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REPORT No. 36/16
PETITION 721-04
REPORT ON ADMISSIBILITY

GONZALO RUBÉN CARRILLO AND OSCAR JOSÉ ESTÉVEZ
MEXICO

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I. SUMMARY

1. On August 11, 2004, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission,” “the Commission,” or “the IACHR”) received a petition filed by the Fray Jacobo Daciano A.C. Human Rights Center (hereinafter “the petitioners”) against the State of Mexico (hereinafter “the Mexican State” or “the State”). The petition alleges the State’s international responsibility for the violation of due process of law in the framework of administrative and criminal proceedings filed against Messrs. Gonzalo Rubén Carrillo González and Oscar José Estévez González (hereinafter “the alleged victims” or “Messrs. Gonzalo Carrillo and Oscar Estévez”).

2. The petitioners contend that, as part of a government measure of retaliation and smearing, the government filed groundless administrative proceedings against Messrs. Gonzalo Carrillo and Oscar Estévez, which led to their dismissal from their government jobs for 10 years, as well as criminal proceedings on the basis of which they were deprived of their personal freedom. The petitioners indicated, among others, that there were irregularities in the audit that triggered the administrative proceedings, which were not impartial, and that they were prevented from having access to the available remedy because of the court’s delay in providing a copy of the judgment. As for the State, it pointed out that the alleged victims benefited, at all times, from adequate and effective remedies, and that the administrative proceedings were resolved domestically, respecting their human rights, as a result of which the present petition is inadmissible on the basis of Article 47.b of the American Convention on Human Rights (hereinafter the “American Convention” or the “Convention”).

3. Without prejudging the merits of the complaint, after examining the positions of the parties and in compliance with the requirements set forth in Articles 46 and 47 of the American Convention, the Commission decided to declare the petition admissible for the purpose of examining the allegations in connection with the alleged violation, in the framework of the administrative proceedings, of the rights enshrined in Article 8 (right to a fair trial) and Article 25 (judicial protection), in connection with Articles 1.1 and 2 of the American Convention. The Commission decided to declare inadmissible the allegations regarding the criminal proceedings because they were filed extemporaneously. The Commission also decided to notify the parties about this decision, and to publish and include it in its Annual Report to the OAS General Assembly.

II. PROCEEDINGS BEFORE THE IACHR

4. The IACHR received the petition on August 11, 2004 and forwarded a copy of the relevant parts to the State on June 29, 2005, granting it two months to submit its observations, on the basis of Article 30.3 of its Rules of Procedure in force at the time. On August 29, 2005, a response from the State was received, and it was forwarded to the petitioners on September 8, 2005.

5. The petitioners submitted additional observations on October 6, 2005, on October 31, 2006, on April 30, September 24, and December 30, 2009, on October 10, 2012, and on August 5, 2013. As for the State, it sent additional observations on June 23, 2006, on June 12, 2007, on January 29, August 6, and October

¹ According to the provisions in Article 17.2.a of the Commission’s Rules of Procedures, Commissioner José de Jesús Orozco Henríquez, a Mexican national, shall participate in the discussions or decision of the present case.

30, 2009, and on July 23 and May 10, 2013. These observations were duly forwarded to the other party. Likewise, the petitioners requested information about the status of the petition on November 25, 2008, on December 12, 2009, on July 21 and August 9, 2010, and on April 18, 2012, which requests were answered.

III. POSITION OF THE PARTIES

A. Position of the petitioners

6. The petitioners point out that Mr. Gonzalo Carrillo had been working as Administrative Director as of October 16, 1997 and that Mr. Oscar Estévez had been working as Deputy Director of Material Resources as of January 16, 1998 of the decentralized agency of Health Services of Querétaro (Servicios de Salud de Querétaro, hereinafter “the SESEQ”) until March 1, 1999, when they were suspended from their jobs. They report that, after Mr. Gonzalo Carrillo refused to sign an incriminating document at the request of the head of the Secretariat of the Comptroller’s Officer, this institution started a series of systematic attacks against the alleged victims.

7. The petitioners mention that, as part of said acts, the Comptroller’s Office conducted an audit of the period between January and October 1998 and found various irregularities, because they were not officially notified previously as stipulated by Article 54 of the Law on Responsibilities of Civil Servants of Querétaro, the calculations did not take into account the elements indispensable for checking use of the budget, and no documentation of termination was issued.

8. On the basis of available information, the audit concluded that the budget allocated to the entity had been improperly used. The petitioners indicate that the Comptroller’s Office justified the alleged spending on the basis of the lowest price without considering the volume, inflation, quality, or availability of the product. They indicate as well that, contrary to the supposed expenditure during that year of management, it was evident there were savings compared to the previous year, because three times as many medicines had been purchased.

9. As a result of the audit, the petitioners indicate that the Comptroller’s Office had started administrative dispute investigative proceedings against the alleged victims and that the latter did not know of the grounds for the proceedings until the hearing because the subpoenas did not show legal grounds or reasoning. They indicated that, although they had reported this situation to the authorities, at the hearing where they appeared on February 9 and 10, 1999, the administrative proceedings were not annulled.

10. Alongside the administrative dispute proceedings, the petitioners indicate that, on February 12, 1999, the Comptroller’s Office started a smear campaign with daily publications of headlines in one of the largest newspapers of Querétaro for more than 30 days, where the responsibility of the alleged victims was established as a proven fact although at that time no ruling had been issued in the case.

11. The petitioners infer that the Comptroller’s Office used an inquisitorial system, because it not only undertook the investigation, it also declared, on March 9, 1999, that Messrs. Gonzalo Carrillo and Oscar Estévez were responsible for 11 administrative offenses that had not been proven, and it punished them by disqualifying them from holding government employment for a period of 13 and 15 years, respectively, ordering them to pay 509,513 pesos. They also point out that the Comptroller’s Office transferred the case to the General Attorney’s Office to start a prior verification, and therefore had acted as prosecutor, judge, and executioner.

12. In view of the ruling of the Comptroller’s Office, the alleged victims filed a plea for annulment of the decision, with the Administrative Dispute Court, which on September 7, 1999 upheld the decision that was being challenged. In view of this rejection of their plea, they filed three direct appeals on constitutional grounds (*amparos*) with the Second Collegiate Court of the Twenty-Second Circuit on October 1, 1999, October 26, 2000, and August 30, 2001 against the Administrative Dispute Court’s upholding of the judgment of the Comptroller’s Office.

13. Likewise, the petitioners point out that, alongside the administrative dispute proceedings, they filed two appeals of complaint with the Second Collegiate Court of the Twenty-Second Circuit on October 13, 1999 and February 29, 2000 so that the Administrative Dispute Court would suspend the actions imposed by the Comptroller's Office. They also indicated that they filed a complaint with the State Human Rights Commission of Querétaro (Comisión Estatal de Derechos Humanos de Querétaro—CEDHQ) on March 1, 1999, which issued a recommendation on September 23, 1999 based on an independent panel of experts that detected various anomalies in the audit conducted by the Comptroller's Office.

14. The petitioners point out that, in the appeal on constitutional grounds (*amparo*) filed on August 30, 2001, it was finally demonstrated that there had been a violation of individual guarantees because the absence of legal grounds and reasoning in the subpoenas had not been taken into account. Regarding this, they indicate that on June 26, 2002, the Administrative Dispute Court ordered that the judgment of March 9, 1999, as well as all the legal consequences, be declared null and void and that proceedings be reinstated within three days.

15. The petitioners report that the Comptroller's Office did not comply with this judgment of the Administrative Dispute Court. They point out that not only were the alleged victims not reinstated, but also the Comptroller's Office did not reinstate the proceedings within the required non-extendable three-day deadline, because of which they filed without success two appeals with the Administrative Dispute Court in order to request that the Comptroller's Office forfeit the right to reinstate proceedings. Likewise, the petitioners point out that the new proceedings against Messrs. Gonzalo Carrillo and Oscar Estévez started on the basis of the same report used in the criminal proceedings that had already been dismissed. They indicate that, in this administrative process, the responsibility of the alleged victims was once again upheld on September 30, 2003, this time with 10 years disqualification and the payment of a fine in the same amount as that set by the ruling of March 9, 1999.

16. In view of this new judgment, the alleged victims filed a plea for annulment with the Administrative Dispute Court on October 20, 2003, which was dismissed on January 26, 2004, because the alleged victims had not presented the judgment whose annulment they were requesting within the five-day deadline. Nevertheless, the petitioners report that this requirement was met in due time and form, because Messrs. Gonzalo Carrillo and Oscar Estévez filed a writ demonstrating that the judgment had been requested from the Administrative Dispute Court, which had delivered 10 days later. They indicate that the timely notification was not challenged by the Court and that, when the judge heard the case, the judgment had been attached to the case file months earlier.

17. The petitioners indicate that, in view of the rejection of the appeal for annulment, Messrs. Gonzalo Carrillo and Oscar Estévez filed a direct appeal on constitutional grounds (*amparo*), which was admitted on August 3, 2004 by the Second Collegiate Circuit Court so that the Administrative Dispute Court could rule on admitting or dismissing the appeal for annulment. They indicate that said appeal on constitutional grounds was dismissed on September 17, 2004. In view of this decision, the alleged victims filed an appeal for review with the Administrative Dispute Court on October 1, 2004, which was heard by the same magistrate who had already ruled on the case, because of which, in the opinion of the petitioners, the partiality of the case was once again proven. Finally, the alleged victims once again filed a direct appeal on constitutional grounds on January 18, 2005, which was turned down by the Second Collegiate Circuit Court on October 4, 2005.

18. As for the criminal investigation that started as a result of the ruling of the Comptroller's Office on March 9, 1999, the petitioners indicated that Messrs. Gonzalo Carrillo and Oscar Estévez were arrested and deprived of their liberty for a criminal offense that did not exist ("improper exercise of public office and illegal negotiations") for more than two months as of September 24, 1999. The petitioners point out that, during that period, the alleged victims filed four appeals on constitutional grounds (*amparos*) against the formal order of imprisonment, which was finally ruled in their favor, with the last appeal on constitutional grounds ruled by the Second District Judge on October 31, 2001, because it was not proven that there was any criminal responsibility, a judgment that was upheld by the Second Collegiate Court of the Twenty-Second Circuit on April 15, 2002.

19. In short, the petitioners indicate that procedural guarantees of the alleged victims had been breached, that remedies under domestic law were ineffective, and that, as a result of said violations, they were subject to administrative sanctions, as well as the filing of criminal proceedings against them. On the basis of the above, the petitioners allege that the State violated, to the detriment of Messrs. Gonzalo Carrillo and Oscar Estévez, the rights enshrined in Articles 8 and 25 of the American Convention in connection with Articles 1.1 and 2 of the Convention.

B. Position of the State

20. The State asserts that the proceedings against Messrs. Gonzalo Carrillo and Oscar Estévez were filed as a result of various irregularities found in the audit and not as a result of attacks or reprisals by the Executive against them. It points out that in the proceedings filed, 11 irregularities were observed, as a result of which on March 9, 1999, by means of an administrative ruling, their responsibility was determined, they were sanctioned by disqualification from holding government positions, and they were ordered to pay a fine.

21. Likewise, it indicates that the administrative dispute proceedings observed the law at all times, because not only were the subpoenas duly based on legal grounds and reasoning, but also the alleged victims were aware of the facts since the issuance of the report stemming from the audit. The State asserts that the alleged victims did not prove the existence of considerable savings or the absence of administrative irregularities. Nevertheless, both the Comptroller's Office and the Administrative Dispute Court at all times complied with the resolutions issued by the Second Collegiate Circuit Court. As for reinstatement, the State points out that this claim was not possible because the judgment issued by the Administrative Dispute Court did not expressly recognize the right of Messrs. Gonzalo Carrillo and Oscar Estévez to reinstatement.

22. Regarding compliance with reinstatement of proceedings by the Comptroller's Office, the State asserts that the judgment of June 26, 2002 was fully complied with because the final ruling of March 9, 1999 was rendered null and void, and the alleged victims were subpoenaed and subjected to administrative proceedings on August 12, 2002. Nevertheless, the Administrative Dispute Court of the Judiciary District of Querétaro ruled once again that they were responsible, as a result of which, on September 30, 2003, they were convicted to 10 years disqualification and ordered to pay a fine.

23. The State indicates that, in view of this decision, the alleged victims filed an appeal for annulment on October 20, 2003, which was dismissed on January 26, 2003 although it was the adequate and effective remedy, because Messrs. Gonzalo Carrillo and Oscar Estévez did not meet the required five-day deadline to submit the judgment that they were appealing. So that the appeals that were later filed were dismissed because of the failure to meet this requirement, as a result of which on October 4, 2005 the administrative proceedings were concluded and the judgment of September 30, 2003 was upheld.

24. Finally, as for the evidence that would prove the innocence of Messrs. Gonzalo Carrillo and Oscar Estévez, the State alleges that neither the report issued by the State Human Rights Commission of Querétaro nor the judgment of the criminal proceedings filed against them prove their innocence. Regarding the former, it indicates that, contrary to what was pointed out by the petitioners, at no time was the nullification of the hearing recognized. With regard to the judgment, it points out that, although they were released because of the absence of elements to try them, this was because the facts that were reported did not pertain to the criminal offense with which they were being charged, not because there were no irregular practices taking place during the discharge of their duties in the SESEQ.

25. In short, the State contends that the alleged victims have, at all times, reckoned with adequate, effective, brief, and simple remedies which have been useful to correct and, where appropriate, redress those proceedings affected by legal flaws in their implementation. Nevertheless, they were unable to substantiate their claims, which is a situation that cannot be imputed to the State, as a result of which the petition is inadmissible, and the IACHR is requested to declare it as such.

IV. ANALYSIS ON COMPETENCE AND ADMISSIBILITY

A. Competence

26. The petitioners are entitled, in principle, by Article 44 of the American Convention to file petitions with the Commission. The petition identified individual persons as the alleged victims, regarding which the Mexican State pledged to respect and guarantee their rights as enshrined in the American Convention. Regarding the State, the Commission pointed out that Mexico is a state party to the American Convention since March 24, 1981, at which date it deposited its ratification instrument. Therefore, the Commission has jurisdiction *ratione personae* to examine the petition. The Commission also has jurisdiction *ratione loci* to hear the petition, because the petition alleges violations of rights protected in the American Convention that had taken place on Mexican territory.

27. The Commission has jurisdiction *ratione temporis* because the obligation to respect and guarantee the rights protected in the American Convention was already in force for the State on the date that the events alleged in the petition took place. Finally, the Commission has jurisdiction *ratione materiae*, because the petition reports possible violations of human rights protected by the American Convention.

B. Admissibility requirements

1. Exhaustion of domestic remedies

28. Article 46.1.a of the American Convention requires prior exhaustion of remedies available under domestic law in line with generally recognized principles of international law, as a requirement for admitting claims about the alleged violation of the American Convention. This requirement is aimed at allowing national authorities to hear about the alleged violation of a right that is protected and, if appropriate, to resolve the case before it is heard by an international body.

29. In the present case, the Commission observes that, on the basis of the audit conducted by the Comptroller's Office in October 1999, three proceedings were filed: two administrative proceedings and one criminal proceeding. As for the criminal proceeding, the Commission observes that the domestic remedies were exhausted with the judgment of the Collegiate Court of the Twenty-Second Circuit on April 15, 2002.

30. Regarding the administrative proceedings, the Commission observed that, because of the alleged failure to provide legal grounds and cause for the subpoenas issued on January 29, 1999 and after various appeals filed by the alleged victims, the Second Collegiate Circuit Court ordered, on May 20, 2002, that all proceedings be declared null and void and that the proceedings be reinstated. On August 12, 2002, new administrative proceedings were filed, which led to the judgment of the Second Collegiate District Court of October 4, 2005. The Commission observes that both the State and the petitioners agreed that remedies under domestic law were exhausted as a result of said judgment.

31. Therefore, the Commission concludes that, in the present case, remedies under domestic law were filed and exhausted in compliance with Article 46.1.a of the American Convention.

2. Timeliness of the petition

32. Article 46.1.b of the American Convention provides that, for a petition to be admissible by the Commission, it must have been filed within six months as of the date the alleged victim has been notified of the final judgment.

33. The petition filed with the IACHR was submitted on August 11, 2004 and the administrative dispute proceedings against the alleged victims came to an end on October 4, 2005. Therefore the exhaustion of remedies under domestic law took place while the petition was being processed by the Commission. Under these circumstances, it has been the Commission's constant view that the review of the prior requirements as

set forth in Article 46.1.b must be conducted in the light of the current situation at the time when the ruling about a petition's admissibility or inadmissibility is made.

34. Regarding the alleged illegality of the criminal proceedings, the IACHR observes that the remedies were exhausted as a result of the judgment of April 15, 2002 by the Collegiate Court of the Twenty-Second Circuit, that is, two years before the petition was filed with the Commission. Therefore, the Commission concludes that, with respect to this claim, the requirements set forth in Article 46.1.b of the American Convention have not been met.

3. Duplication of proceedings and international *res judicata*

35. The case file does not show that the subject of the petition is pending in another international proceeding for settlement, nor does it reproduce a petition that has already been examined by this or any other international body. Therefore, the causes for inadmissibility as set forth in Articles 46.1.c and 47.d of the Convention are not applicable.

4. Colorable claim

36. For admissibility purposes, the Commission needs to establish whether the petition alleges facts that tend to establish a violation of rights, as stipulated in 47.b of the American Convention, whether the petition is "manifestly groundless" or is "obviously out of order," in line with Article 47.c of the American Convention. The criterion to examine admissibility differs from the one used for a review of the merits of a petition, since the Commission only has to conduct a *prima facie* evaluation to determine whether or not the petitions establish the apparent or possible violation of a right guaranteed by the American Convention. It involves a cursory review that does not imply any prejudgment or prior opinion about the merits of the case.

37. Likewise, neither the American Convention nor the Rules of Procedure of the IACHR require the petitioner to identify the specific rights that have been allegedly violated by the State in the case submitted to the Commission, although the petitioners are entitled to do so. It does, however, pertain to the Commission, on the basis of the System's jurisprudence, to establish in its admissibility reports what provision of the relevant inter-American instruments is applicable and what provision it could conclude had been violated if the alleged facts were proven to be true on the basis of sufficient evidence.

38. The petitioners are making claims about the absence of autonomy and impartiality in the administrative proceedings filed without justification against Messrs. Gonzalo Carrillo and Oscar Estévez. They also contend that the remedies were not effective, because they did not make it possible to resolve or protect the violation of their right to judicial guarantees in the administrative proceedings, along with the fact that, according to the petitioners, these proceedings were wrongfully used by both the Comptroller's Office and the Administrative Dispute Court to extend the proceedings and not comply with the rulings of the Collegiate Circuit Court. As for the State, it contends that, for the present petition to be admissible, its examination would constitute a "fourth instance" because the Commission would undertake a review of the judgments, infringing its auxiliary character as established by the American Convention.

39. Regarding this, the Commission has consistently indicated that it has no jurisdiction to review matters pertaining to domestic law and the sphere of jurisdiction of domestic courts, although it does have jurisdiction declare that a petition is admissible and to rule on its merits when the latter refers to a domestic court judgment that has been issued without observing due process of law or that apparently violates any other right guaranteed by the Convention. Therefore, the Commission considers that, in the

present case, the review, at the stage of the merits of the case, of the violations alleged by the petitioners do not constitute the exercise of a “fourth instance.”²

40. The IACHR observes, on the basis of available information, that the appeals filed against the judgment of September 17, 2002 which ordered that the alleged victims be disqualified for 10 years and pay a fine, were never heard in terms of their merits because of the alleged failure to meet formal requirements.

41. In view of the elements of fact and law submitted by the petitioners and the nature of the case submitted for examination, the IACHR considers that, if proven, the alleged facts with respect to the administrative proceeds would tend to establish possible violations of the rights protected in Article 8 (right to a fair trial) and Article 25 (judicial protection) of the American Convention, in connection with Articles 1.1 and 2 of said treaty.

V. CONCLUSIONS

42. On the basis of the arguments of fact and law indicated above and without prejudging the merits of the case, the Inter-American Commission concludes that the present petition meets the admissibility requirements set forth in Articles 46 and 47 of the American Convention,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To declare the present petition admissible with respect to Articles 8 and 25 of the American Convention in connection with Articles 1.1 and 2 of the same instrument.
2. To notify the parties of the present decision;
3. To continue reviewing the merits of the case; and
4. To publish this decision and include it in its Annual Report to the General of the Organization of American States.

Approved by the Inter-American Commission on Human Rights on the 29th day of the month of July, 2016. (Signed): James L. Cavallaro, President; Francisco José Eguiguren, First Vice President; Margarete May Macaulay, Second Vice President; and Esmeralda E. Arosemena Bernal de Troitiño, Commissioners.

² IACHR, Report No. 70/08 (Admissibility), Petition 12.242, Clínica Pediátrica de la Región de los Lago, Brazil, October 16, 2008, para. 47. IACHR, Report No. 36/13 (Admissibility), Petition 403-02, José Delfín Acosta Martínez, Argentina, July 11, 2013, para. 43.