

IN THE CARIBBEAN COURT OF JUSTICE
Original Jurisdiction

CCJ Application No TTOJ2024/001

Between

Derek Anand Ramsamooj

Claimant

And

The State of Suriname

Defendant

And

The Caribbean Community

Amicus Curiae

Caribbean Community law — Freedom of movement — Right to provide services — Minimum standard of human rights — Right of access to legal counsel — Beperking — Whether Community law imposes minimum human rights standards attendant upon the exercise of Treaty-based rights — Whether Charter of Civil Society legally binding or serves as aid to interpretation of the Revised Treaty of Chaguaramas — Whether operation of beperking mechanism consistent with effective exercise of Claimant's rights under the Revised Treaty of Chaguaramas — Whether art 226(1)(a) of the Revised Treaty of Chaguaramas justifies use of beperking mechanism — Whether evidence obtained during period of unlawful detention may be relied upon in domestic criminal proceedings — Non-pecuniary damages — Suriname Code of Criminal Procedure, art 40(2) — Revised Treaty of Chaguaramas, arts 7, 9, 36, 37, 45, 46, 217, 226(1)(a) — Charter of Civil Society for the Caribbean Community.

SUMMARY

The Claimant, Mr Derek Anand Ramsamooj, a citizen of the Republic of Trinidad and Tobago, is a political analyst and political consultant. From 2014, he visited Suriname regularly to provide consultancy services. On the afternoon of 6 October 2020, a police officer visited the Claimant's hotel in Paramaribo, seized his passports and instructed him to report to the police station the following morning. The next day, the Claimant was detained in connection with an investigation of alleged fraud by the previous Surinamese Government for which he had worked. He was denied direct access to legal counsel for two consecutive eight-day periods, on the basis of *beperring* orders made under art 40(2) of the Suriname Code of Criminal Procedure ('SCCP'). During that time, he was interrogated in Dutch with the use of a translator and signed a statement in Dutch

which was used in court as his confession. The Claimant was held in pre-trial detention until 22 December 2020, when he was released due to the deterioration of his health. Formal charges of participation in a criminal organisation, fraud, forgery of invoices and money laundering were laid against him on 26 March 2021, and those charges remain pending before the trial court in Suriname. His passports were held until September 2022, when he was permitted to leave Suriname to seek medical treatment.

With special leave of the Caribbean Court of Justice, the Claimant instituted proceedings against Suriname ('the Defendant') in the Original Jurisdiction of the Court. He contended that he had been arbitrarily detained in Suriname without access to a court or to counsel. He argued that this amounted to a violation of his rights under the Revised Treaty of Chaguaramas ('RTC') to freedom of movement and to provide services. He asserted that the rights accorded to Community nationals under the RTC are not effective without the protection of fundamental human rights, specifically those rights articulated in the Charter of Civil Society for the Caribbean Community ('the Charter'), and that the *beperking* provision under the SCCP, or its use in practice, was incompatible with the RTC.

The Defendant contended that the Claimant had failed to premise the alleged breach of his rights to freedom of movement and to provide services on discriminatory treatment on the ground of nationality only, that the Charter was non-binding, and that the Court lacked jurisdiction over alleged human rights violations. The Defendant also asserted that the restrictions imposed on the Claimant, including the restriction on his access to counsel, were justified under Article 226(1)(a) of the RTC for the protection of public morals and the maintenance of public order and safety.

The Caribbean Community was added to the proceedings as *amicus curiae* and made submissions in response to specific questions posed by the Court concerning the legal status of the Charter and the relationship between the exercise of Community rights and the competence of national law enforcement authorities.

The Court identified four key issues for determination: (i) whether there is a minimum standard of human rights required for the effective exercise by Community nationals of their rights under the

RTC, such as the right to freedom of movement and the right to provide services; (ii) if there is such a minimum human rights standard under Community law, whether the operation of the *beperking* mechanism under art 40(2) of the SCCP in the circumstances of this case was consistent with the effective exercise of the Claimant's right to freedom of movement and to provide services; (iii) whether the Defendant could rely on Article 226(1)(a) of the RTC to justify its use of the *beperking* mechanism; and (iv) what remedies were to be awarded to the Claimant for any violations of his rights under the RTC.

On the first issue, the Court held that Community law imposes minimum human rights standards that must attend the exercise by Community nationals of their Treaty-based rights. Applying the principle of effectiveness (*effet utile*), the Court reasoned that the guarantees of free movement of Community nationals under the RTC would be deprived of their effectiveness if minimum human rights standards were not inferred.

The Court concluded that the Charter is neither a treaty nor a decision of the Conference of Heads of Government with binding force. Nonetheless, the Charter has legal relevance in the Community's legal order (i) as an aid to the interpretation of the RTC pursuant to Article 31 of the Vienna Convention on the Law of Treaties, and (ii) in helping to identify general principles of Community law. The Court found that fundamental human rights are general principles widely accepted throughout the Community, evident from the protection of fundamental rights and freedoms of the individual under the constitutions of all CARICOM Member States, from the Charter itself, and from international human rights instruments such as the International Covenant on Civil and Political Rights and the Universal Declaration of Human Rights, to which CARICOM Member States had subscribed. The Court held that the minimum human rights standards that must attend the exercise of Treaty-based rights, such as the right to freedom of movement, include the right of an accused person to have access to legal counsel of his or her choice, which had been entrenched in the constitutions of every CARICOM Member State and had crystallised into a regional customary standard.

On the second issue, the Court identified three critical junctures at which the operation of the *beperking* under art 40 of the SCCP results in the accused being deprived of access to a lawyer: (i)

during police or judicial interrogation; (ii) during any challenge to the *beperving* order itself; and (iii) during the contest of the lawfulness or continuation of detention. Noting that Suriname inherited its criminal procedural framework from the Netherlands during the colonial period, the Court contrasted the Surinamese approach with the Dutch system, which had been significantly reformed to require prompt judicial oversight and the immediate provision of an independent alternative lawyer where a suspect's chosen counsel is restricted, reflecting the position at the European Union level that access to counsel must be effective from the first interrogation. Applying the reasoning of the European Court of Human Rights in *Salduz v Turkey*, which identifies early and effective access to counsel as a structural safeguard without which the fairness of the proceedings is presumptively compromised, the Court held that art 40 of the SCCP, insofar as it authorises the deprivation of access to counsel at the investigative stage without compensatory safeguards sufficient to preserve the effectiveness of the defence, unlawfully impedes free movement and cannot be reconciled with the minimum human rights baseline required by Community law. The Court found that, in those circumstances, there is no need to establish discriminatory treatment on the ground of nationality only in order to establish a violation of RTC rights.

On the third issue, the Court reaffirmed the principle in *Gilbert v State of Barbados* that freedom of movement under the RTC does not immunise CARICOM nationals from the operation of law enforcement agencies in the receiving State, but distinguished *Gilbert* on the basis that it concerned the application to a Community national of domestic law which was consistent with the RTC. The present case fell within the *Myrie* line of authority: where the domestic law authorising the enforcement action is itself inconsistent with the Treaty by breaching the minimum standard of human rights, Article 226 of the RTC has a greatly diminished role to play. Only in extremely rare circumstances could a Member State be permitted to rely on Article 226 to justify conduct that undermines the substance of Treaty-based rights by reference to domestic procedures that fail to meet the minimum standards of human rights required by Community law.

On remedies, the Court declined to make a declaration in respect of the alleged breach of the freedom to provide services, being unsatisfied on the evidence that the Claimant was, at the material time, actively engaged in the provision of services within the meaning of the RTC. With

respect to the claim for damages, the Court was also not satisfied that the Claimant had demonstrated a causal link between the denial of his access to counsel and the medical expenses he had incurred. Nevertheless, the Court was convinced that the Claimant suffered severe emotional and physical distress and that his health deteriorated appreciably because of his detention, and that these effects were exacerbated by the Claimant being held incommunicado without access to his family and his attorney at crucial stages. The Court accepted the unchallenged expert evidence, on behalf of the Claimant, of a consultant cardiologist that the Claimant had sustained a coronary event, a stroke, and significant progression of his coronary artery disease during his detention, and that the reported conditions of detention would certainly have contributed to the decline of his cardiovascular and general health. On the basis of that evidence, the Court found that such deterioration in health, at least partially caused by conditions which breached his basic human rights enjoyed under the RTC, must attract some monetary recompense. The Court did not consider it necessary to pronounce on the allegations of breach of Articles 7 or 9 of the Treaty, noting that a finding of breach of the specific substantive right to freedom of movement was sufficient.

The Court declared that the application of the *beperking* mechanism to the Claimant in the circumstances of this case was inconsistent with, and constituted a breach of, his right to freedom of movement under the RTC. It awarded the Claimant the sum of USD30,000 by way of non-pecuniary damages, as compensation for the clear and significant injury sustained by the Claimant as a result of the serious breach of an important RTC right. The Court further declared that any reliance upon or use in any criminal proceedings against the Claimant of any admission or confession obtained from him during the period of his unlawful detention arising from the Treaty-inconsistent application of the *beperking* would constitute a breach of Community law. However, this did not preclude the Defendant State from continuing or instituting criminal proceedings against the Claimant on the basis of evidence, if any, obtained independently of, and untainted by, the unlawful detention or deprivation of procedural safeguards.

Costs were awarded to the Claimant, and all other applications and claims for relief were dismissed.

Cases referred to:

Al-Adsani v UK (2001) 34 EHRR 273; *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v Russian Federation)* (Preliminary Objections) (Judgment) [2019] ICJ Rep 558; *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v Russian Federation)* (Preliminary Objections) (Judgment) [2011] ICJ Rep 70; *Argentina: Safeguard Measures on Imports of Footwear – Report of the Appellate Body* (14 December 1999) WT/DS121/AB/R; *Corfu Channel Case (UK v Albania)* (Merits) (Judgment) [1949] ICJ Rep 4; *De Gezamenlijke Steenkolenmijnen in Limburg v High Authority of the European Coal and Steel Community* (Case 30/59) ECLI:EU:C:1961:2, [1961] ECR 1; ECLI:NL:HR:2009:BH3079, (30 June 2009); ECLI:NL:HR:2015:3608, (22 December 2015); ECLI:NL:HR:2019:1985 (17 December 2019); *Fisheries Jurisdiction (Spain v Canada)* (Jurisdiction of the Court) (Judgment) [1998] ICJ Rep 432; *Francovich v Italian Republic* (Joined Cases C-6/90 and C-9/90) ECLI:EU:C:1991:428, [1991] ECR I-5357; *Gilbert v State of Barbados* [2019] CCJ 2 (OJ); *Ibrahim v UK* (App Nos 50541/08) [2017] ECHR 50541/08; *Hummingbird Rice Mills v The Caribbean Community* [2012] CCJ 1 (OJ), (2012) 79 WIR 448; *Internationale Handelsgesellschaft v Einfuhr Und Vorratstelle für Getreide und Futtermittel* (Case 11/70) ECLI:EU:C:1970:114, [1970] ECR 1125; *Juridical Condition and Rights of Undocumented Migrants*, Advisory Opinion OC-18/03, Inter-American Court of Human Rights Series A No 18 (17 September 2003); *Korea: Definitive Safeguard Measure on Imports of Certain Dairy Products – Report of the Appellate Body* (14 December 1999) WT/DS98/AB/R; *Lawfulness of opt-out by a Member State pursuant to Article 27(4) of Conference Decision made under Article 46 concerning the enlargement of classes of persons entitled to move and work freely in the Community; Whether the principle of nonreciprocity enables nationals of those Member States which opt-out to derive the benefits of the enlargement Decision* (Advisory Opinion) [2020] CCJ 1 (OJ) (AO); *Myrie v State of Barbados (No 2)* [2013] CCJ 3 (OJ), (2013) 83 WIR 104; *Nold v Commission of the European Communities* (Case 4/73) ECLI:EU:C:1974:51, [1974] ECR 491; *Prosecutor v Al-Bashir* (Judgment in the Jordan Referral re Al-Bashir Appeal) ICC-02/05-01/09-397-Anx1 (6 May 2019); *Prosecutor v Furundzija* (Judgment) IT-95-17/I-T (10 December 1998); *Prosecutor v Kony* (Decision on the Prosecutor’s Application that the Pre-Trial Chamber disregard as irrelevant the Submission filed by the Registry on 5 December 2005) ICC-02/04-01/05-147 (9 March 2006); *Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law*, Advisory Opinion OC-16/99, Inter-American Court of Human Rights Series A No 16 (1 October 1999); *Salduz v Turkey* (App No 36391/02) [2008] ECHR 36391/02; *Stauder v City of Ulm* (Case 26/69) ECLI:EU:C:1969:57, [1969] ECR 419; *Trinidad Cement Ltd v Caribbean Community* [2009] CCJ 2 (OJ), (2009) 74 WIR 319; *Trinidad Cement Ltd v Co-operative Republic of Guyana* [2009] CCJ 1 (OJ), (2009) 74 WIR 302; *Trinidad Cement Ltd v Co-operative Republic of Guyana (No 2)* [2009] CCJ 5 (OJ), (2009) 75 WIR 327; *United States: Continued Dumping and Subsidy Offset Act of 2000 – Report of the Appellate Body* (16 January 2003) WT/DS217/AB/R, WT/DS234/AB/R; *United States: Standards for Reformulated and Conventional Gasoline – Report of the Appellate Body* (20 May 1996) WT/DS2/9; *United States: Subsidies on Upland Cotton – Report of the Appellate Body* (3 March 2005) WT/DS267/AB/R; *Wachauf v Bundesamt für Ernährung und Forstwirtschaft* (Case 5/88) ECLI:EU:C:1989:321, [1989] ECR 2609.

Legislation referred to:

Antigua and Barbuda – Antigua and Barbuda Constitution Order 1981; **The Bahamas** – Constitution of the Commonwealth of The Bahamas 1973; **Barbados** – Constitution of Barbados 1966; **Belize** – Constitution of Belize 1981; **Dominica** – Constitution of The Commonwealth of Dominica 1978; **European Union** - Council Directive 2013/48/EU of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty [2013] OJ L294/1; **Grenada** – Grenada Constitution Act 1973; **Guyana** – Constitution of the Co-operative Republic of Guyana 1980; **Haiti** – Constitution of the Republic of Haiti 1987; **Jamaica** – Constitution of Jamaica 1962; **Saint Kitts and Nevis** – Constitution of Saint Christopher and Nevis 1983; **Saint Lucia** – Constitution of Saint Lucia 1978; **Saint Vincent and the Grenadines** – Saint Vincent Constitution Order 1979; **Suriname** – Constitution of Suriname 1987, Suriname Code of Criminal Procedure 1977; **Trinidad and Tobago** – Constitution of the Republic of Trinidad and Tobago 1976.

Treaties and International Materials referred to:

American Convention on Human Rights (adopted 22 November 1969, entered into force 18 July 1978) 1144 UNTS 123; Charter of Civil Society for the Caribbean Community (adopted 19 February 1997); International Covenant on Civil and Political Rights (adopted 19 December 1966, entered into force 23 March 1976) 999 UNTS 171; Revised Treaty of Chaguaramas establishing the Caribbean Community including the CARICOM Single Market and Economy (adopted 5 July 2001, entered into force 1 January 2006) 2259 UNTS 293; Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III); Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331.

Other sources referred to:

Àlvarez J R G, ‘The Many Lives of *Effet Utile* in Treaty Interpretation’ (2024) 25(25) Anuario Mexicano de Derecho Internacional e19025; CARICOM Secretariat, ‘Communique issued at the Conclusion of the Eighth Inter-sessional Meeting of the Conference of Heads of Government of the Caribbean Community’, St John’s, Antigua and Barbuda, 20–21 February 1997; CARICOM Secretariat, ‘Report of the Special Meeting of the Conference of the Heads of Government of CARICOM’, REP 92/1/62 HGC, Port of Spain, Trinidad and Tobago, 28–31 October 1992; CARICOM Secretariat, ‘Summary of the Recommendations and Conclusions of the Thirteenth Special Meeting of the Conference of Heads of Government of the Caribbean Community’, HGC(Spec)/2008/13/SRC, Port-of-Spain, Trinidad and Tobago, 4–5 April 2008; Malanczuk P, *Akehurst’s Modern Introduction to International Law* (7th rev edn, Routledge 1997); McDougal M and Gardner R, ‘The Veto and the Charter: An Interpretation for Survival’ (1951) 60 Yale L J 258; West Indian Commission, *Time for Action: Report of the West Indian Commission* (1992).

THE COURT,

composed of W Anderson, President and M Rajnauth-Lee, D Barrow, P Jamadar and C Ononaiwu, Judges

having regard to the originating application filed at the Court on 16 October 2024, together with the annexures thereto, the defence of the State of Suriname filed on 28 November 2024 and the annexures thereto, the written submissions of Derek Anand Ramsamooj filed on 23 June 2025, the written submissions of the Caribbean Community and exhibits filed on 15 April 2025, the written submissions of Derek Anand Ramsamooj and exhibits filed on 23 June 2025 and the written submissions of the State of Suriname and exhibits filed on 21 July 2025, to the public hearing held on 6 and 7 November 2025

and after considering the notes and oral observations of:

- **Derek Anand Ramsamooj**, by Mr Justin Phelps SC, appearing with Mr Navindra Ramnanan, Mr Milton Castelen and Mr Chase Pegus, Attorneys-at-Law
- **The State of Suriname**, by Mr Hans Lim A Po, Attorney-at-Law
- **The Caribbean Community**, by Lisa M Shoman SC, Ms Radha Permanand, Ms Gladys Young and Mr O’Neil Francis, Attorneys-at-Law
- **Trinidad and Tobago**, by Mr Murvani Ojah Maharaj, Ms Laura Persad and Ms Laura-Lee Hackshaw, Attorneys-at-Law

issues on **25 May 2026**, the following:

JUDGMENT

Introduction

- [1] This claim is brought by Mr Derek Anand Ramsamooj (‘the Claimant’), a citizen of the Republic of Trinidad and Tobago and a political analyst and political consultant, against the State of Suriname (‘Suriname’ or ‘the Defendant’). The claim arose out of the Claimant’s detention by the Surinamese police in October 2020 in connection with an investigation of alleged fraud by the previous Government for which he had worked. The Claimant was denied direct access to legal counsel, for two consecutive eight-day periods, on the basis of *beperving* orders made under art 40(2) of the Suriname Code of Criminal

Procedure ('SCCP'). During this time, he was interrogated in Dutch with the use of a translator and signed a statement in Dutch, which was used in court as his confession.

- [2] The Claimant was held in pre-trial detention until December 2020, when he was released due to the deterioration of his health. Formal criminal charges were laid against him in March 2021. The Claimant's passports were held by the police from October 2020 until September 2022, when he was permitted to leave Suriname to seek medical treatment.
- [3] The Claimant's central claim is that he was arbitrarily detained in Suriname without access to a court or to counsel, which amounted to a violation of his rights under the Revised Treaty of Chaguaramas ('RTC') to freedom of movement and to provide services. The Claimant asserts that the rights accorded to Community nationals under the RTC are not effective without the protection of fundamental human rights, and specifically those rights articulated in the Charter of Civil Society for the Caribbean Community ('the Charter' or 'Charter of Civil Society'). The Claimant contends that the *beperking* provision under the SCCP, or its use in practice, is incompatible with the RTC.
- [4] The Defendant contends that the Claimant failed to premise the alleged breach of his rights to freedom of movement and to provide services on discriminatory treatment on the ground of nationality only. In addition, Suriname argues that the Charter of Civil Society is non-binding and the Caribbean Court of Justice ('the CCJ' or 'this Court') lacks jurisdiction over alleged human rights violations. The Defendant also asserts that the restrictions imposed on the Claimant, including with respect to access to counsel, were justified under Article 226(1)(a) of the RTC for the protection of public morals and the maintenance of public order and safety.
- [5] This case raises issues of far-reaching importance to Caribbean Community law. In particular, the Court must determine whether there is a minimum standard of human rights which is required for the effective exercise by Community nationals of their rights under the RTC and which must be respected by Member States in their domestic law enforcement measures. For the reasons which follow, this Court has decided this question in the

affirmative. In order to effectively exercise their RTC rights, nationals of Member States of the Community are entitled to enjoy a certain minimum level of fundamental human rights and freedoms. The Court has further decided that the application by the Defendant of the *beperving* mechanism to the Claimant in this case breached this minimum threshold and unjustifiably impeded the Claimant's free movement rights. The reasons for and the consequences of this finding of breach of the RTC are discussed below.

Factual and Procedural Background

- [6] The parties agreed on certain facts. From 2014, the Claimant visited Suriname regularly to provide consultancy services. In February 2020, he travelled to Suriname. On the afternoon of 6 October 2020, a police officer visited the Claimant's hotel in Paramaribo. The officer seized the Claimant's passports and instructed him to report to the police station the following morning.
- [7] On the morning of 7 October 2020, the Claimant visited the Paramaribo Station as requested. He was detained and interrogated. He promptly provided documents to the police in the course of his detention. The Claimant was denied access to legal counsel on the basis of an order, dated 8 October 2020, from the Office of the Procurator General, pursuant to art 40(2) of the SCCP. This order was extended on 16 October 2020 and the restriction on access to counsel was lifted by an order dated 24 October 2020.
- [8] The Claimant was interrogated in Dutch with the use of a translator interpreting the interrogation from Dutch into English. The Claimant signed a statement written in Dutch. The statement was relied upon by the prosecution, as well as the examining magistrates, when ordering extensions of the Claimant's pre-trial detentions. It was also used in court as a confession against the Claimant.
- [9] The Surinamese police seized from the Claimant approximately EUR7,000 in cash and his electronic devices, including his laptop, iPad and cell phone.
- [10] The Claimant's health deteriorated during his incarceration, prompting his release on 22 December 2020. On 26 March 2021, the Claimant was charged with several criminal

offences, including participation in a criminal organisation, fraud, forgery of invoices and money laundering. Those charges are still pending before the trial court in Suriname.

- [11] On 9 September 2022, the court permitted the Claimant to depart Suriname.
- [12] On 25 May 2024, the Claimant filed an application to the CCJ for special leave to institute proceedings against Suriname. He was granted special leave to do so on 10 October 2024.
- [13] The Claimant filed his originating application on 16 October 2024. The Defendant filed its Defence on 28 November 2024.
- [14] During the management of the case, the Court proposed that the Caribbean Community ('CARICOM') be added to the proceedings to assist the Court as *amicus curiae*. The parties consented. Subsequently, the CCJ invited counsel for CARICOM to make submissions in response to specific questions posed by the Court.
- [15] The Claimant and Defendant filed documents for disclosure and witness statements. Written submissions were made by the parties and CARICOM.
- [16] The hearing of the originating application was held on 6–7 November 2025. On 6 November 2025, the Court heard evidence from witnesses both for the Claimant and the Defendant. On 7 November 2025, the Court heard oral submissions from counsel, including counsel for CARICOM.

Pleadings

Originating Application

- [17] In his Originating Application, the Claimant alleges that he was arrested and detained without access to counsel and without being taken before a court for 18 days, during which he was interrogated at length. He states that during this interrogation, he was coerced into signing a document in the Dutch language, which he does not understand, and this document was relied upon against him. He also alleges that he was detained without a court hearing or being charged with an offence for a further period of 57 days. He contends that

he was denied court hearings and had other court hearings convened without adequate notice or abruptly deferred.

- [18] The Claimant states that while in pre-trial detention, he was ill-treated and denied proper medical care for his conditions of diabetes, cardiovascular disease and hypertension. He contends that on the occasions when he was able to access health care, he was forced to pay exorbitant costs (not charged to Surinamese nationals) for inadequate care. He also states that he had his assets, including cash, frozen and his personal papers, including his passports, seized.
- [19] He asserts that none of the acts attributable to Suriname is reasonably justifiable in a free and democratic society. Further, he alleges that those acts prevented his free movement within and out of Suriname and his ability to provide his professional services.
- [20] The Claimant states that the criminal proceedings against him are politically motivated and constitute a sham prosecution, and that it is impossible for him to obtain a fair trial in Suriname. He also states that the combined effect of the State's conduct and his serious health conditions is that his life will be at risk if that conduct is not prohibited.
- [21] The Claimant contends that acts attributable to the Defendant State have prejudiced his enjoyment of rights conferred upon him under the RTC, in particular, the rights to freedom of movement, to provide services, and not to be discriminated against. He maintains that those rights under the RTC cannot be properly exercised and are rendered ineffective in the absence of the recognition of his rights under the Charter of Civil Society or some minimum standard of human rights.
- [22] He alleges that, as a consequence of the acts of the Defendant State, he suffered irreparable injury, loss and damage, including damage to his health, professional reputation, livelihood and family life.
- [23] The Claimant seeks the following relief:

- a) A declaration that the Defendant infringed his right to freedom of movement;
- b) A declaration that the Defendant infringed his right to provide services;
- c) A declaration that the Defendant infringed his right not to be discriminated against on the ground of his nationality;
- d) A declaration that the Defendant breached its obligations under Article 9 of the RTC in failing to ensure that he was not subjected to arbitrary imprisonment and/or denial of counsel and/or denial of adequate medical attention and/or discrimination on the ground of nationality and/or the several rights identified in the Charter of Civil Society;
- e) A declaration that the Defendant has breached its obligations under Article 9 of the RTC in failing to facilitate the achievement of and/or jeopardising the attainment of the objectives of the RTC, namely the objective of improved standards of living and work and enhanced functional co-operation by way of the advancement of the social development of the peoples of CARICOM;
- f) A declaration that upon a proper interpretation of the RTC, CARICOM citizens are entitled to the benefit of the rights accorded by the Charter of Civil Society when they exercise any of the rights accorded by the RTC, or alternatively;
- g) A declaration that upon a proper interpretation of the RTC, the rights therein provided (and which enure to the benefit of Community citizens) are exercisable without violation of the human rights of those citizens which are part of a peremptory norm of general international law;
- h) A declaration that the device referred to as 'Beperking' and codified in Section 40 of the SCCP is, upon its true interpretation, incompatible with the rights accorded to CARICOM citizens under the RTC, or alternatively;
- i) A declaration that the device referred to as 'Beperking' and codified in Section 40 of the SCCP is, by reason of the manner of its use in practice in the Defendant State, incompatible with the rights accorded to CARICOM citizens under the RTC;
- j) A declaration that the denial of basic human rights to CARICOM citizens by a Member State is incompatible with the RTC upon its proper interpretation;

- k) A declaration that it is incompatible with the RTC for a Member State to adopt a policy, being ‘Beperking’, which in its practice denies relevant CARICOM citizens the right to counsel;
- l) A declaration that the criminal justice system in the Defendant State is open to political influence and that in the events which have happened, he is the victim of political victimisation which is incompatible with the RTC;
- m) Damages; and
- n) Costs.

Defence

- [24] In its Defence, the Defendant contends that the dispute between the parties arises out of Suriname’s endeavours, as a liberal democracy with strong adherence to the rule of law, to pursue and enforce the protection of public morals, and the maintenance of public order and safety in respect of all persons present in its territory or having linkages with persons in its territory, including CARICOM nationals.
- [25] Suriname asserts that the Claimant was interviewed by the police and taken into custody on 8 October 2020 in the interest of further investigation and on the basis that reasonable grounds for suspicion had become manifest that the Claimant was guilty of committing several criminal offences. Due to the then serious suspicion that the further investigation would be contaminated by the Claimant’s direct access to his chosen legal counsel, the Attorney General’s office provided restrictions to such direct access on account of art 40(2) of the SCCP.
- [26] The Defendant states that the SCCP provides several instances of mandatory judicial review of the criminal procedure process or judicial review upon application filed by the suspect or his chosen legal counsel but that the Claimant and his legal counsel did not file any such application. No objection was filed by the Claimant and his chosen legal counsel in the Court of Appeal which has the jurisdiction to review the restrictive measures.

- [27] On 9 September 2022, the trial court permitted the Claimant to depart from Suriname to attend to his medical health and return to Suriname to attend to the further conduct of the trial proceedings. To date, he has not done so. On 15 July 2024, he requested to be heard virtually via Zoom.
- [28] The Defendant denies the Claimant's allegations that he has been prejudiced in the enjoyment of his right to freedom of movement and to provide services within Suriname. Suriname refutes the Claimant's allegation that he is not able to get a fair trial in Suriname, noting that he was treated in the same manner as Surinamese citizens who are reasonably suspected of committing serious offences. Further, the Defendant contends that, in the circumstances, the restrictions imposed on the Claimant, including with respect to access to legal counsel, are justified under Article 226(1)(a) of the RTC for the protection of public morals and maintenance of public order and safety.
- [29] The Defendant states that the Claimant fails to premise the alleged but disputed breach of his right to freedom of movement and to provide services in Suriname, on treatment that is discriminatory based on nationality only.
- [30] The Defendant further contends that the Charter of Civil Society is non-binding based on its status as a declaration of the Conference rather than a treaty as well as from its weak implementing provision. Suriname asserts that the Court has no jurisdiction to adjudicate violations of international human rights treaties and conventions and thus lacks jurisdiction to make the declarations and orders sought by the Claimant relating to breaches of his human rights.
- [31] The Defendant makes no admission and refutes any damages allegedly sustained by the Claimant and caused by the restrictions imposed by the Defendant for which the Claimant provided no particulars and no evidence. The Defendant requests this Court to dismiss the Claimant's originating application and order costs against the Claimant.

Summary of Evidence

[32] The Claimant called as witnesses himself and his wife, Camille Chandra Pagee, as well as two expert witnesses, Mr Murwin Dubois and Dr Jonathan Clague. The Defendant called as a witness Mr Romeo Krishnadath Rampersad, the police prosecutor in the criminal case against the Claimant in Suriname, and as its expert witness, Ms Claudia Brigitte Bruining.

Evidence of the Claimant's Witnesses

The Claimant

[33] The Claimant states that he has worked for approximately 30 years as a political analyst and consultant throughout the Caribbean. He is the holder of a Certificate of Recognition of CARICOM Skills Qualification. From 2018 to 2019, he participated in a team assisting the Government of Suriname with the planning and execution of an international conference for countries with High Forestation and Low Deforestation ('HFLD'). According to the Claimant, he issued invoices for his work on the conference, and payments were made administratively through the Surinamese Postspaarbank ('SPSB'), in cash, due to SPSB's lack of correspondent banking facilities at the relevant time.

[34] In February 2020, the Claimant travelled to Suriname, intending to return to Trinidad and Tobago shortly after the Surinamese general elections held on 25 May 2020. However, he was unable to do so because of travel restrictions during the COVID-19 pandemic. During this period, he resided initially at a hotel and later at an apartment-hotel in Paramaribo and continued to work remotely. In or around October 2020, he secured a flight scheduled to depart Suriname on 8 October 2020, en route to Belize, where he was to commence another consultancy engagement.

[35] On the afternoon of 6 October 2020, Police Officer Pierkhan visited the Claimant's apartment and informed him that he was investigating allegations of corruption by the previous government and wanted to ask him questions with respect to his dealings with the SPSB. The Claimant, who said that he was told that he had been placed on a 'no-fly' list, surrendered both his Trinidad and Tobago and British passports. He was instructed to

report to the police station the following morning. He states that he was told that he was not a suspect and that legal representation was unnecessary at that stage.

[36] On the morning of 7 October 2020, the Claimant reported to the police station as requested. He states that he underwent an approximately 15-hour interrogation without legal representation, despite language barriers and his medical conditions of diabetes and hypertension. According to the Claimant, at the end of this interrogation, he was presented with a document in Dutch (which he does not read or speak) and was told that it was merely a summary of his answers. Believing he would then be released and removed from the ‘no-fly’ list, he signed it. He later learnt it was treated as an incriminating statement or confession.

[37] Shortly after signing the document, instead of being released, he was informed that he would be further detained. In the early hours of 8 October 2020, he was taken to his apartment to collect his belongings, then taken back to the Kiezerstraat police station and placed in a holding cell. He states that his cash, credit and debit cards and electronic devices, including data storage devices, and paper files were seized.

[38] From 8 October 2020, the Claimant was held at the Keizerstraat police station. He avers that he was not taken before a court, formally charged or made aware of what he was being accused of. He describes the detention conditions as overcrowded, unsanitary, and inhumane. He stated that he suffered from a lack of medical care and poor hygiene facilities. On or about 16 October 2020, the Claimant was informed by telephone, through a translator, that a *beperving* had been imposed and was extended for a further eight days. No lawyer was present on his behalf, and he was not given an opportunity to make representations. He stated that he was unaware of any provision which allowed him to lodge an appeal against the *beperving* and, under cross-examination, he indicated that he was not aware of any such appeal being filed by counsel acting for him in the Surinamese courts. He states that while subject to the *beperving* orders, he was not allowed to communicate with a legal advisor, family, or anyone else.

- [39] Following his 18-day detention at Keizerstraat, he was transferred to the Santo Boma penitentiary without a hearing and without being charged with any offence. He remained there for close to two months under similarly harsh conditions. His legal representative was met with delay in accessing the criminal file compiled by the police. He states that he was repeatedly interrogated without his lawyer present. Allegations shifted over time, from internal fraud at SPSB, to money laundering, to participating in a criminal organisation. He asserts that he was never given adequate notice of allegations to properly prepare for hearings in November and December 2020 regarding his continued detention.
- [40] He was ultimately released from the penitentiary on 22 December 2020, after his lawyer made an application to the court and presented customs declarations evidencing lawful possession of cash. He states that many of his possessions, including phones, laptops, and cash, were not returned, and he remained in Suriname under travel restrictions.
- [41] Formal criminal charges were eventually laid against the Claimant on 26 March 2021 and were communicated to him in early April 2021. The Claimant alleged that during the course of the ensuing trial proceedings, it was apparent that exculpatory documents supplied by his wife and lawyers were omitted from the police's criminal file.
- [42] He states that he suffered serious medical deterioration and in December 2021, unsuccessfully sought permission to seek medical care overseas. On 9 June 2022, the Claimant suffered a severe medical incident and was hospitalised in Suriname. He states that he experienced loss of vision and neurological symptoms, which were only diagnosed as a stroke and a clot in his brain several weeks later. Further applications were made to the Surinamese courts, supported by medical documentation, seeking permission for the Claimant to travel for treatment overseas. He stated that he paid substantially more for medical services than it would have cost citizens of Suriname and paid disproportionately high fees for medical reports required by the court. On 9 September 2022, a hearing was held before the trial court, following which the Claimant was permitted to travel for medical treatment. Subsequently, he obtained treatment in Trinidad and at the Royal Brompton Hospital in London. The Claimant provided evidence of payments for visits in

2021 to Dr Goerdat, a diabetic specialist in Suriname, for diagnoses and doctors' consultations in Suriname after his stroke in 2022 and for medical attention in England in 2022.

[43] The Claimant states that the proceedings against him were politically motivated and that he intends to defend the proceedings in Suriname. He claims that he suffered irreversible damage to his health, his professional reputation has been ruined, and he has suffered substantial losses to his income and livelihood. He cites his inability to work during his detention and following his release due to the deterioration of his health. He states that he remains significantly dependent on his wife due to his disabilities. He also states that the events led to the freezing of accounts in Suriname and the closure of a bank account in Nevis, as well as the imposition of additional procedures for travel.

Camille Pagee

[44] Camille Chandra Pagee is the Claimant's wife. She states that she maintained daily communication with the Claimant after she returned to Trinidad in March 2020 until 7 October 2020, when contact with him abruptly ceased. The day before, she had seen via video call that a man identifying himself as Officer Pierkhan was present in the Claimant's apartment in Suriname seeking information about work that the Claimant had completed for the SPSB.

[45] At the officer's request, she promptly emailed invoices, company records, academic certificates, HFLD conference materials, and other documents. The Claimant subsequently informed her that the officer had seized his passports and placed him on a 'no-fly' list.

[46] When repeated attempts to reach the Claimant on 7 and 8 October failed, Ms Pagee contacted the hotel manager at the apartments where the Claimant was staying, who confirmed that the Claimant had been taken to the Keizerstraat police station. She immediately sought legal assistance in Suriname and continued sending every document requested by the authorities.

[47] From 9 October onward, she observed widespread media coverage in Trinidad, Suriname, Jamaica and elsewhere alleging that the Claimant had been arrested in connection with fraud and money laundering. She also learned from Surinamese counsel that the Claimant was under a *beperving* order restricting communication, and from the bank that all of their Suriname accounts and prepaid cards had been frozen following an order dated 3 November 2020.

[48] Ms Pagee received updates from Attorney Nibte in Suriname that the Claimant's health and psychological state were deteriorating. She also described the Claimant's brief call through another inmate's phone in November 2020, during which he said his detention had been extended for another 30 days at a hearing he did not understand and at which his lawyer was not present. According to her account from counsel, the Claimant often lacked notice of hearings or access to representation during the early stages of his detention.

[49] Following the Claimant's eventual return home in 2022, Ms Pagee observed that he suffered from severe visual impairment, difficulty with balance, and longstanding discolouration and lesions on his legs. She accompanied him to London for specialist assessment, where tests confirmed a large brain clot, significant cardiovascular deterioration requiring four stents, and optic nerve damage resulting in loss of more than 75 per cent of his normal visual field. She reports that these conditions have left him unable to navigate public spaces independently, unable to drive, and dependent on her for mobility and daily functioning. She averred that their financial resources have been severely depleted due to medical costs, frozen assets, and the Claimant's inability to work.

Murwin Dubois (Expert)

[50] Mr Murwin Dubois, an Attorney-at-law in Suriname with 17 years of practice in civil, criminal and tax law, stated that he had extensive experience with *beperving* orders under Surinamese criminal procedure. He explained that such orders, made under art 40(2) of the SCCP, allowed the prosecution to deny a suspect all communication, including access to legal counsel, for up to eight days. He confirmed that he had previously been involved in cases where *beperving* orders were found unlawful because they failed to specify the

required grounds, were unnecessarily severe, or unjustifiably restricted communication with counsel.

[51] Mr Dubois explained that, under art 48 of the SCCP, there existed a basis for pre-trial detention, but he had seen no record of such an order in the Claimant's case. He stated that the *beperving* measure constituted a deprivation of liberty, exercised solely by the prosecution rather than an independent judicial authority. In his view, the measure operated as a form of incommunicado detention. He referred to international authorities, including decisions of the United Nations Human Rights Committee, the Office of the Human Rights Commissioner for Human Rights, and the Inter-American Court of Human Rights, which treated incommunicado detention and delayed access to courts as serious violations of the right to liberty, often amounting to arbitrary detention or cruel, inhuman, or degrading treatment.

[52] He explained that Suriname's legal system was monistic, meaning that treaty obligations such as those under the International Covenant on Civil and Political Rights ('ICCPR'), the American Convention on Human Rights, and the RTC were directly applicable and ranked above domestic law. He noted that Suriname had not amended art 40(2) since adopting its Code of Criminal Procedure in 1977, despite significant reforms in the Netherlands eliminating or limiting comparable restrictions. He contrasted Suriname's approach with the Dutch system, where such measures could last no longer than six days, required immediate judicial review, and triggered the automatic appointment of substitute counsel to safeguard the suspect's rights. No equivalent safeguards existed in Suriname.

[53] Mr Dubois said that, in practice, Surinamese prosecutors used *beperving* orders frequently, not as exceptional measures but as routine tools in early investigations, including in various drug, fraud, and corruption cases. He stated that these orders often relied on standardised, generic justifications that merely repeated statutory language rather than identifying specific circumstances or serious suspicions as required by law. He further observed that the orders were almost always imposed for the maximum eight-day period, without

explanation for the duration, and that prosecutors typically chose the most severe restriction, total denial of access to counsel, rather than lesser permissible limitations.

[54] He stated that suspects subject to *beperving* had three days to appeal but, because they were denied contact with a lawyer during this period, such appeals were virtually impossible in practice.

[55] Regarding the Claimant's case, Mr Dubois opined that the operation of art 40(2) had significant implications. Given the nature of *beperving* orders, the Claimant would have been detained without access to counsel, without communication with family, and without judicial supervision for a prolonged period. He noted that international jurisprudence recognised that such isolation could amount to inhumane treatment and that interrogations conducted during such restrictions risked irreparable prejudice to the fairness of criminal proceedings.

Dr Jonathan Clague (Expert)

[56] Dr Jonathan Clague is a Consultant Cardiologist at the Royal Brompton and Harefield Hospital in London, with more than forty years of clinical experience. He stated that he had treated the Claimant since 2009 and had full access to his medical records. He explained that the Claimant first presented with a myocardial infarction in 2009, for which angioplasty and stent insertion were performed. At that time, the Claimant already suffered from Type 2 diabetes and hypertension and was placed on a complex medication regimen and advised to seek specialist diabetic care. The Claimant returned for follow-up in 2016, when an angiogram showed further coronary disease requiring another stent.

[57] Dr Clague stated that at the Claimant's May 2019 consultation, he reported ongoing angina and intermittent claudication. Further coronary angiography revealed severe triple-vessel coronary artery disease. Another stent was inserted and the Claimant was scheduled to return within one year for further intervention, as failure to obtain timely specialist follow-up after complex coronary procedures carried risks of restenosis (blockage or narrowing of the coronary artery), clotting, and major cardiovascular events.

[58] He was advised in November 2020 by Ms Pagee that the Claimant had been incarcerated in Suriname without proper medication, diet, or access to specialist care, and was unable to attend the scheduled cardiac intervention. He issued a medical letter advising that the Claimant's diabetes, hypertension and severe coronary disease required proper monitoring and that prison conditions were unsafe for someone with his condition. He was later informed that an internist in Suriname, Dr Goerdat, had attempted to manage the Claimant's diabetes and peripheral vascular complications, but that recommended procedures could not be performed due to lack of equipment and expertise. Dr Clague issued another letter in December 2021 recommending urgent travel so the Claimant could obtain the necessary cardiac and vascular treatment.

[59] Dr Clague stated that in August 2022, he learned that the Claimant had suffered what appeared to be a coronary event while still in Suriname. After the Claimant was permitted to leave the country, he returned to Dr Clague in October 2022. There was significant progression of his coronary artery disease since 2019, and Dr Clague implanted four stents. An imaging test subsequently confirmed severe peripheral vascular disease in both legs, rendering stent placement impractical. He attributed the progression of the disease to the Claimant's prolonged lack of adequate medical supervision during detention.

[60] He also reported being informed of neurological symptoms that the Claimant experienced in Suriname in early 2022 and was subsequently notified that a neurologist diagnosed a stroke, which imaging in London later confirmed. In his opinion, the reported conditions of detention would certainly have contributed to the deterioration of the Claimant's cardiovascular and general health.

Evidence of the Defendant's Witnesses

Romeo Rampersad

[61] Mr Romeo Krishnadath Rampersad had been employed as a Deputy Public Prosecutor since October 2020 and later as a Public Prosecutor at the Office of the Attorney General in Suriname. In this capacity he had been involved, initially in the background and later directly from 2022 onward, in the criminal proceedings against the Claimant.

- [62] He said that the Claimant was lawfully remanded on 8 October 2020 on the basis of well-founded suspicions of serious criminal offences, and that because of the seriousness of the matter, free communication with his lawyer was restricted under art 40 of the SCCP for two consecutive eight-day periods.
- [63] He maintained that the Claimant's lawyers, Ms Lalji and Ms Nibte, represented the Claimant continuously from the date of detention. He further stated that the legality of the deprivation of liberty was reviewed and upheld by the court on 13 October, 13 November, and 9 December 2020.
- [64] He explained that further investigation indicated that in 2018 the Claimant had carried out work related to the HFLD initiative on behalf of the previous Government, but had invoiced the SPSB using broad descriptors such as 'Market Research,' 'Marketing,' 'Consultancy', and 'Technical Support', thereby creating the false impression that the services were performed for the SPSB. According to him, these invoices allowed the Claimant to receive EUR280,000 unlawfully. He stated that the Claimant confessed to both the structure of the invoices and receipt of these funds during interrogations, including one recorded on 20 October 2020.
- [65] Mr Rampersad stated that on 27 October 2020, the Claimant's lawyer informed the Attorney General of the Claimant's medical condition, leading to his transfer to the medical unit at the Santo Boma penitentiary for treatment. A further letter of 15 December 2020 from the Attorney General requested that the Claimant be given access to specialist medical assistance. He added that the Court of Justice ordered the Claimant's release from pre-trial detention on 21 December 2020 on medical and humanitarian grounds. He explained that in September 2022, the sub-district Court suspended a hearing to allow the Claimant to travel abroad for medical treatment.
- [66] Finally, he stated that the criminal file showed that the Claimant had been assisted at each interrogation by a sworn interpreter or translator who provided Dutch-English interpretation.

[67] Under cross-examination, several exhibits to Mr Rampersad's witness statement were scrutinised and it was made clear that at several hearings of the Claimant's matter, there was no attorney on record to represent him. There was also no evidence of any appeal of the *beperking* being filed.

[68] In a line of questioning from the Bench, attention was drawn to reports dated 8 October 2020 of the police interrogation of the Claimant. Mr Rampersad stated that the Claimant would have never received those documents as a part of his file before the *beperking* was lifted. He claimed that when the Claimant was placed into custody, he and his lawyer received the *beperking* orders, but other documents were not given to him because of the *beperking*.

Claudia Brigitte Bruining (Expert)

[69] Ms Claudia Brigitte Bruining, the Chief Public Prosecutor at the Office of the Attorney General of Suriname, explained that Surinamese criminal procedure was derived historically from Dutch law and regulated the process by which suspected offences were investigated and prosecuted. She stated that formal criminal law served both to standardise investigations and to ensure that suspects were treated with respect for their human dignity.

[70] She described the concept of a 'suspect' under art 19 of the SCCP as a person against whom facts and circumstances created a reasonable suspicion of guilt. She explained that this suspicion had to be objective and based on verifiable circumstances rather than mere intuition. She also outlined the range of coercive measures available to investigators and prosecutors such as stopping, arrest, holding for questioning, detention and pre-trial detention, each of which required a statutory basis, objective grounds and judicial oversight. She noted that suspects had procedural rights, including the ability to challenge detention orders before the examining magistrate and, if necessary, the Court of Justice.

[71] Ms Bruining provided a detailed analysis of art 40 of the SCCP, which guaranteed free communication between a detained suspect and counsel but also permitted restrictions in

specific circumstances. She explained that art 40 allowed the prosecuting officer during the preliminary investigation, or the examining magistrate during the judicial investigation, to restrict access to counsel for up to eight days where there was a serious suspicion that free communication would either reveal information the suspect should temporarily not know or would be misused to obstruct the investigation. She stated that such restrictions did not affect the appointment of counsel but only the ability to communicate freely.

[72] She summarised several Surinamese court decisions interpreting art 40, noting that the courts had upheld restrictions where the investigation risked being compromised, including where the same lawyer represented multiple suspects or where revealing information prematurely might allow the suspect to adjust statements or interfere with evidence. Ms Bruining also noted that the courts had, in other cases, lifted restrictions where the prosecution had not demonstrated necessity. She explained that objections to restrictions could be lodged with the Court of Justice within three days and that the courts examined whether restrictions were urgently required in the interest of truth-finding.

[73] Ms Bruining stressed that art 40 had never been struck down by the courts or the Constitutional Court as inconsistent with the Constitution, the American Convention on Human Rights, or the ICCPR. She said that these international instruments were binding in Suriname, but the judiciary had never found that art 40 violated rights to counsel or access to a court. She emphasised that the provision reflected the long-established principle, shared with earlier Dutch law and recognised in European Union (EU) Directive 2013/48/EU, that limited, temporary restrictions on access to counsel may be necessary to prevent destruction of evidence, collusion, or interference in investigations, provided they were strictly justified and time-limited.

[74] She concluded that the Surinamese regulation of art 40 formed part of a coherent legal framework balancing the rights of suspects with the State's duty to uncover the truth in criminal proceedings. She maintained that the restrictions authorised under art 40 remained valid under Surinamese law and were applied within the boundaries of statutory and judicial safeguards, only where required by the special circumstances of the case.

[75] Under cross-examination, Ms Bruining confirmed that the prosecuting officer making a *beperving* order is not a judicial officer. She also indicated that she was not in any way involved in the Claimant's prosecution. She only knew the matter from the file which was submitted to her office.

[76] Ms Bruining also confirmed that if the *beperving* order is issued at the same time as a detention order, the detention hearing would proceed without a lawyer being present for the detainee. In those circumstances, the suspect would be interrogated, then face the court without a lawyer regarding their detention and then the time for making an objection to the *beperving* order would expire.

Summary of Submissions

Submissions of the Claimant

[77] The Claimant submitted that he was arbitrarily detained in Suriname without access to a court or to counsel, which amounted to a violation of his rights to freedom of movement, to provide services, and to move as a skilled Community national under Articles 36, 37 and 46 of the RTC.

[78] The Claimant maintained that the governing facts were not disputed. The Defendant State filed no evidence contradicting the Claimant's assertion that he was held without access to counsel for 18 days and without access to a court for about 77 days (or, at minimum 8 days if the Claimant's participation in a telephone call which continued the *beperving* is treated as access to the court).

[79] The Claimant noted that the Defendant's justification for the detention relies on art 40 of the SCCP which provides for *beperving*. However, the Claimant argued that even if valid under domestic law, (i) *beperving* was unwarranted in his case, (ii) the provision is fundamentally incompatible with the RTC, and (iii) its use in practice violates RTC rights and international human rights norms. The Claimant argued that the imposition of a *beperving* order constituted an impediment to both the right to freedom of movement and

the right to provide services, and that the right to freedom of movement was closely connected to basic human rights.

[80] Relying heavily on the Vienna Convention on the Law of Treaties ('VCLT'), the Claimant submitted that RTC rights must be interpreted effectively and purposively. He argued that access to a court and to legal counsel are essential to making RTC rights effective. Specifically, the right to freedom of movement cannot be meaningfully enjoyed in a legal environment that permits arbitrary or incommunicado detention, which inherently violates human rights norms.

[81] Counsel urged the Court to identify, through the Charter, the basic human rights enjoyed by Community nationals, describing the Charter as a bespoke Caribbean code made by Caribbean people for Caribbean people. The Claimant argued in favour of the legal and interpretive force of the Charter. He submitted that the Charter constitutes a 'decision' by an Organ of the Community under Article 9 of the RTC, critiquing the contrary view of the Amicus. He pointed to *Myrie v State of Barbados (No 2)*¹ to assert that decisions of the Conference of Heads of Government, such as the adoption of the Charter, can generate binding obligations. Alternatively, it was argued that, at a minimum, the Charter serves as an authoritative interpretive tool. Relying on Article 31 of the VCLT, it was argued that the Charter's inclusion in the preamble of the RTC endowed it with legal relevance. In response to questions from the Bench, Counsel accepted that the Court could also look to Member States' constitutions and other international instruments to identify the basic human rights enjoyed by Community nationals.

[82] As to the *beperving* regime, the Claimant provided evidence (including expert reports) that the provision is vague, susceptible to abuse and inconsistent with modern standards of criminal procedure and human rights. He contrasted the Surinamese approach unfavourably with the Dutch model (on which it was originally based), noting that the latter has since been amended to include prompt judicial oversight and guaranteed legal representation through the appointment of substitute counsel.

¹ [2013] CCJ 3 (OJ), (2013) 83 WIR 104 at [8].

- [83] Counsel submitted that although the Claimant was told in a single sentence during interrogation that he had a right to counsel, that right was rendered illusory by the existence of the *beperring*. The Claimant contended that the *beperring* resulted in an absolute denial of access to counsel under art 40(2) of the SCCP. It was submitted that the restriction prevented the Claimant from being interrogated with counsel present, as well as from challenging the *beperring* order and detention order with counsel, thereby completely undermining the position of a criminal suspect.
- [84] Counsel submitted that between 7 and 24 October 2020, the Claimant remained without legal representation, resulting in a signed confession later relied upon in criminal proceedings. Hearings held on 13 October, 13 November, and 9 December 2020 in relation to the continuation of detention, proceeded without counsel present. Although the *beperring* had been lifted by the November and December hearings, the prosecution was responsible for giving notice and often provided extremely short notice. The Claimant remained in detention for approximately 75 days without charge, and none of the evidence concerning the effect of these events on his person was challenged.
- [85] Referencing the guarantee under Article II(2)(e) of the Charter of the right to freedom of movement within the Community, subject to exceptions and qualifications ‘which are reasonably justifiable in a democratic society’, the Claimant argued that any abrogation of his right to freedom of movement could only be justified on the basis that it was ‘necessary in a democratic society’. He contended that the Defendant’s failure to justify its interference with his rights according to the test of necessity in a democratic society renders the interference disproportionate and unjustifiable. The Claimant referenced jurisprudence from the European Court of Human Rights, Inter-American Court of Human Rights and the United Nations Human Rights Committee which confirms that incommunicado detention violates rights to liberty, fair trial, and protection from inhumane treatment.
- [86] In response to queries from the Bench as to how the Claimant’s right to provide services had been affected by the detention, counsel indicated that the Claimant’s work required him to operate across the Region and that his detention prevented him from doing so.

Reference was made to agreed facts in the record, including that on 6 October 2020, police officers seized the Claimant's passports at his apartment, preventing his departure.

[87] Counsel for the Claimant also addressed medical evidence, including evidence of the stroke suffered in June 2022, and raised issues of causation, arguing that the conditions of detention contributed to the deterioration of his health. It was submitted that had the Claimant enjoyed access to counsel, he might have been released earlier, with positive consequences for his health.

[88] The Claimant rejected the five main grounds of defence raised by the Defendant. He:

- i. asserted that the Defendant's contention that he in fact had counsel from the first day of his detention is contradicted by evidence;
- ii. argued that there is no evidence that the detention was necessary to protect public morals or the maintenance of public order and safety for the purpose of Article 226(1)(a) of the RTC, or that this was the intention behind the *beperking*;
- iii. submitted that proof of discriminatory treatment is not a prerequisite for a violation of the RTC;
- iv. contended that the Defendant's argument that the Charter is non-binding misconstrues Article 9 of the RTC;
- v. insisted that the CCJ has jurisdiction as he is not requesting the Court to enforce international human rights treaties but was relying on the RTC itself and its interpretation in light of the Charter.

[89] In summary, the Claimant submitted that the evidence shows a serious violation of RTC rights, compounded by breaches of minimum human rights standards, with no legitimate justification provided by the Respondent.

Submissions of the Defendant

[90] The Defendant submitted that the Claimant was properly detained, had timely access to legal representation, and was treated in a humane and medically proper manner with no

discrimination against him on the basis of his nationality only. The Defendant denied the Claimant's allegations that he was prejudiced in respect of the enjoyment of his rights to freedom of movement and to provide services.

[91] Counsel for the Defendant asserted that the Claimant mistakenly premised his allegations on the assumption that he cannot receive a fair trial in Suriname. In response to the Claimant's contention that art 40 of the SCCP is incompatible with the right to be represented by legal counsel, the Defendant noted that its expert witness, Ms Bruining, clarified that art 40 of the SCCP had not been set aside or nullified by the Suriname courts.

[92] The Defendant highlighted that the Claimant had a chosen legal counsel who represented him from the first day of his detention, and who was in frequent communication with the Attorney General's Office to represent his interests. Moreover, the Claimant never made any statements to the police, the Attorney General's Office, or the court, without any proper Dutch-English translations or interpretations in place. Counsel for the Defendant addressed evidence concerning interrogation and translation, relying on a police report indicating that a translator had been present and that the Claimant had signed the relevant document.

[93] In response to questions from the Bench regarding the lawfulness of detention without a detention order, the Defendant agreed, along with the Claimant, that detention required a written detention order. The Defendant referred to a detention order disclosed in the record in Dutch, noting that it required translation into English.² It was accepted that the document related to detention only and did not refer to the *beperking*.

[94] Counsel for the Defendant submitted that the laws of Suriname applied equally to all persons within its jurisdiction, including Surinamese nationals, CARICOM nationals, and other foreigners. It was argued that, given the circumstances of the investigation, the *beperking* was applied to all and any counsel in order to protect the integrity of the process. The Defendant reiterated that the Claimant was treated in all respects (including access to

² The Defendant subsequently filed a translated copy of an order, dated 8 October 2020, made under art 48 of the SCCP for the remand in police custody of the Claimant for a period of seven days.

medical benefits) in the same manner as residents and citizens of Suriname who are reasonably suspected of the commission of serious criminal offences.

[95] Additionally, counsel for the Defendant submitted that the restrictions imposed on the Claimant were, in the circumstances, warranted under Article 226(1)(a) of the RTC to protect public morals and maintain public order and safety, in the context of an investigation involving a state-owned entity and allegations of corruption. Counsel submitted that such criminal procedure enforcement was in the circumstances reasonable and proportionate to contain and remedy the damage caused by the suspected actions of the Claimant. Counsel referenced case law to support the claim that the restrictions were applied within a domestic legislative framework that provides an effective and accessible appeal and review procedure with adequate safeguards to protect the Claimant's rights. Counsel accepted that the language of Article 226 prohibited arbitrary or unjustifiable measures but maintained that the restrictions imposed in this case met the requisite standard.

[96] Relying on *Gilbert v State of Barbados*,³ the submissions also reiterated the Claimant's failure to premise the breach of his right to freedom of movement and provide services within Suriname on treatment that is discriminatory on the ground of nationality only. The Defendant contended that simply claiming that the Claimant will not receive a fair trial in Suriname does not raise any issue of discrimination on the ground of nationality only.

[97] The Defendant asserted that the Charter has been perceived since its inception by the drafters and signatories as non-binding. Thus, the Claimant was relying to no avail on the Charter to fortify his request to the Court to test the Suriname criminal procedure law. Counsel for the Defendant argued that the Charter was not intended to serve as a minimum standard for the treatment of CARICOM nationals and aligned itself with CARICOM's position that the Charter was not legally binding.

³ [2019] CCJ 2 (OJ) at [24].

[98] Furthermore, the Defendant submitted that while the CCJ has acknowledged that it can consider principles of international human rights law when seeking to shape and develop relevant Community law, the Court has stated that it lacks jurisdiction to make the declarations and orders sought by the Claimant in these proceedings relating to the breaches of human rights.

[99] In addition, the Defendant rebutted the Claimant's submissions regarding the 'necessary in a democratic society' standard for restrictions placed on the freedom of movement. This requirement and its detailed sub-requirements are part of the European human rights regime under the European Convention of Human Rights, and do not apply to the CSME established by the RTC.

[100] Counsel for the Defendant confirmed that decisions of the Court in its original jurisdiction were binding on Suriname and would require implementation through domestic measures, including possibly legislative adjustment. If the Court were to find the *beperving* unlawful, counsel submitted that the Claimant could invoke that decision before the national courts in Suriname. In addressing the effect of such a finding of unlawfulness on the criminal proceedings, counsel for the Defendant submitted that Suriname operated a semi-monistic system in which only treaty provisions that were directly applicable formed part of domestic law. To date, no domestic decision had completely set aside a *beperving* order as unconstitutional, although *beperving* orders had been appealed and lifted in individual cases.

[101] The Defendant denied any responsibility for the damages allegedly sustained by the Claimant due to the imposed restrictions.

Submissions of CARICOM, Amicus Curiae

[102] The Court posed the following questions to CARICOM:

- (i) What is the legal status of the Charter of Civil Society for CARICOM and the relevance of the Charter to the interpretation and application of the RTC?

- (ii) What is the relationship between the exercise of Community rights and the competence of national law enforcement authorities to apply national criminal law?

[103] As to the legal status and character of the Charter, CARICOM concluded that the Charter does not meet the criteria of a treaty as defined by the VCLT since it lacks clauses for signature, ratification, or accession, and does not have introductory clauses signifying an agreement. CARICOM maintained that, unlike Protocol I amending the Treaty Establishing CARICOM which includes final provisions for entry into force after ratification, the Charter is declaratory and consolidates various obligations assumed by CARICOM Member States. The Community noted that Trinidad and Tobago is the only Member State that has submitted an instrument of ratification to the Charter but pointed out that this is not required by the Charter or the Resolution adopting the Charter.

[104] CARICOM also concluded that the Charter and the Resolution adopting the Charter do not constitute a binding decision or recommendation of the Conference. It was reiterated that the Charter is declaratory and does not create legally binding obligations. The Community noted that the Conference's decisions on non-compliance with the Charter are in the form of recommendations only, and there is limited evidence of subsequent decisions taking concrete steps to implement the Charter. CARICOM also pointed to a decision of the Conference at its Thirteenth Special Meeting in 2008, which indicates that the Heads of Government intended for an additional step to be taken to make the Charter legally binding.

[105] Noting that CARICOM citizens possess inalienable rights arising from the Community legal order, CARICOM characterised the Charter as a statement of the collective intention of Member States that their citizens should enjoy certain fundamental rights. CARICOM submitted that the Charter, though not legally binding in the strict sense, reflected the shared normative commitments of CARICOM Member States.

[106] CARICOM further submitted that legitimate expectations could arise where precise, unconditional, and consistent assurances had been given and relied upon, and that Community institutions were required to act within the rule of law and not to frustrate such expectations.

[107] On the issue of the relevance of the Charter to the interpretation and application of the RTC, CARICOM suggested that the CCJ may consider the reference to the Charter in the RTC's Preamble as providing context for the interpretation of provisions of the RTC. CARICOM further submitted that this Court may determine either that (1) the rights embodied in the Charter form part of the general principles of Community law, either on the basis of the common constitutional traditions of Member States or their common adherence to international human rights principles, or on some other ground, or that (2) the rights embodied in the Charter can be taken into account in interpreting or applying the Treaty by virtue of the Court's mandate in Article 217(1) of the RTC.

[108] On the second question posed by the Court, CARICOM submitted that nothing in the RTC removes or dilutes the competence of national law enforcement authorities to apply national criminal law. Noting the amendment of the RTC to include Security as the fourth pillar of the Community, CARICOM pointed out that even when regional resources are used to manage and defuse national and regional crises or combat serious crimes, their employment must be done in consultation with the relevant Member States. CARICOM emphasised, however, that national criminal law may be open to scrutiny where it restricts fundamental freedoms unless it is justified by the exceptions laid down in Articles 225 and 226 of the RTC. Where a Member State invoked Article 226 to justify restrictive measures on the grounds of public order or safety, the burden rested on the Member State to demonstrate not only that such measures were for the protection of public order or public safety but also that they were neither arbitrary nor unjustifiably discriminatory.

Issues to be Determined

[109] The key issues for this Court's determination are:

1. whether there is a minimum standard of human rights which is required for the effective exercise by Community nationals of their rights under the RTC, such as the right to freedom of movement and the right to provide services;

2. if there is such a minimum human rights standard under Community law, whether the operation of the *beparking* mechanism under art 40(2) of the SCCP in the circumstances of this case was consistent with the effective exercise of the Claimant's right to freedom of movement and to provide services;
3. whether the Defendant can rely on Article 226(1)(a) of the RTC to justify its use of the *beparking* mechanism;
4. what remedies are to be awarded to the Claimant for any violations of his rights under the RTC.

Issue 1: Minimum Standard of Human Rights Required for the Effective Exercise of the Rights under the RTC

[110] The Claimant submits that rights guaranteed to Community nationals under the RTC, such as the right to freedom of movement and the right to provide services, are not effective if they are exercisable in an environment which does not protect fundamental human rights. The Claimant contends that access to a court and to counsel are imperative safeguards against the wrongful infringement of a right to freedom of movement and to provide services. In advancing these submissions, the Claimant urged this Court to recognise the Charter of Civil Society as an important feature of the rule of Community law, either as an independent, self-determined code applicable to the peoples of the Community, or alternatively as an important interpretative tool in delimiting the breadth of the rights conferred by the RTC.

[111] This Court has already recognised the relevance of human rights law to the development of Community law. In *Myrie v State of Barbados (No 2)*, the Court noted that:

[T]he Court is an international court authorised to apply 'such rules of international law as may be applicable' of which human rights law is an inextricable part. It stands to reason therefore that, in the resolution of a claim properly brought in its original jurisdiction, the Court can and must take into account principles of

international human rights law when seeking to shape and develop relevant Community law.⁴

[112] The present case calls on the Court to examine the relevance of the protection of human rights to the exercise of certain rights guaranteed under the RTC. In addressing whether there is a minimum standard of human rights that must be respected to ensure the effective enjoyment by Community nationals of their rights under the RTC, such as the right to freedom of movement, the Court will consider, *inter alia*, the legal status of the Charter and its applicability to the interpretation of the rights guaranteed under the RTC.

[113] At issue in these proceedings is the legal scope of Treaty-based rights such as the right to freedom of movement, which turns on the proper interpretation of provisions of the Treaty. In interpreting the RTC, this Court has relied on the rules of treaty interpretation in Articles 31 and 32 of the VCLT.⁵ The general rule of treaty interpretation, codified in Article 31(1) of the VCLT, prescribes that a treaty shall be interpreted ‘in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.’ In *Trinidad Cement Ltd v Co-operative Republic of Guyana*, this Court recognised that it must adopt a teleological approach to interpretation of the RTC, according to which it must ‘examine the context in which the provision appears in light of the object and purpose of the RTC and interpret the [A]rticle in a manner that *renders the RTC effective*’.⁶

[114] The principle of effectiveness or *effet utile* is a generally accepted principle of international law that a treaty must be interpreted in a manner that would not deprive it of meaning or consequence, or in a manner that would realise its object and purpose.⁷ This principle has been routinely applied by international tribunals. The International Court of Justice has recognised the important role of the principle of effectiveness in the law of treaties⁸ and

⁴ *Myrie* (n 1) at [10].

⁵ [2009] CCJ 1 (OJ), (2009) 74 WIR 302 at [10].

⁶ *ibid* at [38] (emphasis added).

⁷ José Rogelio Gutiérrez Álvarez, ‘The Many Lives of *Effet Utile* in Treaty Interpretation’ (2024) 25(25) *Anuario Mexicano de Derecho Internacional* e19025.

⁸ *Fisheries Jurisdiction (Spain v Canada)* (Jurisdiction) (Judgment) [1998] ICJ Rep 432 at [52].

applied the principle to ensure treaty provisions are not devoid of purport or effect,⁹ as well as to facilitate the achievement of the treaty's aims.¹⁰ Similarly, the International Criminal Court has recognised the principle of effectiveness as requiring that a treaty must be read so as not to devoid it of 'any meaningful content'¹¹ or as preferring the interpretation of a treaty which 'best promotes its major purposes'.¹² The Inter-American Court of Human Rights advances an interpretation of the American Convention on Human Rights that ensures that the 'system for the protection of human rights has all its appropriate effects (*effet utile*)'.¹³ The Appellate Body of the World Trade Organization frequently applied the principle of effectiveness in its jurisprudence, favouring treaty interpretation that would 'give meaning and effect' to the terms of the treaty¹⁴ and avoiding interpretation that would reduce treaty provisions to 'redundancy or inutility'¹⁵ or deprive them of effectiveness.¹⁶

[115] The Court of Justice of the European Communities read treaty provisions through the lens of what is 'necessary to prevent the effectiveness of the Treaty from being considerably weakened and its purpose from being seriously compromised.'¹⁷ The Court of Justice also relied on the principle of effectiveness to ground its development of fundamental doctrines, such as State liability, in respect of which no specific treaty provisions existed. In *Francovich v Italian Republic*,¹⁸ on which this Court relied in *Trinidad Cement Ltd v Co-operative Republic of Guyana (No 2)*,¹⁹ the Court of Justice asserted that 'the full effectiveness of Community rules would be impaired and the protection of the rights which

⁹ For example, *Corfu Channel Case (UK v Albania)* (Merits) (Judgment) [1949] ICJ Rep 4 at 24; *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v Russian Federation)* (Preliminary Objections) (Judgment) [2011] ICJ Rep 70 at [133].

¹⁰ *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v Russian Federation)* (Preliminary Objections) (Judgment) [2019] ICJ Rep 558 at [111].

¹¹ *Prosecutor v Kony* (Decision on the Prosecutor's Application that the Pre-Trial Chamber disregard as irrelevant the Submission filed by the Registry on 5 December 2005) ICC-02/04-01/05-147 (9 March 2006) at [25].

¹² *Prosecutor v Al Bashir* (Judgment in the Jordan Referral re Al-Bashir Appeal) ICC-02/05-01/09-397-Anx1 (6 May 2019) at [419] (Eboe-Osuji, Morrison, Hofmański and Bossa JJ), citing Myers McDougal and Richard Gardner, 'The Veto and the Charter: An Interpretation for Survival' (1951) 60 Yale L J 258, 261.

¹³ *The Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law*, Advisory Opinion OC-16/99, Inter-American Court of Human Rights Series A No 16 (1 October 1999) at [58].

¹⁴ For example, *United States: Subsidies on Upland Cotton – Report of the Appellate Body* (3 March 2005) WT/DS267/AB/R at [522]; *Korea: Definitive Safeguard Measure on Imports of Certain Dairy Products – Report of the Appellate Body* (14 December 1999) WT/DS98/AB/R at [80]; *Argentina: Safeguard Measures on Imports of Footwear – Report of the Appellate Body* (14 December 1999) WT/DS121/AB/R at [95].

¹⁵ *United States: Standards for Reformulated and Conventional Gasoline – Report of the Appellate Body* (20 May 1996) WT/DS2/9 at 23.

¹⁶ *United States: Continued Dumping and Subsidy Offset Act of 2000 – Report of the Appellate Body* (16 January 2003) WT/DS217/AB/R, WT/DS234/AB/R at [271].

¹⁷ Case 30/59 *De Gezamenlijke Steenkolenmijnen in Limburg v High Authority of the European Coal and Steel Community* ECLI:EU:C:1961:2, [1961] ECR I at 24.

¹⁸ Joined Cases C-6/90 and C-9/90 *Francovich v Italian Republic* ECLI:EU:C:1991:428, [1991] ECR I-05357 para 33.

¹⁹ [2009] CCJ 5 (OJ), (2009) 75 WIR 327 at [24].

they would grant would be weakened' if individuals were unable to obtain redress when their rights were infringed by a Member State's breach of Community law.

[116] As this Court has recognised, the interpretation of the RTC in a manner that renders the Treaty effective is consistent with a purposive interpretation of the Treaty. The guarantees of free movement of Community nationals under the RTC would be deprived of their effectiveness if minimum human rights standards did not attend the exercise of the right to freedom of movement.

[117] Further, Article 9 of the RTC imposes an obligation on Member States to 'facilitate the achievement of the objectives of the Community' and to 'abstain from measures which could jeopardise the attainment of the objectives' of the Treaty. Among the stated objectives of the Community in Article 6 of the RTC are improved standards of living and work, full employment of labour and other factors of production and sustained economic development. Notably, the Court has acknowledged in its jurisprudence the critical importance of the free movement of Community nationals. In *Myrie*, this Court stated that the free movement of Community nationals is a 'fundamental Community goal'²⁰ as well as a 'fundamental principle'.²¹ In its first Advisory Opinion, the Court categorised the freedom of movement of skilled nationals as a 'fundamental objective'²² of the Community, which lies at the 'core of the spirit, nature and aspirations of the Community'.²³ The realisation of these objectives would clearly be jeopardised if Member States did not accord a minimum standard of human rights to Community nationals exercising rights guaranteed under the Treaty, such as free movement.

Minimum Human Rights Standard Imposed by Community Law

[118] The Claimant submits that the Charter of Civil Society elaborates the minimum standard of human rights which must be respected to ensure the effective exercise of rights accorded

²⁰ *Myrie* (n 1) at [62].

²¹ *ibid* at [67], [68].

²² *Lawfulness of opt-out by a Member State pursuant to Article 27(4) of Conference Decision made under Article 46 concerning the enlargement of classes of persons entitled to move and work freely in the Community; Whether the principle of nonreciprocity enables nationals of those Member States which opt-out to derive the benefits of the enlargement Decision* (Advisory Opinion) [2020] CCJ 1 (OJ) (AO) at [53].

²³ *ibid* at [50].

to Community nationals under the RTC. The Claimant contends that this conclusion results from the legal status of the Charter as a binding, enforceable decision of the Conference of the Heads of Government, or alternatively from the use of the Charter as an aid to the interpretation of the RTC.

[119] The Charter originated from a recommendation of the West Indian Commission that Member Governments should subscribe to a CARICOM Charter of Civil Society as ‘a clear political statement of the standards of civil society which the people of CARICOM can be confident will be respected as part of the political ethos of CARICOM’.²⁴ In making this proposal, the Commission recognised the need for CARICOM to have ‘normative moorings’ and considered that the Charter could become ‘the soul of the Community’.²⁵

[120] The Conference of Heads of Government, at its Special Meeting in October 1992, agreed in principle to the development of a CARICOM Charter of Civil Society, which would deal with matters such as respect for fundamental civil, political, economic, social and cultural rights.²⁶ At its Eighth Inter-sessional Meeting on 19 February 1997, the Conference adopted the Charter by Resolution, which was signed by 13 Member States and one associate Member of CARICOM. The Resolution recorded the commitment of the Conference to ‘the fundamental principles of human rights and freedoms’ and its agreement to ‘pay due regard to’ the Charter’s principles and ensure that it ‘receives the widest possible circulation’ within their respective States and Territories.

[121] The Preamble to the Charter notes that the people of the Caribbean Community, acting through the representatives of their governments, are determined ‘to ensure continuing respect for internationally recognised civil, political, economic, social and cultural rights’. The Preamble also declares their ‘resolve to pay due regard to’ the elaborated principles by which their governments ‘commit themselves to respect and strengthen the fundamental elements of a civil society’.

²⁴ West Indian Commission, *Time for Action: Report of the West Indian Commission* (1992) 496.

²⁵ *ibid.*

²⁶ CARICOM Secretariat, ‘Report of the Special Meeting of the Conference of the Heads of Government of CARICOM’, REP 92/1/62 HGC(Spec), Port of Spain, Trinidad and Tobago, 28–31 October 1992, 6.

[122] The Charter records the commitments of ‘the States’, defined as Member States of the Community and including Associate Members of the Community.²⁷ Article II provides that the States ‘shall respect the fundamental human rights and freedoms of the individual...subject to respect for the rights and freedoms of others and for the public interest’.²⁸ These fundamental human rights and freedoms, which include the right to liberty and security of the person and freedom of movement within the Community, are ‘subject to such exceptions and qualifications as may be authorised by national law and which are reasonably justifiable in a free and democratic society’.²⁹ Further, the States ‘shall promote and encourage the effective exercise of civil and political rights and, within the limits of their resources, economic, social and cultural rights’.³⁰ Commitments with respect to these rights, as well as good governance, consultations among social partners, and building awareness of the people, are elaborated in the Charter.³¹ The Charter includes undertakings by the States to periodically report to the Community on implementation and to maintain a National Committee or body to monitor implementation and receive allegations of violations or non-compliance.³² Generally, there is a declaration by the States of their ‘resolve to pay due regard to’ the provisions of the Charter.³³

[123] The Court agrees with the submissions of CARICOM that the Charter is neither a treaty nor a decision of the Conference. The Preamble of the Charter does not signify the conclusion of an international agreement, and the Charter does not contain final provisions indicating how States would express their consent to be bound or governing its entry into force. Similarly, various considerations do not point to the status of the Charter as a decision of the Conference with binding force. Article XXVI of the Charter declares the States’ resolve ‘to pay due regard’ to the provisions of the Charter. The communique issued at the conclusion of the meeting of the Conference at which the Charter was adopted, states that the Charter is ‘declaratory and does not itself create legally binding obligations’.³⁴ This

²⁷ Charter of Civil Society for the Caribbean Community (adopted 19 February 1997) art I(b).

²⁸ *ibid* at art II(1).

²⁹ *ibid* at art II(2)(e).

³⁰ *ibid* at art II(3).

³¹ *ibid* at arts III–XXIV.

³² *ibid* at art XXV.

³³ *ibid* at art XXVI.

³⁴ CARICOM Secretariat, ‘Communique issued at the Conclusion of the Eighth Inter-sessional Meeting of the Conference of Heads of Government of the Caribbean Community’, St John’s, Antigua and Barbuda, 20–21 February 1997.

understanding of the Charter is also reflected in the subsequent decision-making of the Conference, which in 2008 requested the Secretariat to ‘table the draft instrument converting the Charter of Civil Society into a legally binding agreement’ at its Twentieth Intersessional Meeting in 2009.³⁵

[124] Although the Charter does not create a free-standing, justiciable catalogue of rights, it does have legal relevance in the Community’s legal order. First, the Charter is relevant as an aid to the interpretation of the RTC. In this regard, the Court notes that the Charter was adopted by regional consensus, through a resolution of the Conference of Heads of Government that was signed by 13 Member States and an associate Member of the Community, and that a Member State sought to ratify it. These States resolved to ‘pay due regard to’ the principles enunciated in the Charter. Significantly, there is an express reference to the Charter in the Preamble to the RTC, the final recital of which recalls the Charter ‘reaffirming the human rights of their peoples’. In keeping with Article 31(2) of the VCLT, this Court has affirmed that the Preamble to the RTC is ‘an important part of its context for the purposes of interpretation’, noting that the Preamble highlights the ‘goals of the states parties and of statements of principle by which they propose to be guided’.³⁶ The Court also agrees with CARICOM that, in line with Article 31(3)(c) of the VCLT, the Charter can be taken into account in interpreting the RTC as ‘relevant rules of international law applicable in the relations between the parties’.

[125] While the Charter is not binding in the strict sense as a treaty or a decision of the Conference, its provisions reflect the shared normative commitments of CARICOM Member States. A reading of the RTC, particularly the rights it confers on Community nationals, in the context of the specific reference to the Charter in the Preamble, buttresses the Court’s earlier conclusion that Community law imposes minimum human rights standards that must attend the exercise by Community nationals of their rights under the Treaty. Further, the Charter, as an expression of shared normative commitments of Member States, articulates a minimum human rights baseline that informs the exercise of State

³⁵ CARICOM Secretariat, ‘Summary of the Recommendations and Conclusions of the Thirteenth Special Meeting of the Conference of Heads of Government of the Caribbean Community’, HGC(Spec)/2008/13/SRC, Port-of-Spain, Trinidad and Tobago, 4–5 April 2008, 3.

³⁶ *Trinidad Cement Ltd v Co-operative Republic of Guyana* (n 5) at [12].

power in the Community, especially where Community nationals are exercising Treaty-based rights, such as freedom of movement.

[126] Second, the Charter is also relevant in helping to identify general principles of Community law. In *Trinidad Cement Ltd v Caribbean Community*, this Court affirmed that the ‘principles of law common to the principal legal systems of the Community’ are applicable rules of international law that it may apply pursuant to Article 217 of the RTC.³⁷ In this regard, the Court stated that:

This Court may take into account the principles and concepts common to the laws of Member States. The search is for general principles of law common to Member States. It is not necessary for the principle to be expressed identically in all Member States. It is sufficient if the general principle is widely accepted ... If the general principle is widely accepted throughout the Community and relevant it may become part of Community law.³⁸

[127] The Court finds that fundamental human rights are general principles that are widely accepted throughout the Community. This is evident from the protection of fundamental rights and freedoms of the individual under the constitutions of all Member States of CARICOM.³⁹ The Charter is also evidence of the wide acceptance of fundamental rights throughout the Community. The Charter is an instrument on which Member States of CARICOM collaborated and ‘consolidates various obligations and undertakings assumed by CARICOM States in relation to...respect for civil, political and economic rights’.⁴⁰ The Charter is also specifically referred to in the RTC as an instrument which reaffirms the human rights of the peoples of the Region.

[128] In determining what fundamental rights should be recognised as general principles of Community law, this Court can look to not only the constitutions of Member States and the Charter, but also other international human rights instruments on which Member States

³⁷ [2009] CCJ 2 (OJ), (2009) 74 WIR 319 at [41].

³⁸ *ibid.*

³⁹ Antigua and Barbuda Constitution Order 1981, ch II; Constitution of the Commonwealth of The Bahamas 1973, ch III; Constitution of Barbados 1966, ch III; Belize Constitution 1981, ch 4, pt II; Constitution of the Commonwealth of Dominica 1978, ch I; Grenada Constitution Act 1973, ch I; Constitution of the Co-operative Republic of Guyana Act 1980, ch III; Constitution of the Republic of Haiti 1987, ch II; Constitution of Jamaica 1962, ch III; Constitution of Saint Christopher and Nevis 1983, ch II; Constitution of Saint Lucia 1978, ch I; Saint Vincent Constitution Order 1979, ch I; Constitution of Suriname 1987, ch V; Constitution of the Republic of Trinidad and Tobago 1976, ch I.

⁴⁰ Communiqué (n 34).

have collaborated or to which Member States are signatories or otherwise subscribe. Such international human rights instruments include the ICCPR,⁴¹ to which 13 CARICOM Member States subscribe,⁴² and the Universal Declaration of Human Rights,⁴³ which is regarded to be an elaboration of the human rights which Members of the United Nations have pledged to promote under Articles 55 and 56 of the United Nations Charter.⁴⁴

[129] The Court of Justice of the European Communities recognised fundamental human rights as general principles of Community law in cases decided under the original Treaty of Rome establishing the European Economic Community, which did not feature the express references to fundamental rights that were later incorporated into the Community's primary treaties.⁴⁵ In *Internationale Handelsgesellschaft v Einfuhr und Vorratstelle für Getreide und Futtermittel*, the Court of Justice found that respect for fundamental human rights forms an integral part of the general principles of Community law protected by the court, noting that 'the protection of such rights, whilst inspired by the constitutional traditions common to the Member States, must be ensured within the framework of the structure and objectives of the Community.'⁴⁶ In *Nold v Commission of the European Communities*, the Court of Justice also found that 'international treaties for the protection of human rights on which Member States have collaborated or of which they are signatories, can supply guidelines which should be followed within the framework of Community law.'⁴⁷

[130] Based on state practice, some fundamental rights may be regarded as having attained the status of customary international law, a source of law which this Court has recognised that

⁴¹ International Covenant on Civil and Political Rights (adopted 19 December 1966, entered into force 23 March 1976) 999 UNTS 171.

⁴² Antigua and Barbuda, The Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Haiti, Jamaica, Saint Lucia, St Vincent and the Grenadines, Suriname and Trinidad and Tobago.

⁴³ Adopted 10 December 1948 UNGA Res 217 A(III).

⁴⁴ Peter Malanczuk, *Akehurst's Modern Introduction to International Law* (7th rev edn, Routledge 1997) 213.

⁴⁵ The 1992 Treaty on European Union ('TEU') expressly provided that fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, shall constitute general principles of EU law. Following the entry into force of the amending Treaty of Lisbon in 2009, the TEU also provided that the Charter of Freedoms of the European Union has the same legal value as the primary Treaties.

⁴⁶ Case 11/70 *Internationale Handelsgesellschaft v Einfuhr und Vorratstelle für Getreide und Futtermittel* ECLI:EU:C:1970:114, [1970] ECR I 125, para 4. The Court had earlier recognised that fundamental human rights were general principles of Community law which were protected by the Court in an *obiter* statement in Case 26/69 *Stauder v City of Ulm* ECLI:EU:C:1969:57, [1969] ECR 419, para 7.

⁴⁷ Case 4/73 ECLI:EU:C:1974:51, [1974] ECR 491, para 13.

it is empowered to apply pursuant to Article 217 of the RTC.⁴⁸ Certain fundamental rights may even have entered the realm of *jus cogens* or peremptory norms.⁴⁹

[131] The fundamental rights which may be recognised under Community law are not absolute. Limitations may be imposed on the exercise of these rights within the framework of the Community in a similar manner that restrictions may be placed on the fundamental rights guaranteed by the constitutions of Member States and international human rights instruments. Similarly, the Court of Justice of the European Communities found that the fundamental rights which constitute general principles of EU law are not absolute, noting that:

The fundamental rights recognized by the Court are not absolute, however, but must be considered in relation to their social function. Consequently, restrictions may be imposed on the exercise of those rights...provided that those restrictions in fact correspond to objectives of general interest pursued by the Community and do not constitute, with regard to the aim pursued, a disproportionate and intolerable interference, impairing the very substance of those rights.⁵⁰

[132] This Court finds that the minimum human rights standards that must attend the exercise of Treaty-based rights, such as the right to freedom of movement, include the right of an accused person to have access to legal counsel of their choice. The right of an accused person to access legal counsel of his or her choice is central to the core civil and political rights affirmed under the Charter. The right is further guaranteed by the constitutions of every CARICOM Member State. Across the Region, access to legal representation is entrenched as a fundamental procedural guarantee, most commonly as an incident of the protection of personal liberty and the right to a fair hearing.⁵¹ Notwithstanding variations in constitutional text and doctrinal development, the consistent entrenchment of the right

⁴⁸ *Trinidad Cement Ltd v Caribbean Community* (n 37) at [41].

⁴⁹ Some international tribunals have found the prohibition of torture to be a peremptory norm in international law. See eg European Court of Human Rights: *Al-Adsani v United Kingdom* (2001) 34 EHRR 273 at [61]; International Criminal Tribunal for the Former Yugoslavia: *Prosecutor v Furundzija* (Judgment) IT-95-17/1-T (10 December 1998) at [144]. The Inter-American Court of Human Rights found that the principle of equality before the law, equal protection before the law and non-discrimination belongs to *jus cogens*: *Juridical Condition and Rights of Undocumented Migrants*, Advisory Opinion OC-18/03, Inter-American Court of Human Rights Series A No 18 (17 September 2003) at [101].

⁵⁰ Case 5/88 *Wachauf v Bundesamt für Ernährung und Forstwirtschaft* ECLI:EU:C:1989:321, [1989] ECR 2609, para 18.

⁵¹ Antigua and Barbuda Constitution Order, CAP 23, ss 5(3), 15(2)(c)–(d); Constitution of the Commonwealth of The Bahamas 1973, ss 19(2), 20(2)(c)–(d); Constitution of Barbados 1966, ss 13(2), 18(2)(c)–(d); Belize Constitution, CAP 4, s 6(3)(c)–(d); Constitution of the Commonwealth of Dominica 1978, s 8(2)(c)–(d); Grenada Constitution Act, CAP 128A, s 8(2)(c)–(d); Constitution of the Co-operative Republic of Guyana Act, Cap 1:01, ss 139(3), 144(2)(c)–(d); Constitution of Jamaica 1962, s 16(6)(b)–(c); Constitution of Saint Christopher and Nevis, CAP 1.01, ss 5(2), 10(2)(c)–(d); Constitution of Saint Lucia, Cap 1:01, ss 3(2), 8(2)(c)–(d); Saint Vincent Constitution Order 1979, ss 3(2), 8(2)(c)–(d); Constitution of the Republic of Trinidad and Tobago Act, Chap 1.01, s 5(2)(c)(ii), (d).

to counsel across the Community points to a shared understanding of its fundamental character.

[133] The consistent constitutional protection of the right to legal representation throughout the Community supports the conclusion that access to counsel has crystallised into a regional customary standard. That standard informs the interpretation and application of Community law obligations, including those arising under the CARICOM Single Market and Economy ('CSME'), and operates as a constraint on State action where Community nationals are subject to detention, criminal process, or other coercive measures. It follows that, where national authorities act in a manner that impairs or denies access to legal counsel, such conduct must be assessed not only against domestic constitutional norms, but also against the minimum human rights protections required by Community law.

Issue 2: Consistency of the Operation of the *beperking* Mechanism with the Claimant's Effective Exercise of his Rights under the RTC

Article 40 of the Suriname Criminal Code of Procedure - Beperking

[134] Article 40 of the SCCP speaks to the powers of counsel regarding interactions and correspondence with a suspect. It is reproduced below:

1. Counsel shall have free access to the suspect who has been legally deprived of his liberty, may speak to him alone and exchange letters with him without the contents being taken cognizance of by others, all this under the necessary supervision, with observance of the internal regulations, and without the investigation being held up as a result.
2. If, from certain circumstances, there is a serious suspicion that the free communication between counsel and suspect will either serve to acquaint the suspect with some circumstance of which he must remain temporarily unaware in the interest of the investigation, or will be misused in attempts to obstruct the search for the truth, the examining magistrate may, during the preliminary judicial investigation and, for that matter, the prosecution officer during the preliminary investigation, at any time order that counsel shall not have access to the suspect or shall not be allowed to speak to him alone and that letters or other documents exchanged between counsel and suspect shall not be handed over. The order shall describe the certain

circumstances referred to in the preceding sentence; it shall not further restrict the free communication between counsel and suspect and shall not be given for longer than is required by those circumstances, and shall in any event only be valid for a maximum of eight days. The order shall be communicated in writing to counsel and suspect without delay.

3. The suspect and his counsel may lodge an objection to the order within three days of that notification with the Court of Justice, which will decide as soon as possible, after having heard the counsel, or at least summoned in writing. In its decision, it may lift, amend or supplement the order.
4. In the case of a person suspected of one of the offences defined in Articles 128 to 149 of the Criminal Code or of an offence punishable by life imprisonment, the examining magistrate may order, during the preliminary judicial investigation and, for that matter, the prosecuting officer during the preliminary investigation, for a period not exceeding fourteen days, in each case, that there will be no communication between the accused and his counsel if he is of the opinion that the interests of the investigation specifically oppose this. The order shall be notified in writing to the counsel and to the accused without delay. The preceding paragraph shall apply.
5. All obstructions on the free communication between counsel and suspect, which have been ordered pursuant to one of the preceding paragraphs, shall cease as soon as the order to close the preliminary judicial investigation in accordance with Article 218 has become irrevocable for the prosecution officer, or, if a preliminary judicial investigation has not taken place, as soon as the notice of further prosecution or the summons to appear in court at first instance has been served.
6. The provisions of the first paragraph shall apply accordingly after a final judgment has been rendered in the case.

[135] Article 40 of the SCCP establishes access to legal counsel as the default position for a suspect who has been lawfully deprived of liberty, framing such access as encompassing private communication and correspondence with counsel. That entitlement is however, articulated in conditional terms. It is expressly subject to supervision, compliance with internal regulations, and the requirement that the investigation not be impeded. The provision therefore does not present access to counsel as an unqualified right, but as one that is recognised and regulated within the investigative process.

- [136] Article 40 further delineates a structured mechanism by which that access may be restricted during the preliminary stages of an investigation. It confers discretionary authority on the examining magistrate or, at an earlier stage, the prosecuting officer, to limit or suspend communication between counsel and suspect where there is a serious suspicion that such communication may prejudice the investigation. Those restrictions must be justified by identified circumstances, limited in scope, temporary in duration, and subject to defined temporal caps. The scheme thus reflects a balance between investigative interests and procedural guarantees, with access to counsel treated as the norm and restriction as the exception.
- [137] Importantly, art 40 embeds internal safeguards against the abuse of that restrictive power. It provides for judicial oversight through a right of objection before the Court of Justice, and it prescribes clear points at which any obstruction of communication must cease as the proceedings advance. The structure of the provision treats access to counsel as contingent on procedural stage, with more limited access during investigation and full access once the proceedings advance to adjudication.
- [138] There are three critical junctures at which the operation of the art 40 *beperving* results in the accused being deprived of access to a lawyer. First, the accused may be subjected to police or judicial detention and interrogation in the absence of legal counsel, notwithstanding that questioning takes place at an early and potentially determinative stage of the investigation. Second, any challenge to the *beperving* order itself may, at least initially, have to be mounted without the assistance of counsel, as the very restriction under challenge precludes access to legal advice at the time it is imposed. Third, the accused may be required to contest the lawfulness or continuation of his or her detention without legal representation, thereby engaging procedural safeguards relating to personal liberty in circumstances where effective participation is structurally constrained by the absence of counsel.

The EU and Dutch Criminal Procedure

- [139] It is notable that Suriname inherited its criminal procedural framework from The Netherlands during the colonial period. The *beperving* mechanism described above has its

roots in Dutch inquisitorial criminal procedure, particularly as codified in the 1926 Dutch Code of Criminal Procedure ('the Wetboek van Strafvordering'). This is the procedural statute governing how criminal investigations and prosecutions are conducted in the Netherlands. It was originally enacted in 1926 and, as of today, remains in force (albeit heavily amended), regulating the powers of police, prosecutors, judges, suspects and accused persons throughout the criminal process. Within that framework, the core objective of the criminal process was 'materiële waarheidsvinding' or uncovering the factual truth of a crime regardless of procedural formalities. In 1926, legislators recognised that if a suspect had unlimited access to the outside world, they could coordinate with co-defendants, intimidate witnesses, or destroy evidence.

[140] In Dutch law, the general *alle beperkingen* powers (Arts 62/62a/76 of the 1926 Dutch Code) enabled wide restrictions on a suspect's communications in the investigative interest, and art 50 provided the counsel-specific mechanism. Notwithstanding the default of confidential access to counsel, the prosecutor could restrict the 'free communication' between counsel and suspect where there was an 'ernstig vermoeden' ('serious suspicion') that counsel contact would be misused to disclose confidential investigative information or obstruct truth-finding, with the restriction being time-limited and reviewable. Article 50 of the 1926 Dutch Code reads:

1. The defence counsel shall have free access to the suspect who has been deprived of his liberty by law and may confer with him in private and exchange letters with him which may not be inspected or read by others, under the required supervision and subject to the internal rules and regulations, and such access may not cause any delay in the investigation.
2. If specific circumstances give rise to the strong suspicion that the free flow of information between the defence counsel and the suspect will serve either to inform the suspect about any circumstance which, in the interest of the investigation, he should not be informed about for the time being or is abused in attempts to impede the finding of the truth, then during the preliminary investigation the public prosecutor may order each time that the defence counsel shall not have access to the suspect or be permitted to confer with him in private and that letters or other documents exchanged between the defence counsel and the suspect shall not be handed out. The order shall describe the specific circumstances referred to in the preceding

sentence; it shall not restrict the free flow of information between the defence counsel and the suspect any greater or any longer than is required by these circumstances, and shall, in any case, be in effect for maximum six days. The defence counsel and the suspect shall be notified in writing of the order.

3. The public prosecutor shall promptly submit the order for the decision of the District Court to which he is attached. The District Court shall decide as soon as possible after having heard the defence counsel, or at any rate having given him written notice to appear before it. The District Court may revoke, amend or supplement the order in its decision.
4. All restrictions on the free flow of information between the defence counsel and the suspect, which are ordered under one of the preceding subsections, shall end as soon as the summons has been served on the suspect.

[141] That is materially the same architecture reflected in Suriname's art 40 of the SCCP, a default entitlement to counsel contact and confidentiality, coupled with a power (triggered by an investigative-risk threshold) to suspend or qualify that entitlement during the preliminary phase.

[142] The European challenge to that kind of system is best understood through the analysis of the Grand Chamber of the European Court of Human Rights in *Salduz v Turkey*,⁵² which treats early access to counsel as a structural fair trial safeguard, not a discretionary procedural convenience. The court emphasised that a suspect is often in a particularly vulnerable position at the investigative stage and that this vulnerability is properly compensated for by the assistance of a lawyer whose role includes ensuring respect for the privilege against self-incrimination.

[143] The Grand Chamber thus rejected the notion that the absence of counsel at the investigative stage could be treated as a neutral or easily remediable omission. That concern crystallised into a general rule of application. At para 55, the court held:

⁵² (Application no 36391/02) [2008] ECHR 36391/02.

As a rule, access to a lawyer should be provided as from the first interrogation of a suspect by the police, unless it is demonstrated in the light of the particular circumstances of each case that there are compelling reasons to restrict this right.

[144] Crucially, the court did not treat the existence of the statutory power to restrict access to counsel as sufficient justification. It emphasised that even where compelling reasons are advanced, any restriction must not undermine the fairness of the proceedings as a whole. The operative harm was identified in categorical terms at para 55:

The rights of the defence will in principle be irretrievably prejudiced when incriminating statements made during police interrogation without access to a lawyer are used for a conviction.

[145] The court's analysis addresses and rejects the argument that later access to counsel can cure an early deprivation. In *Salduz*, the applicant obtained legal representation only after being remanded in custody, but the court held that this was insufficient because 'the investigation had in large part been completed' by that stage.⁵³ The domestic court had relied 'essentially on the statements made by the applicant during police custody' to secure the conviction, notwithstanding his subsequent denial of those statements once counsel was available.⁵⁴

[146] The timing of access was therefore decisive. Once the critical investigative steps had occurred, the later presence of counsel could not undo the procedural disadvantage already suffered. Equally important for present purposes is the court's rejection of systemic or automatic denial of access to counsel. At para 56, the Grand Chamber noted that in *Salduz* no other justification was given for the denial of access other than the fact that it was imposed on a systematic basis pursuant to the relevant legal provisions.

[147] It was held that this feature alone rendered the restriction incompatible with Article 6 (right to a fair trial) of the European Convention on Human Rights since it displaced the requirement for a case-specific and compelling justification. This reasoning directly

⁵³ *ibid* at [58].

⁵⁴ *ibid*.

engages legal frameworks such as the 1926 Dutch art 50 and its Surinamese counterpart in art 40 of the SCCP that permit restriction of counsel access by operation of a general investigative mechanism.

[148] The reasoning in *Salduz* was then absorbed into the EU procedural rights framework, most notably through Directive 2013/48/EU on the right of access to a lawyer, which lays down minimum rules for access to counsel in criminal proceedings and constrains derogations by principles of proportionality, time limitation, and case-by-case justification. Based on the EU's position, the Netherlands undertook reform of its criminal procedure. It is important to note that the Netherlands is currently in the final stages of a massive legislative project to replace the 1926 Code entirely. A new *Wetboek van Strafvordering* has been drafted and is scheduled to enter into force on 1 April 2029. Until that date, the 1921/1926 version remains the governing procedural law.

[149] In the Netherlands, the evolution of the *beperving* mechanism did not occur through abstract legislative reconsideration, but through a sustained line of criminal appeals before the Hoge Raad ('Dutch Supreme Court'), in which the courts progressively narrowed the scope of State power to isolate suspects during the investigative phase. These decisions reflect a marked doctrinal shift away from the historically dominant crime-control orientation of the 1926 Code and toward a due process model anchored in the European Convention on Human Rights.

[150] On 30 June 2009 (ECLI:NL:HR:2009:BH3079),⁵⁵ the Hoge Raad held that failure to afford an arrested suspect the opportunity to consult a lawyer prior to the first interrogation constitutes a serious procedural defect. That decision effectively terminated the long-standing practice of invoking the interest of the investigation as a blanket justification for delaying lawyer access, a practice historically facilitated by arts 50 and 62 of the 1926 Code. The court thus recognised that investigative efficiency could no longer trump the foundational right to legal assistance at the earliest stage.

⁵⁵ The Netherlands SC (Criminal Chamber), 30 June 2009.

[151] A turning point can be seen in the Hoge Raad's landmark judgment of 22 December 2015 (ECLI:NL:HR:2015:3608).⁵⁶ That case addressed the structural gap left in Dutch law following *Salduz v Turkey*, that is, while suspects had been afforded a right to consult a lawyer prior to police interrogation, domestic law did not recognise a right for counsel to be present during the interrogation itself. The Hoge Raad held that, in light of *Salduz* and subsequent jurisprudence of the European Court of Human Rights, an arrested suspect must be afforded the right to have counsel present during police questioning. The court made clear that pre-interrogation consultation alone was insufficient to secure the effectiveness of defence rights, particularly given the decisive evidentiary weight often attached to early statements. The ruling took immediate effect in police practice from 1 March 2016 and directly exposed the incompatibility of the existing *beperving* architecture, particularly as stated in former arts 50 and 62 of the 1926 Code, with modern fair trial standards.

[152] That judicial development culminated in the 2017 modernisation of suspect rights (Stb 2016, 476), which must be understood as a legislative response to binding judicial pressure, rather than as discretionary reform. Effective 1 March 2017, art 50 of the 1926 Dutch Code was repealed, and its content redistributed within a reorganised framework, principally arts 45 and 46 of the Code. The baseline right to free communication with counsel is now located in art 45 with any restriction confined to a separately articulated and more tightly regulated mechanism in art 46. These articles read as follows:

Article 45

Counsel shall have free access to the suspect who has been legally deprived of his liberty, may speak to him alone, and may exchange letters with him without the contents being disclosed to others, all this under the necessary supervision, in compliance with the internal regulations, and without this delaying the investigation.

Article 46

1. If, from certain circumstances, there is a serious suspicion that the free communication between counsel and the suspect will either serve to inform the suspect of some circumstance of which he must remain temporarily unaware in the interest of the investigation, or will be abused in attempts to hinder the search for

⁵⁶ The Netherlands SC (Criminal Chamber), 22 December 2015.

the truth, the public prosecutor may, during the preliminary investigation, at any time order that counsel shall not have access to the suspect or shall not be allowed to speak to him alone, and that letters or other documents exchanged between counsel and the suspect shall not be produced.

2. The order shall describe the specific circumstances referred to in the first paragraph; it shall not further restrict the freedom of communication between counsel and the suspect and shall not be issued for longer than is necessary due to those circumstances, and shall in any event remain in effect for a maximum of six days. Written notice of the order shall be given to counsel and the suspect.

3. The public prosecutor shall immediately submit the order to the court in the district where he or she is appointed. The court shall decide as soon as possible after hearing counsel, or at least after summoning counsel in writing. In its decision, the court may revoke, amend, or supplement the order.

4. All restrictions on the free movement of counsel and the suspect, ordered pursuant to the second and third paragraphs, shall cease as soon as the summons to appear in court at first instance has been served on the suspect.

[153] The reform was explicitly framed as a modernisation of suspect rights in light of European procedural standards, reflecting the EU position that access to counsel must be effective from the first interrogation and that any derogation must be exceptional, strictly limited, and incapable of undermining the fairness of the proceedings as a whole.

[154] Critically, the reform introduced a safeguard entirely absent from the 1926 model. Where a suspect's chosen counsel is restricted under art 46, the State must ensure that the suspect is immediately provided with an independent alternative lawyer. The legislative objective was explicit. It was to prevent a legal vacuum in which the suspect is formally under investigation yet functionally without legal assistance. This reform directly addressed the *Salduz* concern that defence rights may be irretrievably prejudiced when early procedural stages unfold without counsel.

[155] The Hoge Raad has since continued to refine the doctrinal limits of investigative restrictions. In a judgment delivered on 17 December 2019 (ECLI:NL:HR:2019:1985),⁵⁷ the Hoge Raad addressed how courts should respond where pre-trial defence rights

⁵⁷ (The Netherlands SC (Criminal Chamber), 17 December 2019).

including access to counsel, have been restricted without compelling justification. Drawing expressly on the European Court of Human Rights' decision in *Ibrahim v United Kingdom*,⁵⁸ the court rejected automatic exclusionary rules and instead required an assessment of the proceedings as a whole to determine whether the trial was fair. At the same time, the decision significantly raised the justificatory threshold for prosecutors. Generic references to 'the interest of the investigation' were no longer sufficient. Any restriction under art 62 or art 46 of the Dutch Code must be concrete, specific, and demonstrably compelling, thereby further constraining the operational scope of the *beperking* mechanism.

[156] By contrast, the Surinamese system has not undergone an equivalent recalibration. Article 40 of the SCCP retains the inherited *beperking* structure. When assessed against the precise standards articulated in *Salduz*, in particular the emphasis on first-interrogation access (para 55), the concept of irretrievable prejudice (para 55), the insufficiency of later access (para 58), and the rejection of systematic denial (para 56), the absence of reform assumes clear doctrinal significance.

[157] When the reasoning in *Salduz v Turkey* is applied, against the context of the evolution in respect for human rights in the Caribbean Community, to the Surinamese *beperking* as codified in art 40 of the SCCP, the incompatibility with the minimum human rights standards required by Community law becomes apparent. As noted earlier, Community law, rooted in the RTC and informed by the Charter, requires that the exercise of CSME rights must be attended by core guarantees of procedural fairness, including respect for fundamental civil and political rights traditionally recognised in democratic societies. Among those minimum standards is the right of an accused person to have access to legal counsel of his or her choice; a right present in the constitutions of all CARICOM States, including that of Suriname. That right operates as a baseline constraint on State action where Community nationals are subject to coercive measures in the territory of a Member State.

⁵⁸ *ibid* at [3.3], citing *Ibrahim v UK* (App Nos 50541/08) [2017] ECHR 50541/08.

[158] The *Salduz* reasoning is particularly instructive because it does not treat access to counsel as a formal entitlement that may be deferred without consequence. Rather, it identifies early and effective access (as from the first interrogation) as a structural safeguard without which the fairness of the proceedings is presumptively compromised. The Grand Chamber's concern was not limited to the ultimate availability of counsel at trial but focused squarely on the beginning stages of the criminal process, where suspects are most vulnerable and where procedural disadvantages may become irretrievable. In Community law terms, that logic resonates directly with the Charter-based minimum standard: a right that exists only after decisive investigative steps have occurred cannot be regarded as effective protection.

[159] When applied to art 40 of the SCCP, the difficulty is not merely theoretical. The *beperving* mechanism permits the suspension of access to counsel at precisely those investigative junctures that *Salduz* identifies as rights-critical. As already noted, the practical effect of the *beperving* is that the accused may be interrogated without legal assistance, may be required to challenge the restriction order itself without counsel, and may be required to contest the lawfulness of detention in the absence of legal representation. Each of those moments engages fundamental rights interests protected under Community law (by virtue of entrenchment in the Constitutions of Member States) and each occurs at a stage where later remedial access to counsel cannot reliably cure the disadvantage already suffered.

[160] The EU response to *Salduz* is also instructive in another respect. European law rejected systemic denial of access to counsel and insisted that any restriction be justified by compelling, case-specific reasons and accompanied by safeguards sufficient to preserve the substance of the defence. That approach is reflected both in the court's rejection of systematic denial in *Salduz* and in the subsequent restructuring of domestic systems, such as the Dutch repeal of the 1926 art 50. By contrast, art 40 of the SCCP retains a structural design inherited from the 1926 Dutch model, under which deprivation of access to counsel is contemplated as a routine investigative tool, subject only to internal safeguards and temporal limits. In Community law terms, that structure risks normalising a level of

interference with defence rights that falls below the minimum standard required when Treaty-based freedoms are engaged.

[161] That incompatibility is sharpened in the CARICOM context by the nature of the rights at stake. Community nationals exercising CSME rights are entitled to be treated in a manner consistent with the foundational values of the integration regime, including respect for human dignity, equality before the law, and access to justice. Where a Community national is subjected to criminal investigation or detention in another Member State, the minimum standard required by Community law cannot be satisfied by a framework that permits the effective exclusion of legal counsel during decisive stages of the process. To permit such exclusion would be to allow the enjoyment of Treaty rights to be conditioned on procedural arrangements that the Court has already recognised, in other contexts, as incompatible with the rule of law.

[162] The *Salduz* reasoning and the evolution of Caribbean Community human rights perform similar functions in the EU and in CARICOM legal order, respectively. They supply the analytical lens through which broadly framed Treaty and Charter commitments are given concrete content. Just as the EU treated early access to counsel as an indispensable incident of effective free movement and mutual trust, Community law requires that Member States refrain from procedural practices that undermine the substance of Treaty rights in practice. Article 40 of the SCCP, insofar as it authorises the deprivation of access to counsel at the investigative stage without compensatory safeguards sufficient to preserve the effectiveness of the defence, unlawfully impedes free movement and cannot be reconciled with that minimum human rights baseline. In such circumstances where the minimum human rights standard required for the effective exercise of Treaty-based rights has not been observed, there is no need to establish discriminatory treatment on the ground of nationality only in order to establish a violation of the RTC rights.

Issue 3: Justification of the *beperring* Mechanism under Article 226 of the RTC

[163] Counsel for the Defendant State sought to justify the use of the *beperring* mechanism based on Article 226(1)(a) of the RTC. That Article provides that:

Nothing in this Chapter shall be construed as preventing the adoption or enforcement by any Member State of measures:

(a) to protect public morals or to maintain public order and safety;

...

but only if such measures do not constitute arbitrary or unjustifiable discrimination between Member States where like conditions prevail, or a disguised restriction on trade within the Community.

[164] Suriname's submission was that Article 226 preserves the competence of Member States to apply their domestic criminal law and investigative procedures to Community nationals present within their territory, and that the restriction of access to counsel pursuant to art 40 of the SCCP constituted a lawful exercise of that reserved police power in the interests of public order and the administration of justice.

[165] In *Gilbert*,⁵⁹ this Court affirmed that 'freedom of movement under the RTC does not immunize CARICOM nationals from the operation of law enforcement agencies in the receiving State'. That principle is well established and is here reaffirmed. The RTC was never intended to create a zone of impunity for Community nationals, nor to disable Member States from enforcing their criminal law, maintaining public order, or safeguarding public safety. Article 226 reflects a deliberate balance within the Treaty architecture, preserving regulatory and enforcement autonomy while prohibiting the misuse of that autonomy in a manner that undermines Community obligations.

[166] However, the present case is materially distinguishable from *Gilbert*. In *Gilbert*, the Court was concerned with the application to a Community national of domestic law which was consistent with the RTC, and there was no finding that the law authorising the impugned enforcement action was itself incompatible with the RTC. The principle articulated there (that CARICOM nationals remain subject to lawful enforcement measures) operates on the premise that the underlying domestic legal framework complies with Community law. It

⁵⁹ *Gilbert* (n 3) at [23].

does not extend to circumstances where the domestic law or procedure relied upon by the State is found to fall below the minimum human rights standards required by the Treaty.

[167] Where, as here, the law authorising the enforcement action (*beperving*) is itself inconsistent with the Treaty by breaching the minimum standard of human rights, Article 226 has a greatly diminished role to play. Article 226 excuses measures ostensibly in conflict with RTC provisions but which are, in terms of Article 226(1)(a), ‘to protect public morals or to maintain public order and safety’. It is not inconceivable that there may be some minor infractions of human rights standards that may yet be excused on the basis of an overriding need to protect interests of a moral, security or public order nature. Even here, however, the doctrine of proportionality and of employing the least intrusive restriction applies. The experience of the Dutch in the context of the European Union demonstrates that less draconian measures have been used to more equitably balance the needs of the accused for legal advice and counsel (a court appointed attorney, for example) and the needs of the State to safeguard against the risk that an attorney selected by the accused could be the instrument of undue interference with the investigation and the witnesses. It must be only in extremely rare circumstances that a Member State could be permitted to rely on Article 226 to justify conduct that undermines the substance of Treaty-based rights by reference to domestic procedures that fail to meet the minimum standards of human rights required by Community law.

[168] In this general regard, the present case bears a closer resemblance to *Myrie*⁶⁰ than it does to *Gilbert*. In *Myrie*, the Court accepted that Barbados retained sovereign authority to control its borders and to deploy immigration and law enforcement officers in pursuit of that objective. Nonetheless, the Court held that the manner in which those powers were exercised, in particular, the detention and mistreatment of Ms Myrie, breached her rights under the RTC. The critical aspect of the Claimant’s case in *Myrie* was not to deny the existence of enforcement power, but to assess whether the exercise of that power was constrained by, and consistent with, Community law obligations. That exercise was found to be entirely inconsistent with those obligations. By contrast, the applicants in *Gilbert*

⁶⁰ *Myrie* n (1).

were found to have been treated not merely compatibly with how others, including Barbadians were treated, but also in accordance with generally accepted procedures for police investigation and interrogation of suspected criminal activities.

[169] Applying that same analytical structure here, the issue is not whether the Defendant State was entitled to investigate criminal conduct or to apply its law enforcement mechanisms in a situation concerning a Community national. It plainly was. The issue is whether Suriname was entitled to do so by reliance on a procedural mechanism, *beperving* under art 40 of the SCCP, that authorises the deprivation of access to legal counsel at critical stages of the criminal process in a manner inconsistent with the minimum human rights standards required by Community law. It plainly was not. And given this negative answer, it became highly unlikely that Article 226 could have then been involved to cure the defect.

[170] Accordingly, while the general principle articulated in *Gilbert* must be reaffirmed, it does not resolve the present dispute. This case falls within the *Myrie* line of authority, where the Court scrutinises not the existence of enforcement power, but the compatibility of the legal framework governing its exercise with the RTC. Once it is established that the domestic law relied upon authorises conduct that infringes the minimum procedural or human right protections owed to Community nationals, the enforcement action cannot be justified by Article 226, and Member State responsibility under Community law is engaged.

Issue 4: Remedies to be Awarded to the Claimant

[171] For the reasons set out above, the Court concludes that the operation of the *beperving* mechanism in the circumstances of this case was inconsistent with the effective exercise of the Claimant's right to freedom of movement under the RTC. In authorising the deprivation of access to legal counsel at critical stages of the criminal process, the domestic legal framework relied upon by the Defendant State fell below the minimum procedural standards required by Community law and impaired the enjoyment of Treaty-based rights. The Court accordingly declares that the application of the *beperving* in this case was incompatible with the Claimant's right to freedom of movement under the RTC.

[172] The Court, however, makes no declaration in respect of an alleged breach of the freedom to provide services. On the evidence before it, the Court is not satisfied that the Claimant was, at the material time, actively engaged in the provision of services within the meaning of the RTC, or that the impugned conduct prevented the performance of such services. The record discloses no contemporaneous contractual arrangements or concrete service engagements, and the broader restrictions on travel in force during the relevant period tend to further undermine the factual basis of that claim. In those circumstances, the evidential threshold necessary to sustain a finding of breach of the freedom to provide services has not been met.

[173] In relation to the claim for damages, the Court reiterates that for such a claim to succeed, the Claimant must demonstrate that the provision breached was intended to benefit him, the breach giving rise to the claim is serious, the loss or damages are substantial and there is a causal connection between the breach by the State and the loss or damages claimed.⁶¹ Further, the Court recalls that compensation for pecuniary loss or damage, as well as non-pecuniary loss or damage, can be awarded under the RTC.⁶²

[174] The Court agrees with the Defendant that the Claimant has not adequately pleaded or proven the damages he alleges he had sustained. As already indicated, there was no adequate accounting of the claimed opportunity lost to provide services. While the Claimant provided evidence of medical expenses incurred in Suriname after he was released from detention and in England after he departed Suriname, the Court is not satisfied that the Claimant demonstrated a causal link (as opposed to a correlation) between the denial of his access to counsel and the incurring of those expenses. Nevertheless, there can be no doubt that the Claimant suffered severe emotional and physical distress and that his health deteriorated appreciably because of his detention. While these reactions can and do sometimes present even in lawful detention, they were undoubtedly exacerbated in this case by the Claimant being held incommunicado without access to his family and his

⁶¹ *ibid* at [93]; *Hummingbird Rice Mills v The Caribbean Community* [2012] CCJ 1 (OJ), (2012) 79 WIR 448 at [55]–[59]; *TCL v Guyana (No 2)* (n 19) at [27].

⁶² *Myrie* (n 1) at [95] and footnote 23, where the Court noted that compensation for both types of loss or damage are known to the common law jurisdictions of the Community, as well as in the civil law jurisdiction of Suriname where such loss or damage is categorised as “materiele schade” and “immateriele schade”.

attorney at crucial points when his stress levels were, as would be expected, very high. Dr Jonathan Clague, whose evidence at the hearing was not challenged, gave a damning report which connected the detention and the Claimant's ill health. He reported that the Claimant sustained a coronary event, a stroke, and significant progression of his coronary artery disease during his detention. In the doctor's opinion, the reported conditions of detention would certainly have contributed to the decline of the Claimant's cardiovascular and general health. Such deterioration in health under and at least partially caused by conditions which breached his basic human rights enjoyed under the RTC must attract some monetary recompense. The Court will not attempt to arrive at a scientific figure but would, in the round, award the sum of USD30,000 as non-pecuniary damages.

[175] The Court does not consider it necessary to pronounce on the allegations of breach by the Defendant of Articles 7 or 9 of the Treaty. It suffices that the Defendant has been found in breach of the RTC provisions guaranteeing free movement in the context of the present case. There is no need to go further to examine whether there has also been a breach of the prohibition of discrimination on the grounds of nationality only (Article 7), as to which the Court is in possession of scant evidence; or of the general undertaking to implement obligations arising out of the Treaty and to facilitate achievement of the objectives of the Community (Article 9). Articles 7 and 9 are not stand-alone obligations, and a finding that there was breach of the specific substantive right in question is sufficient for this purpose, particularly as the full contours of Articles 7 and 9 were not explored before us.

[176] As regards the remaining relief sought, the Court demurs. The Court will not easily entertain allegations that national prosecutions were brought for the purpose of political victimisation. Furthermore, it bears reiteration that the detection, investigation, prosecution, and punishment of criminal activity are quintessential attributes of State sovereignty and responsibility. Nothing in the RTC was intended to intrude upon, or to displace, the legitimate exercise of that authority by Member States. In this regard, the Court once again reaffirms its settled jurisprudence that the enjoyment of Treaty-based rights by Community nationals does not confer immunity from the operation of the criminal law or from the lawful actions of law enforcement agencies in the receiving State.

[177] That said, the Court considers it appropriate to make the following observation. While the consequences of a breach of RTC rights for the operation of the domestic criminal justice system are, in the first instance, a matter for the sovereign decision of the Member State concerned, that discretion is not unlimited. In exercising it, national authorities are required to have due regard to Community law and to the fundamental principle that a State ought not to derive advantage from its own violation of Community obligations. Where conduct inconsistent with the provisions of the RTC has occurred, the State must ensure that the downstream exercise of its criminal jurisdiction does not perpetuate or compound the effects of that breach.

[178] Accordingly, in a case such as the present, it would not be appropriate for the State to proceed with criminal charges against the Claimant on the basis of any admission, confession, or evidence obtained during the period of his unlawful detention arising from the Treaty-inconsistent application of the *beperring*. To permit reliance on such material would risk allowing the State to benefit from conduct found to be incompatible with Community law. This does not, however, preclude the State from pursuing criminal proceedings where it is in possession of evidence of criminal conduct that is wholly independent of, and untainted by, any such unlawful detention or deprivation of procedural safeguards. In that event, the State would remain entitled to proceed in bringing criminal proceedings subject to its domestic law and constitutional arrangements, and provided these are not otherwise inconsistent with the RTC.

Disposition

[179] The Court makes the following orders and declarations:

- a. The Court declares that the application of the *beperring* mechanism to the Claimant in the circumstances of this case was inconsistent with, and constituted a breach of his right to freedom of movement under the Revised Treaty of Chaguaramas.
- b. The Court awards to the Claimant the sum of USD30,000 by way of non-pecuniary damages, as compensation for the clear and significant injury sustained by the Claimant as a result of the serious breach of an important RTC right.

- c. The Court declares that any reliance upon or use in any criminal proceedings against the Claimant of any admission or confession obtained from the Claimant during the period of his unlawful detention arising from the Treaty-inconsistent application of the *beperring* would constitute a breach of Community law. This declaration does not preclude the Defendant State from continuing or instituting criminal proceedings against the Claimant on the basis of evidence, if any, that was obtained independently of, and is untainted by, the unlawful detention or deprivation of procedural safeguards.
- d. Costs are awarded to the Claimant.
- e. All other applications and claims for relief are dismissed.

/s/ W Anderson

Mr Justice Anderson, President

/s/ M Rajnauth-Lee

Mme Justice Rajnauth-Lee

/s/ D Barrow

Mr Justice Barrow

/s/ P Jamadar

Mr Justice Jamadar

/s/ C Ononaiwu

Mme Justice Ononaiwu