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Decided by: President: Jose Zalaquett;  
First Vice-President: Clare K. Roberts;  
Second Vice-President: Susana Villaran;  
Commissioners: Evelio Fernandez Arevalos, Paulo Sergio Pinheiro, Freddy Gutierrez, Florentin Melendez.  
Dated: 13 October 2004  
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## I. SUMMARY

1. On July 7, 1999, Ms. Yamileth Rojas Piedra (hereinafter “the alleged victim”) filed with the Inter-American Commission on Human Rights (hereinafter “the Commission”) a petition against the Republic of Costa Rica (hereinafter “Costa Rica” or “the State”), in which she reports a violation, against the alleged victim, of human rights guaranteed by the following articles of the American Convention on Human Rights (hereinafter “the Convention”): 8.1 (Right to Fair Trial); 25 (Judicial Protection); 9 (Freedom from Ex Post Facto Laws); 10 (Right to Compensation); 11 (Right to Privacy); 2 (Domestic Legal Effects), all related to Article 1.1 (Obligation to Respect Rights), and 29 (Restrictions Regarding Interpretation).

2. The complainants claim that the State should compensate the alleged victim for the miscarriage of justice when she was convicted for the crime of giving checks drawn on an account with insufficient funds, although her conduct was not characterized as a crime in Costa Rican legislation nor was it criminally blamable. Collaterally, the complainants claim that the State has failed to respect the honor and dignity of Ms. Rojas Piedra by issuing a judgment of conviction against her and entering her name in the Judicial Record of Lawbreakers. The denunciation also alleges that the State committed severe violations of due process because it obstructed the right of access to justice and the right to appeal to claim compensation for the miscarriage of justice.

3. The complainants also claim that, although the Supreme Court granted the appeal for review filed by the alleged victim and reversed this conviction, thus recognizing that there had been a miscarriage of justice, it did not rule on the request for compensation made by the alleged victim in this appeal, and therefore it did not grant her full compensation for damages, in

accordance with the terms of Articles 63.1 and 10 of the American Convention, of which the latter expressly provides for the right to be compensated for a miscarriage of justice. They also point out that the remedies under domestic law that were filed by her to secure compensation were unsuccessful, that the procedure for reviewing criminal cases allows the submittal of evidence on the judgment of conviction but not on its effects (damages) and that she was sentenced to pay exorbitant costs to exercise her right to appeal, all of which, according to the complainants, has to do with the poor functioning of the administration of justice and the impunity stemming from the lack of investigation and punishment of those responsible. They also claim that the State did not meet its obligations to adjust its legislation in line with the provisions of the Convention pursuant to its Article 2 and finally that their petition is admissible because it meets the requirements of Articles 46(1) and 47(b) of the American Convention.

4. The State claims that Ms. Yamileth Rojas Piedra availed herself of the different remedies and courts that the national judiciary system offers and that the Arbitration Court of the Supreme Court of Justice dismissed her claims to compensation for damages because the complainant did not show how she was affected or the alleged damage. The Costa Rican State indicates that the complainant is looking for a new court to air her dissatisfaction at the result of her judicial proceedings in the national judiciary system, thus distorting the subsidiary function of the Commission. Because of this, it states that the petition does not tend to establish the violation of any right guaranteed by the Convention and requests that the petition be declared inadmissible pursuant to Article 47 (b) of this international instrument and 34(a) of the Commission's Rules of Procedure.

5. After studying the factual and legal arguments presented by the parties, as well as the evidence that was given, and without detriment to the substance of the matter, the IACHR concludes, on the basis of Article 47(b) of the Convention, that the case is inadmissible for lack of characterization.

## II. PROCEEDINGS WITH THE INTER-AMERICAN COMMISSION

6. Once the documentation, along with receipt of the additional information presented by the complainant on January 23, 2002, was completed and the corresponding study was carried out, the petition was transmitted to the State on August 7, 2002. The State answered the petition on December 18, 2003, after a reiteration. On April 26, 2004, the complainants presented their observations, which were transmitted to the State on May 6, 2004. On June 30, 2004, additional information was received from the State, and it was transmitted to the complainant on August 19, 2004. Subsequently both parties presented additional information which was transmitted to the respective counterpart.

## III. POSITIONS OF THE PARTIES

### A. The complainants

7. The complainants claim that, by means of judgment No. 11-86 of January 14, 1986, The Criminal Court of Appeals of San José convicted Ms. Yamileth Rojas Piedra as the sole perpetrator responsible for two offenses of "giving checks drawn on an account with insufficient

funds” and it sentenced her to six months imprisonment for each one of these offenses for a total of one year; payment of both costs of the criminal proceedings; entry of judgment in the Judicial Record of Lawbreakers and payment, as a civil compensatory action, the amount of the checks that was the object of the proceeding. Likewise, she was given the benefit of a suspended sentence for a three-year period.

8. The complainants claim that Ms. Yamileth Rojas Piedra was convicted for events that were not characterized as criminal, anti-juridical, and guilty conduct, because the checks that were given were not given in their natural status as an unconditional order for payment, which is an indispensable requirement so that this fact can be the target of a criminal proceeding, but rather as instruments of guarantee, which excluded the committing of any crime. The alleged victim filed a special appeal for review, which was granted by the Criminal Arbitration Court of the Supreme Court of Justice by means of Judgment No. 722-F-93 of December twenty-third nineteen hundred ninety-three. By this judgment, the Arbitration Court reversed the judgment that was being appealed and acquitted the complainant for any penalty and liability for the crime of giving checks drawn on an account with insufficient funds. This judgment, among other things, reads as follows:

...the conclusion that was reached was based on arbitrary grounds, contrary to the provisions of Article 39 of the constitutional text [principle of culpability and legality], which orders the necessary demonstration of guilt. The thesis set forth by the Judge is unconstitutional.... The injured party received the checks as a simple guarantee of payment, with the full intention of using them as credit documents, which is a situation that excludes the appropriation of the safeguarded legal asset, “public trust,” since it does not affect any third party. Nor would there be any damage for the injured party, because he accepted the documents under these conditions, knowing that they could not contain funds, thus only accepting a guarantee of payment which, if not fulfilled, could lead to civil proceedings. From the above, it can be inferred that the judgment being appealed undermines due process of law and therefore infringe an essential principle: necessary proof of guilt. All the grounds on which the judgment is based are illogical and illegal because they rest on criteria without any valid legal basis, which renders the judgment null and void... As a result, the appeal for review should be granted and the judgment rendered null and void...

9. The complainants add that, even when the appeal for review was resolved favorably for the alleged victim, the Supreme Court neglected to rule on the complainant’s request for compensation for a miscarriage of justice and therefore did not determine the damages produced by the State’s miscarriage of justice, pursuant to the provisions of Article 10 of the American Convention, although the Criminal Court, according to what the complainants claim, had the necessary elements to rule on these matters because they were presented in the appeal.

10. The complainant points out that, when the final judgment was declared null and void because of a miscarriage of justice, all the relevant remedial issues should also have been resolved, not only the judgment of acquittal or expunging the conviction from the Judicial Record of Lawbreakers, but also all the consequences of the reversed judgment, which are far broader. The petition indicates also that one of the adverse consequences of this conviction was that the Ministry of Economy, Industry and Commerce of Costa Rica, by means of resolution of

September 9, 1992, withdrew the alleged victim's real estate agent license[FN1] pursuant to the provisions of paragraph f) of Article 3 of Executive Decree 5358-MEIC, of October 30, 1975, which provides that:

to grant a real estate agent license the applicant must not have been convicted for errors or crimes in exercising his/her business activity.

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[FN1] According to the petitioners, Ms. Rojas Piedra filed an appeal on the grounds of unconstitutionality against this resolution, which was declared to be warranted by the Constitutional Court of the Supreme Court of Justice on December 14, 1994. In other words, the effects of refusing the above-mentioned license lasted more than two years, from September 9, 1992 until notification of the decision by the Court to declare that the appeal on the grounds of unconstitutionality was warranted.

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11. The complainant indicates that these consequences include moral damage and affecting the right to honor and dignity stemming from the unfair conviction imposed by the court for a fact that is not considered a criminal offense and the resulting entry of this judgment of conviction in the Judicial Record of Lawbreakers for more than seven years. Regarding the damage that this entry has caused Ms. Rojas Piedra, she cites as a precedent the case of the newspaper La Nación, in which the Inter-American Court granted provisional measures to the journalist Mauricio Herrera because it considered the eventual entry of his case in the Record of Lawbreakers of Costa Rica would produce irreversible damages.[FN2] The complainants add that, in the case of Ms. Rojas Piedra, it was not an eventual damage that was caused but rather a concrete event, as a result of which her "police record was tarnished for more than seven years," her capacity to act and to exercise many of her rights as a citizen was restricted, which prevented her from considering job options, life ambitions and made her feel stigmatized. In addition, the alleged victim's liberty was restricted as a result of the suspended execution of her sentence.

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[FN2] Inter-American Court of Human Rights, Provisional Measures, Case of La Nación. Ruling by the President of the Inter-American Court of Human Rights of May 21 and 23 and December 6, 2001.

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12. For the complainant, the mere fact of having her name entered into the Judicial Record of Lawbreakers was severe enough for the Arbitration Court to establish damages although "abstractly." This would have permitted Ms. Rojas Piedra, afterwards, to demonstrate these damages in ordinary civil life, which in turn would have led to a precise determination of the compensation for a miscarriage of justice under the terms of Article 10 of the Convention, a demonstration that could not be done because in Costa Rica there is no regular proceeding to decide if compensation for a miscarriage of justice is admissible.[FN3]

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[FN3] Ruling 103 F 94 of the Arbitration Court of April twenty-first nineteen hundred ninety-four is quoted as an example of an abstract ruling on compensation for damages. Regarding compensation, it reads as follows:

As a result, the State is held liable for the damages caused in this concrete case (Articles 190 and 201 of the General Law on Public Administration, relative to Article 498 of the Criminal Procedures Code). It has not been proven, however, that the judgment that is being reviewed has produced any material damage to the convicted party. Finally, this point should be dismissed. What cannot be denied is the moral damage that was suffered by Ms. Pereira Castro by the judgment of conviction against her, for which reason this point of the claim should be declared warranted and the State should be ordered to pay the respective amount, which has been prudentially set at one million two hundred fifty thousand colones. The above takes into account the pain, distress and damage to self-esteem that the above-mentioned Ana Cecilia Pereira Castro had to suffer as a result of the unfair judgment that was made to her detriment.

In this case, the plaintiff, as indicated, had filed her claim generically by simply saying: there was a miscarriage of justice when the accused Pereira Castro was convicted and requests that a judgment of acquittal be issued and that the State be ordered to pay for the damages stemming from the judgment that was appealed.

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13. The complainants allege that the generic way in which Ms. Rojas filed her claim for compensation was based, as indicated, on the fact that if she had expounded her claim concretely and had presented evidence regarding the appeal, it would have been declared inadmissible. A document that the complainants presented entitled “Ruling on Compensation for a Miscarriage of Justice in Costa Rica”[FN4] serves to illustrate this reasoning. It indicates that the “appeal” or “proceeding” of review is not just another step in the criminal proceeding because it is a special proceeding or appeal which is processed on the basis of final judgments, that is, those who already have authority of the res judicata. Therefore, the evidence that is accepted is only the one that is related to the demonstration of the miscarriage of justice and not to its effects. The ruling indicates that the only case in which it is possible to have the case reviewed again for damages in a criminal proceeding as a new action is when the resolution that is adopted in the review proceeding rules its resubmittal for a new trial and rules that the conviction is ineffective, which makes the res judicata disappear.

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[FN4] Ruling given at the request of the complainant by professor.....

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14. The above means, as indicated, that there is no regular proceeding to claim damages for a miscarriage of justice and that the only way in which they can process it as part of a criminal proceedings is to process the damages along with the review (as provided for in Article 498 of the Criminal Procedures Code in force at the time the event occurred) and if they are submitted as generic claim.[FN5]

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[FN5] Ruling 103 F 94 of the Arbitration Court of April twenty-first of nineteen hundred ninety-four is quoted as an example of an abstract decision to pay compensation for damages. The

plaintiff, as indicated, only stated that “there was a miscarriage of justice when the accused Pereira Castro was convicted” and simply requested “that a judgment of acquittal be issued and that the State be ordered to pay for the damages stemming from the judgment that is being appealed.” The Arbitration Court, in its judgment, stated:

As a result, the State is held liable for the damages caused in this concrete case (Articles 190 and 201 of the General Law on Public Administration, relative to Article 498 of the Criminal Procedures Code). It has not been proven, however, that the judgment that is being reviewed has produced any material damage to the convicted party. Finally, this point should be dismissed. What cannot be denied is the moral damage that was suffered by Ms. Pereira Castro by the judgment of conviction against her, for which reason this point of the claim should be declared warranted and the State should be ordered to pay the respective amount, which has been prudentially set at one million two hundred fifty thousand colones. The above takes into account the pain, distress and damage to self-esteem that the above-mentioned Ana Cecilia Pereira Castro had to suffer as a result of the unfair judgment that was issued to her detriment.

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15. Now, as alleged, the appeal for review is special and restrictive because it is admissible only when there are certain legal assumptions as provided for in Article 490 of the Criminal Procedures Code. The new evidence can only be presented if it is aimed at demonstrating the miscarriage of justice, that is, demonstrating that the fact of conviction did not exist, that the convicted party did not commit it or that the event pertains to a more favorable legal framework, in accordance with paragraph 4 of the above-mentioned provision. This means, according to the above-mentioned ruling, that it would be legally impossible to obtain compensation for a miscarriage of justice because the proceeding of review sanctions any new element of evidence that does not come under the assumptions established in the above-mentioned Article 490 by declaring inadmissibility.

16. The ruling states that, in view of the impossibility of submitting evidence, the Arbitration Court will always adopt a prudential approach, limiting the right of petition, hearing, defense, and contestation regarding damages. It is indicated, moreover, that when the appeal for review is filed, it is impossible to know which part of the miscarriage of justice will be recognized, as it could involve errors committed in the investigation stage or the sentencing, which will always lead to infra or ultra petita because it is not known on what point the Arbitration Court will declare the right.

17. The complainant claims that, in the case that is being examined, there was no ruling by the Supreme Court of Justice on the generic claims of compensation for damages filed by Ms. Rojas Piedra in the appeal for review. Thus, as alleged, an omission was made and this was the first obstruction of justice and the right of the alleged victim to file for compensation.

18. The second obstruction occurred when Ms. Rojas Piedra, alleging infra petita, made the Court note its omission by filing a motion for addition and clarification and this Court not only dismissed the claim for damages but also exonerated the State from paying any costs. On this occasion, the Court recognized that plaintiff had requested damages and costs on a timely basis, as well as its own omission, when it stated that:

...failed to rule on the request that in the points that were referred to [regarding damages and costs] they were presented from the time the appeal for review was filed.

19. The complainants indicate that, despite the above, when ruling on the motion for addition and clarification, the Arbitration Court denied payment of compensation for damages caused by the reversed conviction and declared that “it was not demonstrated in any way what the damages affecting the complainant consisted of.”[FN6] Regarding this, the Court ruled:

it does not involve any automatic procedure... but rather issues that this Court could rule on separately (498 Ibid.)[FN7] in accordance with the circumstances of each case and on the basis of evidence of the damage caused to the petitioner submitted by whoever is requesting it [FN8]

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[FN6] Ruling V.37-A-94 of March 16, 1994 of the Arbitration Court of the Supreme Court of Justice of Costa Rica.

[FN7] Article 498 of the Criminal Procedures Code.

[FN8] Ruling V.37-A-94 of March 16,1994 of the Arbitration Court of the Supreme Court of Justice of Costa Rica.  
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20. The complainants claim that, on August 30, 1994, once the criminal proceeding concluded and since there were no adequate remedies to claim the corresponding compensation, Ms. Rojas, in an unprecedented case, filed civil administrative adversarial proceedings against the State of Costa Rica with the Appellate Court of Administrative and Civil Adversarial Proceedings of the Treasury. The object of the demand was to claim compliance of the human right to compensation for the miscarriage of justice referred to in Article 10 of the American Convention.

21. According to the complainants, the civil proceeding with the administrative court had the following incidences: 1) Judgment No. 101-95 of February 7, 1995 of the Appellate Court of Administrative and Civil Adversarial Proceedings of the Treasury, which dismissed the objection of res judicata presented by the State because the parties, object, and cause were not identical, which is a condition that is “...necessary for the final judgment to produce a material res judicata with respect to the other process..”; 2) trial court judgment No. 306-97 of the Court of Administrative and Civil Adversarial Proceedings of the Treasury of the Circuit Trial Court of Goicochea, of August 13, 1997, which admitted the objection of res judicata filed by the State and sentenced the plaintiff to payment of both costs; 3) judgment of the court of appeals No. 230-97 of the Superior Court of Administrative Adversarial Proceedings, Appellate Division of the Circuit Court of Appeals of San José, of December 2, 1997, which dismissed the petition for annulment filed by the plaintiff and upheld the judgment of conviction that was being appealed; 4) judgment of the Court of Civil Appeals, Ruling No. 102-F-98 of the Court of Appeals of October 14, 1998, which dismissed the appeal and ordered the plaintiff to pay costs; 5) Motion for Addition and Clarification against the appeal judgment, denied by the ruling of December 2, 1998; 6) Investigation by the Judicial Inspection Court for the disappearance of case file No. 426-85 from the Criminal Court of Appeals of San José, which is the basis for claiming damages by administrative adversarial proceedings; 7) judgment No. 208-2000 of the Trial Court of the

Court of Administrative Adversarial Proceedings, Circuit Court of Appeals of San José of August 9, 2000, which upheld the ruling ordering settlement of legal and personal costs in the framework of the regular proceedings. Ms. Yamileth Rojas Piedra was ordered to pay the State the exorbitant amount of eight million seven hundred eight thousand four hundred six colones and thirty-four cents (about US\$30,000.00 at the time the decision was made). The complainant claims that this took place as part of the regular proceedings filed by her, using the legal means and remedies that were available in Costa Rica's judiciary system, in this case, for having requested compensation for miscarriage of justice on the basis of Article 10 of the American Convention.

22. Definitively, according to the complainants, the alleged victim was not only denied compensation for the miscarriage of justice, but also, after lengthy proceedings characterized by procedural irregularities, was ordered to pay costs 25 times higher than the amount of the checks that were at the origin of this conflict. They add that this occurred although Ms. Rojas Piedra had sufficient grounds to sue, contrary to what was indicated by the trial court judge and the subsequent judiciary officers who ruled on the proceedings filed for appeal and annulment.

23. The complainants affirm that, as a whole, the legal proceedings filed by the alleged victim to claim compensation for the miscarriage of justice took more than 12 years. Of these, 8 years pertained to criminal proceedings and four to the administrative adversarial proceedings, which constitute an unjustified delay in administering justice and a clear violation of Article 8.1 of the Convention. They add that the fact that the regular appeals were neither effective nor expeditious contrasts with the meaning of "simple and prompt recourse" envisaged in Article 25 of the Convention, which is also a breach of this provision.

24. The complainants indicate that, furthermore, in Costa Rica there is no express legal norm admitting capital liability of the State for judgments made by the judiciary branch in the exercise of its jurisdictional function, which means that the alleged victim did not benefit from the judicial protection that domestic law should have afforded her in accordance to the same provision.

25. As for the subsequent claim by the State that compensation did not pertain because there is no record that Ms. Rojas repaid the costs of the lawsuit as she was ordered to do, the complainants indicate that the Arbitration Court, when ruling on [the appeal for review] and acquitting Ms. Rojas Piedra, decided that "no crime was ever committed." "This circumstance, in itself, rendered the effects stemming from the previous conviction null and void, including the criminal judgment and the order to repay the costs of the lawsuit." [FN9]

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[FN9] Brief by the complainant of April 22, 2004, received in IACHR on April 26, 2004, page 8, paragraph 29.  
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26. The complainants request that the Commission order payment of compensation for material and moral damages affecting the alleged victim for entry of her name in the Judicial Record of Lawbreakers for more than seven years, for suffering caused to her, and for the time

and expenses incurred to claim, unsuccessfully, the damages that were produced, as well as for not having investigated the facts or punished those responsible.

B. The State

27. The Costa Rican State points out that the complainant is looking for a new court hearing to express her disagreement with the outcome of her legal initiatives in the country's judiciary system, thus distorting the subsidiary function of the Commission. Because of this, it asserts that the petition does not tend to establish a violation of any right guaranteed by the Convention and requests that the petition be declared inadmissible in conformity with Article 47 (b) of this international instrument.

28. The Government of Costa Rica concurs with the following facts set forth in the petition:

29. That by means of judgment No. 11-86 of January fourteenth nineteen hundred eighty-six, the Criminal Court of Appeals of San José convicted Yamileth Rojas Piedra as the perpetrator responsible for two criminal counts of giving checks drawn on an account with insufficient funds, in a substantive proceeding, to the detriment of Rodolfo Díaz Valle and the public trust and sentenced her to six months imprisonment for each felony (that is, a total of one year imprisonment), plus payment of both costs of the trial; payment to the civil plaintiff of three hundred forty-two thousand colones for the amount of the two checks; and payment of twenty-seven thousand five hundred colones in professional fees for the chief attorney. Furthermore, it ordered entry of the judgment in the Judicial Record of Lawbreakers and granted the convicted party the benefit of a suspended sentence for a three-year period.

30. That the defense attorney of the convicted party filed an appeal for review against this judgment with the Arbitration Court of the Supreme Court of Justice, which by means of judgment No. 722-F-93 of December 23, 1993, granted the appeal, reversed the judgment of conviction being appealed, acquitted Ms. Rojas Piedra of any penalty and liability for the crimes she was accused of, and ordered that the respective entry be expunged from the Judicial Record of Lawbreakers.

31. That in response to the motion for addition and clarification, the Arbitration Court, by means of resolution No. 37-A-94 of March 16 nineteen hundred ninety-four upheld the previous judgment, dismissed the claim for compensation for damages, and exonerated the State from payment of costs.

32. That by means of resolutions No. 78-A-94 of April twenty-first 1994 and No. 91-A.94 of May thirteenth 1994, this same Court flatly dismissed the motions for addition, clarification, and annulment filed by Mr. Andrés Carrillo Chávez, representing the defendant.

33. That subsequently Ms. Rojas Piedra sued the State by means of an adversarial proceeding for payment of damages caused by judgment No. 11-86, issued by the Criminal Court of Appeals of San José on January fourteenth nineteen hundred eighty-six.

34. That judgment No. 306-97 of the Court of Administrative and Civil Adversarial Proceedings of the Treasury of the Circuit Court of Appeals of San José, issued on August thirteenth nineteen hundred ninety-seven, dismissed all points of the lawsuit, with costs to be paid by the plaintiff, who filed an appeal. By means of appeal judgment No. 230-97 of December 2, 1997, the Superior Court of Administrative Adversarial Proceedings, the Appellate Division of the Circuit Court, upheld the ruling of the above. Afterwards, the Trial Court of the Supreme Court of Justice, by means of judgment No. 102-F-98, of October fourteenth 1998, dismissed the petition for annulment filed by the plaintiff and the motion for addition and clarification, by means of resolution No. 102-F-98 bis of December 2, 1998.

35. As for the legal arguments, the State claims that Ms. Rojas Piedra used the different appeals and remedies that were available in the national judiciary system and that, precisely, the Arbitration Court of the Supreme Court of Justice, after reviewing the substance of her claims, dismissed her claim for compensation for damages filed by her because there was no material demonstration of what the alleged damage consisted of. Therefore, according to the State, the adverse outcome for the complainant from her claim was due to her own neglect.

36. As for the subject of receiving compensation, the State claims that, in the appeal for review filed by the attorney of the complainant, only the following is succinctly indicated:

In any case, a ruling regarding the damages caused by the conviction, to be paid by State, is being requested... because the convicted party Rojas Piedra comes under the provisions of Article 498 of the Criminal Procedures Code.

37. Costa Rica adds that, although the Arbitration Court neglected to issue a ruling on this point of the petition, it is certain that the interested party used, as a procedural remedy to address the miscarriage of justice, a motion to add and clarify, in which she neither specified the details of the damages or submitted the respective evidence. The attorney of the interested party simply stated the following:

...taking into consideration that we are in the presence of a miscarriage of justice, which entitles my client to request payment of the damages she suffered both morally and materially, on the basis of the judgment that was reversed here, a situation that is provided for in the American Convention on Human Rights, item 10...in accordance with the regulations governing criminal proceedings, this requires a ruling on the judgment of conviction by the State to pay for damages caused by the conviction, as well as both costs of this appeal. Yamileth suffered considerably from this miscarriage of justice, deserves compensation, and it is fair, and therefore I request an addition to the judgment in this regard. This was expressly requested in the appeal, and therefore this entitles me to claim it.

38. That the motion for addition was granted and the judgment was added, dismissing the claim for compensation for damages; furthermore, the State was exonerated from paying costs because it was deemed that the dispute that led to the proceedings was warranted. The Arbitration Court based its ruling on the following considerations:

1. It recognized that, on the basis of Article 10 of the American Convention on Human Rights, regarding items 498 and 499 of the Criminal Procedures Code, it is possible to determine by means of criminal proceedings damages caused by the reversed conviction.[FN10]
2. Nevertheless, it does not involve an automatic procedure, which functions only because the appeal for review was granted, as it deals with aspects that the Court “could rule on separately.”
3. Although it is asserted that the convicted party “suffered considerably morally and materially,” there was no demonstration of what this suffering consisted of, because:
  - a. In view of the reversed judgment, it is observed that the fact that was judged did indeed exist (giving checks drawn on an account with insufficient funds), but that it did not involve any crime because the criterion that this crime was considered to be “formal” was discarded; that the conviction of one year imprisonment was suspended because the defendant was granted the benefit of a suspended sentence and that there is no record that the costs incurred by the lawsuit that Ms. Yamileth Rojas Piedra was ordered to repay had ever been paid.
  - b. It is observed that the sentence of one year imprisonment was suspended when the benefit of a suspended sentence was granted.
  - c. Although repayment of the costs incurred by the lawsuit, in the amount of three hundred forty-two thousand colones, was declared warranted at that time, there is no record that this amount had been paid.

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[FN10] Article 498 of the Criminal Procedures Code of Costa Rica reads as follows:  
Damages. The judgment declaring the innocence of the convicted party can rule, in a separate motion, on the damages suffered by the convicted party. These damages will be remedied by the State, as long as the convicted party has not contributed by willful misrepresentation or misconduct to the miscarriage of justice. The civil remedy can only be granted for the benefit of the convicted party or his/her legitimate heirs.  
Article 499 of this Code reads as follows:  
Dismissal and costs. Dismissal of an appeal for review does not prevent the filing of a new appeal on new grounds.  
The costs of an appeal that is dismissed will always be charged to the party filing it.  
If the judgment stemming from the retrial is a conviction, it is not possible to impose a heavier sanction than the one imposed in the second judgment.  
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39. The State alleges that, despite this decision, the complainant attempted to claim damages for the miscarriage of justice by administrative and civil adversarial proceedings of the Treasury. This claim was dismissed by judgment No. 4 of January 6, 1995, because it had already been ruled on by the Arbitration Court by means of a resolution that had generated the formal and material effect of a res judicata on the subject of damages, because of which Ms. Rojas Piedra was ordered to pay both costs of these regular proceedings. Regarding this, the judge declared that the judgment of March 16, 1994, whereby the Arbitration Court upheld the judgment of December 23, 1993

...issued an express and material ruling on whether those [damages] were admissible or not..."...if the civil issue had already been resolved, as indicated, by the Arbitration Court, at the request of the same party filing the proceeding, this removed all possibility of having the matter being presented again, which meant that it is admissible to grant the objection of material res judicata filed by the representative of the State.

40. According to the State, the plaintiff filed an appeal and the ad quem body upheld the judgment of the trial court using the same material argument, that is, the admissibility of a defense claiming material res judicata. Afterwards the plaintiff filed a petition for annulment with the Trial Court of the Supreme Court of Justice, which dismissed it, ordering payment of its costs. As for the matter of whether the appellant was entitled to file civil proceedings to obtain compensation for damages after this payment had been denied in criminal proceedings, the Trial Court ruled that:

...the appellant is not justified... because she chose the proceedings to claim these damages and she made the final statement dismissing this claim and therefore it should be respected. If the appellant had not used criminal proceedings to claim payment of these damages, then, under that assumption, she would not have been denied the option of filing civil proceedings to claim payment.

41. The State indicates that, with respect to the motions for addition, clarification, and annulment that were subsequently filed by the appellant regarding this judgment, the Trial Court, among other reasons for its denial, indicated that actually the claim of the litigant is aimed at reopening discussion about issues that were fully examined and resolved.., because it dealt with "...an addition to an addition" and "because in Chapter IV, Title IV, Book IV of the Criminal Procedures Code, there is no provision for a remedy against the judgment issued in a retrial, except for addition and clarification, in conformity with Article 110 of this Code,[FN11] which had already been formulated and resolved by the Court."

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[FN11] Article 110 of the Criminal Procedures Code provides:

Clarification and addition. At any time prior to the official notification, unclear, ambiguous or contradictory terms used in the drafting of the resolutions can be clarified or additions made to their contents if some controversial point in the trial failed to be resolved, as long as these actions do not alter the ruling. The parties or the prosecuting attorney will be able to exercise the same right within three days after notification. The request for clarification or addition shall suspend the time-limits for filing the corresponding appeals.

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42. Regarding the fact that there is no remedy to sue for payment of damages, the State indicates that the proceeding of an appeal for review to request payment for damages comes under Article 498 of the Criminal Procedures Code in force at the time, which, as part of the chapter on the appeal for review, establishes that "the judgment on the basis of which the convicted party is declared innocent, can rule, separately, on the damages caused to the convicted party..."

43. The State affirms that, when damages are ordered to be paid, the judgment that declares the innocence of the convicted party shall also rule on the civil claim. As claimed this clearly indicates that criminal procedural law authorized Ms. Rojas Piedra to charge payment for damages in the same appeal for review... “and she did so precisely because she considered that she had been materially and morally wronged as a result of a miscarriage of justice.” In the case that is now being examined, the judgment by the Arbitration Court did indeed rule on this issue and dismissed this claim, among other reasons, because it was not demonstrated by evidence substantiating the existence of damages...[FN12]

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[FN12] Official Letter by the President of the Supreme Court of Justice of Costa Rica, addressed to the Minister of Foreign Affairs of this Member State, on June 9, 2004, attached to the brief containing additional information from the State, of June 30, 2004, pages 7 and 8.

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44. Costa Rica indicates that, owing to the above, judgment 00102-F-98, which dismisses the appeal filed by the litigant in civil court, “determined that the judgment by the Arbitration Court of the Supreme Court of Justice, which dismissed the request for damages filed by the plaintiff in the appeal for review, led to a material res judicata in terms of the regular civil lawsuit of the Treasury.” The State adds: ...”This judgment also establishes that if the appellant had not used criminal proceedings to claim payment of this compensation, she would not have been prevented from using civil proceedings to claim payment”...”the appellant chose to file her claim in criminal proceedings, although she had the opportunity to do so with civil proceedings, and therefore lost her claim for substantive reasons and attempted to reopen the discussion in an adversarial proceeding, an impossible claim legally speaking, because she had already chosen proceedings in which a judgment bearing the legitimacy of a material res judicata was issued.”[FN13]

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[FN13] Official Letter by the President of the Supreme Court of Justice of Costa Rica, addressed to the Minister of Foreign Affairs of this Member State, on June 9, 2004, attached to the brief containing additional information from the State, of June 30, 2004, pages 7 and 8.

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45. Finally, the State affirms that there has been no delay in administering justice because it is not valid to take the start of a criminal proceeding and the end of an adversarial proceeding and to calculate one single period between the two. First of all, because they involve two independent proceedings filed at different times, one after the other, and also because the second proceeding, as there is already a material res judicata issued by the Arbitration Court, was an unnecessary proceeding, filed for the purpose of reopening a discussion that had expired and whose outcome had been adverse for the plaintiff. The time-limits in which the appeal for review had been resolved was one year and thirty-three days, because the case file was accepted December first, 1992 and was resolved on December twenty-third, 1993...[FN14]

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[FN14] Official Letter by the President of the Supreme Court of Justice of Costa Rica, addressed to the Minister of Foreign Affairs of this Member State, on June 9, 2004, attached to the brief containing additional information from the State, of June 30, 2004, pages 7 and 8.

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46. In short, the State concludes that the various proceedings that have been filed have guaranteed Ms. Rojas Piedra not only the right to defense but also access to justice and the different manifestations of the principle of due process of law. In addition, the claim for compensation for damages stemming from the miscarriage of justice was dismissed “for strictly legal reasons.” As a result, the State claims that there are no grounds for asserting that Articles 8, 9, 10, 11, and 25 of the American Convention on Human Rights, or Article 2 either, have been infringed because the complainant has not been denied entitlement to compensation for having been wrongfully convicted in a final judgment. Nor have the rights to appeal, judicial protection, respect for honor and recognition of dignity, and the principle of fair trial been violated.

47. On the basis of all of the above, the Costa Rican State requests that the present petition be declared inadmissible in conformity with Article 47(b) of the Convention and Article 34(a) of the Rules of Procedure of the Commission, as it does not state facts tending to establish a violation of the rights guaranteed by this instrument.

#### IV. ANALYSIS

A. Jurisdiction *ratione loci*, *ratione personae*, *ratione temporis* and *ratione materiae* of the Commission

1. Jurisdiction *ratione loci*

48. The Commission has jurisdiction *ratione loci* to be apprised of this petition since it claims violations of the rights guaranteed under the American Convention and occurring in the territory of a State party to the Convention.

2. Jurisdiction *ratione personae*

49. The Commission has jurisdiction *ratione personae* by virtue of passive standing, because the denunciation is addressed against a State party to the Convention, as generically provided for by Article 44 of the Convention.

50. The Commission has jurisdiction *ratione personae* by virtue of active standing of the complainant in the present case, pursuant to Article 1(2) of the Convention, which provides that “for the purposes of this Convention, ‘person’ means every human being.”

3. Jurisdiction *ratione temporis*

51. The Commission has jurisdiction *ratione temporis*, to the extent that the events alleged in the petition took place when the obligation to observe and guarantee the rights provided for by

the Convention were already in force for the Costa Rican state, which ratified this instrument on April 8, 1970.

4. Jurisdiction *ratione materiae*

52. Finally, the Commission has jurisdiction *ratione materiae* because the petition describes facts that, if proven to be true, would tend to establish a violation of the rights guaranteed by the American Convention.

B. Other requirements for admissibility of the petition

1. Exhaustion of remedies under domestic law

53. Article 46(1) of the American Convention on Human Rights provides that admission by the Commission of a petition or communication lodged in accordance with Articles 44 or 45 shall be subject to the following requirement: “that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law.”

54. The alleged victim has exhausted remedies under domestic law. First, in criminal proceedings, she filed an appeal for review with the Appellate Court of the Supreme Court of Justice against the judgment of conviction No. 11-86, of January 14, 1986, issued by the Criminal Court of Appeals of San José. The judgment that was appealed was reversed by the Arbitration Court by means of judgment No. 722-F-93 of December 23, 1993, which acquitted Ms. Rojas Piedra of all penalty and liability and ordered that her name be expunged from the Record of Lawbreakers. Afterwards, the alleged victim filed a motion for addition and clarification of this judgment of acquittal, which was resolved on March 16, 1994 by means of judgment No. 37-A-94, which upheld the previous judgment, dismissed the compensation for damages, and exonerated the State from payment of costs.

55. Furthermore, the alleged victim resorted to administrative adversarial proceedings to claim compensation for the miscarriage of justice by filing civil proceedings; this appeal was dismissed by Civil Appeal Judgment No. 102-F-98 of the First Court of Appeals of October 14, 1998. Afterwards, Ms. Rojas Piedra filed a motion for addition and clarification against the civil appeal judgment, which was dismissed by a judgment of the Court of Appeals on December 2, 1998. On July 7, 1999, the alleged victim filed her petition with the Commission.

56. On April 21, 2004 and on May 13, 2004, the Court, by means of resolutions No. 78-A-94 and No. 91-A-94, dismissed new motions for addition, clarification, and annulment, respectively, filed by Ms. Rojas Piedra.

57. In short, the alleged victim exhausted remedies in criminal and administrative adversarial proceedings. The final judgment was issued on December 2, 1998 when the judgment of the Court of Appeals was issued on the same date.

2. Time-limits for presentation

58. Article 46(1)(b) of the American Convention provides that, for a petition to be admitted, it should be “lodged within a period of six months from the date on which the party alleging the violation of his rights was notified of the final judgment.”

59. The State claims that the denunciation was presented extemporaneously; nevertheless, Ms. Rojas Piedra was informed of the judgment of the Court of Appeals of December 2, 1998 referred to above on January 7, 1999, from which date the six-month time-limits provided for in Article 46(1)(b) of the Convention and Article 32 of the Commission’s Rules of Procedure should be calculated. The petition was received by the Commission on July 7, 1999. As a result, the Commission declares that the time-limit requirements provided for in Article 46(b) of the Convention and Article 32 of the Commission’s Rules of Procedure have been met.

### 3. Duplication of proceedings and res judicata

60. Article 46(1)(c) of the Convention provides that, to be admissible, “the subject of the petition or communication is not pending in another international proceeding for settlement.”

61. The Commission, on the basis of the evidence it has available, understands that the subject of the present petition is not pending in another international proceeding for settlement and is not reproducing any petition that has already been examined by itself or by any other international body. Therefore, it concludes that the requirement set forth in Article 46(1), paragraph (c) has been met.

### 4. Characterization of the alleged events

62. Article 47, paragraph (b) of the Convention provides that the Commission shall consider any petition or communication submitted under Articles 44 or 45 inadmissible if “it does not state facts that tend to establish a violation of the rights guaranteed by this Convention.”

63. After studying the factual and legal arguments set forth by the parties and the evidence it has available, the Commission deems that the facts stated by the complainants do not tend to establish a violation of Article 10 of the Convention.

64. Article 10 specifically provides for the right to compensation “...in the event [a person] has been sentenced by final judgment through a miscarriage of justice.” In the petition submitted, the complainant proposes the need to compensate a person who was convicted in a trial court but acquitted as the result of a filing of an appeal for review. The Commission observes that judgment No. 11-86 of January 14, 1986, which constituted the miscarriage of justice, did not acquire the character of res judicata because, as the complainant herself recognizes, although the trial court convicted the accused, in the appeal court she was acquitted owing to a miscarriage of justice.

65. The Commission deems that legal remedies are provided by the national jurisdiction to guarantee the proper administration of justice. Article 8(2)(h) of the Convention specifically provides for the right to appeal in situations such as the present one. In the case being referred to, the IACHR notes that the right to remedy was exercised and that it fulfilled the purpose for

which it was conceived, that is, to remedy possible errors that might be committed by authorities of the judiciary. In addition, the miscarriage of justice that was committed was remedied by the judgment of the Criminal Court of Appeals of the Supreme Court of Justice, which acquitted the alleged victim of all penalty and liability and clearly and specifically ordered that the entry of the judgment of conviction be expunged from the Judicial Record of Lawbreakers.

66. Regarding the error that was allegedly committed when no damages were set in the judgment of review, it is certain that in its judgment of December 23, 1993, the Court of Appeals neglected to rule on the damages that were allegedly suffered by Ms. Rojas Piedra as a result of the judgment of conviction of January 14, 1986. Nevertheless, it is also true that she had the opportunity to file a motion for addition and clarification with the same Court, which remedied this neglect and upheld the judgment by means of a ruling on March 16, 1994. This judgment dismissed the claim for compensation for damages because of lack of evidence and exonerated the State from paying costs. Dissatisfied with this judgment, Ms. Rojas Piedra resorted to a civil proceeding of the Treasury. Judgment 00102-F-98, issued in this proceeding, ruled that the appellant had chosen to file her claim in a criminal proceeding, although she had the opportunity to do so in a civil proceeding, and that as her claim was dismissed for substantive reasons, she attempted to reopen the discussion in an adversarial proceeding, which is not legally possible, because the criminal proceeding issued a ruling bearing the legitimacy of a material *res judicata*.

67. The elements of judgment presented by the complainant were not sufficient to support her assertion that the proceedings of review in criminal court do not make it possible to demonstrate damages caused by a wrongful judgment, which violates Articles 8 and 25 of the Convention. Nor were the complainants able to refute, before the Commission, what the Arbitration Court had ruled in its judgment of March 16, 1994, namely, that the appellant did not show how she had allegedly been affected although she had the opportunity to do so in accordance with domestic law.

68. The State indicates that the alleged victim resorted to civil proceedings because she was not satisfied with the adverse criminal judgment and that, after having access to and exhausted all remedies available under domestic law, she resorted to international protection in search of a new appeal to express her disagreement with the adverse outcome of her legal initiatives in her country's judiciary system, thus distorting the subsidiary function of the Commission.

69. Regarding this, it should be pointed out that the Commission is competent to declare that a petition is admissible and to rule on the grounds of the petition when it refers to a judgment under domestic law that has been issued without due process of law or that apparently violates any other right guaranteed by the Convention. Nevertheless, international protection granted by the supervisory bodies of the Convention is subsidiary[FN15] to what is provided by national bodies that have performed their duties within the bounds of their jurisdiction. In other words, the Commission's protective function consists of guaranteeing observance of the obligations taken up by the States party to the Convention, but not substituting a court of appeals to examine alleged miscarriages of justice or *de facto* errors that might have been committed by national courts that have performed their duties within the bounds of their jurisdiction.[FN16] As indicated by this Commission, "it is not the function of the Inter-American Commission to act as

a fourth quasi-judicial body and to review the judgments of national courts of the member States of the OAS.”[FN17]

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[FN15] Case 11.773, Marzioni (Argentina), Individual Report 39/96, published in the Annual Report of the IACHR (1996) OEA/Ser. L/V/II.95, pág.89, paragraph 48.

[FN16] Case of Marzioni, supra, paragraph 51.

[FN17] Ruling 29/88, Case 9260, Annual Report of the IACHR 1987-1988.

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70. The basic premise of the notion of a fourth body is that, for the Commission to review the judgments issued by national courts performing their duties within the bounds of their jurisdiction and applying due judicial guarantees, there must be a violation of one of the rights protected by the American Convention.[FN18]

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[FN18] See Report No. 39/96, Case 11,673 (Argentina), published in the Annual Report of the IACHR 1996, page 79 and following, and Case 11,671, Carlos García Sacone, Argentina, Report 11/98, published in the Annual Report of the IACHR (1997) OEA/Ser. L/V/II.98.

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71. The complainant’s disagreement with the interpretation of domestic laws or the judiciary decisions that have been made within the jurisdiction of natural judges and in conformity with the principles of due process of law is not sufficient reason for the Commission to justify reviewing these decisions.

As expressed by the European Court of Human Rights,

The Court [...] does not have the mandate to substitute domestic jurisdictions. It pertains to the national authorities, especially courts and tribunals, to interpret domestic law. The role of the Court is restricted to testing the compatibility of the effects of this interpretation with the Convention.[FN19]

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[FN19] Judgment of October 11, 2001 (Case of Rodríguez Valín vs. Spain) BJC-262, page 177, paragraph.22.

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72. Examination of the case, as it has been presented, would require the Commission to act as a fourth quasi-judicial body or court of appeals under domestic law with respect to the final judgment by Costa Rica’s highest judiciary authorities. The Commission’s role is restricted to determining the compatibility of the effects of the interpretation of domestic legislation by the competent courts with the American Convention.

73. On the basis of the above, the Commission concludes that the petition is inadmissible because the alleged facts do not tend to establish a violation of human rights according to the provisions of Article 47(b) of the American Convention on Human Rights.

## V. CONCLUSIONS

74. The Commission concludes that the present petition is inadmissible in conformity with Article 47(b) of the Convention.

75. On the basis of the factual and legal arguments set forth above,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the present petition inadmissible;
2. To notify the parties of this decision;
3. To publish this decision and include 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 13th day of the month of October 2004. (Signed): José Zalaquett, Chair; Clare K. Roberts, First Vice-President; Susana Villarán, Second Vice-President; Commissioners Evelio Fernández Arévalos, Paulo Sergio Pinheiro, Freddy Gutiérrez, and Florentín Meléndez.