

**INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
RESOLUTION 41/2021**

Precautionary Measure No. 382-21

Ovidio Jesús Poggioli Pérez regarding the Bolivarian Republic of Venezuela

May 13, 2021

Original: Spanish

I. INTRODUCTION

1. On May 3, 2021, the Inter-American Commission on Human Rights (“the Inter-American Commission,” “the Commission” or “the IACHR”) received a request for precautionary measures filed by Mr. Rafael Contreras Millán (“the applicant”), urging the Commission to request that the Bolivarian Republic of Venezuela (“the State” or “Venezuela”) protect the rights of Mr. Ovidio Jesús Poggioli Pérez (“the proposed beneficiary”), who was allegedly deprived of liberty on April 26, 2021 by state officers and whose whereabouts or location is currently unknown.

2. The IACHR requested information from the State on May 5, 2021, in accordance with Articles 25(5) of its Rules of Procedure and XIII of the Inter-American Convention on Forced Disappearance of Persons (“CIDFP”).¹ To date, no response has been received from the State. Also on May 5, 2021, information was requested from the applicant, whose response was received on May 7, 2021.

3. Upon analyzing the submissions of fact and law provided by the applicant, the Commission considers, from the applicable *prima facie* standard, that Mr. Ovidio Jesús Poggioli Pérez is in a serious and urgent situation, given that his rights to life and personal integrity face a risk of irreparable harm. Consequently, the IACHR requests that the Bolivarian Republic of Venezuela: a) adopt the necessary measures to protect the rights to life and personal integrity of Mr. Ovidio Jesús Poggioli Pérez. In particular, the State is called on to report whether the beneficiary is in its custody and, where appropriate, the circumstances of his deprivation of liberty, or else, adopt the measures to determine his whereabouts or fate; and b) implement the actions aimed at investigating the events that led to the granting of this precautionary measure, so as to prevent such events from reoccurring.

II. SUMMARY OF FACTS AND ARGUMENTS

1. Information provided by the applicants

4. According to the request, Mr. Poggioli was detained on April 26, 2021 at around 6:30 p.m., in the state of Táchira by a commission in charge of border security who, according to the Criminal Investigation Record No. CZGNB-21-D212-3RA-CIA-SIP-192/ mentioned by the applicant, was processing

information obtained through intelligence networks. Two general officers and a civilian had been traveling to the aforementioned area after holding several meetings in the Republic of Colombia, the United States of America, Chile, the Dominican Republic, with destabilizing purposes that threaten the constitutional order of the Bolivarian Republic of Venezuela.²

¹ The State of Venezuela has been a party to it since its ratification on January 19, 1992.

² Request for precautionary measures dated May 3, 2021, p. 3.

5. Following his detention, both Mr. Poggioli and his two companions were placed at the disposal of the Thirty-fifth National Prosecutor with National Jurisdiction, and on April 27, 2021, the case file was purportedly forwarded to the Eleventh Military Court of Control of San Cristóbal, State Táchira, for the alleged commission of the crimes of high treason and instigation of rebellion, contained in the Organic Code of Military Justice. The military judge hearing the case reportedly called an Oral Presentation Hearing for April 28, 2021, a proceeding which the applicants indicated they were not aware of because the parties' records were not found. However, the judge issued imprisonment orders designating the Directorate General of Military Counterintelligence (DGCIM) as the place of detention, and ordering the seizure, extraction and emptying of all information, contacts, calls, text messages, images, audios, and videos from their cell phones, iPads, and seized computers.

6. On April 29, 2021, the Judge was informed of the lack of physical space in the DGCIM for the imprisonment of the proposed beneficiary, and therefore, the same day the Judge agreed to change the detention center to the National Center for Military Defendants (CENAPROMIL) of Ramo Verde, in Los Teques, Miranda State.

7. The applicant indicated that, as of May 3, 2021, relatives and friends of the proposed beneficiary have gone to the headquarters of the DGCIM in Boleíta Norte, Caracas and of CENAPROMIL, in Ramo Verde, where they received information that Mr. Poggioli Pérez is not in any of these detention centers. It was indicated that he is not under the Thirty-fifth Military Prosecutor, nor the Eleventh Military Court of Control of San Cristóbal or of the Military Judge hearing the case. Consequently, it was noted that no family member, friend, or lawyer of Mr. Poggioli Pérez currently knows his whereabouts.

8. In addition to the above, it was reported that the proposed beneficiary suffers from grade II hypertension, and that he had an ischemic heart disease for which he underwent percutaneous revascularization in 2016, requiring specific medical treatment on an ongoing basis.³

9. Lastly, the applicant provided information on decrees ordering a State of Emergency in the State of Táchira since 2015, while claiming an illegal extension thereof. In turn, it was alleged that the accusations against Mr. Poggioli are based on unknown "intelligence networks" and to which no one has had access. Therefore, it has not been possible to obtain information on the reasons for his detention.

10. Additional information provided by the applicant on May 7 reports that, on May 4, the internal technical defense requested that the judge in the case replace the precautionary measure of deprivation of liberty imposed with house arrest, taking into account the chronic diseases that Mr. Poggioli allegedly suffers from.⁴ Furthermore, on May 5, 2021, the internal technical defense informed the Judge that the relatives of the proposed beneficiary had received the indication that he was not in the CENAPROMIL nor in the DGCIM, requesting that the Court review more expeditiously the admission of the proposed beneficiary and the other two detainees to the detention center.⁵

2. Information provided by the State

11. The IACHR requested information from the State on May 3, 2021. To date, no response has been received.

³ Consisting of aspirin 81 mg OD + EFFIENT (prasugrel) 10 mg PD + Diltiazem 60 mg.

⁴ Annex to communication dated May 7, 2021: Brief of May 4, 2021 addressed to the Eleventh Military Judge of Control, based in San Cristobal, Táchira State.

⁵ Annex to communication dated May 7, 2021: Brief of May 5, 2021 addressed to the Eleventh Military Judge of Control, based in San Cristobal, Táchira State.

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

12. Precautionary measures are one of the mechanisms of the Commission for the exercise of its function of overseeing compliance with human rights obligations, as established in Article 106 of the Charter of the Organization of American States. 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 the latter, the Commission grants precautionary measures in serious and urgent situations in which these measures are necessary to avoid an irreparable harm. In addition, the mechanism of precautionary measures also processes communications alleging forced disappearance of persons, in accordance with Article XIII of the Inter-American Convention on Forced Disappearance of Persons.

13. 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, both protective and precautionary.⁶ Regarding the protective nature, these measures seek to avoid irreparable harm and protect the exercise of human rights.⁷ For this purpose, an assessment must be made with regard to the problem posed, the effectiveness of state actions in the face of the situation described and the level of vulnerability to which the potential beneficiary of precautionary measures would be exposed if no measures are adopted.⁸ Regarding their precautionary nature, precautionary measures have the purpose of preserving a legal situation while it is being considered by the IACHR. Their precautionary nature aims to safeguard the rights at risk until the request 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 (*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, to implement the remedies required.⁹ For the purpose of making a decision, 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;

⁶ See in this regard: I/A Court H.R. [Case of the Yare I and Yare II Capital Region Penitentiary Center \(Yare Prison\)](#). 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. Resolution of July 6, 2009, considerandum 16.

⁷ See in this regard: I/A Court H.R. [Matter of El Rodeo I and El Rodeo II Capital Judicial Confinement Center](#). Provisional Measures regarding Venezuela. Order of the Court of February 8, 2008, considerandum 8; I/A Court H.R. [Case of Bámaca 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.

⁸ 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 El Rodeo I and El Rodeo II Capital 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.

⁹ See in this regard: I/A Court H.R. [Matter of El Rodeo I and El Rodeo II Capital Judicial Confinement Center](#). Provisional Measures regarding Venezuela. Order of the Court of February 8, 2008, considerandum 7; I/A Court H.R. [Matter of “El Nacional” and “Así es la Noticia” newspapers](#). Provisional Measures regarding Venezuela. Order of the Court of November 25, 2008, considerandum 23; I/A Court H.R. [Matter of Luis Uzcátegui](#). Provisional Measures regarding Venezuela. Order of the Court of January 27, 2009, considerandum 19.

- 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. 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.¹⁰ Similarly, the Commission recalls that, by its own mandate, it is not appropriate to rule on the criminal responsibility of individuals, nor to determine whether there were violations of due process in this mechanism, since the foregoing requires an analysis on the merits, which is better suited to 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.

15. Notwithstanding, the IACHR wishes to highlight that Mr. Ovidio Jesús Poggioli Pérez is a victim in case 13,310, where violations of various rights contained in the American Convention on Human Rights (“ACHR”) were found, particularly related to proceedings launched against him before the military jurisdiction, despite being a retired military man, as well as detentions because of those proceedings, added to poor detention conditions and an illegal and arbitrary search of his home.¹¹ In its report on the merits, the Commission reiterated that, contrary to what is established in the Organic Code of Military Justice, retired soldiers cannot be tried by the military courts, and determined that “the application of the military criminal jurisdiction in the two processes launched against Mr. Poggioli was contrary to the principle of competence, independence and impartiality.”¹² In this regard, the Commission recommended, *inter alia*, nullifying the criminal proceedings and convictions that may have been carried out in the military criminal jurisdiction against the proposed beneficiary.¹³

16. Before assessing compliance with the requirements set forth in Article 25 of the Rules of Procedure, the Commission recalls that the CIDFP, in Article II, “forced disappearance is considered to be the act of depriving a person or persons of his or their freedom, in whatever way, perpetrated by agents of the state or by persons or groups of persons acting with the authorization, support, or acquiescence of the state, followed by an absence of information or a refusal to acknowledge that deprivation of freedom or to give information on the whereabouts of that person, thereby impeding his or her recourse to the applicable legal remedies and procedural guarantees.” In this sense, it is important to remember that, in accordance with Article I, paragraph a) of that instrument, States parties are obliged not to practice, not allow, or tolerate the forced disappearance of persons. In turn, Articles XIII and XIV establish the procedure for petitions and communications alleging a forced disappearance of persons, which has been submitted, *inter alia*, to the mechanism of precautionary measures, including the power to urgently request information to the States.

¹⁰ See 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. Resolution of the Inter-American Court of Human Rights of July 4, 2006, considerandum 23.

¹¹ IACHR. Report No. 399/20. Case 13,310. Merits. Ovidio Jesús Poggioli Pérez. Venezuela. December 31, 2020, paras. 62-82.

¹² IACHR. Report No. 399/20. Case 13,310. Merits. Ovidio Jesús Poggioli Pérez. Venezuela. December 31, 2020, paras. 62-67.

¹³ IACHR. Report No. 399/20. Case 13,310. Merits. Ovidio Jesús Poggioli Pérez. Venezuela. December 31, 2020, recommendation No. 1.

17. Regarding the requirement of seriousness, given the special circumstances of the State of Venezuela, the Commission considers it pertinent to evaluate the alleged events described in light of the context where they purportedly take place.

18. The Commission has received worrisome information about soldiers who have been at a serious and urgent risk of irreparable harm to their life and personal integrity. In the context of the crisis in Venezuela, during 2019 and 2020 various precautionary measures have been granted in favor of military personnel who have been subjected to mistreatment and torture during their deprivation of liberty.¹⁴ In fact, given the seriousness of the allegations, on March 21, 2019, the Commission granted one more precautionary measure in favor of all persons deprived of liberty (military and civilians) who are in the Directorate General of Military Counterintelligence in the Boleíta, municipality of Sucre.¹⁵ The Commission noted with concern that among the allegations presented it was indicated that persons deprived of their liberty in the center were reportedly hooded and beaten, which caused them dislocations, fractures, bruises, abrasions, and they were also allegedly injected with unknown substances. Following the issuance of the resolution, the Commission received information in May 2019 that showed a worsening of the risk, informing, among other aspects, that the mistreatment continues. In effect, it was emphasized that some inmates were threatened with “throwing gas at them” through a pipeline, and there were claims regarding situations of prolonged isolation and serious restrictions on the access of family members.

19. The Commission also learned of the death of Captain Rafael Acosta Arévalo in the custody of the DGCIM, possibly due to acts of torture. According to the information received, the Minister of Communication indicated in a note that the Government has requested an investigation into the death of Captain Arévalo. Moreover, it was reported that relatives and lawyers had no access to the corpse.¹⁶ The IACHR subsequently granted precautionary measures to his relatives, as they were being subjected to intimidation and harassment by State officers, in relation to their search of justice for the death of their family member.¹⁷ Additionally, the Commission has also received information about the lack of knowledge on the whereabouts of some persons in Venezuela following their detention by state officers, both from the military¹⁸ and non-military sectors,¹⁹ as well as ill-treatment and inadequate detention conditions of persons detained in the framework of “Operation Gideon.”²⁰

20. On another note, with regard to the seriousness requirement, the Commission notes that the allegations presented indicate that the proposed beneficiary was detained by state officers on April 26, 2021, for allegedly having participated in meetings in other countries for “destabilizing purposes.”²¹ Upon his detention, the information contained in the case file indicates that he was taken into the custody of a Prosecutor and, subsequently, of a Military Court, for the alleged crimes of high treason and instigation of

¹⁴ IACHR. [Resolution 3/2019](#). PM-115-19. Oswaldo García Palomo *et al.* regarding Venezuela, February 19, 2019; IACHR. [Resolution 8/2019](#). PM-83-19. Luis Alexander Bandres Figueroa regarding Venezuela, February 28, 2019; IACHR. [Resolution 9/2019](#). PM-1302-18. Isbert José Marín Chaparro regarding Venezuela, March 4, 2019.

¹⁵ IACHR. [Resolution 14/2019](#). Persons (military and civilians) detained in the Directorate General of Military Counterintelligence DGCIM regarding Venezuela.

¹⁶ IACHR. [Press Release No. 167/19](#). The IACHR expresses alarm and concern over the death of Captain Rafael Acosta Arévalo in custody in Venezuela. July 3, 2019.

¹⁷ IACHR. [Resolution 19/2019](#). PM-712-19. Relatives of Rafael Acosta Arévalo regarding Venezuela. October 1, 2019.

¹⁸ See: IACHR. [Resolution 54/2019](#). PM-918-19. Hugo Enrique Marino Salas regarding Venezuela. October 23, 2019; IACHR. [Resolution 24/20](#). PM-496-20. Leonardo David Chirinos Parra regarding Venezuela. June 9, 2020.

¹⁹ IACHR. [Resolution 36/2020](#). PM-516-21. Maury Carolina Carrero Mendoza regarding Venezuela. July 17, 2020; IACHR. [Resolution 54/2020](#). PM-698-20. Juan José Gámez Maza regarding Venezuela. September 2, 2020.

²⁰ IACHR. [Resolution 17/2020](#). PM-114-20. Alonso José Mora Alfonso regarding Venezuela. April 8, 2020.

²¹ The applicants alleged that they had not been able to access the information that purportedly served as the basis for the State to proceed with their detention.

rebellion. The Military Judge ordered the imprisonment of the proposed beneficiary at the headquarters of the DGCIM and, upon being informed about the lack of space, changed that determination to CENAPROMIL. The Commission notes that when the relatives and friends of the proposed beneficiary went to look for him both at the headquarters of the DGCIM and CENAPROMIL, they were informed that he is not in any of these detention centers. In addition, the facts suggest that he is not at the disposal of any of the tax or jurisdictional authorities hearing his case.

21. The Commission notes that the circumstances under which the proposed beneficiary was deprived of liberty and his subsequent disappearance, as reported by the applicants, are particularly serious, since Mr. Poggioli was in the custody of the State,²² who therefore assumes a special position of guarantor, while the prison authorities exercise strong control or command over the persons in their custody.²³ Added to the impact that the disappearance itself is likely to have on the rights of the proposed beneficiary,²⁴ the Commission notes that, according to the request, he needs to continue taking medicines and, if he does not receive them, there could exist an even greater risk.

22. In addition to the foregoing, the Commission observes that both issues have been made known to the state authorities, specifically the Judge hearing the case: on May 4, house arrest was requested due to the illnesses of Mr. Poggioli, and on May 5, it was reported that he is not in any of the detention centers ordered (see, *supra* para. 10). However, the Commission does not have information regarding the results of these recent communications before the Judge of the case or any investigation carried out.

23. In this scenario, upon requesting information from the State, the Commission does not have sufficient information to know whether the authorities have implemented actions aimed at protecting the rights of the proposed beneficiary and, therefore, to assess whether the alleged risk was disproved or not. This is especially relevant considering that, according to the allegations, the proposed beneficiary was deprived of liberty by state officers, while currently there is no official information on his whereabouts. Considering the foregoing, the Commission notes that this alleged lack of official information about the situation of the proposed beneficiary prolongs his state of defenselessness and creates uncertainty about his life and the conditions in which he reportedly is.²⁵

24. On the other hand, the Commission notes that the DGCIM is the subject of a precautionary measure, which continues to protect all the persons who are there to date (see, *supra* para. 16). In relation to this point, although initially on April 28, 2021 it was decided that he be imprisoned in the DGCIM, the following day his imprisonment in the CENAPROMIL was ordered, and to date it has not been possible to verify that he is in any of these places. This does not allow the Commission to have evidence or elements to consider that Mr. Poggioli remains at those headquarters and that, consequently, he is the beneficiary of the measure.

²² See: I/A Court H.R. [Case of Tenorio Roca et al. v. Peru](#). Preliminary Objections, Merits, Reparations and Costs. Judgment of June 22, 2016. Series C No. 314, para. 148.

²³ I/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](#). OEA/Ser.L/V/II, Doc. 64, December 31, 2011, para. 49.

²⁴ See: I/A Court H.R. [Case of Anzualdo Castro v. Peru](#). Preliminary Objections, Merits, Reparations and Costs. Judgment of September 22, 2009. Series C No. 202, para. 59; I/A Court H.R. [Case of Radilla Pacheco v. Mexico](#). Preliminary Objections, Merits, Reparations and Costs. Judgment of November 23, 2009. Series C No. 209, para. 139; I/A Court H.R. [Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia](#). Merits, Reparations and Costs. Judgment of September 1, 2010. Series C No. 217, para. 59; I/A Court H.R. [Case of Gelman v. Uruguay](#). Merits and reparations. Judgment of February 24, 2011. Series C No. 221, para. 74.

²⁵ IACHR. [Resolution 54/2020](#). PM-698-20. Juan José Gámez Maza regarding Venezuela. September 2, 2020, para. 16.

25. In view of the foregoing, from the *prima facie* standard, the Commission concludes that the existence of a serious risk to the rights to life and personal integrity of Mr. Ovidio Jesús Poggioli Pérez is sufficiently established, insofar as his whereabouts or fate, as well as the conditions in which he finds himself, are unknown.

26. Regarding the requirement of urgency, the Commission considers that it has been fulfilled, inasmuch as the passage of time is likely to continue to have a greater impact on his rights to life and personal integrity, stressing that his relatives have no certainty about the whereabouts or fate of the proposed beneficiary since his detention.²⁶ The Commission also does not have information on measures implemented to find his whereabouts or report on his current situation.

27. Regarding the requirement of irreparable harm, the Commission considers that it has been met, insofar as the potential impact on the rights to life and personal integrity constitutes the maximum situation of irreparability.

IV. BENEFICIARY

28. The Commission declares that the beneficiary of this precautionary measure is Mr. Ovidio Jesús Poggioli Pérez, duly identified in this proceeding.

V. DECISION

29. The Commission considers that this matter meets, *prima facie*, the requirements of seriousness, urgency and irreparable harm set forth in Article 25 of the Rules of Procedure. Consequently, it requests that the Bolivarian Republic of Venezuela:

- a) adopt the necessary measures to protect the rights to life and personal integrity of Mr. Ovidio Jesús Poggioli Pérez. In particular, the State is called on to report whether the beneficiary is in its custody and, where appropriate, the circumstances of his deprivation of liberty, or else, adopt the measures to determine his whereabouts or fate; and
- b) implement the actions aimed at investigating the events that led to the granting of this precautionary measure, so as to prevent such events from reoccurring.

30. The Commission also requests that the Bolivarian Republic of Venezuela report, within 15 days as from the date of this resolution, on the adoption of the precautionary measures requested and update that information periodically.

31. 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.

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

²⁶ See: I/A Court H.R. [Case of Gomes Lund et al. \("Guerrilha do Araguaia"\) v. Brazil](#). Preliminary Objections, Merits, Reparations and Costs. Judgment dated November 24, 2010. Series C No. 219, para. 103.

33. Approved on May 13, 2021, by Antonia Urrejola Noguera, President; Julissa Mantilla Falcón, First Vice-President; Flávia Piovesan, Second Vice-President; Margarete May Macaulay, Esmeralda Arosemena de Troitiño, Joel Hernández García and Edgar Stuardo Ralón Orellana, members of the IACHR.

María Claudia Pulido
Acting Executive Secretary