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Decided by: Chairman: Carlos Ayala Corao;
First Vice Chairman: Robert K. Goldman;
Second Vice Chairman: Jean Joseph Exume.
Commissioners: Alvaro Tirado Mejia, Claudio Grossman, Helio Bicudo,
Henry Forde.
Dated: 28 September 1998
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I. BACKGROUND

1. On March 3, 1995, the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the IACHR") received a complaint filed by Gilbert Bernard Little against the Republic of Costa Rica (hereinafter "the State," "the Costa Rican State," or "Costa Rica") that his right to receive a retirement pension on the basis of equality and without discrimination had been violated.

II. THE POSITIONS OF THE PARTIES

A. The facts alleged

2. The petitioner states that he paid contributions for 30 years as a public-sector employee with the expectation of receiving a retirement pension and that he paid the necessary amounts to receive a Treasury System pension. The claimant alleges that, in spite of the fact that he met the legal requirements, the Treasury pension was denied to him because the interpretation of the Supreme Court of Justice was that in order to be considered a beneficiary under this system a person must be an active civil servant at the time that he requests the pension.

3. The petitioner states that on July 30, 1987, he initiated legal action for recognition of his right to a pension under the Treasury System, pursuant to Act 148 of August 23, 1948, and Act 7013 of November 18, 1985, under which Treasury pensions were extended to civil servants in other branches of the Administration.

4. The aforementioned action was dismissed by the Labor Court of First Instance in a decision of January 23, 1994. Said court ruled that Mr. Gilbert Bernard Little did not meet the requirements set forth in Act 7013, since he was not a member of the civil service when he applied for the pension, nor had he been a civil servant in active service during the period when Act 7013 was in force. Hearing an appeal, the Second Division of the Superior Court of Labor decided that Mr. Bernard Little did meet the requirements to receive the pension in question, since it was not necessary to meet the "requirement of current status" (to be in active service as a civil servant) in order to receive the pension. The latter decision was appealed by the State of Costa Rica before the Supreme Court of Justice. That Court overturned the decision of second instance, indicating that one must meet the "requirement of current status" in order to receive the pension; it stated that it was insufficient to have worked for 30 years and reached the age of retirement, and that a person must be an active civil servant in the administration in order to receive this benefit.

5. The petitioner states that, in adopting this decision, the Supreme Court of Justice is applying new requirements for the entitlement to a pension, including that of being in active service as a civil servant or public employee. For the petitioner, the "requirement of current status" is neither necessary nor mentioned in the law; he therefore considers himself legally entitled to a pension as provided in Act 7013.

6. Mr. Little filed a petition for protection (amparo) against the aforementioned decision of the Supreme Court of Justice on the grounds that, when ruling on the case, the Second Division of the Supreme Court of Justice failed to take account of the decision issued by the Constitutional Court, in the context of an action for unconstitutionality, in which it interpreted Act 7013 as applying to civil servants and former civil servants who, at the time when said law entered into force, met the requirements for retiring; according to Article 13 of the Constitutional Jurisdiction Act, that jurisprudence is binding.

7. The Constitutional Division of the Supreme Court of Justice, by decision of November 9, 1994, dismissed in limine the petition for protection filed by Mr. Bernard Little, without hearing arguments. It indicated that the constitutionality of court actions cannot be challenged through petitions for protection, according to Article 30(b) of the Constitutional Jurisdiction Act.

8. Mr. Bernard Little argues that this decision is prejudicial to his right to a retirement pension. He points out that in Costa Rica a retirement pension is a constitutional right, and that the fact that he was not allowed to challenge the decision of the Supreme Court of Justice through a petition for protection constitutes a violation of his right to effective judicial recourse, guaranteed in Article 25 of the Convention.

B. The State's reply

9. The State of Costa Rica, in a note dated August 7, 1995, received by the Commission on August 14, 1995, replied to the complaint, indicating that the petition of Mr. Bernard Little for recognition of his right to be admitted into the Treasury Pension System was processed in accordance with domestic law by the appropriate jurisdictional bodies and was the subject of a final decision of October 5, 1994, by the Second Division of the Supreme Court of Justice.

10. The State points out that the Second Division of the Supreme Court of Justice dismissed the petition of Mr. Bernard Little in the aforementioned decision, on the basis of the legitimate power of the courts of justice in Costa Rica to interpret the laws. The Supreme Court of Justice, in examining the merits of the petition, found that Mr. Bernard Little "did not meet the requirements set forth in Act 7013, since during the period of validity of that law he was not a civil servant, which is a prerequisite expressly indicated in the legal provisions, which were directed at public-sector employees, i.e., persons who, at the time the law entered into force and while it was still in effect, were public-sector employees." Because the "requirement of current status" was not met, the Supreme Court of Justice decided to revoke the decision of the Superior Court of Labor, in which the petitioner had been granted a Treasury System pension, and to declare that there was no legal basis for Mr. Bernard Little's claim.

11. According to the State of Costa Rica, this was not intended to deny in absolute terms the right to receive a pension, "but it dismissed the petitioner's claim for a pension under a specific system, because he did not meet the conditions for receiving a pension under that pension system, and this does not constitute the denial of a human right."

12. The State points out that Mr. Gilbert Bernard Little lodged a petition for protection with the Constitutional Division of the Supreme Court of Justice. The action was flatly dismissed by a decision of November 9, 1994, which states, inter alia:

Since the decision which the petitioner claims is illegal--in which the Second Division of the Supreme Court of Justice overturned a decision of the Second Division of the Superior Court of Labor which had granted him a pension under the Treasury System--is a decision of the Judiciary, this Division cannot rule on the factual allegations made in the appeal, because, under Article 30(b) of the law governing this jurisdiction, the constitutionality of jurisdictional actions and decisions cannot be challenged by way of "amparo" petitions for protection. Accordingly, the appeal is inadmissible and should be so declared.

13. The State of Costa Rica indicates that the petitioner contests, before the Commission, the validity of Article 30(b) of the Constitutional Jurisdiction Act because he considers it to establish limitations on the simple and prompt recourse provided for in the American Convention on Human Rights. On this point, the State points out that:

the Supreme Court of Justice has already ruled on the legitimacy of this provision in decisions regarding various actions for unconstitutionality brought against said Court; one of the arguments has been its incompatibility with Article 25 of the Pact of San José ... It should be noted that Article 25 of the Convention refers not only to the recourse of habeas corpus and that of amparo (protection against acts that violate fundamental rights), as the plaintiff argues, but also to "any other effective recourse[,] to a competent court or tribunal," and, in that case, the plaintiff had full access to justice and the capacity to challenge the constitutionality of the provision before the common courts, as expressly provided in Article 8(1) of the Organic Judiciary Act.

14. On that basis, Costa Rica argues that Mr. Bernard Little has not exhausted the remedies under domestic law, since he could have brought an action for unconstitutionality against Article 30 of the Constitutional Jurisdiction Act. The State argues that an action for unconstitutionality provides numerous possibilities for remedying the alleged violation; that, therefore, the remedies under domestic law have not been exhausted; and that this claim is therefore inadmissible.

C. Observations by the petitioner

15. By a note of October 16, 1995, received on October 23, 1995, the Commission received the observations of the petitioner regarding the State's reply.

16. The petitioner indicates that he did lodge an action for unconstitutionality against Article 30 of the Constitutional Jurisdiction Act, and that the Constitutional Court dismissed it on grounds that it has ruled on several occasions in favor of the constitutionality of said article. He therefore feels that he has no legal recourse against the decision of the Supreme Court of Justice that denied his right to a retirement pension under the Treasury System.

17. Similarly, the petitioner reiterates his statements in regard to the erroneous judicial interpretation of the legal requirements for receiving a pension under the Treasury System. In particular, he states that the "requirement of current status" imposed by the Supreme Court of Justice is not explicitly stipulated in the law.

18. In a note of October 26, 1995, Mr. Bernard Little expanded on his observations regarding the State's reply. The petitioner indicates that, in regard to the dismissal of the petition for protection, several magistrates of the Constitutional Court have recognized, in votes of exception, that this limitation is a violation of the fundamental rights of Costa Ricans. He quotes the vote of exception of Magistrates Piza Escalante and Fernando Solano Carrera, which reads:

... The Constitution is the primary and most important of laws, which is all the more reason to find that a writ of amparo should be used for the review not only of action taken by the public administration but also of action taken by the courts of justice. Otherwise, we would not know whether to believe what the statistics on writs of habeas corpus against judicial authorities tell us about those courts, i.e., contrary to any logical expectation, a high percentage of these actions, at least during the initial months of operation of the Constitutional Court, proved to be in order. They have corrected a number of erroneous procedures and actions traditionally used by the criminal justice system. And we believe that this has been good for the legal system, society, democracy, and human rights...

D. Final observations by the Costa Rican State

19. The State of Costa Rica argues that the petition is inadmissible because there has been no violation of the Convention. The problem experienced by Mr. Bernard Little is that he did not meet the requirements for receiving a pension administered by the national treasury, called a Treasury pension. For the State of Costa Rica, the interpretation of the legal provision determining whether Mr. Bernard Little meets the legal requirements is a matter to be decided by the competent courts, since it is a matter of law. "As a result, this petition should be dismissed ad

portas, in accordance with the provisions of Article 47.b of the Convention and Articles 35.b [and] 41.b of the Regulations of the Commission, since the events described do not constitute a violation of the rights defined in the Convention." This information was forwarded to the petitioner in a note of April 19, 1996.

III. PROCESSING BY THE COMMISSION

20. After receiving the complaint, and without judging whether it was admissible, the Commission forwarded the pertinent parts to the Costa Rican State by way of a note dated April 25, 1995.

21. On August 21, 1995, the Commission transmitted the reply of the Costa Rican State to the petitioners, requesting their observations within 45 days.

22. In a note received by the Commission on May 22, 1996, the petitioner provided observations on the information submitted by the Costa Rican State. That information was forwarded to the State in a note dated May 24, 1996.

23. The petitioner's observations were transmitted to the Costa Rican State in a note dated October 31, 1995.

24. In a note dated February 21, 1996, the State presented final observations on those presented by the petitioner.

25. On May 3, 1996, the Costa Rican State reasserted the arguments contained in its previous written communications. Said information was forwarded to the petitioner in a note dated May 24, 1996.

26. On June 13, 1996, the petitioner reiterated the information submitted in previous communications.

IV. ANALYSIS

27. The Commission must determine, first of all, whether this petition meets the admissibility requirements established in Article 46, paragraph (1), items (a), (b), (c), and (d), of the Convention.

A. Admissibility requirements

1. Exhaustion of remedies under domestic law

28. The State of Costa Rica has expressly stated that the petitioner has not exhausted remedies under domestic law. It has indicated the specific areas of recourse that, in its opinion, were available to the petitioner.

29. Indeed, the State of Costa Rica agrees that the petitioner lodged a petition for protection against the court decision that denied him admission to a special retirement pension plan. Similarly, the State of Costa Rica confirms the assertions made by the petitioner to the effect that the petition for protection was flatly dismissed by the Constitutional Court under a provision of domestic law that establishes that decisions of the Judiciary are not subject to such petitions.

30. Nevertheless, the State of Costa Rica affirms that the petitioner should have made use of the opportunity to lodge an action for unconstitutionality against the law that establishes that decisions of the Judiciary cannot be challenged by way of amparo. In this regard, the State points out that the Constitutional Jurisdiction Act allows challenges to laws that are contrary to the Constitution and to international instruments. Articles 73 and 91 of the Constitutional Jurisdiction Act provide ample opportunities for challenging an unconstitutional law, and there is no excuse for Mr. Bernard Little not to have done so, in particular because the effects of the decision are declaratory and retroactive to the date on which the disputed rule of law was enacted.

31. In this regard, Mr. Little states, contrary to the assertions of the State, that he did challenge Article 30 of the Constitutional Jurisdiction Act and that the Constitutional Court dismissed his petition on grounds of repeated judicial decisions establishing that said article does not violate either the Constitution of Costa Rica or Article 25 of the American Convention on Human Rights. He indicates that, in his particular case, a decision on his action for unconstitutionality was issued by the Constitutional Court on February 1, 1995 (File 5510). In its final observations, the State of Costa Rica did not contest this fact, for which reason it is deemed to have been proven. The Commission therefore finds that the petitioner has fully met the requirement that remedies under domestic law be exhausted.

2. Time limit for filing the complaint

32. The petition was lodged on March 31, 1995, that is, within the time limit of six months from the date on which the party whose rights are alleged to have been violated, Mr. Bernard Little, was notified of the final decision of the Supreme Court of Justice, on February 1, 1995. The petition therefore meets the requirements established in Article 46(1)(b) of the Convention and Article 38 of the Regulations of the Commission.

3. Same case pending in another court

33. The case that is the subject of the petition is not pending in another international proceeding for settlement and therefore meets the requirement set forth in Article 46(1)(c) of the Convention.

34. The petition also meets the requirements set forth in Article 46(1)(d) of the Convention.

B. Declaration of inadmissibility

35. Although in this case the formal requirements established in Article 46 of the Convention have been met, Article 47(b) of the Convention states that the Commission may find a petition

inadmissible when the events described therein would not constitute a violation of the rights guaranteed by the Convention.

36. The petitioner has argued that he has a constitutional and fundamental right to a retirement pension, and that the State of Costa Rica has, by a legal decision, violated that right. For the petitioner, the right to a retirement pension is a fundamental right established in the Constitution of Costa Rica.

37. The State argues that the complaint of the petitioner involves, in essence, a question of interpretation of the law, insofar as what Mr. Bernard Little is disputing is limited to establishing whether or not the law providing for a retirement pension under the Treasury System contains the requirement of current status. In other words, it involves determining whether or not, in order to be entitled to a pension under this special retirement pension system, it was necessary to be a civil servant in active service. In sum, the petition relates to the judicial application of a national law governing the requirements that must be met for entitlement to a retirement pension.

38. The Commission finds that the events as reported in the complaint would not constitute a violation of the Convention. The petitioner has argued that the denial of his petition violates the right to a pension on the basis of equality and without discrimination, but at no time does he indicate the nature of the alleged discrimination or violation of his right to equal treatment before the law.

39. The second violation alleged by Mr. Bernard Little is based on the lack of effective judicial recourse, as stipulated in Article 25 of the American Convention on Human Rights, which allows him to contest the judicial decision rendered by the Supreme Court of Justice that denied him his right to a retirement pension.

40. Mr. Bernard Little indicates that the judicial decision of the Supreme Court of Justice violates his fundamental rights and, as Costa Rican law provides no recourse against such a decision, Article 25 of the Convention is being violated.

41. The task of the Commission, under the Convention, is to establish whether, in a given case, a state party has violated a right set forth in the Convention, to the detriment of a specific victim, not to consider in abstracto the compatibility of domestic law with the American Convention on Human Rights.

42. On that basis, the Commission must now consider if, in this case, the right of Mr. Bernard Little to effective judicial recourse, as established in Article 25 of the Convention, has been violated.

43. As stated by the petitioner himself throughout the processing of this case, the question to be discussed is whether he meets the requirements established under law for entitlement to a specific type of pension. The point of controversy throughout the various processes of domestic law has been the interpretation of the law, in respect of the "requirement of current status," that is, whether or not there is a need to have been in active service in the public administration at the time when Law 7013 came into force.

44. In the opinion of the Commission, Mr. Bernard Little had free access to judicial recourse to demand his rights, and he has not alleged or indicated that during the proceedings he was prevented from presenting his legal arguments, offering pertinent proof, or rebut the other parties' arguments. Nor has he disputed the impartiality or independence of the courts before which the matter was brought. It can be assumed that all the judicial proceedings were heard by competent, independent, and impartial courts, in accordance with the rules of due process.

45. Hence, the fact that the final decision was prejudicial to his interests cannot be considered a violation of Article 25 of the Convention, since it is the legitimate power of the jurisdictional organs to interpret the law. The fact that the petitioner subsequently filed a petition for protection and that the petition was dismissed on grounds of a provision of domestic law under which decisions of the Judiciary cannot be challenged by way of amparo, especially when the decision was rendered by the highest court of Costa Rica, in no way changes the foregoing conclusion.

46. Indeed, mechanisms that limit the right of a party affected by a decision to challenge that decision, and that ensure the certainty and effectiveness of judicial decisions, must be decided upon under domestic law. When a petitioner has had access to judicial means of challenging judgments, when these have been used according to the rules of due process established in Article 8 of the Convention, and when the judicial decision does not per se violate any other right enshrined in the Convention, there is no violation of the right to effective judicial recourse covered in Article 25 of the Convention.

47. As pointed out by the Commission, "the judicial protection recognized by the Convention includes the right to fair, impartial, and prompt proceedings that afford the opportunity, but not the guarantee, of a favorable outcome. In itself, a negative outcome of a fair process does not constitute a violation of the Convention." [FN1]

[FN1] Case 11.773, S. Marzioni v. Argentina. Individual Report 39/96, published in the Annual Report of the IACHR (1996). OEA/Ser.L/V/II.95, page 89, para. 47.

48. Nevertheless, it must be stressed that, if the facts of the case had revealed irregularities of judicial procedure or any type of discrimination or violation of a right set forth in the Convention, the Commission would have been competent to consider the merits of this case, so as to determine whether said rights of the petitioner had been violated.

49. It should be noted, on the other hand, that the international protection provided by the bodies charged with applying the Convention is subsidiary in nature.[FN2] Therefore, the rule of exhaustion of domestic remedies is based on the principle that a State so requested must be in a position to provide a remedy itself, within the framework of its domestic legal system. The effect of this rule is to assign an essentially subsidiary role to the competence of the Commission.

[FN2] Marzioni Case. Supra, para. 48.

50. "The basic premise of this approach is that the Commission may not review decisions issued by national courts acting in their area of competence and applying due judicial guarantees, unless it finds that any of the rights protected by the American Convention has been violated." [FN3]

[FN3] Case 11.671, Carlos García Sacone v. Argentina. Report 11/98, published in the Annual Report of the IACHR (1997). OEA/Ser.L/V/II.98.

51. The Commission is competent to declare a petition admissible and to decide on its validity when said petition relates to a decision at the national level that has been issued without respect for due process, or which seems to violate any other right guaranteed by the Convention. If, on the contrary, the petition merely affirms that the decision was erroneous or unjust in itself, said petition must be challenged under the "fourth instance" approach. According to this approach, the role of the Commission is to guarantee the observance of the obligations assumed by states parties to the Convention, rather than to serve as an appellate court to consider alleged errors of law or of fact that may have been committed by national courts acting within their sphere of competence. [FN4] As this Commission has pointed out, "it is not a role of the Inter-American Commission to act as a quasi-judicial fourth instance or to review the decisions of national courts of OAS member states (resolution 29/88, Case 9260, Annual Report of the IACHR, 1987-1988).

[FN4] Marzioni Case. Supra, para. 51.

52. The examination of the case as proposed would require that the Commission act as a quasi-judicial fourth instance or court of appeal for domestic law with respect to the final decision rendered by the highest judicial authorities of Costa Rica. The Commission lacks the competence to do so.

V. CONCLUSIONS

1. The Commission concludes that this case meets the requirements of form stipulated for admissibility in Article 46 of the Convention.

2. However, the analysis provided in this report on the basis of information available in the file leads the Commission to conclude that the events reported, even if true, would not constitute a violation of the American Convention. Indeed, in this case, the State of Costa Rica did not deny Mr. Gilbert Bernard Little the right to effective judicial recourse, insofar as he had access to, and in fact used, means of challenging judicial decisions, in which the rules of due process were observed. Although the final decision that ended the litigation was contrary to his interests, the violation that the petitioner alleges relates merely to a point of domestic law, which is the

requirement of being active in the civil service in order to be entitled to a retirement pension. In this context, it is understood that the State has the capacity to regulate means of challenging judgments, to prevent proceedings from becoming endless and decisions from failing to produce effects of *res judicata*, which would be contrary to the principles of judicial promptness and certainty that should be found in any democratic judicial system.

53. In light of those considerations,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare this case inadmissible in accordance with Article 47.b of the Convention.
2. To publish this report in its Annual Report.

Done and signed at the headquarters of the Inter-American Commission on Human Rights, in the city of Washington, D.C., on September 28, 1998. (Signed): Carlos Ayala, Chairman; Robert K. Goldman, First Vice Chairman; Jean Joseph Exumé, Second Vice Chairman; Commissioners Claudio Grossman, Alvaro Tirado Mejía, Hélio Bicudo, and Henry Forde.