

INTER-AMERICAN COURT OF HUMAN RIGHTS

GANGARAM PANDAY CASE

JUDGMENT OF JANUARY 21, 1994

In the case of Gangaram Panday,

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

Rafael Nieto-Navia, President
Sonia Picado-Sotela, Vice-President
Héctor Fix-Zamudio, Judge
Alejandro Montiel-Argüello, Judge
Hernán Salgado-Pesantes, Judge
Asdrúbal Aguiar-Aranguren, Judge
Antônio A. Cançado Trindade, *ad hoc* Judge;

also present:

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

pursuant to Article 44(1) of the Rules of Procedure of the Court in force until July 31, 1991 (hereinafter "the Rules of Procedure"), which govern this case, enters the following judgment in the case brought by the Inter-American Commission on Human Rights (hereinafter "the Commission") against the State of Suriname (hereinafter "the Government" or "Suriname").

I

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

2. In filing the application, 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, charging Suriname with the violation of the following articles of the Convention, committed against Mr. Choeramoenipersad Gangaram Panday (also known as Asok Gangaram Panday): Articles 1 (Obligation to Respect Rights), 2 (Domestic Legal Effects), 4(1) (Right to Life), 5(1) and (2) (Right to Humane Treatment), 7(1), (2) and (3) (Right to Personal Liberty), and 25(1) and (2) (Right to Judicial Protection). The Commission asked the Court *"to decide 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. 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 deceased's brother, Mr. Leo Gangaram Panday, and is summarized below by the Court:

a. Mr. Asok Gangaram Panday was detained by the Military Police when he arrived at Zanderij Airport on Saturday, November 5, 1988, at 20:00 hours. Mr. Leo Gangaram Panday stated that he saw *"the Military Police leading him to a room. His wife, Dropati, was with me and also saw him in police custody."*

b. On Sunday, November 6, Leo Gangaram Panday made repeated calls to the Military Police at the airport. At 16:30 hours, the commanding officer told him that his brother *"was going to be*

transferred that night to Fort Zeeland, [because he was under arrest for] having been expelled from Holland." After repeated, fruitless calls, the Military Police at Fort Zeeland informed the petitioner on Tuesday, the eighth, that his brother had hanged himself.

c. Leo Gangaram Panday and his lawyer, Geeta Gangaram Panday, went to see Attorney General Reeder, who knew nothing of the case. They all then proceeded to the morgue, along with Mr. Freitas, the Military Judge Advocate. At the morgue, they found the body of Asok Gangaram Panday, which was, *"naked except for his underwear. The body presented hematomas on the chest and stomach and an orifice in the back. One of the eyes was black and blue and there was a cut on one lip. The hematomas were large [. . .] [The body] had a short belt around its neck."*

d. The petition went on to say that

[t]he first autopsy report found that he had committed suicide. The report of the second autopsy stated that he had died as a result of asphyxia, but that it was impossible to ascribe responsibility for the death. The third autopsy concluded that the death had been caused by violence.

e. The petitioner took a videotape of the body in the morgue before it was cremated. He asserts that when the underwear was removed from the body they saw, *"that his testicles had been crushed."*

f. According to the petition, the Attorney General personally informed the petitioner's lawyer that it was a case of suicide; the family never received a written report; and the petitioner's lawyer advised him that, *"he should not insist on pursuing this case with the Surinamese authorities because it [was] dangerous."*

4. By note of December 21, 1988, the Commission requested the Government to provide information regarding the circumstances surrounding the death of Mr. Asok Gangaram Panday and granted it 90 days in which to do so. Among other things, the Commission asked for

copies of all the findings of the various autopsies and for the *post mortem* and pathological reports on the case. Later, on February 6, 1989, the Commission transmitted the full text of the petition to the Government.

5. On May 3, 1989, the Commission received a reply to its communications of December 21, 1988, and February 6, 1989, in the form of a note from the Government dated May 2, 1989. In it, the Minister of Justice and Police stated that, on November 5, 1988, Asok Gangaram Panday had indeed, *"been taken by the Military Police to a building for displaced persons (sic) at the Zanderij Airport."* The letter went on to say:

a. That after Attorney Gangaram Panday, the victim's brother, had reported what had happened, the Attorney General *"ordered an autopsy, and the Judge-Advocate, together with Attorney Gangaram Panday, were able to visit the morgue and witness the autopsy."*

b. That, according to the Government's note of May 2, 1989, *"an autopsy report was drawn up, in which the anatomical pathologist came to the conclusion that it was a case of suicide. That conclusion was transmitted to the deceased's brother, Attorney Gangaram Panday."* The note also stated that a copy of the autopsy report had not been requested and that

the Department of Technical and Criminal Investigations and the Department of Identifications prepared a report exploring the possibility that ASOK GANGARAM PANDAY might have hanged himself with his belt, a fact confirmed by the officer in charge of the investigation. (Capital letters in the original)

Finally, the note indicated that the Attorney General

considered it important to look into the possibility that the Military Police officer who arrested ASOK Gangaram Panday might be guilty of unlawful deprivation of liberty or illegal detention and [that he] had ordered the Judge-Advocate to summon the Military Police officer to appear before the Military Court. (Capital letters in the original)

6. According to the application filed by the Commission with the Court, the petitioner's representative before the Commission, Professor Claudio Grossman, requested a hearing with the Commission on September 14, 1989. The hearing was held that same month, during the Commission's 76th Regular Session. In the course of the hearing, Professor Grossman reiterated the nature of the petition and requested a friendly settlement. Although Professor Grossman met with the Minister of Foreign Affairs of Suriname in November, 1989, in the presence of Dr. David Padilla, no friendly settlement could be reached in this case.

7. In a letter dated January 29, 1990, which is transcribed in the Commission's Report N° 04/90 of May 15, 1990, attached to the petition, the petitioner reported that certain members of the Military Police of his acquaintance had asserted that

Asok was tortured in Fort Zeeland, not at Zanderij, [but] they are afraid to testify, and he also knows certain people in the morgue who contend that Asok died before the date stated in the official report [. . .] [that he has] sent a copy of the findings of the third autopsy, signed by the Pathologist [and that there are no] copies of the other two, although the press referred to them.

8. In a communication dated February 4, 1990 which accompanies the petition, anatomical pathologist Dr. Richard Baltaro, Ph.D., M.D., gave Professor Grossman his professional evaluation of the videotape that the latter had sent him, and which had been filmed while the body of Asok Gangaram Panday was being washed. Although he found the quality of the videotape to be unsatisfactory, Dr. Baltaro was of the opinion that

[t]he type of death is not natural. The cause of death was asphyxia resulting from hanging. Based on the evidence presented to me, I am inclined to conclude that the person died by hanging. As to the manner of death, however, it cannot be established whether it was accidental, a suicide, or homicide. Given the evidence provided to me, if I had to sign the death certificate, I would ascribe the death to 'unknown causes' but would prefer to investigate the case further.

Professor Grossman transmitted Dr. Baltaro's report to the Commission on March 21, 1990. He also enclosed a copy of the death certificate

signed by Dr. M. A. Vrede, anatomical pathologist of the Anatomical Hospital of Paramaribo, certifying that Asok Gangaram Panday died "*a violent death.*"

9. On March 23, 1990, the Commission sent the relevant portion of Professor Grossman's letter to the Government, together with the aforementioned reports of Drs. Baltaro and Vrede, and granted it 30 days in which to present any significant information it might have on this case.

10. On May 11, 1990, the Government transmitted to the Commission the same copy of the death certificate that had been signed by Dr. M. A. Vrede and reads as follows: "*[t]he victim died a violent death, and at the time of death was not suffering from any type of infectious disease,*" as well as an autopsy report issued by the same pathologist, Dr. Vrede, indicating that, "*[i]t is assumed that the cause of death was asphyxia resulting from hanging.*"

11. On that same date, the Commission received Professor Grossman at a hearing, where he explained that it had proved impossible to arrive at a friendly settlement and requested that the Commission refer the instant case to the Court.

12. 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 instant 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 in Articles 1 and 2 of that same instrument.
4. To declare that the Government of Suriname violated the human rights of the subject of this case, as provided in Articles 1, 2, 4(01) (*sic*), 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. Conduct an investigation of the facts reported in order to prosecute and punish the persons responsible.

c. Take the necessary measures to prevent the occurrence of similar acts in the future.

d. Pay a just compensation to the injured parties.

6. To transmit this report to the Government of Suriname in order to obtain, within 90 days of the date of transmittal, information from the Government regarding the measures taken to implement the recommendations contained herein. As provided in Article 47(6) of the Commission's Regulations, the Government may not publish this report.

7. To submit this case to the Inter-American Court of Human Rights if the Government of Suriname fails to implement all of the recommendations contained in point 5 above.

II

13. The case before the Court was brought by the Commission on August 27, 1990. In a communication, dated September 17, 1990, the Secretariat of the Court (hereinafter "the Secretariat") transmitted to the Government a copy of the application and its attachments, as provided in Article 26(3) of its Rules of Procedure.

14. On November 6, 1990, the Government appointed Licenciado Carlos Vargas-Pizarro to serve as its Agent.

15. By order of November 12, 1990, the President of the Court (hereinafter "the President"), by mutual agreement with the Agent of Suriname and the delegates of the Commission and in consultation with the Permanent Commission of the Court (hereinafter "the Permanent Commission"), set March 29, 1991, as the deadline for the Commission's submission of the memorial provided for in Article 29 of the Rules of Procedure and June 28, 1991, as the deadline for submission by the Government of its counter-memorial.

16. By note of November 12, 1990, the President requested 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 Brasilia, Brazil, to that position.

17. By note of February 7, 1991, the Commission appointed Professor Claudio Grossman to be its legal adviser in the instant case. In a note dated December 23, 1993, the Commission subsequently placed on record the fact that, in addition to his role as adviser, Professor Grossman was also acting as counsel for the original petitioner. If the Court considered this designation problematical, the Commission would request a public hearing to present its arguments thereon. After obtaining the views of the Court, the President responded in a note dated January 11, 1994, that the public hearing requested "*will not take place. It is possible that this matter may be taken up by the Tribunal when it addresses the merits of the case.*"

18. On April 1, 1991, the Commission submitted its memorial in the case, together with the relevant evidence. In it, the Commission requested that the Court

accept the evidence presented to the Commission and find that the facts have been duly verified in accordance with the applicable legal standards and criteria [. . .] [and if it should be deemed] that such evidence is insufficient, that the Court reserve the right of the Commission to produce additional proof; [that] it hold the State of Suriname responsible for the death of Mr. Asok Gangaram Panday while he was in detention and find that his death constitutes a violation of Articles 1(1) (2), 4, 5, 7 and 25 of the American Convention on Human Rights.

The Commission also asked the Court to find that Suriname

must make adequate reparation to the next of kin of Mr. Asok Gangaram Panday and that, consequently, it order: the payment of compensation for indirect damages and loss of earnings, reparations for moral damages (including the payment of an indemnity and the adoption of measures to restore the good name of the victim), and the investigation of the crime committed, providing for the punishment of those found to be responsible [. . .] [t]hat it order Suriname to pay the costs incurred in the handling of this case, including the reasonable fees of the victim's lawyer.

19. The Government presented its counter-memorial and evidence on the case on June 28, 1991. In that document, it requested the Court to declare that:

a) Suriname cannot be held responsible for the death of Asok Gangaram Panday.

b) In view of the fact that it has not been proved that the violation attributed to Suriname was committed, Suriname should not be obliged to pay any type of compensation.

c) Suriname be allowed to reserve its right to produce additional proof in support of its position if the Court should so decide.

d) The petitioner be ordered to pay the costs of this case.

20. On that same date, the Agent interposed preliminary objections pursuant to Article 27 of the Rules of Procedure. In a judgment rendered on December 4, 1991, the Court unanimously decided the preliminary objections as follows:

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

[. . .]

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

[. .]

3. Postpones its decision on the costs until such time as it renders judgment on the merits. (*Gangaram Panday Case, Preliminary Objections, Judgment of December 4, 1991. Series C No. 12, Operative Part.*)

21. By order of August 3, 1991, and with the purpose of establishing the proceedings on the merits, the President gave the parties until September 11, 1991, to produce and submit additional evidence to the Court. He also set October 15, 1991, as the deadline for presentation of observations on the evidence presented. Both the Commission and the Government submitted their respective statements on September 11, 1991.

22. The Government presented its observations on the Commission's statement on October 15, 1991. The latter's observations on the Government's statement were submitted on October 18, 1991.

23. By order of the President dated January 18, 1992, the parties were summoned to the public hearings scheduled to begin on June 24, 1992, in order to hear the pleadings of the parties regarding the Government's objections to witnesses Richard J. Baltaro and Stanley Rensch (contained in its communications of September 11 and October 15, 1991, respectively) and to decide thereon; to hear their testimony in the event that the Court should deem it relevant, as well as the statements of Ramón A. de Freitas, M. A. Vrede and Juan Gerardo Ugalde Lobo; and to hear the pleadings of the parties on the merits of the instant case.

24. In a communication dated January 31, 1992, the Commission requested that the Court include in its list of witnesses the names of Leo and Droupati Gangaram Panday, the brother and widow of Asok Gangaram Panday, who had not been located before because of difficulties in establishing their whereabouts. By note of February 14, 1992, the Government objected to this request and asked that it be denied.

25. On February 7, 1992, the Commission asked the Court to postpone the hearings on the merits of the case. By note of February 14, 1992, the Government consented to the postponement of the hearings.

26. By order of March 24, 1992, the President amended his order of January 18, 1992, as follows:

1. To summon the parties to the public hearings which will be held at the seat of the Court as of 10:00 hours on July 8, 1992, in order to:

a. Hear the pleadings of the Government of the Republic of Suriname and the observations of the Inter-American Commission on Human Rights regarding the objection to witnesses in this case and decide thereon.

b. Hear, if appropriate, the statements of Richard J. Baltaro, Stanley Rensch, Ramón A. de Freitas, M. A. Vrede, Juan Gerardo Ugalde Lobo, Leo Gangaram Panday and Dropati Gangaram Panday, all pursuant to Article 35 of the Rules of Procedure of the Court, under which the witnesses shall be presented by the party offering their testimony.

c. Hear the pleadings of the parties on the merits of the instant case.

27. By order of July 7, 1992, the Court unanimously ordered "*[t]hat this case continue to be heard by the Court as [newly] composed after January 1, 1992.*"

28. The Government having waived the objections it had interposed, public hearings were held on July 8 and 9, 1992, to receive the testimony of the witnesses and expert witnesses called by the parties and to hear the pleadings on the merits of the case.

There appeared before the Court:

a. for the Government of Suriname:

Carlos Vargas-Pizarro, Agent

Fred M. Reid, Representative of the Ministry of Foreign Affairs of Suriname

Jorge Ross-Araya, Attorney-Adviser

Joaquín Tacsan-Chen, Attorney-Adviser

- b. for the Inter-American Commission on Human Rights:

Oliver H. Jackman, Delegate

David J. Padilla, Delegate

Claudio Grossman, Adviser

- c. witnesses presented by the Commission:

Leo Gangaram Panday

Dropati Gangaram Panday

Stanley Rensch, Director of the Human Rights Bureau,
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- d. witnesses presented by the Government:

Ramón A. de Freitas, Representative of the Attorney's Office
of the Republic of Suriname

M. A. Vrede, Anatomical Pathologist and Expert Witness.

The Government chose not to present Dr. Juan Gerardo Ugalde-Lobo as an expert witness. Dr. Richard J. Baltaro, the expert witness offered by the Commission, did not appear before these hearings.

29. During the hearing, the Court asked the Government to provide statistics on suicide among the population professing the Hindu religion in Suriname, indicating the percentages for males and females. This information was not supplied by the Government.

30. After hearing the witnesses and expert witnesses and the pleadings of the parties on the merits of the case, the President, by order of July 10, 1992, requested the following additional proof for further clarification of the facts:

1. To request technical opinions on the criminal and psychiatric aspects of the case, together with translations, which are to be obtained by Judge Asdrúbal Aguiar-Aranguren from experts on the subject in Venezuela.

2. Through the Secretariat of the Court, to obtain an expert opinion of the medical reports contained in the records, including the videotape and slides, from the Division of Forensic Medicine of the Bureau of Judicial Investigations of Costa Rica.

31. In a written communication received at the Secretariat on November 4, 1992, the Commission requested that, in application of Article 41(2) of the new Rules of Procedure of the Court which came into force on August 1, 1991, the Commission be allowed to reserve its right to examine any witness or expert witness that the Court might call pursuant to the proof ordered by the President in the previous paragraph. After consulting with the Permanent Commission, an order of the President dated March 15, 1993, dismissed the Commission's petition on the grounds that the expert testimony had been ordered by the Court to furnish better proof and that it bore on facts that had already been considered and were known to the parties. The Commission also requested that the Court's experts be provided the oral testimony given by Dr. M. A. Vrede at the public hearing, regarding the presence of blood in the victim's scrotum. The President issued the relevant order.

32. On November 25, 1992, the Secretariat of the Supreme Court of Justice of Costa Rica submitted a forensic medical report containing the expert opinion of its Department of Forensic Medicine. This report was issued in response to the request referred to in Paragraph 30 *supra*.

33. On February 4, 1993, the Court ordered the text of the proceedings to date to be transmitted to the parties and granted the latter 30 days in which to present their observations. The Commission submitted its observations on March 1, 1993. The Government did not present any observations.

The Court also requested the Government to provide it with the official texts of the Constitution of Suriname and of the substantive and criminal procedure laws governing arrests that were in effect on November 7,

1988, all duly translated into Spanish. The Court gave the Government until March 19, 1993, to submit these documents; the Government failed to do so.

34. By note of February 9, 1993, the Head of the Department of Forensic Medicine of the Supreme Court of Justice of Costa Rica was provided with the transcript of the relevant parts of the public hearing on the merits of the case, with the request that he verify whether the statements contained therein affected the conclusions reached in his opinion of November, 1992 (*supra* 32) and, if so, in what manner. On February 22, 1993, the head of that department submitted the information requested, which was transmitted to the parties to enable them to present their observations. Only the Commission did so.

35. On November 30, 1993, the Court received the forensic report issued by the Division of Forensic Medicine of the Technical Corps of the Judicial Police of Venezuela.

36. On December 9, 1993, the Court provided the relevant parts of the public hearing concerning the testimony of Dr. M. A. Vrede to the Division which had supplied the expert forensic testimony in Venezuela, with the request that it verify whether the statements contained therein affected the initial conclusions of their report and, if so, in what manner. The follow-up report was submitted to the Court with a letter dated January 5, 1994, by the Director General of the Technical Corps of the Judicial Police of Venezuela. The parties were duly informed of its contents.

37. The following organizations submitted *amici curiae* briefs: the International Human Rights Law Institute of DePaul University College of Law, the Netherlands Institute of Human Rights (SIM), and the International Human Rights Law Group.

III

38. The Court has jurisdiction to hear the instant case. Suriname has been a State Party to the Convention since November 12, 1987, the date

on which it also recognized the contentious jurisdiction of the Court, as set out in Article 62 of the Convention.

IV

39. During the proceedings, the Commission asserted the following:

[. . .] Because of its judicial nature, the Court has the power to reach its own conclusions as to the legality of the proceedings and as to the verification and scope of the facts determined by the Commission (see Article 62(3)). In cases in which the Court concludes that the proceedings before the Commission were in violation of the Convention and/or that the facts have not been duly established, there is no doubt that the Court can order the submission of relevant proof.

The Commission respectfully submits to the Court that the facts of the instant case were properly verified and that, consequently, it is inappropriate to initiate a probative stage.

In support of its position, the Commission makes reference to the case law of the European Court of Human Rights in the case of *Stocké v. The Federal Republic of Germany*, in which that Court made the following determination:

The Court recalls that under the (European) Convention system, the establishment and verification of the facts is primarily a matter for the (European) Commission (Articles 28 § 1 and 31). Accordingly, it is only in exceptional circumstances that the Court will use its powers in this area. **(Eur. Court H.R., *Stocké judgment of 19 March 1991, Series A no. 199, para. 53*)**

In presenting its evidence, the Commission declared:

Without detriment to the Commission's request to the Court that the latter find that the facts were verified in the proceedings before the Commission, evidence is hereby offered in the unlikely

event that the Court decide that exceptional circumstances exist which require it to act as a 'factfinder.'

40. The Agent of Suriname, for his part, stated that:

[. . .]

[I]t is evident that, pursuant to the provisions governing its jurisdiction contained in Articles 62(3) and 63 of the Convention, the Court has the power to consider, revise and reevaluate all of the facts of a case, independently of whether or not the Commission has previously determined that the facts have been established.

41. The Court notes that the Commission and the Court perform different, albeit complementary, functions when they deal with matters related to the observance of the Convention by the States Parties. Insofar as its own function is concerned, the Court considers that what has already been stated in its case law is applicable to the instant case, namely that

the Court exercises full jurisdiction over all issues relevant to a case [. . .] [and] [i]n exercising these powers, the Court is not bound by what the Commission may have previously decided; rather, its authority to render judgment is in no way restricted. The Court does not act as a court of review, of appeal or other similar court in its dealings with the Commission. Its power to examine and review all actions and decisions of the Commission derives from its character as sole judicial organ in matters concerning the Convention. (*Velásquez Rodríguez Case, Preliminary Objections, Judgment of June 26, 1987. Series C No. 1, para. 29; Fairén Garbi and Solís Corrales Case, Preliminary Objections, Judgment of June 26, 1987. Series C No. 2, para. 34; and, Godínez Cruz Case, Preliminary Objections, Judgment of June 26, 1987. Series C No. 3, para. 32.*)

V

42. In order for it to be able to adjudicate this case, the Court believes that the following facts relating to "*the detention and subsequent death of Choeramoenipersad (also known as Asok) Gangaram Panday*" in

Suriname are in dispute and, accordingly, need to be reviewed and decided upon:

- a. The alleged illegal and arbitrary detention of the victim by the Military Police of Suriname upon his arrival from Holland at the Zanderij Airport on Saturday, November 5, 1988, where he was reportedly held in solitary confinement in a special area reserved for deportees.
- b. The alleged torture of the victim during his detention.
- c. The death of the victim, allegedly by hanging, while in detention and under the custody of the Surinamese Military Police.

VI

43. As regards the detention of Asok Gangaram Panday, based on evidence which has not been disputed by the parties, the Court considers that the following facts have been proved:

- a. That the victim arrived at Zanderij Airport, in Suriname, on Saturday, November 5, 1988, having embarked in Holland (cf. verbal note of the Permanent Mission of the Republic of Suriname to the Organization of American States, issued in Washington, D.C., on May 2, 1989; the written complaint by Leo Gangaram Panday; the testimony of Messrs. Leo Gangaram Panday and Dropati Gangaram Panday at the public hearing; the victim's airline ticket; the annotation and stamp placed in the victim's passport by the authorities of the Kingdom of the Netherlands; the report of the Military Police Corps of Suriname signed by Achong J.G., Ensign of the Military Police, on November 17, 1988).
- b. That, upon his arrival at the airport, the victim was detained by members of the Military Police, on the grounds that the reasons for his expulsion from Holland warranted further investigation, and that he was then placed in a cell within a shelter

for deportees located in the Military Brigade at Zanderij (cf. the complaint of Leo Gangaram Panday; the statement of the Government Agent in his counter-memorial; the report of the Military Police Corps of Suriname signed by Achong J. G., Ensign of the Military Police Corps; the report of proceedings drawn up by R. S. Wolfram, Police Inspector of the Technical Service of Investigations and Inspections of Paramaribo, signed on November 15, 1988).

c. That the victim remained in detention, without being brought before a tribunal, from the night of Saturday, November 5, until the early hours of Tuesday, November 8, 1988, when his lifeless body was discovered (cf. the complaint of Leo Gangaram Panday; the charge brought before the Attorney General of the Court of Justice by Drobotie Sewcharan, the victim's widow, signed in Suriname on November 11, 1988; the statement of the Government Agent in his counter-memorial; the report of the Military Police Corps of Suriname signed by Achong J. G., Ensign of the Military Police Corps).

44. The Court notes, by way of introduction, that the records do not contain sufficient evidence to enable verification of certain statements contained in the Commission's memorial, according to which the victim and his family were not informed of the reasons for his detention, in flagrant violation of the provision contained in Article 7(4) of the Convention. Rather, the record shows that the victim himself, when he was detained at the airport, said to his relatives: *"I've got problems;"* that in the early hours of the day following the abovementioned detention, the victim's brother, Leo Gangaram Panday, was informed by the Military Police that the reason for the detention was the fact that Asok Gangaram Panday had been expelled from Holland and, furthermore, that the latter had told the guard at the shelter *"that he had been expelled from Holland, even though he had of his own free will reported to the Immigration Police."*

45. The Court must now determine whether the detention of Asok Gangaram Panday by members of the Military Police of Suriname constitutes the alleged illegal or arbitrary acts or a violation of the victim's right to be brought promptly before a judge or other officer authorized by law to exercise judicial functions, and whether it is appropriate to

charge Suriname with such acts and, if so, to declare its international responsibility under Article 7(2), 7(3) and 7(5) of the Convention.

46. Article 7 of the Convention reads as follows:

1. Every person has the right to personal liberty and security.

2. No one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the constitution of the State Party concerned or by a law established pursuant thereto.

3. No one shall be subject to arbitrary arrest or imprisonment.

[. .]

5. Any person detained shall be brought promptly before a judge or other officer authorized by law to exercise judicial power [. .]

47. This provision contains specific guarantees against illegal or arbitrary detentions or arrests, as described in clauses 2 and 3, respectively. Pursuant to the first of these provisions, no person may be deprived of his or her personal freedom except for reasons, cases or circumstances expressly defined by law (material aspect) and, furthermore, subject to strict adherence to the procedures objectively set forth in that law (formal aspect). The second provision addresses the issue that no one may be subjected to arrest or imprisonment for reasons and by methods which, although classified as legal, could be deemed to be incompatible with the respect for the fundamental rights of the individual because, among other things, they are unreasonable, unforeseeable or lacking in proportionality.

48. In the instant case, it is impossible for the Court to determine whether or not the detention of Asok Gangaram Panday was for *"the reasons and under the conditions established beforehand"* by the Constitution of that State or by laws promulgated pursuant thereto, or whether that Constitution or those laws were compatible with the standards of reasonableness, foreseeability and proportionality which must

characterize any arrest or legal detention for it not to be deemed arbitrary. Indeed, the record contains no convincing arguments in favor of one thesis over the other, except for the statements of the parties, as follows:

a. The Commission's assertion that "*[i]t has been irrefutably proved that his detention was illegal, since it lasted longer than the six hours authorized under Surinamese law [. . .]*"

b. The Government Agent's assertion that "*the authorities of Suriname acted pursuant to the provisions contained in Articles 52 clause 2) and 48 and 56 of the Code of Criminal Procedure [. . .]*"

49. The Court has maintained that "*in proceedings to determine human rights violations the State cannot rely on the defense that the complainant has failed to present evidence when it cannot be obtained without the State's cooperation*" (**Velásquez Rodríguez Case, Judgment of July 29, 1988. Series C No. 4, para. 135; Godínez Cruz Case, Judgment of January 20, 1989. Series C No. 5, para. 141**). In the exercise of its judicial functions and when ascertaining and weighing the evidence necessary to decide the cases before it, the Court may, in certain circumstances, make use of both circumstantial evidence and indications or presumptions on which to base its pronouncements when they lead to consistent conclusions as regards the facts of the case, particularly when the respondent State has assumed an uncooperative stance in its dealings with the Court.

50. The record shows that, by order of the President dated July 10, 1992, the Government was required to provide the official texts of the Constitution and of the substantive and criminal procedure laws governing cases of detention in its territory on the date on which Asok Gangaram Panday was detained. The Government did not produce the texts in question for the record, nor did it give any explanation for the omission.

51. In view of the foregoing, the Court infers from the position taken by the Government that Mr. Asok Gangaram Panday was illegally detained by members of the Military Police of Suriname when he arrived from Holland at Zanderij Airport. It is, therefore, not necessary for the Court to express an opinion with regard to the reported arbitrariness.

ness of that measure or the fact that he was not brought promptly before a competent judicial authority.

VII

52. As for the torture to which Mr. Asok Gangaram Panday was allegedly subjected during the time he was kept in detention by the Military Police authorities, the Court finds as follows:

a. The videotape supplied by the Commission in support of its allegations and which depicts the preparation of the body of Asok Gangaram Panday was taken on November 15, 1988, that is, one week after the victim's death, according to an uncontested statement made by witness Dr. M. A. Vrede during the public hearing. Witness Leo Gangaram Panday, the petitioner, contradicted himself with regard to the date of taping.

b. The report of forensic pathologist Richard J. Baltaro, which was presented by the Commission, but was not confirmed before the Court, asserts that "*[u]nfortunately, the bad quality of the tape makes it difficult to arrive at a precise diagnosis.*" This is corroborated by the forensic reports ordered by the Court to furnish better proof, which state that: "*In view of the bad quality of the recording of the cassette, [. . .] all of the takes were rejected because they were technically unreliable for an analysis of the case*" (Report of the Department of Forensic Medicine of the Bureau of Judicial Investigation of Costa Rica); and that, "*[t]he videotape is of poor technical quality, with added putrefactive phenomena, which makes it impossible to give a reliable assessment. We therefore abstain from any comments*" (Report of the General Division of Forensic Medicine of the Technical Corps of the Judicial Police of Venezuela).

c. In the report of proceedings drawn up on November 15, 1988, R. S. Wolfram, Police Inspector detailed to the Technical Service of Investigations and Inspections of Paramaribo, declares that "*[a]s far as could be observed, no signs of external violence were found on the body*" of the victim.

d. In the letter dated November 18, 1988, from the Minister of Foreign Affairs of the Kingdom of the Netherlands to the Lower Chamber of the States General at The Hague, which was submitted as proof by the Commission, it is stated that "*[t]he post mortem examination was carried out by a physician in good standing. According to reports, the body did not exhibit any signs of physical violence.*"

53. Despite the foregoing, the Court cannot fail to consider the fact that, during the public hearing, the Commission introduced a new issue for consideration that had not been contained in either its application or its memorial: the alleged existence of injuries to the testicles of the victim, as described in the testimony given by the petitioner, Leo Gangaram Panday, and in the forensic autopsy report on the victim signed on November 11, 1988, by Dr. M. A. Vrede, pathologist. In that report, after certifying that the body showed no other peculiarities or signs of extravasation, Dr. Vrede placed on record the fact that the scrotum exhibited "*extravasation on the left and right; more pronounced on the left side.*"

54. In his personal testimony to the Court, Dr. M. A. Vrede, called as a witness by the Government and having reference to the public viewing of the contents of the videotape of the victim's body, stated the following, among other things:

There was damage to the skin but not to the testicles.

This hemorrhage [in the pubic area] could have been occasioned by violent blows [. . .] brute force, or by a blow to the area where the testicles and pubic parts are. The hemorrhaging in this area was very superficial [. . .] It was a fresh hemorrhage that occurred shortly before death. This hemorrhage must have presented itself shortly before death. It was a fresh hemorrhage.

55. The forensic reports ordered by the Court from the Department of Forensic Medicine of the Bureau of Judicial Investigations (OIJ) of Costa Rica and the Technical Corps of the Judicial Police of Venezuela to furnish better proof, which contain a technical evaluation of all the evidence, record observations of interpretative value regarding the alleged torture to which, according to the Commission, the victim was subject-

ed, as well as the alleged injuries to his scrotum, all of which the Court has taken into consideration.

- a. The report of the OIJ of Costa Rica states the following:

The autopsy examination [. . .] described scrotal ecchymosis and hemorrhagic infiltration in the prepubic fatty tissue, as well as congestion of the vessels of the seminal cord [and] [m]entioned post-mortem (*sic*) eruptions of the skin which we interpret to be (based on our own translation from the Dutch) cadaverous lividities.

[And, as for the lesions,] the ecchymosis in the pubis and scrotum, with a small internal hemorrhage in the subcutaneous fatty tissue and congestion of internal structures in the genitals, points to the mechanical effect of a traumatism that produced that simple contusion.

Diagnosis:

[. . .]

2 - Simple contusion in the scrotum

3 - Simple contusion in the prepubic tissue.

- b. In a follow-up note dated February 22, 1993, the abovementioned Department of Forensic Medicine added that "*the contusion described in the genital and pubic area of Mr. Ganday (sic) entails a vital act, which means that it was produced while he was alive and was traumatic in origin.*"

- c. The Report of the General Division of Forensic Medicine of the Technical Corps of the Judicial Police of Venezuela places on record that

[With respect to the photographic material] [t]he disposition of the cadaverous lividities is very evident [. . .] No bruises, ecchymosis or other evidence of traumatism can be observed, but the phenomenon known as lividities [. . .] difficult to define due to the

quality of the photographic material and the distance from which the photograph was taken. In any event, it appears to be a small flayed area in the scapular region, probably caused by the weight of the body upon hitting the wall when he jumped to hang himself.

There is no physical evidence [. . .] [that he had been tortured] in the photographs taken of the cadaver.

d. The follow-up report of the aforementioned General Division of Forensic Medicine regarding the observations made by Dr. M. A. Vrede during the public hearing states that:

The greater part of the comments and contradictions in the information supplied by the videotape [during the public hearing], because the tape is of low technical quality and was taken long after the death took place, [. . .] was the reason that we abstained from making any comments, as it is risky to issue opinions based on this material.

56. Having examined all of the above elements, the Court considers that no conclusive or convincing indications result from the evaluation thereof that would enable it to establish the truth of the charge that Mr. Asok Gangaram Panday was subjected to torture during his detention by the Military Police of Suriname. Accordingly, the Court cannot conclude, as the Commission requests, that in the instant case there exists a presumption that Article 5(2) of the Convention protecting the right to humane treatment was violated. And the Court so finds.

VIII

57. As regards the death of Mr. Asok Gangaram Panday while in detention and confinement in the "*shelter for deportees located in [the] complex of the Zanderij Brigade,*" the Court is of the following opinion:

a. The Court finds that it has been proved that Mr. Asok Gangaram Panday died while imprisoned in the custody of members of the Military Police of Suriname (cf. the report of the Military Police Corps of Suriname, signed by Achong J. G., Ensign of the Military Police, on November 17, 1988; the report of proceedings drawn up by R. S. Wolfram, Police Inspector of the Technical Service of Investigations and Inspections of Paramaribo, dated November 8, 1988; the autopsy report and death certificate of Mr. Choeramoenipersad (Asok) Gangaram Panday, both signed by Dr. M. A. Vrede, pathologist, on November 11 and 14, 1988, respectively).

b. It has also been proved that the victim died by mechanical asphyxia as a result of hanging (cf. the autopsy report signed by Dr. M. A. Vrede; the opinion of Dr. Richard J. Baltaro, anatomical pathologist, dated February 4, 1990, issued at the request of Professor Claudio Grossman, adviser to the Commission; the forensic report of the Department of Forensic Medicine of the Bureau of Judicial Investigations of Costa Rica issued in November, 1992; the expert forensic testimony prepared by the General Division of Forensic Medicine of the Technical Corps of the Judicial Police of Venezuela; the photographs of the victim's hanging body).

58. As for the etiology of the death of Asok Gangaram Panday in support of a probable hypothesis of homicide, as suggested by the text of the Commission's memorial which states that, "*on March 20, [1990], Professor Grossman sent to the Commission a copy of Dr. Vrede's certificate dated November 14, 1988, in which he indicates that Asok Gangaram Panday died as a result of asphyxia caused by violence*" (underlined by the Court), the records show no evidence in this regard.

59. The death certificate for purposes of cremation includes the statement of the forensic doctor that "*the victim died a violent death*" and also indicates that the certificate was issued on the basis of a model or standard form used by the Anatomical Pathology Laboratory of the Academic Hospital of Paramaribo and that another copy, attached to the record, states the contrary, that is, "*it is not a case of violent death.*" Since it has already been determined that the cause of death of Asok

Gangaram Panday was asphyxia resulting from hanging, it follows that his death could hardly be certified as non-violent, that is, brought on by natural causes.

60. Suicide is the most probable hypothesis contained in the record, and has been endorsed by the Department of Forensic Medicine of the Bureau of Judicial Investigations of Costa Rica and by the expert forensic testimony of the Technical Corps of the Judicial Police of Venezuela. The latter's testimony reads as follows:

On the basis of the total lack of physical violence, the position of the body when it was found, the characteristics of the noose and its position relative to the washbasin, the apparent lack of lesions in the larynx or trachea, except for 'hemorrhage in the neck muscles' and the presence of congestion and pulmonary edema, we conclude that the cause of death was: 'MECHANICAL ASPHYXIA BY HANGING, SECONDARY TO VASOVAGAL SYNDROME OR ACUTE CEREBRAL CIRCULATORY INSUFFICIENCY RESULTING FROM COMPRESSION OF THE JUGULAR VEINS AND/OR CAROTID ARTERIES. THE EVIDENCE PRODUCED FOR THIS EXAMINATION: PHOTOGRAPHIC MATERIAL AND AUTOPSY REPORT, FAVOR SUICIDE AS THE REASON.' (Capitals in the original.)

61. The Court considers that although it is true that the record contains sufficient elements to support the finding that the death of Asok Gangaram Panday was caused by hanging, there is no convincing proof on the etiology of his death that would make it possible to attribute responsibility for that death to Suriname. The above conclusion is in no way modified by the fact that the Agent of the Government admitted in his countermemorial that the victim's mood had been affected by his expulsion from the Netherlands and that this psychological condition had been intensified by his detention. In effect, to deduce from such a statement any type of admission of responsibility by the Government is to strain logic. It is, however, possible to conclude from it that other factors that occurred prior to his detention also affected the victim's state of mind.

62. Nevertheless, it could be argued that the fact that the Court, by inference, considers that the victim's detention was illegal, should also

lead it to conclude that there was a violation of the right to life by Suriname on the grounds that, had Suriname not detained that person, he probably would not have lost his life. However, the Court believes that on the matter of the international responsibility of States for violations of the Convention

[w]hat is decisive is whether a violation of the rights recognized by the Convention has occurred with the support or the acquiescence of the government, or whether the State has allowed the act to take place without taking measures to prevent it or to punish those responsible. Thus, the Court's task is to determine whether the violation is the result of a State's failure to fulfill its duty to respect and guarantee those rights, as required by Article 1(1) of the Convention. (*Velásquez Rodríguez Case, supra 49, para. 173; Godínez Cruz Case, supra 49, para. 183.*)

The circumstances surrounding this case make it impossible to establish the responsibility of the State in the terms described above because, among other things, the Court is fixing responsibility for illegal detention by inference but not because it has been proved that the detention was indeed illegal or arbitrary or that the detainee was tortured. And the Court so finds.

IX

63. Finally, the Commission also charged an alleged violation of Articles 2 and 25 of the Convention, in the following terms:

The case of Mr. Gangaram Panday shows that in Suriname the exercise of the rights and freedoms mentioned in the Convention is not guaranteed when the violations are committed by military personnel.

[. . .]

The violations of human rights committed by the military authorities of Suriname against which the population is absolutely defenseless, as in the case of Mr. Gangaram Panday, represent a clear violation of the obligation to provide judicial protection [. . .]

64. The Court notes that, in principle, the confirmation of a single case of violation of human rights by the authorities of a State is not in itself sufficient ground to presume or infer the existence in that State of widespread, large-scale practices to the detriment of the rights of other citizens.

65. In addition, after completing the evaluation of the various proofs called for and furnished by the parties, the record of the instant case reflects the following:

a. That in the First and Second Reports on the Human Rights Situation in Suriname for the years 1983 and 1985, the Commission states that it has confirmed that, *"a number of fundamental human rights established in the American Declaration of the Rights and Duties of Man continue to be violated by the Government of Suriname;"* however, in the Commission's Annual Report for 1987-1988, approved at the Commission's 74th Session, it is expressly recognized that

Suriname has taken significant steps to establish the rule of law and democratic institutions and has assumed international obligations in the Inter-American community by ratifying the treaties referred to above, all of which indicate a desire to respect and promote human rights. (Underlined by the Court)

b. That Mrs. Drogatie Sewcharan, the victim's widow, filed a complaint regarding the events referred to in this record with the Attorney General of the Court of Justice in Paramaribo, on November 11, 1988.

c. That in his deposition before the Court the victim's brother, Leo Gangaram Panday, replied as follows to the question, *"[h]ave you experienced lack of cooperation by the authorities of Suriname in your efforts to obtain justice?"*: *"I left everything in the hands of my lawyer."* And, later, when questioned whether, *"[i]t has been possible to obtain decisions on this case in Suriname,"* he answered vaguely that, *"[I] heard nothing further on the matter."*

d. That in the note signed by the Minister of Justice and Police of Suriname which was sent to the Commission on May 2, 1989, in response to the request made by the latter in its note of

February 6, 1989, it is stated that:

[T]he Prosecutor General ordered an autopsy to be carried out; the Prosecutor General [. . .] investigated the circumstances and reasons for the detention; [t]hat in addition to the foregoing, the Department of Technical and Criminal Investigations and the Department of Identifications drew up a report; [and] [t]hat the Attorney General had considered it important to look into the possibility that the Military Police Officer [. . .] might be guilty of unlawful deprivation of liberty or illegal detention.

66. The Commission's assertion, contained in the preambular paragraphs of its report on the instant case, that the Government, "*enacted an amnesty Decree freeing all the guilty parties of their criminal responsibility,*" is not supported in the record by anything other than the statement of the complainant.

67. In view of the above, this Court concludes that there is no proof of the violation of Articles 2 and 25 of the Convention charged in the instant case. And it so finds.

X

68. Since the Court has concluded, by inference, that Asok Gangaram Panday was illegally detained by members of the Military Police of Suriname, this violation of the Convention must be ascribed to that State.

69. Consequently, the provisions of Article 63(1) of the Convention are here applicable. The Court notes that in the instant case, since the victim is deceased, it is impossible to ensure him the enjoyment of his right or to make full reparation for the consequences of the measure that constituted the breach thereof. Hence, in accordance with the provision cited, the payment of fair compensation is in order.

70. Since Suriname's responsibility has been inferred, the Court decides to set a nominal amount as compensation, one half to be paid to the widow and the other half to the victim's children, if any. If there are no children, their portion shall be added to the widow's half.

71. Also based on the fact that Suriname's responsibility has been inferred, the Court considers that it must dismiss the request for an award of costs.

XI

Now, therefore,

THE COURT

unanimously,

1. Declares that Suriname has violated its obligations to respect and to ensure the right to personal liberty set forth in Article 7(2) of the Convention, read in conjunction with Article 1(1) thereof, to the detriment of Asok Gangaram Panday.

unanimously,

2. Dismisses the request of the Commission that the State of Suriname be found responsible for the violation of Articles 5(1), 5(2), 25(1) and 25(2) of the Convention, to the detriment of Mr. Asok Gangaram Panday.

by four votes to three,

3. Dismisses the request of the Commission that the State of Suriname be found responsible for the violation of Article 4(1) of the Convention, to the detriment of Mr. Asok Gangaram Panday.

Judges Sonia Picado-Sotela, Asdrúbal Aguiar-Aranguren and Antônio A. Cançado Trindade dissenting.

unanimously,

4. Sets the amount that the State of Suriname must pay to the persons indicated in paragraph 70 of this judgment, and as stipulated therein, at US\$10,000 (ten thousand dollars of the United States of America) or the equivalent amount in Dutch Florins, payable within six months of the date of this judgment.

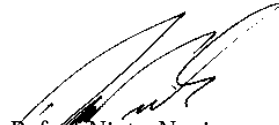
unanimously,

5. Decides that the Court shall supervise the payment of the indemnification ordered and shall only close the file thereafter.

unanimously,

6. Decides that there shall be no award of costs.

Done in Spanish and in English, the Spanish text being authentic, in San Jose, Costa Rica, this twenty-first day of January, 1994.



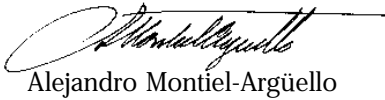
Rafael Nieto-Navia
President



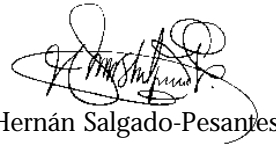
Sonia Picado-Sotela



Héctor Fix-Zamudio



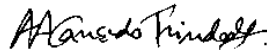
Alejandro Montiel-Argüello



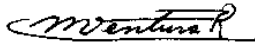
Hernán Salgado-Pesantes



Asdrúbal Aguiar-Aranguren



Antônio A. Cançado Trindade



Manuel E. Ventura-Robles
Secretary

So ordered,



Rafael Nieto-Navia
President



Manuel E. Ventura-Robles
Secretary

Judge Máximo Pacheco-Gómez, who was present at the hearings on the merits, excused himself from participating in the Session during which this judgment was drawn up and signed.

**DISSENTING OPINION OF JUDGES PICADO-SOTELA,
AGUIAR-ARANGUREN AND CANÇADO TRINDADE**

1. We, the undersigned judges, dissent from the majority opinion with respect to operative point 3 of the judgment, in which the Court dismisses the responsibility of the respondent State for the violation of the right to life of Mr. Asok Gangaram Panday.

2. It is our opinion that from the very moment that the Court established the responsibility of the respondent State for the illegal detention of Mr. Gangaram Panday, albeit by inference, it became necessary for it to accept the consequences of such a finding insofar as the protection of the victim's right to life is concerned. This conclusion follows, in particular, because the respondent State admitted in its own counter-memorial that Asok Gangaram Panday's detention " [intensified] *his depression and contempt for life*," something that cannot be separated from the cause of death. In any event, the reason why the Court was unable to go into greater depth in its argumentation as to whether or not the detention reported was illegal or arbitrary was that it did not have before it the legislative texts it had expressly requested of the respondent State.

3. The right to life and the guarantee and respect thereof by States cannot be conceived in a restrictive manner. That right does not merely imply that no person may be arbitrarily deprived of his or her life (negative obligation). It also demands of the States that they take all appropriate measures to protect and preserve it (positive obligation).

4. The international protection of human rights, as it relates to Article 4(1) of the American Convention on Human Rights, has a preventive dimension, in which the obligation to act with due diligence assumes graver implications when dealing with illegal detentions. Due diligence imposes on the States the obligation to prevent, within reason, those situations which - as in the case now before us - could lead, sometimes even by omission, to the denial of the inviolability of the right to life.


5. Based on the foregoing, we, the undersigned Judges, consider that in the instant case the responsibility of the respondent State should have been determined on the basis of Articles 7(2) and 4(1) of the Convention read together with Article 1(1) thereof.




Sonia Picado-Sótela



Asdrúbal Aguiar-Aranguren



Antônio A. Cançado Trindade



Manuel E. Ventura-Robles
Secretary