The Inter-American Court
on Human Rights

Re.: case 12.608
San José, 7 March 2013

The State's final written allegations

with respect to:

INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,
Delegates: Dinah Shelton and
Santiago A. Canton

versus:

THE REPUBLIC OF SURINAME,
Agent and Deputy Agent:
Gerold R. Sewcharan, LL.M and
Angèle E. Telting, LL.M
.....

President, distinguished members of the Court,

With reference to all factual and legal propositions and exhibits that have been put forward by the parties in these proceedings, including those of the hearing of the case of the 6th of February 2013, the State is of the opinion that from the multitude of data presented the following questions came up to be answered by your Court:

1. Is the complaint of 20 July 2003 admissible?
2. If not, is the complaint admissible in certain aspects?
3. Is a violation of Article 8 Paragraph 2 under h of the Convention at issue?
4. Is a violation of Article 9 of the Convention at issue?
5. Is a violation of Article 22 of the Convention at issue?
6. Is a violation of Article 25 of the Convention at issue?
7. Insofar as there is a violation, which consequences should be linked to it?

Re 1 and 2

The State has from its first until its last response, which is the pleading presented on the 6th of February 2013, stated and substantiated this both factually as legally that the present complaint involves a Fourth Instance Application. The State refers for this purpose to its written pleading of the 6th of February 2013, in particular page 2 under C.5, and especially to the jurisprudence referred to there and the citations from the jurisprudence. The State also refers to item B.4 on the same page, which relates to its argumentation in respect of the Fourth Instance Application

in its written reactions of the 18th July 2005 and the 28th of February 2006. Presently, the State refers to the further substantiation of its factual and legal proposition that in this case their is a clear case of Fourth Instance Application based on what was put forward on behalf of petitioner and his representative during the hearing of the 6th of February 2013. In their pleading they put forward that there had not been a case of forgery. The questions of the representative of petitioner to petitioner, as well as the content of his pleadings, only related to the substance of the criminal case as it had been investigated and adjudicated by the High Court of Justice of Suriname. For that matter, during the questioning a prominent point that came forward, also based on the questions of one of the judges of your Honourable Court, the fact that petitioner during the treatment of his criminal case by the High Court of Justice had not used the possibility to have the Ministers heard that would have been present at the Council of Ministers meeting. The High Court of Justice has for that reason legally and convincingly declared proven that petitioner was guilty of the criminal offence of forgery. For four of the five facts for which petitioner had been prosecuted, the High Court of Justice acquitted him. The questions of the representative of petitioner and his propositions in his pleading fit completely in the classical picture of a Fourth Instance Application. The complaint is for that reason completely inadmissible.

The State, furthermore, and also from the beginning of the treatment of this case, stated before the Commission that the complaint either in full, or in parts, should have been declared inadmissible, because of the indisputable fact that petitioner has not exhausted all national legal remedies. The State refers hereby to its argumentation put forward in this respect in its pleading of the 6th of February 2013, more in particular page 3 under D.6 to D16. The State also refers for its argumentation in respect of the non-exhaustion of domestic legal remedies to its written reactions of the 18th July 2005 and the 28th of February 2006. The State also refers to its argumentation in respect of non-exhaustion of domestic legal remedies that was put forward in the State's Answer of the 17th of August 2012 on page 6 under 11.1 and 11.2.

In respect of the non-admissibility put forward in respect of the alleged violation of Article 8 Paragraph 2 under h of the Convention, the State refers in respect of this explicitly to the jurisprudence referred to on page 6 of its pleading of the 6th of February 2013 in Paragraphs 14 and 15. This jurisprudence shows: that there is no violation at issue if the legal remedy is made available afterwards but the petitioner elects not to use it. The jurisprudence is clear and applicable to this case.
At the hearing of the 6th of February 2013 the Commission has only put forward in respect of these objections, also in respect of the material objections of the State in respect of this

provision from the Convention, that at the time that the right to an appeal was made available in August 2007, petitioner had already served his jail sentence imposed by the High Court of Justice.

The State is of the opinion that this argument, however, does not refute the argumentation of the State that the legal remedy of an appeal was made possible in particular for the petitioner and yet was not used by him.

The State furthermore is of the opinion that Article 8 Paragraph 2 under h of the Convention does not deal with whether or not the judgment imposed by the lower court has been executed, but about whether or not there is access to appeal. It is clear that in August 2007 the petitioner could have lodged an appeal, but has not used this possibility without providing a valid reason.

The argumentation of the Commission that the petitioner had already served his jail sentence is in addition not a valid one. For that matter, petitioner has effectively spent seven months in detention of his jail sentence of 12 months. In the criminal law practice, and this is not only true for Suriname, it often happens that the sentence imposed by the lower court has already been executed prior to the decision of the higher court in the case on appeal. In case the decision is in favour of the suspect on appeal, then the law offers the former suspect the possibility to ask for compensation from the State.

The argumentation of the Commission also does not hold for other reasons. The reasoning suggests that petitioner, in case he would have lodged an appeal, he would by definition have been acquitted. This is of course a wrong premisse. The treatment on appeal is, according to the Code of Criminal Procedure, always a completely new investigation and can even lead, depending on the position of the Public Prosecutions Department and the judges in the appeal court, to a statement that all charges are proven and even to a higher jail sentence. The suggestion of the Commission confirms also the argumentation of the State that this is a case of a Fourth Instance Application.

For that matter, it is important to establish that neither the petitioner, nor the Commission has denied at the hearing that they knew of the legal remedy of appeal. Neither did they deny that they knew about the discussions in the parliament in Suriname in September of 2005 to arrive at a possibility to create a right of appeal for sentenced (former) political office holders.

The State for that reason persists fully and with the same conviction, which is based on the factual and legal propositions, that said complaint should have been declared non-admissible, in any case for as far as Article 8 Paragraph 2 under h of the Convention was concerned.

Re 3

In his pleading of the 6th of February 2013, in particular under E17, E18 and E19, the State, apart from the non-admissibility objection in respect of this provision of the Convention, presented four material arguments on the basis of which it is of the opinion that in this case no violation of Article 8 Paragraph 2 under h is at issue. Against these arguments neither the Commission nor the petitioner has presented any counter arguments at the hearing. The Commission only put forward the counter argument referred to above.
The State for that reason persists fully and with the same conviction all four arguments, which are based on factual and legal propositions, and argues that said complaint is unfounded and not proven.

Re 4

At the hearing, in respect of this question, Mr. Héctor Olasolo Alonso was heard as expert witness on behalf of the petitioner and the Commission. The expert witness limited himself to treating the non-retroactive effect of the unfavourable criminal standard within the framework of the content that the principle of "nullum crimen sine iure" presently has in General International Criminal Law and general international human rights.
In as far as the opinion of the State is concerned in this matter, it refers hereby to the statement of the expert-witness himself, in particular where he states:
"As both the written and unwritten standards were accepted as a source of criminal law, the content of the principle "nullum crimen sine iure" in general international law was made concrete in two fundamental requirements:

i. Access of the suspect at the moment he perpetrates his act to the national or international standard that criminalizes this behaviour; and
ii. The reasonable predictability for the suspect, at the moment he perpetrates his acts, that he could be held criminally liable for such acts, according to the applicable laws."

In the present case the behaviour of the petitioner (forgery), which the High Court of Justice of Suriname has stated to be proven, was already since 1910 laid down in the Penal Code of Suriname as a material criminal standard in Suriname and the criminalization applies to everyone. The standard reads more in particular: "He who falsely draws up or falsifies any writing out of which any right, any commitment or any release of debt may arise, or which is intended to serve as prove of any fact, with the intention to use or have others use it as real and genuine, will be, in case any disadvantage arises from that use, punished as being guilty of forgery with imprisonment of five years at the most. With the same punishment will be

punished he who purposefully makes use of the false or falsified writing as if it were real and genuine, in case any disadvantage should arise from that use."
This criminal standard was and is still accessible to anyone in Suriname. It has never been amended since its last amendment in 1917. Petitioner was at the time of perpetrating the criminal offence in July/August of the year 2000 Minister of Finance. A Minister more so than a common citizen may be expected to be better informed of the valid legislation.

Forgery is a criminal offence the criminal court in Suriname has to regularly deal with and about which sentences are given in respect of this criminal offence. The sentences are also regularly published. It was thus sufficiently predictable for petitioner in 2000 that at the time he was committing that act, of forgery, he could be held accountable for it in a criminal court.
The procedural trial of petitioner by the High Court of Justice took place on the basis of the Code of Criminal Procedure of Suriname. This code became effective as of the 23rd of November 1977. This act provides amongst other things for the competencies of the Public Prosecutions Department, of the judges, of the suspect, of the attorneys, for the special methods of coercion such as detention and pretrial confinement, for the investigation, for the manner in which the court, in this case the High Court of Justice, proceeds in the criminal investigation, for the legal remedies, it uses the principle of innocence as the starting point, for the public hearing, for proceedings in a defended case, for free legal aid, and is based on the system of administration of justice in two instances, and furthermore provides for the execution of judgments and administrative decisions, etc., etc. The Code of Criminal Procedure has 532 articles.
The High Court of Justice of Suriname was established by Act of 17 May 1935 (The Act on Judicial Organization). The competence of the High Court of Justice in criminal cases is arranged in Article 2 of this Act. The criminal behaviour of petitioner dates from July/ August 2000.
Article 140 of the Constitution of Suriname, the Constitution became effective on 18 December 1987, provides, contrary to the main rule that all criminal offences are in first instance prosecuted by the District Court, that political office holders for offences perpetrated in the discharge of their function, also *after* they resign will be tried in first and only instance by the High Court of Justice.
The Prosecution is brought by the Prosecutor General after the person involved has been indicted by the National Assembly in a manner to be determined by law. When petitioner in 2000 perpetrated the criminal offence, it was sufficiently predictable that he, even as (former) Minister, could be held accountable on the basis of the valid legislation, as he could be prosecuted for those acts also after his resignation as Minister according to the Constitution.

The Act on the Indictment of Political Office Holders does not contain and thus does not provide the criminal standard, forgery, for which the petitioner was sentenced. The act does not provide for the material criminal standard. The criminal standard is included in the Penal Code of 1910. The Act on the Indictment of Political Office Holders also does not contain the procedural rules for the adjudication of a criminal case. The formal manner of adjudication is done on the basis of the Code of Criminal Procedure of 1977. The Act on the Indictment of Political Office Holders only provide for the indictment.

Neither the Act on the Indictment of Political Office Holders, nor one of its provisions, considering the statement of the expert-witness, is in contravention of Article 9 of the Convention. The statement of the expert-witness is for that reason at odds with the perspective of the Commission in respect to this question. The statement of the expert-witness supports on the contrary the position of the State as indicated by it in page 8 and further of its pleading of the 6th of February 2013 under F.20 through F.28.

Re 5

In respect of this question, the State, in its pleading of the 6th of February 2013, under H.32, referred to the legal provisions in its domestic legislation on the basis of which it is of the opinion that in this case no violation of Article 22 of the Convention is at issue. The State cites for good order the provisions involved.

Article 146 Paragraph 2 of the Constitution reads as follows: : "The Prosecutor General represents the Republic of Suriname in court. He is the head of the Public Prosecutions Department and is at the same time in charge of the court police. He has the powers to give the officers who are entrusted with police tasks instructions for the prevention, detection and investigation of punishable acts, if he deems that necessary in the interest of good justice."

Article 3 of the Code of Criminal Procedure reads: "The Prosecutor General watches over the appropriate prosecution of criminal offences. For that purpose he gives instructions to the members of the Public Prosecutions Department."

Article 134 of the Code of Criminal Procedure reads: "With the investigation of criminal offences is charged:

1. The Prosecutor General and other members of the Public Prosecutions Department;
2. The District Commissioners;
3. The police officers;
4. The extraordinary police officers, if and insofar as they have been designated to do so by the Minister of Justice and Police.".

Article 136 of the Code of Criminal Procedure reads: "The Prosecutor General and other members of the Public Prosecutions Department shall give instructions to other persons charged with the investigation."

The State considering the referred legal provisions in its domestic legislation is of the opinion that the Prosecutor General was authorized for an appropriate prosecution of the petitioner by the High Court of Justice to provide him instructions not to leave the country in January 2003. The instruction was not for an indefinite period, but only intended to prevent that the petitioner would withdraw himself from the criminal case against him. Petitioner has not taken any measure at the domestic level against this instruction of the Prosecutor General. If petitioner did not agree with the instruction at that time, he could have addressed the court for summary proceedings and could have claimed that the instructions of the Prosecutor General would be withdrawn. A decision is given in a few days to such claim brought before the court in summary proceedings. Petitioner has failed to do so.

Re 6

The Constitutional Court as referred to in Article 144 of the Constitution of Suriname has the task, according to Paragraph 2 of said Article:

"a. to verify the purport of Acts or parts thereof against the Constitution, and against applicable agreements concluded with other states and with international organizations;

b. to assess the consistency of decisions of government institutions with one or more of the constitutional rights mentioned in Chapter V."

Article 144 Paragraph 2 reads: "In case the Constitutional Court decides that a contradiction exists with one or more provisions of the Constitution or an agreement as referred to in paragraph 2 sub a, the Act or parts thereof, or those decisions of the government institutions shall not be considered binding."

According to this provision a judgment of the High Court of Justice cannot be tested by the Constitutional Court. The Constitutional Court is therefore not a judicial appeal instance. Thus the Constitutional Court will also not be able to test whether the High Court of Justice has or has not applied a law in contravention of the Constitution in the case of petitioner. The proposition of Petitioner that he wanted to have the constitutionality of the action brought against him or of the Act on Indictment of Political Office Holders tested by the Constitutional Court is for that reason legally unfounded.

Re 7

In respect of this question the State refers to what it has put forward in respect hereof in its pleading of the 6th of February 2013 under I.33. The state persists in this now.

The Authorized Representatives,