

HUMAN RIGHTS COMMITTEE

Elahie v. Trinidad and Tobago

Communication No 533/1993

28 July 1997

CCPR/C/60/D/533/1993

VIEWS

Submitted by: Harold Elahie

Victim: The author

State party: Trinidad and Tobago

Date of communication: 20 February 1992 (initial submission)

Date of decision on admissibility: 12 October 1995

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

Meeting on 28 July 1997,

Having concluded its consideration of communication No.533/1993 submitted to the Human Rights Committee by Mr. Harold Elahie, 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, his counsel and the State party,

Adopts the following:

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

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 was 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 brought before 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 continued 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 finally indicted. It appears from his letters that one of the indictments, dated 9 July 1990, was to be heard on 18 November 1990, but that prior to the hearing the defence filed a motion against this 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 and ordered a new preliminary enquiry. The defence appealed the 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. The State party, in its submission, observes that the author was sentenced on 25 March 1994 for manslaughter, and that the other charges were dropped.

2.4 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 Complaint:

3.1 Although the author does not invoke specific provisions of the Covenant, it transpires that he claims 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 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.

State party's information and observations on admissibility and the author's comments thereon:

4. In a submission dated 20 March 1995, the State party confirms that the author has exhausted all available domestic remedies in regard to his complaint about the procedure adopted at the preliminary enquiry. It further concedes that the author has exhausted domestic remedies with respect to his complaints about prison conditions.

The Committee's admissibility decision:

5. During its 55th session, the Committee considered the admissibility of the communication. It noted that the State party conceded that the author had exhausted available domestic remedies, and observed 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, he had substantiated this claim for it to be considered on its merits.

6.1 The Committee further considered that the author had 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, might raise issues under article 9, paragraph 3, and 14, paragraph 3 (c), of the Covenant, which needed to be examined on the merits.

6.2 On 12 October 1995, the Human Rights Committee declared the communication admissible in as much as it appeared to raise issues under article 10, paragraph 1; 9, paragraph 3, and 14, paragraph 3 (c), of the Covenant.

Further information received from the State party:

7.1 In a further submission on admissibility received after the adoption of the admissibility decision the State party, had stated that on 19 March 1991, the author's original indictment has been quashed on the ground that: "it was founded upon a committal which was void, illegal, of no effect, and ultra vires the Indictable Offences (Preliminary Enquires) Act". The judge ordered that the indictment be quashed, and that a new preliminary enquiry, be commenced de novo.

7.2 The result of the new preliminary inquiry was that the author was committed to stand trial for murder, attempted murder, wounding with intent and shooting with intent. At the trial in the Assize's court, the author pleaded guilty to manslaughter and on 25 March 1994, was sentenced to four years' imprisonment with hard labor.

Examination of the merits:

8.1 The Committee has considered the communication in the light of all the information provided by the parties as provided in article 5, paragraph 1, of the Optional Protocol. It notes with concern that, following the transmittal of the Committee's decision on admissibility, the State party has provided no further information. 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 allegations brought against it, and that it provide the Committee with all the information at its disposal. In the light of the failure of the State party to cooperate with the Committee on the matter before it, despite a reminder being sent on 11 March 1997, due weight must be given to the author's allegations, to extent that they have been substantiated.

8.2 The Committee notes that the information before it shows that the author was arrested on 6 July 1986, that shortly after the preliminary enquiry began, the magistrate to whom the case was assigned was suspended and that the author was not brought before a new magistrate until 22 February 1988. He was committed to stand trial on 25 May 1988. A constitutional motion was filed, on 1 November 1990; resulting in the author's indictment being quashed and a new preliminary enquiry being ordered, on 19 March 1991. The author was convicted of manslaughter on 25 March 1994. This chronology reveals that the author was in detention for 7 years and 8 months before being sentenced on a plea of guilty of manslaughter. The author received a sentence of four years of imprisonment with hard labour which would appear to have been taken into account the time he had already served. Nevertheless, the Committee considers that, a period of 7 years and 8 months between the author's arrest and the start of the trial against him, does in the absence of any adequate explanations from the State party which would explain the delay, amount to a violation of articles 9, paragraph 3, and 14, paragraph 3 (c), of the Covenant, since the trial against a person kept in detention was neither instituted nor completed within a reasonable time and since there were undue delays in the trial itself.

8.3 With regard to the author's allegations of conditions of detention and ill-treatment, the Committee notes that the State party has not offered any information to refute the author's allegations. Due weight must therefore be given to the author's allegation that he only had "a piece of sponge and old newspapers" to sleep on, "food not fit for human consumption" given to him, and that he was treated with brutality by the warders whenever complaints were made. In the Committee's view, the author was not treated with humanity and respect for the inherent dignity of the human person, in violation of article 10, 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 before it disclose violations of articles 10, paragraph 1; 9, paragraph 3, and 14, paragraph 3 (c), of the Covenant.

10. Pursuant to article 2, paragraph 3 (a), of the Covenant, the author is entitled to an effective remedy, including compensation for the ill-treatment suffered and the undue delays in the adjudication of his case. The Committee reaffirms the obligation to treat individuals deprived of their liberty with respect for the inherent dignity of the human person. The State party is under an obligation to ensure that similar events do not occur in the future.

11. Bearing in mind, that by becoming a State 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 ninety 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 N. Bhagwati, Mr. Thomas Buergenthal, Ms. Christine Chanet, Lord Colville, Ms. Elizabeth Evatt, Ms. Pilar Gaitan de Pombo, Mr. Eckart Klein, Mr. David Kretzmer, Ms. Cecilia Medina Quiroga, Mr. Julio Prado Vallejo, Mr. Martin Scheinin, Mr. Danilo Türk and Mr. Maxwell Yalden.

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