release of information. Here it is evident that the privacy interests of the third party outweigh the interest of the Plaintiff in securing the file.

In summary, the official action of the F.B.I. in withholding the documents as discussed was proper, except to the forty-eight pages that have not been adequately described.

V—ATTORNEY'S FEES

Plaintiff has included a prayer for "such cost and disbursement as are in conformity with 5 U.S.C. 552(a)(4)(E)". This will be denied.

VI—CONCLUSION

A determination as to the applicability of the offered exemptions to the materials described as three pages of memoranda to prison officials and the forty-eight pages of the F.B.I. file will be deferred pending submission by the Defendants of affidavits which establish the basis for their conclusions. Otherwise the withholding of documents by the Federal Bureau of Prisons and the F.B.I. was proper and an order will be entered granting the Defendants' motion for summary judgment to these matters. The Defendants will be given thirty days to submit sworn affidavits and any other necessary material setting forth in detail the basis for their claims that the exemptions of the Act justify the withholding of the documents.

An appropriate order will be entered.

IPITRADE INTERNATIONAL, S.A., Petitioner,

v.

FEDERAL REPUBLIC OF NIGERIA, Respondent.

Misc. No. 78-0193.

United States District Court, District of Columbia.

Sept. 25, 1978.

On a petition to confirm an arbitration award, the District Court, Gasch, J., held that a foreign state's agreement to adjudicate all disputes arising under a contract in accordance with Swiss law and by arbitration under International Chamber of Commerce rules constituted a waiver of sovereign immunity under the Foreign Sovereign Immunities Act, and such waiver could not be revoked by unilateral withdrawal.

Default judgment entered.

1. Arbitration ⇐82.5

Under Swiss law, award by Swiss arbitrators finding that under Swiss law foreign state was bound by obligations it had voluntarily entered into was final and binding upon such foreign state. 9 U.S.C.A. §§ 201 et seq., 204; 28 U.S.C.A. §§ 1330, 1330(a), 1391(f)(4); Convention on the Recognition and Enforcement of Foreign Arbitral Awards, art. V, 9 U.S.C.A. § 201 note.

2. Arbitration ⇐82.5

Award by Swiss arbitrator against foreign state was subject to United Nations Convention on Recognition and Enforcement of Foreign Arbitral Awards to which United States, France, Nigeria and Switzerland were each signatories. 9 U.S.C.A. §§ 201 et seq., 204; 28 U.S.C.A. §§ 1330, 1330(a), 1391(f)(4); Convention on the Recognition and Enforcement of Foreign Arbitral Awards, art. V, 9 U.S.C.A. § 201 note.

3. Arbitration ⇐82.5

Fifth Article of United Nations Convention on Recognition and Enforcement of

Foreign Arbitral Awards specifies the only grounds on which recognition and enforcement of foreign arbitration award may be refused. Convention on the Recognition and Enforcement of Foreign Arbitral Awards, art. V, 9 U.S.C.A. § 201 note; 28 U.S.C.A. § 1330.

4. International Law ⇐10.32

Foreign state's agreement to adjudicate all disputes arising under contract in accordance with Swiss law and by arbitration under International Chamber of Commerce rules constituted waiver of sovereign immunity under the Foreign Sovereign Immunities Act, and such waiver could not be revoked by unilateral withdrawal. Convention on the Recognition and Enforcement of Foreign Arbitral Awards, art. V, 9 U.S.C.A. § 201 note; 28 U.S.C.A. §§ 1330, 1605(a)(1), 1608(a).

5. Federal Civil Procedure ⇐2414

No default judgment is to be entered by federal district court against foreign state unless claimant establishes right to relief by evidence satisfactory to court, but where because provisions of Convention on Recognition and Enforcement of Foreign Arbitral Awards and of Foreign Sovereign Immunities Act were satisfied and award with Swiss arbitrator was binding upon the foreign state, default judgment was appropriate. Convention on the Recognition and Enforcement of Foreign Arbitral Awards, art. V, 9 U.S.C.A. § 201 note; 28 U.S.C.A. §§ 1330, 1605(a)(1), 1608(a, e).

Robert S. Medvecky, Washington, D. C., for petitioner.

ORDER

GASCH, District Judge.

Upon consideration of the Petition of Ipitrade International, S.A., (Ipitrade) for an Order (a) Confirming the Award of Dr. Max Brunner dated April 25, 1978, in case RT/DB No. 2949, and (b) directing the entry of judgment thereon against the Federal Republic of Nigeria, the memorandum filed in support thereof, and for the reasons set forth in the Court's Memorandum issued this day, it is by the Court this 25th day of September, 1978,

ORDERED that the said Petition to Confirm is hereby granted; and that the award of Dr. Max Brunner dated April 25, 1978 in case RT/DB No. 2949 be, and the same is hereby, confirmed; and it is further

ORDERED that the Clerk of the Court enter judgment as follows:

1. Federal Republic of Nigeria shall pay to Ipitrade International, S.A. the sum of nine million sixty-six thousand, one hundred thirty-eight dollars and seventy-five cents ($9,066,138.75) together with interest thereon at the rate of six percent (6%) from April 25, 1978 to the date of payment.

2. Federal Republic of Nigeria shall pay to Ipitrade International, S.A. interest at the rate of five percent (5%) from the following dates on the following amounts to the date of payment thereof:

from	October 17, 1975	on	$331,200.00
from	October 27, 1975	on	61,500.00
from	November 6, 1975	on	61,500.00
from	December 3, 1975	on	123,000.00
from	December 10, 1975	on	184,500.00
from	December 11, 1975	on	61,653.75
from	December 17, 1975	on	123,000.00
from	December 29, 1975	on	61,500.00
from	December 31, 1975	on	61,500.00
from	January 15, 1976	on	123,000.00
from	April 28, 1976	on	246,000.00
from	July 9, 1976	on	369,000.00
from	September 16, 1976	on	246,000.00
from	March 28, 1977	on	114,800.00

3. Federal Republic of Nigeria shall pay to Ipitrade International, S.A. the sum of fifty thousand dollars ($50,000.00) together with interest thereon at the rate of six percent (6%) from April 25, 1978 to the date of payment thereof.

4. Federal Republic of Nigeria shall pay to Ipitrade International, S.A. the sum of five hundred fifty thousand Franch Francs (550,000 F.Fr.) at the exchange rate at the close of business in Paris, France on April 15, 1978, together with interest thereon at the rate of six percent (6%) from April 25, 1978 to the date of payment thereof; and it is further

ORDERED that a copy of the Judgment in this case be served on the Federal Republic of Nigeria by the Clerk of this Court by mailing said Judgment by registered airmail, postage prepaid, and return receipt requested to the Honorable Commissioner of External Affairs, Federal Republic of Nigeria, Lagos, Nigeria; and Permanent Secretary, Ministry of Defense, Lagos, Nigeria; and, separately, by registered mail, postage prepaid, return receipt requested to the Embassy of the Federal Republic of Nigeria, 2201 M Street, N.W., Washington, D. C.

MEMORANDUM

On June 6, 1978, Petitioner Ipitrade International, S.A. (Ipitrade) filed a Petition to Confirm Arbitration Award under the provisions of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 9 U.S.C. § 201 *et seq.* Jurisdiction against Respondent, the Federal Republic of Nigeria, is based upon the Foreign Sovereign Immunities Act, 28 U.S.C. § 1330(a), and venue lies in the District of Columbia under 9 U.S.C. § 204 and 28 U.S.C. § 1391(*f*)(4).

[1] On March 17, 1975 Nigeria and Ipitrade entered into a written commercial contract for the purchase and sale of cement. By entering into the contract, Nigeria expressly agreed that the construction, validity, and performance of the contract would be governed by the laws of Switzerland and that any disputes arising under the contract would be submitted to arbitration by the International Chamber of Commerce, Paris, France. During 1975 and 1976 various disputes arose with respect to the contract and on May 12, 1976, Petitioner filed a demand for arbitration with the Secretariat of the Court of Arbitration of the International Chamber of Commerce. Thereafter, an arbitration proceeding was conducted in which the Federal Republic of Nigeria refused to participate, relying on the legal defense of sovereign immunity. The arbitrator, Dr. Max Brunner of Basel, Switzerland, found that under Swiss law Respondent was bound by the obligations it voluntarily entered into and proceeded with the arbitration. On April 25, 1978, the arbitrator issued his written decision (the Award), granting some of Petitioner's claims but rejecting others. Under Swiss law the Award of April 25, 1978 is final and binding on Respondent. Petitioner has made demand upon Respondent for payment pursuant to the terms of the Award but Respondent has not made such payment.

[2–4] The Award is subject to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards to which the United States, France, Nigeria, and Switzerland are each signatories. Article V of the Convention specifies the only grounds on which recognition and enforcement of a foreign arbitration award may be refused. 9 U.S.C. § 201. None of the enumerated grounds exists in the instant case. The Foreign Sovereign Immunities Act, which codifies existing law with respect to suits against foreign states in United States courts, gives federal district courts original jurisdiction against a foreign state as to "any claim for relief *in personam* with respect to which the foreign state is not entitled to immunity under sections 1605–1607 of this title or any applicable international agreement." 28 U.S.C. § 1330. The Act specifies that there is no immunity in any case "in which the foreign state has waived its immunity either explicitly or by implication, notwithstanding any withdrawal of the waiver which the foreign state may purport to effect except in accordance with the terms of the waiver." 28 U.S.C. § 1605(a)(1). The legislative history of this section expressly states that an agreement to arbitrate or to submit to the laws of another country constitutes an implicit waiver. H. Rep. No. 94–1487, 94th Cong., 2d Sess., *reprinted in* [1976] U.S.Code Cong. & Admin.News, at 6604, 6617. Consequently, Respondent's agreement to adjudicate all disputes arising under the contract in accordance with Swiss law and by arbitration under International Chamber of Commerce Rules constitutes a waiver of sovereign immunity under the Act. This waiver cannot be revoked by a unilateral withdrawal.

Service of the Petition to Confirm Arbitration Award was made pursuant to the Foreign Sovereign Immunities Act, 28 U.S.C. § 1608(a), and by Order of this Court dated June 7, 1978. That Court Order fixed August 23, 1978 as the date by which Respondent was directed to appear, plead, answer or otherwise move with respect to the petition, or in default thereof, have the foreign arbitral award confirmed. There has been return receipt from the service on the Embassy of the Federal Republic of Nigeria, 2201 M Street, N.W., Washington, D. C., made pursuant to this Court's Order of June 7, 1978, but no return receipt from the service made upon the Honorable Commissioner of External Affairs, Federal Republic of Nigeria, Lagos, Nigeria. According to the affidavit of Carl F. Salans, filed with the Court, Respondent has actual notice of the pendency of this proceeding.

[5] No judgment by default shall be entered by a federal district court against a foreign state unless the claimant establishes his right to relief by evidence satisfactory to the Court. 28 U.S.C. § 1608(e). In the instant case, Petitioner is entitled to such relief because the provisions of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards and of the Foreign Sovereign Immunities Act are satisfied.

KEY NUMBER SYSTEM

NATIONAL COMMITTEE FOR JUSTICE, INC., and Solomon Leroy Rooks

v.

The Hon. Jimmy CARTER, etc., et al.

No. 78-678 C (1).

United States District Court, E. D. Missouri, E. D.

Nov. 2, 1978.

Plaintiffs brought suit under Civil Rights Act against government officials and against plaintiff's attorney in prior criminal proceedings. Defendants moved separately to dismiss complaint. The District Court, Meredith, Chief Judge, held that: (1) evidentiary questions litigated in prior criminal suits could not, under doctrine of collateral estoppel, be relitigated in subsequent civil rights action against government officials on claim that such officials had combined to obstruct justice during the prior trial, and (2) allegations on claim that plaintiff's attorney had failed to fairly represent him during prior criminal proceedings failed to allege facts to support claim that attorney had failed "to perform an essential duty which substantially harmed and prejudiced plaintiff in obtaining fair trial."

Complaint dismissed.

1. Judgment ⇐648

Evidentiary questions litigated in prior criminal suits could not, under doctrine of collateral estoppel, be relitigated in subsequent civil rights action against government officials on claim that such officials had combined to obstruct justice during the prior trial.

2. Criminal Law ⇐641.1

The right to counsel constitutionally guarantees the right to effective counsel. U.S.C.A.Const. Amend. 6.

3. Civil Rights ⇐13.12(3)

Allegations in civil rights action on claim that plaintiff's attorney had failed to fairly represent him during prior criminal proceedings failed to allege facts to support claim that attorney had failed "to perform an essential duty which substantially harmed and prejudiced plaintiff in obtaining fair trial."

National Committee for Justice, Inc. and Solomon Leroy Rooks, pro se.

Joseph B. Moore, Asst. U. S. Atty., St. Louis, Mo., Daniel T. Rabbitt, Moser, Mar-

salek, Carpenter, Cleary, Jaeckel, Keaney & Brown, St. Louis, Mo., for defendants.

MEMORANDUM

MEREDITH, Chief Judge.

This matter is before the Court on defendants' separate motions to dismiss. For the reasons stated below, defendants' motions will be granted.

Plaintiffs bring this suit pro se under the Civil Rights Acts. In a prior proceeding, plaintiff Rooks was convicted of conspiring to sell cocaine. Plaintiffs claim that defendant government officials combined to obstruct justice during the prior trial. Plaintiffs further claim that Rooks' attorney, defendant Hampe, failed to fairly represent Rooks during the criminal proceedings.

Defendant government officials and defendant Hampe separately move to dismiss plaintiffs' complaint. The Court will first address the defendant government officials' motion.

Defendant government officials contend that plaintiffs are collaterally estopped from retrying issues resolved in a prior proceeding.

To support their present civil rights claim, plaintiffs seek to put in issue evidentiary questions litigated in the prior criminal suit, Case number 77–171 Cr. (1). Plaintiff Rooks appealed the denial of his motion for a new trial to impeach the credibility of material witnesses and to introduce newly discovered evidence. The denial of his motion was affirmed. 577 F.2d 33 (8th Cir. 1978).

[1] It is well established that criminal claims may not be relitigated in the guise of a civil rights action. *Edwards v. Vasel*, 469 F.2d 338, 339 (8th Cir. 1972). Therefore, assuming the facts of plaintiffs' complaint to be true, the Court finds that plaintiffs are collaterally estopped from maintaining the present suit.

The Court next will address defendant Hampe's motion to dismiss plaintiffs' claim of attorney malpractice.

[2] The right to counsel constitutionally guarantees the right to effective counsel. U.S.Const. amend. VI. A charge of inadequate representation, however, can prevail only if an attorney does not exercise the customary skills and diligence "within the range of competence demanded of attorneys in criminal cases." *McMann v. Richardson*, 397 U.S. 759, 771, 90 S.Ct. 1441, 1449, 25 L.Ed.2d 763 (1970); *United States v. Easter*, 539 F.2d 663, 666 (8th Cir. 1976); *Johnson v. United States*, 506 F.2d 640 (8th Cir. 1974), *cert. denied* 420 U.S. 978, 95 S.Ct. 1404, 43 L.Ed.2d 978 (1975).

[3] The Court finds that plaintiffs' complaint does not allege any facts which could support a claim that defendant Hampe failed "to perform an essential duty which substantially harmed and prejudiced [Rooks] in obtaining a fair trial." *Kelton v. United States*, 394 F.Supp. 173, 180 (W.D. Mo.), *aff'd* 518 F.2d 531 (8th Cir.), *cert. denied*, 423 U.S. 1021, 96 S.Ct. 460, 46 L.Ed.2d 394 (1975).

A pro se complaint is to be liberally construed. *Haggy v. Solem*, 547 F.2d 1363, 1364 (8th Cir. 1977). Plaintiffs' complaint, however, must be dismissed because it appears "beyond doubt" that the plaintiffs can prove no set of facts which would entitle them to relief. Rule 12(b)(6) of the Federal Rules of Civil Procedure. *Conley v. Gibson*, 355 U.S. 41, 45–46, 78 S.Ct. 99, 2 L.Ed.2d 80 (1957).

Because plaintiffs' complaint is dismissed, plaintiffs' motion for change of venue is rendered moot.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

IPITRADE INTERNATIONAL, S.A.,
Petitioner,
v.
FEDERAL REPUBLIC OF NIGERIA,
Respondent.

Misc. No. 78-0193

ORDER

Upon consideration of the Petition of Ipitrade International, S.A., (Ipitrade) for an Order (a) Confirming the Award of Dr. Max Brunner dated April 25, 1978, in case RT/DB No. 2949, and (b) directing the entry of judgment thereon against the Federal Republic of Nigeria, the memorandum filed in support thereof, and for the reasons set forth in the Court's Memorandum issued this day, it is by the Court this 25th day of September, 1978,

ORDERED that the said Petition to Confirm is hereby granted; and that the award of Dr. Max Brunner dated April 25, 1978 in case RT/DB No. 2949 be, and the same is hereby, confirmed; and it is further

ORDERED that the Clerk of the Court enter judgment as follows:

1. Federal Republic of Nigeria shall pay to Ipitrade International, S.A. the sum of nine million sixty-six thousand, one hundred thirty-eight dollars and seventy-five cents ($9,066,138 together with interest thereon at the rate of six percent (6%) fro April 25, 1978 to the date of payment.

2. Federal Republic of Nigeria shall pay to Ipitrade International, S.A. interest at the rate of five percent (5%) from the following dates on the following amounts to the date of payment thereof:

from	October 17, 1975	on	$331,200.00
from	October 27, 1975	on	61,500.00
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3. Federal Republic of Nigeria shall pay to Ipitrade International, S.A. the sum of fifty thousand dollars ($50,000.00) together with interest thereon at the rate of six percent (6%) from April 25, 1978 to the date of payment thereof.

4. Federal Republic of Nigeria shall pay to Ipitrade International, S.A. the sum of five hundred fifty thousand Franch Francs (550,000 F.fr.) at the exchange rate at the close of business in Paris, France on April 15, 1978, together with interest thereon at the rate of six percent (6%) from April 25, 1978 to the date of payment thereof; and it is further

ORDERED that a copy of the Judgment in this case be served on the Federal Republic of Nigeria by the Clerk of this Court by mailing said Judgment by registered airmail, postage prepaid, and return receipt requested to the Honorable Commissioner of External Affairs, Federal Republic of Nigeria, Lagos, Nigeria; and Permanent Secretary, Ministry of Defense, Lagos, Nigeria; and, separately, by registered mail, postage prepaid,

return receipt requested to the Embassy of the Federal Republic of Nigeria, 2201 M Street, N.W., Washington, D. C.

Judge

Date: Sept 25th 1975

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

IPITRADE INTERNATIONAL, S.A., Petitioner,	)	
v.	)	Misc. No. 78-0193
FEDERAL REPUBLIC OF NIGERIA, Respondent.	)	

MEMORANDUM

On June 6, 1978, Petitioner Ipitrade International, S.A. (Ipitrade) filed a Petition to Confirm Arbitration Award under the provisions of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 9 U.S.C. § 201 et seq. Jurisdiction against Respondent, the Federal Republic of Nigeria, is based upon the Foreign Sovereign Immunities Act, 28 U.S.C. § 1330a, and venue lies in the District of Columbia under 9 U.S.C. § 204 and 28 U.S.C. § 1391(f)(4).

On March 17, 1975 Nigeria and Ipitrade entered into a written commercial contract for the purchase and sale of cement. By entering into the contract, Nigeria expressly agreed that the construction, validity, and performance of the contract would be governed by the laws of Switzerland and that any disputes arising under the contract would be submitted to arbitration by the International Chamber of Commerce, Paris, France. During 1975 and 1976 various disputes arose with respect to the contract and on May 12, 1976, Petitioner filed a demand for arbitration with the Secretariat of the Court of Arbitration of the International Chamber of Commerce. Thereafter, an arbitration

proceeding was conducted in which the Federal Republic of Nigeria refused to participate, relying on the legal defense of sovereign immunity. The arbitrator, Dr. Max Brunner of Basel, Switzerland, found that under Swiss law Respondent was bound by the obligations it voluntarily entered into and proceeded with the arbitration. On April 25, 1978, the arbitrator issued his written decision (the Award), granting some of Petitioner's claims but rejecting others. Under Swiss law the Award of April 25, 1978 is final and binding on Respondent. Petitioner has made demand upon Respondent for payment pursuant to the terms of the Award but Respondent has not made such payment.

The Award is subject to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards to which the United States, France, Nigeria, and Switzerland are each signatories. Article V of the Convention specifies the only grounds on which recognition and enforcement of a foreign arbitration award may be refused. 9 U.S.C. § 201. None of the enumerated grounds exists in the instant case. The Foreign Sovereign Immunities Act, which codifies existing law with respect to suits against foreign states in United States courts, gives federal district courts original jurisdiction against a foreign state as to "any claim for relief in personam with respect to which the foreign state is not entitled to immunity under sections 1605-1607 of this title or any applicable international agreement." 28 U.S.C. § 1330. The Act specifies that there is no immunity in any case "in which the foreign state has waived its immunity either explicitly or by implication

notwithstanding any withdrawal of the waiver which the foreign state may purport to effect except in accordance with the terms of the waiver." 28 U.S.C. § 1605(a)(1). The legislative history of this section expressly states that an agreement to arbitrate or to submit to the laws of another country constitutes an implicit waiver. H. Rep. No. 94-1487, 94th Cong., 2d Sess., reprinted in [1976] U.S. Code Cong. & Ad. News, at 6617. Consequently, Respondent's agreement to adjudicate all disputes arising under the contract in accordance with Swiss law and by arbitration under International Chamber of Commerce Rules constitutes a waiver of sovereign immunity under the Act. This waiver cannot be revoked by a unilateral withdrawal.

Service of the Petition to Confirm Arbitration Award was made pursuant to the Foreign Sovereign Immunities Act, 28 U.S.C § 1608(a), and by Order of this Court dated June 7, 1978. That Court Order fixed August 23, 1978 as the date by which Respondent was directed to appear, plead, answer or otherwise move with respect to the petition, or in default thereof, have the foreign arbitral award confirmed. There has been return receipt from the service on the Embassy of the Federal Republic of Nigeria, 2201 M Street, N.W., Washington, D. C., made pursuant to this Court's Order of June 7, 1978, but no return receipt from the service made upon the Honorable Commissioner of External Affairs, Federal Republic of Nigeria, Lagos, Nigeria. According to the affidavit of Carl F. Salans, filed with the Court, Respondent has actual notice of the pendency of this proceeding.

No judgment by default shall be entered by a federal district court against a foreign state unless the claimant

establishes his right to relief by evidence satisfactory to the Court. 28 U.S.C. § 1608(e). In the instant case, Petitioner is entitled to such relief because the provisions of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards and of the Foreign Sovereign Immunities Act are satisfied.

Judge

Date: September 25th 1978