

## HUMAN RIGHTS COMMITTEE

### Thomas v. Jamaica

Communication No. 272/1988

31 March 1992

### VIEWS

*Submitted by: Alrick Thomas (represented by counsel)*

*Alleged victim: The author*

*State party: Jamaica*

*Date of communication: 12 January 1988*

*Date of decision on admissibility: 24 July 1989*

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

Meeting on 31 March 1992,

Having concluded its consideration of communication No. 272/1988, submitted to the Human Rights Committee by Mr. Alrick Thomas 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 by the State party,

Adopts its:

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

Facts as submitted by the author

1. The author of the communication is Alrick Thomas, a Jamaican citizen currently imprisoned in the Kingston General Penitentiary. He claims to be a victim of a violation by Jamaica of his human rights. He is represented by counsel.

2.1 The author, an ex-constable of the Manchester Police Force, states that he was arrested on 25 October 1984 a/ and on 29 October 1984 he was charged with the murder of Leroy Virtue. The author claims that the deceased was shot incidentally, in the course of a brief mêlée outside a bar, after a man who had been in the company of the deceased had resisted the author's attempt to arrest him.

2.2 For the duration of the preliminary investigation, the author was granted bail, which was subsequently extended until the beginning of the trial on 27 January 1985. On that day, the author was still without legal representation because of lack of financial means. The Court was so informed and the trial judge instructed the clerk of the Court to ask Mr. Alonzo Manning, a legal aid lawyer, to attend court on 29 January 1985. The author first met Mr. Manning in the courtroom on the day of the hearing. The judge granted counsel permission to consult with his client in private. The author claims that he explained his case to him, but that counsel did not take any notes. When the hearing resumed on the same day, counsel allegedly did not present all the facts to the judge and the jury. Furthermore, he did not challenge the jury, although "in-laws" and close acquaintances of the deceased allegedly were among the jury members. Thus, the author argues, the jury was biased against him.

2.3 On 1 February 1985, the author was found guilty of murder and sentenced to death. The author's appeal was dismissed by the Jamaican Court of Appeal on 14 October 1985. On 6 May 1991, the State party commuted the author's death sentence to life imprisonment.

2.4 With regard to the circumstances of the appeal, the author claims that he was not properly informed of the date of the hearing of his appeal. On 14 October 1985, counsel visited him and told him that his appeal had been dismissed earlier that day. On the next day, he received a letter from the registrar of the Court of Appeal informing him that his case was due to be heard in the week beginning 14 October 1985. According to the author, this meant that he was prevented from instructing his counsel and from attending the appeal personally. Although the author had appealed on the ground that he had not been given a fair trial, counsel had withdrawn that ground, allegedly without consulting with the author.

### 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.

### State party's observations and author's comments

4. The State party, by submission, dated 20 July 1988, contends that the author's communication is inadmissible on the ground of non-exhaustion of domestic remedies, claiming that he could still petition the Judicial Committee of the Privy Council for leave of appeal. The State party adds that legal aid would be available for that purpose pursuant to section 3 of the Poor Prisoners' Defence Act.

5. In a submission dated 30 January 1989, the author's counsel explains that a petition for special

leave to appeal was in fact filed with the Judicial Committee of the Privy Council on behalf of the author early in 1987. The application had been for interlocutory relief, to the effect that the Court of Appeal of Jamaica be ordered to issue a written judgement in the case. Notwithstanding the interlocutory nature of the application, the Privy Council dealt with it as a petition for leave to appeal and dismissed it on 19 February 1987, although no submissions had been made on behalf of the author on the merits of the case. Counsel therefore submits that all available domestic remedies have been exhausted.

6. In a further submission, dated 14 April 1989, the State party acknowledges that the author's petition for special leave to appeal to the Privy Council was dismissed. It reiterates, however, that the communications in inadmissible on the ground of non-exhaustion of domestic remedies, since the author has not taken any action to pursue his constitutional remedies in the Jamaican Supreme (Constitutional) Court, pursuant to section 25 of the Jamaican Constitution.

#### Committee's admissibility decision

7.1 At its thirty-sixth 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 apply for constitutional redress. In the circumstances of the case, the Committee found that recourse to the Supreme (Constitutional) Court under section 25 of the Constitution was not a remedy available to the author within the meaning of article 5, paragraph 2, (b), of the Optional Protocol.

7.2 On 24 July 1989, accordingly, the Committee declared the communication admissible in respect of article 14 of the Covenant.

#### Review of admissibility decision

8. The State party, in its submission dated 10 January 1990, maintains that the communication is inadmissible since constitutional remedies under section 25 are still open to the author.

9. In his reply to the State party's submission, counsel submits that the constitutional remedy is not available in practice because of the author's lack of funds and the unavailability of legal aid.

10.1 The Committee observes that the same issues concerning admissibility have already been examined by the Committee in its views on communications Nos. 230/1987 (Raphael Henry v. Jamaica) b/ and 384/1988 (Aston Little v. Jamaica). c/ In the circumstances of those cases, the Committee concluded that a constitutional motion was not an available and effective remedy within the meaning of article 5, paragraph 2 (b), of the Optional Protocol, and that, accordingly, the Committee was not precluded from examining the merits.

10.2 In the instant case, considering that the State party does not provide legal aid for constitutional motions, the Committee finds that a constitutional motion would not constitute an available and effective remedy within the meaning of article 5, paragraph 2 (b), of the Optional Protocol, and thus confirms its decision on admissibility.

## Examination of the merits

11.1 As to the substance of the author's allegation of violations of his human rights, the Committee notes with concern that the State party has confined itself to the observation that the Committee is not competent to evaluate issues of facts and evidence; it has not addressed the author's specific allegations that his right to a fair trial was violated. The Committee is of the opinion that the summary dismissal of the author's allegations, in general terms, does not meet the requirements of article 4, paragraph 2, of the Optional Protocol.

11.2 With respect to the alleged violations of article 14 of the Covenant, three issues are before the Committee: (a) whether the composition of the jury violated the author's right to a fair trial; (b) whether the author was allowed adequate time and facilities to prepare his defence; and (c) whether the author was denied effective representation during his appeal.

11.3 In respect of the first claim, the Committee notes that while the author alleges that the jury was biased because of the presence of acquaintances and "in-laws" of the deceased, his counsel did not raise any objections. The Committee finds therefore that this allegation has not been substantiated.

11.4 In respect of the second claim, the Committee recalls that the right of an accused person to have adequate time and facilities for the preparation of his defence is an important element of the guarantee of a fair trial and a corollary of the principle of equality of arms. Sufficient time and facilities must be granted to the accused and his counsel to prepare the judicial proceedings. The determination of what constitutes "adequate time and facilities" requires an assessment of the individual circumstances of each case. In the instant case, it is uncontested that the author's defence was prepared on the first day of the trial. The Committee cannot ascertain, however, whether the Court actually denied counsel adequate time for the preparation of the defence. Similarly, the material before the Committee does not disclose whether either the author or his counsel complained to the trial judge that the time or facilities were inadequate. The Committee therefore finds no violation of article 14, paragraph 3 (b), of the Covenant during the trial at first instance.

11.5 In respect of the third claim concerning the author's representation before the Court of Appeal, it is uncontested that the author was only informed about the date of the hearing after it had taken place. He was therefore unable to communicate with his representative with regard to the appeal. Taking into account the combination of circumstances in the instant case, the Committee is of the view that the appeal proceedings did not meet the requirements of a fair trial, under article 14, paragraph 1 of the Covenant.

12. 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 facts before the Committee disclose a violation of article 14, paragraph 1, of the Covenant.

13. It is the view of the Committee that, in cases in which a capital sentence may be pronounced, the obligation of States parties to observe rigorously all the guarantees for a fair trial set out in article 14 of the Covenant admits of no exception. The Committee is of the opinion that Mr. Alrick Thomas is entitled to an appropriate remedy.

14. The Committee wishes to receive information , within 90 days, on any relevant measures taken by the State party in respect of the Committee's views.

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

Notes

a/ According to the judgement of the Court of Appeal, the murder occurred on 25 November 1984, and the author was arrested on the same day.

b/ See sect. B above, communication No. 230/1987, views adopted on 1 November 1991.

c/ See sect. J below, communication No. 283/1988, views adopted on 1 November 1991