Argentina sentenced by the United Nations Human Rights Committee for Not Providing a Legal Abortion

Decision summarized by Mercedes Cavallo, LL.M.

On April 28, 2011, the UN Human Rights Committee sentenced Argentina for impeding access to legal abortion by a 19-year-old mentally disabled girl, “LMR,” who was raped by her uncle in Guernica, Buenos Aires, in 2006. The Committee found a violation of her rights to privacy and to be free from cruel, inhuman and degrading treatment, and requested the State to pay her damages and to establish regulations to prevent future violations.

In Argentina, since 1921, abortion is a criminal offense justified only when the pregnancy entails risk to women’s life or health, or resulted from rape or sexual abuse committed against an idiotic or insane woman. Many scholars and organizations have reported that, in spite of the exceptions, legal and safe abortion is inaccessible for most Argentine women who are legally entitled to the medical procedure.

The case of LMR illustrates how Argentine women cannot access the medical procedure, although the right to it has been stated in the Criminal Code for over 90 years. In 2006, when VDA, LMR’s mother, realized that her daughter was not feeling well, she took her to Guernica Hospital, where she found out that LMR had been raped and was pregnant. As a result, VDA requested a legal abortion. Guernica Hospital refused to perform the abortion, and referred them to San Martin Hospital, 100 kilometers away. By that time, LMR was almost 15 weeks pregnant. When the procedure was about to be performed in San Martin Hospital, a trial judge passed a resolution to impede the abortion. The resolution was then appealed and confirmed by a Civil Law Court of Appeals. That judgment was then appealed by anti-choice groups before the Buenos Aires Supreme Court, which granted the permission for the abortion. By that time, LMR was almost 21 weeks pregnant. Although the highest tribunal of the province had authorized the abortion, San Martin Hospital refused to perform the abortion, alleging that an interruption of a now 21-week-old pregnancy would entail risks to LMR’s health. Finally, with the help of women’s rights organizations, LMR gathered the money to access a clandestine abortion in a private clinic.

The UN Human Rights Committee found that the case touched upon articles 2, 3, 7 and 17 of the ICCPR. The Committee stated that Argentina’s omission to provide safe abortion services in a case where abortion was legal according to the Criminal Code, caused moral and physical pain, amounting to a violation of art. 7; particularly in this case, since the victim had been raped and was mentally disabled. The Committee clearly affirmed that art. 7 not only refers to physical pain, but also moral pain. The Committee also considered that, by impeding the access to legal abortion, the Argentine State interfered with LMR’s right to privacy, in violation of art. 17. The Committee finally said that, although, formally, LMR could access the domestic jurisdiction, the whole proceeding was cumbersome and delayed, being, in fact, an ineffective remedy, and, hence, amounting to a violation of arts. 2.3 in relation to arts. 3, 7 and 17. Accordingly, the Committee granted Argentina 180 days to pay damages to LMR and to implement measures to impede future violations.

It is hoped that this ruling would help to improve access to safe and legal abortion, as complications from unsafe abortive practices in Argentina have been the main cause of maternal mortality in the last twenty years and represent a third of total maternal deaths.
This ruling, Document number: CCPR/C/101/D/1608/2007 is online in Spanish:
--then click “Principales Actuaciones”
--then click “Dictamen del Comite de Derechos Humanos 28 abril 2011”