
**INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
RESOLUTION TO LIFT PRECAUTIONARY MEASURES 72/2020**

Precautionary Measure No. 409-13

Members of the Association for the Search of Disappeared Children regarding El Salvador

October 19, 2020

Original: Spanish

I. BACKGROUND INFORMATION

1. On November 21, 2013, the Inter-American Commission on Human Rights (IACHR) requested the adoption of precautionary measures in favor of the members of the Association for the Search of Disappeared Children (*Asociación Pro-Búsqueda de Niñas y Niños Desaparecidos*), in El Salvador. The request alleged that the beneficiaries were being subject to a series of intimidations and surveillance, due to the work they carry out at the national and international level in the search for children who disappeared during the internal armed conflict in El Salvador. Upon analyzing the submissions of fact and law presented, the Commission considered that the information showed *prima facie* that the beneficiaries were at risk. Consequently, the Commission requested that the State of El Salvador adopt the necessary measures to guarantee the life and personal integrity of the beneficiaries.

II. INFORMATION PROVIDED DURING THE TIME THE MEASURES WERE IN FORCE

2. During the time the precautionary measures were in force, the Commission has followed up on the situation of these precautionary measures, through requests for information from the parties. Furthermore, during this time the State requested the lifting in 2018 and reiterated it in 2019, arguing that the requirements established in Article 25 of the Rules of Procedure are not met. The Commission has made the corresponding forwarding of information between the parties.

3. The State reported that it has carried out proceedings to safeguard the rights of the beneficiaries. In 2013, the State indicated that competent authorities have promoted the corresponding actions to investigate the events that gave rise to these measures. Regarding security measures, they carried out permanent patrols and security operations nearby the Association's headquarters. Moreover, the adoption of protective measures was requested through the Victims and Witnesses Protection Program in favor of the beneficiaries who stated that they required them. In April 2017, the State indicated that it held meetings with the representatives and the Office of the Attorney General (FGR) in order to establish the persons who have protective measures. The State recalled that since January 2014 it has ordered the implementation of protective measures in favor of Marian Dolores Ortiz and Alondra Abigail de Olmedo. In general, the State referred to the proceedings related to monitoring the investigative actions carried out by the Office of the Attorney General.

4. For its part, the representatives noted that in 2014 inspections and interviews had been carried out as part of the investigations; however, they question them. Regarding the protective measures, the representatives stated that they have perimeter security at the Association's facilities that includes the presence of two police officers. Subsequently, in 2017, the representatives indicated that the National Police is providing special protection for the organization's facilities. Before the repeal of the Amnesty Law, some of the Association's staff members reported that they were being followed by unknown vehicles, especially the director alleged that he had received intimidating calls, without further details.

5. In April and May 2018, and January 2019, the State reported that the Office of the Attorney General concluded that the proceedings carried out were insufficient to successfully identify those responsible for the events and, therefore, it was decided to archive the case. However, after that, a file was opened for crimes of aggravated fraud and material misrepresentation committed to the detriment of the Association. In turn, the State noted that 4 years have gone by since the events that gave rise to these precautionary measures took place and no more events of risk have occurred. Moreover, the State emphasized that Marina Dolores Ortiz no longer works for the Association, and that it has been informed of a change in the board of directors of that organization.

6. On January 17, 2019, the IACHR requested that the representatives provide their observations on the request to lift these measures filed by the State, as well as updated information on the situation of the beneficiaries. To date, the Commission does not have the observations by the representatives. Since May 2018, the Commission has not received communications from the representatives whereby they report on the situation of the beneficiaries.

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

7. The precautionary measures mechanism is part of the Commission's function of overseeing compliance with the human rights obligations set forth in Article 106 of the Charter of the Organization of American States and, in the case of the Member States that have not yet ratified the American Convention, the Declaration of the Rights and Duties of Man. These general oversight functions are established in Article 18 of the Statute of the IACHR, and the precautionary measures mechanism is described in Article 25 of the Rules of Procedure of the Commission. In accordance with that Article, the Commission grants precautionary measures in serious and urgent situations in which these measures are necessary to avoid an irreparable harm to persons.

8. The Inter-American Commission and the Inter-American Court of Human Rights have established repeatedly that precautionary and provisional measures have a dual nature, both precautionary and protective. As regards the protective nature, these measures seek to avoid irreparable harm and preserve the exercise of human rights. Regarding their precautionary nature, the measures have the purpose of preserving legal situations while they are being considered by the IACHR. Regarding the process of decision making and, according to Article 25(2) of the Rules of Procedure, 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 case 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.

9. With respect to the foregoing, Article 25.7 of the Commission's Rules of Procedure establishes that "the decisions granting, extending, modifying or lifting precautionary measures shall be adopted through reasoned resolutions." Article 25.9 establishes that "the Commission shall evaluate periodically, at its own initiative or at the request of either party, whether to maintain, modify or lift the precautionary measures in force." In this regard, the Commission should evaluate if the serious and urgent situation and the possible generation of irreparable harm, that caused the adoption of the precautionary measures, persist. Furthermore, the Commission should consider if new situations that might meet the requirements set forth in Article 25 of the Rules of Procedure have subsequently arisen.

10. When analyzing this matter, the Commission recalls that when a State requests the lifting of a precautionary measure, it must present evidence and arguments sufficient to support its request.¹ In the same way, the representatives of the beneficiaries that want the measure to continue must present evidence of the reasons why.² While the assessment of the procedural requirements when adopting precautionary measures is carried out from a *prima facie* standard, the maintenance of such measures requires a more rigorous evaluation.³ In this sense, the burden of proof and argument increases as time goes by and there is no imminent risk.⁴ Similarly, according to Article 25, subparagraph 11, the Commission may lift or review a precautionary measure when the beneficiaries or their representatives unjustifiably fail to provide the Commission with a satisfactory response to the requests made by the State for its implementation.

11. In this matter, the Commission granted precautionary measures in 2012, based on the fact that the beneficiaries were being subject to intimidation and surveillance, allegedly in the framework of the work they carry out as members of the organization Association for the Search of Disappeared Children, in El Salvador. In this regard, the Commission notes that, according to subsequent information, persons who were initially members of the Association no longer work there, such as Ms. Dolores. Furthermore, a change in the board of directors of the organization has been reportedly made.

12. Following the granting, the Commission takes note of the proceedings reported by the State through its reports concerning the implementation of this precautionary measure (see *supra* paras. 3 and 5). For their part, the representatives initially provided observations on the implementation of the precautionary measure (see *supra* para. 4). In their responses, the Commission notes that the representatives referred to the protective measures implemented by the State, without providing actual or detailed questionings regarding their effectiveness or suitability, although during the time this precautionary measure was in force information was requested on the situation of the proposed beneficiaries.

13. Moreover, the Commission notes that the representatives have not submitted information since 2017 on the occurrence of events of risk against them, and approximately 4 years have gone by since then. In the same way, when analyzing the nature of the alleged facts at that time, the information was also general and without details. The Commission even notes that, although information was requested from the representatives in 2019, no response has been received either. In addition, having asked for observations regarding the request to lift these measures in 2019, the representatives have not responded to date and the timelines granted have expired. Given these circumstances, and in view of the lack of updated information, the Commission does not have elements sufficient to infer that the requirements established in Article 25 of its Rules of Procedure are currently met.

14. In this regard, taking into consideration the request to lift the measures filed by the State in 2018 and reiterated in 2019, the lack of response from the representatives to the requests for information, the lack of observations from the representatives on the allegations of the State and the lack of actual questionings on the protective measures implemented, and given that approximately 4 years have gone by without information on the events of risk against the beneficiaries, the Commission considers that it does not have elements sufficient to call for these precautionary measures to remain in force, and it cannot determine that the beneficiaries are in a situation of serious and urgent risk of irreparable harm to their rights according to

¹ I/A Court H.R. Provisional measures regarding Mexico. Order of February 7, 2017, paras. 16 and 17. Available [in Spanish] at http://www.corteidh.or.cr/docs/medidas/fernandez_se_08.pdf

² *Ibid.*

³ *Ibid.*

⁴ *Ibid.*

the provisions in Article 25 of the Rules of Procedure. In this regard, the Commission deems it appropriate to lift these precautionary measures.

15. Lastly, with regard to questioning the investigations, given that it would demand an analysis of the merits that is better suited to an eventual petition or case, which exceeds the precautionary measures nature, the Commission deems it relevant to recall that in accordance with Articles 8 and 25 of the American Convention, the State is obligated to diligently investigate the alleged events with a view to punishing those found responsible.

IV. DECISION

16. The Commission decides to lift the precautionary measures granted to the members of the Association for the Search of Disappeared Children.
17. The Commission deems it relevant to recall that in accordance with Articles 4 and 5 of the American Convention in relation to Article 1.1. of the same instrument, the State of El Salvador is under the obligation to respect and guarantee the rights of the members of the Association for the Search of Disappeared Children, regardless of the lifting of these measures.
18. The Commission recalls that the above decision does not prevent the Commission from considering a new request for precautionary measures, should it be filed.
19. The Commission instructs its Executive Secretariat to notify this resolution to the State of El Salvador and the representatives.
20. Approved on October 19, 2020 by Antonia Urrejola Noguera, First Vice-President; Margarette May Macaulay; Esmeralda Arosemena de Troitiño; and Julissa Mantilla Falcón, commissioners of the IACHR.

María Claudia Pulido
Acting Executive Secretary