

HUMAN RIGHTS COMMITTEE

Pinto v. Trinidad and Tobago

Communication No. 512/1992

16 July 1996

CCPR/C/57/D/512/1992

VIEWS

Submitted by: Daniel Pinto

Victim: The author

State party: Trinidad and Tobago

Date of communication: 24 June 1992 (initial submission)

Date of decision on admissibility: 25 October 1994

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

Meeting on 16 July 1996

Having concluded its consideration of communication No. 512/1992, submitted to the Human Rights Committee by Mr. Daniel Pinto under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication and by the State party,

Adopts its

Views under article 5, paragraph 4, of the Optional Protocol

1. The author of the communication is Daniel Pinto, a Trinidadian citizen currently serving a sentence of life imprisonment at the Carrera Convict Prison in Trinidad and Tobago. A death sentence imposed on him in June 1985 was commuted to life imprisonment by the President of

Trinidad and Tobago in November 1992. In respect of an earlier case submitted by the author to the Committee, the Committee had found, in its views a/, that the author had been sentenced to death without enjoying the right to a fair trial, and it had expressed the view that he was entitled to a remedy entailing his release. In the present communication, the author asserts that the State party has failed to implement the Committee's views and that he is the victim of new violations of his human rights by Trinidad and Tobago.

The facts as submitted by the author

2.1 In his submission of 24 June 1992, the author complains about the prison conditions and the treatment he is subjected to in prison. He states that, in spite of repeated recommendations of the prison doctor during the past four years, the prison authorities have failed to take him to hospital, in spite of numerous appointments scheduled at long intervals, which apparently were all cancelled. As a result, the author contends, he is gradually becoming blind.

2.2 Mr. Pinto further claims that for over 8 years out of 10 years in prison, he has been prevented by the prison authorities from receiving urgently needed dental treatment. That has caused considerable pain and discomfort. In addition, his repeated complaints about nervous disorders have allegedly been ignored.

2.3 In his initial submission, while still on death row, the author complained that he was kept in a prison wing where it was impossible to distinguish between day and night, and that he was being denied the daily hour of recreation and exercise outdoors, to the detriment of his health. Since the commutation of his sentence, he claims, the general conditions of his detention have not improved. Sometime either late in 1992 or early in 1993, he was transferred to an island prison (Carrera Convict Prison), where violations of the prisoners' rights are said to be common and conditions of detention deplorable. In particular, the author claims that he is being "victimized and oppressed" because of his human rights complaints to various organizations. He also complains that the prison authorities interfere with his mail and his correspondence, suppressing whatever he would like to send that is critical of their attitude and activities.

The complaint

3. Although the author does not invoke specific provisions of the Covenant, it transpires from the above that he claims to be a victim of a violation of articles 7 and 10 of the Covenant, on account of lack of medical treatment and his conditions of detention, and of article 17, because of the alleged interference with his mail and correspondence.

The State party's information and observations and the author's comments

4.1 In a submission dated 4 March 1993, the State party observes that the author has failed to complain about the above events to the competent national authorities. Thus, he has neither filed a formal complaint with the prison administration nor petitioned the President. The State party adds that it became aware of some of the matters through information received from the author "on request", and that remedial action was "simultaneously initiated".

4.2 The State party observes that the procedure of complaints about conditions of detention or other events in prison is governed by rules 278, 279 and 280 of the prison rules. Thus, rule 278 stipulates that arrangements must be made to record any request from a prisoner to see either the superintendent, deputy superintendent or assistant superintendent. Rule 279 lays down that the aforementioned prison officials must hear applications from prisoners “at a convenient hour on every day, other than Saturday and Sunday”. Finally, rule 280 states that “[p]etitions from prisoners shall be submitted in the prescribed form and shall be forwarded, along with the comments of the Superintendent, to the Inspector for his comments, before being forwarded ... to the President”. It is submitted that the author did not use any of these channels.

4.3 With regard to the author’s eye treatment, the State party provides the following chronology:

The author’s initial request for treatment was made to the prison’s medical officer on 26 August 1986. He attended the eye clinic of the Port-of-Spain General Hospital thereafter and was given glasses on 18 September 1987, at government expense. A new request for a new pair of glasses was filed on 21 February 1992. Mr. Pinto was referred to the eye clinic and given appointments for 12 March and 21 May 1992; a police escort was unavailable on those dates, and the author could not keep the appointments. He did, however, attend the clinic on 6 August 1992, and another appointment was scheduled for 6 December 1992.

4.4 For dental treatment, the author’s initial request was filed in August 1987. A dentist recommended fillings and partial dentures at a cost of \$2,045. This was approved on 4 September 1987, but owing to financial constraints, only the fillings were completed on 10 October 1987. On 10 October 1989, the author made another request for dental treatment. Again, a dentist recommended an extraction and two fillings at a cost of \$265. Approval for the treatment was subsequently granted, but on 14 August 1992 (!), the author refused the treatment.

4.5 As to the author’s nervous disorders, it is submitted that, Mr. Pinto was examined by the prison’s medical officer on 11 September 1985 and given continuous medication until 2 February 1986. On an unspecified subsequent date, the author again saw the medical officer about the same problem and was prescribed medication until 4 April 1989.

4.6 The State party notes that the author was given a general medical examination on 13 October 1992 and found mentally and physically fit. The medical certificate notes merely a minor complaint related to mild myopia and to mild lower back pain.

4.7 The State party rejects as “totally false” the author’s claim that he is (was) confined to a prison area where it is impossible to distinguish between day and night and that he is being denied daily recreation. It submits that prisoners of the author’s status are relocated regularly within the section of the prison they occupy. Lighting and ventilation of the cells are said to be adequate, enabling the occupants to discern day or night. Like other prisoners in the same section, the author benefits from one hour of daily recreation, which is sometimes but rarely cancelled owing to bad weather. The State party contends that the author’s claims “are a deliberate attempt to misrepresent to the ... Committee that as a prisoner he is undergoing undue hardships which will ... weight heavily in the event of a reprieve”.

4.8 In a subsequent submission of 19 May 1993, the State party notes that on 12 November 1992, the author's death sentence was commuted to life imprisonment with hard labour by the President of Trinidad and Tobago.

5.1 The author was provided with an opportunity to respond to the State party's submission. As he did not reply within the prescribed deadline, a reminder was sent to him on 19 August 1993. In two letters dated May 1994, the author complains that he had prepared replies to the State party's submission and handed them to the Acting Assistant Superintendent (?) who in turn forwarded them to the Deputy Commissioner for Prisons. At that level, the author submits, his reply was "suppressed".

5.2 In two other letters dated 13 May and 5 September 1994, the author complains that he does not receive the correspondence from the Committee's secretariat in respect of the present communication. It would appear that two secretariat letters dated 3 May and 26 August 1994 did not reach him. Finally, he refers to a five-page document dated 28 May 1994, which he submitted in reply to the State party's submission and which he claims in turn did not reach the Committee.

The Committee's admissibility decision

6.1 The Committee considered the admissibility of the communication during its fifty-second session. It noted the State party's contention that the author had not availed himself of the procedures laid down in rules 278 to 280 of the Trinidadian prison rules. On the other hand, it observed that the author had brought his grievances to the attention of the domestic authorities. Given his situation, first on death row and after 13 November 1992 as a person serving a term of life imprisonment, it could not be held against him if he had not done so in the prescribed form. It would have been incumbent upon the prison authorities to investigate his complaint(s) ex officio and with due diligence and expedition. In this context, the Committee noted that the State party had merely invoked the prison rules and the fact that Mr. Pinto had not availed himself of the procedure spelled out in those rules; it did not state whether or not any follow-up had been given to the author's complaint(s), in whatever form. In the circumstances, the Committee considered that the requirements of article 5, paragraph 2 (b), of the Optional protocol had been met.

6.2 The Committee concluded that the author had sufficiently substantiated, for purposes of admissibility, his claim of inadequate medical attention and of interference with his correspondence, and that those issues should be considered on their merits.

6.3 On 25 October 1994, therefore, the Committee declared the communication admissible insofar as it appeared to raise issues under articles 7, 10 and 17 of the Covenant.

Absence of State party cooperation on the merits and the author's further comments on the merits

7.1 The deadline for submission of the State party's information and observations under article 4, paragraph 2, of the Optional Protocol expired on 3 May 1995. No additional information has been received from the State party, in spite of two reminders addressed to it on 1 September and 21 November 1995, and despite the seriousness of the allegations contained in paragraphs 7.3 and 7.4 below.

7.2 In several letters between 10 April and 6 September 1995, the author provides information about his efforts to obtain a favourable recommendation from the Advisory Committee on the Power of Pardon of Trinidad. His petition for release had been submitted to that body after the Committee's decision on communication No. 232/1987, referred to in paragraph 1 above. On 23 July 1995, his case was heard by the Advisory Committee but, according to the author, "placed on hold indefinitely". While six other prisoners under sentence of life imprisonment were released upon recommendation of the Advisory Committee, the author's own release was denied.

7.3 The author notes that the Advisory Committee had requested two reports on his case from the prison authorities; those reports allegedly were prepared in January and February 1995. The prison authorities apparently informed him repeatedly that the reports sent to the Advisory Committee were very unfavourable, militating heavily against his release. Mr. Pinto dismisses the reports of the prison welfare officer and the prison administration as malicious and totally unfounded. In this context, he argues that the prison authorities were eager to humiliate him because he had, while on death row, submitted his complaint to the United Nations and to other organizations and prominent politicians. Thus, the prison officers reminded him that the Minister for National Security was the Chairman of the Advisory Committee and the Attorney-General another member and that it was fully within their discretion to reject his request for release. To the author, the authorities manipulated his file: "I've a very good record in prison but they [want to] fight me down because of my human rights struggle."

7.4 The author adds that the welfare officer who prepared the report on him confessed to him on 28 September 1995 that he had drafted the report upon instructions of his superiors and the prison administration, that he had never interviewed anyone on the matter and that the prison authorities were engaged in "corrupt" practices concerning the case, with the sole view of keeping the author in prison forever. The author now seeks the Committee's intervention with the State party's Government.

7.5 In a letter dated 8 November 1995, Mr. Pinto's former counsel before the Committee confirms that the Advisory Committee on the Power of Pardon of Trinidad has indefinitely deferred a decision in the case. Counsel repeats the author's allegations contained in paragraph 7.3 above, i.e. that the Trinidadian authorities have told the author that they would seek to prevent his release because of the action he had taken to complain about his case to the United Nations.

Examination of the merits

8.1 The Human Rights Committee has considered the case in the light of all the information made available to it by the parties to the present case, as it is required to do under article 5, paragraph 1, of the Optional Protocol.

8.2 The Committee notes with utmost concern the non-compliance of the State party with the Committee's recommendation on the views adopted on 20 July 1990 in respect of Mr. Pinto's first communication. a/ It is equally concerned about the author's and counsel's allegation that Mr. Pinto's request for release to the Advisory Committee on the Power of Mercy was denied because of his previous complaint(s) to the Committee. In this context, the Committee notes that the main theme of the author's correspondence (in excess of 20 letters, including 2 to the Special Rapporteur

for follow-up on views) pertains primarily to the implementation of the recommendations in the previous case.

8.3 The author has complained about appalling conditions of detention and harassment at the Carrera Convict Prison. The State party has only refuted that allegation in general terms; on the other hand, the author has failed to provide details on the treatment he was subjected to, other than by reference to conditions of detention that affected all inmates equally. On the basis of the material before it, the Committee concludes that there has been no violation of article 7. However, to convey to the author that the prerogative of mercy would not be exercised and his early release denied because of his human rights complaints reveals lack of humanity and amounts to treatment that fails to respect the author's dignity, in violation of article 10, paragraph 1.

8.4 As to the author's claim of denial of medical treatment, the Committee notes that the author was provided with an opportunity to comment on the State party's detailed account of 4 March 1993 in this respect; he retained that opportunity even after informing the Committee that comments allegedly prepared on 28 May 1994 had not reached the Committee. He never subsequently provided any information as to the contents of that document. As a result, the State party's submission that Mr. Pinto did receive ophthalmologic, dental and stress treatment is uncontested. In the circumstances, the Committee finds that such medical attention as the author received while on death row did not violate articles 7 or 10, paragraph 1.

8.5 The author has finally contended that his correspondence is being interfered with arbitrarily, in violation of his right to privacy. Although the State party has failed to comment on that allegation, the committee notes that the material before it does not reveal that the State party deliberately withheld or intercepted some of the author's letters to the Committee; many letters written before and after the adoption of the admissibility decision in October 1994, including handwritten "copies" of letters to the Permanent Secretary of the Ministry of National Security and the Attorney-General, and which contained serious allegations against the State party, did in fact reach the Committee without undue delay. There is no evidence that their content was interfered with. After carefully weighing the information available to it, the Committee finds no violation of article 17, paragraph 1, of the Covenant.

9. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts as found by the Committee reveal a violation of article 10, paragraph 1, of the Covenant.

10. The Committee is of the view that Mr. Pinto is entitled, under article 2, paragraph 3(a), of the Covenant, to an effective remedy. This should include measures that will prevent a recurrence of treatment such as the author has been subjected to.

11. By ratifying the Optional Protocol, the State party has recognized the competence of the Committee to establish whether there has been a violation of the Covenant or not. It has further undertaken to ensure to all individuals subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy in case a violation of the Covenant has been found. The Committee wishes to receive from the State party, within 90 days, information about the measures taken to give effect to its views.

12. The Committee notes that the State party has not thus far given effect to the Committee's views of 20 July 1990 a/ in respect of Mr. Pinto's initial communication, in which the Committee decided that he was entitled to a remedy entailing his release. While the death sentence imposed on the author has been commuted to life imprisonment, the fact remains that he has not been released. The Committee notes its previous finding that the author did not have a fair trial. The continued detention of a person sentenced after an unfair trial may raise issues under the Covenant. The Committee therefore calls upon the State party to remedy the violations of the Covenant established in the views of 20 July 1990 by releasing the author and to inform the Committee of any action taken in this regard as soon as possible.

a/ Official Records of the General Assembly, Forty-fifth session, Supplement No. 40 (A/45/40), vol. II, annex IX.H, communication No. 232/1987 (Pinto v. Trinidad and Tobago), views adopted on 20 July 1990.