

Gangaram Panday v. Suriname

ABSTRACT¹

This case is about the arbitrary arrest, detention, and death while in State custody of a Surinamese citizen upon his return to Suriname after having been expelled from the Netherlands. Although the Court found the victim's arrest and detention to be arbitrary, it could not hold Suriname responsible for his death, nor find evidence of cruel, inhuman, or degrading treatment, nor a violation of his rights to judicial protection and effective domestic remedies.

I. FACTS

A. Chronology of Events

November 5, 1988: Mr. Asok Gangaram Panday arrives at Zanderij Airport in Suriname from Holland around 8:00 p.m.² Police detain and arrest him shortly after his arrival.³ Mr. Leo Gangaram Panday and Mrs. Dropati Gangaram Panday, Mr. Asok Gangaram Panday's brother and wife respectively, witness police lead their next of kin to a room.⁴ Police place him in a cell of a shelter for deportees located in the Military Brigade at Zanderij.⁵

November 6, 1988: Mr. Leo Gangaram Panday repeatedly calls the Military Police at the airport.⁶ At 4:30 p.m., the commanding officer informs him that the police are going to transfer his brother to Fort Zeeland that night because he is under arrest for being expelled from Holland.⁷ Mr. Asok Gangaram Panday is never brought before a tribu-

1. Nathaniel Reinhardt, Author; Jennifer Toghian, Editor; Hayley Garscia, Chief IACHR Editor; Cesare Romano, Faculty Advisor.

2. *Gangaram Panday v. Suriname*, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 16, ¶¶ 3(a), 43(a) (Jan. 21, 1991).

3. *Id.* ¶¶ 3(a)-(b).

4. *Id.*

5. *Id.* ¶ 43(b).

6. *Id.* ¶¶ 3(a)-(b).

7. *Id.*

nal.⁸

November 8, 1988: Police discover Mr. Asok Gangaram Panday's lifeless body in his cell and inform Mr. Leo Gangaram Panday that his brother hung himself.⁹ Mr. Leo Gangaram Panday and Attorney Geeta Gangaram Panday meet with Attorney General Reeder¹⁰, who knows nothing about the case.¹¹ All three proceed with Mr. Ramón A. de Freitas, a Military Judge Advocate, to the morgue where they find the victim's body, which has hematomas on the chest and stomach and an orifice on the back,¹² wearing only underwear and a short belt around his neck.¹³ There is a cut on his lip and one eye is black and blue.¹⁴

November 15, 1988: Mr. Leo Gangaram Panday videotapes the body before cremation and, after removing the deceased's underwear, observes that his "testicles had been crushed."¹⁵

B. Other Relevant Facts

[None]

II. PROCEDURAL HISTORY

A. Before the Commission

December 17, 1988: The Commission receives a petition on behalf of Mr. Asok Gangaram Panday against the State.¹⁶ The petition states that the first autopsy report attributed death to suicide; the second report concluded death by asphyxiation, but could not ascribe responsibility; and the third report concluded that the death had been caused by violence.¹⁷

Further, the petition states the following: the Attorney General informed Attorney Geeta Gangaram Panday that Mr. Asok Gangaram

8. *Id.* ¶ 43(c).

9. *Id.* ¶¶ 3(a)-(b), 43(c).

10. The Court documents do not provide a full name for Attorney General Reeder.

11. *Gangaram Panday v. Suriname, Merits, Reparations and Costs*, ¶ 3(c).

12. *Id.*

13. *Id.*

14. *Id.*

15. *Id.* ¶¶ 4(e), 51.

16. *Gangaram Panday v. Suriname, Preliminary Objections, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 12*, ¶ 1 (Dec. 4, 1991).

17. *Gangaram Panday v. Suriname, Merits, Reparations and Costs*, ¶ 3(d).

Panday committed suicide; the family never received a written report of the incident; and Attorney Geeta Ganagaram Panday informed Leo that he should not pursue the case with State authorities because it is dangerous.¹⁸

December 21, 1988: The Commission requests information from the State surrounding the death of Mr. Asok Gangaram Panday.¹⁹ Specifically, the Commission request copies of all the autopsy findings, as well as *post mortem* and pathological reports.²⁰

May 3, 1989: The Commission receives a letter from the State, confirming that Mr. Asok Gangaram Panday was taken into custody by Military Police at the Zanderij Airport and brought to a building for displaced persons.²¹

January 29, 1990: Mr. Leo Gangaram Panday reports, in a letter, that certain member of the Military Police asserted that Mr Asok Gangaram Panday was tortured in Fort Zeeland, not Zanderij, but is afraid to testify.²² The letter also asserts that the particular individuals in the morgue contend that Mr. Asok Gangaram Panday died before the date stated on the official report.²³

February 4, 1990: After viewing a videotape of Mr. Asok Gangaram Panday's body being washed, anatomical pathologist Dr. Richard Baltaro, Ph.D., communicates to Professor Claudio Grossman, Mr. Leo Gangaram Panday's representative, that Mr. Asok Gangaram Panday's death was not natural.²⁴ Dr. Baltaro states that the person died by hanging, but could not determine whether the death was accidental, a suicide, or a homicide.²⁵ The doctor ascribes the death to "unknown causes," which warrant further investigation.²⁶

March 21, 1990: Professor Grossman transmits Dr. Baltaro's report to the Commission.²⁷ He includes a copy of the death certificate signed by

18. *Id.* ¶ 3(f).

19. *Id.* ¶ 4.

20. *Id.*

21. *Id.* ¶ 5(a).

22. *Id.* ¶ 7.

23. *Id.*

24. *Id.* ¶ 8.

25. *Id.*

26. *Id.*

27. *Id.*

anatomical pathologist Dr. M. A. Vrede of the Anatomical Hospital of Paramaribo, which states that Mr. Asok Gangaram Panday died a "violent death."²⁸

May 11, 1990: The State transmits the same death certificate to the Commission, which includes the statement that, "the victim died a violent death, and at the time of death was not suffering from any type of infectious disease."²⁹ Additionally, the State includes Dr. Verde's autopsy report which states that, "it is assumed that the cause of death was asphyxia resulting from hanging."³⁰

May 15, 1990: The Commission issues Report No. 04/90, which determines that attempts at friendly settlement are futile and makes several recommendations to the State.³¹ First, The Commission recommends the State to give effect to Article 1 (Obligation to Respect Rights) and Article 2 (Obligation to Give Domestic Legal Effect to Rights) by assuring respect for and enjoyment of the rights contained therein.³² Second, the Commission recommends the State to conduct an investigation of the facts reported in order to prosecute and punish any persons responsible and take necessary measures to prevent the occurrence of similar acts in the future.³³ Third, the Commission recommends the State to pay compensation to the injured parties.³⁴ Finally, the Commission recommends that the State report measures taken to enact the previously mentioned recommendations within ninety days.³⁵

B. Before the Court

August 27, 1990: The Commission submits the case to the Court after the State failed to adopt its recommendations.³⁶

December 13, 1990: The State appoints Professor Antônio Augusto Cançado Trindade of Brazil as judge *ad hoc*.³⁷

28. *Id.*

29. *Id.* ¶ 5(a).

30. *Id.* ¶ 10.

31. *Id.* ¶ 12.

32. *Id.*

33. *Id.*

34. *Id.*

35. *Id.*

36. *Id.* ¶ 1.

37. *Id.*

June 28, 1991: The State submits three preliminary objections to the Court.³⁸

December 4, 1991: The Court unanimously rejects the State's preliminary objections.³⁹

Regarding the State's first preliminary objection, the State argues that the Commission abused the right of petition by filing the case with the Court.⁴⁰ Specifically, the Commission appropriated for itself the right to find a State responsible for violations of human rights, breached the confidentiality rule, improperly proceeded in determining evidence, and lacked proof to file the petition.⁴¹ The Court responds by stating that the Commission shall draw a report and state its conclusions if a settlement is not reached, which is exactly what occurred.⁴² As to the second point, the Court rules that the Commission merely referenced the reports in contention and did not violate the confidentiality rule.⁴³ Next, the Court concludes no proof supporting the argument that the Commission made an irregular presumption of particular facts.⁴⁴ Finally, the Court refuses to deal with the lack of proof contention.⁴⁵

Regarding the State's second preliminary objection, the State argues non-exhaustion of domestic remedies.⁴⁶ The Court responds by stating that the State did not interpose this particular objection before the Commission.⁴⁷ As a result, the Court concludes that the State tacitly waived this objection and therefore, cannot raise it now.⁴⁸

Regarding the State's third preliminary objection, the State argues that the Commission did not fully comply with the provisions of Article 47 and Article 51 of the Convention.⁴⁹ The Court refuses to deal with this objection because the objection was not substantiated by the State.⁵⁰

July 10, 1992: The President of the Court requests the State to submit

38. Gangaram Panday v. Suriname, Preliminary Objections, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 12, ¶ 8 (Dec. 4, 1991).

39. *Id.* ¶ 12.

40. *Id.* ¶ 29.

41. *Id.*

42. *Id.* ¶ 31.

43. *Id.* ¶ 33.

44. *Id.* ¶¶ 34, 35.

45. *Id.* ¶ 36.

46. *Id.* ¶ 37.

47. *Id.* ¶ 39.

48. *Id.*

49. *Id.* ¶ 41.

50. *Id.*

technical opinions on the criminal and psychiatric aspects of the case.⁵¹

November 25, 1992: The Department of Forensic Medicine of the Supreme Court of Justice of Costa Rica submits a forensic medical report in response to the request of the President of the Court.⁵²

November 30, 1993: The Court receives a forensic report issued by the Division of Forensic Medicine of the Technical Corps of the Judicial Police of Venezuela.⁵³

January 5, 1994: The Department of Forensic Medicine of the Technical Corps of the Judicial Police of Venezuela submits a follow up report to the Court as to whether the relevant transcript from the previously held public hearings, and the statements contained therein, could affect the conclusions reached in its previous report.⁵⁴

1. Violations Alleged by Commission⁵⁵

Article 1 (Obligation to Respect Rights)

Article 2 (Obligation to Give Domestic Legal Effect to Rights)

Article 4(1) (Prohibition of Arbitrary Deprivation of Life)

Article 5(1) (Right to Physical, Mental, and Moral Integrity)

Article 5(2) (Prohibition of Torture, and Cruel, Inhumane or Degrading Treatment)

Article 7(1) (Right to Personal Liberty and Security)

Article 7(2) (Prohibition of Deprivation of Liberty Unless for Reasons and Conditions Previously Established by Law)

Article 7(3) (Prohibition of Arbitrary Arrest or Imprisonment)

Article 25(1) (Right of Recourse Before a Competent Court)

Article 25(2) (Right to a Judicial Remedy) of the American Convention.

51. *Gangaram Panday v. Suriname, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 16, ¶ 30 (Jan. 21, 1991).*

52. *Id.* ¶ 32.

53. *Id.* ¶ 35.

54. *Id.* ¶ 36.

55. *Id.* ¶ 2.

2. Violations Alleged by Representatives of the Victims⁵⁶

Same Violations Alleged by Commission.

Sometime Before January 21, 1994: 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 submit *amici curiae* briefs to the Court.⁵⁷

III. MERITS

A. Composition of the Court⁵⁸

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 Augusto Cançado Trindade, Judge *ad hoc*

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

B. Decision on the Merits

January 21, 1994: The Court issues its Judgment on the Merits, Reparations, and Costs.⁵⁹

The Court found unanimously that Suriname had violated:

Article 7(2) (Prohibition of Deprivation of Liberty Unless for Reasons and Conditions Previously Established by Law), in relation to Article 1(1) the Convention, to the detriment of Mr. Asok Gangaram Pan-

56. Professor Claudio Grossman serves as representative of Mr. Leo Gangaram Panday. *Id.* ¶ 6.

57. *Id.* ¶ 37. The Judgment on Merits, Reparations and Costs does not provide the specific date(s) on which the briefs were submitted.

58. While seven regular judges normally preside over the Court, the President of the Court may request the State to appoint a Judge *ad hoc*. Here, only six regular judges participated in the decision, while the seventh was a Judge *ad hoc*. See generally *Gangaram Panday v. Suriname, Merits, Reparations and Costs*.

59. *Gangaram Panday v. Suriname, Merits, Reparations and Costs*.

day,⁶⁰ because:

The Court stated Article 7 (Right to Personal Liberty) contains specific guarantees against illegal or arbitrary detentions or arrests. The Court highlighted the second provision of the article, which addresses the issue that no individual may be subjected to arrests or imprisonment for reasons and methods deemed incompatible with fundamental human rights, either because they are “unreasonable, unforeseeable, or lacking in proportionality.”⁶¹ Here, the Court was unable to make this determination because the State failed to provide an official text of its Constitution as requested by the President of the Court on July 10, 1992.⁶² Further, the Court stated that the State could not rely on the defense that the representative failed to present evidence, when the evidence cannot be obtained without the State’s cooperation.⁶³ The Court inferred from the State’s failed production of its Constitution that Mr. Asok Gangaram Panday was illegally detained.⁶⁴

The Court unanimously found that Suriname did not violate:

Article 5(2) (Prohibition of Torture, and Cruel, Inhumane or Degrading Treatment) in relation to Article 1(1) of the Convention to the detriment of Mr. Asok Gangaram Panday,⁶⁵ because:

The Court did not find sufficient evidence that police tortured Mr. Asok Gangaram Panday.⁶⁶ First, the Court highlighted evidentiary facts of the case.⁶⁷ The Court found that the bad quality of the videotape taken after the victim’s death on November 15, 1988 made it impossible to give a reliable assessment to the Court, and a report drawn up by Police Inspector R. S. Wolfram concluded no observable signs of violence on the victim’s body.⁶⁸ Additionally, the Court highlighted a letter from the Minister of Foreign Affairs of the Kingdom of the Netherlands in which a physician in good standing carried out the examination and, according to the reports, concluded the victim did not exhibit any signs

60. *Id.* ¶ 2.

61. *Id.* ¶ 47.

62. *Id.* ¶¶ 48-51.

63. *Id.* ¶ 49.

64. *Id.* ¶ 51.

65. *Id.* ¶ 56.

66. *Id.*

67. *Id.* ¶¶ 52(a)-(d).

68. *Id.* ¶¶ 52(a)-(c).

of physical violence.⁶⁹

Next, the Court examined a new issue regarding injuries to the victim's testicles, which the Commission failed to raise in either its application or memorial.⁷⁰ The Court pointed out that Dr. M. A. Vrede's autopsy report concluded no signs of extravasation of the scrotum, but he placed on record the fact that the scrotum exhibited extravasation.⁷¹ In a statement to the Court, Dr. Vrede testified that there was damage to the skin but not the testicles, the hemorrhage was fresh, and occurred shortly before death.⁷² The report from the Department of Forensic Medicine of the Supreme Court of Justice of Costa Rica concluded that the victim's scrotum injury occurred while he was alive and the injury was traumatic in origin.⁷³ The report from the Department of Forensic Medicine of the Technical Corps of the Judicial Police of Venezuela concluded no physical evidence attributable to torture and that the weight of the body hitting the wall when the victim hung himself probable cause the injury to the victim's scrotum.⁷⁴ The Department of Forensic Medicine of the Technical Corps of the Judicial Police of Venezuela's follow-up report abstained from commenting on the issue due to the several contradictions posited by the videotape and public hearings.⁷⁵ Based on all of this, the Court decided not to hold the State responsible for violating Article 5(2) (Prohibition of Torture, and Cruel, Inhumane or Degrading Treatment).⁷⁶

Article 4(1) (Prohibition of Arbitrary Deprivation of Life) in relation to Article 1(1) of the Convention to the detriment of Mr. Asok Gangaram Panday,⁷⁷ because:

The Court found the State responsible for an illegal detention by inference but there was insufficient evidence to prove the State responsible for an illegal, arbitrary detention or torture.⁷⁸ The Court determined that the victim died while in custody and that the victim died as a result

69. *Id.* ¶¶ 52(d).

70. *Id.* ¶ 53.

71. *Id.*

72. *Id.* ¶ 54.

73. *Id.* ¶¶ 55(a)-(b).

74. *Id.* ¶ 55(c).

75. *Id.* ¶ 55(d).

76. *Id.* ¶ 56.

77. *Id.* ¶ 62.

78. *Id.*

of hanging.⁷⁹ Although the Dr. Vrede's death certificate supported a hypothesis of homicide, the Court ruled suicide as the more probable hypothesis, supported by the Department of Forensic Medicine of the Supreme Court of Justice of Costa Rica's report and expert forensic testimony of the Department of Forensic Medicine of the Technical Corps of the Judicial Police of Venezuela.⁸⁰ Ultimately, the Court held the State not responsible for a violation of Article 4(1) (Prohibition of Arbitrary Deprivation of Life) because of insufficient evidence.⁸¹

Article 2 (Obligation to Give Domestic Legal Effect to Rights), Article 25 (Right to Judicial Protection) of the Convention to the detriment of Mr. Asok Gangaram Panday,⁸² because:

The Court stated that a single case of violation of human rights by authorities of the State does not constitute a widespread, large-scale practice of human rights violations.⁸³ The record reflected that the victim's widow, Mrs. Dropati Gangaram Panday, filed the original complaint.⁸⁴ The victim's brother, Mr. Leo Gangaram Panday, answered that he left everything in the hands of his attorney in response to a deposition question concerning efforts to obtain justice.⁸⁵ Finally, a note submitted by the Commission stated that the Prosecutor General ordered an autopsy, investigated the reasons for the detention, the Department of Technical and Criminal Investigations filed a report, the Department of Identifications filed a report, and the Attorney General investigated the possibility that the military police officer was guilty of unlawful deprivation of liberty.⁸⁶ The Court found no proof in the record of the State's criminal responsibility other than the complaint itself.⁸⁷

C. Dissenting and Concurring Opinions

1. Dissenting Opinion of Judge Sonia Picado Sotela, Judge Asdrúbal Aguiar-Aranguren, and Judge Antônio Augusto Cançado Trindade

In a separate combined opinion, Judge Picado Sotela, Judge

79. *Id.* ¶¶ 57(a)-(b).

80. *Id.* ¶¶ 57(a)-(b).

81. *Id.* ¶ 62.

82. *Id.* ¶ 67.

83. *Id.* ¶ 64.

84. *Id.* ¶ 65(b).

85. *Id.* ¶ 65(c).

86. *Id.* ¶ 65(d).

87. *Id.* ¶ 66.

Aguiar-Arranguren, and Judge Cançado Trindade dissented from the majority in regards to the Court's decision not to hold the State in violation of Article 4(1) (Prohibition of Arbitrary Deprivation of Life).⁸⁸

The judges found that from the moment the Court established State responsibility for Mr. Asok Gangaram Panday's illegal detention, the State also became responsible for Mr. Asok Gangaram Panday's life.⁸⁹ The right to life is not a narrowly interpreted right and that due diligence by the State imposes an obligation to protect, within reason, the right to life.⁹⁰

IV. REPARATIONS

The Court ruled unanimously that the State had the following obligations:

A. Specific Performance (Measures of Satisfaction and Non-Repitition Guarantee)

[None]

B. Compensation

The Court awarded the following amounts:

1. Pecuniary Damages

The State must pay a nominal amount of \$10,000, half going to the victim's widow and the other half to the victim's children.⁹¹ If the victim has no children, the children's half goes to the widow.⁹²

2. Non-Pecuniary Damages

[None]

3. Costs and Expenses

[None]

88. *Id.* "Dissenting" ¶ 1.

89. *Id.* "Dissenting" ¶ 2.

90. *Id.* "Dissenting" ¶ 4.

91. *Id.* ¶ 70, Operative Paragraphs, ¶ 4.

92. *Id.* ¶ 70.

4. Total Compensation (including Costs and Expenses ordered):

\$10,000

C. Deadlines

The State must pay the \$10,000 within six months of the date of this Judgment.⁹³

V. INTERPRETATION AND REVISION OF JUDGMENT

[None]

VI. COMPLIANCE AND FOLLOW-UP

[None]

VII. LIST OF DOCUMENTS

A. Inter-American Court

1. Preliminary Objections

[Gangaram Panday v. Suriname, Preliminary Objections, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 12 \(Dec. 4, 1991\).](#)

2. Decisions on Merits, Reparations and Costs

[Gangaram Panday v. Suriname, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 16 \(Jan. 21, 1994\).](#)

[Gangaram Panday v. Suriname, Merits, Reparations and Costs, Dissenting Opinion of Judge Sonia Picado Sotela, Judge Asdrúbal Aguiar-Arranguren, and Judge Antônio Augusto Cançado Trindade, Inter-Am. Ct. H.R. \(ser. C\) No. 16 \(Jan. 21, 1994\).](#)

3. Provisional Measures

[None]

93. *Id.*

4. Compliance Monitoring

[None]

5. Review and Interpretation of Judgment

[None]

B. Inter-American Commission

1. Petition to the Commission

[None]

2. Report on Admissibility

[Not Available]

3. Provisional Measures

[None]

4. Report on Merits

[Not Available]

5. Application to the Court

[None]

VIII. BIBLIOGRAPHY

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