



## Suarez Peralta v. Ecuador

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**Country:** Ecuador

**Region:** Americas

**Year:** 2013

**Court:** Inter-American Court of Human Rights Inter-American Court of Human Rights

**Health Topics:** Health systems and financing, Hospitals, Medical malpractice

**Human Rights:** Right to bodily integrity, Right to due process/fair trial, Right to health

### Facts

On June 28, 2000, Melba Suarez Peralta visited Dr. Emilio Guerrero Gutierrez as a result of abdomen pain, vomits, and fever. She was diagnosed with chronic appendicitis and informed she needed surgery. Three days later, she visited Guerrero in a private clinic and underwent appendix surgery performed by Dr. Jenny Bohorquez and assisted by Guerrero. 11 days after the operation, Suarez Peralta visited the Luis Vernaza Hospital due to intense abdominal pain and was found to be in extremely serious condition by Dr. Hector Luis Taranto. He performed a re-exploratory laparotomy and found problems with her appendicular stump, cleared her abdominal cavity, and removed a portion of her colon. After this operation, Suarez Peralta underwent multiple medical procedures as a result of which she suffered negative financial and personal consequences.

Suarez Peralta's mother, Melba Peralta Mendoza, filed a claim against Guerrero on August 2, 2000. In response to this claim, it was reported that Guerrero had not completed the requirements for approval of his work permit and was hired to perform medical procedures in order to legalize his stay in Ecuador while completing his accreditation; the State had failed to verify whether Guerrero had complied with the procedures domestically required to work as a doctor.

Despite repeated actions by Suarez Peralta, after five years of procedural delay and lack of due diligence by the courts, Guerrero was able to successfully petition the court to declare that the criminal action was prescribed because the statute of limitations had expired. As a result, Suarez Peralta and her mother filed an action filed with the Inter-American Commission against the Republic of Ecuador (the "State") regarding the absence of response that led to the expiration of the statute of limitations and the lack of procedural activity ex officio and minimum guarantees of due diligence for the presumed victim, pursuant to the rights to protection of bodily integrity, fair trial, and judicial protection established respectively in Articles 5(1), 8(1), and 25(1) of the American Convention of Human Rights.

The Commission had previously made a number of recommendations to the State to improve its judicial proceedings and the State had signed a compliance agreement, agreeing to make certain reparations. The State failed to comply with certain of its undertakings in the compliance agreement within the allotted time frame, prompting referral of this case to the Inter-American Court of Human Rights.

### Decision and Reasoning

The Inter-American Court of Human Rights held that the State violated Articles 8(1) and 25(1) of the American Convention of Human Rights, guaranteeing the rights to a fair trial and judicial protection. The Court determined that the State had failed to use due diligence by allowing the statute of limitations to expire before Suarez Peralta was provided relief. The Court noted the particular importance of taking swift action in a situation where civil compensation was subject to the completion of criminal proceedings, especially in malpractice cases, where the injured person may be otherwise limited in earning an income. The Court disagreed with the State's arguments that Suarez Peralta had available to her various remedies such as an appeal against prescription, a civil action for reparation and recusal of the presiding criminal judge, holding that such remedies were inappropriate. The action for denial of justice was affirmed for both Suarez Peralta and her mother.

The Court found that the State had also violated Suarez Peralta's right to personal integrity, guaranteed under Article 5(1) of the American Convention. The Court noted that, although the State cannot be held responsible for a human rights violation committed between private individuals under its jurisdiction, the State did have an

obligation to "establish an adequate normative framework that regulates the provision of health care services." The Court found that while Ecuador had established mechanisms for control and supervision of medical care, the State was aware that these mechanisms were not correctly carried out in the case of Suarez Peralta: "First the Court noted that Guerrero had provided health services to Suarez Peralta through the Guayas Traffic Commission, a State entity, although the State had not verified whether he had complied with all of the procedures required to practice medicine. Secondly, when the State heard of the lack of supervision and the original criminal proceeding against Guerrero in the private clinic, it did not take any action to correct the operation of the clinic. Thus, the Court sustained the action for protection of bodily integrity for Suarez Peralta, but not for her mother, who was unable to prove a violation of her right to personal integrity."

The Court found that the original action should not be re-opened, as none of the exceptions to the application of the statute of limitations (i.e., where international law considers prescription inadmissible in order to maintain the State's punitive authority) were present in this case. They ordered the State to award Suarez Peralta 20,000 US dollars for any future medical treatment that she might require as a result of the incident, 250,000 US dollars for loss of income and expenditure incurred, and costs and expenses for the judicial proceedings. Her mother, Melba Peralta Mendoza was also awarded 30,000 US dollars as compensation for the violation of her right to judicial guarantee and right to judicial protection. The State was further ordered to publish the official summary of the judgment in the Ecuadorian official gazette and to make the judgment available for a year on Ecuador's official website. Finally, the State was requested to make certain guarantees of non-repetition, such as adopting standards related to the exercise of the medical profession and providing health care professions with training.

A concurring opinion argued that any violation of the right to health should have been directly analyzed by the Court, since economic, social and cultural rights should be considered justiciable by the Court. "The concurring judge determined that the ability for the Inter-American Court to rule on the right to health arises from the fact that that civil and political rights and economic, social and cultural rights were interdependent and indivisible. He argued that an interpretive re-evaluation of Article 26 of the American Convention (requiring states to progressively realize economic, social, educational, scientific and cultural standards) could ground the justiciability of economic, social and cultural rights. Reviewing the facts of the case, the concurring judge found such facts "could even have led to declaring a violation of the obligation to guarantee the right to health under Article 26 of the American Convention."

## Decision Excerpts

"In this case, the errors, delays and omissions in the criminal investigation reveal that the State authorities did not act with due diligence or in keeping with the obligations to investigate and to ensure effective judicial protection within a reasonable time, in order to guarantee to Melba Suárez Peralta a reparation enabling her to have access to the medical treatment required by her health problems." Para 30.

"The foregoing reveals the lack of diligence and effectiveness of the agents of justice in expediting the investigation proceedings in the case, which, added to the different gaps of time in the processing of the case, culminated in the prescription of the criminal proceedings. In other words, the responsibility for the errors and the delay in the proceedings and their consequent prescription was due, exclusively, to the way in which the Ecuadorian judicial authorities acted, who bore the responsibility for taking all the necessary measures to investigate, prosecute and punish, as appropriate, those responsible, irrespective of the measures taken by the parties." Para. 101

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"Therefore, this Court has indicated that, in order to comply with the obligation to guarantee the right to personal integrity and in the context of health, States must establish an adequate normative framework that regulates the provision of health care services, establishing quality standards for public and private institutions that allow any risk of the violation of personal integrity during the provision of these services to be avoided. In addition, the State must create official supervision and control mechanisms for health care facilities, as well as procedures for the administrative and judicial protection of victims, the effectiveness of which will evidently depend on the way these are implemented by the competent administration. Consequently, the Court finds it necessary to analyze, in the context of the obligations of guarantee, prevention and protection of the right to personal integrity, whether the State has complied diligently with its obligation to regulate, supervise and control the entities that, in this case, provided health care services to Melba Suárez Peralta." Para 132-133

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â€œ[It] has been proved that medical care was provided in a public health center by someone who had not accredited that he was qualified to exercise his profession (supra para. 48) and that, despite this, the State not only permitted this, but also promoted it. This situation of risk subsequently materialized in the prejudice to the health of Melba SuÃ¡rez Peralta.â€• Para 145.

â€œAs the Court has established, the Stateâ€™s supervisory obligation encompasses both the services provide by the State directly or indirectly, and also those offered by private individuals.<sup>203</sup> Hence, it covers the situations in which the services have been delegated, in which private individuals provide them on behalf of the State, and also the supervision of private services relating to rights of the greatest social interest, which must also be monitored by the public authorities.<sup>204</sup> The eventual provision of medical care in institutions without the proper authorization, the infrastructure and hygiene of which are inadequate for the provision of medical services, or by professionals who do not have the appropriate qualifications for such activities, could have a significant impact on the rights to life and to integrity of the patient.â€• Para 149.

â€œ[T]he supervision and control of the private clinic was not carried out prior to the facts by the competent State authorities (Ministry of Public Health), which signified the Stateâ€™s failure to comply with the obligation to prevent the violation of the right to personal integrity of Melba SuÃ¡rez Peralta. The medical care received from an unauthorized professional and a clinic that was not being supervised by the State had an adverse impact on the health of the presumed victim. In addition, the State failed to prove that it had exercised control of this private institution after the facts, when it became aware of the facts or as a result of the corresponding criminal proceedings that were initiated and the constant requests made by Melba Peralta Mendoza that the clinic be inspected and closedâ€• Para. 153.

â€œSocial citizenship has made significant progress throughout the world and, evidently, in the countries of the American continent. The â€œdirectâ€• justiciability of economic, social and cultural rights constitutes not only a viable interpretative and argumentative option in light of the actual inter-American corpus juris; the Inter-American Court, as the jurisdictional organ of the inter-American system, has the obligation to move in this direction of social justice, because it has competence with regard to all the provisions of the Pact of San JosÃ©. The effective guarantee of economic, social and cultural rights is an alternative that would open up new possibilities in order to achieve transparency and the full realization of rights, without artifices and directly, and thus acknowledge what the Inter-American Court has been doing indirectly or in connection with the civil and political rights.â€• Para. 103, concurrence.