

HUMAN RIGHTS COMMITTEE

Martin v. Jamaica

Communication No. 317/1988

15 March 1990

CCPR/C/38/D/317/1988*

ADMISSIBILITY

Submitted by: Howard Martin (represented by counsel)

Alleged victim: The author

State party concerned: Jamaica

Date of communication: 5 August 1988 (date of initial letter)

Documentation references: Prior decisions - CCPR/C/33/D/317/1988 (Special Rapporteur's combined Rule 86, rule 91 decision, dated 19 August 1988)

Date of present decision: 15 March 1990

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

Decision on admissibility

1. The author of the communication (initial submission dated 5 August 1988 and subsequent correspondence) is Howard Martin, a Jamaican citizen currently awaiting execution at St. Catherine District Prison, Jamaica. He claims to be the victim of a violation of articles 6, 7, 10 and 14 of the International Covenant on Civil and Political Rights by Jamaica. He is represented by counsel.

2.1. The author states that he was sentenced to death on 17 February 1981 in the Home Circuit court of Kingston for the murder, on 22 September 1979, of one Rupert Wisdom. The Jamaican Court of Appeal dismissed his appeal on 11 November 1981. Over six and a half years later, on 11 July 1988, the author's petition for special leave to appeal was dismissed by the Judicial Committee of the Privy Council. The Judicial Committee of the Privy Council did, however, express grave concern about the delays in the case, and stated "... that attention should be given to devising

procedures which will eliminate distressful delays of this character”. It cannot be seen from the information before the Human Rights Committee why the author did not petition the Judicial Committee of the Privy Council earlier than in 1988. The “delays” referred to by the Judicial Committee of the Privy Council appear to concern the delays in the appeals procedure.

2.2 As to the facts, the author states that on the evening of 22 September 1979, he had been engaged in a heated discussion with a female acquaintance outside the gate of her home. Mr. Wisdom approached them, told him to leave the premises and allegedly struck him on the forehead with a bottle. The author then grabbed a piece of steel lying on the ground and turned to the alleged attacker, who had been following him. In the fight that ensued, Mr. Wisdom was fatally injured.

2.3 The author claims that this trial was unfair, and that the trial judge erred in failing to direct the jury on the issue of involuntary manslaughter. He argues that it was clear from the evidence in the case that it was more than doubtful whether he had any intent to kill or cause grievous bodily harm; even though his attorney had not relied on this defence argument, the Judge was under a duty to address it. Further, he claims that the Judge erred in law while summing up the case for the jury, inter alia with respect to the issues of self-defence, provocation and the author’s intent.

2.4 Referring to the delays in the execution of his death sentence, the author contends that they are contrary to due process of law and to Section 14, paragraph 1, of the Jamaican Constitution, which stipulates that an accused person’s trial and the execution of the sentence handed down will take place within a reasonable time. Furthermore, he alleges that the delays in the execution of the sentence is contrary to Section 17, paragraph 1, of the Constitution of Jamaica, which lays down that no person shall be subjected to torture or to degrading punishment or other treatment. He argues that the length of time spent on death row and the permanent anxiety he lives in constitutes such treatment

3. By decision of 19 August 1988, the Special Rapporteur 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. He further requested the State party, 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.

4. In its submission under rule 91, dated 1 December 1988, the State party argues that the communication is inadmissible pursuant to article 5, paragraph 2(b), of the Optional Protocol, because the author has failed to exhaust all domestic remedies available to him. The State party states that the rights invoked by the author, contained in articles 6, 7, 10 and 14 of the International Covenant on civil and Political Rights “are coterminous to the fundamental rights guaranteed to every person in Chapter III of the Jamaican Constitution” (Sections 14, 17 and 20 of the Constitution). Pursuant to Section 25 of the Constitution, an individual claiming that any of the provisions referred to above has been, is being or is likely to be contravened in relation to him, may apply to the Supreme court for redress. The State party reiterates that the author has not taken any action under Jamaican law to pursue a constitutional motion and that, therefore, his communication is inadmissible.

5.1 By letter dated 9 May 1989, author's counsel contests that the procedure referred to by the State party is an effective domestic remedy within the meaning of article 5, paragraph 2(b), of the Optional Protocol. He argues that the State party does not provide legal aid, pursuant to the Poor Prisoner's Defence Act, with respect to a constitutional motion before the Supreme court of Jamaica. Accordingly, the author cannot avail himself of the remedy indicated by the State party, since he cannot afford to instruct a lawyer. Counsel further observes that the Jamaica Council for Human Rights has tried in vain to solicit the services of a lawyer to prepare, on a no-fee basis, a constitutional motion on behalf of the author.

5.2 Counsel further refers to the decision of the Judicial Committee of the Privy Council in the case of Riley et al. v. the Attorney-General (1981), where it was decided by a majority (3/2) that whatever the reasons for, or length of, delay in executing a sentence of death lawfully imposed, the delays can afford no ground for holding the execution to be in contravention of Section 17 of the Jamaican Constitution. Accordingly, he submits, there are no grounds on which an application by way of constitutional motion to the Supreme Court of Jamaica could successfully be brought. Any such motion would inevitably fail and be decided against the applicant: as a result, a constitutional motion is not a domestic remedy available to the applicant.

6.1 By further letter dated 22 May 1989, the author claims that during the preliminary enquiry, the evidence given by two eye-witnesses was contradictory. Only one of them testified during the trial, and the author alleges that her evidence was at odds with her previous statement. When the author's representative questioned her on the matter, he was interrupted by the trial judge, who ruled out further cross-examination on the matter. The author further submits that this witness was a close friend of the police officer in charge of the investigations of his case and that she was accompanied by this police officer to the court each day.

6.2 The author further states that in February 1988 he was removed to the death cell, after a warrant for his execution had been issued. He was granted a last minute stay because of his attorney's efforts to submit a petition for special leave to appeal to the Judicial Committee of the Privy Council. The author claims that this event caused him unnecessary mental and physical suffering.

7.1 Before considering any claim 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.

7.2 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 under another procedure of international investigation or settlement.

7.3 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” (Section 25, paragraph 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, 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 to these interlocutory requests in the negative. 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.

7.4 The Committee notes that part of the author’s allegations concern claims about irregularities in the court proceedings, in that the judge failed to adequately instruct the jury on the issue of involuntary manslaughter. The Committee reiterates that the review by it of specific instructions to the jury in a trial by jury is beyond the scope of application of article 14, unless it can be ascertained that the instructions to the jury were clearly arbitrary or amounted to a denial of justice. The Committee has no evidence that the judge’s instructions suffered from such defects. This aspect of the author’s communication is inadmissible as incompatible with the provisions of the Covenant pursuant to 3 of the Optional Protocol.

7.5 In as much as the author’s other allegations are concerned, the Committee notes that they relate to articles 7 and 14, paragraphs 3 (c) and 5, of the Covenant, as noted in the Privy Council’s decision of 11 July 1988. They should, accordingly, be considered on the merits.

8. The Human Rights Committee therefore decides:

(a) That the communication is admissible in so far as it may raise issues under articles 7 and 14, paragraphs 3(c) and 5 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 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;

(c) That the State party shall 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. This request does not imply a determination on the merits of the communication;

(d) That any explanation 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.

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