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Session:	Hundred Twenty-Second Regular Session (23 February – 11 March 2005)
Title/Style of Cause:	Claudia Ivette Gonzalez v. Mexico
Doc. Type:	Decision
Decided by:	President: Clare K. Roberts; First Vice-President: Susana Villaran; Second Vice-President: Paulo Sergio Pinheiro; Commissioners: Evelio Fernandez Arevalos, Jose Zalaquett, Freddy Gutierrez, Florentin Melendez.
Dated:	24 February 2005
Citation:	Ivette Gonzalez v. Mexico, Petition 281/02, Inter-Am. C.H.R., Report No. 16/05, OEA/Ser.L/V/II.124, doc. 5 (2005)
Represented by:	APPLICANTS: Rosario Acosta and Jorge Alberto Gaytan
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## I. SUMMARY

1. On March 6, 2002, the Inter-American Commission on Human Rights (“the Inter-American Commission or “the IACHR”) received a complaint alleging that the United Mexican States (“the State”) incurred international responsibility for irregularities in the investigation into the case of Claudia Ivette González, who disappeared on October 10, 2001 in Ciudad Juárez, State of Chihuahua, and was found murdered on November 6 of that year. The petition was lodged by Josefina González Rodríguez, the mother of the alleged victim, and by Rosario Acosta and Jorge Alberto Gaytán, representing the “Citizens’ Network for Nonviolence and Human Dignity” [“Red Ciudadana de No Violencia y por la Dignidad Humana”] (hereinafter referred to jointly as “the petitioners”).

2. The petitioners allege that the facts reported constitute violations of Articles 8 (paragraphs a, c, d, and h) and 9 of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women (“Convention of Belém do Pará”), and of Articles XIV and XVIII of the American Declaration of the Rights and Duties of Man (“American Declaration”). They further allege the violation of the following provisions of the American Convention on Human Rights (hereinafter the “American Convention”): the obligation to respect and guarantee all rights (Article 1); the obligation to adopt domestic legislation (Article 2); the right to personal liberty (Article 7); the right to protection of one’s honor and dignity (Article 11); and, the right to judicial protection (Article 25). They indicate that all the requirements for admissibility stipulated in that international instrument have been met. The State, on the other hand, contends that judicial proceedings in this case show its will to guarantee respect for the human rights of all persons and that domestic remedies have not been exhausted.

Consequently, the State requests the Inter-American Commission to declare the petition inadmissible.

3. Without prejudice to the merits of the case, the IACHR concludes in this report that the case is admissible, since it meets the requirements stipulated in Articles 46 and 47 of the American Convention. Therefore, the Inter-American Commission decides to notify the parties of the decision and to proceed with an analysis of the merits of the alleged violation of Articles 2, 4, 5, 7, 8, 11, and 25 of the American Convention, considered in relation to Article 1(1) of that international instrument, and of Articles 7, 8, and 9 of the Convention of Belém do Pará. It further decides to publish this report.

## II. PROCESSING BY THE IACHR

4. The petition was lodged on March 6, 2002, along with a communication from the “Citizens’ Network for Nonviolence and Human Dignity.” After an initial study of the case, based on Article 30 of its Rules of Procedure, the IACHR forwarded the relevant parts of the petition to the State on May 29, 2002, and granted it a period of two months to submit its observations. On August 2, 2002, the State requested an extension to present said observations, whereupon the Inter-American Commission extended the deadline to August 29, 2002. On August 30, 2002, a note was received from the State containing the response to the petition. This information was transferred to the petitioners on September 23, 2002, and they were granted a month to submit their observations.

## III. POSITIONS OF THE PARTIES ON ADMISSIBILITY

### A. The petitioners

5. The petitioners charge the State with responsibility for “irregularities and inconsistencies” in the investigation into the disappearance and subsequent death of Claudia Ivette González. Mrs. Josefina González Rodríguez declared as follows:

1. On October 11, when I went to report her missing, the Procuraduría de Justicia [Public Prosecutor’s Office] did not accept the report because “it was already very late.” It was not until the 12th that I could make the report.

2. My family, friends, and other persons nearby had to search the place where we found the body, since the investigative police [Policía Judicial] did not intervene in this matter until almost four weeks had gone by since she disappeared.

3. The Special Prosecutor for Female Homicides at the time, Sully Ponce, despite having responsibility for facilitating these cases, told me in a meeting with her that they were doing everything possible to find her, but that “they had many other cases before my daughter’s case,” and so I had to wait indefinitely.

4. They only took blood samples to test for DNA from my daughter, Mayela, and me and told us that the results would be available in a month. So far, we have never received the results.

5. Four weeks after my daughter disappeared, when they delivered her to me, all I received was a bag of bones. I found it strange that in less than a month, her body would have

disintegrated to that extent. The prosecutor, Zulema Bolívar, told me that it was possible, since the body “could have been attacked by animals, or affected by rain or the soil.”

6. From the time that the body of my daughter was delivered to me, the authorities released themselves from the case, considering it closed.

7. Four months after the body of my daughter was found, on Sunday, February 24 and Monday, February 25, 2002, again family members, friends, and sympathetic groups searched the place where my daughter and seven other young women had been found, and discovered three intact belongings of my daughter, Claudia Ivette. The authorities in charge of the investigation explained this fact by saying that these objects had been placed there “by family members of the two (alleged) murderers.”

6. Based on the foregoing, Mrs. González Rodríguez considers that the government authorities “have not done everything they could have to clarify the case of my daughter’s murder and to provide a clear and truthful explanation of this crime” and that “the ineffectiveness of the investigations shows the lack of determination on the part of the government to clarify and prevent these crimes.” Among other general measures, she requests that the IACHR “state forcefully that the climate of impunity and violation of human rights [of women] must come to an end in the State of Chihuahua, and especially in Ciudad Juárez”.

7. With regard to exhaustion of domestic remedies, the petitioners contend that the exception provided for in Article 46(2)(b) of the American Convention applies, since the case remained open in the domestic jurisdiction up to the date on which the petition was lodged with the Inter-American Commission. Mrs. González Rodríguez further states that she does not have documents in support of the petition, since they were denied her, and that most of the copies given to her by the authorities “have nothing to do with the case of my daughter, and others do not contain information of any value.” Finally, she indicates that she is willing to appear before the IACHR to defend the petition.

## B. The State

8. In response to the petition, the State contends first that “the report on the disappearance of persons was not made by Mrs. Josefina González Rodríguez, but instead by the sister of Claudia Ivette González, Mayela Banda González. It then refers to the testimony as “fact[s] that imply that the authorities acted promptly upon the disappearance of Claudia Ivette González.”[FN1] With regard to the third paragraph of the petition cited above, the State “neither confirms or denies, since the argument is subjective.”

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[FN1] The State contends:

With regard to the content of the second paragraph, it is contradicted by the testimony of Juana González Flores, Ana Isabel Juárez Valencia, Aidé Navarrete García, Armando Velasco Fernández, Verónica Hernández Estrada, Efrén Ámese, Juan Antonio Martínez Jacobo, Víctor Hugo Hernández Domínguez, and Jesús Moisés Cuellar Juárez, between October 12 and 25, 2001.

Communication from the State of Mexico dated August 30, 2002, page 1.

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9. The delay in the results of the DNA studies, according to the State, “is not due to any type of negligence on the part of the local prosecutor, but rather to the process required by these expert reports” and that up to the time of these observations, “the results have not been turned in, but that the IACHR and the petitioner will be informed of them.” As for the fifth paragraph of the petitioners’ response, the State refrains from responding and “only makes reference to the fact that the autopsy was performed, along with craniometrical and dental studies.”

10. The State further alleges that “at no time and under no circumstances does the fact of delivering the body of a murdered person mean that the case is closed, and that this does not even occur when criminal action is brought against the suspected perpetrator.”[FN2] It adds that the Mexican authorities “have redoubled their efforts to exhaust all hypotheses leading to the location and identification of the persons with probable responsibility for the death of the eight female victims.” The State further contends that the investigations have been effective, to the extent that there are seven persons who are serving sentences and that “in the case in point, no material or human resources have been spared to solve it in a similar manner.”

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[FN2] Idem.  
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11. The State asserts that “at no time have the problems experienced by the women in Ciudad Juárez been minimized. On the contrary, meetings have been held with officials and representatives of civil society where “they have studied the possibility of establishing adequate mechanisms to prevent this sort of regrettable events.” The State also refers to the legal action that the government of the State of Chihuahua has taken to resolve the situation of the women in Ciudad Juárez, and to the measures adopted to support the work of the Special Prosecutor for Murders of Women in Ciudad Juárez, as well as the reorganization of the Unit for Care of Victims and Disappeared Persons “with a view to maximizing human resources and enhancing the effectiveness of the service.”

12. The aforesaid information, in the opinion of the State, should be taken into account to “corroborate the political will of the Mexican government to guarantee respect for the human rights of all individuals.” It further alleges that consideration should be given to the criterion established by the Inter-American Court of Human Rights in the matter of prior exhaustion of domestic remedies, a rule that “permits the State to resolve the problem according to its domestic law before being implicated in an international process.”

13. In brief, the State requests that the Inter-American Commission give consideration to the efforts made by the authorities to clarify the deaths of the women in Ciudad Juárez, that it “recognize that transparency was a key element in the prosecution’s action based on the alleged irregularities in the investigation into the death of Claudia Ivette González,” and that it declare the petition inadmissible “by virtue of the fact that it does not fulfill the requirements established for admissibility by the American Convention on Human Rights.”

#### IV. ANALYSIS

A. The Commission's jurisdiction *ratione personae*, *ratione materiae*, *ratione temporis*, and *ratione loci*

14. The petitioners are authorized by Article 44 of the American Convention to lodge petitions with the IACHR. The petition states that the alleged victim is an individual, in respect of whom Mexico undertook the obligation to respect and guarantee the rights enshrined in the American Convention. As regards the State, Mexico has been a party to the American Convention since March 24, 1981, the date on which it deposited the corresponding instrument of ratification. It has also been a party to the Convention of Belém do Pará since November 12, 1998. Consequently, the Commission has personal jurisdiction to consider the petition.

15. The IACHR has jurisdiction of place to take cognizance of the petition, since the alleged violations of the rights protected by the American Convention and the Convention of Belém do Pará took place within the territory of Mexico, a state party to that treaty. In addition, the Inter-American Commission has jurisdiction *ratione temporis*, since the obligation to respect and guarantee the rights protected by the American Convention and the Convention of Belém do Pará were already in force for the State on the date on which the acts alleged in the petition occurred. Finally, the Commission has subject matter jurisdiction, since the petition reports violations of the human rights protected by the American Convention and the Convention of Belém do Pará.

16. With regard to the allegations of violations of the American Declaration, by virtue of the provisions of Articles 23 and 49 of its Rules of Procedure, in principle the Commission has subject matter jurisdiction to examine the violations of the rights enshrined in that Declaration.[FN3] However, the IACHR has previously established[FN4] that once the American Convention enters into force in relation to a State, it is that instrument, and not the Declaration, that becomes the specific source of the law applicable by the Inter-American Commission, provided the petition alleges violations of rights that are substantially identical in the two instruments[FN5] and that the case does not involve a continuing situation.[FN6]

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[FN3] See also the interpretation of the American Declaration of the Rights and Duties of Man, within the framework of Article 64 of the American Convention on Human Rights, Advisory Opinion OC-10/89, July 4, 1989, Inter-American Court, (Ser. A) No. 10 (1989), para. 41.

[FN4] See IACHR, Amílcar Menéndez et al, *supra* note 1, para. 41.

[FN5] Advisory Opinion OC-10/89, *supra*, para. 46.

[FN6] The IACHR has determined that it has jurisdiction to examine violations of the Declaration and the Convention provided that the continuous violation of the rights protected by both instruments is established. See, for instance, IACHR, 1987-88 Annual Report, Resolution 26/88, Case 10,190, Argentina; and IACHR, 1998 Annual Report, Report 38/99, Argentina, para. 13.

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B. Other requirements for admissibility of a petition

1. Exhaustion of domestic remedies

17. Article 46(1)(a) of the American Convention states that admissibility of a petition lodged with the Commission is subject to the requirement “that the remedies under domestic law have been pursued and exhausted, in accordance with generally recognized principles of international law.” Article 46(2) of the Convention establishes three cases in which the rule of exhaustion of domestic remedies does not apply: 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.

18. The parties in the instant case disagree on exhaustion of the domestic remedies in Mexico, and so it is incumbent on the Commission to decide in this matter. The State contends that the requirements under the Convention have not been met; the petitioners, however, invoke the applicability of the exception to this rule referring to cases in which they are not permitted access to the domestic remedies or in which they are prevented from exhausting them.

19. When a State alleges that the remedies of domestic legislation have not been exhausted, it is responsible for indicating which ones must be exhausted and for demonstrating their effectiveness.[FN7] In this case, the petitioners have responsibility for demonstrating that these remedies were exhausted or that one of the exceptions stipulated in Article 46(2) of the American Convention applies.

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[FN7] Inter-American Court, Case of Velásquez Rodríguez, judgment on preliminary objections, para. 88. See also: Case of Fairén Garbi and Solís Corrales, Preliminary Objections, Judgment of June 26, 1987, Series C No. 2, para. 8; Case of Godínez Cruz, Preliminary Objections, Judgment of June 26, 1987, Series C No. 3, para. 90; Case of Gangaram Panday, Preliminary Objections, Judgment of December 4, 1991, Series C No.12, para. 38; Case of Neira Alegría et al, Preliminary Objections, Judgment of December 11, 1991, Series C No.13, para. 30; Case of Castillo Páez, Preliminary Objections, Judgment of January 30, 1996, Series C No. 24, para. 40; Case of Loayza Tamayo, Preliminary Objections, Judgment of January 31, 1996, Series C No. 25, para. 40; Objections to Exhaustion of Domestic Remedies (Art. 46.1, 46.2.a y 46.2.b, American Convention on Human Rights), Advisory Opinion OC-11/90 of August 10, 1990, Series A No.11, para. 41.

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20. In the matter under consideration here, the State has limited its arguments to the fact that domestic remedies were not exhausted and to offering information on the action taken to deal with the problem of violence against women in Ciudad Juárez.[FN8] In addition, it sets forth in general some of the steps taken in the case of Claudia Ivette González, but it does not provide specific information to support the conclusion that the remedies were adequate and effective to the extent required under international standards in the area of human rights.

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[FN8] The Mexican State has also presented information of a general nature on the situation of violence against Women in Ciudad Juárez in the course of hearings scheduled for that purpose,

and also in reports submitted periodically to the IACHR; some of them have references to the instant case. For example, the “Ninth report of the Government of Mexico to the Inter-American Commission on Human Rights on the situation of Women in Ciudad Juárez (August – September 2003, 118th regular sessions” has one such mention in a chart of Annex 4.1 “List of victims with information on the process of investigation, motive, and, where applicable, judgment”. Also, the “Second Report of the Special Prosecutor for crimes related to the homicide of women in the Municipality of Juárez, Chihuahua” dated October 2004, mentions this case at page 93, as part of the proceedings or criminal case 74/04; that same report mentions the instant case at page 105, as part of inquiry PGR/UEDO/176/2003. It must be mentioned that these are simple references to the case, not legal arguments, and, in any event, they were not submitted as part of the pertinent IACHR proceedings.

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21. Without going into the arguments put forward by the parties on the assumed violation of judicial guarantees and protection, the Inter-American Commission observes, on a preliminary basis, that on the date of approval of this report, nearly three and a half years have gone by since the disappearance of Claudia Ivette González, and that this fact was reported to the competent authorities. According to the information available to the IACHR, even after her remains were located, the reported facts were never fully brought to light, nor was it determined whether government officials had incurred responsibility, as the petitioners alleged. Moreover, the State has not provided specific information on the measures adopted or progress in the investigation or proceedings involving the alleged perpetrators.

22. Moreover, the Inter-American Commission notes that the petitioners allege that the events in the instant case occurred in a context of numerous murders and forced disappearances of women in Ciudad Juárez, which have been followed by impunity for reasons attributable to the authorities.

23. In the light of the foregoing considerations, and of the facts alleged in this case, the Inter-American Commission establishes, for the purposes of admissibility, that there has been an unwarranted delay on the part of the Mexican courts in issuing a decision with regard to the acts alleged. Consequently, in this case, the IACHR applies the exceptions to the exhaustion of remedies under domestic law stipulated in Article 46(2)(c) of the American Convention.

2. Time period for lodging a petition

24. With regard to the requirement specified in Article 46(1)(b) of the Convention, according to which the petition must be lodged within six months from the date on which the victim is notified of the final decision that domestic remedies have been exhausted, the Commission is of the opinion that compliance with this deadline is not required, since the petition was presented within the reasonable period of time stipulated in Article 32(2) of its Rules of Procedure for cases in which a final judgment is not rendered prior to presentation of the petition.

3. Duplication of procedures and res judicata

25. The case files for the petition do not contain any information that would lead one to determine that the case in point is pending in another international proceeding for settlement or that it has been previously decided by the Inter-American Commission. Therefore, the IACHR concludes that the exceptions stipulated in Article 46(1)(c) and in Article 47(d) of the American Convention are not applicable.

#### 4. Description of the alleged facts

26. The petitioners' allegations refer to violations of the right to due process, to judicial protection, and to privacy, guaranteed by the American Convention, and the right of women to a life free of violence, which is ensured by the Convention of Belém de Pará. The State of Mexico, on the other hand, alleges that the requirements for admissibility have not been met, and refers specifically to the rule of exhaustion of domestic remedies. It further argues that the complaint of judicial irregularities has not been supported, and it disputes the characterization of the allegations as possible human rights violations.

27. At this stage of processing, it is not relevant to establish whether there were actual violations of the American Convention or other applicable instruments. For the purposes of admissibility, the IACHR must determine whether the facts set forth reflect a possible violation, as stipulated in Article 47(b) of the American Convention. The standard for evaluating these factual allegations is different from the one required to decide on the merits of a petition. The Commission must carry out a *prima facie* evaluation to determine whether the petition establishes a basis for an apparent or a potential violation of a right guaranteed by the American Convention. This involves a summary analysis, and does not entail prejudice or an advance opinion on the substance or merits of the case. The distinction between the study required for a declaration on admissibility and the examination required to determine a violation is reflected in the IACHR's Rules of Procedures, which clearly establishes two different stages for admissibility and merits.

28. The allegations of the petitioners refer to facts that, if true, describe violations of various rights guaranteed by the American Convention and the Convention of Belém do Pará. Despite the fact that the State alleges that there was no violation whatsoever, the IACHR concludes that the facts deserve a more detailed and complete examination of the petition during the merits stage.

29. The IACHR believes that the facts, if they are proven, describe violations of the rights guaranteed in Articles 8 and 25 of the American Convention, considered in relation to Article 1(1) of that instrument.

30. In addition, the IACHR considers that the facts set forth could establish violations of Article 7 of the Convention of Belém do Pará. The analysis of the allegations referring to alleged violations of Articles 8 and 9 of the Convention of Belém do Pará will depend on the Commission's conclusion with regard to Article 7 of that instrument, during the merits stage.

31. Although the petitioners have not invoked Articles 4 or 19 of the American Convention, by virtue of the principle *iura novit curia* the Inter-American Commission can admit allegations



concerning the right to life guaranteed by the American Convention so that they can be examined at the merits stage in relation to the duty to protect as enshrined in Article 1(1) and to the duty of special care of children as enshrined in the international instrument. Applying the same legal principle, the IACHR considers that the allegations of fact made regarding the treatment alleged to have been received by the mother and other family members of Laura Berenice Ramos Monarrez from the Mexican authorities, could amount to possible violation of the rights protected in Articles 5 and 11 of the American Convention to the detriment of the aforementioned family members.

32. As for Articles 2 and 7 of the American Convention invoked by the petitioners, the IACHR believes that they are admissible, but with the reservation that a decision on these provisions in the merits stage will require clearer, and more complete and detailed information from each of the parties. As regards the duty to adopt provisions of domestic legislation, the Inter-American Commission is of the view that in this case, it is appropriate to analyze in the merits stage whether the State fulfilled its obligation to adopt the necessary measures to ensure the effective protection of the rights established in the American Convention. It will specifically analyze in that stage whether the State adopted the measures or policies needed at the time the events occurred.

33. With regard to the right guaranteed in Article 7 of the American Convention, in the context of the events reported in Ciudad Juárez, and in view of the lack of clarification regarding the events of this case, it is appropriate to consider the possibility that Claudia Ivette González was deprived of her liberty.

34. On the basis of these considerations, the IACHR concludes that the petitioners have proven *prima facie* the factual allegations required under Article 47(b) of the American Convention.

## V. CONCLUSIONS

35. The Inter-American Commission concludes that it has competence to take cognizance of this case and that the petition is admissible, in accordance with Articles 46 and 47 of the American Convention. On the basis of the factual and legal arguments set forth above, and without prejudice to the merits of the case,

## THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

### DECIDES:

1. To declare the present case admissible with regard to alleged violations of the rights protected in Articles 2, 4, 5, 7, 8, 11, and 25 of the American Convention, considered in relation to Article 1(1) of that instrument, and of Articles 7, 8, and 9 of the Convention of Belém do Pará;
2. To notify the parties of this decision;
3. To continue with an analysis of the merits of the matter; and
4. To publish this decision and include it in its Annual Report to the OAS General Assembly.

Done and signed at the headquarters of the Inter-American Commission on Human Rights, in Washington, D.C., on the 24th day of the month of February 2005. (Signed): Clare K. Roberts, President; Susana Villarán, First Vice-President; Paulo Sérgio Pinheiro, Second Vice-President; Commissioners Evelio Fernández Arévalos, José Zalaquett, Freddy Gutiérrez and Florentín Meléndez.