



Taylor (Desmond) v. Jamaica

Communication No 705/1996, Views of the UNHRC, 2 April 1998

Country: Jamaica

Region: Americas

Year: 1998

Court: United Nations Human Rights Committee 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, Right to life

Facts

Taylor (T), P (his brother) and S were charged with murdering four persons in May 1992 and were convicted and sentenced to death in July 1994. T claimed that the two years and three months spent in pre-trial detention was unreasonable, given that the primary evidence against him was a statement made by S.

He also claimed that there was a potential for a conflict of interest in the same lawyer - whom T and P had initially privately retained and whom they had requested at the start of the trial be assigned to them on a legal aid basis - representing him and his brother, particularly as he was accused of directly participating in the killings (a capital murder charge) but the charge against P related to his presence at the scene (a non-capital murder charge). T asserted that real prejudice arose because of the different rules applicable in establishing the two forms of murder and asserted that the judge's failure to direct the jury as to the requirements of the more exacting test in his case would have been substantially reduced if he had been separately represented. T claimed that his only meeting with the lawyer prior to the trial was for some minutes before the preliminary hearing and that he only spoke with him for a few minutes at a time during the trial. He also claimed that the lawyer did not take detailed instructions from him and had failed to call an important witness.

T's appeal against conviction was dismissed by the appeal court in July 1995 and the judicial committee of the privy council dismissed his petition for special leave to appeal in June 1996. T claimed that the conditions of detention applicable to him on death row entailed confinement in a small cell for twenty-three hours a day, no mattress or bedding for his concrete bunk, wholly deficient sanitation, inadequate ventilation, total absence of natural lighting, lack of provision for health care and medical facilities, absence of reeducation and work programs. He further claimed that execution after his substantial period of detention in intolerable conditions would be inhuman and that legal aid was not available to seek redress through a constitutional motion of the violation of the rights which he had suffered. T complained about the delay in bringing his case to trial, the inadequate legal representation, the conditions of detention, the carrying out of the death sentence and the absence of legal aid for a constitutional motion.

Jamaica denounced the Optional Protocol to the International Covenant on Civil and Political Rights ("OP") with effect from 23 January 1998.

[Adapted from INTERIGHTS summary, with permission]

Decision and Reasoning

The Committee held:

(1) that, since there was no indication that T's lawyer, a queen's counsel, was not acting other than in the exercise of his professional judgement by deciding to ignore certain of his instructions and not to call a witness, the claims with respect to the preparation of the defence and legal representation were inadmissible under OP Art 2;

(2) that, all available domestic remedies having been exhausted with the dismissal of T's petition for special leave to appeal, the remaining claims were admissible;

(3) that the delay of twenty-seven months between arrest and trial, during which T was detained, was a violation of Arts 9(3) of the International Covenant on Civil and Political Rights and, as Jamaica had not provided any arguments relating to matters such as the complexities of the case which could have justified such a delay, also of Art 14(3)(c);

(4) that, recalling that T and his brother had privately retained the same lawyer for the preliminary enquiry and had both requested at the trial that he be assigned to them on a legal aid basis, there was no basis for a conflict of interest in their defence entailing a violation of Art 14(3)(b)&(d) since both denied involvement in the crime and the statements attributed to them and neither put forward evidence or submissions reflecting on the other;

(5) (11-4) that the absence of legal aid for a constitutional motion deprived T of any opportunity to test the irregularity of his criminal trial in a fair hearing in the constitutional court and was a violation of Art 14(1);

(6) that, in the absence of further compelling circumstances, T's detention on death row for three and a half years was not a violation of Art 7;

(7) that the claims about the conditions on death row had not been refuted by Jamaica and these were a violation of Art 10(1);

(8) that the final sentence of death had been passed without having met the requirements for a fair trial and was thus a violation of Art 6;

(9) that T was entitled to an effective remedy entailing commutation of his death sentence; and

(10) that, pursuant to OP Art 12(2), Jamaica continued to be subject to the application of the OP with respect to this case as it was submitted before the denunciation.

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Decision Excerpts

"7.4 The author claims that his execution after a lengthy period on death row in conditions which amount to inhuman and degrading treatment would be contrary to article 7 of the Covenant. The Committee reaffirms its constant jurisprudence that detention on death row for a specific period - in this case three and a half years - does not violate the Covenant in the absence of further compelling circumstances. The conditions of detention may, however, constitute a violation of articles 7 or 10 of the Covenant. Mr. Taylor alleges that he is detained in particularly bad and insalubrious conditions on death row; the claim is supported by reports which are annexed to counsel's submission. There is a lack of sanitation, light, ventilation and bedding; confinement for 23 hours a day and inadequate health care. Counsel's submission takes up the main arguments of these reports and shows that the prison conditions affect Desmond Taylor himself, as a condemned prisoner on death row. The author's claims have not been refuted by the State party, which remains silent on the issue. The Committee considers that the conditions of detention described by counsel and which affect Mr. Taylor directly are such as to violate his right to be treated with humanity and respect for the inherent dignity of his person, and are thus contrary to article 10, paragraph 1.

7.5 The Committee considers 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, a violation of article 6 of the Covenant if no further appeal against the sentence is possible. In Mr. Taylor's case, the final sentence of death was passed without having met the requirements for a fair trial set out in article 14 of the Covenant. It must therefore be concluded that the right protected under article 6 has also been violated."