

HUMAN RIGHTS COMMITTEE

Elahie v. Trinidad and Tobago

Communication No. 533/1993

12 October 1995

CCPR/C/55/D/533/1993*

ADMISSIBILITY

Submitted by: Harold Elahie

Alleged victim: The author

State party: Trinidad and Tobago

Date of communication: 20 February 1992 (initial submission)

Documentation references: Prior decisions - Special Rapporteur's rule 91 decision transmitted to the State party on 26 April 1993 (not issued in document form)

Date of present decision: 12 October 1995

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 Harold Elahie, a Trinidadian citizen, currently serving four years' imprisonment with hard labour at the State Prison, Trinidad and Tobago. He claims to be a victim of violations of his human rights by Trinidad and Tobago, but does not invoke any provision of the International Covenant on Civil and Political Rights. The author's release is scheduled for 26 November 1996.

The facts as submitted by the author

2.1 The author was arrested on 6 July 1986 on charges of murder and several other offenses (attempted murder, wounding with intent and shooting with intent). He was presented to a magistrate and remanded in custody. On 15 October 1986, the preliminary enquiry began; shortly

afterwards, the author was told by his attorney that the magistrate had been suspended from his duties for alleged corruption.

2.2 The author was not brought before another magistrate until 22 February 1988. This magistrate took up the enquiry where it had been left in 1986. The author was committed to stand trial on 25 May 1988. It is not clear for which offence he was indicted. It appears from his letters that one of the indictments, dated 9 July 1990, would be heard on 18 November 1990, but prior to the hearing the defence filed a motion against said indictment on the ground that it was based on an illegal committal order. According to the author, the prosecution agreed and, on 19 March 1991, the judge quashed the indictment. However, the judge ordered a new preliminary enquiry in the case. The defence appealed this order, but it was apparently dismissed, since the author states: “[a] second enquiry was concluded against me by another magistrate”.

2.3 A new trial was scheduled and on 25 March 1994, the author was sentenced to four years imprisonment with hard labour, after pleading guilty to a charge of manslaughter. 1/

The complaint

3.1 Although the author does not invoke any specific provisions of the Covenant, he would appear to be a victim of violations of article 10 paragraph 1, of the Covenant, on account of the conditions of his detention, and of articles 9, paragraph 3, and 14, paragraph 3(c), because of the undue delay in the proceedings, as there was a seven year delay between his arrest and detention and his conviction in 1994. He complains that he was detained for 7 years and 8 months before going to trial.

3.2 The author further claims that he is subjected to inhuman and degrading treatment in prison. In this context, he submits that he is detained, together with four inmates, in a small cell. They have nothing but a “piece of sponge” and old newspapers to sleep on, and food, which is not fit for human consumption, is thrown at them “as if they were pigs”. Furthermore, whenever he is visited by his family, he is handcuffed to another prisoner. The author alleges that whenever inmates complain to the warders about the prison conditions, they are subjected to the “worst kind of brutality”, and that they are never permitted to see the Commissioner of Prisons.

3.3 As to the requirement of exhaustion of domestic remedies, the author states that a constitutional motion was filed on his behalf, in November 1990, to quash his indictment. The motion was heard in March 1991 and a new preliminary inquiry was ordered to be carried out.

3.4 The author adds that he pleaded guilty of manslaughter, on his lawyer’s advice, in order to clarify his situation and expedite the proceedings. He further states that his lawyer advised him not to appeal the sentence, as appeal proceedings would take longer than the time he had left to serve.

The State party’s information and observations on admissibility and the author’s comments thereon

4. In its submission dated 20 March 1995, the State party confirms that the author has exhausted all domestic remedies in his criminal case. It further concedes that the author has exhausted domestic remedies with respect to his complaints about the prison conditions.

5. In his comments to the State party's submission, the author requests that the Committee continue the examination of his case, as he considers that he was wrongfully imprisoned, after his initial indictment had been quashed.

Issues and proceedings before the Committee

6.1 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

6.2 The Committee has noted that the State party concedes that the author has exhausted available remedies. It notes that with respect to the author's complaint that he was not treated with humanity and with respect for the inherent dignity of the human person while in detention, the author has sufficiently substantiated his claim for it to be considered on its merits.

6.3 The Committee further considers that the author has sufficiently substantiated, for purposes of admissibility, that the delay in bringing him to trial and his continued detention throughout this period, without the benefit of bail and the time already served not having been taken into account, may raise issues under articles 9, paragraph 3 and 14, paragraph 3 (c) of the Covenant, which need to be examined on the merits.

7. The Committee therefore decides:

(a) that the communication is admissible in so far as it may raise issues under articles 10, paragraph 1; 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 the 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 in 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/ The State party, in its submission, observes that the author was sentenced on 25 March 1994 for manslaughter, and that the other charges were not proceeded with.