HUMAN RIGHTS COMMITTEE

Chung v. Jamaica

Communication No. 591/1994

13 October 1995

CCPR/C/55/D/591/1994*

ADMISSIBILITY

Submitted by: Ian Chung

Alleged victim: The author

State party: Jamaica

Date of communication: 1 December 1993 (initial submission)

Documentation references: Prior decisions - Special Rapporteur's combined rule 86/rule 91 decision, transmitted to the Stated party on 5 September 1994 (not issued in document form)

Date of present decision: 13 October 1995

The Human Rights Committee, acting through its Working Group pursuant to rule 87, paragraph 2, of the Committee's rules of procedure, adopts the following decision on admissibility.

Decision of admissibility

1. The author of the communication is Ian Chung, a Jamaican citizen currently serving a term of life imprisonment. He claims to be a victim of violations by Jamaica of articles 6, 7, 10 paragraph 1, and 14, paragraphs 1, 2, and 3(g), of the International Covenant on Civil and Political Rights. The author is represented by counsel.

The facts as submitted by the author

2.1 The author was arrested together with two co-defendants, Dwayne Hylton 1/ and Dennie Wilson, on 21 August 1986 and charged with the murder of a taxi driver, one Christopher Prince. He was tried in the Manchester Circuit Court (Mandeville District), found guilty as charged and sentenced to death on 26 May 1988; so were his co-defendants. His appeal was dismissed by the

Court of Appeal of Jamaica on 16 May 1990. A subsequent petition for special leave to appeal was dismissed by the Judicial Committee of the Privy Council on 21 June 1993. On 11 July 1995, the author's death sentence was commuted to life imprisonment.

2.2 The case for the prosecution was that Mr. Chung and his co-defendants, during the night of 6 to 7 July 1986, after a visit to the Tracks Discotheque in Mandeville, had boarded a taxi and then stabbed its driver, Mr. Prince, who died of his injuries. A witness for the prosecution, who had initially been charged along with the defendants, testified that he had seen the taxi with the defendants on board, entered it himself, only to find a dead body lying in the car. He left the vehicle in Kingston, after having been threatened by the author not to reveal anything to the police.

2.3 In court, the prosecution also produced as evidence statements made by the defendants, which had been given to the police after their arrest and after having been cautioned. From these statements, it transpired that the author and his co-defendants wanted to leave Jamaica as stowaways on a ship. They had promised Mr. Prince money to drive them to Kingston, but then killed him since they had no money. The author, in his statement, indicated that he had been told by one of the other defendants to cut Mr. Prince's throat, but that he had marked his knife on the victim's chest instead, as he did not want to kill him. The victim was placed in the trunk of the taxi, and thrown out next to a mud lake. When driving away, the defendants realized that Mr. Prince was still alive. One of the author's co-defendants left the car and stabbed Mr. Prince in the back.

2.4 According to the medical evidence produced during the trial, the deep cut on the chest, allegedly the result of the author's stab, could have caused the victim's death, as it had punctured the heart at its base.

2.5 During the trial, the author made an unsworn statement from the dock, stating that he had been at the discotheque until 11:30 p.m. on 6 July 1986, and then returned home with some friends in Prince's taxi. He contended that the police had forced him to sign the statement later produced as evidence by the prosecution. After a voir dire, the judge admitted said statement as evidence.

2.6 As to the requirement of exhaustion of local remedies, the author acknowledges that he did not apply for constitutional redress to the Supreme Court. He claims, however, that a constitutional motion would inevitably fail, in the light of relevant judicial precedents. Moreover, even if a constitutional motion were an effective remedy in theory, it would not be available to him in practice, because of his own indigence and in the absence of legal aid for the purpose of constitutional motions.

The complaint

3.1 It is submitted that on 21 August 1986, during interrogation by three policemen at the Mandeville Police Station, the author was severely beaten by one of the investigating officers 2/. He also claims that he was threatened with a gun. Under duress, he agreed to sign a prepared statement so as to avoid further beatings and stress. At this particular moment, the author was without representation. He claims that the treatment he was subjected to violated articles 7, 10, paragraph 1, and 14, paragraph 3(g), of the Covenant.

3.2 According to the author, he and his co-defendants were brutalized and terrorized, mentally and physically, by members of the public every time they attended the court sessions; he adds that his family and his representative were also threatened. When the trial started, author's counsel asked for a change of venue since, in the circumstances, the author's defence was highly prejudiced and that his client would not benefit from a fair trial. He further argued that pre-trial publicity given to the case had severely prejudiced the public, including the jurors drawn from the Parish of Manchester, who would be prejudiced against the author. The request for change of venue was rejected by the judge. It is contended that this violated the author's right to a fair trial before an independent and impartial tribunal (article 14, paragraph 1), and his right to be presumed innocent until found guilty (article 14, paragraph 2).

3.3 In the author's opinion, the trial judge erred by not leaving the issue of manslaughter open to the jury's consideration. He submits that on the basis of his statement to the police, many doubts about his intention remained, which would have precluded a verdict of murder. It is argued that the judge's directions to the jury amounted to a denial of justice, in violation of article 14, paragraph 1. Furthermore, the death sentence pronounced against the author allegedly violated his right under article 6, paragraph 2, as it was imposed after a trial which did not meet the requirements of article 14.

3.4 As to the conditions of his detention on death row, the author contends that he has been subjected to beatings and other forms of ill-treatment on the death row section of St. Catherine District Prison, in violation of articles 7 and 10, paragraph 1. He claims that, after one inmate had been beaten to death by warders in 1989, warders returned the following day to beat him up in turn. Although he suffered a kidney injury, he was left in his cell for four days before being brought to hospital. The author complained about the ill-treatment to the Parliamentary Ombudsman on 12 January and 10 September 1989, to no avail. His counsel requested further information from the Ombudsman about the author's complaint, without success.

3.5 Finally, it is submitted that the period of time spent on death row - from 26 May 1988 to the present day - amounts to a violation of article 7 of the Covenant. Reference is made to the judgment of 2 November 1993 of the Judicial Committee of the Privy Council in Earl Pratt and Ivan Morgan v. Attorney-General of Jamaica.

State party's admissibility information and counsel's comments thereon

4.1 In its submission under rule 91, dated 17 February 1995, the State party submits that the decision of the Judicial Committee of the Privy Council in Pratt and Morgan v. Attorney-General of Jamaica is no authority for the proposition that the execution of a person detained on death row for more than five years automatically constitutes cruel and inhuman treatment contrary to the Jamaican Constitution. It invokes the Committee's own Views on the above case, where it had been held that prolonged judicial proceedings and detention on death row did not per se constitute cruel, inhuman and degrading treatment, and that an assessment of the circumstances of each case would be necessary.

4.2 The State party recalls that the author's allegations under articles 7, 10, paragraph 1, and 14, paragraph 3(g), in respect of ill-treatment during police interrogation were examined in a voir-dire

during the trial: accordingly, these allegations were subject to judicial scrutiny at a time when the author was represented. As the trial judge was not satisfied of the accuracy of the allegations, and this part of the complaint was being related to the evaluation of evidence in the case, it is submitted that the author's allegation is inadmissible ratione materiae, as it relates to issues of facts and evidence which the Committee has no competence to assess.

4.3 On the issue of the author's purported ill-treatment by warders in 1989, the State party promises an investigation of the matter, pointing out however that the circumstances of the alleged incident would set out in more detail to assist in a prompt investigation of the matter. As of 15 October 1995, the Committee had not been informed of the results of the State party's investigation. The State party adds that its readiness to investigate the author's allegation does not in any way imply that it accepts the assertion that the Parliamentary Ombudsman routinely fails to investigate such claims. Nor does it accept that death row inmates are generally afraid to notify the authorities of ill-treatment; thus, the Inspectorate of the Ministry of National Security and Justice is investigating several cases in which allegations of ill-treatment have been made by inmates.

4.4 The State party refuses the allegation that article 14, paragraph 1, was violated because of the judge's refusal to change the trial venue and his failure to put the possibility of a manslaughter verdict to the jury. Both issues are said to relate to matters of evaluation of facts and evidence. The State party explains that on the issue of change of venue, Section 34 of the Judicature (Supreme Court) Act allows a judge to grant a change of venue where good cause is shown: the trial judge exercised his discretion and did not allow such a change. For the State party, the exercise of such discretion is not a matter to be examined by the Committee, unless there has been a flagrant violation of fundamental rights.

4.5 Similarly, the State party notes that the issue of whether a verdict of manslaughter should have been left to the jury was equally evaluated by the Court of Appeal. For the State party, "... in a situation where a determination depends on an assessment of facts and evidence, [the Committee] is in no position to hold that there has been a breach of the Covenant, unless ... in a case of flagrant abuse of fundamental rights".

5.1 In his comments, counsel challenges the State party's assertion that the judgment of the Judicial Committee of the Privy Council in Pratt and Morgan is no general authority for holding that detention on death row for over 5 years constitutes treatment in violation of article 7. He points out that the Judicial Committee's Guidelines apply to all prisoners incarcerated on death row for more than 5 years - detention on death row for over 5 years is said to constitute per se cruel, inhuman and degrading treatment.

5.2 As to the allegation of Mr. Chung's ill-treatment during interrogation, counsel submits that the examination of the issue in a voir dire during the trial does not relate to evaluation of facts and evidence and thus cannot be deemed to constitute an admissibility issue. He contends, by reference to the Committee's own established jurisprudence 3/, that the issue should be examined on the merits.

5.3 Counsel denies that the author's claim of ill-treatment on death row by prison warders has not been set out in sufficient detail. He recalls that Mr. Chung "made separate complaints to the office

of the Parliamentary Ombudsman, who replied on 2 February 1989 and 26 September 1989 ... assuring Mr. Chung that the complaints would receive prompt attention". It is submitted that the State party should seek assistance from the Office of the Parliamentary Ombudsman rather than the author in having the claim investigated promptly; counsel himself wrote to the Office of the Parliamentary Ombudsman on 15 September and 19 October 1993 to request further factual details on his client's complaint - no reply was ever received.

5.4 Finally, counsel argues that the author's allegation of harassment and brutalization on the occasion of attendance of the trial in the Manchester Circuit Court points to gross and flagrant violations of article 14, paragraphs 1 and 2. As such, these claims cannot be subsumed under evaluation of facts and the criminal evidence in the case and should thus be considered on their merits.

Issues and proceedings before the Committee

6.1 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.

6.2 The Committee has noted the claim that the author's detention on death row for a prolonged period - since May 1988 - amounts to a violation of article 7 of the Covenant. However, it remains the jurisprudence of the Committee that detention for any specific period would not be a violation of article 7 of the Covenant in the absence of further compelling circumstances 4/, although an assessment of the particular circumstances of each case may be required. In the instant case, the author has not substantiated, for purposes of admissibility, any compelling circumstances of his case which would raise an issue under article 7 of the Covenant. This part of the communication is therefore inadmissible pursuant to article 2 of the Optional Protocol.

6.3 As to the allegation under articles 7, 10, paragraph 1, and 14, paragraph 3(g), in respect of the author's ill-treatment during police interrogation, the Committee notes the State party's argument that since these claims were examined in a voir dire during the trial and found to be devoid of substance, they relate in reality to evaluation of facts and evidence and should thus be ruled inadmissible. The Committee notes that, in effect, the issue of whether the author was compelled to confess his guilt was the subject of detailed consideration during the trial and left for the jury to evaluate. The Committee reiterates that it is in general for the appellate courts of States parties to the Covenant to evaluate facts and evidence in a case. Similarly, it is not in general for the Committee to challenge the judge's instructions to the jury, unless the instructions were clearly arbitrary or amounted to a denial of justice. There is no evidence that the judge's decision to admit the author's caution statement as evidence or his instructions to the jury suffered from such defects. Accordingly, this part of the communication is inadmissible as incompatible with the provisions of the Covenant, under article 3 of the Optional Protocol.

6.4 The Committee also has noted the author's allegation that his trial was not compatible with the requirements of article 14, paragraphs 1 and 2, because of the pressure the author and his co-defendants were subjected to in the Manchester Circuit Court, and the judge's refusal to change the venue. It does not accept the State party's assertion that the judge's exercise of discretion not to

change the venue must be subsumed under evaluation of facts and evidence in the case. Rather, the author's allegations suggest an atmosphere of hostility and bias which have had a bearing on his right to a fair trial before an independent and impartial tribunal. As such, they should be considered on their merits.

6.5 The Committee regrets that the State party has not provided it with the results of its investigations into the author's ill-treatment by warders on death row. Thus, the author's contention that his attempts to bring his grievances to the attention of the prison authorities and of the Parliamentary Ombudsman were unsuccessful has not been challenged. In the circumstances, the Committee finds that the author has met the requirements of article 5, paragraph 2(b), of the Optional Protocol in this respect, and considers that the allegation may raise issues under articles 7 and 10, paragraph 1.

6.6 Finally, in as much as the author's allegation that the trial judge erred in not putting the possibility of a verdict of manslaughter to the jury is concerned, the Committee concludes that this allegation indeed relates to matters of evaluation of facts and evidence in the case. The facts before the Committee do not show that the judge's instructions to the jury were manifestly arbitrary or amounted to a denial of justice; accordingly, this claim is inadmissible as incompatible with the provisions of the Covenant, in accordance with article 3 of the Optional Protocol.

7. The Human Rights Committee therefore decides:

(a) that the communication is admissible in so far as it appears to raise issues under articles 7, 10, paragraph 1, and 14, paragraphs 1 and 2, of the Covenant;

(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 transmittal to it of the present decision, its observations and comments on the measures, if any, that may have been taken by it;

(c) that the Secretary-General shall transmit said observations and comments pursuant to rule 93, paragraph 3, of the rules of procedure, to the author and to his counsel, with the request that any comments that they may wish to make thereon should reach the Committee in care of the Centre for Human Rights, United Nations Office at Geneva, within six weeks of the date of the transmittal;

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

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

1/ Consideration of Mr. Hylton's communication No. 407/1990 was concluded by adoption of Views on 8 July 1990; a subsequent communication submitted on his behalf is pending under registry number 600/1994.

2/ The author identifies this officer.

3/ See, e.g., Views on case No. 253/1987 (Paul Kelly v. Jamaica), Views adopted 8 April 1991, paragraph 5.5.

4/ See, for example, inadmissibility decision in case No. 541/1993 (Errol Simms v. Jamaica), adopted on 3 April 1995, paragraph 6.5.