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Institution:	Inter-American Commission on Human Rights
File Number(s):	Report No. 91/98; Case 11.840
Title/Style of Cause:	Denny Baptiste 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, Henry Forde.
Dated:	3 November 1998
Citation:	Baptiste v. Trinidad and Tobago, Case 11.840, Inter-Am. C.H.R., Report No. 91/98, OEA/Ser.L/V/II.102, doc. 6 rev. (1998)
Represented by:	APPLICANT: firm of solicitors "Herbert Smith"

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I. BACKGROUND

1. By fax dated November 17, 1997 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. Denny Baptiste, presently under sentence of death at the State Prison in Port of Spain. The petition stated that the High Court of Trinidad at the Port of Spain Assizes tried the Applicant for the murder of Mr. Alexander Jordan on February 13, 1991 along with two co-defendants, Ms. Indravani (Pamela) Ramjattan and Mr. Haniff Hilaire. The Applicant was convicted on May 29, 1995 and sentenced to the mandatory death penalty for murder.

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. On November 24, 1997, the Commission requested the State to stay Mr. Baptiste's 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."

3. 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, and to guarantee that the Petitioner would not be executed while his case was under examination. In fact, however, as of September 28, 1998, the petitioner has not been executed. The Commission observes that it is not for the State party, but for the Commission, to decide whether or not a complaint is admissible.

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The Commission requests the State to cooperate fully with the Commission's examination of communications in the future.

II. PROCEEDINGS BEFORE THE COMMISSION

4. Mr. Baptiste's appeal to the Court of Appeal of the Republic of Trinidad and Tobago was dismissed on March 10, 1997. On October 7, 1997, the Applicant and his co-defendants lodged petitions to the Judicial Committee of the Privy Council. The Applicant lodged a Supplementary Petitioner to the Privy Council on November 4, 1997. On November 7, 1997, the Applicant's petition was dismissed by the Judicial Committee of the Privy Council.

5. 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"). On December 12, 1997, a Supplementary Petition was filed on behalf of Mr. Denny Baptiste by the petitioners. Specifically, the petitioners allege serious violations as regards the right to legal representation in a capital case. The petition alleges, inter alia, that "the Applicant received insufficient and inadequate representation from his Trinidadian lawyers." The petition alleges that the Applicant first met with his lawyer only just before his case was heard at the Magistrates' Court, after he had been about one year in custody. According to the petition, at trial it was possible for the Applicant to see his lawyer for only five minutes each day. None of the witnesses whom the Applicant wanted to be called at trial were called as the lawyer failed to contact them. In addition, the petition alleges that the Trial Judge erred in his directions to the jury. Further, the petition alleges that the Applicant was arrested by the police on February 16, 1991, but that he was not tried, convicted and sentenced until more than four years later on May 29, 1995.

6. The State of Trinidad and Tobago responded to the petition by Note POL:6/16/2 Vol. 5 of January 16, 1998. 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 communication of Denny Baptiste. Case No 11.840." 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 January 16, 1998 or by July 16, 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.

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7. The Inter-American Commission on Human Rights, at the request of the Government, held a meeting on February 20, 1998, during its 98th period of sessions, with Mr. Ralph Maraj, Minister of Foreign Affairs of the Republic of Trinidad and Tobago and Mr. Ramesh L. Maharaj, the Attorney General of that State. In his statement, the Attorney General argued that the "Commission has no power to challenge the implementation of a sentence of death imposed by a court of competent jurisdiction in Trinidad and Tobago." The argument of the State is as follows:

Under the Convention, the Commission has the power to make recommendations to the State Party, but in so far as those recommendations relate to a sentence imposed by the courts of the State Party it would be acting ultra vires if it attempted to alter by its recommendations the domestic law of the State in respect of sentencing. The Commission therefore has no power to challenge the implementation of a sentence of death imposed by a court of competent jurisdiction in Trinidad and Tobago.

The Constitution of Trinidad and Tobago mandates all arms of the State, including the Judicial arm, to uphold the law of Trinidad and Tobago. The State of Trinidad and Tobago therefore has a mandatory obligation to ensure that its Constitution and laws are not undermined, subverted or frustrated in their operation. It was for this reason that the Government of Trinidad and Tobago, by its reservation entered when accepting the compulsory jurisdiction of the Inter- American Court of Human Rights, stated that the Court can only have jurisdiction to the extent that it is consistent with the Constitution of Trinidad and Tobago. The Commission therefore does not have jurisdiction either by its acts or omissions to prevent in any way a sentence, authorized by the Constitution and laws of Trinidad and Tobago and pronounced by a court of competent jurisdiction, from being carried into effect. It is therefore open for the Government of Trinidad and Tobago, whilst a petition is pending before the Commission, to carry out the sentence of death once the time stipulated in accordance with the Constitution and laws of Trinidad and Tobago has expired. The Commission may recommend the award of compensation to a victim. It may recommend that the State Party correct those matters which gave rise to a substantive breach so that others do not suffer the same violation in future. However it is submitted that the Commission, either directly or by its recommendation, has no power to alter the lawful sentence imposed by a court of a State Party. (Emphasis added).

8. 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. The same article also stated that "[F]ollowing Briggs and James there are three other Death Row inmates listed to be executed soon after. They are Anthony Garcia and Anderson Noel and Christopher Bethel."

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

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9. As a result of the above-mentioned meeting on February 20, 1998, the Commission decided to request provisional measures from the Court in the cases of James, Briggs, Noel, Garcia and Bethel. The Commission, during its 99th special meeting approved the text of this request and on May 22, 1998, the Commission formally requested provisional measures in those cases.

10. On May 27, 1998, the President of the Inter-American Court granted Provisional Measures in the cases of James, Briggs, Noel, Garcia and Bethel, and decided to require the Republic of Trinidad and Tobago "to take all measures necessary to preserve the lives of Wenceslaus James, Anthony Briggs, Anderson Noel, Anthony Garcia and Christopher Bethal, so that the Court may examine the pertinence of the provisional measures requested by the Inter-American Commission on Human Rights." On June 14, 1998, the Court, in plenary, ratified the President's action and ordered "Trinidad and Tobago to take all measures necessary to preserve the life and physical integrity of Wenceslaus James, Anthony Briggs, Anderson Noel, Anthony Garcia and Christopher Bethel, so as not to hinder the processing of their cases before the Inter-American system."

11. Since the six month time period established in the Government's "Instructions" had expired in mid July, the petitioners, in a communication dated July 14, 1998, were concerned that a Warrant of Execution would be read to Mr. Baptiste imminently. The petitioners requested the Commission to ask the Court to order provisional measures, pursuant to article 63(2) of the Convention, to preserve the life of Mr. Baptiste.

12. On July 21, 1998, the Commission requested the Court to amplify the provisional measures ordered on May 27, 1998 and ratified on June 14, 1998 in favor of Wenceslaus James, et al. to include Mr. Denny Baptiste. By Order of the President of the Court dated July 22, 1998, Mr. Baptiste was included in the earlier Order and the Court decided "[T]o require the Republic of Trinidad and Tobago to take all measures necessary to preserve the life and physical integrity of Denny Baptiste, so that the Court may examine the pertinence of the request of the Inter-American Commission on Human Rights to amplify the provisional measures adopted in the James, Briggs, Noel, Garcia and Bethel cases." On August 29, 1998, the full Court ratified the President's Order dated July 22, 1998.

III. GENERAL CONSIDERATIONS

A. The Commission's Competence

13. 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

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14. The Government of Trinidad and Tobago stated in its response dated December 15, 1997 that:

In the interests of expediency (...) notwithstanding the failure of the Applicant to first seek redress for his grievances by way of a Constitutional Motion before the domestic courts of Trinidad and Tobago, except as herein expressly provided, the State party raises no challenge to the admissibility of this communication based on the exhaustion of domestic remedies rule (...).

15. The petitioners, in the observations to the response of the State Party, dated March 20, 1998, noted that "the State Party has raised no challenge to the admissibility of this communication based on the `exhaustion of domestic remedies rule.' The State Party has suggested, however, that the Applicant should first have sought redress for his grievances by way of a Constitutional Motion before the domestic courts of Trinidad and Tobago. It is submitted that for all practical purposes, legal aid to a death row inmate in Trinidad and Tobago for redress by way of Constitutional Motion remains an illusory remedy, therefore it should not be regarded as an available remedy under domestic law for the purposes of Article 46(1)(a) of the Convention or Article 37(2)(b) of the Regulations . Article 46(2)(b) of the Convention and Article 37(2)(b) of the Regulations provide that the requirement for domestic remedies to have been exhausted is not applicable where:

'the party alleging the violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them.'

It is submitted that the Applicant has effectively been denied access to the remedy of a Constitutional Motion, or has been prevented from exhausting this remedy, by virtue of the fact that legal aid is in effect not available for a Constitutional Motion."

16. 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

17. 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. Baptiste's appeal against conviction and sentence was dismissed by the Court of Appeal of Trinidad and Tobago on March 10, 1997. His application for leave to appeal his conviction was dismissed by the Judicial Committee of the Privy Council in London, on November 7, 1997. The petition was filed before the Commission on November 17, 1997.

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3. No duplication of other international procedures

18. 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

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

20. Taking the foregoing considerations into account,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the present case 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 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 in the city of Washington, D.C. on the 3rd day of the month of November 1998. (Signed): Carlos Ayala Corao, Chairman; Robert K. Goldman, Vice Chairman; Jean Joseph Exume, Second Vice Chairman; Commissioners Alvaro Tirado Mejia, Claudio Grossman and Henry Forde.

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