

HUMAN RIGHTS COMMITTEE

G.J. v. Trinidad and Tobago

Communication No. 331/1988**

5 November 1991

CCPR/C/43/D/331/1988*

ADMISSIBILITY

Submitted by: G.J. [name deleted]

Alleged victim: The author

State party: Trinidad and Tobago

Date of communication: 24 September 1988 (initial submission)

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

Meeting on 5 November 1991,

Adopts the following:

Decision on admissibility

1. The author of the communication (initial submission dated 24 September 1988 and subsequent correspondence) is G.J., a Trinidadian citizen currently awaiting execution at the State prison in Port-of-Spain, Trinidad. He claims to be the victim of a violation by Trinidad and Tobago of article 14 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 was charged on 14 July 1980 with the murder, on 11 July 1980, of a two years old child, P.J. At the conclusion of the trial, which took place between 18 May and 15 June 1982, the author was convicted of murder and sentenced to death. He appealed to the Court of Appeal on fifteen grounds; his appeal was, however, dismissed on 20 December

1984. The Court of Appeal issued its written judgment on 24 December 1984. A subsequent petition for special leave to appeal to the Judicial Committee of the Privy Council was dismissed on 17 May 1990.

2.2 The case for the prosecution was based partly on circumstantial evidence and partly on alleged confessions made by the author himself. Thus, the evidence relied on during the trial was that, on the afternoon of the day before the murder, the child's father took his wife and the child to a golf course near their home in Port Fortin. On that occasion, the child's father allegedly saw the author, whom he later identified at an identification parade. The author was next seen by one C.A., in the area of the J.'s house at about 7.30 of the following morning. C.A. purported to identify the author at an identification parade. On the same morning, the child was reported missing and a handwritten ransom note was found at the gate of the J.'s, giving instructions for the delivery of \$ 30.000 at a designated place. The child's parents immediately reported the facts to the police, which mounted an ambush to seize the kidnapper. Allegedly, the author was arrested while collecting the ransom. The child's body was later found in a shallow grave, wrapped up in a plastic bag. During the trial, a forensic expert testified that traces of soil found on the author's clothes matched with samples of soil collected on the spot where the child's corpse was discovered. It was further testified by the same expert that the writing paper used for the ransom note and that found later at the author's home were similar.

The complaint:

3.1 The author claims that soon after his arrest, he was induced by the arresting officer to give an oral confession incriminating himself. Two days after his arrest, he was allegedly forced to sign a written statement reproducing his previous oral confession.

3.2 The author alleges that the criminal proceedings against him were beset by several irregularities. Thus, the trial judge reportedly showed prejudice against him and his representative by, **inter alia**, constantly interrupting the latter in his cross-examination of prosecution witnesses, and putting pressure on him to speed up the conduct of the trial. The trial judge is further said to have misdirected the jury on a number of issues of facts and of law; in particular, it is submitted that (a) he erred by not properly instructing the jury as to the circumstantial nature of the evidence on which the prosecution relied, (b) he erred in admitting into evidence the oral and the written confessions allegedly made under duress by the author, and (c) he misdirected the jury as to how they should consider these confessions.

3.3 The author further alleges that he was denied adequate legal assistance by his legal aid representative, in that the latter displayed gross negligence in the conducting of his defence. Purportedly, he did not sufficiently consult with the author for the preparation of the defence. He is also said to have failed to call one witness, who, according to the author, could have testified in his favour. In addition, before the conclusion of the trial, counsel sought and obtained from the Court permission to withdraw from the case. He later claimed that he withdrew because of the alleged bias and the hostility on the part of the trial judge. He further claimed that he had not been properly retained by the Legal Aid Authority and that he was only appearing on behalf of the author for humanitarian reasons.

3.4 As to the circumstances of the appeal, the author states that he was represented by three legal aid attorneys. Among the fifteen grounds of appeal were (a) that the trial judge failed to inform the jury adequately or at all as to when a confession should be considered admissible or not, (b) that the conduct by counsel during the trial was such as to severely prejudice the outcome of the proceedings. The Court of Appeal acknowledged that counsel had displayed gross misconduct during the trial. Reportedly, the presiding judge described the conduct of counsel as "unbecoming" of a barrister, and directed that a copy of the judgment and the proceedings be sent to the Disciplinary Committee of the Bar Association. Nonetheless, the Court of Appeal found that counsel's misconduct did not affect the outcome of the trial, and dismissed the author's appeal. In this connection, the author indicates that, by letter of 14 November 1988, the President of the Bar Association informed him that no legal action was ever taken against his former lawyer, and that the Law Association had never received any complaint against him from the Court of Appeal.

The State party's observations:

4.1 The time limit for the observations on the admissibility of the communication requested from the State party pursuant to rule 91 of the Committee's rules of procedure, expired on 17 January 1989. In spite of six reminders sent on 23 June 1989, 6 July and 1 September 1990, 25 January, 26 March and 14 August 1991, no submission has been received from the State party.

4.2 The Government of Trinidad and Tobago is, like every State party to the Optional Protocol to the Covenant, required to investigate in good faith all the allegations of violations of Covenant rights made against it, and to inform the Committee accordingly. The Committee deplores the complete absence of co-operation on the part of the Government of Trinidad and Tobago.

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 After a careful consideration of the material placed before it by the author concerning his claims of unfair trial, the Committee recalls its constant jurisprudence that it is generally for the appellate courts of States parties to the Covenant and not for the Committee to evaluate the facts and the evidence placed before the domestic courts and to review the interpretation of domestic law by those courts. Similarly, it is for appellate courts and not for the Committee to review specific instructions to the jury by the trial judge, unless it is apparent from the author's submission that the instructions to the jury were clearly arbitrary or tantamount to a denial of justice, or that the judge manifestly violated his obligation of impartiality. The Committee considers that the author's allegations do not reveal that the judge's instructions or the conduct of the trial suffered from such defects. Accordingly, the communication is inadmissible as incompatible with the provisions of the Covenant, pursuant to article 3 of the Optional Protocol.

6. The Human Rights Committee therefore decides:

(a) that the communication is inadmissible under article 3 of the Optional Protocol;

(b) that this decision shall be communicated to the State party, to the author and to his counsel.

7. The Committee observes, however, that even if the communication is inadmissible, humanitarian measures on behalf of the author, such as the commutation of his sentence, are not excluded.

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

Footnotes

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

**/ Made public by decision of the Human Rights Committee.