



## V.R.P., et al. v. Nicaragua

Report No. 3/09, Petition 4408-02, February 11, 2009; OEA/Ser.L/V/II., Doc. 51, corr. 1, 30 December 2009

**Country:** Nicaragua

**Region:** Americas

**Year:** 2009

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

**Health Topics:** Child and adolescent health, Infectious diseases, Informed consent, Mental health, Sexual and reproductive health, Violence

**Human Rights:** Freedom from discrimination, Freedom from torture and cruel, inhuman or degrading treatment, Right to bodily integrity, Right to due process/fair trial, Right to liberty and security of person, Right to privacy

### Facts

Petitioner V.P.C. stated that on two occasions, her father H.R.A. took her nine-year-old daughter V.R.C. to a remote site, drugged her, and sexually abused her. Petitioner took her daughter to the hospital on October 16, 2001 because her daughter could not control her bowels. The doctor biopsied polyps near the daughter's rectum and found that she had contracted the Human Papilloma Virus. Petitioner filed a criminal complaint for rape against H.R.A. with the Jinotega District Criminal Court in Nicaragua on November 20, 2001.

Petitioner brought her petition before the Inter-American Commission on Human Rights (the Commission) and alleged the state of Nicaragua had allowed irregularities and delays in her criminal proceedings and the district court failed to render a final judgment, resulting in violations of V.P.C. and V.R.C.'s rights enshrined in the American Convention and V.R.C.'s rights in the Convention on the Rights of the Child.

Petitioner alleged that the state re-traumatized the child through arbitrary acts and violated their due process rights. The court had ordered examinations of the child that resulted in serious injury. The female judge took the child to the scene of the crime with H.R.A. and forced her to pose in the positions that the accused placed her for photographs, which resulted in the child bursting into tears. Finally, the child was physically examined three times, over her refusal, and in the presence of multiple people. Also, V.P.C. was not allowed to attend the visual inspection of the crime scene and reconstruction of the facts.

Nicaragua responded that it has protected V.R.C.'s rights by prosecuting H.R.A. according to law. Nicaragua alleged the lengthy proceedings and delay in judgment were due to multiple motions and appeals filed by both parties, and could also be explained by the state Code of Criminal Procedure, which established a very slow investigative procedure. Also, personal issues between the prosecutor and V.P.C., combined with the remoteness of the area and shortage of staff further slowed down the proceedings. Nicaragua also alleged that V.R.C.'s right to personal integrity was not actually violated because it is a social reality that victims of sexual crimes experience re-victimization if they bring criminal proceedings against their aggressors.

### Decision and Reasoning

The Commission declared the petition admissible in connection with the alleged human rights violations under Articles 5(1), 8(1), 11, 19, 24, and 25 of the American Convention with regard to V.R.P., and under Articles 5(1), 8, and 25 of the Convention with regard to V.P.C..

The Commission held that there was an unwarranted delay in rendering a final judgment and that domestic remedies were ineffective in resolving V.P.C.'s complaint in a timely manner. The Commission noted that domestic remedies must be exhausted before a petition can be brought to the Commission, but that the domestic remedies must be adequate and effective to provide a remedy. Nicaragua claimed V.P.C. had not fully exhausted her domestic remedies and the delay in final judgment was due to multiple objections and appeals from both parties. However, the Commission recognized in the significance of six years passing since the initiation of V.P.C.'s criminal complaint without any investigative conclusion. The Commission also stressed that Nicaragua had not presented any information to prove the domestic remedies available to V.P.C. were adequate and effective to resolve her criminal complaint in a timely manner.

### Decision Excerpts

“The Commission notes that in the instant case, over six years have passed since the alleged sexual abuse of the child aged 9, without conclusion of the criminal investigation. The IACHR also notes that a judgment has yet to be rendered by the Nicaraguan courts in connection with the appeal lodged by the petitioner on August 29, 2005. It also notes that the State has confined itself to alleging that domestic remedies have not been exhausted, but presents no specific information from which it could be concluded that the remedy has the adequacy and effectiveness required by international human rights parameters to resolve in a timely manner the situation denounced.” ¶ 44

“If established, the facts denounced tend to establish a violation of Articles 5(1), 8(1), 11, of the American Convention, in conjunction with Articles 1(1) and 2 of said instrument, and Article 7 of the Convention of Belém do Pará, to the detriment of V.R.P. The petitioner alleges that the child V.R.P. was subjected to discriminatory treatment during the criminal proceedings, based on her gender and age, and the Commission will also consider those allegations and the information submitted by the two parties, in light of the possible application of Article 24 of the American Convention.” ¶ 51

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