



Suprema Corte
de Justicia de la Nación



DERECHOS
HUMANOS

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GENDER PERSPECTIVE IN THE FEMICIDE'S INVESTIGATION
(PERSPECTIVA DE GÉNERO EN LA INVESTIGACIÓN DE FEMINICIDIOS)

CASE: *Amparo en Revision 554/2013*

REPORTING JUDGE: Alfredo Gutiérrez Ortiz Mena

DECISION ISSUED BY: First Chamber of Mexico's Supreme Court of Justice

DATE: March 25, 2015

KEY WORDS: right of women to a life free from violence and discrimination, right to access to justice, right to truth, femicide, gender perspective, gender violence, investigation of violent deaths of women.

CITATION OF THE DECISION: Supreme Court of Justice of the Nation, *Amparo en Revision 554/2013*, First Chamber, Alfredo Gutiérrez Ortiz Mena, J., decision of March 25, 2015, Mexico.

The full text of the decision can be consulted at the following link:

<https://www.scjn.gob.mx/derechos-humanos/sites/default/files/sentencias-emblematicas/sentencia/2020-12/AR%20554-2013.pdf>

SUGGESTED CITATION FOR THIS DOCUMENT: Human Rights Office of Mexico's Supreme Court of Justice, *Extract of the Amparo en Revision 554/2013*, Mexico.

SUMMARY OF THE *AMPARO EN REVISIÓN* 554/2013

BACKGROUND: An agent (husband) of the Attorney General's Office of the State of Mexico (Public Prosecutor Office) reported the death of his wife, MLB, after allegedly finding her hanged. He argued that it was the result of a suicide. IBC, MLB's mother, along with people close to them, reported the abuses she was a victim of. Testimonies regarding the husband's treatment of MLB indicated physical, psychological, economic, and even sexual violence. However, the Public Prosecutor's Office only followed the line of inquiry into the alleged suicide. In the end it was determined not to exercise the criminal action, which was contested by IBC and subsequently she filed a *juicio de amparo*. The *juicio de amparo* was granted to further the investigations; nonetheless, IBC considered that the analysis of various approaches had been omitted, and therefore brought a *recurso de revisión*, which the First Chamber of the Mexico's Supreme Court of Justice (this Court) heard through the exercise of its power to assert jurisdiction.

ISSUE PRESENTED TO THE COURT: To determine whether irregularities existed at the preliminary investigation stage with respect to MLB's death and, therefore, whether there has been a failure to effectively administer justice. Also, to determine the guidelines to be followed and the obligations that the authorities have when they are investigating the violent death of a woman.

HOLDING: The *amparo* was granted, essentially, for the following reasons. This Court studied the course of the investigation and noted several irregularities and omissions, among which are the following: lack of due diligence in the preservation of the crime scene; deficiencies in evidence handling and analysis; and the failure to investigate whether it could be a case of gender-based violence. It also emphasized the suspicion of bias or complicity between the husband and the investigating authorities because of their employment and/or friendship relationship. Thus, the purpose of granting IBC the *amparo* and the protection of justice was to continue the investigation with a gender perspective and to issue guidelines for resuming it since, especially in the case of MLB, the context of violence suggested, in principle, opening a line of

inquiry against her husband; in addition, it was ordered to investigate the authorities that were responsible for the various omissions.

VOTE: The First Chamber unanimously decided this case with five votes by judges Olga Sánchez Cordero de García Villegas, Arturo Zaldívar Lelo de Larrea, José Ramón Cossío Díaz, Jorge Mario Pardo Rebolledo (reserved the right to prepare a concurring opinion) and Alfredo Gutiérrez Ortiz Mena.

The votes may be consulted at the following link:

<http://www2.scjn.gob.mx/ConsultaTematica/PaginasPub/DetallePub.aspx?AsuntoID=158001>

EXTRACT OF THE *AMPARO EN REVISIÓN* 554/2013

p.1 Mexico City. First Chamber of Mexico's Supreme Court of Justice (this Court), in session of March 25, 2015, issues the following decision.

BACKGROUND

- p.1-3 On June 29, 2010, an Investigative Agent (husband), who claimed to be commander of the Assistant Attorney General's Office group, appeared at the office of the Attorney General of the State of Mexico (Public Prosecutor Office). He stated that he had found his wife MLB hanging in her bedroom. In light of this report, a preliminary investigation began, in which he stated that he did not know what led his wife to take her own life and that he did not wish to report a homicide.
- p.3-4 On the same day, IBC, MLB's mother, appeared before the Public Prosecutor's Office. She stated that since the beginning of her marriage, MLB had had problems, as her husband was very jealous, he had her very controlled, he did not let her out of the house, he beat her and constantly humiliated her.
- p.4-5 She added that on June 28, 2010, she and her daughter had agreed that the latter would go to the Public Prosecutor's Office to file a complaint, then she would leave the marital home and move to her parents' house. She indicated that, with that intention, her daughter left her home, and she did not know her whereabouts after that. She concluded her deposition stating that her daughter had not committed suicide and filed a criminal complaint for her daughter's murder.
- p.6 On September 30, 2010, IBC added that when she proposed to MLB to file a complaint before the Public Prosecutor's Office, she refused because they "wouldn't do anything to him because he is an investigative policeman and he would beat her to death." IBC reiterated the criminal complaint against whoever was responsible and/or against MLB's husband.
- p.8-9 On December 30, 2010, MLB's half-sister rendered a deposition. She stated that within four weeks of marriage, the husband had beaten her sister because he had not liked his

breakfast. She proposed to her sister to report him, but she told her that "they wouldn't do anything to him." She also stated that her sister had told her that her husband had "threatened to throw her into the cistern" and had told her "that he had already put several women there."

- p.9 In June 2009, MLB told her that her husband had "raped" her, threatening her "with a gun in her mouth to force her to give him oral sex" and punching her. In October 2009 and April 2010, it happened again. She added that the husband had forced her sister to tattoo his surname on her back, because that proved that she was his property.
- p.9-10 The day her sister died, she went to her house, she saw her body lying on the bed and observed that she "had a blow on her forehead, on the left side at the level of the temple she had two blows, as well as two scratches at the height of her clavicle, "without noticing anything in the central part of her neck", in addition to scratches on the knuckles and knees and that on the inside of the leg she had two intense reddish bruises, as well as on the right thigh. Finally, she stressed that there were indications that the husband was in the house prior to her sister's death; she added that her sister's hair was "wet as if freshly washed," in addition that on one side of the bed there was "a wet towel." She said that she found it strange that in the other room she "found her sister's clothes on the bed, as well as two suitcases" and "her sister's sandals in front of her husband's sandals."
- p.10 On the same date, MLB's best friend appeared, who stated that on several occasions she let her stay in her home after being beaten by her husband. She added that on June 28, 2010, MLB called her cell phone and told her she was packing her things before her husband arrived.
- p.15 Subsequently, the Public Prosecutor's Office determined not to exercise a criminal action, since it was apparent from the analysis of the evidence that: the cause of death had been "mechanical asphyxiation in the form of hanging"; that such injuries corresponded to suicide maneuvers; and that there were no injuries typical of a fight or struggle and that there was also no indication whatsoever to imply another person's involvement in the

events. On October 6, 2011, the determination not to exercise a criminal action was authorized.

p.15-16 On November 19, 2011, IBD requested reconsidering the determination not to exercise criminal action.

p.18 On March 14, 2012, IBC filed a *juicio de amparo* against the failure to issue a determination. On March 16, 2012, a District Judge in the State of Mexico admitted it for processing.

p.20-22 On December 17, 2012, a decision was issued in the *juicio de amparo*, which overrode it and covered IBC. On January 4, 2013, a *recurso de revisión* was filed which was sent to a Collegiate Court in the State of Mexico. On September 4, 2013, this Court decided to exercise its power to assert jurisdiction over the *amparo en revisión* and on October 22, 2013 it sent it to the First Chamber.

STUDY OF THE MERITS

p.45,50 This Court considers there is a failure to administer justice effectively on the part of the authorities, which is linked, among other things, to the irregularities and flaws during the preliminary investigation, the discrimination suffered by IBC by the various authorities of the Public Prosecutor's Office, as well as the lack of access to the right to investigate the facts with a gender perspective.

p.52-53 The human right of women to a life free from violence and discrimination derives expressly from the constitutional and conventional obligations of the State. In various instruments the equality of women before the law and the duty of any authority to avoid discriminatory treatment on the basis of gender are recognized.

p.56 The standards are clear in establishing that state authorities must not only condemn all forms of gender-based discrimination but they are also required to take concrete action. They must adopt, in all their policies and acts, a tool as a method of detecting and removing barriers or obstacles that discriminate against people on the status of gender, which is called a gender perspective, whose purpose is to seek the approach or

conceptual content according to gender which must be granted to analyze reality and various phenomena such as the law and its application, so that reality can be evaluated with an inclusive view of the needs of gender, that contributes to the design and proposal of solutions without discrimination.

p.57 Thus, the right of women to a life free from discrimination and violence results in the obligation of every authority to act with a gender perspective, which seeks to combat stereotypical and indifferent arguments for the full and effective exercise of the right to equality.

This Court recalls that the Inter-American Court of Human Rights (I/A Court HR) has emphasized that, in cases of violence against women, state authorities must take comprehensive measures to comply with due diligence. These measures include an adequate legal framework for protection, an effective application thereof and prevention policies and practices to act effectively in the face of complaints. Failure to comply with this obligation on the part of investigating bodies and imparters of justice can condition women's access to justice by making their particular situation invisible.

p.61,63 This Court emphasizes that any murder of a woman must be investigated with a gender vision; that is, as a possible femicide; in accordance with the different protocols for investigating violent deaths of women, although these deaths have multiple expressions and contexts, a large part of them are committed in the woman's home, at the hands of people known to them – such as partners or family members – and one of the common forms of such death is suffocation and trauma.

In principle, MLB's death fit into the pattern registered in these protocols of action, for the sex (female) of the deceased, apparent form of death (suffocation), place where her body was found (her home), the person who allegedly found the body (her husband; all coupled with allegations of an alleged relationship of violence MLB lived in with respect to her partner.

p.64 This Court considers that investigating authorities should explore all possible investigative lines to determine the historical truth of what happened. The duty to investigate becomes

more relevant in relation to the death of a woman in a context of violence against women, since the fact that the deceased woman has been the victim of gender-based violence must be taken as a possible line of inquiry. In this sense, any case of deaths of women, including those that *prima facie* would appear to have been caused by criminal motives, suicide and certain accidents, must be analyzed with a gender perspective, in order to determine whether or not there were gender reasons in the cause of death and in order to confirm or rule out the reason for death.

p.65-66 In the case of deaths of women, the behaviors that caused the death must be identified and the presence or absence of gender reasons or reasons that cause or explain the violent death should be identified. In addition, such deaths should preserve specific evidence to determine whether there was sexual violence and appropriate expert analyses should be carried out to determine whether the victim was immersed in a context of violence. In addition, police and ministerial investigations into alleged femicides should analyze the connection between violence against women and the violation of other human rights, as well as establish possible case hypotheses, based on preliminary findings identifying discrimination or gender-based reasons such as potential motives explaining such deaths. In this regard, possible gender-discriminatory connotations in an act of violence perpetrated against a woman should be investigated *ex officio* when that act is framed in a context of violence against women in a given region.

p.71 This Court concludes that there was no proper protection of the crime scene to determine how MLB was found and the evidence that would have served the investigation of her death; it is unclear which experts were present; not only was the inspection not carried out with the required accuracy, but it omitted basic procedures and showed serious irregularities such as allowing a person for whom a line of inquiry should have been opened – because, according to his own words, he had found and moved his wife's body minutes earlier – was present and moved – in the presence of the investigating team – elements of the crime scene.

- p.75-76 With regard to the chain of custody, this Court concludes that, except for some photographs that do not cover the entire crime scene, no physical evidence was protected or collected on the day of the events, not even the elements with which MLB would have died – cord and eyebolt – the cell phone found beside her or that an alleged suicide note had been sought. In relation to the above, the subsequent statement by the photography expert is highlighted, who stated that during the diligence of the multidisciplinary team on the day of the events "the corresponding chain of custody was not carried out". This Court considers that such flaws are not limited to mere omissions or negligent actions on the part of the multidisciplinary team, but could be the result of deliberate actions in order not to gather the minimum information necessary to clarify the facts, which is considered to be extremely serious and a violation of due diligence.
- p.80 With reference to the protection of the corpse there are official photos of the body where MLB was found on the bed and not where she would allegedly have died from suffocation, since she would have already been moved by her husband by the time the multidisciplinary team arrived. There is no information on the record to determine how the body was lifted, protected, and moved to such facilities.
- p.84-85 While the fact of a woman's violent death was sufficient to require expert analysis to determine whether the woman was the victim of physical or sexual violence, it is clear that in view of the statement by IBC, MLB's mother, on the very same day of the events, in which she points out that there was a situation of violence between her daughter and her husband, expert analysis should have done to determine whether the body had any other signs of violence and to preserve evidence for conducting, if appropriate, an expert analysis of sexual violence. However, no tests whatsoever were done.
- p.85 Nor was there an expert assessment in forensic medicine, for the purpose of determining whether the deceased exhibited criminalistic signs or indications of chronic abuse prior to her death.
- p.85-86 No psychology expert analysis was conducted to study psychological necropsy and determine retrospectively the victim's personality type, her behavior and environment, to

identify whether the deceased presented the syndrome of learned helplessness or the abused woman syndrome. In addition, a complementary psychosocial expert analysis could have been carried out, which focuses on the experience of people affected by human rights violations, through which the psychosocial environment would have been analyzed.

p.86 Furthermore, while there are some opinions that determine the cause of death of MLB as suicide by suffocation, this Court notes that there are several inconsistencies within and between them.

p.90-91 This Court notes that the opinions given are inexplicably omissive in describing the way or reasons why, while the body was found by the investigating team on a bed, the death would have been by suffocation elsewhere in the same room. Such omissions in all opinions – which this Court cannot simply consider negligent or inexplicably coincidental – lead to contradictions in the expert analyses when they establish, on the one hand, that the place where the body was found was "that of the facts" and, on the other hand, that the deceased hung herself in the same room. The opinions also do not clarify how, because of the weight and height of the deceased, the resistance of the cord and the eyebolt height, a suicide would have been possible, nor do they refer to the fact that – according to the photos provided by the husband – she would have been found sitting on a bureau. The expert analyses also do not provide information about the movement of furniture in the room with the mentioned photos and the way the body was found on the bed.

p.91 Thus, this Court concludes that the expert analyses were not only omissive in essential data for the determination of the truth of what happened, but that irregularities in them and the inexplicable coincidence in the same omissions – such as the alteration or contamination of the place expressly recognized by an expert later on – cause this Court to consider that they intended to conceal important facts, breaching the right to due diligence and access to justice, and must therefore be considered invalid.

p.91-92 Hence, it is for this Court to refer to the way in which the investigation must be conducted with respect to persons who might be involved. In specific cases of women's deaths, an expert analysis in social anthropology should be carried out on the person likely responsible, which determines whether that person presents cultural patterns oriented towards misogynist or discriminating behavior or disdain towards women.

p.93 This Court considers it important to note that violent deaths of women are often the result of various manifestations of prior violence by their aggressors (physical, sexual, psychological and/or economic). Therefore, in the investigation into these forms of violence that is fundamental in the design of the investigation. It is not a question of explaining death by the characteristics of the aggressor, but of finding the aggressor by the characteristics of the death.

MLB's death and the alleged way in which she was found by her husband is within the frame of the pattern referred to, even more so considering that it was the latter who found her and – according to his own words – had moved her from the position in which he found her.

p.97-98 In such a way, this Court observes that according to the rules of criminalistics and criminology, and based on the fact that the husband was the one who – according to his own words – had found and moved his wife's body, a line of inquiry should have been opened on him as one of the likely perpetrators of her death. The direct allegations that he was physically, emotionally, economically and sexually violent should be added to that, as well as the fact that the mother of the deceased pointed to him directly as responsible for the death of MLB. Despite all of the above, they failed to carry out a minimal investigation with respect to him, they failed to ask him why he moved his wife's body thereby contaminating the scene or where he had left the cord from his wife's neck, they allowed him to be present at the two proceedings in which the investigating authorities came to gather evidence, to move pieces from the crime scene, to provide material evidence later on without questioning why he did not do it before, which is clearly contrary

to the rules of investigation and could even constitute offences of obstruction in the investigation.

p.98 The aforementioned does not imply a pronouncement by this Court on the likelihood or not of his responsibility for the events. What is noticeable is that a line of inquiry into him was not opened, as should have been done, given the existing elements in the case that could be compatible with gender-based violence and to advance the investigation without ruling out that hypothesis to locate and integrate the rest of the evidence. On the contrary, in the present case, there are serious irregularities, omissions and flaws which, far from being considered negligent, are aimed not only at not seriously investigating the husband, but even allowing him access to crime scenes and various expert analyses, as if he were any other agent and without taking into account that the investigation should be protected from possible contamination.

It is also noted that there are more omissions and irregularities during the investigation: those relating to direct expressions of gender-based violence and for which there is no information that they have been assessed or have impacted the investigation in any way.

p.100 This Court concludes that the authorities had to comply with constitutional and conventional obligations, since it was a case of the violent death of a woman, in an alleged personal context of being the victim of violence on the part of her partner, and an express criminal complaint from the victim's mother who considered that her daughter did not commit suicide, but that it was a homicide. Nonetheless, the investigative authorities did not demonstrate having taken reasonable steps to objectively elucidate the truth of the facts during the early stages of the investigation which, in cases of violence against women, is crucial. On the contrary, this Court notes that there were several omissions, inconsistencies, and flaws that, beyond negligence, constitute an attempt to conceal the truth of the facts, in a clear violation of access to justice.

p.101 The lack of minimally reasonable measures on the part of the investigating body fits with the invisibility and dissimulating elements of violence against women, and specifically with respect to the deaths of women.

In addition, when investigating the violent death of a woman, the investigating bodies should conduct their investigation with a gender perspective, for which a method should be implemented to verify whether there was a gender-based situation of violence or vulnerability in the victim, which requires particular procedures be carried out and they should involve the application of criminalistic concepts applied with a vision of gender, which did not exist in this case.

p.101-102 Irregularities and omissions by the authorities in the investigation of this case, such as the absolute lack of due diligence in the preservation of the crime scene; deficiencies in the management and analysis of the evidence collected; the omission of call tracking on the cell phone of the deceased's husband between the time he allegedly found her dead and when he made a statement; the lack of assessment of inconsistencies and contradictions in the different statements of the husband, the lack of assessment of the employment relationship and/or friendship of the latter with the persons in charge of the investigation, the unjustified delay in the investigation, constitute a violation of the constitutional and conventional obligations of the authorities. Moreover, the record does not show that the authorities had investigated as one hypothesis that MLB's death could be a case of gender-based violence.

p.102-103 Taking up what was said by the IACHR, this Court highlights that impunity for crimes against women sends the message that violence against women is tolerated, which favors its perpetuation and the social acceptance of this phenomenon, the feeling and sense of insecurity by women, as well as women's persistent distrust in the administration of justice. Moreover, state inaction and indifference to allegations of gender-based violence reproduce the violence that it is intended to combat and it implies discrimination in the right of access to justice. That is why it is particularly important that the authorities responsible for investigating acts of violence against women carry them out with determination and effectiveness, taking into account society's duty to reject such violence and the state obligations to eradicate it and to give confidence to victims of violence in state institutions for their protection.

- p.103-104 Thus, the granting of the *amparo* must result in the confirmation of the lifting of the determination not to pursue a criminal action and the instruction to immediately take all necessary measures to investigate, with a gender perspective and in accordance with valid evidentiary collection that complies with the national legal framework and the guidelines highlighted in this decision, the violent death of MLB, while such a decision constitutes the broadest and most favorable protection for the person.
- p.104 This Court considers that the special obligation to prevent, investigate and, where appropriate, to punish violence against women, as well as the corresponding right of women and their families, that the investigation be conducted with a gender perspective and with particular diligence, places the dignity of women beyond mere restorative effects and articulates an understanding of dignity that is fundamentally transformative and substantive. In that understanding, the obligation to repair IBC when it has been concluded that there is a violation of the human rights of IBC is one of the essential phases in access to justice. Thus, on the one hand, it is for this case to grant the *amparo* for the abovementioned acts and to order the investigative authority to, in compliance with the obligation to investigate and sanction, remove all obstacles that have persisted in the prior preliminary investigation, and use all measures at its disposal to diligently carry out the process.
- p.104-105 The Public Prosecutor's Office must complete the investigation of this case in a timely, immediate, serious and impartial manner in order to clarify MLB's death, so that the competent body can subsequently judge and, where appropriate, punish whoever is responsible. It must carry out all the above acts and measures with a gender perspective, after which the investigating body, with freedom from jurisdiction, will reach its conclusions.
- p.105 The obligation to prevent, investigate and, where appropriate, punish violence against women, as well as to ensure access to appropriate and effective judicial and administrative mechanisms to combat violations of women's human rights and non-discrimination, is not only the responsibility of the investigating officer, but also creates obligations for all

authorities. In this sense, both the State Attorney and the agents of the public prosecutor are obliged to comply, guaranteeing at all times the right of access to justice that IBC has. In addition, in the case of the State Prosecutor, this obligation extends to his/her duty to monitor, enforce and, where appropriate, punish his/her subordinates for their obligation to act with due diligence, not to discriminate and to guarantee access to justice, in compliance with the national legal framework and the international guidelines previously developed.

In this way, this Court considers that the irregularities in the investigation of the case that have been committed by state agents must be investigated and punished if they are found responsible.

p.106 On the other hand, the justice system must be able to repair the damage done by the authorities and drive cultural change. Therefore, the judicial authority's response to such violations must not only point to the specific violation by an authority and change it, but should also seek to deter a change in behavior in society and potential actors, improving socially established relationships.

DECISION

p.107 The *amparo* is granted so that, immediately, all necessary measures are carried out to investigate, with a gender perspective, the violent death of MLB, complying with the constitutional and legal framework, and the guidelines highlighted in this decision.