

HUMAN RIGHTS COMMITTEE

Mansur v. The Netherlands

Communication No 883/1999

5 November 1999

CCPR/C/67/D/883/1999

ADMISSIBILITY

Submitted by: Messrs. L. E. and J. Mansur (represented by Dr. Jan M. Sjöcrona and Mr. John H. van der Kuyp)

Alleged victim: The authors

State party: The Netherlands

Date of the communication: 12 October 1999

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

Meeting on 5 November 1999

Adopts the following:

Decision on admissibility

1. The authors of the communication are Luis Emilio Mansur and Jossy Mehzen Mansur, Dutch citizens who are residents of Aruba. They claim to be victims of violations by the Kingdom of the Netherlands of their rights under articles 2 and 17 of the International Covenant on Civil and Political Rights. The victims are represented by Dr. Jan M. Sjöcrona of The Hague, the Netherlands and Mr. John H. Van der Kuyp of Oranjestad, Aruba.

The facts as submitted by the authorsThe facts as submitted by the authors

2.1 The authors are members of the business community in Aruba. Among other enterprises Luis Emilio Mansur is co-owner of a shipping company and Jossy Mehren Mansur is owner and editor-in-chief of a newspaper and co-owner of a trading company.

2.2 Under a Royal Decree of 22 October 1994 the Interim Head of Aruban Security Service, A. Koerten, was instructed to carry out an investigation into the security and integrity of Aruba. A report on this investigation was produced on 20 April 1995, entitled *Security and Integrity of Aruba: Context and Perspective*.

2.3 The report was issued as top secret and was sent to a limited number of state officials and institutions, named in the report.

2.4 The report draws a picture of security in Aruba and mentions that foreign services fighting crime in the region are “almost unanimous in their opinion that the predominant image of the Aruban business community is one of joint services towards (laundering specialists of) regional drug cartels.” The report mentions the authors by name and portrays them as criminals who were associated with criminal organizations involved in drugs trafficking, gun trafficking and laundering money obtained from criminal activities.

2.5 Despite the fact that the report was classified as top secret it was leaked to the press and its contents became public. It is not clear who leaked the report. An investigation of the leak was carried out by the Dutch Internal Security Service in which it was supposedly found that the leaked photocopy was not made from a copy in the hands of the Minister of Dutch-Antillean and Aruban Affairs or another Dutch official. The investigation report did not state of which copy the photocopy was made.

2.6 The authors claim that the allegations against them in the report are totally false and that as a result of the report becoming public their reputations were severely harmed. This led to serious damage to their business interests. They claim that by allowing the report to become public the State party violated their rights not to be subjected to unlawful attacks on their honour and reputation, protected under article 17 of the Covenant.

2.7 The authors requested the Minister of Dutch-Antillean and Aruban Affairs to disassociate himself from the report. When he refused, they initiated summary proceedings in the court of first instance in Aruba. In these proceedings they requested a declaration that the State party, the Minister of Dutch-Antillean and Aruban Affairs and the Interim Head of the Security Service of Aruba had no evidence that the authors were involved in laundering money or in fraudulent actions.

2.8 The court of first instance ruled that it had no competence to peruse the claim against the State party and that the Official Secrets Act justified refusing a remedy against the Interim Head of Security.

2.9 The authors filed an appeal against the dismissal of their summary action with the Joint Court of Justice of the Dutch Antilles and Aruba. Contrary to the judgment of the lower court this court held that the courts were competent to peruse a claim against the State party. However, the Court held that the authors had failed to demonstrate, nor make probable, that the defendants had been negligent in allowing publication of the report and that they could not be held responsible for acting in violation of article 17 of the Covenant.

2.10 The authors did not challenge the above decision before the Netherlands Supreme Court as they

were advised by a Dutch cassation attorney that they had no grounds for a successful cassation appeal.

The author's claims

3.1 The authors claim that by not preventing publication of the information relating to them contained in the secret report the State party has violated their rights under article 17 of the Covenant. They further claim that the directives of the State party regarding classification of secret information and the requirement of the Court in the summary proceedings that the authors prove the negligence of the State party result in a violation of the duty of the State party, under article 2, paragraph 3, of the Covenant, to provide an effective remedy for violation of their rights under article 17.

3.2 The authors claim that by pursuing summary proceedings they have exhausted domestic remedies. They concede, however, that the domestic law does “offer the possibility of a civil standard procedure (before the same instance as where the summary proceedings were lost), yet going through this procedure takes up at least 4 to 6 years (in view of the existing possibilities for appeal and cassation).”

Issues and Proceeding before the Committee

4.1 Before considering any claim contained 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 From the materials presented by the authors it is clear that within the framework of summary proceedings the domestic courts could not examine the factual allegations of the authors. These could only be examined in a standard civil action. The authors have conceded that they have not commenced a standard civil procedure against the State party for a remedy for the alleged attack on their honour and reputation in violation of article 17 of the Covenant. In the circumstances, the Committee cannot accept the mere assertion by the authors that the application of domestic remedies will be unreasonably prolonged. Accordingly, the communication is inadmissible under article 5, paragraph 2 (b) of the Optional Protocol.

5. The Human Rights Committee therefore decides:

- (a) that the communication is inadmissible under article 5, paragraph 2 (b) of the Optional Protocol;
- (b) that this decision shall be communicated to the authors and, for information, to the State party.

*The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Nisuke Ando, Mr. Prafullachandra N. Bhagwati, Ms.

Christine Chanet, Lord Colville, Ms. Elizabeth Evatt, Mr. Eckart Klein, Mr. David Kretzmer, Ms. Cecilia Medina Quiroga, Mr. Fausto Pocar, Mr. Martin Scheinin, Mr. Hipólito Solari Yrigoyen, Mr. Roman Wieruszewski and Mr. Maxwell Yalden.

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