INTER-AMERICAN HUMAN RIGHTS

MOOT COURT COMPETITION

**CRISTAL TROVAR**

Petitioner

**v.**

**DEMOCRATIC REPUBLIC OF EXCLUTIA**

Respondent

**2014**

**IN THE INTER-AMERICAN COURT OF HUMAN RIGHTS**

**SAN JOSE, COSTA RICA**

MEMORIAL FOR THE PETITIONER

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**Cases and Reports**

**Inter-American Court of Human Rights**

Report No. 26/2008, *Cesar Alberto Mendoza et et al.* (Argentina), (Mar.14)……………...……...8

*Case of Godínez Cruz v. Honduras*, 1989 Inter-Am. Ct. H.R. (ser. C) No. 5 (Jan.20)……..……...8

Report No. 43/1998, *Haniff Hilaire* (Trinidad and Tobago), (Sept. 25)……….............................10

Report No. 55/1997, *Juan Carlos Abella* (Argentina), (Nov. 18)………………………………....8

*Case of Juan Humberto Sánchez v. Honduras*, 2003 Inter-Am. Ct. H.R. (ser. C)

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*Case of Las Palmeras v. Colombia*, 2001 Inter-Am. Ct. H.R. (ser. C) No. 90, (Dec. 6)…........…..8

*Case of Loayza-Tamayo v. Peru*, 1998 Inter-Am. Ct. H.R. (ser. C)

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*Matter of Alvarado Reyes et al.*, 2011Order of the Inter-Am. Ct. H.R.,

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*Matter of Mery Naranjo et al.,* 2011 Order of the Inter-Am. Ct. H.R.,

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*Matter of Monagas Judicial Confinement Center*, 2009 Order of the

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*Velásquez Rodriguez Case*, 1988 Inter-Am Ct. H.R., (ser. C) No. 1, (July 29)…….…...…..8, 9, 10

*Case of Víctor Rosario Congo v. Ecuador*, 1999 Inter-Am. Ct. H.R.,

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*Price v. The United Kingdom*, 2001 Eur. Ct. H.R., No. 33394/96, (July 10)…........................15, 16

*Salontaji-Drobnjak v. Serbia*, 2009 Eur. Ct. H.R., No. 36500/06, (Oct. 13)……..…..24, 26, 28, 30

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*Stanev v. Bulgaria*, 2012 Eur. Ct. H.R., No. 36760/06, (Jan. 17)……………...……….…….27, 29

*V.C. v. Slovakia*, 2011 Eur. Ct. H.R., No. 18968/07, (Nov. 8)…….....................................……..18

**Books, Articles, and Other Reports**

Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, 9 Dec. 1988, GA Res.UN Doc. 43/173………….…………………….….……....14

International Disability Alliance and the Mental Disability Advocacy Centre, *Written Comments Submitted in the European Court of Human Rights*,16 August 2011…....…..…........……………18

Commissioner of HR, W*ho Gets to Decide?,* Council of Europe Issue Paper (2012)………..24, 28

Committee on the Rights of the Child, 18 Apr. 2011, UN Doc. CRC/C/GC/13 A/66/268…….....17

Diego Rodriguez-Pinzon & Claudia Martin, *The Prohibition of Torture and Ill-treatment in the Inter-American Human Rights System* 103 (2006)………..………………..………….……...17, 18

Frances Gibson, *Article 13 of the Convention on Rights of Persons*

*with Disabilities* (2009)……………………………………………………………………..….....24

The European Coalition for Community Living, *Focus on Article 19 of the UNC Convention on the Rights of Persons with Disabilities*, Focus Report of the European Coalition (2009)………...20

*Ending Forced Sterilization of Women & Girls with Disabilities,* HRW.org (2014)……….…19, 22

Jean Allain, *Treaty Interpretation and the United Nations Convention on the Rights of Persons with Disabilities*, Centre on Human Rights for People with Disabilities, (2009) …………….…..26

Robert Dinerstein, *Implementing Legal Capacity Under Article 12 of the UN Convention on the Rights of Persons with Disabilities: The Difficult Road from Guardianship to Supported Decision Making*, 19 Human Rights Brief 8 at 9 (2012)……………………………………..……………..23

Laurence Burgorgue-Larsen, Amaya Ubeda de Torres, and Rosalind Greenstein, *The Inter-American Court of Human Rights: Case Law and Commentary* (2011)…………….….........12, 13

Report of the Special Rapporteur on Violence against Women, its Causes and Consequences, 1 Nov. 1999, UN.Doc E/CN.4/1999/68, art. 4……………………………………………………...18

United Nations, Enable, Expert Group Meeting on International Norms and Standards

Relating to Disability, http://www.un.org/esa/socdev/enable/disberk3.htm…...………….............21

Tina Minkowitz, *The United Nations Convention of the Rights of Persons with*

*Disabilities and the Right to be Free from Nonconsensual Psychiatric Interventions*,

34 Syracuse J. Int’l L. & Com.405, 408 (2007).…………………………….………………….…21

**Statement of Facts**

Applicant, Cristal Tover (‘Cristal’), is a 33-year-old blind women residing in Inclutiaran, the capital city of the Republic of Exclutia. Since Cristal’s diagnosis of blindness was confirmed permanent at age 15, she and her mother lived in a small apartment, receiving income from her mother’s cleaning job. When her diagnosis became permanent, Cristal dropped out of school due to the school’s inability to accommodate her condition and their lack of financial resources.

In 2006, Cristal’s mother passed away. Cristal began searching for employment, but was repeatedly turned down because of her disability. Unable to secure employment and pay rent, Cristal was forced to leave her apartment. Cristal reached out to the National Council of Persons with Disabilities of Exclutia to see what, if any, support alternatives the government offered to assist individuals living with disabilities. However, to Cristal’s dismay, the only option available to her was placement in a shelter for the disabled.

After being evicted from her home, Cristal took up residence in a public square. After several days Cristal was picked up by a police officer and transported to a shelter called “La Casita,” (‘La Casita’ or ‘Shelter’) which housed individuals with physical, intellectual, and sensory disabilities, as well as homeless individuals. At the time of Cristal’s arrival, La Casita housed a total of 400 people. Beds were crammed together, mattresses were old and dirty, and residents had no place to safely store personal belongings.

La Casita had outdated facilities and from 6:00am until 10am everyday there was no running water. The Shelter lacked funding for basic amenities and was severely short staffed. Additionally, La Casita housed two isolations rooms which were 2 x 2 meters in size with dim lighting, a mattress on the floor, and a bucket in which to go to the bathroom. During her stay, Cristal witnessed at least three occasions on which residents of the Shelter were locked in the isolation rooms for 4 to 5 hours.

Upon Cristal’s admission, the Shelter reached out to Cristal’s distant aunt and uncle who disclosed that they lacked the necessary financial resources to care for Cristal. Cristal was then examined by a psychiatrist who diagnosed her with a mental disability of mood disorder and major depression. Cristal therefore resided in the area of the Shelter which housed individuals with mental disabilities rather than physical or sensory disabilities, despite being permanently blind. Also, Cristal was prescribed anti-depressants, and because she lived in the shelter pavilion designated for individuals with disabilities, she was unknowingly injected with contraceptives. The staff reasoned that this practice was in place to control sexual activity among residents.

On August 25, 2006, Dr. Lira, the Shelter physician, petitioned the trial court for a declaration declaring Cristal incompetent. On August 28, 2006, an expert psychologist preformed an examination of Cristal, which resulted in the same diagnosis of mood disorder and major-depression. A hearing was held on September 15, 2006; those in attendance included Dr. Lira and a representative from the Public Ministry. At the hearing Dr. Lira testified that Cristal had no contact with any relatives or close friends, despite the Shelter’s contact with Cristal’s aunt and uncle upon her admission to La Casita. On September 29, 2006, the judge declared Cristal incompetent pursuant to Article 41 of Exclutia Civil Code.

On September 1, 2007, Cristal complained of urinary retention, constipation, short-term memory loss, and increased anxiety. On December 26, 2007, Cristal’s condition worsened and she was transported to Raul Cano National Hospital after experiencing hallucinations, a fever, muscle spasms, and tremors. Doctors ultimately concluded Cristal’s symptoms resulted from the medical treatment she received at La Casita.

While hospitalized, Cristal came into contact with a disability attorney who, after meeting with Cristal, agreed to help Cristal gain her independence. Cristal’s attorney first filed a motion to vacate the declaration of incompetency on February 21, 2008, which was dismissed on September 18, 2008 for lack of standing. The trial court noted that in accordance with Exclutian Civil Code, only the Public Ministry or the incompetent person’s guardian could request review or revocation of incompetency. In response, Cristal’s attorney filed an appeal October 1, 2008, which was denied because there had been no abuse on the part of Cristal’s guardian. The appeals court indicated that the appropriate remedy for challenging the declaration of incompetency would be an unconstitutionality action before the Constitutional Court of Exclutia.

Cristal’s attorney then filed a petition for constitutionality on November 2, 2008, alleging violation of fundamental rights of individuals with disabilities living in the Shelter, The petition was granted on October 21, 2011. In response, the State made $200,000 worth of structural improvements to the Shelter. However, these improvements did not deal with the involuntary medication or isolation rooms.

On September 1, 2009, Cristal’s attorney filed another petition before the Inter-American Commission on Human Rights (‘Inter-American Commission’ or ‘Commission’) alleging human rights violations under the American Convention on Human Rights. After granting precautionary measures in October of 2009, on March 11, 2013 the Commission concluded that the State of Exclutia had violated the rights of the individuals residing in La Casita, despite the State’s denials and objections. In addition, the Commission made recommendations with respect to the situations which violated Cristal’s individual rights.

On June 14, 2012, the Commission granted the State’s request for a two-month extension to comply with the Commission’s recommendations, but denied the State’s second request for an extension on August 14, 2012. The Commission then brought the case before the Inter-American Court of Human Rights (‘Inter-American Court’ or ‘Court’). In response, the State filed a preliminary objection arguing that the Commission should have declared the petition inadmissible on timeliness grounds, and therefore the Inter-American Court should not rule on the merits.

After an incident in April 2014 wherein Cristal was detained in one of the isolation rooms for approximately four hours, Cristal’s attorney asked the Inter-American Court to grant provisional measures on behalf of Cristal, given the ongoing practice of involuntary isolation. The State objected. In response, the Inter-American Court issued an order convening the case for public hearing in May of 2014.

**LEGAL ANALYSIS**

1. **Admissibility**
2. **Statement of Jurisdiction**

As a founding Member of the Organization of American States (‘OAS’) the Republic of Exclutia ratified the OAS Charter on April 30 1948 and the American Convention of Human Rights (‘American Convention’ or ‘Convention’) on December 10, 1989.  In accordance with Article 62(1) of the Convention, Exclutia has agreed to submit the present dispute to the Inter-American Court for final resolution.

1. **Exhaustion of Domestic Remedies**

Article 46(1)(a) of the Convention requires petitioners to exhaust all domestic remedies prior to filing a petition with the Inter-American Court.[[1]](#footnote-1) However, available domestic remedies must also be adequate to redress the legal wrong and “capable of producing the result for which it was designed.”[[2]](#footnote-2) Domestic remedies are considered ineffective if they are: discretionary in nature,[[3]](#footnote-3) procedurally restrictive,[[4]](#footnote-4) or if found to be “illusory” in nature.[[5]](#footnote-5) Moreover, it is the responsibility of the State party challenging exhaustion of remedies to specify which remedies the petitioner failed to exhaust while also demonstrating the effectiveness of such remedies.[[6]](#footnote-6)

Cristal has undoubtedly exhausted all domestic remedies. Cristal’s attorney first challenged Cristal’s declaration of incompetency, which was denied.[[7]](#footnote-7) She then appealed that decision.[[8]](#footnote-8) After the appeal was denied, she petitioned for a constitutional remedy, which was granted on December 2, 2008.[[9]](#footnote-9) On September 1, 2009, Cristal’s attorney filed a petition before the Inter-American Commission seeking a declaration of responsibility against the State of Exclutia for violations under the American Convention.[[10]](#footnote-10) On October 21, 2011 the Commission declared the alleged violations in admissible, and on March 11, 2013 made issued findings and recommendations in petitioners favor.[[11]](#footnote-11) After the State’s continued failure to comply with the Commissions finding, the Commission referred the case to the Inter-American Court.[[12]](#footnote-12) Thus, Cristal, with the help of her attorney, exhausted all domestic remedies available to her.

The State will contend that because the unconstitutionality action was already decided in petitioners favor, and as a result the State allocated funds and implemented structural improvements on the shelter, no further domestic remedy is needed.[[13]](#footnote-13) However, an unconstitutionality action will only declare existing law unconstitutional without actually addressing the state’s misconduct or providing a remedy to the wronged individual.[[14]](#footnote-14) Therefore, the Commission’s decision, which only addressed the inadequate living conditions without considering the adequacy of care, did not apply to petitioner’s allegations of inhumane and degrading treatment occurring at La Casita.

Additionally, in the unlikely even the Court determines that Cristal failed to exhaust all domestic remedies; the domestic remedies available to Cristal can be ruled inadequate. Not only was Cristal told she did not have standing to challenge declaration of incompetency in her own case,[[15]](#footnote-15) but Cristal was also denied the right to appeal,[[16]](#footnote-16) a right expressly awarded under Article 8 of the American Convention.[[17]](#footnote-17) Moreover, because the State has failed to allege specifically what remedies Cristal failed to exhaust, demonstrating the effectiveness of such remedies, the Court should find Cristal’s case admissible.

1. **Timeliness of Submission**

Article 46(1)(b) requires that the petition be filed within “six months from the date on which the party alleging violation of his rights was notified of the final judgment.”[[18]](#footnote-18) Further, state parties will waive their right to object on timeliness grounds by failing to file the objection at an early stage in the proceedings.[[19]](#footnote-19) In this case, the State had opportunity to object to petitioners allegations as early as December 2, 2008;[[20]](#footnote-20) however, the State did not assert inadmissibility under Article 46(1)(b) until March 29, 2010.[[21]](#footnote-21) Thus, the State had opportunity to raise the objection as soon as the constitutionality decision was rendered in December of 2008 so by waiting nearly two years to, the State effectively waived their right to do so.

Even if the Court finds that the State did not waive its right to object, petitioners filed allegations with the Inter-American Commission on September 1, 2009, less than six months after the appeals court denied petitioner’s motion to appeal.[[22]](#footnote-22) The State alleges that the petition before the Commission was filed more than six months after the notice of the decision adjudicating the petition for a constitutional remedy, which had been decided in Cristal’s favor.[[23]](#footnote-23) However, Article 46(1)(b) explicitly states that the petition must be lodged within six months of the final decision which the petitioner believes to violate his or her rights.[[24]](#footnote-24) Therefore, the six month period did not start to toll until the decision of the appellate court was rendered on April 18, 2009, giving Cristal until October of 2009 to file her petition with the Commission.

If the Court does find that petitioner failed to timely file, as set forth in Article 46(2)(a), requirements provided for in Article 46(1)(b) shall not be applicable when “the party alleging violation of his rights has been denied access to the remedies under domestic law.”[[25]](#footnote-25) Moreover, this Court has held 46(2)(a) "applies to situations in which the domestic law of a State Party does not provide appropriate remedies to protect rights that have been violated."[[26]](#footnote-26) Therefore, because the State failed to provide petitioner access to adequate domestic remedies timeliness of submission is not at issue and the Court must find the petition admissible.

1. **Procedural Arguments**
2. **Precautionary Measures**

The State of Exclutia contends that the Commission would be required to lift the precautionary measures granted in October of 2009 if this Court denies the request for provisional measures.[[27]](#footnote-27) However, this contention is false. According to Article 25(9) of the Rules of Procedure of the Inter-American Commission on Human Rights, “[t]he Commission shall evaluate periodically, at its own initiative or at the request of either party, whether to maintain, modify or lift the precautionary measures in force.”[[28]](#footnote-28) Therefore, it is left to the Commission’s discretion to decide whether or not to lift the precautionary measures.

1. **Provisional Measures**

In accordance with Article 63(2) of the American Convention, the Court may order provisional remedies in cases of “extreme gravity and urgency, and when it becomes necessary to avoid irreparable damage to persons."[[29]](#footnote-29) Due to petitioners ability to prove gravity, urgency, and the likelihood of irreparable damage if Cristal Trovar and others residing at La Casita continue to be subject to solitary confinement and inadequate treatment, the Court should grant petitioners request for provisional remedies.

1. *The possibility that Cristal will be subject to further solitary confinement and inhumane and degrading treatment is “extremely grave.”*

The Court must determine the presence of “extreme gravity” on a case by case basis, considering all facts in the context of the individual case.[[30]](#footnote-30) Previously, this Court has held that the “extreme gravity” requirement must go beyond theoretical danger, and instead amount to “serious” or “actual danger.” [[31]](#footnote-31) Additionally, on multiple occasions this Court has determined the presence of “extreme gravity” in situations that are likely to result in bodily harm to the petitioner or others. [[32]](#footnote-32) Overall, the Court must find evidence that if the fundamental right awarded by the Convention is compromised, protective measures would be required. [[33]](#footnote-33)

Here, Cristal’s involuntary confinement for a disability unrelated to that which brought her to La Casita in the first place interferes with her life and well-being in a way so extremely grave and serious as to justify provisional measures. Not only has Cristal been deprived of her right to make personal decisions regarding her own well-being, she has been afforded no recourse to challenge such deprivation. Moreover, Cristal has resided in La Casita since August of 2006, where she has been subjected to a lack of resources and inadequate medical care. Since moving to La Casita Cristal’s health has worsened, as evidenced by her week long hospitalization in December of 2007.[[34]](#footnote-34) Additionally, Cristal herself has been involuntarily detained once and has witnessed the involuntary detention of others on three separate occasions. Thus, the danger Cristal has been subject to can easily be characterized as actual rather than theoretical and could arguably result in bodily harm. Further, the right to be free from inhuman and degrading treatment is a non-derogable right under international law, leaving states no room for exceptions or justifications. Thus, this Court must grant petitioners request for provisional measures so as to protect her, and others residing at La Casita, from further isolation and inadequate treatment.

1. *This is an “urgent” matter that requires immediate provisional relief.*

This Court finds the existence of urgency in threatening situations which “require and merit immediate actions and response.”[[35]](#footnote-35) Further, urgency “implies that the risk or threat must be imminent, which also presupposes that the response to remedy it must be immediate.”[[36]](#footnote-36)

As noted, Cristal has already been detained in isolation once, while witnessing the isolation of others on three separate occasions.[[37]](#footnote-37) Additionally, the side effects of Cristal’s medication has already resulted in one hospitalization,[[38]](#footnote-38) and the involuntary injection of contraceptives so greatly infringes upon her right to make reproductive decisions as to damage her personal integrity. Also, nothing in the record suggests that the shelter has ceased giving individuals contraceptives, so the violation will be on-going until this Court rules. Moreover, the imminent risk of Cristal’s health and mental well-being further deteriorating requires the imposition of provisional remedies in response to such imminent threats.

1. *The denial of provisional measures will result in “irreparable harm.”*

Irreparable damage can result in multiple ways including: physical injury or loss of function, infringement upon the right to privacy, or emotional or psychological harm.[[39]](#footnote-39) Here, Cristal’s diagnoses of major depression puts her at increased risk for psychological damage if secluded for a long period of time. However, most persuasively, Cristal is being injected with contraceptives against her will. Such an invasion of privacy so greatly interferes with Cristal’s right to make decisions regarding her reproductive rights as to cause irreparable damage, physically and psychologically, thus requiring the imposition of provisional remedies.

1. **ARGUMENTS ON THE MERITS**
2. **Isolation, involuntary medical treatment, and intolerable living conditions at La Casita violate Article 5 of the American Convention on Human Rights.**

The Republic of Exclutia (‘State’ or ‘Exclutia’) violated international law when it subjected Cristal Tovar and the other residents of the La Casita shelter to inhuman or degrading treatment. Article 5 of the American Convention provides that “no one shall be subjected to torture or cruel, inhuman or degrading punishment or treatment.”[[40]](#footnote-40) This right is absolute, and states are never allowed to derogate from this principle. The interpretation of treatment as “inhuman and degrading” extends “to the widest possible protection against abuses, whether physical or mental.”[[41]](#footnote-41) Here, the State violated that principle by subjecting Cristal and the other residents to isolation and involuntary medical treatment.

1. *The shelter’s use of isolation rooms for individuals with mental disabilities amounts to inhuman and degrading treatment.*

In cases where the victim is a person who suffers from a mental illness, this Court and the European Court of Human Rights (‘European Court’) has applied “special standards” when determining whether or not a provision has been complied with. [[42]](#footnote-42) As this Court stated in *Victor Rosario Congo v. Ecuador*, the protection against inhuman and degrading treatment under Article 5 of the Convention “must be interpreted in light of the *Principles for the Protection Persons with Mental Illness and for the Improvement of Mental Health Care*.” [[43]](#footnote-43) Therefore, in order to protect the rights of a person with a mental illness, this Court should use these principles as a guide to interpreting the Convention. Accordingly, this Court should categorize Cristal as being a “particularly vulnerable” individual.

This Court has previously established that “keeping a person in a small, isolated cell constitutes inhuman and degrading treatment, which justifies provisional measures to preserve…integrity.” [[44]](#footnote-44) In the *Congo* case the Inter-American Commission stated that isolation itself “can constitute inhuman treatment,” and keeping a person in isolation is an even more serious violation when a person has a mental disability.[[45]](#footnote-45)

One commentator noted, “[a]ccording to the European Court of Human Rights…the position of inferiority and powerlessness which is typical of persons with mental disorders confined in psychiatric hospitals or prisons calls for increased vigilance whether this right has been respected by governmental officials.”[[46]](#footnote-46) Cristal has a mental disability and feels sad and powerless. Moreover, when Cristal felt mental anguish due to a friend’s death, the State should have protected her rather than confining her to isolation.[[47]](#footnote-47)

Alternatively, the use of the isolation rooms in pavilions “B” and “D” of the Shelter (the areas of the Shelter housing individuals with mental disabilities) is problematic to Cristal in particular because she is blind and suffers from other physical conditions. In fact, Cristal was recently hospitalized for “fever, muscle spasms and strong Parkinson’s-like tremors.”[[48]](#footnote-48) Moreover, isolation of individuals suffering from such physical disabilities is dangerous and threatening to their health and safety. Similarly, in *Price v. The United Kingdom*, the applicant also had a permanent physical disability and suffered from other conditions such as kidney trouble. She was unable to use the toilet and was forced to sleep in her wheelchair because the bed would hurt her hips.[[49]](#footnote-49) The European Court ruled that keeping a disabled person in these conditions amounted to degrading treatment.[[50]](#footnote-50)

a. Conditions of the isolation room were inhuman and degrading.

Not only did the La Casita employees place Cristal in isolation, but also the layout and conditions in the isolation rooms resembled a prison. In *A v. United Kingdom*, the European Court of Human Rights considered the case of a patient held in isolation in a psychiatric hospital for five weeks without “toilet facilities, furniture or ventilation.”[[51]](#footnote-51) The case resulted in the United Kingdom reforming the law to ensure adequate conditions.[[52]](#footnote-52) In this case, although Cristal was not isolated in a prison cell, this Court should categorize the isolation rooms used in La Casita as similar in nature. Much like the case of the *United Kingdom*, the isolation rooms were cement rooms that measured only 2 x 2 meters with dim lighting, a mattress on the floor, and no toilet facilities besides a bucket that individuals had to use to relieve themselves.[[53]](#footnote-53) As set forth by this Court in *Neira Alegria et al*., every person who is deprived of their liberty has the right to live in “detention conditions compatible with her or his personal dignity, and the State must guarantee…the right to life and to humane treatment…” [[54]](#footnote-54) In the case at hand, instead of the State protecting Cristal’s “physical, mental and moral integrity” they restrained her and deprived her of liberty by putting her in a room that failed to satisfy her “basic needs” such as using a toilet (if she needed to urinate or defecate she had to do so in a bucket).[[55]](#footnote-55)

1. Length of confinement is not of absolute importance.

Placement in an isolation room of the conditions described above does not have to last for a prolonged period of time in order to constitute inhuman and degrading treatment. It is the “seriousness or intensity” of the suffering that is important, along with the surrounding circumstances of the situation, including mental health, the status of the victim’s health, and mental consequences.[[56]](#footnote-56) A Report of the Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment stated “[t]he Special Rapporteur has addressed the issue of solitary confinement and stated that its imposition, of any duration, on persons with mental disabilities is cruel, inhuman or degrading treatment.”[[57]](#footnote-57) Moreover, any restraint of a person with a mental disability, even for a short period of time, can “constitute torture and ill-treatment.”[[58]](#footnote-58)

Admittedly, Cristal was only held in the isolation room for four hours, unlike the other aforementioned cases. However, this Court must look at the surrounding circumstances in addition to the frame. There is no possible way to calculate the amount of suffering a person has undergone based on the length of time the suffering was endured. A person could have the same “intensity” of suffering within one hour as a person who had to endure the suffering for several days. Moreover, if a person suffers from a mental disability, a “heightened standard” should be applied.[[59]](#footnote-59) In the case at hand, Cristal, an individual diagnosed with major depression, had just been notified of a friend’s sudden death and was therefore in an especially vulnerable state. [[60]](#footnote-60) Additionally, at that particular moment in time, she had just returned from a week long hospitalization. [[61]](#footnote-61) All of the surrounding circumstances prove that her suffering was at a high level of “intensity” and is comparable to a person without a mental disability who endured isolation for a longer period of time.

Moreover, the State argues that this was used to protect the safety of the other Shelter residents. It should be noted that this Court has ruled that “any use of force that is not strictly necessary to ensure a prisoner’s proper behavior constitutes a violation of his or her right to personal dignity as protect by Article 5.”[[62]](#footnote-62) Cristal was merely crying and screaming; she did not touch anyone until one of the guards tried to grab her by the hand.[[63]](#footnote-63) Also, while the State insists that what happened to Cristal was an abnormality, on at least three other occasions Cristal witnessed others being isolated.[[64]](#footnote-64) Therefore, in order to protect the physical, psychological, and moral integrity of individuals suffering from mental disabilities, this Court should deem isolation inhuman and degrading treatment.

1. *Involuntary medical treatment at La Casita elevates the treatment to inhuman and degrading.*

A women’s right to make reproductive choices is universally protected under international law.[[65]](#footnote-65) Amnesty International, as well as the European Court, have found that forced sterilization amounts to inhuman and degrading treatment.[[66]](#footnote-66) Additionally, it is still inhuman and degrading even when a third party has authorized it. [[67]](#footnote-67) Although forced sterilization and forced contraceptive use are not the same, the same reasoning should apply because they both prevent a woman from making her own reproductive choices. Forced sterilization occurs when an individual either expressly refuses sterilization or is sterilized unknowingly.[[68]](#footnote-68) Women with mental and physical disabilities, such as Cristal, are even more vulnerable due to the “auspices of legitimate medical care.” [[69]](#footnote-69) Moreover, individuals suffering from a mental disability are more vulnerable because they might have difficulty understanding or communicating about the procedure.[[70]](#footnote-70) Here, Cristal was under the umbrella of “legitimate medical care” through her residence at La Casita.[[71]](#footnote-71) Personnel at La Casita took it upon themselves to inject females from pavilions “A” and “B” with contraceptives without the knowledge of the residents.[[72]](#footnote-72) All they were told was that it was part of their treatment. [[73]](#footnote-73) This form of conduct is inhuman and degrading especially because they only injected those with mental and physical disabilities. Thus, the Court should find the involuntary administration of contraceptives to individuals with disabilities living in La Casita to be inhumane and degrading.

1. **Exclutia violated article 19, 25 and 23 of the Convention on the Rights of Persons with Disabilities by discriminating against disabled individuals.**
2. *The disabled cannot be denied the right to live and participate in the community equally.*

Article 19 of the Convention on the Rights of Persons with Disabilities (‘Disability Convention’) states that all persons with disabilities have the right to live and participate in the community “with choices equal to others.”[[74]](#footnote-74) Article 19 is violated when a person with a disability is not able to live in their community with the support they need to participate in every-day life, including: living independently or with family, going to work, and going to school.[[75]](#footnote-75) In this case, because Exclutia did not have legislation in place to protect individuals with disabilities, Cristal could not receive an adequate education, attain gainful employment, and live independently in her community. Additionally, Cristal could not live with her aunt and uncle because they lacked the financial means to support her. Essentially, Exclutia does not possess the anti-discrimination laws necessary to ensure persons with disabilities can live on an equal basis with those without disabilities. Instead, Exclutia maintains the practice of “isolating and segregating disabled people in long-stay residential institutions.” Some individuals have been at the La Casita shelter for more than twenty years. This failure by Exclutia deprives Cristal and the residents of La Casita of their ability to enjoy their rights, thus violating Article 19 of the Convention on the Rights of Persons with Disabilities.

The State will argue that they ratified the treaty in 2008, therefore when Cristal arrived at La Casita the treaty was not binding. However, this is an ongoing situation. Cristal is yet to be allowed to live in her community independently and has not been given the means to do so. Moreover, customary international law protects “all persons without distinction of any kind such as race, colour, sex, language, religion, political or other opinion, national…or other status.”[[76]](#footnote-76) Further, Article 25 (1) of the Universal Declaration of Human Rights (‘UDHR’) identifies disabilities as a criterion that cannot be used to discriminate against.[[77]](#footnote-77) Therefore, persons with physical or mental disabilities are protected under the UDHR and customary international law. Under Article 23 of the UDHR, “everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.”[[78]](#footnote-78) Further, the UDHR “[has] become part of customary international law and bind all States…” [[79]](#footnote-79) Additionally, the International Covenant on Civil and Political Rights (‘ICCPR’) also protects those of “other status” which further implies the custom of non-discrimination of the disabled.[[80]](#footnote-80) Moreover, customary law can be seen with previous state action. Here, the State was already implementing policies, which focused on those who were previously excluded, including those with disabilities.[[81]](#footnote-81) Thus, the State recognized the disable as a protected class.

Before Cristal was sent to La Casita she tried to find a job and was discriminated against because of her disability. [[82]](#footnote-82) Without income, Cristal lost her home and had to live on the streets.[[83]](#footnote-83) Cristal did not want to be in a shelter, but the State eventually sent her to La Casita.[[84]](#footnote-84) The State did not take preventative measure against the discrimination of the disabled, nor did they try to help her find a job to mitigate the situation. Therefore, the State is in violation of Article 19 of the Disability Convention and customary international law.

1. *The disabled have the right to health care on the basis of free and informed consent and have the right to decide freely and responsibly in respect to their family.*

Article 25 of the Disability Convention “requires States Parties to ensure that health care is provided to persons with disabilities on the basis of free and informed consent, on an equal basis with others.”[[85]](#footnote-85) As noted by a commentator, a violation of the right to free and informed consent occurs when either deceptive or misleading information is given to the disabled person.[[86]](#footnote-86) Moreover, not obtaining consent treats the disabled as a “tragedy” or a “matter for management and rehabilitation. [[87]](#footnote-87) As stated above, Cristal was injected with a contraceptive and was not told what it was for. This was a continuous regime, which was given every 3-4 months. Thus, this contraceptive was given even after the ratification of the Disability Convention in 2008. Cristal could not have given her consent if La Casita did not tell her what she was being injected with. Furthermore, they only injected those living in areas of the Shelter which housed individuals with physically and mental disabilities. [[88]](#footnote-88) This demonstrates discrimination against the disabled and is a clear violation of Article 25 of the Disability Convention.

In addition, the State might argue that it was in the best interest of the female residents and of medically necessary. However, this is not a medical necessity and not in the best interest of the female residents if they did not inject all of them. Unlike the case of *Herczegfalvy v. Austria,* in which the European Court ruled that force-feeding and sedating a patient was medically necessary, there was no medical justification for this. [[89]](#footnote-89) Under Article 25 the State is required to obtain consent from the disabled, which it failed to do.[[90]](#footnote-90)

Moreover, the State is also in violation of Article 23 of the Disability Convention. Article 23 states that a disabled person has the right to decide “freely and responsibly” on the amount of children they wish to have and to have access to reproductive information.[[91]](#footnote-91) At the very least, La Casita should have provided Cristal with information pertaining to reproductive issues and concerns. As stated above, La Casita did not tell Cristal about the contraceptives, therefore not only did La Casita fail to educate Cristal, they took away her right to decide completely.

1. **Exclutia violated international law by failing to grant Cristal, an individual with a disability, equal recognition before the law in her declaration of incompetency hearing.**

Under treaty and customary law, states must provide disabled individuals equal recognition before the law.[[92]](#footnote-92) Equal treatment of persons with disabilities is particularly essential in circumstances involving the loss of legal capacity. Article 12(1) of the Disabilities Convention expressly provides that States “recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life.”[[93]](#footnote-93) In this context, the term “legal capacity” not only refers to the capacity to hold rights, but also includes the capacity to act or exercise one’s rights. [[94]](#footnote-94) This concept is demonstrated by Article 12(3) which requires states to provide even the most severely disabled with any and all support needed to exercise legal capacity.[[95]](#footnote-95) Thus Cristal, an individual with a disability, is entitled by law to play an active role in her declaration of incompetency hearing.

1. *Cristal, an individual with a disability, was not awarded equal recognition of laws restricting the right to exercise legal capacity.*

Article 13 requires States to “ensure effective access to justice for persons with disabilities on an equal basis with others.”[[96]](#footnote-96) Further, Article 13 allows disabled individuals the right to direct and indirect participation in all legal proceedings.[[97]](#footnote-97) Though there is little guidance to establish the comprehensive definition of “access to justice,” a more specific meaning can be ascertained by considering the object and purpose of the treaty.[[98]](#footnote-98) Article 1 of the Disabilities Convention establishes that the purpose of the convention is to “promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.”[[99]](#footnote-99) Such purpose makes clear the drafters intentions to mandate access to the mechanisms and processes necessary to obtain enjoyment of human rights.[[100]](#footnote-100)

In this case, not only was Cristal excluded from participating in her own incompetency hearing,[[101]](#footnote-101) there is no evidence that she was even informed of the decision. The presence of Cristal’s doctor and representative, Dr. Lira, was not enough.[[102]](#footnote-102) Given the individuals dual role as an interested party and the main object of the court’s examination, his or her participation is necessary.[[103]](#footnote-103) Though this question remains unanswered by the Inter-American Court, in the case of *Shtukaturov v. Russia*, the European Court held that it was imperative that the applicant be present at his own incompetency hearing “not only to enable him to present his own case, but also to allow the judge to form a personal opinion about the applicant’s mental capacity.” [[104]](#footnote-104) Further, the European Court concluded that the resolution of the judge to decide the case on the basis of documentary evidence, without seeing or hearing the applicant, was unreasonable and in breach of the principle of adversarial proceedings. [[105]](#footnote-105)

Without having opportunity to rule on this issue previously, this Court should look to the European Court for guidance. In this case, Cristal was shut out of her own declaration of incompetency hearing without being provided an opportunity to be heard.[[106]](#footnote-106) The court failed to take even minimal measures to ensure an objective assessment of her mental condition, leaving Cristal with no alternative to challenge the judgment.[[107]](#footnote-107) Without the opportunity to examine Cristal, the judge was unable to form his own opinion about her mental capacity.[[108]](#footnote-108) Moreover, an accurate decision could not be made without Cristal’s participation and testimony and the improper declaration of incompetency violated Cristal’s fundamental right to a legal personality.[[109]](#footnote-109) Moreover, by failing to allow Cristal neither direct nor indirect participation in her incompetency hearing, the State violated Cristal’s rights under Articles 12 and 13 of the Disability Convention.

1. *Exclutia failed to provide appropriate and effective safeguards to prevent abuse in all measures restricting the right to exercise legal capacity.*

Article 12(4) seeks to prevent abuse in accordance with international human rights law by providing for safeguards which “ensure that measures relating to the exercise of legal capacity…are proportional and tailored to the person’s circumstances, apply for the shortest time possible and are subject to regular review by a competent, independent and impartial authority or judicial body.” There exists little debate over the interpretation of Article 12(4). Article 12(4) is a hard obligation.[[110]](#footnote-110) States are mandated to provide safeguards to prevent abuse when disabled individuals are facing the loss of legal capacity.[[111]](#footnote-111) Here, no such safeguards were in place. This was an inherently one-sided ex parte proceeding requested *sua sponte* by La Casita medical personnel.[[112]](#footnote-112) Cristal had no opportunity to participate, and in Court, the doctor testified that Cristal had no contact with any relatives or close friends without conferring with Cristal or contacting her aunt and uncle about the competency hearing.[[113]](#footnote-113) By failing to provide such safeguards, the State abused its authority and violated Cristal’s right to legal protection under the Disability Convention.

1. Exclutia failed to ensure that restrictions on Cristal’s right to exercise legal capacity were proportional and tailored to her individual circumstances.

As set forth in Article 12(4), all restrictions placed on the ability of individuals to exercise legal capacity must be proportional and tailored to the person’s circumstances so as not to restrict the right to exercise legal capacity more so than necessary.[[114]](#footnote-114) Thus, even if the restriction of an individual’s legal capacity is in accordance with the law and aiming to reach a legitimate state goal, it cannot be so far reaching as to limit liberty interests unnecessarily.[[115]](#footnote-115) For example, in *Shtukaturov,* an applicant diagnosed with schizophrenia, and considered very violent, anti-social, and unable to understand his actions, was deemed incapacitated.[[116]](#footnote-116) However, because the lower court failed to specify exactly what actions they found the applicant did not understand, the European Court found the incapacitation to be un-proportional.[[117]](#footnote-117) Further, the European Court discussed that in some cases partial limitation of legal capacity may be preferred to full incapacitation, dependent upon individual circumstances, a concept that was further elaborated on in the case of *Stanev v. Bulgaria*.[[118]](#footnote-118) The applicant in *Stanev* was under partial guardianship wherein he was permitted to live independently with day-to-day access to some of his resources, but was unable to enter into specified legal transactions.[[119]](#footnote-119) The European Court ultimately found that because the applicant was prohibited from challenging his incapacitation he had been effectively deprived of participation in a manner that was not tailored to his individual needs.[[120]](#footnote-120)

Looking to the European Court for guidance, this Court should determine that Cristal should have never been declared fully incompetent.[[121]](#footnote-121) The primary reason for Cristal’s admittance to La Casita was her physical disability, rather than any incidental mental or intellectual disability she may have experienced.[[122]](#footnote-122) However, the medical expert did not provide any testimony relating to Cristal’s permanent diagnosis of blindness.[[123]](#footnote-123) Even considering Cristal’s mental diagnosis, the existence of a mental disorder, even a serious one, should not be enough to justify full incapacitation.[[124]](#footnote-124) In order to justify full incapacitation, the mental disorder must be “‘of a kind or degree’” warranting such measure.”[[125]](#footnote-125) Yet, the record is devoid of evidence suggesting Cristal’s diagnosis of mood disorder and major-depression is “of a kind or degree” warranting full incapacitation. Thus, by failing to take into consideration Cristal’s individual circumstances, the State unnecessarily restricted Cristal’s rights in a way that was not proportional or individually tailored.

1. Exclutia failed to ensure that restrictions on Cristal’s right to exercise legal capacity were applied for the shortest time possible.

So as not to restrict liberty interests unnecessarily, States must ensure limitations on legal capacity are in place only as long as they can be justified.[[126]](#footnote-126) In order to ensure limitations remain justified, status hearings should be held periodically so that the person’s capacity can be restored if the reasons justifying incapacitation dissipate.[[127]](#footnote-127) While this issue has yet to be considered by the Inter-American Court, in the case of *Salontaji-Drobnjak v. Serbia*, the European Court held that where an appeal procedure failed to review the need for guardianship periodically, the applicant’s right of access to justice had been impaired. [[128]](#footnote-128) In this case, at the time Cristal was declared incompetent, Article 41(7) of the Exclutian Civil Code required the judge to set a review period for Cristal’s declaration of incompetency.[[129]](#footnote-129) However, no such review period was set.[[130]](#footnote-130) As a result, the State failed to ensure the restrictions on Cristal’s right to exercise legal capacity were applied for the shortest time possible.

1. Exclutia failed to establish a procedure of review by an impartial authority of all measures restricting the right to exercise legal capacity.

Courts have found growing numbers of violations in systems where persons deemed incompetent have been unable to challenge their own incapacitation because they are under guardianship.[[131]](#footnote-131) Thus, Article 12(4) creates a requirement that subjects all hearings to review by an impartial body.[[132]](#footnote-132)

For example, in *Stanev* the European Court found the applicant’s inability to access the court to challenge the lawfulness of his detention and seek restoration of his legal capacity amounted to a violation of his fundamental right to equal recognition.[[133]](#footnote-133) Additionally, in *Shtukaturov*, the European Court found the presence of hospital staff serving as the applicant’s representative at the competency hearing was not enough to make the proceedings truly adversarial.[[134]](#footnote-134) The representative acted on behalf of the hospital rather than the applicant and remained passive during the hearing, never truly advocating for the applicant’s interests.[[135]](#footnote-135)

In Cristal’s case, the hearing was inherently one-sided. The proceeding was initiated *sua sponte* and requested by medical personnel employed by La Casita.[[136]](#footnote-136) Further, despite Cristal’s lawyers attempts to vacate the declaration of competency, the trial court found she lacked standing on the ground that only Cristal’s guardian may request review and/or revocation of the declaration.[[137]](#footnote-137) However, because Cristal’s guardian, Dr. Lira, was a representative and employee of La Casita, the proceedings were not truly adversarial and Cristal’s interests were not accurately presented or advocated for. Thus, Cristal was left with no ability to challenge her declaration of incompetency in violation of her right to impartial review.

1. *The 2008 Exclutian constitutional amendment conferring constitutional status on the Disability Convention amounted to binding authority on the Republic of Exclutia..*

The State may argue, in accordance with Article 28 of Vienna Convention, the Disability Convention does not apply to events that occurred before the treaty entered into force on August 30, 2008.[[138]](#footnote-138) Thus, Cristal’s inability to challenge her declaration of incompetence which occurred in February of 2008 would not be covered under the convention. However, Exclutia incorporated these treaty provisions into the Exclutia constitution in 2008, binding Exclutia to all requirements set forth therein.[[139]](#footnote-139) So arguably, at the time of Cristal’s challenge, Exclutia was bound by the treaty under the Exclutia constitutional amendment, allowing Cristal to properly allege a violation of the convention.[[140]](#footnote-140)

1. **Exclutia violated international law by failing to develop and enforce a judicial remedy for the improper declaration of incompetency.**

In the past, this Court has held that the right to a judicial remedy “is one of the fundamental pillars not only of the American Convention, but of the very rule of law in a democratic society in the terms of the Convention.”[[141]](#footnote-141) Article 25 requires that states provide all citizens the right to a judicial remedy.[[142]](#footnote-142) Further, Article 8 provides that “[e]very person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal.”[[143]](#footnote-143) While some restrictions on a person’s procedural rights may be justified to ensure the person’s own protection, the protection of others, or the proper administration of justice, the limitations cannot be unduly restrictive.[[144]](#footnote-144) Looking again to a decision of the European Court, in *Shtukaturov*, the only person with standing to bring a guardianship challenge was the guardian who, in this case, opposed discontinuation.[[145]](#footnote-145) The European Court therefore concluded that such a procedural barrier excluded the applicant from the decision-making process entirely, in violation of his right to judicial review.[[146]](#footnote-146)

Here, Cristal could not appeal or collaterally attack the declaration in her specific case, a right she was entitled under Article 8 of the American Convention.[[147]](#footnote-147) Cristal was told she did not have standing in her own case and the only people able to challenge the declaration were the Public Ministry or her appointed representative, Dr. Lira, the person who requested the declaration of incompetency in the first place.[[148]](#footnote-148) Further, the court denied Cristal’s appeal on standing because there was no abuse on the part of her representative, stating that the only way to properly challenge the decision would be to bring an unconstitutionality action.[[149]](#footnote-149) In effect, Cristal was functionally denied the right to appeal and access to the justice system altogether, leaving her with no legal recourse. Thus, Exclutia violated Cristal’s right to a fair hearing by failing to establish a judicial remedy for improper declarations of incompetency.

The State will argue the amendment to Article 41 of the Exclutian Civil Code will create a judicial remedy for improper declarations of incompetence,[[150]](#footnote-150) effectively rendering the applicants argument moot. However, this contention is unpersuasive. Though the amendment to Article 41 would allow any person to file a request for review of competency, it fails to create an objective test to determine what types of evidence and testimony would lead to a finding of incompetency. While this issue remains undecided by the Inter-American Court, the European Court held that in order to protect disabled individuals from arbitrary interference with their private lives, the law must clearly explain what types of behaviors or disabilities will result in full incapacitation.[[151]](#footnote-151) Here, the amendment establishes no legal standard of how severe the reduction of cognitive capacity must be in order to warrant deprivation of legal capacity, leaving disabled individuals, such as Cristal, at risk of arbitrary loss of legal rights.[[152]](#footnote-152)

In addition, the State will attempt to rebut this argument by pointing to the draft amendment to Article 41 which calls for an open proceeding “in which the relatives of the disabled person and any interested party may take part.”[[153]](#footnote-153) However, this amendment fails to take into consideration that the relatives or individual who is the object of the courts examination may never be notified of the hearing, in the event that it is requested *sua sponte* by the Public Ministry or a civil judge. Thus, until Article 41 includes a requirement that the individual who is the subject of the hearing be present, or at least mandates notification, it will continue to deprive disabled individuals, such as Cristal, the right to equal recognition before the law. Moreover, because the amendment has not yet been passed into law, this Court must find that the State of Exclutia unquestionably violated Cristal’s right to a judicial remedy.

**PRAYER FOR RELIEF**

Based on the foregoing submissions, the Petitioner respectfully requests the Court:

1. Order that Exclutia, without delay, adopt the provisional measures necessary to protect Cristal Trovar by discontinuing the unconsented to administration of contraceptives and the use of isolation rooms.
2. Adjudge and declare the conditions at La Casita shelter violate Article 5 of the American Convention on Human Rights.
3. Adjudge and declare that Exclutia violated Articles 19, 25 and 23 of the Convention on the Rights of Persons with Disabilities by discriminating against disabled individuals.
4. Adjudge and declare that Exclutia violated Articles 12 and 13 of the Convention on the Rights of Persons with Disabilities by failing to grant Cristal equal recognition before the law in her declaration of incompetency hearing.
5. Order Exclutia to develop and enforce a judicial remedy for the improper declaration of incompetency.

1. American Convention on Human Rights OAS, 18 July 1978, 1144 U.N.T.S. 123, art. 46(1)(a) [hereinafter “American Convention”]. [↑](#footnote-ref-1)
2. *Case of Godínez Cruz v. Honduras*, 1989 Inter-Am. Ct. H.R. (ser. C) No. 5, at 67, 69 (Jan. 20). [↑](#footnote-ref-2)
3. IACHR, Report No. 26/2008, *Cesar Alberto Mendoza et et al.* (Argentina), at 269 (Mar. 14). [↑](#footnote-ref-3)
4. IACHR, Report No. 55/1997, *Juan Carlos Abella* (Argentina), at 269 (Nov. 18). [↑](#footnote-ref-4)
5. *Case of Juan Humberto Sánchez v. Honduras*, 2003 Inter-Am. Ct. H. R. (ser. C) No. 99, at121 (June 7); *Case of Las Palmeras v. Colombia*, 2001 Inter-Am. Ct. H. R. (ser. C) No. 90, at 58 (Dec. 6). [↑](#footnote-ref-5)
6. *Velásquez Rodriguez Case*, 1988 Inter-Am. Ct. H.R. (ser. C) No. 1, at 88 (July 29). [↑](#footnote-ref-6)
7. Compromis ¶ 32. [↑](#footnote-ref-7)
8. Compromis ¶ 33. [↑](#footnote-ref-8)
9. Compromis ¶ 34. [↑](#footnote-ref-9)
10. Compromis ¶ 34. [↑](#footnote-ref-10)
11. Compromis ¶ 36. [↑](#footnote-ref-11)
12. Compromis ¶ 38. [↑](#footnote-ref-12)
13. Corrections and Clarifications to the Compromis ¶ 16. [↑](#footnote-ref-13)
14. *See* *Velásquez Rodríguez Case* at 64. An “adequate domestic remedy” is defined as one which is “suitable to address the infringement of a legal right.” [↑](#footnote-ref-14)
15. Compromis ¶ 32. [↑](#footnote-ref-15)
16. Compromis ¶ 33. [↑](#footnote-ref-16)
17. American Convention at art. 8(2)(h). [↑](#footnote-ref-17)
18. American Convention at art. 46(1)(b). [↑](#footnote-ref-18)
19. *Velásquez Rodriguez Case* at 88. [↑](#footnote-ref-19)
20. Compromis ¶ 34. [↑](#footnote-ref-20)
21. Compromis ¶ 35. [↑](#footnote-ref-21)
22. Compromis ¶ 33, 35. [↑](#footnote-ref-22)
23. Compromis ¶ 39. [↑](#footnote-ref-23)
24. American Convention at 46(1)(b). [↑](#footnote-ref-24)
25. American Convention at 46(2)(b). [↑](#footnote-ref-25)
26. IACHR, Report No. 43/1998, *Haniff Hilaire* (Trinidad and Tobago), at 16 (Sept. 25). [↑](#footnote-ref-26)
27. Compromis ¶ 35. [↑](#footnote-ref-27)
28. Rules of Procedure of the Inter-American Commission on Human Rights, 25 Nov. 2000, OAS, art. 25(9). [↑](#footnote-ref-28)
29. American Convention at art. 63(2). [↑](#footnote-ref-29)
30. *Matter of Alvarado Reyes et al.*, 2011Order of the Inter-Am. Ct. H.R., Provisional Measures, at 16 (April 1). [↑](#footnote-ref-30)
31. Laurence Burgorgue-Larsen, Amaya Ubeda de Torres, and Rosalind Greenstein, *The Inter-American Court of Human Rights: Case Law and Commentary*, Oxford University Press (2011). [↑](#footnote-ref-31)
32. *Matter of Monagas Judicial Confinement Center*, 2009 Order of the Inter-Am. Ct. H.R., Provisional Measures, at 2 (Nov. 24). [↑](#footnote-ref-32)
33. *Matter of Mery Naranjo et al.,* 2011 Order of the Inter-Am. Ct. H.R., Provisional Measures, at 11 (Mar. 4). [↑](#footnote-ref-33)
34. Compromis ¶ 28. [↑](#footnote-ref-34)
35. *Matter of Alvarado Reyes et al.* at 16. [↑](#footnote-ref-35)
36. *Matter of Monagas Judicial Confinement Center* at 2. [↑](#footnote-ref-36)
37. Compromis ¶ 24, 40. [↑](#footnote-ref-37)
38. Compromis ¶ 27, 28. [↑](#footnote-ref-38)
39. Burgorgue-Larsen et al., *The Inter-American Court of Human Rights: Case Law and Commentary* at 200-209. [↑](#footnote-ref-39)
40. American Convention at art. 5(2). [↑](#footnote-ref-40)
41. Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, 9 Dec. 1988, GA Res.UN Doc. 43/173, princ. 1, 6. [↑](#footnote-ref-41)
42. .*Víctor Rosario Congo v. Ecuador*, 1999 Inter-Am. Ct. H.R., Annual Report No. 63/99, at 53 (Apr. 13). [↑](#footnote-ref-42)
43. *Id.* ¶ 54. [↑](#footnote-ref-43)
44. *Id.* ¶ 56. [↑](#footnote-ref-44)
45. *Id.* ¶ 58. [↑](#footnote-ref-45)
46. *Herczegfalvy v. Austria*, 1992 Eur. Ct. H.R., No. 10533/83, at 82 (Sept. 24). [↑](#footnote-ref-46)
47. Compromis ¶ 40. [↑](#footnote-ref-47)
48. Compromis ¶ 6. [↑](#footnote-ref-48)
49. *Price v. The United Kingdom*, 2001 Eur. Ct. H.R., No. 33394/96, at 8, 9 (July 10). [↑](#footnote-ref-49)
50. *Id*. at 30. [↑](#footnote-ref-50)
51. *Victor Rosario Congo v. Ecuador* at 57. [↑](#footnote-ref-51)
52. *Id*. at 57. [↑](#footnote-ref-52)
53. Compromis ¶ 17. [↑](#footnote-ref-53)
54. *Victor Rosario Congo v. Ecuador* at 48. [↑](#footnote-ref-54)
55. *Id.* at 58. [↑](#footnote-ref-55)
56. Diego Rodriguez-Pinzon & Claudia Martin, *The Prohibition of Torture and Ill-treatment in the Inter-American Human Rights System*, 2 Torture and Cruel, Inhuman or Degrading Treatment or Punishment 103 at 108 (2006). [↑](#footnote-ref-56)
57. Committee on the Rights of the Child, 18 Apr. 2011, UN Doc. CRC/C/GC/13 A/66/268, paras. 67-68, 78. [↑](#footnote-ref-57)
58. *Id.* at 63; *Bures v. Czech Republic*, 2012 Eur. Ct. H.R., No. 37679/08, at 132 (Oct. 12). [↑](#footnote-ref-58)
59. Rodriguez-Pinzon & Martin, *The Prohibition of Torture and Ill-treatment in the Inter-American Human Rights System* at 108. [↑](#footnote-ref-59)
60. Compromis ¶ 19, 40. [↑](#footnote-ref-60)
61. Compromis ¶ 29. [↑](#footnote-ref-61)
62. Rodriguez-Pinzon & Martin, *The Prohibition of Torture and Ill-treatment in the Inter-American Human Rights System* at 108. [↑](#footnote-ref-62)
63. Compromis ¶ 40. [↑](#footnote-ref-63)
64. Compromis ¶ 24. [↑](#footnote-ref-64)
65. *See* Convention on the Rights of Persons with Disabilities, 24 Jan. 2007, GA Res. U.N. Doc. 61/106, art. 13 [hereinafter “Disability Convention”]; International Covenant on Civil and Political Rights, 16 Dec. 1966, GA Res. 2200A, art. 7, 17 [hereinafter “ICCPR”]; International Covenant on Economic, Social and Cultural Rights, 16 Dec. 1966, GA Res. 2200A, art. 10; Convention on the Elimination of All Forms of Discrimination Against Women, 18 Dec. 1979, GA Res. UN Doc. 34/180, art. 16. [↑](#footnote-ref-65)
66. *V.C. v. Slovakia*, 2011 Eur. Ct. H.R., No. 18968/07, at 160 (Nov. 8); para. 160; Report of the Special Rapporteur on Violence against Women, its Causes and Consequences, 1 Nov. 1999, UN.Doc E/CN.4/1999/68, art. 4 [↑](#footnote-ref-66)
67. Centre for Reproductive Rights, European Disability Forum, InterRights, International Disability Alliance and the Mental Disability Advocacy Centre, *Written Comments Submitted in the European Court of Human Rights: Joelle Gauer and Others [Applicant] Against France [Respondent]*, 16 August 2011. [↑](#footnote-ref-67)
68. Human Rights Watch, *Ending Forced Sterilization of Women and Girls with Disabilities*, accessed Mar. 19, 2014 (accessible at http://www.hrw.org/). [↑](#footnote-ref-68)
69. *Id.* [↑](#footnote-ref-69)
70. *Id.* [↑](#footnote-ref-70)
71. *Id.* [↑](#footnote-ref-71)
72. Compromis ¶ 26. [↑](#footnote-ref-72)
73. Compromis ¶ 26 [↑](#footnote-ref-73)
74. Disability Convention at art. 19. [↑](#footnote-ref-74)
75. The European Coalition for Community Living, *Focus on Article 19 of the UNC Convention on the Rights of Persons with Disabilities*, Focus Report of the European Coalition, 21 (2009). [↑](#footnote-ref-75)
76. Universal Declaration of Human Rights, 10 Dec. 1948, G.A. Res. 217, UN Doc. A/810, art. 2(1) [hereinafter “UDHR”]; ICCPR at art. 2(1). [↑](#footnote-ref-76)
77. UDHR at art. 25 (1). [↑](#footnote-ref-77)
78. *Id.* at 23. [↑](#footnote-ref-78)
79. United Nations - Enable, *Expert Group Meeting on International Norms and Standards Relating to Disability*, accessed Mar. 19, 2014 (accessible at http://www.un.org/esa/socdev/enable/disberk3.htm.) [↑](#footnote-ref-79)
80. ICCPR at art. 2(1). [↑](#footnote-ref-80)
81. Compromis ¶ 5. [↑](#footnote-ref-81)
82. Compromis ¶ 9. [↑](#footnote-ref-82)
83. Compromis ¶ 12. [↑](#footnote-ref-83)
84. Compromis ¶ 5. [↑](#footnote-ref-84)
85. Tina Minkowitz, *The United Nations Convention of the Rights of Persons with Disabilities and the Right to be Free from Nonconsensual Psychiatric Interventions*, 34 Syracuse J. Int’l L. & Com.405, 408 (2007). [↑](#footnote-ref-85)
86. *Id.* [↑](#footnote-ref-86)
87. Human Rights Watch, *Ending Forced Sterilization of Women and Girls with Disabilities*, accessed Mar. X, 2014 (accessible at http://www.hrw.org/). [↑](#footnote-ref-87)
88. Compromis ¶ 26. [↑](#footnote-ref-88)
89. *Herczegfalvy v. Austria* at 27, 83. [↑](#footnote-ref-89)
90. Disability Convention at art. 25(d). [↑](#footnote-ref-90)
91. *Id.* at 23(b). [↑](#footnote-ref-91)
92. *Id.* at 12; American Convention at art. 3. [↑](#footnote-ref-92)
93. Disability Convention at art. 12. [↑](#footnote-ref-93)
94. Robert Dinerstein, *Implementing Legal Capacity Under Article 12 of the UN Convention on the Rights of Persons with Disabilities: The Difficult Road from Guardianship to Supported Decision Making*, 19 Human Rights Brief 8 at 9 (2012). [↑](#footnote-ref-94)
95. *Id.* [↑](#footnote-ref-95)
96. Disability Convention at art. 13. [↑](#footnote-ref-96)
97. *Id.* [↑](#footnote-ref-97)
98. Vienna Convention on the Law of Treaties, 1969, 1155 U.N.T.S. 33 at art. 31. “A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in light of its object and purpose.” [↑](#footnote-ref-98)
99. Disability Convention at art 1. [↑](#footnote-ref-99)
100. Frances Gibson, *Article 13 of the Convention on Rights of Persons with Disabilities* (2009) at 4, accessed Mar. 22, 2014 (accessible at http://www.academia.edu/207906/Article\_13\_of\_the\_Convention\_on\_Rights\_of\_Persons\_with\_Disabilities\_-\_A\_Right\_to\_Legal\_Aid). [↑](#footnote-ref-100)
101. Compromis ¶ 22. [↑](#footnote-ref-101)
102. *Shtukaturov v. Russia*, 2010 Eur. Ct. H.R, No. 44009/05, at 74 (Mar. 4). The presence of a hospital worker who also served as the applicant’s representative at the competency hearing did not make the proceedings truly adversarial. The representative did not serve a true advocate as he acted on behalf of the hospital, rather than the applicant, and remained passive during the hearing. [↑](#footnote-ref-102)
103. Commissioner of HR, W*ho Gets to Decide?* (2012) at Sect. 4.2.3, accessed Mar. 20, 2014 (available at https://wcd.coe.int/ViewDoc.jsp?id=1908555#P393\_55975). [↑](#footnote-ref-103)
104. *Shtukaturov v. Russia* at 72; *Salontaji-Drobnjak v. Serbia* at127. [↑](#footnote-ref-104)
105. *Shtukaturov v. Russia* at 73. [↑](#footnote-ref-105)
106. *See id.* at 63; Compromis ¶ 22. [↑](#footnote-ref-106)
107. *See Shtukaturov v. Russia* at 63; Compromis ¶ 32-33. [↑](#footnote-ref-107)
108. *See Shtukaturov v. Russia* at 73. [↑](#footnote-ref-108)
109. American Convention at art. 3, 7. [↑](#footnote-ref-109)
110. *See* Jean Allain, *Treaty Interpretation and the United Nations Convention on the Rights of Persons with Disabilities*, Centre on Human Rights for People with Disabilities, 1 at 10 (2009). The use of the word “shall” in treaty articles, absent any modifying discretionary language, creates hard treaty terms for states to follow. [↑](#footnote-ref-110)
111. *Id.* at 19. [↑](#footnote-ref-111)
112. Compromis ¶ 22. [↑](#footnote-ref-112)
113. Compromis ¶22. [↑](#footnote-ref-113)
114. Disability Convention at art 12. [↑](#footnote-ref-114)
115. *Salontaji-Drobnjak v. Serbia*, 2009 Eur. Ct. H.R., No. 36500/06, at 144 (Oct. 13). [↑](#footnote-ref-115)
116. *Shtukaturov v. Russia* at 93. [↑](#footnote-ref-116)
117. *Id..* [↑](#footnote-ref-117)
118. *See id.* at 48. [↑](#footnote-ref-118)
119. *Stanev v. Bulgaria*, 2012 Eur. Ct. H.R., No. 36760/06, at 9-10 (Jan. 17). [↑](#footnote-ref-119)
120. *Id.* at 241. [↑](#footnote-ref-120)
121. *See Stanev v. Bulgaria* at 241. [↑](#footnote-ref-121)
122. Compromis ¶ 7, 9, 11. [↑](#footnote-ref-122)
123. Compromis ¶ 22. [↑](#footnote-ref-123)
124. *Shtukaturov v. Russia* at 94. [↑](#footnote-ref-124)
125. *Id.* [↑](#footnote-ref-125)
126. Disability Convention at art. 12. [↑](#footnote-ref-126)
127. *Shtukaturov v. Russia* at 103. [↑](#footnote-ref-127)
128. *Salontaji-Drobnjak v. Serbia* at 134-135. [↑](#footnote-ref-128)
129. Compromis ¶ 21. [↑](#footnote-ref-129)
130. Compromis ¶ 21. [↑](#footnote-ref-130)
131. Commissioner of HR, W*ho Gets to Decide?* (2012) at Sect. 4.2.3, accessed Mar. 19, 2014 (available at https://wcd.coe.int/ViewDoc.jsp?id=1908555#P393\_55975). [↑](#footnote-ref-131)
132. Disability Convention at art. 12. [↑](#footnote-ref-132)
133. *Stanev v. Bulgaria* at 177. [↑](#footnote-ref-133)
134. *Shtukaturov v. Russia* at 74. [↑](#footnote-ref-134)
135. *Id.* [↑](#footnote-ref-135)
136. Compromis ¶ 22. [↑](#footnote-ref-136)
137. Compromis ¶ 32. [↑](#footnote-ref-137)
138. Compromis ¶ 6. [↑](#footnote-ref-138)
139. Compromis ¶ 6. [↑](#footnote-ref-139)
140. Compromis ¶ 6. [↑](#footnote-ref-140)
141. *Case of Loayza-Tamayo v. Peru* at 169. [↑](#footnote-ref-141)
142. American Convention at art. 25. [↑](#footnote-ref-142)
143. *Id.* at 8. [↑](#footnote-ref-143)
144. *See* *Salontaji-Drobnjak v. Serbia* at 144. [↑](#footnote-ref-144)
145. *Shtukaturov v. Russia* at 90-91. [↑](#footnote-ref-145)
146. *Id.* [↑](#footnote-ref-146)
147. Compromis ¶ 32-33. [↑](#footnote-ref-147)
148. Compromis ¶ 32. [↑](#footnote-ref-148)
149. Compromis ¶ 33. [↑](#footnote-ref-149)
150. Compromis ¶ 37. [↑](#footnote-ref-150)
151. *Shtukaturov v. Russia* at 79. [↑](#footnote-ref-151)
152. *See id.* [↑](#footnote-ref-152)
153. Compromis ¶ 37. [↑](#footnote-ref-153)