

HUMAN RIGHTS COMMITTEE

Harward v. Norway

Communication No. 451/1991

26 July 1993

CCPR/C/48/D/451/1991*

ADMISSIBILITY

Submitted by: Barry Stephen Harward [represented by counsel]

Alleged victim: The author

State party: Norway

Date of communication: 17 September 1990 (initial submission)

Documentation references: Prior decisions - Special Rapporteur's rule 91 decision, transmitted to the State party on 13 August 1991 (not issued in document form)

Date of present decision: 26 July 1993

Decision on admissibility

1. The author of the communication (dated 17 September 1990) is Barry Stephen Harward, a British citizen, at the time of the submission of the communication imprisoned in Norway. He claims to be a victim of a violation by Norway of article 14, paragraphs 2, 3 (a), (b), (e), (g), 5 and 6 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 states that he was arrested on 27 September 1986 in Tenerife, Spain, and informed that his extradition had been requested on suspicion of drug trafficking. He was kept in detention until his extradition on 21 August 1987 to Norway. He submits that, at that time, he was still waiting for the outcome of the appeal against his extradition, which he had filed with the Spanish Constitutional Court.

2.2 In Norway, the author was charged with having imported a considerable quantity of heroin into the country during 1985 and 1986. A legal-aid lawyer, who spoke only a little English, was

appointed. On 31 August 1987, a formal indictment was issued against him and his co-defendants, including his two brothers.

2.3 The trial started on 12 October 1987, in the Eidsivating High Court. On 3 November 1987, the author and his co-defendants were found guilty as charged; the author, who claims to be innocent, was sentenced to 10 years' imprisonment. On 25 March 1988, the Supreme Court rejected the author's appeal.

The complaint

3.1 The author claims that he was denied a fair trial, that the charges against him were fabricated and that the evidence against him was contradictory and uncorroborated.

3.2 More specifically, the author claims to be a victim of a violation of article 14, paragraph 2, of the Covenant, because of the massive prejudicial media coverage, which allegedly influenced witnesses and jury members. According to the author, information about the accused and the charges was leaked to the press by police officers.

3.3 The author further claims to be a victim of a violation of article 14, paragraph 3 (a), of the Covenant, since he was allegedly misinformed about the charges against him in Spain. He further submits that the 1,100 document pages used in the trial against him were in the Norwegian language, which he did not understand; only the indictment and a small proportion of the other papers were translated.

3.4 The author also claims that article 14, paragraph 3 (b), was violated in his case. He claims that he was hindered in the preparation of his defence because the indictment was issued only six weeks before the start of the trial and his lawyer's request to have all documents pertaining to the case translated was refused. He further alleges that his defence was obstructed, since the most damaging evidence against him was only introduced during the trial, and not included in the documents which were available beforehand. According to the author, this evidence consisted of uncorroborated and unsigned statements made by his co-defendants during their detention in solitary confinement, in the absence of an interpreter or lawyer.

3.5 The author further claims that his request to call his Spanish lawyer as a witness was refused, although she could have given evidence relating to his allegedly unlawful extradition. He further claims that he was not allowed to cross-examine his co-defendant Mette Westgård, whose evidence was used against him. He alleges that the statement she had made to the police was read out in court, but that she, although she was present, was not called to testify and could therefore not be cross-examined. The author submits that the defence for all six accused only called one witness. According to the author, these facts amount to a violation of article 14, paragraph 3 (e), of the Covenant.

3.6 The author also claims to be a victim of a violation by Norway of article 14, paragraph 3 (g), as he was allegedly told by the police that, if he refused to plead guilty, he would be sentenced to 21 years' imprisonment.

3.7 Finally, the author submits that under Norwegian law he could not appeal his conviction, but only his sentence to the Supreme Court. He claims that this constitutes a violation of article 14, paragraphs 5 and 6, of the Covenant.

The State party's observations and the author's comments

4.1 The State party, in its submission under rule 91, provides information about the relevant domestic law and argues that the communication is inadmissible.

4.2 As regards the author's claim under article 14, paragraph 5, the State party observes that it made a reservation in relation to this paragraph when ratifying the Covenant, and argues that this part of the communication should therefore be declared inadmissible.

4.3 In respect of the author's claim under article 14, paragraph 2, that the jury was prejudiced against him, the State party argues that the author or his counsel could have brought objections concerning the impartiality of the jury members to the court's attention, and could have demanded their exclusion. As regards the author's allegations that the police leaked confidential information to the media, the State party argues that these allegations were never brought to the attention of the competent police authorities for investigation and possible punishment of the responsible officers. The State party therefore claims that this part of the communication is inadmissible on the ground of non-exhaustion of domestic remedies.

4.4 As regards the author's claim under article 14, paragraph 3 (a), that he was wrongly informed about the charges against him when being arrested in Spain, the State party submits that it provided the proper information to the Spanish authorities when requesting the author's extradition in October 1986, pursuant to the European Convention on Extradition. It states that it cannot be held responsible for mistakes made by those authorities in the communication of this information. Moreover, the State party argues that the documents of the case do not support the author's claim.

4.5 In respect of the author's other allegation under article 14, paragraph 3 (a), that he was not informed of the charges against him in a language that he could understand, the State party submits that the author was immediately informed of the charges against him upon his arrival in Norway on 21 August 1987; an interpreter was present on that occasion. The next day, during the court hearing on custody, he was once more informed about the charges, also in the presence of an interpreter. The State party therefore argues that this part of the communication is inadmissible because the facts do not raise any issue under the Covenant.

4.6 As regards the author's claim that he did not have enough time and facilities for the preparation of his defence, the State party notes that neither the author nor his counsel ever requested a postponement of the trial. It therefore argues that in this respect domestic remedies have not been exhausted.

4.7 With regard to the author's claim that the refusal of the Prosecution to have all documents pertaining to his case translated constitutes a violation of article 14, paragraph 3 (b), the State party submits that all documents in the case were available to the defence as from 27 August 1987. The State party argues that the Covenant does not provide an absolute right to have all documents in a

criminal case translated. It submits that the most relevant documents, such as the indictment, the court records and important statements made by the accused to the police, were indeed translated, that all documents were available to counsel, and that counsel had the opportunity to use the services of an interpreter in his consultations with the defendant. It further submits that the author's counsel was informed by the Prosecution that he could demand the translation of specific documents which he deemed important, but that he failed to do this. According to the State party, this part of the communication is therefore likewise inadmissible on the ground of incompatibility with the Covenant and non-exhaustion of domestic remedies.

4.8 As regards the author's allegation that he was prevented from cross-examining one of his co-defendants, whose statement was read out in court, the State party observes that the Covenant does not prohibit the reading out of police reports in court. Moreover, it submits that article 14, paragraph 3 (e), applies to the right of cross-examination of witnesses who are not themselves defendants in a case. In this context, the State party points out that under Norwegian law a defendant does not have to give any affirmation and is not criminally liable for giving a false statement. The State party further observes that, upon request from counsel, the co-defendant in question was not asked to continue her testimony, following the advice of a medical doctor. The State party argues that the reading of the evidence did not violate the author's right to a fair trial, and that this part of the communication therefore does not raise any issue under the Covenant.

4.9 In respect of the author's claim that he was not allowed to call his Spanish lawyer as a defence witness, the State party points out that the author wanted her to submit evidence about his extradition, which would have been irrelevant to the case on trial. It therefore argues that this part of the communication is inadmissible as being incompatible with the Covenant. Furthermore, the State party argues that the author could have appealed the refusal to call a witness to the Supreme Court, which he did not do. This part of the communication should therefore also be declared inadmissible on the ground of non-exhaustion of domestic remedies.

4.10 In this connection, the State party submits that, on 19 October 1987, the author declared that he had no confidence in the court, that he no longer wanted to be represented and that he did not want any witness called.

4.11 As regards the author's claim under article 14, paragraph 3 (g), the State party argues that this claim is not substantiated and should therefore be declared inadmissible. Moreover, domestic remedies have not been exhausted in this respect.

4.12 As regards the author's claim under article 14, paragraph 6, the State party argues that this provision does not apply to the facts of the present case, and that this part of the communication should therefore be declared inadmissible.

5.1 In his comments on the State party's submission, counsel argues that, as regards the partiality of the jury, there is no real possibility in Norway to change the composition of the jury in a criminal trial before the High Court. He submits that normally not more than two jury members can be challenged by the defence. He moreover argues that pursuant to article 14, paragraph 2, the *presumptio innocentiae* should be respected not only by judges, but also by other public authorities. Counsel argues that in this case the police clearly broke this obligation by leaking information to

the press, and submits that in doing so the police did not break domestic law, since the police regulations are very liberal in this respect. Therefore, no effective domestic remedies are said to exist.

5.2 With regard to the claim under article 14, paragraph 3 (b), counsel argues that no request for the postponement of the trial had been made because of the length of time the accused had already spent in custody. He further claims that the accused raised the issue of the translation of documents in court, but that the judges paid no attention to it. It was further raised during appeal, but the Supreme Court found no violation of article 6 of the European Convention on Human Rights. Counsel therefore argues that domestic remedies have been exhausted.

5.3 As regards the claim under article 14, paragraph 3 (e), counsel concedes that there are differences between statements from witnesses and those from defendants. He points out, however, that the statement of Mette Westgård was particularly damaging for the author and was allegedly made under duress, while she was held in solitary confinement. He therefore argues that an opportunity to cross-examine her evidence should have been given. As regards the request to call the author's Spanish lawyer as witness for the defence, it is stated that her testimony could have clarified the circumstances of the author's extradition.

Issues and proceedings before the Committee

6.1 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.

6.2 As regards the author's claim under article 14, paragraph 5, the Committee observes that the State party, upon ratification of the Covenant on 13 September 1972, made a reservation with regard to this provision. The Committee is therefore precluded from considering this part of the communication.

6.3 In respect of the author's claim that the police gave confidential information to the media and that the prejudicial media coverage influenced those participating in the trial, the Committee observes that this claim was not raised before the court of first instance, and that the author has therefore failed to exhaust domestic remedies. While noting counsel's argument that no effective remedies exist, the Committee recalls its jurisprudence, that doubts about the effectiveness of a remedy do not absolve the author of a communication from at least making an effort to exhaust it. This part of the communication is therefore inadmissible under article 5, paragraph 2 (b), of the Optional Protocol.

6.4 As regards the author's allegation that he was not promptly informed about the charges against him in a language he understands, the Committee observes that it appears, from the information before the Committee, that the author, upon arrival in Norway, was promptly informed about the charges against him in the presence of an interpreter. In this respect, therefore, the author has failed to advance a claim under article 2 of the Optional Protocol.

6.5 The author also alleges that, after being arrested in Spain, he was not properly informed about

the charges upon which the request for his extradition was based. The Committee considers that the author has not substantiated this allegation for purposes of admissibility and that this part of the communication is therefore inadmissible under article 2 of the Optional Protocol.

6.6 In respect of the author's claim that he did not have sufficient opportunity to prepare his defence, the Committee notes that the author or his counsel did not request a postponement of the hearing. The Committee therefore considers that this part of the communication is inadmissible because of non-exhaustion of domestic remedies.

6.7 As regards the author's allegation that no translation was provided of all documents pertaining to his case and that the prosecution chose to have only some documents translated for the benefit of the defence, the Committee notes that the author raised the failure of the Prosecution to provide a translation of all documents in the case before the Supreme Court and that domestic remedies thus have been exhausted for purposes of article 5, paragraph 2 (b), of the Optional Protocol. The Committee further notes that the author was defended by a legal-aid lawyer and apparently had no independent means to have the documents translated. The Committee is of the opinion that the question whether a State party in those circumstances is under an obligation to provide translations of all documents in a criminal case, and whether a State party has a free choice in determining which documents to make available in translation, raises issues under the Covenant. In particular, issues are raised in relation to the entitlement to have adequate time and facilities for the preparation of one's defence under article 14, paragraph 3 (b), and the entitlement to a fair trial under article 14, paragraph 1. These issues should be determined on the merits.

6.8 The author further claims that his rights under article 14, paragraph 3 (e), were violated in that he was not allowed to call a certain defence witness and that he was not given the opportunity to cross-examine a co-defendant. The Committee notes that the author did not raise this matter on appeal. This part of the communication is therefore inadmissible under article 5, paragraph 2 (b).

6.9 The Committee further notes that it is undisputed that the co-defendant was, for medical reasons, unable to give her testimony during the trial, whereupon the judge decided, pursuant to the request of her counsel, to read out the statement she had made to the police. Since only her statement to the police was used as evidence against the author and since neither the prosecution nor the defence was given the opportunity to examine her on her testimony, the Committee considers that the author has failed to substantiate, for purposes of admissibility, that the failure to provide for the cross-examination of Mette Westgård infringed the equality of arms between the prosecution and the defence in the examination of witnesses, as protected under article 14, paragraph 3 (e).

6.10 The Committee considers that the author's allegations under article 14, paragraph 3 (g), are not substantiated for purposes of admissibility.

6.11 As regards the author's claim under article 14, paragraph 6, the Committee observes that this provision does not apply to the facts as submitted by the author. Therefore, this part of the communication is inadmissible as incompatible with the provisions of the Covenant.

7. The Human Rights Committee therefore decides:

(a) That the communication is admissible in so far as the failure of the State party to provide translations of all documents pertaining to the author's case may raise issues under article 14, paragraphs 1 and 3 (b), of the Covenant ;

(b) That, in accordance with article 4, paragraph 2, of the Optional Protocol, the State party shall be requested to submit to the Committee, within six months of the date of transmittal to it of this decision, written explanations or statements clarifying the matter and the measures, if any, that may have been taken by it;

(c) That any explanations or statements received from the State party shall be communicated by the Secretary-General under rule 93, paragraph 3, of the rules of procedure to the author and his counsel, with the request that any comments which he may wish to make should reach the Committee in care of the Centre for Human Rights, United Nations Office at Geneva, within six weeks of the date of the transmittal;

(d) That this decision shall be communicated to the State party, to the author and to his counsel.

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