

## HUMAN RIGHTS COMMITTEE

### Collins v. Jamaica

Communication No 356/1989

25 March 1993

CCPR/C/47/D/356/1989

### VIEWS

*Submitted by: Trevor Collins (represented by counsel)*

*Alleged victim: The author*

*State party: Jamaica*

*Date of communication: 17 April 1989*

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 25 March 1993,

Having concluded its consideration of communication No. 356/1989, submitted to the Human Rights Committee by Trevor Collins under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication, his counsel and the State party,

Adopts its

### **Views under article 5, paragraph 4, of the Optional Protocol**

1. The author of the communication is Trevor Collins, a Jamaican citizen awaiting execution at St. Catherine District Prison, Spanish Town, Jamaica. He claims to be a victim of violations by Jamaica of article 14, paragraphs 2 and 3 (b) to (e), of the International Covenant on Civil and Political Rights. He is represented by counsel.

## Facts as submitted

2.1 The author was accused, jointly with a co-defendant, Paul Kelly, a/ of the murder, on 2 July 1981, of one O. V. Jamieson. His trial took place in the Westmoreland Circuit Court from 9 to 15 February 1983; he and Mr. Kelly were found guilty as charged and sentenced to death. On 23 February 1983, the author appealed to the Court of Appeal of Jamaica. On 28 April 1986 the Court of Appeal, treating the application for leave to appeal as the hearing of the appeal itself, dismissed the appeal. The Court of Appeal did not issue a reasoned judgement but merely an oral judgement. Because of the absence of a reasoned appeal judgement, the author has not petitioned the Judicial Committee of the Privy Council for special leave to appeal.

2.2 The body of the deceased was discovered on 2 July 1981 in bushes near the road of Lennox Bigwoods. The previous day, the author and Mr. Kelly had sold a cow to one Basil Miller. The prosecution contended that the cow had been stolen from Mr. Jamieson, who had visited Mr. Miller's home in the evening of 1 July 1981 and identified the cow as his property. The accused allegedly ambushed Mr. Jamieson on his way home and beat him to death, as they believed that he had obtained from Mr. Miller the receipt implicating them in the theft of the cow. The author then allegedly threw his blood-stained clothes into a latrine next to his home and went to Kingston. Mr. Collins contests this version of the facts; he argues that he had obtained the cow from one Alvin Spence, and that he and his co-defendant arrived in Kingston several hours before the crime was committed.

2.3 The author notes that there were no witnesses to the crime, nor any forensic evidence which would have linked him to the deceased. Accordingly, the prosecution relied on circumstantial evidence, i.e. the blood-stained clothes found close to the author's home, the presence of a motive and the testimony of Mr. Kelly's sister and the author's brother, which conflicted with the version put forward by the accused. It further relied on confessions allegedly obtained from the accused upon their arrest; although the latter contended that the confessions were made under duress, the judge ruled them admissible. The author's appeal to the Court of Appeal was filed on the following grounds: (a) that the trial was unfair; (b) that there was insufficient evidence to warrant a conviction and (c) that the prosecution's evidence was contradictory.

## Complaint

3.1 The author submits that the delay of over three years in the determination of his appeal by the Jamaican Court of Appeal violates his right, under article 14, paragraph 3 (c), to be tried "without undue delay". He further claims that he was effectively unrepresented before the Court of Appeal, as his court-appointed representative merely stated that he found no merits in arguing the appeal.

3.2 It is submitted that the author's trial in the Westmoreland Circuit Court violated article 14, paragraph 3 (b), (d) and (e) and, as a result, the presumption of innocence of article 14, paragraph 2. In this context, counsel points out that the trial transcript reveals that no witnesses were called on the author's behalf although he had asked for witnesses to be called, that no evidence was adduced either in support of his alibi that he had left Westmoreland for Kingston several hours before the crime, nor in support of the claim that the cow Mr. Collins had sold to Basil Miller had been given to him by Mr. Spence. These points are said to indicate that the author's representation during the

trial was seriously deficient. Counsel adds that legal aid provided by the State party is such that it is all but impossible for any defendant's case to be properly prepared and/or for witnesses to be traced, as would be appropriate in a capital case.

3.3 With respect to the requirement of exhaustion of domestic remedies, the author notes that senior counsel instructed on his behalf advised there were no grounds upon which a petition for special leave to appeal to the Judicial Committee of the Privy Council could justifiably be filed. He had further suggested that the Jamaican Constitutional Court and the Court of Appeal would consider themselves bound by the decision of the Judicial Committee of the Privy Council in the case of *Riley et al. v. Attorney General of Jamaica*, and that no decision in the case could be taken unless and until a petition to the Judicial Committee were allowed or decided upon. Accordingly, the process of exhaustion of domestic remedies under the Jamaican Constitution and, thereafter, to the Judicial Committee would take several years. Counsel thus concludes that available and effective remedies have been exhausted. He adds that the application of domestic remedies has already been unreasonably prolonged, as the author has been detained on death row for close to 10 years.

#### State party's information and observations

4. The State party argues that the author retains the right, under Section 110 of the Jamaican Constitution, to petition the Judicial Committee of the Privy Council for special leave to appeal. It adds that the rights protected by article 14, paragraphs 2 and 3, are coterminous with those protected under Section 20 of the Jamaican Constitution. Under Section 25, the author could seek enforcement of his constitutional rights before the Supreme (Constitutional) Court. The State party notes that the author has failed to seek constitutional redress.

#### Committee's decision on admissibility and the State party's challenge thereof

5.1 During the thirty-seventh session, the Committee considered the admissibility of the communication. With respect to the requirement of exhaustion of domestic remedies, it noted that the Court of Appeal of Jamaica had not issued a written judgement in the case, the submission of which to the Judicial Committee could be considered a prerequisite for a petition for special leave to appeal to be entertained. In the circumstances, counsel could objectively assume that any petition for leave to appeal would fail, on account of the unavailability of a written judgement from the Court of Appeal. The Committee recalled that domestic remedies need not be exhausted if there are serious reasons for believing that they have no real prospect of success. On the basis of the information before it, it concluded that the requirements of article 5, paragraph 2 (b), of the Optional Protocol had been met.

5.2 On 17 October 1989, accordingly, the Committee declared the communication admissible.

6.1 In its submission under article 4, paragraph 2, of the Optional Protocol, the State party challenges the Committee's findings and reiterates that the author still has criminal remedies (before the Judicial Committee of the Privy Council) and constitutional remedies (before the Constitutional Court) which he is required to pursue. It adds that there are no grounds which would relieve Mr. Collins from his obligation to pursue these remedies, and that such delays as occurred in the proceedings cannot be attributed to the judicial authorities. Accordingly, there is no basis for the

assertion that the application of domestic remedies has been unreasonably prolonged.

6.2 Still in the context of exhaustion of domestic remedies, the State party observes that the Privy Council Rules do not make a written judgement of the Court of Appeal a prerequisite for a petition for special leave to appeal:

"Rule 4 provides that a petitioner for special leave to appeal lodge the judgment from which special leave to appeal is sought. However, 'judgment' is defined in Rule 1 as including 'decree, order, sentence or decision of any court, judge or judicial officer'. Thus the order or decision of the Court of Appeal in respect of a particular appeal, as distinct from the written judgment, is a sufficient basis for a petition for special leave to appeal to the Privy Council, and in practice the Privy Council has heard appeals on the basis of the order or decision of the Court of Appeal dismissing the appeal."

6.3 Finally, the State party contends that the facts relied upon by counsel to substantiate the author's allegations under article 14, paragraphs 2 and 3, do not disclose any breaches attributable to the Government. To the extent that the claims involve issues of evaluation of evidence, the State party maintains that the Committee is not competent to consider those issues.

#### Review of admissibility

7.1 The Committee has taken note of the State party's submission of 8 May 1990, which challenges the admissibility decision of 17 October 1989. It takes the opportunity to expand on its admissibility findings. The State party has argued that the Judicial Committee of the Privy Council may hear a petition for special leave to appeal even in the absence of a written judgement of the Court of Appeal; it bases itself on its interpretation of Rule 4 juncto Rule 1 of the Privy Council's Rules of Procedure. While the Judicial Committee's rules of procedure do not exclude this reasoning, it fails to take into account that, for purposes of the Optional Protocol, a judicial remedy must not only be available in theory but also be effective, that is, have a reasonable prospect of success. It is true that the Judicial Committee has heard several petitions concerning Jamaica in the absence of a written judgement of the Court of Appeal, but, on the basis of the information available to the Committee, all of these petitions were dismissed because of the absence of such a judgement. In this respect, therefore, there is no reason to reverse the Committee's admissibility decision.

7.2 Similar considerations apply to the possibility of instituting constitutional remedies before the Supreme (Constitutional) Court. This issue has already been examined by the Committee in its views on communications 230/1987 (Raphael Henry v. Jamaica) and 283/1988 (Aston Little v. Jamaica). b/ In the circumstances of these communications, the Committee concluded that a constitutional motion did not constitute an available and effective remedy within the meaning of article 5, paragraph 2 (b), of the Optional Protocol.

7.3 The Committee further notes that the State party does not provide legal aid for constitutional motions; as the author is unable to secure private legal representation for this purpose, it concludes that such a motion would not constitute a remedy which the author would be required to exhaust for purposes of the Optional Protocol, and that there is no reason to reverse the decision of 17 October 1989.

7.4 With regard to the author's contention that he was forced to confess his guilt, contrary to article 14, paragraph 3 (g), of the Covenant, the Committee notes that this claim was not submitted to the Committee until almost three years after the Committee's decision to declare the communication admissible. In the circumstances, the Committee does not admit this claim for consideration on the merits.

#### Examination of the merits

8.1 In respect of the author's claims under article 14, paragraph 3 (b) and (e), the Committee reiterates that the right of an accused person to have adequate time and facilities for the preparation of his defence is an important element of the guarantee of a fair trial and an important aspect of the principle of equality of arms. Wherever a capital sentence may be pronounced on the accused, it is imperative that sufficient time must be granted to the accused and his counsel to prepare their defence. The determination of what constitutes "adequate time" requires an assessment of the individual circumstances of each case. The author also contends that he could not obtain the attendance of witnesses. The material before the Committee does not disclose, however, whether either counsel or the author himself complained to the trial judge that the time or facilities for the preparation of the defence had been inadequate. Furthermore, there is no indication that counsel's decision not to call witnesses was not in the exercise of his professional judgement, or that, if a request to call witnesses was made, the judge disallowed it. Accordingly, there is no basis for a finding of a violation of article 14, paragraph 3 (b) and (e).

8.2 As to the author's legal representation before the Court of Appeal, the Committee reaffirms that it is axiomatic that legal assistance be made available to a convicted prisoner under sentence of death. This applies to all stages of the judicial proceedings. Counsel was entitled to recommend that an appeal should not proceed. But if the author insisted upon the appeal, counsel should have continued to represent him or, alternatively, Mr. Collins should have had the opportunity to retain counsel at his own expense. In this case, it is clear that legal assistance was assigned to Mr. Collins for the appeal. What is at issue is whether counsel had a right to effectively abandon the appeal without prior consultation with the author. Counsel indeed opined that there was no merit in the appeal, thus effectively leaving Mr. Collins without legal representation. While article 14, paragraph 3 (d), does not entitle the accused to choose counsel provided to him free of charge, measures must be taken to ensure that counsel, once assigned, provides effective representation in the interest of justice. This includes consulting with, and informing, the accused if he intends to withdraw an appeal or to argue, before the appellate instance, that the appeal has no merit.

8.3 Finally, because of the absence of a written judgement of the Court of Appeal, the author has been unable to effectively petition the Judicial Committee of the Privy Council. This, in the Committee's opinion, entails a violation of article 14, paragraph 3 (c), and article 14, paragraph 5. The Committee reaffirms that in all cases, and especially in capital cases, the accused is entitled to trial and appeal proceedings without undue delay, whatever the outcome of the judicial proceedings may turn out to be. c/

8.4 The Committee is of the opinion that the imposition of a sentence of death upon the conclusion of a trial in which the provisions of the Covenant have not been respected constitutes, if no further appeal against the sentence is available, a violation of article 6 of the Covenant. As the Committee

noted in its General Comment 6 (16), the provision that a sentence of death may be imposed only in accordance with the law and not contrary to the provisions of the Covenant implies that "the procedural guarantees therein prescribed must be observed, including the right to a fair hearing by an independent tribunal, the presumption of innocence, the minimum guarantees for the defence, and the right to review by a higher tribunal". In the present case, while a petition for special leave to appeal is in theory still available, it would not be an available remedy within the meaning of article 5, paragraph 2 (b), of the Optional Protocol (see para. 7.1 above). Accordingly, it must be concluded that the final sentence of death was passed without having met the requirements of article 14, and that as a result, the right protected by article 6 of the Covenant has been violated.

9. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, finds that the facts before it disclose violations of articles 6 and 14, paragraphs 3 (c), (d) and 5, of the Covenant.

10. The Committee is of the view that Mr. Trevor Collins is entitled to a remedy entailing his release. It requests the State party to provide information, within ninety days, on any relevant measures taken by the State party in compliance with the Committee's views.

\* Pursuant to rule 85 of the Committee's rules of procedure, Committee member Mr. Laurel Francis did not take part in the adoption of the Committee's views.

[Done in English, French and Spanish, the English text being the original version.]

#### Notes

a/ The Committee adopted its views on Mr. Kelly's communication on 8 April 1991, finding violations of articles 6, 9, 10 and 14 of the Covenant, and requested the State party to release Mr. Kelly; see communication No. 253/1987.

b/ Communication No. 230/1987, views adopted on 1 November 1991, paras. 7.1 to 7.5; communication No. 283/1988, views adopted on 1 November 1991, paras. 7.1 to 7.6.

c/ See views on communication No. 253/1987 (Paul Kelly v. Jamaica), adopted on 8 April 1991, para. 5.12.