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Institution:	Inter-American Commission on Human Rights
File Number(s):	Report No. 2/92; Case No. 10.289
Session:	Eighty-First (3 – 14 February 1992)
Title/Style of Cause:	Sheik Kadir Sahib Tajudeen (Mohammad Ali) v. Costa Rica
Doc. Type:	Report
Decided by:	Chairman: Marco Tulio Bruni Celli; First Vice Chairman: Oscar Luján Fappiano; Second Vice Chairman: Michael Reisman; Members: Oliver H. Jackman; Leo Valladares Lanza; Patrick L. Robinson; Alvaro Tirado Mejía.
Dated:	04 February 1992
Citation:	Sahib Tajudeen v. Costa Rica, Case 10.289, Inter-Am. C.H.R., Report No. 2/92, OEA/Ser.L/V/II.81, doc. 6 rev. 1 (1991)
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1. On January 29, 1989, the Commission received a complaint by Mr. Sheik Kadir Sahib Tajudeen, a national of Singapore residing in Costa Rica, in which he states the following:

a. That he has been living in Costa Rica for ten years and that by a criminal conviction in the Third Superior Court of Grasse, France, against several individuals, himself among them, he was sentenced to 20 years in prison and a fine of 10 million francs; in his case the sentence was handed down in default. That the French authorities requested his extradition through an arrest order dated November 8, 1985, issued by the trial judge of the Superior Court of Grasse, followed by a judgment in default dated November 26, 1986, by the Court of Grasse for the crimes of drug trafficking, association for drug trafficking, import and export of prohibited merchandise, and fraud. That such request for extradition was granted by the Second Criminal Court of San Jose on January 9, 1989, in accordance with Extradition Law 5991 in effect in Costa Rica, since there is no treaty between that country and France in this regard.

b. The petitioner was contesting the decision by the Costa Rican court because it accepts as grounds for extradition a judgment in absentia as established under French law and because the extradition grant constitutes unequal treatment for foreigners and nationals, inasmuch as the latter cannot be expelled from the country. That such granting of extradition constitutes a violation of the provisions of Article 8 (Judicial Guarantees) of the Constitution of Costa Rica and Article 24 (Right to Equal Protection) of the American Convention on Human Rights.

c. The petitioner maintained that there was a lack of due process because the Court denied him the opportunity to prove that he was in Costa Rica at the time of the events upon which his conviction in the French courts was based.

d. He further asserted that he had filed and exhausted all remedies under domestic jurisdiction, and he provided as background a copy of the resolution by the Second Criminal Court whereby the extradition was granted.

2. On March 22, 1989, the petitioner added evidence showing that the lower court's judgment had been upheld by the Supreme Court of Justice by a vote taken on March 20, 1989; he requested

precautionary measures to prevent this extradition until the international proceeding with the Inter-American Commission was completed.

3. The Commission forwarded the complaint to the Government of Costa Rica in a note dated February 1, 1989, and requested a response within 90 days. On April 13, 1989, during the Commission's 75th session, the Government presented its answer at a hearing held that day to hear the petitioner and the Government and to reach a decision on the precautionary measures requested. The pertinent parts of the Government's answer maintained:

a. That the case involves no discrimination because the equality provided for in the Constitution must be interpreted, according to the jurisprudence of the Supreme Court, to mean "when the individuals have equal status." The Political Constitution grants foreigners equal rights "...with the limitations and exceptions that this Constitution and the laws establish." Article 32 of this Constitution prohibits the expulsion of Costa Ricans from national territory, and therefore extradition applies only to cases involving foreigners.

b. That the petitioner had the right to due process in Costa Rica and that if his procedural right was allegedly violated in another country --which the Costa Rican court ruling found was not the case after analyzing the background of the case-- the complainant must seek relief in that country and not in Costa Rica.

c. That cancellation of his residency permit, the administrative order for expulsion, and the court's decision to agree to the extradition request were done legally by the authorities, in strict compliance with the specific standards and based on requests for arrest and nonappealable judgment handed down in France; that such judgment does not come under the jurisdiction protected by the American Convention on Human Rights and that it is not up to Costa Rica to assess, question, or sanction it.

d. That there were various legal remedies available to the complainant in Costa Rica that he did not exhaust and therefore the domestic appeals had not been exhausted as of that date.

e. That because of the foregoing, it asks that the case and the precautionary measures requested be declared inadmissible.

4. At its 75th session, the Commission decided to reject the petition that had been made for precautionary measures, considering that there was no immediate danger that rights protected by the Convention would be violated, and it decided to continue the proceedings.

5. On June 5, 1989, the petitioner again addressed the Commission in order to add to his complaint, maintaining that, due to a falsification committed by a Costa Rican police official, an attempt was being made to extradite him when the person sought by the French authorities was someone else. He maintained that the American Convention had been violated with regard to Article 8 (Right to a Fair Trial) and with regard to the right to personal liberty recognized by Article 7, since during this entire period he was under arrest.

6. On June 19, 1989, the petitioner, through his representatives, asked the Commission to place itself at the disposal of the parties concerned with a view to reaching a friendly settlement (Article 48 of the American Convention). He also reported several legal actions he was taking in the domestic jurisdiction.

7. The Government replied on September 21, 1989, referring at length to the so-called error in identity, indicating various public documents in which he was identified as Mohammad Ali. It also indicated that, in view of the nature of the case, it was not in a position to accept the procedure of friendly settlement provided for in Article 48 of the Convention.

8. The petitioner's representatives again appeared in a hearing before the Commission at its 76th

session (September 18 through 29, 1989) and reaffirmed his complaints and the aforementioned alleged error in identity.

9. The Government answered in an extensive brief dated November 13, 1989, received at a hearing by the Commission. Expanding on its previous answer, the Government described the legal appeals exercised by the petitioner and asked that the petition be declared inadmissible on the grounds that he did not exhaust domestic remedies, in particular the remedy of review before the Third Chamber of the Supreme Court. This presentation was conveyed to the petitioner, and he was given a period of time in which to reply.

10. In a reply dated December 10, 1989, the petitioner's representatives repeated their allegations concerning the error in identity between the person whose extradition was requested and the petitioner, and other allegations concerning the lack of due process. They again objected to articles in the press allegedly violating the honor and dignity of the person they were defending. These allegations were again repeated by the petitioner's representatives in notes dated June 12, 19, and 25, 1990, which were forwarded to the Government for a reply.

11. On December 18, 1990, the petitioner's representatives brought new information to the Commission's attention, concerning the proceeding that had been under way against Mr. Muhammad Ali in France, and in particular concerning the fact that such proceeding had not included fingerprints proving his identity. They also included a dactyloscopic comparison by a criminal expert from which it appears basically that the identification record used by the Swiss police referring to Mohammad Ali, born on January 29, 1944, in Bombay, India; native of Pakistan; son of Shaikh Qader; mother, Mihideen Beeyi; wife, Jalia Mohammad; businessman, matches that of Mr. Sheik Kadir Sahib Jajudeen, taken in Costa Rica in November 1990 by the same expert in the presence of the petitioner's attorney. They also pointed out certain procedures that in their opinion could have been carried out differently.

12. The expert also pointed out that both the photograph and the physical description sent by the Interpol office fit or could be attributed to the petitioner.

13. The petitioners also indicated that domestic remedies had been exhausted because the extradition law contemplated appeal only, so that the judgment became unappealable in June 1989; that various petitions for habeas corpus had been rejected; that it had already been determined that the detention was legitimate; and that the appeal for review presented on June 22, 1989, had been rejected by the Third Chamber of the Supreme Court on November 3, 1989.

WHEREAS:

14. Concerning the exhaustion of domestic remedies.

a. The Commission believes that it must address this matter because it has been introduced by the Government of Costa Rica, which requested that the petition be declared inadmissible on the grounds of a failure to exhaust domestic remedies. The Commission is also taking into account the petitions of habeas corpus filed and ruled upon, including, among others, the one ruled upon by the Supreme Court of Justice on December 13, 1989.

b. From the presentations made by both parties, it is clear that the petitioner has made use of numerous remedies under domestic law, which were exhausted; the Commission also established that the petitioner has continually introduced alleged "new facts," adding extemporaneous arguments and complaints that have drawn out this case beyond what is reasonable and have delayed a final decision; the Commission cannot fail to point this out, because it concerns the probity and good faith that the parties to proceedings before this Commission must observe; the Commission did not say so earlier so that it could

not be said that the right to self-defense had been abridged.

c. In this particular case, the Commission considers that, for the purposes provided for by the Convention, the petitioner has exhausted the domestic remedies for the matters to be decided by this Commission regarding alleged violations of his rights to personal liberty, to legal personality as concerns personal identity, and to due process, since Costa Rican courts have handed down unappealable rulings on these conditions, among many others.

15. Concerning identification of the detained petitioner as the individual requested for extradition:

a. The file and the documents provided by the Government show that his original name was Mohammad Ali, and that he was known as Sheik Kadir Sahib Tajudeen. He so appears in several public documents relating to proceedings instituted by the petitioner or by his representatives from the time of his arrival in Costa Rica in 1978 until 1983. At no time throughout the proceedings in the Costa Rican courts or before this Commission has the petitioner disputed those documents' authenticity. Back in 1983, when the petitioner was about 41 years of age, he was adopted by notary Nestor Baltodano Guillen, a Costa Rican national, and then changed his name, which he did again years later.

b. All those documents consistently state that in his Singapore passport # 0658890, presented either by the petitioner himself or by his representatives, his name appears as Mohammad Ali, "known also as Sheik Kadir Sahib Tajudeen" to wit:

- the Certificate of Deposit that he made with the Banco Anglo Costarricense on May 3, 1982.
- the testimony given before notary Nestor Baltodano Guillen (later his adopted parent), recorded under the number 391406.
- in the Register Monitoring Fulfillment of Tourism Obligations (ICT) approved on 14-6-82, and in the declaration of dependents of October 27, 1982.
- in various notes at the time of those injuries presented by his representative and adoptive father, the aforementioned Baltodano, to the Costa Rican Institute of Tourism on behalf of the petitioner.
- in the ruling allowing the aforementioned Baltodano to adopt the petitioner, dated February 16, 1983.

c. It also appears that the petitioner changed his own name first to Tajudeen Baltodano Guillen, which is what he calls himself in the note presented to the I.C.T. on February 23, 1983, requesting that his children's names be changed by virtue of the adoption ruling.

d. It also appears that four years later, in 1987, the petitioner's representatives again changed his name (Note No. 771532 from the petitioner's attorney to the National Immigration Council, dated November 19, 1987), to Sheik Kadir Sahib Tajudeen, "also known as Mohammad Ali"; that is, by reversing the name he had upon entering Costa Rica, it became his alias, and the alias became his name. From that time on he has called himself Sheik Kadir Sahib Tajudeen, and mention of his original name has ceased. (See petition of habeas corpus to the Supreme Court of Justice, dated November 8, 1988)

e. That in the Interpol Report added as annex 3 of 21.11.85, Interpol France indicates that the individual sentenced in France has "several aliases: Mohamed Ali Qadir, Dino or Bunny Baltodano Tajunddin, Kadir Tajuddin, Zulfinar Mohamed, Jamal Ali, Taj Ud Din, Zhiekh Ali, and that this is a Pakistani type person 40 years of age, 1.66 meters tall, an astute businessman accustomed to the finer things in life."

f. It also appears from the report by the criminal expert of November 12, 1990, presented to this Commission by the petitioner's attorney with a note dated December 8, 1990, that the finger prints presented by the Swiss Police through Interpol as belonging to Mohammad Ali match those taken from the petitioner in Costa Rica in that month of November 1990 in the presence of his attorney.

g. That the physical descriptions and the corresponding photographs also match. That the observations regarding the transcription procedure do not alter the basic conclusion of the expert to the effect that both identifications refer to the same person.

16. The Commission concludes in the light of all the documents analyzed that the petitioner entered Costa Rica with a passport in the name of Mohamed Ali; that in Costa Rica he changed his name several

times; and that the Costa Rican courts and authorities have respected the rights recognized by the American Convention with regard to his legal personality, which includes personal identity and his right to a name.

17. Concerning the principle of due process.

a. The Commission considers that the principle of due process has not been violated, since the petitioner has had ample opportunity in Costa Rica, which he has availed himself of extensively, both for defense and for various kinds of appeals with regard to his liberty, his right to a name, his right to equal treatment, and his legal guarantees.

b. The extradition has been ordered in keeping with the terms of Extradition Law No. 5991 of 1976, which governs the case because there is no special treaty with France in this regard, in accordance with the judgment of the Second Criminal Court, upheld by the corresponding Superior Court.

c. The fact that his extradition is based on a judgment handed down in default in a country like France that is not a member of the Organization of American States does not in itself involve a violation of the guarantees of due process.

d. That such proceeding in the French court was analyzed by the Costa Rican judge, and he found it complied with the legal requirements of Costa Rica applicable to the case.

e. That, as indicated by the official document of the Government of France dated 19/6/89, through a note from its Ambassador in Costa Rica to that country's Ministry of Foreign Affairs, the Government of France agrees and promises to conduct a new trial in the event Mr. Mohammad Ali, known as Sheik Kadir Sahib Tajudeen, challenges the previous one, and promises to judge and sentence him only for the events that gave rise to the extradition request.

f. The Commission has also considered the judgment of the Supreme Court of Justice of Costa Rica handed down on December 13, 1989, whereby the petition for habeas corpus filed by the petitioner was rejected, which confirms the legality of the petitioner's detention and describes the appeals he has before the French system of justice and eventually before the European system for defense of human rights if he believes his fundamental rights have been violated by the proceedings conducted in the French courts.

18. In this regard the Commission considers that the fact that the Constitution of Costa Rica, in keeping with Article 22.5 of the American Convention, provides a special right for nationals whereby they may not be expelled from their country, which right it does not guarantee to foreigners if they are expelled or extradited in accordance with the legal procedure and the guarantees of due process, does not constitute discrimination against the right to equal treatment before the law.

19. That the petitioner, whose identity the Commission addressed itself to earlier, has had innumerable effective remedies in order to assert his rights in a Costa Rican court; he has made use of them, and it does not appear from the accompanying documentation that his guarantees have been impaired in such remedies; instead, the Costa Rican system has answered his petitions in accordance with the law and with ample opportunity for defense and review.

20. Therefore,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,
RESOLVES:

1. To declare this petition admissible in accordance with the provisions of Article 47, inasmuch as it fulfills the formal requirements required by the American Convention on Human Rights.

2. That the actions and decisions of the Costa Rican judicial and administrative authorities with regard to the petitioner, Mr. Mohammed Ali, who uses various names, including Sheik Kadir Sahib

Tajudeen, as a result of the request for extradition by the Government of France, do not constitute a violation of the rights recognized in the American Convention on Human Rights.

3. Let the Government of Costa Rica and the petitioner be informed of this decision, and let it be published in the 1991 Annual Report of the Commission.