

HUMAN RIGHTS COMMITTEE

Bradshaw v. Barbados

Communication No. 489/1992

19 July 1994

CCPR/C/51/D/489/1992

ADMISSIBILITY

Submitted by: Peter Bradshaw (represented by counsel)

Alleged victim: The author

State party: Barbados

Date of communication: 10 February 1992 (initial submission)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 19 July 1994,

Adopts the following:

Decision on admissibility

1. The author of the communication is Peter Bradshaw, a Barbadian citizen currently awaiting execution at Glendairy Prison, Barbados. He claims to be a victim of violations by Barbados of articles 6, 7, 10 and 14, paragraph 3 (c), of the International Covenant on Civil and Political Rights. He is represented by counsel.

The facts as submitted by the author

2.1 The author and his co-defendant were arrested on 23 January 1985 and charged four days later with the murder of one C. S. On 8 November 1985, both were convicted and sentenced to death in the Bridgetown Assizes Court. On 20 November 1985, the author appealed to the Court of Appeal of Barbados, which dismissed the appeal on 31 May 1988. He then sought leave to appeal to the Judicial Committee of the Privy Council. Counsel in London, however, advised that there was no

merit in presenting the case to the Judicial Committee.

2.2 C. S. was killed during a robbery at his home on 14 December 1984; his invalid wife was upstairs in their bedroom. She heard gunshots, and immediately afterwards three masked men came upstairs to demand her money and jewellery. Because of the masks, she was unable to identify the men. There were no other witnesses to the crime.

2.3 The author and his co-defendant were arrested in connection with other offences. After his arrest, the author allegedly confessed to one of the investigating officers that he had killed C. S., stating that the gun was discharged accidentally, and indicated the hiding place of the murder weapon and the jewellery. The only other evidence against him were fingerprints said to be his, which were allegedly discovered in the home of the deceased.

2.4 As to the circumstances of his apprehension, the author states that after his arrest in the early morning of 23 January 1985, he was taken to Oistins Police Station. He claims that he was taken to a room where his hands were tied behind his head and he was blindfolded, and placed on his back on a table. Police officers then beat him in his stomach. When he started to shout, he allegedly was brought to another room. There he was placed on the floor; police officers held his hands and feet and he was again beaten. When he screamed he was gagged. Shortly thereafter, a cup of water was thrown on the floor. He was then thrown into the puddle of water, lying on his stomach, was stripped from the waist down and water was poured over his buttocks. One of the officers plugged a wire into the wall and he was given electric shocks and was beaten. This went on for about 30 minutes. He was continuously questioned and was not allowed to sleep for three days. He was only given something to eat in the night of 26 January 1985. He further claims that he was beaten on 24 January, that an officer fired a shot next to his head and that he was again administered electric shocks on 25 January 1985. Finally, on 27 January 1985, he signed the confession statement; he was then charged with murder and the next day brought before an examining magistrate.

2.5 The issue of ill-treatment of the accused was raised during the trial. In the author's case, the author's version was corroborated by evidence given in cross-examination by the doctor who had examined the author on 27 January 1985. He stated that the abrasions on the author's body could well have been caused by beatings and electric shocks. The police, however, indicated that both accused were very cooperative during the investigations, that they both made a free and voluntary statement on 24 January 1985 and that the author slipped and fell on his back while he was pointing out the hiding place of the weapon and booty. The statements of the accused were admitted in evidence after a voir dire.

2.6 The author was found guilty of murder under the rule of constructive malice, that is, malice which is not shown by direct proof of an intention to cause injury, but which is inferentially established by the necessarily injurious results of the acts shown to have been committed. The judge, in his summing up, instructed the jury as follows: "You may return a verdict of guilty ... if the evidence makes you feel sure that: (1) Peter Bradshaw was a party with others in an agreed plan to steal ... and for the use of a gun if it became necessary in the execution of the plan; (2) C. S. died as a consequence of violence used in the execution of the plan; and (3) that Peter Bradshaw was present and participated in the execution of the agreed plan when C. S. received the violence from which he died. If the evidence makes you feel sure as to these things, it is immaterial that the violence was

inflicted inadvertently or unintentionally".

2.7 On 23 May 1992, a warrant was read out to the author for his execution on 25 May 1992. Counsel immediately filed a constitutional motion on the author's behalf, and a stay of execution was granted on 24 May 1992. On 29 September 1992, the court of first instance dismissed the constitutional motion; a/ the author's appeal against the decision of the court of first instance was dismissed by the Court of Appeal of Barbados on 2 April 1993. A petition for leave to appeal against the dismissal of the constitutional motion by the courts of Barbados is currently pending before the Judicial Committee of the Privy Council.

2.8 The appeal against the dismissal of the constitutional motion in the author's case was based on the following grounds:

(a) The constructive malice rule in murder, and sections 2 and 3 of chapter 141 of the Offences against the Person Act (which deals with the death sentence being mandatory in murder cases), are incompatible with the Constitution of Barbados;

(b) Whether the author has a right to the exercise of the prerogative of mercy by the Governor-General, in particular in view of the delay in the execution of the sentence of death;

(c) Commutation of the death sentence would be an appropriate remedy for the violations suffered by the author during the course of the police investigations, namely, beatings by the police, denial of access to counsel and detention by the police for an unnecessarily long period before being taken before a court;

(d) The delay in the execution of the death sentence amounts to inhuman or degrading punishment or other treatment, in violation of the Barbados Constitution and article 7 of the International Covenant on Civil and Political Rights;

(e) The provisions of the Covenant and of the Optional Protocol thereto are self-executing and should therefore be directly enforceable by individuals; the court should recognize that the author has the legal right to place his case before the Human Rights Committee pursuant to the Optional Protocol and to have the Committee's views put to the Government of Barbados, and/or, alternatively, the author has a legitimate expectation, based on the State party's accession to the Covenant and the Optional Protocol, that the sentence of death will not be carried out before the Committee has given a final decision in the case.

2.9 When considering ground (a), the Court of Appeal referred, inter alia, to article 6, paragraph 2, of the International Covenant on Civil and Political Rights and to article 4, paragraph 2, of the American Convention on Human Rights. It noted that since Barbados has not abolished the death penalty, the imposition of the death sentence for the most serious crimes is not in violation with these provisions, and that the question of what constitutes a "most serious crime" for the purpose of those provisions obviously has to be determined in Barbados and nowhere else. With respect to ground (e), the Court of Appeal observed that since Barbados had not enacted legislation to fulfil its treaty obligations under the Covenant and the Optional Protocol, the provisions enabling written representations to the Human Rights Committee, and the procedural and other provisions thereunder,

are not part of the law of Barbados. It concluded that: "after a sentence of death is imposed and legal procedures are concluded and legal rights are at an end, the condemned man may seek extra-legal relief from the Governor-General ... He can additionally make written representations for leniency to the Human Rights Committee established by the International Covenant, but that, on the state of the law, is not a matter with respect to which this court can adjudicate".

2.10 In respect of the argument that the author has a legitimate expectation that the State would not carry out the sentence of death before his rights under the Covenant and Optional Protocol have been considered by the Committee, the Court of Appeal stated that "this argument fails because all the legal appellate procedures are exhausted, the sentence of death remains in effect, and the only avenue now open is extra-legal and extra-judicial" (meaning the prerogative of mercy by the Governor-General).

The complaint

3.1 As to the author's trial, counsel concedes that the judge's directions to the jury were in conformity with the applicable law in Barbados. He argues, however, that in other common law countries, the law of constructive malice has been abolished, and that under the current common law system it does not suffice to establish murder if the killing was caused inadvertently, as in the author's case. It is submitted that by failing to either repeal or amend the law as it relates to constructive malice, or by failing to distinguish between murder with malice aforethought and unintentional killing during commission of a crime involving the use of violence, the imposition of the death penalty violates article 6 of the Covenant, under which it should only be imposed for the "most serious crimes".

3.2 Counsel notes that the author has been detained on death row for over eight years. He has filed a request for pardon to the Governor-General of Barbados, but has not been informed if or when his request will be considered. The inherent uncertainty of the author's position as a person under sentence of death, prolonged by the delays in the judicial proceedings, are said to cause severe mental stress, which amounts to cruel, inhuman and degrading punishment in violation of article 7 of the Covenant.

3.3 The treatment of the author referred to in paragraph 2.4 above is said to amount to violations of articles 7 and 10 of the Covenant.

3.4 Counsel points out that the author filed his notice of appeal on 20 November 1985 but that the decision by the Court of Appeal was not given until 31 May 1988. This was the result of the delay by the Registrar's Office in preparing the Record of Appeal. Counsel further claims that it took a considerable time before the authorities replied to his persistent requests for retainer's fees to file a petition for special leave to appeal to the Judicial Committee of the Privy Council. b/ It is submitted that domestic remedies in respect of the criminal proceedings against the author have been unreasonably prolonged, in violation of article 14, paragraph 3 (c).

The State party's information and observations

4.1 By a letter dated 1 July 1992, the State party notes that the Privy Council in Barbados, which

was established under section 76 of the Constitution of Barbados to advise the Governor-General on the exercise of the prerogative of mercy, reviewed the author's case but did not recommend that the death sentence be commuted.

4.2 The State party further notes that, accordingly, all domestic remedies have been exhausted and that the death sentence stands. It states that the author's execution will not take place before the constitutional motion in his case (which at the time of the State party's submission was pending before the court of first instance) has been heard. No reference is made to the Special Rapporteur's request for interim measures of protection under rule 86 of the Committee's rules of procedure. Since July 1992 no further information has been received from the State party in respect of the author's constitutional motion.

Issues and proceedings before the Committee

5.1 Before considering any claims 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.

5.2 The Committee notes that the issues raised by the author in his communication are related to the grounds of appeal raised in his constitutional motion. It further notes that a petition for leave to appeal against the dismissal of the constitutional motion by the Court of Appeal of Barbados remains pending before the Judicial Committee of the Privy Council. In this respect, therefore, the author has not exhausted all available domestic remedies, as required by article 5, paragraph 2 (b), of the Optional Protocol.

5.3 The Committee expresses concern that the State party had issued a warrant for the author's execution on 23 May 1992, in spite of the request of the Special Rapporteur on New Communications not to carry out the death sentence against Mr. Bradshaw while his communication was under consideration by the Committee. This was transmitted to the State party on 6 May 1992. Furthermore, the Committee notes with concern the findings of the Court of Appeal of Barbados in respect of the author's constitutional motion, referred to in paragraphs 2.9 and 2.10 above. By ratifying the Covenant and the Optional Protocol, Barbados has undertaken to fulfil its obligations thereunder and has recognized the Committee's competence to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of a violation by the State party of any of the rights set forth in the Covenant. While the Covenant is not part of the domestic law of Barbados which can be applied directly by the courts, the State party has nevertheless accepted the legal obligation to make the provisions of the Covenant effective. To this extent, it is an obligation for the State party to adopt appropriate measures to give legal effect to the views of the Committee as to the interpretation and application of the Covenant in particular cases arising under the Optional Protocol. This includes the Committee's views under rule 86 of the rules of procedure on the desirability of interim measures of protection to avoid irreparable damage to the victim of the alleged violation.

6. The Human Rights Committee therefore decides:

(a) That the communication is inadmissible under article 5, paragraph 2 (b), of the Optional

Protocol;

(b) That, since this decision may be reviewed under rule 92, paragraph 2, of the Committee's rules of procedure upon receipt of a written request by or on behalf of the author containing information to the effect that the reasons for inadmissibility no longer apply, the State party shall be requested, taking into account the spirit and purpose of rule 86 of the Committee's rules of procedure, not to carry out the death sentence against the author before he has had a reasonable time, after completing the effective domestic remedies available to him, to request the Committee to review the present decision;

(c) That this decision shall be transmitted to the State party and to the author's counsel.

[Adopted in English, French and Spanish, the English text being the original version.]

Notes

a/ The author's constitutional motion and the constitutional motion of D. R. (see annex X.P below, communication No. 504/1992, decision on admissibility adopted on 19 July 1994, at the Committee's fifty-first session) were consolidated by agreement.

b/ Eventually, counsel decided, upon advice of leading counsel in London, that the appeal to the Judicial Committee of the Privy Council ought not to be pursued.