

Political Administrative Chamber

**REPORTING MAGISTRATE: HILDEGARD RONDÒN DE SANSÒ**

On the date of April 5<sup>th</sup> 1999 the citizens Edgar Carrasco, Gustavo Gonzales Osilia and Joaquín Omar Berrios, practicing lawyers, registered in the “Institute of Social Provision of Lawyers numbers 11.254.6.216 and 52.592 respectively, belonging to the Program of Protection, Promotion and Action of Human rights and HIV/AIDS of the Civil Association “ACCION CIUDADANA CONTRA EL SIDA” (citizen action against AIDS), acting with power of attorney of the citizens CRUZ DEL VALLE BERMUDEZ C.I. 2.803.638, ZULEIMA DEL VALLE DIAZ C.I. 7.920.966, LORENA VIRGINIA RODRIGUEZ ALFONZO C.I. 10.941.502, JUDITH JESUS MANCHEGO MELGAREJO C.I. 81.346.545, WENDY CAROLINA SANCHEZ C.I. 13.379.648, OMAIRA MARGARITA JIMENEZ DELGADO C.I. 5.018.614, ANA ISABEL CORREIA XAVIER C.I. 10.282.308, CARMEN CECILIA ARENAS QUINTERO C.I. 81.244.205, LUZ MARINA TORRELLES MARTINEZ C.I. 15.483.793, INESSA CARLOVNA GONZALEZ PRAKAYTIS C.I. 10.117.727, JASMIN ISMENIA PARATA GARCIA C.I. 8.752.566, ENRIQUE ALBERTO MANZUR CASTELLANOS C.I. 81.998.973, JAQUELIN RUIZ C.I. 82.124.249, MARCELIANO GOMEZ C.I. 82.124.927, WILLIAMS ORLANDO MATUTE ROJAS C.I. 6.895.153, ANGEL ALBERTO GAONA BUITRAGO C.I. 4.579.426, YONY JOSE LOPEZ HERRERA C.I. 13.136.259, ALIRIO JOSE CONTRERAS RODRIGUEZ C.I. 12.397.110, JESUS ANDRES SOCORRO PINEDA C.I. 7.824.374, HENRY JESUS DIAZ PALENCIA C.I. N°. 6.359.225, JESUS ENRIQUE CASTRO C.I. N°648.307, DOUGLAS ALEXANDER REYES BARILLAS 11.679.315, WILLIAMS NAZARETH DENIS C.I. 5.115.076, ANIBAL ANTONIO ZURITA C.I. 8.766.030, JUAN MANUEL HALLAK CABBABE C.I. 12.576.413, JOSE PEDRO NUNES C.I. 81.246.150, CEFERINO LA CRUZ CASTRO VASQUEZ C.I. 9.631.488, CANDIDO ROCHA ALVAREZ C.I. 81.418.679, JULIO CESAR LOPEZ RANGEL C.I. 5.526.832, WILMER AZHAEL AZCARATE HIDALGO C.I. 9.956.989, CARLOS ARMANDO MEJIAS MOLINA C.I. 5.038.604, OSCAR ALBERTO VALECILLOS ALIZO C.I. 7.891.309, YERNANDO CONTRERAS RAMIREZ C.I. 6.224.179, CIPRIANO ANTONIO ALVAREZ SALAZAR C.I. 2.852.103. LUIS RAMON MUÑOZ C.I. 10.795.974, LUIS ALEJANDRO MORENO GONZALEZ C.I. 6.941.222, RAFAEL ALBERTO GUEDEZ PARRA C.I. 5.456.969, ALEXIS JOSE GARCIA SIERRALTA C.I. 6.866.997, JOSE ORLANDO DURAN PRADO C.I. 6.866.191, CARLOS NOE VERGARA C.I. 3.815.583, STEWARD EXAID GONZALEZ C.I. 10.824.615, LUIS DURAN C.I. 10.173.542, RAUL FERNANDO OLIVARES ARRAIZ C.I. 7.888.169, JOSE ANTONIO ORTIZ SANCHEZ C.I. 6.450.265, JAVIER JOSE TACOA GONZALEZ C.I. 6.138.199, FREDDY CASTILLO C.I. 3.161.777, SANDRO CRISTIAN PERNIA C.I. 11.491.316, PEDRO RAFAEL RODRIGUEZ LEDEZMA C.I. 6.361.640, RODOLFO ENRIQUE ARENAS QUIJANO C.I. 6.317.376, BRUNO ROBERTO CALDIERON CALMA C.I. 6.349.176, ASDRUBAL ENRIQUE GUEVARA RIVERA C.I. 10.507.777, FELIPE JOSE HERNANDEZ LOPEZ C.I. 11.929.013, OSWALDO JOSE PESCADOR IBRAHIN C.I. 6.870.428, ALEX SALAZAR BARRERA C.I. 6.465.495, AUGUSTO RAMON CHAVEZ TOVAR C.I. 6.035.590, ANDRES ELOY ARRIOJAS CARVAJAL C.I. 5.544.288, MIGUEL ANGEL GALAN AGUILAR C.I. 9.689.735, NELSON REINALDO GARMENDIA ARELLANO C.I. 3.999.885, JOSE GREGORIO DE FREITAS DE SOUSA C.I. 6.823.943, EDGAR ALBERTO GONZALEZ CORTEZ C.I. 6.008.777, FERNANDO VARGAS C.I. 5.409.176, LUIS ALBERTO NORIEGA C.I. 10.076.466, ISAMEL ALEXANDER PEDRAZA DIAZ C.I. 11.159.221, JUAN CARLOS PIRELA ROSAS C.I. 9.787.344, CARLOS MOLINA RAMIREZ C.I. 9.381.739, CARLOS MARIO LEONARD VAZQUEZ C.I. 82.196.530, MANUEL FELIPE MARRERO

Translation provided by the Lawyers Collective (New Delhi, India) and partners for the Global Health and Human Rights Database

CAMPOS C.I. 5.602.571, JULIAN ANTONIO CORNIEL C.I. 5.288.037, ALBERTO RUÍZ C.I. 9.135.832 y JUAN CARLOS RAMOS SARRIN C.I. 7.659.596, filed an Amparo proceeding against the Ministry of Health and Social Assistance.

On the date 5 April 1999, the subject was put forth and the Chamber appointed a reporting Magistrate, who subscribes the present ruling, with the purpose of deciding the amparo proceeding.

On the date 26 May 1999, the attorney Edgar Carrasco, previously identified, appeared before this Chamber in representation of the following third party citizens, because they were in the same situation as the first plaintiffs: NUBIA ROSA LOPEZ C.I. 10.832.658; ROSA MARIA GUZMAN C.I. 12.156.480; FELICIA PAPARELLA VARESONES C.I. 5.963.514; SELLYS CENITH RIVERA de DE HORTA C.I. 82.037.029; GISEL COROMOTO GUZMAN de CERRANO C.I. 4.584.341; AYESA COROMOTO CACERES de MONSALVE C.I. 5.017.545; ROSARIO GUILLEN ROO C.I. 5.259.173; CARMEN AUDREY CORDERO C.I. 10.307.989; JUDITH CHIQUINQUIRA SANCHEZ T. C.I. 13.931.453; DORIS DEL ROSARIO NOGUERA C.I. 9.339.614; NAYLEE SOCORRO CARRASCO C.I. 9.545.813; YUNNIS D. GARCIA VEGA C.I. 12.822.357; GISELA M. IBARRA FRANCO C.I. 7.956.711; MARIBEL DEL VALLE FERMIN B. C.I. 9.858.597; OSNEIDA JOSEFINA GUAIGUA C.I. 9.958.875; SOLMARY UBIERNA C.I. 8.559.258; DUBRASKA ARTEAGA C.I. 11.471.828; JOSE A. MADRID CALDERON C.I. 13.553.092; LUIS SEGUNDO COTTE LUZARDO C.I. 5.124.730; MANUEL GONZALEZ C.I. 3.250.199; RAMON CELESTINO GIMON C.I. 10.304.523; FREDDY KOVACIC YANEZ C.I. 3.480.066; JOSE GREGORIO DELGADO SILVA C.I. 11.636.363; HALLEY RAFAEL SALAS SILVA C.I. 8.542.508; VICTOR M. BECERRA CARVAJAL C.I. 12.059.297; WILLIAM M. MENDEZ GARCIA C.I. 10.504.180; FRANCISCO E. PEREZ MEDINA C.I. 7.661.801; BORIS A. GARNIER GALAN C.I. 11.990.200; MIGUEL ANTONIO ROMERO PEROZA C.I. 7.214.546; SIMON A. GUERRERO A. C.I. 13.865.649; SERVIO T. ARIAS ESCUDEROS C.I. 3.881.775; GONZALO ALFONZO HERNANDEZ C.I. 7.086.602; FREDDY ANTONIO RODRIGUEZ Y. C.I. 7.228.463; PABLO T. NAVARRO G. C.I. 6.203.362; GIOVANNI SILVERIO HERNANDEZ C.I. 6.025.485; JOSE DOUGLAS VEGAS CASTRO C.I. 6.438.383; BLADIMIR T. DIAZ SEQUERA C.I. 10.284.617; JORGE ARTURO GARCIA BENJUMEA C.I. 13.717.787; ALBERTO EDUARDO IGUARO C.I. 8.800.461; JOSE LUIS MIGUEL GARCIA C.I. 81.279.138; HERNAN JOSE FINAMORE C. C.I. 10.513.542; JULIAN EULICES LATINEZ C.I. 10.061.729; IVAN JOSE MAURELL GARCIA C.I. 6.444.405; JUAN NICOLAS TOVAR R. 6.453.271; LUIS DEL VALLE NUÑEZ PEREZ C.I. 7.281.528; JOSE MANUEL DORTA SANCHEZ C.I. 5.889.601; GUSTAVO GONZALEZ O. C.I. 2.938.088; JOSE LUIS MEDINA R. C.I. 5.568.541; FRANKLIN ANTONIO ROJAS C.I. 7.364.146; PEDRO A. BRICEÑO SIBALA C.I. 6.671.073; JUAN E. SOTILLO S. C.I. 8.948.815; FRANKLIN ALI FLORES DELGADO C.I. 10.782.008; IBRAIN VENTURA LUIGI SOTO C.I. 10.541.218; ERIC ROLANDO ESPINOZA SALAZAR C.I. 12.993.895; LUIS ALFREDO CORREA CHAPARRO C.I. 6.812.271; ANTONIO JESUS LUIS SANMARTI C.I. 8.758.365; RUBEN DARIO SOSA TORRES C.I. 10.349.700; JORGE LUIS TINEO ALVAREZ C.I. 13.963.745; ALEXANDER RAFAEL FIGUEROA CARRION C.I. 9.299.408; ALEXIS RAFAEL LEZAMA FARIAS C.I. 8.982.087; OSCAR ALBERTO PARODY APONTE C.I. 9.893.194; AMERICO JESUS FIGUEROA RINCONES C.I. 8.360.879; ALFREDO LORENZO TARIMUZA VALLEJOS C.I. 6.156.558; JAVIER GONZALO GOMEZ HERNANDEZ C.I. 12.148.070; ARMANDO JOSE GASCON

Translation provided by the Lawyers Collective (New Delhi, India) and partners for the Global Health and Human Rights Database

ROJAS C.I. 5.879.501; ROBERT JOSE RICARDE C.I. 10.831.990; JESUS ANTONIO TEPEDINO DIAZ C.I. 6.631.811; RICARDO JOSE CABELLO MAITA C.I. 10.304.948; LUIS MIGUEL CALVO FRANGACHAN C.I. 13.888.697; CARLOS ALBERTO CARMONIA BEITIA C.I. 7.948.226; CARLOS ANTONIO GUERRA PANTOJA C.I. 4.117.430; ANTONIO CLAUDIO BOULTON ARDILLA C.I. 5.887.725; CARLOS CELESTINO ALARCON DOMINGUEZ C.I. 3.479.000; ALIRIO JOSE AGUILERA HERNANDEZ C.I. 4.612.039; ALEJANDRO ALFREDO PUMAREJO MORALES C.I. 13.124.136; MARCOS ANTONIO IBARRA.

By ruling of the date 17 July 1999, the filed amparo proceeding was admitted, accepting equally the intervention presented on 26 May 1999.

On 22 June 1999, the attorney Edgar Carrasco, previously identified, represented before this Chamber the following third parties, because they were in the same situation as the first plaintiffs: YOLIMAR DUNO, C.I. 12.617.918; CARMEN DEL VALLE CURBATA DE APONTE, C.I.8.223.485; MARGARITA ISABEL COLMENARES MORALES, C.I.6.223.837; MARÍA SABINO DE PÉREZ, C.I.18.181.877; NAIROBI COROMOTO ALBARRAN UZCÁTEGUI, C.I.13.379.994; ISIDORA HERNANDEZ, C.I.1.536.386; ALEXIS RICARDO PRADO GONZÁLEZ, C.I.6.966.200; ABDEGANO DELGADO, C.I.15.567.898; ANTONIO JOSÉ BETANCOURT, C.I.10.528.268; LUIS ALBERTO BRUSES GONZÁLEZ, C.I.9.814.281; PEDRO RAMÓN GARCÍA CORZO, C.I.8.994.789; SIMÓN EDUARDO CONDE IBAÑEZ, C.I.6.044.387; JOSÉ RAFAEL MILLAN MALDONADO, C.I.13.299.775; JOSÉ DE JESÚS BELLORÍN MORALES, C.I.6.549.125; SIMÓN JOSÉ ROMERO SANDOVAL, C.I.7.837.419; JOSÉ LUIS SALAZAR PINZÓN, C.I.7.956.497; ARGENIS CRUZ MARTÍNEZ ROJAS, C.I.5.894.968; IVAN JOSÉ OROPEZA TORREALBA, C.I.6.114.610; CRECENCIO ANTONIO PEÑA MATERÁN, C.I.6.480.856; JOSÉ GREGORIO RAFAEL DE LUCA JULIANO, C.I.6.259.596; GIOVANNY JESÚS CASTRO MORÉN, C.I.12.787.550; JULIO RAUL PORTILLO SORIANO, C.I.82.075.344; JORGE FÉLIX LILLO BLANCO, C.I.6.844.180; FABIO ROSSANI URBINA, C.I.5.968.031; LUIS ALBERTO TOVAR AZUAJE, C.I.6.299.426; FIDEL COROMOTO GUERRA AZUAJE, C.I.6.036.486; VICTOR MANUEL RODRÍGUEZ RENGIFO, C.I.6.513.983; JOSÉ GREGORIO CALLES VARGAS, C.I.5.204.741; GUSTAVO RAMÓN DELGADO CHIRINOS, C.I.11.232.373.

Notified the alleged victim in accordance Article 23 of the Organic Law of Protection of Constitutional rights and Guarantees, the lawyer in practice Maria Teresa Otero Califfe, acting with power of attorney on behalf of the alleged offender, the Ministry of Health and Social Assistance, Gilberto Rodriguez Ochoa, put forth this Chamber on the date of 25 of June 1999 with the purpose of submitting the form to which Article 23 of the Organic Law of Protection of Constitutional rights and Guarantees refers.

On 28 June 1999, the oral hearing to which Article 26 of the Organic Law of Protection of Constitutional rights and Guarantees refers, took place. On this same date the parties formulated written reports of their respective observations.

Served the individual reading of the file according to Article 9 the Organic Law of the Supreme Court of Justice, to decide the following considerations.

#### ARGUMENTS OF THE ALLEGED VICTIM PARTY

The attorneys in fact point out that they represent people affected by the human immunodeficiency virus (HIV) and from acquired immune deficiency syndrome (AIDS), a

Translation provided by the Lawyers Collective (New Delhi, India) and partners for  
the Global Health and Human Rights Database

condition which has placed them in front of several woes, that not only refer to mental and physical health, but also includes their social, family and work environment, due to social stigma, discrimination and government indifference.

From another side, the attorneys in fact affirm that the diverse administrative and hospital instances of the Ministry of Health and Social Assistance, “provide services in a discriminatory, degrading and irregular manner, that endanger the life of the population in general and our represented in particular,” even though this Institution prescribes treatments, they are not supplied. In this way, they express that their represented from the moment that they were diagnosed as HIV/AIDS persons “have been prescribed medicines by the medical specialist of the Ministry of Health and Social Assistance, corresponding to the Service of Immunology and Infectology, known as antiretrovirals the Nucleoside Reverse Transcriptase Inhibitor and Protease Inhibitors, such as: AZT or Zidovudine, DDI, or Disanosine, DDC or Zalcitabine, D4T or Stavudine, 3TC or Lamivudine, Crixivan or Indinavir, Saquinavir or Invirase and Ritonavir or Norvir” explain the plaintiffs the mechanisms in which such medicines work and point out the fact that, according to the national and international clinic, treatment with the mentioned medicines must be provided with regularity, combined with therapies for life. Not regularly administrating the medicines produces so-called viral resistance to the medicine, which results in the virus developing the capability to change its chemical structure to resist the effects of the medicines, leaving those who live with HIV/AIDS totally defenseless and, as a consequence, the “appearance of so-called opportunistic infections that lead to the death of persons who live with HIV/AIDS” surges.

They point out the negative effect of the indifference of the Ministry of Health and Social Assistance to deliver the antiretroviral medicine prescribed under the form of triple therapy or “cocktail” has prevented the development of clinical protocols leaving doctors with their hands tied behind their backs, because they have no possibility to access such vital medicines, “they only do medical follow ups by visiting, sharing their anguish and desperation that comes from having to be in a pilgrimage to different dependents and offices, public and private likewise, on behalf of obtaining a medicine, to avoid getting sick and dying.”

Equally they call attention to the fact that their represented are not affiliated with the Venezuelan Institute of Social Security or they do not have the necessary requirements to obtain the medicines prescribed, because they do not enjoy any services of social security and at the same time lack private insurance, because these corporations do not cover the cost of treatment and of medical assistance when the diagnosis is HIV/AIDS. The Cost ascends approximately to SIX HUNDRED AND TWENTY NINE THOUSEND BOLIVARES (Bs. 629.000, 000) monthly without including the cost of periodical medical exams they must take.

They also point out that most of their represented have a reduced economic income that prohibits them from accessing medicines at the market price, which leads to a level of anguish and desperation that in consequence causes abrasions in their immune systems, abrasions which, with respect to some represented, has lead them to suffer opportunistic infections because their body is not in the capacity to defend itself from the biological agents that a healthy body in normal circumstances could defeat.

For this purpose, the plaintiffs invoke the amparo decision of the date 20 January 1998, a case in which a group of effectives enlisted troops in the National Armed Forces were

Translation provided by the Lawyers Collective (New Delhi, India) and partners for  
the Global Health and Human Rights Database

protected by this Chamber when the Ministry of Defense was ordered to deliver antiretroviral medicines to the plaintiffs. In this sense, the lawyers of the plaintiffs state that the fundamentals to which the protection of the military men were entitled are the same as their represented “because they equally live with HIV/AIDS, and are prescribed the same treatments and suffer the same negative indifference by the Venezuelan State and in the concrete case by the MSAS (Ministry of Health and Social Assistance).”

Similarly, they support themselves with the decisions of the Political and Administrative Chamber of the Supreme Court of Justice on ruling of the date 14 August 1998, in relation to the right of HIV/AIDS patients and the antiretroviral treatment and their appropriate attention. In the means that, “the greatest of the legal rights of the individual (life) is protected as a human right in the broadest possible manner in both the national and international sphere.” The fundamental right to life, in terms of the subjective right, gives their owners the possibility of the judicial amparo, and lastly, the one of this Supreme Court before all public action that threatens their life or their integrity.

Likewise, the lawyers in fact repeat that their represented are not in any economic capacity to acquire the prescribed medicine on which their lives depend, and they are not protected by the system of social security, which denies them all possibility of access to treatment and medical attention through that path.

According to the situation exposed, the plaintiffs denounce the violation of the right to life, health, freedom and personal security, non-discrimination, the benefit of science and technology established in the articles 50, 58, 60, 61 ordinal 3o and 76 of the Constitution and the regulations of international instruments of human rights, related to the mentioned constitutional dispositions.

In consequence they plead this Chamber to protect their represented in the following manner:

1) To order the Ministry of Health and Social Assistance, through their different dependencies, to “the regular and periodic delivery of medicines known as Nucleoside Reverse Transcriptase Inhibitor and Protease Inhibitors: such as, AZT or Zidovudine, DDI, or Disanosine, DDC or Zalcitabine, D4T or Stavudine, 3TC or Lamivudine, Crixivan or Indinavir, Saquinavir or Invirase and Ritonavir or Norvir , according to the combined prescriptions medical specialist of the Ministry of Health and Social Assistance, corresponding to the Service of Immunology and Infectology. At the same time that it should be obligatory to take necessary provisions for the uninterrupted delivery and therefore avoiding negligent activities and bad administrating that can endanger the lives of our represented.”

2) To order the Ministry of Health and Social Assistance the performance and coverage of the specialized exams such as “Viral Load, Lymphocyte Load, Platelet Count and all of those exams, such as those for the opportunistic infections, like those necessary to have access to the combined treatments of the Nucleoside Reverse Transcriptase Inhibitor and Protease Inhibitors.”

3) To order the Ministry of Health and Social Assistance to develop a “policy of information, treatment, appropriate medical assistance in favor of our represented, and likewise other people who live with HIV/AIDS and that are going through a similar situation like our represented.”

Translation provided by the Lawyers Collective (New Delhi, India) and partners for  
the Global Health and Human Rights Database

4) To order the Ministry of Health and Social Assistance to supply every medicine for the treatment of opportunistic infections, such as antibiotics, antifungal, antidiarrheal, chemotherapy, cryotherapy and all of the others necessary that develop from their condition of HIV/AIDS.”

5) In the hopes of achieving an equal treatment, and at the same time procuring procedural economy and speed for the adequate function of the Tribunals “that the granted benefits be extended to every citizen that lives in Venezuela with HIV/AIDS, and that requires the treatment prescribed by medical specialists, without seeing himself with the imperious need of constantly recurring to the path of the Constitutional Amparo.

#### ARGUMENTS OF THE PRESUMED OFFENDING PARTY

In the report presented by the lawyer in fact of the alleged offending party, she rejected and contradicted in each one of its parts the arguments expressed by the plaintiffs because-to her say- the Ministry of Health and Social Assistance has not violated any fundamental rights of the alleged victim, in the following manner exposed:

With respect to the alleged violation of the right to life, to health, to access of technology, it was limited to reject generically the arguments expressed by the plaintiffs.

Regarding the right of freedom and personal security, equality, and non-discrimination, she pointed out that the plaintiffs were not violated of such rights, reproducing for this a standard elaborated by this Chamber in a ruling dated 14 August 1998, in an analog case referring to a single amparo proceeding against the Ministry of Health and Social Assistance before the failure to deliver to some people with HIV/AIDS the medicines necessary for the treatment of the disease.

With respect to the request of the lawyers in fact of the plaintiffs that the decision dictated in this present proceedings protect not only the active part of the presented proceeding but also all of the inhabitants of Venezuela that suffer from this horrible disease in hopes of achieving an equal treatment and procuring procedural economy and speed for the adequate functioning of the jurisdictional bodies, the lawyer in fact of the Ministry of Health and Social Assistance pointed out that “this argument lacks all legal foundation, and it distances itself from the most healthy logical and legal interpretation, because there has been recurring and peaceful judicial precedent, and in the ruling of 14-08-98 this Honorable Court said that ‘it has constantly sustained the jurisprudence of this Court, to sustain that the constitutional proceeding of amparo, has no absolute effects or *erga omnes*, but that its effect is relative or *inter partes*, because the respective commandment is directed towards the intervening subjects in the procedure. In consequence, the petition that the plaintiffs put forth for making effective the content of the ruling to all subjects suffering from HIV/AIDS is inadmissible and it so declared.’”

Argued as well that for the Ministry of Health and Social Assistance it is impossible to afford the treatment in question for the entire universe of people that suffer from HIV/AIDS, because, given the situation of crisis that the country faces, it must be determined who can and who cannot afford the required treatment.

Similarly, the lawyer in fact of the alleged offender pointed out the occasion of the ruling of this Chamber (14-08-98) falling over an identical case “the sued organization realized every gesture necessary to cover the cost of the treatment, so that the cost estimate was made to meet the claim, which consumed great part of the budget of the Program for that period was ONE THOUSEND ONE HUNDRED MILLION BOLIVARES (Bs. 1.100.000.00,00), to

Translation provided by the Lawyers Collective (New Delhi, India) and partners for  
the Global Health and Human Rights Database

which it was necessary to make a transfer of items to redirect the process of acquisition and procurement of antiretroviral medicines. Being on course for October 1998 another amparo proceeding a bidding process was opened, which was declared deserted, therefore being necessary to acquire the medicines through direct adjudication to pharmaceutical companies; from this it is evident that it is impossible for the Ministry of Health and Social Assistance to acquire the financial resources with the speed it is expected.”

In this respect, it is pointed out that the Ministry of Health and Social Assistance, through the National Program of HIV/AIDS and Sexually Transmitted Infections, is implementing a policy of prevention and medical assistance in the national territory, for which the necessary economic resources are in process. This program is proceeding to accomplish the following activities:

Revise the programs of prevention directed at youth and sex workers;

Re-edit 5,000 brochures of HIV/AIDS prevention that are to be distributed in the different regions;

Celebrate different Cooperation Conventions with the Youth and Change Foundation, National Commission on Prevention of Early Pregnancy, Committee of Support to the Child and Family, Medical Assistance Fund and Superior Education and University Change Foundation;

National Campaign on the promotion of protected sex, the cost of this Plan being approximately ONE HUNDRED AND EIGHTY MILLION BOLÍVARES (Bs. 180,000,000).

From the previous statements affirms the lawyer in fact of the alleged offender that it is forceful to conclude that the argument referring to the lack of policy attention and regular treatment, according with the advances of science from the Ministry of Health and Social Assistance, lacks all validity.

#### PREVIOUS ITEM

On a preliminary basis this Chamber wants to make some considerations about the role that the concept of privacy plays in this judgment.

Previously, it was the duty of this Chamber to decide about a similar case (Found in Reference Number 14625 according to the numbering used by this High Tribunal) in which it stated its position with respect to the request of the treatment of the procedure in a reserved form. In such opportunity, the chamber stated that “the efforts that are made at the level of the Public Powers to assure the right of equality and non-discrimination, depends in a great part on the social consciousness that one has about this disease, from there it will result in highly beneficial treatment of this subject in collaboration with the affected, their families, and close ones. The guarantee of the right of non-discrimination will not be achieved if they themselves - reassuring in privacy- isolate and remove themselves from their activities, and hide in their own sufferings or feel guilty when in reality there is no reason for it.”

In this sense the Chamber observes that, in the present opportunity, the affected, plaintiffs in this case, chose not to request that the procedure be realized in a reserved manner, a decision which this Chamber praises to be true and highly beneficial for the protection of the constitutional right of equality and non-discrimination.

#### EXAMINATION OF THE MERITS

In the terms of the report that starts the present proceedings, it is observed that it has been implemented by the citizens previously mentioned in an amparo proceeding to this Political Administrative Chamber against the Ministry of Health and Social Assistance due to the failure of this entity to deliver the plaintiffs sick with HIV/AIDS the necessary medicines for the treatment of such disease.

However, this Chamber *in limine litis* must pronounce itself on the request of intervention presented. It is observed by this effect, that subsequent to the admission of the brief with the contents of the proceeding, the lawyer Edgar Carrasco, one of the lawyers in fact, presented formally on the date 22 June 1999 the request to intervene in favor of other people who have been identified in writs, accompanied to his third party intervention, documents constituted by medical reports that reflect that their represented suffer from the disease HIV/AIDS, proof of which shows the interest they have in the debated subject, by which according to article 379 of the Code of Civil Procedure, their intervention is admitted and declared.

The above statements made in regards to the third party, the court must now decide on the merits of the charges that the plaintiffs present on the alleged omitted conduct of the Ministry of Health and Social Assistance.

In respect, the lawyers in fact of the plaintiffs in their libel report the violation of the rights to life, to health, to freedom and personal security, to non-discrimination and to the benefit of science and technology prescribed in articles 50 58 60 61 ordinal 3o and 76 of the Constitution and the regulations of the international instruments about human rights, related to the mentioned constitutional dispositions.

About each one of the alleged violations of the summoned rights that are charged to the Ministry of Health and Social Assistance, the Chamber observes the following:

#### Right of Freedom and Personal Security:

In relation to the supposed violation of freedom and personal security this Chambers assumes the criteria was expressed in the ruling No 47 about a similar case on the date of 14 August 1998.

In that opportunity the Chamber established the following:

“It is not pertinent to fit the established problem in the ambit of the right of freedom and personal security (article 60 of the Constitution), in the terms that the plaintiffs present, this is due to the fact that the personal freedom protected by this percept is the ‘physical freedom,’ the freedom from detention, sentence, or arbitrary confinement, it cannot therefore include a general freedom of acting or a general freedom of self-determination, well this kind of freedom, that has superior value of the legal system only has protection of amparo in those concrete manifestations that the Constitution provides them in the category of fundamental rights, but not to the multiple manifestations of different activities and vital relationships that freedom makes possible in other fundamental rights. It is not observed in this case acts that implicate conduct that, suppressing the sick of freedom and personal security constitute a violation of their rights of physical and moral integrity. Declared.”

Translation provided by the Lawyers Collective (New Delhi, India) and partners for  
the Global Health and Human Rights Database

Additionally, the plaintiffs allege the 3<sup>rd</sup> ordinal of article 60 of the Constitution which states:

Article 60: Freedom and personal security are inviolable, and in consequence  
“No one can be isolated and submitted to torture or other procedures that cause physical or moral suffering. Every physical or moral abuse towards a person submitted to a restriction of freedom is punishable.”

This constitutional disposition prohibits torture and inhumane and degrading treatment; but this prohibition cannot be interpreted to have been violated by the actions or omissions of the Ministry of Health and Social Assistance. The concepts of “torture” and “inhumane or degrading treatment” are, in their legal definition, gradual concepts of a same standard, that in all of its stages, generate, which ever means it is used for, physical or physiological suffering that are illegal and inflicted on those who suffer it in a degrading way and with the intention of degrading and bending the will of the subject. In this sense the Inter-American Convention to Prevent and Punish Torture subscribed in Cartagena de Indias, Colombia, December 9 of 1985 (took effect from 28 of February of 1987, and ratified by Venezuela 26 August 1981) defines torture as “any act intentionally performed whereby physical or mental pain or suffering is inflicted on a person for purposes of criminal investigation, as a means of intimidation, as personal punishment, as a preventive measure, as a penalty, or for any other purpose. Torture shall also be understood to be the use of methods upon a person intended to obliterate the personality of the victim or to diminish his physical or mental capacities, even if they do not cause physical pain or mental anguish.”

The chamber understands that for the treatment to be “degrading” or “inhumane,” besides being intentional, it must also cause the interested a suffering with a special intensity, a humiliation or a debasement that reaches a minimum of seriousness, different and superior to the one that comes with the relationship of administrated and administration. For example, the imposition of a conviction, and the damage implicit within this, would not be it. According to these criteria, in some way it can be qualified of “torture” or ‘inhumane or degrading treatment,” with the sense that these terms revisit article 60 ordinal 3, of the Constitution and in the international legal system, the alleged omitted action of the health administration, it is not directed to inflict physical or physiological suffering nor provoke damage to the integrity of the person sick with HIV/AIDS, and nor does there exist any means by which it is pretended to obtain from the sick any information or confession, to punish them for an act that they have committed or are suspected of committing. In consequence, objectively we are not in the presence of any indication of indignity or debasement. Declared.

As a matter of fact, this Chamber reiterates the criteria expressed in that opportunity and in consequence declares inadmissible the allegation on which it rests. Declared.

Right of Equality and Non-discrimination:

In relation to right of non-discrimination, the lawyers in fact of the alleged offended have alleged that their represented have been provided the health service required for the treatment of their disease in a discriminatory way, by not supplying the medicines that have been prescribed by the medical specialist of the Ministry of Health and Social

Translation provided by the Lawyers Collective (New Delhi, India) and partners for  
the Global Health and Human Rights Database

Assistance, corresponding to the Service of Immunology and Infectology, known as antiretrovirals the Nucleoside Reverse Transcriptase Inhibitor and Protease Inhibitors, such as: AZT or Zidovudine, DDI, or Didanosine, DDC or Zalcitabine, D4T or Stavudine, 3TC or Lamivudine, Crixivan or Indinavir, Saquinavir or Inivirase and Ritonavir or Norvir

In this respect, this chambers considers that the principle of equality expressed in Article 61 of the Constitution establishes the subjective right that every person has to receive equal treatment to that delivered to any person in the same situation. In this sense, this constitutional disposition applies equally to the individuals and the public power to carry out this equal treatment, and in the same way, it limits the power of the bodies charged with the application of the law.

In other words, to the same factual situation, the same legal standards should be applied. A different treatment would configure discrimination. In this case, the plaintiffs do not point out concretely how the discrimination is produced. Nevertheless, the terms in the libel report that started the action has posed, it evidenced that the discrimination in question in the existing case would derivate from the disease itself (HIV/AIDS), in comparison to the treatments of other diseases (cancer, kidney failure, cardiac, diabetes amongst others), by which it must be concluded that it would be the case of a different treatment in relation to the rest of the subjects who suffer other diseases whom are being presented with every medical attention and are being supplied the prescribed medicines.

About this particular situation the ruling which has been many times referenced, of the date of 14 August 1998 pointing out “the notorious fact that the health system of the country, in general is in crisis. It is enough in reading the paper, visiting one of the public hospital centers, to note the deficiency in equipment, medicines, and the low pay of the doctors and other employees of the public health industry (who constantly use the right of strike to achieve the payment of their salaries); in general, the deficiency does not discriminate against disease and even less the sick, there is no sign that they are creating - like the plaintiffs assert – ‘different sick categories.’”

In this case, this Chamber must establish that, the health industry is in crisis and they lack resources to cover all of the necessities in this field, but this does not justify any type of discrimination with respect to the sick with HIV/AIDS.

From the previously established, this High Tribunal concludes by affirming that due to the insufficient activities of the Health administration that affects in the same way every sick person in country who lacks the economic resources to cover their illness, and not having been proved in the writs that the competent authority attend with preference the people sick with a different illness than HIV/AIDS, it dismisses the argument of the violation to the right of equality and non-discrimination. Declared.

Right to Health, Life, access to science and technology:

In the same way was stated in the so named ruling of this Chamber of the date of 14 August 1998, the rights to health, life and access to science and technology are strongly attached to this case. The analysis of these rights will be done together. This merger can be explained in the following way: the right to access the advances of technology and science will allow the sick with HIV/AIDS a guarantee of the preservation of the minimum needed conditions (right to health) with what in this case would mean the

Translation provided by the Lawyers Collective (New Delhi, India) and partners for  
the Global Health and Human Rights Database

possibility of prolonging the life if these patients and in a long term the eventual cure of the disease that afflicts them.

The greatest of the legal rights of the individual (life), is protected as a human right in the broadest manner possible in both the national and international sphere. The fundamental right to life, in terms of the subjective right, gives their owners the possibility of redress through the judicial amparo, and lastly, the one of this Supreme Court towards all public action that threatens life or their integrity. In this same way, the preservation of this right at all costs is an end that the legal system imposes the same public powers and specially to the legislator, which must adopt the necessary measures to protect legal rights, life, and physical integrity from the attacks of others, without counting for this with the will of its owner and even when its even unnecessary to talk about it, with strict meticulousness, about the owner of that right. It is about, the configuration of the right to life with a content of positive protection that impedes the configuration as a right of freedom. From there, that the guarantee in this precious legal right plays a fundamental role in the State's political policy in the subject of public health. This is so in this case, where the obligations imposed on the public power in the subject of prevention and treatment of HIV/AIDS is fundamental.

The Venezuelan Constitution recognizes in the Article 76 bthat "everyone has the right to protection of health" for an effective safekeeping the realization of this right is in the hands of the state's public powers: "the authorities shall guard the sustaining of public health and shall provide the means of prevention and assistance to those who lack it."

The right to health that people sick with HIV/AIDS claim has been recognized by this Chamber in the ruling with the date of 20 January 1998. In this opportunity, an exhaustive analysis was made, starting from a generic approach of the oppressive situation in which the people already infected with the virus stand. In this opportunity, the chamber stated that "the state has the responsibility to care for the infected, physically, physiologically, economicly and socially, even the state must adopt attitude of recognizing dignity to the human affected by this suffering."

In view of the right every citizen has –and the plaintiffs in this case - to the protection of health and the correlative responsibility of the State to safeguard and ensure that this right is effectively realized, especially in the case of those who lack sufficient means, this Chamber states that from the contributed documentation there are sufficient signs that allow it to conclude that there is an evident failure in this responsibility, the immediate consequence of which is that the health and life of the plaintiffs is at risk. In consequence, proof exists that the medical specialist of the Service of Immunology and Infectology centers of the Ministry of Health and Social Assistance, prescribe the medicines known as antiretrovirals the Nucleoside Reverse Transcriptase Inhibitor and Protease Inhibitors, such as: AZT or Zidovudine, DDI, or Disanosine, DDC or Zalcitabine, D4T or Stavudine, 3TC or Lamivudine, Crixivan or Indinavir, Saquinavir or Invirase and Ritonavir or Norvir; and there is no proof the supplying of the same is done in a regular and correct way to those sick with HIV/AIDS, from different institutes depending on the Ministry of Health and Social Assistance. This circumstance risks the life of the affected and, as it is generally known, and even though efforts are being made on a global scale, a cure has yet to be found for this disease.

The alleged offending party does not deny this situation. In fact, it recognizes expressly that due to its sums "it is evident that it cannot satisfy every need of the sick with HIV/AIDS, with the actual assigned budget. Due to the non-compliance of the duty that the Ministry of

Translation provided by the Lawyers Collective (New Delhi, India) and partners for  
the Global Health and Human Rights Database

Health and Social assistance has established, it is fully proved, elements, which in the beginning would be enough to agree the Amparo in everything requested by the plaintiffs.”

But from another side it must be pointed out that, as human being, the sick with HIV/AIDS also find themselves protected by the laws protecting fundamental rights given by the international sphere. Said principles are taken in the precedent of this Court that gives effect to the most recent and relevant pronouncements of the entities that have faced the situation with people affected with HIV/AIDS, just as in the ruling of 14 August 1998, in which the fundamental aspects of "The United Kingdom Declaration of the Rights of People with HIV and AIDS" 1990 are kept.

However, this Court cannot make an order for protection circumventing the defense made by the representative of the driven part, especially, because the same are directed to override that the alleged omitted conduct of the Ministry of Health and Social Assistance is deliberate. Thus, the precedents of this Chamber has pointed out the conditions of admission of the constitutional Amparo proceedings against the omitted actions of the administration (vid, amongst other, rulings from 11-07-91, 14-08-91 y 13-08-92 y 05-11-92) demanding that from one side, this omitted conduct be absolute, which means that the administration has not realized in any moment the due action; and from another side, that omission occurs from a generic obligation, meaning, that is one of those obligations that the public officer has in the development of his functions, different, to the specific obligation that is required for the admission of the action of contentious administrative by abstention.

In this case, the presumed wrongful conduct would be consumed, if the Ministry of Health and Social Assistance, having being assigned in its budget a piece for the case of sick with HIV/AIDS, they would have not proceeded to acquire the equipment and medicines necessary to lend the assistance to the sick.

On this matter, argued as well that for the Ministry of Health and Social Assistance it is impossible to afford the treatment in question to the entire universe of people that suffer HIV/AIDS, reason which before the situation of crisis that the country affronts it must be determined who can and who cannot afford the required treatment.

Equally, she pointed out with the occasion of the decision of this Chamber (14-08-98) that falling over an identical case “the sued organization realized every gesture necessary to cover the cost of the treatment, in that so that the cost estimate was made to meet the claim, which consumed great part of the budget of the Program for that period was ONE THOUSEND ONE HUNDRED MILLION BOLIVARES (Bs. 1.100.000.00,00), to which it was necessary to make a transfer of items to redirect the process of acquisition and procurement of antiretroviral medicines. Being on course for October 1998 another Amparo proceeding a bidding process was opened, which was declared deserted, therefore being necessary to acquire the medicines through direct adjudication to pharmaceutical companies; from this it is evident that it is impossible for the Ministry of Health and Social Assistance to acquire the financial resources with the speed it is expected.”

The exposed economic reasons presented by the lawyer in fact of the alleged offender, they make reference to the compliance of the mandate of Amparo that should be settled in relation to different subjects to those established in the present action, to which such argument cannot be brought and applied to new actors, with respect to which the mentioned representation does no indicate in any way the compliance of their duty.

Translation provided by the Lawyers Collective (New Delhi, India) and partners for  
the Global Health and Human Rights Database

Nevertheless, this chamber understands that in compliance with the constitutional duty of prevention and health assistance, in which the alleged offender would be in is not intentional, due its budget capacities it has attended the demands of this sickness of high risk and elevate costs. It is not about, in the strict legal sense, the omitted conduct of the administration. Declared.

So the matter in question becomes a problem of budget. With respect to the cost, not having a cure of the disease, it is difficult to make an exact estimate of the economic aspects this implies, without taking in account the social and affective implications. To calculate in the country the cost in economic terms of a patient with HIV/AIDS, there must be taken into account:

- Expenses in previous consultations different to the diagnosis (which is often late).
- Expenses in the proof needed for the verification of the diagnosis.
- Price of the employed medicines.
- Surveillance during the treatment (consults, lab testing, especially the periodic immunological testing, hospitalizations in case of complications, even placement in the special care unit, etc...)

It is estimated at the international level that the global cost of a case of HIV/AIDS during the lifetime of the patient reaches around ONE HUNDRED AND TWENTY THOUSEND DOLLARS (\$120,000) which is currently SEVENTY TWO MILLION BOLIVARES Bolívares (Bs. 72,000,000) approximately. This is an approximate figure with many variables that influence it, especially the age of the patient.

As has been previously pointed out, the budget capacities of the alleged offender (Ministry of Health and Social Assistance) have resulted in an insufficiency to comply with its care responsibility towards people sick with HIV/AIDS.

In this same order of ideas, circumscribed the subject as budget problem, this Supreme Court of Justice, to the ends of safeguarding from on side, the right to health, life of the plaintiffs, just as the effective protection that is expected of this Supreme Tribunal in front of the situation exposed, and from the other side, in attention to the responsibility of health assistance of the state - through the Ministry of Health and Social Assistance - analyzing the budget system, observes that there are two possibilities that will allow it to resolve the requests of people sick with HIV/AIDS: from one side the budget rectification that is established in Article 32 of the Organic Law of the Budget Regime that is a mechanism destined to:

1. Attend to unexpected costs that are presented in development of the fiscal year.
2. Augment the budget credits that result in insufficiencies. The use of the budgetary line whose rectification is demanded must be authorized by the President of the Republic in the Ministry Counsel. From another side, the National Executive could issue with conformity with the established in Article 33 of the Organic Law of the Budget Regime additional credits to the budget of expenses with previous authorization of the Congress or the Delegate Commission to cover the unexpected.

Similarly, due to the budget insufficiency, the Ministry of Health and Social Assistance can make use of the mechanism before established, to the ends that the claims of the sick with HIV/AIDS be met, and request the President of the Republic the resource's that he esteems necessary, with the purpose of safekeeping the right to health and life of people infected with HIV/AIDS. Declared.

Translation provided by the Lawyers Collective (New Delhi, India) and partners for  
the Global Health and Human Rights Database

Furthermore, given the fact that there is no cure yet and that the medical costs are high, this Chamber considers that the fight against this disease must be oriented to prevention while scientific knowledge can allow an efficient therapy. Prevention in the subject of HIV/AIDS is protected by an ample world wide investigation; diverse methods have been reviewed scientifically and have been proven reasonably effective. This selection is subordinated to the relation cost/benefit and the local peculiarities of the most vulnerable groups of society.

Regarding the above, as the lawyer in fact of the defense, the Ministry of Health and Social Assistance through the National Program of HIV/AIDS and Infection by Sexual Transmission is implementing a policy of prevention and medical attention in the national territory, for which the corresponding economic resources are being processed, and this program is to accomplish the following activities:

Revise the Programs of prevention directed to the youth, and to sex workers;

Re-edit 5,000 brochures of HIV/AIDS prevention that are to be distributed in the different regions;

Celebrate different Cooperation Conventions with the Youth and Change Foundation, National Commission on Prevention of Early Pregnancy, Committee of Support to the Child and Family, Medical Assistance Fund and Superior Education and University Change Foundation;

National Campaign on the promotion of protected sex, the cost of this Plan being approximately ONE HUNDRED AND EIGHTY MILLION BOLÍVARES (Bs. 180,000,000).

The Chamber considers that said activities constitute a positive initiative and that the same must continue and must deepen taking with it the guidelines that were established in the ruling of this Chamber of the date of 4 August 1998, to know:

“For a national program of prevention, the policy that the State assumes must be developed with the following foundations:

- Educational Programs directed to: vulnerable groups, teenagers, marriages with problems, etc.
- Massive information to the community about the disease, its causes, its way of transmission and preventive measures.
- Elaboration of a National Plan to facilitate diagnosis at an accessible price through the medical assistance institutions of the State.

Each one of these programs requires a special preparation and execution, taking account of the diverse aspects such as: condoms, use of syringes and sterile needles when drugs are used, specific intervention over the most vulnerable groups, continued work at the community level, marriage counseling.”

For that purpose, the Ministry of Health and Social Assistance must make a real study about the minimum necessary priorities that these patients require and the program to prevent the growth of the rate of the infected taking into account the elements previously expressed, must also present the President of the Republic in Ministry Counsel, to take into account the

Translation provided by the Lawyers Collective (New Delhi, India) and partners for  
the Global Health and Human Rights Database

elaboration of the general guidelines for the formulation of the Law Project of Budget for the next fiscal year.

Once declared the existence of the violation of the right to health, this Chamber must decide about the request of the plaintiffs in the hopes of achieving an equal treatment, and at the same time procuring procedural economy and speed for the adequate function of the Tribunals “that the granted benefits be extended to every citizen that lives in Venezuela with HIV/AIDS, and that requires the treatment prescribed by medical specialists, without seeing himself with the imperious need of constantly recurring to the path of the Constitutional Amparo.”

Regarding this, the precedent of this Court has decided, to sustain that due to the highly personal nature of the Amparo proceeding, this does not have absolute effects, but its efficacy is relative, because the order would be directed to the subjects who intervened in the process.

In effect, the highly personal nature of the amparo proceeding has been recognized by this Chamber as an essential characteristic, which supposes that when the subject finds himself in a specific factual situation in which his constitutional rights have been violated, and that the judicial body through the amparo proceeding proves the existence of said situation, this must be protected in an urgent manner with the effects to reestablish the situation inflicted.

Nevertheless, said highly personal nature is referenced only that the Judge of amparo must identify the subject to protect his rights; in this sense the determination that this factual situation violates the constitutional rights, makes admissible for the specific case the protection via amparo proceeding. However, this does not mean that such determination corresponds exclusively to the judicial body, because in the situation that another subject realizes such determination, he must act in such way to not violate the constitutional rights, meaning to act in the same way with what is established by the amparo resolution.

Given the previous considerations, it is concluded the fact that the decision that the amparo Judge issues persecutes the reestablishment of the legal situation inflicted, being by ordering the ceasing of the violation or by issuing any measure that avoids the continuation of the threat. In every case, the amparo sentence recognizes in first place the existence of a constitutional right, in second, declares that a certain conduct is in violation of such right, and third takes the necessary measures to avoid the violation or threat. From this, it follows that the ruling that settles the constitutional amparo does not create laws, but it recognizes and protects the existence and the enforceability of a right; with the added that said recognition and protection is exercised in respect to a factual situation and not attending to the identity of a determined person.

As a result, every time there is recognition of the enforceability of a right with respect to a specific factual situation, such circumstance must be observed by any subject, because in the contrary they would be acting contrary to the Constitution. Additionally to this the simple fact of a previous constitutional mandate of amparo existing clears that the specific situation by the judicial body, the violation of such rights would constitute a disregard to such amparo mandate, punishable according to the law. Nevertheless, it just applicable in those cases in which the factual situation protected was not discussed by the eventual offender, and in the case of doing it so it would correspond again to the judicial body to decide over the concrete case.

Translation provided by the Lawyers Collective (New Delhi, India) and partners for  
the Global Health and Human Rights Database

Using the previous consideration to this case, this Chamber estimates that the Ministry of Health and Social Assistance must recognize the specific factual situation that is protected by the present decision. In such sense, that due to the present amparo proceeding is the second time that is being presented before this Chamber and the same has identity to the first in respect to the offender, the specific factual situation, the same alleged constitutional violations, and in the way of fixing the lesion this Chamber estimates that the Ministry of Health and Social Assistance, as a consequence of the seriousness of the situations of public health involved, it should act in accordance with that ordained in the present amparo mandate every time the following requisites are evidenced:

Determination of suffering of the disease of HIV/AIDS of the petitioner in administrative proceedings.

Determination of the necessity of treatment

Lack of economic resources to cover the costs of the treatment of the disease.

Being Venezuelan or resident of the Republic's territory.

#### DECISION

By all the considerations previously expressed this Political Administrative Chamber of the Supreme Court of Justice, DECLARES ADMISSIBLE, the amparo proceeding tried by the lawyers Edgar Carrasco, Gustavo Gonzales Osilia and Joaquín Omar Berrios, against the Ministry of Health and Social Assistance in the following sense:

It is DECLARED ADMISSIBLE the claim deduced in the 1) point of the petition previously transcribed, in the sense that orders the Ministry of Health and Social Assistance, to act in benefit of the plaintiffs, identified before, the regular and periodic supply of the medicines known as Nucleoside Reverse Transcriptase Inhibitor and Protease Inhibitors: such as, AZT or Zidovudine, DDI, or Disanosine, DDC or Zalcitabine, D4T or Stavudine, 3TC or Lamivudine, Crixivan or Indinavir, Saquinavir or Inivirase and Ritonavir or Norvir, according to the combined prescriptions of a medical specialist of the Ministry of Health and Social Assistance, corresponding to the centers depending to the MHSA (MSAS).

It is DECLARED ADMISSIBLE the claim deduced in the 2) point of the petition, in the sense that it orders the Ministry of Health and Social Assistance, in benefit of the plaintiffs, the performance and coverage of the specialized exams such as Viral Load, Lymphocyte Load, Platelet Count and all of those exams, such as those for the opportunistic infections, like those necessary to have access to the combined treatments of the Nucleoside Reverse Transcriptase Inhibitor and Protease Inhibitors.

It is DECLARED ADMISSIBLE the claim, deduced in 3) point by which the Ministry of Health and Social Assistance is ordered to develop a policy of information, treatment, and comprehensive medical assistance in favor of the plaintiffs.

It is DECLARED ADMISSIBLE the claim deduced in 4) point in the sense that it orders the Ministry of Health and Social Assistance to supply to the plaintiffs every medicine for the treatment of the opportunistic infections, such as antibiotics, antifungal, antidiarrheal,

Translation provided by the Lawyers Collective (New Delhi, India) and partners for  
the Global Health and Human Rights Database

chemotherapy, cryotherapy and all of the others necessary that develop from their condition  
of HIV/AIDS.

In consequence of the preceding states declarations, the following amparo mandate is  
issued:

- 1) ORDER the Ministry of Health and Social Assistance, to follow the orders  
necessaries by the effects that the institute in his charge and accomplish the  
claims of the plaintiffs that have been declared admissible in the present ruling.
- 2) ORDER the Ministry of Health and Social Assistance to solicit immediately the  
President of the Republic, in the Ministry Counsel, a rectification of the  
Budgetary line corresponding to the “activity: prevention and control of AIDS”  
or the consideration of an additional credit, in order to guarantee the opportune  
compliance of the order in the present ruling, by what is left of the fiscal year; as  
well as realize the necessary actions for the inclusion of sufficient resources in  
the following law projecting the budget.
- 3) ORDER the Ministry of Health and Social Assistance to make a real study about  
the minimum necessary priorities that people sick with HIV/AIDS require and the  
destined program to prevent the growth of the rate of the infected taking with a  
preventive policy of information, social awareness, education and assistance in  
favor of those who live with HIV/AIDS.
- 4) ORDER the Ministry of Health and Social Assistance to act in conformity with the  
ordered in the present amparo mandate always that there is evidence of the  
following requisite:

Determination of suffering of the disease HIV/AIDS of the petitioner in administrative  
proceedings;

Determination of the necessity of treatment;

Lack of economic resources to cover the costs of the treatment of the disease;

Being Venezuelan or resident of the Republic’s territory;

The present amparo mandate must be complied with immediately by all the authorities,  
with risk of incurring disobedience in front of the authority.

Publish register, notify. Enforce.

Due, signed sealed in the Political Administrative Chamber of the Supreme Court of  
Justice, in Caracas, on the 15 day of the month July of 1999. Years 188 of independence  
and 140 of the Federation

The President,  
CECILIA SOSA GÓMEZ

The Vice President,  
HUMBERTO J. LA ROCHE

Translation provided by the Lawyers Collective (New Delhi, India) and partners for  
the Global Health and Human Rights Database

HILDEGARD RONDÓN DE SANSÓ  
Reporting Magistrate

HERMES HARTING  
Magistrate

HÉCTOR PARADISI LEÓN  
Magistrate

Secretary,  
ANAÍS MEJIA

HRS/icc

Exp.15789