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File Number(s): Report No. 35/99; Case 12.005
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Title/Style of Cause: Wilson Prince 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. Jean Joseph Exume, Dr. Alvaro Tirado Mejia.
Dated: 11 March 1999
Citation: Prince v. Trinidad and Tobago, Case 12.005, Inter-Am. C.H.R., Report No. 35/99, OEA/Ser.L/V/II.106, doc. 6 rev. (1999)
Represented by: APPLICANT: Tony Morton-Hooper
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I. SUMMARY

1. Mr. Tony Morton-Hooper (hereinafter "the petitioner") of the London firm Mishcon de Reya Solicitors, 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. Wilson Prince, 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 prejudice of Wilson Prince: articles 4(1), 4(6), 5, 7(5), 8 and 24 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 May 8, 1998, Mr. Tony Morton-Hooper of the London firm Mishcon de Reya Solicitors, presented a petition to the Inter-American Commission on Human Rights against the Republic of Trinidad and Tobago, on behalf of Mr. Wilson Prince, presently under sentence of death and detained at the State Prison in Port of Spain. The petition stated that Mr. Prince was convicted of the offense of having murdered Ms. Ida Sebastian Richardson on November 6, 1993. Mr. Prince was found guilty by unanimous verdict and sentenced to death.

3. The Commission transmitted the pertinent parts of the complaint to the State, which responded by Note POL: 6/16/2 of June 14, 1998. On June 18, 1998, the Commission transmitted the pertinent parts of the State's reply to the petitioner and acknowledged receipt of the State's reply.

4. By letter dated July 17, 1998, the petitioners presented observations to the State's reply on behalf of Mr. Prince, for which receipt was acknowledged and these observations were transmitted to the State on July 24, 1998.

5. By letter dated January 18, 1999, the petitioners informed the Commission that they had received a letter, dated January 12, 1999, from the Solicitor General of Trinidad and Tobago, informing them that the "six months time period for the consideration of the application of Wilson Prince by the Inter-American Commission on Human Rights, as stipulated in the Instructions Relating to Applications from Persons Under Sentence of Death issued by the Government of Trinidad and Tobago on 13 October 1997, expired on 9 December, 1998." The letter stated further that: "In accordance with said instructions the case of Wilson Prince will now be referred to the Advisory Committee on the Power of Pardon."

6. It should be pointed out that simultaneously with filing 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, since a warrant of execution had been served on Mr. Prince on May 7, 1998 to be carried out on May 13, 1998. On May 8, 1998, the Commission requested the State to stay Mr. Prince'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."

7. On May 11, 1998, the petitioner informed the Commission that she received a letter from Mr. Joseph Theodore, the Minister of National Security in Trinidad, in which he informs her that he has received her letter dated May 8, 1998, informing him that a petition on behalf of Wilson Prince has been filed with the Inter-American Commission on Human Rights. He states further that:

In these circumstances, I wish to inform you that I have advised The President of the Republic of Trinidad and Tobago to grant a respite of the execution of the sentence of death on Wilson Price until his further order and direction.

8. Mr. Prince is the first death row prisoner whose execution has been stayed by the Minister of National Security in Trinidad on the basis of the filing of a petition before the Commission and the request for precautionary measures.

III. POSITIONS OF THE PARTIES

A. Position of the petitioners

9. The petitioners stated that Mr. Prince appealed his conviction to the Court of Appeals of the Republic of Trinidad and Tobago and in a judgment dated October 14, 1997, it refused his application for leave to appeal. The Court of Appeals treated the application as the hearing of the appeal itself, which they accordingly dismissed and the conviction and sentence were affirmed. Mr. Prince instructed Mishcon de Reya to provide him with legal representation in petitioning the Judicial Committee of the Privy Council for Special Leave to Appeal as a poor person. On March 11, 1998, Mr. Prince's petition to the Judicial Committee was refused leave to appeal.

10. 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(6), 5, 7(5), 8, and 24 of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention"). Specifically, the petitioner alleges, inter alia, serious violations as regards the delay of two years and eleven months in bringing Mr. Prince 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 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. Prince 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.

B. Position of the State

11. The Inter-American Commission on Human Rights, at the request of the Government, held a meeting on February 20, 1998, during its ninety-eighth 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).

12. In its response to the petition, 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 Wilson Prince. Case No. 12.005." [FN1] 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 His Excellency the President, the Government of Trinidad and Tobago respectfully requests the Commission to submit its determination in respect of this communication within a period of six months from the date of the despatch of this 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 June 14, 1998, or by December 14, 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 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.

[FN1] It is interesting to note that the Government of Trinidad and Tobago referred to the Instructions issued on October 13, 1997 as being the applicable Instructions, despite the fact that new Instructions were issued on June 4, 1998.

IV. ANALYSIS

A. 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. Requisites for the admissibility of the petition

a. Exhaustion of Domestic Remedies

14. The Government of Trinidad and Tobago stated in its response, dated June 14, 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.

15. 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. [FN2]

[FN2] 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 No. 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 N° 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.

b. Timely filing

16. 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. Prince's application for leave to appeal his conviction was dismissed by the Judicial Committee of the Privy Council in London on March 11, 1998. The petition was dated May 8, 1998 and filed before the Commission, by fax, that same day.

c. Duplication of procedures and res judicata

17. 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

18. The Commission considers that the presentation by the petition refers to facts, which if proved, that 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

19. 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 disposition 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 May 8, 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; Commissioners Alvaro Tirado Mejía, Carlos Ayala Corao, and Jean Joseph Exumé.