

**INTER-AMERICAN COURT OF HUMAN RIGHTS**

**GANGARAM PANDAY CASE**

**PRELIMINARY OBJECTIONS**

**JUDGMENT OF DECEMBER 4, 1991**

In the Gangaram Panday case,

the Inter-American Court of Human Rights, composed of the following judges:

Héctor Fix-Zamudio, President  
Thomas Buergenthal, Judge  
Rafael Nieto-Navia, Judge  
Sonia Picado-Sotela, Judge  
Julio A. Barberis, Judge  
Antônio A. Cançado Trindade, *ad hoc* Judge;

also present,

Manuel E. Ventura-Robles, Secretary, and  
Ana Maria Reina, Deputy Secretary

delivers the following judgment pursuant to Article 27(4) of the Rules of Procedure of the Court in force for matters submitted to it prior to July 31, 1991 (hereinafter "the Rules"), on the preliminary objections interposed by the Republic of Suriname (hereinafter "the Government" or "Suriname").

## I

1. The Inter-American Commission on Human Rights (hereinafter "the Commission") submitted the instant case to the Inter-American Court of Human Rights (hereinafter "the Court") on August 27, 1990. It originated in a petition (N° 10.274) against Suriname, which the Secretariat of the Commission received on December 17, 1988.

2. In filing the application with the Court, the Commission invoked Articles 51 and 61 of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention") and Article 50 of its Regulations, and requested that the Court determine whether the State in question had violated Articles 1 (Obligation to Respect Rights), 2 (Domestic Legal Effects), 4 (Right to Life), 5 (Right to Humane Treatment), 7 (Right to Personal Liberty) and 25 (Right to Judicial Protection) of the Convention, to the detriment of Mr. Choeramoenipersad Gangaram Panday, also known as Asok Gangaram Panday. The Commission also asked the Court "*to adjudicate this case in accordance with the terms of the Convention, and to fix responsibility for the violation described herein and award just compensation to the victim's next of kin.*" It appointed the following Delegates to represent it in this matter: Oliver H. Jackman, Member; Edith Márquez-Rodríguez, Executive Secretary; and David J. Padilla, Assistant Executive Secretary.

3. On September 17, 1990, the Secretariat of the Court transmitted the application and its attachments to the Government.

4. By fax of November 6, 1990, the Government of Suriname appointed Lic. Carlos Vargas-Pizarro, of San Jose, Costa Rica, as its Agent.

5. By Order of November 12, 1990, the President of the Court, in agreement with the Agent of Suriname and the Delegates of the Commission and in consultation with the Permanent Commission of the Court, set March 29, 1991, as the deadline for the Commission's submission of the memorial provided for in Article 29 of the Rules and June 28, 1991, as the deadline for submission by the Government of the counter-memorial provided for in that same article.

6. By note of November 12, 1990, the President asked the Government to appoint an *ad hoc* Judge for this case. In a communication dated December 13, 1990, the Agent informed the Court that the Government had named Professor Antônio A. Cançado Trindade of Brasília, Brazil, to that position.

7. By note of February 7, 1991, the Commission appointed Professor Claudio Grossman to serve as its legal adviser in this case.

8. In a communication dated June 28, 1991, the Agent filed preliminary objections pursuant to Article 27 of the Rules. The President of the Court set July 31, 1991, as the deadline for the Commission's submission of a written statement on the preliminary objections.

9. By Order of August 3, 1991, the President directed that a public hearing be convened on December 2, 1991, at 15:00 hours, at the seat of the Court, for the presentation of oral arguments on the preliminary objections. At the request of the Government, the order also subpoenaed the following witnesses to testify on the preliminary objections: Ramón de Freitas, Military Auditor of the Government of Suriname, and Dr. A. Vrede, pathologist of the Anatomical Laboratory of the Paramaribo Hospital. The Government subsequently waived the right to have these persons appear as witnesses. In a communication dated November 28, 1991, the Agent informed the Court that Messrs. Ramón de Freitas, Albert Vrede and Fred M. Reid would appear "*as members of the delegation of Suriname*" and identified them as Attorney General of the Republic of Suriname, pathologist and expert, and Third (Embassy) Secretary of the Ministry of Foreign Affairs of Suriname, respectively.

10. The public hearing was held at the seat of the Court on December 2, 1991.

There appeared before the Court

for the Government of Suriname:

Carlos Vargas Pizarro, Agent

Ramón de Freitas

Albert Vrede

Fred M. Reid;

for the Inter-American Commission on Human Rights:

Oliver H. Jackman, Delegate

David J. Padilla, Delegate.

## II

11. The petition filed with the Commission on December 17, 1988, refers to the detention and subsequent death of Mr. Asok Gangaram Panday in Suriname. The petition was filed by the victim's brother, Mr. Leo Gangaram Panday.

12. According to the petitioner, Mr. Asok Gangaram Panday was detained by the Military Police when he arrived at Zanderij Airport in Paramaribo. The Military Police at Fort Zeeland, where he was detained, subsequently reported that he had hanged himself.

13. On December 21, 1988, the Commission requested the Government to provide information regarding the circumstances surrounding the death of the alleged victim. On May 2, 1989, the Government reported on the steps taken to investigate the manner of his detention and added that, according to the autopsy, Asok Gangaram Panday had indeed committed suicide.

14. Pursuant to Article 50 of the Convention, on May 15, 1990, the Commission drew up Report N° 04/90 in which it resolved:

1. To admit the present case.
2. To declare that the parties have been unable to achieve a friendly settlement.

3. To declare that the Government of Suriname has failed to fulfill its obligations to respect the rights and freedoms contained in the American Convention on Human Rights and to assure their enjoyment as provided for in Articles 1 and 2 of the same instrument.

4. To declare that the Government of Suriname violated the human rights of the subjects of this case as provided for by Articles 1, 2, 4(1), 5(1), 5(2), 7(1), 7(2), 7(3), 25(1), and 25(2) of the American Convention on Human Rights.

5. To recommend to the Government of Suriname that it take the following measures:

- a. Give effect to Articles 1 and 2 of the Convention by assuring respect for and enjoyment of the rights contained therein;
- b. Investigate the violations that occurred in this case and try and punish those responsible for their occurrence;
- c. Take the necessary measures to avoid their reoccurrence;
- d. Pay a just compensation to the victim's next of kin.

6. To transmit this report to the Government of Suriname and to provide the Government with 90 days to implement the recommendations contained herein. The 90 day period shall begin as of the date this report is sent. During the 90 days in question the Government may not publish this report, in keeping with Article 47(6) of the Commission's Regulations.

7. To submit this case to the Inter-American Court of Human Rights in the event that the Government of Suriname should fail to implement all of the recommendations contained in numeral 5 above.

15. On August 27, 1990, the Commission referred the instant case to the Court.

### III

16. The Court has jurisdiction to hear the instant case. Suriname has been a State Party to the Convention since November 12, 1987, when it also recognized the contentious jurisdiction of the Court, pursuant to Article 62 of the Convention.

### IV

17. In its communication of June 28, 1991, the Government refers to some questions of form without, however, characterizing them as preliminary objections. At the hearing, the Agent expressly stated that they did not qualify as such. Nevertheless, since these "questions of form" could in one way or another affect the admissibility of the instant case and since the communication expressly requests that the Court deal with them, it will address these questions below. The issues raised concern the lack of a signature on the memorial submitted to the Court, the representation of the Commission in this contentious case, and the presence of the victim's representative on the Commission's delegation.

18. The Court has stated earlier that

failure to observe certain formalities is not necessarily relevant when dealing on the international plane. What is essential is that the conditions necessary for the preservation of the procedural rights of the parties not be diminished or unbalanced and that the objectives of the different procedures be met. (*Velásquez Rodríguez Case, Preliminary Objections, Judgment of June 26, 1987. Series C No. 1, para. 33; Fairén Garbí and Solís Corrales, Preliminary Objections, Judgment of June 26, 1987. Series C No. 2, para. 38; Godínez Cruz Case, Preliminary Objections, Judgment of June 26, 1987. Series C No. 3, para. 36.*)

19. The Government argued, first, that "*Memorials initiating international proceedings in the area of human rights [ . . . ] must comply with*

*the formal requirement of being duly signed by the party filing the application.*" This requirement was not met by the Commission.

20. The Commission maintained that the fact that the memorial had been sent by fax, under a cover sheet indicating that to be the form of transmittal, did not leave the Court or any third parties in doubt as to the authenticity of the document in question.

21. Article 25(2) of the Rules provides that: "*If the Commission intends to bring a case before the Court in accordance with the provisions of Article 61 of the Convention, it shall file with the Secretary, together with its report, in twenty copies, its duly signed application which shall indicate the object of the application, the human rights involved, and the names of its delegates.*"

22. Article 30(3) of the Rules states that: "*A Memorial shall contain a statement of the relevant facts, a statement of law, and the submissions.*"

23. The instant case was referred to the Court by means of an application filed by the Commission on August 27, 1990. It was duly signed by the Executive Secretary of the Commission. According to the Rules, the memorial is not the document that brings the case before the Court but is, rather, the first procedural act that initiates the written part of the proceedings before the Court.

24. The relevant procedural norms applicable to this case do not establish, either as a formality or as a requirement for presentation, that the memorial must be signed. It goes without saying that all documents presented to the Court should bear a signature and that the Commission should have made sure that this was so in the instant case; however, the omission does not constitute non-compliance of a requirement, since the Rules do not require it. Here, moreover, it has been established that the memorial was sent by the Commission, leaving no doubt as to its authenticity.

25. The Government's second contention, based on Articles 2(1) and 3(1) of the Statute of the Commission, Article 71(4) of the Regulations of the Commission and Article 21 of the Rules of the Court, was that the Commission had failed to comply with the aforementioned provisions by naming as Delegates the Executive Secretary and Assistant Executive

Secretary who, while members of the staff of the Commission, are not members of the Commission as such.

26. The Commission responded that “[t]he delegates of the Commission were duly elected by the Commission itself at the appropriate time, and this fact was communicated to the Government.” The Commission argued that, in order to enjoy a degree of flexibility in its actions, it had appointed a team comprising various Delegates, including one of its members, the Executive Secretary and the Assistant Executive Secretary, and that a similar procedure had been followed in other cases decided by the Court.

27. Article 21 of the Rules provides that: “The Commission shall be represented by the delegates whom it designates. These delegates may, if they so wish, have the assistance of any person of their choice.” Therefore, the Court holds that the Commission fulfilled the requirements spelled out therein.

The same argument is applicable to the appointment of the victim’s lawyer as a member of the Commission’s delegation.

## V

28. The Government presented the following preliminary objections:
- a. “Abuse of the Rights conferred by the Convention” on the Commission,
  - b. non-exhaustion of domestic remedies, and,
  - c. non-compliance of the provisions contained in Articles 47 to 51 of the Convention.

29. In the first preliminary objection, the Government is of the opinion that the Commission incurred an “abuse of the rights” by: (1) appropriating for itself the right to find a State responsible for violations of human rights; (2) breaking the “confidentiality rule;” (3) the manner it determined the evidence before the Court; and (4) “a result of



*the abuses committed and lack of proof*" because the Commission incurred an "*abuse of right of petition*" in filing the case with the Court.

30. Without deciding whether or not there exists a preliminary objection such as the one that the Government describes as an "abuse of right," the Court will now examine the Government's contentions.

31. With regard to the first point raised, the Court considers that Article 50 of the Convention is clear when it provides that "*if a settlement is not reached, the Commission shall, within the time limit established by its Statute, draw up a report setting forth the facts and stating its conclusions [ . . . ]*" When the Commission does what this provision provides, as it did in drawing up its Report N° 04/90 of May 15, 1990, it is fulfilling its obligations under the Convention.

32. Secondly, the Government deemed that the Commission had broken the confidentiality rule established in Articles 46(3) of the Rules of Procedures of the Court and 74 of the Regulations of the Commission by having "*made public certain facts relating to the case and, furthermore, by having issued prior value judgments in a case still under consideration [ . . . ] seeking, Mala Fide, a double sanction not contemplated by the Convention.*" The Government appears to be referring to the information on this case that was included in the Commission's Annual Report for 1990-1991. The Commission denied having applied a double sanction, arguing that in the relevant part of its Annual Report to the General Assembly, it merely made a reference to the case and that the reports described in Articles 50 and 51 of the Convention were not published.

33. The Court notes that the aforementioned Annual Report of the Commission refers to the case but does not reproduce the report drawn up under Article 50 and that the case had already been filed with the Court when the Annual Report was published. Consequently, it cannot be contended that there existed a violation by the Commission of Article 74 of its Regulations, let alone a violation of Article 46(3) of the Rules of the Court, which refers to a very different situation.

34. The Government alleged "*abuse of rights by the manner it determined the evidence before the Court,*" and averred that "*although the Commission did not expressly say so, in the instant case it resorted to an*

*irregular presumption of certain facts under Article 42 of its Regulations, despite the fact that a different conclusion would be reached on the basis of the evidence provided by Suriname to the Commission.*" The Commission, on its part, asserted that its conclusions are based on the investigation carried out and on the evidence obtained, and that the presumption provided for in Article 42 of its Regulations, according to which "*[t]he facts reported in the petition [ . . . ] shall be presumed to be true [ . . . ] if [ . . . ] the government has not provided the pertinent information,*" was not applied.

35. The Court found no evidence in the record showing that the Commission had resorted to the presumption referred to in Article 42 of its Regulations.

36. Both in the written proceedings and at the hearing, the Government failed to substantiate its claim that the Commission committed an "*abuse of the right of petition*" by filing an application with the Court. Consequently, basing itself on the provisions of Article 27(2) of its Rules, under which "*[t]he preliminary objection shall set out the facts and the law on which the objection is based,*" the Court will not deal with this objection.

37. The Court will now examine the objection of non-exhaustion of domestic remedies to which Article 46(1)(a) of the Convention refers. That article provides that:

Article 46

1. 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 the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law;

[ . . . ]

38. This requirement

allows the State to resolve the problem under its internal law

before being confronted with an international proceeding. This is particularly true in the international jurisdiction of human rights, because the latter reinforces or complements the domestic jurisdiction (American Convention, Preamble). (***Velásquez Rodríguez Case, Judgment of July 29, 1988. Series C No. 4, para. 61; Godínez Cruz Case, Judgment of January 20, 1989. Series C No. 5, para. 64; Fairén Garbí and Solís Corrales Case, Judgment of March 15, 1989. Series C No. 6, para. 85.***)

The Court has stated that:

Generally recognized principles of international law indicate, first, that this is a rule that may be waived, either expressly or by implication, by the State having the right to invoke it, as this Court has already recognized (see ***Viviana Gallardo et al.***, Judgment of November 13, 1981, No. G 101/81. Series A, para. 26). Second, the objection asserting the non-exhaustion of domestic remedies, to be timely, must be made at an early stage of the proceedings by the State entitled to make it, lest a waiver of the requirement be presumed. Third, the State claiming non-exhaustion has an obligation to prove that domestic remedies remain to be exhausted and that they are effective. (***Velásquez Rodríguez Case, Preliminary Objections, supra 18, para. 88; Fairén Garbí and Solís Corrales Case, Preliminary Objections, supra 18, para. 87; Godínez Cruz Case, Preliminary Objections, supra 18, para. 90.*** See also ***In the Matter of Viviana Gallardo et al., No. G 101/81. Series A.***)

[T]he rule of prior exhaustion is a prerequisite established in favor of the State, which may waive its right, even tacitly, and this occurs, ***inter alia***, when it is not timely invoked. (***Fairén Garbí and Solís Corrales Case, ibid., para. 109.***)

39. The Court notes that the Government did not interpose the objection of non-exhaustion of domestic remedies before the Commission, a fact that was expressly confirmed by the Agent during the public hearing of December 2, 1991. This constitutes a tacit waiver of the objection. The Government also failed to indicate in a timely fashion the domestic remedies that, in its opinion, should have been exhausted or how they would be effective.

40. Consequently, the Court considers that the Government is untimely when it now seeks to invoke the objection of non-exhaustion of domestic remedies that it should have interposed before the Commission but did not.

41. Finally, the Government's third preliminary objection, which asserts that the Commission did not fully comply with the provisions of Article 47 to 51 of the Convention, was not substantiated by the Government either in its communication or at the public hearing. Based on Article 27(2) of its Rules (*supra* 36), the Court will not deal with this objection.

## VI

42. The Court will address the written and oral requests of the parties regarding costs relating to this stage of the proceedings when it deals with the merits of the instant case.

Now, therefore,

### **THE COURT,**

unanimously,

1. Rejects the preliminary objections interposed by the Government of Suriname.

unanimously,

2. Decides to proceed with the consideration of the instant case.

unanimously,

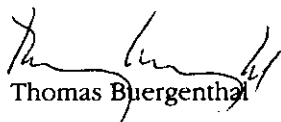
3. Postpones its decision on the costs until such time as it renders judgment on the merits.

Judge Cançado Trindade informed the Court of the contents of his concurring opinion, which will be attached to this judgment.

Done in Spanish and in English, the Spanish text being authentic, at the seat of the Court in San Jose, Costa Rica, this fourth day of December, 1991.



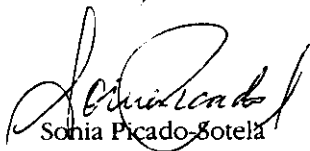
Hector Fix-Zamudio  
President



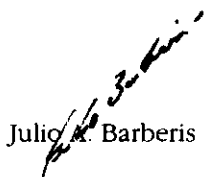
Thomas Buergethal




Rafael Nieto-Navia



Sonia Picado-Sotela



Julio A. Barberis



Antonio A. Cançado Trindade



Manuel E. Ventura-Robles  
Secretary

Read at the public hearing held at the seat of the Court in San Jose, Costa Rica, on December 6, 1991.

So ordered,



Hector Fix-Zamudio  
President



Manuel E. Ventura-Robles  
Secretary