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Title/Style of Cause: Swami Yogdev Roberts v. Suriname
Doc. Type: Decision
Decided by: Chairman: Paolo Carozza;
First Vice-Chairwoman: Luz Patricia Mejia Guerrero;
Second Vice-Chairman: Felipe Gonzalez;
Commissioners: Paulo Sergio Pinheiro, Sir Clare K. Roberts, Florentin Melendez, Victor E. Abramovich.
Dated: 4 March 2008
Citation: Yogdev Roberts v. Suriname, Petition 1066-04, Inter-Am. C.H.R., Report No. 5/08, OEA/Ser.L/V/II.134, doc. 5 rev. 1 (2008)

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I. SUMMARY

1. On November 22, 2004, the Inter-American Commission on Human Rights (hereinafter “the Commission”) received a petition, known as Petition 1066-04, against the State of Suriname by Swami Yogdev Roberts (hereinafter “the petitioner”), a Dutch national residing in Suriname.

2. According to the petitioner, on March 18, 2000, he won a court judgment against Mr. Roepsing Ramthalhaling and his company, NV Roep (hereinafter, collectively “Roep”). The lawsuit arose from Roep’s alleged failure to repay loans borrowed from the petitioner. The petitioner alleges that he has been unable to collect this judgment because an arson fire at the courthouse destroyed the records of the judgment. The petitioner claims that since the records were destroyed, he has been unable to either enforce the judgment or initiate new proceedings. The petitioner further claims that the State is responsible for the facts that gave rise to his lawsuit, alleging that prominent political figures protected Roep and that the State failed to take action against Roep, to the detriment of the petitioner and other parties that had made loans to Roep.

3. The allegations can be categorized into four distinct claims: 1) that the State did not take actions to protect investors from becoming involved in a pyramid scheme; 2) that the petitioner is dissatisfied with the verdict issued in March 2000; 3) claims related to the alleged loss of his court file in a fire; and 4) that the State violated his rights in its response to the petition. Based upon the foregoing, the petitioner alleges violations of the American Convention on Human Rights (hereinafter “Convention”) Articles 1(1) (Obligation to Respect Rights); 2 (Domestic Legal Effects); 8(1) (Right to a Fair Trial); 23 (Right to Participate in Government); 24 (Right to Equal Protection); and 25 (Right to Judicial Protection).

4. The State denies the alleged violations and requests that the Commission declare the petition inadmissible based upon three grounds: 1) that the petition seeks fourth instance review of a decision adopted by Surinamese courts; 2) that the petition does not establish violations of the American Convention; and 3) 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 petitioner on the question of admissibility, the Commission concludes that the petition is inadmissible due to a failure to exhaust domestic remedies as required by Article 46(1) of the Convention. Accordingly, the IACHR decides to rule Petition 1066-04 inadmissible pursuant to Article 47 of the American Convention, to so notify the parties, and to include this report in its Annual Report to the General Assembly of the Organization of American States.

II. PROCESSING BY THE COMMISSION

6. On November 22, 2004, the Commission received Petition 1066-04 along with supporting documents. On April 13, 2005, the Commission requested additional information from the petitioner regarding whether he had pursued domestic remedies. On April 16, 2005, and June 23, 2005, the Commission received further communications from the petitioner to which the Commission responded by note of October 11, 2005.

7. On November 3, 2005, November 21, 2005, and November 28, 2005, the Commission received additional information sent by the petitioner in response to the Commission's letter of October 11, 2005. On January 17, 2006, the Commission requested additional information from the petitioner. The Commission received the petitioner's reply on April 7, 2006. The Commission received additional information from the petitioner on May 17, 2006.

8. On July 20, 2006, the Commission forwarded the pertinent parts of the petition to the State, requesting that the State reply within two months.

9. On November 8, 2006, the Commission received a communication from the State requesting an extension of three months to reply to the Commission's communication of July 20, 2006. On December 18, 2006, pursuant to Article 30(3) of the Commission's Rules of Procedure, the Commission denied the State's request.

10. On November 30, 2006, the Commission received further correspondence from the petitioner. The petitioner reiterated this communication via a note received by the Commission on March 23, 2007.

11. On January 3, 2007, the Commission received the State's response to the petition. The Commission forwarded the pertinent parts of the State's response to the petitioner on May 9, 2007 and requested that he submit his observations within one month.

12. On May 24, 2007, the Commission received an acknowledgement from the petitioner of its letter of May 9, 2007. The petitioner later submitted his observations on the State's submission by letter of July 18, 2007.

13. On September 3, 27 and 28, 2007 the Commission received additional observations from the petitioner. The Commission received further communications from the petitioner on November 14, 2007. On December 5, 2007, the Commission forwarded the pertinent parts of the petitioner's observations to the State, with a request for a response within one month.

14. On December 17, 2007, the State requested information from the Commission, which the Commission transmitted to the State by letters of December 20, 2007 and January 18, 2008.

III. POSITIONS OF THE PARTIES

A. Petitioner

15. The petitioner alleges that in 1996, he made four separate loans to Roep. The petitioner states that "many hundreds of investors" had also made loans to Roep. According to the petitioner, Roep stopped making payments on the loans in April 1997.

16. The petitioner alleges that the State allowed the purported pyramid scheme to continue and did nothing to protect investors in the scheme. He alleges that Roep was protected by political figures in exchange for money and favors and, in particular, that the former military leader of Suriname Desi Bouterse and former rebel leader Ronny Brunswijk had made loans to Roep. Moreover, the petitioner alleges that the then-President of Suriname Jules Wijdenbosch received financial support from Roep. The petitioner alleges that the Government failed to warn him of Roep's activities and the actions of the former President and others made it "almost impossible" for the judiciary to take action against Roep. For the purpose of this report, these allegations will be collectively referred to as "claim 1."

17. According to the petitioner, on June 15, 1999, he presented a lawsuit against Roep in the form of a "summary procedure," which was apparently dismissed by Judge John von Niesewand. Subsequently, the petitioner states that on July 2, 1999, he lodged a second summary procedure, which ended with an oral verdict given by Judge John von Niesewand on March 16 or 18, 2000. The petitioner states that this verdict was in his favor, but also alleges that it violated his rights by purportedly reducing the interest rate on the money owed to him from 120% to 16%. This allegation will be referred to as "claim 2."

18. The petitioner indicates that sometime after the March 2000 verdict, a fire destroyed a court building, including the records of the petitioner's lawsuit. The petitioner states that the entire file related to his case is missing. The petitioner states that on August 24, 2004, he brought a file with details about the case to the courthouse. The petitioner mentions that he has written letters to various court officials and to the President of Suriname about his case, with no result.

19. The petitioner alleges that the State violated his rights by its alleged failure to store “all court documents in safe and fire free places.” This allegation along with other allegations related to the loss of his file will be referred to as “claim 3.”

20. With respect to attempts made to obtain a copy of the judgment in his case and domestic remedies sought, the petitioner indicates that on October 1, 2002, and October 29, 2004, he sent letters to the Court of Justice requesting that the Court provide him with the “findings of the summary proceedings” against Roep. The petitioner indicates that on October 18, 2005, he sent a letter to the Judge John von Niesewand, then President of the Court of Justice, regarding his case. Additionally, he states that he sent letters on October 18 and 24, 2005, to the Minister of Justice and Police regarding his case. The petitioner claims that he received no response to his letters.

21. The petitioner claims that, although Judge John von Niesewand of the Court of Justice handed down the verdict of March 2000, Judge von Niesewand has refused to provide a written copy of the verdict. The petitioner stated in his communication of March 17, 2006, that Judge von Niesewand told him via a letter that, in the petitioner’s words, stated:

“the (low) [sic] court is the appointed authority to give verdicts to the parties. I advise you to seriously consider to act according to the law and ask the court clerk [sic] by means of a written request to give you... the verdict...”

22. Moreover, the petitioner alleges that, to his knowledge, there are no judicial remedies available to him in Suriname to obtain relief regarding claim three. He states that he has written letters to the “low court” and to the “high court” (the petitioner uses the latter term to refer to the Court of Justice) asking the courts to consider his case, but did not provide copies of these letters in an official language of the OAS. The petitioner alleges that his case against Roep has not been heard within a reasonable time.

23. On the issue of exhaustion of domestic remedies with respect to claim three, the petitioner states:

“Beside the ordinary court procedures there are no other domestic remedies available in sense [sic] of court procedures...”

24. The petitioner contends that, because the State did not file a response within the initial two-month period requested by the Commission, the Commission should presume what he alleges to be true. The petitioner requests that his case be submitted to the Inter-American Court.

25. The petitioner reiterates his contention that he was denied access to domestic remedies and argues that an unreasonable time has elapsed since he first filed his case. The petitioner acknowledges that he is allowed to appeal against “all legal decisions taken in court.”

26. The petitioner alleges that the observations provided by the State violate his rights because they are insulting, deceptive, false, accusatory and discriminatory. The petitioner also alleges that the “Commission Legal Experts in Human Rights,” a body of the Surinamese

government which previously represented the State before the Inter-American Commission, does not operate under the law, in violation of his rights. These allegations will be referred to as “claim 4.”

27. In his most recent communication received December 6, 2007, the petitioner states that there is an administrative procedure available to resolve allegations against the judiciary. According to the petitioner, this procedure would require him to file a complaint with the relevant Ministry. The petitioner alleges that by writing a letter to the President of Suriname he has complied with this procedure, without result. The petitioner presented translated copies of letters written to the Ministry of Justice and the President of Suriname.

B. State

28. The State’s primary contention is that the petitioner has not exhausted domestic remedies as required by Article 46(1) of the Convention and that no exception to the exhaustion of domestic remedies should apply pursuant to Article 46(2).

29. The State submits that in the late 1990s, Mr. Roepsing Ramtahaling (“Roep”), a well-known businessman, started a pyramid scheme in which he collected sums of foreign currency from individuals, with promises of “absurd” high interest rates. According to the State, this scheme violated the criminal laws of Suriname. The State adds that the Central Bank of Suriname characterized the scheme as a scam, and warned citizens accordingly by means of the mass media.

30. The State alleges that the petitioner participated in this scheme, which the State labels as an “illegal gambling game.” According to the States, when the petitioner did not receive a return on his investment he decided to file a lawsuit. The State indicates that many individuals were involved in the pyramid scheme. The State adds that many of their cases are complex, requiring extensive investigation.

31. Furthermore, the State claims that the petitioner has the right to file an appeal in Surinamese courts if he is not satisfied with the present outcome of his case. The State contends that the petition presents an attempt to obtain fourth instance review.

32. The State denies all other allegations made by the petitioner. Moreover, the State claims that the petitioner has not stated allegations tending to show a violation of the Convention.

33. The State therefore requests that the Commission declare the petition inadmissible based upon the following grounds: 1) that the petition seeks fourth instance review of a decision adopted by Surinamese courts; 2) failure to establish violations of the American Convention; and 3) failure to exhaust domestic remedies.

IV. ANALYSIS OF ADMISSIBILITY

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

34. 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 November 12, 1987. The petition identifies as the alleged victim Mr. Swami Yogdev Roberts, a person, whose rights under the Convention the State of Suriname is committed to respect and ensure. The petitioner has *locus standi* to submit petitions to the IACHR, in accordance with Article 44 of the Convention.

35. 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.

36. 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.

37. The petitioner alleges violations of Articles 1(1) (Obligation to Respect Rights); 2 (Domestic Legal Effects); 8(1) (Right to a Fair Trial); 23 (Right to Participate in Government); 24 (Right to Equal Protection); and 25 (Right to Judicial Protection) of the Convention.

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

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

B. Exhaustion of domestic remedies

40. Article 46(1) of the American Convention requires “that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law.”

41. Article 31(1) of the Commission’s Rules of Procedure provides that “[i]n order to decide on the admissibility of a matter, the Commission shall verify whether the remedies of the domestic legal system have been pursued and exhausted in accordance with the generally recognized principles of international law.” Article 31(3) provides that “when the petitioner contends that he or she is unable to prove compliance with the requirement indicated in this article, it shall be up to the State concerned to demonstrate to the Commission that the remedies under domestic law have not been previously exhausted, unless that is clearly evident from the record.”

42. In the present petition, the petitioner contends that he should be excused from the requirement of exhausting domestic remedies based on a denial of access to domestic remedies or an unwarranted delay, as permitted by Article 46(2) of the Convention.

43. Based upon the information presented by the petitioner himself, the only domestic remedy sought in this case was a lawsuit against Roep alleging that Roep failed to repay his loans. This case was allegedly filed in July 1999, and allegedly reached a verdict in March 2000.

44. As mentioned in paragraph 3, the petitioner's contentions can be divided into the four following claims: 1) that the State did not take actions to protect investors from becoming involved in the pyramid scheme; 2) that the petitioner is dissatisfied with the verdict issued in March 2000; 3) claims related to the alleged loss of his court file in a fire; and 4) that the State violated his rights in its response to the petition.

Claim 1

45. With respect to the first claim, the petitioner alleges that the State did not take actions to protect investors from becoming involved in the pyramid scheme, and further alleges that prominent politicians protected Roep. However, based upon the information provided by the petitioner himself, he never attempted to pursue any domestic legal action against the State actors allegedly involved.

46. Given the petitioner's unexplained failure to pursue any domestic remedy with respect to Claim 1, his allegation that he was denied access to domestic remedies appears without merit. The petitioner does not allege that the domestic law does not provide him with a remedy. Since there has been no remedy pursued, the petitioner's contention that there has been unwarranted delay in rendering a judgment cannot be sustained. Therefore, no exception to the exhaustion of domestic remedies can apply under Article 31(2) of the Rules of Procedure.

47. Pursuant to Article 31(3) of the Rules of Procedure, it is clearly evident from the record that domestic remedies have not been pursued or exhausted with respect to the allegations identified as claim 1. Therefore, these allegations are inadmissible pursuant to Article 47(a) of the Convention.

Claim 2

48. The petitioner's second claim relates to his dissatisfaction with the purported reduction of the interest rate on the money owed to him from 120% to 16% in the verdict of March 2000. He claims that this reduction of interest rates violated the Convention by interfering in his private life and resulting in damage to him, but does not specify what articles were purportedly violated.

49. The rule requiring prior exhaustion of domestic remedies is based on the principle that a defendant state must be allowed to provide redress within the framework of its domestic legal system. The effect of this rule is to assign an essentially complementary nature to the competence of the Commission. The nature of that role also constitutes the basis for the so-called "fourth instance formula" applied by the Commission, consistent with the practice of the European human rights system. The premise underlying that formula is that the Commission cannot revise judgments handed down by the national courts acting within their sphere of competence and with due judicial guarantees, unless it believes that a possible violation of the Convention is involved.[FN1]

[FN1] See IACHR Report No. 4/97 (Colombia), March 12, 1997.

50. The Commission is competent to declare a petition admissible and rule on its merits when it relates to a claim alleging that a national court's judgment was pronounced without due process or in violation of some other right guaranteed by the Convention. If, on the other hand, the claim simply alleges that the domestic judgment was mistaken or unjust, the petition must be rejected pursuant to the formula stated above. The Commission's function consists of guaranteeing compliance with the obligations assumed by the States Parties to the Convention, but it cannot serve as a court of fourth instance to examine errors of fact or law which may have been made by the national courts acting within their jurisdiction.[FN2]

[FN2] See IACHR Report No. 39/96, Case 11.673 (Argentina), October 15, 1996, Annual Report of the Inter-American Commission on Human Rights 1996.

51. To review the domestic court's purported decision to reduce the interest rates assigned to the petitioner would clearly constitute a fourth instance review. The petitioner alleges that this decision was unjust, but does not allege any violation of due process, fair trial or other rights protected by the Convention during the court case.

52. Based upon the preceding discussion regarding claim 2, the Commission concludes that a review of the petitioner's claims regarding the judgment reducing his interest rate would constitute fourth instance review. Therefore, the allegations categorized as claim 2 are inadmissible pursuant to Article 47(a) of the Convention.

Claim 3

53. The petitioner's third claim contends that the State violated his rights by allegedly failing to store his file in a fireproof location and moreover appears to claim that he is unable to appeal the verdict of March 2000 because his file was lost as a result of a fire at the court building. The State, for its part, denies the loss of the file.

54. Based upon information provided by the petitioner himself, he has the option of pursuing a new court procedure and has been advised to do so by Surinamese judicial officers. The petitioner further states that he is allowed to appeal against "all legal decisions taken in court." However, the petitioner has not pursued these remedies.

55. The petitioner also argues that there has been an unwarranted delay in rendering a judgment under domestic remedies. However, the petitioner has not attempted to file any domestic case related to the loss of his file nor has he attempted to file any claims or appeals related to the verdict of March 2000. In the Commission's view, there is therefore no basis for a finding of unwarranted delay in rendering a judgment on claims 2 and 3.

56. Based upon the foregoing and pursuant to Article 31(3) of the Rules of Procedure, it is clearly evident from the record that domestic remedies have not been pursued or exhausted with respect to the allegations identified as claims 2 and 3. Therefore, these allegations are inadmissible pursuant to Article 47(a) of the Convention.

Claim 4

57. The petitioner also claims that the State violated his rights by insulting him in its response received January 3, 2007. He further alleges that the Surinamese body which represented the State before the Inter-American Commission, the Commission Legal Experts in Human Rights, does not operate according to law.

58. Pursuant to Article 31(3) of the Rules of Procedure, it is clearly evident from the record that the petitioner has not pursued domestic remedies with respect to any of the issues identified as claim 4 and no exception to the requirement of exhaustion is alleged to apply. Therefore, these allegations are inadmissible pursuant to Article 47(a) of the Convention.

V. CONCLUSION

59. Because the Commission has concluded that the petition is inadmissible due to failure to exhaust domestic remedies, it is not necessary to address the other requisites for admissibility.

60. Based upon the foregoing analysis, the Commission has found that all four claims are inadmissible due to the non-exhaustion of domestic remedies, pursuant to Article 47(a) of the Convention.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To declare Petition 1066-04 inadmissible;
2. To so notify the parties; and
3. To include this report in its Annual Report to the General Assembly of the Organization of American States.

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; Paulo Sérgio Pinheiro, Sir Clare K. Roberts, Florentín Meléndez, and Víctor E. Abramovich, Commissioners.