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Institution:	Inter-American Commission on Human Rights
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Title/Style of Cause:	Nelson Eduardo Jimenez Rueda v. Colombia
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Decided by:	Chairman: Ambassador John Donaldson; First Vice Chairman: Dr. Carlos Manuel Ayala Corao; Second Vice Chairman: Professor Robert Kogod Goldman Members: Dr. Oscar Lujan Fappiano, Dean Claudio Grossman, Dr. Jean Joseph Exume. Commissioner Alvaro Tirado Mejia, national of Colombia, did not participate in the discussion and voting on this case, in accordance to Article 19 of the Regulations of the Commission.
Dated:	12 March 1997
Citation:	Jimenez v. Colombia, Inter-Am. C.H.R., Report No. 4/97, OEA/Ser.L/V/II.98, doc. 6 rev. (1997)
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1. On October 17, 1996, the Inter-American Commission on Human Rights (the "Commission") received a petition from Nelson Eduardo Jiménez Rueda concerning an alleged violation by the Republic of Colombia (the "State," the "Colombian State" or "Colombia") of Articles 8, 9, 10 and 25 of the American Convention on Human Rights (the "Convention"). The violation consisted of having imposed a penalty on him whereby he was required to suspend the practice of his legal profession for a period of one year. On February 4, 1997, the petitioner sent the Commission additional information about his claim. The Commission will now decide the admissibility of the petition.

I. BACKGROUND

A. Context

2. Isauro Romero became the husband (third marriage) of María Nohemy López Zuloaga. The couple later sought a divorce and the resulting liquidation of their jointly-owned property, which consisted of an apartment in a three-story building, the first floor of which was used for commercial purposes. The second contained the living quarters of Isauro Romero. The third floor, also consisting of residential space, was occupied by Dagoberto Romero, nephew of Isauro Romero.

3. On February 10, 1986--the day when the property was to be turned over to Mrs. María Nohemy López in the presence of the pertinent judicial authorities-- Nelson Eduardo Jiménez, acting as Dagoberto Romero's lawyer, objected to a transfer of the property in its entirety for the following reasons: (a) the individual whom he represented had not been named as an interested third party in the implementation of a decision which affected him; (b) Dagoberto Romero was living on the third floor of the property; and (c) the situation of Mr. Isauro Romero's first wife, Mrs. Adriana Bermeo, was in jeopardy because the property that was presumably supposed to be handed over formed part of community property acquired

during that first marriage, and Isauro Romero had never had that marriage annulled. Nelson E. Jiménez entered in the record of the case in progress before the civil court the information concerning the three marriages to which Isauro Romero had been a party.

4. Two months after the petitioner first presented his objection to the relinquishment of the property, the 28th Civil Court--which held jurisdiction over the case--settled the matter by taking the property away from Dagoberto Romero and Adriana Bermeo.

5. Thereafter, Nelson E. Jiménez filed numerous legal motions and appeals thereby delaying transfer of the property during a period of several years. The opposition to the delivery of the property extended from January 31, 1986 to April 1988.

B. Facts adduced in the claim

6. Isauro Romero brought suit against the petitioner, Nelson Eduardo Jiménez, at the Disciplinary Tribunal of Colombia's High Council of the Judiciary ("Sala Jurisdiccional Disciplinaria del Consejo Superior de la Judicatura"). The result of the disciplinary administrative proceeding was that Mr. Jiménez was sanctioned with the suspension of his license to practice law for a period of one year.

7. The suit against Nelson E. Jiménez at the Disciplinary Tribunal was presented by Isauro Romero for the following reasons: (a) for having offended the judges of Colombia by his actions; (b) for having violated professional confidentiality to the detriment of Isauro Romero; and (c) for having instituted incidental and frivolous procedural acts, thereby causing undue delay in turning over the property which was the subject of the litigation.

8. In the proceeding at the Sectional Council of the Judiciary ("Consejo Seccional de la Judicatura"--the disciplinary tribunal of first instance for the case), Nelson E. Jiménez adduced reasons to show that his action had been consistent with the mandates of the legal profession; that he did not represent Isauro Romero, so that there had been no professional confidentiality for him to respect and that he had thus proceeded legitimately to accuse Mr. Romero of having committed bigamy. Insofar as the question of frivolous proceedings is concerned, the petitioner again sought to convince the Sectional Council, without addressing the question of the number of remedies that had been sought and the lack of grounds for them, that Isauro Romero's marriage to Mrs. María Nohemy López had been a fraudulent act, designed to keep the property from being awarded to his first wife. He also stated in his defense that, pursuant to the provisions of the Code of Civil Procedure, a third party can object to the relinquishment of a piece of real estate, provided that he can allege ownership thereof and present proof to that effect--a situation that had been demonstrated in situ during the act of delivery--since Dagoberto Romero was living on the third floor of the building. These were the same arguments he had used during the underlying civil proceeding to argue the question of who possessed rights to the property.

9. The decision issued by the Sectional Council on May 11, 1994 did not assess a disciplinary penalty and ordered the dismissal of the disciplinary proceedings. The order to terminate the proceeding against attorney Nelson Eduardo Jiménez was based on the "prescription of the action in relation to the events which were the reason for initiating the investigation."

10. On August 18, 1994, the High Council of the Judiciary acting in Disciplinary Tribunal ("Consejo Superior de la Judicatura en Sala Jurisdicción Disciplinaria"--the court of appeals in this case) took the case on consultation pursuant to the provisions of Article 256 section 3 of the National Constitution and Decree 2652 of 1991, in accordance with Decree No. 1861 of 1989. The High Council rescinded the verdict of acquittal that had been pronounced in favor of the petitioner on May 11, 1994 and remanded the case to the Sectional Council.

11. On November 3, 1995, the Sectional Council decided to penalize the petitioner by suspending his license to practice law for a period of one year.

12. The claimant appealed that judgment on March 15, 1996, in an attempt to vacate the November 3 verdict. Finally, on April 11, 1996, the High Council of the Judiciary acting in Disciplinary Tribunal considered the appeal and upheld the judgment handed down on November 3, 1995.

II. ANALYSIS

A. Admissibility requirements

13. The Commission considers that the petition meets the admissibility requirements set forth in Article 46 of the Convention. The information contained in the petition indicates that the petitioner has exhausted the remedies of domestic jurisdiction available pursuant to Colombian law. The verdict pronounced by the High Council of the Judiciary acting in Disciplinary Tribunal on April 11, 1996, confirming the judgment of November 3, 1995, is final and cannot be appealed.

14. The petition was presented within the time frame cited in Article 46 (b) of the Convention and Article 38 of the Commission's Regulations. The final judgment with respect to the appeal that had been lodged upholding the November 3, 1995 judgment, was issued on April 11, 1996. The petitioner went on record, when he appeared in person before the Judicial Office in Santafé de Bogotá, stating that his petition had been prepared by September 30, 1996. The delay in the Secretariat's receipt of that document until October 17, 1996 may not be blamed on the petitioner, and is not considered so significant as to prevent admission of the case.

15. The Commission has received no information indicating that the matter which is the subject of the petition is pending in another international procedure.

B. Grounds for inadmissibility according to Article 47

16. Article 47.b of the Convention establishes that the Commission should consider inadmissible any petition if it does not state facts that tend to establish a violation of the rights guaranteed in the Convention. Accordingly, the Commission must decide whether the facts alleged in the present case tend to establish that the human rights protected by the Convention have been violated.

1. The alleged violation of the principle of legality and irretroactivity of the law and of due process

17. The petitioner maintains that the High Council of the Judiciary acting in Disciplinary Tribunal revoked a judgment of acquittal in his favor, thereby violating the principle of irretroactivity of the law, since this judgement sought to apply the effects of Law 270, dated March 7, 1996 to a matter that had been decided on May 11, 1994. He alleged that the decision of the High Council also violates Law 270, which calls for a review on consultation only when the decision is unfavorable to the party affected thereby.

18. Law 270, however, was not applied to this case, because it was not even enacted until after the High Council had revoked the sentence of acquittal of August 18, 1994. Neither the High Council nor the Sectional Council invoked that law at any stage of the proceedings against the petitioner. Accordingly, it cannot be alleged that the law has been applied retroactively, or that it has been incorrectly applied.

19. To substantiate the appellate court's right to hear this case, the August 18, 1994 judgment of the High Council of the Judiciary acting in Disciplinary Tribunal and the November 3, 1995 judgment of the Sectional Council invoke other, prior norms: Colombia's Constitution, Article 256, section 3 and Decree 2652 of 1991, Article 9, section 4, harmonized with Decree 1861 of 1989, Article 39 and a verdict handed down by the Supreme Court of Justice, which established the power to hear a case by means of consultation:

For these reasons . . . [it cannot] be overlooked, as averred by the Supreme Court of Justice in its ruling of July 31, 1991, that "those persons. . . who are within the jurisdictional range of the consultation may be reviewed by the higher court without limitation."

20. The petitioner has not alleged any violation in regard to the invocation of these juridical norms which were actually applied in the case.

2. The alleged violation of the right to a defense

21. The petitioner also adduces, in support of his claim, that when the Disciplinary Tribunal examined his case, it failed to examine the evidence which attested to the truth of the arguments he set forth in the disciplinary proceeding, which omission he considers to have impinged his right to defense.

22. It is clear that during the proceedings in the two instances of review of the Disciplinary Tribunal, the tribunal reviewed and evaluated the evidence insofar as it was relevant. The Commission nevertheless observes that when the Disciplinary Tribunal began its review of the case, the question at issue was whether Mr. Jiménez had unduly delayed the underlying civil proceedings, and whether the action had prescribed. The evidence presented in due course by the petitioner--which was duly examined and evaluated during the proceeding--had nothing to do with the question before the Disciplinary Tribunal, which was to determine whether Mr. Jiménez had acted with legal justification and in good faith when he filed numerous appeals against the decision calling for transfer of the property. Accordingly, the Commission considers that no facts have been adduced which tend to establish a violation of the right to defense.

3. The competence of the Commission: the "formula of fourth instance"

23. The type of international protection provided by the supervisory bodies of the Convention is subsidiary. The Preamble to the Convention is clear in that respect, when it refers to the reinforcing or complementing of the protection provided by the domestic law of the American states.

24. The rule requiring prior exhaustion of domestic remedies is based on the principle that a defendant state must be allowed to provide redress within the framework of its domestic legal system. The effect of this rule is to assign an essentially complementary nature to the competence of the Commission.

25. The nature of that role also constitutes the basis for the so-called "fourth instance formula" applied by the Commission, consistent with the practice of the European human rights system. The premise underlying that formula is that the Commission cannot revise judgments handed down by the national courts acting within their sphere of competence and with due judicial guarantees, unless it believes that a possible violation of the Convention is involved.

26. The Commission is competent to declare a petition admissible and rule on its merits when it relates to a claim alleging that a national court's judgment was pronounced without due process or in violation of some other right guaranteed by the Convention. If, on the other hand, the claim simply alleges

that the domestic judgment was mistaken or unjust, the petition must be rejected pursuant to the formula stated above. The Commission's function consists of guaranteeing compliance with the obligations assumed by the States Parties to the Convention, but it cannot serve as a court of fourth instance to examine errors of fact or law, which may have been made by the national courts acting within their jurisdiction.[FN1]

[FN1] See IACHR Report No. 39/96, Case 11.673 (Argentina), October 15, 1996, Annual Report of the Inter-American Commission on Human Rights 1996.

27. Insofar as the present case is concerned, the alleged violations have been examined and are not deemed to involve well-founded allegations that the courts of domestic jurisdiction have acted at the margin of, or in contravention of, the rights protected by this Convention. The petitioner fundamentally requests that the Commission examine the evidence presented in connection with the domestic disciplinary proceeding in order to evaluate the final sentence pronounced by Colombia's Disciplinary Tribunal and possibly also the verdict issued in the civil procedure relative to the ownership of property. The Commission is not authorized in this case to examine the final verdict on the matter which was issued by the Disciplinary Tribunal, because such action would require it to act as a court of fourth instance with respect to a judgment issued by Colombia's judiciary acting within the sphere of its competence.

III. CONCLUSION

28. The Commission concludes that the petition presented by Mr. Nelson Eduardo Jiménez Rueda meets the technical requirements for admissibility that are set forth in Article 46 of the Convention.

29. Based on its examination of the petition, the Commission concludes that facts have not been adduced which tend to establish a violation of the principle of legality and retroactivity or of the right to due process or the right to a defense as alleged by the petitioner.

30. The Commission therefore concludes that the present petition is inadmissible, pursuant to Article 47.b of the Convention.

31. The Commission decides that this report declaring the inadmissibility of the petition presented by Mr. Jiménez shall be sent to the petitioner and published in the Annual Report to the General Assembly of the OAS.