

2014 INTER-AMERICAN MOOT COURT COMPETITION

Case of Cristal Tovar v. Democratic Republic of Exclutia

I. The Democratic Republic of Exclutia

1. The Republic of Exclutia (the Sta [-])TJETBT1 0 0 1 348.07 543.94 Tm(t)-7(ropica)-4(l,)-191(a)-3(nd)

work. Anesí advised Cristal to go to the National Council of Persons with Disabilities of Exclutia (CONADISE) to see whether there was any kind of support or alternatives that the government might offer for individuals with disabilities so they can lead independent lives in their community. The CONADISE worker with whom she met informed her that, although new public policies for persons with disabilities were being developed in Inclutiarán, the only support alternative currently available for people in her situation was to go to a shelter with services appropriate to her needs.

12. A few days later, having little money and convinced that she would not be able to pay the rent and her debts, Cristal moved out of her small apartment. Because Cristal did not want to go to a shelter, she went to a public square where she started begging for money during the day and sleeping on a bench near a fountain. After living for a few days on the street, on August 3, 2006, a police officer who was working for the latest initiative of the capital city's government, "Sheltering our Poor," put her in a patrol car and took her to a shelter called "La Casita."

III. "La Casita"

13. The shelter that Cristal was taken to, "La Casita," housed people with physical, mental, intellectual, and/or sensory disabilities. The shelter also had all kinds of homeless

Public Ministry or a civil judge. In the case of persons with disabilities in residential institutions who do not have relatives to care for them, the directors may request a declaration of incompetency as provided herein.

3. The request for a declaration of incompetency must include a medical report, a statement of the facts supporting the need for a declaration of incompetency, and the specification of the relationship or affiliation between the petitioner and the person subject to the proceeding for a declaration of incompetency.
4. Upon verification of the admissibility requirements, the judge shall hold a hearing that must be attended by the Public Ministry and the person requesting the declaration of incompetency.
5. In the event that the judge declares the incompetency of a person with disabilities, based on the documentation submitted with the request for the declaration and on the expert testimony deemed appropriate, the judge shall establish the extent and limits of the guardianship according to the type of disability. A guardian shall be appointed in the same judgment to represent the person declared incompetent.
6. All judgments of incompetency must be recorded at the Office of Vital Records.
7. The judge shall determine the review periods for the declaration of incompetency in each case.
8. The Public Ministry or the guardian may request the review and/or revocation of the declaration of incompetency.

22. On August 25, 2006, Dr. Lira filed a request for the declaration of the incompetency of Cristal Tovar before the VI Civil Court of the city of Inclutiarán. On August 28, 2006, the judge requested that a psychiatrist perform an expert medical examination of Cristal. This expert evidence led to the same conclusion as the initial medical report of August 3. On September 15, 2006, the judge held a hearing attended by Dr. Lira and a representative from the Public Ministry. At the hearing, the judge asked the petitioner whether Cristal had any close relatives. Dr. Lira stated that Cristal had no contact with any relatives, or with any close friends.

23. Upon examining the documentation submitted with the request for a declaration of incompetency, hearing Dr. Lira's testimony, and considering the information presented by the expert witness, on September 29, 2006, the judge declared Cristal to be incompetent pursuant to Article 41 of the Civil Code, and appointed Dr. Lira as her representative.

VI. Situation of Cristal Tovar at " La Casita" shelter

24. Upon her arrival at " La Casita," Cristal was taken to a room where she was given a haircut. The staff told her that this was done to all of the residents for purposes of hygiene. During the initial days, some of the residents in her area approached Cristal to meet her. They told her that they wore old, ill-fitting clothes, and that some of them did not have shoes. Some of them also told her that they had been living at " La Casita" for 20 years. Cristal witnessed at least three occasions on which residents of the shelter were locked in the isolation rooms. The hospital staff indicated that the individuals in crisis

32. On February 21, 2008, the ODNEI filed a motion to vacate challenging the declaration of incompetency entered in the case of Cristal Tovar. In a decision dated September 18, 2008, the trial court judge ruled the motion inadmissible for lack of standing. The judge held that Exclutia's Code of Civil Procedure establishes that only the Public Ministry or the incompetent person's guardian may request the review and/or revocation of the declaration of incompetency.

33. The ODNEI appealed that decision on October 1, 2008. The Court of Appeals of Inclutiarán decided to subpoena Dr. Lira to appear at the hearing. Dr. Lira stated before the court that Cristal was receiving adequate care at "La Casita" and that there was no better place for her to receive medical treatment, which was provided on the instructions

the grounds that it was not timely filed, and therefore the Court should not rule on the merits. For its part, the Commission maintained that the petition was filed within the six-month period calculated from the April 18, 2009 decision of the Court of Appeals. It added that the State, during the admissibility period before the IACHR, failed to submit