

HUMAN RIGHTS COMMITTEE

Shalto v. Trinidad and Tobago

Communication No. 447/1991

17 March 1994

CCPR/C/50/D/447/1991*

ADMISSIBILITY

Submitted by: Leroy Shalto [represented by counsel]

Alleged victim: The author

State party: Trinidad and Tobago

Date of communication: 16 July 1989 (initial submission)

Documentation references: List - CCPR/C/CL/R.51 Prior decisions - Special Rapporteur's combined rule 86/rule 91 decision, transmitted on 7 August 1991 (not issued in document form)

Date of present decision: 17 March 1994

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 Leroy Shalto, a citizen of Trinidad and Tobago currently awaiting execution at the State prison of Port of Spain. He claims to be the victim of a violation of the International Covenant on Civil and Political Rights by Trinidad and Tobago, without specifying which provisions of the Covenant he considers to have been violated.

Facts as submitted by the author

2.1 The author was arrested and charged with the murder of his wife, Rosalia, on 28 September 1978. On 26 November 1980, he was found guilty as charged and sentenced to death. On 23 March 1983, the Court of Appeal quashed the conviction and sentence and ordered a retrial. At the conclusion of the retrial, on 26 January 1987, the author was again convicted of murder and

sentenced to death. On 22 April 1988, the Court of Appeal dismissed his appeal; a subsequent petition for special leave to appeal to the Judicial Committee of the Privy Council was dismissed on 9 November 1989.

2.2 The evidence relied on by the prosecution during the trial was that, on 28 September 1978, following a dispute between the author and his wife in the store where she worked, the author took out a gun, aimed at his wife and shot her while she was walking away from him. Several eyewitnesses to the incident gave testimony during the trial.

2.3 In a written statement, given to the police after his arrest and duly signed by the author, the author says that he was in the store, talking to his wife, when he saw a man whom he thought was police constable E. behind a fridge in the store. He pulled out a gun and his wife started to run in the man's direction. The author fired a shot, thereby hitting his wife. During the trial, the author claimed that he had signed the written statement under duress, while he was suffering from a leg-injury sustained when he was arrested. He claimed that the part of the statement that related to the incident at the store was incorrect and fabricated by the police. After a voir dire, however, the judge admitted the statement as evidence.

2.4 In an unsworn statement during the trial, the author testified that he and his wife had separated about a month prior to the incident and that on the day in question he went to her to inquire about their two children. He added that he also wanted to ask her about a police revolver that he had found in a clothes basket at his home. After a short conversation, his wife told him that the children were not his and that "this policeman" (apparently constable E.) was a better man than he. The author then became angry and took out the revolver which he had found at home. His wife attempted to get hold of the revolver and during the struggle that ensued the weapon was discharged and she was fatally wounded. The author further stated that, prior to the incident he had been harassed by police constable E., who had wrongfully arrested him two days before.

Complaint

3. The author claims that his retrial in January 1987 was unfair in that the trial judge, when directing the jury in respect of each of the three different versions of what had happened, misdirected the jury by stating that, in law, "words alone cannot amount to provocation", thereby depriving him of the possibility of a verdict of manslaughter based on provocation. In this context, the author submits that, in 1985, by virtue of an amendment of the Offences against the Person Act, the law in Trinidad and Tobago was amended with regard to the issue of provocation, and from then on required that the issue of provocation be left to the jury. It appears from documentation provided by the author, however, that the law applies only to trials in which an indictment was issued after 21 May 1985 and is therefore not applicable to the author's case.

State party's observations and author's comments thereon

4.1 The State party, by its submission of 30 January 1992, refers to the jurisprudence of the Committee which holds that it is a matter for the appellate courts of States parties to the Covenant and not for the Committee to evaluate facts and evidence placed before domestic courts and to review the interpretation of domestic laws by those courts. It also refers to the Committee's

jurisprudence that it is for the appellate courts and not for the Committee to review specific instructions to the jury by the trial judge, unless it is apparent 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.

4.2 The State party argues that the facts as submitted by the author do not reveal that the judge's instructions to the jury suffered from such defects. It therefore contends that the communication is inadmissible under article 3 of the Optional Protocol.

5. In his comments on the State party's submission, the author requests the Committee to take into account that he has spent more than 14 years in prison, the last six years of which under sentence of death.

Issues and proceedings before the Committee

6. The Committee, on 25 October 1993, requested the State party to provide additional information about the delay between the Court of Appeal's decision of 23 March 1983 to order a retrial and the start of the retrial on 20 January 1987. The State party was also requested to explain whether it had considered the provisional release of Mr. Shalto, pending the retrial, and to give reasons for his continued detention between 23 March 1983 and 20 January 1987. The Committee notes with concern that no reply has been received from the State party.

7.1 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.

7.2 The Committee notes that the author's allegations relate primarily to the judge's instructions to the jury. It recalls that it is generally for the appellate courts of States parties to the Covenant and not for the Committee to review specific instructions to the jury by the judge, unless it is clear that the instructions to the jury were arbitrary or amounted to a denial of justice, or that the judge manifestly violated his obligation of impartiality. The facts as submitted by the author do not show that the judge's instructions or the conduct of the trial suffered from such defects. Accordingly, that part of the communication is inadmissible under article 3 of the Optional Protocol.

7.3 The Committee considers that the delay of almost four years between the Court of Appeal's decision to order a retrial and the beginning of the retrial, and the author's continued detention during that period, may raise issues under articles 9, paragraph 3, and 14, paragraph 3 (c), of the Covenant.

8. The Human Rights Committee therefore decides:

(a) That the communication is admissible in as much as it appears to raise issues under articles 9, paragraph 3, and 14, paragraph 3 (c), of the Covenant;

(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 the State party shall be requested, 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. This request does not imply a determination of the merits of the communication;

(d) 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;

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

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