

2007 Inter-American Human Rights Moot Court Competition
Hypothetical Case: Rosa Luna v. Republic of Azar

Rosa Luna v. Republic of Azar

I. Historical Context

1. The Republic of Azar—a country with a civil law tradition— adopted a democratic system of government in 1993. Since then, with the constitutional reform that gave international human rights treaties and agreements constitutional status, a process of institutional reform and greater openness to the international community was initiated. The State of Azar became a member of the Organization of American States and of the United Nations.

2. In 1995 Azar ratified the American Convention on Human Rights, or “Pact of San José”, and accepted the binding jurisdiction of the Inter-American Court of Human Rights. That same year, it ratified the Inter-American Convention to Prevent and Punish Torture and the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. In 1996, it also incorporated into its legal system the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belem do Pará) and the Inter-American Convention on Forced Disappearance of Persons. In 1997, Azar ratified the Inter-American Convention against Corruption.

3. From the time Azar gained its independence in 1893, the northern region, which is the economic and industrial center of the country and has marked social and cultural differences from the rest of Azar, sought to obtain its autonomy and become independent. From that time forward, and for purposes of reaching this aim, the inhabitants of the north formed different organizations that are still active today within the State of Azar as

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II. The Facts of the Case

A. Detention of Rosa Luna

5. Rosa Luna was detained at her home on Friday, June 13, 2003 at 5:30 in the afternoon. The arresting officer had a warrant for her arrest. During the proceeding he informed her of the reasons for her arrest, and advised her of her rights. He informed her that she was accused of involvement in the crime of terrorism as a co-perpetrator. Specifically, she was accused of having provided financial support—in an amount equivalent to 200 American dollars—to the “Foundation for the Poor,” which illegally channeled part of its budget to UNO. She was also informed that she was accused of participating, as an accessory before the fact, in the crime of attempted robbery against the Nueva Armenia military supply warehouse.

6. Upon her arrest, Rosa Luna was taken to the Women’s Detention Center attached to the Azar Maximum Security Jail. From there she was able to make two telephone calls: one to her partner Juan Sol and another to her attorney María Chumbipa.

7. Over the weekend, Rosa Luna was held alone, in a cold, damp cell with a very dim light bulb and no access to a bathroom. She ate and slept in her cell and was not allowed to go out to the prison yard. Nor was she allowed to have contact with any person except for her jailers. Every time she needed to use the bathroom she had to ask the guards for permission. On the Saturday following the day of her arrest she asked repeatedly to be taken to the bathroom; a guard took her two hours after her initial request because the officer in charge of her hall was taking a nap.

8. On Saturday, June 14, her partner, Juan Sol, attempted to visit her. However, the detention center authorities barred his entry and informed him that his partner could not receive visitors until the end of the initial interrogation period, which usually lasted a week. That same day Rosa Luna had woken up with a vaginal hemorrhage and quickly realized that it was her menstrual period. She therefore requested to be provided with sanitary napkins, cotton or paper. Nevertheless, the guards informed her that they could not grant her request until Monday, when the storeroom would be opened and they would have access to such items. Rosa Luna thus had to spend the weekend without any type of dressing, with her clothes stained and with no way to wash herself.

9. Rosa Luna was taken to the infirmary on the morning of Monday the 16th. A doctor examined her and prepared a medical record of her health status at the time of her arrival at the detention center. On this occasion she was given two sanitary napkins and a change of clean clothes. At the same place, Rosa Luna met with psychologist Luciano Duche, who she knew because he was a professor at the Catholic University where she taught. Professor Duche informed her that the purpose of the interview was to establish her state of mind at the time of her arrest. The psychologist took down the relevant information to determine her general emotional state, as well as information necessary to establish her

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hours that the interrogation last

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B. The criminal case involving the crime of torture

21. The Criminal Code of Azar defines torture under Title II “Crimes against liberty,” Chapter I “Crimes against individual liberty.” Article 100 of the Criminal Code establishes: “Any public official who tortures a person deprived of his or her liberty shall be punished by a term of imprisonment of two months to six years.” In addition, under Title I “Crimes against the person,” Chapter II “Crimes of bodily harm,” the Criminal Code anticipates crimes of bodily harm as follows: Article 72 states that “[a]ny person who causes harm to another’s body or health that is not anticipated in another provision of this Code shall be sentenced to term of imprisonment of one month to one year;” Article 73 establishes that: “[a] term of imprisonment of one month to five years shall be imposed if the bodily harm results in the permanent debilitation of the victim’s health, a sense, an organ or a limb, or results in a permanent difficulty in speech, or if the victim’s life was placed in danger, or if the victim was incapacitated from work for more than one month” and Article 74 states: “[a] term of imprisonment of two months to six years shall be imposed if the bodily harm results in a physical or mental illness that is certainly or probably incurable, permanent incapacitation from work, the loss of a sense, of an organ, of a limb, of the use of an organ or limb, of speech or of the ability to procreate.”

22. On May 25, 2004, Ms. Rosa Luna filed a criminal complaint with the Office of the Public Prosecutor of Azar alleging that she had been subjected to torture by virtue of the actions of police Sergeant Jorge Fortunato, Colonels José Jundia and Lino Lona, the psychologist Luciano Duche, the psychiatrist Líbero Carnellutti, the Minister of the Interior, the Minister of Defense, the Minister of Justice and the honorary advisor of said Ministry, Professor Gabriel Guerra of the Private University of Azar. She argued that she had been subjected to inhumane conditions of detention because of the lack of food and light and because of the restrictions on bathroom use. In addition, she complained of having been subjected to humiliation because of the lack of appropriate attention to her situation as a woman and for having been subjected to obscene shouts. She alleged that all of these actions caused her extreme pain and resulted in irreversible psychological and physical harm. Finally, in the alternative, in the case that the Office of the Public Prosecutor is of the opinion that the facts are not consistent with the definition of torture, she requested that it consider prosecuting the accused individuals for crimes of bodily harm.

23. The Office of the Public Prosecutor opened a criminal case to investigate the facts alleged in the complaint. It was determined during the initial investigation period that the interrogations were conducted in accordance with the guidelines of a confidential memorandum that was drafted at the request of the Ministry of the Interior by Professor Guerra, an expert in international criminal law and international human rights law, as well as a consultant to the Red Cross of Azar. The directives in question had been later approved by the Minister of the Interior, the Minister of Defense and the Minister of Justice. According to the investigation, the memorandum contained guidelines for conducting interrogations in cases where national security was at stake. Its reasoning established that its purpose was to adapt interrogations to the international obligations of the State and to its obligations arising from international criminal law. In the “Acceptable

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Techniques” section, the memorandum contained the following directives “[...] 3) Detainees may be interrogated for up to 20 continuous hours per day; 4) Detainees may be interrogated sitting down, standing with raised arms or lying down; 5) Detainees may be interrogated in the facilities available in the detention center where they are being held, or they may be taken to other facilities of the security forces; [...] 15) Detainees may be held in individual or group cells; 16) The cells may have artificial lighting during the entire day, and the light bulbs may be between 25 and 200 watts; and 17) Detainees may have a blanket and a Bible in their cell.” In addition, in the section titled “Control over interrogations,” the memorandum provided the guideline: “1) Interrogations must include psychological or psychiatric and medical advising to ensure the effective taking of statements and the well-being of the person being interrogated; 2) The information in the detainee’s clinical medical and psychological file shall be taken into account during interrogations, as shall other information on his or her activities on record with the State Security Service, with any state security forces or in the possession of the Office of the Public Prosecutor [...].”

24. Once the investigation was concluded, and in view of the evidence produced, the Office of the Public Prosecutor charged Sergeant Fortunato, Colonels Lona and Jundia, the Minister of the Interior, the Minister of Defense and the Minister of Justice for their participation in the crime of torture as principals and accessories. However, the Office of the Public Prosecutor did not consider it possible to link Professor Guerra criminally. On one hand, he was not a public official and therefore was not a perpetrator of the crime of torture; on the other hand, given that he was not a member of the State structure, the drafting of a memorandum requested by a ministerial authority did not make him an accomplice or an abettor to the crime of torture. With respect to Professor Duche and Dr. Carnelutti, the Office of the Public Prosecutor believed that in their capacity as psychologist and psychiatrist, respectively, their contributions had not been determinative to the commission of the crime of torture.

25. On June 2, 2006, the trial court judge, Judge Gelman, ruled on the case and sentenced Sergeant Fortunato to 4 years in prison, having found him guilty of the crime of torture. The judge considered that subjecting Ms. Luna to positions that caused her to experience pain, together with the physical and psychological consequences, were consistent with the crime defined and proscribed in Article 100 of the Criminal Code of Azar. In parallel, the judge ruled that the inhuman conditions of detention to which Ms. Luna had been exposed did not fit the criminal definition of torture because Ms. Luna’s experience was the result of a series of unfortunate facts, and not of an act attributable to Sergeant Fortunato. With respect to the humiliation that Ms. Luna suffered during her detention, Judge Gelman found that it had not caused pain of the intensity required to fall within the category of torture.

26. The judge ruled to dismiss the charges against Colonels Jundia and Lona, the Minister of the Interior, the Minister of Defense and the Minister of Justice because the conviction of these individuals for the crime of torture would violate the principle of legality, a long-held constitutional principle respected in international human rights treaties. According to the judge’s interpretation, the crime of torture is an offense whose commission requires

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insurmountable legal obstacles that would require it to violate the rights of the acquitted individuals in order to comply with the Commission's decision.

32. Upon completion of the proceedings outlined in the American Convention and in the Regulations of the Inter-American Commission on Human Rights, the case was submitted to the jurisdiction of the Inter-American Court.