

## Sewcharan Advocaten

Re.: case 12.608  
Paramaribo, 17 August 2012

The Inter-American Court  
of Human Rights

The State's Answer

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  
.....

Your honour, distinguished members of the court,

1. The Republic of Suriname, hereinafter referred to as: the State, respectfully responds as follows to the case known under the aforesaid number with the Inter-American Court of Human Rights (IACtHR).
2. The case was submitted to the IACtHR by the Inter-American Commission on Human Rights (IACHR) by means of a letter dated 20 January 2012 by virtue of article 35 of the Rules of Procedure of the Inter-American Court of Human Rights (RPIACtHR).
3. As is evident from its letter, IACHR presented its report to the IACtHR, hereinafter referred to as Report on the Merits, with no. 101/11 by virtue of article 50 of the American Convention on Human Rights (ACHR), inclusive of the appendices which form part thereof, as well as all documents as submitted to it in the case.
4. **Requests of the IACHR to the IACtHR**
  - 4.1 In its letter dated 20 January 2012 by virtue of article 34 of the RPIACtHR, the IACHR requests your honourable members of the court to take the following measures against the State of Suriname:

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- “1. Take the measures necessary to nullify the criminal process and conviction imposed on Mr. Alibux;
2. Grant adequate reparation to Mr. Alibux for the violations declared in the report;
3. Take the non-repetition measures necessary so that high officers prosecuted and convicted for acts performed in their official capacity may have access to an effective remedy to request the review of such convictions. Also, adopt legislative or other measures that may be necessary to guarantee an effective mechanism of review of constitutional matters.”.

4.2 In its letter dated 20 January 2012, in addition to the request to take the aforesaid measures, the IACHR stated that this case also contains issues of Inter-American public order. According to the IACHR the case offers the IACtHR the opportunity “to rule on the foreseeability of criminal prosecution under the American Convention.”.

A second aspect stated by the IACHR and turned to the IACtHR to decide in the case for that reason as well, is the fact that Suriname does not have an operational Constitutional Court yet.

#### **5. Report on the merits (report 101/11)**

In its Report on the Merits dated 22 July 2011, by virtue of article 44 of the Rules of Procedure of the IACHR, the IACHR concluded that the articles 8 (right to a fair trial), 9 (freedom of post facto laws), 22 (freedom of movement) and 25 (judicial protection) in conjunction with article 1 paragraphs 1 and 2 of the ACHR had been violated to the detriment of Mr. L.A. Alibux. On page 25 of its Report on the merits, the IACHR set out the following recommendations to the State:

- “1. Take the measures necessary to nullify the criminal process and conviction imposed on mr. Alibux.
2. Grant adequate reparation to mr. Alibux for the violations declared in this report.
3. Take the no-repetition measures necessary so that high officers prosecuted and convicted for acts performed in their official capacity may have access to an effective remedy to request the review of such convictions. Also, adopt legislative or other measures that may be necessary to guarantee an effective mechanism of review of constitutional matters.”.

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**6. Denials and challenges**

- 6.1 In order not to leave any assertion undisputed, the State emphatically challenges and denies all facts stated by the IACHR, as well as conclusions drawn and recommendations made by the same. Accordingly the State herewith offers proof of all its own assertions by all lawful means.
- 6.2 The State respectfully requests the IACtHR to deem all that was stated and submitted to the IACHR for the State during the proceedings, as well as the evidence used by the State in the process and referred to, as being repeated and inserted verbatimly.
- 6.3 The State emphatically denies and challenges that it is guilty of violating article 9, article 8 paragraph 2 subsection h, article 25 and/or article 22 of the ACHR in the criminal proceedings as carried out against Mr. L.A. Alibux. The State therefore does not agree with the final conclusions of the IACHR as mentioned in among others the grounds 66, 76, 93 and 102 of its Report on the Merits. Accordingly the State emphatically contests these and the other conclusions of the IACHR.
- 6.4 The State of Suriname does not agree either with the recommendatins as made by the IACHR on page 25 of its Report on the Merits. The State determines that the recommendations agree with the measures requested by the IACHR to the IACtHR against the State.

**7. The complaint of Mr. L.A. Alibux**

By means of a letter dated 20 July 2003, Mr. L.A. Alibux submitted to the IACHR a complaint by virtue of article 44 ACHR. Mr. L.A. Alibux states in the said letter and in this sequence, that it is a question of violation of article 8 paragraphs 1 and 2, the articles 9, 5, 11, 22 paragraph 2, the articles 24, 25 and 2 of the ACHR.

As is evident from the letter Mr. L.A. Alibux also complains about violation of the articles II, XVII and XXVI of the American Declaration of the Rights and Duties of man (American Declaration).

At the same time the complaint is made about violation of article 2 paragraphs 2 and 3, article 9 paragraphs 3 and 4, article 12, article 14 paragraphs 2, 3 and 5 and the articles 15, 17 and 26 of the International Covenant on Civil and Political Rights.

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**8. The facts to the extent important in this respect**

- 8.1 On 14 October 1910 the Criminal Code enters into force in Suriname, at that time still a colony of the Kingdom of the Netherlands. This code sets out in article 278 that “forgery of documents” and in article 386 “fraud” are liable to punishment as being criminal offences. Forgery of documents is liable to a prison sentence not exceeding five years and fraud is liable to a prison sentence not exceeding three years.
- 8.2 On 23 November 1977 a new Code of Criminal Procedure enters into force in the Republic of Suriname.
- 8.3 By Presidential Decree of 18 December 1987 no. 8228 in the Republic of Suriname the text of the Constitution of the Republic of Suriname is published in the Bulletin of Acts Decrees of the Republic of Suriname. Article 140 of the Constitution reads as follows: “Those who hold political office shall be liable to trial before the High Court of Justice even after their retirement, for punishable acts committed in the discharge of their official duties. Proceedings are indicated against them by the Procurator-General after they have been indicted by the National Assemblée in a manner to be laid down by law. It can be determined that members of the High Councils of State, and other officials shall be liable to trial for punishable acts committed in the exercise of their functions before the High Court of Justice.”.
- 8.4 In the period of 1996-2000, Mr. L.A. Alibux is minister of Natural Resources and minister of Finance of the Wijdenbosch administration.
- 8.5 In the period of March / April 2001 a criminal investigation is instituted against Mr. L.A. Alibux. He was then deemed, among other things, as a suspect in the matter of violating the articles 278 and 386 of the Criminal Code and of the Foreign Exchange Act.
- 8.6 On 18 October 2001 in the Republic of Suriname the “Act of 18 October 2001 to implement article 140 of the Constitution of the Republic of Suriname” enters into force. This act is also called: “Act on Indictment of Political Office Holders”.
- 8.7 On 3 January 2003 by order of the procurator general, Mr. L.A. Alibux is prevented at the international airport of Suriname from leaving the country.
- 8.8 By judgement dated 5 November 2003 Mr. L.A. Alibux is found guilty by the Court of Justice of Suriname for violating article 278 of the Criminal Code and he is sentenced to imprisonment of one year. The Court of Justice acquits Mr. L.A. Alibux on the other charges.

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- 8.9 By the Act of 27 August 2007 an amendment to the Act on Indictment of Political Office Holders is entered into force in Suriname, in which article II stipulates the following: "A ruling given by the Court of Justice prior to the coming into force of this act with regard to serious offences committed by a political office holder or a former political office holder committed during such office as referred to in article 140 of the Constitution, shall be open for appeal within three months following the coming into force of this act and this pursuant to the provisions as set out in the Code of Criminal Procedure."

**9. First issue of inadmissibility with respect to all violations assumed by the IACHR**

- 9.1 To the extent relevant, article 46 of the ACHR reads as follows:

"1. Admission by the Commission of a petition or communication lodged in accordance with Articles 44 or 45 shall be subject to the following requirements:

- c. that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law;
  - d. that the petition or communication is lodged within a period of six months from the date on which the party alleging violation of his rights was notified of the final judgement;
2. The provisions of paragraphs 1.a and 1.b of this article shall not be applicable when:
- a. the domestic legislation of the state concerned does not afford due process of law for the protection of the right of rights that have allegedly been violated;
  - b. the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; or
  - c. there has been unwarranted delay in rendering a final judgement under the aforementioned remedies."

- 9.2 To the extent relevant, article 47 of the ACHR reads as follows:

"The Commission shall consider inadmissible any petition or communication submitted under Articles 44 or 45 if:

- b. any of the requirements indicated in Article 46 has not been met;"

6.

**10. Point of view of the IACHR in its report on the admissibility (Report no. 354/07)**

“46. In the Commission’s view, the State has failed to meet its burden of demonstrating the availability of appropriate, effective domestic remedies that the Petitioner has failed to exhaust. The Commission notes that the Petitioner’s complaints relate to criminal proceedings, which are not, on the face of it, remediable by civil proceedings. In any event the State has not essentially denied the Petitioner’s claim that he lacked any domestic forum to appeal his conviction or to contest its constitutionality. In the light of these considerations, the Commission concludes that the Petitioner exhausted domestic remedies as prescribed by Article 46.1.a of the American Convention”.

**11. Point of view of the State**

11.1 In the instance case it has been established that the complaint of Mr. L.A. Alibux is dated 20 July 2003. It has also been established that the Court of Justice at that moment had not passed a final judgement in the criminal proceedings against Mr. L.A. Alibux. The point of view of the esteemed IACHR, that at the time of submitting his complaint Mr. L.A. Alibux had exhausted all domestic remedies, is incomprehensible to the State and does not show a correct interpretation of the law. After all, pursuant to the provisions of the Code of Criminal Procedure, the Court of Justice of Suriname needed to fully and finally decide after 20 July about and on all defences brought up by Mr. L.A. Alibux and his defence attorneys. It was therefore impossible that it was a question of exhausting all remedies by Mr. L.A. Alibux on 20 July 2003, as required by the provisions of the convention.

11.2 In addition, on 28 August 2007, the Act of 27 August 2007 entered into force in Suriname. This act concerns an amendment to the Act on Indictment of Political Office Holders. Article II of the act stipulates the following:

“A ruling given by the Court of Justice prior to the coming into force of this act with regard to serious offences committed by a political office holder or a former political office holder committed during such office as referred to in article 140 of the Constitution, shall be open for appeal within three months following the coming into force of this act and this pursuant to the provisions as set out in the Code of Criminal Procedure.”

7.

This provision entitles Mr. L.A. Alibux to appeal against the final judgement dated 5 November 2003 of the Court of Justice between 28 August 2007 and 27 November 2007. Mr. L.A. Alibux voluntarily did not exercise this right.

Accordingly it can never be a question of exhausting domestic remedies in the current case on the part of Mr. L.A. Alibux.

## **12. Is it a question of a violation of article 9 of the ACHR?**

The text of article 9 of the ACHR reads as follows:

“No one shall be convicted of any act or omission that did not constitute a criminal offense, under the applicable law, at the time it was committed. A heavier penalty shall not be imposed than the one that was applicable at the time the criminal offense was committed. If subsequent to the commission of the offense the law provides for the imposition of a lighter punishment, the guilty person shall benefit therefrom.”.

## **13. Point of view of the IACHR**

13.1 In ground 53 of the Report on the Merits, the IACHR found the following:

“This being so, the debate in the instant case regards whether the application of the Act on Indictment of Political Office Holders, to prosecute of Mr. Alibux for crimes committed before its entry into force, but which were already considered offenses at the time, constituted a violation to the principle of criminal law regarding non-retroactivity of an unfavorable law, in the terms of Article 9 of the American Convention.”.

13.2 In ground 57 of the Report on the Merits, the IACHR found the following:

“This being so, for example, in cases in which the criminal norms have been gradually clarified at the national level through judicial interpretation, the main point taken into consideration by the European Court is whether the development is consistent with the essence of the crime and could have reasonably been foreseen. The European Court has indicated that it must be examined if the offenses were defined by the law with sufficient accessibility and foreseeability, in such a way that the petitioner could know which acts and omissions would make him criminally liable so as to be able to regulate his conduct according to that knowledge.”.

8.

13.3 In ground 58 of the Report on the Merits, the IACHR found the following:

“..... Nonetheless, the Commission considers that certain circumstances may occur in which the application of procedural norms can have substantive effects relevant to the analysis of Article 9 of the American Convention. In such circumstances, it is for the petitioner to argue in which way the retroactive application of procedural norms had substantive effects on the foreseeability of an eventual exercise of the State’s punitive power.”.

13.4 In grounds 65 and 66 of the Report on the Merits, the IACHR found the following:

“By virtue of the above, even if the Indictment of Political Officer Holders Act is procedural in nature, it was not a mere change in procedural rules but a norm enacted with the purpose of allowing, for the first time, the prosecution of such officers.”.

“In this sense, and in application of the aforementioned standards, the IACHR considers that in the instance case it was not foreseeable for the petitioner that the State could prosecute him before the regulation of Article 140 of the Constitution by means of the indictment of Political Officer Holders Act. Also, the Inter-American Commission considers that the change that was implemented by the enactment of the law was not only a procedural aspect but rather that it had wider and more substantive effects to the detriment of Mr. Alibux. Accordingly, the IACHR concludes that the application of that norm to events that took place before it entered into force constitute a violation of the right guaranteed in Article 9 of the American Convention.”.

#### **14. Point of view of the State**

14.1 The State holds the opinion that it is not guilty of violating article 9 of the ACHR in the criminal proceedings against Mr. L.A. Alibux and this on grounds of the following arguments.

14.2 Assessment on the basis of the text of article 9 of the ACHR.

The relevant text of article 9 reads: “No one shall be convicted of any act or omission that did not constitute a criminal offense, under the applicable law, at the time it was committed ...”.



9.

The actions on grounds of which Mr. L.A. Alibux was prosecuted by the Public Prosecutor's Office of the State before the Court of Justice of Suriname, have been made punishable ever since 1910 in the Criminal Code of the Republic of Suriname. By judgement dated 5 November 2003 of the Court of Justice, Mr. L.A. Alibux was therefore sentenced for a criminal offense, which at the time it was committed (the facts were committed in the year 2000) already constituted a criminal offence under the laws of Suriname.

Accordingly on grounds of the interpretation of the text, the State did not act in contravention of article 9 of the ACHR.

#### **15. Assessment on grounds of the administration of justice as mentioned by the IACHR**

- 15.1 The Act of 18 October 2001 to implement article 140 of the Constitution of the Republic of Suriname is an act that was drawn up in order to implement article 140 of the Constitution. Article 140 is part of the Constitution of 1987.
- 15.2 In its grounds under 65 and 66, the IACHR states that the Act on Indictment of Political Office Holders is not only a change of procedural rules, but that it is or implies in itself a norm.
- 15.3 The State cannot agree with this point of view on the part of the IACHR. According to the State no new norm was set as mentioned in article 9 of the ACHR. The regulating provisions in this respect are the articles 278 and 386 of the Criminal Code of the Republic of Suriname. Article 140 of the Constitution appoints the authorities in charge of prosecuting and bringing to trial the political office holders in question. The Act on Indictment of Political Office Holders is intended to implement article 140 of the Constitution.

The State therefore holds the opinion that it must have been more than sufficiently clear to Mr. L.A. Alibux that he could be prosecuted for the criminal offences he committed. After all, he was aware of the fact that those offences had been made punishable under the Criminal Code and the Foreign Exchange Act.

Mr. L.A. Alibux did not give any argument that he did not know that his actions constituted punishable acts under the Suriname criminal law effective at that moment.

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He did not make it known either, that he did not know that he could also be prosecuted after his retirement, for those offences as laid down by article 140 of the Constitution in 1987. He also did not show whether and how the implementation of article 140 of the Constitution influences the articles 278 and 386 of the Criminal Code.

The fact is that article 140 of the Constitution stipulates that Political Office Holders must also stand trial before the Court of Justice after they retire from office.

15.4 From the foregoing it therefore ensues that in this concrete case, the administration of justice as mentioned by the IACHR does not constitute a violation of article 9 of the ACHR. In order to substantiate this point of view, the State refers to the grounds found by the IACHR in the paragraphs 56, 57 and 59 of the Report on the Merits and which have been quoted by the State above. The State also emphatically invokes this administration of justice.

#### **16. Is it a question of violating article 8 paragraph 2 subsection h of the ACHR?**

The text of article 8 paragraph 2 subsection h of the ACHR (Right to a fair trial) reads as follows:

“2. Every person accused of a criminal offense has the 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 judgement to a higher court.”.

#### **17. Point of view of the IACHR**

In ground 75 of the Report on the Merits, with regard to this issue, the IACHR found the following:

“75. The Inter-American Commission has held in this regard that once an unfavorable decision is rendered at first instance, the right to appeal that judgement to a higher court must also be granted in compliance with fundamental fair trial protections. As the Inter-American Court has established, “the aim of the right to appeal a judgement is to protect the right of defense by creating a remedy to prevent a flawed ruling, containing errors unduly prejudicial to a person’s interests, from becoming final. The tribunal has specified that, while States may regulate the exercise of that remedy, they may not establish restrictions of requirements inimical to the very essence of the right to appeal a judgement.

11.

The State may establish special judicial privileges for the prosecution of high-ranking government authorities and these privileges are compatible, in principle, with the American Convention [.....]. However, even in these situations, the State may allow the accused the possibility of appealing a condemnatory judgement. This would happen, for example, if it were decided that the proceedings at first instance would be conducted by the president of a courtroom of a superior tribunal and the appeal would be heard by the full tribunal, to the exclusion of those who already issued an opinion on the case.”.

#### 18. Point of view of the State

18.1 On 28 August 2007 the Act of 27 August 2007 entered into force in the Republic of Suriname providing for an amendment to the Act on Indictment of Political Office Holders, in which article II stipulates the following:

“A ruling given by the Court of Justice prior to the coming into force of this act with regard to criminal offences committed by a political office holder or a former political office holder committed during such office as referred to in article 140 of the Constitution, shall be open for appeal within three months following the coming into force of this act and this pursuant to the provisions as set out in the Code of Criminal Procedure”.

18.2 Article 12a paragraph 3 furthermore stipulates that on appeal, the Court of Justice shall rule on the case by means of at least five and no more than nine judges. Paragraph 2 of this article stipulates that the Court of Justice in the first instance rules on the case by means of three judges.

18.3 Accordingly it has been established that Mr. L.A. Alibux had the unconditional right to file an appeal against the conviction dated 5 November 2003. It has also been established that the appeal is dealt with by at least five and no more than nine judges.

18.4 Pursuant to article 12b of the Act on Indictment of Political Office Holders, provisions of the Code of Criminal Procedure of the Republic of Suriname were declared to apply *mutatis mutandis* to the trial on appeal. Article 254 paragraph 1 of the Code of Criminal Procedure stipulates that the judge who pronounced the judgement shall not participate in the investigation at the trial on appeal.

In short, taking into consideration the provisions as referred to, the ground of the IACHR does not hold in this case, or at any rate it cannot be stated or assumed merely and in advance on grounds thereof that the proceedings of the aforesaid appeal are not provided with reliable safeguards.

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18.5 Consequently it is not a question of a violation of article 8 paragraph 2 subsection h on the part of the State. It was the choice made by Mr. L.A. Alibux himself not to exercise the right offered to him to file an appeal against the conviction and to have the case be tried again in full by maximally nine judges, who did not take part in the case in the first instance and with due observance of the provisions of the Code of Criminal Procedure, which offers the defence attorneys sufficient possibilities to provide the suspect proper assistance.

#### **19. Is it a question of a violation of article 25 of the ACHR?**

The text of article 25 of the ACHR (Right tot Judicial Protection) reads as follows:

“1. Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized bij the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed bij persons acting in the course of their official duties.

2. The State Parties undertake:

- a. to ensure that any person claiming such remedy shall have his rights determined by the competent authorithy provided for by the legal system of the state;
- b. to develop the possibilities of judicial remedy; and
- c. to ensure that the competent authorities shall enforce such remedies when granted.”

#### **20. Point of view of the IACHR**

In ground 93 of the Report on the Merits, as regards this issue, the IACHR found the following

“93. The petitioner alleges that he attempted to challenge the constitutionality of the indictment of political Office Holders’ Act before the High Court, which ruled that it lacked the jurisdiction to consider the claim, and that the absence of a sitting Constitutional Court deprived him of access tot that instance of revision. The State has not controverted those claims. Under these circumstances, the Commission considers that it has been established that the victim was unable tot secure effective access to the judicial review of his complaint concerning the constitutionality of the Act, in violation of Article 25 of the American Convention.”.

**21. Point of view of the State**

- 21.1 The State holds the opinion that it has not been guilty of violating article 25 of the ACHR in the criminal proceedings against Mr. L.A. Alibux. The State bases this point of view on the following arguments.
- 21.2 Article 25 first sentence of the ACHR prescribes: "Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention ....".
- 21.3 In the ground quoted above, the IACHR found that: "The petitioner alleges that he attempted to challenge the constitutionality of the indictment of political Office Holders' Act before the High Court, which ruled that it lacked the jurisdiction to consider the claim, and that the absence of a sitting Constitutional Court deprived him of access to that instance of revision....".
- 21.4 Mr. L.A. Alibux could have filed an appeal against the decision of the Court of Justice dated 12 juni 2003. The amendment to the act of 27 August as mentioned above, had laid down the right to appeal for among others persons like him. The decision dated 12 June 2003 of the Court of Justice to the preliminary defence of Mr. L.A. Alibux was therefore not an irrevocable decision. Mr. L.A. Alibux is entirely to blame himself for the fact that he did not want to submit the said decision to another court of justice. Accordingly it is the State's opinion that he cannot justifiably state that he was not able to enjoy judicial protection.
- 21.5 For that matter, the State acknowledges the importance of the presence of a Constitutional Court for the Republic of Suriname, as referred to in article 144 of its Constitution.
- The State of Suriname herewith wishes to inform the IACtHR about the fact that the Constitutional Court will be assigned the task:
- c. to verify the purport of Acts of parts therefore against the Constitution, and against applicable agreements concluded with others states and with international organization;
  - d. to assess the consistency of decisions of government institutions with one or more of the constitutional rights mentioned in Chapter V."

14.

- 21.6 Mr. L.A. Alibux states that he was not able to assess the constitutionality of the Act on Indictment of Political Office Holders by the Constitutional Court and that consequently the State violated his right as set out in article 25 ACHR.
- 21.7 According to the State, article 25 ACHR intends to provide any person access to a competent court in order to enjoy protection against actions that violate his fundamental Rights guaranteed by the Constitution and other acts, and/or the ACHR.
- 21.8 The State, however, holds the opinion that Mr. L.A. Alibux has not indicated which guaranteed fundamental right on his part was violated by the Act on Indictment of Political Office Holders in itself.

## **22. Is it a question of a violation of article 22 paragraph 1 of the ACHR?**

The text of article 22 paragraph 1 up to and including 4 of the ACHR (Freedom of Movement and Residence ) reads as follows:

- “1. Every person lawfully in the territory of a State Party has the right to move about in it, and to reside in it subject to the provisions of the law.
2. Every person has the right to leave any country freely, including his own.
3. The exercise of the foregoing right may be restricted only pursuant to a law to the extent necessary in a democratic society to prevent crime or to protect national security, public safety . public order, public morals, public health, or the rights or freedoms of others.
4. The exercise of the rights recognized in paragraph 1 may also be restricted by law in designated zones of reasons of public interest.”

## **23. Point of view of the IACHR**

In ground 101 of the Report on the Merits, as regards this issue, the IACHR found as follows: “101. In reviewing the travel restrictions imposed in the instant case, the Commission notes that the petitioner was prevented from leaving Suriname on January 3, 2003, almost two years after the criminal investigation had started, and three months before his trial commenced before the High Court of Justice. Mr. Alibux claims that he had always returned to the country from such trips. The State has not controverted this. Further, the State has not cited any law of Suriname to justify the restriction imposed on the petitioner, but has simply asserted that its Public Prosecutions Department was entitled to unilaterally impose the travel restriction, to prevent the petitioner from evading prosecution.

15.

The State has provided no evidence to support its contention that Mr. Alibux was a flight risk. Having regard to the jurisprudence of the Court, the State is obliged to define, in clear, legal terms, the exceptional circumstances that warranted the travel restriction imposed on Mr. Alibux. The State is also obliged to demonstrate that the restriction was necessary to prevent the petitioner from absconding, while criminal proceedings were still pending against him. Finally, the State was obliged to demonstrate that the restriction was proportional; that it was the most appropriate and least restrictive measure applied to ensure that Mr. Alibux did not abscond while the criminal proceedings were still ongoing.”

#### **24. Point of view of the State**

24.1 In his complaint filed with the IACHR in July 2003, Mr. L.A. Alibux also complained about the fact that in January 2003 he was prevented at the international airport of Suriname, from leaving the country for a few days’ stay abroad.

24.2 The question as regards this complaint, which should first have been answered by the IACHR, is whether Mr. L.A. Alibux also brought up this action on the part of the State to a domestic court.

The documents did not show that before he filed a complaint to the IACHR on 20 July 2003 about this action on the part of the State, Mr. L.A. Alibux turned to a domestic court in order for such court to assess the State’s action on the basis of the applicable laws of Suriname.

24.3 The Court of Justice of Suriname that tried the criminal proceedings against Mr. L.A. Alibux on 16 April 2003, could only examine the criminal issues and the issues pertaining to criminal law, which had to be answered on grounds of the charges in accordance with the Criminal Code and the Code of Criminal Procedure. The issue about whether or not being allowed to leave the country on 3 January 2003 did not constitute part of those issues.

24.4 In short, at a national level, Mr. L.A. Alibux never presented this issue to the competent court.

24.5 The decision on admissibility of Mr. L.A. Alibux as regards this complaint is therefore incomprehensible if we take into consideration the fact that the domestic legislation of Suriname did offer Mr. L.A. Alibux sufficient legal remedies and that he did not make any use of any such remedy.

16.

**25. Response of the State to the reparation measures as requested**

25.1 Under 1. the IACHR requests the IACtHR to take the necessary measures to nullify the criminal investigation conducted against Mr. L.A. Alibux and to set aside the judgement pronounced by the Court of Justice on the basis of that investigation.

The State holds the opinion that the nullification of a judgement under criminal law by the domestic court can only follow by a renewed investigation by a higher court than the court that pronounced the said judgement. The State deems it contrary to its sovereignty, which should be acknowledged, to simply nullify an investigation and/or proceedings conducted at a national level, which is not associated with defects, and of a judgement pronounced at national level, which is not associated with defects either; after all Mr. L.A. Alibux has not been able to prove that the judgement of the Court of Justice is materially and/or formally incorrect.

25.2 Under 2 the IACHR requests the IACtHR to award Mr. L.A. Alibux sufficient reparation for the violations it assumed in its Report on the Merits. The State believes that Mr. L.A. Alibux is not entitled to any reparation. The fact is that the aforesaid response on the part of the State shows that it holds the opinion that it has not violated any right of Mr. L.A. Alibux.

In addition the State holds the opinion that even if the Court decides that it is a question of a violation of one of the four provisions as mentioned by the IACHR, such violation can never justify reparation as indicated by Mr. L.A. Alibux in his letter dated 18 November 2011 to the IACHR.

25.3 Under 3 the IACHR requested the IACtHR “to take the non-repetition measures necessary so that high officers prosecuted and convicted for acts performed in their official capacity may have access to an effective remedy to request the review of such convictions. Also, adopt legislative or other measures that may be necessary to guarantee an effective mechanism of review of constitution matters.”.

25.4 Upon challenging the violation of article 8 paragraph 2 subsection h, as assumed by the IACHR, the State already declared and proved that as of 28 August 2007 it has provided for a right of appeal for persons who in the first instance were sentenced by the Court of Justice and convicted for offences committed during and in their position as political office holders. The provisions of the Code of Criminal Procedure of the Republic of Suriname have been declared to apply *mutatis mutandis* to trying the case on appeal. These national judicial mechanisms constitute a sufficient guarantee for a proper trial of an appeal, if any.

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25.5 Although above the State outlines and concluded that it was not guilty of a violation of article 25 of the ACHR, as regards the second part of the measure requested by the IACHR under 3, it brings up the following:

Article 144 of the Constitution of Suriname lays down the following:

“1. There shall be a Constitutional Court which is an independent body composed of a President, Vice-President and three members, who - as well as the three deputy members - shall be appointed for a period of five years at the recommendation of the National Assembly.

2. The tasks of the Constitutional Court shall be:

- a. to verify the purport of Acts of parts therefore against the Constitution, and against applicable agreements concluded with others states and with international organization;
- b. to assess the consistency of decisions of government institutions with one or more of the constitutional rights mentioned in Chapter V.

3. In case that 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.

4. Further rules and regulations concerning the composition, the organization and procedures of the court, als well as the legal consequences of the decisions of the Constitutional Court, shall be determined by law.”

25.6 With reference to this constitutional provision, it may be concluded that the State of Suriname has already provided for the constitutional basis to establish a Constitutional Court. Meanwhile the State has already given the instructions to that effect and these must result in making operational this Constitutional Court.

25.7 On grounds thereof the State of Suriname concludes that there is no cause for any of the measures as requested by the IACHR.

## 26. Final conclusion

Op grounds of all the foregoing, the State requests the Inter-American Court of Human Rights to reject the case in its entirety as being factually and judicially unfounded and unproved.

Deputy Agent

