HUMAN RIGHTS COMMITTEE

de Groot v. The Netherlands

Communication No. 578/1994

14 July 1995

CCPR/C/54/D/578/1994*

ADMISSIBILITY

Submitted by: Leonardus Johannes Maria de Groot [represented by counsel]

Alleged victim: The author

State party: The Netherlands

Date of communication: 23 April 1993 (initial submission)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 14 July 1995,

Adopts the following:

Decision on admissibility

1. The author of the communication is Leonardus Johannes Maria de Groot, a Dutch citizen, residing in Heerlen, the Netherlands. The author claims to be a victim of a violation by the Netherlands of articles 4, 6, 7, 14, 15, 17, 18 and 26 of the International Covenant on Civil and Political Rights. He is represented by counsel.

The facts as submitted by the author:

2.1 The author is a peace activist and, in November 1988, attended a camp in Vierhouten, close to a military base, to participate in civil disobedience actions against militarism. He distributed flyers explaining the purpose of the camp and, on one occasion, painted a peace symbol on a military vehicle. He was arrested on 6 November 1988 and charged with public violence and participation in a criminal organization. On 18 November 1988, the Zwolle

Magistrate's Court found him guilty of the charge of public violence and sentenced him to a fine of f. 100.00. He was acquitted on the charge of participation in a criminal organization.

2.2 On 22 November 1988, the public prosecutor filed an appeal against the judgement. The Arnhem Court of Appeal, on 26 May 1989, declared void the charge of public violence on the ground that it lacked precision but found the author guilty on the charge of participation in a criminal organization. He was sentenced to one month's imprisonment (suspended for two years) and a fine of f. 1,000.00. The author subsequently appealed the Court of Appeal's judgement in cassation. On 19 January 1991, the Supreme Court (Hoge Raad) of the Netherlands rejected his appeal. With this, it is submitted that all domestic remedies have been exhausted.

2.3 The prosecution argued that the peace camp had as its object and purpose to engage in criminal activities and that the author, by participating, was part of a criminal organization, that is, an organization with the aim and purpose of using violence against persons and/or goods, and/or of illegally destroying or damaging property, and/or of stealing and/or of inciting others to commit the above offences. The prosecution based itself on public announcements made by the campers, before and during the camp, including a public letter to the population, in which it was clearly stated that the actions undertaken by the campers would involve illegal activities, such as damaging the fence surrounding the military base, blocking the entrance gate and painting symbols and/or slogans on military objects.

2.4 The Appeal Court considered that it was proven that the author, from 1 to 6 November, had participated in the peace camp, an organization with the aim of using violence against property and/or wilfully and illegally destroying or damaging property or rendering it useless and/or inciting others to commit those crimes and/or to be an accessory to those crimes. It concluded that the author had therefore violated article 140 of the Criminal Code by participating in an organization with a criminal intent. Article 140 of the Dutch Criminal Code penalizes participation in an organization which has as its purpose the commission of crimes.

2.5 The author's defence counsel argued that article 140 of the Criminal Code was void because of its vagueness; in this connection, he referred to article 15 of the Covenant. It was further argued that the peace camp was not an organization within the meaning of article 140, since there were no decision-making mechanisms and each person decided for himself or herself whether or not to engage in a certain activity in association with others. According to the defence, the only form of organization was that someone had reserved the camp-site and that transport had been arranged for those who needed it.

2.6 The Court of Appeal rejected the argument of the defence, stating that the fact that article 140 required further interpretation by the judiciary did not make it void. In this context, the Court considered that the organization of different camps under similar names, the announcement of those camps, the provision of addresses for further information, the sharing of the costs of the camps and the fact that the local population had been informed about the purpose of the camps, all indicated that an organization within the meaning of article 140

existed. Although no formal membership existed, the Court considered that participation in the organization was proved by the active participation in the activities organized by the campers.2.7 In a further submission the author states that, on 16 July 1989, he, together with others, was carrying out some peace activities at the Valkenburg air base with the intention of hindering the ongoing militarization and that he was subsequently charged under article 140 of the Criminal Code for participating in a criminal organization. On 25 January 1991, the District Court in The Hague sentenced him to a fine of f. 750 and two weeks' suspended imprisonment. On 9 June 1992, the Court of Appeal sentenced the author to two weeks' imprisonment. The author's appeal in cassation was rejected by the Supreme Court on 11 May 1993.

The complaint:

3.1 The author claims that his convictions are in violation of articles 14 and 15 of the Covenant. In this context, he states that his convictions were in violation of article 14 of the Covenant, since he was not informed in detail about the nature of the charges against him. He also submits that the charges against him, based on article 140 of the Criminal Code, were so vague as to amount to a violation of his right to be informed in detail of the nature and cause of the charge against him. He further submits that the application of article 140 of the Criminal Code in his case violates the principle of legality, since the text of the article is so vague that it could not have been foreseen that it was applicable to the author's participation in civil disobedience activities.

3.2 The author also claims that his convictions are unjust because he acted under a higher legal obligation. In this context, the author argues that the possession of nuclear weapons and the preparation for the use of nuclear weapons violate public international law and amount to a crime against peace and a conspiracy to commit genocide. He submits that the Netherlands military strategy violates not only international norms of humanitarian law, but also articles 4, 6 and 7 of the International Covenant on Civil and Political Rights.

3.3 In respect to his second conviction, the author states that he is a victim of a violation of article 26 of the Covenant, because another participant in the socalled "criminal organization" was not prosecuted, according to the author, because he was a spy of the secret service.

3.4 The author does not explain why he considers himself to be a victim of a violation of articles 17 and 18 of the Covenant.

3.5 The author states that he has earlier submitted the same matter to the European Commission of Human Rights, which declared his application inadmissible.

Facts and proceedings before the Committee:

4.1 Before considering any claim in a communication, the Human Rights Committee must, in accordance with rule 87 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.4.2 With regard to the author's allegation that

he was the victim of a violation of article 14 of the Covenant, the Committee, after examining the court documents, notes that the question raised by the author was considered by the Netherlands courts, including the Court of Cassation, which found that the charge and the facts on which it was based were sufficiently precise, namely that, in conjunction with other accomplices, he placed antimilitarist slogans on military vehicles and participated in other activities, after illegally having gained access to the military base. The Committee notes that the Human Rights Committee does not constitute a final appeal body and is not in a position to challenge the national courts' assessment of the facts and evidence. Consequently, this part of the communication is inadmissible under article 3 of the Optional Protocol.

4.3 The author has further claimed to be a victim of a violation of article 15 of the Covenant, because he could not have foreseen that article 140 of the Criminal Code, on the basis of which he was convicted, was applicable to his case by virtue of its imprecision. The Committee refers to its established jurisprudence [1] that interpretation of domestic legislation is essentially a matter for the courts and authorities of the State party concerned. Since it does not appear from the information before the Committee that the law in the present case was interpreted and applied arbitrarily or that its application amounted to a denial of justice, the Committee considers that this part of the communication is inadmissible under article 3 of the Optional Protocol.

4.4 As regards the author's claims under articles 4, 6 and 7 of the Covenant, the Committee considers that the author has failed to show, by mere reference to the State party's military strategy, that he is himself a victim of a violation of these articles by the State party. This part of the communication is therefore inadmissible under article 1 of the Optional Protocol.

4.5 As regards the author's claim under articles 17 and 18 of the Covenant, the Committee considers that the author has failed to substantiate, for purposes of admissibility, that his rights under these articles were violated. This part of the communication is therefore inadmissible under article 2 of the Optional Protocol.

4.6 With regard to the author's claim under article 26, the Committee recalls that the Covenant does not provide a right to see another person prosecuted, [2] nor does the absence of prosecution against one person render the prosecution of another person involved in the same offence necessarily discriminatory, in the absence of specific circumstances revealing adeliberate policy of unequal treatment before the law. Since no such circumstances have been shown in the instant case, this part of the communication is therefore inadmissible, as incompatible with the provisions of the Covenant, under article 3 of the Optional Protocol.

5. The Committee therefore decides:

(a) That the communication is inadmissible;

(b) That this decision should be communicated to the author of the communication, to his counsel and, for information, to the State party.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

Footnotes

*/ Made public by decision of the Human Rights Committee.

1/ See, inter alia , the Committee's decision in communication No. 58/1979 (Anna Maroufidou v. Sweden), para. 10.1 (Views adopted on 9 April 1981).

2/ See, inter alia , the Committee's inadmissibility decisions with respect to communications Nos. 213/1986 (H.C.M.A. v. the Netherlands) and 396/1990 (M.S. v. the Netherlands).