
**INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
RESOLUTION TO LIFT PRECAUTIONARY MEASURES 40/2022**

Precautionary Measure No. 349-20
Jorge Ernesto López Zea regarding Colombia¹
August 3, 2022
Original: Spanish

I. SUMMARY

1. The Inter-American Commission on Human Rights (IACHR) decided to lift these precautionary measures in favor of Mr. Jorge Ernesto López Zea, in Colombia. At the time of making this decision, the Commission observes that the beneficiary's situation has changed significantly as he is no longer deprived of his liberty. After evaluating the information received by the parties in the framework of analyzing whether the precautionary measures should remain in force, the IACHR considered that they should be lifted in accordance with the terms of Article 25 of its Rules of Procedure.

II. BACKGROUND INFORMATION

2. On October 28, 2020, the Commission granted precautionary measures to Jorge Ernesto Zea López, a person deprived of liberty in Colombia. According to the request, the proposed beneficiary, who suffers from amyotrophic lateral sclerosis (ALS), was deprived of liberty serving a sentence for the crime of aggravated theft and did not have adequate medical treatment for his disease, a situation that was aggravated in the context of COVID-19 infection. The Commission requested that Colombia: a) adopt the measures necessary to protect the rights to life, personal integrity, and health of Mr. Jorge Ernesto López Zea; in particular, by providing him with the required medical treatment in a timely manner and without undue delay, guaranteeing as well that his detention conditions are in accordance with the international standards applicable. In this regard, pursuant to their internal regulations, the competent authorities must guarantee that Mr. Jorge Ernesto López Zea be located in an area, space or structure that allows meeting his needs for treatment and prevention against COVID-19, in accordance with the recommendations issued by the respective experts and as indicated by this Commission. The foregoing, while the situation of the proposed beneficiary is once again submitted to the corresponding technical evaluations with a view to obtaining an alternative measure to prison.²

3. Representation is exercised by Carlos Rodríguez Mejía and Diana Maite Bayona Aristizábal.

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

4. During the time the precautionary measures were in force, the Commission followed-up on the situation that is the subject matter of these precautionary measures by requesting information from the parties. On November 10, 2020, the State requested a time extension to send information, which was accepted by the Commission on December 16 of the same year. On December 30, 2020, the State sent its response. The Commission forwarded the State's response and requested additional information from the representatives on January 13, 2021. On February 16, 2021, the representation furnished its response.

¹ In accordance with Article 17(2) of the Rules of Procedure of the IACHR, Commissioner Carlos Bernal Pulido, a Colombian national, did not participate in the debate and deliberation of this matter.

² IACHR, [Resolution No. 79/20, MC-349-2, Jorge Ernesto López Zea regarding Colombia](#), October 28, 2020

The Commission forwarded the said response and requested additional information from the State on December 14, 2021. On March 4, 2022, the State sent its response. On March 9, 2022, the representatives submitted updated information. On May 24, 2022, the Commission forwarded the information provided by the parties and requested additional information, noting that the IACHR would analyze whether the precautionary measures should remain in force. To date, the Commission has not received any response from the representatives, and the granted timelines have expired. The State responded on July 25, 2022.

A. Information provided by the State

5. On December 30, 2020, the State sent information indicating that, by order of November 13, 2020, the Twentieth Court for the Execution of Sentences and Security Measures (*Juzgado Vigésimo de Ejecución de Penas y Medidas de Seguridad*) granted the beneficiary house arrest. He was transferred from the penitentiary to his place of residence on November 20, 2020, the date on which a virtual meeting was reportedly held between the representatives, the beneficiary, the Ministry of Foreign Affairs, delegates of the National Penitentiary and Prison Institute (*Instituto Nacional Penitenciario y Carcelario*), and the Metropolitan Prison and Penitentiary Complex of Bogotá “*La Picota*” (*Complejo Carcelario y Penitenciario de Bogotá “La Picota”*), in which the transfer of the beneficiary to his home was confirmed and the following commitments were reached: (i) to convene an inter-institutional meeting; (ii) to call a follow-up and consultation meeting; and (iii) to consult on the possibility of guaranteeing the medical conditions in the penitentiary in the event that the return of the beneficiary to the intramural imprisonment is decided.

6. On March 4, 2022, the State sent information regarding the beneficiary’s legal and health situation.³ It was indicated that Mr. Jorge Ernesto Zea López’s temporary house arrest was allegedly replaced with house arrest.⁴ Moreover, it was reported that the Directorate of the Prison and Penitentiary Complex of Bogotá “*La Picota*” requested the competent court the granting of release on parole to the beneficiary.⁵ Regarding the health situation of the beneficiary, the State confirmed that the beneficiary is affiliated with the contributory regime of the Health Social Security System (*Sistema de Seguridad Social en Salud*) and that the health provider “*Famisanar*” is reportedly providing the required care.

7. On July 25, 2022, the State requested the lifting of the measures and informed that on April 29, 2022, the Court of Execution of Sentences and Security Measures of Fusagasugá, based in Soacha, granted the beneficiary release on parole. The order came to fruition on May 2, 2022. Consequently, the beneficiary is at liberty and no longer under the custody of the National Penitentiary and Prison Institute (INPEC). The State also informed that the beneficiary is enrolled in the contributory regime of the Social Security Health System, and his Health Care Provider (EPS) Famisar is providing the required care. The State furnished a detailed report on the medical care received since 2018.

B. Information provided by the representatives

8. On February 16, 2021, the representatives confirmed the granting of the beneficiary’s temporary house arrest and his subsequent transfer on November 20, 2020. They also confirmed the holding of a virtual meeting and the commitments made as reported by the State. The representatives questioned the

³ Two inter-institutional follow-up meetings were reportedly held during the first half of 2021, in compliance with what was agreed during the virtual meeting of November 20, 2020.

⁴ The National Penitentiary and Prison Institute reportedly verified the execution of the sentence in house arrest through regular visits to the beneficiary’s residence.

⁵ The said request was made to the First Court for the Execution of Sentences and Security Measures of Fusagasugá based in Soacha, the same that until the date of the communication had been analyzing the request.

progress of the agreements of the virtual meeting of November 20, 2020. They also indicated that they have not received responses to diverse requests sent to various public entities, including the National Penitentiary and Prison Institute, the Prison and Penitentiary Complex of Bogotá “*La Picota*,” the Twentieth Court for the Execution of Sentences and Security Measures of Bogotá and the First Court for the Execution of Sentences and Security Measures of Fusagasugá (*Juzgado Primero de Ejecución de Penas y Medidas de Seguridad de Fusagasugá*) based in Soacha.⁶

9. In 2021, the representatives reported that the beneficiary was examined twice by the Forensic Medicine staff and that the second forensic medical opinion of health status dismissed the serious condition of the beneficiary due to illness.⁷ For this reason, the representatives requested an extension of an expert opinion before the Colombian Association of Amyotrophic Lateral Sclerosis (*Asociación Colombiana de Esclerosis Lateral Amiotrófica*), in which, although a serious state of health is not certified, the importance of continuous treatment and medical checks is recognized, and the Penitentiary and Prison System is requested to guarantee compliance with such a treatment.⁸ The representatives highlighted that the National Institute of Forensic Medicine (*Instituto Nacional de Medicina Legal*) contradicted itself in the conclusion that the beneficiary’s situation is compatible with life in detention. According to the representatives, the prison in which the beneficiary was held did not guarantee the protection of his fundamental rights.

10. On March 9, 2022, the representatives confirmed that the beneficiary’s health is stable. They also confirmed that the temporary house arrest became definitive by means of a judicial decision issued in May 2021.⁹ Such a measure purportedly enabled the beneficiary to receive the medical assistance required for the treatment of his illness. Furthermore, the representatives informed that they requested the beneficiary’s release on parole before the competent judicial body on August 6, 2021, a request that was reiterated on February 21, 2022. According to the representatives, the legal requirements for granting parole have been met and they are awaiting the ruling of the First Court of Execution of Sentences and Security Measures of Fusagasugá, based in Soacha.

⁶ The representatives provided a detailed list of the communications sent to each public entity and whether or not these have received a response. In addition, they highlighted four communications verifying delays in the forwarding of information and in the medical assessment required by the beneficiary.

⁷ The forensic medical opinion of state of health No. UBSC – DRBO – 06201 – 2020 recommended the following treatment for the beneficiary’s disease: “1. Strict medical management according to the frequency determined by the services of neurology and psychiatry and/or internal medicine. 2. Assessment by pulmonology to perform spirometry and continue supplemental oxygen control and CPAP. 3. He needs ongoing monitoring by psychiatry and nutrition specialists. The continuous and uninterrupted administration of medication formulated by the treating physicians is required. 4. Oxygen administration and CPAP equipment as well as transportation of oxygen equipment must be secured. 5. Continue with the recommendations prescribed by the nutritionist that the diet should be compote-like, with normal amounts of fat, sodium, and glucose, rich in fruit, fiber, and vegetables, in at least six meals a day, accompanied by nutritional protein supplements three times a day. 6. Daily physical activity controlled and supervised in physical rehabilitation program and controlled by occupational and speech therapy. 7. Perform paraclinical and laboratory tests to control his basic pathologies: hemogram, basal blood glucose, creatinine, urea nitrogen, lipid profile, uranalysis, electrolytes, 24-hour urine proteinuria, Liver Function, Chest X-ray, Electrocardiogram, and others that the patients consider pertinent. 8. His place of dwelling or residence must meet certain health conditions; no overcrowding, no exposure to either passive or active cigarette smoke or irritants. 9. He must also receive comprehensive management by his assigned health service of first level care which should include GENERAL MEDICINE, NURSING, DENTISTRY, and PSYCHOLOGY based on the programs of promotion and prevention of the disease, as well as having access to the emergency services in case of decompensation of his disease.”

⁸ As indicated by the representatives regarding the treatment required by the beneficiary, the Colombian Association of Amyotrophic Lateral Sclerosis recommends that “in the opinion of the treating physician, patients can be ordered: physiotherapy, respiratory therapy, occupational therapy, speech therapy, psychotherapy, and a nutrition plan to provide adequate nutritional intake to meet the metabolic demand. Progression to severe or total muscle weakness causes the patient to be completely dependent on a caregiver. Due to weakness in the muscles that facilitate swallowing, there is a risk of aspiration pneumonia (broncho aspiration) because he does not have the strength to move the food into the esophagus and it is deposited in the lung, therefore, the caregiver must avoid and react to these episodes. To guarantee the right to health, and life, the patient must receive pharmacological treatment with riluzole (specific medication for the disease), medications for the control of symptoms (depression, pain, excess of saliva, etc.), multiple therapies, psychology, a fully available caregiver (emphasis added).”

⁹ Decision issued by the First Court for the Execution of Sentences and Security Measures of Soacha (Cundinamarca).

IV. ANALYSIS OF THE REQUIREMENTS OF URGENCY, SERIOUSNESS, AND IRREPARABLE HARM

11. 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. These general oversight functions are established in Article 41(b) of the American Convention on Human Rights, as well as in Article 18(b) of the IACHR Statute. The mechanism of precautionary measures is set forth in Article 25 of the Commission's Rules of Procedure. 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 or to the subject matter of a petition or case before the organs of the inter-American system.

12. The Inter-American Commission and the Inter-American Court of Human Rights ("the Inter-American Court" or "I/A Court H.R.") have repeatedly established that precautionary and provisional measures have a dual nature, protective and precautionary.¹⁰ Regarding the protective nature, these measures seek to avoid irreparable harm and protect the exercise of human rights.¹¹ To do this, the IACHR shall assess the problem raised, the effectiveness of state actions to address the situation described, and the vulnerability to which the persons proposed as beneficiaries would be exposed if the measures are not adopted.¹² Regarding their precautionary nature, these measures have the purpose of preserving a legal situation while it is being considered by the organs of the inter-American system. The purpose of precautionary measures is to preserve the rights at risk until the petition pending before the inter-American system is resolved. Their object and purpose are to ensure the integrity and effectiveness of an eventual decision on the merits and, thus, avoid any further infringement of the rights at issue, a situation that may adversely affect the useful effect of the final decision. In this regard, precautionary or provisional measures enable the State concerned to comply with the final decision and, if necessary, to implement the ordered reparations. In the process of reaching a decision, 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.

13. With respect to the foregoing, Article 25(7) of the Commission's Rules of Procedure establishes that "decisions granting, extending, modifying or lifting precautionary measures shall be adopted through

¹⁰ See in this regard: I/A Court H.R. [Matter of the Yare I and Yare II Capital Region Penitentiary Center](#). Request for Provisional Measures submitted by the IACHR regarding the Bolivarian Republic of Venezuela, Order of the Inter-American Court of Human Rights of March 30, 2006, considerandum 5; I/A Court H.R. [Case of Carpio Nicolle et al. v. Guatemala](#). Provisional Measures, Order of July 6, 2009, considerandum 16.

¹¹ See in this regard: I/A Court H.R. [Matter of Capital El Rodeo I and El Rodeo II Judicial Confinement Center](#). Provisional Measures regarding Venezuela, Order of the Court of February 8, 2008, considerandum 8; I/A Court H.R. [Matter of Camaca Velásquez](#). Provisional measures regarding Guatemala, Order of the Court of January 27, 2009, considerandum 45; I/A Court H.R. [Matter of Fernández Ortega et al.](#) Provisional Measures regarding Mexico, Order of the Court of April 30, 2009, considerandum 5; I/A Court H.R. [Matter of Milagro Sala](#). Request for Provisional Measures regarding Argentina, Order of the Inter-American Court of Human Rights of November 23, 2017, considerandum 5.

¹² See in this regard: I/A Court H.R. [Matter of Milagro Sala](#). Request for Provisional Measures regarding Argentina, Order of the Inter-American Court of Human Rights of November 23, 2017, considerandum 5; I/A Court H.R. [Matter of Capital El Rodeo I and El Rodeo II Judicial Confinement Center](#). Provisional Measures regarding Venezuela, Order of the Court of February 8, 2008, considerandum 9; I/A Court H.R. [Matter of the Criminal Institute of Plácido de Sá Carvalho](#). Provisional Measures regarding Brazil, Order of the Inter-American Court of Human Rights of February 13, 2017, considerandum 6.

reasoned resolutions.” Article 25(9) sets forth 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 assess if the serious and urgent situation and possible irreparable harm that caused the adoption of the precautionary measures persist. Moreover, the Commission shall consider whether new situations that might meet the requirements set forth in Article 25 of the Rules of Procedure have subsequently arisen.

14. Similarly, while the assessment of the procedural requirements when adopting precautionary measures is carried out from a *prima facie* standard, keeping such measures in force requires a more rigorous evaluation.¹³ In this sense, when no imminent risk is identified, the burden of proof and argument increases over time.¹⁴ The Inter-American Court has indicated that the passage of a reasonable period of time without any threats or intimidation, in addition to the lack of imminent risk, may lead to the international protection measures being lifted.¹⁵

15. Moreover, the Commission recalls that the representatives who wish that the measures remain in force must provide evidence of the reasons for doing so.¹⁶ Similarly, Article 25, subparagraph 11 of the Rules of Procedure sets forth that 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. In the matter at hand, the Commission requested information from the parties on May 24, 2022, for the purpose of analyzing whether these precautionary measures should remain in force, which was informed to the parties in the said communication.

16. The Commission notes that these precautionary measures were granted in 2020 in response to the risk faced by the beneficiary due to his medical condition and within the framework of his detention conditions while he was deprived of his liberty in the context of the COVID-19 pandemic with the characteristics in force at that time. For this reason, the IACHR requested the State of Colombia to “adopt the necessary measures to protect the rights to life, personal integrity, and health of Mr. Jorge Ernesto López Zea.”

17. In this regard, the Commission notes that the State reported on the various actions taken to implement these precautionary measures, particularly in the components of implementing an alternative measure to imprisonment and consultation with his representatives. Similarly, the Commission notes that the representatives acknowledged the steps taken by the State, which have purportedly contributed to the beneficiary being able to receive the continuous and comprehensive medical care required for the treatment of his illness. The Commission notes that the beneficiary is under house arrest, which was initially temporary and then definitive. By May 2022 he was granted release on parole, then he is no longer in custody of the State.

18. The Commission observes that the representatives questioned that the legal situation of the beneficiary regarding his request for parole had not been timely resolved despite allegedly complying with the requirements of domestic law. In this regard, the Commission recalls that within the function of precautionary measures, the IACHR is not called upon to make assessments on whether the beneficiary complies with the regulations to access a certain prison benefit pursuant to domestic law. The analysis

¹³ 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

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ Ibid.

performed herein by the Commission is exclusively related with 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. In this sense, it is beyond the scope of the precautionary measures mechanism to analyze whether there are violations of the beneficiary's human rights due to the alleged facts, or to assess whether he internally meets the requirements for a release on parole.

19. In any case, the Commission notes that the beneficiary was indeed released on parole on May 2, 2022, following the decision of the corresponding court. Similarly, the available information indicates that the beneficiary is "stable" in terms of health, and it is not possible to identify any elements of risk that would allow to state that the requirements of Article 25 of the Rules of Procedure are met. In this same vein, the State has provided documentary support that gives an account of the medical care received by the beneficiary throughout the time.

20. In summary, the Commission notes that the conditions that were assessed at the time of granting these measures have changed, given that the beneficiary went from being deprived of his liberty to being released on parole. Considering the analysis carried out, and without having information about any imminent risk against the beneficiary, the Commission does not have any evidence to indicate an ongoing situation presenting a risk pursuant to Article 25 of the Rules of Procedure. In this regard, and taking into account the temporary and exceptional nature of the precautionary measures,¹⁷ the Commission considers that it is appropriate to lift them.

V. DECISION

21. The Commission decides to lift the precautionary measures granted in favor of Jorge Ernesto López Zea in Colombia.

22. The Commission emphasizes that, regardless of the lifting of these measures, it is the obligation of the State of Colombia to respect and guarantee the rights to life, personal integrity, and health of Jorge Ernesto López Zea.

23. The Commission instructs its Executive Secretariat to notify this resolution to the State of Colombia and the representatives.

24. Approved on August 3, 2022, by Julissa Mantilla Falcón, President; Edgar Stuardo Ralón Orellana, First Vice-President; Esmeralda Arosemena de Troitiño; Joel Hernández García; and Roberta Clarke, members of the IACHR.

Tania Reneaum Panszi
Executive Secretary

¹⁷ I/A Court H.R., Matter of Adrián Meléndez Quijano et al. Provisional Measures regarding El Salvador. Order of the Court of August 21, 2013, para. 22, and Matter of Galdámez Álvarez et al. Provisional Measures regarding Honduras. Order of the Inter-American Court of Human Rights of November 23, 2016, para. 24