HUMAN RIGHTS COMMITTEE

Blaine v. Jamaica

Communication No. 696/1996**

17 July 1997

CCPR/C/60/D/696/1996*

VIEWS

Submitted by: Peter Blaine [represented by Allen & Overy, a London law firm]

Victim: The author

State party: Jamaica

Date of communication: 3 May 1996 (initial submission)

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

Meeting on 17 July 1997,

Having concluded its consideration of communication No. 696/1996 submitted to the Human Rights Committee on behalf of Mr. Peter Blaine 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 Peter Blaine, a Jamaican citizen, 27 years of age, currently awaiting execution at St. Catherine District Prison, Jamaica. He claims to be a victim of violations by Jamaica of articles 7, 9, paragraph 2, and 14, paragraphs 1, 2, 3 (a), (b) and (e), and 5 of the International Covenant on Civil and Political Rights. The author is represented by Allen and Overy, a law firm in London.

The facts as submitted

2.1 On 14 October 1994, the author and his co-defendant Neville Lewis [1] were convicted of the murder of a Mr. Higgs and they were sentenced to death by the Home Circuit Court of Kingston. Their appeal was dismissed by the Court of Appeal of Jamaica on 31 July 1995; the Judicial Committee of the Privy Council denied special leave to appeal on 2 May 1996. With this, it is submitted, available domestic remedies have been exhausted.

2.2 During the trial, the case for the prosecution was that the author and his co-defendant had been given a lift in the car of the deceased, who had been asking for directions at an intersection on 18 October 1992. The car was next seen on 19 October 1992, driven by the co-defendant and with the author and two other individuals as passengers. The body of the deceased was found on 22 October 1992 in a mud lake, his hands and feet tied with pieces of grey cloth and a piece of grey cloth wrapped around his neck. The forensic pathologist concluded that the cause of death had been ligature strangulation.

2.3 During the trial, the prosecution sought to adduce a caution statement which it claimed was given voluntarily to the police by the author on 21 July 1994. A voir dire was held on the question of the admissibility of the caution statement; the prosecution relied on the evidence of Detective Superintendent Johnson, who was in charge of the investigation into the murder, Superintendent Reginald Grant [2] and Inspector Wright, the arresting officer. During the voir dire, Mr. Johnson testified that the caution statement had been given voluntarily, and that the author had not been coerced by Inspector Wright, nor been offered any inducement prior to his giving the statement. Inspector Wright testified that he was not present in the room when the author made the caution statement, and that he had not assaulted him previously.

2.4 Also during the voir dire, the author's sister testified that she had visited the police station on 21 July 1994, that Inspector W. Grant [3] had told her that her brother did not want to give a statement, that she had told the author that it would be preferable if he gave a statement to the police, and that the author had told her that one of the policemen was giving him "a very hard time". Upon conclusion of the voir dire, the judge rejected defence counsel's submission that the prosecution had failed to establish beyond a reasonable doubt that the author's caution statement was given voluntarily.

2.5 In the author's caution statement, brought as evidence by the prosecution at the trial, it was stated that the author was with his co-accused and the driver in the car, when they picked up two friends of the co-accused. When the car stopped, one of the friends proceeded to rob the driver at gunpoint. Thereafter, they put him in the car trunk, but later they took him out and tied him up. They then took off a strap of a golf bag and put it around Mr. Higgs' neck. Together with one of the friends, the author then drew the strap tight and strangled Mr. Higgs. Later, they dumped him in the mud lake.

2.6 The author's co-defendant gave sworn evidence at the trial, implicating the author as the driving force behind the crime, responsible for the strangulation of the deceased and for his disposal at the Alcan mud lake.

2.7 The author at the trial gave a statement from the dock, to the effect that he was with Mr. Higgs, his co-accused and two other friends in the car, that one of the others took out a knife and held it to Mr. Higgs' neck and that Mr. Higgs ran off pursued by the others. The author stated that he remained at the car and that some time later his co-accused returned, called him a "chicken", and then the two drove off. He stated that this was what he had told the police before.

The complaint

3.1 The author alleges a violation of articles 7 and 10, paragraph 1, as he was repeatedly beaten by police officers at different police stations over a period of approximately two weeks. In one case, the author was allegedly taken to a room in which six police officers were present. Here the author was kicked in the stomach, beaten on his feet; on another occasion he was beaten unconscious. When requesting medical attention, he was told that he would only be able to see a doctor if he signed several blank sheets of paper. When he refused, he was beaten again; finally, when he could take no more beatings, he signed several blank sheets of paper.

3.2 The author also states that he gave a statement to the police because his sister had told him it would be better.

3.3 The author further submits that articles 7 and 10, paragraph 1, were violated, since he was kept in a small cell together with at least six other occupants for three months between indictment and trial. He allegedly had no other choice but to sleep on newspapers on the floor.

3.4 Counsel states that the author was formally charged with murder on 21 or 22 July 1994, approximately two weeks after having been detained by the police. This is said to constitute a violation of articles 9, paragraph 2, and 14, paragraph 3 (a), of the Covenant.

3.5 The author complains that his attorney first visited him in the General Penitentiary in Kingston, after about two months. According to the author, the meeting was brief, and after the normal introductions, the lawyer was called away by telephone. The next time the author met with counsel was at the preliminary hearing. He adds that he did not see the lawyer again between the preliminary hearing and the start of the trial. As a result, it is submitted that the author could not prepare his defence adequately and, in particular, was unable to consult with the lawyer as to what evidence or which witness should be called on his behalf. All this is said to constitute a violation of article 14, paragraph 3 (b).

3.6 The author further submits that he was told by the police what to say during the trial, and that he repeated this when giving his unsworn statement from the dock at trial. He states that he had no opportunity to discuss this with his attorney.

3.7 The author also claims a violation of article 14, paragraph 3(e), in that he wanted his lawyer to call as a witness the girl he was living with at the time. For unknown reasons, this witness was not called on his behalf during the trial.

3.8 The author contends that there has been a breach of articles 14, paragraphs 1 and 2, as his case was fully and extensively covered by radio, television and all other media prior to the trial. He argues that the media coverage was very prejudicial to his case and must have influenced the jurors. He accordingly submits that the presumption of innocence was not guaranteed; furthermore, because of the adverse publicity he received prior to the trial, the author requested that the press be excluded from the trial, but the request was denied.

3.9 It is submitted that the trial judge's admission into evidence of the caution statement given by the author violated his right to a fair trial within the meaning of article 14, paragraph 1. In this context, the author submits that: (a) he did not give the statement voluntarily; (b) when he gave the statement no justice of the peace was present; (c) he was induced to make a statement by his sister, who in turn was encouraged by several policemen, on the basis that he would be "better off"; and (d) he was arrested on 12 July 1994 but not charged with murder then, although Detective Superintendent Johnson testified on trial that there was sufficient evidence at the time of arrest to charge the author. Counsel points out that it was a breach of the Judges' Rules not to charge the author then; these Rules are strict and do not allow the police to delay charging an accused in order to improve their evidence. It is said that this strengthens the defence's case that the statement was involuntarily made.

3.10 Counsel further argues that the trial judge had a duty to give reasons for his ruling that the caution statement was admissible evidence, and that such reasons as the judge in fact gave were inadequate to discharge that duty. Counsel also submits that the prosecution failed to discharge the burden of proof to show beyond a reasonable doubt that the statement was given voluntarily. In this context, counsel complains that while Inspector Wright was called to give evidence on the voir dire, Inspector Grant was not.

3.11 The author also alleges a violation of article 14 in respect of the hearing of his appeal. He claims that he gave sworn evidence at the voir dire but that the trial transcript fails to record this, giving the impression that he never gave sworn evidence. Accordingly, it is argued that the author was deprived of his right that his representative pursue his appeal and that the Court hear the appeal on the basis of a complete report of all evidence and submissions given on trial.

3.12 It is stated that the matter has not been submitted to another instance of international investigation or settlement.

State party's submission and counsel's comments

4.1 By submission of 12 July 1996, the State party addresses the question of admissibility of the communication as well as the question of the merits of the communication, in order to expedite the procedure.

4.2 Concerning the author's claim that he was beaten up after his arrest, the State party denies that the Covenant was breached. It refers to the voir dire held during the trial, after which the judge found no evidence that the statement was not voluntary, and notes that the author has produced no further evidence in support of this allegation.

4.3 As regards the author's claim that his caution statement was arbitrarily admitted into evidence by the judge, the State party submits that this is a matter of facts and evidence, which should be left to appellate courts according to the Committee's jurisprudence. The State party points out that the Court of Appeal examined the matter and found no errors.

4.4 As regards the author's claim that the prosecution failed to call Inspector Grant as a witness during the voir dire, the State party submits that this does not constitute a breach of the Covenant. The State party argues that the defence could have exercised its right to have the witness made available to them when it became clear that the prosecution was not going to call him.

4.5 With regard to the author's contention that he gave sworn evidence at the voir dire, but that this was not recorded and that this resulted in a violation of his right to appeal, the State party states that it will investigate the matter, but adds that, owing to the unusual nature of the allegation, it would welcome a more precise account of the circumstances of the failure to record the evidence.

4.6 Moreover, the State party does not necessarily accept that if the evidence was indeed omitted from the trial transcript, it constituted a violation of the author's right to appeal. It argues that such a breach would only occur if the evidence omitted was such that if it had been available to the Court of Appeal, the case would have been decided differently.

4.7 With regard to the author's complaint about the media coverage, the State party notes that the matter was not raised before the domestic courts and that this part of the communication is thus inadmissible for non-exhaustion of domestic remedies.

4.8 As regards the author's complaints about the lawyer who represented him at trial, the State party argues that it cannot be held responsible for the manner in which a lawyer conducts a case, whether he is privately retained or appointed by the State.

5.1 In reply to the State party's submission, counsel states that it is difficult for a victim of torture or cruel, inhuman or degrading treatment to substantiate his allegations, for fear of reprisal and for lack of witnesses, and because the police will collectively defend itself since its reputation as a whole is at stake. Counsel draws the Committee's attention to the following factors pointing to corroboration of the author's claim that he was beaten by the police before being charged: he had been in custody for two weeks; at the voir dire Inspector Grant was not called; his sister gave evidence that Inspector Grant had told her it would be better for the author if he made a statement; and there was conflicting evidence as to when the applicant was formally charged, 21 or 22 July 1994, that is, the day of the caution statement or the day after. It is also submitted that Inspector Wright had given incomplete evidence at the voir dire saying that he had charged the author on 22 July, whereas before the jury he said that while he had executed the warrant on 22 July, he had verbally charged the author on 21 July. Counsel moreover recalls that it is accepted jurisprudence that the Committee can form its view on the basis of facts which have not been contradicted by the State party.

5.2 Counsel argues that the failure to call Inspector Grant as a witness was a fundamental flaw in the fairness of the criminal proceedings against the author.

5.3 Counsel does not provide any further information concerning the author's claim that his sworn evidence given at the voir dire was not recorded, but contends that the Court of Appeal might well have come to a different conclusion on the voluntariness of the caution statement if it had had access to the author's evidence. Counsel contends that the test in this case should be whether the omission gave rise to the possibility that his trial was not fair.

5.4 Counsel argues that where a fundamental right is infringed and the possibility exists that a person's right will be taken in consequence, the Committee should assume jurisdiction to consider whether or not the caution statement was rightly admitted.

5.5 As regards the State party's argument that the author failed to exhaust domestic remedies with regard to the pre-trial publicity, counsel states that he does not know of any reported Jamaican case where the courts stayed proceedings because of adverse publicity. Counsel argues that no effective remedy was available after the trial judge refused the author's application to exclude the press from the court.

5.6 As regards the preparation of the defence, counsel notes that the legal aid given by the State party is at such a meagre level that it is most often inexperienced counsel who take death row cases, and that because of the level of remuneration counsel will almost inevitably reduce the time he spends in preparation of the case. Counsel further notes that the State party has failed to ascertain what exactly was the position with counsel for the author.

Decision on admissibility and examination of the merits

6.1 Before considering any claims contained in a communication, the Human Rights Committee must, in accordance with article 87 of its rules of 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 has argued that the author's claim that the media coverage prejudiced the jury against him is inadmissible for non-exhaustion of domestic remedies. The Committee notes that the matter was not raised by the author or his counsel during the trial. The Committee considers therefore that this part of the communication is inadmissible.

6.4 As regards the author's claim that he only saw his lawyer briefly once before the preliminary enquiry, and that he had no time to prepare his defence properly, the Committee notes that neither the author nor his counsel requested more time for the preparation of the defence at the beginning of the trial. This part of the communication is thus inadmissible under article 2 of the Optional Protocol.

6.5 As regards the author's claim that his lawyer failed to call his girlfriend as a witness at the trial, the Committee considers that the State party cannot be held accountable for alleged errors made by a defence lawyer, unless it was manifest to the judge that the lawyer's behaviour was incompatible with the interests of justice. In the instant case, there is no reason to believe that counsel was not using his best judgement and this part of the communication is therefore inadmissible under article 2 of the Optional Protocol.

6.6 With regard to the author's claim that the admission of his caution statement into evidence by the judge was in violation of article 14, paragraph 1, since the prosecution had not shown that the statement was given voluntarily, the Committee notes that this claim pertains to the evaluation of facts and evidence by the judge. 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 the evaluation of facts and evidence. The material before the Committee does not show that the trial judge's decision was arbitrary or amounted to 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.

6.7 As regards the author's claim that he gave sworn evidence during the voir dire, but that this was not recorded, the Committee notes that the State party has offered to investigate the claim but has requested more specific information as to the circumstances. The Committee rejects the State party's affirmation that it is for the author or his counsel to provide additional information, and regrets the lack of information about the results, if any, of the investigation promised by the State party. However, the Committee notes that the trial transcript reveals that there appears to have been a comprehensive voir dire. It remains unclear to the Committee whether any part of it could have been suppressed. In the circumstances, the Committee considers that neither the author nor his counsel have sufficiently substantiated their claim, and this part of the communication is accordingly inadmissible under article 2 of the Optional Protocol.

6.8 The Committee notes that the State party has forwarded comments on the merits of the communication so as to expedite the procedure. Counsel has not raised any objection to the examination of the merits at this stage.

7. Accordingly, the Committee declares the author's remaining claims admissible and proceeds, without further delay, to an examination of the substance of those claims in the light of all the information made available to it by the parties, as required by article 5, paragraph 1, of the Optional Protocol.

8.1 The author has claimed that he was not formally charged until after two weeks after his arrest, although the police testified at trial that there was enough evidence on the basis of which he could have been charged. The Committee observes that it appears from the trial transcript that, during cross-examination, Superintendent Johnson testified that the author was not charged before 21 July, because the witnesses did not know his correct name, and therefore an identification parade was held on 21 July 1994 to allow for the author's identification by the witnesses. After the witnesses had identified the author, he was formally

charged. In the circumstances, the Committee finds that the facts before it do not disclose a violation of articles 9, paragraph 2, and 14, paragraph 3 (a).

8.2 As regards the author's claim that he was beaten in order to make him sign a confession, the Committee notes that this claim was put before the judge and the jury at trial, who rejected it. The Committee further notes that the author, in his statement from the dock during the trial, did not make any allusion to having been beaten by the police. Although the matter was raised on appeal, counsel did not pursue it and the Court found no merit in it. The Committee concludes that the information before it does not justify the finding of a violation of articles 7 and 10 of the Covenant.

8.3 As regards the author's claim that the failure of the prosecution to call Inspector Grant as a witness violated the author's right to a fair trial, the Committee notes that if Inspector Grant's evidence were important to the accused, his counsel could have requested the judge to have him called. It appears from the trial transcript that counsel failed to do so. In the circumstances, the facts before the Committee do not disclose a violation of article 14, paragraph 1, or paragraph 3 (e).

8.4 The State party has not contested the author's claim that he was kept in a small cell together with six other occupants for three months between indictment and trial, and that he had to sleep on newspapers on the floor. In the absence of a reply from the State party, the Committee finds that the conditions of pre-trial detention as described by the author amount to a violation of article 10, paragraph 1, of the Covenant.

9. 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 disclose a violation of article 10, paragraph 1, of the Covenant.

10. Pursuant to article 2, paragraph 3 (a), of the Covenant, the author is entitled to an effective remedy, entailing compensation. The State party is under an obligation to ensure that similar violations do not occur in the future.

11. Bearing in mind that, by becoming a 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 ninety days, information about the measures taken to give effect to the Committee's Views.

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*/ The following members of the Committee participated in the examination of the present communication: Mr. Nisuke Ando, Mr. Prafullachandra N. Bhagwati, Mr. Thomas

Buergenthal, Mrs. Christine Chanet, Lord Colville, Mrs. Elizabeth Evatt, Mrs. Pilar Gaitan de Pombo, Mr. Eckart Klein, Mr. David Kretzmer, Mr. Rajsoomer Lallah, Mrs. Cecilia Medina Quiroga, Mr. Fausto Pocar, Mr. Martin Scheinin, Mr. Danilo Türk and Mr. Maxwell Yalden.

**/ The text of an individual opinion by Committee member Martin Scheinin is appended to the present document.

1/ Neville Lewis' communication to the Human Rights Committee has been registered as communication No. 708/1996.

2/ Not to be confused with Inspector W. Grant.

3/ Not to be confused with Superintendent Reginald Grant.

[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 annual report to the General Assembly.]

Appendix

Individual opinion by Committee member Martin Scheinin *(dissenting)*

I disagree with the Committee's decision to deal jointly with admissibility and merits in the present case. It is true that the State party did address both issues in its submission of 12 July 1996, and that counsel of the applicant in substance commented also on the merits. Nevertheless, counsel of the applicant was never explicitly invited to comment on the merits of the case. On the basis of the text of the Optional Protocol and the publicly available version of the Committee's rules of procedure counsel had reason to expect that there would be another opportunity to deal with the merits of the case.

These concerns are aggravated by the fact that the case involves capital punishment and that the State party has not answered to the author's complaint formally presented under article 9, paragraph 2, of the Covenant but raising issues under paragraph 3 of the said article. If the issue of whether and when the author was brought before a judicial authority after his detention by the police "on or about 12 July 1994" had been clarified through declaring the case admissible and inviting new submissions from the parties, more light could also have been shed on the author's allegations relating to articles 7 and 10.

Martin Scheinin [signed]

[Original: English]