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Title/Style of Cause:	Radyo Koulibwi v. Saint Lucia
Doc. Type:	Decision
Decided by:	Chairman: Claudio Grossman; First Vice President: Juan Mendez; Second Vice-President: Marta Altolaguirre; Commissioners: Robert K. Goldman, Peter Laurie, Julio Prado Vallejo, Helio Bicudo.
Dated:	10 October 2001
Citation:	Koulibwi v. Saint Lucia, Case 11.870, Inter-Am. C.H.R., Report No. 87/01, OEA/Ser./L/V/II.114, doc. 5, rev. (2001)
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## I. SUMMARY

1. This report concerns a petition presented on January 29, 1997, to the Inter-American Commission on Human Rights (hereinafter referred to as "the Commission") by Albert Deterville Managing Director and owner of Alkim Communication Production Co. Ltd. ("Radyo Koulibwi 105.1 FM") hereinafter referred to as "Petitioner") against the State of Saint Lucia (hereinafter referred to as "the State" or "Saint Lucia"), alleging that the State of Saint Lucia had violated his rights as set forth in the American Declaration on the Rights and Duties of Man (hereinafter referred to as "the Declaration").

2. According to the Petitioner, since November 1990 he owned and legally operated a radio station called "Radyo Koulibwi 105.1 FM with a test license" which was granted to him by the State of Saint Lucia. The Petitioner states that on November 23, 1995, he was hand delivered a letter signed by the Permanent Secretary of the Ministry of Communication, by an armed policeman, acting as an agent of the State. The Petitioner alleges that the letter stated that the Government of Saint Lucia was unable to grant him a permanent radio broadcast license at this time, and that therefore his broadcasts were illegal and should be terminated at once. The Petitioner claims that he was intimidated by the police officer who brought him the letter, because "while the police officer was handing him the letter with his left hand, he used his right hand to unbuckle his holster which had a revolver in it, and attempted to use the revolver on Mr. Deterville". The Petitioner contends that he was not armed at the time of the delivery of the letter by the police officer.

3. The Petitioner alleges that the State violated his rights pursuant to Articles of the American Declaration, namely, Article I, (the right to personal security), Article II (the right to equality before law), Article IV (the right to freedom of investigation, opinion, expression and dissemination), Article V (the right to protection of honor, personal reputation, and private and family life), Article XIII (the right to the benefits of culture), Article XIV (the right to work and to fair remuneration), Article XVII (the right to recognition of juridical personality and civil rights), Article XVIII (the right to a fair trial), Article XXIII (the right to property) and Article XXIV (the right to petition).

4. The Commission decides to declare Articles I, II, and IV, of the American Declaration admissible pursuant to Articles 31, 32, 33, 34 and 37, of its Rules of Procedure. In addition, the Commission declares Articles V, XIII, XIV, XVII, XVIII, XXIII, and XXIV, of the American Declaration inadmissible pursuant to Article 34 of its Rules of Procedure.

## II. PROCEEDINGS BEFORE THE COMMISSION

5. On November 17, 1998, the Commission opened a case in this matter and forwarded the pertinent parts of the petition to the State pursuant to Article 34 of its former Regulations, and requested that the State provide its observations with regard to the exhaustion of domestic remedies and the claims raised in the petition, within 90 days.

6. On August 5, 1998 and August 17, 1999, the Commission reiterated its request for information from the State and requested that it provide the said information within 30 days. On August 22, 2000, the Commission again reiterated its request for information from the State and gave it a period of 30 days to respond to the Commission's communication.

7. On July 3, 2000, the Petitioner informed the Commission that it wishes to pursue a friendly settlement with the State. On December 13, 2000, the Commission informed the State that it wishes to place itself at the disposal of the parties with a view to reaching a friendly settlement in the case.

8. To date, the State has not responded to any of the Commission's communications dated February 17, 1998, August 5, 1999, August 17, 1999 and August 22, 2000, nor has it presented any information to the Commission pertaining to the admissibility and merits of the petition, and the Commission's communication of December 13, 2000 concerning its friendly settlement offer.

## III. POSITIONS OF THE PARTIES ON ADMISSIBILITY

### A. Position of the Petitioner

#### a. Petitioner's claims

9. The Petitioner claims that on March 4, 1987, he applied to the State for a test license to broadcast on the following frequencies: 105 MHz., 225.5 MHz., and TV channel 7. The Petitioner reports that this license was granted to him by letter dated August 25, 1989, and that he was required to pay 75 dollars each year, which he duly paid, and Radyo Koulibwi 105.1 FM

began operation in November 1990. The Petitioner maintains that, when he requested a duty free concession to import broadcasting equipment, the Prime Minister advised him by letter dated June 6, 1990, to file an Application for a permanent broadcasting license. According to the Petitioner, between 1990, and 1994, he was requested to make various revisions to his Application and furthermore held several discussions with officials on the status thereof, and arrangement for the payment of fees.

10. The Petitioner claims that on January 11, 1991, he requested an extension of his test license, to allow him and his company to regulate their signals. The Petitioner contends that by letter dated January 23, 1991, this request was granted, pending the reply from the State with respect to the Application for a permanent broadcasting license. According to the Petitioner from 1989 to 1991 he paid the license fees to the Wireless Officer who was stationed at the office of the Commissioner of Police and that subsequently, the Wireless Officer retired, and his office was transferred to the Ministry of Communications.

11. The Petitioner claims that in the morning of November 23, 1995 a police officer, armed with a revolver entered the compound of his radio station, "Radyo Koulibwi" uninvited and unannounced. The Petitioner alleges that he observed this policeman "using his right hand to unbuckle the holster of a revolver he was carrying on his right hip." According to the Petitioner the police officer then "placed his right hand on the head of the revolver, began pulling it out and attempted to use his revolver on the person of the Petitioner", whilst handing him a letter from the Ministry of Communications. The Petitioner claims that he had not been a threat to the Police Officer at any time, and that he was unarmed at the time of the encounter.

12. The Petitioner reports that the letter which was handed to him by the police officer, was signed by Wilbert King, Permanent Secretary, Ministry of Communications and Chairman of the Telecommunications Advisory Board, and it stated that the State was unable to grant him a radio broadcast license at this time and that as a result his FM broadcast on the frequency of 105.1 was illegal and should therefore be discontinued at once. According to the Petitioner, he was not given any reason for this decision.

b. The Petitioner Alleges Violations of Articles, I, II, IV, V, XIII, XIV, XVII, XVIII, XXIII, XXIV, of the Declaration

13. The Petitioner claims that the State violated his right to personal security pursuant to Article I of the Declaration, because the police officer who handed him the letter intimidated him by the manner in which he presented the letter to the Petitioner, and in particular, the action he displayed, by placing his hand on his revolver at the same time. The Petitioner alleges that the State violated his right to equality before law, as established by Article II of the Declaration, because he was treated differently than other persons who applied for licenses, and he was never given the opportunity to appeal the decision of the Telecommunications Advisory Board, and maintains that his rights to appeal the closure were abused.

14. The Petitioner claims that he did not receive any prior warnings before the closure of Radyo Koulibwi that his operations had violated any domestic law, nor was he accused of violating any domestic law. The Petitioner contends that his right to freedom of investigation,

opinion, expression and dissemination guaranteed by the American Declaration was violated by the State, because the authority used by the State to order the closure of Radyo Koulibwi, namely, the Telecommunications Advisory Board is unconstitutional. The Petitioner argues that the only legal authority in the State is constituted under the Wireless Telegraphy Ordinance of Saint Lucia, in the office of the Wireless Officer.

15. The Petitioner contends that his right to protection of honor and personal reputation and family life under Article V of the Declaration was violated by the State, because, the State of Saint Lucia and its agents failed to provide a reasonable explanation for the closure of Radyo Koulibwi, exposed him to ridicule and speculation about his reputation as a regional personality, and as a result, he and his family have suffered immensely from this ordeal.

16. The Petitioner alleges that the State is in violation of Article XIII of the Declaration, namely, his right to the benefits of culture. The Petitioner states that he is a social scientist by profession, engaged in the field of cultural anthropology, and that for five years he had communicated the results of his research on Radyo Koulibwi. The Petitioner claims that the abrupt closure of Radyo Koulibwi affected his professional capacity to function, and to disseminate the results of his research work. The Petitioner

maintains that because of the State's action in the closure of his radio station, he is unable to enjoy or execute his professional interest in the cultural domain.

17. The Petitioner states that he had legally invested in excess of one million Eastern Caribbean dollars in cash, time and equipment into the operation of the radio station, prior to, and during its operations. The Petitioner asserts that this was his sole area of employment from which he financially supported himself and family. According to the Petitioner, the unannounced and abrupt closure of Radyo Koulibwi, violated his right to work and to fair remuneration as provided by Article XIV of the Declaration. In addition, the Petitioner claims that Staff members had to be released who, as the Petitioner, have remained unemployed.

18. The Petitioner claims that by refusing him an audience immediately following the closure of his radio station, the State violated his right to recognition of his juridical personality and civil rights pursuant to Article XVII of the Declaration. The Petitioner alleges that the decision of the High Court in Saint Lucia dismissing his case in 1996, was unfair, because it neglected to consider the State's violation of his human rights. The Petitioner claims that the Court failed to provide protection for his human rights, thereby violating his right to a fair trial in accordance with the provisions of Article XVIII of the Declaration. The Petitioner alleges that the State violated his right to own and enjoy his property under Article XXIII of the Declaration, because Radyo Koulibwi was his own property which he operated legally until its closure by the State. The Petitioner maintains that the closure of the radio station also denied him the right to provide a livelihood for his family.

19. The Petitioner claims that the State is in violation of his right to petition pursuant to Article XXIV of the Declaration because since the closure of the radio station he attempted to have a productive dialogue with the State, however, the State did not grant him a hearing.

c. Petitioner's Argument on Exhaustion of Domestic Remedies

20. With respect to exhaustion of domestic remedies, the Petitioner maintains that after the closure of Radyo Koulibwi 105.1 on November 23, 1995, the Petitioner attempted to have a dialogue with the former Minister of Communications and the former Prime Minister. The Petitioner states that in December of 1995, a petition requesting re-opening of Radyo Koulibwi and signed by 10,991 people was presented to the Government.

21. In addition, the Petitioner contends that in the same month the same matter was presented on his behalf before the High Court of Justice in the Eastern Caribbean Supreme Court, No. 046, suit No. 84 of 1996, requesting an order of certiorari to quash the State's decision of the radio stations' closure, however, the High Court dismissed his suit in 1996. The Petitioner reports that because the process before the High Court during 1995, and 1996, exhausted all his available funds, he was unable to retain counsel to appeal the matter before the Court of Appeal of the Eastern Caribbean States, to the Judicial Committee of the Privy Council.

22. The Petitioner informs that on May 12, 1997, he requested to initiate a dialogue with the new Government of St. Lucia, through Prime Minister Dr. Kenny Anthony, the Minister of Information Services, and Senator Calixte George, Minister of Communications. The Petitioner asserts that he had a meeting with the Minister of Communications on June 26, 1997, and provided him with a copy of the Commission's letter of May 12, 1997. The Petitioner claims that the Minister of Communications gave him no assurances that a remedy would be forthcoming.

23. The Petitioner indicates that he also held discussions with the Prime Minister, Dr. Kenny Anthony, and that they agreed on two points: First, the Petitioner would submit an Application requesting the acquisition of a Permanent Public Broadcasting License and second, an Application requesting the immediate re-opening of Radyo Koulibwi, pending the approval of the said Application. The Petitioner maintains that he was informed, by letter dated August 25, 1997, that he would be communicated with in due course regarding these matters. The Petitioner alleges that both the former, and the present Governments have been given opportunities to provide the Petitioner with a domestic remedy and have not done so, therefore it would be unreasonable to have him and others continue to endure more pain and suffering because of their inaction.

B. Position of the State

24. To date the State has not presented any information or arguments to the Commission on the issues of the admissibility and merits of the petition, notwithstanding the Commission's communications to it, dated February 17, 1998, August 5, 1998, August 17, 1999 and August 22, 2000.

IV. ANALYSIS ON ADMISSIBILITY

A. Competence of the Commission

25. In his petition, the Petitioner alleged violations of Articles I, II, IV, V, XIII, XIV, VII, XVIII, XXIII and XXIV of the Declaration. Article 23 of the Commission's Rules of Procedure provides that:

[a]ny person or group of persons, or non-governmental entity legally recognized in one or more Member States of the OAS, may submit petitions to the Commission, on their own behalf or on behalf of third persons, concerning alleged violations of a human right recognized in, as the case may be, the American Declaration of the Rights and Duties of Man, the American Convention on Human Rights, the Additional Protocol in the Area of Economic, Social and Cultural Rights, the Protocol to Abolish the Death Penalty, the Inter-American Convention to Prevent and Punish Torture, the Inter-American Convention on the forced Disappearance of Persons, and/or the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women, in accordance with their respective provisions, the Statute of the Commission, and these Rules of Procedure. The Petitioner may designate an attorney or other person to represent him before the Commission, either in the petition itself or in another writing.

The petition in this case was lodged by Albert Deterville, who is a national of the State of Saint Lucia.

26. The Declaration became the source of legal norms for application by the Commission[FN1] upon Saint Lucia becoming a member State of the Organization of American States in 1979. In addition, the Commission has authority under the Charter of the Organization of American States, Article 20 of the Commission's Statute,[FN2] and the Commission's Rules of Procedure to entertain the alleged violations of the Declaration raised by the Petitioner against the State, which relate to acts or omissions that transpired after the State joined the Organization of American States. Consequently, the Commission has jurisdiction *ratione temporis*, *ratione materiae*, and *ratione personae* to consider the violations of the Declaration alleged in this case. Therefore, the Commission declares that it is competent to address the Petitioners' claims relating to the alleged violations of the American Declaration.

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[FN1] I/A Court H.R., Advisory Opinion OC-10/89 (Interpretation of the American Declaration of the Rights and Duties of Man Within the Framework of Article 64 of the American Convention on Human Rights), 14 July 1989.

[FN2] Article 20 of the Commission's Statute provides as follows:

In relation to those member states of the Organization that are not parties to the American Convention on Human Rights, the Commission shall have the following powers, in addition to those designated in article 18:

- (a) To pay particular attention to the observance of the human rights referred to in Articles I, II, III, IV, XVIII, XXV, and XXVI of the American Declaration of the rights and Duties of Man;
- (b) To examine communications submitted to it and any other available information, to address the government of any member state not a Party to the Convention for information deemed pertinent by this Commission, and to make recommendations to it, when it finds this appropriate, in order to bring about more effective observance of fundamental human rights; and,

(c) To verify, as a prior condition to the exercise of the powers granted under subparagraph b. above, whether the domestic legal procedures and remedies of each member state not a Party to the Convention have been duly applied and exhausted.

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## B. OTHER GROUNDS OF ADMISSIBILITY

### a. Exhaustion of Domestic Remedies

27. This case raises the issue, whether the State's silence by not responding to the Commission's communications constitutes a waiver to object to non-exhaustion of domestic remedies as established by the Commission's jurisprudence. The issue of exhaustion of domestic remedies is governed by Article 31 of the Commission's Rules of Procedure. That Article provides: "In order to decide on the admissibility of a matter, the Commission shall verify whether the remedies of domestic legal system have been pursued and exhausted in accordance with the general principles of international law." Article 31(2) states that the preceding paragraph shall not apply when:

- a. The domestic legislation of the State concerned does not afford due process of law for protection of the right or 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 judgment under the aforementioned remedies.

28. The State of St. Lucia is not a party to the American Convention, however, for purposes of analysis only, the Commission refers to the case of La Comunidad Mayagna (Sumo) Awas Tingni in which the Inter-American Court of Human Rights in construing Article 46(1)(a) of the American Convention[FN3] which provisions are similar to Article 31(1) and 31(2) of the Commission's Rules of Procedure stated the following waiver of domestic remedies rule:

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[FN3] St. Lucia is not a party to the American Convention. Article 46 Article 46 (1) of the American Convention provides that: Admission by the Commission of a petition or communication lodged in accordance with Articles 44 or 45 shall be subject to the following requirements: (a) that remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international Law."

Article 46 (2) of the American Convention provides: The Provisions of the 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 or 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 judgment under the aforementioned remedies.
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Indeed, of the generally recognized principles of international law referred to in the rule of exhaustion of domestic remedies, the foremost is that the State defendant may expressly or tacitly waive invocation of this rule (Castillo Páez case, Preliminary Objections. Judgment of January 30, 1996. Series C No. 24, para. 40; Loayza Tamayo case, Preliminary Objections. Judgment of January 31, 1996. Series C No. 25, para. 40). Secondly, in order to be timely, the objection that domestic remedies have not been exhausted should be raised during the first stages of the proceeding or, to the contrary, it will be presumed that the interested State has waived its use tacitly (Castillo Páez case, Preliminary Objections. Ibid, para. 40; Loayza Tamayo case, Preliminary Objections. Ibid, para. 40; Castillo Petruzzi case, Preliminary Objections Judgment of September 4, 1998. Series C No. 41, para. 56). Thirdly, the State that alleges non-exhaustion must indicate which domestic remedies should be exhausted and provide evidence of their effectiveness (Castillo Páez case, Preliminary Objections. Ibid, para. 40; Loayza Tamayo case, Preliminary Objections. Ibid, para. 40; Cantoral Benavides case, Preliminary Objections. Judgment of September 3, 1998. Series C No. 40, para. 31; Durand and Ugarte case, Preliminary Objections. Judgment of May 28, 1999. Series C No. 50, para. 33).[FN4]

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[FN4] La Comunidad Mayagna (Sumo) Awas Tingni, Preliminary Objections, Judgment of February 1, 2000, page 12, para 53. Series C: Opinions and Judgments, No. 67.

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29. It is also important to note the Commission's jurisprudence concerning the issue of waiver of exhaustion of domestic remedies. The Commission's rulings on this issue are illustrated in some cases from the Caribbean, namely, the cases of Rudolph Baptiste, Report No. 38/00,[FN5] Omar Hall, Report No. 25/00,[FN6] and Brian Schroeter and Jeronimo Bowleg, Report No. 123/99. In those cases the Commission found that where the States were given the opportunity to respond to the issue of exhaustion of domestic remedies and failed to do so, that those States had tacitly waived their rights to object to the admissibility of those petitions based upon the waiver of exhaustion of domestic remedies rule.

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[FN5] Case No 11.743, (Grenada), Annual Report of the Inter-American Commission on Human Rights, 1999, Volume I, pp. 721, and 737.

[FN6] Case No. 12.068, (The Bahamas), Id. Annual Report of the Inter-American, pp. 184, and 187.

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30. The Commission notes that to date, the State has not provided the Commission with information concerning the issues relating to the admissibility and merits of the petition.

31. In light of the foregoing, the Commission finds that in accordance with jurisprudence of the Inter-American System that the State tacitly waived its right to object to the admissibility of the petition based upon the of exhaustion of domestic remedies rule.



32. The Commission concludes that this petition is admissible pursuant to Article 31 of the Commission's Rules of Procedure.

b. Timelines of the Petition

33. In the petition under study, the Commission has found that the State tacitly waived its right to object to the admissibility of the petition based upon the exhaustion of domestic remedies requirement such that the requirements under Article 32(1) of the Commission's Rules of Procedure does not apply. Nevertheless, the requirements of the exhaustion of domestic remedies and the presentation of a petition within six months of notification of the final judgment that exhausted remedies are independent. Consequently, the Commission must determine whether the petition under study was presented within a reasonable time. In this regard, the Commission observes that the petitioner's original communication was received on January 29, 1997. The Commission notes that the Petitioner filed a case in the High Court of Justice in the Eastern Caribbean Supreme Court, No. 046, suit No. 84 of 1996, requesting an order of certiorari to quash the State's decision of the radio station's closure, however, the High Court dismissed his suit in 1996. The Commission further observes that the Petitioner maintains that he held discussions with the Prime Minister, Dr. Kenny Anthony, and that they agreed on two points: First, the Petitioner would submit an Application requesting the acquisition of a Permanent Public Broadcasting License and second, an Application requesting the immediate re-opening of Radyo Koulibwi, pending the approval of the said Application. The Commission observes that the Petitioner maintains that he complied with the two requirements and was informed, by the State by letter dated August 25, 1997, that he would be communicated with in due course regarding these matters. To date the State has not provided the Petitioner with an appropriate remedy. In light of the particular circumstances of the present petition, the Commission considers that the petition was lodged within a reasonable time.

c. Duplication of Procedures

34. This petition satisfies the requirement of Article 33 of the Commission's Rules of Procedure because the information in the record does not reveal that the subject matter of the petition is pending settlement pursuant to another procedure before an international governmental organization of which the State concerned is a member; nor does it essentially duplicate a petition pending or already examined and settled by the Commission or by another international governmental organization of which the state concerned is a member, pursuant to Article 33 (1) and (2) of the Commission's Rules of Procedure.

d. Colorable claim

35. The Petitioner has alleged that the State has violated the victims' rights under Articles I, II, and IV, of the American Declaration. In addition, the Petitioner has provided factual allegations that if proven would tend to establish that the alleged violations might be well founded. The Commission therefore concludes, without prejudging the merits of the case, that the petition is not barred from consideration under Article 34 of its Rules of Procedure.[FN7]

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[FN7] Article 34 of the Commission's Rules of Procedure provide that the Commission shall declare a petition inadmissible when the petition (a) does not state facts that tend to establish a violation of the rights referred to in Article 27 of these Rules of Procedure; (b) the statements of the petitioner or the State indicate that it is manifestly groundless or out of order' or, (c) supervening information or evidence presented to the Commission reveals that a matter is inadmissible or out of order.

Article 27 of the Commission's Rules of Procedure provides that: "The Commission shall consider petitions regarding alleged violations of the human rights enshrined in the American Convention on Human Rights and other applicable instruments, with respect to the Member States of the OAS, only when the petitions fulfill the requirements set forth in those instruments, in the Statute, and in these Rules of Procedure.

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36. In accordance with the foregoing analysis, and without prejudging the merits of this petition, the Commission decides to declare Articles I, II, and IV, admissible pursuant to Articles 37, of its Rules of Procedure. In addition, the Commission declares Articles V, XIII, XIV, XVII, XVIII, XXIII, and XXIV, of the American Declaration inadmissible pursuant to Article 34 of its Rules of Procedure.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS DECIDES TO:

1. Declare that the petition is admissible with respect to the claimed violations of Articles I, II, and IV, of the American Declaration.
2. Transmit this Report to the State of Saint Lucia and to the Petitioner.
3. To make public this Report and to publish it in its Annual Report to the General Assembly.

Done and signed in Washington, D.C., on the 10TH of October in the year 2001. (Signed): Chairman; Claudio Grossman, First Vice-President; Juan Méndez, Second Vice-President, Marta Altolaguirre, Robert K. Goldman, Peter Laurie and Julio Prado Vallejo, Hélio Bicudo, Commissioners.