

**INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
RESOLUTION 27/2014**

PRECAUTIONARY MEASURE No. 442-12
William Alberto Pérez Jerez
regarding the Republic of El Salvador
October 1 , 2014

I. INTRODUCTION

1. On July 30, 2012, the Inter-American Commission on Human Rights (hereinafter ‘the Inter-American Commission,’ ‘the Commission’ or ‘IACHR’) received a request for precautionary measures submitted by Dennis Estanley Muñoz Rosa (hereinafter ‘the applicant’), asking that the Commission request the Republic of El Salvador (hereinafter ‘El Salvador’ or ‘the State’) to protect the life, personal integrity and health of William Alberto Pérez Jerez (hereinafter ‘the proposed beneficiary’), who would be detained and currently would be facing an alleged serious health situation, allegedly without specialized medical care and the necessary support within the prison where he would be detained.

2. After analyzing the factual and legal allegations put forth by the parties, the Commission considers that the information presented shows *prima facie* that Mr. William Alberto Pérez Jerez would be currently in a serious and urgent situation, as his rights to life, personal integrity and health are allegedly threatened and at serious risk. Consequently, in accordance with Article 25 of the Rules of Procedure of the Commission, the IACHR requests the Government of El Salvador to: a) Adopt the necessary measures to guarantee the life and personal integrity of Mr. William Alberto Pérez Jerez. In particular, to provide the specialized medical care needed, taking into account the deterioration that his pathologies would be producing and the special supports that currently requires; b) To ensure that the conditions of detention of Mr. William Alberto Pérez Jerez are in accordance with applicable international standards, taking into account his current health status, his disability and his terminal illness; and c) To consult with the beneficiary and his representative on actions to be taken to implement these measures.

II. SUMMARY OF FACTS AND ARGUMENTS PROVIDED BY THE PARTIES

3. According to the petition for precautionary measures and subsequent correspondence, Mr. William Alberto Pérez Jerez, 46 years of age, has been imprisoned since July 2001 at the Central Penitentiary “La Esperanza”, in the city of Ayutuxtepeque, El Salvador. The proposed beneficiary was sentenced to 30 years imprisonment pursuant to two convictions for “aggravated kidnapping”. According to the petitioner, the proposed beneficiary suffers from “paraplegic disability and partial blindness” and has been diagnosed with an illness called “Devic’s Syndrome or neuromyelitis optica.” Devic’s Syndrome is an incurable, chronic, degenerative disease, which is causing the proposed beneficiary serious organ damage. The petitioner indicates that Mr. Pérez Jerez is receiving ongoing treatment “with steroids, chemotherapy, and physical therapy” in an effort to prolong his life and that this treatment has had adverse effects on him. Due to complications from his illness and the use of some medications, the proposed beneficiary has to use a wheel chair to move around. In the petitioner’s initial correspondence, he alleged the following facts:

A. The current conditions under which Mr. William Alberto Pérez Jerez is imprisoned are putting his health and life in grave danger. Specifically, the petitioner asserts that the prison where the proposed beneficiary is incarcerated, which has a population of “more than 5500 inmates,” is “seriously overcrowded” (exceeding its capacity by 600%), as the facility was designed for 800 to 1,000 inmates. This situation has made the proposed beneficiary an easy prey to infectious diseases, which is accelerating “the natural progression of the disease’s fatal outcome.” Specifically, the petitioner highlights that due to the proposed

beneficiary's illness, "heightened by the adverse effects of chemotherapy treatment," he remains "persistently immunocompromised."

B. The proposed beneficiary is confined to Administrative Phase "C" of the prison facility. According to the petitioner, Mr. Pérez Jerez is held on the second floor, which means he must be assisted by other inmates to descend from or ascend to this area. In particular, the petitioner states that: (i) "going down is very awkward and risky, as there are 21 steps on the way in the shape of an "L" [with an] extremely steep ascent and descent that requires the assistance of at least three inmates in order to carry him and bring the wheel chair up;" (ii) the cell does not have the adequate minimal conditions for a person with disabilities. For example, he cannot access a "basin of water" (tank on his own) to bathe himself, nor a toilet to relieve himself; (iii) there is a 12-hour lockdown period (from 6 pm to 6 am); (iv) due to the prison system's administrative shortcomings he is not provided with a high-protein diet like specialists have prescribed for him in order to reduce his loss of muscle mass; and (v) the location of his cell would make immediate medical care difficult if there was to be a crisis and there is no evacuation route in cases of emergency.

C. The Constitutional Section of the Supreme Court of Justice ruled in favor of the proposed beneficiary's motion of habeas corpus on June 8, 2011. In this ruling the Court ordered the General Directorate of Prisons to "comply with the medical instructions prescribed for inmate Pérez Jerez, as of when he is taken to the *Instituto Salvadoreño de Rehabilitación de Inválidos* [Salvadoran Institute for Rehabilitation of Disabled Persons] (hereinafter, *ISRI*), as well as his respective chemotherapy sessions and other treatments that are provided as the result of having a clinical condition that is treated by many specialists (hematologist, oncologist, neurologist, internist, and others) from the *Hospital Nacional Rosales* [Rosales National Hospital]". Furthermore, the petitioner reports that (i) a petition for Mr. Pérez Jerez's pardon is currently pending before the Legislative Assembly of El Salvador; and (ii) his request for parole was denied because he is not 60 years of age.

4. On March 12, 2013, information was requested from the State. In response, the State indicated that, in keeping with the information sent by the *ISRI* and the Ministry of Health, the proposed beneficiary had been diagnosed with "upper motor neuron syndrome, secondary quadriplegia, low vision, Devic's disease and painful left shoulder syndrome from osteoarthritis." These diseases mean that "his walking is increasingly limited due to the weakness he experiences, which is progressive and requires him to spend most of his time in a wheel chair." He was also diagnosed with "diminished visual acuity." Due to this situation, the State reported that it had taken the following measures:

A. The State indicated that it had taken measures to coordinate with the *ISRI* and the *Hospital Nacional Rosales* with regard to the proposed beneficiary's medical treatment. Additionally, the State affirmed that the proposed beneficiary received "regular" medical consultations, rehabilitation therapy, and medical care that were aimed at stabilizing his health. Subject to coordination, the proposed beneficiary was transported so he could attend the aforementioned appointments at different hospitals of the "national health network," as well as therapies provided by the *ISRI*.

B. As for the prison conditions, the State indicated that: (i) the proposed beneficiary was receiving medical care, both at the "La Esperanza" prison facility, as well as outside of it; (ii) he was subject to ongoing monitoring by medical personnel and nurses of the General Director of Prisons; (iii) he was subject to a high-protein, high-calorie diet in keeping with his disease; and (iii) he had been assigned to a cell to facilitate his access to the bathroom, which was only occupied by the proposed beneficiary. According to the State, this cell "was accessible so that medical personnel could assist said inmate with any need that he might have."

5. On June 15 and July 2, 2013, the petitioner presented observations to the State's report, indicating that: (i) the proposed beneficiary had not received physical therapy in a regular, ongoing manner. In this regard, he stated that *ISRI* had dispensed with half of the physical therapy sessions prescribed for Mr. Pérez Jerez. According to the petitioner, this decision was contrary to that of the Neurology Department of the *Hospital Nacional Rosales*, which had ordered that physical therapy be ongoing; (ii) the proposed beneficiary was living in a cell that had no toilet; (iii) he did not regularly attend physical therapy sessions; (iv) the proposed beneficiary was general alone and access to the bathroom was inadequate for a person with disabilities. Specifically, he stated that "the distance from the cell to the bathrooms and sinks, is approximately 10 to 15 meters and before you can get to the toilet and the sink across from it there is always the obstacle of a step that is more or less 15 centimeters high, which hinders access thereto"; (v) security personnel were "never" there to assist him with his needs, there was no emergency evacuation exit or immediate access to the prison clinic, among other information.

6. On January 16, 2014, additional information was requested from both parties. Given the lack of response, information was again requested from both parties.

7. On February 3, 2014, the petitioner provided the proposed beneficiary's medical "discharge" summary, issued by the *Hospital Nacional Rosales*, and the updated clinical summary from the *ISRI*, dated January 28, 2014. According to the latter, the proposed beneficiary had suffered "an increase in his disability, and currently faces problems of near blindness in his right eye, low vision in his left eye, and moves around in a wheelchair he pushes himself." This clinical summary added that the proposed beneficiary's disease had "been progressing for approximately six years[,] the consequences of which are already clearly manifested, [...] with a gloomy prognosis for his survival and incapacitating." In its conclusion, the Interdisciplinary Team and Medical Board indicated that he had already been provided with all possible therapeutic processes institutionally and his current condition required therapy only for support or maintenance. Under these circumstances, the petitioner alleged that the proposed beneficiary was "condemned to die in prison."

8. On February 10, 2014, the State attached a report dated January 24, 2014 from the Chief of Neurology of the *Hospital Nacional Rosales*, which stated that the proposed beneficiary's clinical outcome was good.

A. The State likewise attached: (i) an evaluation from the Forensic Medical Institute, stating that the proposed beneficiary "[o]nly presented signs and symptoms that characterize the chronic, degenerative condition, for which, according to the statement by the same Mr. Pérez Jerez, he was receiving medical care and therapy;" and (ii) [sic] the January 29, 2014 record of the inspection conducted by the "First Judge of Penitentiary Oversight and Sentencing Enforcement" of San Salvador of the cell assigned to the proposed beneficiary. During this inspection the Judge noted that "when entering the bathroom and toilet area you must go up a step. Additionally, when going past the bathroom area, another step can be seen that leads to the hall where the cells are located for inmates of Phase "C". Given this situation an improvised ramp has been observed, which is reportedly used when the inmate moves around in his wheel chair over the two steps described above." The Judge also pointed out that the cell where the proposed beneficiary was held is "very clean."

B. Regarding the medical treatment provided to the proposed beneficiary, the State repeated the information previously furnished.

C. The proposed beneficiary's cell was located on the second floor. Therefore, if he required medical care and needed to be taken to the respective clinic, the beneficiary would be taken down from and up [again] to the area by his fellow inmates. The State reported that it had offered to house the proposed beneficiary in what is called the "hospitalization area," located on one side of the prison clinic, where

inmates are held for observation by medical and nursing personnel. This offer, however, was allegedly rejected by the proposed beneficiary.

9. On August 21, 2014, in response to the State's report, the petitioner added that:

A. Regarding the treatment that the proposed beneficiary was currently receiving, the petitioner reported that he was attending physical therapy and was receiving a treatment known as plasmapheresis. This had led to a "slight improvement, but not a cure for [his] illness, Devic's Syndrome or Neuromyelitis Optica, which is incurable." The petitioner alleged that the proposed beneficiary was experiencing "progressive deterioration" of his physical condition. To this point, he attached a clinical summary dated August 14, 2014, which stated that the proposed beneficiary's current health condition was "a state of asthenia, generalized pallor; bilateral alteration of visual acuity, [...], scarce ability to walk, overall sensitivity, and hypotrophy of lower limbs." Under these circumstances, the petitioner affirmed that the proposed beneficiary needed to receive a stem cell transplant for his recovery, multi-disciplinary treatments (he needed supervision of an ophthalmologist and urologist), psychiatric treatment for depression over his illness, and treatment by a nutritionist. According to the petitioner, efforts were being made to provide clinical care for the proposed beneficiary at the prison; however, "such efforts" on the part of prison medical personnel could not cover the medical needs "of more than 5,000 inmates at "La Esperanza" Penitentiary.

B. As for the prison conditions where the proposed beneficiary is held, the petitioner indicated that: (i) the proposed beneficiary was not in a place that was "suitable for his health"; (ii) the fact that he was in an area where there are "many steps to reach his cell" complicated the situation; (iii) he alleged that the prison had no equipped rehabilitation unit; (iv) the toilets were "anti-hygienic" and to access them the proposed beneficiary had to "go up a step approximately 10 centimeters [high]"; (v) he reiterated that the proposed beneficiary was on the second floor of the penitentiary and that the ramp was not "functional, inasmuch as the wood it is made of is broken and rotting." In this regard the petitioner highlighted that the proposed beneficiary "has a permanent catheter in his hemithorax [...], which leads to his heart's right ventricle, and for this reason he cannot and should not overexert himself"; (vi) allegedly there was poor lighting in the hallway leading to his cell, which "is worse particularly at night," and for this reason the proposed beneficiary usually relieved himself in his bed, "soiling his bed and wheel chair with excrement as a result, which is adverse as he runs the risk of contracting an infection, like the ones he has already had."

10. On September 4, 2014, the State presented its report, listing the treatments that the proposed beneficiary was allegedly receiving. Such treatments include, among others, physical rehabilitation therapy at the *ISRI*, follow up and monitoring tests at the laboratory of the *Hospital Nacional Rosales*, and plasmapheresis treatments every three months. The State asserted that the proposed beneficiary was receiving medical treatment for a moderate depressive disorder, which is given daily under the care of prison infirmary personnel. The State further asserted that the proposed beneficiary received a high-protein, high-calorie diet with a double portion as prescribed by the *ISRI* specialist. The State reported that the proposed beneficiary's cell was "exclusively for him, with adequate ventilation and lighting." The State affirmed that if emergency medical care were required, the prison clinic's personnel would go to his cell, as this was "accessible to the clinic." The State repeated that it had offered to hold the proposed beneficiary in what was known as the "hospitalization area," but that he had rejected this.

11. On September 16, 2014, the petitioner presented an additional report, indicating that:

A. The proposed beneficiary had not accepted the transfer to the so-called "hospitalization area," because it was "not suitable for the proposed beneficiary, as there was neither ventilation nor adequate bathrooms." Furthermore, the petitioner added that there were patients with tuberculosis and infectious

contagious diseases in this area, and that “William Pérez Jerez suffers from an autoimmune disease, which means that he can easily contract any virus or bacteria, which could cause his death because he does not have the necessary defenses to fight off any disease.”

B. According to the petitioner, the proposed beneficiary did not have “any direct assistance to meet his daily basic needs, such as eat, take a bath, defecate or urinate, or help him in bed.” Furthermore, he did not have specialized permanent medical assistance; “to the contrary, he depends on the good will of his fellow inmates who have the desire to help him.”

C. Currently the seriousness of the proposed beneficiary’s diseases manifested themselves in: (i) blindness in both eyes, “more in one than in the other”; (ii) concrete impossibility of movement, due to total paraplegia in his lower limbs and partial paraplegia in his upper limbs”; (iii) an infection where the catheter is located, which leads to his heart; (iv) “chronic anemia, as a result of the medical treatment and inadequate nourishment”; among others. Additionally the petitioner indicated that there was a dearth of medication for the treatment prescribed for the proposed beneficiary’s disease, both in the clinic of the Central Penitentiary “La Esperanza”, as well as the pharmacies of the *Hospital Nacional Rosale[s]*. As a result of this situation, the proposed beneficiary’s family had on some occasions paid the cost of the medications.

D. The infrastructure where the proposed beneficiary is being held did not meet “the minimum standards for hygiene or lay out to treat his disease nor did it offer dignified conditions while the illness’ final outcome makes itself felt.”

III. ANALISIS OF THE ELEMENTS OF SERIOUSNESS, URGENCY AND IRREPARABLE HARM

12. The precautionary measures mechanism is part of the Commission’s function to monitor compliance with the human rights obligations set forth in article 106 of the Charter of the Organization of American States. These general monitoring functions are provided for in article 41 (b) of the American Convention on Human Rights and in article 18 (b) of the IACHR’s Statute, and the precautionary measures mechanism is described in Article 25 of the Commission’s Rules of Procedure. Pursuant to this Article, the Commission grants precautionary measures in situations of gravity and urgency, in which such measures are necessary to prevent irreparable harm to the person.

13. The Inter-American Commission and the Inter-American Court of Human Rights (hereinafter ‘the Inter-American Court’ or ‘I/A Court H.R.’) have repeatedly established that precautionary and provisional measures have a dual nature, precautionary and protective. Regarding the protective nature, the measures seek to avoid irreparable harm and preserve the exercise of human rights. Regarding the precautionary nature, the measures have the purpose of preserving a legal situation while being considered by the IACHR. The precautionary nature aims to preserve those rights at risk until the petition in the Inter-American system is resolved. Its object and purpose are to ensure the integrity and effectiveness of the decision on the merits and, thus, avoid infringement of the rights at issue, a situation that may adversely affect the usual purpose (*effect utile*) of the final decision. In this regard, precautionary measures or provisional measures thus enable the State concerned to fulfill the final decision and, if necessary, to comply with the reparations ordered. As such, for the purposes of making a decision, and in accordance with Article 25.2 of its Rules of Procedures, the Commission considers that:

- a. ‘serious situation’ refers to a grave impact that an action or omission can have on a protected right or on the eventual effect of a pending decision in a casa or petition before the organs of the Inter-American system;
- b. ‘urgent situation’ refers to risk or threat that is imminent and can materialize, thus requiring immediate preventive or protective action; and

c. 'irreparable harm' refers to injury to rights which, due to their nature, would not be susceptible to reparation, restoration or adequate compensation.

14. The Commission considers that the requirement of seriousness has been met in this matter, in the light of the alleged marked deterioration in Mr. William Alberto Pérez Jerez's health, which could impact his right to life and to humane treatment. In keeping with the information provided by both parties, Mr. Pérez Jerez has a disability that prevents him from walking—"upper motor neuron syndrome, secondary quadriplegia, low vision, Devic's disease and painful left shoulder syndrome from osteoarthritis." Devic's syndrome or neuromyelitis optica is a chronic, degenerative disease that is incurable. Throughout this proceeding, the petitioner has provided information about the progressive worsening of Mr. Pérez Jerez's health and the potentially disproportionate impact that prison conditions are having on him. Under these circumstances, the Commission considers that the possible absence of special and comprehensive measures in Mr. Pérez Jerez's favor may be causing him unnecessary physical and mental suffering.

15. When analyzing this requirement, the Commission observes that the information contributed by the petitioner is consistent with the general information that IACHR has received through public hearings on the particularly vulnerable situations of persons with disabilities who are deprived of liberty and persons with terminal illnesses under certain circumstances.¹ Based on the "Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas,"² the Commission has regularly reiterated the "necessity for States to adopt special measures to address the particular health needs of persons deprived of liberty who belong to groups [...] [such as] persons with disabilities, [...] and persons with terminal diseases."³ With regard to persons with disabilities in particular, the United Nations System has pointed out that "the fulfilment of the right of persons with disabilities in detention to be treated humanely may require States and their officials to take additional steps to realize such rights. [...] This might require changes to the detention environment and provision of special equipment where necessary."⁴

16. Taking into consideration the information provided, which has been examined comprehensively, the Commission considers that it has been shown *prima facie* that Mr. William Alberto Pérez Jerez's right to life, humane treatment, and health are at risk.

17. The IACHR considers that the urgency requirement has been met, inasmuch as the progress of the aforementioned illness and the passing of time mean there is an immediate need for a series of special measures to address Mr. William Alberto Pérez Jerez's specific situation. In this regard, the Commission takes note of the information furnished by the State related to a series of measures that include: (i) treatments, consultations, rehabilitation therapies, among other measures, provided principally by the *ISRI* and the *Hospital*

¹ See: IACHR. Public hearings: "Human Rights Situation of Persons with Disabilities in Cuba (150th Regular Session), March 25, 2014; "Situation of the Legal Standing and Access to Justice for Persons with Disabilities in Latin America " (150th Regular Session), March 25, 2014; "Human Rights Situation of Persons Deprived of Liberty in Venezuela (150th Regular Session), March 28, 2014; "Situation of Persons Deprived of Liberty in Cuba" (147th Regular Session); "Hearings on the Human Rights Situation of Persons Deprived of Liberty in Uruguay, Honduras, and Mexico" (144th Regular Session), March 23, 26, and 27, 2012. Available at:

<http://www.oas.org/es/cidh/audiencias/advanced.aspx?lang=es>

² See: IACHR. "Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas". Adopted by the Commission during its 131st Regular Session, convened from March 3—14, 2008. Available at: <http://www.oas.org/es/cidh/mandato/Basicos/PrincipiosPPL.asp>

³ See: IACHR. "Report on Human Rights of Persons Deprived of Liberty in the Americas", adopted by the IACHR on December 31, 2011.

Available at: <http://www.oas.org/es/cidh/defensores/docs/pdf/defensores2011.pdf>

⁴ See: UN. "Dignity and Justice for Detainees Week." Information Noted No. 4 regarding Persons with Disabilities, October 2, 2008, Available at:

http://www.ohchr.org/EN/UDHR/Documents/60UDHR/detention_infonote_4.pdf

Nacional Rosales; (ii) Mr. William Alberto Pérez Jerez's assignment to an individual cell on the second floor so he may access the bathroom; (iii) inclusion of a wooden ramp located in the area where the inmate is held; (iv) the option provided to Mr. Pérez Jerez to be relocated to the "hospitalization area," which was rejected due to the alleged possibility of infections and the need for special assistance; among other measures.

18. Nevertheless, the Commission observes that the State has not furnished substantive information on: (i) emergency medical assistance to be provided to Mr. Pérez Jerez in a situation of imminent danger to his health, bearing in mind the particularities of his illness, disability, and the current conditions of his imprisonment; (ii) a contingency plan in the case of fire or other emergencies; (iii) whether the conditions of imprisonment to which he is regularly subject in his assigned area of the Central Penitentiary "La Esperanza" are compatible with the progressive deterioration of his current health; (iv) the adoption of comprehensive measures and reasonable accommodations⁵ with regard to his mobility, ongoing monitoring of his health, special supports to meet his basic needs, among others. Under these circumstances, the IACHR considers that Mr. William Alberto Pérez Jerez is in a situation of defenselessness, inasmuch as a strategy designed to provide conditions that do not worsen his illness has failed to be implemented, taking into consideration his multiple special needs.

19. Regarding the requirement of irreparability, the Commission believes that it is met, to the extent that the possible risk to the right to life and personal integrity, as a result of his current health status, embodies the highest situation of irreparability.

20. The Commission recalls that the States "are in a special position of guarantor, since the prison authorities exercise heavy control or dominance over people who are in their custody. This, as a result of the special relationship and special holding interaction between the person deprived of liberty and the State, characterized by the particular intensity with which the state can regulate their rights and obligations [...] by the circumstances of confinement, in where the inmate is prevented to self satisfy a number of basic needs essential for the development of their dignified life."⁶

IV. BENEFICIARIES

21. The request was filed on behalf of William Pérez Alberto Jerez, who has been fully identified in the documents presented.

V. DECISION

22. In view of the above-mentioned information, the Commission considers that this matter *prima facie* meets the requirements of seriousness, urgency and irreparable harm contained in Article 25 of its Rules of Procedure. Consequently, the Commission requests the Government of El Salvador to:

- a) Adopt the necessary measures to guarantee the life and personal integrity of Mr. William Alberto Pérez Jerez. In particular, to provide specialized medical care needed, taking into account the deterioration that would be producing his pathologies and the special supports that currently requires;
- b) To ensure that the conditions of detention of Mr. William Alberto Pérez Jerez, are in accordance with applicable international standards, taking into account his current health status, his disability and his terminal illness; and
- c) To consult with the beneficiary and his representative on actions to be taken to implement these measures.

⁵ See: UN Convention on the Rights of Persons with Disabilities. Article 2 thereof provides that: "Reasonable accommodation means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms".

⁶ See: IACtHR. Mendoza and others Vs. Argentina case. Preliminary Objections, Merits and Reparations. Judgment of 14 May 2013, para. 188.

23. The Commission requests the Government of El Salvador to inform the IACHR, within 10 days from the date of this resolution, on the adoption of the precautionary measures requested and update such information regularly.

24. The Commission emphasizes that, according to Article 25 (8) of its Rules of Procedure, the granting of this precautionary measure and its adoption by the State shall not constitute a prejudgment on any possible violation of the rights protected in the American Convention on Human Right or other applicable instruments.

25. The Commission orders the Executive Secretariat of the Inter-American Commission on Human Rights to notify the Government of El Salvador and the applicant of this resolution.

26. Approved on the 1 day of October, 2014 by: Tracy Robinson, President; Rose Marie Belle Antoine, First Vice-President; Felipe González, Second Vice-President; Commissioners José de Jesús Orozco Henríquez, Rosa María Ortiz, James Cavallaro and Paulo Vannuchi.