

HUMAN RIGHTS COMMITTEE

Roberts v. Barbados

Communication No. 504/1992

19 July 1994

CCPR/C/51/D/504/1992

ADMISSIBILITY

Submitted by: Denzil Roberts [represented by counsel]

Alleged victim: The author

State party: Barbados

Date of communication: 1 June 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 Denzil Roberts, a Barbadian citizen born in 1963, awaiting execution at Glendairy Prison, Barbados. He claims to be a victim of violations by Barbados of articles 6, 7 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, C.T., were arrested in August 1985 and charged with the murder, in July 1985, of one M.C. They were tried in January 1986. C.T. was found guilty as charged.¹ Since the jury could not agree on the question of the author's guilt, a re-trial was ordered and held, and the author was convicted of murder and sentenced to death on 24 April 1986. His appeal to the Court of Appeal of Barbados was dismissed on 11 March

1988; the Court produced its written judgment on 17 June 1988. The author then sought leave to appeal to the Judicial Committee of the Privy Council. Leading counsel in London, however, advised that there was no merit in presenting the case to the Judicial Committee of the Privy Council.² The prosecution's case rested entirely on a written confession made by the author on 12 August 1985. During the trial, the author made an unsworn statement in which he stated that he had been forced by the police to sign the confession and that he was innocent. He claimed that he had signed his name to the confession following police violence and ill-treatment, and as a result of inducements held out to him. The statement was admitted in evidence after a **voir dire**.

2.3 The author's conviction was based on the application of the "felony-murder" or constructive malice rule, i.e. 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.² In directing the jury, the judge told the jurors that if they found that the statement (i.e. the author's confession) was voluntary and it disclosed a common design on the part of the author and C.T. to steal, and C.T. went beyond the common plan to steal and murdered M.C., and the author was in no way involved in that plan to murder, if they were doubtful then they should find him not guilty. But if, on the other hand, they felt sure that the common plan to rob M.C. included the use of whatever force was necessary to achieve that object or to permit their escape without fear of subsequent identification, and that the author was there aiding and abetting and fully participated in the killing of M.C. by tying up his feet with wire while C.T. pointed a gun at him, then subsequently taking that gun and pointing it at M.C. while C.T. put the wire around M.C.'s neck and strangled him, then they should find the author guilty of murder.

2.4 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 Motion³; 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.

2.5 The appeal against the dismissal of the Constitutional Motion 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 and denial of access to counsel;

(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 courts should recognize that the author has the 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 adopted its final decision in the case.

2.6 When considering ground (a), the Court of Appeal referred, **inter alia**, to article 6, paragraph 2, of the Covenant, 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 has 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".

2.7 In respect of the argument that the author has a legitimate expectation that the State party 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 points out that, although there was no evidence that the author actually killed M.C., the jury must have concluded from the judge's instructions that the author participated in the killing. It is submitted that by applying the constructive malice rule in the author's case, which fails to distinguish between murder in the first degree and in the second degree, 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 observes that the author has been detained on death row for almost eight years. 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 Counsel notes that the author was tried in January 1986, that he was convicted in April 1986 after a re-trial, and that his appeal was dismissed in March 1988. He further notes that the author, as a poor person, depended on legal aid throughout the judicial proceedings against him. Three days after the dismissal of the author's appeal by the Court of Appeal of Barbados, the Record of Appeal was sent to solicitors in London so that an appeal could be lodged with the Judicial Committee of the Privy Council. However, it was only in August 1989 that the competent authorities in Barbados provided retainer's fees to the English solicitors, who then proceeded with the preliminary steps of petitioning the Judicial Committee of the Privy Council⁴. It is submitted that the judicial proceedings against the author have been unreasonably prolonged, in violation of article 14, paragraph 3(c).

The State party's information and observations and the counsel's comments:

4.1 By letter of 10 September 1992, the State party notes that the Privy Council in Barbados, which was established under Section 76 of the Barbados Constitution 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 (which at the time of the State party's submission was pending before the court of first instance) had 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, which had been transmitted to the State party on 2 and 14 July 1992. Since July 1992 no further information has been received from the State party in respect of the author's Constitutional Motion.5.1 By letter of 24 November 1992, counsel notes that the court of first instance dismissed the Constitutional Motion on 29 September 1992, but granted a temporary stay of execution for six weeks until 10 November 1992; during this period, the author appealed to the Court of Appeal and applied for a stay of execution, pending the hearing of the appeal against the decision of the court of first instance. The Court of Appeal, on 19 November 1992, granted the stay of execution.

5.2 Counsel observes that the court of first instance refused to grant the author a stay of execution pending the consideration of his communication by the Human Rights Committee, and that it found that the author could not invoke the provisions of the Covenant, that the Covenant was not part of the law of Barbados, and did not bind the Government of Barbados in respect of its citizens.

Issues and proceedings before the Committee:

6.1 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.

6.2 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. Accordingly, all available domestic remedies have not been exhausted, as required under article 5, paragraph 2(b), of the Optional Protocol.

6.3 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 2.6 and 5.2 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.

7. 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 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 author's counsel.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

Footnotes

* Made public by decision of the Human Rights Committee.

1/ C.T.'s death sentence was commuted to life imprisonment in 1989.

2/ "a person using violent measures in the commission of a felony involving personal violence does so at his own risk and is guilty of murder if those violent measures result even inadvertently in the death of the victim"; R v. Jarman [1945] 2 ALL ER 613.

3/ The author's Constitutional Motion and the Constitutional Motion of P.B. (communication No. 489/1992; decision on admissibility adopted on 19 July 1994, at the Committee's 51st session) were consolidated by agreement.

4/ Eventually, counsel in Barbados decided, upon advice of leading counsel in London, that the appeal to the Judicial Committee of the Privy Council should not be pursued, because of lack of prospect of success.