

HUMAN RIGHTS COMMITTEE

Wright v. Jamaica

Communication No. 349/1989

17 October 1990

CCPR/C/40/D/349/1989*

ADMISSIBILITY

Submitted by: Clifton Wright (represented by counsel)

Alleged victim: The author

State party concerned: Jamaica

Date of communication: 12 January 1989

Document references: Prior decisions - CCPR/C/WG/35/D/349/189 (Working Group combined rule 86, rule 91 decision, dated 17 March 1989)

Date of present decision: 17 October 1990

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

1. The author of the communication dated 12 January 1989 is Clifton Wright, a Jamaican citizen currently awaiting execution at St. Catherine District Prison, Jamaica. He claims to be the victim of a violation by Jamaica of article 14, paragraphs 1 and 3(b) and (e), of the International Covenant on Civil and Political Rights. He is represented by counsel.

The background :

2.1 The author was convicted and sentenced to death on 29 March 1983, in the Home Circuit Court of Kingston for the murder of one Louis McDonald. The prosecution's case was that, late on 28 August 1981, a Mr. Silvester Cole had been hitch-jacking to a road junction in Kingston. The author and his co-defendant, Winston Phillips, were similarly waiting for a lift at the same place. All three

obtained a lift but after a short while, Mr. Cole and Mr. Phillips stopped and left the vehicle. Mr. Cole testified in court that the author remained in the car, pointing a gun at the driver's neck; subsequently, he saw the car driving away with its lights turned off.

2.2 The author was arrested, together with his co-defendant, on 29 August 1981, at about 6 p.m. At the time of arrest, he drove the deceased's car, and both he and Mr. Phillips allegedly were in possession of pieces of jewellery that had belonged to the deceased. The author submits that when they were arrested, the police could not possibly have known about the murder, since the deceased's body was recovered only on the subsequent day, in a canefield close to where he had dropped off Messrs. Cole and Phillips. A postmortem was performed on 1 September 1981 at about 1 p.m. In this context, it is pointed out that, according to the pathologist's evidence produced during the trial, death had occurred approximately 47 hours before, at 2 p.m. on 30 August 1981, that is at about the time when the deceased's body had been found and when the author had already been in custody for about 20 hours.

2.3 It is further stated that, on 3 September 1981, Mr. Cole was taken to the Spanish Town police station, where the author was then in custody. Mr. Cole purported to identify the author as the man who had threatened the deceased with a gun in the car. It was only during the trial that he was asked to identify Mr. Phillips.

2.4 During the trial, the author made an unsworn statement. He asserted that he had been lent the deceased's car by an unnamed friend and denied having obtained a lift in the same car on 28 August 1981. He further claimed that he had been working at a garage until about midnight on the day of the crime. Finally, he denied to have been in possession of any of the deceased's jewellery.

2.5 The author was tried with Winston Phillips. At the conclusion of the trial, the jury failed to return a unanimous verdict in respect of Mr. Phillips who, accordingly, was released on bail and ordered to be retried. The author was convicted and sentenced to death. He appealed to the Court of Appeal of Jamaica which, on 11 July 1983, dismissed his appeal. On 24 September 1986 the court issued a written judgment. On 8 October 1987, the Judicial Committee of the Privy Council dismissed the author's petition for special leave to appeal.

2.6 On 13 February 1984, the author submitted a complaint to the Inter-American Commission on Human Rights, claiming that he had been the victim of a miscarriage of justice. The Commission registered the case under No. 9260 and held a hearing on the case on 24 March 1988. The State party argued that the author had not exhausted domestic remedies because he had failed to file a constitutional motion in the Supreme Court of Jamaica alleging a breach of his right to a fair trial. The Commission requested further information as to whether this remedy was an effective one within the meaning of article 46 of the American Convention on Human Rights, but the State party did not reply. On 14 September 1988, the Commission approved resolution No. 29/88, declaring "that since the conviction and sentence are undermined by the record in this case, and that the appeals process did not permit for a correction, that the Government of Jamaica has violated the petitioner's fundamental rights" under article 25 of the American Convention on Human Rights.

The complaint

3.1 Author's counsel contends that the State party violated several of the author's rights under the Covenant. First, he claims that the author was subjected to ill-treatment by the police (including the squirting of a corrosive liquid into his eyes) and that, as a result, he sustained serious injuries.

3.2 Counsel further claims that the author was not afforded a fair hearing within the meaning of article 14, paragraph 1, of the Covenant, before the Home Circuit Court. More specifically, it appears from the trial transcript that the pathologist's uncontested evidence, which had been produced by the prosecution, was overlooked by the defence and deliberately disregarded by the trial judge. Thus, it is pointed out, the jury was not afforded an effective opportunity to properly evaluate the pathologist's evidence which, if properly put, would have probably concurred in favouring the author's acquittal. In fact, according to the pathologist's report, the deceased's death occurred on 30 August 1981 at around 2 p.m., whereas Mr. Wright had been in police custody since 7 p.m. on 29 August. It is therefore contended that no trial in which the significance of such crucial evidence was overlooked or ignored can be deemed to be fair.

3.3 It is submitted that throughout the trial the judge displayed a hostile and unfair attitude towards the author as well as the defence. Thus, the judge's observations are said to have been partial and frequently veined with malice, his directions on identification and on recent possession of stolen property biased. In this context, it is pointed out that no identification parade was held in the case and that the judge, in the summing up, endorsed the prosecution's contention that it was not proper to conduct an identification parade in the circumstances of the case. The judge is also said to have made highly prejudicial comments on the author's previous character and to have put forth exaggerated criticism of the way in which the defence conducted the cross-examination of prosecution witnesses. Counsel maintains that the judge's disparaging manner vis-a-vis the defence, coupled with the fact that he refused an adjournment for ten minutes, thereby depriving the defence of the opportunity of calling a potentially important witness, points to a violation of article 14, paragraph 3(e), of the Covenant, in that the author was unable to obtain the examination of defence witnesses under the same conditions as witnesses against him.

3.4 Finally, it is claimed that article 14, paragraph 3(b), was violated because the author, or his representative, did not have adequate time for the preparation of the defence. In particular, it is submitted that the transcript of the trial reveals that the attorney assigned to the author's case was instructed on the very day on which the trial began. Accordingly, he had less than one day to prepare the case. This, according to counsel, is wholly insufficient to prepare the defence in a capital case. Deficiencies in the author's defence are said to be attributable partly to lack of time for the preparation for the trial, and partly to the lack of experience of one of the author's two court-appointed lawyers.

3.5 With regard to the issue of domestic remedies, counsel rebuts the State party's contention that the communication is inadmissible on the ground of non-exhaustion of domestic remedies on grounds of a presumed right to apply to the Supreme (Constitutional) Court under the Jamaican Constitution. Counsel adds that this argument is advanced without a detailed consideration of the Constitution. He points out that Chapter III of the Jamaican Constitution deals with individual rights, and Section 20(5) deals with the right to a fair trial. In particular, Section 25 makes provision for the enforcement of the protective provisions, while Section 25(2) stipulates that the Supreme Court has jurisdiction to "hear and determine applications" adding the qualification that the Court

shall not exercise its jurisdiction if it is satisfied that adequate means of redress have been available, under any other law, to the appellant. The author's case is said to fall within the scope of the qualification of Section 25(2) of the Jamaican Constitution: if it were not covered by this proviso, every convicted criminal in Jamaica alleging unfair trial would have the right to pursue parallel or sequential remedies to the Court of Appeal and the Privy Council, both under criminal law and under the Constitution.

3.6 Counsel finally notes that the State party has failed to show that legal aid is available to the author for purposes of a constitutional remedy. If the State party were correct in asserting that a constitutional remedy was indeed available, at least in theory, it would not be available to the author in practice because of his lack of financial means and the unavailability of legal aid. Counsel concludes that a remedy which cannot be pursued in practice is not an available remedy.

The State party's observations

4. The State party contends that the communication is inadmissible under article 5, paragraph 2(b), of the Optional Protocol. It argues that the author's rights under article 14 of the Covenant are coterminous with the fundamental rights guaranteed by Section 20 of the Jamaican Constitution. Accordingly, under the Constitution, anyone who alleges that a fundamental right has been, is being or is likely to be infringed in relation to him may apply to the Supreme Constitutional Court for redress. The State party concludes that since the author failed to take any action to pursue his constitutional remedies before the Supreme Court, the communication is inadmissible.

The issues before the Committee:

5.1 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.

5.2 With regard to article 5, paragraph 2(a), of the Optional Protocol, the Committee has ascertained that the case submitted by the author to the Inter-American Commission on Human Rights is no longer being examined by that body.

5.3 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" (Sect. 25, para. 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 the question 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 that

the Supreme Court has so far not had said opportunity. In the circumstances, 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.

5.4 The Committee notes that part of the author's allegations concern claims of bias on the part of the judge as well as the adequacy of the judge's instructions to the jury. The Committee reaffirms that it is generally beyond its competence to evaluate the adequacy of the judge's instructions to the jury in a trial by jury, unless it can be ascertained that the judge's instructions were clearly arbitrary or amounted to a denial of justice. In this case, however, the Committee considers that the circumstances which led to the author's conviction warrant further examination in respect of his allegations relating to article 14, paragraphs 1 and 3(b) and (e), of the Covenant. They will, accordingly, be considered on the merits.

5.5 The Committee further notes the author's allegation that he was subjected to ill-treatment by the police, and observes that the State party has remained silent on the issue whether this part of the communication should be deemed admissible.

6. The Human Rights Committee therefore decides:

(a) That the communication is admissible in so far as it may raise issues under articles 10 and 14, paragraphs 1 and 3(b) and (e), 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, with reference to the Working Group's decision of 17 March 1989, the State party shall again 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. The Committee observes in this connection that its request does not imply a determination on the merits of the communication;

(d) That any explanations 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.

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

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