

Institution: Inter-American Commission on Human Rights
File Number(s): Report No. 37/98; Case 11.815
Session: Ninety-Ninth Special Session (5 – 8 May 1998)
Title/Style of Cause: Anthony Briggs v. Trinidad and Tobago
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: 7 May 1998
Citation: Briggs v. Trinidad and Tobago, Case 11.815, Inter-Am. C.H.R., Report No. 37/98, OEA/Ser.L/V/II.102, doc. 6 rev. (1998)
Represented by: APPLICANTS: Paula Hodges, Herbert Smith
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I. BACKGROUND

1. By letter dated October 7, 1997, Ms. Paula Hodges of the London firm of Solicitors, Herbert Smith, presented a petition to the Inter-American Commission on Human Rights (hereinafter "the Commission") against the Republic of Trinidad and Tobago (hereinafter "the State" or "Trinidad") on behalf of Mr. Anthony Briggs, presently under sentence of death at the State Prison in Port of Spain. The petition stated that on June 21, 1996, in the High Court of Trinidad at the Port of Spain Assizes, the petitioner was convicted with his co-defendant, Mr. Wenceslaus James, of the murder of Siewdath Ramkissoon, and sentenced to death.

Precautionary Measures

2. Simultaneous with the presentation of the complaint, the Applicant requested the Commission to issue precautionary measures, pursuant to Article 29(2) of its Regulations, and to seek a stay of execution pending the determination of the complaint by the Commission.

3. On October 16, 1997, the Commission requested the State to stay Mr. Briggs' execution "until such time as the Commission has had the opportunity to consider this case and issue its decision." The Commission requested "an immediate consent to the above request."

4. The State of Trinidad and Tobago did not respond to this request for precautionary measures. The Commission regrets that the State party was not prepared to grant the precautionary measures requested under article 29(2) of its Regulations, not to execute the Petitioner while his case was under examination, since the State party considered the complaint inadmissible. The Commission observes that it is not for the State party, but for the Commission,

to decide whether or not a complaint is admissible. The Commission requests the State to cooperate fully with the Commission's examination of communications in the future.

II. PROCEEDINGS BEFORE THE COMMISSION

5. The petitioner and his co-defendant appealed their convictions to the Court of Appeal of Trinidad and Tobago. Their appeal was dismissed on March 6, 1997. In the Judgment, the Court of Appeal affirmed the conviction and sentence imposed upon Mr. Briggs and the co-defendant. According to the complaint, "The sole ground for appeal was that a material irregularity had occurred in the course of the trial in that a prior inconsistent statement on oath of the witness Brown was not put into evidence for the consideration of the jury. As a result, it was likely that a miscarriage of justice could have occurred." The complaint stated further that "No grounds were submitted for appeal against the correctness of the Trial Judge's summing up in respect of his 'felony/murder' direction to the jury, neither did the Court of Appeal on its own motion address the issue despite the fact that the felony/murder rule no longer applies in Trinidad and Tobago.

6. On June 23, 1997, the Applicant and the co-defendant lodged petitions with the Judicial Committee of the Privy Council for Special Leave to Appeal against their convictions. On October 2, 1997, Mr. Brigg's petition for Special Leave to Appeal was dismissed as was the petition of the co-defendant.

7. The complaint alleges that the following articles of the American Convention were violated by the State of Trinidad and Tobago to the detriment of the Applicant: articles 5, 7, and 8 of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention").

8. The State of Trinidad and Tobago responded to the petition by Note POL:6/16/2 Vol. 5 of December 15, 1997. In this Note, the State informed the Commission that the "Instructions Relating to Applications from Persons under Sentence of Death issued by the Government of Trinidad and Tobago on 13 October 1997, are deemed to apply to the case of Mr. Anthony Briggs. Case No 11.815." In addition, the State pointed out that:

... in order for any recommendation by the Commission to be considered by the Minister of National Security when advising his Excellency the President of the exercise of the prerogative of mercy, the Government of Trinidad and Tobago respectfully requests the Commission to submit its determination in respect of the communication within a period of six months from the date of the despatch of the response by the State party.

In other words, the State requested that the Commission issue a decision on the merits in this case within a period of six months from December 15, 1997, or by June 15, 1998. According to the State, the decision of the Commission would be considered by the Minister of National Security when advising the President as to whether he should exercise the prerogative of mercy. Unlike other systems where the prerogative of mercy is considered part of the domestic process, in Trinidad and Tobago the international instance is used to inform the domestic process.

9. An article published in the Trinidad Express on March 13, 1998 stated the Ministry of the Attorney General had issued a press release to the effect that "the six-month period in respect to their [Tony Briggs and Wenceslaus James] applications to the Inter-American Commission on Human Rights expires on June 11, 1998, and after this date the state will decide what action it will take in respect to the two condemned men." [FN1] This article gave the impression that Briggs and James would be the first two prisoners to be hanged by the State of Trinidad and Tobago.

[FN1] Ucill Cambridge, "Sledgehammer killers first to go on Death Row," Trinidad Express, March 13, 1998.

III. GENERAL CONSIDERATIONS

A. The Commission's Competence

10. Trinidad and Tobago is a State party to the American Convention, having ratified the treaty on May 28, 1991. The petition alleges violations of human rights set forth in the Convention which the Commission is competent to review.

B. Procedural Admissibility of the Petition

1. Exhaustion of Domestic Remedies

11. The Government of Trinidad and Tobago alleged that the complaint should be considered inadmissible since the Applicant failed to exhaust domestic remedies by filing a constitutional motion. The Government argues that Legal Aid is available and the Applicant has produced no evidence that he has applied for legal aid or, that having so applied, his application was rejected.

12. The Applicant argues that Legal Aid with respect to a constitutional motion is available but that it has only been granted twice over a period of nine years. The applicant cites a report issued by Amnesty International (June 1994) in which it is stated that "It is extremely rare for Legal Aid to be provided for constitutional motions." The Applicant points out that the UN Human Rights Committee considered the point in the case of Clive Smart (Communication No. 672/1995) in which counsel alleged that "for practical purposes, legal aid to a death row inmate is not available in Trinidad and Tobago; thus constitutional redress remains a hypothetical remedy." The Committee upheld this and recalled the jurisprudence that domestic remedies must be both effective and available: "The mere affirmation by the State party that a remedy exists is not sufficient for the Committee to consider it an effective remedy which needs to be exhausted." In addition, the Applicant presents an affidavit from Alice L. Arc-Soo Hon, a lawyer in Port of Spain, who states that by Section 17(4) of the Legal Aid and Advise Act Chapter 7:07 of the Laws of the Republic of Trinidad and Tobago counsel fees "payable to counsel assigned to any prisoner in the High Court of Justice" are \$750 (T&T) unless the presiding Judge considers it appropriate "to increase the fee to a sum not exceeding \$1,500 (T&T). [FN2]"

[FN2] Affidavit in the files of the Commission.

12. The jurisprudence of the Inter-American Commission and Court supports the view that a remedy needs to be effective and capable of producing the result for which it was designed, and that it is not sufficient for the remedy simply to be available. (Velásquez Rodríguez, Preliminary Objections. Judgment of June 26, 1987, para. 88). For an indigent prisoner, who has exhausted all judicial appeals including recourse to the Judicial Committee of the Privy Council in London, to be expected to file a constitutional motion, the burden of proof lies with the State to show that this remedy is effective and capable of producing the result which would make it worthwhile for the prisoner to pursue. In the opinion of the Commission, the State did not meet the burden of proof in this case and consequently the Commission finds this case admissible.

2. Timely filing

14. The petition was presented within six months of the final ruling of the appeal on conviction and sentence pursuant to Article 46(1)(b) of the Convention. Mr. Briggs' appeal against conviction and sentence was dismissed by the Court of Appeal of Trinidad and Tobago on March 6, 1997. His application for leave to appeal his conviction was dismissed by the Judicial Committee of the Privy Council in London, on October 2, 1997. The petition was filed before the Commission on October 8, 1997.

3. No duplication of other international procedures

15. The petition satisfies the requirements of article 46(1)(c) in that it is not pending settlement in another international proceeding, 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.

IV. CONCLUSION

16. The Commission finds that the petition is admissible having satisfied the requirements of article 46 of the American Convention.

17. Taking the foregoing considerations into account,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES

1. To declare Case 11.815, Anthony Briggs, admissible.
2. To place itself at the disposal of the parties with a view to seeking a friendly settlement of the matter based on the respect for human rights, as recognized in the American Convention.

3. 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.
4. To make public this report and to publish it in its Annual Report to the OAS General Assembly.

Done and signed at the headquarters of the Inter-American Commission on Human Rights, in the city of Caracas, Venezuela on the 7th day of the month of May in the year 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 Helio Bicudo