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Institution:	Inter-American Commission on Human Rights
File Number(s):	Report No. 118/01; Case 12.230
Session:	Hundred and Thirteenth Regular Session (9 – 17 October and 12 – 16 November 2001)
Title/Style of Cause:	Zoilamerica Narvaez Murillo v. Nicaragua
Doc. Type:	Decision
Decided by:	President: Claudio Grossman; First Vice-President: Juan Mendez; Second Vice-President: Marta Altolaguirre; Commissioners: Helio Bicudo, Robert K. Goldman, Peter Laurie, Julio Prado Vallejo.
Dated:	15 October 2001
Citation:	Narvaez Murillo v. Nicaragua, Case 12.230, Inter-Am. C.H.R., Report No. 118/01, OEA/Ser./L/V/II.114, doc. 5 rev. (2001)
Represented by:	APPLICANT: Vilma Nunez de Escorcía
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## I. SUMMARY OF THE ALLEGED INCIDENTS

1. On October 27, 1999, the Inter-American Commission on Human Rights (hereinafter “the Commission” or “the IACHR”) received a petition sent by Ms. Zoilamérica Narváez Murillo, the alleged victim, and Vilma Núñez de Escorcía, her legal representative and the president of the Nicaraguan Human Rights Center (hereinafter “the petitioners”), against the State of Nicaragua (hereinafter “the State” or “Nicaragua”), alleging that the State had violated Zoilamérica Narváez’s right to be heard by a competent court or judge. Ms. Narváez filed suit with the First District Criminal Court in Managua on June 5, 1998, in connection with the alleged physical and psychological violence she suffered at the hands of her adoptive father, Mr. Daniel Ortega Saavedra, currently a deputy serving in Nicaragua’s National Assembly.

2. According to the petitioners, the State of Nicaragua violated Articles 1 (obligation to respect rights), 2 (obligation to adopt domestic legal provisions), 8 (right to a fair trial), 24 (equality before the law), and 25 (judicial protection) of the American Convention on Human Rights, together with Article 7, sections b, d, e, f, and g, of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women, in that the National Assembly still has not issued a decision regarding the request for annulment of congressional immunity filed by Ms. Narváez against Deputy Ortega, which has prevented the alleged victim from enjoying access to justice for the restitution of her violated rights.

3. The Nicaraguan State maintains that it has not denied Ms. Zoilamérica Narváez Murillo access to justice and holds that in the case at hand, the authorities acted in accordance with

domestic law and the American Convention. The State also holds that the remedies provided by domestic jurisdiction were not exhausted in this case, in that there was a Special Commission charged with studying and ruling on Deputy Ortega's annulment of congressional immunity, in accordance with the procedure set forth in the Immunity Law. It therefore requests that Commission declare the petitioners' claim inadmissible on the grounds of noncompliance with the requirement of first exhausting domestic remedies contained in Article 46(1)(a) of the American Convention. In reply, the petitioners maintain that the complaint they lodged with the IACHR is covered by the exceptions to the prior exhaustion requirement described in Article 46(2)(b) and (c) of the American Convention.

4. At its 113th regular session, held on October 9-19, 2001, the Commission analyzed the legal considerations and factual evidence submitted by the parties during the processing of this complaint and decided to declare the case admissible in accordance with the provisions of Articles 46 and 47 of the American Convention.

## II. PROCESSING BEFORE THE COMMISSION

5. On October 27, 1999, the Commission received the petition filed by Ms. Zoilamérica Narváez Murillo and Ms. Vilma Núñez de Escorcia against the State of Nicaragua. On November 8, 1999, in accordance with Article 34 of its Regulations in force before April 30, 2001, the Commission began its processing of Case 12.230 and asked the State to submit the relevant information, granting it a period of 90 days to comply. On that same date, it informed the petitioners that the case had been opened.

6. On January 13, 2000, the State submitted its comments, indicating that the remedies provided by domestic law had not been exhausted in this case. This information was sent to the petitioners on February 15, 2000, along with a request for their comments on it.

7. On January 14, 2000, the petitioners sent the Commission additional information, which was forwarded to the State on February 16, 2000. On March 27, 2000, the petitioners sent the Commission their reply to the State's comments. This information was sent to the State of Nicaragua on March 31, 2000, with a period of 30 days in which it could submit its comments.

8. On August 22, 2000, the Commission received a communication from the petitioners in which they sought to appear at a hearing before the IACHR. In a note dated September 11, 2000, the Commission indicated that it was unable to receive them at a hearing because the request was lodged extemporaneously.

9. On September 27, 2000, the State submitted its comments, in which it reiterated that the domestic remedies available had not been exhausted in the case at hand. In accordance with procedure, that information was sent to the petitioners on October 6, 2000.

10. On December 13, 2000, the petitioners sent their comments on the Nicaraguan State's reply. The Commission forwarded those comments to the State of Nicaragua on December 19, 2000, with a 30-day period for it to reply. On April 25, 2001, the State replied to the petitioners'

comments, repeating the same position as in its previous submissions. On June 26, 2001, the petitioners submitted their comments on the State's reply.

### III. POSITIONS OF THE PARTIES

#### A. Petitioners

11. The petitioners claim that the State of Nicaragua violated Ms. Zoilamérica Narváez's right to a fair trial in that it did allow the crimes of sexual abuse reported to the First District Criminal Court of Managua to go unpunished by failing to suspend Dep. Daniel Ortega's congressional immunity. The petitioners claim that the legislature hindered her access to justice by failing to process the request for the deputy's immunity to be lifted in accordance with the procedure described in the Immunity Law; and, in spite of the procedural formalities followed by Ms. Narváez, this situation could not be overcome because of a lack of political will on the part of the legislature and because there was no further remedy through which that state body could have been required to initiate proceedings toward the suspension of his immunity. They consequently believe that the exceptions set forth in Article 46(2)(b) and (c) of the American Convention apply in this case.

12. The petitioners claim that the National Assembly, as a state body, did not abide by the terms of the Immunity Law (N° 83) and, in spite of their repeated requests for the deputy's immunity to be suspended, no decision was given until this case was brought before the Inter-American Commission on Human Rights. After the case had been brought to the Commission's attention, in a document dated December 7, 1999, the State sent the petitioner notification of the decision by the National Assembly's Steering Committee, adopted at its meeting N° 033-99 on November 25, 1999, regarding her request for suspension of immunity.

13. The petitioners maintain that in that decision, the National Assembly distorted and manipulated Ms. Zoilamérica Narváez's claims, in that it ruled on the suspension or loss of deputy status, which is governed by the Assembly's internal regulations, and not on the procedure for the suspension of immunity sought by the petitioner, which is governed by the Immunity Law. The petitioners also claim that the State acted deceitfully, in that it sent the Commission a different resolution from the one it sent Ms. Narváez on December 7, 1999.

#### B. State

14. The State maintains that at no time did the legislature obstruct the petitioner's access to justice. In this regard it points out that the First District Criminal Judge in Managua remitted the documents she was given to the National Assembly, in accordance with the Immunity Law, since her court was not competent to hear the suit filed by Ms. Zoilamérica Narváez without first pursuing the suspension of immunity in accordance with Nicaraguan law. The State also claims that the petitioner enjoyed full access to domestic remedies, in that she sought the suspension of Dep. Ortega's immunity and also requested, by means of an incidental motion, a prior ruling on whether he was in full enjoyment of his congressional position or had abandoned his functions.

15. The State holds that domestic jurisdiction has not been exhausted, in that the National Assembly's Steering Committee, at a meeting on November 25, 1999, unanimously resolved to analyze the incidents reported by Ms. Narváez and agreed to set up a Special Commission to study and issue a ruling on the lifting of Dep. Ortega's immunity in accordance with the procedure set forth in the Immunity Law. The State adds that Ms. Narváez did not file for amparo relief against the resolutions of the National Assembly's Steering Committee, as allowed by Article 51 of the Amparo Law. The State therefore requests that the Commission declare the petitioners' claims inadmissible, pursuant to the terms of Article 46(1)(a) of the American Convention.

#### IV. COMPETENCE AND ADMISSIBILITY

##### A. Competence of the Commission

16. Having seen the background of the complaint and the way in which it has been processed per the descriptions in the above paragraphs, the Commission sees the admissibility of the case in the following terms:

17. The Commission may hear a case brought before it provided that, *prima facie*, it meets the formal admissibility requirements set forth in Articles 46 and 47 of the American Convention.

18. Under Article 44 of the Convention, the petitioners are entitled to lodge complaints with the IACHR. The petition names, as its alleged victims, individual persons with respect to whom the State of Nicaragua had assumed the commitment of respecting and ensuring the rights enshrined in the American Convention. With respect to the State, the Commission notes that Nicaragua has been a party to the Convention since September 25, 1979, when it deposited the corresponding instrument of ratification. The Commission therefore has competence *ratione personae* to examine Ms. Zoilamérica Narváez Murillo's complaint.

19. The Commission has competence *ratione loci* to deal with this petition, since it alleges violations of rights protected by the American Convention occurring within the territory of a state party there to.

20. The Commission has competence *ratione temporis*, since the obligation of respecting and ensuring the rights protected by the American Convention was already in force for the State, on the date on which the incidents described in the petition allegedly occurred.

21. Finally, the Commission has competence *ratione materiae*, since the petition describes violations of human rights protected by the American Convention.

##### B. Admissibility requirements of the petition

22. The Commission will now examine whether this petition meets the admissibility requirements set forth in Articles 46 and 47 of the American Convention.

a. Exhaustion of domestic remedies and timeliness of the petition

23. The Commission has, on repeated occasions, stressed the “reinforcing or complementary” nature of the inter-American human rights protection system. This rule allows states to resolve matters within their own legal frameworks before facing international proceedings.

24. The State holds that the petitioners’ complaint should be declared inadmissible because a decision on the case is still pending. The petitioners, in turn, claim that they did consult the competent authorities; however, the domestic remedies they pursued were fruitless, and the failure of the National Assembly to resolve their request for the lifting of congressional immunity has denied them the access to justice that would remedy the violated rights.

25. Article 46(1)(a) of the Convention stipulates that: “Admission by the Commission of a petition or communication... shall be subject to the following requirements: that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law.” However, Article 46(2) provides that this requirement shall not apply when:

- (a) the domestic legislation of the state concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated;
- (b) the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; or,
- (c) there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

26. In this connection, the Inter-American Court of Human Rights has maintained that petitioners must only exhaust those remedies that are “adequate” for redressing the alleged violation. It should be noted that the function of those remedies within the domestic legal system must be suitable for addressing an infringement of a legal right.[FN1]

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[FN1] Inter-American Court of Human Rights, Velásquez Rodríguez Case, Judgment of July 29, 1988, paragraph 63.

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27. In the case at hand, the petitioners claim to have exhausted the remedies provided by domestic jurisdiction, in that the petitioner filed suit against Mr. Daniel Ortega with the First District Criminal Court in Managua on June 5, 1998, for the crimes of sexual abuse, rape, and sexual harassment. In that same suit, Ms. Narváez asked for the National Assembly to be requested to begin proceedings to suspend Mr. Ortega’s congressional immunity, pursuant to the provisions of the Immunity Law (Nº 83). Her suit was admitted by the judicial decision of June 9, 1998.

28. On June 15, 1998, Dep. Daniel Ortega submitted a document to the First District Criminal Court, asking the judge to dismiss the suit because, as a member of the Assembly and in accordance with Article 139 of Nicaragua’s Constitution, he enjoyed congressional immunity.

He also denied the allegations made against him and further stated that statutory limitations were applicable to some of them.

29. In a ruling dated June 17, 1998, the judge in charge of proceedings revoked the admission of the suit and forwarded the case documents to the National Assembly to enable its secretariat to report to the Steering Committee and for the steps set forth in the Immunity Law to be taken.

30. On June 22, 1998, Ms. Zoilamérica Narváez filed a request for the suspension of Dep. Daniel Ortega's immunity with the secretariat of the National Assembly and, on June 24, asked the secretariat to check that he was attending the Assembly's sessions. On August 21, September 9 and 11, and October 8, 1998, the petitioner reiterated her request to the National Assembly.

31. On October 28, 1998, the National Assembly presented Ms. Zoilamérica Narváez with a certified copy of the Steering Committee's resolution ordering the case to be forwarded to the Legislative Advisory Directorate for it to provide the Steering Committee with its considerations on the matter.

32. On December 7, 1999, the National Assembly notified Ms. Narváez of Resolution N° 033-99 of November 25, 1999, in which the National Assembly's Steering Committee considered her request for the Assembly to issue a statement on "whether Deputy Daniel Ortega Saavedra did or did not enjoy special congressional immunity because, as she [Ms. Narváez] stated, Art. 130 of the Constitution provides that immunity shall not apply in cases involving family rights, and she holds that the crimes for which she has filed suit against Deputy Daniel Ortega must be considered crimes against the family and, as such, would be covered by family rights."

33. In that regard, the Steering Committee pointed out that: "Article 130 of the Constitution textually sets out the exception of immunity for Family Rights, which refers solely and exclusively to civil matters related to family law—for example: marriage, divorce, children, family relationships, child custody, alimony, etc.—and does not refer at all to matters of a criminal nature; were that so, it would have expressly specified crimes against the family, a turn of phrase that the framers of the Constitution chose not to use. Nicaraguan law has established it in those terms. Originally, family law was conceived of as belonging entirely to civil law, and it has fallen to the civil courts to resolve issues arising in this regard and to distinguish them from criminal matters. The new Organic Law of the Judicial Branch clearly indicates the distinction that exists, with different courts and tribunals responsible for dealing with these matters."

34. The National Assembly's Steering Committee added: "Furthermore, the current Criminal Code does not contain this kind of crimes against the family; on the contrary, our Code solely covers crimes against people and crimes that affect people's civil status. We should remember the PRINCIPLE OF CRIMINAL LEGALITY enshrined in Article 34(11) of the Constitution, which guarantees that a person shall not stand trial or be convicted for an action or failure to act that, at the time it took place, was not expressly and unequivocally defined by law as a punishable offense..." Similarly, Article 13 of the Criminal Code provides that: "Broad interpretations are prohibited in criminal proceedings. Judges shall abide strictly by the letter of

the law. When doubts arise, the law shall be interpreted in the fashion most favorable to the accused.”

35. Finally, the Steering Committee of the National Assembly said that: “The case submitted by Ms. Narváez Murillo clearly involves a suit and an accusation that is not a civil matter, and civil matters are the arena of the family law that enjoys constitutional exemption from immunity; in contrast, this is clearly a criminal matter, one that is not covered by the exemption of immunity established in Article 130 of the Constitution, and one that is instead governed by current criminal law.”

36. Consequently, the National Assembly’s Steering Committee resolved, on the one hand, “to declare groundless the objection filed and to reaffirm that in this case, Deputy Daniel Ortega Saavedra enjoys immunity,” and, on the other, “to create a Special Commission to hear and resolve the proceedings referred to the First Secretariat by the First District Criminal Court of Managua in the suit brought by Ms. Zoilamérica Narváez Murillo against Deputy Daniel Ortega Saavedra.”[FN2]

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[FN2] Jointly transmitted with decision N° 033-99 by the National Assembly’s Steering Committee was a note, dated January 3, 2000, that the Assembly’s First Secretary sent to Nicaragua’s Vice-Minister for Foreign Affairs. In that note, the First Secretary explained that the Special Commission responsible for studying and ruling on the lifting of Mr. Ortega’s congressional immunity had already been created, but its members had not yet been appointed.

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37. The State recognizes that Ms. Narváez’s requests and arguments forced the National Assembly to render a decision on the incidental and special proceedings, which was published in Deed N° 033/99, “which led it to delay its main decision regarding the request for Deputy Ortega Saavedra’s immunity to be lifted, so that a ruling on the incidental matters could be given.”[FN3] The State claims that the creation of this Special Commission demonstrates that domestic jurisdiction has not been exhausted, since this is the procedure set by the Immunity Law and, consequently, represents the instance responsible for deciding on the suspension of Dep. Daniel Ortega’s immunity. However, the State notes that: “Although it is true that the Commission has been created... the appointment of its five members has still to be made.” [FN4]

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[FN3] Comments by the State of Nicaragua, April 25, 2001, p. 2.

[FN4] Ibid., p. 3.

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38. Finally, in its claims the State adds that domestic remedies have not been exhausted, in that Ms. Narváez did not file for amparo relief against the resolutions of the National Assembly’s Steering Committee.[FN5] In this regard, the petitioner has said that under Article 51 of the Amparo Law, this remedy is not admissible against legislative resolutions or actions of the National Assembly; the petitioner is therefore defenseless, since there is no remedy that can

oblige the legislative branch to resolve her complaint in the terms established by the Immunity Law.

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[FN5] Comments by the State of Nicaragua, April 25, 2001, p. 3.

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39. The Inter-American Commission notes that the Immunity Law requires that the National Assembly's Steering Committee immediately appoint a Commission to study and issue a ruling on complaints brought before it. In addition, the procedure set forth in the Immunity Law stipulates that after the evidentiary phase—which may not last more 30 days—the Special Commission must hand down a ruling within a period of 10 days, either upholding or dismissing the complaint.[FN6]

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[FN6] The Immunity Law provides as follows:

Art. 8: Following receipt at the National Assembly secretariat of a complaint sent by the President of the Republic or of a complaint lodged with this branch of government, notice shall immediately be given to the Steering Committee and it shall be processed in accordance with the following articles.

Art. 9: The National Assembly Steering Committee shall immediately appoint a Commission, constituted in accordance with the guidelines set in the General Statute of the National Assembly, to study the lodged complaint and to issue a ruling on it. The official against whom the complaint is made shall be informed of the terms of the complaint within 24 hours following the constitution of the Commission, and he shall appear before that Commission no later than six days after his notification thereof for him to make the relevant statements.

Art. 11: The Commission shall remain open to receive evidence for twenty days following the hearing, and this period may be extended for an additional ten days if a request to that effect is made by the Commission or the interested party to the National Assembly's Steering Committee. At the end of that period, the Commission shall issue its ruling within the following ten days. The ruling shall either uphold the admissibility of the complaint or dismiss it.

Art. 13: If 60 percent of the members of the National Assembly vote to uphold the complaint against the official(s), their congressional immunity shall be suspended.

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40. Moreover, as regards the exhaustion of domestic remedies, the Inter-American Commission notes that since Ms. Narváez presented the National Assembly with her request for suspension of the deputy's immunity on June 22, 1998, three years and three months have gone by in which she has not received a final response regarding that application. In particular, the National Assembly's failure to appoint the members who would serve on the Special Commission has kept a decision on Ms. Narváez's request from being issued.[FN7] This has kept the petitioner on indefinite standby and has prevented her from asserting her rights before the regular courts.

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[FN7] The IACHR has not been informed about the appointment of the members of the Special Commission set up by Resolution 033/99 of November 25, 1999, to rule on the immunity of Dep. Daniel Ortega.

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41. For the purposes of the admissibility of this complaint, the Inter-American Commission holds that the petitioner has been denied access to an appropriate judicial remedy for investigating the suit she filed with the courts in Managua, in the terms of the exception set forth in Article 46(2)(b) of the American Convention. The requirements set forth in Article 46(1)(a) and (b) are therefore not applicable in the instant case.

42. Article 46(2) of the Convention is, by reason of its nature and purpose, an autonomous provision with respect to the instrument's substantive provisions. So, the decision as to whether the exceptions to the exhaustion of domestic remedies rule are applicable in the case at hand must be taken before the merits of the case are examined and in isolation from that examination, in that it depends on a different criterion from the one used to determine whether Articles 8 and 25 of the Convention were indeed violated.

43. In the case at hand, the Commission holds that the exhaustion of domestic remedies bears a close relation to the merits of the case, in light of the State's obligation of guaranteeing access to justice and of providing effective judicial remedies as enshrined in the American Convention. Consequently, all issues relating to the effectiveness of domestic remedies will be analyzed in the IACHR's subsequent report on the merits of the allegations.

b. Duplication of proceedings and Res Judicata

44. Article 46(1)(c) of the Convention stipulates that for the Commission to admit a petition or communication, the subject thereof must not be pending in any other international proceeding. In addition, Article 47(d) of the Convention requires the Commission to declare inadmissible any petition or communication that is substantially the same as any other one previously studied by the Commission or by another international organization.

45. The parties' claims and the case documents do not indicate that this petition is pending in any other international proceeding for settlement, nor is it substantially the same as any earlier petition previously examined by the Commission or other international body. The Commission therefore holds that in the case at hand, the admissibility requirements set forth in Articles 46(1)(c) and 47(d) of the American Convention have been met.

c. Characterization of the alleged facts

46. The Commission believes that the petitioners' claims regarding the alleged violation of the right to a fair trial, to equality before the law, and to judicial protection could tend to establish a violation of rights enshrined in Articles 8, 24, and 25 of the American Convention, in conjunction with Article 1 thereof.

47. The petitioners have shown that the alleged violations can be associated with an agency or agents of the state, as required by Article 47(b) of the Convention. The paragraphs containing the analysis of the exhaustion of domestic remedies state that the alleged violations appear to be the result of actions or omissions by agents or officials of the Republic of Nicaragua.

## V. CONCLUSION

48. In accordance with the above considerations, the Commission concludes that this petition meets the admissibility requirements set forth in Articles 46 and 47 of the American Convention on Human Rights. Consequently, the Commission is competent to hear Case N° 12.230.

49. Based on the foregoing considerations of fact and law, and without prejudging the substance of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare this case admissible with respect to the alleged violation of Articles 8, 24, and 25 of the American Convention on Human Rights, in connection with Article 1 there to.
2. With respect to the other rights referred to by the petitioners, to postpone analysis thereof until the merits phase, provided that the allegations are proven.
3. To give notice of this decision to the parties.
4. To continue with the analysis of the merits of this case.
5. To publish this decision and to include it in its Annual Report to the General Assembly of the OAS.

Done and signed by the Inter-American Commission on Human Rights in the city of Washington, D.C., on the fifteenth day of October, 2001. (Signed): Claudio Grossman, President; Juan Méndez, First Vice-President; Marta Altolaguirre, Second Vice-President; Commissioners Hélio Bicudo, Robert K. Goldman, Peter Laurie, and Julio Prado Vallejo.