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**REPORT No. 239/21**  
**PETITION 1313-09**  
REPORT ON ADMISSIBILITY

EVA GONZÁLEZ ZENDEJAS  
MEXICO

Approved electronically by the Commission on September 17, 2021.

**Cite as:** IACHR, Report No. 239/21, Petition 1313-09. Admissibility. Eva González Zendejas.  
Mexico. September 17, 2021.

**I. INFORMATION ABOUT THE PETITION**

<b>Petitioner:</b>	Galdino Joel Castillo Trejo
<b>Alleged victim:</b>	Eva González Zendejas
<b>Respondent State:</b>	Mexico <sup>1</sup>
<b>Rights invoked:</b>	Articles 5 (humane treatment), 7 (personal liberty), 8 (fair trial), and 9 (Freedom from Ex Post Facto Laws) of the American Convention on Human Rights <sup>2</sup> in connection with Article 2 (domestic legal effects) thereof

**II. PROCEEDINGS BEFORE THE IACHR<sup>3</sup>**

<b>Filing of the petition:</b>	October 19, 2009
<b>Additional information received at the stage of initial review:</b>	Oct 18, 2012, Aug 8 2013
<b>Notification of the petition to the State:</b>	September 21, 2016
<b>State's first response:</b>	Feb 3 2017
<b>Additional observations from the petitioner:</b>	June 1 2017
<b>Additional observations from the State:</b>	Oct 21, 2018

**III. COMPETENCE**

<b>Competence <i>Ratione personae</i>:</b>	Yes
<b>Competence <i>Ratione loci</i>:</b>	Yes
<b>Competence <i>Ratione temporis</i>:</b>	Yes
<b>Competence <i>Ratione materiae</i>:</b>	Yes, American Convention (deposit of instrument of ratification on March 24, 1981)

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

<b>Duplication of procedures and International <i>res judicata</i>:</b>	No
<b>Rights declared admissible</b>	Articles 5 (humane treatment), 8 (fair trial), and 25 (judicial protection) of the American Convention in relation to Article 1 (obligation to respect rights) thereof
<b>Exhaustion of domestic remedies or applicability of an exception to the rule:</b>	Yes, in terms of Section VI
<b>Timeliness of the petition:</b>	Yes, in terms of Section VI

**V. ALLEGED FACTS**

1. The petitioner alleges that Eva González Zendejas (“the alleged victim”) was subjected to violations of due process that resulted in her wrongful conviction in August 2007 for the kidnapping of her son (*secuestro genérico*), for which she is currently serving a prison sentence of 33 years and nine months. He also

<sup>1</sup> Pursuant to the provision of Article 17.2.a of the IACHR Rules of Procedure, Commissioner Joel Hernández García, a Mexican national, did not participate in the discussion or the voting on this matter.

<sup>2</sup> Hereinafter “American Convention”.

<sup>3</sup> The observations submitted by each party were duly transmitted to the opposing party.

denounces that the alleged victim was subjected to physical abuse and torture when she was arrested and taken to the Office of the Public Prosecutor of Mexico State (*Ministerio Público de la Procuraduría General de Justicia del Estado de México*).

2. By way of background, the petitioner indicates that the alleged victim was involved in a cohabitation relationship for 10 years with a man (“the partner”) with whom she had a child (“the son”). He further submits that the relationship between the alleged victim and her partner started to deteriorate in or about November 2005, when she discovered that he had become romantically involved with another woman (“the lover”). The petitioner holds that the lover began making telephone threats to the alleged victim, specifically that she would not rest until the latter disappeared; she disclosed these threats to her partner, but he did not believe her.

3. The petitioner states that in November 2005, the alleged victim then decided to “teach a lesson” to her partner by staging a simulated kidnapping of their son. He further submits that the son was placed in the care of a friend and that as part of the simulated kidnapping, the alleged victim also arranged for telephone calls to be made to her partner demanding a ransom for the release of their son.

4. Following the staged kidnapping, both the alleged victim and her partner reported the events to the authorities; after a police investigation, the alleged victim was considered a suspect. According to the petitioner, on November 15, 2005, the alleged victim was at the house of her partner’s father when three members of his family entered the house forcefully in the company of six armed persons, some of whom were subsequently identified by the alleged victim as police officers. The petitioner submits that these persons repeatedly covered the head of the alleged victim with a plastic bag and punched her in her stomach to force her to disclose where her son was located. He further states that the alleged victim revealed the location of her son, and then she was placed in a vehicle and taken to the home of her friend, where the child was found. Subsequently, the alleged victim was transported to the Office of the Public Prosecutor and placed in custody, where she was again allegedly subjected to the same physical abuse.

5. The alleged victim reported the torture and physical mistreatment to an agent of the Officer of the Public Prosecutor and identified two police officers as the perpetrators. The petitioner further indicates that the alleged victim was examined by a doctor on November 15, 2005, who concluded that there was no evidence of external injuries. According to the petition, this was due to the way the physical mistreatment had been inflicted, particularly the use of a plastic bag on her head. The acts of torture and physical mistreatment were denounced to the local criminal court (*Juez Quinto Penal de Primera Instancia de Ecatepec de Morelos, Estado de México*), but that no further steps were taken to investigate or redress the complaints of the alleged victim in this regard.

6. On August 3, 2007, the alleged victim was convicted of general kidnapping (*secuestro genérico*) and sentenced to 33 years and nine months of prison. The petitioner alleges that the prosecution for general kidnapping was wrongful, since given the circumstances of her case, the applicable offense should have been simulated kidnapping (*secuestro simulado*), a less serious offense provided for in the Mexican Criminal Code. Accordingly, the alleged victim appealed her conviction to a higher court, but her appeal was dismissed on November 5, 2007. She subsequently pursued *amparo* proceedings, which were dismissed on March 6, 2008, by the Third Criminal Court of Appeals of the Second Circuit of the State of Mexico (*Tercer Tribunal Colegiado en Materia Penal del Segundo Circuito del Estado de México*), in a decision which ruled that the claims of the alleged victim were unfounded. On August 28, 2009, another application for *amparo* was dismissed by the First Criminal Court of Appeals of the Second Circuit of the State of Mexico (*Primer Tribunal Colegiado en Materia Penal del Segundo Circuito del Estado de México*) principally because the same claims had already been considered and rejected by the courts. The petitioner contends that this last dismissal represents exhaustion of domestic remedies in relation to the alleged wrongful prosecution for general rather than simulated kidnapping.

7. According to the State, the petition is inadmissible on the following grounds: lack of timeliness; failure to exhaust domestic remedies with respect to the alleged acts of torture; failure to state facts that could characterize possible human rights violations; and the so-called “fourth instance formula”.

8. Regarding timeliness, the State notes that the alleged victim initiated *amparo* proceedings on two separate instances --2008 and 2009), -- after the dismissal of the appeal against her conviction. According to the State, the alleged victim effectively exhausted domestic remedies on April 9, 2008, with the dismissal of the first *amparo* proceedings. The State submits that the second *amparo* proceedings were dismissed on August 28, 2009, because the same claim had already been adjudicated in the 2008 proceedings. Accordingly, the State contends lack of timeliness, since the effective conclusion of litigation by the alleged victim was in April 2008 and that the petition was submitted to the IACHR on October 19, 2009, more than a year after the final judgment.

9. On the matter of exhaustion of domestic remedies regarding the allegations of torture, the State argues that the medical examination of the alleged victim did not disclose any evidence of injuries or physical mistreatment; and that the alleged victim failed to invoke *amparo* proceedings to redress her claims of torture and physical mistreatment. Regarding the issue of failure to state a colorable claim, it reiterates the lack of any medical corroboration of the claims of the alleged victim regarding torture and physical mistreatment and concludes that there were no human rights violations in this regard.

10. The State notes that the petitioner complains that the Mexican judicial authorities wrongly prosecuted the alleged victim for general kidnapping rather than simulated kidnapping. The State argues that it is entirely within the purview of its authorities to determine the nature of the offense for which the alleged victim was prosecuted and therefore any review by the IACHR of the prosecutorial decisions would ultimately violate the so-called "fourth instance formula" and the principle of subsidiarity. Accordingly, the State argues that the petition is inadmissible with respect to the foregoing.

## VI. ANALYSIS OF EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS

11. On the matter of exhaustion, the IACHR has two separate issues to consider: the alleged violation of due process guarantees relating to the prosecution of alleged victim; and the alleged physical abuse and torture against her. In relation to the first issue, the petitioner contends that domestic remedies were exhausted in August 2009 with the conclusion of *amparo* proceedings. The State contends that these were essentially a duplication of the *amparo* proceedings that were concluded in 2008, and that the exhaustion of domestic remedies effectively took place in 2008 rather than 2009. The petition was submitted on October 19, 2009, which the State argues was untimely, given that it was over a year after the conclusion of the 2008 *amparo* proceedings. On the other hand, the petitioner insists that it was timely because its submission came less than two months after the conclusion of the 2009 *amparo* proceedings.

12. The rule on exhaustion of domestic remedies provided for in Article 46.1(a) of the American Convention establishes that remedies generally available and appropriate in the domestic legal system must be pursued first. Such remedies must be secure enough; that is, accessible and effective in resolving the situation in question. The IACHR has established that the requirement regarding domestic remedies does not necessarily mean that alleged victims are obligated to exhaust all remedies at their disposal. If an alleged victim pursued one of the valid and appropriate options in accordance with the domestic legal system, and the State had the opportunity to remedy the matter in its jurisdiction, the objective of international law has been achieved. Accordingly, the Commission considers that the petitioner pursued all valid and appropriate domestic remedies, and that the August 28, 2009, dismissal of the *amparo* proceedings constitutes exhaustion of domestic remedies. As regards the due process complaints, the IACHR hereby concludes that the petition meets the admissibility requirements for exhaustion of domestic remedies and timeliness set forth in Articles 46.1(a) and 46.1(b), respectively, of the American Convention.

13. With respect to the complaints of torture and physical mistreatment, the Commission reiterates that in such cases it is not necessary to exhaust civil actions --such as *amparo*-- before resorting to the Inter-American system. This is because such remedy would not redress the main claim made concerning the alleged torture and physical mistreatment of the alleged victim, followed by the alleged failure of due diligence in investigation, prosecution, and punishment of those responsible, together with delay in conducting such an investigation. In the instant matter, the State acknowledges that the alleged victim was subjected to a

medical exam; however, this is not sufficient in and of itself to satisfy the requirement of a full investigation. The IACHR reiterates that under international standards applicable to matters like this one, where serious human rights violations are alleged, the appropriate and effective remedy is precisely the filing and the undertaking of an effective criminal investigation aimed at the clarification of the facts and, if necessary, the individualization and prosecution of those responsible.

14. Based on the information supplied by both parties, it appears no such investigation has been undertaken by the State despite the passage of more than ten years since the alleged acts of torture/physical mistreatment took place. The Commission believes that such a period constitutes an unwarranted delay for the purpose of admissibility; and that accordingly, the petition meets the exception of the requirement of prior exhaustion of domestic remedies, in accordance with Article 46.2.c of the American Convention on Human Rights. Having regard for the foregoing the Commission believes that the petition was filed within a reasonable time and that the requirement set forth in Article 32.2 of the IACHR Rules of Procedure has been met.

## VII. ANALYSIS OF COLORABLE CLAIM

15. After examining the elements of fact and law presented by the parties, the Commission considers that the claims of the petitioner relating to torture and physical mistreatment, as well as the subsequent impunity, are not manifestly unfounded; and that if corroborated, could constitute violations of the rights recognized in Articles 5 (humane treatment), 8 (fair trial) and 25 (judicial protection) of the American Convention in relation to Article 1 (obligation to respect rights) thereof.

16. In relation to the complaints about due process violations in the criminal kidnapping trial, the Commission appreciates that the alleged victim is dissatisfied with the specific outcomes of the judicial decisions. The IACHR notes that it is not competent to review judgments or rulings issued by national courts which act within the sphere of their competence, and which apply the due process and judicial guarantees. In the instant case, the petitioner claims the judicial authorities wrongly prosecuted her for general kidnapping instead of simulated kidnapping. Based on the record, there is no evidence that the alleged victim was denied a fair trial or access to judicial remedies following her conviction. Therefore, this specific aspect of the petition falls entirely within the purview of the State, and any review of the decision to prosecute the alleged victim for a specific crime would be outside the Commission's mandate. Accordingly, the Commission concludes that the allegations relating to due process violations in the criminal proceedings against the alleged victim are inadmissible based on article 47(b) of the American Convention, given that the allegations made in this regard do not characterize *prima facie* violations of that instrument.

17. Likewise, as to the allegations regarding the rights protected by Articles 7 (personal liberty) and 9 (freedom from *ex post facto* laws) of the American Convention, the IACHR considers that the petitioner has not provided any elements to establish their possible violation. Therefore, the Commission finds this aspect of the petition inadmissible.

## VIII. DECISION

1. To find the instant petition admissible in relation to Articles 5, 8, and 25 of the American Convention in relation to Article 1 thereof.
2. To find the petition inadmissible in relation to Articles 7 and 9 of said treaty.
3. 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.

Approved by the Inter-American Commission on Human Rights on the 17<sup>th</sup> day of the month of September, 2021. (Signed:) Antonia Urrejola, President; Julissa Mantilla Falcón, First Vice President; Flávia Piovesan, Second Vice President; Margarette May Macaulay, Esmeralda E. Arosemena Bernal de Troitiño, and Stuardo Ralón Orellana, Commissioners.