HUMAN RIGHTS COMMITTEE

Collins v. Jamaica

Communication No. 240/l987

1 November 1991

CCPR/C/43/D/240/l987*

VIEWS

Submitted by: Willard Collins (represented by counsel)

Alleged victim: The author

State party: Jamaica

Date of communication: 25 August 1987 (initial submission)

Date of the decision on admissibility: 2 November 1988

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

Meeting on 1 November 1991,

Having considered communication No. 240/1987, submitted to the Committee by Willard Collins 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 and by the State party,

Adopts its

Views under article 5, paragraph 4, of the Optional Protocol.**/

The facts as presented by the author:

1. The author of the communication dated 25 August 1987 is Willard Collins, a Jamaican citizen currently awaiting execution at St. Catherine District Prison, Jamaica. He claims to be the victim of

a violation by Jamaica of articles 7, l0, and 14, paragraphs 1, 2, and 3(e), of the International Covenant on Civil and Political Rights. He is represented by counsel.

2.1 The author is an ex-corporal in the Jamaican police force. He was arrested on 16 June 1981 in connection with the murder, on 23 November 1980, of one Rudolph Johnson in the parish of St. Catherine, Jamaica. The prosecution contended that the author shot the victim with his service weapon because he owed him a substantial amount of money, and that he had procured the assistance of a taxi driver, one C.E., to drive him and the victim to the scene of the crime and to assist with the disposal of the body.

2.2 Initially, C.E. had been arrested on 28 November 1980 and detained in connection with the murder. Some months later, he was released upon direction of the investigating officer, one Detective Sergeant R.G., who had taken charge of the police investigations on his own initiative, in the author's opinion because he was C.E.'s brother-in-law and the father of a girl born to C.E.'s sister. C.E. later became the prosecution's principal witness and only purported eyewitness to the crime.

2.3 The author was initially brought before the Portland Magistrates Court in connection with his application for bail and for directions as to the most appropriate venue for the preliminary hearing. The Magistrate granted the author's application for a transfer of the venue of the preliminary hearing, as the author was well known in the Portland area and it was doubtful whether he would receive a fair trial there. More particularly, the author was well known to the business associates of the Magistrate himself, and the author was known to have bad business relations with those associates. During the hearing of the application, the Magistrate allegedly said, apparently only as an aside, that if he were to try the author he would ensure that a capital sentence be pronounced.

2.4 Mr. Collins' preliminary hearing took place in Spanish Town, parish of St. Catherine, on 15 October 1981; he was ordered to stand trial for murder. Detective G., then stationed in a different parish (Kingston), nevertheless remained in charge of the police investigations.

2.5 The author's trial began in the St. Catherine Circuit Court, Spanish Town, on 7 January 1982; he was represented by F.P., Q.C., and junior counsel, A.W. In spite of the prosecution's contention that the author shot Mr. Johnson without provocation, no plausible motive for the killing could be advanced. The inference to be drawn from the prosecution's case was that Mr. Collins had sought to buy a car from a third party via the victim, and that he shot Mr. Johnson to avoid paying the balance of the amount owed for the car. Throughout the proceedings, the author maintained that C.E. himself had committed the crime, and that he used the author's service weapon after removing it from the author's apartment. Mr. Collins further asserts that he never thought of not honouring his debt towards the deceased and maintains that the balance was paid pursuant to an agreement which he had arranged for his bank manager to prepare. The bank manager, D.A., confirmed this version during the first trial.

2.6 During the trial in January 1982, several witnesses, including members of the author's family, testified on the author's behalf, confirming that he was at home when the victim was believed to have been shot. Five of the twelve days of the trial were devoted to testimony of defence witnesses. At the conclusion of the trial, the jury was unable to return a verdict. The author was ordered to be

retried and remanded in custody.

2.7 The retrial began in the Home Circuit Court, Kingston, on 24 October 1983. Mr. Collins was represented by H.C., Q.C. The author submits that Detective G. continued to manipulate the judicial process as well as the jurors. Justice G., who had heard previous applications on behalf of the author in the Portland Magistrates Court, was assigned to hear the retrial; the author immediately complained to counsel that the judge was biased against him, in the light of the statement referred to in paragraph 2.3 above. H.C. told him that nothing could be done about this.

2.8 The author notes that on 26 October 1983, two witnesses who were present in court and ready to testify on his behalf, Ms. B.H. and Ms. Bl.H., saw three members of the jury board a police car driven by Detective G. Bl.H. followed the car to a quiet lane, where she found G. and his assistant talking to the jury members, indicating that he depended on them and asking them not to let him down. A similar scene was witnessed by Bl.H. on the following day, upon which she informed counsel, in the author's presence, of the attempted jury tampering witnessed by her. H.C. promised to notify the judge but failed to do so. He was reminded of the matter on 28 October 1983, the final day of the trial, when he allegedly told Mr. Collins that it was too late to act.

2.9 Finally, the author indicates that one other witness who would have been able to provide credible testimony to the effect that C.E. was the murderer and had in fact used the author's service weapon for the killing, was prepared to give evidence on his behalf during the second trial. This witness himself states that he was available to give evidence during the first trial, but was prevented from doing so by Detective G. and C.E., who threatened to kill him and his family if he were to testify in court. As a result, this witness moved to a remote part of Jamaica. When he returned to Spanish Town, he was assaulted by a group of individuals which included C.E. In the circumstances, the witness did not attend the retrial.

2.10 On 28 October 1983, the author was found guilty as charged and sentenced to death. He states that his retrial only lasted five days because none of the witnesses who were called to give evidence on his behalf during the first trial were called to do so at the retrial. He blames this on the actions of his counsel, H.C., and of Detective G. In this context, he notes that his counsel mentioned to him that he did not wish the trial to proceed beyond Friday 28 October, as he had other professional obligations to attend to in another part of the country at the beginning of the following week. The author further notes that the jury was sent out to consider its verdict late on a Friday afternoon, thereby putting undue pressure on it to return an early decision.

2.11 The author appealed to the Court of Appeal of Jamaica, which dismissed the appeal on 11 February 1986. He notes that he has encountered many problems in obtaining a copy of the written judgment of the Court of Appeal. As to the possibility of a petition for special leave to appeal to the Judicial Committee of the Privy Council, he notes that as leading counsel in London has opined that there is no merit in such a petition, this remedy provides no prospective avenue of redress.

2.12 As to the conditions of his detention, the author indicates that he has suffered illtreatment on death row on several occasions. On 28 May 1990, the author was among a number of prisoners searched by approximately 60 prison warders, who not only injured the author but also forced him to undress in the presence of other inmates, warders, soldiers and policemen, contrary to Section

192, paragraph 3, of the Jamaican Prisons Act 1947. When the author sought to invoke his rights under this provision, he was subjected to severe beatings by three warders, one of whom hit him several times with a heavy riot club. His counsel complained of the treatment to the authorities and the Parliamentary Ombudsman; no followup on the complaint has been notified to the author or to his counsel, although the author has served notice of his desire to see the behaviour of the warders sanctioned. On several subsequent occasions, in particular on 10 September 1990 when he complained to a warder who had been interfering with his mail and sometimes withholding it altogether, the author was physically assaulted; as a result, he was injured on his hand, which required medical attention and several stitches to mend his injury.

The complaint:

3.1 The author contends that the conduct of his retrial in October 1983 violated article 14, paragraphs 1, 2, and 3(e), of the Covenant. In particular, he submits that the judge was biased against him, as manifested by his previous statement made in the Portland Magistrates Court. In the author's opinion, the appointment of the judge violated his rights to equality before the court, to a fair hearing by an impartial tribunal, and to be presumed innocent until found guilty according to law. In this context, he explains that it is a general rule of criminal procedure in Jamaica that the judge presiding over a trial should not have any prior involvement in the case, and no prior involvement with the defendant, unless such prior involvement is notified to all the parties and no objections are raised. It is further explained that the rationale for the general rule is that the presentation of the evidence at preliminary hearings in criminal cases is not subject to the same strict rules of evidence governing a trial, and that it is, accordingly, considered wrong for a trial judge to have heard evidence in those circumstances at an earlier stage of the proceedings. No such procedure was followed in the author's case.

3.2 As to the claim of jury tampering by Detective G., the author explains that although such allegations are rare in capital cases, they are not unheard of in Jamaica. In his case, Detective G. took charge of a police investigation in a matter in which he was personally involved through his family links with C.E., whom the author suspected of having killed Mr. Johnson. The author claims that G.'s tampering with jury members, including the foreman of the jury, during the retrial, as well as his intimidation of a key defence witness who might otherwise have testified on his behalf, constitute a serious violation of his rights under article 14, paragraphs 1 and 2.

3.3 The author affirms that the conduct of his defence by H.C. during the second trial, in its effect, deprived him of a fair trial and violated his right, under article 14, paragraph 3(e), to have witnesses testify on his behalf under the same conditions as the witnesses against him. Thus, counsel did not call several witnesses who were present in court throughout the retrial and ready to testify on his behalf, including B.H. and Bl.H.; nor did he arrange for the author's bank manager to testify at the retrial, although he had given evidence at the first trial.

3.4 It is further submitted that the non-availability of the author's alibi evidence during the retrial was particularly crucial, in the light of the weakness of the prosecution's case which was based on the evidence of a witness who had initially been detained in connection with the murder and who, at the time of his testimony, had just served a prison term of eighteen months for the theft of three cars. These circumstances are said to corroborate the author's claim of a violation of article 14,

paragraphs 1 and 3(e): the absence of defence evidence violated a fundamental prerequisite of a fair trial, and H.C.'s failure to ensure that defence evidence be put before the court is said to constitute a gross violation of the author's rights.

3.5 The author submits that the beatings he was subjected to on death row in May and September 1990, as well as the interference with his correspondence, constitute violations of his rights under articles 7 and 10, paragraph 1, of the Covenant. He adds that Detective G. is now in charge of crime prevention in the parish of St. Catherine, where the prison is located, and expresses fear that G. may use his position for further attacks on his integrity.

3.6 Finally, the author's detention in the death row section of St. Catherine District Prison since 28 October 1983 is said to constitute a separate violation of article 7, as the severe mental stress suffered by the author due to the continued uncertainty about his situation is not a function of legal but primarily political considerations.

3.7 As to the requirement of exhaustion of domestic remedies, counsel recalls the Committee's established jurisprudence that remedies must not only be available but also effective, and that the State party has an obligation to provide some evidence that there would be a reasonable prospect that domestic remedies would be effective. He submits that neither a petition for special leave to appeal to the Judicial Committee of the Privy Council nor a constitutional motion in the Supreme (Constitutional) Court of Jamaica would provide effective remedies.

3.8 In this context, it is submitted that the case cannot be brought within the ambit of Section 110, paragraphs 1 and 2, of the Jamaican Constitution governing the modalities under which the Court of Appeal may grant leave to appeal to the Judicial Committee of the Privy Council. Firstly, at no stage in the judicial proceedings did a question as to the interpretation of the Jamaican Constitution arise, as required by Section 110, paragraph 1(c). Secondly, the general criteria for granting leave to the Privy Council in Section 110, paragraph 2(a) (a question of great general or public importance or otherwise such that it ought to be submitted to the Privy Council) were not met in the case.

3.9 As to the power of the Judicial Committee, under Section 110, paragraph 3, of the Constitution, to grant special leave to appeal from a decision of the Court of Appeal, counsel affirms that any application for special leave requires the submission of a legal opinion from Leading Counsel, to the effect that there is merit in seeking leave. In the author's case, Leading Counsel, the President of the Bar Council (United Kingdom), has advised that the substantive issues involved do not fall within the narrow jurisdiction of the Judicial Committee. Leading Counsel considers that although there were weaknesses in the evidence against the author during his retrial, as well as in the handling of the defence case, the likelihood of the Judicial Committee to grant special leave to appeal in respect of those matters would be remote.

3.10 To petition the Judicial Committee in the current circumstances would involve discarding highly qualified legal advice that such an avenue would be inappropriate; counsel submits that since the author has diligently considered the possibility of petitioning the Judicial Committee, he should not now be penalized for accepting the advice of Leading Counsel. Finally, it is submitted that recourse to the Judicial Committee in instances in which an application is likely to fail would involve the submission of a large number of unmeritorious petitions to the Judicial Committee, with

damaging consequences for the judicial procedure before that body. Such a consequence, it is submitted, cannot have been the purpose of the rule laid down in article 5 of the Optional Protocol.

3.11 Counsel further asserts that a constitutional motion in the Supreme (Constitutional) Court does not provide the author with an effective domestic remedy. In this context, he advances three arguments: firstly, Section 25 of the Jamaican Constitution, which provides for the "enforcement" of the individual rights guaranteed under Chapter Three of the Constitution, including the right to a fair trial, would not provide an appropriate remedy in the circumstances of the case, as "enforcement" within the meaning of Section 25 would involve ordering a second retrial which, more than ten years after the murder of Mr. Johnson, is an impractical proposition. Secondly, it is submitted that the proviso to Section 25, paragraph 2, namely that the Supreme Court shall not exercise its powers if it is satisfied that adequate means of redress for the contravention alleged are, or have been, available to the applicant, applies to the author's case. Finally, a constitutional remedy is not "available" to the author, because the State party does not grant legal aid for the purpose of filing constitutional motions in the Supreme Court, and lawyers in Jamaica are generally unwilling to argue such motions on a pro-bono basis.

The State party's observations:

4. The State party, by submission of 20 July 1988, contends that the communication is inadmissible on the grounds of non-exhaustion of domestic remedies, since the author retains the right, under Section 110 of the Jamaican Constitution, to petition the Judicial Committee of the Privy Council for special leave to appeal. It adds that it issued the written judgment of the Court of Appeal of Jamaica on 17 March 1986 and that it was available to the author and to his counsel; legal aid would be available to the author to petition the Judicial Committee pursuant to Section 3, paragraph 1, of the Poor Prisoners' Defence Act.

The Committee's admissibility considerations and decision:

5.1 During its 34th session, the Committee considered the admissibility of the communication. With regard to the requirement of exhaustion of domestic remedies, it found that, in the circumstances, a petition for special leave to appeal to the Judicial Committee of the Privy Council did not constitute an available and effective remedy within the meaning of the Optional Protocol. Furthermore, it emphasized that unreasonably prolonged delays had been encountered in obtaining the written judgment of the Court of Appeal of Jamaica, the submission of which to the Judicial Committee was a prerequisite for an application for leave to appeal to be entertained. In Mr. Collins' case, it was undisputed that he had not received the written judgment of the Court of Appeal approximately two years after the dismissal of his appeal.

5.2 On 2 November 1988, accordingly, the Human Rights Committee declared the communication admissible.

The State party's objections to the admissibility decision and the Committee's requests for further clarifications:

6.1 By two submissions of 25 May 1989 and 22 February 1990, the State party rejects the

Committee's findings of admissibility and challenges the reasoning described in paragraph 5.1 above. In particular, it submits that the fact that the power of the Judicial Committee of the Privy Council to grant special leave to appeal pursuant to Section 110, paragraph 3, of the Constitution, is discretionary, does not relieve Mr. Collins from his obligation to pursue this remedy. It contends that

"[a] remedy is no less a remedy because there is, inherent in structure, a preliminary stage which must be undergone before the remedy itself becomes properly applicable. In the instant case, an application to the Privy Council for special leave [to appeal] from decisions of the Court of Appeal is considered in a judicial hearing and a determination thereon is made on grounds which are wholly judicial and reasonable. The Privy Council refuses to grant leave to appeal if it considers that there is no merit in the appeal. Therefore, where special leave was refused, the applicant cannot say [that] he has no remedy...."

6.2 The State party criticizes the Committee's interpretation of article 5, paragraph 2(b), of the Optional Protocol, according to which a domestic remedy must be both available and effective as "a gloss on the relevant provisions of the Optional Protocol": in the instant case, the effectiveness of the remedy must in any event be demonstrated by the power of the Judicial Committee to entertain an appeal.

6.3 The State party affirms that even if the Judicial Committee were to dismiss the author's petition for special leave to appeal, the communication would remain inadmissible on the ground of non-exhaustion of domestic remedies, since Mr. Collins would retain the right to apply for constitutional redress in the Supreme (Constitutional) Court, alleging a violation of his right to a fair trial, protected by Section 20 of the Constitution.

6.4 Considering that further information about the constitutional remedy which the State party claims remains open to Mr. Collins would assist it in the consideration of the communication, the Committee adopted an interlocutory decision during its 37th session, on 2 November 1989. In it, the State party was requested to clarify whether the Supreme (Constitutional) Court had had the opportunity to determine, pursuant to section 25, paragraph 2, of the Jamaican Constitution, whether an appeal to the Court of Appeal and the Judicial Committee of the Privy Council constituted "adequate means of redress" for individuals who claim that their right to a fair trial, as guaranteed by section 20, paragraph 1, of the Constitution, had been violated. Should the answer be in the affirmative, the State party was asked to also clarify whether the Supreme (Constitutional) Court had declined to exercise its powers under section 25, paragraph 2, in respect of such applications, on the ground that adequate means of redress were already provided for in law. By submission of 22 February 1990, the State party replied that the Supreme (Constitutional) Court had not had the opportunity to consider the issue. It reiterated its request of 25 May 1989 that the decision on admissibility be revised, citing rule 93, paragraph 4, of the Committee's rules of procedure.

6.5 In June 1991, author's counsel informed the Committee that the Supreme (Constitutional) Court had rendered its judgment in the cases of Earl Pratt and Ivan Morgan, on whose behalf constitutional motions had been filed earlier in 1991.[1] In the light of this judgment and in order better to appreciate whether recourse to the Supreme (Constitutional) Court was a remedy which the author had to exhaust for purposes of the Optional Protocol, the Committee adopted a second interlocutory

decision during its 42nd session, on 24 July 1991. In this decision, the State party was requested to provide detailed information on the availability of legal aid or free legal representation for the purpose of constitutional motions, as well as examples of such cases in which legal aid might have been granted or free legal representation might have been procured by applicants. The State party did not forward this information within the deadline set by the Committee, that is, 26 September 1991. By submission of 10 October 1991 concerning another case, the State party replied that no provision for legal aid in respect of constitutional motions exists under Jamaican law, and that the Covenant does not oblige the State party to provide legal aid for this purpose.

6.6 In both of the above interlocutory decisions, as well as by note verbale dated 18 April 1990 addressed to it by the Committee's Secretariat, the State party was requested to also provide information and observations in respect of the substance of the author's allegations. In its interlocutory decision of 24 July 1991, the Committee added that should no comments be forthcoming from the State party on the merits of the author's allegations, it might decide to give due consideration to these allegations.

6.7 In spite of the Committee's repeated requests and reminders, the State party did not provide detailed information and observations in respect of the substance of the author's allegations. In this respect, it merely observed, by submission of 4 September 1990, that the facts as submitted by Mr. Collins seek to raise issues of facts and evidence in the case which the Committee has no competence to evaluate, adducing in support of its contention a decision adopted by the Human Rights Committee in November 1989. [2]

Post-admissibility proceedings and examination of merits:

7.1 In the light of the above, the Committee decides to proceed with its consideration of the communication. The Committee has taken note of the State party's position, formulated after the decision on admissibility, and takes the opportunity to expand upon its admissibility findings.

7.2 The Committee has considered the State party's argument that the fact that the power of the Judicial Committee of the Privy Council to grant leave to appeal, pursuant to Section 110, paragraph 3, of the Jamaican Constitution, is limited, does not absolve an applicant from availing himself of this remedy.

7.3 The Committee appreciates that the discretionary element in the Judicial Committee's power to grant special leave to appeal pursuant to Section 110, paragraph 3, does not in itself relieve the author of a communication under the Optional Protocol of his obligation to pursue this remedy. However, for the reasons set out below, the Committee believes that the present case does not fall within the competence of the Judicial Committee, as also contended by leading counsel in the case.

7.4 In determining whether to grant leave to appeal to the Judicial Committee, the Court of Appeal of Jamaica must generally ascertain, under Section 110, paragraphs 1(c) and 2(a) of the Jamaican Constitution, whether the proceedings involve a question as to the interpretation of the Jamaican Constitution or a question of great general or public importance or otherwise such that it should be submitted to the Privy Council. Pursuant to the powers conferred upon it by Section 110, paragraph 3, the Judicial Committee applies similar considerations. In granting special leave to appeal, the

Judicial Committee is concerned with matters of public interest arising out of the interpretation of legal issues in a case, such as the rules governing identification procedures. There is no precedent to support the conclusion that the Judicial Committee would consider issues of alleged irregularities in the administration of justice, or that it would consider itself competent to enquire into the conduct of a criminal case. Such matters, however, are central to the author's complaint, which does not otherwise raise legal issues of general or public interest. In this context, the Committee notes that the evaluation of evidence and the summing up of relevant legal issues by the judge was neither arbitrary nor amounted to a denial of justice, and that the judgment of the Court of Appeal clearly addressed the grounds of appeal.

7.5 In the particular circumstances of the case, therefore, the Committee finds that a petition for leave to appeal to the Judicial Committee of the Privy Council would have no prospect of success; accordingly, it does not constitute an effective remedy within the meaning of the Optional Protocol.

7.6 Similar considerations apply to the author's possibility of obtaining the redress sought by applying for constitutional redress in the Supreme (Constitutional) Court. A remedy is not "available" within the meaning of the Optional Protocol where, as in the instant case, no legal aid is made available in respect of constitutional motions, and no lawyer is willing to represent the author for this purpose on a pro-bono basis. The Committee further reiterates that in capital punishment cases, legal aid should not only be made available; it should also enable counsel to prepare his client's defence in circumstances that can ensure justice. [3]

7.7 For the reasons set out above, the Committee finds that a petition for special leave to appeal to the Judicial Committee of the Privy Council and a constitutional motion in the Supreme (Constitutional) Court are not remedies that the author would have to exhaust for purposes of the Optional Protocol. It therefore concludes that there is no reason to reverse its decision on admissibility of 2 November 1988.

8.1 With respect to the alleged violations of the Covenant, four issues are before the Committee: (a) whether the conduct of the author's retrial by a judge with a previous involvement in the case violated the author's rights under article 14, paragraphs 1 and 2, of the Covenant; (b) whether the alleged tampering with members of the jury by the investigating officer, and the alleged intimidation of witnesses by the same officer, violated the aforementioned provisions; (c) whether the failure of author's counsel in the retrial to call witnesses on his behalf violated article 14, paragraph 3(e); and (d) whether the author's alleged ill-treatment on death row amounts to violations of articles 7 and 10.

8.2 Concerning the substance of Mr. Collins' allegations, the Committee regrets that several requests for clarifications notwithstanding (requests which were reiterated in two interlocutory decisions adopted after the decision on admissibility of 2 November 1988), the State party has confined itself to the observation that the facts relied upon by the author seek to raise issues of facts and evidence that the Committee is not competent to evaluate. The Committee cannot but interpret this as the State party's refusal to co-operate under article 4, paragraph 2, of the Optional Protocol. Article 4, paragraph 2, of the Optional Protocol enjoins a State party to investigate in good faith all the allegations of violations of the Covenant made against it and its judicial authorities, and to make available to the Committee all the information at its disposal. The summary dismissal of the author's

allegations, as in the present case, does not meet the requirements of article 4, paragraph 2. In the circumstances, due weight must be given to the author's allegations, to the extent that they have been credibly substantiated.

8.3 The Committee does not accept the State party's contention that the communication merely seeks to raise issues of facts and evidence which the Committee does not have the competence to evaluate. It is the Committee's established jurisprudence that it is in principle for the appellate courts of States parties to the Covenant to evaluate facts and evidence in a particular case or to review specific instructions to the jury by the judge, unless it can be ascertained that the instructions to the jury were clearly arbitrary or amounted to a denial of justice, or that the judge clearly violated his obligation of impartiality[4]. In the present case, the Committee has been requested to examine matters in this latter category. After careful consideration of the material before it, the Committee cannot conclude that the remark attributed to Justice G. in the committal proceedings before the Portland Magistrates Court resulted in a denial of justice for Mr. Collins during his re-trial in the Home Circuit Court of Kingston. The author has not even alleged in which respect the instructions given by the judge to the jury were either arbitrary or reflected partiality. The Committee further notes that the verdict of the jury necessarily entailed a mandatory death sentence, by which the judge was bound. Secondly, the Committee notes that, although the author states that he apprised his counsel of the judge's alleged bias towards him, counsel opined that it was preferable to let the trial proceed. Nor was the matter raised on appeal, although the author's case was at all times in the hands of a professional adviser. Even if the remark was indeed made, in the absence of clear evidence of professional negligence on the part of counsel, it is not for the Committee to question the latter's professional judgment. In the circumstances, the Committee finds no violation of article 14, paragraphs 1 and 2.

8.4 Similar considerations apply to the alleged attempts at jury tampering by the investigating officer in the case. In a trial by jury, the necessity to evaluate facts and evidence independently and impartially also applies to the jury; it is important that all the jurors be placed in a position in which they may assess the facts and the evidence in an objective manner, so as to be able to return a just verdict. On the other hand, the Committee observes that where alleged improprieties in the behaviour of jurors or attempts at jury tampering come to the knowledge of either of the parties, these alleged improprieties should have been challenged before the court. In the present case, the author claims that his counsel was informed, on 27 October 1983, that Detective G., the investigating officer, had sought to influence members of the jury. Counsel neither conveyed this information to the judge nor sought to challenge the jurors allegedly influenced by Detective G.; in the Committee's opinion, if it had been thought that the complaint was tenable, it would have been raised before the courts. Accordingly, the Committee cannot conclude that Mr. Collins' rights under article 14, paragraphs 1 and 2, were violated by the State party in this respect.

8.5 As to the author's claim of a violation of article 14, paragraph 3(e), the Committee notes that at least two witnesses who would have been willing to testify on the author's behalf were present in the courtroom during the retrial. Notwithstanding the author's repeated requests, they were not called. As author's counsel had been privately retained, his decision not to call these witnesses cannot, however, be attributed to the State party. In the view of the Committee, counsel's failure to call defence witnesses did not violate the author's right under article 14, paragraph 3(e).

8.6 As to the author's allegations of ill-treatment on death row, the Committee observes that the State

party has not addressed this claim, in spite of the Committee's request that it do so. It further notes that the author brought his grievances to the attention of the prison authorities, including the Superintendent of St. Catherine District Prison, and to the Parliamentary Ombudsman, and swore affidavits in this context. Apart from the re-location of some prison warders involved in the ill-treatment of the author on 28 May 1990, however, the Committee has not been notified whether the investigations into the author's allegation have been concluded some eighteen months after the event, or whether, indeed, they are proceeding. In the circumstances, the author should be deemed to have complied with the requirement of exhaustion of domestic remedies, pursuant to article 5, paragraph 2(b), of the Optional Protocol. With respect to the substance of the allegation and in the absence of any information to the contrary from the State party, the Committee finds the allegations substantiated and considers that the treatment of Mr. Collins on 28 May 1990 and on 10 September 1990 reveals a violation of article 10, paragraph 1.

8.7 As to the author's claim under article 7, the Committee observes that it equally has not been refuted by the State party. The claim having been sufficiently substantiated, the Committee concludes that the beatings Mr. Collins was subjected to by three prison warders on 28 May 1990, as well as the injuries he sustained as a result of another assault on 10 September 1990, constitute cruel, inhuman and degrading treatment within the meaning of article 7 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 articles 7 and 10, paragraph 1, of the Covenant.

10. Two consequences follow from the findings of a violation by the Committee. The first is that the violation of article 7 of the Covenant should cease, and the author should be treated in accordance with the requirements of article 10, paragraph 1. In this regard the State party should promptly notify the Committee as to the steps it is taking to terminate the maltreatment and to secure the integrity of the author's person. The State party should also take steps to ensure that similar violations do not occur in the future. The second consequence is that the author should receive an appropriate remedy for the violations he has suffered.

11. The Committee would wish to receive information, within three months of the transmittal to it of this decision, on any relevant measures taken by the State party in respect of the Committee's Views.

[Done in English, French, Russian and Spanish, the English text being the original version.]

Footnotes

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

**/ An individual opinion submitted by Ms. Christine Chanet and Messrs. K. Herndl, Fr. Aguilar Urbina and B. Wennergren is
appended.

1/ On 6 April 1989, the Human Rights Committee had adopted its Views under article 5, paragraph 4, of the Optional Protocol in respect of these cases: see CCPR/C/35/D/210/1986 and 225/1987.

2/ See Communication No. 369/1989 (G.S. v. Jamaica), decision of 8 November 1989, paragraph 3.2.

3/ See Views in Communication No. 250/1987 (Carlton Reid v. Jamaica), decision of 20 July 1990, paragraph 13.

4/ see Views on Communication No. 253/1987 - Paul Kelly v. Jamaica, decision of 8 April 1991, paragraph 5.13.

Appendix

Individual opinion of Ms. Christine Chanet and Messrs. Kurt Herndl, Francisco José Aguilar Urbina and Bertil Wennergren pursuant to rule 94, paragraph 3, of the Committee's rules of procedure, concerning the Committee's Views on Communication No. 240/1987 - Willard Collins v. Jamaica.

"De notre point de vue, quels que soient le contenu et l'impact des remarques attribuées au Juge G. au cours de la procédure, le fait qu'il avait participé à l'instance devant le Magistrates Court de Portland en 1981 lui donnait une connaissance de l'affaire préalable au jugement. Et cette connaissance portait nécessairement sur les charges pesant contre l'auteur ainsi que sur l'appréciation de celles-ci et de sa personne, puisque l'audience devant le Magistrates Court visait à la mise en accusation et au renvoi. C'est pourquoi, selon notre opinion, sa désignation pour présider au deuxième procès de l'auteur devant le Home Circuit Court de Kingston en octobre 1983 était incompatible avec l'exigence d'impartialité au sens de l'article 14, paragraphe 1, du Pacte.

Il appartient à l'Etat partie d'édicter et de faire appliquer les incompatibilités entre les différentes fonctions judiciaires, afin qu'un magistrat ayant participé à une phase de la procédure concernant l'évaluation pertinente bien que préliminaire des charges pesant sur une personne, ne puisse à aucun titre participer au jugement de cette personne sur le fond.

Faute de quoi, il y a violation de l'article 14, paragraphe 1. Tel est notre avis au cas d'espèce."

Ch. Chanet

K. Herndl

Fr. Aguilar Urbina

B. Wennergren