



J.S.C.H., et al. v. Mexico

Report No. 02/09, Petitions 302-04 and 386-04, February 4, 2009; OEA/Ser.L/V/II., Doc. 51, corr. 1, 30 December 2009

Country: Mexico

Region: Americas

Year: 2009

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

Health Topics: Health care and health services, Health information, HIV/AIDS, Infectious diseases, Informed consent, Medicines

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

Facts

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

J.S.C.H. and M.G.S. were discharged from the Mexican Army because of their HIV status as part of an alleged policy of discrimination against people living with HIV. The decision to discharge the alleged victims was confirmed by Mexican judicial authorities. Army provisions declared members unfit for service and forced them into retirement as a result of "susceptibility to recurring infections attributable to untreatable conditions of cellular or humoral immunodeficiency of the organism." Another army provision provided for discharge for those who test positive for "human immunodeficiency virus antibodies, confirmed with supplementary tests in addition to infection with opportunistic germs and/or malignant neoplasia."

J.S.C.H. and M.G.S. claimed they stopped receiving medical treatment upon their discharge and were unable to afford private treatment as a result of losing their military income. Petitioners allege violations of articles 4 (right to life), 5 (right to humane treatment), 8 (right to a fair trial), 9 (freedom from ex post facto laws), 11 (right to privacy), 24 (right to equal protection), 25 (right to judicial protection) and 26 (progressive realization) of the Convention.

Petitioners also allege a violation of article 11 (right to privacy) of the Convention in connection with the disclosure by state agents of the alleged victims' health condition without observing the necessary confidentiality.

Decision and Reasoning

The Commission found the petition was admissible under articles 5, 8, 11, and 24 of the Convention.

However, it declared the petition inadmissible as to alleged violations of rights recognized in articles 4, 9, 25, and 26.

The Commission first examined whether the petition was admissible as to the right to equal protection of the law. It stated that if the discharge of the alleged victims confirmed by the judiciary was proven to be due to their HIV status, it could constitute a violation of articles 24 (right to equal protection) and 8 (right to a fair trial) of the Convention.

The Commission then examined whether the petition was admissible as to the right to humane treatment. It indicated that if a direct causal link was established between Petitioners' discharge and the alleged suspension of timely and adequate medical treatment, then it would amount to a violation of article 5 (right to humane treatment) of the Convention.

Finally, the Commission investigated whether the petition was admissible as to the right to privacy. The Commission stated that if it was proved that state agents disclosed the alleged victims' health condition without observing the necessary confidentiality, it could constitute a violation of article 11 (right to privacy) of the Convention.

Decision Excerpts

“The Commission finds that there is nothing in this case to suggest that the petition is unfounded or out of order. Furthermore, it notes that, prima facie, if proven, the facts concerning the purported discriminatory treatment of the alleged victims due to their status as carriers of the HIV virus, and their resulting discharge from the Mexican Army by the administrative authorities, decisions which were subsequently confirmed by the judicial authorities, could constitute a violation of the rights enshrined at Articles 24 and 8 of the American Convention, in connection with the obligations set forth in Article 1(1) of that instrument.” Para. 94.

“The Commission finds that if a direct causal link is established between “the discharge from active duty and retirement” of J.S.C.H. and M.G.S., and the alleged suspension of timely and adequate medical treatment, then it would amount to a violation of the right to physical integrity recognized in Article 5(1) of the American Convention in connection with Article 1(1) of said instrument.” Para. 95.

“As to the allegations of the petitioners regarding the disclosure by state agents of the alleged victims’ health condition without observing the necessary confidentiality, the IACHR finds that, if proven, they could constitute a violation of Article 11 of the American Convention in connection with Article 1(1) thereof.” Para. 96.

“Furthermore, although the petitioners have not invoked Article 2 of the American Convention, by virtue of the principle of iura novit curia the Commission will examine arguments concerning alleged violations of that Article.” Para. 97.