



## X & Y v. Argentina

Case 10.506, Inter-Am. Comm. H.R., Report No. 38/96, OEA/Ser.L/V/II.95 Doc. 7 rev. (1997).

**Country:** Argentina

**Region:**

**Year:** 1996

**Court:** Inter-American Commission on Human Rights [Comisi3n Interamericana de Derechos Humanos]  
Inter-American Commission on Human Rights

**Health Topics:** Child and adolescent health, Prisons

**Human Rights:** Freedom from discrimination, Freedom from torture and cruel, inhuman or degrading treatment, Right to bodily integrity, Right to family life, Right to privacy

### Facts

The prison authorities of Unit 1 of the SPF of Argentina adopted the practice of performing vaginal inspections on all female visitors who desired to have personal contact with the inmates. Ms. X, whose husband was detained at that Unit, and their thirteen year old daughter Y were thus routinely submitted to such searches each time they visited Mr. X. They filed a complaint alleging a violation of their rights protected under the American Convention, namely Article 11 (right to privacy); Article 5.3 (right to humane treatment); and the general principle of nondiscrimination established by Article 1.1 of the Convention, as the measures allegedly discriminated against women (Article 24).

### Decision and Reasoning

The Commission held that the evidence did not support the conclusion that the vaginal inspection was intended to extend the inmate's punishment onto his family in violation of Article 5.3 of the American Convention. However, the practice did violate both X and Y's Article 5 rights to physical and moral integrity. Furthermore, it was an interference with their right to privacy and a violation of their rights to honor and dignity, as protected under Article 11 of the Convention. The prison's routinely invasive searches additionally interfered unduly with the petitioners' rights to family under Article 17, and it contravened Y's rights as a child insofar as she had no legal standing to challenge a practice that could have "grave consequences" on her well-being. The State of Argentina also violated the Article 19 of the convention, since "the prison authorities proposed and performed vaginal inspections upon Y prior to a physical contact visit with her father."

### Decision Excerpts

"93. Sin embargo, la Comisi3n quisiera subrayar que este caso representa un aspecto 3ntimo especial de la vida privada de una mujer y que el procedimiento en cuesti3n, sea justificable o no su aplicaci3n, puede provocar sentimientos profundos de angustia y verg3enza en casi todas las personas que se ven sometidas a 3l. Adem3s, el aplicar el procedimiento a una ni3a de 13 a3os puede resultar en grave da3o psicol3gico dif3cil de evaluar. La Sra. X y su hija ten3an el derecho a que se respetara su intimidad, dignidad y honor cuando procuraron ejercer el derecho a la familia, a pesar de que uno de sus miembros estuviera detenido. Esos derechos deber3an haberse limitado 3nicamente en el caso de una situaci3n muy grave y en circunstancias muy espec3ficas y, en ese caso, cumpliendo 3strictamente las autoridades con las pautas definidas anteriormente para garantizar la legalidad de la pr3ctica."

"93. Nevertheless, the Commission would like to underscore that the present case involves a particularly intimate aspect of a woman's private life and that the procedure in question, whether its application is justifiable or not, is likely to provoke intense feelings of shame and anguish in almost all persons who are submitted to it. In addition, subjecting a 13 year old child to such a procedure could result in serious psychological damage that is difficult to evaluate. Ms. X and her daughter had a right to have their privacy, dignity and honor respected when they sought to exercise their rights to family, even if a family member was in detention. These rights should have been restricted only in the presence of a particularly serious situation and in very specific circumstances, and then only, with the strict compliance by the authorities with the standards which were outlined above in order to guarantee the legality of the practice."

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"94. La Comisión concluye que cuando las autoridades del Estado argentino realizaron inspecciones vaginales de la Sra. X y de su hija cada vez que deseaban tener un contacto personal con el marido de la Sra. X, violaron su derecho a la protección de la honra y la dignidad, consagrado en el artículo 11 de la Convención."

"94. The Commission thus concludes that when the prison authorities of Argentina subjected Ms. X and her daughter to vaginal searches and inspections each time they desired to have a personal contact visit with Mr. X, they acted in violation of the petitioners' rights to honor and dignity, protected by Article 11 of the Convention."

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"103. El texto de la Convención Americana reconoce que los niños deben recibir cuidados y atenciones especiales y que el Estado tiene la obligación de tomar todas "las medidas de protección que su condición requiere". Un niño es especialmente vulnerable a las violaciones de sus derechos porque, en virtud de su condición misma, en la mayoría de los casos no tienen autoridad legal para tomar decisiones en situaciones que pueden tener consecuencias graves para su bienestar. El Estado tiene la obligación especial de proteger a los niños y de asegurarse que cuando las autoridades públicas ejecutan acciones que lo pueden afectar de alguna manera, se tomen las precauciones para garantizar los derechos y el bienestar del niño."

"103. The text of the American Convention recognizes that children must be the subject of special care and attention, and that the State has a duty to adopt all "measures of protection" required by his condition." A child is especially vulnerable to violations to his or her rights because, by virtue of their very status, as children have no legal standing in most cases to make decisions concerning situations that may have grave consequences on their well being. The state has a special duty to protect children and to ensure that, whenever state authorities take actions that may in any way affect a child, special care is taken to guarantee the child's rights and well being."

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