



Maria Mamerita Mestanza Chavez v. Peru

Report No. 66/00, Case 12.191, October 3, 2000; OEA/Ser./L/V/II.111, doc. 20 rev., 16 April 2001

Country: Peru

Region: Americas

Year: 2003

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

Health Topics: Informed consent, Medical malpractice, Poverty, Sexual and reproductive health

Human Rights: Freedom from discrimination, Right to bodily integrity, Right to health, Right to life

Facts

A group of NGOs lodged a petition with the Commission alleging that Peru violated Maria Mamã©rita Mestanza Chã¼vez's rights on account of a forced sterilization that resulted in her death.

Peru implemented a family planning policy involving compulsory and systematic sterilization in order to modify the reproductive behavior of the population. Poor, indigenous, and rural women were targeted. Ms. Chã¼vez was a woman affected by the policy. She and her husband were subjected to various forms of harassment, including visits to their home by health personnel during which they were threatened with criminal fines and imprisonment if she did not submit to the procedure. Ms. Chã¼vez finally agreed to undergo the operation. Following the procedure, she experienced serious symptoms, but was told by medical personnel that they were postoperative effects of the anesthesia. Ms. Chã¼vez died due to complications nine days after the operation.

Her husband declined a settlement sum offered by the hospital and proceeded to press criminal charges against the hospital chief in the Provincial Court. The charges were dismissed by a Provincial Court citing lack of grounds for opening the case. That decision was confirmed on July 1, 1998 by the Specialized Chamber for Criminal Matters pursuant to which the Provincial Prosecutor ordered the case closed on December 16, 1998. Petitioner then brought the case before the Commission alleging that the Republic of Peru violated the human rights of Mrs. Chã¼vez by forcefully subjecting her to surgical sterilization, which ultimately caused her death.

Petitioners alleged Peru violated Articles 4 (right to life), 5 (right to humane treatment), and 24 (right to equal protection) of the American Convention. Petitioners also alleged violations of Articles 3, 4, 7, 8, and 9 of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (the Convention of Belã©m do Parã¼); Articles 3 (obligation of non-discrimination) and 10 (right to health) of the Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights; and Articles 12 and 14(2) of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

Decision and Reasoning

The Commission declared the petition admissible as to the alleged violations of Articles 1, 4, 5, and 24 of the American Convention, and Article 7 of the Convention of Belã©m do Parã¼, which required states to "condemn all forms of violence against women and agree to pursue, by all appropriate means and without delay, policies to prevent, punish and eradicate such violence."

The Commission noted that the American Convention, the Convention of Belã©m do Parã¼, and CEDAW prohibit forced sterilization, including sterilization performed as a result of coercion.

Decision Excerpts

The Friendly Settlement Agreement included the following provisions:

"The Peruvian State, aware that protection and total respect for human rights is the cornerstone for a just, honorable, and democratic society, in strict compliance with its obligations assumed with the signing and ratification of the American Convention on Human Rights and other international human rights instruments to which it is a party, and aware that any violation of an international obligation that results in injury brings with it

the duty for adequate reparation, which can most justly be done through compensation of the victim, investigation of the facts, and administrative, civil, and criminal penalties for the responsible parties, recognizes its international responsibility for the violation of Articles 1.1, 4, 5, and 24 of the American Convention on Human Rights, as well as Article 7 of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against women in the harm done to victim MarÃ-a MamÃ©rita Merstanza ChÃ¡vez.â€• Pages 3-4.

â€œ[The Peruvian State promises to give the husband and children of MarÃ-a MamÃ©rita Mestanza ChÃ¡vez permanent health insurance with the Ministry of Health or other competent entity. The surviving spouseâ€™s health insurance will be permanent, as will that of the children until they have their own public and/or private coverage.â€• Page 6.

â€œThe Peruvian State pledges to change laws and public policies on reproductive health and family planning, eliminating any discriminatory approach and respecting womenâ€™s autonomy.

The Peruvian State also promises to adopt and implement recommendations made by the Ombudsman concerning public policies on reproductive health and family planning, among which are the following:

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b.â€• Methods for monitoring and guaranteeing respect for human rights of health service clients

(1)â€• Adopt drastic measures against those responsible for the deficient pre-surgery evaluation of women who undergo sterilization, including health professionals in some of the countryâ€™s health centers. Although the rules of the Family Planning Program require this evaluation, it is not being done.

(2)â€• Continuously conduct training courses for health personnel in reproductive rights, violence against women, domestic violence, human rights, and gender equity, in coordination with civil society organizations that specialize in these topics.

(3)â€• Adopt the necessary administrative measures so that that rules established for ensuring respect for the right of informed consent are scrupulously followed by health personnel.

(4)â€• Guarantee that the centers that offer sterilization surgery have proper conditions required by standards of the Family Planning Program.

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(6)â€• Take drastic action against those responsible for forced sterilization without consent.â€• Pages 6-7.