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Decided by: President: Jose Zalaquett;
First Vice-President: Clare K. Roberts;
Second Vice-President: Susana Villaran;
Commissioners: Robert K. Goldman, Julio Prado Vallejo.
Dated: 22 October 2003
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I. SUMMARY

1. On February 23, 2001, the Inter-American Commission on Human Rights (hereinafter “the Commission” or “the IACHR”) received a complaint submitted by Oscar Cedeño Gonzáles (hereinafter “the petitioner” or “the alleged victim”) against the Republic of Costa Rica (hereinafter “Costa Rica”, “the State”, or “the Costa Rican State”) claiming that he had been harmed by violation of his rights under Articles 5, 8, 10, 11, and 25 of the American Convention on Human Rights (hereinafter “the Convention”, or “the American Convention”).

2. The petitioner, a doctor, alleges that he was unjustly dismissed from his post in a Costa Rican hospital as a consequence of a complaint presented by a patient in which the patient accused him of serious abuse while carrying out a physical examination of him which included the procedure referred to as an examination of the back of the eye in order to establish the causes of the severe headaches from which the patient had been suffering.

3. The State claims that the petitioner has had access to all domestic instances, administrative as well as jurisdictional, in order to contest his dismissal and that the reason that he is applying to the Commission is because he is not satisfied with the judgment of the Costa Rican Supreme Court which ratified the legality of the aforementioned dismissal. The State maintains that the petition is inadmissible under the terms of the “Fourth Instance” formula, which establishes that the Commission cannot take the place of a court of appeal by examining alleged errors of law or of fact which might have been committed by national courts acting within their areas of competence. Consequently, the Costa Rican State requests that this petition be found inadmissible under the terms of Article 47(b) of the American Convention on Human Rights and Article 34(a) of the Rules of Procedure of the Inter-American Commission on Human

Rights because facts have not been demonstrated, which amount to a violation of the rights guaranteed by this instrument.

4. On October 22, 2003, the IACHR decided to declare the petition inadmissible.

II. PROCESSING BY THE COMMISSION

5. On February 23, 2001, the IACHR received the complaint in the instant case. On November 1, 2001, the Commission transmitted the relevant communications to the Costa Rican State with a deadline of sixty days for it to reply. The State sent its reply on January 11, 2002. On January 17, 2002, the IACHR sent the State's answer to the petitioner, requesting him to present his comments within forty-five days. On February 20, 2002, the petitioner presented his comments, which were sent to the State on March 18, 2002, with a deadline of thirty days for them to comment. On 24 April, 2002, the Costa Rican State requested the petition to be declared inadmissible because it deals with events, which do not constitute a violation of the Convention.

III. POSITIONS OF THE PARTIES

A. Petitioner

6. The petitioner, a doctor, claimed that as a result of a complaint presented by his patient Gerardo Araya Herrera, the Medical Director of the Hospital of San Carlos, on November 28, 1995, proposed his dismissal from his post as Second Head Doctor in the department of Internal Medicine because of a serious misdemeanor committed against the above mentioned patient. The accusation against the petitioner was that he had seriously abused the patient while carrying out a physical examination of him including the back of his eye examination in order to establish the reasons for the serious headaches the patient had been suffering.

7. The petitioner reported that once he had been dismissed with no right to compensation from his employers, he took issue with the decision; first at the administrative and then at the legal levels, specifically in the ordinary labor courts. The petitioner claimed that in both jurisdictions his right to due process was violated.

8. The petitioner noted that at the administrative level, evidence that he had presented to prove his innocence was not taken into account. One piece of evidence was the Minutes of Meeting No. 049-96, on March 25, 1996, of the Labor Relations Board of the Costa Rican Social Security Fund. According to these minutes, the Board decided by seven votes to one, not to proceed with the dismissal because the case consisted basically of one person's version against another's. In addition, a certificate signed by the President of the College of Doctors and Surgeons of Costa Rica, which stated that the medical examination carried out on the patient was appropriate given the patient's symptoms and personal history (drug addict under treatment), was not taken into account. Another proof that was not taken into account was the retraction made by the patient before a notary public in which he stated that he "now" understood that the doctor had carried out his duties in a professional manner and clarified that his earlier complaints were due to his not understanding the significance of a medical examination and that he never intended to

attribute to Dr. Cedeño inappropriate acts, and that if he had done so, it was due to a misunderstanding on his part.

9. The petitioner reports that the judgment of first instance of the Second Labor Court of the San José Judicial Circuit was in his favor but that subsequently the Labor Court and the Second Court of Appeal rejected the evidence presented to them and in violation of procedural norms reversed the principle in *dubio pro operario*, to his detriment, and arbitrarily sanctioned his dismissal. He notes that Resolution No. 4512/98 of the Labor Court violated his rights by gathering together two facts which had been proved and by accepting as proven the facts not established as proven at the first instance, in this way violating the principle of healthy rational criticism to which all judges are subject when pronouncing judgment. The petitioner added that the Labor Court, in order to accept the new facts as proofs, disallowed the resolution of the Labor Relations Board, the certificate from the President of the College of Doctors and Surgeons of Costa Rica, and the retraction made by the patient before a notary public, mentioned above.

10. With regard to the patient's retraction, the alleged victim holds additionally that the Labor Court stated that "unfortunately the most important witness (the patient), having denounced the facts and made a statement, retracted them, thus creating a state of confusion which far from diminishing the misdeed in fact aggravated it because it seems incredible that a witness should have invented the whole story having related it with such a degree of detail." According to the petitioner, the Labor Court could not disallow the evidence contained in a notarial statement, which in itself is a public document, nor could it regret that the main witness (the patient) should have retracted his original complaint.

11. As part of his appeal to have the judgment reversed (*recurso de casación*) the petitioner pointed out that the Second Court of the Supreme Court of Justice accepted the patient's initial statements, but not his retraction, which he made having learnt more fully about the medical procedure which had been practiced on him. Furthermore, the petitioner stated that the above-mentioned court violated his right to dignity by saying that "it was the plaintiff himself who, once the deeds had been committed, acquired a sworn statement from the patient in which he retracted what he had previously described in the official complaint, which far from benefiting the plaintiff by questioning the veracity of the complaint, works against him ... Such conduct is not unusual in sexual abusers who often make use of different means with which to obscure their unjustifiable, abnormal, and deviant behavior." The petitioner indicated that the description of him as sexual abuser, in addition to injuring his dignity, also constitutes a flagrant violation of Article 5.1 of the American Convention. In relation to the request for an extraordinary review of his case filed on March 29, 2000, the petitioner states that resolution which denied the request, published on August 16, 2000 by the Second Court of the Supreme Court of Justice violated his fundamental rights and prejudices him morally, professionally, and economically, because the same magistrates who found against him in the request to have the judgment reversed instead of barring themselves, decided also on the request for a review.

12. Therefore, the petitioner states that he was in a unequal position in the disciplinary proceedings *vis-à-vis* the other party, that the Costa Rican legal system did not take into account the evidence he produced, nor did it evaluate it appropriately, and both institutions' decisions to dismiss him were unjust and arbitrary.

B. STATE

13. The State informed the IACHR that the disciplinary investigation against the petitioner was carried out with due process and that the petitioner had had the opportunity to exercise his right to defend himself in the administrative process.

14. The State accepted that the Board of Labor Relations had declared Dr. Cedeño's dismissal contrary to law because of the lack of sufficient evidence, as it also accepted that the Medical Management of the hospital had not accepted the Board's decision and had ratified his dismissal without employer liability (Tr. sin responsabilidad patronal, i.e. without right to employment compensation). According to the State, the fact that Medical Management had ratified the sanction against the petitioner without taking into account the Board's decision was not a violation of his rights as the decisions of the Board of Labor Relations are not binding on the administration. The management did not incorporate the patient's sworn notarial retraction in the proceedings because the retraction had not been ratified administratively. If the retraction had been included in the file, the State stated, there would have been a violation of the principle that both parties to a case must be present, which is part of due process. Costa Rica also stated that the petitioner appealed the decision and on June 10, 1996 the Medical Management declared an end to the administrative process because they considered that the appeal procedure had been lodged in an extemporaneous fashion.

15. With respect to the legal process, the State accepted that the Labor Court of the Second Judicial Circuit of San José, in its judgment at the first instance on October 30, 1998, had ordered the immediate reinstatement of Dr. Cedeño with full entitlement of former, current, and future rights. However, it stated that the Costa Rican Social Security Board appealed this finding before the High Court of Labor and on August 10, 1999, the High Court of Labor reversed the judgment of the first instance and declared the judgment null and void in all its parts as it considered that the serious offense had been proved and that the dismissal had been justified. On appeal (Casación) the Second Court of the Supreme Court of Justice, in Resolution No 330-00, confirmed the disputed finding. The State asserts that both the administrative and the judicial process were applied with full regard for the guarantees of due process and for the rules of sound criticism. Consequently, it states that it has not committed any violation of fundamental law to which the petitioner is entitled and that consequently at no time has the petitioner been left defenseless. With regard to the request for a Review rejected by the Second Court of the High Court of Justice, the State claims that the review process is not an instance for further review of legal decisions, but a legal process with which to contest the certainty of a definitive verdict and for this reason can only be applied in the hypothetical situations expressly laid down in Article 619 of the Civil Code, which do not include a review of the administrative process which the petitioner is seeking. Therefore, all the instances exhausted by the petitioner, in the administrative and in the legal processes, demonstrate—the State maintains—that following a long process the petitioner has made use of all the resources which the public administration and the courts place at the disposal of citizens, during the course of which the circumstances and justification for his dismissal were examined in detail and concluded definitively that the process was in order.

16. The State stated that the petitioner turned to the Commission in search of a new instance through which to express his disagreement with the adverse result of the processes he had undertaken in the administrative and legal arena. However, the State says, the Commission has already indicated that it cannot play the role of an appeal court to examine alleged errors of law or of fact which might have been made by national courts acting within their areas of competence.

17. Finally, the State requests that this complaint should be declared inadmissible according to Article 47(b) of the American Convention on Human Rights and Article 34(a) of the Rules of Procedure of the Commission because the facts put before it have not described a violation of the rights guaranteed by that instrument.

IV. ANALYSIS

18. The Commission goes on to review the requisites for admissibility laid down in the American Convention.

A. Competence of the Commission

19. The Commission has competence *ratione materiae* to deal with this petition, since it alleges violations of rights protected by the American Convention, to which the State of Costa Rica is Party, having ratified it on April 8, 1970.

20. The Commission has competence *ratione personae* to examine the complaint, since the condition of the alleged victim and petitioner meets the requirements laid down in Articles 1.2 and 44 of the Convention.

21. The IACHR has competence *ratione temporis* to examine the complaint, since the obligation of respecting and ensuring the rights protected by the American Convention was already in force for the State on the date on which the incidents described in the petition allegedly occurred.

22. Finally, the Commission has competence *ratione loci*, since the petition denounces violations of human rights within the jurisdiction of the State, which is the object of this complaint.

B. Other requirements for admissibility

1. Exhaustion of remedies under domestic law

23. Under Article 46(1) of the Convention it is stated that for a petition to be admissible it is necessary to have previously exhausted remedies under domestic law, according to the principles of international law. In none of its communications presented to IACHR did the State oppose exceptions to the rule of exhaustion of domestic legal remedies. Additionally, in its communication of April 24 of the current year, the State in reference to its first communication of January 2 of the same year indicated that the petitioner had exhausted all the instances in the

administrative and legal processes, which is an express recognition on the part of the State. Therefore the Commission, as it did on a previous occasion[FN1], without needing to engage in further analysis, is of the opinion that the requirement detailed in Article 46.1 of the Convention has been satisfied by the Costa Rican State's recognition.

[FN1] See report 21/02 P12.109 Bessy Álvarez y Blanca Rodríguez v. Honduras, paragraph 22.

2. Deadline for presentation of petitions

24. Article 46(1) of the American Convention states that for a petition or communication to be admitted by the Commission it must be lodged within a period of six months from the date on which the party alleging violation of his rights was notified of the final judgment.

25. The petitioner informed the IACHR that the last judgment about which he was notified was Resolution No. 2000-00764 of August 28, 2000, which rejected his request for a review. The State did not register an objection to any of the communications presented to the IACHR. Consequently, given that the petition was received in the IACHR on February 23, 2001, the Commission considers that the receipt of the petition falls within the deadline established in Article 46.1(b) of the American Convention.

3. Duplication of procedures and res judicata

26. The file concerning the petition contains no information that would suggest that this subject is currently pending in another international proceeding or that it might already have been settled by the Inter-American Commission on Human Rights. Therefore, the IACHR concludes that it has met the provisions laid down in Article 46(1)(c) of the American Convention.

C. Description of the alleged facts

27. Article 47(b) of the American Convention states that the Commission shall consider inadmissible any petition that "does not state facts that tend to establish a violation of the rights guaranteed by this Convention".

28. The petitioner alleges violations of due process, especially arbitrary evaluation of evidence and unsubstantiated judgment. The State, for its part, has invoked the doctrine of fourth instance, under the terms of which the IACHR is prevented from taking on the role of an appeal court in order to examine supposed errors of law or fact which might have been committed by national courts acting within the limits of their competence. The State maintains that the petitioner's allegation that his right to due process and to effective legal protection was violated is incorrect because his procedural guarantees were respected both at the administrative and at the judicial levels.

29. The State maintains that the petitioner's complaint to the IACHR is due to his disagreement with the judicial decision reached and to his desire to find an additional instance where he might obtain the favorable result he did not obtain from the domestic jurisdiction. The State recalls that the decision of the Supreme Court of Justice to ratify Dr. Cedeño's dismissal without employer's liability was reached following a long process, which involved appeals to both the courts of Apelación (Appeal) and Casación (Annulment), which ensured that the Costa Rican courts had examined all the evidence available in relation to the disputed matter. The petitioner also had access to the extraordinary request for review, which was turned down. The State maintains that during this long process the petitioner did not establish facts which demonstrate a violation of rights under the American Convention, but, on the contrary, demonstrate that he enjoyed full access to prompt and effective legal redress, substantiated in accordance with the guarantees of due process.

30. On previous occasions the Commission has stated that a State Party to the Convention should have the opportunity to offer reparation within its domestic jurisdiction and in accordance with its legal system before cases in which alleged violations by the State of the rights protected under the terms of the Convention are made public in the inter-American system of protection of human rights.[FN2] The legal foundation for this is found in the rule of exhaustion of domestic legal remedies, which implicitly confers on the international system of protection of human rights a role, which is subsidiary or complementary to the domestic sphere.[FN3]

[FN2] See IACHR, Report N° 39/96, Case 11.673 ("Marzioni"), Argentina, October 15, 1996, IACHR Annual Report, 1997, paragraph 50.

[FN3] In the Marzioni case, the Commission stated that: "International protection provided by the Commission's supervisory organs is by nature subsidiary to that provided by domestic law, according to the Convention's own Preamble. - See Marzioni, supra, paragraph 50.

31. The subsidiarity of the international system for the protection of human rights and the principle of economy of process provide the basis for the adoption, by the Commission, of the "formula of the fourth instance"[FN4]. This formula is based on the premise that the Commission need not review judgments laid down by domestic courts acting within the sphere of their own competence and apply due judicial guarantees unless it is considered that there is a possibility that a violation of the Convention has been committed.[FN5] According to the principle of *contrario sensu*, the Commission does have competence to declare a petition admissible and to find judgment on its foundation when the petition refers to a domestic judgment which is presumed to have been handed down without due process or in violation of any other right guaranteed by the Convention.[FN6]

[FN4] See Marzioni, supra, paragraph 50.

[FN5] The Commission has applied the formula of the "fourth instance" on many occasions, and declared inadmissible many petitions on this basis. In 1988, the Commission stated: ... It should not be assumed that the Commission may act as a fourth instance in domestic law to which a case may be presented and where differences with regard to sums adjudicated by the judiciary in

its application of the law may be resolved. It should be remembered that it is not the function of the IACHR to act as a quasi-judicial fourth instance and to review the holdings of the domestic courts of the OAS Member States. IACHR, Resolution 29/88, Case N° 9260. IACHR Annual Report 1987-88, paragraph 5.

[FN6] See Marzioni, *supra*, paragraph 6.

32. In the instant case, the petitioner has had unrestricted access to all instances of domestic jurisdiction in order to exercise his right to defend himself and challenge his dismissal, and he has exhausted the protection provided by domestic jurisdiction. Subsequently, the Supreme Court of Justice, in a sufficiently reasoned judgment, ratified the legality of his dismissal. The Commission finds that there are insufficient facts on which to conclude that the procedure in the domestic jurisdiction suffered irregularities on a scale sufficient to amount to a violation of the petitioner's rights as protected by the Convention, in particular his right to due process and his right to justice (Articles 8 and 25, respectively) and his right to respect for his integrity, his right to compensation, and the right to have his honor respected and his dignity recognized, as laid down in Articles 5, 10, and 11, of the same instrument, respectively.

33. The petitioner would like the Commission to enter into an analysis of errors alleged to have been committed in the domestic jurisdiction (especially in the administrative process) and review the evidence he put forward so that the final judgment handed down by the Supreme Court of Justice, which was unfavorable to him, can be revised. The Commission, given the above, does not possess the faculties to review said judgment because, if it were to do so, it would be acting in the role of an appeal court in respect of a ruling by the competent Costa Rican judicial authorities. In addition, the Commission repeats that the decisive element is not the subjective fear of the interested party with regard to the impartiality of the court responsible for the judgment, but the fact that in the circumstances of the case it can be sustained that his fears are objectively justified. The European Court itself has stated that "in principle, the impartiality of the members of a court will be assumed until the opposite can be proved".[FN7]

[FN7] ECHR, *Albert and Le Compte v. Belgium*, February 10, 1983, Series A No. 58, Application No. 7299/75 and 7496/76, (1983) 5 EHRR 533, and 32.

III. CONCLUSION

34. The Commission concludes that this petition meets all the requisites for formal admissibility as laid down in Article 46 of the Convention.

35. It is clear from an analysis of the petition that it does not describe events which comprise violations of the right to judicial guarantees and fair trial (Articles 8 and 25, respectively), or of the right to personal integrity, (Article 5), the right to compensation (Article 10), or the right to the protection of honor and dignity (Article 11), as claimed by the petitioner. Therefore, the Commission concludes that the present case is inadmissible, according to Article 47(b) of the Convention.

36. Based on the foregoing considerations of fact and law,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare this petition inadmissible.
2. To give notice of this decision to the petitioner and to the State.
3. To publish this decision and to include it in its Annual Report to the General Assembly of the OAS.

Done and signed at the headquarters of the Inter-American Commission on Human Rights in the city of Washington, D.C., on the 22nd day of the month of October, 2003. (Signed): José Zalaquett, President; Clare K. Roberts, First Vice-President; Susana Villarán, Second Vice-President; Robert K. Goldman and Julio Prado Vallejo, Commissioners.