

INTER-AMERICAN COURT OF HUMAN RIGHTS*

CASE OF LIAKAT ALI ALIBUX V. SURINAME

OFFICIAL SUMMARY ISSUED BY THE INTER-AMERICAN COURT

**JUDGMENT OF JANUARY 30, 2014
(PRELIMINARY OBJECTIONS, MERITS, REPARATIONS, AND COSTS)**

On January 30, 2014, the Inter-American Court of Human Rights (hereinafter "the Inter-American Court," "the Court," or "the Tribunal") issued a Judgment in the case of *Liakat Ali Alibux v. Suriname*, and declared the international responsibility of the State for the violation of the right to appeal the judgment to a higher court, as well as the right to freedom of movement and residence, in relation to the restriction on leaving the country, to the detriment of Mr. Alibux, former Minister of Finance and Natural Resources in Suriname. The Court did not find the State responsible for violations of the right to freedom from ex post facto laws or of the right to judicial protection.

I. Facts

The Court found that Mr. Alibux served as Minister of Finances and Minister of Natural Resources between September of 1996 and August of 2000. He was prosecuted in relation to the purchase of a complex of buildings conducted between June and July of 2000. On October 18, 2001, the Indictment of Political Office Holders Act (hereinafter "IPOHA") was adopted; its purpose was to implement Article 140 of the Constitution of Suriname in order to "establish regulations for indicting those who have held political office, even after their retirement, for punishable acts committed in the discharge of their official duties." Although preliminary investigations were conducted by the police between April and September of 2001, it was not until January 28, 2002 that the Prosecutor formally initiated the criminal process against Mr. Alibux, once the IPOHA was in effect. Mr. Alibux was subjected to proceedings before the National Assembly and a preliminary inquiry. Mr. Alibux was subsequently tried in a single instance by three judges from the High Court of Justice and convicted on November 5, 2003 for the crime of forgery under Article 278, in relation to Articles 46, 47, and 72 of the Criminal Code, and sentenced to a one-year term of imprisonment and three years' disqualification from holding office as Minister. At the time of the conviction, the legal system did not provide any remedy for appealing the judgment of conviction. On August 27, 2007, the so-called "remedy of appeal" was established by means of an amendment to the IPOHA, which provided that persons indicted pursuant to Article 140 of the Constitution be tried, in the first instance, by three judges from the High Court of Justice, and in the event of an appeal, be heard by five to nine judges of the same court. Moreover, the persons who had been convicted prior to the foregoing amendment were granted the right to appeal within a period of three months. Mr.

*Composed of the following judges: Humberto Antonio Sierra Porto, President; Roberto F. Caldas, Vice President; Manuel E. Ventura Robles, Judge; Diego García-Sayán, Judge; Alberto Pérez Pérez, Judge; Eduardo Vío Grossi, Judge, and Eduardo Ferrer Mac-Gregor Poisot, Judge. Also present, Secretary of the Court Pablo Saavedra Alessandri and Deputy Secretary Emilia Segares Rodríguez. Judges Alberto Pérez Pérez, Eduardo Vío Grossi, and Eduardo Ferrer Mac-Gregor Poisot provided the Court with their Separate Opinions.

Alibux, however, did not make use of this remedy. Meanwhile, Article 144 of the Constitution provides for the establishment of a Constitutional Court. Nevertheless, such court had not been created at the time of the present Judgment. Furthermore, on January 3, 2003, during the pendency of the criminal process against Mr. Alibux, he was prohibited from leaving the country at the Paramaribo airport while attempting to travel for personal reasons.

II. Preliminary Objections

The State raised three preliminary objections regarding the lack of exhaustion of domestic remedies, based on the following: i) the filing of the petition before the Commission prior to the issuance of a conviction; ii) the lack of an appeal of the judgment of conviction; and iii) the lack of exhaustion of remedies related to the prohibition to leave the country. The Court dismissed the preliminary objections raised by the State.

Regarding the first preliminary objection, the Court determined that the alleged victim did, indeed, submit such document on August 22, 2003, and up until that date, the final judgment, which was delivered on November 5, 2003, had not yet been issued in the criminal proceedings brought against him. The Admissibility Report was adopted on March 9, 2007. Nevertheless, it considered that, in this case, in light of the Interlocutory Resolution of the High Court of Justice of Suriname, in which the interlocutory objections raised by the petitioner were rejected, as well as due to the absence of an appeal process against the possible conviction, the issuance of said judgment was not an indispensable prerequisite for purposes of presenting the case before the Commission. With regard to the second objection, the Court concluded that at the moment of the conviction rendered against Mr. Alibux, there was no remedy of appeal. Moreover, the argument regarding the requirement to exhaust this remedy was not raised at the appropriate procedural opportunity, thereby rendering the objection time-barred. In relation to the third objection, the State did not contravene its admissibility in the early stages of the proceedings before the Commission, nor did it indicate the remedies that the alleged victim should have exhausted; such information was not provided to the Court either.

III. Merits

With regard to the rights of the Convention alleged in this case, the Court performed the following analysis: 1) the right to freedom from ex post facto laws; 2) the right to a fair trial and, in particular, the right to appeal the judgment; 3) the right to judicial protection, and 4) the right to freedom of movement and residence, particularly the right to freely depart from one's country of origin.

Regarding the right to freedom from ex post facto laws, the Court reiterated its jurisprudence on this matter in relation to punishable conduct and criminal offenses, as well as on the application of the most favorable sentence. However, it noted that, in the case at hand, the Commission alleged that this principle may also apply to regulations governing procedure. With regard to this, the Court noted that the legal controversy was rooted in whether or not the IPOHA violated the principle of legality and the right to freedom from ex post facto laws.

In this regard, the Court referred to the temporal application of procedural rules in the region from a comparative perspective, and it held that the application of regulations that govern procedure in an immediate manner do not violate Article 9 of the Convention because the point of reference is the moment in which the procedural act takes place, and not the moment in which the commission of the criminal act occurs, unlike in the case of regulations that classify criminal offenses and penalties (substantive regulations), where the point of application is precisely the time of the commission of the crime. In other words, acts that form part of the proceedings are completed during the procedural stage in which they originate and are governed by the applicable standards

that regulate them. In light of this, and because the legal process is a sequence in constant motion, the application of a regulation that governs procedure after the commission of an alleged criminal offense does not, *per se*, contravene the principle of legality. Based on the foregoing, the Court determined that the principle of legality, in the sense that a law exists prior to the commission of a crime, does not apply to rules governing the procedure, unless they can have an impact on the classification of acts or omissions that at the time of commission were not punishable under applicable law or the imposition of a more severe sentence than the one that existed at the time of commission of the criminal offense.

For purposes of the matter at hand, the Court found that when the offenses of which Mr. Alibux was accused were committed, the conduct was considered punishable pursuant to Article 278 and ancillary provisions of the Criminal Code. As a result, such regulation was in compliance with the principle of legality. Furthermore, the bases for his prosecution were set forth in Article 140 of the Constitution. For its part, the immediate application of the IPOHA did not affect the classification of the criminal offense, nor the severity of the penalty. Therefore, the Court concluded that the State of Suriname did not violate, to the detriment of Mr. Liakat Ali Alibux, the right to freedom from *ex post facto* laws established in Article 9 of the American Convention.

In relation to the right to appeal the judgment, the Court reiterated its constant jurisprudence on the scope and content of Article 8(2)(h) of the Convention, as well as the standards that must be observed to protect the guarantee of the right to appeal the judgment to a higher court or judge. In addition, in regard to the establishment of courts different from the ordinary criminal ones for the prosecution of high-ranking officials, the Inter-American Court determined that, when dealing with the alleged commission of a crime, although the ordinary criminal jurisdiction is activated in order to investigate and sanction the alleged perpetrators through the ordinary criminal channels, with respect to certain high-level officials, some jurisdictions have established a court system different from the ordinary one as the one with jurisdiction to prosecute them, by virtue of the high office they occupy and the importance of their investiture. In this sense, the State may establish special judicial privileges for the prosecution of high-ranking government authorities. As such, the Court concluded that the designation of the highest body of justice for the criminal prosecution of political office holders is not, *per se*, contrary to Article 8(2)(h) of the American Convention. In this specific case, Mr. Alibux was tried by the highest court of justice in Suriname. Thus, there was no higher tribunal or judge that could perform a complete review the judgment of conviction. In this regard, in cases such as this, the Court interpreted that in the absence of a higher court, the role of a superior court to review the conviction may be fulfilled when the plenary or a chamber within the same high body, but of a different composition than the one that originally heard the case, resolves the appeal, with powers to revoke or amend the conviction, if it deems it appropriate. In this way, the Inter-American Court reiterated that it can be established, for example, that the proceedings in the first instance will be carried out by the president or a chamber of the high court, and the appeal would then be heard by the whole tribunal, except for those who already issued their opinion on the case. Notwithstanding the foregoing, the Court considered that the State can organize itself in a manner that it deems appropriate in order to guarantee the right to appeal the judgment of high-ranking public officials.

Based on the foregoing, the Court found that, in this case, Mr. Alibux did not have the possibility of appealing his conviction for the purpose of securing and protecting his rights, regardless of the rank or position held, and regardless of the jurisdiction established as the competent one for his trial. Moreover, the Court held that the State failed to demonstrate how, in a trial by a panel of three judges of the highest court of justice, Mr. Alibux was afforded full due process, particularly, the right to appeal the judgment, in violation of Article 8(2)(h) of the Convention.

Regarding the alleged subsequent appeal process, the Court found that it was created when the judgment of conviction had already become *res judicata*, and after the criminal penalty had been

fully served. For Mr. Alibux, the possibility to file an appeal in 2007 against a sentence that had already been completed signified nothing more than its mere formal existence since the effects of the judgment had already materialized. As such, the Court concluded that the State of Suriname violated Article 8(2)(h) of the American Convention.

In relation to the right to judicial protection, the Court reviewed the Interlocutory Resolution of the High Court of Justice from June 12, 2003, in which the aforementioned High Court ruled on five objections raised by the representatives in relation to the allegations of the absence of the right to appeal the judgment and the retroactive application of the IPOHA, as well as claims regarding the proceedings brought against him and its jurisdiction over constitutional issues. In addition, while the Court recognized the importance of constitutional tribunals as the protectors of constitutional mandates and fundamental rights, the American Convention does not impose a specific model for the regulation of issues of judicial review and control for conformity with the Convention, a duty that is delegated to all bodies of the State. In this regard, the Court concluded that the State of Suriname did not autonomously violate the right to judicial protection set forth in Article 25 of the American Convention, to the detriment of Mr. Liakat Ali Alibux.

With regard to the prohibition to depart from the country imposed on Mr. Alibux on January 3, 2003, the Court noted that the norms outlined by the State do not provide a clear and precise regulation by which to determine the legality of the restriction on the right to freedom of movement in this case. Moreover, the State did not offer information regarding the process that would have allowed the alleged victim to challenge the restriction. Therefore, Suriname restricted Mr. Alibux's right to depart from the country without having shown that it observed the principle of legality, in violation of paragraphs 2 and 3 of Article 22 of the American Convention.

IV. Reparations

The Court held that its Judgment constitutes *per se* a form of reparation and determined that it was not appropriate to order the State to nullify the criminal proceeding and sentence imposed on Mr. Alibux. Moreover, it acknowledged and appreciated the adoption of domestic legislation in 2007 regarding the process of appeal for high-ranking officials and reiterated the obligation to exercise an *ex officio* "control for conformity with the Convention" by all bodies of the State. It further ordered that the State: i) as a measure of *satisfaction*, complete the publications ordered in the Judgment; ii) as *compensation* for damages, pay the amounts set forth for non-pecuniary damage and reimbursement for costs and expenses, and iii) provide the Court with a report on the measures adopted to comply with the Judgment.

The Court will monitor the compliance with the Judgment, in exercise of its attributes and in performance of its duties pursuant to the American Convention on Human Rights, and will close this case once the State has fully complied with the provisions therein.

The full text of the Judgment can be found at the following link:
<http://www.corteidh.or.cr/index.php/en/decisions-and-judgments>.