



**INTER-AMERICAN COURT OF HUMAN RIGHTS COUR
INTERAMERICAINE DES DROITS DE L'HOMME
CORTE INTERAMERICANA DE DIREITOS HUMANOS
INTER-AMERICAN COURT OF HUMAN RIGHTS**



INTER-AMERICAN COURT OF HUMAN RIGHTS*.

ANGULO LOSADA VS. BOLIVIA

**JUDGMENT OF NOVEMBER 18, 2022
(Preliminary Objections, Merits and Reparations) OFFICIAL**

SUMMARY ISSUED BY THE INTER-AMERICAN COURT

On November 18, 2022, the Inter-American Court of Human Rights (hereinafter "the Inter-American Court", "the Court" or "the Tribunal") issued a Judgment by which it declared the Plurinational State of Bolivia (hereinafter "the State", or "Bolivia") internationally responsible for the violation of the rights to personal integrity, judicial guarantees, private and family life, children's rights, equality before the law and judicial protection, contained in Articles 5.1, 5.2, 8.1, 11.2, 19, 24 and 25.1 of the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention"), in relation to the obligations to respect and guarantee the rights and to adopt provisions of domestic law, enshrined in Articles 1.1 and 2 of the same instrument, as well as for the breach of the obligations derived from Articles 7.b), 7.c), 7.e) and 7.f) of the Convention of Belém do Pará, to the detriment of Brisa De Angulo.

The foregoing is a consequence of the failure to comply with the duty of enhanced due diligence and special protection to investigate the sexual violence suffered by Brisa de Angulo Losada, the absence of a gender and children's perspective in the conduct of the criminal proceedings and the practice of revictimizing acts during the same, the application of criminal legislation incompatible with the American Convention, as well as the institutional violence and discrimination in access to justice based on gender and children's issues suffered by the victim and the violation of the guarantee of reasonable time.

I. Facts

In 1990 Brisa De Angulo Losada and her family moved to the city of Cochabamba, Bolivia. In 2001 Brisa's older siblings moved to the United States to validate their studies. Days after their departure, E.G.A., Brisa's 26-year-old older cousin, arrived in Bolivia to complete his veterinary internship. During his stay in the family home, E.G.A. supported Brisa in her studies and took care of her and her younger sisters. Brisa, who was then a 16-year-old girl, stated that on several occasions between October 2001 and May 2002, she suffered sexual violence, including sexual abuse and rape, by her cousin. After becoming aware of the facts, Brisa's father reported them to the Defense for Children International (hereinafter "DNI") in Cochabamba on July 15, 2002. On July 24, 2002

* Composed of the following judges: Ricardo C. Pérez Manrique, President; Humberto Antonio Sierra Porto, Vice President; Eduardo Ferrer Mac-Gregor Poisot, Judge; Nancy Hernández López, Judge; Verónica Gómez, Judge; Patricia Pérez Goldberg, Judge; and Rodrigo Mudrovitsch, Judge. Also present were the Secretary, Pablo Saavedra Alessandri, and the Deputy Secretary, Romina I. Sijniensky.

On July 31, 2002, the psychologist at the MorningStar center attended Brisa, concluding that it was a relationship of a "minor being seduced by an adult male for the purpose of sexual exploitation". On July 31, 2002, Brisa underwent a forensic medical examination, which was performed by a male doctor, with the assistance of five medical students, all male, and without the presence of her parents.

On August 1, 2002, Brisa's father filed a complaint against E.G.A. before the Judicial Technical Police (hereinafter "PTJ"), for the crime of rape to the detriment of his daughter. On November 5, 2002, the Public Prosecutor's Office filed a formal accusation against E.G.A. for the crime of rape. The first oral trial culminated in a sentence for the crime of aggravated rape, sentencing E.G.A. to seven years of imprisonment, was annulled and a retrial was ordered in another court. After the second trial, in September 2005, Sentencing Court No. 2 of Cochabamba unanimously acquitted E.G.A. On May 10, 2007, the decision was annulled and the case was remanded for a new trial by another court. In August 2008, a new gynecological forensic examination was conducted. The Court scheduled a hearing to be held on September 22, 2008, however, E.G.A. did not appear. The same happened on October 28, 2008. That same day the Court declared him in absentia, ordered the issuance of an arrest warrant against him and other precautionary measures, in addition to declaring the trial suspended. In July 2018, Interpol Colombia informed Interpol Bolivia that the accused rebel would be in Colombian territory, and an amplifying report was issued to initiate the proceedings to request an arrest warrant for extradition purposes. In May 2019, Sentencing Court No. 3 admitted the request for extradition of E.G.A. In March 2020, an exhorto suplicatorio was issued with a formal request for extradition to the competent authority in Colombia. In February 2022 E.G.A. was captured for extradition purposes in Colombian territory. However, on September 7, 2022, it was decided to cancel the arrest warrant against E.G.A., who was arrested for extradition in Colombia. E.G.A. due to "the prescription of the criminal action in light of Colombian regulations", and his immediate release was ordered.

II. Fund

a. Enhanced due diligence and the duty of special protection in investigations and criminal proceedings related to sexual violence committed against children and the duty not to revictimize them

The Court recalled the essential components of the duty of enhanced due diligence and the special protection of girls and boys, stressing that the case *sub judice* deals with sexual violence committed against a 16-year-old girl and that, therefore, it is also necessary that the case be approached from a perspective of intersectionality between gender and childhood.

In examining the specific case, the Court considered as accredited the fact that Brisa had a traumatic experience during the first forensic gynecological examination, which was carried out in a manner incompatible with the requirements of strict due diligence and exposed Brisa to a situation of re-victimization. Furthermore, for the Court, the use of force during the examination and the ignoring of the victim's signs of pain and discomfort constituted an act of institutional violence of a sexual nature. Additionally, the Court considered that, in the circumstances of this case, the need to perform the second forensic gynecological examination in 2008 was not justified, as it did not constitute useful evidence.

The Court also noted that Brisa was forced to recount on different occasions the facts related to the sexual violence of which she was a victim, contrary to one of the key elements of strict and enhanced due diligence, which is the adoption of the necessary measures to avoid the repetition of interviews, as their recurrence forces the victims to return to

experience traumatic situations. In this regard, the Court considered that the interview before the SEDEGES of Cochabamba, on August 1, 2002, and Brisa's initial contact with the Prosecutor N.T.A. were revictimizing. The Court also identified other acts and omissions that demonstrated the State's lack of due diligence.

Thus, the Court concluded that the State did not take the necessary measures to avoid the re-victimization of Brisa, nor did it conduct the criminal proceeding with a gender and children's perspective, in accordance with the duty of strict and enhanced due diligence and special protection required in the case of a complaint of rape against a child.

b. Reasonable time and speed of the process

The Court noted that almost 20 years have passed since the sexual violence suffered by Brisa and, to date, there is no final judgment and found that this excessive delay in the processing of the criminal proceeding is the result of prolonged periods of inaction, without any explanation or justification by the authorities in charge of prosecuting the case. Therefore, the Court found that Bolivia exceeded the reasonable time frame for the investigation and prosecution of the sexual violence in question.

c. Consent in crimes of sexual violence and alleged discrimination in Bolivian criminal law

The Court agreed with the position of the different international organizations in considering that the criminal normative provisions related to sexual violence should contain the figure of consent as their central axis, that is, for a rape to be perpetrated, proof of threat, use of force or physical violence should not be required, and it should be sufficient to prove, by any suitable means of evidence, that the victim did not consent to the sexual act. It emphasized that the criminal offenses relating to sexual violence must focus on consent, an essential element in the access to justice of women victims of sexual violence. Thus, the Court held that it is not necessary to prove resistance to physical aggression, but rather the lack of consent, and emphasized that consent can only be understood to exist when it has been freely expressed through acts that, in view of the circumstances of the case, clearly express the will of the person. Either through verbal consent, or because such consent is derived from a behavior clearly identifiable with a voluntary participation.

The Court recognized that there are situations in which there are defects in consent and acknowledged that the lack of a legal definition of psychological violence, for example, hinders the possibility of investigating rape. In this regard, it considered it essential that States include in criminal law some elements to determine the absence of consent in a sexual act, such as (a) the use of force or the threat to use it; (b) coercion or fear of violence or the consequences; (c) intimidation; (d) detention and/or deprivation of liberty; (e) psychological oppression; (f) abuse of power; and (g) inability to understand sexual violence. It also considered it necessary for the criminal legislation to establish that consent may not be inferred (i) when force, threat of force, coercion or taking advantage of a coercive environment have diminished the victim's capacity to give voluntary and free consent; (ii) when the victim is unable to give free consent; (iii) from the victim's silence or lack of resistance to sexual violence; and (iv) when there is a power relationship that compels the victim to the act out of fear of the consequences of the act, taking advantage of a coercive environment.

The Court considered that it is essential that the regulations concerning crimes of violence against women and children

The sexual act provides that consent cannot be inferred, but must always be given expressly, freely and prior to the act, and that it may be reversible.

With regard to the specific case, the Court found that the criminal legislation of Bolivia did not establish - and still does not do so today - consent as a central element of the crime of rape and requires the demonstration of violence or intimidation for its configuration. Nor does it refer to circumstances in which consent is vitiated, such as in cases of evident asymmetry of power between aggressor and victim. On the other hand, the Court recalled that the present case deals with the criminal proceeding initiated as a result of the denunciation of the rape of a 16-year-old girl by her 26-year-old cousin, who constituted a figure of authority before the alleged victim, due to the symbolic place of "older brother" and "guardian" that he occupied and the trust placed in him by Brisa and her parents. In this regard, the Court reiterated that it is not possible to refer to the consent of the victim to have sexual relations when the aggressor holds a figure of authority over the victim, because it generates an inequality of power that is aggravated by the difference in age between the victim and the victimizer. For all of the above reasons, it considered that the application of Bolivian criminal law and its interpretation by the domestic courts resulted in the denial of justice to a child victim of sexual violence, such as Brisa.

On the other hand, the Court considered that the criminal offense of statutory rape, as it is included in the Bolivian legislation, is incompatible with the American Convention, so that in any hypothesis of carnal access with a person between 14 and 18 years of age, without their consent or in a context in which their consent cannot be inferred due to seduction, deception, abuse of power, coercion, intimidation or any other reason, it becomes covered by the crime of rape.

d. Discrimination in access to justice based on gender and age, as well as on the alleged victim's status as a developing person.

In the instant case, the Court observed that some justice operators used gender stereotypes to refer to personal attributes of the alleged victim and thus question the existence of sexual violence. In addition, the Court found that the State required the girl to undergo two gynecological examinations unnecessarily, that she was interviewed to tell her what happened on several occasions, and that all this, added to the lack of comprehensive care for the victim, increased the trauma suffered, maintained the post-traumatic stress present and prevented the girl's recovery and rehabilitation, the impact of which persists in her personal integrity to this day. Consequently, the Court concluded that the manner in which the investigation into Brisa's rape was conducted was discriminatory and was not carried out with a gender perspective and with a perspective of reinforced protection of the rights of the child. In light of the foregoing, the Court considered that Bolivia failed to comply with its obligation to guarantee, without discrimination based on gender, as well as on the victim's status as a developing person, the right of access to justice. In addition, the Court considered that the State became a second aggressor by committing various revictimizing acts that constituted institutional violence and should be classified, taking into account the extent of the suffering caused, as cruel, inhuman and degrading treatment.

III. Repairs

The Court established that its Judgment constitutes, in itself, a form of reparation. Additionally, it ordered the State the following measures of integral reparation: (i) to keep the criminal proceeding against E.G.A. open and to promote the investigation of the case if there is any change of circumstance that would allow it; (ii) to adopt all the necessary measures to determine the possible responsibilities of the officers that

contributed with their actions to the commission of acts of revictimization and possible procedural irregularities to the detriment of Brisa; (iii) to make the indicated publications; (iv) to carry out a public act of recognition of international responsibility; (v) to adapt its domestic legal system in such a way that lack of consent is central to and constitutes the crime of rape; (vi) to adapt its domestic legal system in relation to the crime of statutory rape; (vii) to adapt its domestic legal system to make incestuous rape more visible; (ix) to adapt its protocols or adopt new protocols, implement, supervise and oversee a protocol for investigation and action during criminal proceedings in cases of child and adolescent victims of sexual violence, a protocol on a comprehensive approach and legal medical evaluation in cases of child and adolescent victims of sexual violence and a protocol for comprehensive care for child and adolescent victims of sexual violence; (x) to adopt and implement training and courses for public officials who work in the justice administration system on issues of sexual violence; (xi) to adopt and implement training and courses for public officials who work with issues of sexual violence; (xii) to adopt and implement training and courses for forensic doctors and other personnel of the Institute of Forensic Investigations, with the objective of providing training on the appropriate treatment of children and adolescent victims of sexual violence during medical examinations; (xiii) to implement an awareness-raising and sensitization campaign aimed at the population of Bolivia in general, aimed at confronting the sociocultural patterns that normalize or trivialize incest; (xiv) to incorporate the concept of incest as a crime against children and adolescents in the Bolivian justice system; (xv) to incorporate the concept of incest as a crime against children and adolescents in the Bolivian justice system; (xvi) to include in compulsory school teaching materials adequate and timely information in accordance with the level of maturity of children and adolescents, aimed at providing them with tools to prevent, identify and report acts constituting and risks of sexual violence; and (xvii) to design and implement a national and centralized system for the collection of data on cases of sexual violence against minors.

Judge Rodrigo Mudrovitsch announced his individual concurring vote.

The Court will supervise full compliance with this Judgment, in exercise of its powers and in fulfillment of its duties under the American Convention on Human Rights, and will close the present case once the State has fully complied with the provisions of the Judgment.

The full text of the Judgment can be consulted at the following link:

http://www.corteidh.or.cr/docs/casos/articulos/seriec_475_esp.pdf