

Institution: Inter-American Commission on Human Rights
File Number(s): Report No. 92/08; Petition 12.305
Session: Hundred Thirty-Third Regular Session (15 – 31 October 2008)
Title/Style of Cause: Julio Cesar Recabarren and Maria Lidia Callejos v. Argentina
Doc. Type: Decision
Decided by: Chairman: Paolo Carozza;
First Vice-Chairwoman: Luz Patricia Mejia Guerrero;
Second Vice-Chairman: Felipe Gonzalez;
Commissioners: Second Vice Chairman; Sir Clare K. Roberts, Paulo Sergio Pinheiro, Florentin Melendez.
Pursuant to article 17.2.a of the Commission’s Rules of Procedure, Commissioner Victor E. Abramovich, of Argentina nationality, did not participate in the deliberations or in the decision of the instant case.
Dated: 31 October 2008
Citation: Recabarren v. Argentina, Petition 12.305, Inter-Am. C.H.R., Report No. 92/08, OEA/Ser.L/V/II.134, doc. 5 rev. 1 (2008)
Represented by: APPLICANTS: Susana Graciela Cayuso, Ruben Alberto Suarez and Tomas Ojea Quintana
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I. SUMMARY

1. This is a report on the inadmissibility of case 12.305. Proceedings were initiated by the Inter-American Commission on Human Rights (hereinafter “Inter-American Commission,” “Commission” or “IACHR”) following its receipt of a petition on November 26, 1997, submitted by Susana Graciela Cayuso, with the legal counsel of Rubén Alberto Suárez and Tomás Ojea Quintana (hereinafter “the petitioners”) against the Argentine Republic (hereinafter “Argentina” or “the State”), concerning the lack of proper medical care for, and the subsequent death of, Mr. Julio César Recabarren (hereinafter the alleged victim), on February 2, 1992, in the General Hospital for Acute Medicine J.M. Ramos Mejía, after he suffered complications and the hospital did not have sufficient beds available to transfer him to the intensive care unit. The petition also refers to the lack of reparations to the mother of the alleged victim, Ms. María Lidia Callejos.

2. The petitioners maintain that, after receiving adequate treatment for a knife wound for which Mr. Julio César Recabarren had come to the hospital, he developed symptoms of sepsis and bronchopneumopathy allegedly contracted in the same hospital, which compromised the alleged victim’s health. They contend that the death of Mr. Recabarren, at 11:40 am of February 2, 1992, was due to the sepsis and bronchopneumopathy that he had contracted in the hospital, which had not been detected in time, nor had received proper treatment, given that his state of

health required specific care and his placement in an intensive care unit; these actions were not carried out despite the fact that the physician on duty had ordered them.

3. The State, for its part, maintains that there was no medical negligence and that every necessary measure was taken to care for the alleged victim. It further maintains that there is no proof of a direct causal link between the impossibility, due to the lack of beds, of moving the patient to the intensive care unit on the one hand, and his subsequent death, on the other. The State argues that neither the forensic expert nor the forensic scientists attributed the death of the alleged victim to the fact that he was not transferred to the intensive care unit; hence no adequate causal relationship was proven to exist that would provide the basis for civil reparations. The State also said that appropriate judicial protection has been guaranteed to the mother of Mr. Julio César Recabarren with a proper legal proceeding, and the instant petition is intended to submit to an international instance a request for review of a domestic proceeding in which it was decided that civil reparations were not appropriate.

4. In this report, the Commission analyzes the information submitted in light of the provisions of the American Convention on Human Rights (hereinafter “American Convention” or “Convention”) and concludes that it does not tend to establish a possible violation of the rights guaranteed by the American Convention. Therefore, based on Article 47.b of the American Convention, the IACHR declares the petition inadmissible. It also decides to transmit the report to the parties, issue it, and order its publication in the Commission’s Annual Report.

II. PROCESSING BEFORE THE COMMISSION

5. The petition was received by the IACHR on November 26, 1997. The Commission received additional information regarding the petition on August 3, 1999. The pertinent parts of the petition were forwarded to the State on July 18, 2000, granting it 90 days to submit its observations.

6. The State submitted its response on October 20, 2000, which the Commission forwarded to the petitioners on November 2, 2000, for them to present their observations.

7. The petitioners submitted additional observations on January 2, 2001, April 23, 2001, and December 7, 2001, which were forwarded to the State on January 3, 2001, August 16, 2001, and January 24, 2002, respectively.

8. The State presented additional observations on February 14, 2001 and September 19, 2001, which were forwarded to the petitioners for their observations on March 26, 2001 and October 17, 2001, respectively.

III. POSITIONS OF THE PARTIES

A. The petitioners

9. The petitioners claim that on January 26, 1992, Mr. Julio César Recabarren, 19 years of age, had arrived to the General Hospital for Acute Medicine J.M. Ramos Mejía, a public hospital

under the jurisdiction of the Autonomous Government of the City of Buenos Aires, with a knife wound in his right forearm. After surgery, Mr. Julio César Recabarren was transferred to the traumatology and orthopedics ward. They state that Mr. Recabarren received proper treatment for the wounds that brought him to the hospital and that post-operative recovery had been normal.

10. The petitioners contend that the ensuing medical follow-up, however, had been imprudent and negligent regarding the detection of subsequent complications. They maintain that Mr. Recabarren's clinical history indicates that from January 30, he presented anomalies in his recovery, such as three days of hiccups that did not cease spontaneously, and blood-streaked expectoration and nausea with epigastric pain and belching. They contend that for January 31 and February 1 there is no report on the patient's file regarding his status, which goes to prove that Mr. Recabarren received no medical attention during that period. The petitioners further add that in response to the decompensation of the alleged victim, an order was given for him to receive two units of blood in transfusion, and there is no record in his file indicating that the transfusion actually was given to him.

11. According to the petitioners, at 3:00 a.m. on February 2, 1992, a physician on duty diagnosed Mr. Julio César Recabarren with symptoms of sepsis compatible with pneumopathy and requested his immediate transfer to an intensive care unit. They go on to say that in medical science this is considered a pathology generally related to hospital infection, and contend that the patient contracted this condition in the Ramos Mejía Hospital. The petitioners claim that the hospital failed to detect and control the patient's sepsis in timely fashion, and that this failure was documented subsequently by post-mortem expert medical examinations. Hence, the petitioners stress that the surgery carried out for the knife wound was not deficient, but that the follow-up of Mr. Recabarren's case from January 30, 1992 was cursory and insufficient.

12. The petitioners explain that the intensive care unit had no free beds and that no order was given to urgently transfer the patient to another medical institution. According to the patient's clinical history, they maintain, it was not until 9:00 a.m. on the same day of February the 2nd that the request was again made for an immediate transfer to the hospital's intensive care unit, and only then was the chief of the Office of Coordination of the Permanent Information Center for Emergencies and Catastrophes [Coordinación del Centro Informativo Permanente para Emergencias y Catástrofes (CIPEC)] contacted to request a bed in other intensive care units of the city or province. Therefore, the petitioners contend, it has been documented that six hours were lost which would have improved Mr. Recabarren's chances for survival. They allege that no other steps were taken to find or transfer him to intensive care units of other public or private institutions, a service they consider to be basic and indispensable.

13. The petitioners report that Mr. Julio César Recabarren was transferred to the emergency room of the same hospital, where he died at 11:40 a.m. of the same day, February 2, 1992. According to the petitioners, his death was caused by sepsis and bronchopneumopathy contracted in the hospital, which was not detected in time nor properly treated, since his health condition required specific care and his transfer to an intensive care unit.

14. According to the petitioners, the public hospital's strict liability is proven by: the untimely verification of the patient's worsening condition due to the sepsis, with symptoms that should have been observed had the appropriate follow-up taken place; the inadequate environment in which he received treatment once it was confirmed – albeit in untimely fashion – that there was a sepsis; and the fact that his transfer not only was not made, but that an excessive amount of time transpired before the first request for his transfer and its reiteration.

15. The petitioners state that Ms. María Lidia Vallejos, mother of Julio César Recabarren had filed a suit for (a) damages for loss of life, (b) damages for loss of profit, (c) damages for pain and suffering, and (d) damages for psychological injury. According to the petitioners, the central issue in the claim was to ascertain whether the State failed to comply with its obligation to provide appropriate medical attention.

16. Along with their complaint, the petitioners submitted evidence in the domestic proceedings provided by a court-appointed expert, an expert on behalf of one party, and by the forensic medical corps. Both expert reports refer to deficiencies in medical attention from the 1st of February of 1992. Based on the symptoms of medical complications or sepsis, the court-appointed expert stated that “the deceased suffered an extremely acute or acute infection and he noted that there were signs of lack of proper treatment. It would have been necessary and indispensable to transfer the patient to an intensive care unit,” and he states that this could have improved the patient's life expectancy. The privately engaged expert's opinion was that follow-up was deficient by omission and that supervision was irregular and insufficient. For its part, the office of forensic science states that “the environment in which the patient received treatment from 02/01/92 onward was inadequate, given that a decrease in his blood count since his admission had been confirmed, as well as tachypnea and jaundice, all which point towards a patient evolution towards complications from the time he was admitted to the hospital.” Said report adds that “there is no doubt that intensive care and assistance increase the possibility of survival; were it not so, they would be an absurd undertaking.”

17. The petitioners point out that the medical reports all agree on the following: the lack of supervision; the inadequate nature of the environment in which the patient was under care; the confirmation of the existence of symptoms that he did not present at the time of his admission into the hospital and that should have been assessed as indicative of complications; the indubitable improvement of chances for survival that intensive care provides, and Ms. María Lidia Vallejos' need of entering into an intensive psychotherapeutic treatment.

18. According to information provided by the petitioners, the judge of the first instance considered as proven facts: the need to transfer the patient to an intensive care unit, that this was not done due to the lack of available beds, and that his transfer would have made possible Mr. Recabarren's survival. The judge also kept in mind the obligation of health welfare agencies to provide adequate medical attention and to transfer a patient to the appropriate place for him or her to receive adequate treatment. On these grounds, the judge found partially for the plaintiff on August 27, 1996, and sentenced the Municipality of the City of Buenos Aires to pay damages, in the sum of 150,000 pesos, to Ms. María Lidia Vallejos.

19. The complaint states that both parties lodged appeals against the judgment before the National Chamber of Appeals. On December 3, 1996, this higher court decided to reverse the appealed judgment on the grounds that the lack of space in the intensive care unit was not proven to be the direct cause contributing to the death of Mr. Julio César Recabarren. The court's opinion was that a sentence could not be handed down based on a doubt; what had been proven was that expectation of survival improved for patients in intensive care, but not that there was a causal relationship linked to the death of the patient.

20. The petitioners contend that the judgment of the appeals court had manifestly violated due legal process and had constituted a grave act of arbitrariness. They therefore lodged an "extraordinary appeal against an arbitrary judgment and institutional jeopardy" [recurso extraordinario por sentencia arbitraria y gravedad institucional] before the Supreme Court of Justice of the Nation, on the grounds of violation of due legal process and the failure to recognize the right to health and to life. This extraordinary federal appeal was denied on February 21, 1997 on the grounds that it was out of order; the petitioners then filed a complaint regarding the denial of the extraordinary federal appeal [recurso de queja]. The Supreme Court of Justice of the Nation denied this last appeal on May 13, 1997, on the grounds that the special appeal which gave rise to the complaint was inadmissible. This judgment was notified on May 29, 1997.

21. According to the petitioners, the deprivation of the "chance" or hope of keeping life and health should be the basis of compensation, because the omission or failure to comply with elementary obligations had been proven. They contend that the loss of a "chance" is by nature the thwarting of the single opportunity, probability, or possibility of reverting the result. The petitioners maintain that if the State's negligent behavior deprived Mr. Recabarren of the medical treatment specifically indicated for his illness, even if the end result is unknown, it is clear that the alleged victim was deprived of the "chance" of receiving the advisable treatment, and this fact makes the State liable. They go on to say that it would be impossible for a party seeking the protection of his or her rights to find evidence that the prejudicial result would not have occurred in the absence of the omission. They add that the causal nexus was established by the inadequate conditions which brought on the thwarting of the "chance." Thus, they contend, negligence, imprudence, and lack of foresight constituted the direct causal nexus leading to the loss of the "chance." In light of the above, the petitioners claim that the State is responsible for the lack of adequate, timely, and sufficient medical care to guarantee the right to life, health, and physical integrity.

22. The petitioners also hold the State responsible for denial of justice and violation of due legal process on the grounds that Ms. María Lidia Vallejos was denied her right to a just, reasonable, and equitable compensation. In this regard, they note that the State did not comply with its duty to guarantee a substantive due process, and that the appealed judgment lacked the requirement of reasonableness, because it did not consider the scope of the duties and obligations of those charged with the responsibility of providing adequate care, and thus failed to effectively protect the pertinent fundamental rights. In fact, they claim that the judgment of the Chamber and of the Supreme Court of Justice did not even consider or mention the right to life of the alleged victim. Thus, domestic courts arbitrarily deprived the alleged victim from any and all recourse to remedy the injury caused by the lack of adequate medical assistance.

23. According to the petitioners, negligence on the part of the State in not providing basic, appropriate, and adequate medical care to protect the right to health violated the right to life of Julio César Recabarren; omissive behavior thwarted his possibility to survive. In this respect, in addition to the right to a fair trial, the petitioners consider that the right to life, guaranteed by article 4 of the Convention has not been recognized. They also state that the facts of the instant petition had an impact on the physical and psychological integrity of Mr. Recabarren's mother and his immediate family, thus violating articles 5 (right to humane treatment) and 17 (rights of the family) of the American Convention. They also consider that the right to property provided for by article 21 of the Convention has also been violated, because Ms. María Lidia Vallejos was unlawfully deprived of compensation for the loss of the chance caused by the alleged negligent behavior of the public hospital. It is also their opinion that the reversal of the judgment of the first instance could be interpreted as a very grave judicial error, which would in turn constitute violations of articles 10 (right to compensation) and 11(1) (right to privacy) of the American Convention. Finally, they consider that article 24 (right to equal protection) of the Convention has also been violated because the procedural equality of arms of the parties was altered, placing Ms. Vallejos in a situation of disadvantage and defenselessness.

24. Based on the foregoing, the petitioners conclude that there have been violations of articles 4 (right to life), 5 (right to humane treatment), 8 (right to a fair trial), 10 (right to compensation), 11(1), right to privacy, 17 (rights of the family), 21 (right to property), 24 (right to equal protection), 25 (right to judicial protection), and 26 (progressive development) of the American Convention.

B. The State

25. The State, for its part, contends that, pursuant to the judgment of the National Chamber of Civil Appeals, there is no responsibility that can be assigned to the Argentine State. It further argues that there was no causal nexus between the impossibility of transferring the patient for lack of beds to the intensive care unit, and his subsequent death. It explains that Mr. Julio César Recabarren would have had "better chances" of survival, but it was not proven that the patient died because he had not been transferred. The State stresses that any injury should be the immediate and necessary consequence of a lack of compliance with an obligation.

26. The State adds that although the crisis leading to his death occurred on February 2, 1992, when Mr. Julio César Recabarren was admitted to the hospital on January 26 of the same year he was in critical condition, in a state of shock, lacking peripheral pulse and with profuse hemorrhages, and despite the transfusions received his body did not have time to recover from his severe anemia. According to the State, the lack of body defenses was the cause of the alleged victim's death.

27. The State denies that the verification of Mr. Recabarren's worsening condition was untimely; it claims that his clinical chart shows daily developments until January 31 and an extensive clinical evaluation on February 2, as well as several notes on developments on February 2.

28. The State affirms that intensive medical care was dispensed at the site where the alleged victim was to be found and that the hospital complied with its obligation to take all necessary steps to transfer the patient to other hospitals, including the Gran Buenos Aires Hospital. It further states that the patient had a mechanical respirator at his disposal, and thorough care was given to him in his ward.

29. The State concludes that the therapeutic measures taken were the correct ones, as were the ensuing treatment and follow-up until the patient's decompensation, which caused the request for his transfer to an intensive care unit. Hence, for the State the issue is centered on whether the failure to transfer the patient to an intensive care unit was causally linked to the death of the alleged victim, and if the lack of adequate attention as a consequence of his not being transferred to intensive care, due to the lack of beds, makes the hospital responsible for any eventual prejudicial consequences.

30. The State contends that neither the forensic expert nor the forensic scientists attribute the death of the patient to the failure to transfer him to the intensive care unit, and therefore an adequate causal relationship between the lack of beds in intensive care and the decease of Mr. Julio César Recabarren has not been established. According to the State, in order to determine civil liability, proof of a causal nexus is indispensable. In this respect, the State argues that the "best chance" of survival does not mean that the cause of death of the patient was the failure to transfer him. Moreover, the State maintains that, in matters involving medical responsibility, the party assigning the blame has the burden of proving that there has been manifest negligence or serious diagnostic errors.

31. The State argues that the rights to due process and to a fair trial have been fully respected, because Ms. María Lidia Vallejos had access to a court of the first instance that handed down a judgment in her favor, she had the right to appeal the judgment in a court of the second instance, and to file an extraordinary appeal for the Supreme Court to review the judgment of the second instance. The State claims, moreover, that judgment of the Chamber of Appeals had considered all the evidence that had been submitted in the proceedings and concluded that there had been no evidence offered that could allow the affirmation that the death of the patient was caused by his not being transferred to the intensive care unit. The State further adds that the proceedings lasted a reasonable amount of time.

32. According to the State, the instant petition intends to bring to an international venue a request for review of the proceedings and of their outcome regarding the death of Julio César Recabarren. Based on the foregoing, the State considers that the instant petition is inadmissible given that it does not establish a violation of rights protected by the American Convention on Human Rights.

IV. ANALYSIS OF ADMISSIBILITY

A. Competence of the Commission

33. Pursuant to article 44 of the American Convention, the petitioners have standing to file a petition before the Commission. The instant petition under examination indicates that the alleged

victims were under the jurisdiction of the Argentine State at the time of the alleged facts. Regarding the State, the Commission notes that Argentina is a State Party to the American Convention, having deposited its instrument of ratification on September 5, 1984. Therefore, the Commission is competent *ratione personae* to examine the complaint. It also is competent *ratione materiae* because the petitioners claim that there have been violations of rights protected by the American Convention.

34. The Commission also has temporal jurisdiction to examine the complaint. The petition is based on allegations regarding facts occurred starting on January 26, 1992, the date on which Julio César Recabarren was admitted to the Ramos Mejía Hospital. The facts alleged, therefore, took place after the entry into force of the State's obligations as a Party to the American Convention. In addition, since the petition alleges violations of rights protected by the American Convention in the territory of a State Party, the Commission concludes that it is competent *ratione loci* to examine the petition.

B. Other requirements for admissibility of the petition

1. Exhaustion of domestic remedies

35. Article 46 of the American Convention provides, as a requirement for the admission of a case, "that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law." This requirement's purpose is to allow national authorities to take cognizance of an alleged violation of a protected right and, if appropriate, to resolve it before the matter is heard by an international instance.

36. In the instant case, the Commission notes that Ms. María Lidia Vallejos filed a claim in court for compensation for the death of her son, Julio César Recabarren. The judgment of the court of first instance sentenced the Municipality of the City of Buenos Aires to pay the sum of 150,000 pesos in damages to Ms. María Lidia Vallejos. The National Chamber of Appeals, after examining all the facts and law, decided to reverse the appealed judgment on the grounds that it had not been proven that the lack of space in intensive care was the direct cause contributing to the death of Julio César Recabarren. An "extraordinary appeal against an arbitrary judgment and institutional jeopardy" [*recurso extraordinario por sentencia arbitraria y gravedad institucional*] was then lodged before the Supreme Court of Justice of the Nation, which denied it on the grounds that it was out of order. The petitioners then filed a complaint regarding the denial of the extraordinary federal appeal [*recurso de queja*], before the Supreme Court of the Nation, which was also denied on May 13, 1997.

37. The Commission notes, moreover, that the State has not alleged a lack of exhaustion of domestic remedies, nor has it mentioned any different additional remedy that should have been exhausted in order to redress the situation described above.

38. In light of the foregoing, the Commission considers that the available domestic judicial remedies to obtain compensation for the facts that are the subject matter of this petition were exhausted with the aforementioned decision of the Supreme Court of Justice of the Nation.

2. Timeliness of the petition

39. Pursuant to article 46(1)(b) of the Convention, a petition must be lodged within a definite time period to be admitted, specifically within a period of six months from the date on which the party alleging violation of his rights was notified of the final domestic judgment.

40. In the instant case, the final judgment of the Argentine judicial system was handed down on May 13, 1997 and notified on May 29, 1997. The petition was filed before this Commission on November 26, 1997.

41. Based on the foregoing, the IACHR considers that the instant petition was submitted in a timely fashion.

3. Duplication of procedures

42. Article 46(1)(c) provides that the admissibility of a petition requires that the matter “is not pending in another international proceeding for settlement” and article 47(d) of the Convention provides that the Commission cannot admit a petition that “is substantially the same as one previously studied by the Commission or by another international organization.” In the instant case the parties have not claimed the existence of any of these two conditions for inadmissibility, nor does it arise from the proceedings so far.

4. Characterization of the facts alleged

43. Article 47(b) of the Convention establishes that the Commission shall consider a petition inadmissible if it does not state facts that tend to establish a violation of the rights guaranteed by the Convention. Therefore, the Commission will proceed to analyze whether the facts reported in this case represent a violation of the articles of the Convention invoked by the petitioners.

44. The nature of the protection offered by the organs of the inter-American human rights system is complementary, as stated in the very preamble of the American Convention on Human Rights. Consequently, although the Commission has the duty to see to compliance with the obligations assumed by the state parties to this international instrument, it cannot act as a high court by examining alleged factual or legal errors that national courts may have committed within their jurisdictional capacity. The Commission is not competent to review evidence that has been evaluated by national courts, unless there is unequivocal proof of the violation of the right to a fair trial established in the American Convention.

45. In the present case, according to the information submitted, the Commission notes that Mrs. María Lidia Callejos had access to and lodged her complaint with independent and impartial courts which, upon analyzing and evaluating the evidence legally brought before them, issued a decision contrary to her interests. In accordance with the jurisprudence of the inter-American system, the Commission is not authorized to review “judgments issued by national courts that were acting within their jurisdictional capacity and applying guarantees of due judicial process, unless it finds that a violation of one of the rights protected by the American

Convention was committed.”[FN2] The petitioners did not describe problems in access to the domestic courts, and did not report having encountered any obstacles in presenting their case.

[FN2] IACHR, Report N° 8/98, Case 11.671, Carlos García Saccone (Argentina), March 2, 1998, para. 53.

46. In view of the foregoing considerations, the Commission is of the view that it is not appropriate for it to examine the alleged international responsibility of the Argentine State on the basis of the interpretation by the domestic courts of the facts and Argentine law that gave rise to this case.

47. Lastly, the documents presented do not show that there has been an arbitrary judicial procedure or that the alleged victim has been impeded to access the domestic remedies with all guaranties of due process. Therefore, the alleged facts do not tend to establish a violation of the American Convention.

IV. CONCLUSIONS

48. The IACHR has established in this report that the facts described by the petitioners do not tend to establish possible violations of the American Convention. Consequently, it declares the petition to be inadmissible, because it fails to comply with one of the requirements stipulated in said Convention, and hence will not proceed with consideration of the merits of the case. On the basis of the factual and legal arguments set forth herein,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the present petition inadmissible.
2. To notify the parties of this decision.
3. To publish this decision and include it in its Annual Report to the OAS General Assembly.

Done and signed in Washington, D.C., on October 31, 2008. (Signed: Paolo G. Carozza, Chairman; Luz Patricia Mejía González, First Vice Chairwoman; Felipe González; Second Vice Chairman; Sir Clare K. Roberts, Paulo Sérgio Pinheiro, and Florentín Meléndez, members of the Commission.