



## Laura Albán-Cornejo v. Ecuador

Inter-Am. Ct. H.R. (ser. C) No. 171 (Nov. 22, 2007).

**Country:** Ecuador

**Region:** Americas

**Year:** 2007

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

**Health Topics:** Health care and health services, Infectious diseases, Medical malpractice

**Human Rights:** Freedom from torture and cruel, inhuman or degrading treatment, Freedom of expression, Right of access to information, Right to bodily integrity, Right to due process/fair trial, Right to family life, Right to life

### Facts

On December 13, 1987, Laura Susana Albán-Cornejo was admitted to a private health institution from expressed symptoms of bacterial meningitis. On December 17, 1987, Albán-Cornejo suffered severe pain for which the resident physician prescribed a 10 mg. dose of morphine. The next day, while under medical treatment, Albán-Cornejo died. The parents, who were with their daughter when she died, charged medical malpractice and negligence, but no one was brought to justice in Ecuador for these acts. Following her death, her parents brought a domestic criminal complaint to investigate the their daughter's cause of death.

The parents filed a petition against the State before the Inter-American Commission on Human Rights for failure to conduct proper and effective investigation. The Commission admitted the case and issued recommendations to the State. Because the state failed to sufficiently implement the Commission's recommendations, the Commission submitted the case before the Inter-American Court of Human Rights. The representatives of the victims alleged violations of Articles 4 (right to life), 5 (right to humane treatment), 8 (right to a fair trial) and 25 (right to judicial protection) of the American Convention, to the detriment of the patient; and Articles 5 (right to humane treatment), 8 (right to a fair trial), 13 (freedom of thought and expression), 17 (rights of the family) and 25 (right to judicial protection) of the American Convention on Human Rights, to the detriment of the parents. The Commission alleged that the state violated Article 8 (right to fair trial) and Article 25 (right to judicial protection) of the Convention.

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### Decision and Reasoning

The Court did not find sufficient evidence to hold the State of Ecuador responsible for the death of the alleged victim under Article 4 (right to life) of the American Convention on Human Rights.

The Court found the State in violation of Articles 8(1) (right to a fair trial) and 25(1) (right to judicial protection) in relation to Articles 4, 5(1) and 1(1) of the American Convention, to the detriment of Carmen Cornejo de Albán and Bismarck Albán-Sánchez, for failure to take immediate steps to investigate the death of the alleged victim once the State became aware of the incident.

With respect to Article 2 of the Convention that requires states to give effect to the rights enshrined in the American Convention, the Court held that states have the obligation of regulating and supervising health services to protect the right to life and humane treatment. Therefore, although the Court did not find the State immediately responsible for the intervention of staff the private health center, the Court did find the State responsible for failing to supervise the activities of the center.

The Court also reiterated the State's duty to have "effective legislation" to ensure effective investigation into acts that violate the rights of health care users, which would include those associated with the rendering of medical services.

### Decision Excerpts

"117: The Court has repeatedly stated that the right to life is a fundamental human right, the enjoyment and exercise of which is a prerequisite for the exercise of all other rights. Personal integrity is essential for the

enjoyment of human life. In turn, the rights to life and humane treatment are directly and immediately linked to human health care. Also, the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights sets forth that everyone has the right to health, which is defined as the enjoyment of the highest level of physical, mental and social well-being; it further states that health is a public good (Article 10)."

"121: The Court has expressed that the States are responsible for regulating and supervising the rendering of health services, so that the rights to life and humane treatment may be effectively [sic] protected. All of this requires setting up a legal system which effectively respects and guarantees the exercise of such rights, and supervising permanently and effectively the rendering of services on which life and humane treatment depend."

"123: As it has been argued, the States must have effective legislation to guarantee health care users an effective investigation into the acts which are in violation of their rights. Naturally, this includes the acts arising from the rendering of medical services."

"128. Recently, the Organic Law of Health, Law No. 67, was enacted on December 22, 2006, standardizing health care services. It states that health "is an inalienable and indivisible human right which cannot be compromised on, the protection and guarantee of which is the main responsibility of the State" (Article 3)."

"129. The above-mentioned Organic Law of Health provides that everyone has the right to "promptly and effectively initiate, before the competent bodies, proceedings to process administrative or judicial complaints and claims which guarantee the enforcement of their rights, as well as to seek due reparation and due compensation for the damages suffered, in the relevant cases" (Article 7, subsection i). The same Law sets forth that it is the jurisdiction of the "national health authority [Ministry of Public Health] to investigate and punish illegal practice, negligence, lack of skill, recklessness and failure to meet the standards required in the practice of health professions, without prejudice to the ordinary judicial actions" (Article 199). Said law acknowledges the duty of the State and therefore the right of patients that the medical malpractice be investigated and punished at the administrative level, regardless of whether the medical institution or personnel belongs to the private sector."

"130. The legislation aimed at improving the conditions of health care services includes the Law on the Rights and Protection of the Patient, Law No. 77 of February 3, 1995, which acknowledges the patients' right to receive decent services, not to be discriminated, to be protected by professional secrecy, to be informed, and to decide on their medical treatment. As to the scope of the Law, Article 14 states that "said Law is binding for all health institutions in the country," with regard to the supervision to which all public and private institutions authorized to render services by the National Health System must be subject, as well as those private institutions which are not included in such system. In this regard, there should be clear and sufficient legislation preventing exceptions that might arise in connection with access to the information contained in the medical file (supra paras. 67 and 68), as well as access to the file by virtue of a judicial or administrative order."

"135. In the instant case, it has been alleged that there was no legislation on medical malpractice or that it had shortcomings. Naturally, States must adopt the necessary measures, among which is the enactment of criminal laws and the creation of a judicial system to prevent and punish the violation of fundamental rights, such as the right to life and humane treatment. As far as substantive criminal law is concerned, such purpose is realized through the enactment of adequate criminal descriptions in accordance with criminal legal provisions, which meet the requirements of punitive law in a democratic society and which are adequate for the protection of goods and legal interests, from a criminal perspective. As far as procedural criminal law is concerned, it is necessary to have the effective resources to ensure access to justice and the full satisfaction of legitimate claims in a timely manner."