

Cases 2141, Inter-American Commission on Human Rights (1981) 260

The Petition--two individuals bring an action on behalf of "Baby Boy," a fetus they allege to have been viable (evidence apparently was disputed as to whether the fetus was viable, 261, para. 3(d)) against the doctor who performed the abortion, Dr. Kenneth Edelin. Dr. Edelin had been charged with manslaughter, the jury had convicted him, but the Massachusetts Supreme Judicial Court had reversed the conviction. 260B

[on what ground?]

Is there a Jurisdictional Problem here? Standing.

Can actions be brought by third parties? Yes.

But only on behalf of "persons". Article 26 of the Commission's statute, p. 268.

Should the Commission have addressed that issue?

Is that the ultimate issue on the merits?

What were the petitioner's legal arguments?

Do they concede that this case is governed by the American Declaration on the Rights and Duties of Man rather than by the American Convention? Because US has not ratified the Convention. Discuss the Commission's analysis in paragraphs 15 & 16 at 261-62. And the Convention had not even come into force for any country at the time this incident occurred. 261B

Under American Declaration (para. 3, p. 261), Petitioners claim violations of:

Art. I (rt. to life)

Art. II (freedom from discrimination, without discrimination on the basis of AGE--what was the age of this fetus?)

Art. VII ("All children have the right to special protection, care, and aid.")

Art. XI (Every person has the right to the preservation of his health...")

As to Art. I (rt. to life): Petitioners argue that

(a) travaux preparatoires demonstrate that the drafters wanted to protect life from the moment of conception. 262. Para. 18(a).

(b) American Declaration must be interpreted in light of Article 4(1). Para. 18(b)

What is the Commission's analysis?

(a) Travaux preparatoires do not support petitioner's argument--

The original draft did say that the right to life begins at the moment of conception--262B.

But a new draft, much more general, was submitted by a Working Group, in response to concerns raised by a number of states that did allow abortions when necessary to protect the life of the mother and in a number of other situations--263 3/5

And the Commission thus concludes that "the conference faced

this question but chose not to adopt language which would clearly have stated that principle," i.e., that life beings from the moment of conception. Para. 19(h), 263.

(b) With regard to the American Convention, the Commission focuses on the words "in general" in Article 4(1). Why are they there? --Because of the "abortion laws in force in the majority of the American States" Para. 26, 264 How should they be interpreted? Petitioners' interpretation of Article 4(1) is "incorrect."--"the drafters of the Convention" did not "intend to modify the concept of the right to life that prevailed in Bogata," namely that countries could allow for abortions in appropriate cases. Para. 30, 264.

And, even if petitioners were correct, the American Convention could not be imposed upon the United States, because the United States has not ratified the Convention. [Commission reserves judgment on the reservation, para.32, p. 264--get text of the reservation]

And the other Articles cited by petitioners are irrelevant to this fact situation!! para. 33, 264.

Andres Aguilar, concurring(264-65):

Language in American Declaration was a compromise, leaving each country free to develop its own standards. 265T

United States has not accepted the obligation to protect life from the moment of conception.

Even though I think that life does begin at the moment of conception.

Marco Gerardo Monroy Cabra, dissenting (265-66):

Agrees that the text of the American Declaration is ambiguous, so argues that it must be interpreted to give a "genuine protection" to the right to life. To do so, we must turn to scientific texts, and they tell us that the fetus is a genetically complete human being and thus must be considered to be a human being.

This interpretation is necessary to give effect to the object and purpose of the American Declaration.

Lovely language at the top of 266.

Luis Demetrio Tinoco Castro, dissenting (266-67):

Asks the ultimate question regarding what happens "when the woman's ovum is fertilized by action of the man, has a human being been constituted and does it have the right to life?"

Looks to science for the answer, and finds that the answer is YES. Therefore Article I must protect the fetus.

*Inadequate reasoning? Q 21, 260*

Case NO. 2646 (Haiti) IACmHR (1983) 272

Petition brought in 1977 on behalf of Mr. Anous Pierre, who was arrested in 1976, and was being held a year later.

Haiti gives only a very general response, six months later, saying there are no political prisoners in Haiti. Then the Commission asks four specific questions, and Haiti does not answer at all.

What should the Commission do?

Presume that no domestic remedies exist, and presume that the facts as alleged are true (Art. 39.

Haiti has ratified the Convention.

Commission finds violations of

Art. 7 (rt to liberty)

Art. 5 (rt to humane treatment)

Art. 8 (rt to fair trial)

Requires Haiti to make a full investigation and accounting of the situation.

Discuss again the Velasquez Rodriguez case, cited at 73 Supp. Duty to investigate. And pay COMPENSATION.

Case No. 9426 (Peru) IACmHR (1987) 275

Juan Dario Cuya Laine was tortured while in prison.  
Peru's response was that he was not arrested, and the government had no record of his being in prison.

The petitioner then provided more details on the arrest and imprisonment. 276.

Peru did not respond to these additional details.

Commission determines petitioner's description of the facts to be true.

Commission's recommendation--

Articles 4, 5, and 7 have been violated.

Investigate immediately.

Provide compensation for the victim.