



**ORGANIZACIÓN DE LOS ESTADOS AMERICANOS**  
WASHINGTON, D.C. 2 0 0 0 6 EEUU

July 29, 2011

**Ref.: Case No. 12.361**  
***Gretel Artavia Murillo et al. ("In Vitro Fertilization")***  
**Costa Rica**

Mr. Secretary:

I am pleased to address you on behalf of the Inter-American Commission on Human Rights in order to submit to the jurisdiction of the Honorable Inter-American Court of Human Rights, Case No. 12.361, Gretel Artavia Murillo *et al.* v. Costa Rica (hereinafter "the State", "the Costa Rican State" or "Costa Rica"), which concerns the violation of the rights to have one's private and family life respected, the right to found a family and the right to equality and non-discrimination, recognized in articles 11, 17 and 24 of the American Convention on Human Rights, read in conjunction with articles 1(1) and 2 thereof, to the detriment of Gretel Artavia Murillo, Miguel Mejía Carballo, Andrea Bianchi Bruno, German Alberto Moreno Valencia, Ana Cristina Castillo León, Enrique Acuña Cartín, Ileana Henchos Bolaños, Miguel Antonio Yamuni Zeledón, Claudia María Carro Maklouf, Víctor Hugo Sanabria León, Karen Espinoza Vindas, Héctor Jiménez Acuña, María del Socorro Calderón P., Joaquina Arroyo Fonseca, Geovanni Antonio Vega, Carlos E. Vargas Solórzano, Julieta González Ledezma and Oriester Rojas Carranza.

The violations were the result of an across-the-board ban on the practice of the assisted reproductive technique of *in vitro* fertilization, a ban that has been in effect in Costa Rica since 2000, following a ruling issued by the Constitutional Chamber of the Costa Rican Supreme Court. As indicated in merits report 85/10, the Commission found that this absolute ban constituted arbitrary interference in the right to private and family life and the right to found a family. The Commission also found that the ban violated the victims' right to equality inasmuch as the State had denied them access to a treatment that would have enabled them to overcome the disadvantage they have with respect to the possibility of having biological children. The ban also had a disproportionate impact on women.

The State ratified the American Convention on Human Rights on April 8, 1970 and accepted the Court's contentious jurisdiction on July 2, 1980.

The Commission has designated Commissioner Rodrigo Escobar Gil and IACHR Executive Secretary Santiago Canton as its delegates. Likewise, Elizabeth Abi-Mershed, Deputy Executive Secretary, and Silvia Serrano Guzmán, Isabel Madariaga, Fiorella Melzi and Rosa Celorio, attorneys with the Commission's Executive Secretariat have been designated to serve as legal advisors.

In accordance with Article 35 of the Rules of Procedure of the Inter-American Court, the Commission is enclosing with this communication a copy of report No. 85/10 prepared in compliance with Article 50 of the American Convention, as well as a copy of the entire file before the Inter-American Commission (Appendix I) and the annexes used in the preparation of Report 85/10 (Annexes). The merits report was notified to the Costa Rican State by a communication dated August 23, 2010, which was given two months to report on the implementation of the recommendations made therein. On three different occasions, the State requested an extension from the Commission in order to implement those recommendations. The Commission granted the requested extensions, but thus far no significant progress has been made toward compliance.

The Commission is therefore submitting this case to the jurisdiction of the Inter-American Court in order to get justice for the victims.

As for the recommendation to “[l]ift the ban on *in vitro* fertilization in the country through the necessary legal procedures”, following notification of merits report 85/10 the Commission received information from the Costa Rican State concerning two bills on *in vitro* fertilization and embryo transfer that had been introduced in the Legislative Assembly and whose purpose was to lift the ban on that practice in Costa Rica. According to the information available, Bill 17,900 was tabled, and Bill 18,057 is still in the legislative process. Hence, at the present time, the ban on the practice of *in vitro* fertilization is still in force in Costa Rica.

As for the recommendation to “[e]nsure that any regulation of the practice of *in vitro* fertilization once the ban is lifted be compatible with the state’s obligations with respect to the rights recognized in articles 11(2), 17(2) and 24 (...) [and] take particular care to make certain that persons and/or couples that need and want the treatment have access to the technique of *in vitro* fertilization so that the treatment can serve its purpose”, the Commission believes it would be inappropriate for it to issue any definitive observations on the bills introduced, since one has already been tabled and the other is still being discussed. It therefore reserves the right to make observations on any law eventually approved in these or other legislative processes, to the extent that they are germane to any reparations that the Court might order.

Regarding the recommendation to “[m]ake full reparations to the victims in the present case, to include pecuniary and non-pecuniary damages and measures of satisfaction for the harm done”, the Commission notes that the only information the State has provided concerns the internal mechanisms that the victims could pursue to obtain reparations for “damages and injuries”. From the information available, it turns out that the State has not taken any steps to order the reparations that the victims are owed for the violations of the American Convention declared in the merits report.

The Inter-American Commission is submitting to the jurisdiction of the Court the full facts and human rights violations as set out in merits report 85/10 and is asking the Court to adjudge and declare the international responsibility of the Costa Rican State for the following:

- a) The violation of the rights established in Articles 11.2 and 17.2 of the American Convention, in connection with the obligations established in

Articles 1.1 and 2 of the said instrument, to the detriment of Gretel Artavia Murillo, Miguel Mejía Carballo, Andrea Bianchi Bruno, German Alberto Moreno Valencia, Ana Cristina Castillo León, Enrique Acuña Cartín, Ileana Henchos Bolaños, Miguel Antonio Yamuni Zeledón, Claudia María Carro Maklouf, Víctor Hugo Sanabria León, Karen Espinoza Vindas, Héctor Jiménez Acuña, María del Socorro Calderón P., Joaquina Arroyo Fonseca, Geovanni Antonio Vega, Carlos E. Vargas Solórzano, Julieta González Ledezma and Oriester Rojas Carranza.

- b) The violation of the right established in Article 24 of the American Convention in connection with the obligations established in Articles 1.1 and 2 of the said instrument to the detriment of Gretel Artavia Murillo, Miguel Mejía Carballo, Andrea Bianchi Bruno, German Alberto Moreno Valencia, Ana Cristina Castillo León, Enrique Acuña Cartín, Ileana Henchos Bolaños, Miguel Antonio Yamuni Zeledón, Claudia María Carro Maklouf, Víctor Hugo Sanabria León, Karen Espinoza Vindas, Héctor Jiménez Acuña, María del Socorro Calderón P., Joaquina Arroyo Fonseca, Geovanni Antonio Vega, Carlos E. Vargas Solórzano, Julieta González Ledezma and Oriester Rojas Carranza.

The Commission is therefore requesting that the Inter-American Court order the following reparations:

- a) Lift the ban on in vitro fertilization in the country through the necessary legal procedures.
- b) Ensure that the regulations governing the practice of in vitro fertilization issued once the prohibition is lifted are compatible with the State's obligations pertaining to the rights recognized in Articles 11.2, 17.2, and 24, as established throughout the report; and especially that the persons and/or couples that so request and desire it may have access to in vitro fertilization techniques, in such a way that said treatment contributes effectively to fulfilling its purpose.
- c) Make full reparations to the victims in the present case, to include pecuniary and non-pecuniary damages and measures of satisfaction for the harm done.

In addition to the need to get justice for the victims in the instant case, the IACHR observes that this case raises issues of inter-American *ordre public*.

The victims in the instant case are not the only ones affected by the general ban on the practice of *in vitro* fertilization in Costa Rica. The ban has raised the question of the scope and content of the rights recognized in articles 11 and 17 of the American Convention. Specifically, the instant case is an opportunity for the Court to examine the protection of the right to found a family, in the sense of deciding to become a biological parent and then having access to the means necessary for that right to be exercised. The Court will also be able to declare that the decision to found a family is one of the most private decisions that an individual and/or couple makes and is the exclusive purview of each individual and/or couple.

As this case directly concerns the scope and content of Convention articles 11 and 17, it necessitates a juridical analysis of the international standards that must be taken into account when examining permissible restrictions on the exercise of the right to a private and family life and the right to found a family, in a

reproductive health issue on which the Inter-American Court has not yet established any case law.

The instant case also includes a legal analysis of the international standards on the right to equality and non-discrimination from two different perspectives: on the one hand, the responsibility the State has incurred by having denied a group of persons access to a treatment that would have enabled them to overcome a disadvantage they had in terms of the possibility of having their own biological children; on the other, the disproportionate impact that a measure of this kind has on women. These two perspectives will enable the Court to build up its case law on the subject of equality and non-discrimination.

Because these issues affect inter-American *ordre public*, in keeping with Article 35(1)(f) of the Inter-American Court's Rules of Procedure the Commission is offering the following expert witnesses:

1. Fernando Zegers-Hochschild, who will give testimony concerning the assisted reproductive technique of *in vitro* fertilization, describing and comparing the technique and procedures used.

2. An expert whose name will be reported in due course, who will testify about and compare the various regulations governing the assisted reproductive technique of *in vitro* fertilization.

3. Paola Bergallo, who will testify about the international standards on reproductive rights, particularly on arbitrary interferences in private and family life and the principles of equality and non-discrimination. The expert will also discuss what the implications of a State's ban on the practice of *in vitro* fertilization are in light of those standards.

4. Paul Hunt, who will give testimony about the concept of "disproportionate impact" as a violation of the principle of equality and non-discrimination, and how the concept of "disproportionate impact" applies to women when their exercise of their reproductive rights is unduly restricted.

The *curricula vitae* of the experts proposed will be included in the annexes to merits report 85/10.

The Commission is advising the Inter-American Court that through a number of communications received in September 2010, subsequent to notification of report 85/10, the petitioner supplied information related to the individual victims named in that report, and persons who were not parties to Case 12,361. Responding to that information, by a communication dated October 20, 2010 the IACHR informed the petitioner that the only information that would be included in the file for future purposes would be that pertaining to the individuals identified by name in report 85/10. Some of the information supplied by the petitioner concerns cases that are still in process with the IACHR.

Finally, the person who served as petitioner in the case with the Inter-American Commission is Mr. Gerardo Trejos Salas. The contact information that the Commission has for this person is as follows:

Gerardo Trejos Salas  
[REDACTED]

Please accept renewed assurances of my highest regards.

*Signed in the original*

Elizabeth Abi-Mershed  
Deputy Executive Secretary