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Title/Style of Cause:	Prince Pinder v. Bahamas
Doc. Type:	Decision
Decided by:	President: Clare K. Roberts; First Vice-President: Susana Villaran; Second Vice-President: Paulo Sergio Pinheiro; Commissioners: Evelio Fernandez Arevalos, Jose Zalaquett, Freddy Gutierrez, Florentin Melendez.
Dated:	12 October 2005
Citation:	Pinder v. Bahamas, Petition 95/03, Inter-Am. C.H.R., Report No. 49/05, OEA/Ser.L/V/II.124, doc. 5 (2005)
Represented by:	APPLICANT: Adela Williams
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I. SUMMARY

1. On January 15, 2003, the Inter-American Commission on Human Rights (“the Commission”) received a petition dated January 14, 2003, from Adela Williams, solicitor, of Arnold and Porter, in London, United Kingdom (“the Petitioner”), against the Commonwealth of The Bahamas (“The Bahamas” or “the State”). The petition was presented on behalf of Mr. Prince Pinder, a Bahamian national incarcerated in The Bahamas. According to the petition, on July 28, 1997, Mr. Pinder was convicted of two counts of armed robbery and one count of attempted armed robbery and sentenced to a term of 30 years imprisonment and to a flogging of six strokes. The petition also requested the Commission to grant precautionary measures in favor of Mr. Pinder to suspend the execution of sentence while the petition is pending.
2. The petition alleged that the imposition and/or execution of a flogging sentence violates Articles I, XI, XVIII, XXV and XXVI of the American Declaration of the Rights and Duties of Man (the “Declaration”). Moreover, the Petitioner asserts that the overall delay in the criminal process and in the anticipation of the flogging further violates Article XXVI of the Declaration.
3. Save for acknowledgements of some of the Commission’s communications, the Commission has not received a substantive response from the State addressing Mr. Pinder’s petition.
4. As set forth in this Report, having examined the contentions of the petitioners on the question of admissibility, and noted the silence of the State, and without prejudging the merits of the matter, the Commission has decided to: (a) admit the claims in the present petition pertaining

to Articles I, XI, XVIII, XXV and XXVI of the Declaration; (b) transmit this Report to the parties; (c) continue with the analysis of the merits of the case and; (d) publish this Report and include it in its Annual Report to the General Assembly of the Organization of American States.

II. PROCEEDINGS BEFORE THE COMMISSION

A. Petition

5. Following the receipt of the petition on January 15, 2003, the Commission, received a letter of February 04, 2003 from the petitioner confirming that the sentence of flogging had not yet been carried out on Mr. Pinder.

6. By note of May 30, 2003, the Commission transmitted the pertinent parts of the petition to the State and requested the State to observations on the petition within two months as prescribed by Article 30 (3) of the Commission's Rules of Procedure.

7. By communication of June 30, 2003, the State acknowledged receipt of the Commission's note, advising that it had been "referred to the relevant authorities for their review."

8. By communication of June 14, 2004, the Commission acknowledged receipt of the petitioner's letter of February 4, 2003, and advised that the State had not yet responded to the petition. The Commission also requested the Petitioner to confirm that the flogging sentence had not yet been executed.

9. By note of the same date, the Commission reiterated its previous request to the State for information, asking that it be supplied to the Commission within 30 days of the Commission's communication. As of the date of the present report, the Commission has not received any information or observations from the State concerning Mr. Pinder's petition.

B. Precautionary Measures

10. By note of February 04, 2003, the Commission requested the State to take precautionary measures pursuant to Article 25 of the Commission's Rules of Procedure to suspend the imposition of Mr. Pinder's flogging sentence pending the Commission's investigation of the claims raised by the petition.

11. By communication of April 08, 2003, the State acknowledged receipt of the Commission's request, advising that it has been "referred to the relevant authorities for their attention."

12. In its note to the State of May 30, 2003 (transmitting the pertinent parts of the Petitioner's petition), the Commission contemporaneously reiterated its request for the State to suspend the imposition of the flogging sentence on Mr. Pinder's person until it had the opportunity to investigate the claims raised in the petition.

13. Save and except for an acknowledgement from the State of June 30, 2003, the transmission of this note, the Commission has received no further communications from the State regarding the grant of precautionary measures in favor of Mr. Pinder.

III. POSITIONS OF THE PARTIES

A. Position of the Petitioner

14. According to the information submitted by the Petitioner, on July 28, 1997 Mr. Pinder was convicted by the Supreme Court of The Bahamas of two counts of armed robbery and one count of attempted armed robbery. Mr. Pinder was ultimately sentenced to 30 years imprisonment and in addition, a flogging of six strokes to be administered in two installments of three strokes. His subsequent appeals against this sentence were dismissed by the Court of Appeal of The Bahamas and the Judicial Committee of the Privy Council[FN1] on January 29, 1999 and July 15, 2002, respectively.

[FN1] According to the Petitioner, the substantive appeal of Mr. Pinder was dismissed by the Judicial Committee of the Privy Council; however the question of which instrument should be used for the flogging was remitted to the Court of Appeal of The Bahamas for determination.

15. In relation to the admissibility of the complaint, the Petitioner claims that with the decision of the Judicial Committee of the Privy Council, Mr. Pinder has exhausted his domestic remedies in The Bahamas, as required under Article 31(1) of the Commission's Rules of Procedure.

16. The Petitioner also submits that the matters complained of in Mr. Pinder's petition have not previously been submitted for examination by any other procedure of international investigation or settlement.

17. With respect to the merits of the complaint, the Petitioner contends that the State's laws[FN2] permitting the infliction of judicial corporal punishment represents a breach of the State's obligations under the American Declaration; and further, that the infliction of such a punishment upon Mr. Pinder would unquestionably do so. The petitioner contends that the State is in violation of Articles I[FN3], XI[FN4], XVIII[FN5], and XXVI[FN6] of the Declaration, as particularized hereunder:

a) The sentence of flogging constitutes cruel, infamous or unusual punishment and a violation of the security of the person, in breach of Articles XXVI, XI and I of the Declaration. In support of this contention, the Petitioner notes that all of the judges of the Bahamian Court of Appeal and the Judicial Committee of the Privy Council identified flogging as inhuman and degrading[FN7]. The petitioner also submits that during the hearing before the Judicial Committee of the Privy Council, the State had conceded that flogging is "torture or inhuman punishment"[FN8].

b) In violation of Article XXVI, Mr. Pinder has been exposed to cruel, infamous or unusual punishment , by virtue of the overall delay in the criminal process of almost 5 ½ years (between his conviction and the presentation of the petition). In this respect, the Petitioner argues that the sentence of flogging has been aggravated by the mental agony of anticipating its infliction over this protracted period.

c) The sentencing judge violated Mr. Pinder's rights under Articles XVIII and XXVI of the Declaration by: (a) failed to inform Mr. Pinder he was considering the sentence of corporal punishment, or to give Mr. Pinder the opportunity to make submissions against such sentence[FN9]; (b) failure to make any inquiries about Mr. Pinder's character or antecedents, thus denying him an "individualized sentencing"[FN10].

[FN2] Judicial corporal punishment was reintroduced (for certain offences) by the Criminal Law (Measures) Act, 1991, after it had been previously abolished in 1984 by the Penal Code (Amendment) Act.

[FN3] Right to life, liberty and personal security. Every human being has the right to life, liberty and the security of his person.

[FN4] Right to the preservation of health and to well-being. Every person has the right to the preservation of his health through sanitary and social measures relating to food, clothing, housing and medical care, to the extent permitted by public and community resources.

[FN5] Right to a fair trial. Every person may resort to the courts to ensure respect for his legal rights. There should likewise be available to him a simple, brief procedure whereby the courts will protect him from acts of authority that, to his prejudice, violate any fundamental constitutional rights.

[FN6] Right to due process of law. Every accused person is presumed to be innocent until proved guilty. Every person accused of an offense has the right to be given an impartial and public hearing, and to be tried by courts previously established in accordance with pre-existing laws, and not to receive cruel, infamous or unusual punishment.

[FN7] While all the judges of the Court of Appeal and the Judicial Committee of the Privy Council were ad idem on the nature of corporal punishment, both courts (by majorities of 3-2) held that corporal punishment is permitted under the Constitution of The Bahamas by virtue of Article 17 (2). This Article provides that "nothing contained in or done under authority of law shall be held inconsistent with or in contravention of this Article to the extent that the law in question authorizes the infliction of any description of punishment that was lawful in the Bahama Islands immediately before 10 July 1973".

[FN8] See Petitioner's petition of January 14, 2003, para. 1.

[FN9] See Petitioner's petition of January 14, 2003, para. 4, where the petitioner argues that this violation was exacerbated by the fact that Mr. Pinder was not represented by counsel at the sentence hearing.

[FN10] Ibid, where the petitioner contends that Articles XVIII and XXVI require that the sentencing judge should make proper inquiries before sentencing an individual found guilty of an offence, and that"given the nature of the sentence there was a need for a heightened standard of procedural fairness to ensure that the case was an appropriate one ...for corporal punishment." [the petitioner however rejects the idea that corporal punishment is appropriate in any case]

B. Position of the State

18. Apart from acknowledging the Commission's notes of February 04, 2003, and May 30, 2003[FN11], the Commission has not received any information or observations from the State in response to Mr. Pinder's petition.

[FN11] By note of June 14, 2004, the Commission reiterated its request to the State for information, but has not so far received a response.

IV. ANALYSIS

A. Preliminary Considerations

19. The Commission notes that the State at no time has responded to the petitioner's allegations or questioned the petition's admissibility. While the Commission acknowledged that the State is not a party to the American Convention on Human Rights, the Commission is authorized under Article 20 b. of its Statute "...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".

20. The IACtHR also considers that the information requested by the Commission is information that would enable it to reach a decision in a case submitted to it. The Inter-American Court of Human Rights has indicated that cooperation by the States is an essential obligation in international proceedings in the inter-American system:

In contrast to domestic criminal law, in proceedings to determine human rights violations the State cannot rely on the defense that the complainant has failed to present evidence when it cannot be obtained without the State's cooperation.

The State controls the means to verify acts occurring within its territory. Although the Commission has investigatory powers, it cannot exercise them within a State's jurisdiction unless it has the cooperation of that State[FN12].

[FN12] Inter-American Court of Human Rights, Velásquez Rodríguez case, Judgment of July 29, 1988, para. 135 and 136.

21. The IACtHR and the Inter-American Court of Human Rights have also indicated that "the silence of the accused or elusive or ambiguous answers on its part may be interpreted as an acknowledgment of the truth of the allegations, so long as the contrary is not indicated by the record or is not compelled as a matter of law." [FN13] The Commission therefore reminds The

Bahamas that it has a duty to cooperate with the organs in the inter-American human rights system, for optimal fulfillment of its functions to protect human rights.

[FN13] Velásquez Rodríguez case, Judgment of July 29, 1988, para. 138. IACtHR, Report N° 28/96, Case 11.297, Guatemala, October 16, 1996, para. 45.

B. Competence of the Commission

22. In its petition, the petitioner alleges violations of Articles I, XI, XVIII, XXV and XXVI, of the Declaration. Article 23 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 petitioner, Adela Williams, solicitor, of Arnold and Porter, in London, United Kingdom, on behalf of the victim, Prince Pinder, a national of The Bahamas.

23. The Declaration became the source of legal norms for application by the Commission[FN14] upon The Bahamas becoming a member 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[FN15], and the Commission's Regulations to entertain the alleged violations of the Declaration raised by the petitioner against the State, which relate to acts or omissions that transpired after the State joined the Organization of American States. Consequently, the Commission has jurisdiction ratione temporis, ratione materiae, and ratione personae to consider the violations of the Declaration alleged in this case. Therefore, the Commission declares that it is competent to address the petitioner's claims relating to the alleged violations of the Declaration.

[FN14] 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.

[FN15] 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.

C. Admissibility

1. Duplication of Procedures

24. According to the Petitioner, the matters complained of in this petition have not previously been submitted for examination by any other 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 33(1) of its Rules of Procedure.

2. Exhaustion of Domestic Remedies

25. The Petitioner argues that the petition is admissible because Mr. Pinder has exhausted all available domestic remedies in The Bahamas, having had his appeals against the flogging sentence dismissed by the Bahamas Court of Appeal and the Judicial Committee of the Privy Council.

26. 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 requests to the State.

27. In accordance with generally recognized principles of international law[FN16], the Commission finds that the State tacitly waived its right to object to the admissibility of the Petitioner's 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[FN17].

[FN16] See I/A Court H.R., Viviana Gallarado et al., Judgment of November 13, 1981, No. G 101/81. Series A, para. 26.

[FN17] Article 31(1) of the Commission's Rules of Procedure specify that, in order for a case to be admitted, remedies under domestic law must have been pursued and exhausted in accordance with generally accepted principles of international law.

3. Timeliness

28. Article 32(1) of the Commission's Rules of Procedure stipulates that the Commission must refrain from taking up petitions that are lodged after the six month period following the date on which the complaining party has been notified of the final ruling, in cases where the remedies under domestic law have been exhausted. In this report, the Commission has

established the State's tacit waiver of its right to invoke the failure to exhaust domestic remedies. Therefore, the requirement set forth in Article 32(1) of the Commission's Rules of Procedure has been satisfied given the silence of the State with respect to this petition.

4. Colorable Claim

29. Article 34(a) and (b) of the Commission's Rules of Procedure requires the Commission to consider a petition to be inadmissible if the petition does not state facts that tend to establish a violation of the rights guaranteed by the American Convention on Human Rights or other applicable instruments, or if the statements of the petitioner or of the state indicate that the petition is manifestly groundless or obviously out of order.

30. The Petitioner alleges that the State is responsible for violations of Mr. Pinder's rights under Articles I, XI, XVIII, XXV and XXVI of the Declaration. Based upon the information provided by the Petitioner, and without prejudging the merits of the matter, the Commission finds that the Petitioner's petition contains factual allegations, that, if proved, tend to establish violations of the rights guaranteed by the Declaration, and that the statements of the Petitioner are not on the information provided manifestly groundless or obviously out of order. Consequently, the claims in the petition are not barred as inadmissible under Article 34(a) and (b) of the Commission's Rules of Procedure.

V. CONCLUSIONS

31. The Commission concludes that it has the competence to examine this case, and that the petition is admissible in accordance with Articles 31 to 34 of the Commission's Rules of Procedure.

32. On the basis of the findings of fact and law set forth above, and without prejudging the merits of the matter,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare admissible the Petitioner's claims as to the alleged violations of Articles I, XI, XVIII, XXV and XXVI of the Declaration.
2. To give notice of this decision to the State and to the Petitioner.
3. To continue with the analysis of the merits of the case.
4. To publish this Report and include it in the Annual Report to the OAS General Assembly.

Done and signed at the headquarters of the Inter-American Commission on Human Rights, in Washington, D.C., on the 12th day of October 2005. (Signed): Clare K. Roberts, President; Susana Villarán, First Vice-President; Paulo Sergio Pinheiro, Second Vice-President; and Commissioners Evelio Fernández Arévalos, José Zalaquett, Freddy Gutiérrez and Florentín Meléndez.