

OEA/Ser.L/V/II.
Doc. 96
16 July 2018
Original: Spanish

REPORT No. 84/18
PETITION 2362-12
REPORT ON ADMISSIBILITY

LEONELA ZELAYA
HONDURAS

Approved electronically by the Commission on July 16, 2018.

Cite as: IACHR, Report No. 84/18, Petition 2362-12. Admissibility. Leonela Zelaya. Honduras.
16 de julio de 2018.



I. INFORMATION ABOUT THE PETITION

Petitioner:	“CATTRACHAS” Lesbian Network and Robert F. Kennedy Human Rights (RFKHR) ¹
Alleged victim:	Leonela Zelaya
Respondent State:	Honduras
Rights invoked:	Articles 4 (life), 5 (humane treatment), 8 (fair trial), 13 (freedom of thought and expression), 24 (equal protection) and 25 (judicial protection), in relation to Article 1.1 (obligation to respect rights), of the American Convention on Human Rights, ² and Article 7 of the Inter-American Convention on the Prevention, Punishment and Eradication of All Forms of Violence against Women ³

II. PROCEDURE BEFORE THE IACHR⁴

Filing of the petition:	December 28, 2012
Notification of the petition to the State:	February 15, 2014
State’s first response:	January 16, 2017
Additional observations from the petitioner:	March 26, 2018
Additional observations from the State:	June 21, 2018

III. COMPETENCE

Competence <i>Ratione personae</i>:	Yes
Competence <i>Ratione loci</i>:	Yes
Competence <i>Ratione temporis</i>:	Yes
Competence <i>Ratione materiae</i>:	Yes. American Convention (deposit of ratification instrument on September 8, 1977) and Convention of Belém do Pará (deposit of ratification instrument on July 12, 1995)

IV. DUPLICATION OF PROCEDURES AND INTERNATIONAL *RES JUDICATA*, COLORABLE CLAIM, EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

Duplication of procedures and International <i>res judicata</i>:	No
Rights declared admissible:	Articles 4 (Life), 5 (Humane Treatment), 8 (Fair Trial), 13 (Freedom of Thought and Expression), 24 (Equal Protection) and 25 (Judicial Protection) of the American Convention, in relation to Article 1.1 (Obligation to Respect Rights) thereof, and Article 7 of the Convention of Belém do Pará
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, under the terms of Section VI
Timeliness of the petition:	Yes, under the terms of Section VI

¹In its communication of September 22, 2015, the petitioning party reported that the Robert F. Kennedy Human Rights organization became co-petitioner in the instant petition.

² Hereinafter “Convention” or “American Convention.”

³ Hereinafter “Convention of Belém do Pará.”

⁴ The observations submitted by each party were duly transmitted to the opposing party.

V. ALLEGED FACTS

1. The petitioners indicate that the instant petition originates in the context of violence affecting the LGBTTI community in Honduras, particularly, trans people and sexual workers; for they are exposed to cultural and institutional violence and transphobia—they are often assaulted by private individuals and state agents. The petitioners argue that investigations into offenses against trans people are prejudiced, which translates into the fact that many criminal offenses are not even recorded; this being the apparent reason why most murders in the trans population remain unpunished. They report that between 1994 and 2004 at least 15 LGBTTI persons were murdered in Honduras and that only two cases were prosecuted and sentenced.

2. The petitioners claim that on August 15, 2004, Leonela Zelaya, a trans person and sexual worker aged 34, was violently assaulted by officers of the Preventive Police of Police Station No. 4 of Comayagüela, who beat her with “clubs and the butts of guns.” They allege that afterward she was taken to the police station, where she was held under custody, in isolation, and with no health-care assistance; and that she was released on that same day. The petitioners submit that, as a result of the attack, she had bruises and swelling in the legs, the face and the back. They claim that weeks later, on September 6, 2004, Leonela Zelaya was stabbed to death on the chest. They indicate that her body was found in a main avenue of the city of Comayagüela and that it was belatedly removed early in the morning of the following day.

3. They claim that state authorities have been negligent about investigating Leonela Zelaya’s murder. They argue that from the moment the body was removed there was an incorrect collection and preservation of evidence, and that “elements essential to clarify the events were not considered”, such as the individualization of witnesses. They add that, according to the certificate of the corpse removal, on September 8, 2004, the death was recorded at the complaints reception office of the Directorate-General of Criminal Investigation (hereinafter “DGIC”) under file number 963-04. They indicate that on September 20, 2004 the Prosecutor’s Office for Ordinary Offenses issued an order to open an investigation for murder, despite which the DGIC failed to take steps to identify witnesses or collect other types of evidence at the crime scene in order to establish the cause, the manner and the time of death. Therefore, they claim that legal remedies have proved ineffective, for the investigation has taken an excessive time and, thus, assured impunity for those responsible. Finally, they allege that the Unit on Deaths with a High Social Impact, part of the Office of the Public Prosecutor’s Office—set up to investigate crimes against the LGBTTI population, among other things—has only investigated crimes occurred after September 2008.

4. For its part, the State claims that it is wrong to allege State responsibility for the violation of the right to life because it has not been proved that state agents were involved in the murder; and that the assault and the arrest of the alleged victim were prior to her death and isolated incidents, therefore, these do not necessarily lead to conclude that state agents were involved the alleged murder. It also argues that the authorities’ alleged failure to adopt measures to prevent risk has not been demonstrated either. In regard to the alleged violation of the freedom of thought and expression as well as of the right to equal protection, the State claims that the petitioners do not invoke any of these rights in the initial petition, and that in the instant case there are no antecedents to establish that Leonela Zelaya’s death was the result of an act of hatred toward an LGBTTI person; and that they do not explain in what ways the alleged victim’s freedom of expression was violated.

5. As for the criminal proceeding, in its first communications the State argued that it could not file observations because there were no records of the case file. However, in its latest communication, it indicates that case 963-2004 concerning the death of Leonela Zelaya as an unknown victim was reopened on May 4, 2018, and the antecedents were sent to the Office of the Special Prosecutor for Crimes against Life for it to adopt the measures it deems necessary. It adds that the duty to investigate must not be considered unfulfilled simply because the investigation has not yet led to any result. In addition, it claims that the body was duly removed. In view of the foregoing, it alleges that the investigation is still open; that, consequently, the petition does not meet the admissibility requirement of prior exhaustion of domestic remedies.

VI. ANALYSIS OF EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

6. The petitioners claim that given that it has been more than a decade since Leonela Zelaya's murder, authorities have infringed the rule of reasonable time for the investigation and have not clarified the events or punished the offenders, which reveals a situation of judicial inaction ensuring impunity for those responsible. For its part, the State argues that domestic remedies have not been exhausted because the initial investigation was recently reopened.

7. The Commission observes that in situations like this, where criminal offenses against life and humane treatment are involved, the domestic remedies to be considered for the purpose of admissibility are those concerning the investigation and punishment of the persons responsible, which must be taken on and furthered by the State. In the instant case, the available information indicates that the alleged murder occurred on September 8, 2004 and that on September 20 of the same year the Prosecutor's Office for Ordinary Offenses issued an order to file an investigation, an investigation that was later archived. According to the information submitted by the State, the investigation was reopened on May 4, 2018, more than 13 years after the alleged murder; therefore, it is in its preliminary stage. In view of this, the IACHR concludes that the exception to the prior exhaustion of domestic remedies, set forth in Article 46.2.c of the American Convention, applies in the instant case.

8. In regard to the timeliness requirement, the Commission establishes that in view of the above exception, the petition was filed within a reasonable time under Article 32.2 of the IACHR Rules of Procedure. This decision is based on the fact that although Leonela Zelaya's murder took place on September 6, 2004 and the petition was filed on December 28, 2012, some of the consequences of the alleged facts still persist, such as the lack of punishment of the persons responsible.

VII. ANALYSIS OF COLORABLE CLAIM

9. Considering the elements of fact and law presented by the parties, the Commission believes that, if proven, the alleged police violence against the alleged victim based on her gender identity and expression, as well as the purported serious omissions and unwarranted delays in the investigation of her subsequent death which impeded to clarify the incidents and punish the offenders all could establish possible violations of Articles 5 (humane treatment), 8 (fair trial), 24 (equal protection) and 25 (judicial protection) of the American Convention, to the detriment of the alleged victim, in connection with Article 1.1 thereof (obligation to respect rights).

10. The IACHR believes that the claims concerning the State's duty to ensure protection and prevention in relation to the rights to life of Leonela Zelaya, murdered in an alleged context of generalized violence against LGBTI people in Honduras, particularly against trans people and sexual workers, must be analyzed in the merits stage, in the light of Article 4 (life) of the American Convention, in connection with Article 1.1 (obligation to respect rights) thereof.

11. Likewise, in the merits stage the IACHR will study the possibility to apply Article 13 (freedom of thought and expression) of the Convention, in regard to the purported violation of the alleged victim's freedom to express her gender identity. Finally, the Commission believes that the claims may lead to establish violations of Article 7 of the Convention of Belém do Pará, taking into account that, by virtue of said treaty, States Party are obliged to prevent, punish and eradicate all forms of violence against women, including lesbian, bisexual, transgender, and intersex women.⁵

12. As for the State's observation that in the initial petition were no claims about the violation of rights enshrined in Articles 13 and 24, but that these were included after the initial complaint, the Commission notes that neither the Convention nor the Rules establish a time for closing the discussion and

⁵IACHR, Report No. 64/16, Petition 2332-12. Admissibility. Vicky Hernández and family. Honduras. December 6, 2016, par. 31.

that, on the contrary, “the bodies of the system have had the need to integrate and assess new and later facts, as long as these are connected with and reasonably a part of the case under assessment.”⁶

VIII. DECISION

1. To declare the instant petition admissible in relation to Articles 4, 5, 8, 13, 24 and 25 the American Convention, in relation to Article 1.1 thereof, and Article 7 of the Convention of Belém do Pará; and

2. To notify the parties of this decision; to continue with the analysis on the merits; and to publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.

Done and signed on the 16th day of the month of July, 2018. (Signed): Margarete May Macaulay, President; Esmeralda E. Arosemena Bernal de Troitiño, First Vice President; Luis Ernesto Vargas Silva, Second Vice President; Francisco José Eguiguren Praeli, Joel Hernández García, Antonia Urrejola, and Flávia Piovesan, Commissioners.

⁶ IACHR, Report No. 144/17. Petition 49-12. Admissibility. Ernestina Ascencio Rosario *et al.* Mexico. October 26, 2017, par. 11.