

Albán Cornejo et al. v. Ecuador

ABSTRACT¹

This case is one of several cases that have been brought against Ecuador over the years for Ecuador's failure to regulate the medical profession and properly prosecute cases of medical malpractice. As in the Suárez Peralta v. Ecuador and the Gonzales Lluy et al. v. Ecuador cases, the Court eventually found Ecuador in violation of the American Convention.

I. FACTS

A. Chronology of Events

December 13, 1987: Health professionals working with the Metropolitan Hospital, a private health center located in Ecuador's capital city, Quito, admit Ms. Laura Susana Albán Cornejo, an Ecuadorian citizen aged twenty, after she complains about suffering from serious and painful symptoms, including "severe headaches, a fever and convulsions."² Dr. Ramiro Montenegro López, a neurologist, attends to the care of Ms. Albán Cornejo.³

December 17, 1987: After completing numerous medical tests, Mr. Montenegro López diagnoses Ms. Albán Cornejo with bacterial meningitis.⁴ Bacterial meningitis occurs when bacteria enter the membrane of the brain known as meninges, causing inflammation resulting in serious life-threatening and debilitating conditions, including brain damage and death.⁵ Medical standard recommends immediate antibiotic treatment once laboratory testing confirms the diagnosis.⁶

1. Durdana Karim, Author; Milja Miric, Editor; Megan Venanzi, Chief IACHR Editor; Cesare Romano, Faculty Advisor.

2. Albán Cornejo et al. v. Ecuador, Petition to the Court, Inter-Am. Comm'n H.R., Case No. 12.587, ¶ 26 (Jul. 5, 2006).

3. *Id.*

4. *Id.* ¶ 27.

5. Olaf Hoffman & Joerg R. Weber, *Pathophysiology and Treatment of Bacterial Meningitis*, 2(6) *THER. ADV. NEUROL. DISORD.* 401 (2009) <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3002609/>.

6. *Id.* at 406.

Despite her diagnosis for bacterial meningitis, Ms. Albán Cornejo remains in the hospital overnight without any immediate course of treatment.⁷ After Ms. Albán Cornejo experiences serious symptomatic signs of meningitis, which includes worsening nighttime headaches,⁸ her parents, Mrs. Carmen Susana Cornejo Alarcón de Albán and Mr. Bismarck Wagner Albán Sánchez,⁹ urge the attending physician, Dr. Montenegro López, to tend to the treatment of their daughter.¹⁰ However, Dr. Montenegro López does not show up.¹¹

In his place, resident physician Dr. Fabián Ernesto Espinoza Cuesta¹² comes to treat Ms. Albán Cornejo's severe discomfort from her headaches¹³ and prescribes morphine to ease her pain, but does not further prescribe any antibiotic medications.¹⁴

December 17, 1987: Shortly after the administration of the morphine injection, Ms. Albán Cornejo's health worsens and she dies in the hospital.¹⁵ Medical records later reveals that Ms. Albán Cornejo died from "cardio respiratory arrest, cranial hypertension, and sudden acute purulent meningitis."¹⁶

Around 1989: After the death of Ms. Albán Cornejo, Mrs. Cornejo Alarcón de Albán and Mr. Albán Sánchez request their daughter's medical records to fully investigate the cause of her death.¹⁷ However, Metropolitan Hospital denies their request, and requires them to provide a court order in order to obtain confidential medical records for a deceased adult individual.¹⁸

November 6, 1990: After filing a petition with the courts, Ms. Albán Cornejo's parents make an appearance before a Civil Judge in the Eighth

7. Albán Cornejo et al. v. Ecuador, Petition to the Court, ¶ 27.

8. Albán Cornejo et al. v. Ecuador, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 171, ¶ 2 (Nov. 22, 2007).

9. *Id.* ¶ 1. The parents of deceased Ms. Albán Cornejo are identified as the affected victims of medical negligence. *Id.*

10. Albán Cornejo et al. v. Ecuador, Petition to the Court, ¶ 27.

11. *Id.*

12. Albán Cornejo et al. v. Ecuador, Merits, Reparations and Costs, ¶ 10.

13. Albán Cornejo et al. v. Ecuador, Petition to the Court, ¶ 27.

14. *Id.*

15. *Id.* ¶ 2.

16. *Id.* ¶ 28.

17. *Id.* ¶ 29.

18. *Id.*

Civil Court of Pichincha, Quito, to request that Metropolitan Hospital release Ms. Albán Cornejo's medical records.¹⁹ The civil court commands Metropolitan Hospital to release Ms. Albán Cornejo's medical records.²⁰

November 16, 1990: Although Metropolitan Hospital provides the medical records to the court on the same day, the court delays notification of their availability to Ms. Albán Cornejo's parents and does not inform them until twelve days later.²¹

December 1990: After receiving Ms. Albán Cornejo's medical records, Mrs. Cornejo Alarcón de Albán and Mr. Albán Sánchez take the records over to several doctors to review and get a second opinion on the cause of their daughter's death.²² Upon reviewing the records, the doctors make a determination that Ms. Albán Cornejo's death was a result of the morphine administered, which reacts badly to treatment of symptoms for "meningitis, convulsions, or intra-cranial hypertension."²³

November 25, 1993: Mrs. Cornejo Alarcón de Albán and Mr. Albán Sánchez file a complaint regarding the mistreatment and medical negligence inflicted on Ms. Albán Cornejo with the Board of the Pichincha Medical College.²⁴

January 4, 1995: The Board of the Pichincha Medical College finds that there was no medical negligence by Dr. Ramiro Montenegro López, who was responsible for the care of Ms. Albán Cornejo when she was admitted to the Metropolitan Hospital.²⁵ The Board also concludes that Dr. Espinoza Cuesta and another doctor, Dr. N. Andrade, are not at fault for any medical negligence.²⁶

Additionally, the Board asserts that they cannot make a competent decision as to professional negligence by the attending nurse, Ms. Myriam Barahona, because the decision is for the Board of the Pichincha College of Nurses to make.²⁷ As a result, the Board does not sanction or punish any of the above mentioned health professionals.²⁸

19. Albán Cornejo et al. v. Ecuador, Petition to the Court, ¶ 30.

20. *Id.*

21. *Id.*

22. *Id.* ¶ 31

23. *Id.*

24. *Id.* ¶ 32.

25. Albán Cornejo et al. v. Ecuador, Petition to the Court, ¶ 32

26. *Id.*

27. *Id.*

28. *Id.*

August 3, 1995: Ms. Albán Cornejo's parents file a formal complaint with the Attorney General, Dr. Fernando Casares.²⁹ The complaint requests the Attorney General criminally prosecute the physicians responsible for the treatment and care of Ms. Albán Cornejo.³⁰ The Attorney General decides not to prosecute Ms. Albán Cornejo's claim.³¹

November 1, 1996: A year later, Ms. Albán Cornejo's parents again file a complaint with the new Attorney General, Dr. Guillermo Castro Dager.³²

November 25, 1996: The Attorney General agrees to prosecute the claim against the Metropolitan Hospital and the medical physicians responsible for Ms. Albán Cornejo's care and gives the case to Dr. Alicia Ibarra, who is the Pichincha Prosecutor.³³

The prosecutor invokes Article 456 and 457 of the Penal Code of Ecuador, which classifies death caused by negligent supervision and administration of medications by physicians as homicide.³⁴ Specifically, Article 456 regulates the criminal punishment for parties administering medications "capable of serious impact on health," including death.³⁵ Article 457 sets a presumption of negligent intention to cause death if the medication is administered by a doctor or other knowledgeable health professional.³⁶

January 10, 1997: Legal proceedings commence in regards to the medical malpractice amounting to criminal charges against Metropolitan Hospital and associated physicians by the Fifth Criminal Judge in Pichincha.³⁷

January 23, 1997: Ms. Albán Cornejo's parents file separate private claims against physicians and any health professional who helped in treating their daughter.³⁸

29. *Id.* ¶ 34.

30. *Id.*

31. Albán Cornejo et al. v. Ecuador, Petition to the Court, ¶ 34.

32. *Id.* ¶ 35.

33. *Id.* ¶¶ 35-36.

34. *Id.*

35. *Id.* n.22.

36. *Id.*

37. Albán Cornejo et al. v. Ecuador, Petition to the Court, ¶ 36.

38. *Id.*

January 28, 1997: Police reports reveal noncompliance by the Metropolitan Hospital with the request to release full name of the doctor who prescribed the medication and dosage for Ms. Albán Cornejo prior to her death.³⁹

September 12 and 30 1997: Forensic Expert, Dr. José A. Vergara G. and medical expert, Dr. Carlos Salina, review Ms. Albán Cornejo's medical records.⁴⁰ The experts present reports to the Fifth Pichincha Judge, revealing that Ms. Albán Cornejo symptoms should have alerted physicians to not administer morphine.⁴¹

March 30, 1997: The Fifth Criminal Judge of Pichincha begins summary proceedings against Dr. Espinoza Cuesta.⁴²

July 24, 1998: The Prosecution argues that there is sufficient evidence to make a finding that the doctors committed criminal actions in the negligent treatment of Ms. Albán Cornejo.⁴³

December 14, 1998: The Fifth Judge of Pichincha grants provisional acquittal against the doctors identified in the prosecution's complaint, dismissing the claims against the doctors.⁴⁴ However, the judge forwards the case to the High Court in Quito for review and recommendations.⁴⁵

December 23, 1998: Representatives for Ms. Albán Cornejo's parents appeal against the decision made by the Fifth Judge of Pichincha.⁴⁶

February 24, 1999: After receiving the case, the Sixth Court of the Superior Court sends it to the prosecuting judge in Pichincha for consultation.⁴⁷

June 15, 1999: Prosecuting Judge of Pichincha, Dr. José Marín, orders the recession of the lower court finding for provisional acquittal and instructs the reinstatement of the proceedings against Dr. Montenegro López and Dr. Espinoza Cuesta after making the conclusion that there

39. *Id.* ¶ 37.

40. *Id.* ¶ 39

41. *Id.*

42. *Id.* ¶ 40.

43. Albán Cornejo et al. v. Ecuador, Petition to the Court, ¶ 41.

44. *Id.*

45. *Id.*

46. *Id.* ¶ 42.

47. *Id.*

was sufficient evidence to make a finding that the doctors violated Articles 456 and 457 of the Penal Code.⁴⁸

The Sixth Court of the Superior Court of Justice of Quito (“Sixth Court”) designates Dr. Marcelo E. Cruz as medical expert.⁴⁹ Dr. Cruz provides a full medical review affirming that morphine administered to Ms. Albán Cornejo was counter-indicative of generally accepted medical standards for treating meningitis and endocranial hypertension.⁵⁰

Furthermore, Dr. Iván Cruz Utreras emphasizes that morphine is never administered as a medical standard if a patient presents with symptoms similar to Ms. Albán Cornejo.⁵¹

December 13, 1999: Despite sufficient findings for medical negligence, which would subject the parties involved in the death of Ms. Albán Cornejo to imprisonment, the Sixth Court of the Superior Court of Justice of Quito concludes that the statute of limitations had run out for Ms. Albán Cornejo’s legal claim.⁵² The court acknowledged that Article 101 of the State Penal Code required criminal proceedings to take place within five-years from the time the offense took place.⁵³ The criminal proceedings against Dr. Montenegro López would subject him to medium-term imprisonment for “unintentional homicide” as defined in Article 456 of the Penal Code because his offense was committed without the intention to cause substantial harm.⁵⁴ As a result of the expiration of the statute of limitation, the court dismisses claims.⁵⁵

The court, next, issues a warrant against Dr. Espinoza Cuesta and orders a psychological evaluation for him.⁵⁶ The court then suspends the proceedings against Dr. Espinoza Cuesta until he can be presented at court.⁵⁷

Furthermore, the court recognizes the actions taken by Metropolitan Hospital, including noncompliance with records requests and concealing names, amounted to obstruction of investigation and justice.⁵⁸ However, no criminal charges could be asserted against the hospital because corpo-

48. *Id.*

49. Albán Cornejo et al. v. Ecuador, Petition to the Court, ¶ 43.

50. *Id.*

51. *Id.* ¶ 44.

52. *Id.* ¶ 46.

53. *Id.* n.35.

54. *Id.* ¶ 46.

55. Albán Cornejo et al. v. Ecuador, Petition to the Court, ¶ 46.

56. *Id.* ¶ 47.

57. *Id.*

58. *Id.* ¶ 48.

rate entities cannot exhibit the intention required for a showing of criminal offense, even though it can be considered a legal person.⁵⁹

The court dismisses claims against potential health professionals, including nurses, who were present and responsible for the care of Ms. Albán Cornejo because they were not fully identified by name.⁶⁰

December 16, 1999: Ms. Albán Cornejo's parents appeal from the decision of the Sixth Court, arguing that the statute of limitations should be ten years instead of five for Dr. Montenegro López's criminal claims.⁶¹

February 16, 2000: The court dismisses the appeal by Ms. Albán Cornejo's parents to reconsider the time for the statute of limitations.⁶²

April 24, 2000: The court rejects appeals under *recurso de casación*, "reversal of the judgment."⁶³

June 15, 2000: The court rejects Dr. Espinoza Cuesta's appeal under *recurso de hecho*, an "appeal on the basis of fact."⁶⁴ The Court is unable to arrest Dr. Espinoza Cuesta, who is identified as a fugitive.⁶⁵

November 10, 2006: Mrs. Cornejo Alarcón de Albán, through aid of her representatives, investigates the whereabouts of Dr. Espinoza Cuesta in an internet search, and concludes that he is no longer in Ecuador.⁶⁶ Subsequently, Mrs. Cornejo Alarcón de Albán informs the Fifth Criminal Court about the findings.⁶⁷

B. Other Relevant Facts

[None]

II. PROCEDURAL HISTORY

A. Before the Commission

59. *Id.* ¶ 49.

60. *Id.* ¶ 50.

61. Albán Cornejo et al. v. Ecuador, Petition to the Court, ¶ 51.

62. *Id.*

63. *Id.*

64. *Id.*

65. *Id.*

66. Albán Cornejo et al. v. Ecuador, Merits, Reparations and Costs, ¶ 87.

67. *Id.*

May 31, 2001: Mrs. Cornejo Alarcón de Albán and Mr. Albán Sánchez file a petition on behalf of Ms. Albán Cornejo to the Inter-American Commission on Human Rights (“Commission”) against the Republic of Ecuador (“State”).⁶⁸

October 16, 2011: The State responds to the complaint by asserting that the petitioners failed to exhaust all legal domestic remedies.⁶⁹ Specifically, the State asserts that since the criminal proceedings against Dr. Espinoza Cuesta have been suspended as a result of his fugitive status, the petitioners have not exhausted domestic remedies before seeking relief through the Commission.⁷⁰

October 23, 2002: The Commission announces the admissibility of the petition and approves Admissibility Report No. 69/02.⁷¹ As a result of the dismissal of Dr. Montenegro López’s case and the suspension of Dr. Espinoza Cuesta’s claim, the Commission rejects the State’s argument regarding non-exhaustion of domestic remedies, concluding that the State failed to provide qualifying evidence showing that domestic remedies were open and ongoing.⁷²

February 28, 2006: The Commission accepts Merits Report No. 7/06.⁷³ The Commission announces that the State violated Articles 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection) of the American Convention, in relation to Articles 1(1) (Obligation to Respect Rights) and 2 (Obligation to Give Domestic Legal Effects to Rights).⁷⁴

B. Before the Court

July 5, 2006: The Commission submits the case to the Court after the State failed to adopt its recommendations.⁷⁵

68. Albán Cornejo et al. v. Ecuador, Admissibility Report, Report No. 69/02, Inter-Am. Comm’n H.R., Case No. 12.406, ¶ 1 (Oct. 23, 2002).

69. *Id.* ¶ 4.

70. *Id.* ¶ 33.

71. Albán Cornejo et al. v. Ecuador, Merits, Reparations and Costs, ¶ 1.

72. Albán Cornejo et al. v. Ecuador, Admissibility Report, ¶ 38.

73. Albán Cornejo et al. v. Ecuador, Merits, Reparations and Costs, ¶ 1.

74. *Id.* n.2.

75. *Id.* ¶ 1.

1. Violations Alleged by Commission⁷⁶

Article 8 (Right to a Fair Trial)

Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal)

Article 25 (Right to Judicial Protection)

Article 25(1) (Right of Recourse Before a Competent Court)

all in relation to:

Article 1(1) (Obligation of Non-Discrimination)

Article 2 (Domestic Legal Effects) of the American Convention.

2. Violations Alleged by Representatives of the Victims⁷⁷

Same Violations Alleged by the Commission, plus:

Article 4 (Right to Life)

Article 5 (Right to Humane Treatment)

Article 5(1) (Right to Physical, Mental, and Moral Integrity)

Article 13 (Freedom of Thought and Expression)

Article 17 (Rights of the Family)

all in relation to:

Article 1(1) (Obligation of Non-Discrimination)

Article 2 (Obligation to Give Domestic Legal Effects to Rights) of the American Convention.

December 6, 2006: Due to the State's failure to appoint an *ad hoc* judge on a timely manner, the Court rejects the appointment by the State for an additional judge.⁷⁸

June 6, 2007: The State acknowledges partial international responsibility in violating Article 8 (Right to a Fair Trial) and Article 25 (Right to Judicial Protection) of the American Convention, as a result of failing to take steps in extraditing Dr. Espinoza Cuesta and suspending the criminal proceedings against him.⁷⁹

76. *Id.* ¶ 4.

77. *Id.* ¶ 5. Mr. Farith Simon Campaña and Mr. Alejandro Ponce Villacís served as representatives of Mrs. Cornejo Alarcón de Albán and Mr. Albán Sánchez. *Id.*

78. Albán Cornejo et al. v. Ecuador, Merits, Reparations and Costs, n.6.

79. *Id.* ¶ 10.

III. MERITS

A. *Composition of the Court*

Sergio García Ramírez, President
Cecilia Medina Quiroga, Vice-President
Manuel E. Ventura Robles, Judge
Diego García-Sayán, Judge
Leonardo A. Franco, Judge
Margarette May Macaulay, Judge
Rhadys Abreu Blondet, Judge

Pablo Saavedra Alessandri, Secretary
Emilia Segares Rodríguez, Deputy Secretary

B. *Decision on the Merits*

November 22, 2007: The Court issues its Judgment on Merits, Reparations, and Costs.⁸⁰

The Court found unanimously that State had violated:

Article 2 (Obligation to Give Domestic Legal Effect to Rights), in relation to Article 1(1) of the Convention, to the detriment of Mrs. Cornejo Alarcón de Albán and Mr. Albán Sánchez,⁸¹ because:

The State acknowledged partial violation of Article 2 (Obligation to Give Domestic Legal Effect to Rights) as a result of not having clear laws, which provide for criminal prosecution of health professionals who commit malpractice.⁸² Article 2 (Obligation to Give Domestic Legal Effect to Rights) requires the State to amend, adopt, and regulate domestic legislation so as to comply with all obligation, rights, and freedoms identified in the American Convention.⁸³ Although the death of Ms. Albán Cornejo was committed under the medical care of a private institution, the State holds a vital obligation to supervise medical professionals and protect the sanctity of health services.⁸⁴ Subsequent to the State's partial acquiescence, the State proposed to amend domestic legislation to fully comply

80. *Id.* ¶ 1.

81. *Id.* ¶ 113.

82. *Id.* ¶ 11.

83. *Id.* n.107.

84. Albán Cornejo et al. v. Ecuador, Merits, Reparations and Costs, ¶ 119.

with Article 2(Obligation to Give Domestic Legal Effect to Rights) of the American Convention.⁸⁵ Additionally, the State acknowledged partial responsibility for violations of Articles 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection) for failing to extradite Dr. Espinoza Cuesta.⁸⁶

Article 5(1) (Right to Physical, Mental, and Moral Integrity), in relation to Article 1(1) of the Convention, to the detriment of Mrs. Cornejo Alarcón de Albán and Mr. Albán Sánchez,⁸⁷ because:

The State's failure to timely and diligently provide legal proceedings to the allegations of medical malpractice amounted to a violation of humane treatment as established under Article 5 (Right to Humane Treatment).⁸⁸ Article 5(1) (Right to Physical, Mental, and Moral Integrity) protects the "physical, mental, and moral integrity" of individuals.⁸⁹ Although the negligence was committed by private individuals and institutions, the State has an obligation to set appropriate medical standards to provide quality health care to all individuals, thereby preserving the patients' physical, moral, and psychological integrity.⁹⁰

The Court identified that Mrs. Cornejo Alarcón de Albán and Mr. Albán Sánchez as the next of kin to the deceased Ms. Albán Cornejo and therefore were entitled to seek judicial relief as victims.⁹¹ The Court addressed that Mrs. Cornejo Alarcón de Albán and Mr. Albán Sánchez both endured immense psychological and emotional grief, not only from seeing the mishandling of their daughter's medical care at the time of death, but they also suffered for more than fourteen years from the lengthy and delayed judicial proceedings while seeking legal remedies for the unexpected death of their daughter.⁹² As a result of facing delayed judicial relief for the death of her daughter, Mrs. Cornejo Alarcón de Albán was forced to stop working, causing economic impairment to her family.⁹³ The State's failure in providing proper judicial remedies to address the allegations of medical malpractice in the death of Ms. Albán Cornejo diminished her parents' right to humane treatment and personal integrity in violation of

85. *Id.*

86. *Id.* ¶ 16

87. *Id.* "Operative Paragraphs," ¶ 2.

88. *Id.* ¶ 45.

89. Albán Cornejo et al. v. Ecuador, Merits, Reparations and Costs, n. 22.

90. *Id.* ¶ 39(b).

91. *Id.* ¶ 47.

92. *Id.* ¶¶ 48-49.

93. *Id.* ¶ 39(b).

*Article 5 (Right to Humane Treatment) and Article 5(1) (Right to Physical, Mental, and Moral Integrity).*⁹⁴

Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal), in relation to Articles 1(1), 4, and 5(1) of the Convention, to the detriment of Mrs. Cornejo Alarcón de Albán and Mr. Albán Sánchez,⁹⁵ because:

*The Court recognized the State's partial acquiescence and international responsibility for violating Article 8 (Right to a Fair Trial) and Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal).*⁹⁶ *Article 8 (Right to a Fair Trial) requires the State to provide fair and diligent judicial remedies.*⁹⁷ *Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) guarantees timely due process of every person to a proper hearing in front of an impartial tribunal.*⁹⁸

*The State acknowledged both the negligence and omission by judicial authorities for failing to complete the procedures required for extraditing Dr. Espinoza Cuesta but disputed any violation as to the criminal proceedings relating to the death of Ms. Albán Cornejo.*⁹⁹

*The Court found that the State acted within proper means when its domestic courts provided Mrs. Cornejo Alarcón de Albán and Mr. Albán Sánchez with court approved order to release Ms. Albán Cornejo's medical records after repeated attempts to request the record from Metropolitan Hospital by the parents failed.*¹⁰⁰ *As to the release of Ms. Albán Cornejo's medical records, the Court concluded that the judicial procedure was made in a timely and effective manner.*¹⁰¹ *Prior to the criminal proceedings in the domestic courts, Mrs. Cornejo Alarcón de Albán and Mr. Albán Sánchez properly pursued administrative recourse by seeking clarification, relief and punishment for the accused individuals through*

94. *Id.* ¶ 50.

95. Albán Cornejo et al. v. Ecuador, Merits, Reparations and Costs. "Operative Paragraphs," ¶¶ 1-3.

96. *Id.* "Operative Paragraphs," ¶ 1.

97. *Id.* n.30.

98. *Id.*

99. *Id.* ¶ 10.

100. *Id.* ¶ 71.

101. Albán Cornejo et al. v. Ecuador, Merits, Reparations and Costs, ¶ 69.

the Colegio Médico de Pichincha (Honor Tribunal of the Pichincha Medical Association).¹⁰² The Court emphasized the important role medical boards have over the supervision of physicians and staff, noting that the board should be impartial and objective in making sure professional standards of ethics are upheld and determining whether disciplinary actions are needed.¹⁰³

The Court determined that the State failed to competently, diligently, and effectively pursue investigation and judicial process of Mrs. Cornejo Alarcón de Albán and Mr. Albán Sánchez's medical malpractice claims. The State lacked effective investigation of the alleged crime, forcing the burden of gathering proper evidence of the crime to Mrs. Cornejo Alarcón de Albán and Mr. Albán Sánchez.¹⁰⁴ Additionally, the State delayed its investigation and litigation of the alleged perpetrators.¹⁰⁵ As a result of the lack of prompt prosecution for the medical malpractice claims, the statute of limitations expired, thereby causing greater obstacles for the victims of a negligent crime to seek judicial protections.¹⁰⁶ Although the statute of limitations can sometimes be excluded to allow for liability, especially in heinous crimes, the Court concluded that, in the instant case, the statute of limitation is a guarantee afforded to the accused of a due process defense, thus barring the State from continuing to pursue punishment against the accused.¹⁰⁷ The Court declared that because of the State's ineffective and delayed judicial prosecution of the perpetrators to the unlawful conduct, it was in violation of Article 8 (Right to a Fair Trial) and Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal).¹⁰⁸

Article 25(1) (Right of Recourse Before a Competent Court),¹⁰⁹ in relation to Article 1(1), 4, and 5(1) of the Convention, to the detriment of Mrs. Cornejo Alarcón de Albán and Mr. Albán Sánchez,¹¹⁰ because:

*Article 25 (Right to Judicial Protection) protects the right of individuals to seek judicial remedy in a competent tribunal.*¹¹¹ The State accepted its

102. *Id.* ¶ 72.

103. *Id.* ¶ 78.

104. *Id.* ¶ 57.

105. *Id.*

106. *Id.*

107. Albán Cornejo et al. v. Ecuador, Merits, Reparations and Costs, ¶ 111.

108. *Id.* ¶ 109.

109. *Id.* ¶ 10.

110. *Id.* "Operative Paragraphs," ¶¶ 1-3.

111. *Id.* at 18 n. 31.

*international responsibility under Article 25 (Right to Judicial Protection) when it's judicial authorities, including the Corte Suprema de Justicia ("Supreme Court of Justice") and the Juez Quinto de lo Penal de Pichincha ("Fifth Criminal Judge from Pichincha"), were negligent in setting stringent and timely judicial procedures to apprehend Dr. Espinoza Cuesta after he was identified as a fugitive by the courts.*¹¹²

*Article 25(1) (Right of Recourse Before a Competent Court) protects the right of individuals to seek effective judicial remedies in domestic courts for violation of rights and freedoms afforded by the American Convention.*¹¹³ *The State admitted to not leading an effective prosecution and prompt extradition of Dr. Espinoza Cuesta once he had fled the country.*¹¹⁴ *Therefore, the State violated Article 25(1) (Right of Recourse Before a Competent Court).*¹¹⁵

The Court did not rule on:

Article 13 (Freedom of Thought and Expression) and Article 17 (Rights of the Family),¹¹⁶ because:

*The facts alleged by the representatives were already examined under the findings in Article 8 (Right to a Fair Trial), Article 25 (Right to Judicial Protection), and Article 5 (Right to Humane Treatment).*¹¹⁷

Article 4 (Right to Life),¹¹⁸ because:

*The evidence submitted by the representatives was insufficient to meet international liability under the American Convention.*¹¹⁹

C. Dissenting and Concurring Opinions

1. Separate Opinion of Judge Sergio García Ramírez

In a separate opinion, Judge García Ramírez emphasized that the Court correctly interpreted Article 5(1) (Right to Physical, Mental, and

112. *Id.* ¶ 10.

113. Albán Cornejo et al. v. Ecuador, Merits, Reparations and Costs n.31.

114. *Id.* ¶ 109.

115. *Id.*

116. *Id.* ¶¶ 52-55.

117. *Id.*

118. *Id.* ¶ 42.

119. Albán Cornejo et al. v. Ecuador, Merits, Reparations and Costs, ¶ 42.

Moral Integrity) to apply to actions not only taken by State officials, but also to private actors.¹²⁰ Judge García Ramírez addressed the State's responsibility to the fundamental social protection of healthcare and highlighted the duty of oversight over the healthcare industry.¹²¹ The State holds a paramount interest in making sure that healthcare professionals adhere to ethics and standards which protect a basic concept of humanity, "life and humane treatment."¹²²

Judge García Ramírez specifically identified the issues that the victims, Mrs. Cornejo Alarcón de Albán and Mr. Albán Sánchez, faced in updating the medical records for their daughter.¹²³ In doing so, the Judge recommended that the State develop and implement legislation which can both provide access to medical records when it has been legally requested while protecting the privacy interest of patients to their medical information.¹²⁴

The regulation of expert medical opinions is another State responsibility, which relates to the right to human treatment as it affects access to patient's medical information.¹²⁵ In addition, the State has an international duty to provide effective legislation that addresses the liabilities for medical malpractice, but is not required to classify malpractice as criminal liability as it would already fall into the crime of negligence.¹²⁶

Lastly, Judge García Ramírez acknowledged the importance statutes of limitation have on criminal defense.¹²⁷ Furthermore, Judge García Ramírez balanced the interest of defendant's substantive and procedural defense of statutes of limitation with the interest of international law to protect human rights.¹²⁸ Judge García Ramírez asserted the important exception be allowed to limit such statutes when heinous crimes go unprosecuted as a result of State's failure to promptly take judicial action.¹²⁹

IV. REPARATIONS

The Court ruled unanimously that the State had the following obligations:

120. *Id.* "Separate Opinion," ¶ 3.

121. *Id.* "Separate Opinion."

122. *Id.* "Separate Opinion," ¶ 6.

123. *Id.* "Separate Opinion," ¶¶ 9-10.

124. *Id.* "Separate Opinion," ¶ 11.

125. Albán Cornejo et al. v. Ecuador, Merits, Reparations and Costs, "Separate Opinion," ¶ 22.

126. *Id.* "Separate Opinion," ¶ 12.

127. *Id.* "Separate Opinion," ¶ 25.

128. *Id.* "Separate Opinion."

129. *Id.* "Separate Opinion," ¶¶ 25-31.

A. Specific Performance (Measures of Satisfaction and Non-Repetition Guarantee)

1. Judgment as a Form of Reparation

The Court concluded that the Judgment established as *per se* from of reparation.¹³⁰

2. Publish the Judgment

The Court ordered the State to publish the Judgment in the official newspaper as well as another nationally circulated periodical.¹³¹

3. Disseminate Information About Patient's Rights

The State must circulate, through national campaigns, the rights of patients within a reasonable time.¹³² The State is also required to implement the circulation of Law on Rights and Protection of Patients promulgated on February 3, 1995.¹³³

4. Implement Training Programs Related to Patient's Rights

The State is required to carry out educational programs aimed at better informing healthcare professionals about the rights afforded to patients and informing them of the grave punishment that may arise in violating those rights.¹³⁴

B. Compensation

The Court awarded the following amounts:

1. Pecuniary Damages and Non-Pecuniary Damages

The Court awarded \$25,000 each to Mrs. Cornejo Alarcón de Albán

130. *Id.* "Operative Paragraphs," ¶ 4.

131. Albán Cornejo et al. v. Ecuador, Merits, Reparations and Costs, "Operative Paragraphs," ¶ 5.

132. *Id.* "Operative Paragraphs," ¶ 6.

133. *Id.* ¶ 163.

134. *Id.* "Operative Paragraphs," ¶ 7.

and Mr. Albán Sánchez for compensation of both pecuniary and non-pecuniary damages within one year of the Judgment.¹³⁵ The Court evaluated the pecuniary and non-pecuniary damages in awarding a sum to each victim.¹³⁶ The Court acknowledged that Mrs. Cornejo Alarcón de Albán incurred expenses in obtaining medical information about her daughter's death, including requesting medical records through judicial order.¹³⁷ The Court also calculated the emotional suffering endured by Mrs. Cornejo Alarcón de Albán and Mr. Albán Sánchez from delays in legal proceedings while seeking justice for the death of their daughter.¹³⁸ The Court dismissed the claim for awarding damages to Mrs. Cornejo Alarcón de Albán for loss of income, finding that there was insufficient evidence to determine the claim.¹³⁹

2. Costs and Expenses

The Court awarded \$30,000 to Mrs. Cornejo Alarcón de Albán for the cost and expenses incurred for the domestic proceedings as well as in the Court proceedings to be paid by the State within one year from the decision.¹⁴⁰ This amount covers the legal fees required by the representatives in litigating the domestic and international case.¹⁴¹ Mrs. Cornejo Alarcón de Albán is responsible to remit the appropriate amount to her representatives.¹⁴²

3. Total Compensation (including Costs and Expenses ordered):

\$ 80,000

C. Deadlines

The State is required to comply with the publication of the Judgment within six months from the date of the decision.¹⁴³

The State must disseminate information regarding the rights of patients and implement training programs for health profiles to adhere to

135. *Id.* ¶ 153.

136. *Id.* ¶ 141.

137. Albán Cornejo et al. v. Ecuador, Merits, Reparations and Costs, ¶ 151.

138. *Id.* ¶ 143.

139. *Id.* ¶ 147.

140. *Id.* ¶ 168.

141. *Id.* ¶ 168.

142. *Id.*

143. Albán Cornejo et al. v. Ecuador, Merits, Reparations and Costs. "Operative Paragraphs," ¶ 5.

those rights within a reasonable time from the state of the decision.¹⁴⁴

The State is ordered to pay the pecuniary and non-pecuniary damages each to Mrs. Cornejo Alarcón de Albán and Mr. Albán Sánchez within one year from the date of the Judgment.¹⁴⁵

The State is also required to pay the cost and expenses awarded to Mrs. Cornejo Alarcón de Albán within one year of the decision.¹⁴⁶

V. INTERPRETATION AND REVISION OF JUDGMENT

January 19, 2007: Mrs. Cornejo Alarcón de Albán and Mr. Albán Sánchez's representatives filed a request for interpretation of the Judgment.¹⁴⁷

The representatives sought to clarify the merits decided in the Judgment regarding Articles 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) and 25(1) (Right of Recourse Before a Competent Court) in relation the State's violation of Article 1(1) of the American Convention.¹⁴⁸ Specifically, the representatives inquired about the obligation and conviction required by the State to investigate and punish the perpetrators, as well as the scope of the application of the statute of limitation in continuing with the punishment of Dr. Espinoza Cuesta.¹⁴⁹ Additionally, the representatives sought to clarify the duty of the State to enact proper legislation of medical malpractice as a result of the acquiescence to the violation of Article 2 (Obligation to Give Domestic Legal Effect to Rights), as well as clarify the scope of the State's duty to disseminate information regarding patient's rights.¹⁵⁰

A. Composition of Court

Cecilia Medina Quiroga, President
Diego García-Sayán, Vice-President
Sergio García Ramírez, Judge
Manuel E. Ventura Robles, Judge
Leonardo A. Franco, Judge
Margarette May Macaulay, Judge
Rhadys Abreu Blondet, Judge

144. *Id.* ¶ 6.

145. *Id.* ¶ 153.

146. *Id.* ¶ 168.

147. Albán Cornejo et al. v. Ecuador, Interpretation of the Judgment on Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 183, ¶ 1 (Aug. 5, 2008).

148. *Id.*

149. *Id.*

150. *Id.*

Pablo Saavedra Alessandri, Secretary
Emilia Segares Rodríguez, Deputy Secretary

B. Merits

The Court found that the representatives failed to comply with the American Convention and the Rules of Procedure in requesting interpretation for clarifying the scope of the judgment as to the State's obligation to investigate and punish those responsible as a result of the State's violation of Articles 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) and 25(1) (Right of Recourse Before a Competent Court).¹⁵¹

The Court found that the Judgment already clarified that the exclusion of the statute of limitation was not applicable in the instant case because the facts did not meet the international requirement of actions that arise to atrocious crimes and human right violations.¹⁵² Additionally, it was clear from the Judgment that excluding the statute of limitation in the instant case would be a violation of the rights of the accused to due process.¹⁵³

Since the State, itself, acknowledged partial violation of Article 2 (Obligation to Give Domestic Legal Effect to Rights), the Court concluded that the State is responsible on its own to revise proper legislation as it sees appropriate.¹⁵⁴ The Court further concluded that the Judgment was clear in its interpretation as to the dissemination of information on patient's rights, which the State is required to implement both national and international standards for circulation, and which the representatives can follow through the Court compliance and monitoring.¹⁵⁵

VI. COMPLIANCE AND FOLLOW-UP

July 6, 2009: The State fully complied with its obligation to pay compensation to Mrs. Cornejo Alarcón de Albán and Mr. Albán Sánchez for pecuniary and non-pecuniary damages.¹⁵⁶ The State also fully complied with its responsibility to pay Mrs. Cornejo Alarcón de Albán the amount

151. *Id.* ¶ 12.

152. *Id.* ¶¶ 15-16.

153. Albán Cornejo et al. v. Ecuador, Interpretation of the Judgment on Merits, Reparations and Costs, ¶ 15.

154. *Id.* ¶ 19.

155. *Id.* ¶ 23.

156. Albán Cornejo et al. v. Ecuador, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R., ¶ 21 (Jul. 06, 2009).

awarded for cost and expenses.¹⁵⁷

The State partially complied with its duty to publish the pertinent provisions of the Judgment after reporting that it issued the decision in the State's Official Gazette on February 7, 2008.¹⁵⁸ The Court will continue to monitor the additional requirement of the State to circulate the judgment in a wider known publication.¹⁵⁹

The Court kept open the monitoring of the State's continued obligation to disseminate patients' rights information, as well as implementation of education programs aimed at better informing health professionals of its obligation to patient's rights.¹⁶⁰

August 27, 2010: The Court will continue to monitor the State's compliance to fully publish the provision of the judgment as identified in the decision in a wide circulation newspaper.¹⁶¹ Although the State created pamphlets regarding the rights of patients, it has yet to fully circulated these pamphlets widely across all health facilities.¹⁶² The State procured a consultancy organization to develop training programs, but has yet to implement the programs.¹⁶³ Consequently, the Court kept open the monitoring and compliance of the State's continued obligation to disseminate patient's rights information as well as implementation of training programs for health professionals to respect the rights of patients.¹⁶⁴

February 5, 2013: The State fully complied with the obligation to publish the Judgment in a widely circulated newspaper.¹⁶⁵ The Court will continue to monitor the State, as it has yet to fully comply with its obligation to disseminate information regarding patient's rights or implement the education programs regarding those rights.¹⁶⁶

August 28, 2015: The State provided reports from their Ministry of Public Health showing the State's action in promoting a mass campaign aimed at publicizing the Patient's Rights and Protection Act through

157. *Id.* ¶ 23.

158. *Id.* ¶ 7.

159. *Id.* ¶ 10.

160. *Id.* "Declares," ¶ 3.

161. Albán Cornejo et al. v. Ecuador, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R., "Declares," ¶ 1(a) (Aug. 27, 2010).

162. *Id.* ¶¶ 12-13 (Aug. 27, 2010).

163. *Id.* ¶ 15.

164. *Id.* "Declares," ¶ 1.

165. Albán Cornejo et al. v. Ecuador, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R., "Declares," ¶ 1 (Feb. 05, 2013).

166. *Id.* "Declares," ¶ 2.

newspaper circulation, posters provided to health facilities, as well as allowing access to the information on the Ministry of Public Health's webpage.¹⁶⁷ Therefore, the State has fully complied with its obligation to broadly disseminate information regarding the rights of patients.¹⁶⁸

Additionally, the Ministry of Public Health implemented education programs by developing several training courses in which not only health professionals but also court officials like judges and prosecutors, were exposed to greater knowledge of patient's rights.¹⁶⁹ As a result, the State fully complied with its obligation to develop and implement training programs aimed at educating health professional about patient's rights.¹⁷⁰

VII. LIST OF DOCUMENTS

A. *Inter-American Court*

1. Preliminary Objections

[None]

2. Decisions on Merits, Reparations and Costs

[Albán Cornejo et al. v. Ecuador, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 171 \(Nov. 22, 2007\).](#)

3. Provisional Measures

[None]

4. Compliance Monitoring

[Albán Cornejo et al. v. Ecuador, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(Jul. 06, 2009\).](#)

[Albán Cornejo et al. v. Ecuador, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(Aug. 27, 2010\).](#)

[Albán Cornejo et al. v. Ecuador, Monitoring Compliance with Judgment,](#)

167. Albán Cornejo et al. v. Ecuador, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R., "Considering That," ¶¶ 3-11 (Aug. 28, 2015).

168. *Id.* "Resolved," ¶ 1

169. *Id.* ¶ 21.

170. *Id.* "Resolved," ¶ 1.

[Order of the Court, Inter-Am. Ct. H.R. \(Feb. 05, 2013\).](#)

[Albán Cornejo et al. v. Ecuador, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(Aug. 28, 2015\).](#)

5. Review and Interpretation of Judgment

[Albán Cornejo et al. v. Ecuador, Interpretation of the Judgment on Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 183 \(Aug. 5, 2008\).](#)

B. Inter-American Commission

1. Petition to the Commission

[Not Available]

2. Report on Admissibility

[Albán Cornejo et al. v. Ecuador, Admissibility Report, Report No. 69/02, Inter-Am. Comm'n H.R., Case No. 12.406, \(Oct. 23, 2002\).](#)

3. Provisional Measures

[None]

4. Report on Merits

[None]

5. Application to the Court

[Albán Cornejo et al. v. Ecuador, Petition to the Court, Inter-Am. Comm'n H.R., Case No. 12.587 \(Jul. 5, 2006\).](#)

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