



I.V. v. Bolivia (Merits)

Report No. 72/14, Case 12.655; Merits I.V. BOLIVIA; August 15, 2014

Country: Bolivia

Region: Americas

Year: 2014

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

Health Topics: Informed consent, Sexual and reproductive health

Human Rights: Freedom from discrimination, Freedom from torture and cruel, inhuman or degrading treatment, Right to bodily integrity, Right to family life, Right to privacy

Facts

I.V. went to a hospital for a cesarean section and was sterilized by her doctor. She alleged that the only questions that the doctor had asked her before the procedure were where she had her first cesarean section and whether she had previously had an infection. I.V. maintained that she was not given any information regarding contraceptive methods, nor was she asked whether she had been informed of or consulted regarding her sterilization. During the procedure, the doctor discovered numerous adhesions and concluded that another pregnancy could be risky to her. He then performed tubal ligation on I.V., permanently sterilizing her. After the cesarean section, I.V. suffered pains and fever and was diagnosed with acute endometritis and remains of placenta in the uterus, causing her to require two curettage procedures. Two weeks later, I.V. was hospitalized again due to an abscess of the abdominal wall and bruising on the wound left by the cesarean section.

Three medical audits were conducted. The first audit stated that I.V. had consciously given consent. The second audit concluded that the ligation had been performed preemptively to preserve the mother's future wellbeing. The third audit stated that (1) no justification had existed for carrying out the ligation because the presence of multiple adhesions did not pose a risk to the patient's life; (2) there had been no written consent and it was not acceptable to take the consent of the patient during the surgical or peri-operative procedure; and (3) that the doctor who had performed the procedure had alternated between describing himself as "communicating" or having had "communicated" the subject of sterilization to I.V., which was an inconsistency that casted doubt on the doctor's testimony.

The petitioner alleged that the State of Bolivia subjected I.V. to a sterilization procedure without her informed consent, and that the judicial authorities also denied her access to justice to a remedy for the alleged violations of her rights. Further, the petitioner alleged that these facts violated rights protected by Articles 5 (Rights to Humane Treatment), 8 (Right to a Fair Trial), 11 (Right to Privacy), 13 (Freedom of Thought and Expression), 17 (Rights of the Family), and 25 (Right to Judicial Protection), as well as Article 1.1 of the American Convention on Human Rights and Article 7 of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women. She maintained that there were improper and unwarranted delays in the criminal proceedings; that she continued to suffer the physical and psychological consequences of the procedure and of the alleged denial of justice; that even if she had been asked about the sterilization procedure, her acceptance under the circumstances would not constitute informed consent, as she was under anesthesia, surgical stress, and lying prostrate in the operating room; that there was no justification for carrying out the tube ligation because the alleged risk to I.V.'s life would only be posed in the event of a possible future pregnancy, not at the time of the cesarean section; and that, since the intervention was not necessary to save the life or health of I.V. in the presence of an imminent danger, there was no justification for taking the decision to perform the ligation during the cesarean section. The State argued that I.V. had consented orally to the procedure, that the procedure was carried out because another pregnancy would pose a risk to her life, and that she had access to appropriate legal remedies.

Decision and Reasoning

The Commission held that I.V.'s subjection to a surgical sterilization procedure without her informed consent violated her rights to access to information, humane treatment, and a private and family life, and that the non-consensual sterilization violated I.V.'s right to live free from all forms of violence. The Inter-American Commission therefore concluded that the State of Bolivia violated rights established in Articles 1.1, 5.1, 8.1, 11.2, 13.1, 17.2, and 25.1 of the American Convention, as well as Article 7 of the Inter-American Convention

on the Prevention, Punishment, and Eradication of Violence against Women.

The Commission held that the procedure of tying the fallopian tubes was not an emergency medical procedure. This is because the World Health Organization, in conjunction with various agencies of the United Nations, have emphasized that sterilization without informed consent for the prevention of future pregnancy cannot be justified due to the irreversible nature of the procedure.

Next, the Commission held that performing a surgical procedure without the required informed consent was a violation of the right to humane treatment, the right of women to be free from all forms of violence, and the right to be free from arbitrary interference in private and family life. It established that women's maternal health falls under the right to personal integrity. States must guarantee that women have equal access to the health care services they require, which includes those related to pregnancy, post-natal care, and information regarding maternity and reproductive matters, in order to maintain women's equality, autonomy, privacy, and dignity. This right to personal integrity also includes the right to reproductive health care services and proper access to the information needed to make free, autonomous, and informed decisions in that area.

The Commission also found signs of discrimination. It maintained that the medical team decided to perform the surgery because it was influenced by gender stereotypes on the inability of women to make autonomous decisions.

Lastly, the Commission held that the way the judiciary acted was ineffective due to procedural defects and unwarranted delays. This resulted in a denial of justice for I.V. The Commission noted that the proceedings went on for four years without a final judgment, and that hearings had been suspended and the case passed from one jurisdiction to another for trivial reasons.

Decision Excerpts

There are signs that the medical team that performed the surgery on I.V. was influenced by gender stereotypes on the inability of women to make autonomous decisions with respect to their own reproduction. The medical decision to practice sterilization without I.V.'s informed consent reflects a notion that medical personnel are empowered to take better decisions than the woman concerned regarding control over reproduction. • Para. 162.

The absence of informed consent in this case led to I.V. not receiving the appropriate maternal health services needed in relation to her reproductive capacity, thereby curtailing her free and autonomous choice in this area peculiar to women. Consequently, I.V.'s nonconsensual sterilization constituted a form of discrimination against her guaranteed right to humane treatment under Article 5.1 of the American Convention, as well her right to a private and family life and to found a family under Articles 11 and 17 of the American Convention. • Para. 163.

The States have a duty to guarantee appropriate access to justice for women when any of their human rights are violated, including those relating to their sexual and reproductive health. There are two dimensions associated with this duty. The first is criminal sanctions when acts occur that may constitute a form of violence against women . . . A second dimension has to do with the need to address the causes and systemic flaws that gave rise to the human rights violation under review. The impunity associated with violations of women's rights "including their sexual and reproductive rights" constitutes a form of discrimination against them . . . • Para. 172.

In light of the link between violence and discrimination, the Commission notes that the lack of punishment in an act of violence against women may also constitute a discrimination. On that principle, the Commission and the Inter-American Court have held that the lack of due diligence that leads to impunity "reproduces the violence that it claims to be trying to counter, without prejudice to the fact that it alone constitutes discrimination regarding access to justice." • Para. 182.