



## Victor Rosario Congo v. Ecuador

Report 63/99, Case No. 11.427; OEA/Ser.L/V/II.106 Doc. 6 rev., April 13, 1999

**Country:** Ecuador

**Region:** Americas

**Year:** 1999

**Court:** Inter-American Commission on Human Rights Inter-American Commission on Human Rights

**Health Topics:** Diet and nutrition, Health care and health services, Mental health, Prisons

**Human Rights:** Right to bodily integrity, Right to due process/fair trial, Right to food, Right to health, Right to life, Right to water and sanitation

### Facts

Victor Rosario Congo, an Ecuadorian, was placed in a detention center pending investigations into criminal charges. There were indications that he suffered from a mental disorder. In September 12, 1990, Mr. Congo was placed in an isolation cell at which time a guard assaulted him in the Rehabilitation Center, inflicting a wound to his head. Despite the apparent severity of the wound and his deteriorated emotional and mental state, Mr. Congo was returned to an isolation cell, naked, having received no medical treatment. While several medical experts recommended his immediate transfer to a psychiatric facility, Mr. Congo was finally transferred after a considerable delay upon which he was turned away from two such facilities before being accepted into the third in a critical state of health. At this time, attending personal issued a medical order that Mr. Congo be transferred to a Hospital where he died within a few hours of arrival. An autopsy concluded he died of malnutrition, hydro-electrolytic imbalance, and heart and lung failure.

The petition was filed by the Ecumenical Commission on Human Rights on behalf of Mr. Congo against Ecuador for a violation of the American Convention on Human Rights (the Convention).

The Petitioner claimed Ecuador was responsible for the wounds inflicted on Mr. Congo by personnel of the Detention Center and that it failed in its obligation to provide medical care to Mr. Congo. Petitioner claimed that Mr. Congo's death was a result of his placement in an isolation cell without medical treatment while he was wounded and in a distressed mental state. The Petitioner also argued that the State failed to comply with its obligation to carry out a judicial investigation to establish those responsible for Mr. Congo's injuries and his subsequent death, claiming that any investigation that took place was negligently done.

While the State presented documentary evidence confirming the identity of the victim's aggressor and information that confirmed the physical and psychological damage caused by the aggressor, it did not presented any defense in justification of the guard's actions. The State described the assertion that a causal link existed between the assault of Mr. Congo and his death as "perverse." It alleged that, according to the autopsy, Mr. Congo died of dehydration, not of his wounds. The State also referred to its socioeconomic situation, which it claimed prevented it from having psychiatric prisons and an adequate number of trained guards. The State alleged that the Petitioner, having only filed complaints to the government prosecutor, failed to appeal to a proper member of the judiciary, namely the Court of Constitutional Guarantees, to protect Mr. Congo's rights.

### Decision and Reasoning

The Petitioner did not expressly allege violations of specific provisions of the Convention, so the Commission, according to the principle of *jura novit curia*, determined the provisions that may have been violated in light of the facts. The Commission examined violations under article 5(1) and (2) (right to humane treatment), article 4 (right to life), and article 25(1) (right to judicial protection).

The Commission concluded that, for the purposes of the petition, Mr. Congo was to be regarded as mentally disabled. As such, he was a member of a particularly vulnerable group—the mentally disabled. Accordingly, the Commission declared that the right to humane treatment enshrined in article 5 of the Convention must be interpreted in light of the Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care (the Principles). The Principles were adopted by the United Nations General Assembly as an interpretive guide in matters concerning the protection of the human rights of persons with mental disabilities. The Commission also reiterated that every State has a responsibility under the Convention to

respect and protect the rights of persons subject to their jurisdiction who are under the direct control of the State, including persons held in penitentiary institutions.

The Commission declared that the State failed in its duty to protect Mr. Congo's mental and moral integrity under article 5(1). The Commission also found that the State failed under article 5(2) to guarantee Mr. Congo's right to humane treatment and to fulfill its duty to ensure every person deprived of his liberty has the right to live in detention conditions compatible with her or his personal dignity.

The Commission found that the solitary confinement to which Mr. Congo was subjected constituted inhuman and degrading treatment in violation of article 5(2) and was aggravated by the fact that Mr. Congo was unable to satisfy his basic needs. Ecuador had thus violated the right of Mr. Congo to "be treated with respect for the inherent dignity of the human person." The Commission noted that the Inter-American Court of Human Rights had established that keeping a person in a small, isolated cell constituted inhuman and degrading treatment, and thus required provisional measures to safeguard the inmate's integrity. Moreover, the Commission pointed out that when a person kept in isolation has a mental disability, solitary confinement might amount to a more egregious violation.

The Commission found that the State was responsible for the physical assault upon Mr. Congo committed by the detention center guard. The Commission declared that the assault also constituted cruel, inhuman and degrading treatment and was a "grave violation of the victim's right to respect for his physical, mental, and moral integrity."

The Commission stated that detaining an individual suffering from mental illness without medical treatment amounted to a violation of the inmate's physical, mental and moral integrity as well as the prohibition of inhuman, cruel or degrading treatment. The Commission noted that the State failed to provide medical treatment needed to ensure Mr. Congo's physical integrity after his condition had been established. The Commission thus found that Ecuador did not take the necessary measures to protect Mr. Congo's physical, mental and moral integrity.

The Commission also found that Ecuador violated Mr. Congo's right to life under article 4 of the Convention. Basic measures necessary for Mr. Congo's survival, such as medical care to treat his physical injuries and vital care such as sanitization, food, and mental health care, were not provided by the State. Ecuador cited structural impairments to proper psychiatric facilities for detainees; however, the Commission declared that the State's lack of special facilities did not exempt it from the obligation to provide medical care to persons in its custody. Ecuador thus failed to take measures within its power to ensure the right to life of Mr. Congo who was under State control and, partly because of his state of health and in part owing to injuries inflicted on him by a State agent, was defenseless and isolated.

Lastly, the Commission found that Ecuador violated Mr. Congo's right to judicial protection enshrined in article 25(1) of the Convention. The Commission declared that the State's duty to investigate, try and punish human rights offenders could not be delegated to victims or their families. It noted that no judicial proceedings had been commenced to investigate and determine responsibility for the injuries and death of Mr. Congo.

## Decision Excerpts

"Keeping a person in a small, isolated cell constitutes inhuman and degrading treatment, which justifies provisional measures to preserve his integrity." Para. 56.

"The Commission is of the view that isolation can in itself constitute inhumane treatment. Moreover, when the person kept in isolation in a penitentiary institution has a mental disability, this could involve an even more serious violation of the State's obligation to protect the physical, mental and moral integrity of persons held under its custody." Para. 58.

"The Commission considers that a violation of the right to physical integrity is even more serious in the case of a person held in preventive detention, suffering a mental disease, and therefore in the custody of the State in a particularly vulnerable position." Para. 67.

"The fact that the State has no special facilities for the admission of prisoners with mental illness does not exempt it from the obligation to provide medical care to the persons in its custody." Para. 81.

"The European Court of Human Rights has established that the state of health of a victim is an important factor in determining whether they have been subjected to inhumane or degrading punishment or treatment.

The Commission must take into consideration that the death of the victim occurred as a consequence of dehydration and malnutrition. Persons with mental disability are not able to look after themselves and require care, treatment and supervision for their own protection. In this case, therefore, the agents of the State charged with the personal safety of Mr. Congo were not in a position to assume that the inmate was capable of feeding and caring for himself. The fact that the supposed victim died as a result of his dehydration and malnutrition reveals that the State failed in its duty to do what was in its power to keep him alive, given his mental and physical disorders. The Petitioners have not argued that Mr. Congo was deliberately deprived of water and food, but the State has not shown that it took the measures incumbent on it to ensure that the alleged victim would be properly fed during the time of his isolation. Nor does the fact that the inmate may have displayed antisocial behavior—a symptom of his disorder in any case—exempt the State from taking such measures as are in its power to keep him alive. As held by the European Commission in the case of *Dhoest vs. Belgium*, the obligation of authorities to watch continually over the health and welfare of persons with mental disabilities extends to the cases of prisoners who are uncooperative. Therefore, given the causes of his death, and apart from having omitted to provide him with medical and psychiatric care, the State neglected its obligation to protect the life of inmate VÃ-ctor Rosario Congo." Para. 82.

â€œ[T]he Commission [has] established that whenever a person is detained and unable to contact his next of kin, a lawyer or personal physician, the State must be considered to be in complete control of his life and physical integrity. In such circumstances, any omission by the State violate its obligation to ensure the right to life and physical integrity of the inmate.â€• Para. 83.

â€œThe investigation, trial and punishment of human rights perpetrators is an obligation that the State is in no position to delegate.â€• Para. 95.

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