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Institution: Inter-American Commission on Human Rights
File Number(s): Report No. 24/00; Case 12.067
Session: Hundred and Sixth Regular Session (22 February – 10 March 2000)
Alt. Title/Style of Cause: Michael Edwards v. Bahamas
Doc. Type: Decision
Decided by: Chairman: Helio Bicudo;
First Vice-Chairman: Claudio Grossman;
Second Vice-Chairman: Juan Mendez;
Commissioners: Marta Altolaguirre, Robert K. Goldman, Peter Laurie; Julio Prado Vallejo
Dated: 7 March 2000
Citation: Edwards v. Bahamas, Case 12.067, Inter-Am. C.H.R., Report No. 24/00, OEA/Ser.L/V/II.106, doc. 3, rev. (1999).

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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 Richard Sallybanks Esq., Solicitor, of Messrs. Burton Copeland, Solicitors, in London, United Kingdom, (hereinafter “the petitioners”) by letter dated November 5, 1998 on behalf of Michael Edwards. The petition alleges that the Commonwealth of The Bahamas (hereinafter “the State” or “The Bahamas”) violated Mr. Edwards’ rights under the American Declaration of The Rights and Duties of Man (hereinafter “the Declaration”).

2. The petitioners state that Mr. Edwards, a national of The Bahamas, was convicted of armed robbery and murder on May 8, 1996, and a mandatory death sentence was imposed on him. According to the petitioners, Mr. Edwards appealed his convictions and sentence to the Court of Appeal of The Bahamas, which dismissed his appeal on January 20, 1997. He then petitioned the Judicial Committee of the Privy Council (hereinafter “the Privy Council”) for Special Leave to Appeal his convictions and sentence, and the Privy Council dismissed his petition on October 29, 1998.

3. The petitioners claim that the petition is admissible because Mr. Edwards has exhausted the domestic remedies of The Bahamas. The petitioners also allege that the State has violated Mr. Edwards’ rights under and Articles I, II, XVIII, and XXVI of the Declaration.

4. In their petition, the petitioners requested that the Commission issue precautionary measures pursuant to Article 29(2) of its Regulations against the State, and requested that the Commission ask that the State take no steps to execute Mr. Edwards to avoid “irremediable and catastrophic results” to him while his petition is pending determination before the Commission.

The petitioners argue that if the State executes Mr. Edwards before the Commission renders a decision in his case, such decision would be rendered useless, and would weaken the fabric of the human rights system recognized and protected by the American Declaration, and would place the Commonwealth of The Bahamas in breach of the provisions of the Declaration.

5. In this report, the Commission concludes that the petition is admissible pursuant to Articles 37 and 38 of the Commission's Regulations.

II. PROCEEDINGS BEFORE THE COMMISSION

6. Upon receipt of the petition, the Commission complied with the requirements of its Regulations. The Commission studied the petition, requested information from the parties, and forwarded the pertinent parts of each party's submissions to the other party.

7. On December 10, 1998, pursuant to Article 34 of its Regulations, the Commission forwarded the pertinent parts of the petition to the State and requested its observations within 90 days with regard to the exhaustion of domestic remedies and the claims raised in the petition. The Commission also requested that the State stay Mr. Edwards' execution pending the Commission's investigation of the alleged facts.

8. On December 11, 1998, the Commission received the State's reply to the petition. In summary, the communication addressed the merits of the petition[FN1] and stated the following:

[FN1] The Government's response on the merits will be addressed in the merits phase of the petition.

The Government of The Bahamas has been informed that a Petition has been filed with the Commission on behalf of the above captioned convict, who has been sentenced to death. With respect to the alleged Breaches as contained in a copy of the Petition lodged with our United Kingdom Solicitors Messrs. Charles Russell, We respond as follows:-

the application for special leave to appeal the applicant's conviction to the Privy Council was heard and dismissed according to our records on the 30th October, 1998, as opposed to the 29th October. The other relevant dates referred to in the History are agreed. The Government does not take issue with the Background or the Defence Case as stated in paragraph 2.

Be respectfully advised that the Government of The Bahamas gives the undertaking that it will accord to the IACHR "reasonable time," in accordance with the IACHR'S own Regulations, in order to consider the Petition but maintains that is (it) will not allow such reasonable time to extend to five (5) years from the date of conviction, thereby frustrating the domestic law as laid down by the Highest Court of the Land, the Judicial Committee of her Majesty's Privy Council. The Government regrets therefore, that unless the final recommendation of the IACHR be forwarded to reach the Government of The Bahamas in Nassau within eighteen (18) months of

the 4th November, 1998 and in any event not later than the 4th May, 2000, the Government will be obliged to act in accordance with the laws of the land.

9. On December 21, 1998, the Commission forwarded the pertinent parts of the State's reply to the petitioners and requested that it provide the Commission with their observations within 30 days.

10. On January 20, 1999, the Commission received a request from the petitioners for an extension of time to file their response to the State's observations because the petitioners stated that they were "still awaiting information from Mr. Edwards regarding the preparation of his defense namely, that he was deprived of a fair trial, and the prison conditions in which he is currently being held." On February 5, 1999, the petitioners forwarded their observations to the State's reply to the petition. In addition, the petitioners stated that there were practical difficulties in obtaining information with regard to Mr. Edwards' prison conditions and reserved the right to develop this ground of his petition once relevant information is received. The petitioners also reiterated their request that the Commission issue precautionary measures in respect of Mr. Edwards.

11. On February 19, 1999, the Commission forwarded the petitioners' observations to the State and requested that it provide the Commission with it information that it deemed relevant to the case within 30 days.

12. On October 19, 1999, the Commission reiterated its request to the State to provide it with observations to the petitioners' response to the State's reply to the petition.

13. The Commission has not received any additional communication or information from the State since its reply to the petition on December 11, 1998.

III. POSITIONS OF THE PARTIES ON ADMISSIBILITY

A. Position of the petitioners

14. The petitioners allege violations of Articles I, II, XVIII, and XXVI of the Declaration, in connection with the trial, conviction and sentencing of Mr. Edwards for the crime of murder in The Bahamas. More particularly, the petitioners argue that the mandatory death sentence imposed by the State pursuant to its penal law on every person convicted of murder, and the pardon and commutation regime of the State violate Mr. Edwards' rights to life, equality before the law, a fair trial, and humane treatment under Articles I, II, XVIII, and XXVI, of the Declaration.

15. In the original petition dated November 5, 1998, the petitioners contended that Mr. Edward's right to a fair trial pursuant to Article XXVI of the Declaration was violated because he was denied the benefit of effective and competent counsel. In their later submission of February 5, 1999, the petitioners withdrew this claim.

16. The petitioners also maintain that Mr. Edwards did not have a fair trial pursuant to Article XXVI of the Declaration because the State failed to disclose documents relating to the conduct of the identification parade in his case.

17. In addition, the petitioners claim that the conditions under which Mr. Edwards is being detained violate Article XXVI of the Declaration, and that they would amplify this ground or withdraw it in due course.

18. The petitioners argue that the petition is admissible because Mr. Edwards has exhausted the domestic remedies of The Bahamas. The petitioners contend that Mr. Edwards appealed his convictions and sentence to the Court of Appeal of The Bahamas, which dismissed his appeal on January 20, 1997. Mr. Edwards then petitioned the Judicial Committee of the Privy Council (hereinafter referred to as “the Privy Council”) for Special Leave to Appeal his convictions and sentence, and the Privy Council dismissed his petition on October 29, 1998. In response to the State’s position that Mr. Edwards petition to the Privy Council was dismissed on October 30, 1998, the petitioners reaffirmed that Mr. Edwards’ petition to the Privy Council was heard and dismissed on October 29, 1998, and not October 30, 1998, as suggested by the State.

19. The petitioners also contend that the State may claim that Mr. Edwards has a remedy under the Constitution of The Bahamas to pursue a Constitutional Motion, however, this remedy cannot be considered either available or effective. The petitioners argue that Mr. Edwards is unable to pursue a Constitutional Motion in The Bahamas to challenge his mandatory death sentence as being inhuman or degrading punishment or treatment because he 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 his petition to the Commission is being made on a pro bono basis, and that the State’s practice is to refuse legal aid for Constitutional Motions. The petitioners maintain that the legal complexity of a Constitutional Motion, combined with Mr. Edwards’ relative lack of education, makes it unrealistic and unfair to expect him to present a Constitutional Motion without professional legal assistance. Finally, the petitioners maintain that it is difficult for Mr. Edwards to find a Bahamian lawyer who is willing to prepare and argue a Constitutional Motion pro bono.

20. In support of their position, the petitioners rely upon jurisprudence of the United Nations Human Rights Committee (HRC), in particular its decision in the case of *Champagnie, Palmer & Chisolm v. Jamaica*,^[FN2] in which the Committee stated as follows:

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

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]

[FN3] Article 5(2) of the United Nations Optional Protocol 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."

B. The position of the State

21. In its reply which was received by the Commission on December 11, 1998, the State did not contest the admissibility of the petition, and only addressed the substantive issues relating to the merits of the petition.[FN4] However, in addition, the State maintains the following: "the application for Special Leave to Appeal the applicant's (Mr. Edwards') conviction to the Privy Council was heard and dismissed according to our records on the 30th October, 1998, as opposed to the 29th October. The other relevant dates referred to in the history are agreed. The Government does not take issue with the Background or the Defence Case as stated in paragraph 2 of the petition."

[FN4] The State's arguments on the substantive issues will be included in the merits' phase of the petition.

IV. ANALYSIS ON ADMISSIBILITY

A. Commission's competence

22. In their petition, the petitioners allege violations of Articles I, II, XVIII, and XXVI of the Declaration. Article 26 of the Commission's Regulations provides that "[a]ny person or group of persons, or any non-governmental entity legally recognized in one or more member states of the Organization, may submit petitions to the Commission, in accordance with these Regulations, on one's own behalf or on behalf of third persons, with regard to alleged violations of a human right recognized, as the case may be, in the American Convention on Human Rights or in the American Declaration of the Rights and Duties of Man." The petition in this case was lodged by the petitioners, Solicitors from London, United Kingdom, on behalf of Mr. Edwards' who is a national of the State of The Bahamas.

23. The Declaration became the source of legal norms for application by the Commission[FN5] upon The Bahamas becoming a member State of the Organization of American States in 1982. In addition, the Commission has authority under the Charter of the Organization of American States, Article 20 of the Commission's Statute,[FN6] and the Commission's Regulations to entertain the alleged violations of the Declaration raised by the petitioners against the State, which relate to acts or omissions that transpired after the State joined the Organization of American States. Consequently, the Commission has *ratione temporis*, *ratione materiae*, and *ratione personae* jurisdiction to consider the violations of the Declaration alleged in this case. Therefore, the Commission declares that it is competent to address the petitioners' claims relating to violations of the Declaration.

[FN5] I/A Court H.R., 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), 14 July 1989.

[FN6] Article 20 of the Commission's Statute provides as follows:

In relation to those member states of the Organization that are not parties to the American Convention on Human Rights, the Commission shall have the following powers, in addition to those designated in article 18:

- (a) To pay particular attention to the observance of the human rights referred to in Articles I, II, III, IV, XVIII, XXV, and XXVI of the American Declaration of the rights and Duties of Man;
- (b) To examine communications submitted to it and any other available information, to address the government of any member state not a Party to the Convention for information deemed pertinent by this Commission, and to make recommendations to it, when it finds this appropriate, in order to bring about more effective observance of fundamental human rights; and,
- (c) To verify, as a prior condition to the exercise of the powers granted under subparagraph b. above, whether the domestic legal procedures and remedies of each member state not a Party to the Convention have been duly applied and exhausted.

B. Other grounds of admissibility

a. Exhaustion of domestic remedies

24. The petitioners argue that Mr. Edwards exhausted domestic remedies in The Bahamas on October 29, 1998, when the Privy Council dismissed his petition seeking Special Leave to Appeal his convictions and sentence. In its reply which was received by the Commission on December 11, 1998, the State did not contest the admissibility of the petition, and only addressed the substantive issues relating to the merits of the petition.[FN7] However, the State maintained that Mr. Edwards' "application for special leave to appeal the applicant's conviction to the Privy Council was heard and dismissed according to our records on the 30th October, 1998, as opposed to the 29th October. The other relevant dates referred to in the history are agreed. The Government does not take issue with the Background or the Defence Case as stated in paragraph 2 of the petition."

[FN7] The State's arguments on the substantive issues will be included in the merits' phase of the petition.

25. Article 37(1) of the Commission's Regulations provides that: "For a petition to be admitted by the Commission, the remedies under domestic jurisdiction must have been invoked and exhausted in accordance with the general principles of international law." The Commission concludes that Mr. Edwards exhausted the domestic remedies of The Bahamas between October 29 and October 30, 1998, and therefore the petition is admissible under Article 37(1) of the Commission's Regulations. [FN8]

[FN8] The petitioners maintain that Mr. Edwards' petition was dismissed by the Privy Council on October 29, 1998. The State argues that Mr. Edwards' petition was dismissed by the Privy Council on October 30, 1998.

b. Timeliness of petition

26. As concluded above, Mr. Edwards' petition was dismissed by the Privy Council between October 29 and October 30, 1998. Mr. Edwards' petition was presented to the Commission on November 5, 1998. Therefore, the Commission concludes that Mr. Edwards' petition was filed within six months of the final decision in his case, and finds that the petition is admissible pursuant to Article 38 of its Regulations.

c. Duplication of procedures

27. The petitioners state in their petition that the claims raised in their petition on behalf of Mr. Edwards have not been submitted for examination under any other procedure of international investigation or settlement. The record before the Commission does not indicate that the subject of the petitioners' claims is pending in another international procedure, or duplicates a petition pending or already examined by the Commission or another international organization. The State has not provided any observations on the issue of duplication of procedures. The Commission therefore finds that the petition is not inadmissible under Article 39(1) of its Regulations.[FN9]

[FN9] Article 39(1) of the Commission's Regulations provides that the Commission shall not consider a petition in cases where the subject of the petition is pending in another procedure under an international governmental organization of which the State concerned is a member, or essentially duplicates a petition pending or already examined and settled by the Commission or by another international governmental organization of which the state concerned is a member.

d. Colorable claim

28. The petitioners have alleged that the State has violated the victims' rights under Articles I, II, XVIII, and XXVI of the Declaration. In addition, the petitioners have provided factual allegations that if proven would 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' petition is not barred from consideration under Article 41(c) of its Regulations.[FN10]

[FN10] Article 41(c) of the Commission's Regulations provides that the Commission shall declare a petition inadmissible if the petition is manifestly groundless or inadmissible on the basis of the statement by the petitioner himself or the government.

29. In accordance with the foregoing analysis, and without prejudging the merits of this petition, the Commission decides to declare admissible the alleged violations of the Declaration presented on behalf of Mr. Edwards.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES TO:

1. Declare that the petition is admissible with respect to the claimed violations of Articles I, II, XVIII, and XXVI of the American Declaration.
2. Transmit this report to the State of The Bahamas and to the petitioners.
3. Place itself at the disposal of the parties concerned with a view to reaching a friendly settlement of the matter.
4. Maintain in effect the precautionary measures issued on December 10, 1998.
5. To make public this report and to publish it in its Annual Report to the General Assembly.

Done and signed in the city of Washington, D.C., on the 7th day of the month of March, 2000
(Signed): Hélio Bicudo, Chairman; Claudio Grossman, First Vice-Chairman; Juan Méndez, Second Vice-Chairman; Commissioners Marta Altolaguirre, Robert K. Goldman, Peter Laurie, and Julio Prado Vallejo.