

## HUMAN RIGHTS COMMITTEE

### LaVende v. Trinidad and Tobago

Communication No.554/1993

12 October 1995

CCPR/C/55/D/554/1993\*

### ADMISSIBILITY

*Submitted by:* Robinson LaVende

*Alleged victim:* The author

*State party:* Trinidad and Tobago

*Date of communication:* 4 October 1993 (initial submission)

*Documentation references:* Prior decisions - Special Rapporteur's combined rule 86/rule 91 decision, transmitted to the State party on 5 October 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 Robinson LaVende, a Trinidadian citizen who, at the time of submission of his communication, was awaiting execution at the State Prison of Port-of-Spain, Trinidad and Tobago. He claims to be a victim of violations by Trinidad of articles 7, 10, paragraph 1, and 14, paragraph 3(d), of the International Covenant on Civil and Political rights. On 31 December 1993, the author's death sentence was commuted to life imprisonment, in accordance with the Guidelines laid down in the judgment of the Judicial Committee of the Privy Council of 2 November 1993 in the case of Pratt and Morgan v. Attorney General of Jamaica.

#### **The facts as submitted by the author**

2.1 The author was tried for murder, found guilty as charged and sentenced to death in July 1975; no information is provided about the facts of the case or the conduct of the trial. The Court of

Appeal of Trinidad and Tobago dismissed the author's appeal on 28 November 1977.

2.2 In early 1978, the author applied for legal aid to the Minister of National Security of Trinidad, so as to allow him to prepare and file a further appeal with the Judicial Committee of the Privy Council; the application for legal aid was refused. As a result, the author argues, he was unable to petition the Judicial Committee for special leave to appeal.

2.3 On 30 September 1993, a warrant for the author's execution on 5 October 1993 was read to him. A constitutional motion on his behalf was filed in the High Court of Trinidad and Tobago on 1 October 1993. A stay of execution was granted during the night of 4 to 5 October 1993.

2.4 The author argues that he has exhausted domestic remedies within the meaning of the Optional Protocol, and that the fact that a constitutional motion was filed on his behalf does not preclude his recourse to the Human Rights Committee. As to the denial of legal aid for the purpose of petitioning the Judicial Committee of the Privy Council, it is argued that the State party is now estopped from arguing that he was obliged to pursue this matter further before the domestic courts before bringing it before the committee.

2.5 Counsel further contends that because of the very nature of her client's situation, he will necessarily invoke all available procedures, possibly until the scheduled time of execution. To require that all last minute procedures be exhausted before allowing a recourse to the Human Rights Committee would imply that the applicant either wait until a moment dangerously close in time to his execution, or that he refrain from invoking all potentially available domestic remedies. It is submitted that neither option is within the letter or the spirit of the Optional Protocol.

### The complaint

3.1 The author, who was confined to death row from the time of his conviction in July 1975 until the commutation of his death sentence on 31 December 1993, i.e. over eighteen years, alleges a violation of article 7, on the ground that the period of time spent on death row amounts to cruel, inhuman and degrading treatment. He further contends that the time spent on death row is contrary to his right, under article 10, paragraph 1, to be treated with humanity and respect for the inherent dignity of his person. It is argued that the execution of a sentence of death after so many years on death row would amount to a violation of the above-mentioned provisions. In support of her arguments, counsel refers to recent jurisprudence, *inter alia* a recent judgment of the Supreme Court of Zimbabwe 1/, the judgment of the European Court of Human Rights in the case of Soering 2/, and the arguments of counsel for the applicants in the case of Pratt and Morgan v. Attorney General of Jamaica.

3.2 It is submitted that the State party violated article 14, paragraph 3(d), by denying the author legal aid for the purpose of petitioning the Judicial Committee for special leave to appeal. In this context, counsel relies on the jurisprudence of the Human Rights Committee, pursuant to which "legal aid must be made available to a convicted prisoner under sentence of death. This applies to all stages of the criminal proceedings" 3/. Reference is also made to judgments of the Supreme Court of the U.S. 4/

## Issues and proceedings before the Committee

4.1 Before considering any claims contained in a communication, the Human Rights Committee must decide, in accordance with rule 87 of its rules of procedure, whether or not it is admissible under the Optional protocol to the Covenant.

4.2 The communication was forwarded to the State party under rule 91 of the Committee's rules of procedure on 5 October 1993, requesting it to provide information and observations on the admissibility of the complaint. On 9 February 1994, the State party forwarded information to the effect that the author's death sentence had been commuted to life imprisonment on 31 December 1993 by the President of Trinidad and Tobago, on the advice of the Minister of National Security. The State party observed that the commutation "was consequent upon the decision of the Judicial Committee of the privy Council in the case of Pratt and Morgan v. Attorney-General of Jamaica, in which Their Lordships held that in any case in which execution is to take place more than five years after sentence there will be strong grounds for believing that the delay is such as to constitute inhuman or degrading punishment or other treatment". No further information has been received from the State party, in spite of a reminder addressed to it on 7 December 1994.

4.3 While welcoming the information contained in the State party's note verbale of 9 February 1994, the Committee notes that the State party has failed to provide information and observations in respect of the admissibility of any of the author's claims under the Covenant that have not been mooted by the commutation of the sentence. In the circumstances, due weight must be given to the author's allegations, to the extent that they have been sufficiently substantiated.

4.4 In respect of the author's claims under articles 7 and 10(1), the Committee observes that the State party itself commuted the author's death sentence so as to comply with the Guidelines laid down by the Judicial Committee of the Privy Council in the case of Pratt and Morgan v. Attorney-General. The State party has not informed the Committee of any further effective remedy available to the author in respect of the above claims; the State party's silence in this respect must be deemed to constitute an admission that no such remedies exist.

4.5 Concerning the claim under article 14, paragraph 3(d), the committee notes that Mr. LaVende was refused legal aid for the purpose of petitioning the Judicial Committee for special leave to appeal in forma pauperis. There is nothing in the file which would show that the author was not entitled to pursue such an appeal. This claim, which may also raise issues under article 14, paragraph 5, should therefore be considered on its merits.

4.6 The Committee considers that the author has sufficiently substantiated, for purposes of admissibility, his allegations under the above-mentioned provisions of the Covenant. They should, accordingly, be considered on their merits.

5. The Human Rights Committee therefore decides:

(a) that the communication is admissible in so far as it appears to raise issues under articles 7, 10, paragraph 1, and 14, paragraphs 3(d) and 5, of the Covenant;

(b) that the State party shall be requested, under article 4(2) of the Optional Protocol, 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 any explanations or statements received from the State party shall be communicated by the Secretary-General under rule 93(3) of the Committee's rules of procedure, to the author and to his counsel, with the request that any comments that they may wish to submit thereon 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;

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

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

1/ Supreme Court of Zimbabwe, judgment No. S.C. 73/93 of June 1993.

2/ Soering v. United Kingdom, 11 EHHR 439 (1989).

3/ Views on communication No. 250/1987 (C. Reid v. Jamaica), adopted 20 July 1990, para. 11.4; Views on communication No. 230/1987 (Henry v. Jamaica), adopted 1 November 1991, para. 8.3.

4/ e.g. Lane v. brown, 372 U.S. 477 (1963).