

HUMAN RIGHTS COMMITTEE

N. A. J. v. Jamaica

Communication No. 246/1987

26 July 1990

ADMISSIBILITY

Submitted by: N. A. J. [name deleted]

Alleged victim: The author

State party: Jamaica

Date of communication: 6 August 1987 (date of initial letter)

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

Meeting on 26 July 1990,

Adopts the following:

Decision on admissibility

1. The author of the communication (initial submission dated 6 August 1987, model communication dated 3 November 1987 and subsequent correspondence) is N. A. J., a Jamaican citizen currently awaiting execution at St. Catherine District Prison, Jamaica. He claims to be the victim of a violation by the Government of Jamaica of articles 6, 7 and 14 of the International Covenant on Civil and Political Rights. He is represented by counsel.

2.1 On 5 October 1977, the author was convicted and sentenced to death in the Home Circuit Court, Kingston, for murder, on 15 January 1976, of one P. N. The Court of Appeal of Jamaica dismissed his appeal on 23 February 1978. In January 1988, the death sentence was commuted to life imprisonment by the Government-General of Jamaica.

2.2 As to the facts of the case, a/ the author states that on 15 January 1976 at about 8 p.m., he went to the deceased's house to visit his girlfriend. Together with his girlfriend and her baby were Mr. M., the prosecution's main witness, P. N. and another individual. The author submits that an

argument developed between the deceased and himself in the course of which the deceased produced a knife and tried to stab him. The ensuing fight was interrupted by a friend of the deceased. The author then left the premises. On the following day, he claims, he was informed about N's death.

2.3 The author argues that he was poorly assisted by his court-appointed lawyer; this lawyer, in his statement of defence before the Home Circuit Court, allegedly failed to request that the charges against the author be reduced to manslaughter. Furthermore, it is submitted that the summing-up of the trial judge was unfair and unbalanced, since the judge unduly stressed the weaknesses and discrepancies of the defence evidence in his summing-up, whereas he failed to put to the jury that the medical and expert evidence presented by the prosecution put the credibility of the testimony of the prosecution's sole eye-witness in question.

2.4 Referring to the conditions of his detention, the author indicates that he suffers from handicaps and ailments, without, however, specifying the nature of his disability and whether it developed during his detention. He explains that in the spring of 1987, welfare officers conducted interviews among inmates with permanent handicaps, pursuant to a prison directive that a list with the names of disabled inmates be submitted to the prison authorities. The author states that his name was not included in that list and that, as a result, he has been discriminated against.

3. By decision of 5 November 1987 the Human Rights Committee transmitted the communication, for information, to the State party and requested it, under rule 86 of the rules of procedure, not to carry out the death sentence against the author before it had had an opportunity to consider further the question of the admissibility of the communication. The author was requested, under rule 91 of the rules of procedure, to furnish clarification about the facts of his case and the circumstances of his trial and his appeal and to provide the Committee with the transcripts of the written judgments in the case.

4. Under cover letter dated 14 January 1988, and upon request by the author, the Secretariat of the Inter-American Commission on Human Rights forwarded to the Committee the documents submitted by the author to the IACHR. The Secretariat of the IACHR indicated that the author had requested that his case be withdrawn from consideration by that body. No clarifications were received from the author in reply to the Committee's request.

5. By further decision of 22 March 1988, the Committee's Working Group transmitted the communication to the State party, requesting it, under rule 91 of the rules of procedure, to provide information and observations relevant to the question of the admissibility of the communication. In particular, it requested the State party to clarify whether the author retained the right to petition the Judicial Committee of the Privy Council for leave to appeal and whether legal aid would be available to him in that respect. The State party was further asked to provide the Committee with the text of the written judgments in the case. The Working Group 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.

6. In its submission under rule 91, dated 25 October 1988, the State party argues that the author's communication is inadmissible on the ground that he has not exhausted domestic remedies, as required by article 5, paragraph 2 (b), of the Optional Protocol, since his case has not been

adjudicated upon by the Judicial Committee of the Privy Council, Jamaica's highest appellate court.

7. In his comments, dated 29 March 1989, counsel contends that although Section 3 of the Poor Prisoners' Defence Act provides legal aid for purposes of a petition for special leave to appeal to the Judicial Committee of the Privy Council, an appeal to that body constitutes a remedy of limited scope. He adds that the State party has failed to show how this remedy could have been or could be effective in the circumstances of the case and concludes that the requirements of article 5, paragraph 2(b), have been met.

8. In a further submission, dated 20 June 1989, the State party submits that a petition for special leave to appeal to the Privy Council is a genuine remedy: thus, in the author's case, such a petition would be considered in a judicial hearing and adjudicated on grounds that are both judicial and reasonable. If the Privy Council were to refuse the petition as without merit, the author could not claim that he had no remedy; he would merely have been unsuccessful in the pursuit. The State party therefore maintains that the communication is inadmissible on the ground of failure to exhaust domestic remedies.

9. In further comments dated 16 February 1990, counsel affirms that while Section 3 of the Poor Prisoners' Act may provide legal aid for purposes of a petition for special leave to appeal, such a petition would inevitably fail in the author's case. He points out that although the long delays in the judicial proceedings in the case should be deemed to constitute a denial of justice, the Judicial Committee has held, in the case of Riley and others v. The Queen (1981) that whatever the reasons for delays in the execution of a sentence lawfully imposed, the delay could afford no ground for holding the execution to be in contravention of Section 17 of the Jamaican Constitution. Counsel concluded that a petition for special leave to appeal to the Judicial Committee of the Privy Council would not be a remedy "available" to the author within the meaning of article 5, paragraph 2 (b).

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 matter is not being examined under another procedure of international investigation or settlement.

10.3 With respect to the requirement of exhaustion of domestic remedies, the Committee notes the State party's contention that the author may still petition the Judicial Committee of the Privy Council for special leave to appeal. It notes that the author was sentenced to death on 5 October 1977. Although the application of domestic remedies over a period of thirteen years could be construed as being "unreasonably prolonged" within the meaning of article 5, paragraph 2 (b), it is a well established principle that any appellant must display reasonable diligence in the pursuit of available remedies. In the instant case, it was incumbent upon the author or his representative to pursue the avenue of a petition for special leave to appeal to the Judicial Committee after the Jamaican Court of Appeal had, in April 1978, produced its written judgment in the case. The author and his counsel have not shown, although they were invited to do so, the existence of circumstances which would have absolved them from petitioning the Judicial Committee of the Privy Council in

due course. In the circumstances, the Committee concludes that the delays in the judicial proceedings can be attributed mainly to the author, and that the requirements of article 5, paragraph 2 (b), of the Optional Protocol have not been met.

11. The Human Rights Committee therefore decides:

(a) That the communication is inadmissible under article 5, paragraph 2 (b), of the Optional Protocol;

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

a/ The author does not provide a detailed account of the facts. The following account is based on the judgment of the Court of Appeal.