



Llantoy Huamãjn, Karen Noelia (K.L.) v. Peru

Llantoy Huamãjn v. Peru, U.N. H.R. Comm., U.N. Doc. CCPR/C/85/D/1153/2003 (2005).

Country: Peru

Region: Americas

Year: 2005

Court: United Nations Human Rights Committee United Nations Human Rights Committee

Health Topics: Child and adolescent health, Health care and health services, Mental health, Sexual and reproductive health

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

Facts

A 17-year-old Peruvian minor was denied a legal therapeutic abortion when tests indicated that her fetus was anencephalic and a gynecologist and obstetrician advised her to terminate the pregnancy, informing her that continued pregnancy would cause risks to her life. The hospital director refused, alleging the abortion would be unlawful according to the Peruvian Criminal Code, despite the exception outlined in article 119 that allowed termination when it would save the pregnant woman's life or avoid serious and permanent damage to her health. The author carried the fetus to term and gave birth to an anencephalic baby girl who died within four days of birth during which time the author breastfed her. The author was subsequently diagnosed with severe depression by a psychiatrist.

The author alleged violations of her rights under Article 2 (effective remedy) of the International Covenant on Civil and Political Rights (ICCPR) as the state failed to ensure that she could exercise her right to receive an abortion. Further, she claimed that she suffered from discrimination on the basis of sex as the violation of her right to procure a legal abortion affects only women and was denied to her in breach of Article 3 (freedom from discrimination). Also, the author's alleged a violation of Article 6 (right to life) when Peru did not take steps to ensure that the author secured a safe termination of pregnancy. The author claimed that she endured cruel and inhuman treatment (Article 7) on account of the pain and distress she experienced when she was forced to carry the anencephalic fetus to term, give birth to her deformed daughter knowing she would survive only briefly, and then experience her death. The author alleged a breach of her right to privacy (Article 17), given that the right protects women from interference in decisions that affect their bodies and protects their right to make decisions on their reproductive lives. The author also claimed that was not provided with the care she required as an adolescent girl in breach of Article 24 (children's rights). Finally, the author maintained that she failed to receive the special protection she deserved on account of her specific needs and that this was incompatible with the assurance of equal protection under the law (Article 26).

Decision and Reasoning

The Committee dismissed the author's claims regarding violations of articles 3 (freedom from discrimination) and 26 (right to equal protection) of the ICCPR as the author had not provided any evidence relating to the events that demonstrated any type of discrimination.

The Committee found a breach of Article 7 (freedom from torture or to cruel, inhuman or degrading treatment or punishment) based on the State's failure to allow the author to benefit from a therapeutic abortion that caused her mental suffering. Because the Committee found the state in violation of Article 7, it did not consider it necessary to make a finding on article 6 of the Covenant.

The Committee concluded that the state violated Article 17 (right to privacy) based on the hospital director's refusal to act in accordance with the author's decision to terminate her pregnancy.

The Committee also found the state in violation of article 24 (children's rights), as the author was not provided the special medical and psychological support she needed as a minor.

The Committee reiterated that Article 2 (effective remedy) lays down general obligations for States and is analyzed together with the other allegations. The Committee accepted the author's claims regarding the lack of an adequate legal remedy, finding violations of Article 2 in conjunction with Articles 7 (freedom from torture

or to cruel, inhuman or degrading treatment or punishment), 17 (right to property), and 24 (children's rights).

Decision Excerpts

"3.9 The author claims that the administration of the health centre left her without protection as a result of a restrictive interpretation of article 119 of the Criminal Code. She adds that the text of the law contains nothing to indicate that the exception relating to therapeutic abortion should apply only in cases of danger to physical health. But the hospital authorities had drawn a distinction and divided up the concept of health, and had thus violated the legal principle that no distinction should be drawn where there is none in the law. She points out that health is "œa state of complete physical, mental and social wellbeing and not merely the absence of disease or infirmity", so that when the Peruvian Criminal Code refers to health, it does so in the broad and all-embracing sense, protecting both the physical and the mental health of the mother."

"5.2 The Committee notes that, according to the author, the same matter has not been submitted under any other procedure of international investigation. The Committee also takes note of her arguments to the effect that in Peru there is no administrative remedy which would enable a pregnancy to be terminated on therapeutic grounds, nor any judicial remedy functioning with the speed and efficiency required to enable a woman to require the authorities to guarantee her right to a lawful abortion within the limited period, by virtue of the special circumstances obtaining in such cases. The Committee recalls its jurisprudence to the effect that a remedy which had no chance of being successful could not count as such and did not need to be exhausted for the purposes of the Optional Protocol.⁴ In the absence of a reply from the State party, due weight must be given to the author's allegations. Consequently, the Committee considers that the requirements of article 5, paragraph 2 (a) and (b), have been met."

"6.3 The author also claims that, owing to the refusal of the medical authorities to carry out the therapeutic abortion, she had to endure the distress of seeing her daughter's marked deformities and knowing that she would die very soon. This was an experience which added further pain and distress to that which she had already borne during the period when she was obliged to continue with the pregnancy. The author attaches a psychiatric certificate dated 20 August 2001, which confirms the state of deep depression into which she fell and the severe consequences this caused, taking her age into account. The Committee notes that this situation could have been foreseen, since a hospital doctor had diagnosed anencephaly in the fetus, yet the hospital director refused termination. The omission on the part of the State in not enabling the author to benefit from a therapeutic abortion was, in the Committee's view, the cause of the suffering she experienced. The Committee has pointed out in its General Comment No. 20 that the right set out in article 7 of the Covenant relates not only to physical pain but also to mental suffering, and that the protection is particularly important in the case of minors. (6) In the absence of any information from the State party in this regard, due weight must be given to the author's complaints. Consequently, the Committee considers that the facts before it reveal a violation of article 7 of the Covenant. In the light of this finding the Committee does not consider it necessary in the circumstances to make a finding on article 6 of the Covenant."