

Press Release

Inter-American Court of Human Rights

I/A Court H.R._PR-04/2023 English

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I/A Court H.R. Protecting Rights

BOLIVIA IS RESPONSIBLE FOR GENDER AND CHILD DISCRIMINATION AND REVICTIMIZATION OF AN ADOLESCENT VICTIM OF SEXUAL VIOLENCE DURING THE JUDICIAL PROCESS

San José, Costa Rica, January 19, 2023. In the Judgment notified today in the *Case of Angulo Losada v. Bolivia*, the Inter-American Court of Human Rights found the State of Bolivia internationally responsible for the violation of the rights to humane treatment, judicial guarantees, private and family life, equality before the law, judicial protection and children's rights, to the detriment of Brisa de Angulo Losada. This resulted from the breach of the duty of enhanced due diligence and special protection to investigate the sexual violence suffered by Brisa, the absence of a gender and children's perspective in the conduct of the criminal process and the re-victimizing practices during that process, of the application of criminal legislation incompatible with the American Convention, as well as institutional violence and discrimination in access to justice suffered by the victim due to her gender and status as a child and the violation of the guarantee of a reasonable timeframe. This led the Court to conclude that Bolivia violated Articles 5(1), 5(2), 8(1), 11(2), 19, 24 and 25(1) of the American Convention, in relation to Articles 1(1) and 2 of the same instrument and Articles 7(b), 7(c), 7(e) and 7(f) of the Convention of Belém do Pará.

Consult the official summary of the Judgment [here](#) and the full text of the Judgment [here](#).

Brisa lived with her family in Cochabamba, Bolivia, since 1990. In 2001, when she was 16 years old, her 26-year-old cousin E.G.A. came to live with her family while he finished his studies. Brisa testified that, on various occasions, between October 2001 and May 2002, she suffered acts of sexual violence by E.G.A, including sexual abuse and rape. After learning about the facts, Brisa's father reported them to the Defense for Children International in Cochabamba on July 15, 2002. On July 24, 2002, a psychologist who treated Brisa concluded that she was a "minor [who had been] seduced by an adult man for the purpose of sexually exploiting her."

On August 1, 2002, Brisa's father filed a complaint against E.G.A. before the Judicial Technical Police for the crime of rape to the detriment of his daughter. On November 5, 2002, the Public Prosecutor filed a formal accusation against E.G.A. for the same crime. The First Trial culminated in a conviction for the crime of aggravated rape, sentencing E.G.A to seven years in prison. The trial was then annulled and reinstated by another court. After the second trial, in September 2005, the Trial Court No. 2 of Cochabamba unanimously ruled to acquit E.G.A. On May 10, 2007, the aforementioned judgment was annulled, and the case was sent for a new trial by another court. A hearing was then scheduled to be held on September 22, 2008, but E.G.A. failed to appear in court. He again failed to appear on October 28, 2008. That same day, the Court declared his absence, ordered that an arrest warrant be issued against him, and suspended the trial. As E.G.A. was in Colombia, his country of nationality, an extradition request for E.G.A was issued in May 2019. In February 2022, the defendant 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. due to "the statute of limitation of the criminal action in light of Colombian regulations," and his immediate release was ordered.

In its Judgment, the Court stressed that the case deals with sexual violence committed against a 16-year-old girl and, therefore, it was necessary to approach it from the perspective of the intersectionality between gender and childhood.

When examining the case, the Court considered as proven 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 revictimization. Additionally, it considered that the need to carry out the second forensic gynecological examination in 2008 was not justified, since it did not provide useful evidence. The Court also indicated that Brisa was forced to recount on several 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, that is, the adoption of the measures necessary to avoid repetition of interviews since their recurrence forces the victims to re-experience traumatic situations.

Furthermore, the Court considered that the almost 20 years' duration of the criminal proceedings, without the existence of a final judgment to date, constituted a violation of a reasonable period of investigation and prosecution in relation to the sexual violence in question.

Additionally, the Court agreed with the position of various international organizations in considering that the concept of consent must be the central axis of regulatory criminal provisions related to sexual violence, that is, for a rape to be considered committed, proof of threat, or use of force and physical violence should not be required. It should be sufficient for it to be demonstrated, through any suitable means of proof, that the victim did not consent to the sexual act. It stressed that the criminal code related to sexual violence should focus on consent and stressed that consent can only be understood when it has been freely expressed through acts that, in view of the circumstances of the case, clearly express the person's intention. The Court also recognized that there are situations in which there are defects in consent.

Regarding this specific case, the Court reiterated that reference to the victim's consent to have sexual relations cannot be made when the aggressor holds a figure of authority over the victim, because an inequality of power is generated that is aggravated by the age difference between the victim and the perpetrator. Thus, it considered that the application of Bolivian criminal law and its interpretation by the domestic courts resulted in the denial of justice to a girl such as Brisa, who was a victim of sexual violence. Additionally, the Court considered that the criminal offense of statutory rape as provided for in Bolivian legislation, is incompatible with the American Convention.

Finally, the Court noted that some judicial officers used gender stereotypes to refer to personal attributes of the alleged victim and thus question the existence of sexual violence. In addition, the Court verified that the State required the girl to submit to two unnecessary gynecological examinations, to be interviewed on several occasions to recount events, and that this all added to the lack of holistic care for the victim, increased the trauma suffered, prolonged post-traumatic stress and prevented the girl's recovery and rehabilitation, which continues to impact on her personal condition to this day. Consequently, the Court concluded that Bolivia failed to comply with its obligation to guarantee, without gender-based discrimination and due to the victim's condition as a developing person, Brisa's right of access to justice. Additionally, the Court considered that the State became a second aggressor, by committing various acts causing revictimization that constituted institutional violence and must be classified, taking into account the extent of the suffering caused, as cruel, inhuman, and degrading treatment.

Due to these violations, the Court ordered various reparation measures, among others: (i) that the State maintain the criminal proceedings against E.G.A. open and promote the investigation of the case if there is any change of circumstance that allows it; (ii) that it adopt all the necessary measures to determine the possible responsibility of the officials whose actions contributed to the commission of acts of re-victimization and possible procedural irregularities to Brisa's detriment; (iii) to publish the judgment and the official summary, as indicated; (iv) to carry out an act of public acknowledgment of international responsibility; (v) that it adapt its domestic legal system in such a way that a lack of consent is central and constitutes a crime of rape; (vi) that it adapt

its protocols or adopt new protocols, implement, supervise, and oversee a protocol for investigation and action during criminal proceedings for cases of children and adolescents who are victims of sexual violence, a protocol on a comprehensive approach and legal medical evaluation for cases of children and adolescents who are victims of sexual violence and a comprehensive care protocol for children and adolescents who are victims of sexual violence, and (vii) to implement a campaign to raise awareness, aimed at the Bolivian population in general, aimed at confronting sociocultural perceptions that normalize or trivialize incest.

Judge Rodrigo Mudrovitsch announced his individual concurring opinion.

The composition of the Court for the issuance of this Judgment was as follows: Judge Ricardo C. Pérez Manrique, President (Uruguay), Judge Humberto Antonio Sierra Porto, Vice President (Colombia), Judge Eduardo Ferrer Mac-Gregor Poisot (Mexico), Judge Nancy López (Costa Rica), Judge Verónica Gomez (Argentina), Judge Patricia Pérez Goldberg (Chile), and Judge Rodrigo Mudrovitsch (Brazil).

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