

HUMAN RIGHTS COMMITTEE

Spence v. Jamaica

Communication No. 599/1994**

18 July 1996

CCPR/C/57/D/599/1994*

VIEWS

Submitted by: Wayne Spence [represented by counsel]

Victim: The author

State party: Jamaica

Date of communication: 20 October 1994 (initial submission)

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

Meeting on 18 July 1996,

Having concluded its consideration of communication No. 599/1994 submitted to the Human Rights Committee on behalf of Mr. Wayne Spence 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 the following:

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

1. The author of the communication is Wayne Spence, a Jamaican citizen who, at the time of submission of his communication, was awaiting execution at St. Catherine District Prison, Jamaica. He claims to be a victim of violations by Jamaica of articles 7 and 10, paragraph 1, of the International Covenant on Civil and Political Rights. Mr. Spence is represented by counsel. In the spring of 1995, the author's death sentence was commuted to life

imprisonment.

The facts as presented by the author

2.1 The author was convicted of two murders and sentenced to death on 13 October 1988 in the Home Circuit Court in Kingston. His appeal against conviction and sentence was dismissed by the Court of Appeal of Jamaica on 18 June 1990. A subsequent petition for special leave to appeal to the Judicial Committee of the Privy Council was dismissed on 29 October 1992.

2.2 Counsel argues that constitutional remedies are unavailable in practice to Mr. Spence, as he is indigent and the State party does not make available legal aid for the purpose of constitutional motions; reference is made in this context to the Committee's jurisprudence. Counsel accordingly submits that all domestic remedies have been exhausted for the purpose of the Optional Protocol.

The complaint

3.1 The author submits that he is a victim of a violation of articles 7 and 10, paragraph 1, on account of the length of the period of time he spent confined to death row. From his conviction in October 1988 to the spring of 1995, i.e. for six and a half years, he was detained in the death row section of St. Catherine District Prison. Counsel contends that the execution of the sentence after such a delay would constitute cruel, inhuman and degrading treatment, in violation of article 7. Reference is made to the judgement of the Judicial Committee of the Privy Council in Pratt and Morgan v. Attorney-General, where it was held, *inter alia*, that a delay of over five years in carrying out the execution of a capital sentence lawfully imposed constitutes inhuman and degrading treatment. To counsel, the delay is in itself sufficient to find a violation of articles 7 and 10, paragraph 1.

3.2 It is further submitted that the conditions of detention at St. Catherine District Prison amount to a violation of the author's rights under articles 7 and 10, paragraph 1. These conditions have been examined and criticized by non-governmental organizations, and are well documented. In this respect, reference is made to an incident which occurred on 3 and 4 May 1993, during which the author claims he was severely beaten by prison warders and a soldier. After the beatings, which allegedly included being hit with batons, an iron pipe and a metal detector, the author was refused the medical treatment he had requested. His report of the incident is included in a deposition made and signed in the presence of a witness on 14 May 1993.

3.3 Counsel notes that after the events of 3 and 4 May 1993, the author did not himself contact the Office of the Parliamentary Ombudsman, for fear of reprisals. On 3 December 1993, the author's legal representative contacted the Ombudsman and requested a thorough and speedy investigation of the complaint. The Ombudsman's reply, dated 10 February 1994, indicated that his office had been unable to identify any participants in the events of 4 May 1993 and that, accordingly, he was unable to take the matter any further. Counsel contends that such a superficial investigation cannot be deemed to amount to an effective domestic

remedy.

The State party's observations on the admissibility and the merits of the case and the counsel's comments thereon

4.1 In its submission under article 4, paragraph 2, of the Optional Protocol, dated 24 February 1995, the State party does not raise objections to the admissibility of the communication and, so as to expedite matters, offers comments on the merits of the case.

4.2 The State party denies that there has been a breach of articles 7 and 10, paragraph 1, because the author was confined to death row for over six years. It contends that the judgement of the Judicial Committee of the Privy Council in Pratt and Morgan is no authority for the proposition that once a person has been on death row for a specific period of time, his continued detention there automatically constitutes cruel and inhuman treatment contrary to the Jamaican Constitution. Rather, it argues, each case must be examined on its merits in accordance with the applicable legal principles. In support of its contention, the State party invokes the Committee's Views on the case of Pratt and Morgan, where it was held that "prolonged judicial proceedings do not per se constitute cruel, inhuman and degrading treatment even if they can be a source of mental strain for convicted prisoners. However, ... an assessment of the circumstances of each case would be necessary".¹

4.3 As to the author's claim of ill-treatment by warders and police officers on 4 May 1993, the State party notes that these "allegations will be investigated and the Committee will be informed of the results".²

5. By letter of 3 April 1995, counsel notes that she has nothing to add to her review of the legal principles applicable to the so-called "death row phenomenon" in the initial communication. She suggests that the Committee examine the claim of Mr. Spence's ill-treatment on death row on its merits if the State party does not report on the findings of its investigations within two months.

Decision on admissibility and examination on the merits

6.1 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.

6.2 The Committee notes that the State party does not raise any objections to the admissibility of the communication and has forwarded its observations on the merits, in order to expedite the procedure. It recalls that article 4, paragraph 2, of the Optional Protocol, stipulates that the State party shall submit its written comments on the merits of a case within six months of the transmittal of the complaint to it for comments on the merits. As the Committee stated in earlier cases, this period may be shortened, in the interest of justice, if the State party so wishes.³ Furthermore, counsel for the author has agreed to the examination of the merits at this stage, without offering additional comments.

6.3 Having concluded that the communication meets all admissibility requirements under the Optional Protocol, the Committee accordingly decides that the communication is admissible and proceeds, without further delay, to the examination of the substance of the author's claims, in the light of all the information made available by the parties, as required under article 5, paragraph 1, of the Optional Protocol.

7.1 The first issue to be determined is whether the period of time the author spent on death row, i.e. approximately six and a half years, amounts to a violation of articles 7 and 10, paragraph 1. The Committee refers to its established jurisprudence that prolonged detention on death row does not, per se, amount to cruel, inhuman and degrading treatment in the absence of further compelling circumstances. That there are no "further compelling circumstances" in the instant case has been confirmed by counsel herself, who has argued that the delay (i.e. Mr. Spence's confinement to death row for over six years) should be deemed in itself sufficient to constitute a violation of articles 7 and 10, paragraph 1. Accordingly, the Committee finds no violation of these provisions on this count. Similar conclusions apply to the allegation that the author's conditions of detention violated articles 7 and 10, paragraph 1, as counsel has not substantiated this claim other than by submitting documents of a general nature.

7.2 The author has further alleged a violation of articles 7 and 10, paragraph 1, on account of the ill-treatment he was subjected to on 4 May 1993, in the context of police and armed forces intervention during a prison riot. The State party has promised to investigate said claim, but failed to forward to the Committee its findings on the matter. The Committee notes that the author's allegations, which are contained in a signed and witnessed deposition dated 14 May 1993, are precise, in that he identifies the warders who ill-treated him, furnishes a description of a soldier who also beat him, and describes the weapons with which he was beaten. His additional claim that he was refused the medical treatment he was entitled to and which the State party should have provided him with after sustaining injuries in the incident has not been refuted. The Committee further observes that in spite of the author's deposition, the Office of the Parliamentary Ombudsman claims to have been unable to identify anyone said to have been involved in the incident. In the circumstances of the case, and in the absence of State party explanations on this issue, the Committee concludes that there has been a violation of articles 7 and 10, paragraph 1.

8. 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 as found by the Committee reveal a violation of articles 7 and 10, paragraph 1, of the Covenant.

9. Pursuant to article 2, paragraph 3 (a), of the Covenant, the author is entitled to an effective remedy for the violations suffered. The Committee considers that this should include the award of appropriate compensation for the ill-treatment suffered on 4 May 1993. Furthermore, the State party is under an obligation to investigate thoroughly and promptly events of the nature of those of 4 May 1993 and to ensure that similar violations do not recur.

10. Bearing in mind that, by becoming a State party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy in case a violation has been established, the Committee wishes to receive from the State party, within 90 days, information about the measures taken to give effect to the Committee's Views.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

Footnotes

*/ Made public by decision of the Human Rights Committee.

*/ Pursuant to rule 85 of the rules of procedure, Committee member Laurel Francis did not participate in the adoption of the Views.

**/ The text of an individual opinion by Committee member Francisco José Aguilar Urbina is appended to the present document.

1/ Views on communications Nos. 210/1986 and 225/1987 (Earl Pratt and Ivan Morgan v. Jamaica), adopted 5 April 1989, para. 13.6.

2/ As of 3 July 1996, the State party had not forwarded the results of said investigations to the Committee, in spite of a reminder addressed to it on 29 April 1996.

3/ See e.g. Views on communication No. 606/1994 (Clement Francis v. Jamaica), adopted 25 July 1995, para. 7.4.

Appendix

Individual opinion by Committee member Francisco José Aguilar Urbina

The terms in which the majority opinion on the communication submitted by Wayne Spence against Jamaica (communication No. 599/1994) was expressed obliges me to express my individual opinion. The majority opinion again maintains the earlier jurisprudence that the time factor does not, per se, constitute a violation of article 7 of the International Covenant on Civil and Political Rights as far as the death row phenomenon is concerned. The Committee has repeatedly maintained that the mere fact of being sentenced to death does not constitute cruel, inhuman or degrading treatment or punishment. In my opinion, the

Committee is wrong to seek inflexibly to maintain its jurisprudence without clarifying, analysing and appraising the facts before it on a case-by-case basis. In the communication concerned, the Human Rights Committee's wish to be consistent with its previous jurisprudence has led it to rule that the length of detention on death row is not in any case contrary to article 7 of the Covenant.

The majority opinion seems to be based on the supposition that only a total reversal of the Committee's jurisprudence would allow it to decide that an excessively long stay on death row could entail a violation of that provision. In this respect, I must refer to my opinion and analysis regarding communication No. 588/1994 (Errol Johnson v. Jamaica).

The Committee must therefore establish whether the laws and actions of the State, and the behaviour and conditions of the condemned person, make it possible to determine whether the time elapsed between sentencing and execution is reasonable and, on that basis, that it does not constitute a violation of the Covenant. These are the limits of the Human Rights Committee's competence to determine whether there has been compliance with, or violation of, the provisions of the International Covenant on Civil and Political Rights.

I concur with the majority opinion that in this case, there has been a violation of articles 7 and 10 of the Covenant, although not only for the reasons given in the majority decision, but also because of the time spent by the author on death row.

Francisco José Aguilar Urbina [signed]

[Original: Spanish]