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CCPR/C/43/D/233/1987
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HUMAN RIGHTS COMMITTEE
Forty-third session

DECISIONS

Communication No. 233/1987

Submitted by : M.F. (represented by counsel)

Alleged victim : The author

State party : Jamaica

Date of communication : 10 March 1987 (initial submission)

Documentation references : Prior decisions - CCPR/C/30/D/233/1987
(Combined rule 86,
rule 91 decision,
dated 22 July 1987)
- CCPR/C/WG/32/D/233/1987
(further Working Group
combined rule 86, rule
91 decision, dated
22 March 1988)
- CCPR/C/WG/37/D/233/1987
(Working Group
interlocutory decision,
dated 20 October 1989)
- CCPR/C/38/D/233/1987
(decision on
admissibility, dated
15 March 1990)

Date of present decision : 21 October 1991

Decision to revise an earlier decision on admissibility

[See Annex]

*/ All persons handling this document are requested to

respect and observe its confidential nature.

DEC233.43

ANNEX*/

Decision of the Human Rights Committee under the Optional
Protocol to the International Covenant on Civil and Political
Rights

- Forty-third session -

concerning

Communication No. 233/1987

Submitted by : M.F. (name deleted)

Alleged victim : The author

State party : Jamaica

Date of communication : 10 March 1987 (initial submission)

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

Meeting on 21 October 1991,

Adopts the following:

Decision to revise an earlier decision on admissibility

1. The author of the communication (initial submission dated 10 March 1987) is M.F., a Jamaican citizen currently awaiting execution at St. Catherine District Prison, Jamaica. He claims to be a victim of a violation by Jamaica of article 14 of the International Covenant on Civil and Political Rights. He is represented by counsel.

The facts as submitted by the author :

2.1 The author was convicted of murder in the Home Circuit Court of Kingston on 30 January 1986 and sentenced to death. He had been accused of stabbing and wounding two individuals with an ice pick;

*/ Made public by decision of the Human Rights Committee. one of them, one R.Y., subsequently died. The other person testified against him during the trial. The author indicates that the coroner's verdict was that the victim's death had not been caused by stab wounds but by a fractured skull.

2.2 The author indicates that his privately retained legal representative was not present in court when the trial began and the judge proceeded to empanel the jury. The author refused to enter a plea, but the judge nonetheless entered a plea of "not guilty" for him. The author submits that the judge chose to proceed in the absence of his lawyer, taking account of police reports that one of the principal prosecution witnesses, one D.T., would not be available if the trial were adjourned.

2.3 The author appealed his conviction and sentence, but the Jamaican Court of Appeal dismissed the appeal on 21 May 1987. Subsequently, he sought to obtain the Court of Appeal's judgment, to no avail.

2.4 At the time of submission, the author had not petitioned the Judicial Committee of the Privy Council for special leave to appeal, because he lacked the means to do so. Subsequently, in 1988, he secured pro bono legal representation by a law firm in London for this purpose. In May 1990, following the Committee's decision of 15 March 1990 declaring the case admissible, counsel informed the Committee that he had succeeded in obtaining the judgment of the Court of Appeal, pointing out that it took him over one year and a half to obtain this document and emphasizing that "availability" of relevant court documents should be deemed to refer to practical and reasonably effective methods whereby an appellant or his counsel might receive the appropriate documents. While criticizing the "apparent administrative inefficiency and un-cooperativeness" of the State party which, for a considerable time, made the exhaustion of domestic remedies a practical impossibility, he nonetheless confirms that he is now proceeding with a petition for special leave to appeal to the Judicial Committee on the author's behalf.

The complaint :

3.1 The author complains that the conduct of his trial and of his appeal were beset with several irregularities, in violation of article 14 of the Covenant. Thus, he claims that he had wholly inadequate opportunities to consult with his lawyer prior to and during the trial. There was no regular communication with this lawyer prior to the trial, and the lawyer visited him only once, briefly, before its beginning. In court, their contacts were confined to brief exchanges, each of no more than 10 to 15 minutes duration. The author adds that his lawyer was repeatedly absent in court and usually sent telephonic excuses that he had to attend trial dates elsewhere.

3.2 The author concedes that the prosecution witnesses were cross-examined, adding, however, that he had asked for a potential alibi witness, a girl in his company at the time of his arrest, to testify on his behalf, since she allegedly would have been able to cast doubts on the testimony of D.T. His counsel made no attempt to contact this witness.

3.3 As to his appeal, the author maintains that he was not assisted in its preparation and merely informed that a legal aid representative had been assigned to him for the purpose. He addressed two letters to the representative prior to the hearing of the appeal but did not receive a reply. Subsequently, he and his counsel repeatedly requested the written judgment of the Court of Appeal; it is submitted that the delay in obtention of this judgment constitutes a violation of the author's right to have his conviction and sentence reviewed by a higher tribunal according to law.

The State party's information and observations :

4.1 The State party submits that the communication is inadmissible on the ground that the author has failed to exhaust available domestic remedies, as required by article 5, paragraph 2(b), of the Optional Protocol. It points out that the author retains the right to petition the Judicial Committee of the Privy Council for special leave to appeal, and that legal aid would be available to him for that purpose pursuant to Section 3, paragraph 1, of the Poo r

Prisoners' Defence Act.

4.2 The State party further adds that doubts as to the availability of the written judgment of the Court of Appeal in the case may be attributable to some confusion over the author's identity. In this context, the Registrar of the Court of Appeal had conveyed the following information:

"There is an appeal from a [M. F.] convicted of murder on 30 January 1986. Appeal was heard on 21 May 1987. (...) On 19 June 1987 written judgment was given. The Registrar opined that the confusion lay in the name forwarded to the office, i.e. [M.F.]."

4.3 The State party submits that the availability of the reasoned judgment was not at issue at any stage in the proceedings. Further to an interlocutory decision in the case adopted by the Committee's Working Group in October 1989, in which the State party had been requested to make the written judgment of the Court of Appeal available to the author or his counsel, M.F. was provided with a copy.

4.4 The State party submits that in cases similar to the author's, where a written judgment was in fact delivered by the Court of Appeal, the obligation to make the judgment available to the author of a complaint is discharged upon delivery of the written judgment. Accordingly, the judgment was available to the author and his counsel on 19 June 1987, the date of its delivery.

Issues and proceedings before the Committee :

5.1 Before considering any claims contained in a communication, the Human Rights Committee must, in accordance with rule 87 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

5.2 During its 38th session, the Committee considered the admissibility of the communication. With respect to the requirement of exhaustion of domestic remedies, it noted the State party's contention that the communication was inadmissible because of the author's failure to petition the Judicial Committee of the Privy Council for special leave to appeal. In this context, the Committee observed that although the Judicial Committee may in

principle hear petitions in the absence of a written judgment from the Court of Appeal, its past practice revealed that all petitions unsupported by the relevant court documents had been dismissed. It therefore considered that if a petition for leave to appeal was to be considered an available and effective remedy, it had to be supported by the judgment from which leave to appeal was sought. The Committee further considered that counsel had made reasonable efforts to obtain the documents in question, and that he was entitled to assume that a petition for special leave to appeal would not be an effective remedy within the meaning of article 5, paragraph 2(b), of the Optional Protocol.

5.3 On 15 March 1990, therefore, the Committee declared the communication admissible in as much as it appeared to raise issues under article 14 of the Covenant.

6.1 The Committee has taken note of the State party's submission, made after the adoption of the decision on admissibility, that the Court of Appeal's duty to make its judgment available to the accused is discharged when it has been rendered in writing, and that the judgment of the Court of Appeal would have been available to the author and his counsel as of 19 June 1987.

6.2 While considering that the adoption of the written judgment cannot of itself be equated with "availability" of the same to either the appellant or his counsel, and that there should be reasonably efficient administrative channels through which either appellant or counsel may request and obtain relevant court documents, the Committee notes that author's counsel did obtain a copy of the judgment of the Court of Appeal shortly after the adoption of the decision on admissibility in the case. Thus he now has the documents enabling him to effectively petition the Judicial Committee; the Committee further observes that counsel has confirmed that he will lodge a petition for special leave to appeal on the author's behalf, and therefore is in the process of exhausting an available domestic remedy, potentially providing the judicial redress sought.

7. The Human Rights Committee therefore decides:

- (a) that the admissibility decision of 15 March 1990 is set aside;
- (b) that the communication is inadmissible under article 5, paragraph 2(b) , of the Optional Protocol;
- (c) that, since this decision may be reviewed under rule 92, paragraph 2, of the Committee's rules of procedure upon receipt of a written request by or on behalf of the author containing information to the effect that the reasons for inadmissibility no longer apply, the State party is requested, under rule 86 of the Committee's rules of procedure, not to carry out the death sentence against the author before he has had a reasonable time, after completing the effective domestic remedies available to him, to request the Committee to review the present decision;
- (d) that this decision be communicated to the State party, to the author and to his counsel.

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