



L.C. v. Peru

L.C. v. Peru, CEDAW, U.N. Doc. CEDAW/C/50/D/22/2009 (2011).

Country: Peru

Region: Americas

Year: 2011

Court: Committee on the Elimination of Discrimination against Women Committee for the Elimination of All Forms of Discrimination against Women

Health Topics: Health care and health services, Health systems and financing, Mental health, Poverty, Sexual and reproductive health, Violence

Human Rights: Freedom from discrimination, Freedom from torture and cruel, inhuman or degrading treatment, Right to due process/fair trial, Right to family life, Right to health, Right to life, Right to privacy

Facts

A minor child, L.C., began to be sexually abused at the age of 11 years by a 34-year-old man. Two years later, L.C. became pregnant, and in response, attempted suicide by jumping from a building. L.C. survived her suicide attempt, and she was taken to a public hospital where she was diagnosed with a series of severe spinal, cervical, and skin injuries, as well as paraplegia in her lower and upper limbs as a result of damage to her spinal column. The head of the neurosurgery department at the hospital recommended emergency surgery to prevent further injury or physical immobility. Subsequently, a gynecological examination confirmed L.C.'s pregnancy. On the day of L.C.'s surgery, the neurosurgery department informed L.C. that it had postponed the procedure due to L.C.'s pregnancy. L.C.'s mother then requested that the hospital carry out a termination of the pregnancy in accordance with Article 119 of the Peruvian Penal Code, which permitted a mother to request a legal abortion to save her own life or avoid "serious and permanent harm to her health." The hospital's medical board took 42 days to consider her request and ultimately denied the request on the basis of its determination that the life of the patient was not in danger. Although a medical report from the High-Level Commission on Reproductive Health at the Medical College of Peru subsequently concluded that a therapeutic abortion would have been justified due to the grave risk that the continued pregnancy would pose to L.C.'s physical and mental health, the director of the hospital determined that the decision of the board was not subject to appeal. Meanwhile, however, L.C. had already miscarried the fetus spontaneously. L.C. had surgery for her spinal injuries almost three and one half months after it was originally determined necessary, and she also began physical rehabilitation and psychological assistance four months after it was determined that she required the services. In the months that followed, L.C.'s family could not afford her rehabilitation services, and she remained paralyzed from the neck down. Her condition also prevented her from attending school, and the cost of her care at home forced her brothers to leave school to work.

L.C.'s mother, the applicant, had foregone the remedy of "amparo," believing that the normal time period for adjudication of the particular rights protection mechanism (between 62 and 102 days) would not effectively ensure the protection of her daughter's rights. Instead, she applied to the Committee on the Elimination of Discrimination against Women (Committee) for its views on her daughter's situation. In particular, the applicant claimed that the doctors' refusal to perform the therapeutic abortion, as well as Peru's lack of legislative, administrative, and judicial measures for the protection of those rights, violated her daughter's rights to health, a life of dignity, and to be free from discrimination in access to healthcare in violation of Articles 1 (freedom from discrimination), 2(c) (equal protection), 3 (guarantee of basic human rights and fundamental freedoms), 5 (freedom from sex role stereotyping and prejudice), 12 (right to health) and 16(e) (freedom to decide the number and spacing of children and right of access to information) of the Convention on the Elimination of All Forms of Discrimination Against Women (Convention), as well as provisions of the Committee's general recommendation No. 24 on women and health.

The respondent state argued that the application was inadmissible because the applicant had failed to exhaust required domestic remedies. It further argued that, even if the Committee found the application admissible, none of the alleged violations of the Convention had occurred.

The Committee found the application admissible, considering, in particular, that the improbability that an "amparo" action would not have provided effective relief to L.C.

Decision and Reasoning

The Committee found that Peru had violated Articles 2(c) (equal protection), 3 (guarantee of basic human rights and fundamental freedoms), 5 (freedom from sex role stereotyping and prejudice) and 12 (right to health), read together with Article 1 (freedom from discrimination), of the Convention. The Committee specifically considered that the doctors had postponed L.C.'s recommended emergency surgery to protect the fetus without addressing L.C.'s physical and mental health. The Committee also considered that the repeal of domestic legislation that had provided for therapeutic abortion consistent with the provisions of Article 119 of the Penal Code had left L.C. without legal recourse when the respondent state denied her request for a legal abortion. The Committee concluded that such circumstances constituted a failure to "take all appropriate measures to eliminate discrimination against women in the field of healthcare," as required under Article 12 of the Convention.

In addition, the Committee found that the respondent state had violated Article 5 of the convention insofar as the decision to postpone the surgery was influenced by a stereotype that the health of the fetus should prevail of the health of the mother.

The Committee also found that the respondent state had violated L.C.'s right to effective remedy insofar as the time that the hospital medical board took to make a decision on her request for an abortion constituted an excessive delay.

The Committee did not consider it necessary to rule on the possible violation of Article 16, paragraph 1(e) of the Convention.

Finally, the Committee took the view that the respondent state should have provided reparation to L.C., including adequate compensation for material and moral damages, as well as reviewed its laws to establish a mechanism for effective access to therapeutic abortion that would protect women's physical and mental health and provide for the decriminalization of such procedures.

Decision Excerpts

œœIn the view of the author, expecting a girl to have overcome her emotional trauma and sought assistance is a double victimization. It is cruel to create in a minor the idea that she was guilty for acts that were totally beyond her control, such as being sexually abused and consequently suffering a mental imbalance that worsened when she learned that she was pregnant. It further reveals a discriminatory attitude that responds to the gender stereotype tending to blame women who have been victims of violence for its consequences.œœ (7.2)

œœL.C. was a victim of exclusions and restrictions in access to health services based on a gender stereotype that understands the exercise of a woman's reproductive capacity as a duty rather than a rightœœ (7.7)

œœIn Peru there is no legislation or regulation on access to therapeutic abortion, with the result that each hospital determines arbitrarily what requirements are necessary, under what procedures cases requesting it will be decided, the time limits for making the decision and the level of importance placed on the views of the pregnant woman regarding the risks to her health that she is prepared to assume.œœ (7.11)

œœThe lack of legislative and administrative measures regulating access to therapeutic abortion condemns women to legal insecurity insofar as protection of their rights is completely at the mercy of gender prejudices and stereotypes, as shown in the present case. The sociocultural pattern based on a stereotypical function of a woman and her reproductive capacity guided the medical decision on which the physical and mental integrity of L.C. depended, subjecting her to discrimination by placing her on an unequal footing with men with respect to the enjoyment of her human rights.œœ (7.12)