

# Jurisprudence of the Inter-American Court of Human Rights: Case Cuscul Pivaral et al v. Guatemala: Case 12484.

MD. Cristina Calderón

## ABSTRACT

Case **12484** started in **2001**, and it is related to the families and **49 people diagnosed with HIV** between **1992** and **2003** (15 of whom have passed away while reviewing the case).

This process lasted **18 years**, and it took a strategic alliance between the Center for Justice and International Law -CEJIL-, the Inter-American Commission on Human Rights and **MD. Cristina Calderón**, who gather all the information of each victim during all these years and also was representative of the victims, all this resulted in the judgment of the **Inter-American Court of Human Rights in favor of the victims on August 23, 2018**.

On **October 25, 2018**, the **Inter-American Court of Human Rights** (I/A Court H.R) published the judgment of **Case Cuscul Pivaral et al v. Guatemala**, hereinafter Case **12484**; and for the first time, held a State responsible for violating the progressive realization principle, determining that the State of Guatemala contravened its duty to progressively achieve the full realization of the right to health of **49 people with HIV**. Before this judging the **Inter-American Court** had not made such a rigorous interpretation and adjusted to the rules of International Law.

The most singular aspect of said reparation measure is that the Inter-American Court emphasizes that the effectiveness of the design and implementation of this mechanism, depends on the State's action; therefore the State must call to participate, the medical community, people with **HIV** and other organizations representing them.

The **Inter-American Court held a State** party to the American Convention internationally responsible, for the lack of progress in the effectiveness of the right to health of **49 victims**.



## RESULTS:



The Inter-American Court of Human Rights declares that the State of Guatemala is responsible for the violation:

- Of the right to health, to the detriment of the **49 people**.
- Of the prohibition of discrimination in relation to the obligation to **guarantee the right to health**.
- Of the progressive realization principle.
- Of the **right to life**.
- To **personal integrity**.
- To guarantee a reasonable time.
- To the rights to judicial **guarantees** and **judicial protection**.

## EXECUTION OF THE DECISION OF THE RESULTS:



The I/A Court HR unanimously rules that:

The Judgment constitutes, by itself, a form of reparation.

And that the State must:

- Carry out the public act of acknowledgment of international responsibility.
- Provide adequate comprehensive care.
- Provide, through its health institutions, psychological medical care free of charge and immediately to victims and their families.
- Implement mechanisms of control and supervision of health services.
- Improve the accessibility, availability and quality of health care for people with HIV.
- Guarantee the provision of antiretroviral drugs and other indicated medication to all people with HIV.
- Offer the population diagnostic tests for HIV detection.
- Implement an HIV training program for healthcare professionals.
- Guarantee adequate medical treatment to pregnant women with HIV.
- Carry out a national awareness and sensitization campaign.
- Guarantee through its health institutions that medical care is provided in the clinic closest to the victims' place of residence and that it assumes the costs of transportation for those who are far away.

Within a period of one year from the notification of this Judgment, submit to the Court a report on the measures adopted to comply with it.

The Court will monitor full compliance with this Judgment, in exercise of its powers and fulfilling its duties under the American Convention on Human Rights, and will consider this Case closed once the State has fully complied with the provisions of the judgment.

## IMPORTANT AND UNIQUE FINDINGS:

The I/A Court of **HUMAN RIGHTS** for the first time in **40 YEARS**

- Pronounces on the obligation that States have to guarantee the right to health in a progressive manner proportional to their capacities.
- Judged on the rights of people with **HIV** throughout **Central America**.
- In **Guatemala** where the State is held internationally responsible for violating the autonomous right to health.
- The case is a great contribution to the development of interamerican jurisprudence and international standards in the area of the right to health and "**Economic, Social, Cultural and Environmental Rights**", opening the door for other people with **HIV** in Latin America, to claim their right to health and to use the Inter-American Human Rights System when their rights have been violated.
- The case not only benefits the **49 victims** and their families, it impacts the entire population with **HIV** on the continent.
- The Judgment not only have effects in **Guatemala** but also commits all the States Parties that recognize the jurisdiction of the Inter-American Court to respect and follow these standards of protection of the rights of people with **HIV**.
- Locally, it was possible to determine the obligation of the **State of Guatemala** to make structural changes in the health system in order to improve services and comprehensive medical care for all people with **HIV** in the country.



See Jurisprudence of the Court



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The newest aspect is:

... The measure of reparation consisting of the design of a mechanism of accessibility, availability and quality of antiretroviral drugs, diagnostic tests and benefits in Comprehensive Care for the population with HIV.



See Judgment

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