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File Number(s): Report No. 30/98; Case 11.643
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Title/Style of Cause: Trevor Nathaniel Pennerman Fisher v. Bahamas
Referred to in this Report as The Bahamas.
Doc. Type: Decision
Decided by: Chairman: Carlos Ayala Corao;
First Vice Chairman: Robert K. Goldman;
Second Vice Chairman: Jean Joseph Exume.
Commissioners: Alvaro Tirado Mejia, Claudio Grossman, Helio Bicudo.
Dated: 5 May 1998
Citation: Fisher v. Bahamas, Case 11.643, Inter-Am. C.H.R., Report No. 30/98,
OEA/Ser.L/V/II.102, doc. 6 rev. (1998)
Represented by: APPLICANT: McKenna & Co.
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I. ALLEGED FACTS:

1. On June 19, 1996, the Commission received a petition dated June 7, 1996, on behalf of Mr. Trevor Nathaniel Pennerman Fisher, from McKenna & Co., Solicitors, in London, United Kingdom. The petition stated that Trevor Fisher was convicted of murder and sentenced to death on March 25, 1994. He then appealed to the Court of Appeal of The Bahamas against his conviction and sentence but his appeal was dismissed on October 10, 1994. Subsequently, he applied to the Privy Council in London for leave to appeal his conviction. On May 23, 1996 the Privy Council dismissed his application for leave. The petition stated that Mr. Fisher has exhausted all domestic remedies available to him and is at risk of imminent execution. The petition also stated that Mr. Fisher has lodged a Constitutional Motion challenging the constitutionality of his sentence, including an application to the Supreme Court of The Bahamas for a Conservatory Order[FN2] pending the outcome of this application. Moreover, the petition stated that Mr. Fisher is incarcerated on death row, at Foxhill Prison, Nassau, in The Bahamas, and is awaiting execution.

[FN2] Stay of Execution.

2. The petitioner claims that Mr. Fisher is a victim of a miscarriage of justice because of errors committed during his trial. The petitioner argues that Mr. Fisher's human rights have been violated by The Bahamas, and claims that the following articles of the American Declaration of the Rights and Duties of Man have been violated. Namely, Article I, the right to life, Article II,

the right to equality before the law, Article XI, the right to the preservation of health and to wellbeing, Article XVIII, the right to a fair trial, Article XXV, the right of protection from arbitrary arrest, and Article XXVI, the right to due process of law.

II. PROCEEDINGS BEFORE THE COMMISSION

3. The petition, dated June 7, 1996, made the following allegations on behalf of Mr. Fisher: The Petitioner argues that Mr. Fisher's fundamental right to life and the protection of the law, guaranteed by Section 1 5(A) of the Constitution of The Bahamas will be infringed if he is executed pending the determination of his complaint by the Commission.

4. The petitioner argues that Mr. Fisher has suffered cruel and inhuman treatment and punishment by reason of the overall delay in the criminal process, namely (a) that he was arrested on October 4, 1990 and was detained on Death Row from that date to the present, a total of 5 years and 8 months; and (b) that he was convicted on March 25, 1994, and has been detained on Death Row from that date to the present, a total of over 2 years and 2 months.

5. The petitioner argues that it is accepted that the sentence of death itself may be constitutional as acknowledged by Section 16(1) of the Constitution of The Bahamas, and in itself does not violate the American Declaration. However, in The Bahamas, it is mandatory to impose a death sentence on all those convicted of murder without any allowance for extenuating circumstances, which renders the sentence cruel, infamous or unusual punishment in violation of Article XXVI of the American Declaration.

6. The petitioner argues that the automatic imposition of the death sentence is also contrary to an evolving policy in the Caribbean states where the death penalty is only applied in cases of murders with substantial aggravating circumstances.

7. The petitioner argues that in every case in The Bahamas, a mandatory death sentence is imposed upon conviction of murder, and that sentence is contrary to Articles I and II of the American Declaration.

8. The petitioner argues that since his arrest in October 1990, Mr. Fisher has been subjected to inhuman and degrading treatment due to the appalling conditions in which he has been detained. The Petitioner also argues that Mr. Fisher was sentenced to death, and not sentenced to death aggravated by a lengthy period of inhuman and degrading treatment whilst awaiting execution. The Petitioner argues that this additional suffering inflicted upon Mr. Fisher was not authorized by the original sentence and, submits that it amounts to cruel, infamous or unusual punishment in violation of Article XXVI of the American Declaration .

9. The petitioner argues that Mr. Fisher has been detained in the condemned cell, together with prisoners under sentence of death awaiting execution for some 5 years and 8 months, since October 1990. Petitioner states that this period includes some 3 years and 6 months prior to the date of conviction, and that such detention violates Article XXVI of the American Declaration. The Petitioner concluded that Mr. Fisher has been subjected to treatment that violates his

fundamental rights as guaranteed under the American Declaration of the Rights and Duties of Man.

10. The petitioner requested that the Commission obtain an undertaking from the Government of the Commonwealth of the Bahamas that no action will be taken to execute Mr. Trevor Fisher while this matter is pending.

11. On June 20, 1996, the Commission opened a case and transmitted the pertinent parts of the petition to the Government of The Bahamas pursuant to Article 34 of its Regulations. It requested that the Government of The Bahamas provide it with any additional information within 90 days, which would enable the Commission to determine whether the internal legal remedies and procedures have been exhausted in the case pursuant to Article 37 of its Regulations. It also requested that the Government of The Bahamas "stay the execution of Mr. Fisher pending an investigation by the Commission of the alleged facts."

12. On September 9, 1996, the petitioner informed the Commission that a warrant of execution had been issued for Mr. Fisher, and that he was scheduled to be executed on September 12, 1996. The petitioner requested that the Commission reiterate its request for a stay of execution on Mr. Fisher's behalf until the Commission had completed its investigation and on September 11, 1996, the Commission reiterated its request that the Government of The Bahamas "stay Mr. Fisher's execution pending an investigation by it of the alleged facts raised in the petition."

13. On September 23, 1996, the Government of The Bahamas replied to the petition concerning the claims raised in the petition and quoted the Advisory Committee on Mercy which stated that "Having regard to the dismissal by the Privy Council, the applicant has exhausted all domestic legal remedies."

14. On September 25, 1996, the Commission sent the pertinent parts of the Government's reply to the petitioner, and stated that any observations to the same should be sent within 30 days of receipt of its letter. On October 21, 1996, the petitioner sent his response to the Government of The Bahamas' reply to the petition. The petitioner replied on October 21, 1996, to the Government's response to the petition.

15. On October 30, 1996, the Commission forwarded the pertinent parts of the petitioner's response to the Government of The Bahamas, and requested that the Government of The Bahamas take whatever measures are deemed necessary so that the Commission may receive all the information relevant to this case within 30 days of receipt. On April 7, 1997, the Government of The Bahamas replied to the Petitioner's response of October 21, 1996. The reply was received at the Offices of the Commission on April 15, 1997. The Commission forwarded a copy of this reply to the petitioner on May 5, 1997.

16. On October 9, 1997, the petitioner wrote to the Commission, and informed it that Mr. Fisher's case had been considered by the Privy Council in London and that it ordered that the issues raised in Mr. Fisher's Constitutional motion should be the subject of a full appeal. The

petitioner also stated that the appeal was scheduled to be heard before the Privy Council on October 13, 1997, and included a copy of the appellate brief in its communication.

17. On December 17, 1997, the Commission wrote to the petitioner requesting that it inform it of the pending appeal before the Privy Council within 30 days of receipt. On that same day the Commission wrote to the Government of The Bahamas and informed it that it was awaiting information from the petitioner concerning Mr. Fisher's pending appeal before the Privy Council. On December 23, 1997, the Commission received a communication from the petitioner dated December 18, 1997, which stated that the Judicial Committee of the Privy Council dismissed Mr. Fisher's appeal. The Petitioner also enclosed a copy of the Privy Council's decision and requested that the Commission consider the dissenting opinion of Lord Steyn who stated inter alia that "it would be inhuman to execute Mr. Fisher, and that he would advise Her Majesty to quash the death sentence and substitute a sentence of life imprisonment."

18. On December 24, 1997, the Commission sent the pertinent parts of the petitioner's communication to the Government of The Bahamas for its comments and observations if any, within 30 days. On December 30, 1997, the Government of The Bahamas wrote to the Commission informing it of the Privy Council's decision dismissing the appeal and enclosed a copy of the decision for the Commission's information.

19. On February 25, 1998, the petitioner requested that the Commission issue a precautionary measure to the Government and request a stay of execution for three months. On March 4, 1998, the Commission wrote to the Government of The Bahamas and informed it that "the case is still being examined by the Commission, and that the Commission's request for a stay of execution of Mr. Fisher dated June 20, 1996, remains in effect, until it has had the opportunity to investigate the alleged facts."

20. On March 27, 1998, the petitioner wrote to the Commission informing it that the Government of The Bahamas had issued an Execution warrant in respect of Mr. Fisher. The execution was scheduled for April 2, 1998, at 8:00 a.m. The petitioner also asked that the Commission request the Government of The Bahamas to stay the execution of Mr. Fisher pending completion of investigations by the Commission and receipt of its recommendations, if any. On March 27, 1998, the Commission reiterated its request to the Government of The Bahamas to stay the execution of Mr. Trevor Fisher pending an investigation by it of the alleged facts.

21. On April 1, 1998, the petitioner wrote to the Commission, and stated inter alia, that: "Bearing in mind the imminent time fixed for the execution, I would respectfully ask you to reiterate your request to the Government to stay the execution, on the basis not only of the earlier alleged breaches of the Declaration but also the additional breach set out in the enclosed submission. As Mr. Fisher is due to be executed at dawn tomorrow, I would ask you to request the Government to stay execution prior to close of business today." The petitioner reiterated its prior submissions and in addition raised a new argument concerning the further alleged breach of the American Declaration of the Rights and Duties of Man, which had not occurred at the time of the original submission in June of 1996. Finally, the petitioner submitted that "As the Commission is aware, on Thursday 26 March, 1998, a warrant of execution was read to Mr.

Fisher at Foxhill prison. The execution is due to take place tomorrow, Thursday 2 April, 1998, at 8:00 a.m. Bahamian time." Mr. Fisher is seeking a stay of execution whilst the Commission consider his application that The Bahamas have seriously breached the terms of the American Declaration. On April 1, 1998, the Commission again requested a stay of execution of the Government of The Bahamas.

22. On April 2, 1998, the Commission was informed by both parties that a Constitutional Motion was argued before the Court in The Bahamas, and the Court issued a Conservatory Order granting a stay against the execution of Mr. Fisher for seven days. The petitioner stated that the Court's decision was pending on the issues raised in the Constitutional Motion, and that the length of the Conservatory Order would be reviewed by the Court when judgment was delivered. On that same day the petitioner wrote to the Commission and forwarded more exhibits, including a copy of an Originating Notice of Motion For Constitutional Redress, which was filed in the Supreme Court of Commonwealth of The Bahamas on March 31, 1998.

23. On April 29, 1998, the Petitioner wrote the following letter to the Commission:

I am writing to update you as to the present position with respect to this matter. As you know, a Warrant of Execution was issued in respect of Mr. Fisher to be carried out on 2 April 1998. Subsequently, a Constitutional Motion was issued in the Bahamas and this was heard on 31 March and 1 April 1998; at 10.00 pm on 1 April, a stay of execution was granted to be reviewed when Judgment was delivered. Judgment, dismissing Mr. Fisher's application, was handed down on 3 April and at that time the Judge granted a Conservatory Order pending the outcome of Mr. Fisher's appeal to the Court of Appeal. His appeal was dismissed on 14 April 1998. On 17 April Mr. Fisher applied to the Court of Appeal for special leave to appeal to the Privy Council. Under the Bahamian Constitution, he has the right to appeal but the Court of Appeal may impose conditions to be satisfied before that right may be exercised. In this case the Court of Appeal imposed conditions that Mr. Fisher's representatives in the Bahamas should prepare the record of proceedings and that Mr. Fisher must lodge a bond in the sum of 2000 Bahamian Dollars before 8 May, when Mr. Fisher's case will be reviewed. In the meantime they issued a Conservatory Order which will expire at Midnight on 8 May. The conditions imposed by the Bahamian Court of Appeal are the source of some concern. The requirement to prepare the record is fairly standard; it is this type of administrative matter that is normally dealt with as a condition to obtaining formal leave to appeal to the Privy Council. However, the requirement to lodge a bond is unacceptable. The Rules provide that a bond may be required in some cases; this is intended to act as security for costs in, for example, commercial disputes. It is clearly inappropriate in the case of a criminal appeal by an indigent prisoner on a capital case. We believe that the Court of Appeal made a mistake in imposing this condition and we expect that the Order will be varied. However, to date that has not occurred and it may be necessary to bring the matter specifically to the attention of the Privy Council.

III. GENERAL CONSIDERATIONS

A. The Commission's Competence

24. The Commission is competent to examine this petition. It derives its authority from the Charter of the Organization of American States; Articles 1, 18, and 20 of its Statutes; Chapter I of Title II, Articles 32 to 70 of its Regulations, particularly Article 51 which refer to Articles of the Regulations and the procedure applicable in petitions which are from member states who are not parties to the American Convention; its competence derives also from the American Declaration of the Rights and Duties of Man.

B. Procedural Admissibility of the Petition

a. Timeliness of petition

25. The petition was timely filed. It was presented within six months of the final ruling of appeal on conviction and sentence pursuant to Article 38 of the Commission's Regulations. Mr. Fisher's appeal against conviction and sentence was dismissed by the Court of Appeal of The Bahamas on October 10, 1994. His application for leave to appeal his conviction was dismissed by the Privy Council in London, on May 23, 1996. The petition was filed before the Commission on June 7, 1996.

b. No Duplication of Other International Procedures

26. The petition satisfies the requirement of Article 39(1) of the Commission's Regulations. It is not pending settlement in another procedure under an international governmental organization of which the State concerned is a member. Nor does it duplicate a petition already examined and settled by the Commission or by another international governmental organization of which the state concerned is a member.

c. Exhaustion of Domestic Remedies

27. There is no dispute between the parties regarding the issue of exhaustion of domestic remedies. As noted above (para. 13) the Government acknowledges that domestic remedies have been exhausted with the dismissal of the appeal by the Judicial Committee of the Privy Council on May 23, 1996.

IV. CONCLUSION

28. The Commission notes that the State of the Commonwealth of The Bahamas and the Petitioner agree that Mr. Trevor Fisher has exhausted the domestic remedies of the Commonwealth of The Bahamas. Therefore, the Commission finds, based on the chronological record of the case, that Mr. Trevor Fisher has invoked and exhausted the domestic remedies of the Commonwealth of The Bahamas when he pursued his appeal against conviction and sentence in the Courts of The Bahamas and the Privy Council in London, and filed and appealed his Constitutional Motions and Conservatory Orders in the Commonwealth of The Bahamas challenging his two execution dates of September 4, 1996, and April 2, 1998.

29. The Commission also finds that the petition is admissible having satisfied the requirements of Articles 37, 38, and 39 of its Regulations, and that it raises a colorable claim of

violation of a human right recognized in the American Declaration of the Rights and Duties of Man. Without prejudging the merits of this petition, the Commission will assess the validity of this claim in the phase of the merits

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the petition admissible.
2. To transmit this to the State of The Commonwealth of The Bahamas and to the petitioners.
3. To place itself at the disposal of the parties concerned with a view to reaching a friendly settlement of the matter and to request the parties to appear at a hearing at the headquarters of the Commission on May 28, 1998 at 9:00 a.m.
4. To maintain in effect the precautionary measures issued by the Commission on April 1, 1998, pursuant to article 29(2) of its Regulations, until the Commission issues a decision on the merits of the Petition.
5. To make public this report and to publish it in its Annual Report to the OAS General Assembly.

Approved by the Inter-American Commission on Human Rights (IACHR), in the city of Caracas, Venezuela on the 5th day of the month of May 1998. (Signed): Carlos Ayala Corao, Chairman; Robert K. Goldman, First Vice Chairman; Jean Joseph Exume, Second Vice Chairman; Commissioners Alvaro Tirado Mejia, Claudio Grossman and Hélio Bicudo.