Morgan and Williams v Jamaica, Merits, Communication No 720/1996, UN Doc CCPR/C/64/D/720/1996/Rev.1, (1999) 6 IHRR 958, IHRL 2110 (UNHRC 1998), 3rd November 1998, United Nations General Assembly [UNGA]; Office of the High Commissioner for Human Rights [OHCHR]; United Nations Human Rights Committee [UNHRC]

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Module:

International Human Rights Law [IHRL]

Parties:

Leroy Morgan (Jamaica [jm]), Samuel Williams (Jamaica [jm])
Jamaica

Judges/Arbitrators:

Nisuke Ando; Prafullachandra Natwarlal Bhagwati; Thomas Buergenthal; Lord Colville; Omran El Shafei; Elizabeth Evatt; Eckart Klein; David Kretzmer; Cecilia Medina Quiroga; Fausto Pocar; Martin Scheinin; Roman Wieruszewski; Maxwell Yalden; Abdallah Zakhia

Procedural Stage:

Merits

Subject(s):

Freedom from torture and cruel, inhuman, or degrading treatment — Right to fair trial — Rights of persons deprived of their liberty — Evidence — International criminal law, evidence

Core Issue(s):

Whether proceedings in respect of the classification of a person's alleged crime were proceedings for the purposes of the right to a fair hearing under Article 14(1) of the International Covenant on Civil and Political Rights.

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Facts

F1 Leroy Morgan and Samuel Williams were convicted of murder on 12 April 1991, and sentenced to death. Their appeals ultimately failed.

F2 The matter had been remitted to the Court of Appeal regarding the classification of the alleged crime as capital murder rather than non-capital murder.

F3 The case was first examined by a single judge of the Appeal Court in July 1996 and then reviewed by a panel of three judges in November 1996. In both cases, the Court held that Morgan and Williams' convictions were capital offences.

F4 Morgan and Williams claimed that when their case was examined by a single judge of the Court of Appeal they were not represented nor were they entitled to make any submissions. They claimed the reclassification proceedings breached Article 14(1) of the International Covenant on Civil and Political Rights (16 December 1966) 999 UNTS 171, entered into force 23 March 1976 ('ICCPR').

F5 Morgan and Williams also claimed that they were held in St Catherine's prison in inhuman and degrading conditions contrary to Articles 7 and 10 of the ICCPR. Morgan further alleged that he had sustained serious injuries prior to his arrest for which he did not receive adequate medical care during his detention, in further breach of Articles 7 and 10.

F6 Jamaica explained its procedures regarding classification of murder as capital or non-capital. It claimed the procedures accorded with the ICCPR.

F7 Jamaica undertook to investigate the allegations of poor treatment in detention.

Held

H1 The communication was admissible. (paragraph 6.4)

H2 The reclassification of a criminal offence did not amount to a 'determination of a criminal charge' for the purposes of Article 14(3). However a reclassification hearing had to comply with the relevant procedural safeguards for a fair trial under Article 14(1) of the ICCPR. (paragraph 7.1)

H3 Here, the matter was initially vetted by a single judge before it was determined by a three judge panel of the Court of Appeal in a public hearing. This procedure accorded with Article 14(1) of the ICCPR. (paragraph 7.1)

H4 There were detailed allegations concerning the conditions of Morgan and Wiliams' detention and beatings. In the absence of refutation by Jamaica, there was a breach of Article 10(1). (paragraph 7.2)

H5 Jamaica had violated Morgan and Williams' rights under Article 10(1) of the ICCPR and was required to provide them with an effective remedy including compensation. (paragraphs 8–9)

H6 Mr Ando in a partially dissenting opinion: The evidence did not sustain a finding of violation of Article 10(1). The only evidence submitted was an NGO report on general conditions at St Catherine's prison; Morgan and Williams had not explained how those general conditions affected them specifically. (paragraph 1)

Date of Report: 17 February 2009

Reporter(s):

Alexander Pung; Castan Centre for Human Rights Law

Analysis

A1 Proceedings in respect of the classification of a crime are proceedings to which Article 14(1) applies. The relevant procedure in Jamaica satisfied Article 14(1). See also *Levy v Jamaica*, UN Doc CCPR/C/64/D/719/1996.

A2 Ando basically disagreed with the majority on the evidence needed to sustain a breach of Article 10(1). Compare *Hylton v Jamaica*, UN Doc CCPR/C/57/D/600/1994.

Date of Analysis: 21 September 2009
Analysis by: Sarah Joseph; Castan Centre for Human Rights Law

Instruments cited in the full text of this decision:

International

Standard Minimum Rules for the Treatment of Prisoners, UN Doc A/CONF/611, annex I; ESC res 663C; 23 UN ESCOR Supp (No 1) at 11; UN Doc E/3048 (1957), 30 August 1955, Sections 10, 11(a), 11(b), 12, 13, 15, 19, 22(1), 22(2), 22(3), 24, 25(1), 25(2), 26(1), 35(1), 36(1), 36(2), 36(3), 36(4), 57, 71(2), 72(3), 77

International Covenant on Civil and Political Rights (16 December 1966) 999 UNTS 171, entered into force 23 March 1976, Articles 2(3)(a), 6, 6(2), 7, 10(1), 14(1), 14(3)(b), 14(3)(d)

Optional Protocol to the International Covenant on Civil and Political Rights (16 December 1966) 999 UNTS 171, entered into force 23 March 1976, Articles 2, 5(1), 5(4), 12(2)

Rules of Procedure UN Doc CCPR/C/3/Rev5, UN Human Rights Committee, 11 August 1997, Rules 87, 94(1), 94(2)

Domestic

Offences Against the Person (Amendment) Act, 1992 (Jamaica), Sections 2, 7

Cases cited in the full text of this decision:

UN Human Rights Committee

Champagnie and ors v Jamaica, UN Doc CCPR/C/51/D/445/1991

Peart and Peart v Jamaica, UN Doc CCPR/C/54/D/464/1991; UN Doc CCPR/C/54/D/482/1991, 19 July 1995

Johnson v Jamaica, UN Doc CCPR/C/56/D/588/1994, 22 March 1996

Taylor v Jamaica, UN Doc CCPR/C/62/D/705/1996, 2 April 1998

Privy Council

Pratt and Morgan v Attorney General of Jamaica, (1993) All ER 769, 2 November 1993

Huntley v Attorney General of Jamaica, (1995) 1 All ER 308

Walker v R, (1995) 2 AC 36

Guerra v Baptiste and ors, (1996) AC 397

United Kingdom domestic courts

Lamey v R, (1996) 1 WLR 902

Simpson v R, (1996) 2 WLR 77

Decision - full text

Paragraph numbers have been added to this decision by OUP

Views under article 5, paragraph 4, of the Optional Protocol

1 . The authors of the communication are Leroy Morgan and Samuel Williams, Jamaican citizens currently awaiting execution at St. Catherine District Prison, Jamaica. They claim to be victims of violations by Jamaica of articles 6; 7; 10, paragraph 1, and 14, paragraph 3 (b) and (d) of the International Covenant on Civil and Political Rights. They are represented by counsel. Mr. Saul Lehrfreund of the London law firm of Simons Muirhead & Burton.

The facts as presented by the authors

2.1 On 12 April 1991, the authors were convicted for the murder of George Chambers and sentenced to death. On 16 November 1992, the Court of Appeal of Jamaica dismissed their appeal and classified the authors‘ offences as capital murder under Section 2 of the Offences Against the Person (Amendment) Act 1992. On 15 March 1995, a petition was lodged with the Judicial Committee of the Privy Council for special leave to appeal against their convictions and the reclassification of their offences. Special leave to appeal was granted limited to the — issue of the substitution by the Court of Appeal of a verdict of guilty of capital murder“. On 7 March 1996, the Judicial Committee of the Privy Council held that the Court of Appeal as such has no jurisdiction to perform the reclassification for capital murder. Consequently, the classification of the Court of Appeal in the authors‘ case was found null and void. The process of classification was subsequently restarted in accordance with section 7 of the Offences Against the Person (Amendment) Act 1992, which requires that review is first to be performed by a single judge of the Court of Appeal and then, if appealed, by three designated judges, and not by the Court of Appeal as such. In the authors‘ case, their offences were classified as capital by a single judge on 26 July 1996 and, on appeal, by three judges on 18 November 1996.

2.2 As to the reclassification of the case, which was made in accordance with the Statute, it is submitted that a petition for special leave to appeal to the Privy Council is not available and effective. Reference is made to findings of the Privy Council in Walker v. The Queen(1995) 2 AC 36. Counsel explains that under its Statutes, the Judicial Committee of the Privy Council is not in a position to review a decision of the judges of the Court of Appeal of Jamaica sitting as an administrative body.

2.3 The authors have not applied to the Supreme (Constitutional) Court of Jamaica for redress. It is argued that a constitutional motion in the Supreme Court would inevitably fail, in light of the precedent set up by the Judicial Committee of the Privy Council in Huntley v. Attorney General for Jamaica(1995) 1 ALL ER 308. It is further submitted that if it is considered that the authors have a constitutional remedy in theory, in practice it would not be available to them because of lack of funds and the unavailability of legal aid. Reference is made to findings of the Committee 1/ that in the absence of legal aid, a constitutional motion

does not constitute an available remedy. With this, it is submitted, domestic remedies have been exhausted.

The complaint

3.1 Counsel contends that the process of reclassification for capital murder was in violation of article 14, paragraphs 1 and 3, of the Covenant. Counsel states that the Offences Against the Person (Amendment) Act 1992 creates two categories of murder; capital and non-capital. Section 7 of the Act provides for the classification of convictions that were pronounced prior to the entry into force of the Act. Murder is to be classified as capital if it is committed, inter alia, in the course of robbery, burglary, or house-breaking. Counsel notes that Section 7 requires a further finding of aggravating factors which were not considered during the original trial. It is submitted that the reclassification amounts to the determination of new criminal charges against the authors, within the meaning of article 14 of the Covenant. Alternatively, it is argued that the reclassification is in fact an extension of the original sentencing process and should qualify for the procedural safeguards of article 14 which apply at the sentencing stage. Specifically it is argued that article 14 was violated at the time of the initial classification by the single judge, as

- — the authors were not given any notice of where or how their cases were reviewed
- — the authors were not given any notice of the statutory category under which their offences might be considered capital
- — the authors were not provided with a copy of the reasons for the decision of the judge
- — the authors were not given the opportunity to be heard in person or to make written representations
- — the authors were not given an opportunity to be represented by a legal representative
- — the authors were not informed of the factual findings upon which the judge was minded to make the classification
- — the proceedings in which the decision was made were not held or conducted in public.

3.2 Counsel alleges that, as a consequence of the alleged violation of article 14, also article 6, paragraph 2, was violated by the imposition of the death sentence, as the provisions of the Covenant were breached, and no further appeal is now possible. Reference is made to the Committee‘s jurisprudence 2/.

3.3 Counsel alleges a violation of articles 7 and 10, paragraph 1, on the ground of the conditions of detention at St. Catherine‘s District Prison. Counsel invokes the reports of non-

governmental organizations concerning the inhuman conditions of detention at St. Catherine District Prison. In this context, it is submitted that the authors spend twenty-hours a day in a cell with no mattress, other bedding or furniture, no sanitation, no natural light and inadequate ventilation. The prison itself is in a total state of disrepair, the quality of food is very poor and medical assistance is lacking. The conditions under which the authors are detained are said to amount to a violation of articles 7 and 10 of the Covenant, as well as Sections 10; 11 (a) and (b); 12; 13; 15; 19; 22 (1), (2), (3), 24; 25 (1) and (2); 26 (1); 35 (1); (36) (1), (2), (3), (4); 57; 71 (2); 72 (3); and 77 of the U. N. Standard Minimum Rules for the Treatment of Prisoners.

3.4 With regard only to Leroy Morgan, counsel alleges a violation of articles 7 and 10, paragraph 1, because at the time of the commencement of his detention at St. Catherine‘s District Prison he was denied medical attention to injuries he sustained after a gun shot in 1987. It is submitted that Mr. Morgan contacted the Superintendent of St. Catherine‘s District Prison on numerous occasions requesting that he be provided with medical treatment for his injury which was causing him extreme pain, but that he never received medical treatment, despite promises from the Superintendent. The lack of propr medical care is also said to be in violation of the U. N. Standard Minimum rules for the Treatment of Prisoners.

3.5 Counsel alleges a violation of articles 7 and 10, paragraph 1, also on the ground that the authors have been awaiting execution since 1992 on death row. It is submitted that the —agony of suspense“ amounts to cruel, inhuman and degrading treatment, as recognized by the Judicial Committee of the Privy Council in the cases of Pratt and Morgan v. The Attorney General of Jamaica 3/ and Guerra v. Baptiste & Others 4/.

The State party‘s submission and counsel‘s comments thereon

4.1 In its submission of 4 November 1996, the State party, in the interest of expediting the examination of this communication, states that it will address both the admissibility and the merits, but it does not explicitly contest the admissibility of the communication.

4.2 As to the alleged violation of article 14, paragraphs 1 and 3, in the reclassification of the authors‘ offences, the State party denies that there has been any breach of the Covenant. The State party explains that before the entry into force of the Amendment Act in October 1992 the penalty for murder was an automatic death sentence, and that everyone who at the time already was sentenced to death were given a second chance through the retroactive application of the Act. This operated as a review process where a single judge would make a preliminary determination of capital or non-capital murder. The State party states that the factors which affect the judge‘s decision are the clear and unambiguous categories of Offences set out in the Act and the trial transcript, both of which were available to the author and his counsel. Prior to this review, it is stated, a jury found the authors guilty of murder beyond a reasonable doubt, and the jury must have been satisfied that the offence not just had been committed, but also that it was committed in the manner alleged by the prosecution. Further, the State party states that the case, including the judge‘s directions to

the jury and addresses, was reviewed on appeal, and therefore, the evidence used by the single judge to make his decision had already been examined twice before it came to him. Furthermore, the State party argues that the procedure allows that if for some reason the single judge went beyond the evidence in the transcript and made a classification of capital murder, then this could be dealt with by counsel before the panel of three judges, i.e. the author was given an opportunity, complete with legal representation, to challenge the single judge‘s decision. In conclusion, the State party holds that both the reclassification in this particular case and the reclassification procedure at large is consistent with the Covenant, not a violation thereof.

4.3 The State party states it will make inquiries into Leroy Morgan‘s allegation of lack of medical treatment in St. Catherine‘s District Prison.

4.4 With respect to the alleged violation of articles 7 and 10, paragraph 1, of the Covenant on the ground of — agony of suspense“ suffered by the author due to the delay of execution, the State party submits that a prolonged stay on death row does not per se constitute cruel inhuman treatment.

5.1 In his submission of 10 January 1997, counsel comments on the State party‘s submission. Regarding the alleged violation of article 14, counsel argues that the factors which influence the single judge‘s decision, contrary to the State party‘s observations, are far from clear and that a number of categories of offences set out in the Amendment Act are ambiguous. In this respect, counsel points that appeals have already been heard by the Judicial Committee of the Privy Council on the issue of proper categorisation under the Amendment Act 5/. As to the State party‘s contention that the authors were among those who benefited from the retroactive application of the Amendment Act, and that they thus were given a second chance by an Act of Parliament, counsel argues that although the purpose of the Amendment Act is consistent with one of the purposes of the Covenant as it was given in order to reduce the categories of murder which attract the death penalty, the issue at hand is whether the mechanism for determining if aggravating factors under the Act are present is compatible with the guarantees in article 14 of the Covenant. In this regard, it is submitted that article 14 was breached by the single judge‘s reclassification of the authors‘ offences.

5.2 As to the alleged violations of articles 7 and 10, paragraph 1, on the ground of prolonged stay on death row, counsel makes reference to the Committee‘s jurisprudence where it has held that prolonged detention on death row may breach the Covenant where further compelling circumstances are substantiated, and submits that the physical and psychological treatment of the prisoner, as well as their health, must be taken into consideration. Reference is also made to the individual opinions of five Committee members in communication No. 588/1994 6/, expressing the necessity of a case by case appreciation when determining whether prolonged stay on death row constitutes a violation of the Covenant.

5.3 As to the remaining allegations, counsel reiterates the claims put forward in the original submission.

Facts and proceedings before the Committee

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

6.2 The Committee notes that the State party in its submission, in order to expedite the examination, has addressed the merits of the communication. This enables the Committee to consider both the admissibility and merits of the case at this stage, pursuant to rule 94, paragraph 1, of the rules of procedure. However, pursuant to rule 94, paragraph 2, of the rules of procedure, the Committee shall not decide on the merits of a communication without having considered the applicability of any of the grounds of admissibility referred to in the Optional Protocol.

6.3 With regard to the claim that the authors' detention on death row since 1991 constitutes cruel, inhuman or degrading treatment, the Committee reiterates its constant jurisprudence 7/ that detention on death row for any specific period of time does not constitute a violation of articles 7 and 10, paragraph 1, of the Covenant in absence of further compelling circumstances. The Committee has in its jurisprudence 8/ held that deplorable conditions of detention may on their own constitute a violation of articles 7 and 10 of the Covenant, but they cannot be regarded as — further compelling circumstances" in relation to the — death row phenomenon". Consequently, no relevant circumstances have been adduced by counsel or the author, and the Committee finds this part of the communication inadmissible under article 2 of the Optional Protocol. On the other hand, the authors' claims of violations of the same provisions on the ground of lack of medical treatment and conditions of detention in St. Catherine's District Prison are, in the view of the Committee, sufficiently substantiated to be considered on the merits, and are therefore deemed admissible.

6.4 The Committee also declares the remaining claims admissible, and proceeds with the examination of the merits of all admissible claims, in the light of the information made available to it by the parties, as required by article 5, paragraph 1, of the Optional Protocol.

7.1 As to the author's claim that the reclassification of his offence as capital murder by the single judge violated article 14, the Committee notes that pursuant to the Offences against the Persons (Amendment) Act 1992, the State party adopted a procedure to reclassify established murder convictions expeditiously by entrusting the initial review of each case to a single judge, enabling him to promptly give a decision in favour of the prisoner who in his opinion had committed a non-capital offence, and thus removing rapidly any uncertainty as to whether he was still at risk of being executed. If the single judge on the other hand found that the offence was of capital nature, the convict was notified and was granted the right to appeal the decision to a three judge-panel, which would address the matter in a public

hearing. The Committee notes that it is not disputed that all procedural safeguards contained in article 14 applied in the proceedings before the three judge-panel. The author‘s complaint is solely directed at the first stage of the reclassification procedure, i.e. the single judge‘s handling of the matter, of which the author was not notified and in which there was no public hearing where the author could comment on the relevant issues or be represented. The Committee is of the opinion that the reclassification of an offence for a convict already subject to a death sentence is not a — determination of a criminal charge“ within the meaning of article 14 of the Covenant, and consequently the provisions in article 14, paragraph 3, do not apply. The Committee considers, however, that the safeguards contained in article 14, paragraph 1, should apply also the reclassification procedure. In this regard, the Committee notes that the system for reclassification allowed the convicts a fair and public hearing by the three judge-panel. The fact that this hearing was preceded by a screening exercise performed by a single judge in order to expedite the reclassification, does not constitute a violation of article 14. Consequently, the Committee also finds that these facts do not constitute a violation of article 6, paragraph 2, of the Covenant.

7.2 As to the allegation of a violation of articles 7 and 10, paragraph 1, of the Covenant on the ground of the conditions of detention, including lack of medical treatment at St. Catherine‘s District Prison, the Committee notes that the authors have made specific allegations. They state that they are detained twenty-three hours a day in cells with no mattress, other bedding or furniture, that the cells have inadequate sanitation and no natural light, and that the food is not palatable. Furthermore, they state that there in general is a lack of medical assistance, and the author Leroy Morgan specifically mentions that at the time of the commencement of his detention, despite numerous requests to the Superintendent, he was denied medical attention to injuries he sustained after a gun shot in 1987. The State party has not refuted these specific allegations, and has not forwarded results of the announced investigation into the author‘s allegations that he was denied medical attention in 1991. The Committee finds that these circumstances disclose a violation of article 10, paragraph 1, of the Covenant.

8 . The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant and Civil and Political Rights, is of the view that the facts before it disclose a violation of article 10, paragraph 1.

9 . In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the authors with an effective remedy, that should entail compensation. Having regard to the circumstances, the Committee also recommends commutation of the death penalty imposed on the authors.

10 . 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.

Appendix
Individual opinion by member Nisuke Ando (partly dissenting)

Mr Nisuke Ando

1 I am not in disagreement with the Committee‘s finding of a violation of article 10, paragraph 1, in this case so far as it concerns Mr. Leroy Morgan‘s allegation with respect to the State party‘s denial of medical attention in 1991. (See para. 7.2) However, I have a difficulty in agreeing with the Committee‘s finding of violation of article 10, paragraph 1, for the alleged facts that the authors — are detained twenty-three hours a day in cells with no mattress, other bedding or furniture, that the cells have inadequate sanitation and no natural light, and that the food is not palatable. Furthermore ... there in general is a lack of medical assistance“. (See, also, paragraph 7.2) These allegations are based exclusively on the reports of nongovernmental organizations about the general conditions of detention at St. Catherine‘s District Prison, and while the authors‘ counsel invokes these reports, he/she fails to prove, in my view, how these general conditions did affect specific conditions of each of the authors. It may be true that the State party has not refuted the above-mentioned allegations, but it is the duty of the Committee to ascertain the validity of each allegation on the basis of facts which specifically support it. In this particular case I am afraid that the Committee has more to do to fulfil this duty.

Nisuke Ando (signed)

Footnotes:

1/ Communication No. 445/1991, Lynden Champagnie, Delroy Folmer and Oswald Chisholm.

2/ Communications Nos. 464/1991 and 482/1991, Garfield Peart and Andrew Peart v. Jamaica, Views adopted 19 July 1995 at the 54th session of the Committee.

3/ Judgment PC Appeal No. 10, of 1993, delivered on 2 November 1993.

4/ (1995) 4 ALL ER.

5 Reference is made to Leroy Lamey v. The Queen[1996] 1 WLR 902 and Simpson v. The Queen[1996] 2 WLR 77.

6/ Errol Johnson vs. Jamaica, Views adopted on 22 March 1996.

7/ See, inter alia, the Committee‘s Views on communication No. 588/1994, Errol Johnson v. Jamaica, adopted on 22 March 1996.

8/ See, inter alia, the Committee‘s Views on communication No. 705/1996, Desmond Taylor v. Jamaica, adopted on 2 April 1998.