
**INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
RESOLUTION 8/2021**

Precautionary Measure No. 998-20

José Humberto Hernández Rodríguez regarding Venezuela

January 28, 2021

Original: Spanish

I. INTRODUCTION

1. On October 19, 2020, the Inter-American Commission on Human Rights (“the Inter-American Commission,” “the Commission” or “the IACHR”) received a request for precautionary measures filed by Génesis María Dávila Vázquez, Simón Enrique Gómez Guaimara, and Yeimber Machado of the organization Defend Venezuela (“the applicants”), urging the Commission to request that the Bolivarian Republic of Venezuela (“the State” or “Venezuela”) protect the rights of José Humberto Hernández Rodríguez (“the proposed beneficiary”). According to the request, the proposed beneficiary, a Venezuelan national prosecuted for his alleged “participation in drug trafficking,” is being held in pretrial detention by court order in the Fénix prison of the state of Lara, and is not receiving the medical care prescribed for his health situation.

2. Pursuant to Article 25 of its Rules of Procedure, the IACHR requested information from the State on November 10, 2020. The representatives submitted additional information on November 16, 2020 and January 20, 2021.

3. Upon analyzing the submissions of fact and law provided by the applicants, the Commission considers, from the applicable *prima facie* standard, that Mr. José Humberto Hernández Rodríguez is in a serious and urgent situation, given that his rights to life, personal integrity, and health face a risk of irreparable harm. Consequently, the Commission requests that Venezuela: a) adopt the necessary measures to protect the rights to life, personal integrity and health of Mr. José Humberto Hernández Rodríguez, in particular by ensuring that he has access to the medical treatment prescribed by the competent authorities; b) consult and agree upon the measures to be adopted with the beneficiary and his representatives; and c) implement the actions aimed at investigating the events that led to the granting of this precautionary measure, so as to prevent them from reoccurring.

II. SUMMARY OF FACTS AND ARGUMENTS PROVIDED BY THE PARTIES

1. Information provided by the applicants

4. The proposed beneficiary (60 years old at the time), along with other authorities and businessmen, was arrested by court order on March 29, 2016 upon identifying a plane allegedly carrying 350 kilos of cocaine, GPS devices, flight plans and a significant sum of foreign currency in cash. On that date, the proposed beneficiary was working as an airport security officer. He was charged with “accessory in the crimes of drug trafficking and conspiracy to commit a crime.” The criminal process is being heard by the 6th Court of Lara State, Venezuela.

5. Since his arrest, the proposed beneficiary was beaten by officers of the National Guard, a situation that continued during the interrogation. Such actions, according to the applicants, led the proposed beneficiary to admit the facts that they were charging him with. Upon being brought to a hearing before the Court, the defense of the proposed beneficiary requested the corresponding forensic medical examination.

6. In June 2018, the proposed beneficiary was assisted by the so-called “Cayapa Plan,” which consisted of a State policy aimed at decongesting prisons in Venezuela due to overcrowded conditions. On that occasion, the then Vice-Minister of Penitentiary Affairs stated that a humanitarian measure would be agreed upon with him. This measure could not be enforced immediately, because at that time there were failures in the electronic system, but the decision was reportedly documented. However, according to the applicants, the file of the proposed beneficiary kept by the Ministry of Popular Power for Penitentiary Affairs was lost, as the authorities affirm that it does not rest at the headquarters of the aforementioned body in Caracas and is not in the archives of the penitentiary center. In view of the above, this humanitarian measure could never be enforced.

7. The applicants indicated, in general, that there have been frequent riots with several fatalities in the Fénix prison, making it one of “the most deplorable [prisons] in the country.” With regard to food, the proposed beneficiary is given a spoon of sugar and potatoes for breakfast. In the afternoon, lentil or squash (pumpkin) water. The applicants reported that the food that the relatives bring is stolen. In November 2020, the applicants indicated that the proposed beneficiary has informed his daughters that he is left without food for up to three days. Given the suspension of visits due to the COVID-19 pandemic, the proposed beneficiary reportedly depends on what the State provides. The proposed beneficiary purportedly uses an “improvised mask” and is provided with a “weekly water pipe” for his consumption and cleaning.

8. According to the medical reports of 2019 and February 2020, the proposed beneficiary (66 years old) currently has the following diagnoses: “painful grade III prostate enlargement”; “large calcification in prostate parenchyma”; “inflammatory process of his bladder wall”; “little post-void residue”; “both kidneys were examined and intracalyceal sediments are appreciated”; “umbilical hernia”; and “bilateral inguinal hernia.” According to the applicants, the physicians have recommended “more examinations and treatment by urology for prostatic growth” and “surgical intervention,” indicating that, if it is not timely treated, it could be complicated with hydronephrosis. In this regard, the applicants indicated that if his prostate growth is not treated, there is a high probability that he may develop prostate cancer to the extent that a surgery would no longer be effective. Moreover, they stressed that the proposed beneficiary requires two surgeries to correct the hernias he has in his pelvic area, which purportedly cause severe daily pain and contribute to urinary obstruction.

9. In September 2020, the proposed beneficiary’s daughter was taken to the Fénix prison. She was reportedly able to see him from afar and, according to the applicants, she detailed that the lump in his pelvic area is already visible even under clothing. The proposed beneficiary allegedly told her that he had not eaten for two days. On that occasion, his daughter brought him an analgesic (injectable diclofenac), so that the prison staff could administer it to him to relieve the severe pain in his pelvic area. However, the officers prevented the family from entering and claimed that there were no personnel who could administer the medicine to him.

10. According to the applicants, in the first weeks of 2021, the proposed beneficiary was examined by a State physician, who diagnosed a “pleural effusion” and ordered to transfer him immediately to a health center where a chest X-ray can be performed and the fluid in his lungs, which purportedly does not let him breathe, can be drained. However, the guards have refused to transfer him stating that there are no vehicles or fuel and indicating that his relatives must arrange transportation. On several occasions, according to the applicants, his relatives have paid for private vehicles to take him to the hospital and, even so, the guards deny his transfer. On January 16, 2021, the proposed beneficiary contacted his daughters to mention that he has severe pain and shortness of breath. In addition, he stated that his guards force him to carry out physical activity under a “closed military order.”

11. The applicants indicated that they have filed the following complaints: in 2016 they asked the Attorney General of the Republic to “review his measure for humanitarian reasons”; and on January 22, 2020, they requested before the competent Court “his immediate transfer, as a matter of urgency, to the Service of Medicine and Forensic Sciences of the State of Lara in order to once again corroborate his health status and carry out an “urgent review of the judicial measure of pretrial detention” due to health conditions. These requests have been reportedly unsuccessful.

12. Lastly, the applicants indicated that the family of the proposed beneficiary is “very humble” and resides within the country. In this sense, the proposed beneficiary was provided with a Public Defender, who has not initiated any proceedings due to the pandemic. The relatives themselves have purportedly resorted to the Supreme Court of Justice of Caracas, given that they were informed by the judge of the Lara State Court that the “case file” was being presided by that Court since 2016. When going to Caracas, the family members were informed that “a decision was pending” and that they are not able to initiate proceedings. According to the applicants, in view of this situation, the judge of the Lara State Court told them that “no actions can be undertaken whatsoever.”

2. Response from the State

13. The IACHR requested information from the State on November 10, 2020. To date, no response has been received from it.

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

14. 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. These general oversight functions are established in Article 18 (b) 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 irreparable harm to persons.

15. The Inter-American Commission and the Inter-American Court of Human Rights (hereinafter “the Inter-American Court” or “I/A Court H.R.”) have established repeatedly that precautionary and provisional measures have a dual nature, both precautionary and protective.

Regarding the protective nature, precautionary measures seek to avoid irreparable harm and to protect the exercise of human rights. Regarding their precautionary nature, these measures have the purpose of preserving legal situations while they are being considered by the IACHR. Their precautionary nature aims to safeguard the rights at risk until the request under consideration in the Inter-American System is resolved. The 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 useful purpose (*effet utile*) of the final decision. In this regard, precautionary or provisional measures allow the State concerned to fulfill the final decision and, if necessary, to comply with the required reparations. Regarding the process of decision making and, in accordance with 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.

16. In analyzing those requirements, the Commission reiterates that the facts supporting a request for precautionary measures need not be proven beyond doubt; rather, the purpose of the assessment of the information provided should be to determine *prima facie* if a serious and urgent situation exists.¹ In the same way, the Commission recalls that, by its own mandate, it is not called upon to rule on the criminal liability of individuals. It is also not called upon to determine the violation of due process through this mechanism, since it would require an analysis on the merits, which is characteristic of a petition or case. The analysis carried out herein by the Commission is exclusively related to the requirements of seriousness, urgency, and risk of irreparable harm set forth in Article 25 of its Rules of Procedure, which can be resolved without making any determinations on the merits, which are specific to the petition and case system.

17. As a preliminary matter, and in view of the nature of the facts described by the applicants, the Commission recalls that the Inter-American Convention to Prevent and Punish Torture, to which the State of Venezuela is a party since its ratification on August 26, 1991, includes the definition of torture as “[...] any act intentionally performed whereby physical or mental pain or suffering is inflicted on a person for purposes of criminal investigation, as a means of intimidation, as personal punishment, as a preventive measure, as a penalty, or for any other purpose,” as well as “[...] the use of methods upon a person intended to obliterate the personality of the victim or to diminish his physical or mental capacities, even if they do not cause physical pain or mental anguish.”

¹See in this regard, I/A Court H.R. *Matter of Inhabitants of the communities of the Miskitu indigenous people of the North Caribbean Coast Region of Nicaragua*. Extension of Provisional Measures. Order of the Inter-American Court of Human Rights of August 23, 2018, considerandum 13; I/A Court H.R., *Matter of children and adolescents deprived of liberty in the “Complexo do Tatuapé” of the Fundação CASA*. Request for extension of provisional measures. Provisional Measures regarding Brazil. Order of the Inter-American Court of Human Rights of July 4, 2006. Considerandum 23. Available (in Spanish) at http://www.corteidh.or.cr/docs/medidas/febem_se_03.pdf

18. In this regard, the Inter-American Court has indicated that an infringement of the protection of the right to integrity encompasses various connotations of degree, such as those ranging from torture to other types of harassment or cruel, inhuman, or degrading treatment.² In this vein, there is also the prohibition of torture, cruel, inhuman, and degrading treatment, and the impossibility of suspending it under any circumstances. In this regard, the Inter-American Court has indicated that the lack of adequate medical care for a person deprived of their liberty and in the custody of the State could be considered a violation of that prohibition.³ Similarly, according to the case law of the European Court of Human Rights, the lack of regular medical care can also constitute inhuman or degrading treatment.⁴

19. Based on the above, it must be borne in mind that, in accordance with Articles 1 and 6 of that instrument, the States parties are obliged to prevent and punish torture, cruel, inhuman or degrading treatment or punishment within the scope of their jurisdiction and, in turn, Article 17 establishes a commitment to “inform the Inter-American Commission on Human Rights about the legislative, judicial, administrative and other measures that they have adopted in application of this Convention.” Under this logic, the Commission reiterates as part of its powers over the States, those provided for in Article 18 (b) of its Statute, consisting of “making recommendations to the governments of the States so that they adopt progressive measures in favor of human rights, within the framework of their laws, their constitutional precepts and their international commitments, as well as appropriate provisions to promote respect for these rights.” In this way, the mechanism of precautionary measures has had a progressive development to become a protection mechanism of the inter-American system, in compliance with its conventional and procedural obligations and emanating from the aforementioned function of the IACHR to ensure compliance with the international commitments assumed by the States parties.

20. Regarding the seriousness requirement, the Commission recalls that the proposed beneficiary is in the custody of the State, which therefore has a special position of guarantor, since prison authorities exercise strong control or command over the persons in their custody.⁵ This is due to the unique relation and interaction of subordination between the person deprived of liberty and the State, characterized by the particular intensity with which the State can regulate their rights and obligations, and by the very circumstances of imprisonment, where prisoners are prevented from satisfying on their own a series of basic needs that are essential for the development of a dignified life.⁶ More specifically, and in light of the facts narrated by the applicants, the Commission recalls that, based on the principle of non-discrimination, the Inter-American Court has indicated that this duty implies the obligation of the State to guarantee their physical and mental health, specifically through the provision of a regular medical check-up and, when required, adequate, timely and, where appropriate, specialized medical treatment according

²I/A Court H.R. Case of Barrios Family v. Venezuela. Judgment of November 24, 2011, para. 52

³I/A Court H.R. Case of Chinchilla Sandoval *et al.* v. Guatemala. Preliminary objection, merits, reparations and costs. Judgment of February 29, 2016. Series C No. 312, para. 173

⁴See: ECHR. Case of Sarban V. Moldova (Application no. 3456/05). JUDGMENT. 4 October 2005, para. 78 Available at <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-70371%22%5D%7D>

⁵I/A Court H.R. *Case of Mendoza et al. v. Argentina*. Preliminary Objections, Merits and Reparations. Judgment of May 14, 2013. Series C No. 260, para. 188. Also, see: IACHR, Report on the Human Rights of Persons Deprived of Liberty in the Americas, December 31, 2011, para. 49.

⁶IACHR, *Report on the Human Rights of Persons Deprived of Liberty in the Americas*, December 31, 2011, para. 49 et seq.

to the special care needs required by the detained persons in question.⁷ In the same way, as indicated by the Inter-American Court, the States must create conditions of real equality for groups that are at greater risk of being discriminated.⁸

21. In this specific case, the Commission notes that the proposed beneficiary is at serious risk due to his state of health, in view of the nature of the medical situation he suffers, its possible consequences and the alleged lack of medical treatment prescribed, within the framework of his deprivation of liberty. In this regard, the Commission notes that the medical diagnoses provided by the applicants dating to 2019 and 2020 show that the proposed beneficiary has a “painful grade III prostate enlargement,” hernias, and an “inflammatory process of his bladder wall,” among others. Given this diagnosis, the treating physician allegedly recommended “treatment by urology” and “surgical intervention” to avoid hydronephrosis. In this regard, the applicants indicated that the proposed beneficiary has severe daily pain, and by September 2020, his pelvic protrusion is very visible, which reportedly is sufficient to show the level of progressive enlargement of his prostate. As indicated, there is the possibility that his medical situation may worsen, that he may develop prostate cancer and that the prescribed surgery may not be effective.

22. In this regard, the Commission notes that, according to the information available, the State has been aware of his health situation since at least 2016 through requests made before the competent Court and the Office of the Attorney General of the Republic (see *supra* para. 11). However, the Commission notes that, despite such actions, the situation of the proposed beneficiary has purportedly not been addressed by the State, nor have the medical prescriptions issued been complied with. Furthermore, the applicants indicated that there is not possible to present further briefs before the Venezuelan justice entities, given that the Supreme Court of Caracas has not yet ruled on the case, and because the Public Defender's Office has not adopted actions in favor of the proposed beneficiary due to the COVID-19 pandemic (see *supra* para. 12). In addition, the Commission notes that, according to the applicants, even though in 2018 the Vice-Ministry of Penitentiary Affairs of Venezuela assessed his situation, it has been alleged that the corresponding file before that entity has disappeared (see *supra* para. 6). In this regard, despite the various actions carried out before the competent entities, the Commission observes that the situation of the proposed beneficiary has not treated for approximately 5 years.

23. Although there is not enough information available to fully assess the conditions of detention of the proposed beneficiary, and such allegations are of a general nature, it is possible to assess the seriousness of the lack of prescribed medical care for the proposed beneficiary, and the impacts that this situation generates in his health, particularly in view of his current age. In this regard, the Commission also notes that, in January 2021, the proposed beneficiary was assessed by a state physician, who diagnosed a “pleural effusion” and requested immediate transfer to a health center for specialized examinations (see *supra* para. 10). The information available indicates that the medical transfer was not carried out either.

⁷I/A Court H.R. Case of Chinchilla Sandoval *et al.* v. Guatemala. Preliminary objection, merits, reparations, and costs. Judgment of February 29, 2016. Series C No. 312, para. 171. For its part, the UN Human Rights Committee even stressed that attention should be ex officio. See: I/A Court H.R. Case of Chinchilla Sandoval *et al.* v. 172.

⁸I/A Court H.R. Case of Poblete Vilches *et al.* v. Chile, Merits, Reparations and Costs. Judgment of March 8, 2018. Series C No. 349. para. 123.

24. In this framework, the Commission also takes into account that, according to the information available, the guards of the proposed beneficiary not only do not carry out the medical transfers that the proposed beneficiary reportedly requires, but also do not allow the medications that the family itself purportedly brings to be properly supplied to the proposed beneficiary. On other occasions, despite having private support in transportation paid for by the family, the guards do not allow for the transfers to take place (see *supra* paras. 9 and 10). Added to this, the applicants indicated that the proposed beneficiary spends some periods of time without receiving food from his guards (see *supra* para. 9) and recently, despite his medical condition, the guards forced him to engage in physical activity (see *supra* para. 10). Although it is not up to the Commission to rule on the attribution of such acts to specific persons or to rule on their individual responsibility, it does take into account the seriousness resulting from the fact that such acts were perpetrated, according to the applicants, by state actors who have the proposed beneficiary under custody.

25. In this regard, the Commission regrets that the State has not responded to the request for information pursuant to Article 25 of the Rules of Procedure. Although the silence of a State does not justify *per se* the granting of a precautionary measure, it does prevent from knowing if the authorities have implemented actions in order to protect the rights of the proposed beneficiary and therefore assess whether the alleged situation of risk has been disproved or not.

26. In summary, taking into account the medical situation of the proposed beneficiary, the medical complications that he purportedly faces, and the lack of prescribed medical treatment, from the *prima facie* standard, the Commission concludes that the existence of a situation of serious risk for the rights to life, personal integrity and health of Mr. José Humberto Hernández Rodríguez is sufficiently evidenced.

27. Regarding the urgency requirement, the Commission considers that it has been met, inasmuch as while the proposed beneficiary is kept without the prescribed medical care that he requires, the evolution of his medical conditions is likely to cause even greater effects on his rights. Moreover, despite the existence of actions before authorities of the judiciary since 2016, the Commission notes that no response has been received to address the situation presented, and the legal actions are pending resolution or are paralyzed due to the current context. In this regard, the immediate grating of these measures is necessary.

28. As it pertains to the requirement of irreparable harm, the Commission finds that it is met, since the possible impact on the rights to life and personal integrity constitute the maximum situation of irreparability.

IV. BENEFICIARY

29. The Commission declares that the beneficiary of this precautionary measure is Mr. José Humberto Hernández Rodríguez, duly identified in this proceeding.

V. DECISION

30. The Commission considers that this matter meets *prima facie* the requirements of seriousness, urgency and irreparable harm contained in Article 25 of its Rules of Procedure. Consequently, it requests that Venezuela:

- a) adopt the necessary measures to protect the rights to life, personal integrity and health of Mr. José Humberto Hernández Rodríguez. In particular, by ensuring that he has access to the medical treatment prescribed by the competent authorities;
- b) consult and agree upon the measures to be adopted with the beneficiary and his representatives; and
- c) implement the actions aimed at investigating the facts that motivated the granting of this precautionary measure, so as to prevent them from reoccurring.

31. The Commission requests as well that the State of Venezuela report, within 15 days as from the date of this resolution, on the adoption of the precautionary measures requested and to update that information periodically.

32. The Commission emphasizes that, in accordance with Article 25 (8) of its Rules of Procedure, the granting of this precautionary measure and its adoption by the State do not constitute a prejudgment on any violation of the rights protected in the applicable instruments.

33. The Commission instructs the Executive Secretariat of the IACHR to notify this resolution to the State of Venezuela and the applicants.

34. Approved on January 28, 2021 by: Joel Hernández García, President; Antonia Urrejola Noguera, First Vice-President; Flávia Piovesan, Second Vice-President; Margarette May Macaulay; Esmeralda Arosemena de Troitiño; Edgar Stuardo Ralón Orellana, and Julissa Mantilla Falcón, members of the IACHR.

María Claudia Pulido
Acting Executive Secretary