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Session: Hundred Thirty-First Regular Session (3 – 14 March 2008)
Title/Style of Cause: Esbert Edques Victor Vriesde v. Suriname
Doc. Type: Decision
Decided by: Chairman: Paolo Carozza;
First Vice-Chairwoman: Luz Patricia Mejia Guerrero;
Second Vice-Chairman: Felipe Gonzalez;
Commissioners: Sir Clare K. Roberts, Paulo Sergio Pinheiro, Florentin Melendez, Victor E. Abramovich.
Dated: 4 March 2008
Citation: Vriesde v. Suriname, Petition 1402-05, Inter-Am. C.H.R., Report No. 6/08, OEA/Ser.L/V/II.134, doc. 5 rev. 1 (2008)
Represented by: APPLICANT: Robert K. Hewitt
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I. SUMMARY

1. On December 6, 2005, the Inter-American Commission on Human Rights (hereinafter “the Commission”) received a petition against the State of Suriname by Robert K. Hewitt of the Allied Collective Human Rights Organization and Esbert Edques Victor Vriesde (hereinafter “the petitioners”) presented on behalf of Mr. Vriesde, the alleged victim of human rights violations.

2. According to the petitioners, land belonging to Mr. Vriesde was illegally occupied while Mr. Vriesde was out of the country in 1980. The petitioners state that Mr. Vriesde brought an action in Surinamese courts in 1988 but that case has still not been fully adjudicated, with the most recent action on the case being the filing of an appeal in 1998. The petitioners allege that there has been an unwarranted delay in adjudicating his case and allege that the domestic courts acted with bias or interference in favor of the occupant of the land claimed by Mr. Vriesde.

3. Based on these allegations, the petitioners contend that Mr. Vriesde’s right to the full use and enjoyment of property under Article 21(1) of the American Convention on Human Rights (hereinafter “the Convention”) has been violated, in conjunction with the State’s obligation to protect rights under Article 1, as has the Right to Property under Article XXIII of the American Declaration of the Rights and Duties of Man.

4. The State denies the alleged violations and requests that the Commission declare the petition inadmissible based upon failure to exhaust domestic remedies pursuant to Article 46(1)

of the Convention, contending that no exception to the requirement of exhaustion of domestic remedies under Article 46(2) applies.

5. As set forth in this Report, having examined the positions of the State and the petitioners on the question of admissibility, the Commission concludes that the petition presented does not meet the admissibility requirements of Article 46 of the American Convention, specifically for having failed to invoke and exhaust all available domestic remedies.

6. Accordingly, the IACHR decides to rule Petition 1402-05 inadmissible pursuant to Article 46 and 47(A) of the American Convention, make this report public, so notify the parties and include this report in its Annual Report to the General Assembly of the Organization of American States.

II. PROCESSING BY THE COMMISSION

7. On December 6, 2005, the Commission received the petitioners' petition, dated November 18, 2005. On December 21, 2005, the petitioners submitted a copy of the petition together with supporting evidence.

8. By letter of August 8, 2006, the Commission transmitted the pertinent parts of the petition to the State of Suriname, giving the State two months to submit its response. By a letter dated November 3, 2006, the State requested an extension of an additional four months.

9. By a letter of November 7, 2006, pursuant to Article 30 of the Commission's Rules of Procedure, the Commission declined the State's request for a four-month extension. By a letter dated November 27, 2006, the State reiterated its request for an extension. By note of December 5, 2006, the Commission reiterated that the Rules of Procedure prohibited the extension requested by the State to submit its observations.

10. By a letter dated December 29, 2006, the State submitted its official response to the petition. The pertinent parts of the State's response were submitted to the petitioners on January 9, 2007 with the request that the petitioners respond within one month. The response of the petitioners was received by January 29, 2007.

11. On May 9, 2007, the pertinent parts of the petitioners' response were sent to the State with the request that the State respond within one month. The State's response was received on June 15, 2007.

12. On June 21, 2007, the pertinent parts of the State's response were sent to the petitioners with the request that the petitioners respond within one month. On July 18, 2007, the Commission received the petitioners' response and forwarded the pertinent parts of that response to the State with the request that the State respond within one month.

13. On August 8, 2007, the Commission received the State's response. The Commission forwarded the pertinent parts of this response to the petitioners on August 17, 2007, requesting that they respond within one month.

14. On September 3, 2007, the Commission received the petitioners' response, the pertinent parts of which were forwarded to the State on September 12, 2007, with the request that the State respond within one month.

15. On October 9, 2007, the Commission received the State's response to the petitioners' communication of September 3, 2007, the pertinent parts of which were transmitted to the petitioners on October 24, 2007, with the request that the petitioners provide their observations within one month.

16. On November 12, 2007, the Commission received the petitioners' response to the State's communication of October 9, 2007. The Commission forwarded the pertinent parts of that communication to the State on December 10, 2007, with the request that the State reply within one month.

III. POSITIONS OF THE PARTIES

A. Petitioners

17. According to the petitioners, Mr. Vriesde is the rightful owner of a piece of land known as Parcel 232 measuring 150.14 hectares located in the Coronie District (hereinafter "Parcel 232"), which was illegally occupied while Mr. Vriesde was out of the country in 1980. The petitioners state that Mr. Vriesde and his siblings inherited this land, that he bought out his siblings' share and that he established a business on the land of which he was the general manager. The petitioners state that during the military regime in the 1980s, while Mr. Vriesde was not in Suriname, the military permitted other parties to occupy approximately 100 hectares of the land in order to cultivate paddy. Mr. Vriesde instigated legal action to expel the occupants from Parcel 232. Moreover, the petitioners state that while interim injunction proceedings were pending, his neighbors, the Issa family, "seized" his plot of land.

18. According to documentation presented by the petitioners, Mr. Vriesde brought a case, known as AR. No. 902199, regarding the alleged illegal occupation of Parcel 232 in the Surinamese Third Canton court in 1988, and the court found that he was the rightful owner of Parcel 232 in an interim injunction on August 17, 1990. However, the petitioner alleges that he was unable to secure the assistance of the police to expel the occupants from Parcel 232 at this time.

19. The petitioners also present documentation showing that the defendant in that case appealed before the Court of Justice. This court reversed the earlier judgment of the Canton Court on February 7, 1997. The case was remanded to the Third Canton court. The Third Canton court made an interlocutory decision in favor of Mr. Vriesde on March 19, 1996, but ultimately ruled against Mr. Vriesde in its judgment of June 3, 1998, in a decision known under AR. No. 952963.

20. The petitioners state that on June 29, 1998 Mr. Vriesde filed an appeal against this judgment. The petitioners present a copy of the notice of appeal, which Mr. Vriesde's attorney

purportedly sent to the Clerk of the Sub-district Court. The petitioners emphasize that the notice of appeal bears the stamp of the Ministry of Justice, Department of Finance and Accounts, which purportedly proves that Mr. Vriesde paid the required fee and properly lodged the appeal with the Cantonal Court Registrar. The petitioners complain that the appeal still has not been heard by the Surinamese courts.

21. The petitioners allege that the Agricultural Bank in Coronie (in Dutch, “Landbouwbank”) granted the occupants of Parcel 232 loans, which they would only be able to repay if they are able to produce crops on the land. The petitioners state that the bank, which is government owned, would go bankrupt if the occupants of Parcel 232 were evicted and rendered incapable of repaying their loans. The petitioners imply that the Government has deliberately delayed judgment in the case to prevent the eviction of the occupants of Parcel 232 and that politicians have interfered in the judiciary.

22. The petitioners contend that there has been an unwarranted delay in adjudicating Mr. Vriesde’s case and that several specific judges engaged in bias, collusion or interference against Mr. Vriesde.

23. The petitioners allege that Mr. Vriesde exhausted all domestic remedies available to him and maintain that his appeal under AR. No. 952963 was timely and properly filed. The petitioners mention that Mr. Vriesde has written twelve letters to the President of Suriname, the President of the Judicial Court, the Chairman of the National Assembly or the Minister of Justice and Police about his case between April 7, 1992, and December 20, 2005.

24. The petitioners allege that the occupation of his land has inhibited Mr. Vriesde’s use of his property and furthermore, that the case is urgent because the party occupying his land has disturbed the petitioner’s irrigation system. The petitioners reiterate that the State has not given a firm and solid judgment in Mr. Vriesde’s case and contend that even though the judicial system may be overburdened or lack resources, an exception to the requirement of exhaustion of domestic remedies should apply due to unwarranted delay.

B. State

25. The State notes Mr. Vriesde’s allegation that he appealed his case, known as AR No. 952963, and submitted a copy of his notice of appeal dated June 29, 1998. The State submits that Mr. Vriesde was required by law to file his notice of appeal of the case with the Registrar of the District Courts within 30 days of the June 3, 1998, judgment; that is, by July 3, 1998. However, the State alleges that Mr. Vriesde did not file his notice of appeal with the Registrar of the District Courts. The State presented a copy and official translation of a letter from the Clerk of the District Courts stating that an appeal was not lodged in the case known as AR No. 952963. The State also presented a copy of the relevant pages of the Appeal Register showing that no appeal notice was received on AR No. 952963 during the period between June 3 and July 3, 1998. The State maintains that proof of payment of the relevant fees does not constitute proof that Mr. Vriesde actually lodged the appeal with the Registrar of the Court. The State contends that if the appeal had been lodged with the Registrar, Mr. Vriesde would have received an

acknowledgment of receipt. The State notes that the petitioners have not submitted any such acknowledgment of receipt as evidence of having filed the appeal.

26. Additionally, the State contends that, if Mr. Vriesde believes that his appeal had been properly filed and was not heard within a reasonable time, he has a domestic recourse available under Article 1386 of the Surinamese Civil Code, which provides recourse in all instances in which any person or State actor violates the law, a subjective right or an unwritten duty of care or standard of good governance. According to the State, Mr. Vriesde did not pursue a remedy under Article 1386.

27. The State argues that no exception to the requirement of exhaustion of domestic remedies under Article 46(2) of the Convention applies.

28. The State denies the petitioners' allegations of political interference with the judiciary and contends that the Surinamese Judiciary is independent and is not influenced by the other branches of government. The State points out that any party to a case can file for the dismissal of a presiding judge if that party believes the judge cannot render an independent decision or is biased, but Mr. Vriesde did not do so.

29. The State submits that the allegations made by the petitioners about the Agricultural Bank's role in the case are unsubstantiated in law.

30. The State indicates that it "denies and contests all which it does not recognize explicitly."

31. The State therefore requests that the petition be declared inadmissible due to failure to exhaust domestic remedies.

IV. ANALYSIS OF ADMISSIBILITY

A. The Commission's competence *ratione personae*, *ratione loci*, *ratione temporis* and *ratione materiae*

32. Upon considering the record before it, the Commission considers that it has the competence *ratione personae* to entertain the claims in the present petition. Suriname is party to the American Convention, having deposited its instrument of accession thereto on 12 November 1987. The petitioner has *locus standi* to submit petitions to the IACHR, in accordance with Article 44 of the Convention. The petition identifies as the alleged victim Mr. Vriesde, a person, whose rights under the Convention the State of Suriname is committed to respect and ensure.

33. The Commission has competence *ratione loci* to take cognizance of this petition, since it alleges violations of rights guaranteed by the American Convention that purportedly occurred in the territory of a State party.

34. The Commission has competence *ratione temporis*, since the events alleged in the petition took place at a time when the duty to respect and ensure the rights enshrined in the Convention was in force for the State.

35. The petitioners allege violations of the right to property under Article 21(1) of the Convention, in conjunction with the State's obligation to protect rights under Article 1, and the right to property under Article XXIII of the American Declaration of the Rights and Duties of Man. Given that the alleged violations arise from a court case that was filed in 1988, one year after Suriname ratified the American Convention, the Commission will examine these violations within the context of the Convention.

36. Although the petitioners did not specifically claim violations of Articles 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection) of the Convention, the Commission considers under the principle of *iura novit curia*[FN1] that the allegations presented could require reference to those articles.

[FN1] See, e.g., IACHR Report No. 21/04 Petition 12.190, para. 36, José Luís Tapia González et al., Chile, February 24, 2004.

37. The Commission therefore has competence *ratione materiae*, since the petition alleges violations of human rights protected by the American Convention.

38. Accordingly, the Commission finds that it is competent to address the claims raised in the petition.

B. Exhaustion of domestic remedies

39. The State argues that the petitioners have not exhausted domestic remedies because the petitioners did not pursue certain remedies under domestic law as required by Article 46(1)(a). Specifically, the State contends that Mr. Vriesde did not file an appeal of the judgment of June 3, 1998. The State submits that Mr. Vriesde has presented no proof that such an appeal was properly filed, and that it has no record of such appeal.

40. The petitioners contend that their petition is not subject to requirements of Article 46(1)(a) and (b) of the Convention because an exception to those requirements under Article 46(2)(c) applies due to unwarranted delay in rendering a final judgment. The petitioners base this contention upon the allegation that Mr. Vriesde properly filed an appeal of the June 3, 1998, judgment and that a decision on said appeal was never rendered, constituting an undue delay.

41. The Commission notes that the petitioners have not countered the State's contention that (a) it has no record of Mr. Vriede's appeal and (b) proof of payment court fees, *per se*, is not proof that an appeal was lodged with the Registrar of the Court. Further, the petitioners have not refuted the State's submission that a written acknowledgment of receipt of the appeal application is issued by the registry of the court when the appeal application is received. The State observes that the petitioners have not submitted this receipt as proof of filing the appeal.

42. In light of the above, the Commission concludes that it does not have a sufficient basis to find that Mr. Vriesde took all the steps required to appeal the judgment of June 3, 1998, and accordingly, the petition is inadmissible for failure to exhaust domestic remedies.

43. In light of this conclusion concerning failure to exhaust domestic remedies, it is not necessary to address the parties' remaining arguments on admissibility.

V. CONCLUSION

44. By virtue of the foregoing arguments of law and fact, the Commission concludes that the case at hand does not fulfill the requirements of admissibility set forth in Article 46 of the Convention.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To declare petition 1402-05 inadmissible;
2. To notify the parties of this decision; and
3. To publish this decision and include it in the Commission's Annual Report to the General Assembly of the OAS.

Done and signed in the city of Washington, D.C., on the 4th day of the month of March, 2008.
(Signed): Paolo G. Carozza, Chairman; Luz Patricia Mejía Guerrero, First Vice-Chairwoman; Felipe González, Second Vice-Chairman; Sir Clare K. Roberts, Paulo Sérgio Pinheiro, Florentín Meléndez, and Víctor E. Abramovich, Commissioners.