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Title/Style of Cause: Paul Lallion v. Grenada
Doc. Type: Decision
Decided by: Chairman: Professor Robert K. Goldman;
First Vice-Chairman: Dr. Helio Bicudo;
Second-Vice Chairman: Dean Claudio Grossman;
Members: Prof. Carlos Ayala Corao, Dr. Jean Joseph Exume, Dr. Alvaro Tirado Mejia.
Dated: 27 September 1999
Citation: Lallion v. Grenada, Case 11.765, Inter-Am. C.H.R., Report No. 124/99, OEA/Ser.L/V/II.106, doc. 6 rev. (1999)
Represented by: APPLICANT: Saul Lehfreund Esq.
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I. SUMMARY

1. This report concerns a petition presented to the Inter-American Commission on Human Rights (hereinafter “the Commission”) by Saul Lehfreund Esq., Solicitor, of Messrs. Simons, Muirhead & Burton, Solicitors, in London, United Kingdom, (hereinafter “the petitioners”) by letter dated June 17, 1997, on behalf of Mr. Paul Lallion. The petition alleges that the State of Grenada (hereinafter “the State”) violated Mr. Lallion’s rights under the American Convention on Human Rights (hereinafter “the Convention”) and the American Declaration on the Rights and Duties of Man (hereinafter “the Declaration”).

2. The petitioners indicate that Mr. Lallion, a national of Grenada, was convicted of murder on December 19, 1994, and a mandatory death sentence was imposed on him pursuant to the domestic law of Grenada.[FN1] According to the petitioners, Mr. Lallion appealed his conviction and sentence to the Court of Appeal in Grenada, and his appeal was dismissed by the Court on September 15, 1995.

[FN1] Section 234 of the Criminal Code (Cap. 76 of the 1958 Revised Laws of Grenada).

3. The petitioners argue that the Petition is admissible because Mr. Lallion has satisfied the requirements of Articles 46 of the Convention and Articles 37 and 38 of the Commission’s Regulations. The petitioners also allege that the State has violated Mr. Lallion’s rights under

Articles 4(1), 4(6), 5(1), 5(2), 5(6), 7(2), 7(4), 7(5), 8 and 24 of the Convention and Articles I, II, XVIII and XVIII of the Declaration.

4. In their petition, the petitioners requested the Commission to issue Precautionary Measures pursuant to Article 29(2) of its Regulations against the State and ask that the State suspend Mr. Lallion's execution to avoid irreparable damage to him while his case was pending determination before the Commission. The petitioners also requested that the Commission recommend to the State that it quash Mr. Lallion's death sentence and release him from prison.

5. In this report, the Commission concludes that the petitioners' claims relating to violations of the Convention satisfy the requirements of Article 46 of the Convention and are therefore admissible. The Commission also concludes that the petitioners' claims relating to violations of the Declaration are inadmissible.

II. PROCEEDINGS BEFORE THE COMMISSION

6. Upon receipt of the petition and submissions of the parties, the Commission has complied with the requirements of its Regulations. It has studied the petition, requested information from the parties and forwarded the pertinent parts of each party's submissions to the other party. The letter presenting the petition to the Commission was dated June 17, 1997, and was received by the Commission on June 18, 1997. By letter dated June 19, 1997, the petitioners informed the Commission that they intended to forward supplemental arguments concerning the exhaustion of domestic remedies to the Commission. On June 23, and July 2, 1997, the petitioners forwarded these supplemental arguments to the Commission.

7. On July 2, 1997, the Commission forwarded the pertinent parts of the petition and the petitioners' supplementary arguments to the State and requested observations within 90 days with respect to claims raised in the petition, as well as any additional information regarding exhaustion of domestic remedies. The Commission also requested that the State stay Mr. Lallion's execution pending an investigation by the Commission of the alleged facts.

8. By letter dated November 3, 1997, the petitioners requested that the Commission hold a hearing in the case and conduct an on-site visit to Richmond Hill Prison, St. Georges, Grenada, where Mr. Lallion is presently incarcerated. By letter dated January 23, 1998, the Commission informed the State and the petitioners that a hearing in the case was scheduled for Friday, February 27, 1998, during the Commission's 98th Period of Sessions.

9. By communication dated February 3, 1998, the State replied to the petition. In its reply, the State indicated that Mr. Lallion's mandatory death sentence, as well as hanging as a method of execution, were lawful under the Constitution of Grenada. The State also claimed that "all domestic legal remedies and procedures have been exhausted and the sentence of the Court would have to be executed as there have been no undue and unconscionable delay in the execution."

10. The Commission transmitted the pertinent parts of the State's response to the petitioners on February 11, 1998 and requested that the petitioners submit its observations within 30 days.

11. On February 24, 1998, the Commission received additional observations from the petitioners, claiming that the State had also violated Mr. Lallion's right to liberty pursuant to Article 7 of the American Convention. The Commission forwarded the pertinent parts of the additional information to the State on February 24, 1998, with a response requested within 30 days. Also on February 24, 1998, the Commission received the petitioners' arguments for the hearing scheduled on February 27, 1998 and forwarded them to the State on February 25, 1998.

12. The Commission convened a hearing on the admissibility and merits of the petitioners' case on February 27, 1998 during its 98th Period of Sessions. The petitioners attended the hearing and made oral representations to the Commission in respect of the claims raised in their petition. The State did not appear at the hearing.

13. By communications dated September 1, 1998 and August 18, 1999 to the State, the Commission reiterated its request for information pertaining to the petitioners' additional submissions dated February 24, 1998.

III. POSITIONS OF THE PARTIES ON ADMISSIBILITY

A. Position of the petitioners

a. Claims by the petitioners

14. In their petition, the petitioners allege violations of Articles 4(1), 4(6), 5(1), 5(2), 5(6), 7(2), 7(4), 7(5), 8 and 24 of the Convention and Articles I, II, XVIII and XXVI of the Declaration. In particular, the petitioners argue that the mandatory death sentence imposed on Mr. Lallion under the State's penal law governing the crime of murder violates Mr. Lallion's right to life under Article 4(1) of the Convention and Article I of the Declaration, and the right to humane treatment under Article 5 of the Convention and Article XXVI of the Declaration.

15. In addition, the petitioners argue that the State has violated Mr. Lallion's rights to a fair trial and to equality before the law under Articles 8 and 24 of the Convention and Articles II and XVIII of the Declaration because of the manner in which the Advisory Committee on the Prerogative of Mercy in Grenada grants amnesty, pardon and commutation of sentence. In particular, they complain that Mr. Lallion does not have the right to make representations to the Advisory Committee, to receive and comment upon information before the Advisory Committee when it considers his case, or to otherwise have the benefit of any other procedure regulated by law providing an objective and proportionate decision on whether the death penalty is an appropriate punishment in the circumstances of Mr. Lallion's case.

16. The petitioners also allege violations of Mr. Lallion's right to humane treatment under Article 5(1), 5(2), and 5(6) of the Convention, and Article XXVI of the Declaration, because of his conditions of detention, and allege that these violations also render the implementation of his death sentence unlawful.

17. Finally, the petitioners allege violations of Article 7(2), 7(4) and 7(5) of the Convention, because Mr. Lallion was detained in police custody for over 48 hours and was not promptly notified of the charges against him or brought promptly before a judge or other judicial officer. The petitioners contend that these rights are also protected under Grenada's domestic law.

b. Exhaustion of domestic remedies

18. The petitioners argue that Mr. Lallion has exhausted the domestic remedies of Grenada because, after being convicted of capital murder on December 19, 1994, he appealed his conviction to the Court of Appeal in Grenada, and the Court dismissed his appeal on September 15, 1995. Mr. Lallion did not pursue a petition for Special Leave to Appeal to the Judicial Committee of the Privy Council, based upon a legal opinion received from British Barristers Kuldip Sing QC and Martin Evans Esq., on January 2, 1997 indicating that the petition may be unsuccessful. The petitioners claim in this regard that the grounds for appealing to the Privy Council are very narrow, and the Privy Council has no jurisdiction to vary the sentence of death and substitute a lesser sentence, and therefore there are no domestic remedies available to Mr. Lallion in respect of his sentence.

19. The petitioners also argue that Mr. Lallion is unable to pursue a Constitutional Motion to the Supreme Court of Grenada to challenge his mandatory death sentence as being inhuman or degrading punishment or treatment because Mr. Lallion is indigent, and the State's domestic law does not provide private funds nor legal aid to indigent persons to pursue such Motions. The petitioners claim that the Constitution is a complex legal document and that expert legal representation is therefore required to have a reasonable prospect of success on a Constitutional Motion. They argue further that Mr. Lallion's lack of private funding and the unavailability of legal aid prohibit him from pursuing a Constitutional Motion and therefore render this remedy illusory. The petitioners also state that there is a dearth of Grenadian lawyers who are prepared to represent Mr. Lallion without payment.

20. The petitioners contend that the absence of legal aid for an impecunious individual is sufficient to establish that domestic remedies are not available for the purposes of exhaustion. In support of their position, they rely upon the decision of the United Nations Human Rights Committee (hereinafter referred to as "HRC") in *Champagnie, Palmer & Chisolm v. Jamaica*,^[FN2] in which the HRC stated as follows:

With respect to the authors' possibility of filing a Constitutional Motion, the Committee considers that, in the absence of Legal Aid, a Constitutional Motion does not constitute an available remedy in the case. In light of the above, the Committee finds that it is not precluded by Article 5(2)(b) of the Optional Protocol from considering the communication.^[FN3]

[FN2] U.N.H.R.C., *Champagnie, Palmer & Chisolm v. Jamaica*, Communication No. 445/1991.

[FN3] Article 5(2) of the Optional Protocol to the International Covenant on Civil and Political Rights provides: "The Committee shall not consider any communication from an individual unless it has ascertained that: (b) The individual has exhausted all available domestic remedies. This shall not be the rule where the application of the remedies is unreasonably prolonged.

21. In addition, the petitioners argue that Mr. Lallion should be excused from exhausting domestic remedies pursuant to Articles 37(1) and 37(2) of the Commission's Regulations because of the State's failure to provide Mr. Lallion with legal aid to challenge his Constitutional rights in respect of his mandatory death sentence.

c. Timeliness of the petition

22. The petitioners submit that Mr. Lallion's petition was timely filed for two reasons. First, they argue that they were unable to present a petition to the Commission until June 1997, because they did not received the final opinion of the Barristers until January 2, 1997 respecting the prospects of an appeal to the Privy Council, and they did not receive the supplemental documentation in Mr. Lallion's case until May 8, 1997. Second, the petitioners argue that the violations alleged on Mr. Lallion's behalf relating to the mandatory nature of the death penalty and his treatment and conditions of his detention are a "continuing situation" against which there are no domestic remedies available to invoke and exhaust.

23. In support of their position, the petitioners rely upon the decision of the European Commission on Human Rights (hereinafter referred to as the "European Commission") in Application/Requete N° 11123/84[FN4] in which the European Commission held that there was a close correlation between the exhaustion of domestic remedies under Article 26 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as "the European Convention")[FN5] and the six-month rule under that Convention. The European Commission noted that the State in Application 11123/84 acknowledged that domestic remedies for the petitioner's allegations were not available. As a consequence, the European Commission found that the six-month rule under the European Convention did not bar the petitioner's claim in the case, stating as follows:

The [European] Commission has held in its case-law that when the alleged violation consists, as in the present case, in a continuing situation against which there is no domestic remedy available, the six [month] period begins to run only when the continuing situation has ended (cf. N° 214/56; loc.cit: cf. Also N° 6852/74, Dec. 5.12.78, D.R.15 p.5). This is not so in the present case, as the impugned provisions are still in force, and hence the six month time-limit does not apply. It follows that the Government's objections to admissibility under Article 26 of the Convention cannot be accepted.[FN6]

[FN4] Decision of 9 December 1987 on the admissibility of the Application, pp. 52 to 69.

[FN5] Article 26 of the European Convention provides: "The Commission may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law, and within a period of six months from the date on which the final decision is taken.

[FN6] Id. p. 67.

B. Position of the State

24. The State responded to the petition on February 3, 1998, and indicated that Mr. Lallion' mandatory death sentence, as well as hanging as a method of execution, were lawful under the Constitution of Grenada. The State also claimed that "all domestic legal remedies and procedures have been exhausted and the sentence of the Court would have to be executed as there have been no undue and unconscionable delay in the execution." The State has not contested the admissibility of the petition.

IV. ANALYSIS

A. Competence of the Commission

25. The Commission has subject matter jurisdiction in this case, as the State deposited its instrument of accession to the American Convention on July 18, 1978,[FN7] and the petitioners allege that the State has violated Articles 4, 5, 8, and 24 of the Convention. The Commission also has temporal jurisdiction, as the petitioners' complaints pertain to acts or omissions that transpired after the State's accession to the Convention. Finally, the Commission has personal jurisdiction, as the victim is a citizen of Grenada and the petitioners were authorized under Article 44 of the Convention to lodge a petition on behalf of Mr. Lallion. The Commission is therefore fully competent to examine this petition.

[FN7] Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V/ii.92 doc.31 rev.3 (3 May 1996), p. 53.

26. The petitioners have also alleged violation of Articles I, II, XVIII and XXVI of the Declaration. In this regard, the Commission notes that once the Convention entered into force for the State of Grenada on July 18, 1978, the Convention, and not the Declaration became the source of legal norms for application by the Commission,[FN8] insofar as the petition alleges violations of substantially identical rights set forth in both instruments and those claimed violations do not involve a continuing situation.[FN9] In Mr. Lallion's case, the rights alleged to have been violated by the State under the Declaration are similarly guaranteed in the Convention. In addition, acts or omissions to which the alleged violations relate occurred after the State manifested its consent to be bound by the Convention. Therefore, the Commission declares the petitioners' claims relating to the Declaration inadmissible, and will only consider the petitioners' claims relating to the Convention.

[FN8] The Inter-American Court of Human Rights in its Advisory Opinion OC-10/89, (interpretation of the American Declaration of the Rights and Duties of Man Within the Framework of Article 64 of the American Convention on Human Rights.) July 14, 1989, para. 46, stated that "For the States Parties to the Convention, the specific source of their Obligations with respect to the protection of human rights is, in principle, the Convention itself."

[FN9] The Commission has established that it can find violations both of the Declaration and the Convention when there is a continuous situation, such as a denial of justice, which begins before and persists after the State concerned has ratified the American Convention. See: Inter-American Commission on Human Rights, Annual Report 1987-1988. Resolution 28/88 Case 10.109 (Argentina), September 13, 1988.

B. ADMISSIBILITY OF PETITION

a. Exhaustion of domestic remedies

27. The petitioners argue that Mr. Lallion exhausted the domestic remedies of Grenada upon the dismissal of his appeal against his conviction and sentence by the Court of Appeal of Grenada on September 15, 1995. The State has likewise stated that Mr. Lallion has exhausted all domestic legal remedies and procedures. Based upon the record before it, the Commission finds that this petition is admissible under Article 46(1)(a) of the Convention

b. Timeliness of the petition

28. The petitioners argue that this petition was timely filed under Article 46(1)(b) of the Convention and Article 38(2) of the Commission's Regulations.[FN10] The State has not contested the admissibility of the petition on the ground of timeliness or otherwise demonstrated that the petition was not timely filed.[FN11] Therefore, the Commission finds that this petition is not inadmissible under Article 46(1)(b) of the American Convention.

[FN10] Article 38(2) provides that: "In the circumstances set forth in Article 37(2) of these Regulations, the deadline for presentation of a petition to the Commission shall be within a reasonable period of time, in the Commission's judgment, as from the date on which the alleged violation of rights has occurred, considering the circumstances of each specific case."

[FN11] See I/A Court H.R., Neira Alegria Case, Preliminary Objections, Judgment, December 11, 1991 pp. 44-45, at paras. 25-31.

c. Duplication of procedures

29. The petitioners have indicated that the subject of Mr. Lallion's petition has not been submitted for examination under any other procedure of international investigation. The State has not contested the issue of duplication of procedures. Therefore, the Commission finds that the petition is not inadmissible under Articles 46(1)(c) and 47(d) of the Convention.

d. Colorable claim

30. The petitioners have alleged that the State has violated Mr. Lallion's rights under Articles 4, 5, 7, 8 and 24 of the Convention, and have provided factual allegations that tend to establish that the alleged violations may be well-founded. The Commission therefore concludes, without

prejudging the merits of the case, that the petitioners' case is not inadmissible under Articles 47(b) or 47(c) of the Convention.

V. CONCLUSION

31. In accordance with the foregoing analysis of the requirements of the Convention and the applicable provisions of the Commission's Regulations, and without prejudging the merits of this petition, the Commission decides to declare admissible the alleged violations of the Convention presented on behalf of Mr. Lallion, and to declare inadmissible the alleged violations of the Declaration presented on behalf of Mr. Lallion.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the violations of the Convention alleged in the petition admissible.
2. To declare the violations of the Declaration alleged in the petition inadmissible.
3. To transmit this report to the State of Grenada and to the petitioners.
4. To place itself at the disposal of the parties concerned with a view to reaching a friendly settlement of the matter.
5. To maintain in effect the precautionary measures issued on July 2, 1997.
6. To make public this report and publish this report in its Annual Report to the General Assembly.

Done and signed in the city of Washington, D.C., on the 27th day of the month of September, 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.