

HUMAN RIGHTS COMMITTEE

Steadman v. Jamaica

Communication No. 528/1993

2 April 1997

CCPR/C/59/D/528/1993

VIEWS

Submitted by: Michael Steadman [represented by Mr. T. Hart]

Victim: The author

State party: Jamaica

Date of communication: 10 November 1992 (initial submission)

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

Meeting on 2 April 1997,

Having concluded its consideration of communication No. 528/1993 submitted to the Human Rights Committee on behalf of Mr. Michael Steadman 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 Michael Steadman, a Jamaican citizen, at the time of submission awaiting execution at St. Catherine District Prison, Spanish Town. The author claims to be the victim of a violation by Jamaica of articles 6, 9, 10 and 14 of the International Covenant on Civil and Political Rights. He is represented by Mr. T. Hart.

The facts as submitted by the author

2.1 On 12 December 1985, the author was convicted of the murder, on 26 June 1983, of one Sylvester Morgan and sentenced to death by the Home Circuit Court of Kingston. His appeal was refused on 19 February 1988 by the Jamaican Court of Appeal. The Judicial Committee of the Privy Council refused special leave to appeal on 21 March 1990. The author's death sentence was commuted in February 1993.

2.2 The prosecution's case against the author was that he, together with his co-accused Carlton Collins and two others, on 26 June 1983, entered a yard belonging to one Charlie Chaplin, where Collins shot Sylvester Morgan in the head, as a result of which the latter died. It was alleged that the killing arose out of a joint enterprise between the author and his co-accused. When the men were entering the yard, they allegedly said: "watch it, watch it, mek me shoot the boy". During the trial the author was identified by two witnesses, 13 and 14 years old, as one of the men participating in the killing. They testified, however, that they had not seen the author firing a shot himself, although he had been carrying a gun. One of the witnesses stated that, after the shot was fired, the author asked his co-accused: "You sure you shot the boy?". Four other witnesses testified having seen the author and three others running away after the incident while carrying guns.

2.3 The author gave a sworn statement to the effect that he had been at work at the time of the killing. No witnesses were called to support his alibi, however, and during cross-examination the author admitted that he had arrived home at 7.20 p.m. that day, while the murder allegedly had been committed around 7 p.m. The author further alleged that, after his arrest, the police officer had threatened him and fired shots over his head.

The complaint

3.1 The author states that he was arrested on 22 July 1983 and charged with murder on 30 July 1983, after having been detained for eight days without recourse to either a legal adviser, a member of his family or a friend. Preliminary examinations took place in August 1983 and September 1984. The author was kept in pre-trial detention until the start of the trial in December 1985, some 28 months later. According to the author the delay in bringing him to trial was caused by inadequacies in the Jamaican legal system, amounting to a violation of articles 9, paragraph 3, and 14, paragraph 3(c), of the Covenant.

3.2 The author further claims that he was severely prejudiced by this delay, since the witnesses no longer had the incident fresh in their minds and had been exposed to local gossip and publicity, because of which they had lost their impartiality. He also claims that, because of the lapse of time, potential defence witnesses could no longer be traced. In this connection, the author points out that after the preliminary examination in August 1983, he did not meet with his counsel until the day of the trial.

3.3 The author further alleges that he is a victim of a violation of article 14, paragraph 3(b) and (d), since he was denied adequate time and facilities to prepare his defence. In this context, the author claims that he was deprived of adequate legal representation, both at his trial and at his appeal to the Court of Appeal of Jamaica. He submits that the legal aid counsel, who was originally assigned to

represent him, failed to appear at the preliminary examination, and that he was then represented by a junior counsel. The author claims that he had no opportunity to instruct his counsel and that this counsel was only present at the first preliminary examination. Following the preliminary examination, the author had no contact with his legal representative until the day of the trial. He therefore alleges that he was denied the opportunity to prepare his defence, whereas the Prosecution had some 28 months to prepare its case.

3.4 As regards the appeal hearing, the author submits that he was represented by another counsel, who had not previously been involved in the case. He alleges that this counsel never communicated with him before the hearing, and that he therefore was not able to give him instructions as to the grounds of appeal. During the hearing, counsel submitted that there were no grounds to appeal the conviction, according to the author thereby effectively withdrawing his appeal without his consent. Counsel only addressed the Court on the matter of sentence, claiming that both the author and the co-accused had been under 18 years of age at the time of the killing and should therefore not be sentenced to death. The Appeal Court, however, found that research by the Registrar General had proven that the author was born on 31 December 1964 and that he was over the age of 18 years at the time of the murder. As the Prosecution failed to prove that the author's co-accused was over the age of 18 at the time of the offence, his sentence was varied to imprisonment during Her Majesty's pleasure.

3.5 The author further alleges that he was denied a fair hearing in violation of article 14, paragraph 1, of the Covenant, because the judge failed to direct the jury properly as to identification and manslaughter, which were central issues during the trial. In this connection, the author points out that the witnesses gave contradictory evidence with regard to the exact hour of the incident, some claiming that it happened around 7 p.m., others around 8 p.m. It is stated that, while it would still have been light at 7 p.m., it would have been dark at 8 p.m. The author claims that the darkness would have affected proper identification of the perpetrators and that the judge should have alerted the jury to the issue as to whether it was in fact dark, which he failed to do. He further alleges that the judge failed to bring to the attention of the jury certain other inconsistencies in the evidence and to warn the jury properly with regard to the need for caution in relying on identification evidence.

3.6 The author also claims that the judge did not direct the jury properly as regards the issue of joint enterprise in that he did not advert to the possibility that the author's co-accused, who was alleged to have fired the only shot, might have gone beyond what was tacitly agreed as part of the joint enterprise. In this connection, the author points out that the witnesses' evidence showed that the four men were looking for a Derrick Morgan, not for the deceased, and that the jury had to decide whether the author had indeed the intention to kill or do serious harm to the deceased. The author claims that it was open to the jury to find him guilty of manslaughter if he started out on an enterprise which envisaged some degree of violence and his co-accused went beyond the scope of the enterprise. However the judge allegedly instructed the jury that the author was to be convicted of murder or acquitted.

3.7 The author also alleges that he is a victim of a violation of article 6, paragraph 2, of the Covenant, since he has been sentenced to death after a trial during which the provisions of the Covenant were violated. In this connection, the author refers to the Committee's Views in communication No. 250/1987. *Carlton Reid v. Jamaica*, Views adopted on 20 July 1990.

3.8 The author finally alleges that he is a victim of a violation by Jamaica of article 10 of the Covenant, since the State party fails to provide him with sufficient food, medical or dental care, and basic necessities for personal hygiene. To support his claims, the author encloses copy of a report by Professor W. E. Hellerstein, based on a study of the conditions in Jamaican prisons, conducted in January 1990.

State party's observations

4. By submission of 19 May 1994, the State party argues that the communication is inadmissible for failure to exhaust domestic remedies. In this context, the State party argues that it is open to the author to seek redress for the alleged violations of his rights by way of a constitutional motion to the Supreme Court.

5. In a letter, dated 6 February 1995, counsel for the author refers to his initial communication and states that he has no further comments to make.

The Committee's admissibility decision

6.1 At its 53rd session, the Committee considered the admissibility of the communication.

6.2 The Committee ascertained, as required under article 5, paragraph 2 (a), of the Optional Protocol, that the same matter was not being examined under another procedure of international investigation or settlement.

6.3 The Committee took note of the State party's claim that the communication was inadmissible for failure to exhaust domestic remedies. The Committee recalled its prior jurisprudence and considered that, in the absence of legal aid, a constitutional motion did not, in the circumstances of the case, constitute an available remedy which needed to be exhausted for purposes of the Optional Protocol. In this respect, the Committee therefore found that it was not precluded by article 5, paragraph 2(b), from considering the communication.

6.4 The Committee noted that part of the author's allegations related to the evaluation of evidence and to the instructions given by the judge to the jury. The Committee referred to its prior jurisprudence and reiterated that it is generally for the appellate courts of States parties to the Covenant to evaluate facts and evidence in a particular case. Similarly, it was not for the Committee to review specific instructions to the jury by the trial judge, unless it could be ascertained that the instructions to the jury were clearly arbitrary or amounted to a denial of justice. The material before the Committee did not show that the trial judge's instructions or the conduct of the trial suffered from such defects. Accordingly, this part of the communication was inadmissible as incompatible with the provisions of the Covenant, pursuant to article 3 of the Optional Protocol.

6.5 The Committee noted that the author, in support of his claim under article 10 of the Covenant, only referred to a general report about conditions in Jamaican prisons. The Committee considered that, in the absence of any information concerning the specific situation of the author, this claim had not been substantiated for purposes of admissibility. This part of the communication was therefore inadmissible under article 2 of the Optional Protocol.

6.6 The Committee considered that the author and his counsel had sufficiently substantiated, for purposes of admissibility, that the delay in bringing the author to trial and his continued detention throughout this period might raise issues under articles 9, paragraph 3, and 14, paragraph 3(c), of the Covenant, which needed to be examined on the merits. The Committee also considered that the author's claim that he was denied time and facilities to prepare his defence and that his counsel effectively abandoned his appeal might raise issues under article 14, paragraph 3(b) and (d), which needed to be examined on the merits.

7. Accordingly, the Human Rights Committee decided that the communication was admissible in so far as it might raise issues under articles 9, paragraph 3, and 14, paragraph 3(b), (c) and (d), juncto article 6, paragraph 2, of the Covenant.

State party's observations on the merits of the communication

8.1 By submission of 25 September 1996, the State party argues that the delay of 28 months between the author's arrest and the beginning of the trial against him does not constitute a violation of articles 9, paragraph 3, and 14, paragraph 3(c), because two preliminary hearings were held during that time. The State party submits that there is no basis for the assertion that this delay was undue or prejudicial to the author and points out that witnesses could have refreshed their memory from their own statements given shortly after the incident occurred.

8.2 The State party further is of the opinion that it cannot be held accountable for the manner in which counsel conducts a trial or argues an appeal.

Issues and proceedings before the Committee

9. The Human Rights Committee has considered the present communication in the light of all the information made available to it by the parties, as provided in article 5, paragraph 1, of the Optional Protocol.

10.1 The author has claimed that the delay in bringing him to trial, a period of more than 27 months (from his arrest on 22 July 1983 to the beginning of the trial on 9 December 1985) during which he remained in detention, is in violation of articles 9, paragraph 3, and 14, paragraph 3(c). The Committee notes that the author has stated that the preliminary enquiry against him was held in August 1983 and that the State party has not provided any information as to why it was adjourned or why the trial did not start until 26 months later. In the absence of any specific grounds from the State party, as to why the trial only started 26 months after the adjournment of the preliminary enquiry, the Committee is of the opinion that the delay in the instant case was contrary to the State party's obligation to bring an accused to trial without undue delay.

10.2 As regards the author's claim that he did not have adequate time and facilities for the preparation of his defence, the Committee notes that the information before it shows that the author was represented at trial by the same counsel who had represented him at the preliminary examination. The Committee further notes that neither the author nor counsel ever requested the Court for more time in the preparation of the defence. In the circumstances, the Committee finds that the facts before it do not show a violation of article 14, paragraph 3(b), of the Covenant in respect

to the author's trial.

10.3 The author has further complained that counsel who was assigned to represent him on appeal, did not contact him before the appeal, and that he did not advance any grounds for appeal against conviction. It appears from the judgment of the Court of Appeal that the author's counsel for the appeal (who had not represented him at the trial) conceded at the hearing that there were no arguments that he could put forward to affect the conviction. The Committee recalls that, while article 14, paragraph 3(d), does not entitle the accused to choose counsel provided to him free of charge, measures must be taken to ensure that counsel, once assigned, provides effective representation in the interests of justice. This includes consulting with, and informing, the accused if he intends to withdraw an appeal or to argue before the appellate instances that the appeal has no merit. While it is not for the Committee to question counsel's professional judgment that there was no merit in the appeal against conviction, the Committee considers that in a capital case, when counsel for the accused concedes that there is no merit in the appeal, the Court should ascertain whether counsel has consulted with the accused and informed him accordingly. If not, the Court must ensure that the accused is so informed, so that he can consider any other remaining options open to him. In the circumstances, the Committee concludes that the author was not effectively represented on appeal, in violation of article 14, paragraph 3(b) and (d).

10.4 The Committee is of the opinion that the imposition of a sentence of death upon conclusion of a trial in which the provisions of the Covenant have not been respected constitutes, if no further appeal against the sentence is possible, a violation of article 6 of the Covenant. As the Committee noted in its General Comment 6(16), the provision that a sentence of death may be imposed only in accordance with the law and not contrary to the provisions of the Covenant implies that "the procedural guarantees therein prescribed must be observed, including the right to a fair hearing by an independent tribunal, the presumption of innocence, the minimum guarantees for the defence, and the right to review of conviction and sentence by a higher tribunal". See CCPR/C/21/Rev.1, page 7, paragraph 7. In the present case, since the final sentence of death was passed without effective representation for the author on appeal, there has consequently also been a violation of article 6 of the Covenant.

11. 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 articles 9, paragraph 3, and 14, paragraph 3(b), (c) and (d), and consequently of article 6, paragraph 2, of the International Covenant on Civil and Political Rights.

12. Under article 2, paragraph 3(a), of the Covenant, Mr. Steadman is entitled to an effective remedy. The Committee is of the opinion that in the circumstances of the case, the author is entitled to an appropriate remedy. The State party is under an obligation to ensure that similar violations do not occur in the future.

13. 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.

* The following members of the Committee participated in the examination of the present communication: Messrs. Nisuke Ando and Prafullachandra N. Bhagwati, Mrs. Christine Chanet, Lord Colville, Mr. Omran El Shafei, Mrs. Elizabeth Evatt, Messrs. Eckart Klein, David Kretzmer and Rajsoomer Lallah, Mrs. Cecilia Medina Quiroga, Mrs. Laure Moghaizel, Messrs. Julio Prado Vallejo, Martin Scheinin, Danilo Türk and Maxwell Yalden.

[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.]