



## Caesar v. Trinidad and Tobago

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**Country:** Trinidad and Tobago

**Region:** Americas

**Year:** 2005

**Court:** Inter-American Court of Human Rights Inter-American Court of Human Rights

**Health Topics:** Health care and health services, Prisons

**Human Rights:** Freedom from torture and cruel, inhuman or degrading treatment, Right to bodily integrity, Right to due process/fair trial

### Facts

C was arrested on 11 November 1983 as a suspect in connection with a rape alleged to have occurred in Trinidad a few days earlier. On 16 November 1983 he was released on bail. Between 1985 and 1986 committal proceedings took place and he was ordered to stand trial on 21 February 1986. C was arrested on 10 September 1991 for failing to appear at court and was incarcerated. C was tried in the High Court of Trinidad and Tobago in January, 1992 and on 10 January 1992 was convicted of attempted rape under Trinidad and Tobago's Offenses Against the Person Act. He was sentenced to serve 20 years in a penitentiary with hard labour and to receive 15 strokes with a "cat o' nine tails". C signed a notice of appeal same day and remained in detention. On 26 November 1993 C's attorney filed an application for leave to appeal and on 28 February 1996 the Court of Appeal of Trinidad and Tobago dismissed the application and confirmed the conviction and sentence, without giving reasons. Thereafter, counsel in Britain was asked whether reasonable grounds for appeal to the Primary Counsel existed and on 2 November 1998, counsel indicated such an appeal was unlikely to succeed.

Since his arrest in 1991, C has been incarcerated at four of the five prisons in Trinidad and Tobago. For some of that time he shared a hot and unventilated cell with four or five other men. C slept on a thin mat on the floor. There were no toilet facilities and a "slop pail" was used by all in the cell. C was allowed out of his cell for an hour in the morning and an hour in the evening. While incarcerated C has suffered serious health problems that have not been properly treated by the state authorities, and his health has deteriorated.

Prisoners sentenced to corporal punishment in Trinidad and Tobago are taken to Carrera Convict Prison, where such sentences are carried out during specified times of the year. C was aware of such times and as they approached his emotional state deteriorated. Three or four times between November 1996 and 5 February 1998, C was kept overnight in a cell at Carrera with other prisoners. Each morning the other prisoners were removed from the cell, one by one, to have their corporal punishment carried out. Each time C observed the prisoners return severely injured, but he was not flogged.

On 5 February 1998, C was subjected to 15 strokes of the "cat o' nine tails", in accordance with his sentence. He was stripped naked and spread-eagled onto an iron frame. His head was covered by a sheet. At least six persons were present, including a doctor who checked C's blood pressure and examined his other vital signs and consented to the continuation of the procedure.

During the lashing, C screamed in pain and eventually fainted. As a result of the punishment C suffered depression and acute anxiety warranting a diagnosis of an adjustment disorder. He may also have suffered from post-traumatic stress disorder in the year or two following his flogging, but at the time of the decision his symptoms did not meet the diagnosis for that disorder.

The Inter-American Commission on Human Rights submitted the Case of C to the Inter-American Court of Human Rights, against the state of Trinidad and Tobago, on 26 February 2003. In its application the Commission asked the Court, pursuant to Article 61 of the American Convention, to decide whether Trinidad and Tobago had violated C's rights to humane treatment under Articles 5(1 and 2), his right to be tried within a reasonable time under Article 8(1), and his right to judicial protection under Article 25, all in conjunction with violations of Article 1(1). The Commission also argued that by failing to provide for the right to be tried within a reasonable time under its domestic law, and by authorising a form of punishment incompatible with the right to humane treatment, the state was responsible for violating its obligations, under Article 2 of the Convention, to give domestic legal effect to the rights guaranteed by Articles 5(1 and 2), 7(5) and 8(1) of the Convention.

The Commission requested that the Court order the state to adopt pecuniary and non-pecuniary reparation measures.

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## **Decision and Reasoning**

The Court held:

(1) the state violated the rights provided in Article 5(1 and 2), in conjunction with Article 1(1), to the detriment of C, in that, (a) the state was obligated to abstain from imposing corporal punishment and to prevent its administration because, in any circumstance, corporal punishment constitutes a cruel, inhuman or degrading treatment or punishment, (b) the state's law (the Corporal Punishment Act) permitting flogging as a sanction is per se incompatible with the Convention, as it constitutes a form of torture, and (c) because the conditions of detention to which C was subjected failed to respect his physical, mental and moral integrity;

(2) by failing to abrogate the Corporal Punishment Act following the state's ratification of the Convention the state failed to comply with its obligation under Article 2, in relation to Article 5(1 and 2);

(3) with regard to the issue of whether C's right to be tried within a reasonable time, under Article 8(1), was violated, the Court can only consider the period between the date of the state's recognition of the Court's compulsory jurisdiction (28 May 1991) and the decision of the Court of Appeal on 28 February 1996 and, because during that period C's lawyers waited almost two years to request leave to appeal, the delay was not unreasonable and the state is not responsible for a violation of Article 8(1);

(4) the state violated C's rights as established under Article 25, in conjunction with Articles 1(1) and 2, because domestic judges were authorized to sentence C to flogging under the Corporal Punishment Act, originally adopted in 1953, and any appeal would have been most unlikely to succeed because, while the Constitution of Trinidad and Tobago forbids Parliament from imposing cruel and unusual treatment or punishment, it also contains a provision "the "savings clause" that saves from invalidation, and precludes challenge to, laws in force before 1976, the year the Constitution entered into force;

(5) reparations for the moral damages suffered by C, taking into account the aggravating circumstances of C's corporal punishment, the delay in executing the sentence, the symptoms from which C continues to suffer, and the serious health problems that the state authorities have not properly treated, the state is to (a) "grant indemnity" of USD 50,000 to C for moral damages; (b) provide C, free of charge and for such period as may be necessary, such medical and psychological care and maintenance as may be recommended by qualified specialists; (c) adopt, within a reasonable time, such legislative or other measures as may be necessary to abrogate the Corporal Punishment Act, and to amend, within a reasonable time, the Constitution of Trinidad and Tobago insofar as its provisions deny persons effective recourse to a competent court or tribunal to remedy violations of human rights; and (d) adopt within a reasonable time all necessary measures to bring the conditions of its prisons into compliance with the relevant international human rights norms.

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## **Decision Excerpts**