Caso *Giròn y otro vs. Guatemala*: the death penalty in Guatemala in the light of the recent IACHR's judgements

di Chiara Cardinali

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1. – The Inter-American Court of Human Rights (hereinafter, also the Court) issued the judgment in the case "*Giròn y otro vs. Guatemala*" dated 15 October 2019, which in the meantime is only available in Spanish.

The case concerns a series of alleged violations of the right to a fair trial committed by the State of Guatemala in the context of the criminal proceeding against Roberto Giròn and Pedro Castillo Mendoza, who were sentenced to death for the rape and the killing of a young girl. They were executed by a firing squad and the execution was filmed and broadcast on television.

The Court ruled unanimously that the State of Guatemala violated, in relation to the obligation stated in Article 1, § 1, ACHR, the right to life, (art. 4, §1 and 4, § 2 ACHR), the right to personal integrity (art. 5, § 1 and 5, § 2, ACHR), and the right to a fair trial and judicial protection (art. 8, §1 and 8, §2, ACHR) of Roberto Giròn and Pedro Castillo.

At the same time, the Court established that the State of Guatemala is not liable for the violation of the right to apply for amnesty, pardon, or commutation of sentence (art. 4, §6 ACHR) and of the right to have a public criminal proceeding (art. 8, §5 ACHR) of Roberto Giròn and Pedro Castillo.

2. – The case was initially brought to the attention of the Inter-American Commission of Human Rights by the Magnus F. Hirschfled Center for Human Rights and the by the *Instituto de Estudios Comparados en Ciencias Penales de Guatemala* (IECCP) along with the Centro de *Acciòn Legal en Derechos Humanos* (CALDH) in favour of Roberto Giròn and Pedro Castillo Mendoza. (§ 2)

On 9 September 1996, the Commission solicited the State to adopt provisional measures in order to suspend the execution of Giròn and Castillo. The State denied the requested measures alleging that according to the Supreme Court of Justice of Guatemala there was no ground for adopting the measure in that stage of the proceeding.

On 13 September 1996, Giròn and Castillo were executed. (§ 2)

On 5 July 2017, the Commission, according to articles 35 and 50 of its Regulation, issued an *"Informe de Admisibilidad"* determining the international liability of the State of Guatemala for the violations of several rights of the two alleged victims and expressed recommendations to the State. (§ 2)

The Commission then notified the State of Guatemala of the *Informe* that was issued against it so that the State could comply with the recommendations. The State did not respond expeditiously. (§ 2)

On 30 November 2017, the Commission submitted the Case to the Court and asked to assess the international responsibility of the State of Guatemala. (§3)

The Court recognized itself to be competent to decide the case, according to art. 62 § 3 of the IACHR.

In fact, Guatemala is part of the American Convention since 25 May 1987 and accepted the contentious jurisdiction of the Court since 9 March 1987. (§14)

The State of Guatemala opposed the Court's competence on this case arguing that it fell under a preliminary exception concerning *res judicata*. The State claimed that the criminal proceeding regarding Giròn and Mendoza followed Guatemalan laws and that the right to fair trial and the right to appeal were respected. The State also alleged that Guatemala had applied the capital punishment for 20 years. (§ 15)

The Court rejected the preliminary exception claimed by the State on the grounds that the case itself concerned the violation of the right to a fair trial of the alleged victims. So, the exception raised by the State did not have the nature of a preliminary exception since it necessarily entailed an analysis on the merit of the case. (§ 19)

3. – In its analysis, first of all, the Court examined the laws in force when the facts of the alleged crimes took place and also the facts concerning the criminal trial against Roberto Giròn and Pedro Castillo and their executions. (§ 27)

The Court drew a picture of the applicable laws in Guatemala concerning the capital punishment and the right to defence. (§ 27)

Article 18 of the Constitution of Guatemala recognize the possibility to apply the capital punishment. Article 43 of the Criminal Code of the Republic of Guatemala establish that the death penalty has an extraordinary nature and it can be applied only to those cases that are expressively mentioned by the law. Such a penalty cannot be executed if all the judicial remedies have not been exhausted. (§ 28)

As far as the crime of rape is concerned, Article 175 of the Criminal Code, as reformed in 1996 by the *Decreto No.* 20-96, provided that if the victim is less than ten years and dies, the capital punishment has to be imposed. (§ 29)

The Court tried then to assess the trend on the application of the capital punishment in Guatemala. (§ 31)

The Court noted that such a punishment was occasionally applied till the '90s. Since 1996 the State inverted such trend and started applying the death penalty more frequently, initially trough execution by a firing squad and then trough the lethal injection. (§ 31)

As far as the right to defence is concerned, Article 144 of the Procedural Criminal Code provided that the defendant has the right to be assisted by a lawyer from the moment in which he provides the investigative statements. (§ 33)

The defendant has to indicate a lawyer in that moment or in the following five days. (§ 33)

4. – In the *Fondo* the Court investigated if the State of Guatemala is internationally liable for the imposition of the capital punishment, the broadcast on television of the execution and the violation of the right to a fair trial and judicial guarantees. (§ 58)

The Court proceeded with the analysis of the compulsory application of the capital punishment to Giròn and Mendoza, the alleged violation of their personal integrity and the alleged violation of their judicial guarantees. (§ 58)

First of all, the Court wanted to stress that, despite the reprehensible conduct of Roberto Giròn and Pedro Mendoza, as individuals they deserved to enjoy fundamental human rights and judicial guarantees and the State is responsible to secure such warranties. (§ 59)

As far as the right to life is concerned, the Court recently affirmed that in those exceptional cases in which the State can apply the capital punishment, the imposition of such penalty is subjected to rigorous limitations. (Corte IDH, Caso Martínez Coronado vs. Guatemala, 10-05-2019 [*Fondo, Reparaciones y Costas*], § 62-67)

The death penalty can be imposed only for serious crimes (art. 4 § 2 IACHR) and not for political crimes or common crimes linked to political ones. (§63)

Such provision of the IACHR demonstrates that such punishment is only applicable in exceptional circumstances. (§63)

Notwithstanding the obligation that every state has to protect its own citizens, to repress the crimes and to maintain the public order, at the same time the fight against crime has to be pursued in respect of human rights and public security. (§ 64)

The Court took note that the First instance judge imposed the capital sanction compulsorily, as Article 175 of the Criminal Code established, without taking into account the mitigating and aggravating circumstances.

As the Court had already pointed out (Corte IDH, Caso Rexcacò Reyes vs. Guatemala -15-09-2005, [*Fondo, Reparaciones y Costas*), §79), the principle declared by the Human Rights Committee, which calls for the consideration of the suitability of capital punishment in the concrete case despite the compulsory nature of capital sanctions, should be embraced.

Indeed, Article 175 of the Criminal Code, as written in 1996, did not contemplate a different sanction for the rape when the victim is less than 10 years.

The law, in its wording, did not allow for the consideration of the specific characteristics of the crime, nor the intensity or the culpability of the accused. Such circumstances could have led to a mitigation of the imposed sanction. Instead the law was designed so that it would be applied automatically, without any discretion of the judge. (§71)

In conclusion, since the Court found that the State imposed the capital punishment mandatorily, it follows that State of Guatemala was liable for the arbitrary deprivation of the life of Roberto Giròn and Pedro Castillo in violation of Article 4 § 1 and 4 § 2 of the Inter-American Convention, in relation to Article 1 § 1 and § 2 of the same Convention.

At the same time, the Court did not find the State of Guatemala liable for the violation of art. 4 § 6 of the Convention since the State allowed the defendants to submit the *recurso de gracia*. (§74)

As far as the right to personal integrity is concerned, the Court concluded that the method used for the execution of the capital punishment provoked a psychological suffering (§88) for Giròn and Castillo since they knew for a prolonged period of time that they were destined to die. They had remained locked in the so called "*corredor de la muerte*" for two years and eleven months, with the constant oppressive feeling that they could have been executed anytime. (§85)

For this reason, the Court found the State of Guatemala liable for the violation of Articles 5 §1 and 5 § 2 of the American Convention which protect the right to personal integrity. (§90)

As far as the right to judicial guarantees is considered, the Court recalled that the right to defence has two sides: first it entails the right of the defendant to render a voluntary declaration concerning the facts of his case and secondly it entails the right to a technical defence by a professional who can advise the accused on his rights and duties and who can control the legality of the process of the evidence collection. (§98)

The Court, in this case, focused its evaluation on the right to a technical defence, whose violation could involve other violations of the basic guarantees of the due process established by Art. 8 of the IACHR. (§ 98)

When the defence is provided by the State, even if it corresponds to a public service, it has to be granted the necessary autonomy so that the professional is able to carry out his office in the best interest of the defendant. (§100) The State cannot be considered liable for the deficiencies of the public defence, considering the independency of the profession itself and of the autonomy of judgment of the defendant. (§100)

The State is only responsible for the selection of the public defenders and should exercise a periodical control over their work. (§100)

The appointment of a public defender should not be a mere formality, but the State has to grant its effectiveness and to assure that he has the same weapons as the prosecution. (§ 101)

Furthermore, the defence in criminal proceedings, in order to be substantial, has to carried out by a professional. (§ 102)

Pedro Giròn and Roberto Castillo were assisted by law students in the initial phase, when they rendered the voluntary declarations, during the examination phase and when the judge established the pre-trial detention. (§104)

Indeed, the Procedural Criminal Code of Guatemala contemplated the possibilities that the defendants were assisted by "pasantes no titulados".

But, as the Court already pointed out (Corte IDH, Caso Dacosta Cadogan Vs. Barbados, 24-09-2009, *[Excepciones Preliminares, Fondo, Reparaciones y Costas.* Sentencia], in the capital cases an adequate defence is even more necessary given that it crucially lead to an irreversible violation of the right to life. (§ 109)

To be assisted by law students who lack the experience, capacity and aptitude do not meet the requirements of the due process: so the Court found the State to be liable for the violation of art. 8 §2 of the IACHR.

5. – It is interesting to investigate the human rights framework regarding the application of the death penalty in the OAS region. (The Death Penalty in the Inter-American Human Rights System: From Restrictions to Abolition, IACHR, OEA/Ser.L/V/II., December 2011).

The trend in the region is that the majority of the member states of OAS has abolished capital punishment, whereas a minority of them still maintain it. (The Death Penalty…, IACHR, OEA/Ser.L/V/II., December 2011, § 1)

Indeed, according to the American Convention on Human Rights, the application of the death penalty is not forbidden, but it is subjected to strict limitations and prohibitions. (The Death Penalty…, IACHR, OEA/Ser.L/V/II., December 2011, § 2)

The text of the Convention reveals an unequivocal tendency towards the limitation or abolition of the death penalty in its imposition and application. (Juana María Ibáñez Rivas, *Convenciòn Americana sobre Derechos Humanos, Comentario*, Konrad Aenauer Stiftung, 2014, p. 249)

The right to life is enshrined in Article 4 of the IACHR which solemnly affirms that every person has the right to have his life respected. The same Article warns those States who still retain the capital punishment that its imposition is permitted only for the most serious crimes. It can be applied only "by a competent court that delivers a final judgment and in accordance with a law establishing such punishment, enacted prior to the commission of the crime".

"In fact, even if the ACHR does not prohibit the death penalty in absolute terms, since it is not forbidden for States that had it when the instrument enters into force for them – but only in the strict limits then existing – , the Court has affirmed that the relevant provisions have to be interpreted *pro homine* and in light of the due respect of specific procedural guarantees and the conditions of the States involved". (L. Paladini, N. Carrillo-Santarelli), *Migration Issues in the Inter-American System of Human Rights: The Development of an increasingly Humane Jus Migrandi*, in G. C. Bruno, A. Di Stefano, F. M. Palombino (eds.), *Migration Issues before International Courts and Tribunals*, CNR Edizioni, Roma, 2019, to be published)

It appears relevant for what will be discussed later in the paper to stress that Art. 4 § 3 asserts that "the death penalty shall not be re-established in states that have abolished it" and also that art. 4 § 2 in its last part recalls that the application of such punishment shall not be extended to crimes to which it does not presently apply.

In sum, three types of limitation are applicable to States that still maintain such penalty: first, this sanction has to meet certain procedural requirements, second, it has to be applied only to the most serious crimes, and third, the person of the defendant has to be taken into account. (Carlos Ayala Corao y María Daniela Rivero, *Convenciòn Americana sobre Derechos Humanos, Comentario*, Konrad Aenauer Stiftung, 2014, p. 249)

On the other hand, the American Declaration of the Rights and Duties of Man which protects the right to life, does not mention the death penalty. The result is that the death penalty is admitted, but it cannot be applied when its "application results in an arbitrary deprivation of life or would otherwise be rendered cruel, infamous or unusual punishment". [IACHR, Report No. 57/96, Case 11.139, William Andrews, United States, December 6, 1996]

In 1990, the OAS General Assembly adopted the Protocol to the American Convention to Abolish the Death Penalty. The ratifying States commit themselves not to apply the death penalty, even if a reservation it is possible to allow for its application in times of war. (The Death Penalty…, IACHR, OEA/Ser.L/V/II., December 2011, § 12)

The Commission and the Court over the years had analysed cases concerning this sanction and had reflected on the its mandatory application. The automatic imposition without the consideration of the individual circumstances of the offence or of the offender incompatible with the rights to life, humane treatment and due process. [The Death Penalty…, IACHR, OEA/Ser.L/V/II., December 2011, § 25]

In fact, mandatory sentencing by its very nature precludes considerations from a court of whether the death penalty is an appropriate or permissible form of punishment in the circumstances of a particular offender or offense. (The Death Penalty…, IACHR, OEA/Ser.L/V/II., December 2011, § 71)

In particular the Court and the Commission concluded that when capital punishment cases have to be decided, a heightened level of scrutiny has to be used. A strict adherence to the rules and the principles of due process and fair trials requires the right of a defendant to be presumed innocent until proven guilty according to law, the right to adequate time and means for the preparation of his defence, the right to be tried by a competent, independent and impartial tribunal, and the right of the accused to be assisted by legal counsel must be assured.

Specifically, a rigorous compliance with the defendant's right to competent counsel is compelled by the possibility of the application of the death penalty.

Finally, the Court assessed that the death row phenomenon, during which a person condemned to death is detained while awaiting execution, constitutes cruel, inhuman and degrading treatment.

As for the international legal framework concerning the application of death penalty is concerned, it is important to recall that the ICCPR at art. 6 does not prohibit death penalty but establishes strict limitation on its imposition. While the African Charter recognize the right to life but not impede the use of such sanction (Art. 4 African Charter on Human and People's Rights), the European Convention on Human Rights initially did not prohibit such penalty but then Protocol 6 to the European Convention on Human Rights (Council of Europe, Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the abolition of the death penalty as amended by Protocol No. 11, Strasbourg,28.IV.1983) established that capital punishment should be abolished. Today in the European Human Rights system, death penalty is not permitted in any circumstances, so that the exception of times of war or imminent threat of war does not apply (Council of Europe, Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms, concerning the abolition of the death penalty in all circumstances, Vilnius, 3. V.2002.)

6. – For a comprehensive understating of the judgment delivered by the Court in the case at stake, it appears compelling to give a clear picture concerning the application of the death penalty in the State of Guatemala.

As mentioned above, the Guatemalan Constitution and the ordinary criminal legislation both envisaged the application of the death penalty.

However, the extraordinary character of such penalty is reaffirmed in Art. 43 of the Criminal Code and it implies that it can be imposed only to cases expressively contemplated in the law and after all the remedies have been exhausted.

There are cases in which the death penalty cannot be imposed: in relation to political crimes, to women, elderly, when the conviction is based on presumptions and to persons extradited to Guatemala on the condition that Guatemala not pursue the death penalty.

The death penalty was contemplated as the only sanction for plagiarism or kidnapping, parricide, extrajudicial execution, murder of the President or VicePresident of the Republic, crimes related to drug trafficking resulting in the death of persons.

According to Amnesty International, the capital punishment was applied very few times before the 90's. Later in the 90's, Guatemala restarted applying this sanction; first the execution was carried out by firing squads, according to the *"Decreto 234 del Congreso de la Republica"* and then using the lethal injection, according to the *"Decreto 100-96"*.

(IACHR, Caso Romàn Valenzuela Ávila y familiares vs. Guatemala, 25-10-2017 [Informe de Fondo no. 132/17])

In accordance with the IACHR (art. 2 § 6 ACHR), which establishes the right of a person convicted to death to exercise his right to apply for amnesty, pardon and commutation of sentence, the Guatemalan law provides a special remedy to override the application of the death penalty, which is called *recurso de gracia*.

In 2005 the Inter-American Court of Human Rights for the first time examined a case concerning the application of the death penalty in Guatemala, especially with regards to the requisite of dangerousness as a ground for the application of the death

penalty on a murderer. In the case *Fermín Ramírez contra Guatemala* the Court found that such provision violated Article 9 of the IACHR and recommended the State of Guatemala to modify its legislation. (Corte IDH, Caso Fermín Ramirez vs Guatemala, 20-06- 2005, [*Fondo, Reparaciones y Costas*])

From the time the above-mentioned judgment was rendered, in 2005, Guatemala has refrained from imposing capital punishment, even if such penalty is still contemplated in the Criminal Code.

In fact, on 25 March 2016, the Constitutional Court of Guatemala ruled that provisions in the Penal Code requiring the imposition of the death penalty for certain circumstances of aggravated murder were unconstitutional as described in Article 132 of the Penal Code.

Despite this, the death penalty was maintained in the other cases.

Recently the Constitutional Court of Guatemala ruled again on the constitutionality of the application of capital punishment.

On 24 October 2017, the Constitutional Court of Guatemala declared uncostitutional the Articles in the Penal Code and the Anti-Narcotics Law allowing for the imposition of the death penalty. The Court found that they violate the principle of legality. As a result of the decision, from the date of this ruling, the death penalty can no longer be imposed for crimes charged under ordinary laws in Guatemala. (Amnesty International, Public Statement, 7-11-2017)

Such a ruling was welcomed by the international community as a "step forward for the promotion and protection of human rights in the country and a major milestone in its journey towards abolition".

However, capital punishment can still be imposed in military cases.

It is interesting to recall that "there have been no executions in Guatemala since 2002, when Law Decree 159, which established the procedure for the President of the Republic to decide on petitions of clemency, was repealed. This created a void that prevented persons under sentence of death from accessing a clemency process, which would make any execution unlawful under the American Convention on Human Rights. The last remaining death sentence in the country was commuted in 2012."

Still, despite the cessation of the practice of imposing the death penalty since 2002 (Corte IDH, Caso Fermín Ramirez vs Guatemala, 20-06- 2005, [*Fondo, Reparaciones y Costas*], § 33), the Guatemalan Congress has yet to modify its legislation in order to completely cancel the death penalty from the criminal code.

7. – After having determined the Inter-American and Guatemalan framework concerning the application of the death penalty, it appears interesting to reflect on the fact that in the recent months, the Inter-American Court have ruled on four cases all regarding persons convicted to death, namely the *Giròn* case, that has been already analysed, the case *Ruíz Fuentes y familiares vs. Guatemala*, *Tirso Román Valenzuela Ávila y familares vs. Guatemala* case and *Rodríguez Revolorio y otros vs. Guatemala* case. The last two cases have already been decided but the sentences are not available yet, so that the relative considerations will stem from the analysis of the *Informe the Fondo* prepared by the Inter-American Commission.

The present study, setting aside the facts of the *Giròn* case that has already been widely taken into consideration, will try to briefly describe the different facts of the four cases and to highlight the similarities among them and their implications (Setting aside the facts of the *Giròn* case that has already been widely taken into consideration).

The case *Ruiz Fuentes vs. Guatemala* investigates an alleged series of violations of the due process during the criminal proceeding against Ruíz Fuentes, who was

convicted for the crime of kidnapping. He tried to escape from the prison and in 2005 he was extrajudicially executed by a firing squad.

The case *Rodriguéz Revolorio y otros vs. Guatemala* is about the violations of the right of due process of Revolorio and others convicted for the crime of murder and attempt of murder some policemen. After remaining in the death row for several year, they were executed.

Finally, the case *Tirso Román Valenzuela Ávila y familiares vs. Guatemala* involves a series of violations of the right to a fair trial of Ávila, who was convicted for the crime of murder and sentenced to death. Similar to the *Ruiz Fuentes* case, he also tried to escape from prison and was extrajudicially executed in 2005.

The text of the judgments related to *Ruiz Fuentes* and *Ávila* cases are not available to date. For such reason, some consideration on the possible outcome will be delivered.

A necessary premise is that the four decisions intervened more or less 20 years later the relative facts. For this reason, as it will be pointed later in the paper, some of the recommendations of the Court and some statements may appear belated and insignificant.

The four cases have some common traits.

First of all, they all concern people who were sentenced to death after a criminal proceeding in which their right to due process was not respected. The executions were carried out in the *Giròn*, *Ruiz Fuentes*, *Ávila* cases.

In the *Giròn* case , the defendants were not effectively assisted by a counsel, but by law students not ready and unprepared to deal with capital cases; in the *Ruiz Fuentes* case, the defendant was not able to provide evidence to sustain his innocence since the counsel omitted to sign the necessary memorandum, and when a new counsel was appointed he was not given enough time to prepare an adequate defence and his right to appeal trough a "recurso de fallo" was denied (Corte IDH, Caso Ruiz Fuentes y otra vs. Guatemala,10-10-2019 [*Fondo, Reparaciones y Costas*]) ; in the *Rodriguez Revolorio* case the right to due process was violated since the presumption of innocence was not granted and the right to appeal was denied (IACHR, Aníbal Archila Pérez, Miguel Angel López Caló and Miguel Angel Rodríguez Revolorio vs. Guatemala, [Informe de Fondo no. 99/17]); lastly, in the *Ávila* case the right to fair trial was violated since the right to appeal was not granted (IACHR, Caso Romàn Valenzuela Ávila y familiares vs. Guatemala, 25-10-2017 [Informe de Fondo no. 132/17]).

From the joint analysis of the four cases, it emerges that the State of Guatemala failed to guarantee due process and violated the right to life since an irreversible sanction, as the death penalty, was imposed after trials that did not meet the requirements of the due process.

It is also possible to draw another parallelism among the four cases at stake.

In all of them, the Court found that the death penalty imposed was illegitimate.

In the *Giròn* case the Court affirmed that the mandatory death penalty violated the Inter-American Convention, which requires that the circumstance of each concrete case to be taken into account in order to apply capital punishment.

In the *Ruiz Fuentes* case, the defendant was sentenced to death for a crime (kidnapping not followed by death) for which initially no capital punishment was provided; moreover, such penalty was imposed automatically, without considering aggravating and mitigating circumstances in violation of art. 4 § 2 of IACHR.

Concerning the cases *Ávila* and *Rodriguez Revolorio*, according to the writer's opinion, the Court should have likely found the State of Guatemala accountable for the violation of art. 4 IACHR since in the *Ávila* case, capital punishment was applied on the basis of the dangerousness of the defendant and in the *Revolorio* case such sanction was imposed after a trial disregarding the due process guarantees.

It appears interesting to stress that the cases *Giròn*, *Ruiz Fuentes and Ávila* all concern a matter that is exhausted. In fact, Giròn and Castillo were executed in 1996, while Ruiz Fuentes and Ávila were extrajudicially executed respectively in 2005 and 2006. For such reason, the recommendations issued by the Court (in the *Giròn* and *Ruiz Fuentes* cases, and it will likely be the same in the *Ávila* case) are aimed at establishing the international responsibility of the State of Guatemala and at providing a form of compensation for the violation occurred in favour of their families. The Court assessed that Guatemala, over the years, has not applied the death penalty. For this reason, it did not issue any recommendations pertaining to that.

It may appear that these late judgments, condemning the use of capital punishment, are willing to constitute an admonition for the State of Guatemala but at the same time, since the death penalty had been already imposed, seems to lack effectiveness.

In the *Rodrguez Revolorio* case instead the situation is dramatically different. As the Commission, (IACHR, Aníbal Archila Pérez, Miguel Angel López Caló and Miguel Angel Rodríguez Revolorio vs. Guatemala, [Informe de Fondo no. 99/17], § 151) pointed out, the defendants have not been executed yet, whereby, the State of Guatemala should process them again, in respect of the due process guarantees.

As it has been already stressed, the judgment is still not available in its integral version, but it seems that the Court will not waste this chance to reassess the right to a fair trial that has already been violated once.

8. – These cases and the respective judgments that condemn the use of death penalty in Guatemala recognize that over the years Guatemala has become a de facto abolitionist country.

Bearing in mind all that has been pointed out, the promise of the newly elected president of Guatemala, Alejandro Giammatei, appears to clash with the spirit of the Inter-American Convention of Human Rihgts.

Giammatei has declared that: *"que en un eventual gobierno suyo combatirá "con tetosterona" la inseguridad, el narcotráfico, el crimen organizado y las pandillas. Como parte de su estrategia de seguridad, pretende resucitar la pena de muerte, la cual está en suspenso desde el 2000 por un vacío legal. "La aplicación de la pena de muerte está, es constitucional, y si las leyes están, hay que cumplirlas", aseveró."* (Rfi, Giammatei, el derechista guatemalteco que quiere revivir la pena de muerte,11/08/2019) (his government will fight insecurity, drug trafficking and organized crime, and, as a part of his strategy, he wants to bring back the death penalty, which has been suspended since 2000 due to a lack of regulation. According to his words "capital punishment exists, is constitutional and, if a law exist, it must be implemented.)

In the light of such declaration, the following legitimate questions arise: Could Giammattei re-establish capital punishment after the Constitutional Court has *de facto* abolished it by declaring it unconstitutional?

Could Giammattei revive the death penalty without rendering the State of Guatemala liable at the international level for the violation of the IACHR?

The answer appears pretty simple when looking at art. 4 § 3 of the IACHR, which solemnly affirms: "the death penalty shall not be re-established in States that have abolished it"

It seems that Giammattei will have to take a step backwards unless he desires Guatemala to fail in meeting its obligations under the IACHR.

9. – Lastly, in accordance with art. 63, par. 1 of the Convention, the San José Court emphasized the importance of providing adequate remedies in these situations. (§ 390).

The violation of an international obligation entails the obligation to provide an adequate reparation. (Corte IDH, Velásquez Rodríguez vs. Honduras, 21-7-1989, [*Reparaciones y costas*]). The Court has to decide on the damages taking into consideration the facts which emerges during the proceeding, (Corte IDH, Ticona Estrada y otros vs. Bolivia, 27-11-2008, [Fondo, reparaciones y costas], § 110], the violations stated by the parties, the nature and the extent of the obligation to repair. (Corte IDH, Acost y otros vs. Nicaragua, 25-3-2017, [*Excepciones preliminares, fondo,reparaciones y costas*], § 210). First of all, the judgment itself represents a means of reparation. The Court ordered the State, as reparation measures, to publish the Judgment of the Court and its summary. It also ordered the State to pay an established amount as a restoration for the psychological and immaterial damage suffered by the victims and to deposit the amount established by the Court to the *"Fondo de asistencia legal de victimas de la Corte"*.

The State also has to inform the tribunal of the measures taken in order to conform to the present judgment and the Court will monitor the implementation of this judgement: the case will be deemed to be definitely closed when the State of Guatemala will have been in compliance with the judgments.