

OEA/Ser.L/V/II.161
Doc. 36
18 March 2017
Original: Spanish

REPORT No. 29/17
PETITION 424-12
REPORT ON ADMISSIBILITY

MANUELA AND FAMILY
EL SALVADOR

Approved by the Commission at its session No. 2077 held on March 18, 2017
161th Regular Period of Sessions

Cite as: IACHR, Report No. 29/17. Petition 424.12. Admissibility. Manuela and Family. El Salvador. March 18, 2017.

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I. INFORMATION ABOUT THE PETITION

Petitioners:	Center for Reproductive Rights; <i>Colectiva de Mujeres para el Desarrollo Local</i> ; and <i>Agrupación Ciudadana por la Despenalización del Aborto Terapéutico, Ético y Eugenésico</i>
Alleged victims:	Manuela and family ¹
State denounced:	El Salvador
Rights invoked:	Articles 1.1, 2, 4.1 and 5.1, 5.2, 8.1, 8.2, 8.2(b), 8.2(c), 8.2(d), 8.2(e), 8.2(h) and 8.3, 25.1, 7.1, 7.2, 7.3, 7.4 and 7.5, 11.2, 17 and 25.1 of the American Convention on Human Rights (hereinafter “American Convention” or “ACHR”); Articles 1, 3 and 6.1 of the Inter-American Convention to Prevent and Punish Torture (hereinafter “IACPPT”); Articles 7(a) and 7(e) of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (hereinafter “Belém do Pará Convention”)

II. PROCEDURE BEFORE THE IACHR²

Date on which the petition was received:	March 21, 2012
Additional information received at the initial study stage:	March 4 and 9, 2015
Date on which the petition was transmitted to the State:	April 20, 2015
Date of the State’s first response:	October 14, 2015
Additional observations from the petitioning party:	January 15 and October 25, 2016

III. COMPETENCE

Competence <i>Ratione personae</i>:	Yes
Competence <i>Ratione loci</i>:	Yes
Competence <i>Ratione temporis</i>:	Yes
Competence <i>Ratione materiae</i>:	Yes; ACHR (deposit of instrument of ratification made on August 21, 1990); Belém do Pará Convention (deposit of instrument made on January 26, 1996; competence under Article 21 thereof); IACPPT (deposit of instrument made on December 5, 1994; competence under Article 22 thereof)

¹ The petitioners requested to keep the alleged victim’s name confidential and to refer to her by the name of “Manuela.” They also requested to keep her family members’ identity confidential and to protect the alleged victim’s medical data.

² The observations presented by each party were duly transmitted to the opposing party.

IV. ANALYSIS OF DUPLICATION OF PROCEDURES AND INTERNATIONAL *RES JUDICATA*, COLORABLE CLAIM, EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

Duplication of procedures and International <i>res judicata</i>:	No
Rights declared admissible	Articles 1 (Obligation to Respect Rights), 2 (Domestic Legal Effects), 4 (Right to Life), 5 (Right to Humane Treatment), 8 (Right to a Fair Trial), 11 (Right to Privacy), 13 (Freedom of Thought and Expression), 17 (Rights of the Family), 24 (Equal Protection), 25 (Judicial Protection) and 26 (Progressive Development) of the ACHR; Articles 1, 6 and 8 of the ICPPT; Article 7 of the Belém do Pará Convention
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes; exception set forth in Article 46.2(b) of the ACHR
Timeliness of the petition:	Yes; under the terms of Section VII

V. ALLEGED FACTS

1. The petitioners claim that in El Salvador there is a structural denial of human rights that entails the criminal prosecution, punishment and incarceration of women who suffer obstetric emergencies. They assert that some of the contributing factors are the strict ban on abortion in force since the reform of 1998, as it protects life from the moment of conception (Art. 1 of the Constitution), and the Criminal Code currently in force, under which all forms of abortion are punishable by up to ten years' imprisonment. They claim that murder, as an offense connected with abortion, is punishable by thirty to fifty years of imprisonment. They indicate that other causes of the denounced structural situation include the breach of professional secrecy, the lack of basic rights like the presumption of innocence, the politicization of the Institute of Legal Medicine and the use of outdated methods, the lack of a second instance in criminal matters between 1998 and 2011, and the prevalence of gender violence and discrimination in both the public and the private spheres.

2. According to the petition, Manuela was a poor and illiterate woman living in a rural area who had no access to basic services, education, or birth control methods; she was a mother of two, aged 7 and 9, whom she raised alone, as her husband had left her. The petitioners assert that Manuela had several tumors among other symptoms, and that in August 2006 she came to the closest health unit in the area, Health Unit of Cacaopera, located 5 kilometers away from her house. They claim that she was diagnosed as having gastritis and given painkillers, despite her having indicated several discomforts and not having undergone any prior examination. They claim that she actually suffered from an advanced lymphoma that was diagnosed only one year later. They assert that, as a result, Manuela was transferred to San Francisco Gotera Hospital but was never told of the importance of undergoing medical examinations nor assisted in getting to the hospital, even though she had explained that, due to reasons of time and money, it was hard for her to travel from the rural area where she lived to said hospital. The petitioners also claim that as a result of a short-lived relationship, Manuela became pregnant though she was never sure she was expecting, and they claim that on February 26, 2008, in the seventh month of pregnancy, she had a serious fall while doing laundry in the river. They assert that the following day, she had a precipitous labor on a pit toilet but she thought she had indigestion; afterwards, she lost conscience and suffered a hemorrhage and a severe preeclampsia, and was taken to hospital.

3. They claim that, at hospital, the treating physician asked Manuela if her husband knew what she had done and, though she asserted having had a miscarriage, the physician lodged a police report against Manuela for induced abortion on the grounds of a pregnancy resulting from an "extramarital relation." They assert that, consequently, Manuela was questioned by the police, regardless of her condition, her lack of legal representation and the lack of information about her right to a counsel. They also claim that the following

day police officers came to her house, threatened to imprison her parents they confessed, insulted her mother, accused her of covering up for Manuela, and prepared a report that distorted the mother's account of the facts. Moreover, the petitioners assert that Manuela's father, who is illiterate, was forced to sign a document that was later used as a complaint against his own daughter, which, according to them, was illegal under the Code of Criminal Procedure then in force, as it banned complaints against family members. Furthermore, they assert that the forensic doctor who saw Manuela at her house prepared reports with significant discrepancies, particularly regarding the condition of the umbilical cord.

4. They indicate that on February 28, Manuela was detained and handcuffed to the couch, spending eight days in custody; afterwards, she was taken to the police station of Morazán and later to the Pre-trial Detention Center and Prison of San Miguel. They submit that she was discharged from the public hospital of San Francisco Gotera without having undergone a complete medical examination; that while in jail, she never had a medical examination and, whenever she complained of her pain, she was insulted for the facts she was accused of. They assert that in the casefile there is a police report of February 28 with several irregularities, such as the claims that Manuela was arrested "in flagrante delicto" for murder; that her charges and her rights were read; that she was asked if she could afford a counsel; the time the report was prepared and the lack of her fingerprint on it, which indicates that she did not want to sign it. The petitioners submit that the report is false given that her detention did not conform to the basic arrest requirements. In addition, they assert that there is another report of the same date assigning a public defender to Manuela, which is signed by the counsel and the police, but which also lacks Manuela's fingerprint; hence the petitioners submit the report was fabricated since Manuela never accepted said counsel. The petitioners allege that in March of that year officials from the Institute of Legal Medicine, through insults and reproaches, forced Manuela's parents to register the stillbirth. They indicate that consequently, her parents, having incurred in significant debt, were able to travel to register the birth and then the death of the fetus.

5. They indicate that on March 2, 2008, the Justice of the Peace of the City of Cacaopera accepted an order from the prosecutor's office to conduct an official inquiry for aggravated murder and issue an arrest warrant against Manuela. They claim that on that day the police came to the hospital to ask Manuela to sign a record notifying her of the prosecutor's order; however, no one ever verbally explained to her the charges, even though she was illiterate and had no defense counsel. They claim that the following day the same public defender was one again assigned to her. They add that the first hearing was conducted without Manuela being present despite the fact that she had not previously talked to her representative; that at the hearing for the review of the precautionary measure, which was maintained, Manuela was represented by another counsel, whom she was unable to reach in spite of having so requested; and that at the preliminary hearing her counsel was once again changed without prior notice. They also claim that the judge found that the offense was sufficiently proved, as he considered that the fetus died as a result of mechanical asphyxiation by upper airway obstruction and severe umbilical cord hemorrhage, the main evidence being the police report allegedly filed by Manuela's father. They assert that on July 31, 2008, there was a public hearing and the Trial Court of San Francisco Gotera convicted Manuela to 30 years of imprisonment for aggravated murder, and that that was the first time Manuela met her counsel. They claim that on August 11, 2008, the judgment was read out and her public defender did not present an appeal of cassation, the ordinary remedy available at the time, nor did he inform Manuela of the possibility of appealing.

6. In addition, they indicate that Manuela's mother stopped visiting her in July 2008 given that, as a visitor, the mother was required to undergo vaginal and anal inspections against her will and in insanitary conditions, which had grave consequences to her mental health. Moreover, they claim that while Manuela was deprived of liberty in San Miguel, her health continued declining and that the authorities took her to hospital only one year later, in February 2009. They assert that she was diagnosed with nodular sclerosis Hodgkin's lymphoma and that she received chemotherapy but was unable to complete the treatment since the prison staff often failed to take her to hospital and forced her to stay in her cell after chemotherapy sessions. They also claim that on September 10, 2009, she was taken to Ilopango Women's Rehabilitation Center to facilitate her transportation to the National Hospital of Rosales, but that, again, authorities failed to take her to receive the complete chemotherapy treatment. They indicate that Manuela was therefore taken to the hospital in January 2010 and stayed there until April 30, 2010, when she died.

7. They assert that thanks to the support from the petitioning organizations that heard the case,³ on October 27, 2011, Manuela's father filed a disciplinary and criminal complaint against her defense counsel for participating in the forgery of the legal document that notified Manuela's arrest. They also claim that on November 17, 2011, the father lodged a petition to obtain a copy of Manuela's medical record from the National Hospital of Rosales, which was rejected given that under the "Technical Rules for the Departments of Statistics and Medical Files from National Hospitals, of the Ministry of Public Health and Social Welfare, Planning Directorate, Health Information Unit," medical records can be accessed only by the Police, the Prosecutor's Office, the Attorney General's Office, and federal judges. Moreover, they indicate that on December 20, 2011, Manuela's father lodged an action for review given that the judgment was illegal, as it was based on complaint allegedly lodged by him. They indicate that on January 30, 2012, the Trial Court of San Francisco Gotera overruled the appeal on the grounds that the matter was not based on said police report but on the treating physician's complaint. They claim that said court also alleged formal aspects that are not established in the Code of Criminal Procedure. They indicate that domestic remedies have been exhausted inasmuch as once an action for review has been rejected, it cannot be appealed.

8. The petitioners allege the applicability of the exceptions set forth in Article 46.2(a) and (b) of the ACHR and Article 31.2(a) and (b) of the Commission's Rules. As to the alleged lack of a suitable legal remedy, they claim that, in connection with the deficiencies in the health and legal services, no remedy can have an effect on the criminal proceedings, since Manuela's death terminates the criminal action. In addition, they indicate that the criminal proceedings do not afford an appeal that meets the basic requirements of a second instance, given that a motion to vacate a judgment (which was the only remedy available against a first instance conviction) was applicable on condition that said judgment was based on the nonobservance or wrongful application of a legal norm, and had a restricted number of such shortcomings. Moreover, they claim that given the specificity and the technical nature of said remedy, Manuela was deprived of the opportunity to access a reconsideration of the completeness of the evidence, and of the account and attribution of the facts fabricated by the Prosecutor's Office. Moreover, concerning the purported deficiencies in the health system, they assert that a criminal complaint for malpractice or manslaughter is not applicable, since Manuela's death was the result of a series of violations of her integrity perpetrated by several state agents. They indicate that the only possibility might be filing a claim for direct reparations for lack of medical treatment; however, they also indicate that under the law governing the administrative law court it is possible to challenge only the lawfulness of administrative acts performed by the public administration, as long as the latter issues an administrative record. Therefore, they claim that Manuela's family members cannot resort to such jurisdiction. In this regard, they claim that the violations of Manuela's rights are not a consequence of an act of an administrative nature, but of acts and omissions on the part of different state agents, such as health service providers, the staff of the prisons where she was detained, police officers, officials from the prosecutor's office and judges that participated in Manuela's case. As a result, they assert that Manuela's family members cannot resort to the administrative jurisdiction. Likewise, the petitioners indicate that while Manuela was alive, she was deprived of her right to exhaust domestic remedies since she was unable to file a motion to vacate the judgment due to the ineffective assistance of her State appointed counsel. They claim that, based on the foregoing, the exception set forth Article 46.2(b) of the ACHR and in Article 31.2(b) of the Rules of Inter-American Commission is applicable.

9. As a result of the aforementioned facts, the petitioners allege violations of the rights to life; to be free from cruel, inhuman and degrading treatment; the right of all persons deprived of liberty to be treated with dignity; to access a fair trial; to personal freedom; to freely and fully exercise the rights protected by the ACHR without discrimination, in connection with all of the State's obligations to refrain from acts and practices of violence against women and to adopt measures to eradicate customary patterns that encourage the tolerance of such violence. In addition, they allege the violation of the right to personal integrity to the detriment of Manuela's father, mother, children, and sister; particularly, the violation of their right to be free from cruel, inhuman and degrading treatment; the right to privacy; and Manuela's mother's right of the family, as she was subjected to vaginal and anal inspections as a requirement to visit her daughter in prison.

³ Center for Reproductive Rights and *Colectiva de Mujeres para el Desarrollo Local*.

10. In turn, the State claims that it fully accepts its obligations concerning the respect and the safeguard of human rights, and it asserts that since 2009, it has developed strategies to overcome poverty and social inequality. It claims that the reform of the healthcare system in 2010 has had an impact in terms of sexual and reproductive health, as it has enabled the access to health for girls, adolescents and women. It also indicates that it has adopted specific legislation concerning gender equity and equality, designed public policies to enforce the legal norms concerning gender equality, and trained public defenders on women's rights in order to ensure the rights of the women prosecuted for, or convicted of, offenses connected with "the life of the human being in prenatal development." In particular, regarding the denounced facts, it gives a detailed account of the instances when Manuela received medical treatment at different institutions of the Public Health System, and it claims that on September 9, 2009, the Eastern Regional Criminological Council found appropriate to have Manuela transferred from the Pre-trial Detention Center and Prison of San Miguel to the Women's Rehabilitation Center of Ilopango in order to facilitate her medical treatment.

11. The State gives an account of a series of actions in the framework of the proceedings filed against Manuela. It indicates that the Chief Justice of the Trial Court of San Francisco Gotera, who heard the case, asserted that Manuela's rights and legal safeguards were respected in every stage of the proceedings. There is a report signed by said judge, who claims that Manuela's rights and legal safeguards were read out; that she was arrested "in flagrante delicto" thanks to the treating physician's report filed the previous day and to the search of the detainee's home on a warrant; and that a public defender was assigned to her on the same day of her detention. According to said report, on March 2, 2008, during the administrative detention, the Prosecutor's Office presented a claim whereby the accused was remanded in custody –that is to say, three days after her detention–, and that on that same day the Justice of the Peace of Villa Cacaopera appeared at the Hospital to notify Manuela of the order that the Prosecutor's Office had issued against her; the Justice of the Peace read her rights and the charges, and established that her arrest would last for the legally prescribed term of the investigation. Moreover, the report states that given that Manuela's legal representative was not present at the time of her detention, she was not questioned on the facts; and that, at the hearings, Manuela was always accompanied by her counsel. As to the pre-trial custody, the report states that it was upheld by the Justice of the Peace of Cacaopera and the Second Judge of the Court of First Instance inasmuch as they considered that there was sufficient evidence to logically conclude that the accused was responsible for murder. In the report, it is also claimed that the prosecutors collected evidence throughout the pre-trial proceedings, a time during which the public defender was able to prepare the defense and to reach Manuela; and that the defender had enough time to prepare her defense. According to the report, Manuela's rights were not violated nor were there acts of negligence or ill-will on the part of her public defender; and the accused, in the exercise of her right to material defense, presented testimonial evidence. It is claimed that her right to challenge a judgment was not violated inasmuch as when the judgment was read out, said decision was made available to the defense in case it wished to file the corresponding remedies; however, this right was not exercised, hence the judgment became final.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

12. The petitioners assert that the exceptions set forth in Article 46.2(a) and (b) of the American Convention and in Article 31.2(a) and (b) of the Commission's Rules apply as a result of the abovementioned arguments. In turn, the State indicates that the alleged victim did not resort to the remedies available against the criminal judgment, which is why it became final. After considering the fact that in the criminal proceedings initiated against Manuela on July 31, 2008, there was a public hearing in which the Trial Court of San Francisco Gotera convicted Manuela to thirty years of imprisonment, and the fact that despite the judgment having been read out on August 11, 2008, Manuela's public defender never filed a remedy against it within the legally established terms or allegedly ever informed Manuela of this possibility, the Commission concludes that the exception to the prior exhaustion of domestic remedies set forth in Article 46.2(b) of the American Convention applies in this case. Moreover, in the merits stage, the IACHR will analyze the arguments concerning the lack of an ordinary remedy to challenge a first instance judgment at the time when the facts took place. It is worth mentioning that the petition to the IACHR was received on March 21, 2012, that the alleged facts matter of this complaint started on February 27, 2008, and that certain effects continue to the present date. As a result, in view of the context and given the characteristics of the matter, the

Commission finds that the petition was filed in a reasonable time and that the admissibility requirement of timeliness is met.

VII. COLORABLE CLAIM

13. In view of the elements of fact and law presented by each party and given the nature of the matter brought to its attention, the IACHR finds that, if proved, the denounced facts concerning the lack of access to health services, the effects on the alleged victim's integrity, the arbitrary deprivation of liberty, the violation of due process of law, the lack of access to justice and judicial protection, and discrimination could establish possible violations of Articles 4, 5, 7, 8, 17, 24, 25 and 26 of the ACHR to the detriment of Manuela; and of Article 7 of the Belém do Pará Convention. Moreover, the Commission believes that the arguments concerning Articles 1, 6 and 8 of the IACPPT need to be analyzed at the merits stage. Furthermore, as to Manuela's family members, if proved, the denounced facts concerning the effects on the alleged victims' integrity, the lack of justice and judicial protection as well as the obstacles to access information, and the violations of the right to protect the family could establish possible violations of Articles 5, 8, 13 and 25 of the ACHR. Lastly, as to the claims regarding the physical inspections to which Manuela's mother was subjected when she visited her daughter in prison, the Commission finds that these establish possible violations of Articles 11 and 17 of the ACHR.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 4, 5, 7, 8, 11, 13, 17, 24, 25 and 26 of the American Convention in connection with Articles 1.1 and 2 of the same treaty;

2. To find the instant petition admissible in relation to Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture;

3. To find the instant petition admissible in relation to the purported violations of Article 7 of the Belém do Pará Convention;

4. To notify the parties of this decision;

5. To continue with the analysis on the merits; and

6. To publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.

Done and signed in the city of Washington, D.C., on the 18th day of the month of March, 2017. (Signed): Francisco José Eguiguren, President; Margarete May Macaulay, First Vice President; Esmeralda E. Arosemena Bernal de Troitiño, Second Vice President; Paulo Vannuchi and James L. Cavallaro, Commissioners.