
V.D.A vs. Argentina

Facts

The author of the communication is V.D.A., Argentinean citizen, who submitted the communication on behalf of her daughter, L.M.R. L.M.R. has a permanent mental impairment and has been diagnosed as having a mental age of between 8 and 10 years.

On June 2006 L.M.R was found to be pregnant at Guernica Hospital and her mother requested a termination. The hospital staff informed her that she needed to file a complaint with the police. On 24 June 2006 a complaint was filed against an uncle of L.M.R., who was suspected of having raped her. Guernica hospital also refused to perform the termination and referred the patient to San Martín Hospital in La Plata – a public hospital – where she was registered on 4 July 2006. The hospital authorities organized a Bioethics Committee that decided this was a case of ‘non-punishable’ abortion, in accordance with the Argentinean Criminal Code. According to this provision, mentally handicapped women who are raped are given the right to interrupt their pregnancy without the need of any judicial authorization.

Subsequently, the hospital was issued with an injunction demanding the interruption of all procedures and judicial proceedings were initiated to prevent the abortion. The juvenile court judge ruled that a termination should be prohibited because she did not find it acceptable to repair a wrongful assault (sexual abuse) “with another wrongful assault against a new innocent victim, i.e. the unborn child”. The decision was confirmed on appeal by the Civil Court, but was eventually contested before the Supreme Court, which overturned the decision on 31 July 2006 and ruled that the termination could proceed.

Despite the ruling, San Martín Hospital and the family came under enormous pressure from various sources opposed to the termination and the hospital refused to perform the procedure on the grounds that the pregnancy was too advanced (between 20 and 22 weeks). With help from women’s organizations a new scan was performed in a private clinic on 10 August, revealing that the victim was 20.4 weeks pregnant. The family contacted various health centers and hospitals both in and outside the province, but none of them would agree to carry out a termination. However, the family managed to arrange an illegal termination on 26 August 2006.

The author claims that her daughter was the victim of violations by Argentina of Art. 2, 3, 6, 7, 17 and 18 of the Covenant.

The State submitted a reply and refuted the author’s allegations. The State argues that the communication was inadmissible on the grounds of failure to exhaust domestic remedies. It further disputes that since the case had been resolved favourably for the applicant under domestic jurisdiction, the application for full reparation submitted by the author is not substantiated. Lastly, the author’s decision to resort to an unsafe abortion was a decision she made of her own accord, and cannot be considered a direct consequence of the State’s action.

Key words

- Ensure ICCPR rights
- Ill-treatment
- Privacy
- Freedom of religion.

Relevant Provisions

- Article 2
- Article 3
- Article 7
- Article 17
- Article 18

Violated Provisions

- Article 2 § 3
- Article 3
- Article 7
- Article 17

Consideration of admissibility

Article 5: The Committee declares the communication admissible insofar as it raises issues under Art. 2, 3, 7 and 17 of the Covenant.

The Committee notes the author's claim that the facts described constitute a violation of L.M.R.'s right to life in that the State failed to ensure that L.M.R. could obtain a safe abortion. The Committee observes, however, that there is nothing in the case file to indicate that L.M.R.'s life was exposed to particular danger and dismissed, therefore, this claim as unfounded.

Consideration of merits

Article 7: The Committee considers that the State party's omission, in failing to guarantee L.M.R.'s right to a termination of pregnancy, caused L.M.R. physical and mental suffering constituting a violation of Art.7 of the Covenant that was made especially serious by the victim's status as a young girl with a disability.

Article 2 § 1, together with Article 3, Article 7, Article 17: The Committee observes that the judicial remedies sought at the domestic level to guarantee access to a termination of pregnancy were resolved favorably for L.M.R. by the Supreme Court ruling. However, to achieve this result, the author had to appear before three separate courts, during which period the pregnancy was prolonged, with subsequent consequences for L.M.R.'s health that ultimately led the author to resort to illegal abortion. For these reasons, the Committee considers that the author did not have access to an effective remedy and the facts described constitute a violation of Art.2, §3 in relation to Art. 3, 7 and 17 of the Covenant.

Conclusions

The Committee is of the view that the information before it reveals a violation of Art. 7, on the ground of the physical and mental suffering the victim went through, Art. 17, due to the arbitrary interference of the judiciary in L.M.R.'s private life, and Art. 2 § 3 in relation to Art. 3, 7 and 17, because the victim ultimately had to resort to illegal abortion in order to obtain a remedy.

The State party is under an obligation to provide L.M.R. with avenues of redress that include adequate compensation. The State party is also under an obligation to take steps to prevent similar violations in the future. The Committee also wishes to receive from the State party, within 180 days, a report about the measures taken by the State. In addition, it requests the State party to publish the Committee's Views.

Dissent/Concurrence

N/A