

REPORT No. 95/12
DECISION TO ARCHIVE
PETITION 372-00
ARGENTINA
November 8, 2012

ALLEGED VICTIM Alejandra Graciela Acosta

PETITIONER: Luis María Claus

ALLEGED VIOLATIONS: The petitioner alleges violation of Articles 5.1 in relation to Article 1.1 of the American Convention on Human Rights

INITIATION OF PROCESSING: January 14, 2002

I. POSITION OF THE PETITIONER

1. On July 17, 2000, the Inter-American Commission on Human Rights (hereinafter "the Commission" or "IACHR") received the complaint filed by Luis María Claus (hereinafter "the petitioner"), on behalf of Alejandra Graciela Acosta (hereinafter the "alleged victim") against the Republic of Argentina (hereinafter "the State" or "Argentina"), regarding the alleged violation of her right to humane treatment protected by Article 5.1, in conjunction with Article 1.1, of the American Convention on Human Rights. The petitioner argued that the judicial authorities wrongly stated that the Institute for Medical Assistance (*Instituto de Obra Médico Asistencial*, hereinafter the "IOMA") did not have to compensate the alleged victim with respect to a number of irregularities in the medical care she received before and after the cesarean section performed in her by medical staff working for the IOMA, which resulted in her losing her uterus.

2. The petitioner asserted that the alleged victim was obligatorily affiliated with the IOMA, a dependency of the Ministry of Health of the Province of Buenos Aires, and that in March 1987 she attended *Centro Médico Privado Modelo, S.A.*, one of the clinics that the IOMA gave her to choose from, because she was pregnant. He added that, after the alleged victim had been told by Dr. Alberto E. Manuale, a physician at the IOMA, that she was two months pregnant, she attended monthly check-ups from April to September, 1987. The petitioner said that on September 4, 1987, the aforementioned physician confirmed to the alleged victim that she needed to undergo a cesarean section.

3. He said that at both *Centro Médico Privado Modelo, S.A.* and in another clinic she subsequently attended, she was told that she would have to pay an additional fee and that her delivery would not be covered 100% as per the IOMA's mother-child plan. The petitioner added that the alleged victim had to take out a loan to cover the difference and be treated at *Centro Médico Privado Modelo, S.A.* The petitioner said that the cesarean was performed on September 14, 1987, when his daughter was born.

4. He said that, despite pains and although she was running a high temperature, the alleged victim was discharged from the Clinic on September 18, 1987 but had to return to it, where she was treated until September 21. He alleged that she subsequently suffered hemorrhages and metrorrhages that were not properly treated and was discharged twice, until, finally, on October 27 she was operated on at *Centro Médico Privado Modelo, S.A.* by Dr. Alberto E. Manuale, who extracted her uterus, leaving her unable to bear children.

5. The petitioner pointed out that the alleged victim went to court to establish the civil liability of Dr. Alberto E. Manuale, the *Centro Médico Privado Modelo, S.A.*, and the IOMA. The judges of the lower and first appeal courts declared them liable and ordered them to compensate the alleged victim, underscoring that the cesarean section had been premature and that the IOMA had an obligation to provide adequate health care and to assist its affiliates through its clinics and the medical staff associated

with them. However, the petitioner stated that the Supreme Court of the province of Buenos Aires, in response to an appeal filed by the IOMA, exonerated that Institute from paying compensation and the Supreme Court of Justice of the Nation declared the extraordinary appeal lodged against that ruling inadmissible.

6. He alleged that, in 1988, the Ministry of Health (*el Ministro de Salud*) of the Province of Buenos Aires had admitted that, according to IOMA statistics, some clinics made improper use of cesarean sections, because they involve anesthesiologists and assistants who bill for their services, which placed the lives and health of both patients and their newborn in jeopardy. The petitioner claimed that the sums withheld from civil servants' wages in order to finance the health system were being used not to protect workers but rather to generate profit. As in the case of the alleged victim, this involved placing people's physical integrity at risk. He argued that the State had violated the alleged victim's right to physical integrity and health, given that it should have ordered the IOMA to pay her compensation. Finally, the petitioner argued that the complaint had been filed within the six months allowed from the date of notification of the judgment of the Supreme Court of Justice of the Nation of March 9, 2000.

II. POSITION OF THE STATE

7. The State asked the Commission to declare the petition inadmissible, given that the occurrences he described did not constitute a violation of human rights and what the petitioner really wanted was for the Commission to act as a "fourth judicial instance," revising findings of fact and law made by the domestic courts. The State further requested that the petition be archived.

8. The State further argued that the petitioner's claim rested on his disagreement with the outcome of the lawsuit, which found no grounds for civil liability on the part of the IOMA, without prejudice to the final ruling regarding that of the other respondents. The State argued that the petitioner had access to the courts and had managed to obtain civil indemnification for damages in the lower and first appeal courts, as all those found strictly liable or liable based on breach of duty had been jointly and severally sentenced to pay said indemnification. It said that the Supreme Court of the Province of Buenos Aires had considered that the IOMA could not be considered liable under civil law. It also argued that the mere fact that one of the accused before domestic courts had not been jointly convicted with the rest of those sentenced was neither appropriate nor grounds for sustaining the petitioner's complaint, particularly since that decision was the result of a legal interpretation by the Supreme Court of Buenos Aires evidently not shared by the petitioner.

III. PROCESSING BY THE IACHR

9. The petition was received by the Commission on July 17, 2000. The IACHR forwarded the petition to the State on January 14, 2002 with a request for its observations.

10. In a communication dated January 23, 2002, the State requested that the time allowed for its reply be computed as of February 1, given that the judiciary was in recess in January. In response, the Commission granted the State one month as of February 6, 2002 for it to present its reply. That reply was transmitted to the IACHR on April 9, 2002. The Commission forwarded the State's reply to the petitioner on June 6, 2002, asking him to submit any observations he deemed pertinent.

11. Due to the lack of communication thereafter, on November 18, 2011, the Commission reiterated its request for information to the petitioner and attached a copy of its request for information of June 6, 2002, pointing out that the IACHR could archive the case if it did not receive a reply within six months.

IV. BASIS FOR THE DECISION TO ARCHIVE

12. 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 establish that, when processing a petition, once the information has been received or the period for receiving the information has elapsed,

the IACHR shall verify whether the grounds for the petition or communication exist or survive and, should they not exist or survive, shall order the archiving of the file.

13. So far the petitioner has not replied to the IACHR's requests for information of June 6, 2002 and November 18, 2011, and has not provided information since 2002. After analyzing the case, the Commission considers that it lacks sufficient elements for determining the admissibility or inadmissibility of the petition or whether the grounds on which the original complaint was based subsist, so that, pursuant to Article 48.1(b) of the American Convention on Human Rights and Article 42 of the Rules of Procedure of the IACHR, it hereby decides to archive the instant petition.