

REPORT No. 61/10
DECISION TO ARCHIVE
PETITION 1113-02
VENEZUELA
March 24, 2010

ALLEGED VICTIM: Luz Magaly Serna Rugeles

PETITIONER: Luz Magaly Serna Rugeles, José Guillermo Andueza and Genis Arbey Navarro Serna

VIOLATIONS ALLEGED: Articles 8 and 25 of the American Convention on Human Rights

DATE PROCESSING BEGAN: January 6, 2004

I. POSITION OF THE PETITIONERS

1. On July 8, 2002, the Inter-American Commission on Human Rights received a petition lodged by Luz Magaly Serna Rugeles, José Guillermo Andueza and Genis Arbey Navarro Serna (hereinafter “the petitioners”) in which they allege that the Bolivarian Republic of Venezuela failed to comply with the November 11, 1999 judgment delivered by the Political Administrative Chamber of the Supreme Court, which had found the State liable for violation of Luz Magaly Serna Rugeles’ right to health and had ordered it to pay her compensation for non-pecuniary damages.

2. The petitioners contend that since 1972, Luz Magaly Serna Rugeles had worked as a nurse in the Hospital Universitario de los Andes, an institution of what was then the Ministry of Health and Social Assistance. They allege that in 1978, Luz Magaly Serna began to show symptoms of a change in health. They further allege that numerous medical examinations and tests were done, but it was not until 1988 that she was diagnosed as suffering from chronic mercury poisoning, and the levels of mercury within her system were high. The petitioners contend that the Office of the Regional Deputy Director of Public Health in the state of Mérida had initially refused to hospitalize Luz Magaly Serna in a facility specializing in mercury poisoning; because she did not receive treatment early enough, some of the injuries were allegedly irreversible.

3. The petitioners allege that given the circumstances, on November 24, 1992, a case was brought in the Political Administrative Chamber of the Supreme Court for alleged violation of Luz Magaly Serna’s right to health, her right to have her honor respected and dignity recognized, and her right to a private life. The suit sought compensation for non-pecuniary damages. The petitioners allege that on November 11, 1999, the Political Administrative Chamber delivered a ruling in which it upheld in part the claims made in the suit and ordered the State to pay compensation for “non-pecuniary damages caused by the obvious and flagrant violation of the alleged victim’s right to health.” The petitioners contend that after an expert study was done to determine the amount of the monetary correction between the date on which the case was filed and the date on which the ruling was published, the Political Administrative Chamber ordered enforcement of its ruling on June 15, 2000.

4. The petitioners contend that when the authorities took no action to comply with the ruling, on August 1, 2001 Luz Magaly Serna allegedly petitioned the Political Administrative Chamber seeking forced compliance with the ruling, and allegedly reiterated that request on January 17, 2001. They point out that when the State failed to comply with the ruling, Luz Magaly Serna filed a petition seeking *amparo* relief with the Constitutional Chamber of the Supreme Court on April 24, 2001, which the Constitutional Chamber declared inadmissible on the grounds that it was not the proper remedy to get compliance with and enforcement of a judgment. They observe that on May 3, 2004, Luz Magaly Serna signed an agreement with the Ministry of Health and Social Development, at the Twentieth Notary Public’s Office in the municipality of Libertador, Metropolitan District of Caracas in which said Ministry “submits to voluntary compliance” with the November 11, 1999 ruling delivered by the Political Administrative Chamber of the

Supreme Court and gave Luz Magaly Serna's representative an order for partial payment, which was deposited into the alleged victim's account. They contend that the agreement was that the remaining balance would be paid to Luz Magaly Serna within no more than 30 days. Finally, the petitioners report that Luz Magaly Serna allegedly received the total amount owed by the State and requested the archive of the petition.

II. POSITION OF THE STATE

5. The State confirms that the Political Administrative Chamber of the Supreme Court found the Venezuelan State liable and ordered it to pay non-pecuniary damages to Luz Magaly Serna. The State also confirms that an agreement between the Ministry of Health and Social Development and Luz Magaly Serna was signed in the presence of the Twentieth Notary Public.

III. PROCESSING BY THE IACHR

6. The IACHR received the original petition on July 8, 2002 and classified it as P1113-2002. After doing a preliminary analysis of the petition, the IACHR forwarded the pertinent parts to the State on January 6, 2003, asking it to submit its observations within two months, in keeping with Article 30(3) of the Commission's Rules of Procedure. The State submitted its brief of observations on April 22, 2004, which was forwarded to the petitioners for their observations. On June 2, 2004, the Commission received a brief from the petitioners, which was forwarded to the State for its observations. On June 16, 2004, a brief containing the State's observations was received at the Commission and forwarded to the petitioners for their perusal. On June 28, 2005, the Commission asked the petitioners to provide updated information on the case. On April 28, 2009 a communication was sent to the petitioners requesting updated information in order for the Commission to ascertain whether the grounds for the petition still existed. The Commission also advised the petitioners that if no information was received within one month, it could proceed to close the record.

IV. BASIS FOR THE DECISION TO ARCHIVE

1. Both Article 48.1 (b) of the American Convention on Human Rights and Article 42 of the Rules of Procedure of the Inter-American Commission on Human Rights provide that in the processing of a petition once the observations have been received or the period established has elapsed with no observations received, the IACHR shall ascertain whether the grounds for the petition or communication exist or subsist, and if they do not it shall order the case archived.

7. As for withdrawal, Article 41 of the Commission's Rules of Procedure provides that the petitioner may at any time desist from his or her petition or case, to which effect he or she must so notify the Commission in writing, which may then archive the petition or case if it deems it appropriate.

8. Based on the information that the two parties provided, while the present petition was being processed the compensatory damages that the Supreme Court ordered for Luz Magaly Serna were paid. Given that fact, the petitioners expressly desisted from their petition in a communication dated June 30, 2004. Given the circumstances, the Commission finds that the grounds for the original petition no longer exist and therefore, in accordance with Article 48(b) of the Convention and articles 41 and 42 of the Commission's Rules of Procedure, decides to archive the present petition.

Done and signed in the city of Washington, D.C., on the 24th day of the month of March 2010. (Signed: Felipe González, President; Dinah Shelton, Second Vice-President; María Silvia Guillén, José de Jesús Orozco Henríquez, and Rodrigo Escobar Gil, members of the Commission).