



ORGANIZACIÓN DE LOS ESTADOS AMERICANOS WASHINGTON, D.C. 20006 EEUU

January 26, 2012

Ref.: Case No. 12.683
Melba del Carmen Suárez Peralta
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. 12.683 Melba del Carmen Suárez Peralta vs. the state of Ecuador (hereinafter “the State”, “the Ecuadorian State” or “Ecuador”) before the jurisdiction of the Honorable Inter-American Court of Human Rights, regarding the absence of guarantees and judicial protection in the criminal proceedings followed against to supposed people responsible of the medical malpractice alleged by Melba del Carmen Suárez Peralta.

In July 2000, Melba del Carmen Suárez Peralta went to the private practice “Minchala” to undergo surgery for appendicitis, which provoked her severe and permanent sufferings. The criminal proceedings initiated in connection with the incident concluded without result. The lack of due diligence in conducting the process led to declare the prescription in 2005, after passed more than five years from the first court order process.

In this regard, in its Merits Report 75/11, the Commission emphasized the absence of diligence by both the prosecution and the judge in charge, and considered that in the five years the necessary measures to clarify the complaint by the victim were not taken, despite repeated requests. On this matter, an effective investigation against the principal or on possible suspects in different responsibility degrees was not performed. The Commission considered that the criminal proceeding was characterized by absence of procedural impulse and of minimal guarantees of due diligence. The absence of response and delay in impelling and dealing with the process favored with impunity the process. Accordingly, the Commission considered that the State violated the right to due process of the victims. Furthermore, the Commission determined that the lack of motivation in response to the request of fine for the manager of justice for the prescription of the action due to the his lack of diligence, constituted a violation of the right to a fair trial.

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

The Commission notes that since the surgery performed in 2000, the state of health of the victim has deteriorated. This has forced the victim to be hospitalized and operated on several occasions. At present, his health has worsened and continues to suffer severe symptoms that affect her permanently.

The State ratified the American Convention on Human Rights on December 28, 1977, and accepted the contentious jurisdiction of the Court on July 24, 1985.

The Commission has designated Commissioner Fdinah Shelton and the Executive Secretary Santiago A. Canton as its delegate. Likewise, Elizabeth Abi-Mershed, Deputy Executive Secretary, Tatiana Gos and Karin Mansel, attorneys of the Executive Secretariat of the IACHR, will serve as legal advisors.

In accordance with Article 35 of the Rules of Procedure of the Inter-American Court, the Commission is enclosing a copy of Report 75/11, 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 annexes used in drafting Report 75/11 (Annexes). Said report was notified to the Venezuelan State by means of communication of July 26, 2011, granting it a period of two months to report on the implementation of the recommendations.

In a communication dated September 15, 2011, the State of Ecuador presented a brief on implementation of the recommendations where it stated that on August 9, 23, and 30, 2011, working meetings of the Parties had taken place in Guayaquil, culminating in the signing of an implementation agreement between the Ministry of Justice, Human Rights, and Worship and Ms. Melba del Carmen Suárez Peralta. A schedule was established for implementing the reparation measures recommended by the Commission. The State asked the Commission to ratify that agreement.

On October 10, 2011, the Commission received a communication from the State requesting three more months to report on progress made with compliance with Report No. 75/11 and stating its understanding that, if the extension is granted, the deadline set in Article 51.1 of the American Convention on Human Rights will be suspended. Furthermore, the State expressly waived its right to file any preliminary objection related to the extemporaneous presentation of a possible suit before the Inter-American Court. On October 24, 2011 the Commission notified the State the granting of the extension for three months and requested that the State inform about the measures adopted to comply with the recommendations of the Commission by January 5, 2012.

On January 18, 2012, the petitioners sent an email indicating that, based on the lack of fulfillment of the first agreement of December 28, 2011, they re-signed another agreement to comply with the recommendations of the Commission and it was set as the date for the payment of compensation January 20, 2012.

On January 26, 2012, the State sent a communication in which he reported the fulfillment of some requested actions and asked to consider THEM as an expressly stated willingness to comply with the recommendations contained in Report No. 75/11. In relation to the payment of the compensation, the State indicated that the documents submitted by the petitioners justified only a fraction of the agreed amount and that since the internal processes need to be executed in the most possible and with the justificatory correspondent, it will be requested to the representatives to provide additional documentation to support an objective and forceful way the costs they have incurred since 2001.

Additionally, the State informed that, under an inter-institutional meeting, it was agreed that the Portfolio of Health would provide logistic facilities to attend Mrs. Melba

Suarez del Carmen Peralta. It also referred to the request for medical assistance from the victim on January 4 and 23, 2012, and requested to "record the first steps taken by the Ecuadorian State to comply with the fourth recommendation."

Finally, in connection with the offering of public apologies, the State enclosed a "Public Apology Publication in the Daily Universe Ecuador dated January 25, 2012" and a "Photography of the Printing Public Apologies plate, which will be placed in the building of the Provincial Court of Justice of the province of Guayas"

Moreover, on December 27, 2011, and on January 18 and 26, 2012, the petitioners sent emails to the Commission stating that despite the deadline stipulated in the agreement have passed, the State has neither made effective payment of the established compensation, nor complied with the recommendations. They also noted that they needed to make effective repairs so that Melba Suarez del Carmen Peralta received urgent medical treatment.

En relación con las disculpas públicas, los peticionarios indicaron que la publicación en el periódico se realizó sin su consentimiento ni aprobación y que, además según el acuerdo, previo a las disculpas públicas debían pagarse las indemnizaciones establecidas.

On the other hand, on December 16, 2011, the petitioners sent an e-mail in which informed that, despite the schedule, the State has not paid any compensation. Later on, on December 27, 2011, the petitioners expressed that none of the recommendations had been fulfilled, that the General Prosecutor's Office had suspended the proceedings and they requested the referral of the case to the Court if the agreement was not complied by January 26, 2012. On January 3, 2012 the petitioners sent an e-mail in which they indicated that on December 28, 2011 they had signed another agreement in which it was established that compensations will be pay on January 20, 2012. On January 17, 2012 the petitioners expressed that the State was not taking the previous step required to pay the compensations on January 20, 2012 and indicated that they needed those compensations to provide urgent medical treatment to Melba del Carmen Suárez Peralta.

The Committee notes that according to the State report, the Government has taken steps for a compliance agreement; however, no evidence has been met either in relation to the fulfillment of the recommendations contained in the Report 75/11, or in relation to the execution of the obligations agreed to in the agreement signed by the parties on September 8, 2011, and amended on December 28, 2011. Additional the Committee notes that the State did not requested the granting of an extension to take measures to comply with the obligations assumed.

In fact, the Commission notes that in the agreement signed by the parties, the amount stipulated in compensation including compensation for material and moral damage caused and it was not subject to the submission of any documentation for the agreed amount. The Commission also notes that the State has not requested the granting of an extension to require additional information requested by the petitioners, nor to ensure full implementation of the recommendations 1, 4 and 5.

Moreover, the Commission notes that the recommendation related to the provision of medical treatment, would be partially addressed in the economic compensation specifically established for this purpose in the agreement of September 8,

2011. Nevertheless, to the date and according to the information contributed by the State, the above mentioned compensation has not been paid yet, and it does not show that indeed Mrs. Melba Suarez del Carmen Peralta is receiving adequate and timely medical treatment.

Finally, with regard to the public apologies, the Commission notes that it appears that neither the text of the publication nor the text of the plate was consulted with beneficiaries, although it was as expressly provided in the agreement signed.

The Commission submits the instant case to the jurisdiction of the Inter-American Court due to the need to obtain justice for the victim, the lack of detailed and substantial information about State's compliance with the recommendations, and the serious health situation in which Melba Suarez del Carmen Peralta is.

The Commission submits to the Inter-American Court all the facts and violations of Human Rights stated in the Report on the Merits 75/11 and request that the Inter-American Court declare that the State of Argentina is responsible for:

violation of the right to a fair trial and to judicial protection enshrined in Articles 8.1 and 25.1 of the American Convention, in conjunction with the general obligation of respecting and ensuring those rights set out in Article 1.1 thereof, with respect to Melba del Carmen Suárez Peralta and her mother, Melba Peralta Mendoza.

Based on the foregoing conclusions, the Commission recommends that the Venezuelan State:

1. Adopts the measures necessary for an effective investigation of the facts of the case at hand and to punish, within a reasonable time, the judicial officials whose actions led to the excessive delays in the pursuit of the criminal proceedings and the resultant denial of the victims' access to justice;
2. Adopts the measures necessary to provide appropriate redress to Melba del Carmen Suárez Peralta and to her mother, Melba Peralta Mendoza, for the human rights violations identified in this report, including both material and moral damages. Given the particular nature of the facts in this case, this redress must include payment of the expenses incurred by the victims in their pursuit of justice and a recognition of international responsibility and public apology by the State;
3. Adopts the measures necessary to provide the required medical attention, immediately and without charge, through its specialized health agencies, and at the place of residence of Ms. Suárez Peralta, including the medicines she requires and with consideration for her ailments;
4. Adopts the measures necessary to ensure that the laws related to the exercise of the medical profession are regulated and effectively implemented, in accordance with the national and international standards in the matter; and
5. Adopts all the measures necessary to prevent similar incidents from occurring in the future, in compliance with the duties of prevention and guaranteeing rights enshrined in the American Convention.

Additionally, the Commission considers that the case deals with issues of inter-American public order. The case deals with the obligations of the State with respect to regulating the health services, and will allow the Court to develop standards of due diligence and procedural momentum, and criminal and administrative procedures in cases of medical malpractice. In addition, the Court would develop its jurisprudence with regard to the obligation to avoid situations of impunity in relation to the liability incurred by health professionals

Likewise, given that these issues have a significant impact on inter-American public order, pursuant to Article 35.1.f) of the Rules of Procedure of the Inter-American Court, the Commission would ask the Inter-American Court to incorporate the testimony given by the experts Ernesto Albán Gómez and Raúl Moscoso Álvarez in the Albán Cornejo vs. Ecuador case. The Commission would also like to offer the following expert's statement:

1. Expert whose name shall be informed promptly, who will develop, according to international standards, the content of State obligations of access to justice and due diligence in the investigation of medical practice cases.

The curricula vitae of the experts proposed by the Inter-American Commission are attached to the Merits Report 75/11.

The Commission notifies that the people that represent the victims in the procedure are:

Jorge Sosa Meza

[REDACTED]
[REDACTED]
Guayaquil, Ecuador

Dennis Edgar Cerezo Suárez
Guayaquil, Ecuador

Please allow me to greet you and express my appreciation.

Signed in the original

Elizabeth Abi-Mershed
Deputy Executive Secretary