



ORGANIZACIÓN DE LOS ESTADOS AMERICANOS
WASHINGTON, D.C. 2 0 0 6 EEUU

March 18, 2014

Ref.: Case No. 12.723
TGGL y familia
Ecuador

Mr. Secretary:

I am pleased to address you on behalf of the Inter-American Commission on Human Rights in order to file Case No. 12.723 TGGL¹ and family v. Ecuador (hereinafter “the State”, “the Ecuadorian State” or “Ecuador”) before the jurisdiction of the Honorable Inter-American Court of Human Rights. The instant case involves international responsibility of the State of Ecuador for infringing the right to a dignified life and humane treatment of TGGL, as a consequence of a blood transfusion that was performed on her on June 22, 1998, when she was three years of age. The blood that was used in the transfusion came from the Red Cross Blood Bank of Azuay, over which the State had not adequately fulfilled the duty to ensure rights; specifically, it had failed to perform its role of supervision and control over private health service-provider entities. The Commission also found that the State’s failure to adequately respond, particularly to the situation arising from the failure to provide the medical care required by the victim, has continued to impair the exercise of the victim’s right as of the present date. Lastly, the Commission found that the domestic investigation and criminal proceedings, which culminated in a judicial ruling that the statute of limitations had lapsed, did not meet the minimum standards of due diligence to provide for an effective remedy for the child TGGL and her next-of-kin. The Commission found that the overall facts of the case evince a breach of the State’s duty of special protection for TGGL in her status as a minor child.

The State of Ecuador ratified the American Convention on Human Rights on December 28, 1977 and accepted the contentious jurisdiction of the Court on July 24, 1984.

The Commission has designated Commissioner Rose Marie B. Antoine and Emilio Álvarez Icaza L., executive secretary, as its delegates. Likewise, Elizabeth Abi-Mershed, Deputy Executive Secretary and Silvia Serrano Guzmán, attorney of the Executive Secretariat of the IACHR, have been designated to serve as legal advisors.

Mr.
Pablo Saavedra Alessandri, Secretary
Inter-American Court of Human Rights
Apartado 6906-1000
San José, Costa Rica

¹ Tal como indicó la Comisión en su informe sobre admisibilidad, a pesar de no haber sido expresamente solicitado por los peticionarios, se dispuso la reserva de identidad de la entonces presunta víctima por tratarse de una niña. Asimismo, con el fin de brindar mayor protección, se dispuso también la reserva de identidad de la madre de TGGL y de los donantes de sangre.

In accordance with Article 35 of the Rules of Procedure of the Inter-American Court, the Commission is enclosing a copy of Merits Report No. 102/13, prepared in compliance with Article 50 of the American Convention, as well as a copy of the entire file before the Inter-American Commission (Appendix I.) and the attachments used to prepare the Report on the Merits (Attachment). The Commission transmitted the Merits Report to the State on December 18, 2013 granting it two months to provide information on the measures adopted in compliance with the recommendations.

On January 17, 2014, the State claimed that “it has been taking several public policy steps with regard to providing protection, prevention and support to the individual linked to the case.” It also noted that the “proportional extension” it requested will enable it “to move forward with the agenda of a possible agreement between the parties (...) inasmuch as national and local agencies of several branches of government are involved.”

On February 18, 2014, the Commission granted a first extension for one month, requesting the State that no later than March 11, 2014, present information on compliance with the recommendations, specially the one related to the immediate specialized medical treatment that TGGL requires.

On February 25, 2014, the State requested a work meeting on the case. By means of communication of March 5, 2014, the Commission informed the State that the possible extension would depend on a request for an extension on the part of the State. It was also mentioned the need that the State presents the information required in an urgent basis regarding the medical specialized treatment. Finally the Commission mentioned that an eventual meeting will depend on the will of the victims.

Ante la falta de respuesta a la solicitud concreta de información efectuada por la Comisión sobre el cumplimiento de las recomendaciones, especialmente de aquellas a las cuales se otorgó un carácter inmediato ante la situación de salud de TGGL y su múltiple condición de vulnerabilidad, la Comisión decidió someter el presente caso a la jurisdicción de la Corte Interamericana por la necesidad de obtención de justicia para la víctima y su familia. La Comisión Interamericana somete a la jurisdicción de la Corte la totalidad de los hechos y violaciones de derechos humanos descritos en el informe de fondo 102/13.

The Inter-American Commission concluded that the State of Ecuador is responsible for the violation of the rights to a dignified life, human treatment, judicial guarantees and due process, established in Articles 4, 5, 8 and 25 of the American Convention in relation to the obligations set out in Article 1.1 of the same instrument, to the prejudice of TGGL. Throughout, the Commission has concluded that the State of Ecuador has failed to fulfill its obligations of special protection of TGGL in her status as a child, in violation of Article 19 of the American Convention. Thus, the Commission concluded that the State of Ecuador is responsible for the violation of the rights to mental and moral integrity, judicial protection and due process, enshrined in Articles 8 and 25 of the American Convention in relation to the obligations established in Article 1.1 of the same instrument to the prejudice of TGGL’s mother and brother.

En ese sentido, la Comisión solicita a la Corte que concluya y declare que el Estado de Ecuador es responsable por la violación de los derechos a la vida digna, integridad personal, garantías judiciales y protección judicial, establecidos en los artículos 4, 5, 8 y 25 de la Convención Americana en relación con las obligaciones establecidas en los artículos 1.1 del mismo instrumento, en perjuicio de TGGL. Asimismo, la Comisión solicita a la Corte que concluya y declare que el Estado ecuatoriano incumplió sus obligaciones de especial protección de TGGL en su condición de niña, en violación del artículo 19 de la Convención Americana. Finalmente, la Comisión solicita a la Corte que concluya y declare que el Estado ecuatoriano es

responsable por la violación de los derechos a la integridad psíquica y moral, a las garantías judiciales y protección judicial, establecidos en los artículos 5, 8 y 25 de la Convención Americana en relación con las obligaciones establecidas en los artículos 1.1 del mismo instrumento en perjuicio de la madre y el hermano de TGGL.

By virtue of the foregoing conclusions, the Commission recommended:

1. Make reparations in full to TGGL and her mother for the violations of the human rights set forth in the present report, including both the material and moral aspects.
2. Provide, in consultation of TGGL, immediately and permanent, the medical treatment that she needs.
3. Provide, in consultation with TGGL, primary education, high school and university, for free.
4. Undertake a complete and effective investigation into the violations of human rights highlighted in the present report.
5. Put in place procedures to prevent a repetition, including: i) the implementation of serious and effective mechanisms of periodic supervision and control of the operations and register system of the Blood Banks that function in Ecuador, including public and private sector; ii) the implementation of serious and effective mechanisms of periodic supervision and control of the public and private hospitals to verify the security of the blood products that are used for transfusions; iii) the implementation of training programs for the workers of the Blood Banks that operate in Ecuador, in order to grant that they exercise their duties in a compatible way with the minimum technical standards internationally recognized; and iv) the provision of treatment and free health assistance to children with HIV that do not have the economic resources for that propose.

In addition to the need to obtain justice as a result of the failure to comply with the recommendations of the merits report, the Commission deems that the case raises issues of Inter-American public order. Specifically, the instant case provides an opportunity for the Court to expand legal precedents regarding the duty of States to ensure, supervise and control private entities, which provide health service and, consequently, may infringe the right to life and humane treatment. In this case, the Honorable Court will be able to rule on the special duty of States with regard to certain activities linked to human health, which by their very nature entail a high risk, such as dealing with blood bank and transfusion services. Additionally, the case poses an opportunity for the Inter-American Court to expand legal precedents on obligations, which are imposed on States by the American Convention, in light of applicable international standards, when it comes to human immunodeficiency virus carriers, who are in a situation of particular vulnerability.

Inasmuch as these issues have a consequential effect on Inter-American public order, as provided under Article 35.1.f of the Rules of Procedure of the Inter-American Court, the Commission proffers the following expert witnesses:

1. xxxxxxxxxxxx, who will provide testimony on international standards pertaining to the duty to ensure the right to life and humane treatment, in connection with the right to health. Specifically, the expert will address the scope and content of the obligations of supervision and control of private entities providing health services. The expert will discuss specific obligations, when it comes to human health-related activities, which may pose a high risk, such as dealing with blood banks and transfusion services.

The expert will examine, to the extent that it is relevant, the position of other human rights protection systems, as well as experiences in comparative law.

2. xxxxxxxxxxxx, who will provide testimony on the obligations imposed by the American Convention on States, as interpreted in light of applicable international standards, with regard to persons who are carriers of the human immunodeficiency virus. The expert will specifically address the State obligations with respect to individuals that were infected with HIV due to action or omission of the State. The expert will also address the obligations towards persons that, because of their particular condition, are in a situation of vulnerability on multiple fronts, for example, being a minor child or baby, or economically disadvantaged.

3. xxxxxxxxxxxx, who will provide testimony on the international standards that determine the State obligations regarding the health of children, in order to offer elements for the Court to analyze the different components of the case under Article 19 of the American Convention.

Los CV de los peritos/as propuestos/as será incluido en los anexos al informe de fondo 102/13.

La Comisión pone en conocimiento de la Corte la siguiente información de quien ha actuado en calidad de peticionario a lo largo del trámite y sus respectivos datos de contacto:

Gustavo Quito Mendieta, Iván Patricio Durazno

[REDACTED]

Asimismo, la Comisión pone en conocimiento de la Corte que tras la notificación del informe de fondo, se han recibido comunicaciones directamente de TGGL y su madre desde el siguiente correo electrónico:

[REDACTED]

Aprovecho la oportunidad para saludar a usted muy atentamente,

Signed in the original

Emilio Álvarez Icaza L.
Secretario Ejecutivo