



Martín de Mejía-a, Raquel v. Perú^o

Martín de Mejía-a v. Perú^o, Case 10.970, Report No. 5/96, Inter-Am.C.H.R., OEA/Ser.L/V/II.91 Doc. 7 at 157 (1996).

Country: Peru

Region: Americas

Year: 1996

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

Health Topics: Mental health, Sexual and reproductive health

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

Facts

A group of armed persons with their faces covered by masks violently entered the home of the Mejía-as, abducted Mr. Mejía-as and later returned to the house, apparently to ask Mrs. Mejía-as for her husband's identity documents. While she looked for them, one of the men followed her into the room and told her that she, too, was considered a subversive. He then followed her into her bedroom and raped her. Sometime later, the same person returned to the Mejía-as' home, apparently with the intention of telling Mrs. Mejía-a that her husband might possibly be taken to Lima by helicopter the next day, and raped her once again. Mr. Mejía-a was murdered while he was in captivity. When she filed her declaration with the Oxapampa police concerning the abduction and subsequent homicide of her husband, Mrs. Mejía-a did not report the sexual abuse to which she had been subjected because she feared that the violations committed against her would have caused her to be ostracized and exposed her to greater danger or physical harm.

Decision and Reasoning

To the judgment of the Commission, current international law establishes that sexual abuse committed by members of security forces, whether as a result of a deliberate practice promoted by the State or as a result of failure by the State to prevent the occurrence of this crime, constitutes a violation of the victims' human rights, especially the right to physical and mental integrity. The Commission considers rape is a physical and mental abuse perpetrated as a result of an act of violence. Rape is one of the various methods of physical torture and it is a method of psychological torture, since it seeks to humiliate not only the victim but also her family or the community. On these grounds, the Commission ruled that the Peruvian State was responsible for violating Article 5 (Right to humane treatment) of the American Convention.

Decision Excerpts

"The fact is that, pursuant to Article 8 of the Convention, it has recognized the right of everyone accused of an offense to a fair trial. This right includes, inter alia, the right to be heard by an impartial tribunal and to be presumed innocent until legally proved to be guilty."

"For the Commission, Article 13 of Decree-Law 25.475, regardless of its application in a particular case, does not guarantee the right to a fair trial."

"In the first place, it reserves the burden of proof and creates, in practice, a presumption of guilt that places on the accused the burden of proving his innocence. The decree in fact requires the investigating magistrate to institute criminal proceedings and arrest the accused on the basis of the existence of a petition alone and requires him to forward the case to the Superior Court, without ascertaining in either case whether there is sufficient evidence to warrant proceeding with it; it further prevents the accused from defending himself by recourse to prior questions, even ones that would apparently demonstrate that he is not guilty or that no offense was committed and, finally it generates an obligation for the Senior Prosecutor to indict the accused, even when there is not sufficient evidence for such a step."

"Secondly, Article 13 does not guarantee the impartiality of the court. In establishing the legal obligation to open proceedings and indict, the decree places the tribunal in the position of considering the accused guilty, even before assessing the evidence at hand."

"The Commission accordingly observes that Article 13 of Decree-Law 25.475, by omitting to guarantee free and full exercise of the right to a fair trial contained in Article 8 of the Convention is incompatible with the obligation set forth in Article 1(1) of same."

"In the case of Raquel Mejía-a, the application of this law in the proceedings constitutes, in the Commission's opinion, a violation of her right to be heard by an impartial tribunal and to be presumed innocent. The fact is that, as is evident from the evidence produced, once she was accused of alleged commission of the crime of terrorism, the examining magistrate opened the case and issued a warrant for her arrest. Once the preliminary investigation was completed, he forwarded the dossier to the Lima Provincial Prosecutor who, despite stating that, Raquel Mejía-a "...the indications that would warrant formulation of the indictment have not been proven to date, which means that her participation in the events investigated cannot be established for the moment..." forwarded the case to the Superior Court. That Court proceeded to appoint the Supreme Prosecutor who, in compliance with the provisions of Article 13 of Decree-Law 25.475, charged Raquel Mejía-a with the crime of terrorism and asked for the penalty of 20 years imprisonment, without even considering whether there was any evidence of the criminal liability."

"In Report 25/95, to which the Peruvian State did not reply within the 60 days given to it by the Commission, the latter concluded that the Peruvian State had violated its obligation to respect and guarantee the fundamental rights and freedoms, an obligation which implies the duty to investigate abuses of those rights and freedoms and to punish those responsible, and the right to judicial protection, provided for in Articles 1 and 25 of the American Convention on Human Rights."

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