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Decided by: Chairman: Helio Bicudo;
Second Vice-Chairman: Juan E. Mendez;
Commissioners: Marta Altolaguirre, Robert K. Goldman, Peter Laurie, Julio Prado Vallejo
Dated: 3 October 2000
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I. SUMMARY

1. By petition submitted to the Inter-American Commission on Human Rights (hereinafter “the Commission,” “the Inter-American Commission,” or the “IACHR”) on June 15, 1999, the non-governmental organizations Estudio para la Defensa de la Mujer (DEMUS), the Latin American and Caribbean Committee for the Defense of Women’s Rights (CLADEM), and the Asociación Pro Derechos Humanos (APRODEH), which later accredited as co-petitioners the Centro Legal para Derechos Reproductivos y Políticas Públicas (CRLP) and the Center for Justice and International Law (CEJIL) (hereinafter “the petitioners”), alleged that the Republic of Peru (hereinafter “Peru,” “the State,” or “the Peruvian State”) violated the human rights of Mrs. María Mamérita Mestanza Chávez, on forcefully subjecting her to surgical sterilization, which ultimately caused her death. The original petitioners alleged that the facts in this case constitute a violation by the Peruvian State of the rights to life, humane treatment, and equality before the law, set forth in Articles 4, 5, 1, and 24 of the American Convention on Human Rights (hereinafter “the Convention” or the “American Convention”), as well as violations of Articles 3, 4, 7, 8, and 9 of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (hereinafter “Convention of Belém do Pará”), Articles 3 and 10 of the Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights (hereinafter “Protocol of San Salvador”), and Articles 12 and 14(2) of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). The State argued that the case is inadmissible for failure to exhaust domestic remedies. The Commission decides to admit the case with respect to the alleged violations of Articles 1, 4, 5, and 24 of the American Convention, and Article 7 of the Convention of Belém do Pará.

II. PROCESSING BEFORE THE COMMISSION

2. The Commission received the complaint on June 15, 1999. On July 14, 1999, the IACHR opened the case, forwarded the pertinent parts of the complaint to the Peruvian State, and requested that it provide information within 90 days. Peru requested an extension of this period, which was granted by the IACHR. Peru answered on January 14, 2000. The petitioners submitted observations to the State's answer on April 12, 2000.

III. POSITION OF THE PARTIES

A. Position of the petitioners

3. Petitioners allege that the case of Mrs. María Mamérita Mestanza represents one more of a significant number of cases of women affected by the implementation of a massive, compulsory, and systematic government policy that emphasized sterilization as a method for quickly modifying the reproductive behavior of the population, especially of poor, indigenous, and rural women. In this respect, they note that the Office of the Human Rights Ombudsman (Defensoría del Pueblo) received several complaints in this regard,[FN1] and that from November 1996 to November 1998, CLADEM documented 243 cases of human rights violations in the surgical contraception program carried out in Peru.

[FN1] Defensoría del Pueblo, Informe sobre la Aplicación de la Anticoncepción Quirúrgica Voluntaria: los casos investigados por la Defensoría del Pueblo, Lima, January 1998.

4. They note that Mrs. María Mamérita Mestanza, a peasant woman approximately 33 years of age and mother of seven, was subject to harassment, dating back to 1996, by the health center for the District of La Encañada, which is part of the public health system, in an effort to have her become sterilized. In this context, she and her permanent partner Jacinto Salazar Suárez received various forms of harassment, which included several visits in which health staff threatened to denounce her and Mr. Salazar Suárez to the police, as they were told the government had adopted a law under which anyone with more than five children had to pay a fine and would be taken to prison.

5. They state that ultimately, and under coercion, Mrs. Mestanza's consent was obtained to undergo surgery for a tubal ligation. The surgical procedure was performed on March 27, 1998, at the Regional Hospital at Cajamarca, without any prior medical exam. Mrs. Mestanza was discharged the next day, March 28, 1998, when she still manifested serious anomalies, such as vomiting and intense headaches. During the next few days Mr. Jacinto Salazar informed the personnel at the La Encañada health center as to Mrs. Mestanza's condition, which was growing worse with each passing day, and the personnel at the health center said that these were the after-effects of the operation due to the anesthesia.

6. They adduce that Mrs. Mestanza Chávez finally died at home, on April 5, 1998, and that the death certificate indicated a sepsis as a the direct cause of death and bilateral tubal blockage as the antecedent cause. They reported that days later a physician from the health center offered Mr. Jacinto Salazar a sum of money to consider the problem over and done with.

7. They indicate that on April 15, 1998, Mr. Jacinto Salazar denounced Martín Ormeño Gutiérrez, Chief of the La Encañada health center, to the Mixed Provisional Prosecutor for Baños del Inca in relation to the death of Mrs. Mestanza, for crimes against her life, body, and health, constituting the offense of manslaughter. They add that on May 15, 1998, that Provincial Prosecutor formally presented criminal charges against Mr. Ormeño Gutiérrez and other persons, to the Provincial Judge, who on June 4, 1998, declared that there were no grounds for opening an investigation. That decision was confirmed on July 1, 1998, by the Specialized Chamber for Criminal Matters, pursuant to which the Provincial Prosecutor ordered the case closed on December 16, 1998.

B. Position of the State

8. The State argues that the Ministry of Health investigated the facts, and that its investigation resulted in “inadequate counseling” for Mrs. Mestanza and a failure to monitor after the surgery, all as the result of a voluntary surgical operation.

9. It notes that as a result of this report the physicians, nurses, and anesthetists who participated in the surgery on Mrs. Mestanza, and the directors of the health center and Coordinators of the Reproductive Health Programs, were found to be administratively liable. The State adds that the case was then studied by the Office of the Inspector General for health, and also by the Mixed Court of Baños del Inca, in the city of Cajamarca, and by the Specialized Chamber of the Superior Court of Justice, which decided to halt the investigation that was begun pursuant to the criminal complaint presented by Mr. Salazar Suárez to the Criminal Provincial Prosecutor of Baños del Inca on April 15, 1998. With the foregoing, and pursuant to Peruvian legislation, the State indicated that the decision to not open the investigation became *res judicata*.

10. The State further adduces that the action brought by Mr. Salazar was aimed at defining the individual liability of agents in acts of medical negligence and its purpose was not to make a determination regarding what the petitioners described as “forced sterilization.” Because of this, it requested that the case be declared inadmissible, since domestic remedies were not exhausted with respect to the surgical procedure which the victim allegedly did not freely choose, and with respect to the harassment and discriminatory acts denounced by the petitioners.

IV. ANALYSIS

11. The Commission now analyzes the admissibility requirements for a petition set forth in the American Convention.

A. Competence of the Commission *ratione materiae*, *ratione personae* and *ratione temporis*

12. The petitioners are authorized by Article 44 of the American Convention and Article 12 of the Convention of Belém do Pará to present complaints to the IACHR. The petition sets forth as the alleged victim an individual with respect to whom Peru undertook to respect and ensure the rights enshrined in the American Convention and in the Convention of Belém do Pará. As regards the State, the Commission observes that Peru is a state party to the American

Convention, having ratified it on July 28, 1978, and of the Convention of Belém do Pará, having ratified it on October 18, 1995. Accordingly, the Commission is competent *ratione personae* to examine the complaint.

13. In addition, the Commission is competent *ratione materiae* since the facts alleged in the petition could be violations of rights protected by the American Convention and by the Convention of Belém do Pará, at Article 7.

14. The IACHR is also competent *ratione temporis*, as the facts in question allegedly occurred in 1996, when the obligation to respect and ensure the rights established in the American Convention and in the Convention of Belém do Pará was already in force for the Peruvian State.

B. Admissibility requirements of the petition

a. Exhaustion of domestic remedies

15. The petitioners and the State agree that on April 15, 1998, Mr. Jacinto Salazar lodged a complaint with the Mixed Provisional Prosecutor of Baños del Inca against Martín Ormeño Gutiérrez, Chief of the health center at La Encañada in relation to the death of Mrs. Mestanza, for crimes against the life, the body, and health, constituting manslaughter. On May 15, 1998, that Provincial Prosecutor filed formal criminal charges against Mr. Ormeño Gutiérrez and other persons before the local Provincial Judge, who on June 4, 1998, declared that there were no grounds for opening the investigation. That decision was confirmed on July 1, 1998, by the Specialized Chamber for Criminal Matters; consequently, the Provincial Prosecutor ordered the case archived with prejudice.

16. The petitioners argue that domestic remedies were exhausted with the foregoing decision. The State adduces that the December 16, 1998 decision is final and *res judicata*, but that it did not constitute exhaustion of domestic remedies, since it was aimed at determining liabilities for the possible negligent homicide of Mrs. Mestanza, but not in relation to the alleged forced sterilization of Mrs. Mestanza nor the alleged acts of harassment and discrimination against Mrs. Mestanza.

17. The Commission observes that the domestic remedy exhausted by Mr. Jacinto Salazar was adequate, at least in theory, to seek to obtain justice in the specific case, through criminal sanction of the Chief of the health center where the facts occurred that later caused the death of Mrs. Mestanza. Furthermore, the State has not shown what other domestic remedies should have been exhausted. In this respect, the Inter-American Court of Human Rights has established that a State that alleges non-exhaustion must indicate the domestic remedies that must be exhausted, and must show they are effective.[2]

[FN2] Inter-American Court of Human Rights, Case of Velásquez Rodríguez, Preliminary Objections, Judgment of June 26, 1987. Series C No. 1, para. 88; Case of Fairén Garbi and Solís

Corrales, Preliminary Objections, Judgment of June 26, 1987. Series C No. 2, para. 87; and Case of Godínez Cruz, Preliminary Objections, Judgment of June 26, 1987. Series C No. 3, para. 90.

18. For the reasons set forth above, the Commission concludes that the requirement concerning exhaustion of domestic remedies has been met.

b. Time period for presentation

19. The requirement set forth at Article 46(1)(b) of the Convention, according to which the petition must be presented within six months of the victim receiving notification of the final decision that has exhausted domestic remedies, has been met in this case, since domestic remedies were exhausted on December 16, 1998; and even though the date of notice of that decision does not appear in the record, the petition was filed with the IACHR on June 15, 1999, before six months had run since the date of the decision.

c. Duplication of procedures and res judicata

20. The Commission understands that the subject matter of the petition is not pending before any other international procedure for settlement, nor does it deal with the same subject matter as a petition already examined by this or any other international organization. Accordingly, the requirements established at Articles 46(1)(c) and 47(d) are also satisfied.

d. Characterization of the facts

21. The Commission considers that the presentation by the petitioners states facts which, if true, tend to establish a violation of rights guaranteed in the American Convention and the Convention of Belém do Pará.

V. CONCLUSIONS

22. The Commission considers that it is competent to hear this case, and that the petition is admissible, under Articles 46 and 47 of the American Convention, in the terms set forth above.

23. Based on the foregoing arguments of fact and law, and without prejudging on the merits,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare this case admissible, in relation to the violations alleged of Articles 1, 4, 5, and 24 of the American Convention, and Article 7 of the Convention of Belém do Pará.
2. To notify the petitioners and the State of this decision.
3. To proceed to analyze the merits issues.
4. To publish this decision and include it in its Annual Report for the OAS General Assembly.

Done and signed by the Inter-American Commission on Human Rights in Washington, D.C., on October 3, 2000. (Signed): Hélio Bicudo, Chairman; Juan E. Méndez, Second Vice- Chairman; Members: Marta Altolaguirre, Robert K. Goldman, Peter Laurie, and Julio Prado Vallejo.