

# WorldCourts™

---

Institution:	Inter-American Commission on Human Rights
File Number(s):	Report No. 48/96; Case 11.553
Session:	Ninty-Third Regular Session (30 September – 18 October 1996)
Title/Style of Cause:	Emerita Montoya Gonzalez v. Costa Rica
Doc. Type:	Decision
Decided by:	Chairman: Professor Claudio Grossman; First Vice Chairman: Ambassador John S. Donaldson; Second Vice Chairman: Professor Carlos Ayala Corao; Members: Dr. Oscar Lujan Fappiano, Professor Robert Kogod Goldman, Dr. Jean Joseph Exume, Ambassador Alvaro Tirado Mejia.
Dated:	16 October 1996
Citation:	Montoya Gonzalez v. Costa Rica, Case 11.553, Inter-Am. C.H.R., Report No. 48/96, OEA/Ser.L/V/II.95, doc. 7 rev. (1996)
Represented by:	APPLICANTS: Ariel Dulitzky and Marcela Matamoros
Terms of Use:	Your use of this document constitutes your consent to the Terms and Conditions found at <a href="http://www.worldcourts.com/index/eng/terms.htm">www.worldcourts.com/index/eng/terms.htm</a>

---

## I. BACKGROUND

### A. Context

1. The petition alleges that the municipal organizers of athletic competitions in Costa Rica discriminated against women athletes, in particular, against the applicant, Emérita Montoya González, by arbitrarily establishing lower prizes for female athletes as compared with male athletes despite a regulation that provides that the categories and prizes shall be equal. Since the organizers were a municipality, state responsibility for the action is imputed. The applicant alleges that the authorities established fewer categories for women than men and that the prizes for the women were lower than for men in the same category of competition. In particular, Mrs. Montoya, on August 28, 1993, wished to participate in the marathon in the municipality of Heredia, and the regulations for the 12 kilometer race established categories for male "juveniles" and "veterans" which were not established for females.

2. The applicant alleges that the State of Costa Rica has violated Articles 1.1 (obligation to respect rights), 8.1 (right to a fair trial), 24 (right to equal protection) and 25.1 (right to judicial protection) of the American Convention on Human Rights.

### B. The Facts

3. The applicant, Mrs. Emérita Montoya González, is represented in this case by the Center for Justice and International Law (CEJIL), the Asociación Ventana and Disabled People International (DPI). The petition was presented to the Commission by letter dated November 3, 1995, which was received on November 7th.

4. On August 28, 1993 the municipality of Heredia and the Costa Rican Federation of Athletics organized the Second Municipal Race. The rules for the 12 kilometer race, in Article 11, excluded the categories of "juveniles" and "veterans" for female runners although these categories were established for male runners.

5. Article 19 of these rules established a first place prize for male runners in the amount of 20,000 Costa Rican colones whereas the first place prize for female runners was set at 10,000 colones. The second place prize for male runners was set at 15,000 colones, whereas the second place prize for female runners was only 5,000 colones. In addition, the rules contemplated a third place only for male runners, and the prize was 10,000 colones, equivalent to the first place prize for female runners.

6. The applicant stated that Mrs. Emérita Montoya registered to run the race but without the possibility of obtaining a prize in case she would have been first in her category since the rules had eliminated her category ("veterans") for female runners.

7. The domestic law of the Costa Rica, in particular, Decree Law number 191189-c, provides that all competitive sports must provide equal prizes for men and women. Applicant alleges that Costa Rican law promotes equality between men and women and does not allow for arbitrary discrimination based on sex. Applicant further alleges that the law is not observed in practice as is shown by the activities of state authorities, such as the municipality of Heredia, which organize discriminatory footraces.

#### C. Violations Alleged

8. The applicant alleges that the State of Costa Rica has violated Articles 1.1 (obligation to respect rights), 8.1 (right to a fair trial), 24 (right to equal protection) and 25.1 (right to judicial protection) of the American Convention on Human Rights. Mrs. Montoya presented a writ of amparo to the Constitutional Chamber of the Supreme Court of Costa Rica on August 23, 1993, alleging that the failure to establish the same categories for female runners that existed for male runners, and the difference in the prizes for male and female runners were discriminatory actions which prejudiced her. The applicant states that the Constitutional Chamber of the Costa Rican Supreme Court rejected ad portas the writ of amparo presented on the applicant's behalf. The applicant was not notified until May 1995 that the writ had been rejected and she alleges that there is no other simple and effective remedy available in Costa Rica for the human rights violation which is the subject matter of this case.

#### D. Relief Requested

9. The applicant requests that 1) the case be opened and processed pursuant to Articles 46-51 of the American Convention and Article 19 of the Rules of Procedure of the Commission; that the complaint be transmitted to the Government of Costa Rica pursuant to Article 48 of the Convention; and that 2) Costa Rica be found to have violated Articles 1.1, 8, 24 and 25.1 of the Convention; and that compensation be ordered and paid pursuant to Article 63 of the Convention.

## II. PROCEEDINGS BEFORE THE COMMISSION

10. On December 5, 1995, the Commission acknowledged receipt of the complaint and transmitted the pertinent parts of the complaint to the Government of Costa Rica and requested it to provide whatever information it deemed appropriate within 90 days.

11. By note dated January 16, 1996, and faxed to the Commission on the same date, the Government of Costa Rica indicated that it did not receive the complaint until January 10th and requested an extension

of time within which to respond. By letter dated January 24, 1996, the Commission granted an additional period (of 45 calendar days from the date of its letter) for the Government to respond.

12. By note dated March 13, 1996 the Government of Costa Rica responded to the complaint. The Government argued that the case should be declared inadmissible by the Commission pursuant to Article 47.b of the American Convention for failing to "state facts that tend to establish a violation of the rights guaranteed by this Convention."

13. The Government disputed the applicant's allegation that the writ of amparo is not a simple and efficient means of redressing violations of fundamental human rights in Costa Rica. The Government pointed out that this writ is invoked massively by Costa Rican nationals and foreigners and that the Constitutional Chamber of the Supreme Court has decided more than 25,000 cases in the last 6 years. In addition, the Government noted that the writ of amparo is also used to impugn administrative norms and actions. It does not follow, however, the Government concluded, that when one presents a writ of amparo that one will win one's case, and that although the writ of amparo is the appropriate remedy in this case, it does not follow that the Costa Rican Supreme Court will automatically favor the position of the applicant.

14. The Government pointed out that there were also other remedies that Mrs. Montoya could have invoked such as the writ of amparo of legality ("el amparo de legalidad"), which is set forth in Article 357 of the Law on Public Administration (#6227 of 1978); precautionary measures set forth in Article 242 of the Code of Civil Procedure by which a civil judge is empowered to suspend an action which, in his opinion, could be prejudicial to the interests of one of the parties, or by which an administrative judge is empowered to suspend a similar administrative action.

15. In addition, the Government stated that the applicant could have challenged, in the Costa Rican Supreme Court, the constitutionality of the rules for the 12 kilometer race that became the subject matter of the case before the Commission. Costa Rican law permits challenging the constitutionality of a law as part of a writ of amparo action. Having presented a writ of amparo, Mrs. Emérita Montoya could have challenged the constitutionality of the rules of procedure of the race, since they were legal norms issued by the municipality of Heredia for the event. The fact that she did not do so, the Government alleged, was not due to any legal obstacle but rather to incorrect legal advice or her own negligence. In addition, the Government noted, she could have challenged the legality of the rules of the race in an administrative action, pursuant to Costa Rican administrative law.

16. The Government of Costa Rica argued further, in its response dated March 13, 1996, that the applicant had no standing to bring this action. At the time of the race, August 28, 1993, she could not have participated in the "juveniles" category since she was 36 years of age and not a juvenile. She also could not have participated in the "veterans" category, since the lowest age to participate in that category would have been 40 years of age. Consequently Mrs. Montoya only qualified for the category of "adults" which did in fact exist.[FN1]In order to apply for a judicial, administrative or other remedy before an international body it is necessary that the applicant demonstrate standing to bring the action.

---

[FN1] The Government pointed that the rules for the 12 kilometer race had been amended in 1993 and the categories for "juveniles" and "veterans" eliminated for women. In 1992 the category "juveniles" included those up to the age of 17 years 11 months and 29 days; "adults" included those from 18 - 39 years, 11 months and 29 days; "veterans" included those aged 40 and above.

---

17. In addition, the Government of Costa Rica pointed out that the applicant, Mrs. Montoya did not even participate in the race, although her category existed and she could have competed. Since she did not

participate, the Government argued, there could not have been a violation of her rights since none of her interests could have been affected. From the information submitted by the municipality of Heredia, the Government stated that from the 13 participants who registered for the 12 kilometer race on August 28, 1993, only Mrs. Emérita Montoya is missing from the final list of runners whose times were registered, leading it to conclude that she either did not run the race or abandoned it.

18. The Government of Costa Rica emphasized that in the 1992 race only one woman wished to run in the "veterans" category and only four in the "juveniles" category, and for that reason these categories were excluded in the 1993 race for female runners. In the 1993 race, the Government pointed out, the prizes for the female runners were not less than the prizes for the male runners, but were in proportion to their participation in the race, since the prizes are derived from the entry fees paid by the participants. In the 1993 race only 13 female runners participated, and they were between the ages of 26 and 38 years of age, all in the "adult" category, compared to the 116 male runners who participated. Consequently, the differences in prizes was not arbitrary discrimination but in direct proportion to the participation of the runners and their payment of entry fees from which the prizes were derived.

19. In conclusion, the Government of Costa Rica requested that the Commission declare this petition inadmissible for failure to state a violation of the American Convention. The Government stated that Mrs. Montoya accepts that it is not discriminatory to create separate categories for male and female runners; accepts that to create one category for female runners is not discriminatory; accepts that her interest is not in competition but in winning prizes; has no right to request inclusion in a category to which she does not belong (in the 1993 12 kilometer race held in Heredia); has no right to request prizes different from the category for which she qualified, first, because she did not place well in the race since she did not run or complete it; has no standing to present complaints of a general character since there are no identified victims or no one who can show that her interests have been negatively affected; and, in addition, she has presented no information to show that she has exhausted her domestic remedies.

20. The Government's reply was transmitted to the applicant on April 9, 1996, who were requested to submit their observations thereon within a period of 45 days. By note dated May 22, 1996, the applicant requested an extension of time within which to formulate her observations on the reply of the Government. By letter dated May 24, 1996, the Commission gave the applicant an extension of 45 days from the date of the letter to submit her reply.

21. The applicant submitted her observations on the Government's reply by letter dated July 8, 1996, and requested that the Commission formally admit the case and grant a hearing to the applicant during the next period of sessions. The applicant's observations were transmitted to the Government of Costa Rica by letter dated July 18, 1996. A hearing was held on the admissibility of this case on October 8, 1996 from 9:00 am until 10:30 am at the headquarters of the Commission in Washington, D.C. Representing the Government of Costa Rica were Ambassadors on Special Mission, Lic. Fabián Volio and Dr. Linnethe Flores Arias, and representing the applicants were the lawyers, Mr. Ariel Dulitzky and Ms. Marcela Matamoros from CEJIL, and CEJIL/MESOAMERICA, respectively.

### III. THE QUESTION REGARDING ADMISSIBILITY AT ISSUE IN THIS CASE

#### A. Grounds of Inadmissibility

22. The Government of Costa Rica has requested the Commission to declare

this case inadmissible on the grounds that the petition "does not state facts that tend to establish a violation of the rights guaranteed by this Convention."

23. Article 47 of the American Convention states that the Commission shall consider a petition inadmissible if:

- a. any of the requirements indicated in Article 46 have not been met;
- b. the petition or communication does not state facts that tend to establish a violation of the rights guaranteed by this Convention;
- c. the statements of the petitioner or of the State indicate that the petition or communication is manifestly groundless or obviously out of order; or
- d. the petition or communication is substantially the same as one previously studied by the Commission or by another international organization.

24. The formal admissibility requirements sets forth in Article 46 of the American Convention have been met by the applicants. Applicant alleged that a writ of amparo was presented to the Supreme Court and dismissed in 1993. The petition was lodged within a period of 6 months from the date (May 1995) on which the applicant was notified of the dismissal of the writ of amparo. Applicant alleged that the domestic legislation of Costa Rica is inadequate in protecting the rights of the victim, since there is no simple and rapid remedy for the violation alleged and, therefore, there are no further domestic remedies to exhaust. The subject matter of the petition is not pending in another international proceeding for settlement. The petition contained the name, nationality, profession, domicile and signature of the individual and organizations lodging the petition.

25. The petition is not manifestly groundless or obviously out of order and the petition is not substantially the same as one previously studied by the Commission or by another international organization.

26. Having eliminated the grounds sets forth in Article 47.a, c. and d., the Commission now proceeds to consider the remaining condition, set forth in Article 47.b.

B. Does the petition state facts that tend to establish a violation of the rights guaranteed by this Convention?

27. Article 44 of the American Convention provides that "[A]ny person or group of persons, or any nongovernmental entity legally recognized in one or more member states of the Organization, may lodge petitions with the Commission containing denunciations or complaints of violation of this Convention by a State Party." Unlike the provisions of the European Convention and the United Nations Covenant on Civil and Political Rights the applicant need not claim to be the victim of the violation of the Convention in the inter-American system.

28. The liberal standing requirement of the inter-American system should not be interpreted, however, to mean that a case can be presented before the Commission in abstracto. An individual cannot institute an *actio popularis* and present a complaint against a law without establishing some active legitimation justifying his standing before the Commission. The applicant must claim to be a victim of a violation of the Convention, or must appear before the Commission as a representative of a putative victim of a violation of the Convention by a state party. It is not sufficient for an applicant to claim that the mere existence of a law violates her rights under the American Convention, it is necessary that the law have been applied to her detriment. If the applicant fails to establish active legitimation, the Commission must declare its incompetence *ratione personae* to consider the matter.

29. In this case the issue is whether Mrs. Emérita Montoya González suffered a violation of any right protected by the American Convention as a result of an action taken by the State of Costa Rica, sufficient to give her standing to bring this action before the Inter-American Commission on Human Rights.

30. The applicant, Mrs. Montoya, was 36 years of age at the time of the race that she wished to enter on August 28, 1993. At the time the rules for the female runners, established by the municipality of Heredia which organized the race, provided for only one category of female runners. That category was for "adult" runners, and excluded the categories of female "juveniles" or "veterans." Mrs. Montoya claims to belong in the category of female "veterans," although in 1992 the "veterans" category was comprised of female runners aged 40 and above and Mrs. Montoya in 1993 was only 36 years of age. During the hearing on this case the representatives of the applicant admitted that Mrs. Montoya did not run in this race, the rules of which she is challenging, because the category of "veterans," into which she felt she belonged, did not exist. When the representatives of the applicant were asked why Mrs. Montoya wanted to run as a "veteran" since she was only 36 year old, the reply was that she wanted the category of "veterans" to be established for women aged 35 and above.

31. It is clear that the applicant in this case has not established active legitimation to appear before the Commission and that the Commission must consider itself incompetent to consider this matter *ratione personae*. The applicant did not qualify to run in the "veterans" category since she was under the age of 40 at the time of the race in 1993, and she chose not to run in the "adult" category for which she qualified, which might have demonstrated the need for a "veterans" category for female runners, had female runners over the age of 35 participated in significant numbers and placed significantly behind the female runners under the age of 35. In fact, the Government of Costa Rica provided information which proved the contrary, in that the three female athletes who placed first, second and third in the 1993 race in which Mrs. Montoya did not participate, all running in the "adult" category, were respectively 36, 33 and 26 years of age.

32. Consequently,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

33. To declare inadmissible *ratione personae*, in accordance with Article 47.b of the American Convention, the petition presented in the instant case, number 11.553.

34. To send this report, declaring inadmissible the petition, to the Government of Costa Rica and to the applicants.

35. To publish this report in the Annual Report to the General Assembly of the OAS.