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CCPR/C/45/D/349/1989  
18 August 1992

Original: ENGLISH

HUMAN RIGHTS COMMITTEE  
Forty-fifth session

DECISIONS

Communication No. 349/1989

Submitted by : Clifton Wright  
[represented by counsel]

Alleged victim : The author

State party : Jamaica

Date of communication : 12 January 1989 (initial submission)

Documentation references : Prior decisions-  
CCPR/C/WG/35/D/349/1989  
combined  
1989)  
(Working Group  
rule 86/rule 91  
decision, 17 March  
-CCPR/C/40/D/249/1989  
(decision on  
admissibility, dated  
17 October 1990)

Date of adoption of Views : 27 July 1992

On 27 July 1992, the Human Rights Committee adopted its Views under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 349/1989. The text of the Views is

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Committee to make such an evaluation 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 manifestly violated his obligation of impartiality. In the present case, the Committee has been requested to examine matters belonging in the latter category.

8.3 In respect of the issue of the significance of the time of death of the victim, the Committee begins by noting that the post-mortem on the deceased was performed on 1 September 1981 at approximately 1 p.m., and that the expert concluded that death had occurred forty-seven hours before. His conclusion, which was not challenged, implied that the author was already in police custody when the deceased was shot. The information was available to the Court; given the seriousness of its implications, the Court should have brought it to the attention of the jury, even though it was not mentioned by counsel. Furthermore, even if the Judicial Committee of the Privy Council had chosen to rely on the facts relating to the post-mortem evidence, it could not have addressed the matter as it was introduced for the first time at that stage. In all the circumstances, and especially given that the trial of the author was for a capital offence, this omission must, in the Committee's view, be deemed a denial of justice and as such constitutes a violation of article 14, paragraph 1, of the Covenant. This remains so even if the placing of this evidence before the jury might not, in the event, have changed their verdict and the outcome of the case.

8.4 The right of an accused person to have adequate time and facilities for the preparation of his or her defence is an important element of the guarantee of a fair trial and a corollary of the principle of equality of arms. In cases in which a capital sentence may be pronounced, it is axiomatic that sufficient time must be granted to the accused and his or her counsel to prepare the defence for the trial; this requirement applies to all the stages of the judicial proceedings. The determination of what constitutes "adequate time" requires an assessment of the individual circumstances of each case. There was considerable pressure to start the trial as scheduled on 17 March 1983, particularly because of the return of the deceased's wife from the United States to give evidence; moreover, it is uncontested that Mr. Wright's counsel was instructed only on the very morning the trial was scheduled to start and, accordingly, had less than one day to prepare Mr. Wright's defence and the cross-examination of witnesses. However, it is equally

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uncontested that no adjournment of the trial was requested by either of Mr. Wright's counsel. The Committee therefore does not consider that the inadequate preparation of the defence may be attributed to the judicial authorities of the State party; if counsel had felt that they were not properly prepared, it was incumbent upon them to request the adjournment of the trial. Accordingly, the Committee finds no violation of article 14, paragraph 3(b).