

2011 Inter-American Human Rights Moot Court Competition
American University Washington College of Law

Richardson, Unzué *et al.* v. *Juvenlandia*

Background of the case

1. *Juvenlandia* is a country located in the Americas, and it is politically organized as a federal representative democracy. Its legal system, like the majority of the countries in the region, traces back to the civil law tradition of Spain in terms of its subconstitutional order, while the constitutional order — at both the provincial and federal levels — is based on the European and North American constitutional systems established in the hemisphere in the mid-19th century, with important reforms that introduced social rights in the mid-20th century, and universal and regional human rights treaties at the beginning of the 1990s.¹

2. *Juvenlandia* has an area of 1,500,000 km² and a population of 25 million inhabitants. Its average human development index, *per capita* GDP, and economic growth and quality of life indicators—in terms of access to basic social benefits (security, education, health, cultural goods)—have placed it at the top of the index of Latin American countries for several years now.

1 In particular, *Juvenlandia* has ratified the *American Convention on Human Rights*, signed in San José, Costa Rica, on November 22, 1969; the *International Covenant on Economic, Social and Cultural Rights*, signed in New York City, United States of America, on December 19, 1966; the *International Covenant on Civil and Political Rights*, signed in New York City, United States of America, on December 19, 1966; the *International Convention on the Elimination of All Forms of Racial Discrimination*,

, adopted by the United Nations General Assembly in New York, United States of America, on November 20, 1989, as well as its two Optional Protocols; the *Inter-American Convention on the Forced Disappearance of Persons*, adopted during the 24th General Assembly of the Organization of American States on June 9, 1994 in Belém do Pará, Federal Republic of Brazil; the *Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights*, "Protocol of San Salvador" (1988); the *Inter-*

American Convention on the Prevention, Punishment and Eradication of Violence Against Women, adopted in 1994; and the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children*, which supplements the United Nations Convention against Transnational Organized Crime. *Juvenlandia* is also a member State of the United Nations and of the Organization of American States.

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back, Porota told her she had lost it and that she would buy her another one when they got to Tierra Soñada, the capital of *Juvenlandia*.

11. When they crossed the border, Porota asked the girls for their documents and told them not to talk to anyone. She then had a conversation with the Customs and Immigration officers. The girls could not hear the conversation, but they saw that Porota handed the public officials an envelope.

12. María Paz and Felicitas's trip was very long, given that they had to travel 2000 km. overland in an unidentified vehicle that made many stops, lasting several hours each, due to various mechanical problems and searches conducted by what appeared to be security forces.

13. During the 30 hours that the journey lasted, Porota gave the girls just a few cookies and some water, and they both arrived in the capital completely exhausted.

14. A man with a very prominent scar on his face was waiting for them at the station. He very nastily told them to get into a pickup truck, saying that he would take them to the two houses where employment had already been arranged for them. To the girls' surprise, they arrived at a very dirty apartment crowded with other women. Some were younger and some were older, they had little clothing, and some of them showed signs of having been beaten.

15. María Paz became frightened and reacted by asking for her documents so she could leave the place. Porota told her that they were going to keep the girls' documents until they could pay for their trip. María Paz got nervous and began shouting. Then, the man with the scar on his face took her by force, raped her, and told her that from that point on she would be well advised to behave herself if she wanted to stay out of trouble. Felicitas fainted (not long afterwards, she learned that she was pregnant). María Paz became pregnant as a result of the rape.

16. They were forced to work for six months at that place, which served as both a living quarters and a brothel. They were prevented from leaving unless accompanied by some very aggressive men they referred to as "the thugs." Every so often they were given some money to buy food and sanitary items. Any complaint—no matter how mild—was met with a brutal attack, so eventually they stopped complaining. They never received any medical attention. They were frequently given pills. The girls did not know what the pills were for, but they had very strange effects on them. After taking the pills, the girls

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18. On August 10, 2002, a day on which she had been with ten “customers”, María Paz, exhausted from the pain and desperate over her situation, tried to terminate her pregnancy. The hemorrhaging did not stop, so she was taken to the health center. The doctor on duty reported the incident to the police, who filed a complaint against her alleged abortion. The report stated that the fetus was anencephalic. A few days later, María Paz was transferred to the Women s Prison in the capital.

19. Eight months after arriving in the capital, Felicitas started having contractions. A woman was called in to act as a midwife, but she said that it was necessary for a cesarean to be performed at a health center. Felicitas was taken to a place that seemed like a clinic, and her son was born there. She was immediately transported back to the brothel, and when she asked for her baby she was told that he had to be in intensive care and would therefore remain at the clinic for a time.

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26. She was tried in a regular criminal court, due to the fact that the case law of the Supreme Court of *Juvenlandia* holds that the special jurisdiction² derived from the international treaties signed by the country (in particular, art. 40(3) of the Convention on the Rights of the Child) refers only to the right to the application of a special legal system for minors under the age of eighteen; it does not call for a specialized court system separate from the regular criminal justice system which, ultimately, must respect the criminal and procedural rights of any person accused of a crime, and is suitable for implementing the specific guarantees derived from the juvenile criminal justice laws currently in effect in *Juvenlandia*.

27. Meanwhile, the abortion case was still at the pre-trial stage. The prosecutor had opposed its dismissal based on the legal excuse of rape, given that, in his understanding, there was no final conviction against the perpetrator that could exempt María Paz from being tried and, possibly, convicted.

28. Felicitas was still working in the brothel. She managed to contact Lucio, her

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33. The union's attorney referred María Paz's mother to the free legal aid center at the National University, and he took on Lucio and Felicitas's case due to the connections between the *Juvenlandia* and *Pobrelandia* unions.

The case of Felicitas, Lucio, and their son

34. Lucio and Felicitas's attorney filed a criminal complaint alleging human trafficking, grievous bodily harm, subjecting another to servitude, and violation of the Prophylaxis Law. The court issued a search warrant at the request of the Office of the Public Prosecutor, but when it was executed, the brothel was deserted. In view of the lack of evidence, the complaint was dismissed without further proceedings. The Office

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Paz's mother and met with María Paz to tell her to file an appeal *in forma pauperis* requesting a review of the conviction. In accordance with Article 42 of the Supreme Court Procedure Act of *Juvenlandia*, untimely extraordinary appeals filed by incarcerated persons are admissible when such persons are clearly lacking proper defense.

42. According to the law, the reason that justified the filing of the appeal *in forma pauperis*

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respect to Felicitas. The Commission processed his petition immediately pursuant to Article 25 of its Regulations, as it considered it an urgent and serious matter that merited the issuance of such measures.

46. *Juvenlandia* replied to the Commission's request with the argument that the requirements for the proper issuance of precautionary measures had not been met, given that it had not verified the urgency and seriousness required under the applicable provisions.

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to take any measures to comply with the recommendations contained in the Report timely prepared by the Commission, the Commission submitted the case to the Inter-American Court of Human Rights (hereinafter “the Court”) on August 26, 2010. The Commission alleged that, with respect to Felicitas, *Juvenlandia* had violated Articles 5 (right to humane treatment), 7 (right to personal liberty), 6 (freedom from slavery), 8 (

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Rights of the Child. *Juvenlandia* requested that the case be processed through the