

HUMAN RIGHTS COMMITTEE

Quelch v. Jamaica

Communication No. 292/1988

15 March 1990

CCPR/C/38/D/292/1988 */

ADMISSIBILITY

Submitted by: Delroy Quelch (represented by counsel)

Alleged victim: The author

State party concerned: Jamaica

Date of communication: 24 February 1988 (date of initial letter)

Documentation references: Prior decisions - CCPR/C/WG/33/D/292/1988 (Working Group combined rule 86, rule 91 decision, dated 8 July 1988); CCPR/C/37/D/292/1988 (Interlocutory decision, dated 8 November 1989)

Date of present decision: 15 March 1990

The Human Rights Committee, acting through its Working Group pursuant to rule 87, paragraph 2, of the rules of procedure, adopts the following:

Decision on admissibility

1. The author of the communication (initial submission dated 24 February 1988 and subsequent correspondence) is Delroy Quelch, a Jamaican citizen currently awaiting execution at St. Catherine District Prison, Jamaica. He claims to be the victim of a violation by Jamaica of articles 6, paragraph 1, 7, 14, paragraphs 1 and 3(d), in conjunction with article 2, paragraph 3, of the International Covenant on Civil and Political Rights. He is represented by counsel.

2.1 The author states that he was arrested on 10 July 1984 on suspicion of complicity in the murder of a police constable, V. W., on 3 July 1984. He and his co-defendants, Errol Reece and Robert Taylor, were tried at the Portland District Court and sentenced to death on 2 June 1985. Their appeal was dismissed by the Court of Appeal of Jamaica on 15 December 1986. All three

defendants subsequently petitioned the Judicial Committee of the Privy Council for special leave to appeal. By decision of 27 July 1989, the Privy Council quashed the decision of the Jamaican Court of Appeal with respect to the author's co-defendants, whereas it dismissed the author's petition for special leave to appeal.

2.2 The author states that on 3 July 1984, he was approached by a man, whom he knew as "Chappel", and five other individuals. He was asked by Chappel to escort them since he was more familiar with the area they were heading to. On the way, they stopped to buy drinks, and the author and Chappel were ordered to wait while the others headed towards Moore Town Post Office a few blocks away. Upon their return, half an hour later, the men were armed with rifles and ordered the author to lead them to Millbank District, where they assaulted the driver of a van parked at the road side and drove off in the van to a nearby hill; there the men became engaged in a shoot-out with three policemen in plain clothes, one of whom was fatally shot. The author states that the men then threatened to kill him if he informed the police about the incident. He further maintains that it was only later the same day that he learned that the Moore Town Post Office had been robbed.

2.3 After his arrest, the author was placed on an identification parade during which, he claims, a serious error was made in that the parade sheet indicated that he was suspect No. 1, whereas he had been suspect No. 9. During the trial, the judge allegedly took note of this point. The author adds that the main prosecution witness, a policeman who survived the shooting, testified to having seen him twice at a gate, and then running close to the scene of the crime. He contends that the description of him given by this witness did not at all correspond to his appearance, in particular with his beard and the style of his hair at the time in question; furthermore he indicates that other witnesses who would have been able to support his version were not called to testify by his legal aid lawyer. With respect to his appeal, the author claims that his court-appointed lawyer did not appear at all for the hearing.

3. By decision of 8 July 1988, the Working Group of the Human Rights Committee transmitted the communication to the State party and requested it, under rule 91 of the rules of procedure, to provide information and observations relevant to the question of the admissibility of the communication. The State party was asked, in particular, to provide the Committee with the texts of the written judgements in the case and to clarify whether the author retained the right to petition the Judicial Committee of the Privy Council for leave to appeal. The State party was further requested, under rule 86 of the rules of procedure, not to carry out the death sentence against the author while his communication was under consideration by the Committee. The author was requested, under rule 91 of the rules of procedure, to provide a number of clarifications concerning the conduct of his identification parade and of his trial.

4. In his reply to the request for clarifications, the author states that he was assigned an inexperienced lawyer, who, in addition, was constantly obstructed in his defence by the judge. He concedes that the witnesses called to testify against him were cross-examined but reiterates that those whom he sought to have testify on his behalf were not called.

5. In its submission under rule 91, dated 16 November 1988, the State party contended that the author's communication was inadmissible on the ground of non-exhaustion of domestic remedies, since at that time he had not yet petitioned the Judicial Committee of the Privy Council for special

leave to appeal.

6. On 19 December 1988, the Judicial Committee of the Privy Council granted leave to appeal in the author's case. On 27 July 1989 the petition was dismissed on the merits.

7. In a further submission dated 28 September 1989, the State party contends, that in spite of the dismissal of the author's petition by the Judicial Committee of the Privy Council, the communication remains inadmissible for failure to exhaust domestic remedies, since the author has not pursued the remedies available to him under the Jamaican Constitution. In this context, the State party submits that the provisions of the Covenant invoked by the author (articles 6, 7, 14) are coterminous with the rights protected by Sections 14, 17 and 20 of the Jamaican Constitution, which guarantee to everyone the right to life, protection against torture, inhuman or degrading punishment or treatment, and due process of law, respectively. Under the Constitution, if anyone alleges that any of these fundamental rights has been, is being or is likely to be contravened in relation to him, he may, without prejudice to any other action with respect to the same matter which is lawfully available, apply to the Supreme Court for redress. The State party thus reiterates that the communication is inadmissible.

8. By submission of 30 November 1989, counsel argues that the central issue in the case relates to the treatment of identification evidence. He submits that the author's identification by the main prosecution witness, depended entirely on "fleeting glance", and points out that the witness admitted this himself during cross-examination. Counsel further contends that the author was denied the right to adequate and effective legal assistance, both during trial and appeal; in particular, his representative allegedly failed to call other witnesses to testify that the author's identification parade had not been properly conducted and to attest to the author's appearance at the time of the offence, in order to clarify the alleged discrepancies in the prosecution witness' evidence. Finally, counsel challenges the State party's contention that the author may still pursue constitutional remedies and submits that these remedies are not available to the author owing to lack of financial means and unavailability of legal aid for the purpose, despite the guarantees of Section 25(1) of the Jamaican Constitution. On 20 February 1990, counsel reiterates that a remedy which cannot be pursued in practice, is not an available remedy and, accordingly, concludes that the author has complied with article 5, paragraph 2(b), of the Optional Protocol.

9. By interlocutory decision of 8 November 1989, the Human Rights Committee requested the State party to forward clarification about the remedy which it submitted remained available to the author under the Jamaican Constitution. In its reply, dated 11 January 1990, the State party submits that the Supreme (Constitutional) Court has not had any occasion to determine, pursuant to Section 25, paragraph 2, of the Jamaican Constitution, whether an appeal to the Court of Appeal and the Judicial Committee of the Privy Council constitutes "adequate means of redress" for an individual who claims that his right to a fair trial as guaranteed in Section 2, paragraph 1, of the Constitution has been violated.

10.1 Before considering any claims contained in a communication, the Human Rights Committee must, in accordance with rule 87 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

10.2 The Committee has ascertained, as it is required to do under article 5, paragraph 2(a), of the Optional Protocol, that the same matter is not being examined by another procedure of international investigation or settlement.

10.3 The Committee has taken note of the State party's contention that the communication is inadmissible because of the author's failure to pursue constitutional remedies available to him under the Jamaican Constitution. In this connection, the Committee observes that Section 20, paragraph 1, of the Jamaican Constitution guarantees the right to a fair trial, while Section 25 provides for the implementation of the provisions guaranteeing the rights of the individual. Section 25, paragraph 2, stipulates that the Supreme (Constitutional) Court may "hear and determine" applications with regard to the alleged non-observance of constitutional guarantees, but limits its jurisdiction to such cases where the applicants have not already been afforded "adequate means of redress for the contraventions alleged" (Sect. 25, para. 2, *in fine*). The Committee notes that the State party was requested to clarify, in a number of interlocutory decisions, whether the Supreme (Constitutional) Court has had the opportunity to determine the question pursuant to Section 25, paragraph 2, of the Jamaican Constitution, whether an appeal to the Court of Appeal and the Judicial Committee of the Privy Council constitute "adequate means of redress" within the meaning of Section 25, paragraph 2, of the Jamaican Constitution. The State party has replied that the Supreme Court has so far not had said opportunity. Taking into account the State party's clarification, together with the absence of legal aid for filing a motion in the Constitutional Court and the unwillingness of Jamaican counsel to act in this regard without remuneration, the Committee finds that recourse to the Constitutional Court under Section 25 of the Jamaican Constitution is not a remedy available to the author within the meaning of article 5, paragraph 2 (b), of the Optional Protocol.

10.4 In respect of counsel's contention that the judge failed to adequately direct the jury on the issue of identification evidence in the case, the Committee reiterates that while article 14 of the Covenant guarantees the right to a fair trial, it is for the appellate courts of States parties to the Covenant to evaluate facts and evidence in a particular case. It is not in principle for the Committee to review specific instructions to the jury by the judge in a trial by jury, unless it can be ascertained that the instructions to the jury were clearly arbitrary or amounted to a denial of justice. ^{1/} The Committee has no evidence that the trial judge's instructions suffered from such defects. In this respect, accordingly, the communication is inadmissible as incompatible with the provisions of the Covenant, pursuant to article 3 of the Optional Protocol.

10.5 The Committee has further considered counsel's contention that the author suffered inhuman and degrading treatment in violation of article 7 of the Covenant but considers that this claim has not been sufficiently substantiated, as required pursuant to rule 90(b), of the Committee's rules of procedure.

11. The Human Rights Committee therefore decides:

(a) That the communication is admissible in so far as it may raise issues under article 14, paragraph 3(d), of the Covenant, in respect of the claim that no lawyer was present during the author's appeal;

(b) That, in accordance with article 4, paragraph 2, of the Optional Protocol, the State party shall be requested to submit to the Committee, within six months of the date of the transmittal to it of this

decision, written explanations or statements clarifying the matter and the measures, if any, that may have been taken by it;

*/ All persons handling this document are requested to respect and observe its confidential nature.

1/ See decision in communication 329/1988 (D.F. v. Jamaica), adopted on 26 March 1990, para. 5.2.

(c) That, with reference to the Working Group's decision of 14 March 1989, the State party shall again be requested, under rule 86 of the Committee's rules of procedure, not to carry out the death sentence against the author while his communication is under consideration by the Committee. The Committee observes in this connection that its request does not imply a determination on the merits of the communication;

(d) That any explanations or statements received from the State party shall be communicated by the Secretary-General under rule 93, paragraph 3, of the Committee's rules of procedure, to the author and his counsel, with the request that any comments that they may wish to submit thereon should reach the Human Rights Committee in care of the Centre for Human Rights, United Nations Office at Geneva, within six weeks of the date of the transmittal;

(e) That this decision shall be communicated to the State party, to the author and to his counsel.