

INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
RESOLUTION 59/2019
Precautionary Measure No. 984-19

Child J.M.V regarding Trinidad and Tobago
December 9th, 2019

I. INTRODUCTION

1. On October 22nd, 2019, the Inter-American Commission on Human Rights (“the Inter-American Commission,” “the Commission” or “the IACHR”) received a request for precautionary measures in favor of the child J.M.V. (“the potential beneficiary”), from the civil society organization “Defiende Venezuela” (the applicants), urging the IACHR to request the State of Trinidad and Tobago (“Trinidad and Tobago” or “the State”) to adopt the necessary measures to protect his rights to identity, family and personal integrity. According to the request, the potential beneficiary, a one-year-old child, was placed under the State’s custody shortly after he was born and has not had contact with his biological family until the present time.

2. The Commission requested information from the State, pursuant to Article 25 of its Rules of Procedure, on October 29th, 2019. However, no response has been received to date. The applicants submitted additional information on November 7th, 2019.

3. After analyzing the factual and legal allegations submitted by the applicants, the Commission considers that the information shows *prima facie* that the child J.M.V. is in a situation of seriousness and urgency as his rights to personal integrity, identity and family are at serious risk of irreparable harm. Consequently, pursuant to Article 25 of its Rules of Procedure, the Commission requests that Trinidad and Tobago take the necessary measures to protect the rights to personal integrity, identity and family of J.M.V. In particular, by timely processing the proceedings and evaluating whether the measures dictated in his regard comply presently with his best interest as a child, according to the applicable international standards on the matter, as founded by updated pertinent technical assessment, in light of paragraphs 17, 19-21 of the present Resolution.

II. SUMMARY OF FACTS AND ARGUMENTS

1. Information provided by the applicants

a. Background

4. The child J.M.V. was born on September 6th, 2018 in Trinidad and Tobago, to Ms. Isis Carol Villalobos, a Venezuelan national. According to the information provided by the applicants, Ms. Villalobos discovered she was pregnant on February 2018 and did not “feel motivated” about it, presumably because of the conditions in Venezuela at that time and because she “felt ashamed,” since the father was married to someone else. In that context, in August 2018, a friend of hers put her in contact with a woman, Ms. B., who knew a couple in Trinidad and Tobago willing to adopt a newborn child. Ms. B. allegedly offered to pay for Ms. Villalobos expenses so she could travel to Trinidad and Tobago and meet the couple interested in adopting the child. The couple would prepare the necessary procedures to ensure her entry in the country, including “plane tickets, prior expenses, letter of invitation, among others”. Ms. Villalobos allegedly stated that she wished to meet the prospective parents first, before considering whether she wanted to give the baby for adoption.

5. On August 23rd, 2018, Ms. Villalobos flew to Trinidad and Tobago, where she was received and hosted by Ms. B., who informed her that her request to meet the prospective parents would depend on the approval by the couple’s attorney. According to the precautionary measures request,

Ms. Villalobos was planning to stay for three days, but felt ill and could not fly back. The applicant further alleged that she suffered from placenta displacement and could not walk. On September 5th, Ms. Villalobos was informed that she needed to be hospitalized and her labor induced, although she was only 7 months pregnant. All her medical costs were being covered by the couple interested in adopting J.M.V. On that same day, Ms. B. brought an English-speaking lawyer to aid Ms. Villalobos with the adoption process, even though Ms. Villalobos is not fluent in that language.

6. On September 6th, the potential beneficiary J.M.V. was born and on September 10th, the day of the hospital discharge, Ms. Villalobos informed Ms. B. that she had no intention to place her son for adoption. According to the applicants, “as a reaction” to her decision, she received a claim for the expenses incurred.

7. Ms. Villalobos and the potential beneficiary were taken back to Ms. B.’s residence. As stated in the request, upon their return to the residence, her hosts stopped providing for her and the newborn, despite Ms. Villalobos lacking the resources to do so (due to governmental restrictions, she could not access her funds in Venezuela). Furthermore, she was reportedly prevented from leaving the premises without her hosts. Under these circumstances, Ms. Villalobos claimed she self-inflicted her C-section wound and was subsequently taken to the hospital, where she agreed to give the potential beneficiary up for adoption to the couple concerned. According to the applicants, Ms. Villalobos did so since she could not figure out any other alternative and she lacked adequate representation. After these events, a ticket was purchased for her return to Venezuela.

8. Upon her return to Venezuela, Ms. Villalobos contacted the Embassy of Trinidad and Tobago in Caracas and made the authorities aware of the situation. She was then allowed to return to Trinidad and Tobago on October 11th, 2018, in order to deal with the matter. According to the request, in November the authorities sought the child and placed him in a childcare facility, while the adopting parents are being investigated for human trafficking.

b. Legal proceedings

9. In November 12th, 2018, a complaint was filed before the Family Court with the purpose of obtaining a determination on the custody of the potential beneficiary. To date, J.M.V.’s mother remains in Trinidad and Tobago, waiting for a judicial decision, and has not been allowed access to him for over a year, despite the motions filed on her behalf. Indeed, on December 18th, 2018, the court denied her interim custody “until all the evidence is heard, and there’s a final determination.” It further referred to a “home study report from Venezuela” that would assess Ms. Villalobos’ conditions. In the meantime, J.M.V. would remain in the “care and control of the Children’s Authority of Trinidad and Tobago” during the following four to six weeks that were required to conduct such a study. Based on the documents submitted by the applicants, there is no information concerning any decision on visitation rights.

10. The court considered that granting interim custody to Ms. Villalobos would require an assessment of the merits of the case, which was not procedurally possible at that stage. According to the decision, it was not yet clear whether the proposed beneficiary’s mother was a victim of human trafficking or an actual member of the criminal network. Moreover, when taking a decision, it noted some contradictions in her statements and took into account her financial situation, as well as the fact that she was not restrained and that “Trinidad and Tobago has porous borders *vis-a-vis* Venezuela;” nonetheless, it recognized that Ms. Villalobos “is no apparent or clear risk to the baby.”

11. According to the applicants, the decision was taken despite a favorable recommendation made by the State’s Children’s Authority issued in December 10th, 2018, for the interim placement of J.M.V. with his mother. A week later, yet another recommendation followed in favor of allowing the mother to have access to her son at the childcare facilities. Additionally, the applicants argued that this decision has not been reassessed in light of the current circumstances, even though Ms.

Villalobos is no longer being criminally investigated. Finally, they stated that although the trial was to be held on November 2019, it was postponed until January 2020.

2. Response by the State

12. The Commission requested information from the State on October 29th, 2019. However, no response has been received to date.

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

13. The precautionary measures mechanism is part of the Commission's function of overseeing Member States compliance with human rights obligations established in Article 106 of the Charter of the Organization of the American States. These general oversight functions are set forth in Article 41 (b) of the American Convention on Human Rights, as well as in Article 18 (b) of the Statute of the IACHR. The precautionary measures mechanism is regulated in Article 25 of the Commission's Rules of Procedure. Pursuant to this article, the Commission grants precautionary measures in serious and urgent situations and when these measures are necessary to prevent an irreparable harm.

14. The Inter-American Commission and the Inter-American Court on Human Rights ("the Inter-American Court" or "IAHR Court") have established repeatedly that precautionary and provisional measures have a dual nature, both precautionary and protective. Regarding the protective nature, these measures seek to avoid irreparable harm and to protect the exercise of human rights. Regarding their precautionary nature, the measures have the purpose of preserving legal situations while the bodies of the Inter-American System analyze a petition or case. The precautionary nature of the mechanism seeks to protect those rights that are potentially at risk until the resolution of the petition brought to the Inter-American system. Their objective 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 *effet utile* of the final decision. In this regard, precautionary or provisional measures allow the State concerned to comply with the final decision and, if necessary, implement the ordered reparations. For such purposes, 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" is determined through the provided information and 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.

15. In analyzing those requirements, the Commission reiterates that the facts supporting a request for precautionary measures need not be proven beyond doubt; rather, the information is to be assessed under a *prima facie* standard, to determine whether a serious and urgent situation exists.¹

16. The Commission wishes to clarify that the precautionary measures mechanism is not the proper one to examine whether the internal proceedings relating to the guardianship and custody of the potential beneficiary are being carried out in compliance with the duties set forth in the American Declaration of the Rights and Duties of Man, and/or in light of special obligations

¹ In that regard, for instance, in relation to the provisional measures, the Inter-American Court has considered that this standard requires a minimum of details and information that allow for the *prima facie* assessment of the situation of risk and urgency. IACHR, Matter of the children and adolescents deprived of their liberty in the "Complexo do Tatuapé" of the Fundação CASA. Request for extension of precautionary measures. Provisional Measures regarding Brazil. Resolution of the Inter-American Court of Human Rights of July 4, 2006. Considerandum 23. Available at: http://www.corteidh.or.cr/docs/medidas/febem_se_03.pdf

regarding children, given that only the petitions and case system may address the merits of the matter. In view of the above, the following analysis will exclusively relate to the requirements of seriousness, urgency, and risk of irreparable harm established in Article 25 of its Rules of Procedure, which can be resolved without making determinations on the merits.

17. With regard to the requirement of seriousness, the Commission notes that, as recognized by the organs of the inter-American system, children may be at risk in certain proceedings, such as those related to their adoption, guardianship or custody. More specifically, given the fact that since they may be separated from their biological families, their rights to personal integrity, identity and family life might be irreparably harmed² in the event of delays or lack of response, thus calling for a precautionary protection.³ Indeed:

Family relations and the biological aspects of the history of a person, particularly of a child, constitute a fundamental part of his or her identity, meaning, any action or omission of the State that has an impact on such components may constitute a violation of the right to identity; moreover, “[...] the family that every child has the right to is, mainly, his or her biological family, which includes the closest relatives – that which must protect the child and that, in turn, must be a primordial object of protection by the State.”⁴

18. Hence, the inter-American Court stressed that in cases involving children’s rights, domestic authorities have a duty to “speed up” procedures *motu proprio*, further noting that issues of guardianship and visitation rights “[...] do not present special complexities and neither are they unusual to States.”⁵

19. In the present matter, the Commission understands that the potential beneficiary is facing a situation of risk, given the fact that he has allegedly not had any contact with his mother for more than a year, despite the existence of judicial proceedings and being just one year old. While it is not appropriate to examine at this stage whether the State incurred any international responsibility with regard to the conduct of the authorities or to question the placement of the child under its custody, it cannot be ignored that, as established in previous matters, the mere passage of time is a determinant factor in assessing the mentioned risk. Indeed, the absence of any relationship with his biological family is susceptible of severely affecting his rights, considerably more given his age and the role of such interaction at this early age in the framing of his psychology and identity (see *supra* para. 17)⁶.

20. Considering the above, the Commission takes duly note of the court’s decision from December 18th, 2018, in which it denied interim custody in favor of Ms. Villalobos. In this regard, according to international standards – specifically, the principle of exceptionality, which governs in the event of a family separation – States must undertake all possible measures to support and assist the family in the care of the child⁷, before deciding for the separation and its continuity. Furthermore, an evaluation of a child’s best interest must be founded on the respective expert evaluations carried out⁸. In addition, in certain cases, such as violence, negligent treatment, or exploitation taking place in the family, State interference is required through protective measures, which may include temporary or permanent separation between children and their parents.⁹ States have indeed an immediate obligation to take “[...] all measures of every kind that are effective and

² IACtHR, Resolution of the Inter-American Court of Human Rights of July 1st 2011, Provisional Measures in respect of Paraguay, *Matter of L.M.*, paras. 12, 15-16, 19; IACHR, *Child A.R. regarding Argentina* (PM 356-16), Resolution 26/2017, July 27th 2017, para. 14; IACHR, *Matter of Maria and her son Mariano regarding Argentina* (PM 540-15), Resolution 22/2016, April 12th 2016, para 2 and 11; IACHR, *Children’s right to family*, OEA/Ser.L/V/II. Doc. 54/13, October 17th, 2013, para 174.

³ IACtHR, *Matter of L.M.*, *considerandum* 16.

⁴ IACtHR, *Case of Forneron and daughter vs. Argentina*. Merits, Reparations and Costs. Decision of April 27th, 2012 Serie C No. 242, para. 113 and 119.

⁵ IACtHR, *Case of Forneron and daughter*, para. 67 and 69; IACHR, *Child A.R. regarding Argentina*, para 24; IACtHR, *Matter of L.M.*, para. 16.

⁶ See: IACHR, *G.Y.G.R. regarding Mexico* (PM 364-17), Resolution 38/2019, July 29th 2019, para. 31.

⁷ IACHR, *Children’s right to family*, 2013, para 172.

⁸ IACHR, *Children’s right to family*, 2013, para 185 and 195.

⁹ IACHR, *Children’s right to family*, 2013, para 122, 179. See also: IACtHR, *Case of Atala Riffo and daughters vs. Chile*. Merits, Reparation and Costs. Sentence of February 24th 2012. Serie C No. 239, para. 164.

appropriate for the purpose of preventing and responding to violence against children,”¹⁰ insofar as they are duly justified in the principle of their best interests.¹¹ In addition, measures implying an impact on the right to the family “[...] must respect the principles of necessity, exceptional nature and temporariness,”¹² and seek to preserve and restore the rights of the child, including the right to the family.¹³ As a corollary of these principles derives States’ obligation to periodically review the implemented measures.¹⁴

21. However, it must be stressed that, according to the applicants, the decision denying interim custody in favor of Ms. Villalobos has not been reviewed to date, even though almost a year has passed since it entered into force. Moreover, based on the information provided by the applicants, no decision has been rendered concerning visitation rights. Considering the effects of time and States’ duty to “speed up” proceedings of this nature *motu proprio* (*supra* para. 18), the Commission observes that serious implications may take place in relation to J.M.V.’s rights to personal integrity, identity and family.¹⁵ In addition, according to the request, Ms. Villalobos’ circumstances have changed since the initial court order, which took into consideration, when assessing the child’s best interest, that “it was not yet clear whether the potential beneficiary’s mother was a victim of human trafficking or an actual member of the criminal network” (*supra* para. 10), since currently, Ms. Villalobos is allegedly no longer being subject to investigation.

22. Despite any relevant information that might have been submitted by the State to examine these serious allegations, the Commission regrets that no response has been received yet. Even though the former is not a justifiable basis *per se* to grant a precautionary measure, it does prevent to further assess whether the applicants’ allegations may be rebutted, especially considering that the potential beneficiary is under the custody of the State and its special obligations to protect children.

23. In view of the above, the Commission concludes that, under the *prima facie* standard of review applicable to the precautionary measures mechanism, the rights to personal integrity, identity and family of J.M.V. are in a situation of serious risk.

24. As for the requirement of urgency, the Commission notes that at least eleven months have passed since the J.M.V is under State custody and yet the separation from his family has not been reviewed in light of his best interest and the present circumstances. In addition, it must be stressed that the trial has been postponed to January 2020, according to the applicants. Hence, the Commission understands that urgent measures are required, in light of the serious risk to J.M.V.’s rights that are susceptible of materializing through the mere passage of time.

25. In relation to the requirement of irreparable harm, the Commission considers that a potential loss of family ties as a result of the situation described above might cause irreparable harm

¹⁰ IACHR, Children’s right to family, 2013, para 185 and 128; IACTHR, Resolution of the Inter-American Court of Human Rights of July 1st 2011, Provisional Measures in respect of Paraguay, Matter of L.M., para. 14 and 16.

¹¹ IACHR, Children’s right to family, 2013, para 185 and 128; IACTHR, Resolution of the Inter-American Court of Human Rights of July 1st 2011, Provisional Measures in respect of Paraguay, Matter of L.M., para. 14; IACTHR, Juridical Status and Human Rights of the Child. Consultative Opinion OC-17/02 of August 28th 2002. Serie A No. 17; IACHR, Children’s right to family, 2013, para. 149.

¹² IACHR, Children’s right to family, 2013, para. 143; IACTHR, Resolution of the Inter-American Court of Human Rights of July 1st 2011, Provisional Measures in respect of Paraguay, Matter of L.M., para. 14; IACTHR, Case of Forneron and daughter vs. Argentina. Merits, Reparations and Costs. Decision of April 27th, 2012 Serie C No. 242, para 121.

¹³ See also: IACTHR, Resolution of the Inter-American Court of Human Rights of July 1st 2011, Provisional Measures in respect of Paraguay, Matter of L.M., para. 17; IACHR, Children’s right to family, 2013, para. 172.

¹⁴ “The periodical revision of a temporary protection measure has as purpose to determine if the measure complies with its objective, and thus, if responds to the child’s best interest. Additionally, the periodical supervision must contribute to that the implementation of the measure allows the timely reintegration of the child to his/her family, provided that such is in accordance with his/her best interest.”; and also. “[t]he revision must be founded in the technical evaluations presented by the multidisciplinary teams, and the reasoning must be objective, appropriated and sufficient, and based on the child’s best interest. Moreover, the child’s opinion and his/her parents, family and other relevant persons to the child’s life must be heard when deciding the conditions of implementation, maintenance, change or termination of the protection measure.” (IACHR, Children’s right to family, 2013, para. 145 and 244 respectively). See also para. 173, 196, 243-246.

¹⁵ See also: IACHR, G.Y.G.R. in respect of Mexico (PM 364-17), Resolution 38/2019, July 29th 2019.

to J.M.V.'s rights to personal integrity and identity, a damage that may even persist through his adulthood and development, given that said separation would take place at such an early age.

IV. BENEFICIARY

26. The Commission declares that the beneficiary of the present precautionary measure is J.M.V., who is duly identified in these proceedings pursuant to Article 25(6)(b) of the Rules of Procedure.

V. DECISION

27. The Commission considers that this matter meets *prima facie* the requirements of seriousness, urgency and risk of irreparable harm set forth in Article 25 of its Rules of Procedure. Consequently, the Commission requests that Trinidad and Tobago take the necessary measures to protect the rights to personal integrity, identity and family of J.M.V. In particular, by timely processing the proceedings and evaluating whether the measures dictated in his regard comply presently with his best interest as a child, according to the applicable international standards on the matter, as founded by updated pertinent technical assessment, in light of paragraphs 17, 19-21 of the present Resolution.

28.

29. The Commission requests that the Government of His Excellency inform the Commission, within a period of 15 days, as from the date of notification of the present communication, about the adoption of the precautionary measures that have been consulted with and agreed upon and to periodically update this information.

30. The Commission highlights that, in conformity with Article 25(8) of its Rules of Procedure, the granting of precautionary measures and their adoption by the State do not constitute a prejudgment on the possible violation of rights protected in the American Declaration and other applicable instruments.

31. The Commission requests that the Executive Secretariat of the Inter-American Commission notify the Government of Trinidad and Tobago and the applicants of the present resolution.

32. Approved on December 9th, 2019 by: Esmeralda Arosemena de Troitiño, President; Joel Hernández García, First Vice-president; Antonia Urrejola Noguera, Second Vice-president; Margarete May Macaulay; Francisco José Eguiguren Praeli; and Flavia Piovesan.

Paulo Abrão
Secretario Ejecutivo