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Institution:	Inter-American Commission on Human Rights
File Number(s):	Report No. 36/99; Case 12.042
Session:	Hundred and Second Regular Session (22 February – 12 March 1999)
Title/Style of Cause:	Mervin Edmond v. Trinidad and Tobago
Doc. Type:	Decision
Decided by:	Chairman: Professor Robert K. Goldman; First Vice-Chairman: Dr. Helio Bicudo; Second-Vice Chairman: Dean Claudio Grossman; Commissioners: Prof. Carlos Ayala Corao, Dr. Alvaro Tirado Mejia.
Dated:	11 March 1999
Citation:	Edmond v. Trinidad and Tobago, Case 12.042, Inter-Am. C.H.R., Report No. 36/99, OEA/Ser.L/V/II.106, doc. 6 rev. (1999)
Represented by:	APPLICANT: Clive Woolf
Editor's Note:	The original has the text of the footnote 1 without the corresponding reference to the footnote in the body of the text.
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I. SUMMARY

1. Mr. Clive Woolf (hereinafter "the petitioner") of the London firm Collyer & Bristow, 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. Mervyn Edmund, presently under sentence of death and in detention at the State Prison in Port of Spain. The petition maintains that the State violated the following articles of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention"), to the detriment of the petitioner; Articles 4(1), 4(2), 4(6), 5(1), 5(2), 7(5), 8(1), 8(2), 24 and 25 of the Convention. The State pointed out that it did not question the admissibility of the communication. The Commission decides to admit the petition, continue with the analysis of the merits of the matter and to place itself at the disposition of the parties in order to reach a friendly settlement based on the respect for human rights set forth in the Convention.

II. PROCEEDINGS BEFORE THE COMMISSION

2. By letter dated August 5, 1998, Mr. Clive Woolf of the London firm Collyer & Bristow, presented a petition to the Inter-American Commission on Human Rights against the Republic of Trinidad and Tobago, on behalf of Mr. Mervyn Edmund, presently under sentence of death at the State Prison in Port of Spain. The petition stated that Mr. Edmund was convicted of the offence of murder of Ms. Minerva Sampson on December 28, 1987, to which charge he pleaded not guilty. Mr. Edmund was found guilty and sentenced to death on December 10, 1990.

3. The State of Trinidad and Tobago responded to the petition by Note POL: 6/16/2 Vol. 9 of September 3, 1998. On October 5, 1998, the Commission transmitted, by fax, the pertinent parts of the State's reply to the petitioner and acknowledged receipt, also by fax, of the State's reply.

4. By letter dated October 30, 1998, the petitioner submitted a "Supplementary Petition" on behalf of Mr. Edmund. This "Supplementary Petition" was, in fact, the petitioner's observations on the State's reply. The pertinent parts of this information was transmitted to the State on November 20, 1998, and the Commission requested that the State "take whatever measures are deemed necessary so that the Commission may receive all of the information relevant to this case within 60 days."

5. It should be pointed out that simultaneous with the presentation of the complaint, the petitioner 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 August 7, 1998, the Commission requested the State to stay Mr. Edmund'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."

6. 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 January 15, 1999, 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. The Commission requests the State to cooperate fully with the Commission's examination of communications in the future.

III. POSITIONS OF THE PARTIES

A. Position of the petitioner

7. The petitioner stated that the appeal of Mr. Edmund was heard by the Court of Appeal of the Republic of Trinidad and Tobago on April 12, 1994. The Court of Appeal treated the application as the hearing of the appeal itself, ordered that leave be granted, that the appeal be allowed and that the conviction and sentence be quashed and ordered a retrial; however, reasons were not given until March 13, 1995. Mr. Edmund was retried between March 14 -21, 1995 and was again found guilty and sentenced to death. The Court of Appeal of Trinidad and Tobago dismissed his application for leave to appeal against his conviction on September 17, 1996, affirming the conviction and sentence. On July 16, 1998, his petition for Special Leave to Appeal as a poor person against the decision of the Court of Appeal, was dismissed by the Judicial Committee of the Privy Council. Mr. Edmund has exhausted all his domestic remedies.

8. 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 petitioner: Articles 4(1),

4(2), 4(6), 5(1), 5(2), 7(5), 8(1), 8(2), 24 and 25 of the American Convention on Human Rights. Specifically, the petitioner alleges, inter alia, serious violations as regards the delay of three years in bringing Mr. Edmund to trial, which it is alleged deprived him of his right to a fair trial within a reasonable time. Further it is alleged that the trial judge committed serious errors in his directions to the jury. Further, it is argued that the mandatory imposition of the death penalty in all cases of murder is tantamount to "cruel, inhuman and degrading" punishment. In addition, the petitioner alleges the violation of the right to equality before the law by the fact that Mr. Edmund has no right to be heard before the Advisory Committee, that his right to life and right to a fair trial have been violated, and that his post conviction prison conditions violate international standards. Lastly, he alleges that he is denied access to the Court to seek redress for the violations of these rights. The petitioner requests the Commission to carry out an on-site investigation in order to verify the claims concerning conditions of confinement and requests that Mr. Edmund be provided with an effective remedy, "entailing his release from detention."

B. Position of the State

9. 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).

10. 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 4 June 1998, are deemed to apply to the communication of Mervyn Edmund, Case No. 12.042." 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 pardon, the Government of Trinidad and Tobago respectfully requests the Commission to submit its determination in respect of the communication of Mervyn Edmund by 1 March 1999.

Unlike in other legal systems where the prerogative of pardon is considered part of the domestic process, in Trinidad and Tobago the international instance is used to inform the domestic process.

IV. ANALYSIS

A. Competence

11. 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. Requisites for the admissibility of the petition

a. Exhaustion of domestic remedies

12. The Government of Trinidad and Tobago stated in its response, dated September 3, 1998, 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 (...). (Emphasis added)

Accordingly, the Commission understands that the State expressly and irrevocably waives any challenge with respect to remedies invoked, or remedies that could potentially be invoked, by petitioner in domestic legal proceedings in connection with this case.

13. In this case, in regard to the exhaustion of domestic remedies, the Commission takes this opportunity to reiterate its doctrine of non consideration of constitutional motions as effective remedies which must be exhausted, since they neither comply with the requirements set forth in article 8 of the American Convention, nor with the jurisprudence of the Inter American Court.

b. 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. Edmund's application for Leave to Appeal his conviction was dismissed by the Judicial Committee of the Privy Council in London on July 16, 1998. The petition was dated August 5, 1998 and filed before the Commission by fax on August 6, 1998.

c. Duplication of procedures and res judicata

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.

d. Grounds for the petition

16. The Commission considers that the presentation by the petitioner refers to facts, which if proved, tend to establish a violation of the rights guaranteed by the Convention. Since the lack of grounds or the inappropriateness of the petition is not evident, the Commission considers the requisites of Article 47(b) and (c) of the Convention to be satisfied.

V. CONCLUSION

17. The Commission considers that it has the competence to consider this case and that the petition is admissible, having satisfied the requirements of articles 46 and 47 of the American Convention.

On the basis of the arguments on the facts and on the law set forth above, and without prejudicing the merits of the matter in question,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the present case admissible.
2. To notify the State and the petitioner of this decision.
3. To continue with the analysis of the merits of the question.
4. To place itself at the disposal of the parties with a view to reaching a friendly settlement of the matter based on the respect for human rights, as recognized in the American Convention, and to invite the parties to express their views on this possibility.
5. To maintain in effect the precautionary measures issued by the Commission on August 7, 1998, until the Commission issues a decision on the merits of the petition.
6. 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 Washington, D.C., on the eleven day of the month of March in the year 1999. (Signed) Robert K. Goldman, Chairman; Hélio Bicudo, First Vice Chairman; Claudio Grossman, Second Vice Chairman; Carlos Ayala Corao and Alvaro Tirado Mejía, Commissioners.

[FN1] See I/A Court H.R., Velásquez Rodríguez, Preliminary Objections, Judgment of June 26, 1987, at paras. 62, 64 and 88; see also I/A Court H.R., "Exceptions to the Exhaustion of Domestic Remedies (Art. 46(1), 46(2)(a) and (2)(b) American Convention on Human Rights", Advisory Opinion, OC-11/90 of August 10, 1990 at para. 31; Report N° 90/98, Case 11.843, Kevin Mykoo (Jamaica) at para. 35; see also ("Accordingly, in prior cases . . . the Commission has found that the absence of legal aid to file a constitutional motion may render that recourse essentially unavailable to an indigent applicant.") Report N° 96/98, Case 11.827, Peter Blaine (Jamaica) at para. 60; and cf. ("With respect to the authors' possibility of filing a constitutional motion, the Committee considered that in the absence of legal aid, a constitutional motion did not constitute an available remedy in the case.") Comm. No. 445/1991, *Champagnie et al. v. Jamaica* (views of 18 July 1994), Report of the UNHRC (1994), GAOR, 49th Sess., Supp. No. 40 (A/49/40), Vol. II at p. 136, 139 para. 5.2.
