



TGGL v. Ecuador

Report No. 89/09, Petition 663-06, August 7, 2009; OEA/Ser.L/V/II., Doc. 51, corr. 1, 30 December 2009

Country: Ecuador

Region: Americas

Year: 2009

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

Health Topics: Child and adolescent health, HIV/AIDS, Infectious diseases

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

Facts

This report addresses the admissibility of a petition that alleged Ecuador failed to fulfill its obligations under the American Convention on Human Rights (the Convention), including protection of the right to life, the right to humane treatment, and rights of the child.

The basis of the claim was that three years old TGGL became infected with HIV when she received a contaminated blood transfusion from the Red Cross. Petitioners furthered alleged that TGGL lacked access to necessary medical treatment and nutrition and that social rejection and discrimination prevented her from attending the primary school of her choice. Petitioners claimed that Ecuador was responsible for supplying "safe blood" through entities such as the Ecuadorian Red Cross and thus the State failed to fulfill its obligation to guarantee the right to life.

A domestic criminal suit was instituted against several Red Cross doctors in Ecuador but was later dismissed because the statute of limitations had expired. Petitioners claimed this was due to the inaction of the judges. A civil suit was also filed for damages against the president and director of the blood bank. However the suit could not proceed because the Ecuadorian Criminal Procedure Code establishes that there can be no suit for civil compensation unless there has been a criminal conviction for the offense involved.

Decision and Reasoning

The petition was admissible as to articles 4 (right to life), 5 (right to humane treatment), 8 (right to a fair trial), 19 (rights of the child), and 25 (right to judicial protection) of the Convention, and allegations of fact submitted by petitioners may constitute a violation of Ecuador's duty to protect personal integrity and the rights of the child.

The Commission examined first whether it was competent to examine Ecuador's possible responsibility for TGGL's infection. Ecuador claimed the infection of TGGL was not attributable to actions by any agent of the state. It noted that the International Committee of the Red Cross (ICRC) is a private society created under the Swiss Civil Code; that its functions are based on the Geneva Conventions; and that both the ICRC and the Ecuadorian Red Cross enjoy an international status as independent legal entities. However, the Commission found that national legislation provided that the Ecuadorian Red Cross was exclusively responsible for the supply and use of blood and blood derivatives, as well as the regulatory control and coordination of the blood banks and deposits of the Ministry of Health and other state institutions. State organs were also tasked with the supervision and oversight of services provided by the Ecuadorian Red Cross. Furthermore, The Supreme Court of Ecuador established that the Ecuadorian Red Cross provided a service of a public nature and that attestations of the Red Cross were as valid as those of Ecuadorian state institutions.

Decision Excerpts

"The Commission notes that TGGL was allegedly infected with the HIV/AIDS virus through blood supplied by the Red Cross of Cuenca in the Province of Azuay. The legislation then in force provided that the Ecuadorian Red Cross was exclusively responsible for the supply and use of blood and blood derivatives, and the regulatory control and coordination of the blood banks and deposits of the Ministry of Health and other State institutions. The responsibility of organizing the supply of blood in the country, and testing each and every one of the units collected for the blood banks to the effect of "tracking irregular components", was delegated to the National Red Cross by the State. Also, the Supreme Court of Ecuador has established that the Ecuadorian Red Cross provides a service of a public nature and that its attestations are equally valid to those

of official institutions. Based on the delegated and direct powers of the State organs with respect to supervision and oversight of the provision of a service by the Ecuadorian Red Cross, and their connection with the claim of the instant case, the Commission finds that it is competent to examine the possible responsibility of the State in the merits phase.â€• Para. 32.

â€œWith regard to the claims of the petitioners, the Commission finds that the alleged facts could characterize possible violations of the right to life, protected in Article 4(1)[25] in connection with Article 1(1) of the American Convention. In addition, the Commission, applying the principle of *iura novit curia*, finds that the allegations of fact submitted by the petitioners may constitute a violation of the duty of the State to protect personal integrity in accordance with Article 5(1) of the American Convention and its duty to ensure due protection of the courts in accordance with Articles 8(1) and 25(1) as they relate to Article 1(1) of the Convention.â€• Para. 33.

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