



Ana Victoria Villalobos and Others v. Costa Rica

Report No. 25/04, Petition 12.361, March 11, 2004; OEA/Ser.L/V/II.122 Doc. 5 rev. 1 at 237, 23 February 2005

Country: Costa Rica

Region: Americas

Year: 2004

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

Health Topics: Health systems and financing, Sexual and reproductive health

Human Rights: Freedom from discrimination, Right to bodily integrity, Right to due process/fair trial, Right to family life, Right to health, Right to privacy

Facts

A Presidential Decree authorizing and regulating the practice of in vitro fertilization was issued in 1995. The Decree permitted solely married couples to utilize the practice; it prohibited the insemination of more than six ovules per couple; and it required that all embryos be deposited in the maternal uterus, prohibiting the freezing, preservation or discarding of embryos. In 2000, the Constitutional Chamber of the Supreme Court of Justice of Costa Rica declared the Decree unconstitutional. It held that the human embryo was a person in law and that in vitro fertilization implied a high loss of embryos caused directly by the conscious and deliberate manipulation of reproductive cells.

Petitioner argued that in vitro fertilization was not a threat to life. The argument was based on medical studies that demonstrated not all human embryos develop to birth and that the percentages of successful gestation in natural processes were similar to those in in vitro fertilization. Petitioner also challenged the Chamber's ruling that the human embryo was a person in law.

Petitioner claimed that the prohibition of in vitro fertilization constituted discrimination and unequal treatment among medical patients, in violation of article 24 (right to equal protection) of the American Convention on Human Rights (the Convention) and article 3 (obligation of nondiscrimination) of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (the Protocol of San Salvador). Petitioner argued that the prohibition made treatment of persons suffering from sterility or infertility impossible, while at the same time allowing for the use of scientific and technological advances to cure or alleviate other illnesses. He also argued that the prohibition violated the right to health enshrined in article 10 of the Protocol of San Salvador and the right to physical, mental and moral integrity protected in article 5 (right to humane treatment) of the Convention. Petitioner further claimed that the prohibition on in vitro fertilization constituted an arbitrary and abusive interference with the right to family life of the persons who needed or wanted to undergo the procedure in order to start a family, in violation of article 11 (right to privacy) of the Convention and article 15 (right to the formation and the protection of families) of the Protocol of San Salvador.

Petitioner also claimed violation of articles 1 and 7(h) of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (the Convention of Belém do Pará). Petitioner observed that the prohibition of in vitro fertilization had caused severe pain and suffering to women and maintained that Costa Rica had failed to take effective measures to address the issue. He noted that women in Costa Rica faced considerable pressure to have children, and the lack of access to in vitro fertilization prolonged and exacerbated the emotional suffering caused by this pressure.

Costa Rica argued that in vitro fertilization violated the right to life and was contrary to public order, morals and customs, thus the State had a legitimate interest in regulating it. It contended that the duty to protect a life began at the moment it was determined to exist, and that through the process of in vitro fertilization a human life began developing and thus must be protected. It asserted that in vitro fertilization was not an emergency treatment used to save lives or cure a disease, as infertility and sterility were not diseases since they did not involve an alteration of an individual's health. Rather, Costa Rica contended that infertility and sterility were biological conditions or consequences of a disease. It further claimed that the prohibition of in vitro fertilization did not violate the right to privacy because it was not a private matter.

Lastly, Costa Rica argued that the petition did not refer to any act of violence against women, or any lack of

diligence that might provoke such violence. It claimed that the suffering caused to men and women by the problem of infertility had no causal link to the State.

Decision and Reasoning

The Commission declared the petition admissible. It announced that it would examine whether State action to restrict individual access to measures in favor of family planning and childbearing was compatible with the terms of the Convention. In this regard, the Commission observed that article 17(2) of the Convention established the "right of men and women of marriageable age to marry and to raise a family shall be recognized, if they meet the conditions required by domestic laws, insofar as such conditions do not affect the principle of nondiscrimination established in this Convention." It also made note of relevant "[d]evelopments in international law dating back to the Teheran Conference, the Cairo Programme of Action, and the Beijing Platform of Action" that recognized, among other things, the rights "to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so" and "to make decisions concerning reproduction free of discrimination, coercion, and violence as expressed in human rights documents."

The Commission stated that allegations raised under the Protocol of San Salvador, concerning the obligation of nondiscrimination, the right to health and the right to constitute and protect a family, could be taken into account in interpreting the obligations of Costa Rica under article 26 (progressive development) of the Convention. However, it clarified that the Commission lacked jurisdiction to establish violations of these articles, as the Protocol of San Salvador was not directly cognizable within the individual petition system of the Inter-American Commission on Human Rights.

However, the Commission found that the Petitioner had provided no basis in fact or law to indicate how the rights of victims under articles 4 (right to life) and 32 (relationship between duties and rights) of the Convention had been violated. Nor had sufficient foundation been provided to characterize violations of articles 5 (right to humane treatment), 8 (right to a fair trial) and 25 (right to judicial protection) of the Convention or article 7 of the Convention of Belém do Pará.

Decision Excerpts

"To accept the argument of the State that the complaint should be inadmissible because the individual victims were not identified in the initial petition, although they were subsequently identified, would imply a formalistic decision inconsistent with protecting the human rights enshrined in the Convention, and would place the presumed victims in a position of defenselessness. The Inter-American Court of Human Rights has declared that it is a commonly accepted principle that the procedural system is a means for seeing that justice is done, and that it is not sacrificed for the sake of mere formalities." Para. 46.

"The petition also complains of violations of Articles 3, 10 and 15 of the Protocol of San Salvador. The Commission notes that although it lacks jurisdiction to establish violations of those Articles of the Protocol of San Salvador, it will take into consideration those provisions referring to the obligation of nondiscrimination, the right to health, and the right to constitute and protect a family, in its analysis of the merits of this case, in accordance with Articles 26 and 29 of the American Convention." Para. 52.

"The Commission observes that the submissions of the petitioner concerning the rights of those named as victims relate principally to Articles 1, 2, 11, 17 and 24 of the American Convention. In particular, Article 17(2) of the American Convention indicates that the "right of men and women of marriageable age to marry and to raise a family shall be recognized, if they meet the conditions required by domestic laws, insofar as such conditions do not affect the principle of nondiscrimination established in this Convention." Developments in international law dating back to the Teheran Conference, the Cairo Programme of Action, and the Beijing Platform of Action, have recognized the right of couples and individuals: to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so, and the right to attain the highest standard of reproductive and sexual health. It also includes the right of all to make decisions concerning reproduction free of discrimination, coercion, and violence as expressed in human rights documents. (International Conference on Population and Development, Cairo, 1994.)" Para. 68.