

HUMAN RIGHTS COMMITTEE

Boodlal Sooklal v. Trinidad and Tobago

Communication No 928/2000

25 October 2001

CCPR/C/73/D/928/2000

VIEWS

Submitted by: Mr. Boodlal Sooklal (represented by counsel, Ms. Natalia Schiffrin, Interights)

Alleged victim: The author

State Party: Trinidad and Tobago

Date of communication: 2 February 2000 (initial submission)

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

Meeting on 25 October 2001,

Having concluded its consideration of communication No. 928/2000, submitted to the Human Rights Committee by Mr. Boodlal Sooklal 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 the State party,

Adopts the following:

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

1. The author of the communication, submitted on 2 February 2000, is Boodlal Sooklal, a citizen of Trinidad and Tobago, currently serving 50 years of concurrent sentences in a prison in Trinidad and Tobago. He claims to be a victim of violations of articles 9, paragraph 3, and 14, paragraph 3

(c) and (d), and paragraph 5, of the International Covenant on Civil and Political Rights. He is represented by counsel.

The facts as submitted by the author

2.1 In May 1989, the author was arrested and charged with the offences of sexual intercourse and serious indecency with minors. Following a preliminary inquiry in June 1992, he was released on bail on 27 July 1992. The author was held in custody from the time of his arrest to his release on bail, over three years after his arrest.

2.2 In February 1997, the author was tried in the High Court, where he pleaded not guilty. He was represented by a legal aid lawyer. He was convicted and sentenced to 12 strokes with the birch, as well as 50 years of concurrent sentences, equivalent to a sentence of 20 years after remission.

2.3 The author lodged an appeal, which came up for hearing at the Court of Appeal on 19 November 1997. He did not receive any advice from his legal aid lawyer regarding this appeal, and did not meet with his lawyer prior to the hearing. During the proceedings, the author's lawyer, told the court that she could not find any grounds for pursuing the appeal. Consequently, leave to appeal was refused and the sentence was re-affirmed.

2.4 According to counsel, the author cannot afford to hire a lawyer privately to take a constitutional action in relation to this case and has been unable to find counsel to do so on a pro bono basis. Counsel also states that even if the author were to find someone to represent him, the Constitution of Trinidad and Tobago does not guarantee a speedy trial or a right to a trial within a reasonable time and therefore no constitutional remedy for the delays would be effective in the circumstances.

The complaint

3.1 Counsel claims that the author is a victim of violations of articles 9, paragraph 3, and 14, paragraph 3 (c), as he was held in detention for an unreasonable time awaiting trial and was not tried without undue delay.

3.2 Counsel refers to the Committee's jurisprudence in particular, its decision in Steadman v. Jamaica,⁽¹⁾ at which the Committee held that in the absence of any reasons from the State party explaining its behaviour, a delay of approximately 27 months between the date of the applicant's arrest and the date of trial amounted to a violation of the State's obligations under articles 9, paragraph 3, and 14, paragraph 3 (c), to bring the accused to trial without undue delay.

3.3 Counsel submits that the facts of this case are not complex and it involves a limited number of witnesses and few allegations. Thus, counsel argues, it is not the type of case where a delay can be justified due to a complex factual situation. Counsel also submits that none of the delay in this case can be attributable to the author, who was in fact anxious to have his case heard as soon as possible.

3.4 Counsel submits that the State party is responsible for the entirety of the delay. She argues that, without explanation, the prosecution and judicial authorities subjected the author to a delay of approximately three years before conducting a preliminary inquiry into his case, and to a further delay of four years and nine months before bringing his case to trial. In addition, no reasons were given for detaining him in custody rather than releasing him with the requirement to reappear at trial, as required under article 9, paragraph 3 of the Covenant. According to counsel, the lapse of time of nearly eight years between the author's arrest and trial, is even greater than the period of pre-trial delay held in Steadman v. Jamaica, which the Committee considered unreasonable.

3.5 Furthermore, counsel submits, that nearly nine years after the incidents in question,(2) the fairness of the author's trial was severely prejudiced, due to the likelihood that witnesses called at the trial were less accurate in their recollection of events. In this regard, counsel notes that two of the witnesses were 10 and 12 years of age at the time of the events in question. She submits that it is unlikely that when they were close to 20 years of age, they could accurately testify to events in their childhood.

3.6 Counsel also claims that the author is a victim of a violation of article 14, paragraph 3 (d), of the Covenant, as he did not receive effective legal representation. In this regard, counsel submits that the author's lawyer declared to the Court of Appeal that she could find no grounds for an appeal, even though clear grounds did exist, in particular, the fact that the author had suffered a delay of nearly eight years awaiting trial and that this factor had apparently not been considered by the trial judge in his determination of the case.

3.7 Counsel submits that the right to effective representation is an inherent component in the right to a fair trial and the right to an appeal. She refers to the Committee's Views in Kelly v. Jamaica,(3) in which the Committee noted "measures must be taken to ensure that counsel, once assigned, provides effective representation in the interests of justice."

3.8 Counsel submits that the Committee has affirmed on several occasions that where counsel for an accused decides that there are no grounds for an appeal, he should consult with the accused and inform him in advance of his intention to withdraw the appeal.(4) This duty to inform the accused also extends to the court hearing the appeal. Counsel submits that in the case of Steadman v. Jamaica, in which the accused's lawyer told the court that there were no grounds for appeal, the Committee took the view that it could not question counsel's professional judgement, but added that "the Court should ascertain whether counsel has consulted with the accused and informed him accordingly. If not, the Court must ensure that the accused is so informed so that he can consider any other remaining options open to him".

3.9 Counsel submits, that when the author's lawyer informed the Court that she could find no grounds to appeal the conviction, she was effectively withdrawing the author's appeal without the author being informed and, consequently, without his consent. Lastly, she states that there is no indication that the Court of Appeal made an inquiry as to whether the author had been duly advised of his counsel's intentions to withdraw the appeal. Counsel refers to the Committee's jurisprudence(5) in this regard and submits that these factors reveal a violation of the author's rights under article 14, paragraph 3 (d) as well as article 14, paragraph 5 of the Covenant.

3.10 Although counsel did not specifically raise an allegation of a violation of any of the rights protected under the Covenant with respect to the sentence of 12 strokes of the birch, the facts of the case raise an issue under article 7 of the Covenant.

Issues and proceedings before the Committee

4.1 The communication with its accompanying documents was transmitted to the State party on 17 May 2000. The State party has not responded to the Committee's request, under rule 91 of the rules of procedure, to submit information and observations in respect of the admissibility and merits of the communication, despite several reminders addressed to it. The Committee recalls that it is implicit in article 4, paragraph 2, of the Optional Protocol, that a State party examine in good faith all the allegations brought against it, and that it provide the Committee with all the information at its disposal. In light of the failure of the State party to cooperate with the Committee on the matter before it, due weight must be given to the author's allegations, to the extent that they have been substantiated.

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

4.3 The Committee notes that at the time of submission, Trinidad and Tobago was a party to the Optional Protocol. The withdrawal by the State party from the Optional Protocol on 27 March 2000, with effect as of 27 June 2000, does not affect the competence of the Committee to consider this communication.

4.4 The Committee has ascertained, as required under article 5, paragraph 2 (a), of the Optional Protocol, that the matter is not being examined under another procedure of international investigation or settlement. With respect to the exhaustion of domestic remedies, the Committee notes that the State party has not claimed that there are any domestic remedies yet to be exhausted by the author and has not raised any other objection to the admissibility of the claim. On the information before it, the Committee is of the view that the communication is admissible and proceeds to a consideration of the merits.

4.5 The Human Rights Committee has considered the present communication in light of all the information made available to it by the parties, as provided in article 5, paragraph 1, of the Optional Protocol.

4.6 The Committee notes that the author was sentenced to 12 strokes of the birch and recalls its decision in Osbourne v. Jamaica(6) in which it decided that irrespective of the nature of the crime that is to be punished, however brutal it may be, it is the firm opinion of the Committee that corporal punishment constitutes cruel, inhuman or degrading treatment or punishment contrary to article 7 of the Covenant. In the present case, the Committee finds that by imposing a sentence of whipping with the birch, the State party has violated the author's rights under article 7.

4.7 The Committee notes counsel's contention that the State party has violated article 9, paragraph 3, as the author was held in detention for an unreasonable time prior to his trial. The State party did not provide any justification for the author's detention and its duration. The Committee notes that the author spent three years in detention prior to release on bail and considers, therefore, that the State party has violated article 9, paragraph 3, of the Covenant.

4.8 As to counsel's contention that the State party has violated article 14, paragraph 3 (c), as the author's trial was not held within a reasonable time after he was charged, the Committee notes that the author waited for a period of seven years and nine months from the time of his arrest to the date of his trial. The State party has provided no justification for this delay. In the circumstances, the Committee considers that this is an excessive period of time and, therefore, that the State party has violated article 14, paragraph 3 (c), of the Covenant.

4.9 The Committee notes counsel's contention that, because of the delay of seven years and nine months from the date of the author's arrest to his trial, the witnesses could not have been expected to testify accurately to events alleged to have taken place nine years previously, and that the fairness of the trial was seriously prejudiced. As it appears from the file that issues related to the credibility and assessment of the evidence were addressed by the High Court, the Committee takes the view that the effect of the delay on the credibility of the witnesses testimonies does not give rise to a finding of a violation of the Covenant that would be separate from the conclusion reached above under article 14, paragraph 3 (c).

4.10 With regard to an alleged violation of article 14, paragraph 3 (d), the Committee notes that the State appointed defence counsel conceded that there were no grounds for appeal. The Committee, however, recalls its prior jurisprudence⁽⁷⁾ and is of the view that the requirements of fair trial and of representation require that the author be informed that his counsel does not intend to put arguments to the Court and that he have an opportunity to seek alternative representation, in order that his concerns may be ventilated at appeal level. In the present case, it does not appear that the Appeal Court took any steps to ensure that this right was respected. In these circumstances, the Committee finds that the author's right under article 14, paragraph 3 (d), has been violated.

4.11 The Committee is of the view that the same facts as referred to in paragraph 4.10 do not raise a separate issue under article 14, paragraph 5 of the Covenant.

5. 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 violations by Trinidad and Tobago of articles 9, paragraph 3, 14, paragraph 3 (c) and (d), and article 7 of the Covenant.

6. Pursuant to article 2, paragraph 3 (a), of the Covenant, the author is entitled to an effective remedy entailing compensation and the opportunity to lodge a new appeal, or should this no longer be possible, to due consideration of granting him early release. The State party is under an obligation to ensure that similar violations do not occur in the future. If the corporal punishment imposed on the author has not been executed, the State party is under an obligation not to execute the sentence.

7. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant, and to provide an effective and enforceable remedy in case a violation has been established, the Committee wishes to receive from the State party, within 90 days, information about the measures taken to give effect to the Committee's Views.

* The following members of the Committee participated in the examination of the present communication: Mr. Nisuke Ando, Mr. Prafullachandra Natwarlal Bhagwati, Ms. Christine Chanet, Mr. Maurice Glèlè Ahanhanzo, Mr. Louis Henkin, Mr. Ahmed Tawfik Khalil, Mr. Eckart Klein, Mr. David Kretzmer, Mr. Rajsoomer Lallah, Ms. Cecilia Medina Quiroga, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Martin Scheinin, Mr. Ivan Shearer, Mr. Hipólito Solari Yrigoyen and Mr. Maxwell Yalden.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be translated also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

Notes

1. Communication No. 528/1993.

2. She does not say when the incidents occurred.

3. Communication No. 253/1987.

4. Counsel refers to Kelly v. Jamaica, No. 253/1987, and Wright and Harvey v. Jamaica, No. 459/1991.

5. Counsel refers to the case of Pinkney v. Canada, Communication No. 7/1978, where the applicant suffered a delay of over two years in receiving his trial transcript, and consequently alleged a violation of his right to a trial within a reasonable time as well as his right to an appeal. According to counsel, the Committee held that the right to be tried without undue delay should be applied in conjunction with the right to review by a higher tribunal and that consequently there was a violation of both of these provisions taken together.

6. Communication No. 759/97.

7. In the following cases, the Committee decided that the withdrawal of an appeal without consultation, would amount to a violation of article 14, paragraph 3 (d) of the Covenant: Collins v. Jamaica (356/89), Steadman v. Jamaica (528/93), Smith and Stewart v. Jamaica (668/95),

Morrison and Graham v. Jamaica (461/91), Morrison v. Jamaica (663/95), McLeod v. Jamaica (734/97), Jones v. Jamaica (585/94).