

# Press Release

Inter-American Court of Human Rights

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## **GUATEMALA IS RESPONSIBLE FOR VIOLATING THE RIGHT TO HEALTH OF PEOPLE LIVING WITH HIV**

*San José, Costa Rica, 25 October 2018.*- In the judgment published today in the Case *Cuscul Piraval et al v. Guatemala* the Inter-American Court of Human Rights (the Court) declared that Guatemala is responsible for violating the right to health, life, personal integrity, right to a fair trial and to judicial protection of several people living or having lived with HIV, as well as for committing discriminatory acts based on gender against two pregnant women. The Court also declared for the first time the responsibility of a State for the violation of the progressivity principle, since Guatemala failed to comply with their obligation to progressively develop the right to health. The entire text of the judgment can be found at the following link [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_359\\_esp.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_359_esp.pdf). (in Spanish).

The judgment concerns 34 victims that currently live with HIV in Guatemala, 15 victims that lived with HIV but passed away, as well as some of their relatives. These persons had one or several of the following conditions: had contracted opportunistic infections (*i.e.*, infections that occur more often or are more severe in people with weakened immune system than in people with healthy immune systems) and in some cases they had died because of these infections; they were people with insufficient financial resources; they were mothers or fathers who had borne economic and/or moral responsibility of their families; they had a low level of education; the effects of their condition as people living with HIV had not allowed them to carry out the same activities prior to their contagion; they had lived far away from the hospitals where they had to receive medical attention, or they were pregnant women.

The Court observed that the Guatemalan State did not comply with their duty to provide adequate healthcare to the victims, which caused the development of opportunistic infections and, eventually, the death of some of the victims. For these reasons, the Court determined that the State did not comply with their duty to guarantee the right to health, the right to integrity and to life, as protected by Articles 26, 5 and 4 of the American Convention on Human Rights (the Convention). The Court also noted that the State's failure to provide adequate healthcare to two pregnant women living with HIV were discriminatory acts based on gender, in view of the differentiated impact that this failure had on the victims, as well as for the risk of HIV vertical transmission to their children.

Additionally, the Court concluded that the State's inaction as regards the obligation to protect the health of people living with HIV in Guatemala, that occurred before 2004, was a violation of the progressivity principle as laid down in Article 26 of the Convention. In this regard, the Court determined that the obligation of progressive development of the ESCER (economic, social, cultural and environmental rights) prohibited the State's inaction in their duty to implement actions guaranteeing the effective protection of these rights, especially when the total absence of State's protection placed people in an imminent situation of suffering a serious damage to their life or personal integrity, as it had happened in the present case. This is the first time that the Court declares the violation of the above-mentioned principle.

On the other hand, the Court also held that the State violated the right to a fair trial (Article 8) and to judicial protection (Article 25) of 13 victims, since the Guatemalan's Constitutional Court did not comply with the obligation to issue the judgment within a reasonable time and to state

the reasons on which the decision had been based, all of this in the framework of the *amparo* appeals lodged by these victims. Finally, the Court concluded that some of the victims' relatives had suffered serious damage to their personal integrity, which violated Article 5.1 of the Convention.

As a consequence of these violations, the Court ordered certain reparations, *inter alia*, that the State guarantee free medical treatment to the victims and their relatives, implement mechanisms to improve the healthcare benefits of people living with HIV in Guatemala, launch a national campaign of awareness and sensitization, and grant compensation for material and moral damage to the victims and their relatives. Additionally, the Court ordered the State to pay the legal costs of the domestic proceedings and to refund to the Legal Assistance fund for Victims the costs of the proceedings before the Court.

You can find the official summary of the judgment [here](#) (in Spanish).

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The Court's composition for the sentence included the following: Judge Eduardo Ferrer MacGregor Poisot, President (Mexico); Judge Humberto Antonio Sierra Porto (Colombia); Judge Elizabeth Odio Benito (Costa Rica); Judge Eugenio Raúl Zaffaroni (Argentina); and Judge Patricio Pazmiño Freire (Ecuador). Due to force majeure reasons accepted by the Plenary of the Court, Judge Eduardo Vio Grossi, Vice-President (Chile), did not participate in this period of sessions.

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