HUMAN RIGHTS COMMITTEE

Reid v. Jamaica

Communication No. 355/1989

8 July 1994

CCPR/C/51/D/355/1989*

VIEWS

Submitted by: George Winston Reid

Victim: The author

State party: Jamaica

Date of communication: 23 February 1989 (initial submission)

Date of decision on admissibility: 25 March 1992

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

Meeting on 8 July 1994,

Having concluded its consideration of communication No. 355/1989 submitted to the Human Rights Committee by Mr. George Winston Reid 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 and the State party,

Adopts its

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

The facts as submitted by the author:

1. The author of the communication is George Winston Reid, a Jamaican citizen currently

detained at the General Penitentiary in Kingston, Jamaica. He claims to be a victim of a violation by Jamaica of his human rights.

2.1 The author was arrested for the murder of his girlfriend, who died of stab wounds in the Cornwall Regional Hospital on 9 January 1980. He claims to be innocent and maintains that his girlfriend was stabbed by an unidentified man in the course of a dispute in her house. The author was taken into custody and detained at Montego Bay for three and a half months. His legal aid attorney, Mr. E. Alcott, first met him about 10 minutes before the start of the trial on 22 April 1980. Without giving any details, the author claims that he was poorly defended. On 23 April 1980, he was sentenced to death. On 16 March 1981, he was notified by the Registrar of the Court of Appeal that his appeal had been dismissed on 27 February 1981. No reasoned judgment was issued, and the author's efforts to obtain copies of trial documents in his case failed.

2.2 Since 1981, the author has unsuccessfully sought legal assistance with a view to filing a petition for leave to appeal to the Judicial Committee of the Privy Council. His first representative, Mr. Alcott, emigrated. Mr. Alcott's daughter, also an attorney, declined to take the case because she did not think that there was merit in it. According to the author, the Notes of Evidence would clearly prove her wrong. He submits that he would be unable to pursue an appeal other than in forma pauperis, and that no legal aid has been made available to him.

2.3 On 19 September 1990, the author's death sentence was commuted to life imprisonment.

The complaint:

3. Although the author does not invoke any article of the International Covenant on Civil and Political Rights, it appears from his submission that he claims to be a victim of a violation by Jamaica of article 14 of the Covenant.

The State party's observations and the author's comments:

4.1 By submission of 7 July 1989, the State party argued that the communication was inadmissible on the grounds of failure to exhaust domestic remedies, since the author could still petition the Judicial Committee of the Privy Council for leave to appeal.

4.2 By further submission of 16 January 1992, the State party confirmed that the author's application for leave to appeal had been refused by the Court of Appeal on 27 February 1981, in an oral judgment, which has not been issued in writing.

4.3 The State party explained that "where an application for leave to appeal is heard and an oral judgment is delivered, it is not permissible in law for the presiding judge or any other judge on that panel to give a written judgment in the same case, unless he had promised to do so at the time of the application for leave to appeal. The reason for this is that once the case is heard and determined, the judges are functus officio and cannot afterwards write up a judgment and put it on the files".

5. In his reply to the State party's submission, the author's counsel, who had agreed to represent him pro bono for purposes of a petition for special leave to appeal to the Judicial Committtee of the Privy Council, stated that he had been advised by leading counsel that there were no grounds upon which to petition the Privy Council. He therefore argued that the author was without an effective domestic remedy.

The Committee's admissibility decision:

6. At its 44th session, the Committee considered the admissibility of the communication. It noted the State party's contention that the communication was inadmissible because of the author's failure to petition the Judicial Committee of the Privy Council for special leave to appeal. It also noted that it was uncontested that no reasoned judgment of the Court of Appeal had been issued. Considering that the Judicial Committee cannot sustain arguments that are not corroborated by a written judgment of the Court of Appeal and taking into account the advise given by leading counsel, the Committee concluded that a petition to the Judicial Committee did not, in the special circumstances of the case, constitute an available and effective remedy within the meaning of article 5, paragraph 2(b), of the Optional Protocol.

7. On 25 March 1992, the Committee therefore declared the communication admissible in so far as it might raise issues under article 14, paragraphs 3 and 5, of the Covenant.

Review of admissibility:

8. By submission of 26 October 1992, the State party again argued that the communication was inadmissible for failure to exhaust domestic remedies, since the author could still petition the Judicial Committee of the Privy Council.

9. In his comments, dated 17 January 1993, on the State party's submission, the author submitted that, in the absence of a written judgment by the Court of Appeal, an appeal to the Privy Council only constituted a theoretical remedy and not one that is practically available.

10. The Committee has taken note of the arguments submitted to it by the State party and the author and reiterates that domestic remedies within the meaning of the Optional Protocol must be both available and effective. The Committee notes that, in the absence of a written judgment by the Court of Appeal, the Judicial Committee of the Privy Council routinely dismisses petitions for special leave to appeal [1] It reiterates that, in the absence of a written judgment by the Court of Appeal, a petition for special leave to appeal to the Judicial Committee of the Privy Council does not, in the circumstances of the instant case, constitute an available remedy within the meaning of article 5, paragraph 2(b), of the Optional Protocol. There is therefore no reason to revise the Committee's earlier decision on admissibility of 25 March 1992.

Examination of the merits:

11.1 As to the merits of the communication, the State party, by submission of 26 October

1992, argues that there has been no violation of article 14, paragraph 5, in the author's case. In this connection, the State party notes that the Court of Appeal reviewed the author's conviction and sentence and that it was open to the author to seek leave to appeal from this judgment to the Privy Council.

11.2 With regard to the author's claim under article 14, paragraph 3, the State party, by further submission of 12 May 1993, argues that it is unable to submit its comments, since the author has not alleged specific violations of the particular provisions under article 14, paragraph 3, and since the Committee, in its admissibility decision, has not identified the specific sub-paragraphs either. The State party argues that, under the Optional Protocol, an individual is under an obligation to invoke specific provisions of the Covenant, in order to enable the State party to reply properly to the communication. It further argues that a State party cannot be expected to answer to allegations when it is unaware of their contents.

12. At its 49th session, the Committee considered the communication and decided, on 22 October 1993, to request the State party to comment on the author's claim that he only met his legal aid attorney 10 minutes before the start of the trial and to clarify how the right to adequate time and facilities for the preparation of the defense was guaranteed to the author, as provided in article 14, paragraph 3(b), of the Covenant. In this context, the Committee also inquired when the legal aid attorney was appointed, whether he was present at the preliminary inquiry and whether the relevant depositions were made available to the attorney and if so, when. The Committee further decided to request the State party to provide information in respect of Mr. Reid's appeal, in particular to clarify whether Mr. Reid was able to appeal his conviction and sentence unconditionally or whether his right to appeal was dependent on the prior granting of leave to appeal.

13.1 In two further letters, dated 21 November 1993 and 25 February 1994, the author explains that he was represented during the preliminary inquiry by a legal aid lawyer, who later did not represent him at the trial. He further submits that this legal aid lawyer was only present on the first day of the preliminary hearings and that he was not represented on the second day, when evidence was given by a medical doctor. He alleges that the doctor did not speak English, but Spanish, that there was no interpretation and that, when it became clear that the investigating magistrate and the witness could not understand each other, the doctor produced a written statement, which had been prepared in advance. By the time of the trial, the doctor had returned to his home-country Cuba, and the written statement was rendered as evidence. The author claims that he has difficulties further substantiating his allegations, since the State party has failed to provide him with a copy of the trial transcript.

13.2 No information or observations have been forwarded by the State party, despite a reminder sent on 3 May 1994. The Committee notes with regret the absence of cooperation from the State party with the Committee's request for further information, and recalls that it is implicit in article 4, paragraph 2, of the Optional Protocol, that a State party make available to the Committee all the information at its disposal. In the circumstances, due weight must be given to the author's allegations, to the extent that they have been substantiated.

14.1 The Human Rights Committee has considered the present communication in the light of all the information made available to it by the parties, as provided in article 5, paragraph 1, of the Optional Protocol.

14.2 As regards the author's claim that he did not have adequate time and facilities for the preparation of his defence, the Committee notes that it is uncontested that the legal aid lawyer who represented the author at the preliminary inquiry was not present at all the hearings and that the author met the legal aid lawyer who was going to represent him at the trial only ten minutes before its start. In the absence of any evidence that might prove otherwise, the Committee considers that the time and facilities for the preparation of the author's defence were not adequate and that this must have been known to the investigating magistrate and the trial judge. The Committee therefore concludes that the facts of the case reveal a violation of article 14, paragraph 3(b), of the Covenant.

14.3 Concerning the proceedings before the Court of Appeal, the Committee recalls that article 14, paragraph 5, states that everyone convicted of a crime shall have the right to have his conviction and sentence reviewed by a higher tribunal according to law. The Committee considers that, while the modalities of an appeal may differ among the domestic legal systems of States parties, under article 14, paragraph 5, a State party is under an obligation to substantially review the conviction and sentence. In the instant case, the Committee considers that the conditions of the dismissal of Mr. Reid's application for leave to appeal, without reasons given and in the absence of a written judgment, constitute a violation of the right guaranteed by article 14, paragraph 5, of the Covenant.

14.4 As regards the author's right to petition the Judicial Committee of the Privy Council for leave to appeal, the Committee notes that the Court of Appeal did not produce a written judgment. In these circumstances, the author was prevented from effectively petitioning the Judicial Committee of the Privy Council for special leave to appeal. The Committee recalls that the words "according to law" in article 14, paragraph 5, are to be interpreted to mean that if domestic law provides for further instances of appeal, the convicted person must have effective access to each of them. Moreover, in order to enjoy the effective use of this right, the convicted person is entitled to have, within reasonable time, access to written judgments, duly reasoned, for all instances of appeal. [2] In this connection, the Committee refers to its earlier jurisprudence and reaffirms that article 14, paragraph 3(c), and article 14, paragraph 5, are to be read together, in the sense that the right to review of conviction and sentence must be made available without undue delay at all instances. [3] The Committee concludes that in the instant case there has been a violation of article 14, paragraphs 3(c) and 5, of the Covenant in this respect.

15. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts before it disclose a violation of article 14, paragraphs 3(b), 3(c) and 5, of the International Covenant on Civil and Political Rights.

16. The Committee is of the view that Mr. Reid is entitled to an appropriate remedy under article 2, paragraph 3, of the Covenant. In this case, as the Committee finds that Mr. Reid

did not receive a fair trial within the meaning of the Covenant, the Committee considers that the appropriate remedy entails his release. The State party is under an obligation to ensure that similar violations do not occur in the future.

17. The Committee would wish to receive information, within ninety days, on any relevant measures taken by the State party in respect of the Committee's Views.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

Footnotes

*/ Made public by decision of the Human Rights Committee.

1/ See inter alia communications Nos. 230/1987 (Raphael Henry v. Jamaica , Views adopted on 1 November 1991) and 253/1987 (Paul Kelly v. Jamaica , Views adopted on 8 April 1991).

Rules 3 and 4 of the Judicial Committee (General Appellate Jurisdiction) Rules Order read: "3(1) A petition for special leave to appeal shall (a) state succinctly all such facts as it may be necessary to state in order to enable the Judicial Committee to advise Her Majesty whether such leave ought to be granted; (b) deal with the merits of the case only so far as is necessary to explain the grounds upon which special leave to appeal is sought; ... 4. A petitioner for special leave to appeal shall lodge (a) six copies of the petition and of the judgment from which special leave to appeal is sought; ..."

2/ See the Committee's Views in communication No. 230/1987 (Raphael Henry v. Jamaica , Views adopted on 1 November 1991), paragraph 8.4. See also communication No. 320/1988 (Victor Francis v. Jamaica , Views adopted on 24 March 1993).

3/ See the Committee's Views concerning communications Nos. 210/1986 and 225/1987 (Earl Pratt and Ivan Morgan v. Jamaica), adopted on 6 April 1989, paragraphs 13.3 to 13.5.