

HUMAN RIGHTS COMMITTEE

Martin v. Jamaica

Communication No 317/1988

24 March 1993

CCPR/C/47/D/317/1988*

VIEWS

Submitted by: Howard Martin (represented by counsel)

Alleged victim: The author

State party: Jamaica

Date of communication: 5 August 1988

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

Meeting on 24 March 1993,

Having concluded its consideration of communication No. 317/1988, submitted to the Human Rights Committee on behalf of Mr. Howard Martin 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, his counsel and the State party,

Adopts its

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

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.

Facts as submitted

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. In February 1988, a warrant for his execution was issued. After 17 days, however, he was granted a last minute stay, because a petition for special leave to appeal to the Judicial Committee of the Privy Council was being prepared on his behalf. 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".

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, who lived at the same premises, approached them, told the author to leave 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 As to the trial proceedings, the author submits that during the preliminary inquiry, 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, 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.

Complaint

3.1 The author claims that his trial was unfair, and that the trial judge erred in not directing 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.

3.2 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 should take place within a reasonable time. Furthermore, he alleges that the delay in the execution of the sentence is contrary to Section 17, paragraph 1, of the Constitution, which lays down that no person shall be subjected to torture or to degrading punishment or treatment. He argues that the length of time spent on death row and the permanent anxiety he lives in constitutes such degrading treatment.

3.3 The author further claims that his 17 days' stay in the death cell, after a warrant for his execution was issued and before the last minute reprieve, caused him unnecessary mental and physical suffering, in violation of article 7 of the Covenant.

State party's observations and the author's comments thereon

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 domestic remedies available to him under Section 25 of the Constitution.

5. By a 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 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.

Committee's decision on admissibility

6.1 At its thirty-eighth 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 pursue constitutional remedies available to him. In this connection, the Committee observed, taking into account the absence of legal aid for filing a constitutional motion and the unwillingness of Jamaican counsel to act in this regard without remuneration, that recourse to the Supreme Court under Section 25 of the Jamaican Constitution was not a remedy available to the author within the meaning of article 5, paragraph 2 (b), of the Optional Protocol.

6.2 The Committee further considered that part of the author's allegations concerning irregularities in the court proceedings were inadmissible under article 3 of the Optional Protocol, since it is, in principle, beyond the competence of the Committee to review specific instructions to the jury in a trial by jury.

6.3 On 15 March 1990, the Committee declared the communication admissible in so far as it might raise issues under articles 7 and 14, paragraphs 3 (c) and 5 of the Covenant.

Review of admissibility

7. The State party, in its submissions dated 11 February 1991 and 14 January 1992, challenges the Committee's admissibility decision and maintains that the communication is inadmissible. It argues that the author has constitutional remedies he may still pursue. It submits that, in the light of cases recently decided by the Supreme (Constitutional) Court, it is clear that this Court has jurisdiction to allow applications for redress with regard to

cases in which criminal appeals have been dismissed. It further argues that the absence of legal aid does not relieve a person of the obligation to exhaust domestic remedies. It submits that nothing in the Covenant imposes upon a State party the duty to provide legal aid other than to an accused in the determination of a criminal charge against him.

8. In his comments on the State party's request for review of the admissibility decision, author's counsel argues that, while it is in theory possible for the author to file a constitutional motion, in practice the absence of legal aid and the unwillingness of lawyers to provide legal assistance in these matters without remuneration renders this right illusory.

9. The Committee has taken note of the arguments submitted to it by the State party and reiterates that domestic remedies within the meaning of the Optional Protocol must be both available and effective. The Committee considers that, in the absence of legal aid, a constitutional motion does not, in the specific circumstances of the instant case, constitute an available remedy within the meaning of article 5, paragraph 2 (b), of the Optional Protocol, which the author should still exhaust. a/ There is therefore no reason to revise the Committee's earlier decision on admissibility of 15 March 1990.

Examination of the merits

10. In its submission, dated 14 January 1992, the State party denies that the Covenant was violated in the author's case. It submits that the delay in carrying out the death sentence against the author resulted from the author's exercise of his right to appeal against conviction and sentence to the Judicial Committee of the Privy Council. As regards the alleged violation of article 14, paragraph 5, of the Covenant, the State party argues that the author has appealed his conviction to the Court of Appeal and the Judicial Committee of the Privy Council, and thus has not been denied the right to have his conviction and sentence reviewed by a higher tribunal.

11. In his comments on the State party's submission, author's counsel argues that the delay in carrying out the death sentence cannot be attributed to the exercise by the author of the right to further appeal his conviction. He submits that the author was being held on death row for over six years before a warrant for his execution was issued, and that an appeal to the Privy Council was only lodged on his behalf on 25 May 1988, after he had obtained a stay of execution in February 1988.

12.1 The Committee has considered the communication in the light of all the information made available to it by the parties, as required under article 5, paragraph 1, of the Optional Protocol.

12.2 As to the author's allegation that his prolonged stay on death row constitutes cruel, inhuman or degrading treatment, the Committee refers to its jurisprudence in communications Nos. 270 and 271/1988 b/ and reiterates that prolonged judicial proceedings do not per se constitute cruel, inhuman or degrading treatment, even if they may be a source of mental strain and tension for detained persons. In the instant case, the delay between the judgement of the Court of Appeal and the dismissal of the author's petition to the Judicial

Committee of the Privy Council has been disturbingly long. However, the evidence before the Committee indicates that the Court of Appeal promptly produced its written judgement and that the ensuing delay in petitioning the Judicial Committee was largely attributable to the author. In the circumstances of the present case, the Committee affirms its jurisprudence that even prolonged periods of detention under a severe custodial regime on death row cannot generally be considered to constitute cruel, inhuman or degrading treatment if the convicted person is merely availing himself of appellate remedies.

12.3 The author further alleges that the delay of 17 days between the issuing of the warrant for his execution and its stay, during which time he was detained in a special cell, constitutes a violation of article 7 of the Covenant. The Committee observes that, after the warrant had been issued, a stay of execution was requested, on the grounds that counsel would prepare a petition for leave to appeal to the Judicial Committee of the Privy Council. This stay of execution was subsequently granted. Nothing in the information before the Committee indicates that the applicable procedures were not duly followed, or that the author continued to be detained in the special cell after the stay of execution had been granted. The Committee therefore finds that the facts before it do not disclose a violation of article 7 of the Covenant.

12.4 The author also alleges that his trial suffered from undue delay and that he was denied the right to have his conviction and sentence reviewed by a higher tribunal. The Committee observes that the author was convicted and sentenced by the Circuit Court of Kingston on 17 February 1981 and that his appeal was dismissed by the Court of Appeal on 11 November 1981. The Committee notes that the subsequent delay in obtaining a hearing before the Judicial Committee of the Privy Council, which dismissed special leave to appeal on 11 July 1988, is primarily attributable to the author, who did not file his petition to the Judicial Committee until after a warrant for his execution had been issued in 1988, six and a half years after the Court of Appeal's judgement. The Committee therefore concludes that the facts before it do not disclose a violation of article 14, paragraphs 3 (c) and 5, of the Covenant.

13. 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 the facts before it do not disclose a violation of any of the provisions of the International Covenant on Civil and Political Rights.

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

* Pursuant to rule 85 of the Committee's rules of procedure, Committee member Mr. Laurel Francis did not take part in the adoption of the Committee's views.

a/ See also the Committee's views in communications Nos. 230/1987 (Raphael Henry v. Jamaica) and 283/1988 (Aston Little v. Jamaica), adopted on 1 November 1991, paras. 7.1

et seq.

b/ Randolph Barrett and Clyde Sutcliffe v. Jamaica, views adopted on 30 March 1992.