

Institution:	Inter-American Commission on Human Rights
File Number(s):	Report No. 24/92; Cases Nos. 9328, 9329, 9742, 9884, 10.131, 10.193, 10.230, 10.429, 10.469
Session:	Eighty-Second Session (21 September – 2 October 1992)
Title/Style of Cause:	Noe Emilio Villalobos Calvo v. Costa Rica Oliver Ugalde Miranda v. Costa Rica Mireya Castillo Espinoza v. Costa Rica Niels Claus Zuniga v. Costa Rica Roberto Araya Falcón v. Costa Rica Juan Jose Odio Paez v. Costa Rica Ram Rajpal v. Costa Rica Olga Sauma Uribe v. Costa Rica Marco Tulio Naranjo Carvajal v. Costa Rica
Doc. Type:	Report
Decided by:	Chairman: Dr. Marco Tulio Bruni Celli; First Vice-Chairman: Dr. Oscar Luján Fappiano; Second Vice-Chairman: Prof. Michael Reisman Members: Dr. Patrick Robinson; Mr. Oliver H. Jackman; Dr. Leo Valladares Lanza; Dr. Alvaro Tirado Mejía.
Dated:	01 October 1992
Citation:	Villalobos Calvo v. Costa Rica, Cases 9328, 9329, 9742, 9884, 10.131, 10.193, 10.230, 10.429, 10.469, Inter-Am. C.H.R., Report No. 24/92, OEA/Ser./L/V/II.83, doc. 14, corr. 1 (1992)
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I. BACKGROUND

1. In the period between April 1984 and August 1989, the Commission received a number of complaints alleging that provisions of the Costa Rican Code of Criminal Procedure obstructed the full exercise of Article 8.2.h of the American Convention on Human Rights, which concerns the right to a fair trial and which states the following:

Every person accused of a criminal offence has a right to be presumed innocent so long as his guilt has not been proven according to law. During the proceedings, every person is entitled, with full equality, to the following minimum guarantees:

h. the right to appeal the judgment to a higher court.

The impediment being alleged is said to be established under Articles 474, 475 and 476 of the Costa Rican Code of Criminal Procedure, articles which preclude the possibility of review by a higher court in the case of lesser criminal sentences involving certain periods of imprisonment, disqualification, confinement in the interest of public safety or fines.

2. Because the complaints presented in the cases under examination raised the same point of law

and because the procedure involved in the various cases is similar and the Costa Rican State's response the same, the Commission felt it best to consider all these cases jointly in this report, which are summarized below.

II. CASE 9328. NOE EMILIO VILLALOBOS CALVO

3. The first petition in this case was filed in a note dated April 17, 1984, which alleged that the violation is in the provisions of Article 474.2 of the Code of Criminal Procedure which stipulates that appeals seeking to have criminal court convictions overturned may only be filed when the sentence is for more than six months imprisonment; it further alleges that in application of that rule, the Second Criminal Court of Alajuela had declared the appeal filed by the petitioner to be inadmissible on the grounds that his sentence was for less than six months' imprisonment.

4. The petitioner pointed out that the American Convention on Human Rights had been in effect for Costa Rica since 1970 and, within the Costa Rican legal system, had preeminence over domestic law. Consequently, the petitioner stated, the right of review recognized in Article 8.2.h of the Convention cannot be qualified, inasmuch as the Convention did not qualify it.

5. When this communication was sent to the Government of Costa Rica on June 1, 1984, the latter replied on August 20 of that year, acknowledging the court actions alleged by the petitioner and explaining the history of criminal procedure in the country. It stated that an appeal in penal matters was based on the doctrine whereby it is incompatible with the principles of oral testimony given in the presence of judge and accused, where the evidence can be weighed.

In that regard it cited Binding, who said that to allow a superior court or superior bench to review (on appeal) the sentence based on the court record would be to allow the less informed judge's opinion to take precedence over that of the more informed judge. It said that it would be impossible to recreate all of the evidence, unaltered. It pointed out that based on Articles 474, 475 and 476 of the Code of Criminal Procedure, the severity of the sentence handed down in the final verdict was the only criterion used when such verdicts were appealed.

It also maintained that even though Article 7 of the Political Constitution of Costa Rica states that public treaties do have higher authority than the national laws, in other words, that they are self-executing, this is not true in the case of procedural rules which require enactment of domestic legislation to be applied directly by the courts of the land. It invited the Inter-American Commission to make any recommendations in this regard.

6. In a note dated November 6, 1984, in response to the Government's observations, the petitioner reasserted the arguments made in the original presentation. After seeing the petitioner's response, on February 12, 1985, the Government stated that it had no further observations.

7. On April 18, 1985, at its 67th session, the Commission adopted Decision 26/86. There, it recounts the case and finds that the petition is admissible inasmuch as the remedies under domestic law have been exhausted and that a court ruling has in fact denied any possibility of a review of the conviction. As for the merits of the case, the Commission was of the view that this was even more delicate, since it was not just a matter of a minor offense but rather of a criminal conviction.

8. Under Article 50 of the Convention, and bearing in mind the Government's cooperative attitude, the Commission made recommendations apropos the general efficacy of Article 8.2.h. It noted that the States Parties to the Convention are obliged to adopt domestic measures to guarantee the right embodied therein, and pointed to the fact that the Costa Rican Constitution makes international treaties preminent.

It further noted that from the text of certain provisions of the Convention it is evident that they are self-executing within the domestic legal system of the States Parties. However, the Commission was of the view that the provision contained in Article 8.2.h was not self-executing prima facie and that a domestic law was required, which the Government of Costa Rica had not enacted.

9. It declared that there was a violation and recommended to the Government that within six months, and in accordance with its constitutional procedures, it take the necessary measures to give full effect to the judicial guarantee recognized in Article 8.2.h., thereby complying with Article 2 of the Convention. The Commission resolved that if Costa Rica failed to adopt such measures within that time period, it would refer the case to the Inter-American Court, unless the State itself should submit the case first.

10 Once that time period had elapsed, at the Commission's request, on October 26, 1986, the Government reported that the adoption of these measures involved intricate coordination so that it had set up a special commission of magistrates and specialized public servants who were preparing a bill to be submitted to the Legislative Assembly. It requested a six-month extension, which the Commission agreed to.

On April 20, 1987, the Government presented to the Commission a bill on this subject that was being presented to the Legislative Assembly and to the Supreme Court for its opinion. On June 11 of that year it reported that the Commission's recommendations had been taken up by the Supreme Court of Justice.

III. OTHER PETITIONS THAT CONCERNED THE GUARANTEE RECOGNIZED IN ARTICLE 8.2.h

11. Since that first communication received on April 17, 1984, in the case of Mr. Noe Villalobos, the Commission has received communications or complaints that allege the very same problem raised in Case 9328 (Noe Villalobos) and the fact that if the sentences handed down in criminal convictions are less than a certain amount, they cannot be appealed, which is incompatible with the guarantee recognized in Article 8.2.h of the American Convention. The following paragraphs describe those cases with the Commission that concern the same problem.

12. CASE 9329. Oliver Ugalde Miranda

The petition was filed on May 10, 1984, alleging violation of Article 8.2.h of the Convention in that the petitioner, under the provisions of Article 474 of the Code of Criminal Procedure of Costa Rica, was unable to file an appeal against a criminal conviction sentencing the petitioner to six months in prison for petty theft. The Government gave the same reply that it gave in the case of Noe Villalobos. For his part, the petitioner did not reply to the Commission's note whereby it conveyed to the petitioner the Government's communication.

13. CASE 9742. Mireya Castillo Espinoza

The petition was filed on April 28, 1986, alleging the same violation as in the previous cases, which in this case was a refusal to allow an appeal against a sentence of six months in prison for an alleged breaking and entering of a house. The Government's reply, dated June 4, 1986, was the same as it had been in the previous cases. As it had done in the other cases, the Commission advised the petitioner of the imminent legislative amendment. The petitioner's reply was that because she was Nicaraguan, she would be unable to obtain her accountant's license because her record was stained by this court conviction. This prevented her from entering and leaving the country freely. As for the bill, the petitioner stated that it did not specify clearly that the remedy could be invoked in the case of convictions that occurred prior to the

law's enactment, such as her own. She also said that the bill was a very low priority on the legislative agenda.

14. CASE 9884. Niels Claus Zuniga

On January 22, 1987, the petitioner complained that under Article 474, paragraph 2, of the Code of Criminal Procedure, the sentence he received, i.e. "fifty days fine-imprisonment and a criminal conviction on his file," could not be appealed, which was a violation of the Commission's decision. On June 24, 1987, the Government of Costa Rica replied as it had in the previous cases, which when sent to the petitioner, drew no reply.

15. CASE 10.131. Roberto Araya Falcon

The petitioner filed a complaint on October 19, 1987, alleging a violation of the Convention because his appeal to overturn the Superior Court's sentence of one year and six months in prison for petty theft had been denied. The Costa Rican Government's reply to this case was the same as it had been in the previous cases, and it requested an extension of the deadline to give it time to correct the problem through legislative means, by amending the appeals system under the Code of Criminal Procedure. The Commission agreed to its request.

16. CASE 10.193. Juan Jose Odio Paez

On May 15, 1988, a complaint was sent to the Commission alleging the same violation alleged in the previous cases, when no appeal was permitted to challenge the ruling that sentenced Mr. Odio Paez to five years' imprisonment for perjury. The processing of this case was similar to that of case 10,131, described above.

17. CASE 10.230. Ram Rajpal

On September 14, 1988, a complaint similar to the earlier complaints was received, this one involving a Mr. Ram Rajpal, who was unable to appeal a sentence to 18 months imprisonment in the trial wherein he was convicted of misrepresentation. Since Mr. Rajpal is an alien, under domestic law his conviction meant that he could be expelled from the country; hence, the fact that he was unable to appeal posed an even greater threat in his case. The processing of this case was similar to the other cases.

18. CASE 10.429. Olga Sauma Uribe

On July 10, 1989, a complaint was filed alleging the same violation of the Convention that was alleged in the earlier cases, inasmuch as Mrs. Sauma Uribe was unable to appeal the sentence of ten months in prison and cancellation of her driver's license as a result of a traffic accident in which she was involved. The processing of this case was similar to that of the other cases.

19. CASE 10.469. Marco Tulio Naranjo Carvajal

On August 21, 1989, the same violation was denounced, where the individual in question was unable to file an appeal against a sentence of 30 days and a fine, for having threatened someone. The processing of this case was similar to the other cases.

Establishment of the Constitutional Chamber and rulings on the point at issue in these petitions

20. On May 16, 1990, the Government of Costa Rica informed the Commission of new and relevant

developments in connection with these cases. The Constitutional Chamber of the Supreme Court of Justice had been created by virtue of new Articles 10, 48, 105 and 138 of the Constitution and the 1989 Law on Constitutional Jurisdiction No. 7135. By virtue of its competence under that law, the Constitutional Chamber handed down Judgment 282-90 whereby it admits a petition of habeas corpus and orders the release of an individual who had been convicted but had not had an opportunity to file an appeal of his conviction, a right that is his, inasmuch as the corresponding provision of the Convention is clear and unqualified. Because of its origin, constitutionally this judgment is "erga omnes," in other words, it protects all those who are now or may one day be denied the right that it recognizes.

21. In that ruling, the Constitutional Chamber of the Supreme Court, after confirming the specifics of the case in question, found that the new law on Constitutional Jurisdiction empowers the interested parties to file legal actions claiming the unconstitutionality of domestic legal provisions that are contrary to an international treaty. The foregoing notwithstanding, it stated that:

when the provisions of a treaty are self-executing and need no other domestic laws to elaborate upon them, any laws that contradict them shall be regarded as null and void, precisely by virtue of the fact that the treaty is preeminent. Any conflict... is resolved first, and insofar as possible, by automatic repeal of the domestic law insofar as it is contrary to the international treaty, even though the law can also be declared unconstitutional.

In that ruling the Constitutional Chamber of the Supreme Court went on to say that where appropriate, the remedy of habeas corpus or the remedy of amparo can be used as a test for constitutionality, whether in judicial actions or judicial or legislative inquiries.

22. The ruling states that the right recognized in Article 8.2.h of the Convention is absolute, because the Convention does not qualify it in any way. In other words, the Convention does not make it subordinate to any domestic laws that may be created. The right is recognized in cases wherein domestic law establishes the institutional and procedural structure (organs and remedies) for the right to be exercised; if those organs and remedies do not exist, they should be created.

In the case in point, the Court found that Costa Rican law provides for that remedy, inasmuch as Article 474, paragraphs 1 and 2, in general permits an appeal against criminal convictions. Hence, to observe the guarantee recognized in the American Convention, it is sufficient ... to nullify the limitations (established in Article 474) and to understand that any convicted person sentenced to any punishment in a criminal proceeding has, under the law, the right to appeal.

Since there was a standing order to incarcerate those who had filed the appeal and since some of them are actually serving their sentence, even though there was no constitutional basis for the sentence because they had been denied their right to appeal, the Court granted the petition of habeas corpus and ordered their release until a final verdict has been handed down in the case, after those charged have been given a full legal opportunity to appeal the Court's decision... which they can do once they are personally notified of this ruling.

Consequently, in accordance with Article 8.2.h of the American Convention on Human Rights, the petition is admitted and the State is ordered to pay the parties damages and court costs, which shall be paid in executing sentence before the Court of Administrative Law.

23. Based on the foregoing, on May 14, 1990, the Government requested that under Article 48.1.c of the Convention, the Commission declare these cases to be either inadmissible or without merit. It argued that an opportunity for appeal that had not previously existed had been created and that the Commission's recommendations had been favorably resolved by declaring the legal provisions that were contrary to the

American Convention on Human Rights to be null and void. It added that this being a judgment erga omnes, subsequent cases would be favorably resolved. The Government also sent information on other rulings (among them 528-90) wherein this decision had been applied to the court decisions that, though not strictly penal in nature, had the same effect, thereby opening up an opportunity to appeal those rulings as well.

24. Later, as a result of the Government's note of May 14, 1990, reporting the availability of remedies by which to appeal those cases, in a note dated May 22, 1990, the Government's communication was forwarded to the petitioners, asking that they kindly report whether this corrected the violation denounced.

On June 12, 1990, the petitioner in case 9.742, Mireya Castillo Espinoza, replied that the violation denounced persisted --in her judgment--since the decision of the Fourth Constitutional Chamber, invoked by the Government, was not retroactive and did not constitute binding jurisprudence. In a note dated July 3, 1990, the Commission asked the petitioner to report whether she had tried to exercise the appeal that the Government alleged would correct the situation, and if so what the result of the appeal had been. The petitioner did not answer that request.

25. In a communication dated February 21, 1991, repeated again on July 1, 1991, Mr. Ram Rajpal, the petitioner in case 10,230, presented copies of the petitions of habeas corpus that he had filed with the Supreme Court on May 9, 1990, and the appeal that he had filed with the Third Superior Court on September 24, 1990. Those appeals were denied by those courts, the first because Mr. Rajpal was on probation and hence his right to freedom was not in jeopardy (Decision 528-90 of May 18, 1990).

As for the appeal to overturn the conviction, it was filed with the Third Criminal Superior Court on September 24, 1990, and denied because it was filed extemporaneously. Examining that decision, one finds that the tribunal considered that Mr. Rajpal's case was not one of those covered by the ruling that he invoked (Ruling 719-90), since his appeal concerned a lower court ruling and the ruling that he invoked as a precedent concerned another type of proceeding, covered by different articles of the Code of Criminal Procedure. Mr. Rajpal appealed that decision with a petition of habeas corpus filed on November 21, 1990, with the Supreme Court. The Constitutional Chamber upheld the ruling on the same grounds.

26. That as the Costa Rican Government's communication and the decision by the Constitutional Chamber of the Supreme Court of Justice of that country acknowledge, Article 474, inter alia, of the Code of Criminal Procedure did not allow observance of the right that everyone has to turn to a higher court to appeal a ruling handed down against said person (Article 8.2.h of the American Convention on Human Rights).

27. That even though, in an effort to comply with the Commission's resolution 26/86, the Executive Power sent to Congress a bill to amend the Code of Criminal Procedure and whose "primary purpose was to adapt the criminal appeals system to the provisions of the Convention," the bill was not passed by the Costa Rican Legislative Assembly.

28. That at no time has it been alleged that the situations described in the petitions were pending in a procedure before some other international organ.

29. That as is obvious from the content of the Supreme Court's decisions and by virtue thereof, the Costa Rican legal system created an opportunity to appeal cases such as the ones denounced, so that the friendly settlement procedure provided for in Article 48 of the Convention, is unnecessary. This was the effect when the ruling acknowledged the constitutional hierarchy of the respective provision of the

American Convention and accorded it erga omnes legal effect when it decided "to declare the limitations in question (Article 474 of the Code of Criminal Procedure) to be null and void and that persons convicted to any sentence handed down in a criminal proceeding shall be entitled to appeal" (Judgment 282-90, point VI).

30. That the remedy of appeal is a legal institution and, inasmuch as it permits a higher court to review a lower court ruling and all important case files, including legality of the evidence, it is, in principle, an effective means to exercise the right recognized in Article 8.2.h of the Convention. Accordingly, the Commission cites the Constitutional Chamber's ruling in Judgment 528-90 where it states that: "the remedy of appeal satisfies Convention requirements in that it is not regulated, interpreted or applied with formalistic rigor, but allows the Court of Appeal to examine, fairly and simply, the overall validity of the challenged decision, as well as observance of the fundamental rights of the accused, especially the right to defend oneself and to due process of law."

31. That as is evident in other judgments supplied by the Costa Rican Government, such as Judgment 528-90 concerning penalties for a failure to pay child support, the Constitutional Chamber has expanded the scope of its decision to include other categories of court decisions that, though not penal in nature, have the same effect, and has allowed such decisions to be appealed as well.

32. That with respect to the earlier cases, the judgment allowed the possibility of reopening the case during the established legal period, which began with publication of the erga omnes ruling, a period during which the petitioners could exercise that right. That when each one of the petitioners was asked, not one provided any information to show that it had attempted to exercise that right or that its appeal had been denied for lack of merit.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,
CONCLUDES:

1. That the petitions that gave rise to the cases under examination, concerning the alleged failure to observe Article 8.2.h of the Convention because of the impediments established in Articles 474, 475 and 476 of the Code of Criminal Procedure of Costa Rica, though they may have been admissible at the time they were filed, are now without merit because of decisions handed down by the Constitutional Chamber of the Supreme Court, concerning the subject of the suit in the instant cases.

2. That the decision in ruling 282-90 and similar rulings of the recently created Constitutional Chamber of the Supreme Court of Justice effectively established in that country the legal guarantees necessary for observance of the right recognized in Article 8.2.h of the Convention, by recognizing the constitutional preeminence of the American Convention on Human Rights over that code, and declaring, ergo omnes, the unconstitutionality of those limitations, thereby following the recommendations that the Inter-American Commission on Human Rights had made in its Report 26/86.

3. That the petitioners in the instant cases had an opportunity to avail themselves of that remedy, by virtue of the aforementioned rulings, and those appeals filed, which the Commission had an opportunity to consider, were heard and decided by the Supreme Court.

4. That this report, therefore, be published in the next Annual Report of the Inter-American Commission on Human Rights.