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Title/Style of Cause:	Franklyn Villaroel v. Trinidad and Tobago
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 Trejo, Florentin Melendez.
Dated:	13 October 2005
Citation:	Villaroel v. Trinidad and Tobago, Petition 12.260, Inter-Am. C.H.R., Report No. 66/05, OEA/Ser.L/V/II.124, doc. 5 (2005)
Represented by:	APPLICANT: a firm of Solicitors "Lovell's"
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I. SUMMARY

1. On March 23, 2000, the Inter-American Commission on Human Rights (the "Commission" or "IACHR") received a petition from Lovell's, a firm of Solicitors in London, U.K. (the "Petitioners") against the Government of Trinidad and Tobago ("Trinidad and Tobago" or "the State"). The petition was presented on behalf of Franklyn Villaroel, who is detained at the State Prison, 103a Frederick Street, Port of Spain, Trinidad and Tobago. The petition states that Mr. Villaroel's appeal of his murder conviction was dismissed by the Court of Appeal of the Republic of Trinidad and Tobago ("Court of Appeal") on April 9, 1998. The petition also indicates that prior to that dismissal, on December 1, 1993, Mr. Villaroel's death sentence was commuted to one of imprisonment for the rest of his natural life. Subsequently, Mr. Villaroel's petition to the Judicial Committee of the Privy Council for special leave to appeal from the judgment of the Court of Appeal was dismissed on October, 5th 1999.

2. The petition alleges that the State is responsible for violations of Mr. Villaroel's rights under Articles 5, 7, 8, 11, 24 and 25 of the American Convention on Human Rights (the "American Convention" or "Convention") and Articles XXV, XXVI, XVI, XVII, XVIII and II of the American Declaration of the Rights and Duties of Man (the "American Declaration" or "Declaration"). The alleged violations relate to errors in jury instructions, delays in judicial proceedings, the nature of Mr. Villaroel's sentence, and the denial of access to a court for redress of the alleged violations. With regard to the admissibility of the claim, the Petitioners claim that although Mr. Villaroel has a domestic Constitutional claim in theory, it is not available to him in practice because of his lack of funds and the unavailability of legal aid. Because the State does

not provide legal aid for Constitutional motions, Petitioners argue that Mr. Villaroel is absolved from pursuing such remedies.

3. As of the date of this report, the Commission had not received a response from the State regarding Mr. Villaroel's petition.

4. As set forth in this report, having examined the contentions of the parties on the question of admissibility, and without prejudging the merits of the matter, the Commission has decided to admit the claims in the present petition, to continue with the analysis of the merits of the case, to transmit the report to the parties, to publish the report and include it in its Annual Report to the General Assembly of the Organization of American States.

II. PROCEEDINGS BEFORE THE COMMISSION

5. Following receipt of the Petitioners' petition on March 23, 2000, the Commission transmitted the pertinent parts of the petition to the State. The Commission requested the State's observations on the petition within 90 days as established by the Commission's prior regulations.[FN1] Also by note of the same date, the Commission informed the Petitioners that the pertinent parts of their petition had been transmitted to the State and that they would be advised of any reply that the State might make.

[FN1] During its 109th special session in December 2000, the Commission approved the Rules of Procedure of the Inter-American Commission on Human Rights which replaced the Commission's prior Regulations of April 8, 1980. Pursuant to Article 78 of the Commission's Rules of Procedure, the Rules entered in to force on May 1, 2001.

6. By communication dated April 5, 2000, and received on April 7, 2000, the State acknowledged receipt of the Commission's communication dated April 20, 2000. As of the date of the present report, the Commission has not received any information or observations from the State regarding Mr. Villaroel's petition.

7. On March 5, 2001, the Commission received from the Petitioners a copy of a February 27, 2001 letter they had sent to the Governor of the State Prison in Port of Spain, requesting a review of Mr. Villaroel's sentence.

8. By note of April 13, 2004 the Commission requested current information regarding Mr. Villaroel's status and the result of any review of his sentence. Petitioners responded by note dated May 28, 2004 and received on June 16, 2004, stating that Mr. Villaroel's status remained unchanged and no sentence review had taken place.

III. POSITIONS OF THE PARTIES

A. Position of the Petitioners

9. The petition states that on October 28, 1988, in his second trial after the first was declared a mistrial when the jury could not arrive at an agreement, Franklyn Villaroel was convicted of the March 10, 1985 murder of his common law wife Judith Arrindell and sentenced to death. The petition also states that Mr. Villaroel's death sentence was commuted to imprisonment for the rest of his natural life on December 1, 1993.

10. In relation to the admissibility of the complaints, the Petitioners provided information indicating that the alleged victim unsuccessfully appealed his conviction, based on grounds relating to allegedly improper jury instructions, to the Court of Appeal of Trinidad and Tobago on November 21, 1995. The Court of Appeal dismissed the appeal on April 9, 1998. Mr. Villaroel then petitioned the Judicial Committee of the Privy Council for special leave to appeal from the Judgment of the Court of Appeal; that petition was dismissed on October 5, 1999.

11. The Petitioners also state that Mr. Villaroel did not pursue Constitutional motions in the domestic courts of Trinidad and Tobago because he was indigent and because legal aid is not available for such motions in Trinidad and Tobago.

12. Additionally, the Petitioners state that the subject matter of the complaint has not been submitted for examination under any other procedure of international investigation or settlement to any other international organization.

13. With respect to the merits of their complaints against the State, Petitioners state in particular that the failure of the trial judge to instruct the jury regarding provocation and a possible manslaughter conviction and the failure of Mr. Villaroel's counsel to introduce evidence of good character during Mr. Villaroel's trial violated his right to a fair trial under Article 8(1) of the Convention and Article XVIII of the Declaration. The Petitioners also claim that delays in the hearing of Mr. Villaroel's appeal are contrary to Article 7(5) and Article 8(1) of the Convention and Article XXV of the Declaration. In addition, the petition argues that the imposition of a sentence of imprisonment for the rest of one's natural life constitutes cruel, inhuman punishment contrary to Article 5(2) and 5(6) of the Convention and Article XXV of the Declaration. Further, the Petitioners allege that the manner in which Mr. Villaroel has been treated during and the conditions of his imprisonment, including poor sanitation, overcrowding, and denial of medical care, violate his rights under Article 5(2) of the Convention and Article XXV of the Declaration, as well as his right to privacy under Article 11(1) of the Convention and his right to preservation of health and well-being contrary to Article XI of the Declaration. Finally, the denial of access to a court to seek redress for the violations of the above rights due to a lack of financial resources is claimed to be contrary to the provisions of Articles 24 and 25 of the Convention and Articles II, XVII, XVIII, and XXVI of the Declaration.

B. Position of the State

14. As indicated above, by communication dated April 5, 2000 and received on April 7, 2000, the State acknowledged receipt of the Commission's communication dated March 30, 2000. Apart from this communication, the Commission has not yet received any information or observations from the State respecting this petition.

IV. ANALYSIS

A. Competence of the Commission

15. The Republic of Trinidad and Tobago became a party to the American Convention on Human Rights when it deposited its instrument of ratification of that treaty on May 28, 1991.[FN2] Trinidad and Tobago later denounced the American Convention by giving notice one year in advance on May 26, 1998 in accordance with Article 78 of the Convention, which provides as follows:

(1) The State Parties may denounce this Convention at the expiration of a five year period from the date of its entry into force and by means of notice given one year in advance. Notice of the denunciation shall be addressed to the Secretary General of the Organization, who shall inform the other States Parties.

(2) Such a denunciation shall not have the effect of releasing the State Party concerned from the obligations contained in this Convention with respect to any act that may constitute a violation of those obligations and that has been taken by that state prior to the effective date of renunciation.

[FN2] Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L/1.4 rev.8, 22 May 2001, p. 48.

16. By the terms of Article 78(2), States Party to the American Convention have agreed that a denunciation will not release the denouncing State from its obligations under the Convention with respect to acts taken by the State prior to the effective date of the denunciation that may constitute a violation of those obligations. As previously held by the Commission, a State Party's obligations under the Convention encompass not only those provisions of the Convention relating to the substantive rights and freedoms there under, but also the provisions relating to the supervisory mechanism under the Convention, including those under Chapter VII of the Convention relating to the jurisdiction, functions and powers of the Inter-American Commission on Human Rights.[FN3] The Inter-American Court of Human Rights has reached the same conclusion regarding its jurisdiction and procedure.[FN4] Therefore, notwithstanding Trinidad and Tobago's denunciation of the Convention, the Commission will retain jurisdiction over complaints of violations of the Convention by Trinidad and Tobago with respect to acts taken by that State after ratification of the Convention and prior to May 26, 1999, the date upon which the State's renunciation became effective. As indicated by prior jurisprudence, this jurisdiction includes acts taken by the State prior to May 26, 1999 even if the effects of those acts continue or are manifested after that date.[FN5]

[FN3] See, e.g., Report 89/01, Case 12.342, Balkissoon Roodal, Trinidad and Tobago, Annual Report of the IACHR 2001, para. 23.

[FN4] See similarly I/A Court H.R., Ivcher Bronstein Case, Jurisdiction, Judgment of 24 September 1999, Series C N° 54, para. 37 (noting that the obligation of State Parties to the

American Convention on Human Rights to guarantee compliance with its provisions applies both to the substantive and procedural norms under the treaty).

[FN5] See Report N° 50/02, Petition 12.401, Admissibility, Alladin Mohammed, Trinidad and Tobago, Annual Report of the IACHR 2002, para. 18; see similarly I/A Court H.R., Blake Case, Preliminary Objections, Judgment of July 2, 1996, Series C N° 27, paras. 33-34 and 46; I/A Comm. H.R., Report N° 24/98, Joao Canuto de Oliveira, Brasil, Annual Report of the IACHR 1997, paras. 13-18; Eur. Court H.R., Papamichalopoulos et al v Greece, June 24, 1993, Series A N° 260-B, pp 69-70, 46 (stating that human rights instruments may properly be applied in respect to acts that arose prior to the ratification of those instruments but which are continuing in nature and whose effects persist after the instruments' entry into force).

17. With respect to acts done by the State wholly before May 28, 1991 or wholly after May 26, 1999, the State is bound by the American Declaration of the Rights and Duties of Man and the Commission's authority to supervise the State's compliance with that instrument, having deposited its instrument of ratification of the OAS Charter on March 17, 1967 and thereby becoming an OAS Member State.[FN6]

[FN6] See Commission Statute, Art. 20 (providing in respect to those OAS Member States that are not parties to the Convention, the Commission may examine communications submitted to it regarding those states and any other available information, to address the government of such states for information deemed pertinent by the Commission, and to make recommendations to such states when it finds this appropriate in order to bring about more effective observance of human rights). See also 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, July 14, 1989, Ser A N° 10, paras. 35-45; I/A Comm. H.R., Res. 3/87, Case 9647, James Terry Roach and Jay Pinkerton, United States, 22 September 1987, Annual Report 1986-87, paras. 46-49.

18. In the present case, the available information indicates that all or most acts occurred prior to May 26, 1999, though some acts may have occurred prior to May 26, 1999 but continued or had their effects manifested after that date. In both cases, the American Convention may be applicable. The alleged violation of Article 7(5) may be an exception, as, according to the jurisprudence of the Inter-American Court, calculation of any delay in trial proceedings under the Convention cannot include time before the State deposited its instrument of ratification.[FN7] Additionally, some acts, such as Mr. Villaroel's trial and conviction, appear to have occurred before Trinidad ratified the Convention and would therefore be governed by the American Declaration.

[FN7] See I/A Court H.R., Caesar v Trinidad and Tobago Case, Judgment of March 11, 2005, Series C N° 123, para. 111.

19. Considering the nature of the Petitioners' allegations, the Commission determines that it is only through the analysis of the merits of the Petitioners' claims that it may properly determine the nature and extent of any acts for which the State may be responsible under the American Convention or American Declaration. The Commission is therefore competent to consider Mr. Villaroel's claims under both instruments and will join to the merits of the case a determination of the specific applicability of either or both the American Convention or the Declaration to each claim raised by the Petitioners.

B. admissibility of the petition

1. Duplication of procedures

20. Petitioners claim that the matters complained of in this petition have not been submitted previously for examination by any other international organization; the State has provided no observations on the issue of duplication of procedures. The Commission therefore finds no bar to the admissibility of the petition under articles 46(1)(c) or 47(d) of the Convention or Article 33 of the Commission's Rules of Procedure.

2. Exhaustion of domestic remedies

21. According to Article 46(1)(a) of the Convention and Article 31(1) of the Commission's Rules of Procedure, the Commission must verify whether the remedies of the domestic system have been pursued and exhausted in accordance with generally recognized principles of international law before deciding on the admissibility of a petition. This rule was designed for the benefit of the State, seeking to excuse the State from being forced to answer to an international body before having an opportunity to remedy complaints by internal means. The Inter-American Court has thus deemed the requirement a waivable defense to a complaint against a State.[FN8] Such a waiver can be express or tacit, and once effected, is irrevocable.[FN9] When the requirement has been waived, the Commission need not consider any potential issues relating to the existence or nonexistence of available domestic remedies.

[FN8] I/A Court H.R., Loayza Tamayo Case, Preliminary Objections, Judgment of January 31, 1996, Series C N° 25, para. 40.

[FN9] Id.

22. In the instant case, the State has not provided any input regarding the admissibility of Mr. Villaroel's claims, and has thereby tacitly waived its right to object to the admissibility of claims in the petition based on the exhaustion of domestic remedies requirement.

23. In addition, the petition indicates that Mr. Villaroel has pursued all post-conviction appeals before the domestic courts in Trinidad and Tobago. His final petition for special leave to appeal before the Judicial Committee of the Privy Council was dismissed on October 5, 1999. According to the Commission's prior jurisprudence, Mr. Villaroel is not required to pursue a Constitutional motion before the courts in Trinidad and Tobago because he is indigent. Though

technically still an available option, such a motion would be sufficiently complex as to require legal assistance and, as the petition alleges, assistance with such motions is not provided by Trinidad and Tobago.[FN10] The State has not provided any observations or evidence rebutting these allegations. Therefore, the Commission finds that Mr. Villaroel's claims are not barred from consideration under Article 46(1)(a) of the Convention or Article 31(1) of the Commission's Rules of Procedure.

[FN10] See similarly Report N° 43/98, Case 11.816, Haniff Hilaire, Trinidad and Tobago, Annual Report of the IACHR 1998, paras. 15-17.

3. Timeliness of the petition

24. Independent of a determination regarding a petitioner's exhaustion of domestic remedies under Article 46(1)(a) of the Convention and Article 31(1) of the Commission's Rules of Procedure, the Commission must determine whether the complaint has been lodged within a period of six months from the date of the notification of a final judgment of the domestic court, according to Article 46(1)(b) of the Convention and Article 38(1) of the Regulations.

25. The instant petition was lodged with the Commission on March 23, 2000, within six months of the dismissal of Mr. Villaroel's petition to the Privy Council on October 5, 1999. Therefore, the Commission finds that the petition was lodged in a timely manner.

4. Colorable Claim

26. For the purposes of admissibility, the Commission is required to determine whether the facts stated in the petition tend to establish a violation of rights set forth in the American Convention, as provided for under Article 47(b), or whether the petition must be dismissed as "manifestly groundless" or "obviously out of order" under Article 47(c) of the Convention and Article 34 of the Commission's Rules of Procedure. In so doing, the Commission undertakes only a prima facie evaluation of the alleged facts with respect to admissibility and does not consider or judge the merits of any claim.

27. The petition alleges that the State is responsible for violations of Mr. Villaroel's rights under Articles 5, 7, 8, 11, 24 and 25 of the American Convention and Articles II, XI, XVIII, XXV and XXVI of the American Declaration, the particulars of which are summarized above at part III(A). The State has failed to provide any observations or information on the violations alleged by Mr. Villaroel.

28. Based upon the information provided by the Petitioners, and without prejudging the merits of the matter, the Commission finds that the Petitioners' petition contains factual allegations that, if proved, tend to establish violations of the rights guaranteed by Articles 5, 7, 8, 11, 24 and 25 of the American Convention and, to the extent applicable under the analysis of part IV(A), Articles II, XI, XVIII, XXV and XXVI of the American Declaration. Accordingly, the

Commission finds that the Petitioners' claims are not precluded from consideration under Article 47(b) or (c) of the Convention or Article 34 of the Commission's Rules of Procedure.

V. CONCLUSION

29. The Commission concludes that it is competent to examine this petition, and that the petition is admissible in accordance with Articles 46 and 47 of the Convention and Articles 31 to 34 of the Commission's Rules of Procedure.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the claims in the petition admissible with respect to Articles 5, 7, 8, 11, 24 and 25 of the Convention and Articles II, XI, XVIII, XXV and XXVI of the American Declaration.
2. To give notice of this decision to the State and to the Petitioners.
3. To continue with the analysis of the merits of this case.
4. To publish this Report and include it in the Annual Report to the OAS General Assembly.

Done and signed in the city of Washington, D.C., on the 13th day of the month of October, 2005.
(Signed): Clare K. Roberts, President; Susana Villarán, First Vice-President; Paulo Sérgio Pinheiro, Second Vice-President; Evelio Fernández Arévalos, José Zalaquett, Freddy Gutiérrez Trejo, and Florentín Meléndez, Commissioners.