

# Gómez Murillo et al. v. Costa Rica

## ABSTRACT<sup>1</sup>

*Like the Artavia Murillo et al. v. Costa Rica case, this case is about Costa Rica's ban of In-Vitro Fertilization (IVF). In Artavia Murillo, the Court had found the ban a violation of the America Convention. Since Costa Rica was delaying lifting it, couples who wanted to have access to this infertility treatment brought a second set of petitions to the Commission. The State lifted the ban before the Court could rule on the merits and the parties reached a friendly settlement.*

## I. FACTS

### A. Chronology of Events

**February 3, 1995:** The Ministry of Health issues Executive Decree No. 24029-S (“Executive Decree”),<sup>2</sup> allowing married heterosexual couples to resort to In-Vitro Fertilization (IVF), and establishes regulations to govern the *in vitro* practice.<sup>3</sup> IVF is a medical procedure whereby sperm and egg are combined in a laboratory, in a controlled environment, in a vial. Once fertilized, the pre-embryos are then implanted into a woman’s uterus with the goal of achieving pregnancy.

**April 7, 1995:** Mr. Hermes Navarro del Valle submits a complaint challenging the constitutionality of the Executive Decree alleging it violates the right to life and the right to have one’s dignity respected.<sup>4</sup>

**1995-2000:** IVF remains a legal practice.<sup>5</sup> Fifteen nationals are born via IVF.<sup>6</sup>

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1. Mildred Lima Gonzalez, Author; Michelle Gonzalez, Editor; Erin Gonzalez, Chief IACHR Editor; Cesare Romano, Faculty Advisor

2. Gómez Murillo et al. v. Costa Rica, Judgment of Nov. 29, 2016, Inter-Am. Ct. H.R. (ser. C) No. 326, ¶ 23 (Nov. 29, 2016).

3. Gómez Murillo et al. v. Costa Rica, Report on Merits, Report No. 1/15, Inter-Am. Comm’n H.R., Case No. 12.798, ¶ 21 (Jan. 29 2015).

4. *Id.* ¶ 20.

5. Gómez Murillo et al. v. Costa Rica, Judgment of Nov. 29 2016, ¶ 24.

**March 15, 2000:** The Constitutional Chamber of the Costa Rican Supreme Court (“Constitutional Chamber”) delivers Judgment No. 2000-02306, which prohibits IVF and makes the Executive Degree unconstitutional.<sup>7</sup> The Constitutional Chamber declares that IVF is a threat to human life because it requires a “conscious and voluntary manipulation of male and female reproductive cells” to create a life that has “a considerable percentage” of having “no chance of surviving.”<sup>8</sup> The Constitutional Chamber finds that IVF violates the right to life.<sup>9</sup> IVF is now banned in the State.

**Approx. 2003:** Mr. Miguel Acuña Cartín and Ms. Patricia Núñez Marín undergo several unsuccessful scientific procedures to have a child.<sup>10</sup> The couple believes these procedures are forced upon them because they are unable to resort to IVF in the State.<sup>11</sup>

**December 8, 2004:** A medical certificate issued to Mr. Gerardo Gómez Murillo and Ms. Aída Marcela Garita Sánchez states that Ms. Garita Sánchez “is the carrier of a secondary tubal factor infertility; she has no right fallopian tube and her left tube is completely obstructed” and that “her only chance of pregnancy would be *in vitro* fertilization and uterine transfer of the embryo.”<sup>12</sup> The couple has a “suffocating and all-consuming sense of emptiness” because of their inability to have a child.<sup>13</sup>

**December 16, 2004:** A medical certificate issued to Mr. Roberto Pérez Gutierrez and Ms. Silvia Maria Sosa Ulate states that she “is the carrier of a primary tubal factor infertility; her right fallopian tube was surgically removed in a previous procedure, while her left fallopian tube was affected by an inflammatory pelvic condition and postoperative adhesions.”<sup>14</sup> IVF is recommended to her.<sup>15</sup> The couple feels “powerless,” and the situation takes a profound psychological and emotional toll on their lives.<sup>16</sup>

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6. *Id.*

7. Gómez Murillo et al. v. Costa Rica, Report on Merits, ¶ 2.

8. *Id.* ¶ 24.

9. *Id.*

10. *Id.* ¶ 38.

11. *Id.*

12. *Id.* ¶¶ 8, 27.

13. Gómez Murillo et al. v. Costa Rica, Report on Merits, ¶ 28.

14. *Id.* ¶¶ 8, 30.

15. *Id.*

16. *Id.* ¶ 31.

**Approx. 2006:** Mr. Luis Miguel Cruz Comparaz and Ms. Raquel Sanvicente Rojas are unable to have biological children due to Mr. Cruz Comparaz's low sperm count.<sup>17</sup> The couple wants to undergo IVF and describe their lack of access to the procedure as painful and discriminatory.<sup>18</sup>

Doctors tell Mr. Randall Alberto Torres and Ms. Geanina Isela Marín Rankin that Ms. Marín Rankin's "fallopian tubes are in very poor condition, which make it virtually impossible for her to conceive by natural means."<sup>19</sup> The doctor suggests resort to IVF abroad.<sup>20</sup> The couple feels depressed and deeply frustrated over their inability to turn to IVF in the State.<sup>21</sup>

Mr. Carlos Edgardo López Vega and Ms. Albania Elizondo Rodríguez are told that their only option to have children is IVF.<sup>22</sup> The couple describes their anguish at not having access to IVF as cruel and degrading.<sup>23</sup>

**November 28, 2012:** The Inter-American Court issues a judgment in the case of *Artavia Murillo et al. v. Costa Rica*, which orders the State to lift the ban on IVF and implement assisted infertility programs in its healthcare system, while ensuring proper inspection and quality control.<sup>24</sup>

**September 11, 2015:** The State adopts Executive Order No. 3921-MP-S, authorizing IVF.<sup>25</sup> An action is subsequently filed claiming the unconstitutionality of the Executive Order.<sup>26</sup>

**October 7, 2015:** The Constitutional Chamber issues a judgment suspending Executive Order No. 3921-MP-S.<sup>27</sup>

**February 3, 2016:** The Constitutional Chamber annuls Executive Order No. 3921-MP-S, banning IVF.<sup>28</sup>

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17. *Id.* ¶¶ 8, 32-33.

18. *Id.* ¶¶ 32-33.

19. Gómez Murillo et al. v. Costa Rica, Report on Merits, ¶¶ 8, 34.

20. *Id.* ¶ 34.

21. *Id.* ¶ 35.

22. *Id.* ¶¶ 8, 36.

23. *Id.* ¶ 37.

24. Gómez Murillo et al. v. Costa Rica, Judgment of Nov. 29 2016, ¶ 28-29.

25. *Id.* ¶ 30.

26. *Id.* ¶ 31.

27. *Id.*

28. *Id.* ¶ 32.

**February 26, 2016:** In light of the Constitutional Chamber's annulment, the Inter-American Court issues a Monitoring and Compliance Report in the case of *Artavia Murillo et al. v. Costa Rica* which orders the State to allow IVF, and thus reinstates Executive Order No. 3921-MP-S.<sup>29</sup>

**August 4, 2016:** The parties sign a friendly settlement agreement.<sup>30</sup>

*B. Other Relevant Facts*

[NONE]

II. PROCEDURAL HISTORY

*A. Before the Commission*

**December 14, 2004–May 3, 2007:** The Commission receives six petitions from the following couples: Mr. Gómez Murillo and Ms. Garita Sánchez, Mr. Pérez Gutiérrez and Ms. Sosa Ulate, Mr. Cruz Comparaz and Ms. Sanvicente Rojas, Mr. Torres Quirós and Ms. Marín Rankin, Mr. López Vega and Ms. Elizondo Rodríguez, and Mr. Acuña Cartín and Núñez Marín.<sup>31</sup> Each complaint against the State is for prohibiting IVF.<sup>32</sup>

**November 1, 2010:** The five petitions are joined under petition number 1368/04 and the Commission issues Admissibility Report No. 156/10, declaring the petitions admissible.<sup>33</sup>

**January 29, 2015:** The Commission adopts Report on the Merits No. 1/15 and gives the State two months to comply with its recommendations.<sup>34</sup> The Commission recommends the State lift the IVF prohibition, as well as ensure that the IVF process complies with the American Convention on Human Rights.<sup>35</sup> Lastly, the Commission recommends full reparations for material and moral harms sustained by the victims.<sup>36</sup>

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29. *Id.*

30. Gómez Murillo et al. v. Costa Rica, Judgment of Nov. 29 2016, ¶ 11.

31. Gómez Murillo et al. v. Costa Rica, Report on Merits, ¶ 1.

32. *Id.*

33. *Id.*

34. Gómez Murillo et al. v. Costa Rica, Judgment of Nov. 29, 2016, ¶ 3.

35. Gómez Murillo et al. v. Costa Rica, Report on Merits, "Recommendations," ¶¶ 1-2.

36. *Id.* "Recommendations," ¶ 3.

*B. Before the Court*

**January 18, 2016:** The Commission submits the case to the Court after the State fails to adopt its recommendations.<sup>37</sup>

1. Violations Alleged by Commission<sup>38</sup>

Article 5 (Right to Humane Treatment)  
Article 7 (Right to Personal Liberty)  
Article 11(2) (Right to Honor and Dignity)  
Article 17(2) (Right to Marry and Raise a Family)  
Article 24 (Right to Equal Protection)

*all in relation to:*

Article 1(1) (Obligation of Non-Discrimination)  
Article 2 (Obligation to Give Domestic Legal Effect to Rights) of the American Convention.

2. Violations Alleged by Representatives of the Victims<sup>39</sup>

Same Violations Alleged by Commission.

III. MERITS

*A. Composition of the Court*<sup>40</sup>

Roberto F. Caldas, President  
Eduardo Ferrer Mac-Gregor Poisot, Vice President  
Eduardo Vio Grossi, Judge  
Humberto Antonio Sierra Porto, Judge  
Eugenio Raúl Zaffaroni, Judge  
L. Patricio Pazmiño Freire, Judge

Pablo Saavedra Alessandri, Secretary  
Emilia Segares Rodríguez, Deputy Secretary

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37. Gómez Murillo et al. v. Costa Rica, Judgment of Nov. 29, 2016, ¶ 3.

38. Gómez Murillo et al. v. Costa Rica, Report on Merits, ¶ 42.

39. Mr. Hubert May Cantilano served as representative of the victims. Gómez Murillo et al. v. Costa Rica, Judgment of Nov. 29, 2016, ¶ 44.

40. Judge Elizabeth Odio Benito did not participate in the deliberation of this judgment because she is a Costa Rican national. *Id.* n.\*.

*B. Decision on the Merits*

**November 29, 2016:** The Court issues its Judgment on Merits, Reparations, and Costs.<sup>41</sup>

The Court found by five votes to one that:

*The parties reached a successful and fair settlement, where the State acknowledged its responsibility in the facts leading to the instant case. Additionally, the State declared that it violated the rights protected by Article 5 (Right to Humane Treatment), Article 7 (Right to Personal Liberty), Article 11(2) (Right to Honor and Dignity), Article 17(2) (Right to Marry and Raise a Family), and Article 24 (Right to Equal Protection), all in relation to Article 1(1) (Obligation of Non-Discrimination) and Article 2 (Obligation to Give Domestic Legal Effect to Rights) of the American Convention on Human Rights.*<sup>42</sup>

*C. Dissenting and Concurring Opinions*

1. Dissenting Opinion of Judge Eduardo Vio Grossi

Judge Vio Grossi, concerned of the Court's reliance on *Atravia Murillo et al. v. Costa Rica*, argued that one of the dangers of appropriating the underlying rationale was only recognizing the alleged violations of human rights in that case, while entirely overlooking other issues such as the right of the conceived, and ultimately "leaving it... in total helplessness and vulnerability."<sup>43</sup>

Additionally, Judge Vio Grossi argued that it was unnecessary for the Court to approve the friendly settlement agreement, stating that mere abidance of internal or national orders would have sufficed.<sup>44</sup> Furthermore, Judge Vio Grossi noted the Court's time should only be used if the State does not comply with the terms of the agreement, and even then, the parties must utilize national judicial channels first.<sup>45</sup>

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41. *See Id.*

42. *Id.* ¶ 47.

43. Gómez Murillo et al. v. Costa Rica, Judgment, Separate Opinion of Judge Eduardo Vio Grossi, Inter-Am. Ct. H.R. (ser. C) No. 326, ¶ b "The *ratio decidendi* of the homologation" (Nov. 29, 2016).

44. *Id.* ¶ b "The principle of *coadyuvance* or *contemplaridad*."

45. *Id.*

For the aforementioned reasons, Judge Vio Grossi did not consider the judgment an approval of the friendly settlement agreement, but rather as the Court simply taking note of the settlement agreement.<sup>46</sup>

#### IV. REPARATIONS

The Court ruled by five votes to one that the State had the following obligations:

##### A. *Specific Performance (Measures of Satisfaction and Non-Repetition Guarantee)*

###### 1. Publish the Friendly Settlement Agreement and Judgment

The State agreed to publish the friendly settlement agreement and the Court's judgment in the Official Gazette, on the Presidency of the Republic's website, and on the Ministry of Foreign Affairs and Worship of the State's website.<sup>47</sup>

###### 2. Take Measures in Compliance with *Artavia Murillo et al. v. Costa Rica*

The State recognized that their measures must comply with the judgment in *Artavia Murillo et al. v. Costa Rica*, meaning the State must make IVF accessible immediately in both public and private spheres as well as make IVF treatment available within the State's health care.<sup>48</sup>

###### 3. Educate State Agents on Human Rights

The State agreed to contact academic and international organizations of the Ombudsman Republic to train State agents about human rights.<sup>49</sup> The State agreed to promote educational programs that provide training in the areas of human rights, non-discrimination, and respect of autonomy.<sup>50</sup> Additionally, the State agreed to create a broad

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46. *Id.* ¶¶ “Conclusion.”

47. Gómez Murillo et al. v. Costa Rica, Judgment of Nov. 29, 2016, ¶ 51.

48. *Id.* ¶ 53.

49. *Id.* ¶ 55.

50. *Id.*

and participatory discussion about surrogacy as an avenue for procreation.<sup>51</sup>

#### 4. Report on Compliance

The Court found that the friendly settlement agreement required the State to inform the Court on a regular basis of their compliance with the agreement's terms.<sup>52</sup> The Court determined that it would continue to monitor compliance with all measures of the friendly settlement agreement.<sup>53</sup>

#### *B. Compensation*

The Court awarded the following amounts:

##### 1. Pecuniary Damages

The State committed to compensating each victim \$25,000, totaling \$50,000 per couple, for the various harms caused by the State in not allowing them access to IVF.<sup>54</sup>

##### 2. Non-Pecuniary Damages

[None]

##### 3. Costs and Expenses

The State agreed to reimburse the representative of the victims, Mr. May Cantilano, for costs and expenses totaling \$15,000.00.<sup>55</sup>

##### 4. Total Compensation (including Costs and Expenses ordered):

\$315,000.00

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51. *Id.*

52. *Id.* ¶ 62.

53. Gómez Murillo et al. v. Costa Rica, Judgment of Nov. 29 2016, ¶ 63.

54. *Id.* ¶ 58.

55. Gómez Murillo et al. v. Costa Rica, Settlement Agreement, Inter-Am. Ct. H.R., ¶ 8 (August 4, 2016).



### *C. Deadlines*

The State must publish the friendly settlement agreement and the Court's judgment within three months of the publication of the judgment.<sup>56</sup>

The State must report on its compliance with the friendly settlement agreement within one year of the judgment.<sup>57</sup>

The State must make IVF a lawful practice in both private and public sectors immediately.<sup>58</sup>

The State must identify specific actions taken to train government staff on human rights, implement educational programs, and create a platform for discussion about surrogacy as an option for procreation within six months of publication of the judgment.<sup>59</sup>

The State must reimburse Mr. May Cantilano for costs and expenses no more than twelve months from the date of the judgment.<sup>60</sup>

The State must pay the victims the agreed pecuniary damages within twelve months of the publication of the Court's judgment.<sup>61</sup>

## V. INTERPRETATION AND REVISION OF JUDGMENT

[None]

## VI. COMPLIANCE AND FOLLOW-UP

[None]

## VII. LIST OF DOCUMENTS

### *A. Inter-American Court*

#### 1. Preliminary Objections

[None]

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56. Gómez Murillo et al. v. Costa Rica, Judgment of Nov. 29 2016, ¶ 51.

57. *Id.* "Decides" ¶ 9.

58. *Id.* ¶ 53(3).

59. *Id.* ¶ 57.

60. *Id.* ¶ 60.

61. Gómez Murillo et al. v. Costa Rica, Settlement Agreement, ¶ 7.

## 2. Decisions on Merits, Reparations and Costs

[Gomez Murillo et al. v. Costa Rica, Judgment of Nov. 29, 2016, Inter-Am. Ct. H.R. \(ser. C\) No. 326 \(Nov. 29, 2016\).](#)

[Gomez Murillo et al. v. Costa Rica, Judgment, Separate Opinion of Judge Eduardo Vio Grossi, Inter-Am. Ct. H.R. \(ser. C\) No. 326 \(Nov. 29, 2016\).](#)

## 3. Provisional Measures

[None]

## 4. Compliance Monitoring

[None]

## 5. Review and Interpretation of Judgment

[None]

*B. Inter-American Commission*

## 1. Petition to the Commission

[Gomez Murillo et al. v. Costa Rica, Petition to the Court, Inter-Am. Comm'n H.R., Case No. 12.798 \(Jan. 18, 2016\).](#)

## 2. Report on Admissibility

[Not Available]

## 3. Provisional Measures

[None]

## 4. Report on Merits

[Gomez Murillo et al. v. Costa Rica, Report on Merits, Report No. 1/15, Inter-Am. Comm'n H.R., Case No. 12.798 \(Jan. 29, 2015\).](#)

## 5. Application to the Court

[Not Available]

## VIII. BIBLIOGRAPHY

Progress in the Protection of Women's Reproductive Rights in Latin America The Case of Artavia Murillo et al v. Costa Rica, IPAS, [http://www.womenslinkworldwide.org/files/gjo\\_analysis\\_caseArtaviaMurillo\\_en.pdf](http://www.womenslinkworldwide.org/files/gjo_analysis_caseArtaviaMurillo_en.pdf) (last visited Feb. 23, 2018).