



Marcela Alejandra Porco v. Bolivia

Report No. 8/08, Case 11.426

Country: Bolivia

Region: Americas

Year: 2008

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

Health Topics: Controlled substances, Health care and health services, Mental health, Prisons, Sexual and reproductive health

Human Rights: Right to bodily integrity, Right to due process/fair trial, Right to liberty and security of person, Right to privacy

Facts

The petitioner sued the Bolivian State (â€œthe Stateâ€•) for numerous violations regarding her treatment in prison. The present case is deciding whether this petition is admissible before the Inter-American Commission on Human Rights (â€œthe Commissionâ€•).

There is disagreement between the parties as to the facts.

Marcela Alejandra Porco, an Argentine citizen, was detained in the Viru Viru Airport in Santa Cruz, Bolivia and was found with almost 3 kg of cocaine. Porco told the authorities that she was unaware of the cocaine and had a serious mental illness and needed medication. The State claimed that Porco appeared to be sane and claiming insanity was commonly done to deny culpability in drug trafficking charges.

She was tried for drug trafficking under Law 1008. During trial she was sought medical treatment, but Law 1008 prohibited medical treatment outside of prison quarters, so the district court ordered she be given medical care in prison. Petitioners pointed out that housing convicts and defendants together is a violation of the American Convention and the Standard Minimum Rules for the Treatment of Prisoners of the United Nations.

Petitioners alleged that Porco was locked in a dark cell, in solitary confinement, with only a small space delimited by curtains, due to her mental illness. They claimed the conditions were terrible and that water leaked into the cell and the prisoners were only given a bed frame to keep their mattresses from getting soaked after a prisoner strike. The petitioners alleged her father found Porco naked and delirious lying in wastewater with worms on her feet and vagina. The State alleged that a surprise visit by the Ministry of Justice found that she was held in a part of the dining hall with curtains for privacy and that there was no indication of any abuse or neglect. During this time, petitioners alleged she was sexually abused by the guards. The State alleged that its surprise visit found no sexual abuse and instead Porco stated a man in the prison was her boyfriend and the relations were consensual.

The State alleged that during her stay in the prison, she was examined in a mental health center, which found that she had no psychotic symptoms and believed she was feigning. After 7 months of detainment, a Bolivian Court ordered that Porco be committed to a mental health center in Santa Cruz, where medical experts diagnosed her with a mental disorder and ordered weekly review. Porco remained there until she was released. The State also noted that since the alleged events, Law 1008 was amended to allow for the possibility of parole and the prison was remodeled with better living conditions.

On December 30, 1994, the petitioners initiated communication with the Commission, providing initial information concerning the case. They followed up with more information and on February 2, 1995, the Commission notified the State, giving the State 90 days to respond. The petitioners continued providing information and requested that the Commission approach the State about reaching a settlement. The Commission, the State, and the Petitioners continued communicating and transferring information until June 13, 2002, when the State requested certain observations from the Petitioners. The Commission reminded the Petitioners on June 18, 2007 of this request for information. The Petitioners supplied the requested information and the State was given one month to submit more observations. As of March 4, 2008, the date of this case, the State had not yet replied to this request.

Decision and Reasoning

The Commission held the complaint admissible.

The Commission addressed each of the four requirements for admissibility in reviewing this case. These requirements are (1) Exhaustion of domestic remedies, (2) time period for submission of the petition, (3) duplicity of procedures and *res judicata*, and (4) colorable claim.

The Commission held that the petitioners received an exception from the exhaustion of domestic remedies requirement. The burden of showing non-exhaustion of domestic remedies is on the State. Two of the remedies the State suggested, *habeas corpus* and *amparo* were impossible due to restrictions by Law 1008. As the State did not specify potential remedies that could have resolved the situation, the Commission provided the exception.

The Commission next held that Porco submitted the petition in sufficient time. The requirement is that a petition be submitted to the court within six months of the final decision in domestic courts. However, because Porco was not provided any domestic remedy, the Commission held that submitting a petition on December 30, 1994, concerning incidents that began on June 2, 1994, is considered a reasonable time.

The Commission held that this case was not barred by duplicity of procedures or *res judicata*. Neither party claimed that this issue had been previously addressed by the Commission.

Finally, the court held that the petition was a colorable claim. The facts provided tend to establish a possible violation of human rights. Therefore, the Commission held that these facts should be given the chance to be proven.

Decision Excerpts

60. En relación a los recursos internos aducidos por el Estado, la CIDH considera que el Estado no ha proporcionado ante la Comisión información específica en relación a la manera que los recursos invocados hubiesen servido para resolver la situación planteada. No corresponde al Estado simplemente señalar la falta de agotamiento de los recursos internos de forma general, porque la aplicación y la eficacia de los mismos van a depender de las exigencias formales o sustanciales del derecho interno y su consonancia y posibilidad de usarlos eficazmente en un caso concreto.

60. As regards the domestic remedies adduced by the State, the IACHR considers that the State has not provided the Commission with any specific information as to how the remedies invoked would have helped resolve the situation posed. It does not suffice for the State to simply indicate the failure to exhaust domestic remedies generally, because the application and effectiveness thereof will depend on the formal or substantial requirements of the domestic law and its consistency, and the possibility of using them effectively in a specific case.

69. La Comisión considera que de ser probados los hechos expuestos sobre presuntas irregularidades en el juzgamiento, así como sobre las supuestas deficiencias en diversas disposiciones contenidas en la Ley 1008 bajo la cual Marcela Porco fue procesada y la presunta ausencia de garantías y protección judiciales, podrán caracterizar una posible violación de los derechos consagrados en los artículos 7, 8.1 y 25 de la Convención Americana en relación con las obligaciones establecidas en los artículos 1.1 y 2 del mismo instrumento.

70. Igualmente considera que el alegado maltrato y abuso sexual padecido durante el periodo en el cual estuvo bajo custodia del Estado y la falta de provisión de tratamiento adecuado de salud por parte del Estado, podrá caracterizar una posible violación a los artículos 5.1 y 11.1 de la Convención Americana sobre Derechos Humanos, en conexión con los artículos 1.1. y 2 de dicho instrumento.

69. The Commission considers that if the facts set forth are proven regarding alleged irregularities in the trial as well as the alleged deficiencies in several provisions of Law 1008 under which Marcela Porco was tried, and the alleged lack of judicial guarantees and judicial protection, they could tend to establish a possible violation of the rights enshrined in Articles 7, 8(1), and 25 of the American Convention in relation to the obligations established Articles 1(1) and 2 of the same instrument.

70. In addition, it considers that the alleged mistreatment and sexual abuse suffered during the time when she was in State custody, and the failure of the State to provide adequate health treatment could tend to

establish a possible violation of Articles 5(1) and 11(1) of the American Convention on Human Rights, in connection with Articles 1(1) and 2 of said instrument.â€•

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