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Institution: Inter-American Commission on Human Rights  
File Number(s): Report No. 29/01; Case 12.249  
Session: Hundred and Tenth Regular Session (20 February – 9 March 2001)  
Title/Style of Cause: Jorge Odir Miranda Cortez v. El Salvador  
Doc. Type: Decision  
Decided by: Chairman: Claudio Grossman;  
First Vice-Chairman: Juan E. Mendez;  
Second Vice-Chairman: Marta Altolaguirre;  
Commissioners: Robert K. Goldman, Peter Laurie, Julio Prado Vallejo, Helio Bicudo.  
Dated: 7 March 2001  
Citation: Miranda Cortez v. El Salvador, Case 12.249, Inter-Am. C.H.R., Report No. 29/01, OEA/Ser.L/V/II.111, doc. 20, rev. (2000)  
Represented by: APPLICANT: Carlos Rafael Urquilla Bonilla (Foundation for Studies for the Application of Law)  
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## I. SUMMARY

1. On January 24, 2000, the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the IACHR") received a petition filed by Carlos Rafael Urquilla Bonilla of the Foundation for Studies for the Application of Law, FESPAD ("the petitioners"), alleging international liability on the part of the Republic of El Salvador ("the State") with respect to Jorge Odir Miranda Cortez and 26 other persons who are carriers of the Human Immunodeficiency Virus/Acquired Immunodeficiency Virus ("HIV/AIDS") and are members of the Atlacatl Association.[FN1] The petitioners allege that the acts reported constitute a violation of several provisions of the American Convention on Human Rights (hereinafter "the American Convention"): the right to life (Article 4); humane treatment (Article 5); equal protection before the law (Article 24); judicial protection (Article 25); and economic, social, and cultural rights (Article 26), in accordance with the general obligation set forth in Article 1(1) and the duty set forth in Article 2 of the aforementioned international instrument. They also allege violation of Article 10 of the Additional Protocol to the American Convention on Human Rights in the area of Economic, Social, and Cultural Rights ("Protocol of San Salvador"), as well as other provisions consistent with the American Declaration on the Rights and Duties of Man ("the American Declaration") and other human rights instruments. In light of the gravity and urgency of the situation, the petitioners requested precautionary measures on behalf of the 27 persons mentioned above, which were granted by the IACHR when it began processing of the case.

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[FN1] The petitioners have requested that the names of the other victims not be disclosed; the Salvadoran State is informed of those names, which are also in the IACHR file. As of the date of adoption of this report, three of the alleged victims had died.

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2. The petition alleges that the State violated the right to life, health, and well being of the alleged victims in this case, inasmuch as it has not provided them with the triple therapy medication needed to prevent them from dying and to improve their quality of life. The petitioners maintain that the situation of these persons, which they also attribute to negligence on the part of the State, constitutes cruel, inhumane, and degrading treatment. They further allege that the Salvadoran Social Security Institute (ISSS) has discriminated against Mr. Jorge Odir Miranda Cortez and the alleged victims because they are carriers of HIV/AIDS. In April 1999, the petitioners instituted amparo proceedings in the Constitutional Division of the Supreme Court of El Salvador, claiming violation of the rights outlined in their petition to the Inter-American Commission. The petitioners assert that the delay on the part of this Salvadoran legal entity is unreasonable and constitutes an additional violation of the right to a fair trial and judicial protection, and provides grounds for invoking the exception to the exhaustion of domestic remedies set forth in Article 46(2)(c) of the American Convention.

3. The State maintains that the petitioners had access to domestic remedies and that these remedies have been adequate in order to address the situation reported. They add that the authorities availed themselves of conciliation proceedings at meetings between the Director of the ISSS and Mr. Jorge Odir Miranda Cortez regarding the provision of triple therapy for the persons who are carriers of HIV/AIDS (seropositive). In the view of the State, the attention provided to the persons identified in this report within the framework of the precautionary measures demonstrates compliance with its international commitments, and, for this reason, it requests that the case be closed.

4. Without prejudice to the merits of the case, the IACHR concludes in this report that the case is admissible, inasmuch as it meets the requirements set forth in Articles 46 and 47 of the American Convention. The Inter-American Commission therefore decides to inform the parties of the decision and to continue analysis of the merits regarding the alleged violation of Articles 2, 24, 25, and 26 of the American Convention.

## II. PROCESSING BY THE COMMISSION

5. After filing the January 24, 2000 petition, the petitioners submitted another communication on February 28, 2000, reiterating their request for precautionary measures and their petition. On February 29, 2000, the Inter-American Commission assigned the number 12.249 to the case and requested information from the Salvadoran State regarding the pertinent parts of the petition. On that same date, the IACHR asked the State to adopt precautionary measures on behalf of Jorge Odir Miranda Cortez and the other persons listed in the petition, and to provide information on this matter within a period of 15 days.[FN2]

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[FN2] The request for precautionary measures stated:

Without prejudice to other actions that your Government deems necessary, the Commission holds the view that urgent measures should be adopted in order to provide the medical care capable of safeguarding the life and health of Jorge Odir Miranda Cortéz and the other persons listed above. In particular, the IACHR asks that your Government provided the anti-retroviral treatment and medication necessary to avoid the death of the aforementioned persons, as well as the hospital, pharmacological, and nutritional care needed to strengthen their immune systems and to prevent the development of diseases and infections.

Communication from the IACHR to the Salvadoran State on February 29, 2000.

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6. On March 2, 2000, the petitioners included the Center for Justice and International Law (CEJIL) as a co-petitioner. On March 15, 2000, the petitioners submitted a communication in which they provided details on the actions taken with respect to the Salvadoran authorities regarding the petition and the precautionary measures. They requested, among other things, that the IACHR declare non-compliance with the precautionary measures and seek provisional measures from the Inter-American Court of Human Rights. On that date, the State submitted its response to the request for information on precautionary measures, which was forwarded to the petitioners. On March 16, 2000, the State reported the appointment of Mr. José Roberto Mejía Trabanino of the Office of the Director General for Foreign Policy as the liaison official for the petitioners with respect to the issues related to this case.

7. The comments of the petitioners were received on March 21, 2000. On March 24, 2000, the Inter-American Commission requested from the petitioners the names of the alleged victims involved in this case who had died since processing of the case began, and specific information regarding precautionary measures. On April 3, 2000, the petitioners submitted this information and reiterated their request that the IACHR take the matter to the Inter-American Court in order to request provisional measures. On April 7, 2000, they sent another communication containing the same request.

8. The Inter-American Commission contacted the State on April 20, 2000 in order to transmit the comments of the petitioners and to request additional information regarding compliance with the precautionary measures granted in this case. In its response of April 28, the State informed the IACHR of the actions taken by the Salvadoran authorities to address the claims of the alleged victims related to care. The State submitted additional information in this regard on May 4, 2000.

9. The petitioners submitted additional information on precautionary measures on May 16, 2000. On May 23, 2000, the State submitted the medical summary reports on the patients with HIV/AIDS included in this case, issued by the ISSS Department of Preventive Medicine. On May 26, 2000, the IACHR asked both parties to submit additional information regarding medical care, treatment of the alleged victims, and any other information relevant to the processing of this case.

10. On June 5, 2000, the petitioners submitted "a request for activity to move the case forward [solicitud de impulso procesal]." On June 9, 2000, the Salvadoran State submitted the information requested by the Inter-American Commission, which included "the list of persons

identified in the request for precautionary measures, together with updated and detailed information on medical care, treatment, medical recommendations, and other pertinent information." On that same date, the Inter-American Commission once more requested information from the State on the petition filed regarding this case, which was first transmitted on February 29, 2000, with a 90-day period being granted for a response.

11. The State responded on June 23, 2000 to the issues raised by the petitioners in the petition. On June 27, 2000, the petitioners submitted their comments on the information from the State regarding precautionary measures, and repeated their position with respect to non-compliance with these measures.[FN3] On July 12, 2000, the State submitted a communication in which it reported that the Governing Board of the ISSS had decided to authorize the purchase of the triple therapy medication.[FN4] On July 14, 2000, the IACHR forwarded this additional information to the petitioners, and, at the same time, forwarded the pertinent parts of their comments to the State.

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[FN3] Among other things, the petitioners asserted that the two victims who died on May 5 and 11, 2000, respectively, did not receive the treatment from the State that would have avoided their deaths. They reiterated the gravity and urgency of the situation, as well as the request for provisional measures from the Inter-American Court.

[FN4] The communication from the State includes a copy of Agreement N° 2000-0558 to the Board of Directors of the ISSS "authorizing the purchase of medications used to provide anti-retroviral triple therapy for persons who are insured and are carriers of HIV/AIDS" and reported the establishment of "a fund of 13,610,516.00 million colones during the current fiscal year," in addition to "other measures to provide care to persons who were ill."

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12. The State submitted additional information on July 20, 2000, consisting of a document pertaining to the treatment received by Mr. Jorge Odir Miranda Cortez from the ISSS. The Inter-American Court expressed its appreciation for this information and for the action taken by the Salvadoran State within the context of the precautionary measures granted in this case. On July 28, 2000, the State submitted supplementary information on the action taken to implement the precautionary measures.

13. The petitioners submitted their comments regarding the exhaustion of domestic remedies and the merits of the petition on August 3, 2000. On August 8, 2000, the State submitted correspondence from the ISSS regarding the treatment that was allegedly provided to the patients infected with HIV/AIDS.[FN5]

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[FN5] The measures described in the correspondence from the ISSS refer, among other things, to "strengthening and stepping up activities aimed at preventing the transmission of AIDS through education and the promotion of hygiene and preventive health ... among the sectors most at risk for this disease" and "creating a fund aimed at purchasing anti-retroviral medications for the provision of triple therapy to HIV infected persons."

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14. On August 25, 2000, the petitioners submitted their comments regarding the information provided by the Salvadoran State. They reiterated, among other things, their position regarding non-compliance with the precautionary measures by the Salvadoran State and their request that provisional measures be sought from the Inter-American Court. On August 28, 2000, the petitioners requested a hearing on the case before the Inter-American Commission.

15. The precautionary measures expired on August 29, 2000, the date that marked the end of the six-month period initially established by the Inter-American Commission in the communication of February 29, 2000.

16. On September 8, 2000, the Salvadoran State submitted its comments on correspondence from the petitioners pertaining to the petition. On September 28, 2000, the petitioners submitted the written arguments that were to be developed at the hearing granted by the Inter-American Commission. The pertinent parts of this correspondence were forwarded to the Salvadoran State.

17. The Inter-American Commission held a hearing on this case on October 10, 2000, at its 108th regular session.

18. On October 17, 2000, the petitioners submitted their comments regarding the correspondence submitted by the State on September 8, 2000. The IACHR forwarded the pertinent parts of this correspondence to the State on October 26, 2000.

19. On November 24, 2000, the petitioners submitted correspondence in which they once again asked the Inter-American Commission to declare that the Salvadoran State had failed to comply with the precautionary measures and to seek provisional measures from the Inter-American Court. On December 6, 2000, they submitted additional correspondence to that effect. On that same date, the State submitted a communication providing a summary of the activities conducted in order to comply with the precautionary measures and containing comments on the merits of the petition.

20. At its 109th special session, the IACHR decided not to grant the request for provisional measures. In making this decision, the Inter-American Commission considered the information received from both parties, and evaluated the different actions taken by the Salvadoran State to provide medical treatment not only to the members of the Atlacatl Association but also to other persons infected with HIV/AIDS in that country. These actions had continued even after expiration of the deadline for precautionary measures on August 29, 2000.

21. On December 12, 2000, the Inter-American Commission forwarded the pertinent parts of the most recent communications from the petitioners together with a request for information from the Salvadoran State regarding the medical care and treatment provided to the 24 surviving persons identified in this case. On January 19, 2001, the Salvadoran State requested an extension of the deadline for its response to several cases, including this one, because of the national emergency in that country.[FN6] A 30-day extension was granted on January 24, 2001.

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[FN6] On January 13, 2001, an earthquake measuring 7.5 on the Richter Scale occurred in the Pacific Ocean, 55 kilometers from El Salvador's coasts. As a result, hundreds were killed or missing and property damaged. That day, the President of the Republic declared a state of emergency, which was still in effect on the date of approval of this report. This natural disaster was followed by a series of earthquakes of varying levels of intensity, which exacerbated the situation in the country.

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22. The petitioners submitted communications on February 16 and 19, 2001, in which they reiterated their position, provided a summary listing of persons receiving treatment from the Salvadoran State, and asked that the IACHR declare the case admissible.

23. The Salvadoran State forwarded the information requested by the IACHR on February 22, 2001. In its correspondence, it indicated that "to date, anti-retroviral medication has been provided to 11 of the 24 persons included in Case 12.249" and explained that this medication is available to the other persons identified in the case, subject to the appropriate medical evaluation. In addition, the State reported that it had expanded provision of the medication to other persons not included in this case.

### III. POSITIONS OF THE PARTIES

#### A. The petitioners

24. The petitioners allege that the Salvadoran State is responsible for violation of Article 4 of the American Convention, to the detriment of Jorge Odir Miranda Cortez and the other members of the Atlacatl Association. They maintain that the Salvadoran State is refusing to purchase "the triple therapy and other medications that prevent death and improve the quality of life of persons living with HIV/AIDS,"[FN7] and, for this reason, it has failed to guarantee them the quality of life that allows them to achieve well being. In that regard, they stated:

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[FN7] Communication from the petitioners of January 24, 2000, para. 58.

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The right to life encompasses much more than not dying as a result of action or negligence attributable to the State, in accordance with the rules of international law. The right to life, in that broader sense, presupposes, inter alia, that a person lives under conditions that are conducive to his well being.[FN8]

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[FN8] Idem, para. 57.

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25. With regard to the alleged violation of the right of the persons listed in this report to humane treatment, the petitioners allege that "the State, because of its negligent acts, can also place or allow a group of persons to be placed in cruel, inhumane, or degrading

conditions."[FN9] The petitioners' position is that persons who live with HIV/AIDS are in "a vulnerable situation that exposes them to death" which is "clearly a cruel, inhumane, or degrading situation."[FN10]

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[FN9] Idem, para. 75.

[FN10] Idem, paras. 78 and 79.

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26. The petitioners also allege that the Salvadoran State has violated the right of the alleged victims to health set forth in Article XI of the American Declaration and Article 10 of the Protocol of San Salvador, as well as social rights under Article 26 of the American Convention. They maintain that the following "immediate legal obligation" can be inferred from these instruments:

The State should conduct all acts and omissions [sic] that are necessary to improve health, leading to the highest level of physical, mental, and social well being through the use of modern advances and scientific medical discoveries. The Salvadoran State cannot therefore fail to purchase and administer anti-retroviral treatments to persons living with HIV/AIDS for budgetary reasons if it did not seek and implement, some time earlier, reasonable financial adjustments to permit their purchase and administration.[FN11]

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[FN11] Idem, para. 93.

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27. The petitioners maintain that the alleged victims were discriminated against and stigmatized because they are infected with HIV/AIDS. They allege, among other things, that the bed linen of seropositive patients was separated from the bed linen of other patients and placed in a red bag, that they were given drinking glasses with special markings, and the nursing staff shunned them and treated them differently from the other patients.

28. According to the petitioners, this case also involves violation of the right to judicial protection enshrined in the American Convention, taking into account the time period that has elapsed since April 1999, when the amparo proceedings were filed in El Salvador. They allege that amparo proceedings are set up in Salvadoran legislation in such a way as to prevent fulfillment of the requirements of simplicity, rapidity, and effectiveness mentioned in Article 25 of the American Convention, and, for this reason, they are requesting that the IACHR declare that this State has, in addition, failed to fulfill its duty imposed under Article 2 of the aforementioned international instrument.[FN12]

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[FN12] Based on their petition, the petitioners asked the IACHR to recommend the following to the Salvadoran State, "at a minimum:"

Purchase and provide medication to all persons in need of it based on their medical treatment plan; approve an AIDS law that gives persons living with HIV/AIDS the right to medication;

provide fair compensation to the families of persons who have died as a result of the negligence of the State; ensure that hospital practices are overhauled in order to eliminate stigmatization of and discrimination against persons living with HIV/AIDS; carry out informational campaigns on HIV/AIDS and the prevention of infection including the promotion and use of condoms and other barriers; amend fully the Law on Constitutional Procedures in order to ensure that amparo proceedings offer an effective judicial remedy; and acknowledgement of the expenses arising from these proceedings.

Communication from the petitioners of February 16, 2001, para.. 22.

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B. The State

29. The Salvadoran State maintains that the information provided to the IACHR during the processing of precautionary measures should be construed as the response to the allegations of the petitioners regarding the exhaustion of domestic remedies and the merits of the matter reported. In that regard, the State maintains:

The petitioners have availed themselves of domestic remedies and have, at all times, had access to the appropriate entities in the country. We have evidence, which has also been provided to the Commission, pertaining to specialized medical and hospital care, the measures adopted by State institutions, the treatment provided to each patient living with HIV/AIDS, and the budget approved to provide them with the medication requested.[FN13]

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[FN13] Communication from the State of September 8, 2000, page 2.

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30. The State explains the recommendations of medical specialists in the field regarding the criteria to be followed to ensure that patients benefit from triple therapy treatment and application. The use of this therapy, according to the State, will permit a 70% reduction in patient mortality and a 50% reduction in hospitalization, and, furthermore, "will facilitate the reintegration of persons receiving anti-retroviral therapy into productive and family life, thereby guaranteeing, to a large extent, enjoyment of their economic, social, and cultural rights." [FN14] It adds that a Technical Advisory Committee has been established in El Salvador for the drafting of treatment plans for persons living with HIV/AIDS and, "internally, conciliation proceedings were used in an attempt to meet the demands of the claimants."

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[FN14] Idem.

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31. In a subsequent communication, the Salvadoran State disputes the merits of the case and asserts that no violation occurred in this case.[FN15] The State further disputes the allegations of discriminatory treatment of seropositive patients in El Salvador. It maintains, in that regard, that hospitals follow general rules regarding disease prevention and control, as well as the



guidelines adopted by the World Health Organization on the classification of hospital solid waste from infectious and contagious diseases such as AIDS and hepatitis B and C.

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[FN15] In that regard, the State asserted:

The term "victims" used by the representative of the claimants is indeed insulting to these persons, and, in particular, is an affront to their dignity, since the term used in these cases is "patients or sick persons," which is consistent with the general guidelines established for care to persons who are suffering from HIV/AIDS. Once it is contracted, the infected person will develop severe immunodeficiency, and, for this reason, will be subject to opportunistic infections, which may shorten his life. Therefore, in this case, it cannot be concluded that the State is responsible for the arbitrary deprivation of life, nor can it be held that the right to health was violated because of the extent of its impact on patients or the manner in which care was provided.

Communication from the State dated December 6, 2000, page 2.

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32. With regard to measures adopted to fulfill their obligations, the Salvadoran State informed the Inter-American Commission that:

Therapy will be provided based on the treatment plans for patients, depending on the stage of the disease, and whether treatment is followed and maintained. In that regard, it is important to point out to the Commission that the team of medical experts will be responsible for determining when a patient is ready for anti-retroviral treatment. This is because medication is potentially toxic and can have serious side effects and, instead of improving a patient's condition, can do more harm and lead to more suffering.

Patients who have not begun the treatment plan will be notified by telegram to appear at the Social Work Unit of the Oncology Hospital of the Salvadoran Social Security Institute, ISSS. Following this procedure, the liaison officer for Case 12.249, Mr. José Roberto Mejía Trabanino, forwarded correspondence dated February 12, 2001 to Mr. Carlos Rafael Urquilla, the legal representative of the petitioners.[FN16]

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[FN16] Communication from the State dated February 22, 2001, page 4.

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33. Based on the arguments presented and the actions taken to provide care to patients who are carriers of HIV/AIDS, the Salvadoran State requests that the IACHR close this case.

#### IV. ANALYSIS

A. Competence of the Inter-American Commission *ratione personae*, *ratione materiae*, *ratione temporis*, and *ratione loci*

34. In this case, the petitioners describe the acts that purportedly violate rights recognized and enshrined in the American Convention, which allegedly occurred in El Salvador when the obligation to respect and guarantee all the rights established in this instrument was in effect for that State.[FN17] Consequently, the IACHR is competent *ratione personae*, *ratione materiae*, *ratione temporis*, and *ratione loci* to examine the merits of the case.

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[FN17] The Salvadoran State deposited its instrument of ratification on June 23, 1978.

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35. With regard to the allegations of the petitioners regarding violation of Article 10 of the Protocol of San Salvador, the Inter-American Commission notes that Article 19(6) of this instrument states the following:

Any instance in which the rights established in paragraph a) of Article 8 and in Article 13 are violated by action directly attributable to a State Party to this Protocol may give rise, through participation of the Inter-American Commission on Human Rights and, when applicable, of the Inter-American Court of Human Rights, to application of the system of individual petitions governed by Article 44 through 51 and 61 through 69 of the American Convention on Human Rights.

36. The IACHR is not competent *ratione materiae* to determine independently, violations of Article 10 of the Protocol of San Salvador through the system of individual petitions. However, the Inter-American Commission can consider this Protocol in the interpretation of other applicable provisions, in light of the provisions of Articles 26 and 29 of the American Convention.

B. Other admissibility requirements of the petition

a. Exhaustion of domestic remedies

37. The Inter-American Court of Human Rights has established the following with respect to the rule of prior exhaustion of domestic remedies:

States Parties have an obligation to provide effective judicial remedies to victims of human rights violations (Art. 25), remedies that must be substantiated in accordance with the rules of due process of law (Art. 8(1), all in keeping with the general obligation of such States to guarantee the free and full exercise of the rights recognized by the Convention to all persons subject to their jurisdiction (Art. 1).[FN18]

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[FN18] Inter-American Court of Human Rights, Velásquez Rodríguez case, Judgement on Preliminary Exceptions, June 26, 1989, para. 91.

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38. The information furnished by the two parties in this case confirms that domestic remedies have not been exhausted in El Salvador. In fact, the petitioners filed a petition for amparo proceedings on April 28, 1999 with the Supreme Court of that country seeking the provision of anti-retroviral medication for seropositive patients. According to the information furnished by the petitioners (which was not disputed by the Salvadoran State), on June 15, 1999, the Constitutional Division of the Supreme Court decided to accept the petition. However, as of the date of this report, it had not handed down a final ruling on the merits of the claim.

39. The petitioners allege that as a result of the delay on the part of this Salvadoran legal entity, the exception provided for in Article 46(2)(c) of the American Convention is applicable. The Salvadoran State confines itself to arguing that the petitioners have had access to "adequate and effective domestic remedies," without addressing the claims of the petitioners regarding the reasonableness of the time period for making a decision related to these remedies.

40. In the view of the IACHR, the petitioners had access to amparo proceedings, the remedy offered by the domestic legal system in this case, and they filed for these proceedings within the time period and in the manner required. However, to date, this remedy has not proven effective in responding to the claims of alleged violation of human rights. Almost two years have elapsed since the petition was filed and no final decision has been handed down by the Salvadoran Supreme Court. These matters will be analyzed during the procedural phase, together with the other allegations pertaining to the right to a fair trial and to effective judicial protection.[FN19]

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[FN19] In this regard, the Inter-American Court has stated:

When certain exceptions to the rule of non-exhaustion of domestic remedies are invoked, such as the ineffectiveness of such remedies or the lack of due process of law, not only is it contended that the victim is under no obligation to pursue such remedies, but, indirectly, the State in question is also charged with a new violation of the obligations assumed under the Convention. Thus, the question of domestic remedies is closely tied to the merits of the case. Inter-American Court, Velásquez Rodríguez judgment *supra*, para. 91.

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41. The Inter-American Commission decides to apply the exception provided for in the second part of Article 46(2)(b) of the American Convention to this case. The reasons that prevented the exhaustion of domestic remedies will be analyzed in the report to be adopted by the IACHR on the merits of the case, in order to determine whether the American Convention was violated.

b. Time period for submission

42. The IACHR has noted that in this case, after almost two years, a final ruling has not been handed down regarding the claim of the petitioners in El Salvador, and has determined that an unjustified delay has occurred in terms of domestic remedies. The application of Article 46(2)(c) of the American Convention obviates the need for analysis of the requirement set forth in Article 46(1)(b) of the aforementioned international instrument. In the view of the Inter-American

Commission, based on the circumstances analyzed, the petition was submitted within a reasonable time period of the date on which the acts were reported in El Salvador.

c. Duplication of proceedings and res judicata

43. No objections were raised by the Salvadoran State to the exceptions provided for in Article 46(1)(d) and Article 47(d) of the American Convention, nor do they emerge from the information contained in the file related to this case.

d. Characterization of the allegations

44. The petition outlines the events which, in the view of the petitioners, violate several articles of the American Convention. The petitioners maintain that in this case, the IACHR should establish the international liability of the Salvadoran State for the delay in providing the proper medication and treatment to the patients and for the discrimination to which they were subjected. The petition further alleges violation of the right to judicial protection due to the failure on the part of the Supreme Court of El Salvador to reach a decision on the petition for amparo proceedings that they filed in that country to protect their rights. In their allegations, the petitioners also mention the inappropriate nature of amparo proceedings in Salvadoran legislation for the protection of fundamental rights.

45. In the view of the Inter-American Commission, these allegations must be examined during the phase related to the merits of the case, in order to determine whether the facts reported violated Articles 2, 24, 25, and 26 of the American Convention. Consequently, the IACHR concludes that the requirements set forth in Article 47(b) and (c) of that international instrument have been met.

46. The Inter-American Commission considers the allegations made with respect to Articles 4 and 5 of the American Convention to be secondary in nature and to be contingent on the conclusion reached with respect to the merits of the allegations mentioned in the foregoing paragraph. Consideration of the admissibility of the allegations of the petitioners regarding respect of the right to life and humane treatment will therefore be deferred to the phase involving examination of the merits of this case.

## V. CONCLUSIONS

47. The Inter-American Commission concludes that it is competent to examine the merits of this case and that the petition is admissible pursuant to Articles 46 and 47 of the American Convention. However, although it is not competent to determine violations of Article 10 of the Protocol of San Salvador, the IACHR will take into account the provisions related to the right to health in its analysis of the merits of the case, pursuant to the provisions of Articles 26 and 29 of the American Convention.

48. The IACHR is aware of the fact that the people of El Salvador are in the midst of a very difficult period brought on by a series of natural disasters, which has placed enormous demands on the health authorities and officials. In that context, the Inter-American Commission

appreciates the efforts of the Salvadoran authorities to address the needs of persons infected with HIV/AIDS in that country. The supply of anti-retroviral medications has been steadily increasing in recent months, and the State has announced that it will continue to adopt the measures necessary in that regard.

49. Based on the arguments of fact and law outlined above, and without prejudice to the merits of the case,

#### THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

#### DECIDES TO:

1. Declare this case admissible with respect to alleged violation of the rights protected under Articles 2, 24, 25, 26 of the American Convention.
2. Inform the parties of this decision.
3. Continue analysis of the merits of the case, and
4. Publish this decision and include it in its Annual Report to the OAS General Assembly.

Done and signed at the headquarters of the Inter-American Commission on Human Rights, Washington, D.C., March 7, 2001. (Signed): Claudio Grossman, Chairman; Juan E. Méndez, First Vice-Chairman; Marta Altolaguirre, Second Vice-Chair; Robert K. Goldman, Peter Laurie, Julio Prado Vallejo, and Hélio Bicudo, Commission Members.