

Manuela et al. v. El Salvador

ABSTRACT¹

I. FACTS

This case is about a woman who miscarried and was criminally prosecuted for that. Moreover, although seriously ill, the State failed to provide her with adequate medical care, resulting in her death. The Court found the State in violation of several articles of the American Convention, including Article 26.

A. Chronology of Events

1998: El Salvador enacts a new Criminal Code that outlaws all abortion and imposes strict punishment.² The Criminal Code eliminates the classification of mitigated homicide for a woman who “kills” her child during childbirth or within seventy-two hours of birth.³ An individual can be charged with aggravated homicide and face imprisonment for a minimum of thirty years if she/he kills her/his children or descendants.⁴ Additionally, the Criminal Code expands the punishment for women who self-induce abortion, persons who prompt an abortion without the consent of the mother, medical professionals who aid in an abortion, and anyone who assist in an abortion.⁵

1999: Article 1 of the Salvadoran Constitution is amended to define a human person as one created from the moment of conception.⁶

1997: Manuela, a twenty-year-old woman, is married and has two sons. Her husband leaves her shortly after the birth of their second son.⁷ She and her sons live with her parents and sister in the Las Mezas village, located in the municipality of Cacaopera, in the department of Morazán.⁸ Manuela and her parents are unable to read or write.⁹

August 24, 2006: Manuela visits the local health clinic due to headaches, nausea, stomach pain, fatigue, and sweating.¹⁰ There, clinicians diagnose her with acute gastritis.¹¹

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² *Manuela et al. v. El Salvador*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 441, ¶ 35 (Nov. 2, 2021); *Manuela et al. v. El Salvador*, Admissibility Report, Report No. 29/17, Inter-Am. Comm’n H.R., Case No. 424.14, ¶ 1 (March 18, 2017).

³ *Manuela et al. v. El Salvador*, Preliminary Objections, Merits, Reparations, and Costs, ¶ 35.

⁴ *Id.* ¶ 36.

⁵ *Id.*

⁶ *Id.* ¶ 37.

⁷ *Id.*

⁸ *Id.*

⁹ *Manuela et al. v. El Salvador*, Preliminary Objections, Merits, Reparations, and Costs, ¶ 47.

¹⁰ *Id.* ¶ 48; *Manuela et al. v. El Salvador*, Report on Merits, Report No.153/18, Inter-Am. Comm’n H.R., Case No. 13.069, ¶ 7 (December 7, 2018).

¹¹ *Manuela et al. v. El Salvador*, Preliminary Objections, Merits, Reparations, and Costs, ¶ 48.

May 14, 2007: Because of ongoing headaches, Manuela again visits the clinic.¹² A clinician observes a painful lump behind Manuela's ear and diagnoses her with cervical adenitis.¹³ She is prescribed analgesics.¹⁴

June–August 2007: Manuela develops more lumps.¹⁵ She attends further clinic appointments and is ultimately diagnosed with right neck lymphadenopathy and is referred to San Francisco de Gotera National Hospital.¹⁶ The clinicians neglect to inform her of the importance of medical treatment and fail to provide her with transportation to the hospital.¹⁷ The clinicians also fail to recognize that Manuela has the symptoms of lymphatic cancer.¹⁸

February 2008: Manuela is pregnant, but it is unknown as to which term of pregnancy she is in.¹⁹

February 26, 2008: While doing laundry in the river with her oldest son, Manuela falls and injures her pelvic area.²⁰ She experiences increased, intense, and long-lasting pain, as well as transvaginal bleeding.²¹ Manuela believes that her vaginal bleeding, which leads her to expel the fetus, is due to indigestion.²² Her mother buries all expelled contents in the latrine.²³

February 27, 2008: Manuela is bedridden due to illness.²⁴ Around noon, her parents find her unconscious, sweating, and bleeding from her vagina, and so her father takes her to San Francisco de Gotera Hospital.²⁵ In the afternoon, Manuela is admitted to the hospital's emergency department.²⁶ The attending physician asks Manuela if her husband is aware of what she has done.²⁷ The hospital records reflect that she suffers from a perineal tear, retained placenta, preeclampsia, and that she was admitted due to an abortion.²⁸ The emergency report includes a quote from Manuela where she explains that she is unaware of the location of the fetus and whether umbilical cord had been torn or cut.²⁹ She further explains that her sister told her the fetus was stillborn and that her mother cut the umbilical cord and buried the child.³⁰ The report notes that Manuela was uncooperative upon further questioning and was told that the criminal prosecution service would be notified.³¹ The report does not mention Manuela's lumps.³² At 7:00 p.m., her perineal tear is sutured, and the placenta is removed.³³ The same day,

¹² Manuela et al. v. El Salvador, Preliminary Objections, Merits, Reparations, and Costs, ¶ 48.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Manuela et al. v. El Salvador, Admissibility Report, ¶ 2.

¹⁸ Manuela et al. v. El Salvador, Report on Merits, ¶ 7.

¹⁹ Manuela et al. v. El Salvador, Preliminary Objections, Merits, Reparations, and Costs, ¶ 49.

²⁰ *Id.* ¶ 50.

²¹ *Id.*

²² Manuela et al. v. El Salvador, Report on Merits, ¶ 8.

²³ *Id.*

²⁴ Manuela et al. v. El Salvador, Preliminary Objections, Merits, Reparations, and Costs, ¶ 51.

²⁵ *Id.*

²⁶ *Id.* ¶ 52.

²⁷ Manuela et al. v. El Salvador, Admissibility Report, ¶ 3.

²⁸ Manuela et al. v. El Salvador, Preliminary Objections, Merits, Reparations, and Costs, ¶¶ 52-53.

²⁹ *Id.* ¶ 53.

³⁰ *Id.*

³¹ *Id.*

³² *Id.* ¶ 56.

³³ *Id.* ¶ 54.

Manuela's attending physician files a report to the authorities, accusing Manuela of receiving an abortion of a pregnancy resulting from infidelity.³⁴ Criminal proceedings are initiated.³⁵

February 28, 2008: The police conduct a warrantless arrest *in flagrante delicto* of Manuela for murder of her newborn son.³⁶ The police question her without informing her of the right to a legal defense despite her frail condition.³⁷ She refuses to sign the officers' arrest record and is handcuffed to her hospital bed.³⁸ She is assigned a public defender, but the record of appointment lacks proof of informed consent (her fingerprint or signature).³⁹ At 9:00 a.m., a forensic physician inspects Manuela's genitals and determines the fetus's umbilical cord was cleanly cut and that it was nearly at full term.⁴⁰

At 11:30 a.m., police arrive to inspect Manuela's house under warrant.⁴¹ There, investigators discover a newborn inside the septic tank: a full-term male with a severed umbilical cord.⁴² Subsequently, the officers harass and threaten Manuela's parents with imprisonment.⁴³ They accuse Manuela's mother with covering up the abortion and distort her testimony.⁴⁴ The police also force Manuela's illiterate father to fingerprint a false statement in which he claims he is ashamed of his daughter's pregnancy in infidelity.⁴⁵ This statement is subsequently used as a complaint against Manuela, violating the Criminal Code's ban on complaints against family members.⁴⁶ At 5:00 p.m., an autopsy reveals that the child died from asphyxiation from the septic tank waste and umbilical hemorrhage; he had been dead for thirty to thirty-two hours.⁴⁷

February 29, 2008: At the prosecution's request, the hospital director provides Manuela's medical record, which includes information regarding her emergency care and her sexual and reproductive life.⁴⁸ The Prosecutor General issues an order for formal investigation and calls for Manuela's pretrial detention.⁴⁹

March 2, 2008: The Cacaopera Magistrate's Court orders Manuela's detention while it determines whether it will grant the prosecutor's request.⁵⁰ It calls for an initial hearing for the next day.⁵¹ Manuela is notified.⁵²

³⁴ Manuela et al. v. El Salvador, Preliminary Objections, Merits, Reparations, and Costs, ¶ 57; Manuela et al. v. El Salvador, Report on Merits, ¶ 9; Manuela et al. v. El Salvador, Admissibility Report, ¶ 3.

³⁵ Manuela et al. v. El Salvador, Preliminary Objections, Merits, Reparations, and Costs, ¶ 57; Manuela et al. v. El Salvador, Report on Merits, ¶ 9.

³⁶ Manuela et al. v. El Salvador, Preliminary Objections, Merits, Reparations, and Costs, ¶ 64; Manuela et al. v. El Salvador, Report on Merits, ¶ 11.

³⁷ Manuela et al. v. El Salvador, Admissibility Report, ¶ 3.

³⁸ Manuela et al. v. El Salvador, Preliminary Objections, Merits, Reparations, and Costs, ¶ 64; Manuela et al. v. El Salvador, Report on Merits, ¶ 9.

³⁹ Manuela et al. v. El Salvador, Preliminary Objections, Merits, Reparations, and Costs, ¶ 65.

⁴⁰ *Id.* ¶ 59.

⁴¹ *Id.* ¶ 60.

⁴² *Id.*

⁴³ Manuela et al. v. El Salvador, Admissibility Report, ¶ 3.

⁴⁴ *Id.*

⁴⁵ Manuela et al. v. El Salvador, Preliminary Objections, Merits, Reparations, and Costs, ¶ 62; Manuela et al. v. El Salvador, Admissibility Report, ¶ 3.

⁴⁶ Manuela et al. v. El Salvador, Admissibility Report, ¶ 3.

⁴⁷ Manuela et al. v. El Salvador, Preliminary Objections, Merits, Reparations, and Costs, ¶ 61, n.128.

⁴⁸ *Id.* ¶¶ 66-67.

⁴⁹ *Id.* ¶ 68.

⁵⁰ *Id.* ¶ 69.

⁵¹ *Id.*

⁵² *Id.*

March 3, 2008: The Cacaopera Magistrate's Court holds a hearing to determine whether to approve a formal investigation with pretrial detention.⁵³ Manuela is not present due to a lack of agents to transport her from the hospital to the courtroom.⁵⁴ The public defender claims that there are enough facts to support evidence of a miscarriage and requests no pretrial detention.⁵⁵ However, the Court determines that the facts establish an abortion and that it was certain Manuela intended to hide and destroy her child.⁵⁶ Thus, the Court approves a formal investigation and pretrial detention.⁵⁷

March 6, 2008: The Second Trial Court of San Francisco de Gotera formally orders preliminary proceedings against Manuela for aggravated homicide.⁵⁸ It also calls for a preliminary hearing and approves Manuela's pretrial detention.⁵⁹ Manuela is discharged from the hospital without receiving a full medical examination despite her repeated complaints of discomfort.⁶⁰ She is taken to the Morazán National Civil Police Station.⁶¹

March 11, 2008: Manuela is transferred to San Miguel Prison.⁶²

March, 2008: Officials of the Institute of Legal Medicine force Manuela's parents to register the birth and death of Manuela's child.⁶³

April 11, 2008: Manuela's child is issued a death certificate stating that he had died of asphyxiation on February 28, 2008 at 2:00 p.m., having lived for two days.⁶⁴

April 25, 2008: At the prosecution's request, the Institute of Forensic Medicine performs a psychological evaluation on Manuela and determines she is not legally incompetent.⁶⁵

June 5, 2008: The Second Trial Court of San Francisco de Gotera holds a hearing to review Manuela's pretrial detention, where Manuela is represented by another public defender.⁶⁶ The Court affirms the ongoing pretrial detention.⁶⁷

July 2008: Manuela's mother stops visiting her in prison.⁶⁸ Furthermore, Manuela is required to undergo nonconsensual genital cavity inspections in unsanitary conditions.⁶⁹

⁵³ Manuela et al. v. El Salvador, Preliminary Objections, Merits, Reparations, and Costs, ¶ 70.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.* ¶¶ 71-72.

⁵⁷ *Id.* ¶ 71.

⁵⁸ *Id.* ¶ 73.

⁵⁹ Manuela et al. v. El Salvador, Preliminary Objections, Merits, Reparations, and Costs, ¶ 73.

⁶⁰ *Id.*; Manuela et al. v. El Salvador, Report on Merits, ¶ 10.

⁶¹ Manuela et al. v. El Salvador, Preliminary Objections, Merits, Reparations, and Costs, ¶ 73.

⁶² Manuela et al. v. El Salvador, Report on Merits, ¶ 10.

⁶³ Manuela et al. v. El Salvador, Admissibility Report, ¶ 4.

⁶⁴ Manuela et al. v. El Salvador, Preliminary Objections, Merits, Reparations, and Costs, ¶ 74.

⁶⁵ *Id.* ¶ 75.

⁶⁶ *Id.* ¶ 76.

⁶⁷ *Id.*

⁶⁸ Manuela et al. v. El Salvador, Admissibility Report, ¶ 6.

⁶⁹ *Id.*

July 7, 2008: The trial court holds a preliminary hearing.⁷⁰ Manuela's public defender asks to be substituted thirty minutes before it is due to start, as he has another hearing to attend to.⁷¹ The Court orders trial proceedings and reaffirms pretrial detention.⁷²

July 23, 2008: Manuela's psychiatric evaluation is added to the case record.⁷³ This evaluation contains Manuela's account of the facts.⁷⁴ She says that as a result of her fall, she went into premature labor, as she was expecting the child in April.⁷⁵ She explains she did not purposefully induce an abortion and is being prosecuted for her baby falling into a septic tank while she was using the bathroom.⁷⁶ Moreover, she says she cannot recall anything else regarding the incident or her family's subsequent actions.⁷⁷

July 31, 2008: The trial court holds a public hearing against Manuela.⁷⁸ The autopsy doctor testifies that it is medically impossible to refer to the baby's birth as a miscarriage because it was a full-term child.⁷⁹ At Manuela's alleged request, the public defender does not allow Manuela's mother to testify.⁸⁰

August 11, 2008: The trial court sentences Manuela to thirty years of imprisonment for aggravated homicide.⁸¹ It determines that Manuela's allegations of facts are implausible and contrary to the maternal instinct to save one's own child.⁸² The court additionally reasons that there was no legal reason a mother would kill her child and that Manuela did so to escape the shame of infidelity.⁸³ The minimum sentence for aggravated homicide was imposed in consideration of Manuela's low education level.⁸⁴

August 26, 2008: The court's judgment becomes final; Manuela's public defender is negligent in filing an appeal.⁸⁵ Manuela is imprisoned in the San Miguel Prison.⁸⁶

February 6, 2009: Manuela is committed to the Rosales National Hospital.⁸⁷ There, hospital physicians record that she has had a lump in her neck for one year.⁸⁸ They additionally record a loss of thirty pounds in the last three months, high body temperatures, and jaundice.⁸⁹

February 12, 2009: Manuela is finally diagnosed with nodular sclerosis Hodgkin's lymphoma and is prescribed chemotherapy.⁹⁰

⁷⁰ Manuela et al. v. El Salvador, Preliminary Objections, Merits, Reparations, and Costs, ¶ 77.

⁷¹ *Id.*

⁷² *Id.* ¶¶ 77-78.

⁷³ *Id.* ¶ 80.

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ Manuela et al. v. El Salvador, Preliminary Objections, Merits, Reparations, and Costs, ¶ 80.

⁷⁷ *Id.*

⁷⁸ *Id.* ¶ 81.

⁷⁹ *Id.*

⁸⁰ *Id.* ¶ 82.

⁸¹ *Id.* ¶ 83.

⁸² Manuela et al. v. El Salvador, Preliminary Objections, Merits, Reparations, and Costs, ¶ 83.

⁸³ *Id.* ¶ 84.

⁸⁴ *Id.*

⁸⁵ *Id.* ¶ 85; Manuela et al. v. El Salvador, Report on Merits, ¶ 13.

⁸⁶ Manuela et al. v. El Salvador, Preliminary Objections, Merits, Reparations, and Costs, ¶ 86.

⁸⁷ *Id.* ¶ 87.

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Id.*

September 10, 2009: Manuela is transferred to the Women's Rehabilitation Center of Ilopango.⁹¹

January 10, 2010: Manuela is admitted to the Rosales National Hospital's Prisoners' Ward.⁹²

April 30, 2010: Manuela dies in custody.⁹³

2011: The representatives of Manuela file a complaint against the Women's Rehabilitation Center of Ilopango claiming that it failed in taking Manuela to chemotherapy in April and November of 2009.⁹⁴ The complaint is deemed inadmissible.⁹⁵

October 27, 2011: With help from the petitioners, Manuela's father seeks an investigation as to the circumstances of Manuela's public defender assignment, and files a complaint against her public defender for participating in Manuela's unlawful consent.⁹⁶

November 17, 2011: Manuela's father requests Manuela's medical records from the National Hospital of Rosales and is refused.⁹⁷

December 20, 2011: Manuela's father files an appeal against Manuela's judgment, claiming it was based on his falsified complaint.⁹⁸

January 22, 2012: The trial court declares the appeal inadmissible because it agrees overall with the trial court's findings.⁹⁹

B. Other Relevant Facts

El Salvador's complete abortion ban, as well as its imposed reporting duty on medical professionals, has created systemic violence against women seeking abortions and obstetric care.¹⁰⁰ The Salvadoran Health Code establishes that medical professionals have a duty of secrecy to their patients, which is enforced through the Criminal Code under threat of imprisonment.¹⁰¹ However, the law also creates an obligation for medical professionals to report criminal offenses under threat of financial penalty.¹⁰² Because of mandated reporting, many women are detained and even handcuffed while they are receiving medical care.¹⁰³ Because women fear reports by medical staff and subsequent severe criminal punishment, they resort to unsafe, clandestine abortions or do not seek emergency medical care.¹⁰⁴

⁹¹ Manuela et al. v. El Salvador, Preliminary Objections, Merits, Reparations, and Costs, ¶ 88.

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.* ¶ 89.

⁹⁵ *Id.*

⁹⁶ *Id.*; Manuela et al. v. El Salvador, Admissibility Report, ¶ 7.

⁹⁷ Manuela et al. v. El Salvador, Admissibility Report, ¶ 7.

⁹⁸ *Id.*; Manuela et al. v. El Salvador, Preliminary Objections, Merits, Reparations, and Costs, ¶ 89.

⁹⁹ Manuela et al. v. El Salvador, Preliminary Objections, Merits, Reparations, and Costs, ¶ 90; Manuela et al. v. El Salvador, Admissibility Report, ¶ 7.

¹⁰⁰ Manuela et al. v. El Salvador, Report on Merits, ¶ 33; Manuela et al. v. El Salvador, Preliminary Objections, Merits, Reparations, and Costs, ¶ 40.

¹⁰¹ Manuela et al. v. El Salvador, Preliminary Objections, Merits, Reparations, and Costs, ¶ 39.

¹⁰² *Id.* ¶ 40.

¹⁰³ *Id.* ¶ 46.

¹⁰⁴ Manuela et al. v. El Salvador, Report on Merits, ¶ 33.

Even women who suffer miscarriages are convicted of aggravated homicide.¹⁰⁵ Once women are criminally accused, they are denied their rights to adequate due process and legal defense.¹⁰⁶ These women are mostly poor and less educated, often from rural or substandard urban areas.¹⁰⁷ As a result of Salvadoran law, maternal mortality rate has increased throughout the years, with underground abortion being the second main cause of death in Salvadoran women.¹⁰⁸

II. PROCEDURAL HISTORY

A. Before the Commission

March 21, 2012: On behalf of Manuela and her family, the Center for Reproductive Rights (Centro de Derechos Reproductivos), the Women’s Collective for Local Development (Colectiva de Mujeres para el Desarrollo Local), and the Citizen Group for the Decriminalization of Therapeutic, Ethical and Eugenic Abortion (Agrupación Ciudadana por la Despenalización del Aborto Terapéutico, Ético y Eugenésico) file a petition to the Inter-American Commission on Human Rights.¹⁰⁹

March 18, 2017: The Commission approves and admits Admissibility Report No. 29/17.¹¹⁰

March 31, 2017: The parties are notified of the admissibility.¹¹¹

December 7, 2018: The Commission adopts Merit Report No. 153/8.¹¹² Therein, it determines the State has violated Articles 4.1 (Prohibition of Arbitrary Deprivation of Life), 5.1 (Right to Physical, Mental, and Moral Integrity), 7.1 (Right to Personal Liberty and Security), 7.2 (Prohibition of Deprivation of Liberty Unless for Reasons and Conditions Previously Established by Law), 7.3 (Prohibition of Arbitrary Arrest or Imprisonment), 8.1 (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal), 8.2 (Right to Be Presumed Innocent), 8.2c (Right to Adequate Time and Means to Prepare Defense), 8.2e (Right to Assistance by Counsel Provided by State), 8.2h (Right to Appeal), 11.2 (Prohibition of Arbitrary Interference with Private Life, Family, Home, Correspondence, and of Unlawful Attacks on Honor, and Dignity), 11.3 (Right to Protection from Attacks against Private Life, Family, Home, Correspondence, Honor, and Dignity), 24 (Right to Equal Protection), 25.1 (Right of Recourse Before a Competent Court), and 26 (Duty to Progressively Develop Economic, Social, and Cultural Rights) in corresponding violation of Articles 1.1 (Obligation of Non-Discrimination) and 2 (Obligation to Give Domestic Legal Effect to Rights) of the American Convention on Human Rights.¹¹³ As a result, the Commission recommends that El Salvador provide reparations for Manuela’s family, investigate the relevant human rights violations, and prevent future repetitions of such rights.¹¹⁴

¹⁰⁵ Manuela et al. v. El Salvador, Report on Merits, ¶ 42.

¹⁰⁶ Manuela et al. v. El Salvador, Preliminary Objections, Merits, Reparations, and Costs, ¶ 44.

¹⁰⁷ *Id.* ¶ 46; Manuela et al. v. El Salvador, Report on Merits, ¶¶ 36, 38.

¹⁰⁸ Manuela et al. v. El Salvador, Report on Merits, ¶ 33.

¹⁰⁹ Manuela et al. v. El Salvador, Preliminary Objections, Merits, Reparations, and Costs, ¶ 2(a); Manuela et al. v. El Salvador, Report on Merits, ¶ 1.

¹¹⁰ Manuela et al. v. El Salvador, Report on Merits, ¶ 2.

¹¹¹ *Id.*

¹¹² Manuela et al. v. El Salvador, Preliminary Objections, Merits, Reparations, and Costs, ¶ 2(c).

¹¹³ Manuela et al. v. El Salvador, Report on Merits, ¶ 5.

¹¹⁴ *Id.* “Recommends” ¶¶ 1-3.

January 29, 2019: The Commission notifies the State of the Merits Report and gives it two months to report on its compliance with the Commission's recommendations.¹¹⁵ Despite an extension, the State does not provide a timely report and neglects to ask for further extension.¹¹⁶

B. Before the Court

July 29, 2019: The Commission submits the case to the Court after the State fails to adopt its recommendations.¹¹⁷

September 2, 2019: The Commission notifies both parties of the case's submission.¹¹⁸

November 6, 2019: The representatives present their brief of pleadings, motions, and evidence to the Court.¹¹⁹ They agree with the Commission's findings and provide further context on El Salvador's criminalization of obstetric emergencies.¹²⁰ They also allege State violations of Articles 5 (Right to Humane Treatment), 7.4 (Right to Be Informed of Reasons of Arrest and Charges), 7.5 (Right to Be Promptly Brought Before a Judge and Right to a Trial Within Reasonable Time), 8.2b (Right to Have Prior Notification of Charges), 13 (Freedom of Thought and Expression), 17 (Rights of the Family), and 19 (Rights of the Child) of the American Convention.¹²¹ Lastly, they seek reparation and reimbursement of certain costs.¹²²

February 18, 2020: The State submits its reply where it presents three preliminary objections and opposes both the allegations and reimbursements sought by the representatives.¹²³

2019-2020: The Court receives fifty-eight amicus curiae briefs.¹²⁴

1. Violations Alleged by the Commission¹²⁵

Article 4.1 (Prohibition of Arbitrary Deprivation of Life)

Article 5.1 (Right to Physical, Mental, and Moral Integrity)

Article 7.1 (Right to Personal Liberty and Security)

Article 7.2 (Prohibition of Deprivation of Liberty Unless for Reasons and Conditions Previously Established by Law)

Article 7.3 (Prohibition of Arbitrary Arrest or Imprisonment)

Article 8.1 (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal)

Article 8.2 (Right to Be Presumed Innocent)

Article 8.2c (Right to Adequate Time and Means to Prepare Defense)

Article 8.2e (Right to Assistance by Counsel Provided by State)

¹¹⁵ Manuela et al. v. El Salvador, Preliminary Objections, Merits, Reparations, and Costs, ¶ 2(d).

¹¹⁶ *Id.*

¹¹⁷ *Id.* ¶ 3.

¹¹⁸ *Id.* ¶ 5.

¹¹⁹ *Id.* ¶ 6.

¹²⁰ *Id.*

¹²¹ Manuela et al. v. El Salvador, Preliminary Objections, Merits, Reparations, and Costs, ¶ 6.

¹²² *Id.*

¹²³ *Id.* ¶ 7.

¹²⁴ *Id.* ¶ 9.

¹²⁵ Manuela et al. v. El Salvador, Report on Merits, ¶ 159.

Article 8.2h (Right to Appeal)
 Article 11.2 (Prohibition of Arbitrary Interference with Private Life, Family, Home, Correspondence, and of Unlawful Attacks on Honor, and Dignity)
 Article 11.3 (Right to Protection from Attacks against Private Life, Family, Home, Correspondence, Honor, and Dignity)
 Article 24 (Right to Equal Protection)
 Article 25.1 (Right of Recourse Before a Competent Court)
 Article 26 (Duty to Progressively Develop Economic, Social, and Cultural Rights)
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 on Human Rights.

2. Violations Alleged by the Representatives of the Victims¹²⁶

Same Violations Alleged by Commission, plus:

Article 5 (Right to Humane Treatment)
 Article 7.4 (Right to Be Informed of Reasons of Arrest and Charges)
 Article 7.5 (Right to Be Promptly Brought Before a Judge and Right to a Trial Within Reasonable Time)
 Article 8.2b (Right to Have Prior Notification of Charges)
 Article 13 (Freedom of Thought and Expression)
 Article 17 (Rights of the Family)
 Article 19 (Rights of the Child) of the American Convention
all in relation to:
 Article 1(1) (Obligation of Non-Discrimination) of the American Convention

III. MERITS

A. Composition of the Court

Elizabeth Odio Benito, President
 L. Patricio Pazmiño Freire, Vice-President
 Eduardo Vio Grossi, Judge
 Humberto Antonio Sierra Porto, Judge
 Eduardo Ferrer Mac-Gregor Poisot, Judge
 Eugenio Raúl Zaffaroni, Judge
 Ricardo Pérez Manrique, Judge

Pablo Saavedra Alessandri, Secretary
 Romina I. Sijniensky, Deputy Secretary

¹²⁶ Manuela et al. v. El Salvador, Preliminary Objections, Merits, Reparations, and Costs, ¶ 6. The Center for Reproductive Rights, the Women's Collective for Local Development and the Citizen Group for the Decriminalization of Therapeutic, Ethical and Eugenic Abortion served as representatives of Manuela and her family.

B. Decision on the Merits

November 2, 2021: The Court issues its Judgment on Preliminary Objections, Merits, Reparations, and Costs.¹²⁷

The Court found unanimously:

To reject the State's preliminary objections¹²⁸, because:

The State objected to the representatives' petition, arguing that it was time-barred.¹²⁹ In agreement with the representatives, the Court determined the State did not present its objection at the appropriate time and the objection was therefore inadmissible.¹³⁰ The State also asserted that the case was inadmissible and failed to divulge its receipt of a State report in violation Article 35 of the Court's Rules of Procedure.¹³¹ In this report, the State set forth measures it had taken to adopt the recommendations issued in the Commission's Merits Report.¹³² The Representatives argued that a failure to comport with Article 35 was not a per se obstacle to admissibility and that, regardless, the State failed to substantively comply with the Merits Report.¹³³ The Commission argued similarly that the State failed to substantively comply and that it had followed Article 35.¹³⁴ The Court rejected the State's preliminary objection because the Commission had complied with Article 35.¹³⁵

To reject the State's preliminary consideration, because:

The State argued that the Commission claimed it would not consider facts regarding the social and legal context of El Salvador's criminalization of abortion because they were irrelevant in a case of aggravated homicide.¹³⁶ Nevertheless, the Representatives included them.¹³⁷ The Representatives asserted these facts were essential in explaining and clarifying the facts of the case, and that the Commission's Merits Report had emphasized the strictness of El Salvador's abortion laws and cited to jurisprudence regarding the violation of women's rights in medical emergencies.¹³⁸ The Commission agreed that the context was related to the case and useful for the Court's decision.¹³⁹ The Court determined that it would admit the contextual facts to the extent they were relevant to the case.¹⁴⁰

The Court found unanimously that El Salvador had violated:

Articles 7(1) (Right to Personal Liberty and Security), 7(3) (Prohibition of Arbitrary Arrest or Imprisonment), and 8(2) (Right to Be Presumed Innocent), in relation to Articles 1(1)

¹²⁷ Manuela et al. v. El Salvador, Preliminary Objections, Merits, Reparations, and Costs, ¶ 1.

¹²⁸ *Id.* "Decides" ¶¶ 1-2.

¹²⁹ *Id.* ¶ 17.

¹³⁰ *Id.* ¶¶ 20-21.

¹³¹ *Id.* ¶ 22.

¹³² *Id.*

¹³³ Manuela et al. v. El Salvador, Preliminary Objections, Merits, Reparations, and Costs, ¶ 22.

¹³⁴ *Id.*

¹³⁵ *Id.* ¶ 23.

¹³⁶ *Id.* ¶ 24.

¹³⁷ *Id.*

¹³⁸ *Id.* ¶ 25.

¹³⁹ Manuela et al. v. El Salvador, Preliminary Objections, Merits, Reparations, and Costs, ¶ 26.

¹⁴⁰ *Id.* ¶¶ 27, 28, 30.

(Obligation of Non-Discrimination) and 2 (Obligation to Give Domestic Legal Effect to Rights) of the Convention, to the detriment of Manuela,¹⁴¹ because:

The Court stated that pretrial detention is the harshest measure for pretrial offenders.¹⁴² It is an exceptional measure that must comply with a proportionality test to ensure the detention is not arbitrary or unlawful.¹⁴³ The detention should be enforced only for a legitimate purpose, such as to prevent an offender's escape or hindrance of legal proceedings, and should be verified using the objective facts of each case.¹⁴⁴ A court should only authorize pretrial detention if it is supported by sufficient and objective evidence; neither the supposed offender's personal characteristics nor the gravity of the alleged crime alone will suffice.¹⁴⁵ If a court does not abide by these requirements, the detention is arbitrary.¹⁴⁶

The Court determined that the Second Trial Court of San Francisco de Gotera failed to consider the specific, true, and objective facts of Manuela's case and instead presumed that pretrial detention was necessary.¹⁴⁷ The trial court also failed to consider whether Manuela's detention should be concluded, as pretrial detention should end when no longer necessary; detention should only be prolonged upon sufficient evidence.¹⁴⁸ While the trial court's decision was supported by a law which allowed it to consider general factors (such as the frequency of similar incidents in the area), this law was contrary to the Convention.¹⁴⁹ Because the trial court did not support the pretrial detention with sufficient reasoning, the Court found the State had violated Articles 7(1) (Right to Personal Liberty and Security) and 7(3) (Prohibition of Arbitrary Arrest or Imprisonment) of the Convention.¹⁵⁰ The Court also found that the State's enactment of pretrial detention resulted in violation of Manuela's right to presumption of innocence in violation of Article 8(2) (Right to Be Presumed Innocent).¹⁵¹

The Court found unanimously that El Salvador had violated:

Articles 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent), 8(2) (Right to Be Presumed Innocent), 8(2)(d) (Right to Self-Defense or Legal Assistance and to Communicate Freely with Counsel), 8(2)(e) (Right to Assistance by Counsel Provided by State), 24 (Right to Equal Protection), 5(2) (Prohibition of Torture, and Cruel, Inhumane or Degrading Treatment), and 5(6) (Detention Must Aim to Reform and Rehabilitate), in relation to Articles 1(1) (Obligation of Non-Discrimination) and 2 (Obligation to Give Domestic Legal Effect to Rights) of the Convention, to the detriment of Manuela,¹⁵² because:

The Court considered violations of three judicial guarantees: Manuela's right to a defense, the prosecution and trial court's use of gender stereotypes, and Manuela's conviction.¹⁵³ First, the

¹⁴¹ Manuela et al. v. El Salvador, Preliminary Objections, Merits, Reparations, and Costs, ¶¶ 110-112.

¹⁴² *Id.* ¶ 99.

¹⁴³ *Id.* ¶¶ 97-99.

¹⁴⁴ *Id.* ¶¶ 100-101.

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ Manuela et al. v. El Salvador, Preliminary Objections, Merits, Reparations, and Costs, ¶¶ 103-106.

¹⁴⁸ *Id.* ¶ 107.

¹⁴⁹ *Id.* ¶¶ 109-110.

¹⁵⁰ *Id.* ¶ 110.

¹⁵¹ *Id.* ¶¶ 111-112.

¹⁵² *Id.* ¶ 173.

¹⁵³ Manuela et al. v. El Salvador, Preliminary Objections, Merits, Reparations, and Costs, ¶ 119.

Court reaffirmed that the right to a substantive defense encompasses preparation for trial and the right to adequate counsel.¹⁵⁴ This latter right is violated when defense counsel does not participate in the main proceedings.¹⁵⁵ Beyond just providing defense counsel, the State must ensure such counsel is effective, qualified, and autonomous.¹⁵⁶ The Court found various flaws to Manuela's defense: the substitution of her counsel merely thirty minutes before preliminary hearing, counsel's lack of communication with Manuela, failures to assert certain defenses and present evidence countering the abortion allegation, the withdrawal of Manuela's and her mother's statements, and failure to file a timely appeal of Manuela's sentence.¹⁵⁷ Due to this neglect, Manuela was deprived of her right to a defense.¹⁵⁸ Thus, the Court held that the State violated Articles 8(2)(d) (Right to Self-Defense or Legal Assistance and to Communicate Freely with Counsel) and 8(2)(e) (Right to Assistance by Counsel Provided by State).¹⁵⁹

Second, the Court evaluated the effect of gender biases on Manuela's judicial guarantees.¹⁶⁰ To guarantee impartiality, judges must not have an interest or preference for either party in the dispute or personal involvement.¹⁶¹ Impartiality is presumed unless there is evidence of personal prejudice or bias, which the judge must dispel by proving an unbiased conviction.¹⁶² Personal prejudice, including gender stereotypes, may violate an individual's right to the presumption of innocence and to an impartial court.¹⁶³ In Manuela's case, local authorities neglected to investigate alternative causes of death for the newborn and failed to consider Manuela's medical history.¹⁶⁴ These officials, including the lead investigator, were influenced by their own prejudices and preconceived notions about maternity and women.¹⁶⁵ Therefore, the Court found that Manuela was presumed guilty from the beginning of the investigation and that minimal effort was made to find evidence to the contrary.¹⁶⁶

The use of gender stereotypes negatively affected the trial court's statement of reasons, which failed to include objective reasoning based on reliable proof.¹⁶⁷ The Court noted that by relying on gender stereotypes of maternal instincts and extramarital shame, the trial court assumed Manuela's bad faith and guilt.¹⁶⁸ The trial court's decision was also discriminatory because of its subjective and prejudicial rationale and its extreme impact on Manuela due to her poverty and illiteracy.¹⁶⁹ Accordingly, the Court held the State to be in violation of Articles 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal), 8(2) (Right to Be Presumed Innocent), and 24 (Right to Equal Protection) of the Convention.¹⁷⁰

¹⁵⁴ Manuela et al. v. El Salvador, Preliminary Objections, Merits, Reparations, and Costs, ¶ 120.

¹⁵⁵ *Id.* ¶ 121.

¹⁵⁶ *Id.* ¶ 122.

¹⁵⁷ *Id.* ¶¶ 126-129.

¹⁵⁸ *Id.* ¶ 130.

¹⁵⁹ *Id.*

¹⁶⁰ Manuela et al. v. El Salvador, Preliminary Objections, Merits, Reparations, and Costs, ¶ 131.

¹⁶¹ *Id.*

¹⁶² *Id.*

¹⁶³ *Id.* ¶¶ 132-134.

¹⁶⁴ *Id.* ¶¶ 136-138.

¹⁶⁵ *Id.* ¶¶ 141-144.

¹⁶⁶ Manuela et al. v. El Salvador, Preliminary Objections, Merits, Reparations, and Costs, ¶ 146.

¹⁶⁷ *Id.* ¶¶ 148-152.

¹⁶⁸ *Id.* ¶¶ 153-154.

¹⁶⁹ *Id.* ¶¶ 157-159.

¹⁷⁰ *Id.* ¶ 160.

Third, the Court found that Manuela’s punishment was grossly disproportionate and in violation of the Convention’s prohibition of cruel and inhumane punishment.¹⁷¹ The punishment did not consider her individual perinatal and postpartum experiences and was not mitigated despite her status as a vulnerable young woman from a rural and culturally isolated background, with little education.¹⁷² The Court determined that the trial court’s punishment was cruel and contradictory, as it sentenced Manuela to thirty years in incarceration despite recognizing her personal circumstances.¹⁷³ Hence, the State violated Articles 5(2) (Prohibition of Torture, and Cruel, Inhumane or Degrading Treatment) and 5(6) (Detention Must Aim to Reform and Rehabilitate).¹⁷⁴

The Court found by six votes to one that El Salvador had violated:

Articles 4 (Right to Life), 5 (Right to Humane Treatment), 11 (Right to Privacy), 24 (Right to Equal Protection), and 26 (Duty to Progressively Develop Economic, Social, and Cultural Rights), in relation to Articles 1(1) (Obligation of Non-Discrimination) and 2 (Obligation to Give Domestic Legal Effect to Rights) of the Convention, to the detriment of Manuela,¹⁷⁵ because:

The Court recognized that the right to life, personal integrity, and health are all intrinsically linked.¹⁷⁶ The right to health requires that a State ensure reliable and effective healthcare to its citizens, especially to vulnerable and marginalized groups.¹⁷⁷ The State must guarantee that these services are not discriminatory and advance the equality of economic, social, cultural, economic, and environmental rights (“ESCER”) through Article 26 (Duty to Progressively Develop Economic, Social, and Cultural Rights).¹⁷⁸ Moreover, the right to health includes the right to sexual and reproductive health.¹⁷⁹ The State must account for the differences between women and men in providing sexual and reproductive health services, and must provide such service without discriminating against patients accused of crime.¹⁸⁰ The Court observed that the delay in treating Manuela’s injuries, the failure to diagnose her lumps, and the usage of handcuffs in a hospital were all unacceptable actions.¹⁸¹ Regarding the handcuffs, the Court pointed to international jurisprudence which establishes that handcuffs or restraints should not be used on women during labor, birth, or post-partum stages.¹⁸² They should not be used unless strictly necessary to prevent a detainee’s escape or self-harm.¹⁸³ The Court found Manuela’s handcuffing unreasonable and in violation of Articles 5 (Right to Humane Treatment) and 26 (Duty to Progressively Develop Economic, Social, and Cultural Rights), as she was being treated for severe injuries and posed no flight risk or threat to others.¹⁸⁴

¹⁷¹ Manuela et al. v. El Salvador, Preliminary Objections, Merits, Reparations, and Costs, ¶¶ 161-162.

¹⁷² *Id.* ¶¶ 166, 168.

¹⁷³ *Id.* ¶ 169.

¹⁷⁴ *Id.* ¶ 172.

¹⁷⁵ *Id.* ¶ 260.

¹⁷⁶ *Id.* ¶ 183.

¹⁷⁷ Manuela et al. v. El Salvador, Preliminary Objections, Merits, Reparations, and Costs, ¶ 185.

¹⁷⁸ *Id.* ¶ 186.

¹⁷⁹ *Id.* ¶ 192.

¹⁸⁰ *Id.* ¶¶ 193-194.

¹⁸¹ *Id.* ¶¶ 195-197.

¹⁸² *Id.* ¶ 199.

¹⁸³ Manuela et al. v. El Salvador, Preliminary Objections, Merits, Reparations, and Costs, ¶ 198.

¹⁸⁴ *Id.* ¶¶ 200-201.

Next, the Court considered violations of Manuela's right to privacy.¹⁸⁵ The right to privacy includes reproductive autonomy, access to services, and confidentiality of sensitive information, such as that regarding an individual's sex life.¹⁸⁶ In conjunction with the right to health, the right to privacy guarantees confidentiality of personal health information.¹⁸⁷ While physicians have a duty to ensure client confidentiality, a state may restrict this duty when the restriction is established by law and pursues a legitimate, necessary purpose.¹⁸⁸ This law must be precise and unambiguous, and should not allow individuals to act in an arbitrary or discretionary manner.¹⁸⁹ The Court noted that El Salvador's Health Code and Criminal Procedure establish conflicting duties and do not include information regarding the maintenance of confidentiality in obstetric emergencies.¹⁹⁰ Thus, it was unclear that the law obligated Manuela's physicians to breach client confidentiality.¹⁹¹ Accordingly, the disclosures violated Article 2 (Obligation to Give Domestic Legal Effect to Rights).¹⁹² While the Court considered that the physician's criminal complaint against Manuela may have filled a necessary and suitable purpose, it was not more important than Manuela's need for privacy and medical care.¹⁹³ Therefore, the criminal complaint violated Articles 11 (Right to Privacy) and 26 (Duty to Progressively Develop Economic, Social, and Cultural Rights).¹⁹⁴ Additionally, the physician's statement and the director's disclosure of Manuela's medical report to the prosecution constituted violations of Articles 11 (Right to Privacy) and 26 (Duty to Progressively Develop Economic, Social, and Cultural Rights).¹⁹⁵

Furthermore, the Court examined the medical attention provided to Manuela while she was detained.¹⁹⁶ The Court observed that the State failed to ensure that Manuela was examined following her medical emergency and failed to provide her adequate medical treatment while detained.¹⁹⁷ A State must not incarcerate individuals with terminal diseases unless it can provide appropriate and qualified medical treatment.¹⁹⁸ The State neglected to provide Manuela with regular chemotherapy appointments and medical care, transforming her punishment into cruel and inhumane punishment in violation of Articles 5 (Right to Humane Treatment) and 26 (Duty to Progressively Develop Economic, Social, and Cultural Rights).¹⁹⁹ Moreover, Manuela died in custody, and thus the State violated Article 4(1) (Prohibition of Arbitrary Deprivation of Life).²⁰⁰

Lastly, the State examined the effect of discrimination and determined that medical staff prioritized the filing of a criminal report over Manuela's health and safety, thereby violating Articles 24 (Right to Equal Protection) and 26 (Duty to Progressively Develop Economic, Social, and Cultural Rights).²⁰¹

¹⁸⁵ Manuela et al. v. El Salvador, Preliminary Objections, Merits, Reparations, and Costs, ¶ 205.

¹⁸⁶ *Id.* ¶¶ 204-205.

¹⁸⁷ *Id.* ¶ 206.

¹⁸⁸ *Id.* ¶ 207.

¹⁸⁹ *Id.* ¶¶ 211-212.

¹⁹⁰ *Id.* ¶ 213.

¹⁹¹ Manuela et al. v. El Salvador, Preliminary Objections, Merits, Reparations, and Costs, ¶ 215.

¹⁹² *Id.* ¶ 216.

¹⁹³ *Id.* ¶¶ 217-221.

¹⁹⁴ *Id.* ¶¶ 217-224.

¹⁹⁵ *Id.* ¶¶ 228.

¹⁹⁶ *Id.* ¶¶ 230-231.

¹⁹⁷ Manuela et al. v. El Salvador, Preliminary Objections, Merits, Reparations, and Costs, ¶¶ 235-238.

¹⁹⁸ *Id.* ¶ 237.

¹⁹⁹ *Id.* ¶¶ 238-242.

²⁰⁰ *Id.* ¶¶ 238-246.

²⁰¹ *Id.* ¶¶ 255-256.

The Court found unanimously that El Salvador had violated:

Articles 5(1) (Right to Physical, Mental, and Moral Integrity), in relation to Articles 1(1) (Obligation of Non-Discrimination) of the Convention, to the detriment of Manuela's parents and sons,²⁰² because:

The Court has historically asserted that the family of victims may be victims themselves, and that their pain and suffering can violate the right of mental and moral integrity.²⁰³ Manuela's family continued to suffer from post-traumatic stress resulting from Manuela's incarceration and death.²⁰⁴ As a result, the Court held the State violated Article 5(1) (Right to Physical, Mental, and Moral Integrity) to the detriment of Manuela's family.²⁰⁵

The Court unanimously dismissed:

The claim of violation of Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal).²⁰⁶ While a State has a duty to open an ex officio investigation when an individual dies in State custody, a non-judicial investigation may be sufficient in cases such as Manuela's, where there was no allegation of violence.²⁰⁷ Therefore, there was insufficient evidence to show the State had failed to ensure access to justice.²⁰⁸

The Court unanimously dismissed:

The claims of violation of Articles 11(2) (Prohibition of Arbitrary Interference with Private Life, Family, Home, Correspondence, and of Unlawful Attacks on Honor, and Dignity), 17(1) (Family's Right to Be Protected), and 19 (Rights of the Child) because the representatives' allegations were the same as those for the Article 5(1) (Right to Physical, Mental, and Moral Integrity) violation.²⁰⁹

The Court did not rule on:

Article 4.1 (Prohibition of Arbitrary Deprivation of Life), Article 5.1 (Right to Physical, Mental, and Moral Integrity), Article 7.2 (Prohibition of Deprivation of Liberty Unless for Reasons and Conditions Previously Established by Law), Article 8.2(c) (Right to Adequate Time and Means to Prepare Defense), Article 8.2(h) (Right to Appeal), Article 11.2 (Prohibition of Arbitrary Interference with Private Life, Family, Home, Correspondence, and of Unlawful Attacks on Honor, and Dignity), Article 11.3 (Right to Protection from Attacks against Private Life, Family, Home, Correspondence, Honor, and Dignity), Article 25.1 (Right of Recourse Before a Competent Court) in relation to Article 1.1 (Obligation of Non-Discrimination) and Article 2 (Obligation to Give Domestic Legal Effect to Rights) of the American Convention on Human Rights, Article 7.4 (Right to Be Informed of Reasons of Arrest and Charges), Article 7.5 (Right to Be Promptly Brought Before a Judge and Right to a

²⁰² Manuela et al. v. El Salvador, Preliminary Objections, Merits, Reparations, and Costs, ¶ 266.

²⁰³ *Id.* ¶ 262.

²⁰⁴ *Id.* ¶ 265.

²⁰⁵ *Id.* ¶ 266.

²⁰⁶ *Id.* ¶ 247.

²⁰⁷ *Id.*

²⁰⁸ Manuela et al. v. El Salvador, Preliminary Objections, Merits, Reparations, and Costs, ¶ 247.

²⁰⁹ *Id.* ¶ 267.

Trial Within Reasonable Time), Article 8.2(b) (Right to Have Prior Notification of Charges) in relation to Article 1(1) (Obligation of Non-Discrimination) of the American Convention.

C. Dissenting and Concurring Opinions

1. Concurring Separate Opinion of Judge Ricardo C. Pérez Manrique

In a separate opinion, Judge Pérez Manrique contended that the right to health is interconnected with several Convention rights, and therefore does not need be supported with Article 26 (Duty to Progressively Develop Economic, Social, and Cultural Rights) to be justiciable.²¹⁰ He emphasized the importance of recognizing that an individual or a community may have intersectional vulnerabilities that make them susceptible to enhanced discrimination and therefore subject to greater violation of rights.²¹¹ Because the State was obligated to combat intersectional and structural discrimination, he thought it necessary to mention the State's obligation to guarantee the right to presumption of innocence and to defense in cases such as Manuela's, where the individual is victim to intersectional discrimination.²¹² Additionally, the State's duty to provide a competent defense should have been framed with an awareness of gender and women's health issues.²¹³ Lastly, he asserted that it was essential for the Court to elaborate on the State's obligation to guarantee a woman's presumption of innocence by addressing structural gender discrimination in criminal and investigative proceedings.²¹⁴

2. Concurring Separate Opinion of Judge Humberto Antonio Sierra Porto

In a separate opinion, Judge Sierra Porto partially disagreed with the Court's reasoning to maintain the State's responsibility and justiciability through Article 26 (Duty to Progressively Develop Economic, Social, and Cultural Rights).²¹⁵ While he agreed that the State violated Articles 4 (Right to Life), 5 (Right to Humane Treatment), 11 (Right to Privacy), and 24 (Right to Equal Protection) of the Convention, as well as Article 7(a) (Duty to Refrain from Acts of Violence) of the Convention of Belém do Pará, he objected to the right of health being justiciable through Article 26 (Duty to Progressively Develop Economic, Social, and Cultural Rights); its justiciability contradicts the Convention and the Vienna Convention on the Law of Treaties.²¹⁶

3. Concurring Separate Opinion of Judge Eugenio Raúl Zaffaroni

In a separate opinion, Judge Raúl Zaffaroni expressed two *obiter dicta* reflections on the judgment.²¹⁷ First, he noted that the legal contradiction inherent in a reporting duty for medical professionals is incompatible with democracy as it obliges individuals to act as State enforcers.²¹⁸ Second, if the State does impose a duty to report an offense, it must never be

²¹⁰ Manuela et al. v. El Salvador, Preliminary Objections, Merits, Reparations, and Costs, Separate Opinion of Judge Ricardo C. Pérez Manrique, Inter-Am. Ct. H.R. (ser. C) No. 441, ¶ 7 (Nov. 2, 2021).

²¹¹ *Id.* ¶¶ 8-9.

²¹² *Id.* ¶ 24.

²¹³ *Id.* ¶ 26.

²¹⁴ *Id.* ¶ 28.

²¹⁵ Manuela et al. v. El Salvador, Preliminary Objections, Merits, Reparations, and Costs, Separate Opinion of Judge Humberto Antonio Sierra Porto, Inter-Am. Ct. H.R. (ser. C) No. 441, ¶ 2 (Nov. 2, 2021).

²¹⁶ *Id.* ¶¶ 2-3.

²¹⁷ Manuela et al. v. El Salvador, Preliminary Objections, Merits, Reparations, and Costs, Separate Opinion of Judge Eugenio Raúl Zaffaroni, Inter-Am. Ct. H.R. (ser. C) No. 441, ¶ 22 (Nov. 2, 2021).

²¹⁸ *Id.* ¶¶ 4-10.

prioritized so that an individual is forced to choose between punishment or death.²¹⁹ He noted that a trial founded on a complaint made in violation of the duty of professional secrecy should be nullified because such a complaint would be unlawful.²²⁰

4. Partially Dissenting Opinion of Judge Eduardo Vio Grossi

In a separate opinion, Judge Vio Grossi disagreed with the Court’s findings as to the right to health and the Court’s mention of abortion in its sentence to the State.²²¹ First, he agreed with the other concurrences in that Article 26 (Duty to Progressively Develop Economic, Social, and Cultural Rights) should not be used to as a basis for justiciability.²²² He explained that the Convention regulates recognized rights and that the rights in Article 26 are “derived” from the Charter of the Organization of the American Rights, which merely “encouraged” adoption instead of providing justiciable rights; the Charter uses language of “basic objectives” and policy tools.²²³ Moreover, the Court’s interpretation of the article does not conform with Article 31(1) of the Vienna Convention on the Law of Treaties.²²⁴ Second, he disagreed with the Court’s consideration of the greater context of abortion law in El Salvador, believing it was unnecessary in a case regarding aggravated homicide.²²⁵ He noted that the Court neglected to consider that a State holds responsibility in a case when its most recent act violated an international duty, unless the act is continuing, composite, or an omission.²²⁶ In contrast, prior acts should not be considered since the State would be unable to rectify its actions.²²⁷ He claims that the Court substituted its own international protection over the State’s domestic protection by ruling on the investigation surrounding Manuela’s abortion, rather than limiting inquiry to the legality of the aggravated homicide charge.²²⁸ Finally, because there was no international right to an abortion, the State did not have an obligation to protect this right.²²⁹

IV. REPARATIONS

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

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

1. Judgment as a Form of Reparation

The State must publish the official summary of the Court’s judgment in the State’s Official Gazette as well as a national newspaper.²³⁰ This must be disseminated widely in a legible and adequate font and must be available for the minimum of one year on the websites of the

²¹⁹ *Manuela et al. v. El Salvador*, Preliminary Objections, Merits, Reparations, and Costs, Separate Opinion of Judge Eugenio Raúl Zaffaroni, ¶ 16.

²²⁰ *Id.* ¶ 20.

²²¹ *Manuela et al. v. El Salvador*, Preliminary Objections, Merits, Reparations, and Costs, Separate Opinion of Judge Eduardo Vio Grossi, Inter-Am. Ct. H.R. (ser. C) No. 441, ¶¶ 1, 6 (Nov. 2, 2021).

²²² *Id.* ¶ 4.

²²³ *Id.*

²²⁴ *Id.*

²²⁵ *Id.* ¶¶ 6, 11, 14.

²²⁶ *Id.* ¶ 12.

²²⁷ *Manuela et al. v. El Salvador*, Preliminary Objections, Merits, Reparations, and Costs, Separate Opinion of Judge Eduardo Vio Grossi, ¶ 12.

²²⁸ *Id.*

²²⁹ *Id.* ¶ 13.

²³⁰ *Manuela et al. v. El Salvador*, Preliminary Objections, Merits, Reparations, and Costs, ¶ 273.

Attorney General's Office and the Ministries of Education, Justice and Public Security, and Public Health in an accessible manner.²³¹

2. Acknowledgement of Responsibility

To remedy the State's actions and to deter future violations, the State must publicly acknowledge its responsibility for violations of Manuela and her family's rights.²³² The State must make this acknowledgement, with agreement of the victims or their representatives, in a public ceremony with senior State officials and Manuela's family or their representatives present.²³³ This acknowledgement should be widely disseminated in the media, especially in those media outlets owned by the Ministries of Health and the Ministry of Justice and Public Security.²³⁴

3. Scholarships for Manuela's Sons

The State must grant an academic scholarship to Manuela's sons for their primary and secondary education, and graduate and/or postgraduate studies.²³⁵ This fund may not be conditional on their academic performance and must be granted from the time the sons ask for its provision to their termination of studies.²³⁶

4. Health Services for Manuela's Parents

The State must immediately provide free medical, psychological, and/or psychiatric treatment to Manuela's parents so long as they require it.²³⁷ The treatment must be provided at the parents' preferred health centers.²³⁸ If this is not possible, then the State must pay for transportation and food costs for travel to other centers.²³⁹

5. Amend Pretrial Detention Standard

The State should amend its Code of Criminal Procedure to comply with the Convention's standards on pretrial detention.²⁴⁰

6. Amendment of Criminal Punishment for Infanticide

The State must amend its criminal laws to comply with the Convention's rules on proportional punishment.²⁴¹

7. Implement Sexual Education Program

²³¹ *Manuela et al. v. El Salvador*, Preliminary Objections, Merits, Reparations, and Costs, ¶ 273.

²³² *Id.* ¶ 276.

²³³ *Id.* ¶¶ 276-277.

²³⁴ *Id.* ¶ 276.

²³⁵ *Id.* ¶ 279.

²³⁶ *Id.*

²³⁷ *Manuela et al. v. El Salvador*, Preliminary Objections, Merits, Reparations, and Costs, ¶ 282.

²³⁸ *Id.*

²³⁹ *Id.*

²⁴⁰ *Id.* ¶ 289.

²⁴¹ *Id.* ¶ 295.

The State is required to design and implement comprehensive school-based sexual education that is non-discriminatory and evidence based.²⁴²

8. Attention to Obstetric Emergencies

The State must comply with its guidelines concerning obstetric care and ensure comprehensive medical care for women in obstetric emergencies.²⁴³ The Court will monitor the State's compliance for three years.²⁴⁴

The Court ruled six votes to one that the State had the following obligations:

9. Clarification of Medical Secrecy and Adoption of Medical Protocol

The State must clarify the regulations of medical secrecy, protection of records, and any associated exceptions.²⁴⁵ This clarification should establish the following: (1) medical staff do not have an obligation to report female patients for suspected abortions, (2) staff have a duty of secrecy in such cases if questioned by authorities, (3) a failure to report will not lead to personal consequences, (4) medical records may be disclosed only upon a legitimate order to disclose, and (5) disclosure should be narrowly limited to necessary information.²⁴⁶ Until the State complies with this order, it must not apply current laws regarding medical staff's duty to report.²⁴⁷ Additionally, the State must adopt a protocol regulating public and private health personnel's treatment of women requiring urgent care for obstetric emergencies.²⁴⁸ This protocol should ensure that patient confidentiality is ensured, that their access to health services is not burdened by a presumption of criminal conduct, and that they are not questioned for purposes of criminal investigation.²⁴⁹

10. Awareness Training for Public Officials

The State must adopt an awareness program for judicial officials and medical staff of the Rosales National Hospital.²⁵⁰ For judicial officials, the State is required to implement ongoing education and training programs that emphasize women's voices and rights, deter usage of stereotypes, and explain restrictions on handcuff usage for women in labor.²⁵¹ For the Rosales medical staff, the State is required to implement a program focusing on professional secrecy, gender stereotypes, and the protocol for women in obstetric emergencies.²⁵²

B. Compensation

The Court awarded the following amounts:

²⁴² Manuela et al. v. El Salvador, Preliminary Objections, Merits, Reparations, and Costs, ¶ 297.

²⁴³ *Id.* ¶ 299.

²⁴⁴ *Id.*

²⁴⁵ *Id.* ¶ 286.

²⁴⁶ *Id.*

²⁴⁷ *Id.*

²⁴⁸ Manuela et al. v. El Salvador, Preliminary Objections, Merits, Reparations, and Costs, ¶ 287.

²⁴⁹ *Id.*

²⁵⁰ *Id.* ¶ 293.

²⁵¹ *Id.*

²⁵² *Id.* ¶ 294.

1. Pecuniary Damages

The Court awarded \$20,000 to Manuela's parents, to be divided equally between them, for expenses incurred in their search for justice and Manuela's detention and hospitalization.²⁵³ Additionally, for the loss of Manuela's lifetime earnings, the Court awarded \$60,000 to be divided equally between her sons.²⁵⁴

2. Non-Pecuniary Damages

For Manuela's imprisonment, prosecution, and lack of medical care, the Court awarded compensation of \$100,000.²⁵⁵ This should be divided by giving \$30,000 each to Manuela's sons and \$20,000 each to her parents.²⁵⁶ Additionally, because of the family's ongoing pain and suffering, the Court awarded \$40,000 to the family, to be divided equally by each family member.²⁵⁷

3. Costs and Expenses

The Court awarded the Women's Collective for Local Development \$14,500 and the Center for Reproductive Rights \$33,000 for costs and expenses.²⁵⁸

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

\$ 267,500

C. Deadlines

Within six months of receiving notice of the judgment, the State must publish the judgment in various news and media sources and Manuela's sons must notify the State of their intent to accept the State's scholarships.²⁵⁹ The sons have an additional two years from completing secondary studies to inform the State of their acceptance of funds for their graduate studies.²⁶⁰

Within one year, the State must adopt the patient-centered protocol for medical staff and the training programs for judicial officers and the Rosales Hospital staff.²⁶¹

Within two years, the State must clarify the scope of the medical duty to report, amend its Criminal Code for punishment and infanticide, and design the sexual education program.²⁶²

The State must report its progress on implementation of this program within one year.²⁶³

Within eighteen months, Manuela's parents must inform the State of their acceptance of its free health services.²⁶⁴

V. INTERPRETATION AND REVISION OF JUDGMENT

²⁵³ Manuela et al. v. El Salvador, Preliminary Objections, Merits, Reparations, and Costs, ¶ 304.

²⁵⁴ *Id.* ¶ 305.

²⁵⁵ *Id.* ¶ 309.

²⁵⁶ *Id.*

²⁵⁷ *Id.* ¶ 310.

²⁵⁸ *Id.* ¶ 319.

²⁵⁹ Manuela et al. v. El Salvador, Preliminary Objections, Merits, Reparations, and Costs, ¶¶ 273, 279.

²⁶⁰ *Id.* ¶ 279.

²⁶¹ *Id.* ¶¶ 286-287, 293-294.

²⁶² *Id.* ¶¶ 286-287, 289, 295.

²⁶³ *Id.* ¶ 297.

²⁶⁴ *Id.* ¶ 282.

February 28, 2022: The representatives of the petitioners requested interpretation of the judgment.²⁶⁵ They asked for clarification on the deadline to accept the scholarship, on whether Manuela's sons are beneficiaries of the health services given to Manuela's parents, and on the beginning of the Court's three-year period to supervise the State's compliance with the measure to guarantee care for obstetric emergencies.²⁶⁶

July 27, 2022: The Court issued its interpretation of the judgment.²⁶⁷ The Court clarified that Manuela's sons have six months to indicate they will receive the State's scholarships, and that the State must provide the funds immediately upon notification.²⁶⁸ Next, the Court explained that the State is only required to provide health services to Manuela's parents.²⁶⁹ However, it may provide services to Manuela's sons in good faith.²⁷⁰ Lastly, the Court clarified that it would begin to supervise the State's compliance with obstetric care once the State submits its first compliance report.²⁷¹

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

Manuela et al. v. El Salvador, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 441 (Nov. 2, 2021).

Manuela et al. v. El Salvador, Preliminary Objections, Merits, Reparations, and Costs, Separate Opinion of Judge Ricardo C. Pérez Manrique, Inter-Am. Ct. H.R. (ser. C) No. 441 (Nov. 2, 2021).

Manuela et al. v. El Salvador, Preliminary Objections, Merits, Reparations, and Costs, Separate Opinion of Judge Humberto Antonio Sierra Porto, Inter-Am. Ct. H.R. (ser. C) No. 441 (Nov. 2, 2021).

²⁶⁵ Manuela et al. v. El Salvador, Application for Judicial Review of the Judgment of Preliminary Objections, Merits, Reparations, and Costs, Inter-Am. Ct. H.R. (ser. C) No. 461, ¶ 2 (July 27, 2022).

²⁶⁶ *Id.*

²⁶⁷ *See id.*

²⁶⁸ *Id.* ¶ 16.

²⁶⁹ *Id.* ¶ 20.

²⁷⁰ *Id.* ¶ 21.

²⁷¹ Manuela et al. v. El Salvador, Application for Judicial Review of the Judgment of Preliminary Objections, Merits, Reparations, and Costs, ¶ 26.

Manuela et al. v. El Salvador, Preliminary Objections, Merits, Reparations, and Costs, Separate Opinion of Judge Eugenio Raúl Zaffaroni, Inter-Am. Ct. H.R. (ser. C) No. 441 (Nov. 2, 2021).

Manuela et al. v. El Salvador, Preliminary Objections, Merits, Reparations, and Costs, Separate Opinion of Judge Eduardo Vio Grossi, Inter-Am. Ct. H.R. (ser. C) No. 441 (Nov. 2, 2021).

3. Provisional Measures

[None]

4. Compliance Monitoring

[None]

5. Review and Interpretation of Judgment

Manuela et al. v. El Salvador, Application for Judicial Review of the Judgment of Preliminary Objections, Merits, Reparations, and Costs, Inter-Am. Ct. H.R. (ser. C) No. 461 (July 27, 2022).

B. Inter-American Commission

1. Petition to the Commission

[None]

2. Report on Admissibility

Manuela et al. v. El Salvador, Admissibility Report, Report No. 29/17, Inter-Am. Comm'n H.R., Case No. 424.14 (March 18, 2017).

3. Provisional Measures

[None]

4. Report on Merits

Manuela et al. v. El Salvador, Report on Merits, Report No. 153/18, Inter-Am. Comm'n H.R., Case No. 13.069 (December 7, 2018).

5. Application to the Court

Manuela et al. v. El Salvador, Petition to the Court, Inter-Am. Comm'n H.R., Case No. 13.069 (July 29, 2019).