



Miranda Cortez, Jorge Odir, et al. v. El Salvador

Miranda Cortez v. El Sal., Case 12.249, Inter-Am. Comm'n H.R., Report No. 29/01, OEA/Ser.L/V/II.111 Doc. 20 rev. at 284 (2000).

Country: El Salvador

Region: Americas

Year: 2001

Court: Inter-American Commission on Human Rights

Health Topics: Health care and health services, Health systems and financing, HIV/AIDS, Infectious diseases, Medicines

Human Rights: Freedom from discrimination, Freedom from torture and cruel, inhuman or degrading treatment, Right to due process/fair trial, Right to health, Right to life

Facts

Applicant filed this petition on behalf of himself and 26 other HIV infected persons against the State of El Salvador alleging Article 26 of the American Convention (the right to health) violation for failing to provide HIV triple therapy medication they needed to prevent death and to improve their quality of life. Petitioner maintains that state's negligence constitutes cruel, inhumane, and degrading treatment. Applicant further alleges that the Salvadorian Social Security Institute (ISSS) has discriminated against Mr. Jorge Odir Miranda Cortez and the alleged victims because they are carriers of HIV/AIDS. Petitioners claimed violations of 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) of the American Convention on Human Rights, as well as 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) and "other provisions consistent with the American Declaration on the Rights and Duties of Man and other human rights instruments."

Decision and Reasoning

The IACHR requested the State to adopt urgent precautionary measures in respect of the alleged victims in this case so that they could receive relevant medical services and antiretroviral medication. Consequently, the Supreme Court of San Salvador issued a resolution ordering the supply of the drugs to the petitioners starting in December 2000. The IACHR declared the case admissible in respect of alleged violations to the rights of equal protection and judicial protection, as well as the right to health under Article 26 of the American Convention on Human Rights. In 2004, the IACHR issued its (confidential) report on the merits of the case, confirming the violations and issuing recommendations.

Decision Excerpts

"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."