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**REPORT No. 252/23**  
**PETITION 1998-17**  
REPORT ON INADMISSIBILITY

GINA MARÍA GONZÁLEZ DOMÍNGUEZ  
HONDURAS

Approved by the Commission electronically on October 10, 2023

**Cite as:** IACHR, Report No. 252/23, Petition 1998-17. Inadmissibility. Gina María González Domínguez. Honduras. October 10, 2023.

**I. INFORMATION ABOUT THE PETITION**

<b>Petitioner:</b>	Gina María González Domínguez
<b>Alleged victim:</b>	Gina María González Domínguez
<b>Respondent State:</b>	Honduras
<b>Rights invoked:</b>	Articles 8 (fair trial), 24 (equality before the law) and 25 (judicial protection) of the American Convention on Human Rights <sup>1</sup> ; article XVIII (justice) of the American Declaration of the Rights and Duties of Man <sup>2</sup> ; and Articles 3, 4, 5 and 7 of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women ("the Convention of Belém Do Pará")

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

<b>Filing of the petition:</b>	November 2, 2017
<b>Additional information received at the stage of initial review:</b>	February 11, 2021 and June 13, 2022
<b>Notification of the petition to the State:</b>	June 13, 2022
<b>State's first response:</b>	October 14, 2022
<b>Additional observations from the petitioner:</b>	January 4, 2023
<b>Notification of the possible archiving of the petition:</b>	January 12, 2021
<b>Petitioner's response to the notification regarding the possible archiving of the petition:</b>	January 28, 2021

**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 September 8, 1977), American Declaration (ratification of the OAS Charter on January 13, 1950) and Convention of Belém do Pará (deposit of instrument on July 12, 1995)

**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>	None
<b>Exhaustion of domestic remedies or applicability of an exception to the rule:</b>	Yes
<b>Timeliness of the petition:</b>	Yes

<sup>1</sup> Hereinafter "The Convention" or "the American Convention".

<sup>2</sup> Hereinafter "the Declaration" or "the American Declaration"

<sup>3</sup> The observations of each party were duly forwarded to the opposing party.

## V. POSITION OF THE PARTIES

1. The present petition refers to the alleged lack of access to justice and the violation of the rights to a fair trial and to judicial protection of Ms. Gina María González Domínguez in the context of a criminal proceeding for domestic violence in which she denounced her ex-partner, which culminated in a cassation decision that revoked the conviction imposed on the latter.

### *Allegations of the petitioner*

2. The petitioner holds that from 2004 to 2007 she had a common-law relationship with Mr. F.A.H.P., which ended due to alleged acts of violence committed by him against her. From that moment on, her ex-partner began a series of threats, persecutions and actions to discredit her, consisting of filing a series of false complaints before different entities, contained in the files: 0801-2010-15771 for the crime of misappropriation; 2045-11 for falsification of public documents; 3470-2014 for disobedience; TST 0801-2011-03388/TST 0801-2011-03388 for defamation and slander; with the purpose of harming her personally and professionally, which caused her psychological and patrimonial detriment.

3. In December 2005, together with Mr. F.A.H.P., she incorporated the commercial company Inversiones Géminis S.A. de C.V. However, she holds that she and her children were deprived of their shares in the company by her former partner (in a telecommunications company). On February 4, 2013, the petitioner requested the nullity of resolution AS455/10 of November 11, 2010 issued by the National Telecommunications Commission (CONATEL) for violation of the legal system. Subsequently, on June 11, 2014, the Contentious Administrative Court of Appeals issued a final judgment in which it declared the action filed by the petitioner admissible and annulled the aforementioned resolution, which was confirmed by the Labor-Administrative Chamber of the Supreme Court of Justice, although it holds it has been unable to recover the company and its assets since they seemingly disappeared.

### *Judicial proceedings for domestic violence*

4. On November 3, 2008, Mrs. González filed a complaint (file 6327-08) before the Special Prosecutor's Office for Women for the crime of domestic violence. Subsequently, on November 19, 2008, the Domestic Violence Court of the Department of Francisco Morazán issued a conviction judgment against Mr. F.A.H.P., sanctioning him with community service for two months, a ruling that was issued on November 19, 2010; with which he allegedly did not comply. In view of the recidivist actions of her ex-partner, Mrs. González filed a new complaint for the crime of domestic violence before the Special Prosecutor's Office for Women, for which the criminal action was declared admissible before the Trial Court of Francisco Morazán.

5. On April 30, 2014, the Sentencing Court of Tegucigalpa issued conviction judgment No. 39-2014, within file No. 8-477-2012, sentencing Mr. F.A.H.P to one year of imprisonment for the crime of domestic violence, in addition to declaring him civilly liable for the compensation and indemnification of damages caused by the crime for which he was convicted. On May 28, 2014, the defense of Mr. F.A.H.P filed an extraordinary appeal in cassation against the conviction for not assessing in due form the evidence provided at trial, so that on March 29, 2017, the Criminal Chamber of the Supreme Court of Justice, by means of a resolution, decided to revoke the sentence issued by the Sentencing Court for error in the appraisal of the evidence, considering that from the proven facts, the elements for the crime of domestic violence were not present. Thus, the sentence of one year of imprisonment was revoked and the declaration of civil liability and the compensation and indemnification for damages was left in force. The decision was notified on May 5, 2017.

6. Finally, Mrs. Gonzalez holds that she denounced two prosecutors for failing in their duties as public officials for concealing evidence in some proceedings initiated by Mr. F.A.H.P. against her.

7. The petitioner considers that the Supreme Court's decision does not mention which law or doctrine was considered to have been violated by the Court's judgment, and therefore the decision to revoke

the Court's judgment was unjust and arbitrary, leaving her unprotected and her case in complete impunity. Additionally, she refers that the actions of her ex-partner have harmed her professionally since they have interfered so that she cannot run for important positions for which she has been proposed as a candidate for judge of the Supreme Court of Justice or Public Prosecutor of the Republic. She concludes that all of the above constitutes a denial of access to justice, that there was an unjustified delay in the course of the proceedings and appeals, and a violation of the Convention of Belem do Para, since the lack of conviction constitutes an act of tolerance by the State to the psychological aggressions suffered and sends a message to Mr. F.A.H.P. that he can continue committing his actions, perpetrating violence against women.

#### *Allegations of the Honduran State*

8. For its part, the State requests that the instant petition be declared inadmissible, since in the administrative and contentious-administrative proceedings under resolution AS455/10 issued by CONATEL, it acted in accordance with the law and remedied the legal situation that had been infringed. With regard to the alleged violation of rights by the issuance of the decision of the Criminal Chamber of the Supreme Court of Justice in the scope of the proceedings for domestic violence, due process was observed, the decision was duly motivated, and the participation of Mrs. González was guaranteed at all times.

9. The State agrees that the death threats, intimidation, persecution, and other violent manifestations made by Mr. F.A.H.P. against the petitioner led her to file a complaint with the Domestic Violence Courts. However, despite having obtained a conviction, the violence continued, for which reason the petitioner again denounced her ex-partner before the Criminal Trial Court for the crime of domestic violence, obtaining a conviction issued by the Sentencing Court of Tegucigalpa in case file 8-477-2012. Subsequently, the Criminal Chamber of the Supreme Court ruled in favor of the cassation appeal filed by Mr. F.A.H.P., acquitting him of all responsibility and revoking the precautionary measures imposed on the grounds that there was a violation of substantive law. The petitioner decided to file a complaint with the Inspectorate of Courts against the judges of the Criminal Chamber of the Supreme Court of Justice.

10. By virtue of the foregoing, the State considers that the petitioner was heard by the courts under conditions of equality and non-discrimination, that her rights to due process were respected, and that she had access to appeal the judgments and to the remedies available under domestic law. In this regard, the State holds that, faced with the March 29, 2017 ruling in the cassation appeal for violation of the law filed by Mr. F.A.H. P, the magistrates of the Criminal Chamber of the Supreme Court of Justice considered that among the facts proven in the judgment and the qualification of the criminal type by the Court, there was an improper application of the criminal precept, since the conducts described were not subsumable in the objective elements of the criminal type, and therefore, they decided to acquit Mr. F.A.H.P of all criminal liability, leaving in force the civil liability and payment of damages in favor of the petitioner.

11. The State considers that the judgment was issued by virtue of the contestation made by Mr. F.A.H.P., where the petitioner was heard and was able to provide evidence. It also notes that the judgment was issued by three competent magistrates and was duly reasoned.

12. With respect to the complaints filed by Mr. F.A.H.P. against Ms. González, which are contained in files 13892-2010, 3470-2014, 1465309522-2016, and 151106181-2017, holds that none of them have been successful because they were closed by the prosecutorial body, for which reason they have not harmed the petitioner's candidacy to be Attorney General of the Republic or a Supreme Court Justice, as she argues. On the other hand, the prosecutorial request against Ms. Gonzalez in file 2045/2011 of February 9, 2011, is pending the resolution of the amparo filed by the petitioner.

13. Finally, regarding the complaints filed by Ms. Gonzalez against two officials for the crimes of abuse of authority and violation of the duties of public servants to the detriment of the public administration, which are contained in files 019-2013 of October 22, 2013, 080-2014 of June 18, 2014 and 147-2018 of January 17, 2018; accumulated under the No. SEDI 019-2013 and SIGEFI 16431419232022, are under investigation due to the pending remission of the report by the Forensic Audit Unit of the Special Prosecutor's Office for the Prosecution of Servants and Officials of the Justice Sector.

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

14. The petitioner claims that she exhausted all domestic remedies to obtain the annulment of CONATEL resolution AS455/10, which granted the transfer of the radio frequency permit and license rights of Sociedad Mercantil Inversiones Géminis S.A. de C.V., as well as to file and pursue the domestic violence proceedings against her ex-partner. For its part, the State argues that it responded to Mrs. González's claims in the domestic courts.

15. In order to evaluate the adequacy of the remedies available in the domestic legal system, the Commission usually establishes the specific claim that has been formulated, and then identifies the judicial remedies provided by the domestic legal system that were available and adequate to ventilate that particular claim. This is precisely what constitutes the suitability and effectiveness of each remedy considered concretely, in that it provides a real opportunity for the alleged human rights violation to be remedied and resolved by the national authorities before having to resort to the Inter-American system for protection.

16. The IACHR notes that the final decision in the criminal proceedings for the crime of domestic violence was the cassation judgment that revoked the one-year prison sentence imposed on Mr. F.A.H.P., which was issued on March 29, 2017 and notified on May 5 of that same year.

17. Consequently, and since the petition was filed on November 2, 2017, the Commission concludes that the present petition meets the requirements of exhaustion of domestic remedies and the deadline for submission, set forth in Article 46.1 (a) and (b) of the American Convention.

## VII. ANALYSIS OF COLORABLE CLAIM

18. The Commission reiterates that, for the purposes of admissibility, it must decide whether the alleged facts can be characterized as a violation of rights, as stipulated in Article 47(b) of the American Convention, or whether the petition is 'manifestly unfounded' or 'obviously out of order', in accordance with paragraph (c) of said article. The criterion for assessing these requirements differs from that used to rule on the merits of a petition. In this regard, the Commission reiterates that it is not competent to review judgments handed down by national courts acting within their jurisdiction and applying due process and judicial guarantees.

19. In the instant case, the Commission observes that the administrative and judicial proceedings conducted in the domestic legal system, particularly the contentious-administrative judgment declaring the nullity of resolution AS455/10, and the cassation judgment revoking the one-year prison sentence of the petitioner's ex-partner, were duly motivated and in both proceedings Ms. González exercised her right to contradict, provided evidence and, in general, was guaranteed due process.

20. Thus, the Commission does not find specific allegations or sufficient elements in the present proceedings to support *prima facie* that the judicial proceedings conducted by the petitioner did not respect her judicial guarantees. On the contrary, the State outlined how the judicial authorities responded to each allegation raised at the domestic level. In particular, the Commission observes from the main decisions issued in the process of alleged domestic violence, that the domestic courts conducted an exhaustive examination of the evidence and the facts denounced, without verifying the commission of said crime; furthermore, the Commission does not identify *prima facie* that the competent authorities have failed in their duty to investigate the facts with due diligence.

21. In this regard, the Commission reiterates that the mere disagreement of the petitioners with the interpretation that the domestic courts have made of the relevant legal norms is not sufficient to establish violations to the Convention. The interpretation of the law, the relevant procedure and the evaluation of the evidence is, *inter alia*, the exercise of the function of domestic jurisdiction, which cannot be replaced by the

IACHR<sup>4</sup>. The Commission's role is to ensure compliance with the obligations undertaken by the States parties to the American Convention, but it cannot act as a court of appeal to examine alleged errors of law or fact that may have been committed by national courts acting within the limits of their competence<sup>5</sup>.

22. With respect to the allegation of violation of the American Declaration, in accordance with Articles 23 and 49 of its Rules of Procedure, the Commission has, in principle, competence *ratione materiae* to examine violations of the rights enshrined in the Declaration. However, the IACHR has previously established that, once the American Convention enters into force in relation to a State, the Convention and not the Declaration becomes the primary source of law applicable by the Commission, provided that the petition refers to the alleged violation of rights identical in both instruments and does not involve a situation of continuous violation.

23. On the other hand, regarding the claim of alleged violation of Article 7 of the Convention of Belém do Pará, the Commission observes that the petitioner has not offered sufficient allegations or support to allow a *prima facie* consideration of a possible violation. With regard to the alleged violation of Articles 3, 4, 5 thereof, the Commission observes that, in accordance with the provisions of its article 12, in order to rule in the context of an individual case it is limited to Article 7. With regard to the other articles, in accordance with Article 29 of the Convention, the IACHR may consider said Convention in the interpretation of other applicable provisions of the American Convention and other treaties over which it has competence *ratione materiae*<sup>6</sup>.

24. Consequently, the Commission concludes that these allegations are inadmissible under Article 47(b) of the American Convention, since the facts presented do not indicate, even *prima facie*, possible violations of the American Convention.

### VIII. DECISION

1. To declare the present petition inadmissible pursuant to Article 47. b) of the American Convention; and

2. To notify the parties of this decision; 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 10th days of the month of October 2023. (Signed:) Margarette May Macaulay, President; Roberta Clarke, Second Vice President; Julissa Mantilla Falcón and Carlos Bernal, Commissioners.

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<sup>4</sup> IACHR, Report No. 83/05 (Inadmissibility), Petition 644/00, Carlos Alberto López Urquia, Honduras, 24 October 2005, para. 72.

<sup>5</sup> IACHR, Report No. 70/08, (Admissibility), Petition 12.242, Pediatric Clinic of the Lake Region, Brazil, October 16, 2008, para. 47.

<sup>6</sup> IACHR, Report No. 44/04 (Inadmissibility), Petition 2584-02, Laura Tena Colunga and others, Mexico, October 13, 2004, paras. 39 and 40.