
**IN THE INTER-AMERICAN COURT OF HUMAN RIGHTS
SAN JOSE, COSTA RICA**

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

Petitioner

V.

REPUBLIC OF AZAR,

Respondent

*Case of Rosa Luna v. Republic of Azar
(Torture Case)*

MEMORIAL FOR THE RESPONDENT

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STATEMENT OF FACTS

The Republic of Azar (hereinafter “Azar”) is a developing country. (Clarification

Detention Center, Luna called her attorney, María Chumbipa, and he

(R. at ¶ 23; C.Q. ¶ 26.) The guidelines were written by Red Cross consultant Professor Gabriel Guerra of the Private University of Azar at the behest of the Ministry. (Id.) The guidelines contained the following directives:

Acceptable Techniques- “[...] 3) Detainees may be interrogated for up to 20 continuous hours per day; 4) Detainees may be interrogated sitting down, standing with raised arms or lying down; 5) Detainees may be interrogated in the facilities available in the detention center where they are being held, or they may be taken to other facilities of the security forces; [...] 15) Detainees may be held in individual or group cells; 16) The cells may have artificial lighting during the entire day, and the light bulbs may be between 25 and 200 watts; and 17) Detainees may have a blanket and a Bible in their cell.”

Control over interrogations- “1) Interrogations must include psychological or psychiatric and medical advising to ensure the effective taking of statements and the well-being of the person being interrogated; 2) The information in the detainee’s clinical medical and psychological file shall be taken into account during interrogations [...].” (R. at 23).

Unbeknownst to the Ministry, Sergeant Fortunato derogated from the guidelines both Friday, June 20 and Saturday, June 21 by subjecting Luna to bright lights, recorded sounds of people screaming in pain, and threats that the same fate awaited her if she did not cooperate. (R. at ¶ 15.) These sessions lasted four hours each day. (R. at ¶ 14.) During those sessions, Sergeant Fortunato had Luna stand with her arms raised for forty-minute increments. (Id.)

On Saturday, June 21, Luna bathed, ate in the cafeteria, went out into the detention center’s yard, and interacted with other detainees. (R. at ¶ 15.) Fortunato returned to the original, approved interrogation methods on Sunday, June 22. (R. at ¶ 16.) All interrogations stopped on Monday, June 23. (R. at ¶ 18.) That day, Luna met with her partner for half an hour and later with her attorney for a private, unrestricted two-hour meeting. (R. at ¶ 17.) On Thursday, June 26, Luna appeared before the judge presiding over her case concerning her involvement with UNO. (R. at ¶ 18). She was acquitted on July 28, 2003 for lack of sufficient proof. (Id.)

Luna filed criminal charges with the Public Prosecutor against all of the people she considered involved in her interrogation. (R. at ¶ 20.) The Public Prosecutor charged Sergeant Fortunato, Colonels Lino Lona and José Jundia, the Minister of Justice, Minister of Defense, and the Minister of the Interior as principals and accessories to the crime of torture. (R. at ¶ 24.) The Public Prosecutor dropped the claims against Professor Guerra because he was not a public official and drafting the memorandum did not make him an accomplice or abettor in the crime of torture. (Id.) The charges against Dr. Duche and Dr. Carnelutti were also dropped for their roles as psychologist and psychiatrist, respectively, were not determinative in to the commission of torture. (Id.) The Criminal Trial Court dismissed the charges against Colonels Lino Lona and José Jundia, the Minister of Justice, Minister of Defense, and the Minister of the Interior due to their lack of direct involvement in the torture and principal of legality. (R. at ¶ 26.) The court sentenced Fortunato to four years of imprisonment finding that the physical and psychological consequences of his actions were consistent with the crime of torture in accordance with Article 100 of the Criminal Code of Azar. (R. at ¶ 25). The Criminal Code reads as follows:

Title I “Crimes against the person,” Chapter II “Crimes of bodily harm,”

Article 72- “[a]ny person who causes harm to another’s body or health that is not anticipated in another provision of this Code shall be sentenced to term of imprisonment of one month to one year;”

Article 73- “[a] term of imprisonment of one month to five years shall be imposed if the bodily harm results in the permanent debilitation of the victim’s health, a sense, an organ or a limb, or results in a permanent difficulty in speech, or if the victim’s life was placed in danger, or if the victim was incapacitated from work for more than one month”

Article 74 states: “[a] term of imprisonment of two months to six years shall be imposed if the bodily harm results in a physical or mental illness that is certainly or probably incurable, permanent incapacitation from work, the loss of a sense, of an organ, of a limb, of the use of an organ or limb, of speech or of the ability to procreate.”

Article 100- “Any public official who tortures a person deprived of his or her liberty

Luna appealed to the highest court of Azar, The Court of Criminal Appeals which reversed the case dismissals of Lona and Jundia and sentenced them to prison.³ Its decision was final September 18, 2006. Rosa Luna timely filed her petition to the Inter-American Commission on Human Rights on December 5, 2006, which is within three months of the six months required under Article 32 of the Rules of Procedure of the Inter-American Commission on Human Rights. After the issue of its report, the Republic of Azar realized it could not comply with the Commission's recommendations. Upon the completion of the proceedings required under Articles 48 and 50 of the American Convention on Human Rights, the Commission submitted the case to the Inter-American Court pursuant to Article 61.⁴

II. THE COURT SHOULD FIND THAT AZAR HAS FULFILLED ITS OBLIGATION TO PROTECT LUNA'S PERSONAL LIBERTIES, AND ENSURE JUDICIAL GUARANTEES AND PROTECTION BECAUSE SHE WAS LEGALLY DETAINED, INFORMED OF THE CHARGES, NEVER DEPRIVED RECOURSE TO A COMPETENT COURT AND RECEIVED A FAIR TRIAL.

- A. Luna was not arbitrarily denied her right to personal liberty under Article 7 of the American Convention.**

“arbitrary” is equated with unlawfulness, inappropriateness, injustice and lack of predictability.⁸

The African Commission held that the mass arrests and detentions of office workers on suspicion that they had used office equipment for subversive ends were arbitrary.⁹

Prior to Luna’s arrest, Azar criminalized terrorist activity and prohibited the release of suspected terrorists during the interrogation period under its criminal code. The arrest was carried out in connection with a lawful inquiry accompanied by a judge issued warrant as a result of actual events, of which she was identified as a co-perpetrator. Unlike the frivolous charge of using office equipment for subversive ends, Luna was implicated for the more serious charge of funding terrorist activity through the “Foundation for the Poor” – a front for the UNO. Therefore, Luna’s arrest was not arbitrary where there was evidentiary support, and it was in accordance with previously established law.

Likewise, Luna’s pre-trial detention did not constitute arbitrary imprisonment. The House Committee requires pre-trial detentions to be necessary and reasonable under the circumstance.¹⁰ Custody may be necessary to prevent flight, avert interference with witnesses and other evidence, or prevent the commission of other offences.¹¹ Moreover, a person may be detained when they constitute a clear and serious threat to society which cannot be contained by any other manner.¹² The European Court held that continued pre-trial detention is justified “if there are specific indications of a genuine requirement of public interest which, notwithstanding the presumption of innocence, outweighs the rule of respect for individual liberty.”¹³

⁸ *Albert Womah Mukong v. Cameroon*, (458/1991), 21 July 1994, UN Doc. CCPR/C/51/D/458/1991, p. 12.

⁹ *Achutan (on behalf of Banda) and Amnesty International (on behalf of Orton and Vera Chirwa) v. Malawi*,

The Criminal Code of Azar prohibits the release of pre-trial detainees only when the detention is in connection to national security. Luna's imprisonment was necessary to prevent the commission of other terrorists acts which Azar feared would have likely occurred if she was allowed contact with UNO members. In light of the recent kidnappings and assassinations, and bank and military warehouse robberies, the UNO had the finance and resources to pose a serious threat to national security. Luna was personally identified by a UNO member as a one of their financial backers, she was employed at a university known to have UNO connections, and she is of direct blood relation of the founder of the organization. It was in the public's interest to take precautions in the interest of national security, thus Luna's detention was reasonable and necessary.

In the *Suárez-Rosero* case, the court held Ecuador violated Article 7(2) and (3).¹⁴ Since the suspect was not caught red-handed, a warrant issued by a competent judicial body was required for his arrest.¹⁵ The first judicial proceeding relating to the detention occurred over a month after his arrest in violation of Ecuador's criminal code which prohibits *incommunicado* detentions to exceed twenty-four hours.¹⁶ Also, Ecuador's actions warranted reprimand because the detainee was held in a police station.¹⁷ Unlike *Suárez-Rosero*, there was a warrant for Luna's arrest and she was not held *incommunicado*. Therefore, the Court should find Luna was not arbitrarily deprived of her liberty.

¹⁴ *Suárez-Rosero Case*, Judgment November 12, 1997, Inter-Am. Ct. H.R. (Ser. C) No. 35 (1997).[hereinafter *Suárez-Rosero*]

¹⁵ *Id.* at para. 44.

¹⁶ *Id.* at para. 48.

¹⁷ *Id.* at para.46.

B. Luna was promptly notified of her reason for detention and charges, and brought before a judge.

Although Luna only alleged a violation of Article 7(3) of the American Convention, the Commission determined that Azar was in violation of Article 7 without specifications. Azar maintains that Luna was not deprived of her personal liberty in violation of any other provision in Article 7. The American Convention requires that detainees are informed of the reason for their detention and “promptly notified of the charge or charges against him.”¹⁸ The officers immediately advised Luna of her rights and informed her of the charges against her during her arrest in compliance with Article 7(4).

Article 7(5) requires States to ensure that detainees are brought “promptly before a judge” and “entitled to a trial within a reasonable time or released without prejudice to the continuation of the proceedings.” The term “promptness” is determined based on the “attendant circumstance[s]” surrounding the case.¹⁹ In the *Castillo-Petruzzi* case, the court found a

Republic of the Dominican Republic is a party to the American Declaration of the Rights and Duties of Man (for-0.ef)4(treason

arrest, which is far less than the thirty days endured in *Castillo-Petruzzi*. Upon these facts, Azar urges the Court to find that Azar's one-week interrogation period with limited visitation and prompt oversight of an impartial judge is in compliance with international standards.

C. Luna was not deprived of recourse to a competent court under Articles 7(6) or 25 because neither she nor her attorney requested a review of the lawfulness of her detention or the legality of her treatment prior to trial.

Luna failed to apply for a writ of *habeas corpus*, an opportunity guaranteed under Azar's laws. Article 7(6) states that those deprived of their liberty are "entitled to recourse from a
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claim she was denied a right she never asserted. Therefore, Azar did not deprive Luna of her personal liberty rights guaranteed under Article 7, 25, and 27 of the American Convention.

D. Luna was not denied the right to a fair trial under Article 8 of the American Convention.

Luna was given a hearing and trial with due guarantees in accordance with the American Convention. Article 8(1) of the American Convention states:

“Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil,

III. THE COURT SHOULD FIND THAT AZAR HAS NOT VIOLATED ITS DUTIES UNDER THE INTER-AMERICAN CONVENTION TO PREVENT AND PUNISH TORTURE BECAUSE AZAR ENACTED A CRIMINAL CODE THAT PUNISHES TORTURE AND ADOPTED INTERROGATION GUIDELINES DESIGNED TO PREVENT TORTURE, DEGRADING AND INHUMANE TREATMENT.

Azar's budding civil law system effectively criminalizes torture and other inhumane treatment of detainees. Article 26 of the American Convention recognizes the difficulty of full compliance soon after its ratification. It allows for progressive developments in state legal systems accounting for the deliberative legislative process. Although a developing nation, Azar

restrictive definition. Azar effectively punishes “torture” and “bodily harm” by assigning various imprisonment sentences that accounts for the seriousness of the nature of the crime and the resulting harm. The severity of the criminal penalties for torture and bodily harm also serves as a deterrent. Individuals are less likely to engage in prohibited conduct when the penalty is severe. In addition to imposed penalties, Azar’s interrogation guidelines attempt to get to the root of the problem serving as an additional preventative measure.

B. Azar’s interrogation guidelines prevent torture and other cruel acts in compliance with Azar’s regional and international obligations.

Article 6 of the Torture Convention requires States to take effective measures to prevent

the request of the Minister of Interior. Guerra is an expert in international criminal and human rights law. Additionally, he is a consultant to the Red Cross and as such is well versed in Azar's treaty obligations.

The guidelines only apply to situations where national security is at stake. Its purpose was to adapt interrogations to international obligations of the State including those arising under international criminal law. It was later approved by the Ministers of Interior, Defense, and Justice; all of which have no military or police connection. They are servants of the state who are designated with duty to protect the rights of their nationals.

Azar has complied with their obligation to document the detainees' health and mental status upon entry and provide medical examinations. The guideline section entitled "Control over Interrogations," requires medical examinations to document the detainee's health and well-being. Officials are required to give psychological or psychiatric and medical advising which are taken into account during interrogations.

The American Convention prohibits torture and bodily harm but does not identify specific techniques which have been shown to subject one to such torture or bodily harm. The "Acceptable Techniques" section allows detainees to be interrogated for up to 20 continuous hours a day, interrogation while the detainee is sitting down, standing with raised hands or lying down. The detainee may be held in the available detention center facilities, in individual or group cells with artificial lighting between 25 and 200 watts. This section should be read in conjunction with "Control over Interrogation" as well as the Criminal Code.

The acceptable interrogation technique is not uniformly applied to each detainee. Rather, they are dependent on the results of the individual's preliminary examination. Officials are reluctant to use any techniques that torture or are likely to cause the detainee serious bodily harm

due to the fact that they could be held individually liable under the Criminal Code. This is especially true since the seriousness of the injury is conversely proportionate to the length of imprisonment.

IV. THE COURT SHOULD FIND THAT, UNDER ARTICLES 3 AND 7 OF THE TORTURE CONVENTION, THE CHARGES AGAINST DOCTORS LÍBERO

A. Doctors Carnelluti and Duche did not order, instigate or induce use of torture in Luna's interrogations and were not in a position to have prevented it.

Luna might argue that both doctors were hired to direct the course of her treatment while detained, and so were directly involved in or failed in their capacity to prevent her torture. This argument must be rejected as groundless. While Doctors Carnelutti and Duche were hired to monitor interrogations and the health of the detainees, they had no authority to intervene in the few instances of torture, thus their charges were dropped. Dr. Duche psychologically examined Luna's well-being during her detention as mandated by law. Doctor Carnelutti observed the interrogations, scrutinizing the effects they had on Luna. Luna may also allege that the doctors were hired, as often is the case in other jurisdictions, as "specialist personnel" to advise about torture that leaves the fewest macroscopic traces – physically or emotionally.²⁸ However, that is not the case here. Doctors Duche and Carnelutti were only in the position "to be in charge of medical attention" and "to assist in the investigation" respectively. Their involvement equated to the usefulness of a tent in a hailstorm – the doctors ardently guarded her mental and emotional well-being, but they were in no position to control the unauthorized actions of the military professionals who conducted the unlawful portions of the interrogations.

B. Professor Guerra was a scholar-consultant who had no direct involvement in the few instances of torture that occurred.

Luna may claim that Professor Guerra's involvement ordered, instigated or induced the limited torture or inhumane treatment she endured, but this argument is without merit. It was at the request of the Minister of the Interior that Profeurput

consultant, so Articles 3 and 7 of the Torture Convention do not reach his actions or inaction. As an international law expert, and consultant to the Red Cross of Azar, the ministry trusted Professor Guerra's wisdom that the guidelines were harmonious with international obligations to prevent torture and inhumane treatment. In the past, this court has relied upon the opinions of scholars in its adjudications of human rights violations, so it is reasonable for the court to find that the ministry of Azar felt it was acting responsibly under international standards when it consulted Professor Guerra and relied on his expertise.²⁹ Therefore, this court should find that Professor Guerra's mere consultation did not amount to direct or indirect involvement in Luna's torture, and that the charges against him were properly dropped.

C. The Ministers of Defense, Interior, and Justice did not order, instigate or induce Luna's torture.

Luna argues that the Ministry was directly or indirectly responsible for her torture or that they failed to prevent it. However, this claim must also fail. The Ministers implicated in this case were far removed from the few instances of torture Luna endured. They were never present during interrogations. The interrogation guidelines established by ministerial order did not order "threats," which are deemed utilities of psychological torture.³⁰ On the contrary, the Ministry approved guidelines they felt were torture-free, yet still effective enough to counter the growing threat UNO's vicious regime poses to national security. Given the foregoing reasons, the Court should find that Professor Guerra, Doctors Duche and Carnelutti, and the Ministers of Defense, Interior, and Justice were not directly or indirectly responsible for any torture Luna underwent while detained, and that

V. LUNA DID NOT SUFFER INHUMANE TREATMENT UNDER ARTICLE 5 OF THE AMERICAN CONVENTION BECAUSE SHE WAS AFFORDED SEPARATE TREATMENT RESPECTING HER UNCONVICTED STATUS WITH MORE THAN ADEQUATE DETENTION CONDITIONS AND WAS DILLIGENTLY EXAMINED FOR MENTAL AND EMOTIONAL HEALTH.

A. Detention conditions were more than adequate under the circumstances.

Luna claims conditions of her detention amounted to inhumane or degrading treatment, but the court should find otherwise. Detention conditions were more than adequate under the circumstances. Azar recognizes that Article 5(4) of the American Convention demands:

Accused persons shall . . . be segregated from convicted persons, and shall be subject to separate treatment appropriate to their status as unconvicted persons.

Also, this court has previously held that:

[A]ll persons detained have the right to live in prison conditions that are in keeping with personal dignity, and the State must guarantee their right to life and personal integrity. Consequently, the State, which is responsible for detention facilities, is the guarantor of these rights of detainees.³¹

Accordingly, Luna was placed in a private, twenty-three-foot-squared room and provided with bed and blanket in order to keep as warm and comfortable as possible. Although without toilet and sink inside her room, those amenities were made available to her when necessary. Luna claims that withholding bathroom privileges was a form of the inhumane treatment inflicted upon her; however, guards explained to her that authorized personnel sometimes were unavailable to escort her to the bathroom or shower given her rather late requests. This is far different from never being allowed to use the bathroom and cleanse oneself which this court has deemed inhumane.³²

³¹ *Cantoral-Benavides Case*, Judgment of August 18, 2000, Inter-Am Ct. H.R. (Ser. C) No. 69, at para. 87 (Aug. 18, 2000).

³² *See Case of the Miguel Castro Castro Prison v. Perú*, Judgment of Nov. 25 2006, Inter-Am. Ct. H.R. (Ser. C.) No. 160 (Nov. 25, 2006)[hereinafter *Castro Prison Case*].

Luna argues that her feminine needs were ignored. Conversely, the court should find that Luna actually received specialized attention to her situation as a woman. Azar understands it is settled law that adequate health care for female detainees is a must.³³ In the *Castro Prison Case*, the court has declared that a state must provide regular physiological care to its female prisoners, especially when they happen upon their periods.

Tamayo Case, this court found that Perú had violated Article 5 of the American convention.³⁵ There, Ms. María Elena Loayza-Tamayo was a professor at a local university and denounced by a colleague as a member of a subversive unit associated with the alleged terrorist regime called the “peace accord.”³⁶ The court reasoned that allowing treatment “such as *incommunicado* detention, being exhibited through the media wearing a degrading garment, solitary confinement in a tiny cell with no natural light, blows and maltreatment, including total immersion in water, intimidation with threats of further violence, a restrictive visiting schedule [and alleged rapes which were unsubstantiated] . . . all constitute forms of cruel, inhuman or degrading treatment in the terms of Article 5(2) of the American Convention.”³⁷ The gravity of such behavior is not exhibited here.

This case is distinguished from the *Loayza-Tamayo Case*, demanding a different result. Like Ms. Loayza-Tamayo, Luna is a professor and was implicated in a terrorism investigation by a colleague. However, unlike incidents in the *Loayza-Tamayo Case*, Luna was given a twenty-three square foot cell, never struck, never submerged in water, and never raped. She was also not held *incommunicado* because she was able to call her attorney and partner on the night of her arrest, and able to meet with her attorney within three days of her arrest, which was the first available business day. In addition, the psychologist hired to examine her emotional state was in fact a colleague of hers from the Catholic University. Luna was surrounded by professionals willing to see her emerge from the interrogations with her physical, mental, and moral integrity in tact.

Therefore, despite the rogue actions of a few officials, who were sought out and punished domestically, the court should find that Azar took all preventive measures to ensure that Luna’s

³⁵ *Loayza-Tamayo Case*, *supra*, note 24 at para. 58.

³⁶ *Id.* at para. 3(a)

³⁷ *Id.* at para. 58

physical, mental and moral integrity were respected as demanded in Article 5 of the American Convention. Azar should not be held in derogation of this international obligation.

VI. THE COURT SHOULD FIND THAT, UNDER BELÉM DO PARÁ AND THE INTER-AMERICAN CONVENTION TO PREVENT AND PUNISH TORTURE AZAR HAS MAINTAINED AN INTERROGATION PROCEDURE THAT IS FREE OF TARGETED VIOLENCE AGAINST WOMEN BECAUSE THE CONDITIONS OF LUNA'S DETENTION WERE NOT OF THE HIGH GRAVITY THAT REQUIRE REPARATIONS IN THIS COURT.

A. Azar fulfilled its duties under the Inter-American Convention to Prevent and Punish Torture.

The Torture Convention respects lawful means of investigation. Article 2 of the Torture Convention, defines torture as:

[...] any act intentionally performed whereby physical or mental pain or suffering is

the American Convention.

under the Convention of Belém do Pará where facts support that any discomfort associated with her femininity was alleviated whenever possible.

CONCLUSION

Given the measures the Republic of Azar implem

ented to c

and personal integrity, Luna was not denied of any rights under the

Human Rights. Furthermore, the Republic of Azar has fully comp

the Inter-American Convention to Prevent and Punish Torture as v

Convention on the Prevention, Punishment and Eradication of Vic

Finally, the Republic of Azar hasTlrecognized the importance of h

strides, despite internal conflict, and its developing status, to ensur

by incorporating the treaties of which it is a signatory into its cons

REQUEST FOR RELIEF

Wherefore the Republic of Azar requests this Court:

1. Find the State in compliance with the American C
an Rights Articles

1(1), 2, 5, 7, 8, and 25;

2. Find the State in compliance with Articles 3 and 6 of the Inter-American Convention to