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REPORT No. 1/15
CASE 12.798
REPORT ON MERITS

DANIEL GERARDO GÓMEZ MURILLO, AIDA MARCELA GARITA
SÁNCHEZ Y OTROS
COSTA RICA

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COSTA RICA

JANUARY XX, 2015

I. SUMMARY

1. The Inter-American Commission on Human Rights (hereinafter “the Commission”, “the Inter-American Commission” or “the IACHR”) received five petitions submitted by Gerardo Trejos Salas (hereinafter “the petitioner”)¹ on December 14, 2004, on behalf of Daniel Gerardo Gómez Murillo and Aída Marcela Garita Sánchez (P 1368-04); on December 27, 2004, on behalf of Roberto Pérez Gutiérrez and Silvia María Sosa Ulate (P 16-05); on June 28, 2006, on behalf of Luis Miguel Cruz Comparaz, Raquel Sanvicente Rojas, Randall Alberto Torres Quirós and Geanina Isela Marín Rankin (P 678-06); on October 17, 2006 on behalf of Carlos Edgardo López Vega and Albania Elizondo Rodríguez (P 1191-06); and on May 3, 2007, on behalf of Miguel Acuña Cartín and Patricia Núñez Marín (P 545-07).

2. The petitioners brought their complaints against the State of Costa Rica (hereinafter “the State”, “the Costa Rican State” or “Costa Rica”) alleging violation of the American Convention on Human Rights (hereinafter “the American Convention”, “the Convention” or “the ACHR”) resulting from Judgment No. 2000-02306 of March 15, 2000, delivered by the Constitutional Chamber of the Costa Rican Supreme Court, which prohibited the practice of *in vitro* fertilization by declaring Presidential Decree 24029-S of February 3, 1995 unconstitutional. As a consequence of that ruling, the five couples were unable to receive the treatment they wanted in order to be able to circumvent a variety of infertility conditions. The State, for its part, argued that it had not committed any breach of the American Convention because the case does not state facts that tend to establish a violation of human rights guaranteed therein. The State asserted that the Constitutional Chamber regulated the right to reproduce by stating that the right to reproduce must be subordinate to the absolute right to life, as it would be a contradiction to allow the possibility of a life at the cost of other human lives which is, in its view, what happens when the technique of *in vitro* fertilization is practiced.

3. During the admissibility phase, the five petitions were joined under petition number 1368/04. On November 1, 2010, the Commission issued its admissibility report 156/10, in which it declared the five petitions admissible, which were then registered as case number 12,798.

4. Recalling that both organs of the inter-American human rights system have already definitively determined that the absolute ban on the practice of *in vitro* fertilization is incompatible with the American Convention, the Inter-American Commission found that the preset case concerns the same issues of fact and of law and, therefore, established the international responsibility of the Costa Rican State by reference to the analysis of the law done in its merits report 85/10 regarding case 12,361 - *Artavia Murillo et al.*, and in the Judgment on Preliminary Objections, Merits, Reparations and Costs that the Inter-Court of Human Rights (hereinafter “the Inter-American Court” or “the Court”) handed down on November 28, 2012, in the same case. On that basis, the Commission made the respective recommendations.

II. PROCESSING WITH THE COMMISSION

5. The five petitions that are the subject of this report were received on December 14, 2004 (P 1368-04), December 27, 2004 (P 16-05), June 28, 2006 (P 678-06), October 17, 2006 (P 1191-06) and May 3, 2007 (P 545-07). The processing from the time the petitions were presented to the admissibility decision is explained in detailed in admissibility report 156/10 of November 1, 2010.² Once the five petitions were

¹ The IACHR learned of the petitioner’s death while the case was being processed.

² See, IACHR, Report No. 156/10, Petition 1398/04, Admissibility, Daniel Gerardo Gómez, Aida Marcela Garita *et al.*, Costa Rica, November 1, 2010.

joined, the Commission issued admissibility report 156/10 of November 1, 2010, wherein it declared the petitions admissible for alleged violations of the rights recognized in articles 5(1), 11(2), 17(2) and 24 of the American Convention, read in conjunction with articles 1(1) and 2 thereof.

6. The Commission assigned the petitions case number 12,798 and, on November 12, 2010, notified the parties of the admissibility report. In accordance with Article 36(2) of the Rules of Procedure then in force, the Commission placed itself at the disposal of the parties with a view to reaching a friendly settlement and invited the petitioner to submit additional observations within three months' time. Neither of the two parties raised the possibility of initiating a friendly-settlement process.

7. By a communication dated November 25, 2010, received on December 2, 2010, the petitioner submitted his additional observations on the merits, which were forwarded to the Costa Rican State on December 6, 2010, with the request that within three months, it submit any additional observations it might have concerning the merits. The petitioner sent additional communications on December 16, 20 and 22, 2010. The State made reference to the case in a communication dated March 7, 2011, and requested an extension in order to be able to prepare more detailed observations on the merits. The extension was granted on March 16, 2011. However, as of the date of approval of the present report, the Costa Rican State has not filed any additional observations on the merits.

III. THE POSITIONS OF THE PARTIES

A. The petitioner

8. The petitioner alleged human rights violations committed against the following persons: Aída Marcela Garita Sánchez, a teacher, Daniel Gerardo Gómez Murillo, a chemist, Luis Miguel Cruz Comparaz, a tourism guide, Raquel Sanvicente Rojas, a housewife, Randall Alberto Torres, a graduate in English, Geanina Isela Marín Rankin, a graduate in electrical engineering, Carlos Edgardo López Vega, a micro-entrepreneur, Albania Elizondo Rodríguez, a micro-entrepreneur, Roberto Pérez Gutiérrez, an assistant manager, Silvia María Sosa Ulate, an administrator, Miguel Acuña Cartín and Patricia Núñez Marín.

9. All the petitions assert that the violation is rooted in Judgment No. 2000-02306 delivered by the Constitutional Chamber of the Supreme Court of Costa Rica on March 15, 2000, in which it prohibited the practice of *in vitro* fertilization by holding that Presidential Decree No. 24029-S of February 3, 1995, which regulated the use of that practice, was unconstitutional.

10. According to the petitioner, all the alleged victims attempted to have biological children; however, when that did not happen they sought medical treatment and were diagnosed as having infertility conditions. The petitioner observed that after trying various methods of assisted reproduction, all to no effect, the only viable option that they had for biological reproduction was through the use of *in vitro* fertilization.

11. The petitioner argued that the technique of *in vitro* fertilization is a tool that scientific progress has made available to infertile couples to enable them to exercise their rights to health, to reproduction, and to raise a family, rights protected under the American Convention and the Protocol of San Salvador. He added that the Protocol of San Salvador recognizes every person's right to enjoy the benefits of scientific and technological progress. He reasoned, therefore, that the Costa Rican State must refrain from imposing any legal obstacles that would deny infertile couples access to the benefits of that progress.

12. He argued that Article 11 of the American Convention was violated in that the right to privacy protects persons from state interference in their private lives. He observed that the ban on *in vitro* fertilization violates the right to protection of freely made, responsible decisions regarding persons' sexual and reproductive lives, such as the decision to raise a family and to undergo the therapeutic treatments necessary to attempt to have children. He further maintained that the State is violating the alleged victims' right to privacy, defined as "a sphere into which no one can intrude, a zone of activity that is wholly one's own."

13. The petitioner observed that the prohibition of *in vitro* fertilization in Costa Rica violates the right to raise a family, the alleged victims' own family. This right, he argued, is protected under Article 17(2) of the American Convention. He reasoned further that the prohibition also violated the right to reproduce, which is the necessary precondition to raise a family. He also maintained that the prohibition of *in vitro* fertilization violates the general obligation of non-discrimination established in Article 1 of the American Convention. He further alleged a violation of Article 24 of the American Convention in that the prohibition of *in vitro* fertilization discriminates against persons with reproductive disabilities and those who do not have the economic means to travel to seek the treatment abroad.

14. The petitioner asserted that the right to life is not an absolute; instead it is subject to exceptions and conditions. He observed that the American Convention set forth the principle of relativity in its Article 4, which states that this right shall be protected, in general, from the moment of conception. The petitioner also questioned whether the embryo has legal personality and notes that every person who comes into this world has rights if he or she meets two conditions: that of being born and being born alive.

B. The State

15. In the admissibility phase, the State maintained that it has taken care to create the conditions necessary to observe the right to protection of the family. It argued, however, that under Article 17(2) of the Convention, men and women have the right to marry and to raise a family if they meet the conditions required by domestic law. The State reasoned that "while parents must have the right to have children, to do so by depriving other human beings of their lives can hardly be lawful."

16. It argued that however the expression "in general" in Article 4(1) of the American Convention is interpreted, what matters is that the article establishes the right to protection of life from the moment of conception and that the State has opted for that degree of protection.

17. It maintained that in its Judgment No. 2000-02306 of March 15, 2000, the Constitutional Chamber of the Costa Rican Supreme Court did not declare *in vitro* fertilization as a method of assisted reproduction to be unconstitutional *per se*; its ruling was that "the procedure as practiced in the year 2000 [...] undoubtedly exposed embryos to a disproportionately high rate of death." According to the State, under the conditions in which the technique was practiced at the time of the Constitutional Chamber's ruling, which allowed insemination of up to six ova, it deemed that the technique violated the right to life. Hence the technique was deemed to be in violation of constitutional law and Article 4 of the American Convention. According to the State, the Constitutional Chamber held that "science and biotechnology are advancing at such a dizzying pace that the technique may one day be improved to the point that the objections raised here may be moot."

18. Thus, in the admissibility phase the State was emphatic in arguing that the Constitutional Chamber's ruling and its effects are not in violation of the American Convention.

19. After the parties were notified of the admissibility report, the State presented a single brief in 2011 wherein it requested an extension in order to be able to present its observations on the merits. The State supported its request by pointing out that it was in the process of complying with the recommendations made in the Commission's merits report in case 12,361, *Artavia Murillo et al.* The Commission granted the extension. However the case was submitted to the Inter-American Court and by now more than two years have passed since the Court's judgment was delivered and yet the State has provided no further information in connection with the present case.

IV. ESTABLISHED FACTS

A. Judgment No. 2000-02306 of March 15, 2000, issued by the Constitutional Chamber of Costa Rica's Supreme Court

20. On April 7, 1995, Hermes Navarro del Valle, a Costa Rican citizen, filed a case challenging the constitutionality of Executive Decree No. 24029-S, issued on February 3, 1995, which regulated *in vitro* fertilization in Costa Rica. The petitioner alleged that the *in vitro* fertilization and embryo transfer technique regulated in that decree violated the right to life and the right to have one's dignity respected.

21. The Executive Decree in question authorized the technique of *in vitro* fertilization between married couples and established rules to govern its practice. In Article 1, the Executive Decree established the practice of assisted reproductive techniques between married couples and set forth rules for their practice.³ Article 2 defined assisted reproductive techniques as "all those artificial techniques in which the egg and the sperm are united through a form of direct manipulation of the reproductive cells in the laboratory."

22. Those provisions of Decree Law No. 24029-S that specifically concern the technique of *in vitro* fertilization at issue in the constitutionality challenge were as follows:⁴

Article 9.- In cases of *in vitro* fertilization, fertilization of more than six of the patient's ova per treatment cycle is strictly prohibited.

Article 10.- All ova fertilized in a treatment cycle shall be transferred to the patient's uterine cavity; disposing of or destroying ova or preserving them to be transferred into the same patient in later cycles or into other patients, is strictly prohibited.

Article 11.- Manipulation of the embryo's genetic code, or any other experimentation on the embryo, is strictly prohibited.

Article 12.- Marketing either homologous or heterologous reproductive cells –eggs and sperms- to be used in treating patients by means of assisted reproductive techniques, is strictly prohibited.

Article 13.- Failure to comply with the provisions herein established shall give the Ministry of Health the authority to cancel the health services operating permit and the accreditation of the establishment in which the violation was committed; the matter is to be immediately referred to the Public Prosecutor's Office and to the respective Professional Association, for the necessary sanctions to be administered.

23. *In vitro* fertilization was practiced in Costa Rica from 1995 to 2000. During that period 15 Costa Rican *in vitro* babies were born until the Constitutional Chamber of the Costa Rican Supreme Court declared the practice unconstitutional in ruling 2000-02306, delivered on March 15, 2000.⁵

³ Judgment No. 2000-02306 of March 15, 2000, issued by the Constitutional Chamber of Costa Rica's Supreme Court, Case File No. 95-001734-007-CO.

⁴ Judgment No. 2000-02306 of March 15, 2000, issued by the Constitutional Chamber of Costa Rica's Supreme Court, Case File No. 95-001734-007-CO.

⁵ *Diario La Nación*, Interview with Gerardo Escalante, April 27, 2009.

24. In its ruling, the Constitutional Chamber held that *in vitro* fertilization practices are a threat to the life and dignity of the human person. As the Constitutional Chamber wrote:⁶

The human embryo is a person from the moment of conception and therefore shall not be treated as a research specimen or be subjected to selection and cryo-preservation procedures. The most fundamental issue for the Court is that it is unlawful under the Constitution for the embryo to be exposed to a disproportionate risk of death. [...]

The Court's main objection is that the practice of the technique carries a high embryo loss rate, which cannot be justified by the fact that the ultimate purpose is to produce a human life and give a child to a couple that might otherwise be unable to have one. What matters most is that the embryos that the technique initially endeavors to give life to and then cuts short are human beings and the Constitution does not admit of any distinction between them.

The Court also dismisses the argument that under natural circumstances, some embryos fail to implant in the uterus or, even if they do implant, do not develop to birth; it rejects this argument for the simple reason that the *in vitro* fertilization technique involves a conscious and voluntary manipulation of male and female reproductive cells in order to bring about a new human life, when one knows beforehand that the situation being created is one in which a considerable percentage of the human lives thus brought into being have no chance of surviving.

From what the Court has been able to establish, the technique of *in vitro* fertilization and embryonic transfer, as currently practiced, threatens human life. This Court knows that science and biotechnology are advancing at such a dizzying pace that the technique may one day be improved to the point that the objections raised here are moot. Nevertheless, given the conditions under which the technique is currently practiced, any elimination or destruction of embryos –whether intentional or as a result of the practitioner's ineptitude or the inaccuracy of the technique itself- is a violation of the right to life. Thus, the regulation being challenged is unconstitutional as it violates Article 21 of the Constitution and Article 4 of the American Convention on Human Rights.

The technique itself violates the right to life. Therefore, no legal provision can legitimately authorize its practice so long as the science of the technique remains the same and poses a conscious threat to human life.

25. Based on the information in the case file, the prohibition against the practice of *in vitro* fertilization is still in force in Costa Rica.

B. The situation of the alleged victims in the five petitions

1. Daniel Gerardo Gómez Murillo and Aida Marcela Garita Sánchez (P 1368/04)

26. According to the petitioners, in 2003, after undergoing a number of examinations and tests, the alleged victims in this petition were told that the only way they could have biological children was through *in vitro* fertilization.⁷

27. A medical certificate dated December 8, 2004 states that Mrs. Aida Marcela Garita Sánchez "is the carrier of secondary tubal factor infertility; she has no right fallopian tube and her left tube is

⁶ Judgment No. 2000-02306 of March 15, 2000, issued by the Constitutional Chamber of Costa Rica's Supreme Court, Case File No. 95-001734-007-CO.

⁷ Original petition of December 10, 2004.

completely obstructed (...) her only chance of pregnancy would be *in vitro* fertilization and uterine transfer of the embryo.”⁸

28. As to how the prohibition of *in vitro* fertilization has affected their lives, the couple told the IACHR that “it is difficult to put our feelings into words in this petition, faced as we are with the hand that fate has dealt us, knowing that the one chance we now have to have a family of our own is to use the technique of *in vitro* fertilization (...) When we decided to join our lives in the presence of God, to make a home, have a family, have children, it never occurred to us that this would never come to pass; it never occurred to us that this dream that every man and woman have could vanish. We get up day after day and live with a suffocating and all-consuming sense of emptiness.”⁹

2. Roberto Pérez Gutiérrez and Silvia María Sosa Ulate (P 16/05)

29. According to the petitioners, after undergoing a series of tests and examinations, they were told that *in vitro* fertilization was the only alternative available to them to have biological children.¹⁰

30. A medical certificate dated December 16, 2004, states that Mrs. Silvia Sosa Ulate “is the carrier of primary tubal factor infertility; her right fallopian tube was surgically removed in a previous procedure, while her left fallopian tube was affected by an inflammatory pelvic condition and postoperative adhesions (...). *In vitro* fertilization is being suggested as an elective option to get around her infertility condition.”¹¹

31. As to how the prohibition affected their lives, the couple told the IACHR that “this situation has had a profound psychological and emotional effect on my husband and myself, because time is passing and we see no hope for any solution (...) The only option we have is the *in vitro* procedure done in another country, which would cost millions, far beyond our means (...) This experience has affected every aspect of our private and social lives, as we are experiencing a depression born of our sense of frustration at not being able to avail ourselves of all the scientific options. We feel powerless. The enormous social pressure we feel leaves us with a sense of inferiority and the feeling that we are victims of discrimination.”¹²

3. Luis Miguel Cruz Comparaz and Raquel Sanvicente Rojas (P 678/06)

32. According to the petitioners, after undergoing a series of tests and examinations five years before they filed their petition, they were told that *in vitro* fertilization was the option available to them if they wanted biological children.¹³

33. The petitioners described what the infertility was in the case of this couple. For Luis Miguel Cruz Comparaz “it is very difficult to father a child because he has a low sperm count.”¹⁴ As for the effects of the prohibition, the petitioners stated that “this painful situation has caused us emotional and psychiatric depression (...) We feel that society discriminates against us (...) We decided to make our first attempt at *in*

⁸ Medical certificate dated December 8, 2004. Dr. Gerardo Escalante López (Annex to the original petition of December 10, 2004).

⁹ Original petition of December 10, 2004.

¹⁰ Original petition of December 20, 2004.

¹¹ Medical certificate dated December 16, 2004. Dr. Gerardo Escalante López (Annex to the original petition of December 20, 2004).

¹² Original petition of December 20, 2004.

¹³ Document titled “Identification and written testimony of Luis Miguel Cruz Comparaz and Raquel Sanvicente Rojas” (Annex 1 to the original petition of June 28, 2006).

¹⁴ Document titled “Identification and written testimony of Luis Miguel Cruz Comparaz and Raquel Sanvicente Rojas” (Annex 1 to the original petition of June 28, 2006).

vitro fertilization in Panama. Unfortunately, it was not a success. We tried a second time in Colombia, with the same result (...) We had to mortgage the house, take out loans (...).¹⁵

4. **Randall Alberto Torres Quirós and Geanina Isela Marín Rankin (P 678/06)**

34. According to the petitioners, after a series of tests done on Geanina Isela Marín Rankin, “the doctor said that her fallopian tubes were in very poor condition, which would make it virtually impossible for her to conceive by natural means. The physician’s immediate suggestion was *in vitro* fertilization abroad.”¹⁶ They described how the two costly attempts in other countries had failed.¹⁷

35. As to how their lives have been affected, they stated that they have had to deal with the “stereotypes of friends and colleagues (...) society’s discrimination (...). This painful situation has caused significant emotional and psychological depression in both of us, depression that comes on every day as we see our dreams of becoming parents frustrated (...) For us the prohibition (...) has been a cause of great suffering and anguish.”¹⁸

5. **Carlos Edgardo López Vega and Albania Elizondo Rodríguez (P 1191/06)**

36. According to the petitioners, they were told that the only option available to them to have biological children was *in vitro* fertilization.¹⁹ They described how Albania Elizondo “had previously undergone a salpingectomy” and after one attempt at *in vitro* fertilization outside the country, they attempted a reconstruction of the tubes, but the attempt failed.²⁰ They told how they tried *in vitro* fertilization twice, once in Panama and again in Colombia, without success.²¹

37. As to the how the prohibition has affected their lives, they said the following: “Our depression worsens every time we hear any conversation about babies (...) I am becoming more and more estranged from family (...) the sacrifice is enormous, as we even work Sundays to be to get the money together; we never go out anymore (...) our relationship as a couple is up and down, due to the constant stress (...) this law here in Costa Rica is discriminatory and selfish. For us, its victims, it is cruel, inhuman and degrading treatment.”²²

6. **Miguel Acuña Cartín and Patricia Núñez Marín (P 545/07)**

38. According to the petitioners, they have been trying to have children since 2003, but could not because of a health problem. They said the following: “We underwent a series of scientific procedures, some more complex than others (...) These procedures have been very frustrating for us, mainly because the

¹⁵ Document titled “Identification and written testimony of Luis Miguel Cruz Comparaz and Raquel Sanvicente Rojas” (Annex 1 to the original petition of June 28, 2006).

¹⁶ Document titled “Identification and written testimony of Randall Alberto Torres Quirós and Geanina Isela Marín Rankin” (Annex 2 of the original petition of June 28, 2006).

¹⁷ Document titled “Identification and written testimony of Randall Alberto Torres Quirós and Geanina Isela Marín Rankin” (Annex 2 of the original petition of June 28, 2006).

¹⁸ Document titled “Identification and written testimony of Randall Alberto Torres Quirós and Geanina Isela Marín Rankin” (Annex 2 of the original petition of June 28, 2006).

¹⁹ Document titled “Testimony of Carlos Edgardo López Vega and Albania Elizondo Rodríguez” (Annex 1 of the original petition of October 16, 2006).

²⁰ Document titled “Testimony of Carlos Edgardo López Vega and Albania Elizondo Rodríguez” (Annex 1 of the original petition of October 16, 2006).

²¹ Document titled “Testimony of Carlos Edgardo López Vega and Albania Elizondo Rodríguez” (Annex 1 of the original petition of October 16, 2006).

²² Document titled “Testimony of Carlos Edgardo López Vega and Albania Elizondo Rodríguez” (Annex 1 of the original petition of October 16, 2006).

steps we have taken have been forced on us, necessitated by the fact that we are unable to pursue scientific and technological procedures in Costa Rica.”²³ As to the effects of the prohibition, they said that it has been a cause of “great anxiety”²⁴ and that “it is an egregious violation of our right to form a family with the resources that modern science and technology make possible (...) our life plan is precisely that, to give life.”²⁵

V. THE LAW AND CONCLUSIONS

39. Based on the facts that the Commission has taken as established and on the positions of the parties, the problem that the present case poses is the prohibition of the assisted reproduction technique of *in vitro* fertilization as a result of a decision by the Constitutional Chamber of the Costa Rican Supreme Court. This prohibition is an across-the-board ban affecting all persons and/or couples who require *in vitro* fertilization in order to follow through with their decision to have biological children.

40. The two organs of the inter-American human rights system have already had an opportunity to decide this situation within the framework of the petition and case system.

41. Thus, on July 14, 2010, the Commission approved merits report 85/10 in case 12,361. When no action was taken on the recommendations the Commission made in its report, it decided to refer the case to the jurisdiction of the Inter-American Court. After hearing the case, the Inter-American Court issued its Judgment on Preliminary Objections, Merits, Reparations and Costs on November 28, 2012.

42. In application of the principle of procedural economy and inasmuch as the problem is, as previously observed, a general one that both organs of the inter-American human rights system have already taken up and decided, the Inter-American Commission establishes the international responsibility of the Costa Rican State by reference to the analysis of the law and articles invoked both in its merits report 85/10 regarding case 12,361 - *Artavia Murillo et al.*,²⁶ and in the Judgment on Preliminary Objections, Merits, Reparations and Costs that the Inter-American Court of Human Rights delivered.²⁷ Based on the above considerations, the Commission concludes that the State of Costa Rica violated the rights enshrined in Articles 5 (humane treatment), 7 (personal liberty), 11.2 (to private and family life), 17.2 (to raise a family) and 24 (equal protection of the law) of the American Convention, in relation to the obligations established in Articles 1.1 (to respect rights) and 2 (duty to adopt provisions of domestic law) of the same instrument, in detriment of Daniel Gerardo Gómez Murillo, Aída Marcela Garita Sánchez, Roberto Pérez Gutiérrez, Silvia María Sosa Ulate, Luis Miguel Cruz Comparaz, Raquel Sanvicente Rojas, Randall Alberto Torres Quirós, Geanina Isela Marín Rankin, Carlos Edgardo López Vega, Albania Elizondo Rodríguez, Miguel Acuña Cartín and Patricia Núñez Marín.

VI. RECOMMENDATIONS

43. Given the particulars of the present case, when the reparations to be made are determined, consideration must be given to the degree of compliance with the decisions handed down by the Commission and the Court in case 12,361 with respect to the general measures that, by their nature, will have an impact on all other cases of individuals and/or couples affected by the prohibition.

²³ Document titled “Testimony of Miguel Acuña Cartín and Patricia Núñez Marín” (Annex 1 of the original petition of May 2, 2007).

²⁴ Document titled “Testimony of Miguel Acuña Cartín and Patricia Núñez Marín” (Annex 1 of the original petition of May 2, 2007).

²⁵ Document titled “Testimony of Miguel Acuña Cartín and Patricia Núñez Marín” (Annex 1 of the original petition of May 2, 2007).

²⁶ Available at: <http://www.cidh.oas.org/demandas/12.361Eng.pdf>

²⁷ Available at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_257_ing.pdf

44. From the information that has come to light in the process of monitoring compliance with the judgment delivered in the *Case of Artavia Murillo et al.*, to which the Commission is party, as of the date of approval of the present merits report, no normative or judicial act has been adopted that expressly lifts the ban prohibiting *in vitro* fertilization, nor have regulations been legislated into law to govern that technique.

45. Based on the observations expressed through this merits report,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS IS RECOMMENDING THE FOLLOWING TO THE STATE OF COSTA RICA:

1. Lift the prohibition of *in vitro* fertilization in the country through the corresponding legal procedures.

2. Ensure that, once the prohibition is lifted, the regulations adopted for the practice of *in vitro* fertilization are compatible with the States' obligations under the American Convention on Human Rights. In particular, that the individuals and/or couples that so need and desire can have access to the techniques of *in vitro* fertilization so that the treatment effectively serves its intended purpose.

3. Make full reparations to the victims in the present case, in the form of material and moral damages, including measures of satisfaction for the harm done.