

WorldCourts™

Institution: Inter-American Commission on Human Rights
File Number(s): Report No. 25/00; Case 12.068
Session: Hundred and Sixth Regular Session (22 February – 10 March 2000)
Title/Style of Cause: Omar Hall 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: Hall v. Bahamas, Case 12.068, Inter-Am. C.H.R., Report No. 25/00, OEA/Ser.L/V/II.106, doc. 3, rev. (1999).

Terms of Use: Your use of this document constitutes your consent to the Terms and Conditions found at www.worldcourts.com/index/eng/terms.htm

I. SUMMARY

1. This report concerns a petition presented to the Inter-American Commission on Human Rights (hereinafter “the Commission”) by Gary Hickinbottom, Solicitor, of Messrs. Cameron McKenna, Solicitors, in London, United Kingdom (hereinafter “the petitioners”) by letter dated December 3, 1998, on behalf of Omar Hall. The petition alleges that the Commonwealth of The Bahamas (hereinafter “the State” or “The Bahamas”) violated Mr. Hall’s rights under the American Declaration of the Rights and Duties of Man (hereinafter “the Declaration”).

2. The petitioners state that Mr. Hall, a national of The Bahamas, was convicted of murder on September 2, 1996, and a mandatory death sentence was imposed on him. According to the petitioners, Mr. Hall appealed to the Court of Appeal of The Bahamas against his conviction and sentence, and his appeal was dismissed by the Court on May 2, 1997, and the judgment was issued on July 23, 1997. Mr. Hall then petitioned the Judicial Committee of the Privy Council for Special Leave to Appeal his conviction and sentence, and the Privy Council dismissed his petition on June 3, 1998.

3. The petitioners claim that Mr. Hall exhausted the domestic remedies of The Bahamas when the Privy Council dismissed his petition on June 3, 1998. The petitioners also allege that the State has violated Mr. Hall’s rights under Articles I, II, XVII, XVIII, and XXVI of the Declaration.

4. In their petition, the petitioners requested that the Commission recommend to the State that it commute Mr. Hall’s death sentence so that he can be removed from the death row regime in Foxhill Prison. The petitioners also invited the Commission to recommend to the State that it

amend its penal code to restrict the death penalty to the most heinous forms of murder and to institute a sentencing hearing in which aggravating or mitigating factors can be examined. In addition, the petitioners asked the Commission to reach a decision in the case as soon possible, and they requested that the Commission make the strongest possible representations to the State to stay the execution of Mr. Hall until the Commission completes its investigation of the case.

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 and submissions of the parties, the Commission complied with the requirements of its Regulations. The Commission studied the petition, and requested information from the parties, and forwarded the pertinent parts of the petitioners' submissions to the State.

7. On December 10, 1998, 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. Hall's execution pending the Commission's investigation of the alleged facts. On October 19, 1999, the Commission reiterated its request to the State for its observations within 30 days with regard to the claims raised in the petition.

8. To date, the Commission has not received any response from the State in respect of the petitioners' petition, despite the Commission's requests for information dated December 10, 1998, and October 19, 1999.

III. POSITIONS OF THE PARTIES ON ADMISSIBILITY

A. Position of the petitioners

9. The petitioners allege violations of Articles I, II, XVII, XVIII, and XXVI, of the American Declaration, in connection with the trial, conviction and sentencing of Mr. Hall for the crime of murder in The Bahamas. In addition, 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 State's pardon and commutation procedure, violate Mr. Halls' rights under Articles I, II, XVII, and XVIII, of the Declaration, and his right to humane treatment under Article XXVI of the Declaration. More particularly, the petitioners argue that the domestic law of The Bahamas does not provide the victims with the right to make representations to the Advisory Committee on the Prerogative of Mercy, the body in The Bahamas with authority to grant amnesties, pardons and commutations of sentences.

10. The petitioners also argue that Mr. Hall has suffered cruel and inhuman treatment and punishment pursuant to Article XXVI of the Declaration, because he has been incarcerated for a total of over 3 years and nine months. The petitioners claim that Mr. Hall was incarcerated on remand from the time of his arrest in July 1994, until he was "bailed" in January 1996. The

petitioners also claim that subsequent to Mr. Hall's trial in 1996, he has been incarcerated on death row up to the present time.

11. The petitioners allege that Mr. Hall did not receive a fair trial pursuant to Article XXVI of the Declaration, because of the imposition of his mandatory death sentence, and because Mr. Hall suffered prejudice due to biased reporting in the daily newspapers and television at the time of his trial. The petitioners claim that such coverage meant that Mr. Hall was incapable of receiving a fair trial.

12. The petitioners argue that the petition is admissible because Mr. Hall has exhausted the domestic remedies of The Bahamas. The petitioners contend that Mr. Hall appealed his conviction and sentence to the Court of Appeal of The Bahamas, and the Court dismissed his appeal on May 2, 1997, the judgment in his case was issued on July 23, 1997. Mr. Hall then petitioned the Privy Council for Special Leave to Appeal his conviction and sentence which was dismissed on June 3, 1998.

B. The position of the State

13. The State has not provided the Commission with observations with regard to the admissibility or merits of the petition, despite the Commission's communications to the State dated December 10, 1998, and October 19, 1999.

IV. ANALYSIS ON ADMISSIBILITY

A. Commission's competence

14. In their petition, the petitioners allege violations of Articles I, II, XVII, 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. Hall, who is a national of the State of The Bahamas.

15. The Declaration became the source of legal norms for application by the Commission[FN1] 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,[FN2] 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.

[FN1] 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.

[FN2] 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

16. The petitioners argue that the petition is admissible because Mr. Hall has exhausted the domestic remedies of The Bahamas. The petitioners contend that Mr. Hall appealed his conviction and sentence to the Court of Appeal of The Bahamas, and the Court dismissed his appeal on May 2, 1997, the judgment in his case was issued on July 23, 1997. Mr. Hall then petitioned the Privy Council for Special Leave to Appeal his conviction and sentence which was dismissed on June 3, 1998.

17. The State has not provided the Commission with observations with regard to the admissibility, including the exhaustion of domestic remedies or merits of the petition, despite the Commission's communications to the State dated December 10, 1998, and October 19, 1999.

18. In accordance with generally recognized principles of international law,[FN3] the Commission finds that the State tacitly waived its right to object to the admissibility of the petitioners' petition based upon the exhaustion of domestic remedies rule. Consequently, the Commission finds that the petition is admissible under Article 37(1) of the Commission's Regulations.[FN4]

[FN 3] See I/A Court H.R., Viviana Gallarado et al., Judgment of November 13, 1981, No. G 101/81. Series A, para. 26.

[FN4] 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."

b. Timeliness of petition

19. As concluded, Mr. Hall's petition for Special Leave to Appeal to the Privy Council was dismissed by it on June 3, 1998. The Commission concludes that the petition was filed within six months of the final ruling in the case and find that it is therefore admissible pursuant to Article 38 of the Commission's Regulations.

c. Duplication of procedures

20. 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.[FN5]

[FN 5] 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 not pending in another international 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

21. The petitioners have alleged that the State has violated Mr. Halls' rights under Articles I, II, XVII, 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 the Commission's Regulations.[FN6]

[FN6] 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.

e. Conclusion on admissibility

22. As noted previously, the State has not replied to the Commission's communications to it dated December 10, 1998, and October 19, 1999, which requested that the State provide the Commission with information that the State deemed relevant pertaining to the exhaustion of domestic remedies and the claims raised in the petitions. As a consequence, in determining the admissibility of this case, the Commission has presumed the facts as reported in the petition to be true, provided that the evidence does not lead to a different conclusion, in accordance with Article 42 of the Commission's Regulations.[FN7]

[FN7] Article 42 of the Commission's Regulations provides that "[t]he facts reported in the petition whose pertinent parts have been transmitted to the government of the State in reference shall be presumed to be true if, during the maximum period set by the Commission under the provisions of Article 34 paragraph 5, the government has not provided the pertinent information, as long as other evidence does not lead to a different conclusion." Article 34(5) of the Commission's Regulations provides that "[t]he Commission shall request the affected government to provide the information requested within 90 days after the date on which the request is sent."

23. 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. Hall.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES TO:

1. Declare the petition admissible with respect to the claimed violations of Articles I, II, XVII, 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 OAS 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 Mendez, Second Vice-Chairman; Commissioners: Marta Altolaguirre, Robert K. Goldman, Peter Laurie and Julio Prado Vallejo.