

## HUMAN RIGHTS COMMITTEE

### C. Johnson v. Jamaica

Communication No. 592/1994

14 March 1996

CCPR/C/56/D/592/1994\*

### ADMISSIBILITY

*Submitted by:* Clive Johnson [represented by counsel]

*Alleged victim:* The author

*State party:* Jamaica

*Date of communication:* 8 February 1994 (initial submission)

*Documentation references:* Prior decisions - Special Rapporteur's combined rule 86/rule 91 decision, transmitted to the State party on 5 September 1994 (not issued in document form)

*Date of present decision:* 14 March 1996

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.

#### **Decision on admissibility**

1. The author of the communication is Clive Johnson, a Jamaican citizen, at the time of submission of the communication awaiting execution in St. Catherine District Prison, Jamaica. He claims to be a victim of a violation by Jamaica of articles 6, 7, 10, 14 and 17 of the International Covenant on Civil and Political Rights. He is represented by counsel.

#### The facts as submitted by the author

2.1 The author was arrested on 13 October 1985, in connection with the murder, on 11 October 1985, of one Clive Beckford. On 13 November 1987, on the second of the trial before the Kingston Home Circuit Court, he was found guilty of murder and sentenced to death. The Court of Appeal, on 15 November 1988, dismissed his appeal. On 20 October 1992, the Judicial Committee of the

Privy Council dismissed his petition for special leave to appeal. Subsequently, the author's death sentence was commuted to life imprisonment, following the reclassification of this offence as non-capital.

2.2 The author has not applied to the Supreme Court for constitutional redress for the violations of his basic rights. The author argues that a constitutional motion is not available to him because of his lack of funds, the unavailability of legal aid and the unwillingness of Jamaican counsel to act on a pro bono basis.

2.3 The case for the prosecution was based on the evidence of a single eye-witness, R. H., a police constable. He stated that, in the early evening of 11 October 1985, he was walking towards his home with his 8-year-old daughter and Clive Beckford, who was 17 years old. Four men came running from behind and, after a brief conversation, encircled them. The men were holding ice picks and knives; two of them, among whom the author, attacked the witness, the other two attacked Beckford. After three or four minutes, Beckford ran off and was chased by his two attackers, who returned within a minute. After some more fighting, R. H. managed to get away and the men then released his daughter. R. H. and his daughter found Beckford lying in the road, stabbed and dying. Two days later, R. H. saw the author approaching him close to his home. He recognized him as one of the attackers. The author allegedly pulled out a knife and stabbed R. H., who then shot him in the leg.

2.4 At the trial, the author made an unsworn statement from the dock in which he denied having been at the scene of the incident on 11 October 1985. No witnesses were called on his behalf.

### The complaint

3.1 The author submits that he was born on 21 August 1968 and therefore 17 years and seven weeks old at the time of the incident on 11 October 1985. In support, he furnishes an authenticated copy of his birth certificate. He claims that the death sentence was passed against him in violation of article 6, paragraph 5, of the Covenant.

3.2 The author claims that he has not received a fair trial within the meaning of article 14, paragraph 1, of the Covenant. He submits that the trial judge was wrong in directing the jury that they should apply an objective standard in determining the author's intention. The Court of Appeal agreed that this constituted a misdirection, but failed to remedy it, since it was of the opinion that it had not led to a substantial miscarriage of justice, because, in the opinion of the Court of Appeal, on a correct direction, the jury would inevitably have arrived at the same verdict. The author argues that the judge's instructions to the jury must meet particularly high standards in a case where capital punishment may be pronounced, and that the judge's failure to direct properly on the essential elements of the crime of murder render the trial unfair and the verdict uncertain.

3.3 The author argues that he was denied adequate legal representation both for the trial and on appeal. He emphasizes that he was held in custody for over 18 months before being granted access to a lawyer; that he was not represented at all at the preliminary hearing; that, when he finally was assigned a legal aid attorney, he only met her for the first time a few days before the trial; that this meeting lasted three minutes; that he only met his lawyer once during the trial itself. He also

contends that he never met with his lawyer prior to the hearing of his appeal. The author contends that this constitutes a violation of his rights under article 14, paragraph 3 (b) and (d), to have adequate time and facilities for the preparation of his defence and to have adequate legal assistance assigned to him.

3.4 The author further argues that the State party's failure to grant him legal aid to pursue a constitutional motion amounts to a violation of article 14, paragraph 5, of the Covenant.

3.5 The author also claims that he has been subjected to ill-treatment on death row. In particular, he claims that, on 4 May 1993, during a search by soldiers, he was twice beaten on his testicles with a metal detector. Although the author consequently passed blood in his urine, he did not receive any medical treatment until 8 May 1993, when a doctor was sent by the Jamaica Council for Human Rights. The doctor examined the author and gave a prescription to the prison authorities, but the author never received the medication. It is submitted that this treatment amounts to a violation of articles 7 and 10, paragraph 1, of the Covenant, read together with sections 25 (1) and 31 of the Standard Minimum Rules for Prisoners. Counsel for the author argues that no domestic remedies are available for this complaint and submits in this context that prisoners, including the author, who have complained about their treatment have received death threats from warders. He further claims that the Parliamentary Ombudsman's complaints procedure is ineffective. Reference is made to the Amnesty International report Jamaica - Proposal for an Enquiry into Deaths and Ill-Treatment of Prisoners in St. Catherine District Prison.

3.6 Counsel also contends that article 17, paragraph 1, of the Covenant has been violated in the author's case. He indicates that, on several occasions between 10 January 1991 and 18 June 1992, mail sent by the author never arrived at counsel's office because of unlawful interference by the prison authorities.

3.7 The author finally submits that he has been held on death row since 13 November 1987 and alleges that his lengthy stay on death row, as well as his possible execution after such delay, is contrary to article 7 of the Covenant. In this context, reference is made inter alia to the judgment of the Privy Council in Earl Pratt & Ivan Morgan v. the Attorney General for Jamaica, delivered on 2 November 1993.

#### State party's submission and counsel's comments

4.1 By submission of 25 January 1995, the State party raises no objection to the admissibility of the communication and addresses the merits of the case, in order to expedite its consideration.

4.2 The State party does not accept the author's view that, following the Privy Council's decision in Pratt and Morgan, a delay of over five years in carrying out the death penalty automatically constitutes cruel and inhuman treatment. The State party is of the opinion that each case must be looked at in its entirety and refers to the Committee's Views 1/ in this respect.

4.3 The State party states that it is investigating the author's allegations that he was ill-treated while on death row, and that it will inform the Committee about the outcome of the investigations.

4.4 The State party further states that it will investigate the author's allegation that he was denied access to an attorney during the 18 months in which he was held in custody.

4.5 As regards the absence of representation for the author at the preliminary hearing, the State party submits that he was free to seek legal aid. In the absence of any evidence that the State prevented the author from seeking his right, the State party denies that it was responsible for the author's failure to obtain representation. In the context, the State party states that it cannot be held accountable for the alleged failures in the conduct of the defence at trial or at appeal by a legal aid attorney, just like it cannot be held accountable for the conduct of privately retained counsel.

4.6 The State party further rejects the view that the decision by the Court of Appeal not to quash the judgment of the Court of first instance and not to order a retrial constitutes a violation of article 14, paragraph 1, of the Covenant. In this connection, the State party points out that the Court of Appeal examined the facts in the case, exercised its discretion in accordance with the law, and allowed the decision to stand. The State party refers to the Committee's jurisprudence that issues of facts and evidence are best left to the appellate courts and argues that it is not within the Committee's competence to examine the way in which the Court of Appeal exercised its jurisdiction.

4.7 The State party denies that a violation of article 14, paragraph 5, took place. It submits that this article is confined to criminal offences, and that it is therefore the State party's obligation to ensure that anyone who is convicted of a crime is allowed to have the conviction and sentence reviewed by a higher tribunal. Since the Jamaican law provides for such a right, and the author exercised it, there is no violation of article 14, paragraph 5.

4.8 As to the author's allegation that he is a victim of a violation of article 17, the State party submits that there is absolutely no evidence of any arbitrary or unlawful interference with the author's mail.

5.1 In his comments on the State party's submission, counsel for the author agrees to the immediate examination by the Committee of the merits of the communication.

5.2 Counsel refers to several judicial decisions 2/ in support of his argument that as the author has been incarcerated on death row since his conviction on 13 November 1987, for almost eight years, he has been subjected to inhuman and degrading treatment or punishment in violation of articles 7 and 10, paragraph 1, of the Covenant. In this connection, counsel quotes from the Privy Council judgment in Pratt & Morgan that a State "must accept the responsibility for ensuring that execution follows as swiftly as practical after sentence, allowing a reasonable time for appeal and consideration of reprieve".

5.3 Counsel also refers to the Committee's general comment on article 7, 3/ where it is stated that "when the death penalty is applied by the State party ... it must be carried out in such a way as to cause the least possible physical pain and mental suffering". Counsel submits that any execution that would take place more than five years after conviction would undoubtedly result in pain and suffering and therefore constitute inhuman and degrading treatment.

5.4 As regards the State party's contention that it cannot be held accountable for failures of legal aid

attorneys, counsel refers to the Committee's Views in communication No. 283/1988 4/ where it held that: "In cases in which a capital sentence may be pronounced, it is axiomatic that sufficient time must be granted to the accused and his counsel to prepare the defence for the trial". It is submitted that, although the Committee has held that shortcomings of a privately retained counsel cannot be attributed to a State party, this does not apply to legal aid attorneys, who once assigned must provide "effective representation".

5.5 In a further letter dated 17 November 1995, counsel explains that the matter of Mr. Johnson's age was not raised at the trial because there was not enough time and facilities to prepare his defence. Only in October 1992, the Jamaica Council for Human Rights noticed his being under age. The lawyer who represented Mr. Johnson on appeal informed London counsel by letter of 29 March 1993 that, if the birth certificate were authentic, the matter could be brought again before the Court of Appeal. On 18 March 1994, the Jamaica Council for Human Rights sent London counsel an authenticated copy of the birth certificate. London counsel claims that it appears that the author's Jamaican appeal counsel was unwilling to assist in bringing the matter to the attention of the Jamaican authorities. From the copies of correspondence it appears that there has been no further contact with the Jamaican appeal counsel since March 1993.

#### Issues and proceedings before the Committee

6.1 Before considering any claims contained in a communication, the Human Rights Committee must, in accordance with article 87 of its rules procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

6.2 The Committee has ascertained, as required 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.

6.3 The Committee notes that the State party does not raise any objections to the admissibility of the communication and has forwarded its comments on the merits in order to expedite the procedure, and that counsel for the author agrees to the examination of the merits of the communication at this stage. Nevertheless, the Committee considers that the information before it is not sufficient to enable it to adopt its Views at this stage. The Committee will therefore limit itself to issues of admissibility.

6.4 The Committee notes that part of the author's allegations relate to the instructions given by the judge to the jury. The Committee refers to its prior jurisprudence and reiterates that it is generally not for the Committee, but for the appellate Courts of States parties, to review specific instructions to the jury by the trial judge, unless it can be ascertained that the instructions to the jury were clearly arbitrary or amounted to a denial of justice. The Committee has taken note of the author's claim that the instructions in the instant case did not meet the high standards required in cases of capital punishment. The Committee has also noted the Court of Appeal's consideration of this claim, and concludes that in the instant case the trial judge's instructions did not show such defects as to render them arbitrary or a denial of justice. Accordingly, this part of the communication is inadmissible as incompatible with the provisions of the Covenant, pursuant to article 3 of the Optional Protocol.

6.5 As to the author's claim that his prolonged detention on death row amounts to a violation of article 7 of the Covenant, the Committee notes that the State party has not objected to the admissibility of the claim. The Committee will therefore consider on the merits whether the author's prolonged detention on death row, in view of his young age, constituted a violation of article 7 of the Covenant.

6.6 The Committee notes that the author's claim that some of the letters sent by him in 1991 and 1992 failed to arrive at his counsel's office, lacks specificity and considers that the author has failed to substantiate, for purposes of admissibility, his claim that this was due to unlawful interference by the prison authorities, in violation of article 17 of the Covenant. This part of the communication is therefore inadmissible under article 2 of the Optional Protocol.

6.7 The Committee considers that the author's claims that he was sentenced to death in violation of article 6, paragraph 5, of the Covenant, that he has been subjected to ill-treatment in detention, that he had no access to a legal representative during the first 18 months of his detention and that he was not represented at the preliminary hearing, and that the unavailability of legal aid for constitutional motions constitutes a violation of article 14 of the Covenant, have been sufficiently substantiated, for purposes of admissibility, and should be considered on the merits.

7. The Human Rights Committee therefore decides:

(a) that the communication is admissible in so far as it may raise issues under articles 6, paragraph 5, 7, 10, paragraph 1, and 14, paragraphs 1, 3, (b) and (d), and 5, of the Covenant, in respect of the lack of legal representation during the first 18 months of detention, at the preliminary hearing and the unavailability of legal aid for the filing of the constitutional motion;

(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 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. In particular, the State party is requested to furnish the results of its investigations into the author's allegations of ill-treatment and of lack of legal representation;

(c) that any explanations or statements received from the State party shall be communicated by the Secretary-General under rule 93, paragraph 3, of the rules of procedure to the author and his counsel, with the request that any comments which he may wish to make 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;

(d) that this decision shall be communicated to the State party, to the author and to his counsel.

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

1/ Pratt and Morgan v. Jamaica, communications Nos. 210/1986 and 225/1987, Views adopted on

6 April 1989 (CCPR/C/35/D/210/1986 and 225/1987).

2/ Inter alia, Pratt & Morgan v. Attorney-General [1993] All ER 769, Catholic Commission for Justice and Peace in Zimbabwe v. Attorney General, judgment No. SC73/93, 24 June 1993.

3/ General Comment No. 20, adopted at the Committee's 44<sup>th</sup> session, on 7 April 1992.

4/ Little v. Jamaica, Views adopted on 1 November 1991, para. 8.3.