COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Narrainen v. Norway

Communication No. 3/1991

16 March 1993

CERD/C/42/D/3/1991*

ADMISSIBILITY

Submitted by: Michel L.N. Narrainen (represented by counsel)

Alleged victim: The author

State party concerned: Norway

Date of communication: 15 August 1991 (initial submission)

Documentation references: Prior decisions - none

Date of present decision: 16 March 1993

Decision on admissibility

1. The author of the communication (initial submission dated 15 August 1991) is Michel L.N. Narrainen, a Norwegian citizen born in 1942, currently detained at Bastoy Landsfengsel, Norway. He claims to be a victim of violations by Norway of his rights under the international Convention on the Elimination of All Forms of Racial Discrimination, but does not invoke specific provisions of the Convention.

The facts as found by the Committee:

2.1 The author is of Tamil origin and was born in Mauritius; in 1972, he was naturalized and became a Norwegian citizen. On 25 January 1990, he was arrested in connection with a drug-related offence. On 8 February 1991, before the Eidsivating High Court (Court of Appeal - "Lagmannsretten"), a jury of ten found him guilty of offences against Section 162 of the Criminal Code (drug trafficking), and the author was sentenced to six and a half years' of imprisonment. The author appealed to the Supreme Court, but leave to appeal was denied in early March 1991. On 17 February 1992, the author filed a petition for re-opening of the case. By order of 8 July 1992, the Court of Appeal refused the request. The author again appealed the order to the Supreme Court

which, on 24 September 1992, ruled that the case was not to be re-opened.

2.2 The author contends that there was no case against him, except for the evidence given by another individual, S.B. already convicted of drug-related offences, who allegedly had been promised a reduction of his sentence in exchange for providing incriminating evidence against the author. In court, S.B. withdrew these allegations. In the same context, the author complains about the allegedly "racist" attitude of the investigating police officer, S.A., who reportedly made it clear that he "wished that people like me had never set foot in his country" (author's quote).

2.3 The author contends that under the terms of the initial indictment, he was accused of having travelled to the Netherlands in the early summer of 1989 to buy amphetamines. When he was able to produce evidence that, at the time in question, he was in Mauritius, the initial indictment allegedly was changed in court, after his own legal representative had contacted the prosecution and asked for the indictment to be changed. The author adds that it was impossible for him to have had any contacts with S.B. or his friends prior to or during the trial.

2.4 The author further contends that two jurors in the Court of Appeal were biased against him and that they openly stated that individuals such as the author, who lived on taxpayers' money, should be sent back to where they had come from. The remarks allegedly included slurs on the colour of the author's skin. Yet these jurors, although challenged, were not disqualified by the Court and participated in the deliberations of the verdict.

2.5 The State party gives the following version of the incident referred to by the author (see paragraph 2.4):

> "The Court record shows that during a break in the court proceedings, a law student, Ms. S.R.H., overheard a private conversation between two members of the jury, Ms. A.M.J. and Ms. S.M.M. This conversation was referred to defence counsel, who requested that one of the jurors be dismissed. The court called the law student and the two jurors to testify. [They] agreed on the facts: Ms. J. had expressed dismay at the defendant receiving NOK 9,000 a month without having to work for it, and had also said that he ought to be sent back to where he came from. Ms. M. had said that the purpose of a case like this was to get more information about the drug trafficking. The law student, Ms. H., had at this point entered the conversation, saying that the purpose of a case like this was to determine whether the defendant was guilty. According to the three witnesses, the question of guilt had otherwise not been mentioned by any of them.
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> Defence counsel requested that Ms. J. be dismissed from the jury because, according to Section 108 of the Courts' Act, a juror could be disqualified if there are circumstances...apt to impair confidence in his or her impartiality. The Prosecutor claimed that nothing had been said that could influence the members of the jury, and that everyone was entitled to have opinions. Discussing private opinions during a break [was] no ground for disqualification, and the case itself had not been discussed by the three persons.
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> The Court unanimously decided that Ms. J. should not be disqualified because she had not discussed the question of guilt in the present case, and the views she had expressed were

not uncommon in Norwegian society."

The complaint:

3.1 The author claims that racist considerations played a significant part in his conviction, as the evidence against him would not have supported a guilty verdict. He adds that he could not have expected to obtain a fair and impartial trial, as "all members of the jury came from a certain part of Oslo where racism is at its peak". He asserts that this situation violated his rights under the International Convention on the Elimination of All Forms of Racial Discrimination.

3.2 The author claims that other factors should be taken into consideration in assessing whether he was the victim of racial discrimination. In this context, he mentions the amount of time spent in custody prior to the trial (380 days), out of which a total of nine months were allegedly spent in isolation, and the quality of his legal representation: thus, although he was assigned legal counsel free of charge, his representative "was more of a prosecutor than a lawyer of the defence." Finally, the author considers that a previous drug-related conviction, in 1983, was disproportionably and unreasonably used as character evidence against him during the trial in February 1991.

The State party's information and observations and author's comments:

4.1 The State party considers that the communication should be declared inadmissible as manifestly ill-founded, "in accordance with the established practice in similar international human rights monitoring bodies".

4.2 As to the author's claim that he was denied his right to equal treatment before the courts because the jurors were selected from a part of Oslo known for a prevalence of racist opinions, the State party notes that no documentation has been adduced in support of this contention. Author's counsel only requested that one juror be disqualified; for the rest of the jurors, it is submitted that the matter should have been raised in court, and domestic remedies cannot be deemed exhausted in their respect.

4.3 After explaining the operation of Section 108 of the Courts' Act (governing the disqualification of jurors), the State party points out that it is not uncommon for jurors to have negative feelings towards the defendant in a criminal case, but that this does not imply that they are incapable of giving the defendant a fair hearing. In the instant case, the views expressed by the jurors were of a general nature, and the court's decision not to disqualify the juror was unanimous.

4.4 As to the author's claim of unfairly expeditious dismissal of his appeal to the Supreme Court, the State party notes that under Section 335, subsection 2, of the Code of Criminal Procedure, no appeal may be filed with the Supreme Court if it merely concerns the evaluation of evidence in the case. In the author's case, the appeal was based on two grounds: the issue of the jury's impartiality (as a procedural error) and the severity of the prison term imposed on the author. The State party notes that under Section 349 of the Code of Criminal Procedure, leave to appeal should not be granted if the Appeals Board is unanimous that an appeal would not succeed. Under Section 360, procedural errors shall only be taken into consideration if they are deemed to have affected the substance of the judgement. In the author's case, the issue of the length of the prison term was

considered, but as the answer to whether the Supreme Court should hear the appeal was negative, it was deemed unlikely that the sentence would be reduced. Concluding on this issue, the State party insists that there is no indication that the author was not given the same opportunities to defend his case before the courts as other individuals, in connection both with the appeal and the request for a re-opening of the case, regardless of race, colour of skin, ethnic origin, etc.

4.5 As to the length of the pre-trial detention, the State party explains that a little over one year of pre-trial custody is not unusual in cases involving drug-related offences. According to the State party, the delay of nine months from arrest to the dispatch of the indictment to the Court of Appeal was partly attributable to the author himself, since he changed his lawyer several times while in custody, which in turn delayed the preparations for the main hearing. The State party submits that nothing indicates that the author was kept in custody longer than other suspects merely because of his origin; this part of the complaint therefore is also said to be inadmissible as manifestly ill-founded.

4.6 Finally, the State party dismisses as manifestly ill-founded the author's complaint about the quality of his legal representation. Under Section 107 of the Code of Criminal Procedure, a court-appointed lawyer is remunerated by the State; the author had the opportunity to choose his own counsel throughout the judicial proceedings, and it cannot be said that he was subjected to racial discrimination in this respect.

5.1 In his comments, the author challenges the State party's submission on various procedural and factual grounds. He claims that the State party's version of the judicial proceedings is one-sided, because it is adapted from the Court Book, which according to him reveals little of substance. He further asserts that in a letter to the Registry of the Supreme Court, the prosecutor himself admitted that the only prosecution witness against Mr. Narrainen acknowledge in court to have been pressed by the investigating officer to make a false and incriminating statement. As this virtually destroyed the probative value of the prosecution's case, the author concludes that he was convicted on the basis of racist ideas and serious errors committed by the investigating authorities.

5.2 The author reiterates that several factors in his case, including the gathering and the evaluation of evidence, the omission of important statements in the court book, the absence of serious preparation of his defence by the court-appointed lawyers, the handling of his appeal, all underline that he was denied a fair and impartial hearing, and that his conviction was based on racist considerations.

Issues and proceedings before the Committee:

6.1 Before considering claims contained in a communication, the Committee on the Elimination of Racial Discrimination must, in accordance with rule 91 of its rules of procedure, decide whether or not it is admissible under the Convention.

6.2 The Committee has duly considered the State party's objections to the admissibility of the communication on the grounds that the author's claims are either unfounded or unsubstantiated. The Committee concludes, however, that the communication satisfies the conditions for admissibility, set out in rule 91 of its rules of procedure, and that it may raise issues of an unfair trial under article

5(a) of the Convention which should be examined on their merits.

7. The Committee on the Elimination of Racial Discrimination therefore decides:

(a) That the communication is admissible insofar as it may raise issues under article 5(a) of the Convention;

(b) That the State party be requested to submit its written observations on the merits of the communication within three months of the date of the transmittal to it of the present decision, pursuant to article 14, paragraph 6(b), of the Convention and rule 94, paragraph 2, of the Committee's rules of procedure;

(c) That any written observations received from the State party pursuant to this decision be transmitted to the author, who may, within six weeks of the date of the transmittal, submit comments on the State party's observations, if he so wishes;

(d) That this decision be communicated to the State party and to the author.

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

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*/ All persons handling this document are requested to respect and observe its confidential nature.