

REPORT Nº 10/10

PETITION 214-08

ADMISSIBILITY

KOEMPAI *ET AL.*

SURINAME

March 16, 2010

I. SUMMARY

1. On February 25, 2008, the Inter-American Commission on Human Rights (the "Inter-American Commission" or the "IACHR") received a petition from G.R. Sewcharan (the "petitioner") against the Republic of Suriname (the "State" or "Suriname"), on behalf of 24 persons¹ detained at the Duisburglaan Penal Institution, Paramaribo, Suriname ("Koempai *et al.*" or "the alleged victims").

2. According to the petition, the alleged victims have all been criminally convicted by the District Court of Suriname, sentenced to a prison term, and lodged an appeal. The petitioner claims that they have all have suffered violations of Article 8 of the American Convention on Human Rights (the "American Convention") because their appeals have not been heard within a reasonable amount of time. In particular, the petitioner alleges that in 21 of the 24 cases, none of the appeals lodged has been heard by the Court of Justice, and that the earliest appeal was lodged in 1998 and the latest in August 2006. The petition indicates that, in the three remaining cases, the appeals have been dealt with, but also after an allegedly long and unreasonable delay (between three and five years) in violation of the American Convention.

3. The petitioners allege that the State is consequently responsible for violating the alleged victims' rights under Articles 8 and 25, in connection with Articles 1(1) and 2 of the American Convention. The petitioner submits that the legislation of Suriname provides no recourse for the alleged victims to exhaust, as there is no effective legal remedy to enforce the right to have an appeal heard within a reasonable period of time.

4. The State admits that, due to an important backlog at the District Court, the delays in the processing of the alleged victims' appeals represent an unreasonable period of time. However, the State argues that the petition is inadmissible because the alleged victims failed to exhaust the domestic remedies in place to guarantee the right to be tried within a reasonable time.

5. In this report the IACHR examines the contentions of the parties on the question of admissibility and, without prejudging the merits of the matter, concludes that the case is admissible, inasmuch as it meets the requirements provided in Articles 31 to 34 of its Rules of Procedure. Based on the foregoing, the IACHR decides to notify the parties of its decision and to continue with its analysis of the merits as regards alleged violation of Articles 1, 2, 7(5), 8 and 25 of the American Convention, publish this report and include it in its Annual Report to the General Assembly of the OAS.

¹ The petition names Ruben M. Koempai, Marcel J. Burtleson, Cornelis Adjako, Mitranand Rambaran, Henry F. Staphorst, Raidel B. Telgt, Edgar D. Wijnruit, Ray G. Klipsteen, Norman M. Vannodoe, Derrick O. Lugard, Jurgen C. Struiken, Sjaamkoemar Sankar, Lesly Bena, Ganesh M. Kalloe, Manaho A. Carrot, Jean Luc R. G. Jardin de Ponte, Randy R. Ngadimin, Irtiza Shah N. Karamat-Ali, Roberto R. Nortan, Wesley C. Dors, and Erich O. Aalstein, all Surinamese nationals; and Rafael V. Demenezes, Brazilian; Siegfried D. Brielle, Dutch; and Omar E. Vega Vega, Colombian.

II. PROCEEDINGS BEFORE THE INTER-AMERICAN COMMISSION

6. The IACHR received the petition on February 25, 2008, and the relevant annexes on February 27, 2008. By a communication dated February 28, 2008, the Inter-American Commission acknowledged receipt and subsequently requested additional information from the petitioner on April 16, 2008. In a communication received on May 27, 2008, the petitioner sent the information requested to the IACHR, which acknowledged receipt on June 4, 2008 and transmitted the pertinent parts of the received communications to the State on June 18, 2008, with a request that it submit its observations within two months.

7. The State responded on August 15, 2008 and the Inter-American Commission transmitted this response to the petitioner on September 11, 2008, with a request that any additional observations be submitted within a month. The petitioners provided the IACHR with additional information on October 10, 2008 and April 30, 2009. This information was duly notified to the State,² which transmitted additional observations on February 9 and July 2, 2009. The IACHR transmitted these observations to the petitioner, respectively on April 2, and July 8, 2009.

III. POSITIONS OF THE PARTIES

A. Position of the petitioners

8. According to the petition, the alleged victims have all been criminally convicted by the District Court of Suriname, sentenced to prison terms ranging from five to twenty years, and were all detained in the remand prison of the Duisburglaan Penal Institution, Paramaribo, at the moment of presentation of the petition. The information indicates that the moments at which the alleged victims were arrested differ; similarly, the convictions and sentences of the alleged victims were imposed at various times, between 1998 and 2006. Hence, at the moment of presentation of the petition, the period of time elapsed since the convictions ranged from two to ten years. The petitioner emphasizes that neither the complexity of the cases nor the behavior of the alleged victims can justify this alleged undue delay.³ Consequently, he claims that the alleged victims have all suffered violations of their right to be tried within a reasonable period of time, under Articles 8 and 25 of the American Convention.

9. The petition further argues that the State is responsible for violation of Article 2 of the American Convention, as it has not brought its national legislation into conformity with Article 8 of the same instrument. Finally, a violation of Article 1 of the American Convention is alleged in connection with the right to be heard within a reasonable period of time. The petitioner states that although some of the alleged victims have suffered other human rights violations, in this petition, they wish to restrict the analysis to the right to adjudication within a reasonable time.

10. The petitioner asserts that Suriname's legislation does not contain remedies through which the alleged victims can compel the domestic courts to hear their appeals within a reasonable period of time. Consequently, he claims that there are no domestic remedies to exhaust to enforce the alleged victims' right to have their appeal heard within a reasonable period of time, justifying an exception to the exhaustion of domestic remedies, as set forth in Article 46(2)(a) of the American Convention.

11. At the moment of presentation of the petition, the petitioner indicated that three of the alleged victims had their appeal proceedings initiated,⁴ whereas the others were still waiting, despite

² Respectively, on January 14, 2009 and June 3, 2009.

³ Referring to I/A Court H.R., *Suárez-Rosero v. Ecuador Case*. Judgment of November 12, 1997. Series C No. 35, paras. 70-72.

⁴ The information indicates that Mr. Adjako, arrested on February 18, 2001, convicted and sentenced by the District Court on February 21, 2003, received the final decision on his appeal on February 20, 2008; Mr. Aalstein, arrested on May 5, 2003, convicted and sentenced by the District Court on June 22, 2004 had an appeal hearing scheduled for June 3, 2008; and Mr. Continued...

repeated requests to the Clerk of the District Court⁵ (First instance) and the Court of Justice⁶ (Appeals Court). However, even for the alleged victims whose appeal was initiated or completed, the petitioner argues that their right to trial within a reasonable time was still violated, as one waited five years for his appeal to be decided, and the two others waited respectively four and six years for the proceedings in their appeals to begin; their appeals not having been decided as of the presentation of the petition.

12. In further communications, the petitioner informed the Inter-American Commission that five of the alleged victims were released from detention,⁷ because, according to the petitioner, they demonstrated that, had the appeal taken place and the same sentence been re-imposed, they would already have been released under the procedures for release and conditional release. However, the petitioner rejects the State's contention that any of these five persons was released because of the right to be tried within a reasonable period of time, and underscores that the decision to free them does not release the State from its obligation to guarantee their appeal within a reasonable time.

13. In response to the State's argument that domestic remedies are available and have not been exhausted, the petitioner submits the following:

- A. Article 28(1) of the Code of Criminal Proceedings is not relevant because it refers to proceedings that are instituted by the prosecution and discontinued without a judgment on guilt being rendered, which is not the case here;
- B. Article 259 of the Code of Criminal proceedings is not relevant because it provides that a hearing, at trial or on appeal, shall take place without interruption, but does not address the time period between the trial and the appeal;
- C. Although under Article 373 of the Code of Criminal Proceedings, the Clerk of the District Court needs to provide the procedural documents to the Clerk of the Court of Justice as quickly as possible, for the case to be heard on appeal, and under Article 249 of the Code of Criminal Proceedings, the President of the Court of Justice shall decide on the appeal's hearing date within eight days upon reception of the said documents, these provisions do not attach any consequence to the default of following them and thus do not represent remedies that can be invoked by the alleged victims to guarantee the hearing of their appeal within a reasonable period of time. Moreover, in the present case, the documents have not even been sent to the Court of Justice, rendering Article 249 totally irrelevant; and although several requests were made by the alleged victims to the Court of the Justice for the documents to be transmitted to the Clerk of the Court of Justice, they were unsuccessful;
- D. Pursuant to criminal case law, Article 1386 of the Civil Code and Article 226 of the Code of Civil Procedure cannot be used as a way to bring a case in appeal, but are rather the legal basis for an action claiming compensation for damages suffered, which is not what the alleged victims are seeking. Moreover, this procedure as suggested by the State is inappropriate to solve the issue complained of in the present petition because: (1) the alleged victims are not asking for financial compensation, but for their appeal to be heard; (2) the alleged victims are not asking to be released, but for their appeal to be heard; and (3) it would be futile to ask the Court to order itself to proceed with the appeal (which, in

...continuation

Demenezes, arrested on March 16, 2001, convicted and sentenced by the District Court on April 19, 2002, had his appeal proceedings started and hearings scheduled for May 21, 2008.

⁵ The IACHR notes that although the terms "Registrar" and "Clerk" are both used by the petitioner, it will only use "Clerk" to refer to both. Also, it will use the term "District Court" to name the First instance criminal court, also referred to as "Cantonal Court" and "Subdistrict Court" by the petitioner.

⁶ The petition includes letters from the Clerk of the Court of Justice, in which several requests to the Clerk of the District Court for documents to be transferred to the Court of Justice are mentioned, concerning four of the alleged victims. The petitioner argues that despite these several requests the required documents were not transferred to the Court of Justice.

⁷ The petitioner indicates that Mr. Demenezes was released on April 3, 2008; Mr. Koempai on December 23, 2007; Mr. Staphorst on February 19, 2008; Mr. Struiken on January 7, 2008; and Mr. Rambaran on January 8, 2008.

any case, would require a similar unreasonable amount of time to what is complained of in the petition).

14. Consequently, the petitioner maintains that the alleged victims should benefit from an exception to the rule of exhaustion of domestic remedies under Article 46(2)(a) of the American Convention because the domestic legislation does not afford due process of law for the protection of their right to be tried within a reasonable time.

B. Position of the State

15. The State recognizes that the period of time between the alleged victims' convictions and appeals is unreasonable, but it rejects the admissibility of the petition on the basis that the domestic remedies were not exhausted.

16. First, the State maintains that the right to be tried within a reasonable period of time is embedded in its legislation in various places, such as Article 10 of the Constitution of Suriname, which sets that: "Everyone shall have, in case of infringement of one's rights and freedoms, a claim to an honest and public treatment of his complaint within a reasonable time by an independent and impartial judge," recognizing this right as fundamental.

17. In addition, the State argues that various provisions of its Code of Criminal Proceedings ensure the right to trial within a reasonable time, in particular:

- A. Article 28(1) provides that if a prosecution is not conducted without undue delay, at the request of the accused, the Court of Justice may declare that the case is closed. However, the State notes that this remedy would not be effective in the case of the alleged victims.
- B. Articles 252 and 259 provide that during the trial in first instance and on appeal the investigation should be conducted without any interruption;
- C. Article 373(1) sets forth that the Clerk of the District Court should send the case documents to the Clerk of the Court of Justice as soon as possible once the appeal has been lodged; and
- D. According to Article 249(4), the President of the Court of Justice should determine the date of sitting for the appeal, if possible, within eight days after the case documents have been forwarded to the Clerk of the Court of Justice.

18. The State contends that these measures protect the right to trial without undue delay and represent effective remedies which should have been pursued by the alleged victims, the failure of which renders the petition inadmissible.

19. The State also argues that Article 1386 of the Suriname Civil Code—the general provision on tort—used together with Article 226 of the Suriname Code of Civil Procedure—which allows for summary proceedings in case of urgency—could be used by the alleged victims as a way to obtain an order from the Court to proceed with their appeals, as well as monetary compensation. As an example of such procedure, the State presents two domestic cases in which the District Court ordered the State to release an arrested suspect because specific time limits in the pre-trial period had been exceeded, and ordered a monetary compensation.⁸ The State explains that Article 1386 of the Civil Code provides full protection in case of harm caused by any act or omission from the State which either violates the law, infringes a subjective right or violates an unwritten standard of due care. The various forms of repair allegedly include damages, *restitution in integrum*, a declaratory judgment establishing the unlawfulness of the act or an injunction, which can be obtained through summary proceedings, forbidding future

⁸ The State cites *Martosmeti v. Suriname*, August 20, 1998 AR No.983652 and *Whap v. Suriname*, August 25, 1998 AR No. 983668 and notes that these orders were accompanied by monetary compensation.

unlawful conduct or ordering in case of an unlawful omission, which could be the case in the current situation.

20. Moreover, the State submits that excessive length in the criminal proceedings can in principle be compensated for by a reduction of the sentence on account of the length of procedure.⁹

22. With respect to the merits of the petition, the State “regrettably admits” that, principally due to a “huge backlog of work” and “organizational deficiencies at the level of the Clerk of the District Court,” the time period between the alleged victims’ convictions and appeals indeed constitutes an unreasonable period of time. It further states that “proceedings were not sent without undue delay as prescribed in the Code of Criminal Proceedings to the Clerk of the Court of Justice.” The State underscores that, despite this violation, four of the alleged victims were released due to the violation of their right to be tried within a reasonable time, demonstrating the State’s concern about the occurrence of such violations. The State asserts that it will take appropriate measures aimed at increasing the capacity of the judiciary and the court clerks and will investigate and take corrective actions with respect to other persons waiting for unduly long periods for their criminal cases to be tried on appeal. As such, the State provided a schedule for the hearing of all the alleged victims’ appeals for which proceedings had not started. However, in further communications, the State conceded that amendments had to be made to this schedule and that only one appeal had in fact started.

IV. ANALYSIS OF ADMISSIBILITY

A. Jurisdiction

23. The petitioner is empowered by Article 44 of the American Convention to lodge a petition on behalf of the alleged victims. The alleged victims in this case are within the jurisdiction of the State of Suriname, which has been a State party to the American Convention since November 12, 1987, the date on which it deposited its instrument of ratification. Consequently, the IACHRC has competence *ratione personae* to examine this petition.

24. The Inter-American Commission has competence *ratione loci* to examine the petition because it alleges violations of rights protected under the American Convention which took place within the territory of a State party to the American Convention. Furthermore, the IACHR has competence *ratione temporis* because the obligation to respect and protect the rights enshrined in the American Convention was already in force for the State at the date on which the violations of rights alleged in the petition took place. Finally, the IACHR has competence *ratione materiae* because the petition alleges violations of human rights enshrined in the American Convention.

B. Admissibility Requirements

1. Exhaustion of Domestic Remedies

26. Article 46(1)(a) of the American Convention establishes as a requirement for admission of a petition lodged with the Inter-American Commission that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law. The objective of this requirement is to enable national authorities to consider the alleged violation of a protected right and, if appropriate, to have an opportunity to address the violation prior to its consideration by an international body. Article 46(2) further states that this requirement shall not be applicable when the domestic legislation of the state concerned does not afford due process of law for the protection of the rights that have allegedly been violated; the party alleging violation of his rights has been denied access to the remedies or has been prevented from exhausting them; or there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

⁹ The State refers to P. Van Dijk *et al.*, *Theory and Practice of the European Convention on Human Rights*, Oxford (2006), page 611.

27. A State alleging non-exhaustion of domestic remedies must indicate the domestic remedies to be exhausted and provide evidence of their effectiveness.¹⁰ In the present case, and as detailed above, the State argues that the right to be tried within a reasonable time is guaranteed by the Constitution of Suriname, as well as by various provisions of the Code of Criminal Proceedings, which represent effective domestic remedies that should be exhausted by the alleged victims. The petitioner rejects these contentions by arguing that none of these provisions represents an effective remedy through which the alleged victims can ask that their appeal be heard within a reasonable time by the Court of Justice. Although it appears to the Inter-American Commission that these provisions recognize the importance of the right to trial within a reasonable time, they do not appear to constitute effective domestic remedies that should be exhausted by the alleged victims. The provisions in question indicate various measures that should be carried out in a timely way; however, the provisions make no reference to a remedy in the event of nonobservance, nor has the State referred to any concrete cause of action.

27. Further, the State contends that Article 1386 of the Civil Code, together with Article 226 of the Code of Civil Procedure is an appropriate remedy through which the alleged victims could obtain an order from the Court to proceed with their appeals. To provide evidence of the effectiveness of this remedy, the State gives the example of two cases in which the Court ordered the release of an arrested suspect because time limits in the pre-trial period had been exceeded. The petitioner argues that these provisions are inappropriate to solve the claims of the petition, which is not to receive financial compensation, but to have their appeal heard and decided, and underscores the futility of requesting the Court to order itself to proceed with an appeal.

28. The Inter-American Commission notes that the two cases given as example by the State are factually different from the situation of the alleged victims in this case and resulted in the release of persons who had not yet been convicted. The State did not provide evidence of the effectiveness of the procedure suggested (Article 1386 of the Suriname Civil Code, together with Article 226 of the Suriname Code of Civil Procedure) for a situation similar to that of the alleged victims. Therefore, the IACHR considers that the State did not meet its burden of demonstrating the effectiveness of this remedy with respect to the claims of the petition.

29. Finally, the IACHR observes that a reduction of sentence cannot be considered as an effective domestic remedy for the purpose of determining admissibility, as it does not guarantee the right to adjudication within a reasonable time, and would, for example, be inadequate for someone whose guilty verdict is reversed by the Court of Justice for an acquittal.

30. Consequently, the Inter-American Commission concludes that the domestic legal system has not provided effective remedies to address the claims presented in the petition and for this reason, the alleged victims are exempt from exhausting domestic remedies, pursuant to Article 46(2)(a) of the American Convention.

2. Timeliness of the petition

31. Article 46(1)(b) of the American Convention provides that a petition must be lodged within six months following the date on which the party alleging the violation of his rights was notified of the final judgment. Moreover, Article 32 of the IACHR's Rules of Procedure set that in those cases in which an exception to the exhaustion of domestic remedies is found to be applicable, the petition shall be presented within a reasonable period of time, as determined by the Inter-American Commission.

¹⁰ Article 31.3 of the IACHR Rules of Procedure, IACHR Report N° 32/05, Petition 642/03, Admissibility, Luis Rolando Cuscul Pivaral *et al.*, (Guatemala) March 7, 2005, paras.33-35; I/A Court H.R., *Durand and Ugarte v. Peru Case. Preliminary Objections*. Judgment of May 28, 1999, Series C N° 50, para. 33; and *Cantoral Benavides v. Peru Case. Preliminary Objections*. Judgment of September 3, 1998. Series C N°40, para.31.

32. In the present case, the information indicates that at the moment of presentation of the petition, the alleged victims had been waiting for a period of between two and ten years for their appeals to be heard, with the exception of Mr. Adjako, who was convicted and sentenced on February 21, 2003, lodged his appeal within fifteen days, and whose appeal was decided on February 20, 2008, after almost five years. Given the factual circumstances of the petition and the ongoing nature of the alleged violations, the IACHR considers that the petition lodged on February 25, 2008, was lodged within a reasonable period of time.

3. Duplication of procedures and *res judicata*

33. Article 46(1)(c) of the American Convention states that the admissibility of a petition depends on the matter not being “pending in another international proceeding for settlement,” and Article 47(d) of the same instrument rules that the IACHR cannot admit a petition that is “substantially the same as one previously studied by the Inter-American Commission or by another international organization.” The petitioner states that no other complaint has been filed before another international organ and the State did not contest this contention. Accordingly, the petition is not barred from consideration under the ground of duplication.

4. Colorable claim

34. For purposes of admissibility, the Inter-American Commission must decide whether the alleged facts tend to establish the violation of a protected right, as stipulated in Article 47(b) of the American Convention, or whether the petition is “manifestly groundless” or “obviously out of order,” as described in Article 47(c) of that same instrument. The level of conviction regarding those standards is different from that required in deciding on the merits of a complaint: the Inter-American Commission must conduct a *prima facie* evaluation to determine whether the petition establishes the grounds for the possible or potential violation of a right protected by the American Convention, but it does not establish the existence of a violation and does not represent a prejudgment on the merits of the matter.

35. The petition alleges that the State has violated Articles 1, 2, 8 and 25 of the American Convention, in taking an unreasonable period of time to hear the appeals of the alleged victims on their criminal convictions and related sentences. The State “regrettably admits” that the said period of time represents an unreasonable period of time, but ensures that it is concerned with the situation and will take measures to try and resolve the situation.

36. After reviewing the information provided by the parties, and without prejudging the merits of the matter, the IACHR considers that the petition contains allegations that, if proved, may tend to establish violations of Articles 1, 2, 8 and 25 of the American Convention. Furthermore, while not alleged by the petitioner, by virtue of the general principle of *iura novit curia*, the IACHR finds that the circumstances alleged may also disclose infringements of the State’s obligations under Article 7(5) of the American Convention, which relate to the right to trial within a reasonable period of time or to be released without prejudice to the continuation of the proceedings.

37. Based on the foregoing, the IACHR considers that the petition is not manifestly groundless or out of order and concludes that it should be declared admissible with regard to alleged violations of Articles 1, 2, 7(5), 8 and 25 of the American Convention.

V. CONCLUSIONS

38. The IACHR concludes that it is competent to take cognizance of the instant case and that the petition is admissible, in accordance with Articles 46 and 47 of the American Convention. Based on the arguments in fact and in law presented above, and with no pre-judgment on the merits of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES TO:

1. Declare the claims in the petition admissible with respect to Articles 1, 2, 7(5), 8 and 25 of the American Convention;
2. Notify the parties of this decision;
3. Continue with the analysis of the merits of the case; and
4. Publish this Report and include it in its Annual Report to the OAS General Assembly.

Done and signed in the city of Washington, D.C., on the 16th day of the month of March, 2010.
(Signed: Felipe González, President; Paulo Sérgio Pinheiro, First Vice-President; Dinah Shelton, Second Vice-President; María Silvia Guillén, José de Jesús Orozco Henríquez, and Rodrigo Escobar Gil, members of the Commission).