

## **HUMAN RIGHTS COMMITTEE**

### **S. M. v. Barbados**

**Communication No. 502/1992**

**31 March 1994**

**CCPR/C/50/D/502/1992**

### **ADMISSIBILITY**

*Submitted by: S. M. [name deleted]*

*Alleged victim: The author*

*State party: Barbados*

*Date of communication: 12 May 1992*

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

Meeting on 31 March 1994,

Adopts the following:

### **Decision on admissibility**

1. The author of the communication is S. M., a citizen of Trinidad and Tobago, residing in Trinidad. He claims to be a victim of a violation by Barbados of article 14, paragraph 1, of the International Covenant on Civil and Political Rights. He is represented by counsel.

#### **Facts as submitted by the author**

2.1 The author is the owner of and sole shareholder in a Barbadian company, S. Foods Limited, which traded in Barbadian foodstuffs, including, in particular refrigerated food, kept in cold storage facilities on its premises. The company had insured its stock with the Caribbean Home Insurers Limited, against loss or damage caused by change of temperature resulting from the total or partial disablement of the refrigerating plant by any of the perils insured against.

2.2 In November 1985 a quantity of lobster was lost by damage from water, caused by heavy rainfall. According to the author, this loss, amounting to 193,689.18 Barbados dollars, 1/ was covered by the terms of the insurance. The insurance company, however, repudiated liability. On 8 April 1986, S. Foods started a civil suit against the insurance company before the High Court of Barbados. The case was fixed for hearing on 3 June 1987.

2.3 On 16 May 1987, the insurance company applied for an order that S. Foods should provide security for costs, on the ground that it was in serious financial difficulties and would therefore be unable to pay the insurance company's costs if it failed in its claim. On 26 May 1987, the judge ordered S. Foods to provide security and stayed the proceedings until the security had been paid; the amount was set at BDS\$ 20,000.

2.4 The author submits that the judge had no power under the law to order his company to provide the security. A provision in the Companies Act, providing that a company might be ordered to post security for the costs of the defendant in a civil action, had been repealed on 1 January 1985. The author further submits that, because of the inability of his company to provide security, his case has not been heard by the Court to date. The author states that his company did not appeal the order, since, even if the Court of Appeal would have granted leave, it would have ordered security for the costs of the appeal, probably in the amount of BDS\$ 15,000, which S. Foods would have been unable to pay.

2.5 The author submits that the insurance company has no legal basis to oppose the claim for payment of the insurance money, that it would certainly have lost the court proceedings and that it only requested the security in order to delay or stall the court's determination of the case.

2.6 On 26 June 1987, S. Foods applied to the High Court for redress under section 24 of the Constitution. It was claimed that the judge's order denied the constitutional right of access to court for the determination of civil rights and obligations, and the right to a fair hearing of the case within a reasonable time. On 8 December 1988, the High Court dismissed the application. On 26 February 1990, the appeal against the judgment was rejected by the Court of Appeal of Barbados. Subsequently, S. Foods sought special leave to appeal to the Judicial Committee of the Privy Council, which dismissed the appeal on 20 January 1992. The author's company was ordered to pay the costs of the appeals.

2.7 The Courts agreed with the author that the judge had no statutory power to make the order for security, but based their decisions to dismiss the claim for redress on section 24, paragraph 2, of the Constitution, which provides that the High Court shall not exercise its constitutional powers of redress when adequate means of redress are or have been available under any other law. They considered that the wrong the author's company claimed to suffer as a result of the order for security of costs, could have been repaired by the exercise of the right of appeal to the Court of Appeal.

2.8 As to the author's contention that this remedy was not effective, since his company might have been ordered to post security for the costs of the appeal which was beyond its resources, the Privy Council considered that S. Foods should first have tried to avail itself

of the appeal before considering it ineffective. In this context, the Privy Council considered that it would have been highly improbable that, in the specific circumstances of the case, the Court of Appeal would have ordered payment of security or, if ordered, that it would have been an amount that S. Foods could not have afforded.

### Complaint

3. The author claims to be a victim of a violation of article 14 of the Covenant, since he was denied a fair and public hearing of his case by a competent, independent and impartial tribunal, within the meaning of paragraph 1 of article 14.

### State party's observations and author's comments thereon

4.1 By submission of 14 June 1993, the State party argues that the communication is inadmissible. It contends that the author has provided no basis for his claim that he was denied a fair and public hearing within the meaning of article 14 of the Covenant. It submits that, even if the order of the judge to pay security was erroneous under the laws of Barbados, this does not amount to a violation of article 14.

4.2 The State party further argues that the author failed to exhaust domestic remedies and submits that the author had at all times a right to appeal the order made by the judge, but that he unjustifiably failed to exercise this right. In this connection, the State party argues that the Court of Appeal would certainly have granted leave to appeal, and that it is inconceivable that security would have been ordered for the costs of the appeal, since such order was the subject-matter of the appeal. The State party submits that any complainant should first avail himself of available means of redress before contending that available domestic remedies are ineffective.

4.3 In this context, the State party refers to the hearing before the Privy Council, during which Their Lordships pointed out that S. Foods Ltd. could still seek leave to appeal, and that it would be inconceivable that the Court of Appeal would not grant leave or that it would require security.

5.1 In his comments on the State party's submission, author's counsel argues that an appeal to the Court of Appeal from the judge's order would not have been an effective remedy, because the insurance company could have asked for security under the existing law relating to appeals. In this connection, the author submits that the Privy Council's remark that the Court of Appeal might not have ordered security, or that security might not have been substantial, was speculative.

5.2 He further argues that the redress provided by an appeal would have been inadequate, since it would have been limited to reversing the order for security of costs, and would not have undone the delay created by the judge's order. However, under section 24 of the Constitution, the High Court could not only have revoked the order but also have awarded damages for the loss of the opportunity to have the case heard without delay, thereby providing a more appropriate redress. In this connection, counsel argues that the judge's

order caused further delay in an urgent matter, on the solution of which the company depended to stay in business.

5.3 It is submitted that the local Courts and the Privy Council misinterpreted section 24 of the Constitution which, according to the author, relates to redress at first instance from the time a fundamental right is violated. Counsel argues that, since the Courts and the Privy Council were of the opinion that the security order did indeed violate the company's right of access to court, they should have revoked the order and awarded compensation.

5.4 The author submits that the suggestions made by the Privy Council, namely that he should apply for leave to appeal to the Court of Appeal out of time, imply that he must incur further costs without the guarantee of a result. He reiterates that the legal error made by the judge of the High Court amounts to a denial of his fundamental right to have his case heard by the court.

#### Issues and proceedings before the Committee

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

6.2 The Committee notes that the author has submitted the communication claiming to be a victim of a violation of his right under article 14, paragraph 1, to have access to court, because the judge at first instance ordered the company of which he is the owner and sole shareholder to pay security and then stayed the proceeding until payment. The author is essentially claiming before the Committee violations of rights of his company. Notwithstanding that he is the sole shareholder, the company has its own legal personality. All domestic remedies referred to in the present case were in fact brought in the name of the company, and not of the author.

6.3 Under article 1 of the Optional Protocol only individuals may submit a communication to the Human Rights Committee. The Committee considers that the author, by claiming violations of his company's rights, which are not protected by the covenant, has no standing under article 1 of the Optional Protocol.

7. The Human Rights Committee therefore decides:

- (a) That the communication is inadmissible under article 1 of the Optional Protocol;
- (b) That this decision shall be communicated to the State party, to the author and to his counsel.

[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.]

## Notes

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

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

1/ BDS\$ 1 = US\$ 0.5.