

## HUMAN RIGHTS COMMITTEE

### Thomas v. Jamaica

Communication No. 532/1993<sup>2</sup>

3 November 1997

CCPR/C/61/D/532/1993<sup>1</sup>

### VIEWS

*Submitted by: Maurice Thomas [represented by the London law firm of Duthie Hart & Duthie]*

*Victim: The author*

*State party: Jamaica*

*Date of communication: 17 November 1992 (initial submission)*

*Date of decision on admissibility: 6 July 1995*

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

Meeting on 3 November 1997,

Having concluded its consideration of communication No. 532/1993 submitted to the Human Rights Committee on behalf of Mr. Maurice Thomas 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 Maurice Thomas, 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 6, 7 and 14 of the International Covenant on Civil and Political Rights.<sup>3</sup> His death sentence was commuted in 1995. He is represented by Shaun Murphy of the London law firm of Duthie Hart and Duthie.

#### The facts as submitted by the author

2.1 On 5 February 1985, the author was convicted of the murder of one Anthony Chamberlain and sentenced to death by the Home Circuit Court, Kingston, Jamaica; he claims to be innocent. The Court of Appeal treated the application for leave to appeal as the hearing of the appeal dismissing it on 28 January 1987; a written judgment was issued on 12 April 1988. On 23 July 1992, the Judicial Committee of the Privy Council denied special leave to appeal. Following a reclassification hearing on 27 March 1995, the offence of which the author was convicted was reclassified as non-capital and his death sentence was commuted.

2.2 The prosecution's case was that, on 15 March 1982 at approximately 6:30 p.m., one Allan Gray and his common law wife, Gloria Thompson, who were in the backyard of their house, heard gunshots from the front where the deceased, Gloria Thompson's nephew, was sitting. They went around the house and saw the victim staggering towards them, mortally wounded. Behind him followed two men. Allan Gray identified one of them as the author, and said that he fired a shot at him, Gray then ran to the other side of the house. He was caught there by two other men, who shot him through the jaw. The author was only arrested on 26 July 1982.

2.3 The prosecution's case rested exclusively on the identification evidence of Allan Gray and Gloria Thompson. No ballistic or forensic evidence was adduced. Gray testified that he had known the author from childhood. He had given the author's name and the names of the three other men to the police. Gloria Thompson testified that although she did not know the author's name, she had known him for a long time.

2.4 The author testified that, at the time of the killing, he was at home with his mother and sister, approximately half a mile away from the deceased's home. The defense did not call his mother and sister as witnesses during the trial, but another witness testifying on the author's behalf stated that at approximately 6 p.m. she had seen the author at his home with his mother and sister, and then again at approximately 7 p.m.

2.5 The author submits that on 5 April 1988, one Eugene Benjamin, another inmate detained at St. Catherine's District Prison, confessed to the murder of Anthony Chamberlain shortly before his death. The confession was allegedly repeated before police officers, the Superintendent of the Prison and a magistrate; it is contended that the confession was put into writing. Efforts to obtain a copy of the alleged confession have remained unsuccessful.

#### The complaint

3.1 The author claims a violation of article 14, paragraph 3(c), in that the delays in judicial

proceedings in his case amount to a violation of his right to be tried without undue delay. From the date of his arrest, he waited two and a half years until the trial, another two years until the conclusion of his first appeal, a further 15 months until the written judgment of the court of Appeal, and yet another four years and three months until the decision of the Judicial Committee of the Privy Council. The last delay allegedly was due to the State party's failure to grant him legal aid.

3.2 The author further alleges that the State party's failure to provide him with legal aid for his petition to the Judicial Committee of the Privy Council is a violation of article 14, paragraphs 3(b) and (d). The absence of legal aid prevented the case from being conducted swiftly and counsel from collecting any further evidence on the author's behalf. Particular reference is made to the alleged confession of Eugene Benjamin, which could not be fully investigated due to the absence of a lawyer in Jamaica, and to the impossibility for counsel in London to trace and interview the author's mother and sister.

3.3 It is further submitted that, as a result of the judicial delays, the lack of proper legal representation in Jamaica following the unsuccessful appeal, and his confinement to death row between 1985 and 1995, the author's uncertainty and distress intensified. This is said to amount to cruel, inhuman and degrading treatment, in violation of article 7.

3.4 It is submitted that the failure to provide Mr. Thomas or his counsel with a copy of Mr. Benjamin's confession statement, exonerating the author of the offence for which he was convicted, constitutes a violation of the author's rights under article 14, in particular of his right to appeal, since, in the absence of said document, he could not pursue his right, under Section 29(1) of the Judicature (Appellate Jurisdiction) Act, to have his case reviewed. In this context, counsel submits that he has contacted the Registrar of the Court of Appeal, the Director of Public Prosecutions, the Minister of Justice and the Governor General, all to no avail. He states that the Deputy Director of Public Prosecutions informed him that the statement was considered by the Jamaica Privy Council on 2 August 1988; however, no copy was made available to counsel.

3.5 The author further claims that until a full investigation is made into the alleged confession statement of Eugene Benjamin, and until his mother and sister are interviewed, his execution would constitute an arbitrary deprivation of his life, in violation of article 6, paragraph 1, since he has not been given a reasonable opportunity to exonerate himself through gathering of all evidence. This allegation has become moot after commutation of the author's sentence.

#### The State party's observations

4. By submission of 30 March 1994, the State party argues that the communication was inadmissible for failure to exhaust domestic remedies.

#### Committee's decision on admissibility

5.1 At its fifty-fourth session, the Committee considered the admissibility of the

communication. It noted that the author was convicted of murder, that his appeal was dismissed and that his special petition for leave to appeal to the Judicial Committee of the Privy Council was rejected. It therefore concluded that it was not precluded by article 5, paragraph 2(b), from considering the communication.

5.2 The Committee considered that the author and his counsel had sufficiently substantiated, for purposes of admissibility, that the communication could raise issues under article 14 and, consequently, under article 6 of the Covenant, which needed to be examined on the merits.

5.3 As to the author's claim that his prolonged detention on death row amounted to a violation of article 7 of the Covenant, the Committee noted that although some national courts of last resort had held that prolonged detention on death row for a period of five years or more violates their constitutions or laws,<sup>4</sup> the Committee's jurisprudence remained that detention for any specific period would not be a violation of article 7 of the Covenant in the absence of some further compelling circumstances.<sup>5</sup> The Committee observed that the author had not substantiated, for purposes of admissibility, any specific circumstances of his case that would raise an issue under article 7 of the Covenant. This part of the communication was therefore deemed inadmissible under article 2 of the Optional Protocol.

#### Issues and proceedings before the Committee

6.1 The Committee has considered the communication in the light of all the information provided by the parties. It notes with concern that, following the transmittal of the Committee's decision on admissibility, no further information has been received from the State party clarifying the matter raised by the present communication, despite a reminder sent to it on 11 March 1997. The Committee recalls that it is implicit in article 4, paragraph 2, of the Optional Protocol, that a State party examine in good faith all the allegations brought against it, and that it provide the Committee with all the information at its disposal. In the light of the failure of the State party to cooperate with the Committee on the matter before it, due weight must be given to the author's allegations, to the extent that they have been substantiated.

6.2 The Committee notes that the information before it shows that the author was arrested on 26 July 1982, that he was convicted for murder on 5 February 1985, the appeal dismissed on 28 January 1987, that a written judgement was not issued by the Court of Appeal until 12 April 1988 and that the Privy Council denied leave on 23 July 1992. Proceedings against the author therefore took just under 10 years to complete. The author remained in detention throughout this period and was confined to death row from 1985 onwards. Article 14, paragraph 3(c), of the Covenant prescribes that anyone charged with a criminal offence has the right to be tried without undue delay; the Committee concludes that a delay of almost 31 months from arrest to conviction plus a further three years before the completion of the Appeal proceedings cannot be deemed compatible with this provision, in the absence of any explanations from the State party justifying the delay. The denial of legal aid which contributed to the further delay in the author's application for leave to appeal to the Privy Council is also a violation of article 14, paragraph 3(d).

6.3 The author contends that he was unable to obtain the attendance and examination of witnesses on his behalf on equal terms as witnesses against him. Reference is made in particular to the availability of the author's mother and sister, who were not called as alibi witnesses. However, the Committee considers that as defense witnesses were available to the author, and one alibi witness was in fact called, it was counsel's professional judgment not to call them. The Committee also observes that the material before it does not reveal that either counsel or the author himself ever complained to the trial judge that they were unable to examine the witnesses under the same conditions as witnesses for the prosecution, or unable to examine some witnesses at all. The Committee therefore finds no violation of article 14, paragraph 3(e), of the Covenant.

6.4 The author claims that his right to appeal to the Court of Appeal of Jamaica was violated because neither he nor his counsel were provided with a copy of Mr. Benjamin's alleged confession statement which would exonerate the author. He also claims that the absence of legal aid prevented him from having further investigations carried out in relation to the alleged confession. In the absence of the document, he claims that he could not pursue his right under Section 29(1) of the Judicature (Appellate Jurisdiction) Act to have his case reviewed. The Committee notes that the State party has not explained why this alleged statement was never made available to the author or to his counsel; it notes too that counsel states that the Deputy Director of Public Prosecutions informed him that the statement was considered by the Jamaica Privy Council on 2 August 1988, and considered that it did not warrant a reference to the Court of Appeal on Section 29 (1), and was not referred. The Committee is of the view that the failure to provide Mr. Thomas with legal aid in Jamaica has denied him the opportunity to have enquiries made about the matter and to pursue such legal remedies as may have been available to him in Jamaica in accordance with the Constitution or otherwise and that this amounts to a violation of article 14, paragraph 3(d), in conjunction with article 2, paragraph 3.

7. 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 14, paragraphs 3(c) and (d), of the International Covenant on Civil and Political Rights.

8. In accordance with article 2, paragraph 3(a), of the Covenant, the State party is under an obligation to provide the author with an effective remedy. The Committee has noted that the State party has commuted the author's death sentence and recommends that, in view of the fact that the author has spent over fifteen years in prison, the State party consider the author's release. The State party is under an obligation to ensure that similar violations do not occur in the future.

9. 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 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.]

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

1/ The following members of the Committee participated in the examination of the present communication: Mr. Nisuke Ando, Mr. Prafullachandra N. Bhagwati, Mr. Thomas Buergenthal, Lord Colville, Mr. Omran El Shafei, Ms. Elizabeth Evatt, Mr. Eckart Klein, Mr. David Kretzmer, Mr. Rajsoomer Lallah, Ms. Cecilia Medina Quiroga, Mr. Fausto Pocar, Mr. Julio Prado Vallejo, Mr. Martin Scheinin, Mr. Danilo Türk, Mr. Maxwell Yalden and Mr. Abdallah Zakhia.

2/ The text of an individual opinion signed by two Committee members is appended to the present document.

3/ On 19 October 1993, the Human Rights Committee adopted its Views in respect of another communication (No. 321/1988) from Mr. Maurice Thomas, concerning violations of articles 7 and 10 of the Covenant; a violation of both these articles was found.

4/ See, inter alia, the judgment of the Judicial Committee of the Privy Council, dated 2 November 1993 (Pratt and Morgan v. Jamaica).

5/ See the Committee's Views on communications Nos. 210/1986 and 225/1987 (Earl Pratt and Ivan Morgan v. Jamaica), adopted on 6 April 1989, paragraph 12.6. See also, inter alia, the Committee's Views on communications Nos. 270/1988 and 271/1988 (Randolph Barrett and Clyde Sutcliffe v. Jamaica), adopted on 30 March 1992, and No. 470/1991 (Kindler v. Canada), adopted on 30 July 1993.

## **Appendix**

### **Individual opinion by Messrs. Fausto Pocar and Rajsoomer Lallah**

While we concur with most of the conclusions reached by the Committee in the present case, we cannot join the Committee's views as far as they refer to the author's claim that prolonged detention on death row amounted to a violation of article 7 of the Covenant. The Committee has declared the claim inadmissible under article 2 of the Optional Protocol on the following grounds: on the one hand it recalled its previous jurisprudence according to which detention on death row for any specific period is not a violation of article 7 of the Covenant in the absence of some further compelling circumstances; on the other hand, it observed that the

author had not substantiated, for purposes of admissibility, any of such circumstances.

The arguments are not persuasive. As to the first ground, it is true that the Committee's jurisprudence - as expressed by the majority of the Committee's members, though with several dissenting opinions - is that prolonged detention on death row does not constitute per se a violation of article 7 of the Covenant in the absence of further compelling circumstances. However, in reaching these views, the Committee had to consider and resolve the issue on its merits. Although reaffirmed in a number of cases, those views, as any other views of the Committee based on legal grounds, can be reversed or modified at any time, in the light of further arguments raised by Committee members during the consideration of another case. In such circumstances, the Committee's previous jurisprudence cannot be invoked as a ground per se for declaring a claim inadmissible under the Optional Protocol.

These considerations would in themselves render moot the second ground invoked to declare the claim inadmissible. However, even this ground is in our view unfounded also for other reasons. The author of the present communication had not merely referred to prolonged detention on death row to substantiate his claim of violation of article 7, but submitted that, as a result of judicial delays, the lack of proper legal representation and his confinement on death row, his uncertainty and distress intensified; on that basis, he claimed that he was subjected to cruel, inhuman and degrading treatment. By referring to such other relevant circumstances, he had substantiated, for purposes of admissibility, his claim. Therefore, the author's allegations should have been considered by the Committee when dealing with the merits of the communication, in order to establish whether they could constitute such further compelling circumstances that might, according to the current jurisprudence of the Committee, render prolonged detention on death row a violation of article 7 of the Covenant.

Fausto Pocar [signed]

Rajsoomer Lallah [signed]

[Original: English]