

REPORT No. 21/13¹
DECISION TO ARCHIVE
PETITION 652-03
MEXICO
March 20, 2013

ALLEGED VICTIM: Esthela Jeaneth Cruz Estrada
PETITIONER: Esthela Jeaneth Cruz Estrada
VIOLATIONS ALLEGED: Denial of medical treatment and failure to take blame for medical malpractice
DATE PROCESSING BEGAN: August 26, 2003

I. THE PETITIONER'S POSITION

1. The petitioner alleged that on December 7, 1999, she was the victim of medical malpractice in Tijuana. She stated that she was admitted to Tijuana's Social Security public hospital as she was experiencing the warning signs of premature birth. She asserted that one of the physicians gave the order for her to undergo a cesarean section and that during the procedure she was given anesthesia that caused her extreme pain. She later discovered that as a result of the operation she had lost the use of her legs.

2. The petitioner claimed that on March 1, 2000, her husband filed a complaint in the Seventh District Court of the State of Baja California. A ruling on that complaint was still pending as of the date on which she filed her petition with the Inter-American Commission. She also indicated that a complaint had been filed with the Office of the Prosecutor for Human Rights.

II. THE STATE'S POSITION

3. The State's contention was that the petition should be declared inadmissible on the grounds that the petitioner did not exhaust the domestic remedies. It argued that the alleged victim's husband brought two different cases: one was a complaint filed with the office of the Prosecutor for Human Rights, and the other was a criminal complaint filed with the Office of the Attorney General.

4. According to the State, the Office of the Prosecutor for Human Rights of the state of Baja California advised the petitioner's husband to file his complaint with the National Arbitration Commission (CONAMED), which is authorized to offer alternative solutions for disputes arising out of medical services and is, moreover, a service that is provided free of charge and is expeditious and confidential. The petitioner's husband did as he was advised. However, the State contends that under CONAMED's Rules of Procedure, the administrative case had to be suspended because no CONAMED arbitration proceedings can go forward as long as the same complaint is pending with a prosecutorial authority.

5. As for the criminal case, the State pointed out that the Office of the Attorney General of the Republic was in charge of the investigation. It brought a criminal action against the anesthesiologist and surgeon for medical malpractice. The State claimed that on August 4, 2001, the judge delivered a verdict acquitting the accused on the grounds that their culpability had not been proven. The Public Prosecutor's Office appealed the decision, but the latter was upheld by the Court of Second Instance, which confirmed the verdict of acquittal.

¹ In keeping with Article 17(2)(a) of the Commission's Rules of Procedure, Commissioner José de Jesús Orozco Henríquez, a Mexican national, did not participate in either the discussion or the decision on this case.

According to the State, the petitioner has other avenues to exhaust, such as a petition seeking *amparo* relief. It also argued that she could still turn to CONAMED, as she had a right to again seek a solution via that avenue.

6. As for the facts, the State observed that on December 7, 1999, Mrs. Esthela Jeaneth Cruz Estrada was admitted to Clinic 7 of the Mexican Social Security Institute (IMSS) in the city of Tijuana, state of Baja California, under threat of premature birth. That same day, a cesarean section was performed on Mrs. Cruz Estrada, which required anesthesia. It observed that on December 19, 1999, she was diagnosed as having a neurological lesion on the spinal cord, seemingly as a consequence of the anesthesia administered during the surgery. On December 31, 1999, the alleged victim was released, after which the IMSS provided her with special treatment and rehabilitation until she changed domicile without giving the IMSS notice of her new address. Her whereabouts are still unknown.

III. PROCESSING WITH THE IACHR

7. The IACHR received the petition on August 26, 2003, and registered it as number 652-03. On October 29, 2003, it sent the State a copy of the complaint and gave it two months in which to submit its response, in keeping with the Commission's Rules of Procedure then in force. The State presented its reply on February 5, 2004. The petitioner sent additional information on January 26, 2004. The State presented additional information on April 21, 2004

8. On April 6, 2010, the IACHR again requested information from the petitioner, as it had on May 5, 2004. On June 6, 2012, it requested updated information to ascertain whether the grounds for the original petition still existed. In both communications it informed the petitioner that if the requested information was not received within one month's time, the IACHR could archive her petition, as provided in Article 48(1)(b) of the American Convention on Human Rights and Article 42 of the Commission's Rules of Procedure.

IV. BASIS FOR THE DECISION TO CLOSE THE RECORD

9. Article 48(1)(b) of the American Convention on Human Rights and Article 42 of the IACHR's Rules of Procedure provide that, at any point in a proceeding, the Commission shall ascertain whether the grounds for the petition still exist and, if they do not, shall order the record closed.

10. In the present case, more than 8 years have passed since the petitioner's most recent communication and, despite the requests seeking updated information, dated May 5, 2004 and June 6, 2012, thus far the IACHR has not received the requested information it needs to update the processing of the petition.

11. Consequently, the Commission does not have the information it needs to ascertain whether the grounds for the original complaint still exist; nor does it have the information it needs to reach a final decision as to the alleged violation of human rights. Therefore, pursuant to Article 48(1)(b) of the Convention and Article 42 of its Rules of Procedure, the Commission decides to close the record on the present petition.

12. Given the circumstances and because the information available is not sufficient to reach a decision on the petition's admissibility, the IACHR decides to archive the petition, in keeping with Articles 48(1)(b) of the American Convention and 42(1) of the IACHR's Rules of Procedure.

Done and signed in the city of Washington, D.C., on the 20th day of March 2013. (Signed):; Tracy Robinson, First Vice-President; Rosa María Ortiz, Second Vice-President, Felipe González, Dinah Shelton, Rodrigo Escobar Gil, and Rose-Marie Belle Antoine, Commissioners.