

OEA/Ser.L/V/II
Doc. 253
11 October 2023
Original: English

REPORT No. 234/23
PETITION 1040-14
REPORT ON ADMISSIBILITY

EDGAR WILFRED RITFELD AND FAMILY
SURINAME

Approved electronically by the Commission on October 11, 2023.

Cite as: IACHR, Report No. 234/23. Petition 1040-14. Admissibility.
Edgar Wilfred Ritfeld and family. Suriname. October 11, 2023.

I. INFORMATION ABOUT THE PETITION

Petitioner:	G. R. Sewcharan
Alleged victim:	Edgar Wilfred Ritfeld
Respondent State:	Suriname
Rights invoked:	Articles 8 (right to a fair trial) and 25 (right to judicial protection) of the American Convention of Human Rights in conjunction with Article 1 (obligation to respect rights)

II. PROCEEDINGS BEFORE THE IACHR¹

Filing of the petition:	July 23, 2014
Additional observations during the initial assessment stage:	July 29, 2014
Notification of the petition to the State:	July 18, 2019
State request for extension:	September 18, 2019
Notification of the possible archiving of the petition:	December 15, 2021
Petitioner's response to the notification:	January 21, 2022
State's first response:	September 7, 2022

III. COMPETENCE

Competence <i>Ratione personae</i>:	Yes
Competence <i>Ratione loci</i>:	Yes
Competence <i>Ratione temporis</i>:	Yes
Competence <i>Ratione materiae</i>:	Yes, American Convention (deposit of instrument of ratification made on November 12, 1987)

IV. DUPLICATION OF PROCEDURES AND INTERNATIONAL *RES JUDICATA*, COLORABLE CLAIM, EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

Duplication of procedures and International <i>res judicata</i>:	No
Rights declared admissible	Articles 8 (right to a fair trial) and 25 (right to judicial protection) of the American Convention of Human Rights, in conjunction with Article 1 (obligation to respect rights)
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, in terms of Section VI
Timeliness of the petition:	Yes, in terms of Section VI

V. ALLEGED FACTS

1. The petition arises in the context of criminal proceedings against the alleged victim, Edgar Wilfred Ritfeld ("Mr. Ritfeld") for his purported involvement in a massacre that took place in 1982². According to the record, Mr. Riffled was accused of being one of several military officers who carried this massacre. The

¹ The observations submitted by each party were duly transmitted to the opposing party.

² According to the record, this massacre involved the killing of 15 Surinamese men at the behest of the military dictatorship that governed Suriname at that time.

principal complaint of the petition relates to an alleged delay in conducting and completing these criminal proceedings arising from the alleged involvement of Mr. Ritfeld in this massacre.

2. According to the petition, by letter of December 22, 2004, the public prosecution authorities (hereafter “the public prosecution”) notified the alleged victim that it was initiating “further prosecution³” in relation to his alleged involvement in the massacre. Based on the record, it appears that this prosecution was to be conducted by way of a military court martial (hereafter “military court martial” or “court martial”). The petition states that by letter dated May 24, 2005, counsel for Mr. Ritfeld requested the public prosecution to refrain from further prosecution, on the ground that there was no factual basis to support the accusation against the alleged victim (regarding his involvement in the massacre). The petition indicates that by letter dated August 10, 2005, the public prosecution informed Mr. Ritfeld that it would not withdraw the notice of further prosecution.

3. According to the petition, the public prosecution took no immediate steps to bring the matter before the military court martial. As a result, Mr. Ritfeld’s counsel then submitted a petition (dated September 14, 2005) to the military court martial requesting that the public prosecution be ordered to summon the alleged victim within a month (to commence proceedings); or to order that no further prosecution be continued against him. The petition indicates that by decision of February 24, 2006, the court martial denied this request.

4. According to the petition, by letter of June 19, 2007, Mr. Ritfeld’s counsel again requested the public prosecution to refrain from further prosecuting the alleged victim. The petition indicates that the public prosecution did not respond to this request.

5. The petition indicates that on November 5, 2007, Mr. Ritfeld was summoned by the public prosecution to appear before the military court martial on November 30, 2007. According to the petition, the summons concerned the prosecution of Mr. Ritfeld for multiple offences relating to the 1982 massacre, including multiple murder and manslaughter. According to the petition, Mr. Ritfeld’s counsel filed a notice of objection to the prosecution (dated November 8, 2007). This notice of objection sought to have the court martial to dismiss the prosecution primarily on the basis that there were no factual grounds on which to prosecute Mr. Ritfeld. The petition indicates that the court martial dismissed the objection by a ruling dated on February 28, 2008.

6. Mr. Ritfeld’s counsel then filed an appeal to the Court of Justice in Suriname; however, by decision on February 24, 2009, this court dismissed the appeal and referred the matter back to the court martial for the criminal proceedings to continue. Subsequently, the petition indicates that Mr. Ritfeld was summoned by the court martial on May 18, 2009, to appear before it on June 12, 2009. The petition further states that on July 13, 2009, witnesses gave testimony before the court martial in favor of Mr. Ritfeld.

7. According to the petition, the criminal proceedings “did not progress.” As a result, the petition claims that Mr. Ritfeld’s counsel submitted a letter to the court martial dated February 19, 2010, requesting the court martial to have the prosecutors advance the proceedings (“state their demand”); as well as to have the court martial issue a complete ruling within a short time. In the absence of any response from the court martial, the petition states that Mr. Ritfeld’s counsel then applied to the court martial on December 22, 2010, to rule that the prosecution against Mr. Ritfeld had effectively ended. The petition indicates that there was no immediate response from the Court Martial to this request.

8. The petition states that on March 16, 2012, counsel for Mr. Ritfeld received a notification from the military court martial that the public prosecution would state its demand on April 13, 2012, at a session of the military court martial, in which the counsel for Mr. Ritfeld would have to plead his case at a subsequent session on April 27, 2012.

³ It is not clear from the petition whether criminal proceedings had previously been initiated against the alleged victim.

9. According to the petition, by decision dated on March 22, 2013, the court martial denied the request of December 22, 2010, to declare that the prosecution against Mr. Ritfeld was at an end. The petition states that while the criminal proceedings were pending against Mr. Ritfeld, that, the Act of 5 April 2012 which amended the Amnesty Act 1989, entered into force. Considering this, the petition indicates that by judgement dated on 11 May 2012 the court martial suspended the prosecution against Mr. Ritfeld. The petition indicates that the court martial ruled that because of the amendment to the Amnesty Act a judicial issue under constitutional law presented itself, and that this issue first had to be answered by the Constitutional Court before the criminal proceedings against Mr. Ritfeld could be continued.

10. According to the petition, Mr. Ritfeld filed an appeal with the Court of Justice against this judgement of the court martial. The petition indicates that on January 27, 2014, the Court of Justice upheld the appeal filed on behalf of Mr. Ritfeld and set aside the judgement of the court martial. However, the Court of Justice referred the case against Mr. Ritfeld complainant back to the Court martial for disposal.

11. The petition maintains that Mr. Ritfeld is not guilty of the offences he is accused of by the public prosecution; and further alleges that Mr. Ritfeld and his family have suffered as a result of the criminal proceedings. The petition submits that the failure of the State to complete criminal proceedings against him amounts to a violation of his right to a fair trial; and emphasizes that Mr. Ritfeld has been accused of the most serious offences without proper factual basis and, that he continues to be subjected to criminal prosecution after many years.

12. The petitioner claims that Mr. Ritfeld has exhausted local remedies by continuing the proceedings up to the highest court, namely, the Court of Justice, which had the legal power of delivering a judgement on the merits of the accusation made against him. Alternatively, the petitioner argues that Mr. Ritfeld is entitled to an exception to the exhaustion requirement, given the protracted time taken to conduct the criminal proceedings against him; and the multiple efforts by Mr. Ritfeld to expedite the completion of these proceeding. The petition submits that an exception to the exhaustion requirement is warranted under either Article 46 (2) (b) or Article 46 (2) (c) of the American Convention.

13. Generally, the State of Suriname rejects the petition as inadmissible for failure to exhaust the domestic remedies. The State indicates that Mr. Ritfeld was acquitted by the court martial on November 29, 2019; and that he subsequently filed a civil suit against the State seeking damages. The State also indicates that this suit is pending as is due to be decided in January 2023. Given this status quo, the State reaffirms that the alleged victim has failed to exhaust domestic remedies.⁴

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS IN THE SUBMISSION OF THE PETITION

14. The requirement of prior exhaustion of domestic remedies is intended to allow domestic authorities to hear the alleged violation of a protected right and, if applicable, settle the issue before it is brought before an international body.⁵

15. The need for previous exhaustion of local remedies does not apply when there has been unwarranted delay in rendering a final judgment under the remedies. There are no specific provisions in the Convention or Rules of Procedure that define the length of time that constitutes “unwarranted delay,” meaning that the Commission evaluates each case to determine whether a delay exists⁶. In criminal cases, the Commission takes into special account, *inter alia*, the time passed during the investigations and proceedings⁷. According to the petitioner, the first step of the criminal proceedings, a letter to Mr. Ritfeld containing a notice of further prosecution, dated 22 December 2004. This information was not disputed by the State. The State submitted, on the other hand, that Mr. Ritfeld was court-martialed and acquitted in first instance on November

⁴ The State provided only six short paragraphs of observations.

⁵ IACHR, Report No. 82/17, Petition 1067-07. Admissibility. Rosa Ángela Martino and María Cristina González. Argentina. July 7, 2017, para. 12.

⁶ IACHR, Report No. 14/08, Petition 652-04. Admissibility. Hugo Humberto Ruiz Fuentes. Guatemala. March 5, 2008, para. 68.

⁷ IACHR, Report No. 50/08, Petition 298-07. Admissibility. Néstor José Uzcátegui and others. Venezuela. July 24, 2008, para. 42.

29, 2019. As far as the criminal proceedings are concerned, the Commission considers that the acquittal of Mr. Ritfeld constitutes the exhaustion of domestic remedies; and that accordingly, the petition is admissible under Article 46 (1) (a) of the American Convention. The Commission further considers that the issue of duration of the criminal proceedings will be considered at the merits stage. . The Commission notes that the petition was filed on July 23, 2014, which it considers to be timely, having regard for the chronology of circumstances that gave rise to the petition. Accordingly, the IACHR considers that the petition meets the requirement of timeliness and is therefore admissible.

16. The Commission notes, however, that according to the State, Mr. Ritfeld filed a civil suit seeking damages and that this suit was due to be decided in January 2023. According to the State the petitioner has not exhausted this remedy. The petitioner has not rebutted this claim, nor is there any information available on whether this suit has been concluded. Accordingly, the Commission has no basis upon which to conclude that Mr. Ritfeld has exhausted this remedy. Accordingly, as far as the civil suit appears to remain pending, the Commission considers that the petition is inadmissible; and that this civil suit will not be considered at the merits stage.

VII. COLORABLE CLAIM

17. The Commission notes that, for the purposes of admissibility, it must decide whether the alleged facts may characterize a violation of rights, as stipulated in Article 34 (a) of the Commission's Rules of Procedure, or if the petition is "manifestly unfounded" pursuant to subsection (b) of said Article. The criterion for evaluating these requirements differs from that used to rule on the merits of a petition. Likewise, within the framework of its mandate, it is competent to declare a petition admissible when it refers to internal processes that could violate rights guaranteed by the American Declaration. In other words, considering the conventional standards, in accordance with Article 34 of its Rules of Procedure, the admissibility analysis focuses on the verification of such requirements, which refer to the existence of elements that, if true, could constitute prima facie violation of the American Convention.

18. The present petition includes allegations relating primarily to the length of time that Mr. Ritfeld has been subjected to criminal proceedings by the State. Thus, in view of these considerations and after examining the elements of fact and law presented by the parties, the Commission considers that the claims of the petitioner are not manifestly unfounded and require a substantive study on the merits as the alleged facts, to be corroborated as certain could characterize violations of the American Convention. More specifically, the Commission considers that Mr. Ritfeld being subjected to criminal proceedings for more than 15 years could characterize violations of articles 8 (right to a fair trial) and 25 (right to judicial protection) of the American Convention, in conjunction with its article 1 (obligation to respect rights), to the detriment of Mr. Ritfeld.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles, 8 and 25 of the American Convention, in conjunction with article 1.

2. To notify the parties of this decision; to continue with the analysis on the merits; and to publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.

Approved by the Inter-American Commission on Human Rights on the 11th day of the month of October 2023. (Signed:) Margarete May Macaulay, President; Roberta Clarke, Second Vice President; Julissa Mantilla Falcón and Carlos Bernal Pulido, Commissioners.