

HUMAN RIGHTS COMMITTEE

Fraser and Fisher v. Jamaica

Communication N° 722/1996

31 March 1999

CCPR/C/65/D/722/1996*

VIEWS

Submitted by: Anthony Fraser and Nyron Fisher

(Represented by David Stewart of the London law firm S. J. Berwin & Co.)

Alleged victims: The authors

State party: Jamaica

Date of communication: 7 August 1996

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

Meeting on 31 March 1999,

Having concluded its consideration of communication No. 722/1996 submitted to the Human Rights Committee by Messrs Anthony Fraser and Nyron Fisher 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 authors of the communication, and the State party,

Adopts the following:

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

1. The authors of the communication are Mr. Anthony Fraser, a Jamaican citizen born in 1957, and Mr. Nyron Fisher, a Jamaican citizen born in 1968. Both are imprisoned at General Penitentiary in Jamaica. They claim to be victims of violations by Jamaica of

articles 7, 10 and 14, paragraphs 1 and 3 (b and d), of the International Covenant on Civil and Political Rights. They are represented by David Stewart of the London law firm S. J. Berwin & Co. In 1995, the authors' convictions were classified as non-capital pursuant to the Offenses Against the Person (Amendment) Act 1992, and their death sentences were commuted to life imprisonment with a non-parole period of 7 years.

The facts as submitted by the authors

2.1 The authors were convicted of the murder of one Rahalia Buchanan and sentenced to death on 19 December 1989 by the St. Thomas Circuit Court, Jamaica. Their appeal was dismissed on 18 May 1992 by the Court of Appeal. On 31 October 1994, their petitions for Special Leave to Appeal to the Privy Council were refused. It is contended by counsel that a constitutional remedy is not available in practice. Counsel submits therefore that all domestic remedies have been exhausted for purposes of article 5, paragraph 2(b), of the Optional Protocol.

2.2 Mr. Buchanan, a resident of New York but a former inhabitant of Jamaica, was murdered in the small village of Airy Castle in Jamaica on the night of 4 October 1988. The prosecution alleged that the deceased was killed during a lynching in which he, inter alia, was chopped with machetes. The prosecution's case relied on visual identification evidence of three eye witnesses, Ms. Thermutis McPherson, Mr. Harold Deans and Ms. Loretta Reid. The latter did not testify at the trial, but her deposition from the preliminary hearing was admitted into evidence and read to the court. All of these witnesses placed Mr. Fisher on the scene of the crime, and two of them claimed to have seen him chopping the deceased with a machete. Only one witness, Mr. Deans, claimed to have seen Mr. Fraser and alleged that also he had chopped the deceased with a machete. The authors were tried alongside five other defendants, of which four were acquitted.

The complaint

3.1 The authors claim to be victims of a violation of article 14, paragraph 1, submitting that because of the poor quality of and the inconsistencies in the prosecution's evidence, it could not warrant a conviction. It is stated that the lighting around the scene of the murder was weak as there was no electricity after hurricane Gilbert had hit the island just before. The only light came from two "bottle torches". It is also stated that the scene of the murder was extremely confused. Furthermore, counsel states that Annette Small, another witness, attested that Ms. McPherson was an accomplice to the murder, that she ran to fetch salt to rub into the deceased's wounds, and refused to fetch him water to drink. It is stated that the testimony of Annette Small contradicts that of Ms. McPherson who held that this was done by Mr. Fisher. Counsel claims that also the witness Mr. Deans was partial, as he bore a personal grudge to Mr. Fraser and because he himself had been arrested and detained for 10 days in connection with the same murder and therefore "had an interest in casting blame on others". Furthermore, counsel makes reference to an episode in Mr. Deans' testimony in which, as opposed to what he had held at the preliminary hearing, he claimed that he had seen the authors attacking the deceased *before* he entered a nearby shop, and not after. Counsel also points out the "irreconcilable inconsistency" between Ms. McPherson's

testimony and that of Mr. Deans, as only the latter placed Mr. Fraser on the scene of the crime.

3.2 The authors also claim that their right to a fair trial, as provided for in article 14, was violated because the trial judge's instructions to the jury were inadequate. In particular, it is stated that the jury were not duly warned to treat the testimonies of Ms. McPherson and Mr. Deans with caution, considering that both witnesses were possible accomplices, and that the latter's evidence was also uncorroborated.

3.3 The authors allege to be victims of a violation of article 14 on the ground that defence counsel at the trial were denied access to Mr. Deans' police statement, despite requests both to the prosecution and the trial judge. It is submitted that the police statement was essential for the defence of Mr. Fraser, in particular, and Mr. Fisher because it would have exposed Mr. Deans' partiality in the proceedings as he both bore a grudge against Mr. Fraser and had been arrested in connection with the same case himself.

3.4 Mr. Fraser also claims to be a victim of a violation of article 14, paragraph 3(b) and (d), on the ground that he was inadequately represented by his counsel, as they were given at most one hour to consult prior to the trial.

3.5 Mr. Fisher claims to have been beaten by the police on 7 October 1988, the day of his arrest. He claims that he was hit with a crowbar and that he coughed up blood. He purports to have notified both his counsel for the trial and the judge, and states that despite numerous complaints to the authorities, he has still not received any medical attention. It is submitted that this constitutes a breach of articles 7 and 10, paragraph 1.

The State party's submission and counsel's comments

4.1 In its submission of 4 February 1997, in keeping with its "desire to have the examination of the communication expedited", the State party offers its comments on the merits.

4.2 The State party submits that all the issues identified relate to facts and evidence given at the trial, and makes reference to the Committee's jurisprudence where it has held that these are matters best left to an appellate court, as they in this case were to the Court of Appeal. In these circumstances, the State party asserts that this communication is not one which should be dealt with by the Committee.

5.1 In his note of 18 March 1997, counsel agrees to a combined examination of the admissibility and the merits of the communication. With regard to the admissibility and merits, counsel merely refutes the State party's assertion that the communication is not one which should be dealt with by the Committee.

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 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 in its submission, in order to expedite the examination, has addressed the merits of the communication. This enables the Committee to consider both the admissibility and merits of the case at this stage, pursuant to rule 94, paragraph 1, of the rules of procedure. However, pursuant to rule 94, paragraph 2, of the rules of procedure, the Committee shall not decide on the merits of a communication without having considered the applicability of any of the grounds of admissibility referred to in the Optional Protocol.

6.3 With regard to the alleged violation of article 14 on the ground that the identification evidence contained serious inconsistencies and that the convictions therefore were wrongful, the Committee reiterates that while article 14 guarantees the right to a fair trial, it is generally for the domestic courts to review the facts and evidence in a particular case. The Committee can, when considering alleged breaches of article 14 in this regard, solely examine whether the conviction was arbitrary or amounted to a denial of justice. However, the material before the Committee and the author's allegations do not show that the courts' evaluation of the evidence suffered from any such defects. Accordingly, this part of the communication is inadmissible as the authors have failed to forward a claim within the meaning of article 2 of the Optional Protocol.

6.4 Similarly, it is for the appellate courts of States parties to review whether the judge's instructions to the jury and the conduct of the trial were in compliance with domestic law. With regard to the alleged violations of article 14 on the ground of improper instructions from the trial judge, the Committee can therefore merely examine whether the judge's instructions to the jury were arbitrary or amounted to a denial of justice, or if the judge manifestly violated his obligation of impartiality. However, the material before the Committee and the author's allegations do not show that the trial judge's instructions or the conduct of the trial suffered from any such defects either. Accordingly, also this part of the communication is inadmissible as the authors have failed to forward a claim within the meaning of article 2 of the Optional Protocol.

6.5 Mr. Fraser has claimed that he was not afforded sufficient time with his legal aid lawyer to prepare for his trial, and that the quality of his defence therefore suffered. In this context, the Committee reiterates its jurisprudence that where a capital sentence may be pronounced on the accused, it is axiomatic that sufficient time must be granted to the accused and his counsel to prepare the defence, but that the State party cannot be held accountable for lack of preparation or alleged errors made by defence lawyers unless it has denied the author and his counsel time to prepare the defence or it should have been manifest to the court that the lawyer's conduct was incompatible with the interests of justice. Since there is nothing in the material before the Committee which suggests either that the author and his counsel were denied opportunity to prepare adequately or that the lawyer's conduct was incompatible with the interests of justice, the Committee holds that also this part of the communication is inadmissible as the author has failed to forward a claim within the meaning of article 2 of the Optional Protocol.

6.6 With regard to Mr. Fisher's claim to be a victim of violations of articles 7 and 10, paragraph 1, on the ground that he was beaten on the day of his arrest, the Committee notes that although the author claims to have notified his attorneys and the trial judge, there is no record of this in the trial transcript. The Committee further notes that no action was taken either at the trial or at any other time to substantiate the assault, and finds that this claim is inadmissible under article 2 of the Optional Protocol for lack of substantiation.

6.7 The Committee declares admissible the claim of a violation of article 14 on the ground that the authors and their counsel at the trial were denied access to the police statement of the witness Harold Deans, and proceeds with the examination of the merits in the light of the information made available to it by the parties, as required by article 5, paragraph 1, of the Optional Protocol.

7. The authors' claim that they were denied access to the police statement of one of the prosecution's witnesses is raised under the general provisions of article 14, paragraph 1; taking account of the course of the trial (in which the police statement did not form part of the prosecution's case) and the conduct of the authors' defense by their counsel in relation to this matter throughout the legal proceedings, the Committee finds that the authors have not substantiated any denial of a fair trial in the determination of the criminal charges against them.

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 before it do not disclose any violations of the International Covenant on Civil and Political Rights.

* The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Nisuke Ando, Mr. Prafullachandra N. Bhagwati, Mr. Thomas Buergenthal, Ms. Christine Chanet, Lord Colville, Ms. Elizabeth Evatt, Ms. Pilar Gaitán de Pombo, Mr. Eckart Klein, Ms. Cecilia Medina Quiroga, Mr. Fausto Pocar, Mr. Martin Scheinin, Mr. Hipólito Solari Yrigoyen, Mr. Roman Wieruszewski, and Mr. Abdallah Zakhia.

[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.]