



Bennett v. Jamaica

Communication NÂ° 590/1994*

Country: Jamaica

Region: Americas

Year: 1999

Court: United Nations Human Rights Committee

Health Topics: Prisons

Human Rights: Freedom from torture and cruel, inhuman or degrading treatment, Right to due process/fair trial

Facts

Trevor Bennett (â€œauthorâ€•) at the time of submission of the communication was awaiting execution at a prison. He had been convicted of murder and sentenced to death. His appeals to the Court of Appeal and Judicial Committee of the Privy Council were dismissed.

He claimed violations of articles 6, 7, 9, 10, and 14 of the International Covenant on Civil and Political Rights.Â He alleged that the conditions of detention were inhuman, degrading, and unsanitary. His health had deteriorated since he was detained, he developed an ulcer, and he had not seen a doctor since 1990.

He also alleged that he was neither charged nor brought before a judge until four weeks after his arrest, there was a four year delay between his conviction and dismissal of appeal, the caution statement was made under coercion, there was insufficient time to prepare his defense, erroneous jury instructions, he was not represented on appeal by counsel of his choice, ineffective counsel, and prolonged detention on death row.

Decision and Reasoning

The Human Rights Committee held violations of article 9, paragraph 3; article 10, paragraph 1; and article 14, paragraph 3(c) in conjunction with paragraph 5 of the Covenant.

The Committee found that the authorâ€™s conditions of the prison and lack of medical attention amounted to a violation of article 10. The author made specific allegations such as sharing a cell with mentally ill inmates, not having seen a doctor since 1990 and having close to his cell a large pipe carrying waste water with foul odor, but the State only disputed that the author was denied adequate medical attention.

The Committee found that detaining the author for four weeks before bringing him before a judge was a violation of article 9, paragraph 3.

The Committee found that the period of two years and three months from the conviction of the author to the dismissal of his appeal in the Court of Appeal violated article 14, paragraph 3(c) in conjunction with paragraph 5. All guarantees under article 14 should be strictly observed in any criminal procedure, particularly in capital cases. There were no circumstances justifying the delay and the State acknowledged as undesirable. However, the Committee found that the period of one year and nine months from the judgment of the Court of Appeal to the dismissal of the author's petition for special leave to appeal to the Judicial Committee of the Privy Council was not a violation.

The Committee thus held that Jamaica was under an obligation to provide Mr. Bennett with an effective remedy, including compensation, and that similar violations do not occur in the future.

In regards to the claims that the author received insufficient time to prepare his defense, erroneous jury instructions, ineffective counsel, and prolonged detention on death row, the Committee found that the claims were were not sufficiently substantiated for admissibility.

Decision Excerpts

10.5 ...The Committee reiterates that all guarantees under article 14 of the Covenant should be strictly observed in any criminal procedure, particularly in capital cases, and notes, with regard to the period of two years and three months which lapsed from the conviction of the author to the dismissal of his appeal in the Court of Appeal, that the State party has acknowledged that such a delay is undesirable, but that it has not offered any further explanation. In the absence of any circumstances justifying the delay, the Committee finds that with regard to this period there has been a violation of article 14, paragraph 3(c), in conjunction with paragraph 5.

10.8 The Committee notes that the author refers not only to the inhuman and degrading prison conditions in general, but also makes specific allegations such as sharing a cell with mentally ill inmates, not having seen a doctor since 1990 and having close to his cell a large pipe carrying waste water with foul odour. The Committee notes that with regard to these specific allegations, the State party has merely disputed that the author was denied adequate medical attention. In the circumstances, the Committee finds that article 10, paragraph 1, has been violated.

12. In accordance with article 2, paragraph 3(a), of the Covenant, the State party is under an obligation to provide Mr. Bennett with an effective remedy, including compensation. The State party is under an obligation to ensure that similar violations do not occur in the future

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 violations of article 9, paragraph 3, article 10, paragraph 1 and article 14, paragraph 3(c) in conjunction with paragraph 5, of the International Covenant on Civil and Political Rights. 12. In accordance with article 2, paragraph 3(a), of the Covenant, the State party is under an obligation to provide Mr. Bennett with an effective remedy, including compensation. The State party is under an obligation to ensure that similar violations do not occur in the future. 13. On becoming a State party to the Optional Protocol, Jamaica recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not. This case was submitted for consideration before Jamaica's denunciation of the Optional Protocol became effective on 23 January 1998; in accordance with article 12(2) of the Optional Protocol the communication is subject to the continued application of the Optional Protocol. 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 ninety days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the Committee's Views

6.4 The author claimed that he did not have sufficient time to prepare his defence, in violation of article 14, paragraph 3(b), of the Covenant. The Committee noted, however, that the author met with his legal representative on several occasions before the beginning of the trial and that there was no indication that the author or his legal representative complained to the judge at the trial that they had not had sufficient time to prepare the defence. In these circumstances, the Committee considered that the allegation had not been substantiated, for purposes of admissibility. This part of the communication was therefore inadmissible under article 2 of the Optional Protocol.

6.5 The Committee noted that part of the author's allegations relate to the instructions given by the judge to the jury. The Committee referred to its prior jurisprudence and reiterated that it is generally not for the Committee, but for the appellate Courts of States parties, to review specific instructions to the jury by the trial judge, and that the Committee will not admit such claims, unless it can be ascertained that the instructions to the jury were clearly arbitrary or amounted to a denial of justice. The Committee took note of the author's claim that the instructions in the instant case amounted to a denial of justice. The Committee also noted the Court of Appeal's review of the judge's instructions, and concluded that in the instant case the trial judge's instructions did not show such defects as to render them arbitrary or a denial of justice. Accordingly, this part of the communication was inadmissible as incompatible with the provisions of the Covenant, pursuant to article 3 of the Optional Protocol.

6.6 With regard to the author's claim that he was not represented on appeal by a counsel of his choice, the Committee recalled that article 14, paragraph 3(d), does not entitle the accused to choose counsel provided to him free of charge. This part of the communication was therefore inadmissible, as incompatible with the provisions of the Covenant, under article 3 of the Optional Protocol. With regard to the author's claim that he was not properly represented by his legal aid counsel on appeal, the Committee noted from the information before it that counsel did in fact consult with the author prior to the hearing of the appeal, and that at the hearing counsel did argue grounds for appeal. The Committee considered that it is not for the Committee to

question counsel's professional judgment as to how to argue the appeal, unless it is manifest that his behaviour was incompatible with the interests of justice. The Committee found therefore that, in this respect, the author had no claim under article 2 of the Optional Protocol.

6.7 As to the author's claim that his prolonged detention on death row amounts to a violation of article 7 of the Covenant, the Committee referred to its prior jurisprudence 1, and in particular to its Views in respect of communication No. 588/1994 *Errol Johnson v. Jamaica*, adopted on 22 March 1996.. The jurisprudence of this Committee remains that the length of detention on death row alone does not entail a violation of article 7 of the Covenant in the absence of some further compelling circumstances. In the instant case, neither the author nor his counsel had substantiated any such circumstances. This part of the communication was therefore inadmissible under article 2 of the Optional Protocol. 6.8 The Committee considered that the author's remaining claims, regarding the period of detention without having been brought before a judge, the period between conviction at first instance and the dismissal of his application for special leave to appeal to the Judicial Committee of the Privy Council, and the circumstances of detention to be sufficiently substantiated for purposes of admissibility, and that they should be examined on the merits.

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