

HUMAN RIGHTS COMMITTEE

E. P. v. Trinidad and Tobago

Communication No. 636/1995

15 October 1996

CCPR/C/58/D/636/1995 */

ADMISSIBILITY

Submitted by: E. P. (name deleted) [represented by counsel]

Alleged victim: The author

State party: Trinidad and Tobago

Date of communication: 22 June 1995 (initial submission)

Documentation references: Prior decisions - Special Rapporteur's combined rule 86/rule 91 decision, transmitted to the State party on 27 June 1995 (not issued in document form)

Date of present decision: 15 October 1996

The Human Rights Committee, acting through its Working Group pursuant to rule 87, paragraph 2, of the Committee's rules of procedure, adopts the following decision on admissibility.

Decision on admissibility

1. The author of the communication is E. P., a Trinidadian citizen, currently awaiting execution at the Port-of-Spain State Prison. He claims to be a victim of violations by Trinidad and Tobago of articles 6, 7, 9, 10, paragraph 1, and 14, of the International Covenant on Civil and Political Rights. He is represented by counsel.

The facts as presented by the author

2.1 The author was taken into police custody on 29 November 1985 and held at the Sangre Grande police station. He was formally charged with the murder of one K. P. on 2 December 1985. He was kept in detention until the beginning of the trial against him, in February 1990.

2.2 On 8 February 1990, the author was convicted of the murder of K. P. and sentenced to death by the High Court of Trinidad at the Port-of-Spain Assizes. His appeal was dismissed by the Court of Appeal of Trinidad and Tobago on 29 July 1994. On 22 June 1995, the author's petition for special leave to appeal to the Judicial Committee of the Privy Council was dismissed.

2.3 It is submitted that the author has exhausted all available and effective local remedies within the meaning of article 5, paragraph 2 (b), of the Optional Protocol.

2.4 The prosecution's case was partly based on a confession made by the author on 2 December 1985 while in police custody. The author testified that he was forced to sign this statement after having been beaten twice by police on that day. He alleges that he had given a statement voluntarily on 1 December 1985 regarding the murder, which took place on 14 November 1985, telling the police that he had seen another person commit the murder. After a voir dire, the judge admitted the second statement, implicating the author, into evidence.

2.5 At trial, the author gave sworn evidence denying making the second statement voluntarily and stating that he was given medical treatment as a result of the beatings he received. One of the police officers involved testified at the trial and denied that any force, threats or promises were used on the author to coerce him to sign the confession. The officer stated that the author had signed the statement voluntarily and had sought medical attention for an insect bite. In addition, the officer testified that medical reports had been obtained regarding the author's injuries. These reports were not adduced as evidence at the trial.

2.6 Defence counsel raised the issue of the improperly obtained confession before the trial court, the Court of Appeal and the Privy Council, to no avail.

The complaint

3.1 The author claims to be a victim of a violation of articles 7 and 10, paragraph 1, of the Covenant in view of the length of detention on death row. The author has been held at the Port-of-Spain State Prison since his conviction on 8 February 1990, and has therefore been on death row for over five years. Counsel alleges that the length of time he has been on death row would render his execution cruel, inhuman and degrading treatment or punishment. Reference is made to the decision of the Judicial Committee of the Privy Council in the case of Pratt and Morgan, 1/ where it was held, inter alia, that the delay in carrying out the execution constitutes cruel, inhuman and degrading treatment.

3.2 Counsel also submits that the length of time of the author's pre-trial detention, a period of four years and three months, and the length of time of the author's detention awaiting appeal, an additional four years and four months constitute a violation of articles 9, paragraph 3, and 14, paragraph 3(c).

3.3 It is further contended that article 14, paragraph 3(g), was violated, since the author was convicted on the basis of an improperly obtained confession. The author is still attempting to obtain copies of his medical reports relating to the alleged beatings, and reserves the right to present them to the Committee at a later date.

3.4 It is also submitted that the beating of the author while in police custody constitutes a violation of articles 7 and 10, paragraph 1.

3.5 Counsel further asserts that the imposition of the sentence of death upon the conclusion of a trial in which the provisions of the Covenant have been breached, where no further appeal against sentence is available, is a violation of article 6.

3.6 It is stated that the case has not been submitted to another procedure of international investigation or settlement.

Issues and proceedings before the Committee

4.1 On 27 June 1995, the Committee's Special Rapporteur on New Communications requests the Government of Trinidad and Tobago, under rule 86 of the Committee's rules of procedure, not to carry out the death sentence against the author while his communication is under consideration by the Committee.

4.2 In a letter, dated 14 June 1996, counsel for the author informs the Committee that the author was served with a warrant for his execution on 13 March 1996. Following a constitutional motion, a stay of execution was granted. The hearing on the constitutional motion has been repeatedly adjourned upon the State's request. In this context, counsel refers to the draft Bill to amend the Constitution of Trinidad and Tobago, which aims at constitutionalizing the so-called "death row phenomenon", so that the Privy Council's decision in Pratt and Morgan no longer apply.

5. By note verbale of 4 October 1996, the State party informs the Committee that, on 24 June 1996, the author's death sentence had been commuted to a term of imprisonment with hard labour for a period of 75 years.

6. The Committee expresses its great concern about the fact that a warrant for the author's execution was issued after the Committee's request under rule 86 of its rule of procedure had been made to the State party. It recalls that the State party, upon ratifying the Optional Protocol, undertook to cooperate with the Committee under the procedure, including the Committee's requests under rule 86 of its rules of procedure to prevent irreparable harm done to an author of a communication before the Committee. The Committee urges the State party to ensure compliance with its requests in the future.

7. The present communication was transmitted to the State party on 27 June 1995, with the request to provide information and observations relating to the question of admissibility. No reply concerning the admissibility of the communication has been received from the State party, despite a reminder sent on 17 June 1996. The Committee recalls that it is implicit in the Optional Protocol that States parties make available to the Committee all information at its disposal and regrets the lack of cooperation of the State party.

8.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 87 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

8.2 The Committee has ascertained, as required under article 5, paragraph 2(a), of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

8.3 The Committee notes that the State party has failed to raise objections to the admissibility of the communication. In the circumstances, the Committee considers that it is not precluded by article 5, paragraph 2(b), of the Optional Protocol from examining the communication on its merits.

8.4 As regards the author's claim that he is a victim of a violation of articles 7 and 10, paragraph 1, of the Covenant in view of the length of his detention on death row, the Committee refers to its prior jurisprudence that prolonged detention on death row does not per se constitute cruel, inhuman or degrading treatment in the absence of some further compelling circumstances. The Committee considers that the author has not substantiated, for purposes of admissibility, in what particular way his detention on death row from February 1990 to June 1996 affected him as to raise an issue under articles 7 and 10 of the Covenant. This part of the communication is therefore inadmissible under article 2 of the Optional Protocol.

8.5 The Committee considers that the author's remaining claims have been sufficiently substantiated, for purposes of admissibility, and should be considered on the merits.

9. The Human Rights Committee therefore decides:

(a) that the communication is admissible, except for the author's claim concerning the length of his detention on death row;

(b) that, in accordance with article 4, paragraph 2, of the Optional Protocol, the State party shall be requested to submit to the Committee, within six months of the date of transmittal to it of this decision, written explanations or statements clarifying the matter and the measures, if any, that may have been taken by it;

(c) that any explanations or statements received from the State party shall be communicated by the Secretary-General under rule 93, paragraph 3, of the rules of procedure to the author, with the request that any comments which he may wish to make should reach the Human Rights Committee, in care of the Centre for Human Rights, United Nations Office at Geneva, within six weeks of the date of the transmittal;

(d) that this decision shall be communicated to the State party and to the author.

*/ All persons handling this document are requested to respect and observe its confidential nature.

1/ Earl Pratt and Ivan Morgan v. Attorney-General of Jamaica; PC Appeal No. 10 of 1993, judgement delivered on 2 November 1993.