The Autonomous Justiciability of the Right to Health and Supervision of Immediate Obligations of States in the Inter-American Human Rights System

by Nicolás Carrillo-Santarelli

Title: L'autonoma giustiziabilità del diritto alla salute e la supervisione sulle obbligazioni immediate degli Stati nel Sistema interamericano dei diritti umani

Keywords: Right to health; Right to life; Personal integrity; Non-discrimination; Inter-American Human Rights System.

1. – The Inter-American Court of Human Rights (hereinafter, also the Court) recently reached and published a landmark decision in the *Poblete Vilches and others vs. Chile* case, dated 8 March 2018, which in the meantime is exclusively available in Spanish. Among other reasons, the judgment adopted in the exercise of the Court's contentious jurisdiction is remarkable because, as is expressly indicated in the judgment, this is the first time the Court makes a pronouncement on the right to health considered in an autonomous manner and treated as directly justiciable, that is to say, capable of being directly invoked in complaints filed before the main bodies of the Inter-American Human Rights System, namely its Commission and Court. (§ 105). Accordingly, this case note will focus much on the analysis of the right to health and health-related aspects of other human rights made by the Inter-American Court.

2. – Based on the evidence presented before the Court, the latter classified the case in two main episodes, both of which pertain to a deficient health service provided to an elderly person (§ 84) in a public hospital (Sótero del Río), aspect which also led the Court to highlight the necessity of properly treating senior patients in ways that take into account their special needs and guided by the principles of non-discrimination and strengthened protection, insofar as age is a category protected by the principle of equality (§ 122, 127-132, 140-143). While the hospital involved in the facts of the case was, as indicated above, a public one (§ 1, 84), it is to be recalled that in the past the Court has directly attributed the conduct of certain private health providers to States whenever the functions they carry are treated as public in the domestic legislation, as happened in the *Ximenes Lopes* case (Corte IDH, *Ximenes Lopes vs. Brasil*, 4-7-2006 [*fondo*]) considering that in Brazil the public Single Health [care] System could be sometimes provided by private institutions duly authorized "as supplementary agents and by virtue of contracts or agreements entered into" (§ 86-95).

During the first stage of the situation, Mr. Poblete Vilches, who suffered from diabetes and could not be subject to certain medical interventions (§ 44), was unconscious at the time and hence could not provide consent himself, was later surgically intervened

without the consent of his close relatives –in fact, some evidence points towards the falsification of their consent produced by medical personnel (§ 139)— and then discharged prematurely, with his relatives not having been informed of how to properly tend to him or what signs of alarm to pay attention to, all of which had an impact on the rapid worsening of his condition (§ 84, 136). Afterwards, the same patient had to be hospitalized again, but his relatives had to pay a private ambulance due to the fact that the hospital had no available ambulances (§ 133); and was not provided the treatment he required, since he was not given a ventilator he required to properly keep breathing (§ 133) and, due to a lack of sufficient beds and rooms, was neither sent to the intensive care unit nor to another hospital with enough capacity to properly treat him in the way his serious condition required (§ 137). Mr. Poblete Vilches finally died on 7 February 2001 (§ 133).

3. – At the outset of its analysis of the merits, the Court indicated that it would not examine the case in light of the right to social security because it was unnecessary to do so, given the fact that its examination on the basis of the rights to health, life and integrity was sufficient (§ 99). The Court recalled its decision in the *Lagos del Campo* case (Corte IDH, *Lagos del Campo vs. Perú*, 31-8-2017 [*excepciones preliminares, fondo, reparaciones y costas*]) in terms of its having competence to autonomously examine compliance with obligations related to ESCE rights that can fall within the scope of article 26 of the American Convention on Human Rights (§ 100) and have been regarded as having direct justiciability since that decision (PALADINI, Luca. Una nuova tappa nella giurisprudenza della Corte IDH: la giustiziabilità diretta del diritto al lavoro. DPCE Online, [S.l.], v. 33, n. 4, jan. 2018. ISSN 2037-6677). Article 26 is entitled "Progressive development", and says the following:

> The States Parties undertake to adopt measures, both internally and through international cooperation, especially those of an economic and technical nature, with a view to achieving progressively, by legislation or other appropriate means, the full realization of the rights implicit in the economic, social, educational, scientific, and cultural standards set forth in the Charter of the Organization of American States as amended by the Protocol of Buenos Aires.

The Inter-American Court insisted on its competence on the basis of the interdependence of human rights, which for the Court is alluded to in the Preamble of the Convention when reference to the Universal Declaration of Human Rights –which mentions the right to health in article XI (§ 109)— or the Charter of the OAS is made (§ 102). According to the Court, that interdependence implies that all such rights, be them civil and political or economic, social, cultural and environmental (with the latter rights being encompassed on the same ESCER classification in the recent practice of the Inter-American System, which has a rapporteurship on them and with all those rights being treated under the same category in OC-23/17, § 69), among others,

> deben ser entendidos integralmente y de forma conglobada como derechos humanos, sin jerarquía entre sí y exigibles en todos los casos ante aquellas autoridades que resulten competentes para ello. (§ 100)

The Court then went on to refer to an "inclusion" of economic, social, cultural and environmental rights enshrined in the OAS Charter and American Declaration on the Rights and Duties of Man on the basis of article 29 of the American Convention and of a systemic, evolutionary and teleological interpretation that takes into account developments in the international human rights law *corpus juris* (§ 103).

4. – Interestingly, and coinciding with what has been said by bodies as the Committee on Economic, Social and Cultural Rights, the Inter-American Court identified two kinds of

obligations: namely progressive and immediate duties that States have in relation to the right to health (§ 104), with the former referring to the

> obligación concreta y constante de avanzar lo más expedita y eficazmente posible hacia la plena efectividad de los DESCA [...] Asimismo, se impone por tanto, la obligación de no regresividad frente a la realización de los derechos alcanzados

which cannot be interpreted in the sense of depriving the right of a concrete content while such goal is attained, nor in terms of permitting endlessly postponing the pertinent required measures; and the latter referring to the obligation to adopt

> medidas eficaces, a fin de garantizar el acceso sin discriminación a las prestaciones reconocidas para cada derecho. Dichas medidas deben ser adecuadas, deliberadas y concretas en aras de la plena realización de tales derechos

which requires strict observance of the obligations to respect and ensure enshrined in article 1.1 of the American Convention and the duty to adjust and adopt domestic legislation and measures in order to ensure conformity with international human rights demands (*ibidem*).

As indicated in the previous paragraph, the Committee on Economic, Social and Cultural Rights likewise indicated, among others, in its *General Comment No. 14 on the Right to the Highest Attainable Standard of Health*, that:

> While the Covenant provides for progressive realization and acknowledges the constraints due to the limits of available resources, it *also imposes* on States parties various obligations which are of immediate effect. States parties have *immediate obligations* in relation to the right to health, such as the guarantee that the right will be exercised without discrimination of any kind (art. 2.2) and the obligation to take steps (art. 2.1) towards the full realization of article. Such steps must be deliberate, concrete and targeted towards the full realization of the right to health [...] progressive realization of the right to health over a period of time should not be interpreted as depriving States parties' obligations of all meaningful content (§ 30, 31 emphasis added).

As indicated above, the Court made its decision on the basis of the aforementioned immediate obligations pertaining to the right to health instead of those related to its progressive dimension (§ 134), and did so on the basis of the implementation of standards on basic and concrete health services to be provided "frente a situaciones de urgencia o emergencia médica", taking into account the age of the patient(s) (§ 116-117), which I will not turn to. That being said, it should be noted that in another recent case the Inter-American Court of Human Rights addressed the progressive obligations States have in regards to the right to health, which require progress, are contrary to regressivity and inaction, and call for the following:

> los Estados partes tienen la obligación concreta y constante de avanzar lo más expedita y eficazmente posible hacia la plena efectividad de los DESCA (Corte IDH, *Cuscul Pivaral y otros vs. Guatemala*, 23-8-2018 [*excepción preliminar, fondo, reparaciones y* costas], § 79-98, 106-118, 140-148).

5. – The Court based its analysis of applicable standards on the right to live with dignity, which is to be understood not only as related to the absence of afflictions or illness but also as a state of full physical, mental and social welfare; on the State obligation to ensure access to essential health services that are efficient, have good quality and seek to improve the health conditions of their populations (§ 118); and on the principle of non-discrimination, which is highlighted in relation to persons who are in a situation of risk or vulnerability and demands guaranteed access in equal terms to health services (§ 123).

One first concrete obligation is that of regulation, supervision and enforcement, which is permanent and applicable both in relation to public and private health providers; calls for the implementation of National Health Programmes; and also requires overseeing providers and services to make sure that their hygienic conditions are appropriate, that facilities are adequate, that professionals are qualified and that human rights are respected (§ 119, 124).

On the other hand, the Court considered that urgent health services must meet, at the very least, the following standards: of i) quality –having adequate and necessary elements and personnel to provide basic and urgent services—; ii) accessibility –accessible facilities, goods and services for everyone without discrimination and regardless of economic means; and also ensuring informed consent (§160)—; iii) availability –related to a sufficient number of providers and material elements and programmes, and to a coordination between health institutions that permits to ensure the provision of required services to those who need them—; and iv) acceptability –which refers to taking into account of medical ethics and appropriate cultural criteria, gender perspectives, and the consideration of the patients' will and life conditions, apart from proper information about diagnosis and treatment (§ 121).

6. – Applying the previous standards to the facts of the case, the Court concluded that the lack of transfer to another hospital, the non-provision of a ventilator, the unavailability of basic services, and other aspects, resulted in the (deficient) provision of health-related services without the minimum-required quality (§ 138). Additionally, accessibility and acceptability requirements were not observed either, considering how no priority was given to the patient despite his health condition and age; the falsification of consent supposedly given by the relatives; and the lack of clear and accessible information provided to them regarding the health condition and treatment of the victim (§ 139).

For the Court, all of the foregoing resulted in discrimination and a breach of immediate obligations on the right to health, given the absence of basic and urgent measures with quality that were required (§ 142-143). Furthermore, the Court held that the deficiencies that were found substantially lowered the probability of recovery and survival of the patient in a discriminatory manner (§ 175). Those conclusions are sound and persuasive, and may pave the way for improvements in the region if they are internalized.

7. – Additionally, the Court examined the facts also in relation to the idea that informed consent is protected by the right to health under the accessibility condition (§ 160) and is related both to the right to dignity (article 11 of the Convention, according to the Court) and the possibility of individuals having self-determination and making free choices, among others in relation to their health (§ 168), and having their private and family life and other rights respected and protected (*ibidem*, § 170). Such an emphasis on autonomy as a basis of human rights law can also be found in the recent advisory opinion OC-24/17 of the Inter-American Court (§ 85-86, 225). The Court expressed that, in order to be valid, informed consent must be previous, free, full and informed (§ 161), and entails:

> ⁅U⁆na decisión previa de aceptar o someterse a un acto médico en sentido amplio, obtenida de manera libre, es decir sin amenazas ni coerción, inducción o alicientes impropios, manifestada con posterioridad a la obtención de información adecuada, completa, fidedigna, comprensible y accesible, siempre que esta información haya sido realmente comprendida, lo que permitirá el consentimiento pleno del individuo (*ibidem*).

The Court also held that while consent is in principle or as a general rule personal, i.e. given by the patient or directly affected person (*ibidem*), it can sometimes be given by others representing or replacing patients who, as a result of their condition, lack the

> capacidad de tomar una decisión en relación a su salud, por lo cual esta potestad le es otorgada a su representante, autoridad, persona, familiar o institución designada por ley. Sin embargo, cualquier limitación en la toma de decisiones tiene que tener en cuenta las capacidades evolutivas del paciente, y su condición actual para brindar el consentimiento (§ 166).

Under these circumstances, consent must also be free, full, prior and informed, unless there is an emergency that prevents this insofar as a quick response must be given when there is a serious risk to the life or health of the person if immediate action is not taken (*ibidem*).

As to the content of information provided in order to ensure a free, full and informed consent, the patient or representatives must be informed about: the evaluation of diagnosis; the objective, method, estimated duration, benefits and risks of proposed treatment; possible side effects; treatment alternatives, including those that are less intrusive or generate less pain, risks or side effects; consequences of treatment; and the estimation of what may happen before, during and after treatment (§ 162).

In regards to the first stage of the facts, the Court found that the relatives of Mr. Poblete Vilches were not given enough information and thus could not provide an informed consent, so much so that their consent was not obtained and was even falsified –and there was no imperious rush that prevented obtaining it (§ 167); while the second stage entailed deficiencies in terms of access to information (§ 163), insofar as clear and accessible information on diagnosis and treatment was not provided (§ 173).

8. – Considering the death of Mr. Poblete Vilches, the Court made an interesting analysis of when deaths in medical contexts –provided that health personnel conduct can somehow be attributed to States under the rules of international responsibility for wrongful acts— can engage State responsibility in relation to the right to life (article 4 of the American Convention). The starting point was the consideration that not every such death can be attributable, insofar as

> no toda muerte acaecida por negligencias médicas debe ser atribuida al Estado internacionalmente. Para ello, corresponderá atender las circunstancias particulares del caso (§ 147).

The Court considers that attribution under these circumstances requires, firstly, i) the identification of a causal nexus, not necessarily in the sense of the death having been caused *by* the medical treatment, but also one that exists when an adequate, prompt and proper treatment that was not provided could have likely prevented the harmful result; ii) the foreseeability of risk as a result of the denial of essential medical services; and iii) serious medical negligence. Given the centrality of these considerations, I quote the relevant excerpt below in its original Spanish version:

> Para efectos de determinar la responsabilidad internacional del Estado en casos de muerte en el contexto médico, es preciso acreditar los siguientes elementos: a) cuando por actos u omisiones se niegue a un paciente el acceso a la salud en situaciones de urgencia médica o tratamientos médicos esenciales, a pesar de ser previsible el riesgo que implica dicha denegación para la vida del paciente; o bien, b) se acredite una negligencia médica grave; y c) la existencia de un nexo causal, entre el acto acreditado y el daño sufrido por el paciente. Cuando la atribución de responsabilidad proviene de una omisión, se requiere verificar la probabilidad de que la conducta omitida hubiese interrumpido el proceso causal que desembocó en el resultado dañoso. Dichas verificaciones deberá (*sic*) tomar en consideración la posible situación de especial vulnerabilidad del afectado, y frente a ello las medidas adoptadas para garantizar su situación (§ 148).

In light of the previous considerations, the Court considered that there were serious omissions of urgent and basic services that were required by Mr. Poblete Vilches; that the

medical personnel should have known about the risk generated by their absence, especially given his advanced age; and that the measures that could have been taken were reasonable and there was no justification for their denial (§ 149-150). As to the causal nexus, the Court concluded that

> existía una alta probabilidad de que una asistencia adecuada en materia de salud hubiese al menos prolongado la vida del señor Poblete Vilches, por lo cual debe concluirse que la omisión de prestaciones básicas en materia de salud afectó su derecho a la vida (§ 151).

9. – As to the Right to a Humane Treatment (article 5 of the American Convention), the Court distinguished between alleged violations of this right against the direct victim and against relatives. Firstly, as to the direct victim, the Inter-American Court of Human Rights indicated that the lack of adequate medical attention can be contrary to what such a right requires (§ 152), reason why States must regulate health services and supervise the effective implementation of pertinent standards (*ibidem*). Recapitulating the deficiencies that were present in the case, the Court found that they led to the suffering of Mr. Poblete Vilches in different ways, reason why his right to a humane treatment was violated as well (§ 155).

Regarding the right of personal integrity (humane treatment) of Mr. Poblete Vilches's relatives, there was controversy about physical and psychological harms allegedly suffered by some of them because of the death of the direct victim, of alleged mistreatment by medical personnel and of denial of justice (§ 203). The Court referred to its case law in order to recall both that State "contributions" to the creation or worsening of a situation of vulnerability has an impact on the wellbeing of individuals, for instance in terms of uncertainty and a sense of insecurity, reason why their existence must be taking into account when evaluating the respect and guarantee of the right enshrined in article 5 of the American Convention (§ 205); and also that the harm of certain relatives and close persons in terms of suffering and anguish is presumed whenever there is a serious violation (in Spanish, *violación grave*, § 204). Notwithstanding, in the Court's opinion the case did not entail such a "violación grave a los derechos humanos en términos de su jurisprudencia", reason why the suffering of relatives had to be demonstrated and proved (§ 204). This is an interesting distinction that the Court makes with impact on evidence and arguments before the Court, which yet some could question considering how the loss of the life of someone close when there is a perceived injustice and unacceptable situation can also generate a sense of anguish, despair or suffering even when there is not a massacre or other such heinous violation involved –in its case law, the Court has identified as some serious violations the following: torture, extrajudicial, summary or arbitrary executions, enforced or involuntary disappearances, and other human rights violations contrary to peremptory law (Corte IDH, *Barrios Altos vs. Perú*, 14-3-2001 [*fondo*], § 41).

That being said, the Court considered that no evidence was presented to demonstrate the allegations of the representatives of the victims in terms of physical ailments and serious diseases such as cancer, diabetes or a heart attack as having been caused by the State conduct (§ 207) Accordingly, the Court dismissed those claims. This emphasis on a causal nexus is, to my mind, a correct one, and reliance on its requirement prevents excessive or false allegations, thus making the lack of a presumption of suffering unnecessary, because what is presumed is the anguish or despair, not a physical disease, which should be proven in respect of both serious and non-serious violations.

That being said, the Court insisted on its case law in terms of the possibility of State actions or omissions causing suffering of the relatives or those who had a close bond with a direct victim (§ 208); and then provided transcriptions of the accounts given by relatives of Mr. Poblete Vilches (§ 209), which is something important insofar as this practice can increase the satisfaction effects that judgments and their publication can have (§ 226;

International Law Commission, Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, 2001, § 6 of the commentary to article 37) and permits such important declarations to be made public, and also for State agents and other participants in a violation to realize about the impact of their conduct on the lives of human beings. Based on such declarations and other considerations, the Court concluded that, due to the close relationship that some individuals had with Mr. Poblete Vilches:

> [S]e desprenden lógicos *los sufrimientos ocasionados con motivo del trato recibido en un primer momento en el Hospital Sótero del Río, tales como la imposibilidad de ver a su familiar, la falta de información sobre un diagnóstico claro del paciente y forma de atenderlo* en su domicilio al ser dado de alta, y particularmente la falta de obtención de su consentimiento respecto de la intervención a su familiar (supra párr. 173). *Asimismo, la Corte entiende el sufrimiento de los familiares derivado del largo proceso en la búsqueda de la justicia*, particularmente sobre el esclarecimiento de los hechos, así como de la incertidumbre por la indeterminación de la causa de muerte del señor Poblete Vilches, y frente a ello la respuesta ofrecida por las autoridades en distintas instancias (supra párrs. 59 y 81). *Dichas afectaciones repercutieron en el seno familiar y en el desarrollo de sus planes de vida.* Por tanto, resulta responsable el Estado por la violación del artículo 5.1 de la Convención, en perjuicio de los familiares del señor Poblete Vilches (§ 210, emphasis added).

10. – Concerning the right to a fair trial or due process guarantees and the right to judicial protection, recognized in articles 8 and 25 of the American Convention on Human Rights, the judgment took note of the acknowledgment of responsibility that the defendant State made in regards to a reasonable period in which procedures ought to have taken place, reason why it declared the controversy regarding that issue as no longer existing (§ 183).

The Court then reiterated its position that access to justice is a peremptory norm (§ 184) requiring the absence and removal of obstacles and undue delays, in addition to the availability of an effective remedy against human rights violations, and also State efforts to investigate and respond to abuses regardless of the efforts of victims themselves, the latter being an obligation of conduct (§ 185). In the Court's opinion, evaluating if these standards have been observed must be done, in general terms, in a way that seeks to ascertain whether eventual failures affected State efforts overall, instead of being concerned with every single possible minor failure which did not necessarily have a considerable impact on the (domestic) process(es) overall. In other words, even in the presence of minor failures, if they had no impact in precluding or preventing an effective State action, then State responsibility in terms of access to justice would not be engaged and its performance would be deemed compatible with treaty requirements (§ 186). This is a correct argument that may somehow help to prevent the clogging up of the system and the exponential growth of applications.

Moving on to concrete aspects related to the facts of the case in terms of the rights mentioned above, the Inter-American Court of Human Rights stressed how corpses must be treated, in terms of indispensable and minimum actions that must be carried out with professionalism seeking to preserve any evidence that can be useful in later investigations (§ 187). Contrasting what the State did with such requirements, the Court criticized the lack of an exhumation and autopsy with the purpose of ascertaining the real cause of death; inconstant criminal proceedings; and the lack of a cross-examination with medical personnel that indirect victims requested (§ 188). Such omissions were regarded by the Court as problematic given their importance in terms of finding out the truth of what happened, reason why such failures and delays were deemed contrary to the right of access to justice (§ 191-192). Importantly, in this section the Court also made an appeal to medical bodies entrusted with investigating or mediating, by –quite rightly and necessarily, to my mind— exhorting them to place human rights considerations above professional solidarity, acting in an independent manner. In this sense, the Court said:

> [L]a Corte llama la atención sobre la labor que los órganos médicos colegiados de mediación deben, en todo caso, cumplir al momento de valorar situaciones de negación de servicio de salud o mala praxis médica. Para ello, resulta indispensable una aproximación integral del derecho a la salud, desde la perspectiva de los derechos humanos, así como de impactos diferenciados, a fin de constituirse como órganos independientes que, a la luz de su experiencia médica, garanticen también los derechos de los pacientes (§ 193).

Apart from aspects related to access to justice, the Inter-American Court examined the impartiality of domestic authorities. The Court mentioned that impartiality requires that authorities deciding on a case have no vested direct interests in it, that they have no preference for any party and are not involved in a related controversy; and that judges must appear as having no influence, motivation, pressure, threat or direct or indirect intervention in the resolution of the case, but rather must seem –and actually happen, I might add— to decide based exclusively on the applicable law (§ 195). Concerning all of this, the Court said that judicial impartiality is to be presumed (§ 196), and that an examination of contrary allegations perforce often involves an investigation on motivations and requires obtaining evidence as to the hostility or bias of a judicial authority (*ibidem*). Considering such burden of proof and evidence considerations, the Court declared that the representatives of the alleged victims failed to provide sufficient evidence, even circumstantial evidence, of a lack of impartiality, reason why it dismissed the respective accusations (§ 197-198).

11. – Regarding reparations, the Court stressed that they must have a "causal nexus with the facts of the case, declared violations, proved harm, and the measures to repair the respective damages that have been requested" (my translation, § 212), and must aim, as far as possible, to provide full reparations and restitution (§ 213).

While much of what the Court said in the reparations section (VIII) reiterates the case law of the Court, interesting and noteworthy aspects include the fact that, due to the *kind of violation* that took place, the Court deemed it inappropriate to order a reopening of criminal investigations as a response to the operation of the period of prescription in the case (§ 219). The Court thus seems to make another determination based on the presence or absence of a violation that can be classified as serious in light of its case law, as happened with presumptions of harm caused to relatives, but without mentioning such category this time. Precisely in relation to psychological suffering, and based on its conclusion that there is a nexus between the facts of the case and emotional and psychological afflictions of indirect victims, the Court ordered the State to provide professional psychological treatment as a rehabilitation measure *if* so requested by the victims –appropriately respecting their will to undergo treatment or receive assistance.

Concerning guarantees of non-repetition, the Court issued some orders with the objective of contributing to the prevention of similar violations as the ones declared in the future, such as obliging the State to provide reports on adjusting practices and policies to the standards of the system discussed in the judgment (§ 238); the drafting of a concise publication on the standards declared in its decision that is to be made available in public and private Chilean hospitals (§ 240); and the design of a general public policy of "integral protection of elderly people" in accordance with the Inter-American applicable standards (§ 241) –perhaps the most controversial order when examined through the prism of other judicial regional systems, but an adequate one to my mind, since it can make a change regarding the problems and issues discovered by the Court.

12. – Judge Humberto Sierra Porto appended a concurring opinion in which he basically argued that he agrees with the outcome of the decision of the majority but considers that, in order to reach it, it was sufficient to take into account the 'connectivity' between the rights to life and integrity and health-related aspects (§ 5), and thus unnecessary to treat

the right to health as autonomously justiciable, consideration which he regards as not permissible under the applicable sources that the Inter-American Court can resort to (§ 4).

Regardless of whether one agrees with the opinion of judge Sierra Porto or not, it cannot be denied that the Court's pronouncement on specific aspects related to health, the elderly and other elements permits to raise awareness about them and to pinpoint *legal* obligations and responsibilities concerning them. Moreover, the autonomous treatment of the right to health also permits to explore progressivity aspects, which were considered in a recent case against Guatemala referred to above. Finally, State regulation, supervision and enforcement obligation requires it to act *vis-à-vis* both public and private health providers and medical personnel, and in this way the standards declared (developed?) by the Court will (have to) indirectly impact the responsibilities of both State and non-state actors (John H. Knox, *Horizontal Human Rights Law*, *American Journal of International Law*, Vol. 102, 2008), which is necessary for human rights law to be fully effective, considering that dignity is non-conditional and thus must be respected by all actors, as article 30 of the Universal Declaration of Human Rights indicates.