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## Chinchilla Sandoval v. Guatemala

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# Chinchilla Sandoval v. Guatemala

## ABSTRACT\*

*This case is about a female inmate in a Guatemalan detention center who did not receive adequate medical care for a series of ailments and disabilities that affected her, resulting in her death. The Court found Guatemala in violation of the American Convention for the failure to protect her life and for the violation of her right to physical, mental and moral integrity, as well as for violating her right to judicial protection. However, the Court did not address the question of the right to health of the victim.*

## I. FACTS

### A. Chronology of Events

**May 13, 1995:** Police arrest Ms. María Inés Chinchilla Sandoval for murder and aggravated larceny.<sup>1</sup> Soon after, she is sentenced to thirty years in prison at the Female Orientation Center (*Centro de Orientación Femenino*; hereinafter “the COF”) in Fraijanes, Guatemala.<sup>2</sup>

During her stay at the COF, Ms. Chinchilla Sandoval works at the *maquila* (factory), creating crafts and paintings and selling coffee and tea.<sup>3</sup> She is scheduled for release from the COF on May 29, 2025.<sup>4</sup> She has two adult children from her first marriage and two minor children from her second marriage.<sup>5</sup>

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\* Kiana Farzad, Author; Shushan Khorozyan, Editor; Erin Gonzalez, Chief IACHR Editor; Cesare Romano, Faculty Advisor

1. Chinchilla Sandoval v. Guatemala, Report on Merits, Report No. 7/14, Inter-Am. Comm’n H.R., Case No. 12.739, ¶ 15 (Apr. 2, 2014).

2. *Id.*

3. *Id.* ¶ 17.

4. *Id.* ¶ 15.

5. *Id.* ¶ 16.

During her detention, Ms. Chinchilla Sandoval develops a series of medical conditions, including diabetes mellitus, a condition requiring treatment and a specialized diet.

**Between March 1997 and May 2004:** Ms. Chinchilla Sandoval requests the Judge of the Second Criminal Enforcement Court (hereinafter “the Judge”) dozens of permits to go and receive medical treatment at the San Juan de Dios Hospital (*Hospital Nacional San Juan de Dios*; hereinafter “the HSJD”).<sup>6</sup> Most requests are granted but some are denied, especially after, on January 6, 1999, the Director of the COF reports items found in a bag belonging to Ms. Chinchilla Sandoval,<sup>7</sup> that suggest she might plan to escape during one of her hospital visits.<sup>8</sup>

**Between May 2001 and August 2002:** Ms. Chinchilla Sandoval is taken to the HSJD in emergency and several of her toes are amputated because of her diabetes.

**June 9, 2002:** Ms. Chinchilla Sandoval is diagnosed with “diabetic retinopathy,” for which the medical examiner recommends she undergo surgery at Roosevelt Hospital.<sup>9</sup>

**May 4, 2003:** Ms. Chinchilla Sandoval is taken to the HSJD in an emergency after she falls and breaks her hip.<sup>10</sup> She undergoes a “hip osteosynthesis” procedure.<sup>11</sup>

**October 9, 2003:** Ms. Chinchilla Sandoval refuses to allow a nurse to enter her cell and administer a dose of insulin.<sup>12</sup> The nurse indicates that she “gave her the syringe with insulin from outside so that she would be given the medication.”<sup>13</sup>

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6. *Id.* ¶ 19.

7. Chinchilla Sandoval v. Guatemala, Report on Merits, ¶ 30.

8. *Id.*

9. *Id.*

10. *Id.*

11. *Id.* ¶ 52.

12. *Id.* ¶ 57.

13. Chinchilla Sandoval v. Guatemala, Report on Merits, ¶ 57.

**April 9, 2004:** A COF nurse reports that it would be impossible for the COF “to provide the special care” this inmate needs “because we have to tend to the other 146 inmates.”<sup>14</sup>

**Between 2002 and 2004:** Ms. Chinchilla Sandoval files four incidental motions for early release due to her medical condition.<sup>15</sup> They are all denied.<sup>16</sup>

**May 25, 2004:** At approximately 6:00 a.m., inmates at the COF witness Ms. Chinchilla Sandoval fall out of her wheelchair.<sup>17</sup>

At approximately 9:20 a.m., the on-duty nurse is informed of the fall.<sup>18</sup> The nurse examines Ms. Chinchilla Sandoval and administers a tablet of captopril and two tablets of diclofenac.<sup>19</sup>

At around 11:00 a.m., Ms. Claudia Fedora Quintana, an inmate at the COF, witnesses Ms. Chinchilla Sandoval turn blue.<sup>20</sup> She calls for help.<sup>21</sup> The nurse administers CPR, but there is no response.<sup>22</sup> The nurse records Ms. Chinchilla Sandoval’s time of death as 11:25 a.m.<sup>23</sup>

The Prosecution Unit for Crimes against Life and the Person is informed of the death.<sup>24</sup> An autopsy occurs, and the report states that the cause of death is “pulmonary edema and hemorrhagic pancreatitis.”<sup>25</sup>

Ms. Chinchilla Sandoval is 51 years old when she died at the COF.<sup>26</sup> Her elder daughters take in the minor children, and their maternal grandmother helps with some of their living expenses.<sup>27</sup>

**June 21, 2004:** The Public Prosecution Service Chemical Analysis Department provides the prosecutor with test results after they examined “samples of blood, liver, and gastric contents” from Ms.

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14. *Id.*

15. *Id.* ¶ 67.

16. *Id.*

17. *Id.*

18. *Id.* ¶ 112.

19. *Chinchilla Sandoval v. Guatemala*, Report on Merits, ¶ 112.

20. *Id.* ¶ 113.

21. *Id.*

22. *Id.* ¶ 114.

23. *Id.*

24. *Id.* ¶ 118.

25. *Chinchilla Sandoval v. Guatemala*, Report on Merits, ¶ 118.

26. *Chinchilla Sandoval v. Guatemala*, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 312, ¶ 40 (Feb. 29, 2015) (Available only in Spanish).

27. *Id.* ¶ 41.

Chinchilla Sandoval's body.<sup>28</sup> The results indicate that "there was no presence of ethyl alcohol, methyl alcohol, isopropane, or acetone."<sup>29</sup> Thus, it requests "that the case be dismissed and archived."<sup>30</sup>

*B. Other Relevant Facts*

[NONE]

II. PROCEDURAL HISTORY

*A. Before the Commission*

**March 23, 2005:** The Institute for Comparative Studies' Petition in Criminal Sciences (*Instituto de Estudios Comparados en Ciencias Penales*), through its legal representative, Mr. Alejandro Rodríguez Barrillas, files a petition with the Commission.<sup>31</sup> The Commission registered the petition under case number 12.739.<sup>32</sup>

**November 13, 2009:** The Commission issues a report declaring the petition admissible.<sup>33</sup>

**February 26, 2010:** The petitioner notifies the Commission of the interest to include Ms. Chinchilla Sandoval's daughters, Ms. Marta María Gantenbein Chinchilla and Ms. Luz de María Juárez Chinchilla, as victims in the case.<sup>34</sup>

**April 2, 2014:** The Commission issues its Report on the Merits.<sup>35</sup> The Commission finds that the State violated Articles 4(1) (Prohibition of Arbitrary Deprivation of Life) and 5(1) (Right to Physical, Mental, and Moral Integrity) in relation to Article 1(1) (Obligation of Non-Discrimination) of the American Convention to the detriment of Ms. Chinchilla Sandoval,<sup>36</sup> and Articles 8(1) (Right to a Hearing Within

28. Chinchilla Sandoval v. Guatemala, Report on Merits, ¶ 119.

29. *Id.*

30. *Id.*

31. *Id.* ¶ 1.

32. *See generally id.*

33. Chinchilla Sandoval v. Guatemala, Admissibility Report, Report No. 136/09, Inter-Am. Comm'n H.R., Case No. 12.739, (Nov. 13, 2009).

34. *Id.* ¶ 5.

35. *Id.*

36. *Id.* ¶ 196.

Reasonable Time by a Competent and Independent Tribunal) and 25 (Right to Judicial Protection) to the detriment of her next of kin.<sup>37</sup>

The Commission recommends that the State: (1) provides full compensation for the human rights violations suffered; (2) completes an impartial and adequate investigation; and (3) adopts measures to guarantee non-repetition.<sup>38</sup>

### *B. Before the Court*

**August 19, 2014:** The Commission submits the case to the Court, after the State failed to adopt its recommendations.<sup>39</sup>

#### 1. Violations Alleged by Commission<sup>40</sup>

To the detriment of Ms. Chinchilla Sandoval:

Article 4(1) (Prohibition of Arbitrary Deprivation of Life)

Article 5(1) (Right to Physical, Mental, and Moral Integrity)

*all in relation to:*

Article 1(1) (Obligation of Non-Discrimination) of the American Convention.

To the detriment of Ms. Chinchilla Sandoval and her next of kin:<sup>41</sup>

Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal)

Article 25 (Right to Judicial Protection)

*all in relation to:*

Article 1(1) (Obligation of Non-Discrimination)

Article 2 (Obligation to Give Domestic Legal Effect to Rights) of the American Convention.

#### 2. Violations Alleged by Representatives of the Victims<sup>42</sup>

Same violations alleged by the Commission.

37. *Id.*

38. *Id.*

39. Chinchilla Sandoval v. Guatemala, Preliminary Objections, Merits, Reparations and Costs, ¶ 3.

40. *Id.* ¶ 2.

41. The Commission names the following family members as victims: Ms. Marta María Gantenbein Chinchilla and Ms. Luz de María Juárez Chinchilla. *Id.*

42. Mr. Alejandro Rodríguez Barrillas serves as the victim's legal representative. *Id.*

**January 12, 2015:** The State submits its brief filing a preliminary objection on the prior exhaustion of domestic remedies.<sup>43</sup>

**2015-2016:** The Court received amicus curiae briefs from the following individuals and organizations: (1) the Criminal Policy Research Center of the Externado de Colombia University; (2) professors and students of the New York University School of Law Clinic on Policy Advocacy in Latin America; (3) professors and students of the Legal Clinic in Disability of the Pontifical Catholic University of Peru; (4) professors and students of the Legal Clinic Program of Action for Equality and Social Inclusion (PAIIS) of the Faculty of Law of the Universidad de los Andes of Colombia; (5) the law firm ELEMENTA Consultoría en Derechos; and (6) the Harvard Law School Project on Disability and the Center for Justice and International Law (CEJIL).<sup>44</sup>

**February 29, 2016:** The Court unanimously dismissed the preliminary objection of the State on the exhaustion of domestic remedies<sup>45</sup> because the arguments raised by the State were either untimely or unsuitable.<sup>46</sup> In accordance with the American Convention, the State must specify any domestic remedies pending exhaustion, namely those that are “available,” “adequate, suitable and effective,” and it must be raised at the Commission’s admissibility procedure stage.<sup>47</sup> Moreover, the arguments raised before the Commission must be analogous to those later submitted to the Court.<sup>48</sup>

Before the Commission, the State argues that Ms. Chinchilla Sandoval’s family members “had not tried the complaint within the criminal proceedings,” nor did they exhaust the “ordinary civil claim damages.”<sup>49</sup> Later before the Court, the State argues that Ms. Chinchilla Sandoval’s family members did not exhaust the “ordinary civil claim damages,” or the “summary judgment of civil liability of civil servants

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43. *Id.* ¶ 7.

44. *Id.* ¶ 11.

45. Chinchilla Sandoval v. Guatemala, Preliminary Objections, Merits, Reparations and Costs, “Operative Paragraphs,” ¶ 1.

46. *Id.* ¶¶ 20-27.

47. *Id.* ¶ 21.

48. *Id.*

49. *Id.* ¶ 22.

and public employees.”<sup>50</sup> Hence, the State does not maintain, and consequently waives, the allegation regarding a criminal proceeding.<sup>51</sup>

As a result, the Court only addresses the State’s argument regarding the “ordinary civil claim damages.”<sup>52</sup> The Court concluded that it is unnecessary for Ms. Chinchilla Sandoval or her family members to exhaust this remedy.<sup>53</sup> For these reasons, the Court dismissed the State’s preliminary objection.<sup>54</sup>

### III. MERITS

#### *A. Composition of the Court*<sup>55</sup>

Roberto F. Caldas, President  
Eduardo Ferrer MacGregor Poisot, Vice President  
Manuel E. Ventura Robles, Judge  
Alberto Pérez Pérez, Judge  
Eduardo Vio Grossi, Judge  
Humberto Antonio Sierra Porto, Judge

Pablo Saavedra Alessandri, Secretary  
Emilia Segares Rodríguez, Deputy Secretary

#### *B. Decision on the Merits*

**February 29, 2016:** The Court issues its Judgment on Preliminary Objections, Merits, Reparations, and Costs.<sup>56</sup>

The Court found unanimously that the State had violated:

Article 4(1) (Prohibition of Arbitrary Deprivation of Life) and Article 5(1) (Right to Physical, Mental, and Moral Integrity), in relation

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50. *Id.* ¶ 24.

51. *Chinchilla Sandoval v. Guatemala*, Preliminary Objections, Merits, Reparations and Costs, ¶ 24.

52. *Id.* ¶ 25.

53. *Id.*

54. *Id.* ¶ 27.

55. *See generally id.* Judge García Sayan did not participate in this judgment for reasons of *force majeure*. *Id.* n\*.

56. *Id.*

to Article 1(1) (Obligation of Non-Discrimination) of the Convention, to the detriment of Ms. Chinchilla Sandoval,<sup>57</sup> because:

*The State failed to provide Ms. Chinchilla Sandoval with adequate care and medical treatment for her disability and related conditions while she was deprived of her liberty at COF.<sup>58</sup> Article 4(1) (Prohibition of Arbitrary Deprivation of Life) provides everyone with the right to respect to his or her life, and that no one can be arbitrarily deprived of life.<sup>59</sup> The right to life implies a separate, but consistent obligation on the State to guarantee detainees the rights established in Article 5(1) (Right to Physical, Mental, and Moral Integrity).<sup>60</sup> Thus, “every person deprived of liberty has the right to live in conditions of detention compatible with their personal dignity.”<sup>61</sup> The State’s obligation to guarantee personal integrity increases when an inmate’s health has deteriorated progressively.<sup>62</sup>*

*In analyzing whether the State violated Ms. Chinchilla Sandoval’s right to life, the Court addressed these controversies, in the following order: (1) the State’s duty to provide adequate care and medical treatment to Ms. Chinchilla Sandoval for her diabetes; (2) the State’s response to Ms. Chinchilla Sandoval’s disabled condition; and (3) the COF authorities’ response effort on the day of Ms. Chinchilla Sandoval’s death.<sup>63</sup>*

*1. The State’s duty to provide Ms. Chinchilla Sandoval adequate treatment<sup>64</sup>*

*The Court noted, “persons deprived of their liberty who suffer serious illness should not remain in prisons,” except when a State can ensure that it can provide them with “adequate specialized care and treatment,” and an “adequate food and diet” regimen.<sup>65</sup> Ms. Chinchilla*

57. Chinchilla Sandoval v. Guatemala, Preliminary Objections, Merits, Reparations and Costs, “Operative Paragraphs,” ¶ 2.

58. *Id.* ¶ 224.

59. *Id.* ¶ 166.

60. *Id.* ¶ 171.

61. *Id.* ¶ 169.

62. *Id.* ¶ 184.

63. Chinchilla Sandoval v. Guatemala, Preliminary Objections, Merits, Reparations and Costs, ¶ 165.

64. *Id.* ¶¶ 183-200.

65. *Id.* ¶ 184.

*Sandoval suffered from diabetes mellitus, a condition requiring treatment and a specialized diet.*<sup>66</sup>

*Regarding Ms. Chinchilla Sandoval's diet, the State failed to provide the Court with evidence that it regularly provided her with adequate food.*<sup>67</sup> *Likewise, the Court found that Ms. Chinchilla Sandoval had to prepare her own food because the COF provided meals containing sugars and fats.*<sup>68</sup>

*The State argued that the COF doctors anticipated the treatment required for Ms. Chinchilla Sandoval's diabetes.*<sup>69</sup> *However, the Court found that Ms. Chinchilla Sandoval's hospital appointments "did not have the necessary agility" to provide effective treatment, namely in a case of emergency.*<sup>70</sup> *Also, Ms. Chinchilla Sandoval was not provided with periodic medical supervision to treat her disabilities, nor was she offered any rehabilitation to prevent the aggravation of her health.*<sup>71</sup> *Thus, Ms. Chinchilla Sandoval's conditions worsened under the system of health services offered at the COF.*<sup>72</sup>

## *2. The State's Response to Ms. Chinchilla Sandoval's Disability*<sup>73</sup>

*Article 25 of the Convention on the Rights of Persons with Disabilities (CRPD) specifies that those living with disabilities "have the right to the highest possible health care without discrimination" because of their disability.*<sup>74</sup> *Further, Article 26 of the CRPD obliges States to harness "effective and relevant measures to enable rehabilitation," to allow those with disabilities to "achieve and maintain the maximum independence, physical, mental, social, and vocational capacity, and inclusion and participation in all aspects of life."*<sup>75</sup>

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66. *Id.* ¶ 186.

67. *Id.* ¶ 194.

68. *Id.*

69. Chinchilla Sandoval v. Guatemala, Preliminary Objections, Merits, Reparations and Costs, ¶ 191.

70. *Id.* ¶ 197.

71. *Id.*

72. *Id.*

73. *Id.* ¶¶ 201-219.

74. *Id.* ¶ 210.

75. Chinchilla Sandoval v. Guatemala, Preliminary Objections, Merits, Reparations and Costs, ¶ 210.

Here, the Court considered the State's obligation to ensure that reasonable adjustments were made because of Ms. Chinchilla Sandoval's disability.<sup>76</sup> In light of the facts, the Court found that the adjustments the State made were not sufficient to alleviate her condition.<sup>77</sup> Specifically, the State should have provided Ms. Chinchilla Sandoval with reasonable access to a rehabilitation facility as her health deteriorated.<sup>78</sup>

### 3. The Response Effort on the Day of Ms. Chinchilla Sandoval's Death<sup>79</sup>

Considering Ms. Chinchilla Sandoval's overall health, the Court expressed that the State had an obligation to ensure her "right[s] to personal integrity and life" during an emergency situation.<sup>80</sup> After her accident, the COF doctor did not see Ms. Chinchilla Sandoval; rather, a COF nurse administered a pain reliever and hypertension medication.<sup>81</sup> However, the nurse did not take a glucose test, which would have showed that Ms. Chinchilla Sandoval's state of health was an emergency.<sup>82</sup> The nurse appeared hours later, but it was too late.<sup>83</sup> The Court therefore held that Ms. Chinchilla Sandoval's death "occurred without any kind of attention or supervisions" thus violating her right to life.<sup>84</sup>

Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) and Article 25 (Right to Judicial Protection), in relation to Article 1(1) (Obligation of Non-Discrimination) of the Convention, to the detriment of Ms. Chinchilla Sandoval,<sup>85</sup> because:

*The State failed to comply with its obligation to guarantee Ms. Chinchilla Sandoval the right to judicial guarantees and judicial protection.*<sup>86</sup> Pursuant to Article 8(1) (Right to a Hearing Within

76. *Id.* ¶ 215.

77. *Id.* ¶ 217.

78. *Id.* ¶ 218.

79. *Id.* ¶¶ 220-223.

80. *Id.* ¶ 221.

81. Chinchilla Sandoval v. Guatemala, Preliminary Objections, Merits, Reparations and Costs, ¶ 222.

82. *Id.*

83. *Id.*

84. *Id.* ¶¶ 222-223.

85. *Id.* "Operative Paragraphs" ¶ 3.

86. *Id.* ¶¶ 222-223.

*Reasonable Time by a Competent and Independent Tribunal), everyone has the right “to be heard, with due and within a reasonable time” before a competent and independent tribunal, previously established by law, “in the substantiation of any criminal charge made against him or for the determination of its rights and obligations of a civil, labor, fiscal or any other nature.”<sup>87</sup> Likewise, under Article 25 (Right to Judicial Protection), everyone has the right “to a simple and prompt remedy or any other effective remedy” before a competent and independent tribunal.<sup>88</sup>*

*The obligation towards victims of human rights violations under Article 25 (Right to Judicial Protection) must be in accordance with the judicial guarantee of due process under Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal).<sup>89</sup> To substantiate these violations, the Court reviewed judicial proceedings from Ms. Chinchilla Sandoval’s various court hearings, namely those that ruled against Ms. Chinchilla Sandoval’s health and disability situation.<sup>90</sup>*

*The Court took interest in the following: (1) Ms. Chinchilla Sandoval’s requests to temporarily leave the COF in order to receive medical attention at the HSJD,<sup>91</sup> and (2) Ms. Chinchilla Sandoval’s incidental motions for early release.<sup>92</sup>*

*Regarding the first grouping, the Court found that the judicial authorization of granting medical appointments did not violate Articles 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) or 25 (Right to Judicial Protection).<sup>93</sup>*

*On the other hand, the judicial actions regarding Ms. Chinchilla Sandoval’s incidental motions for early release violated Articles 8(1) (Right to a Hearing Within Reasonable Time by a Competent and*

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87. Chinchilla Sandoval v. Guatemala, Preliminary Objections, Merits, Reparations and Costs, ¶¶ 222-223.

88. *Id.* ¶¶ 233-234.

89. *Id.* ¶ 233.

90. *Id.* ¶¶ 234-256.

91. *Id.* ¶¶ 236-240.

92. *Id.* ¶¶ 241-256.

93. Chinchilla Sandoval v. Guatemala, Preliminary Objections, Merits, Reparations and Costs, ¶¶ 241-256.

*Independent Tribunal) and 25 (Right to Judicial Protection).*<sup>94</sup> *Of interest was the fact that all motions were denied, and corrective measures were not adopted to seek a solution to her situation.*<sup>95</sup> *The Court asserted that the execution judge should have recognized and acted upon “its position of guarantor against the conditions” surrounding Ms. Chinchilla Sandoval’s health, when it was clear that she had “severe conditions” coupled with acute “physical or psychological suffering.”*<sup>96</sup> *Therefore, the judges did not take the necessary steps to protect Ms. Chinchilla Sandoval’s right to personal integrity and life.*<sup>97</sup>

The Court unanimously dismissed the claim of violation of Articles 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) and 25 (Right to Judicial Protection), to the detriment of Ms. Chinchilla Sandoval’s relatives<sup>98</sup>, because:

*The majority of Ms. Chinchilla Sandoval’s requests to leave the COF were granted.*<sup>99</sup> *The Court found that the Judge of the Second Criminal Enforcement Court had power to authorize the medical appointments.*<sup>100</sup> *Thus, the Court found that the State did not violate Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) and 25 (Right to Judicial Protection), with respect to the medical appointments.*<sup>101</sup>

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94. *Id.* ¶ 252.

95. *Id.*

96. *Id.* ¶ 252.

97. *Id.* ¶ 256.

98. *Id.* “Operative Paragraphs,” ¶ 4.

99. *Chinchilla Sandoval v. Guatemala, Preliminary Objections, Merits, Reparations and Costs*, ¶ 240.

100. *Id.*

101. *Id.*

*C. Dissenting and Concurring Opinions*

## 1. Concurring Opinion of Judge Eduardo Ferrer MacGregor Poisot

Judge Eduardo Ferrer MacGregor Poisot agreed with the majority to rule in favor of Ms. Chinchilla Sandoval.<sup>102</sup> However, he argued that the case should have relied upon a “direct and explicit analysis” on the right to health, rather than the Court’s adopted analysis on the rights to life and personal integrity.<sup>103</sup> The right to health implies “prevention and treatment of endemic, professional or other diseases.”<sup>104</sup> This case favors the right to health approach because it incorporates certain types of obligations, namely: accessibility, availability, quality and acceptability, or, the “adoption of reasonable adjustments to guarantee the enjoyment of the right to health in the case of people with disabilities.”<sup>105</sup>

To substantiate his claim, Judge MacGregor Poisot applied the “right to health” standard to the specific facts of this case.<sup>106</sup> He concluded that the “poor medical care from the moment of detention” until the time of her death directly affected her “right to health,” which would have warranted a direct violation of Article 26 (Duty to Progressively Develop Economic, Social, and Cultural Rights).<sup>107</sup>

## 2. Separate Opinion of Judge Roberto F. Caldas

Judge Roberto F. Caldas concurs with the Judgment and the resulting reparations.<sup>108</sup> He differs only regarding the foundation of the right to health as it relates to Article 26 (Duty to Progressively Develop Economic, Social, and Cultural Rights) of the American Convention.<sup>109</sup> Judge Caldas understands that Ms. Chinchilla Sandoval was deprived of

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102. *Chinchilla Sandoval v. Guatemala*, Preliminary Objections, Merits, Reparations and Costs, Concurring Opinion of Judge Eduardo Ferrer MacGregor Poisot, Inter-Am. Ct. H.R. (ser. C) No. 312, ¶ 4 (Feb. 29, 2015) (Available only in Spanish).

103. *Id.* ¶ 6.

104. *Id.* ¶ 38.

105. *Id.* ¶ 6.

106. *Id.*

107. *Id.* ¶ 67.

108. *Chinchilla Sandoval v. Guatemala*, Preliminary Objections, Merits, Reparations and Costs, Separate Opinion of Judge Roberto F. Caldas, Inter-Am. Ct. H.R. (ser. C) No. 312, ¶ 1 (Feb. 29, 2015) (Available only in Spanish).

109. *Id.*

her liberty while she served her sentence in a prison for women as her health rapidly deteriorated, causing her disability and eventually leading to her death.<sup>110</sup> The majority finds that the State is responsible for the breach of the obligation to guarantee the rights to personal integrity and life as reflective of Articles 4(1) (Prohibition of Arbitrary Deprivation of Life) and 5(1) (Right to Physical, Mental, and Moral Integrity) of the American Convention on Human Rights.<sup>111</sup> Judge Caldas believes that the majority did not emphasize the importance of the right to health.<sup>112</sup>

#### IV. REPARATIONS

The Court ruled unanimously that the State had the following obligations:

##### *A. Specific Performance (Measures of Satisfaction and Non-Repitition Guarantee)*

###### 1. Judgment as a Form of Reparation

The Judgment constituted a *per se* form of reparation, a notion repeatedly established in international jurisprudence.<sup>113</sup>

###### 2. Publish the Judgment

The Court ordered the State to publish the following: (1) a summary of the Judgment in the official gazette, and in a nation-wide newspaper, with the font size large enough to be legible and adequate, and (2) the Judgment in its entirety on an official website for at least one year.<sup>114</sup> The State should publish the foregoing within six months of notification of this Judgment.<sup>115</sup>

###### 3. Reform Legislation

The Court acknowledged the State's effort in implementing training programs through its Criminal Chamber of the Judiciary for the execution of sentences by judicial authorities.<sup>116</sup> The Court urged the

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110. *Id.* ¶ 4.

111. *Id.* ¶ 6.

112. *Id.* ¶ 7.

113. Chinchilla Sandoval v. Guatemala, Preliminary Objections, Merits, Reparations and Costs, ¶ 270.

114. *Id.*

115. *Id.*

116. *Id.* ¶ 273.

State to continue such efforts, and further ordered the State to adopt legislation to train not only judicial authorities, but also prison guards, medical and health officials, and other relevant authorities that interact with persons deprived of liberty.<sup>117</sup> The adoption of such measures would satisfy the State's role as "guarantor" of those deprived of their liberty at the COF, and would facilitate "health protection" where medical attention is required.<sup>118</sup> The adopted measures must adhere to international standards, namely in the "protection of health," the right to "personal integrity, life and non-discrimination," and the reliability of a "fast, suitable and effective judicial or administrative channel to bring lawsuits."<sup>119</sup>

### *B. Compensation*

The Court awarded the following amounts:

#### 1. Pecuniary Damages

The Court awarded \$3,000 to Ms. Chinchilla Sandoval as compensation for pecuniary damages.<sup>120</sup> The award considered the expenses Ms. Chinchilla Sandoval's relatives paid to provide her with medication at the COF.<sup>121</sup> However, the Court declined to provide compensation for Ms. Chinchilla Sandoval's loss of earnings during her imprisonment.<sup>122</sup>

#### 2. Non-Pecuniary Damages

The Court awarded \$40,000 to Ms. Chinchilla Sandoval as compensation for non-pecuniary damages.<sup>123</sup> The amount considers Ms. Chinchilla Sandoval's physical and mental disease, and the failure of authorities to take effective measures to palliate such a visible and deteriorating condition while detained at the COF.<sup>124</sup> The compensation must be delivered directly to her next of kin, in equal parts, specifically

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117. *Id.* ¶ 274.

118. *Id.*

119. Chinchilla Sandoval v. Guatemala, Preliminary Objections, Merits, Reparations and Costs, ¶ 275.

120. *Id.* ¶ 304.

121. *Id.*

122. *Id.* ¶ 305.

123. *Id.* ¶ 309.

124. *Id.*

naming: Marta María Gantenbein Chinchilla, Luz de María Juárez Chinchilla and Luis Mariano Juárez Chinchilla.<sup>125</sup>

### 3. Costs and Expenses

The Court awarded \$10,000 to Ms. Chinchilla Sandoval's representatives as compensation for expenses incurred in processing the case before the Court.<sup>126</sup>

### 4. Total Compensation (including Costs and Expenses ordered):

\$53,000

### *C. Deadlines*

The State must make the payment of compensation for pecuniary damages, non-pecuniary damages, and the costs and expenses, within one year from the date of notification of this Judgment.<sup>127</sup>

## V. INTERPRETATION AND REVISION OF JUDGMENT

[None]

## VI. COMPLIANCE AND FOLLOW-UP

[None]

## VII. LIST OF DOCUMENTS

### *A. Inter-American Court*

#### 1. Preliminary Objections

[None]

#### 2. Decisions on Merits, Reparations and Costs

Chinchilla Sandoval v. Guatemala, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 312 (Feb. 29, 2015) (Available only in Spanish).

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125. Chinchilla Sandoval v. Guatemala, Preliminary Objections, Merits, Reparations and Costs, ¶ 310.

126. *Id.* ¶ 315.

127. *Id.* ¶ 321.

## 3. Provisional Measures

Chinchilla Sandoval v. Guatemala, Provisional Measures, Order of the President, Inter-Am. Ct. H.R. (ser. E) (May 12, 2015) (Available only in Spanish).

## 4. Compliance Monitoring

[None]

## 5. Review and Interpretation of Judgment

[None]

*B. Inter-American Commission*

## 1. Petition to the Commission

[Not Available]

## 2. Report on Admissibility

Chinchilla Sandoval v. Guatemala, Admissibility Report, Report No. 136/09, Inter-Am. Comm'n H.R., Case No. 12.739 (Nov. 13, 2009).

## 3. Provisional Measures

[None]

## 4. Report on Merits

Chinchilla Sandoval v. Guatemala, Report on Merits, Report No. 7/14, Inter-Am. Comm'n H.R., Case No. 12.739 (Apr. 2, 2014).

## 5. Application to the Court

Chinchilla Sandoval v. Guatemala, Petition to the Court, Inter-Am. Comm'n H.R., Case No. 12.739 (Aug. 19, 2014).

## VIII. BIBLIOGRAPHY

Carmela García, *Caso Chinchilla Sandoval vs Guatemala: La accesibilidad de las personas con discapacidad privadas de libertad*, IDEHPUCP. (Aug. 8, 2017), <http://idehpucp.pucp.edu.pe/opinion/caso-chinchilla-sandoval-vs-guatemala-la-accesibilidad-de-las-personas-con-discapacidad-privadas-de-libertad/>.

Evi Kostner, *"Here anyone could die...": Prisons and Human Rights in Guatemala*, CCHR. (2017), <http://cchr.uu.nl/here-anyone-could-die-prisons-and-human-rights-in-guatemala/>.