HUMAN RIGHTS COMMITEE

Lindon v. Australia

Communication Nº 646/1995

20 October 1998

CCPR/C/64/D/646/1995

ADMISSIBILITY

Submitted by: Leonard John Lindon

Victim: The author

State party: Australia

Date of communication: 11 February 1995 (initial submission)

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

Meeting on 20 October 1998

Adopts the following:

Decision on admissibility

1. The author of the communication is Leonard John Lindon, a citizen of both Australia and the United States of America, currently residing in Australia. He claims to be a victim of violations by Australia of articles 6 and 14, paragraphs 1 and 7, of the International Covenant on Civil and Political Rights. The author also claims to represent others who have attended mass protests at the Joint Defence Space Research Facility at Pine Gap in the Northern territory, Australia, over the last 15 years. The author claims that these are victims of violations of article 6 of the Covenant. The Covenant and the Optional Protocol entered into force for Australia on 13 August 1980 and on 25 December 1991, respectively.

The facts as submitted by the author

2.1 The author states that on 19 October 1987, he took part in a demonstration on the

premises of the Joint Defence Space Research Facility, an establishment known as "Pine Gap", near Alice Springs in the Northern Territory of Australia. On the same day, he was charged with trespassing. On 14 April 1988, he was convicted for that offence by the Court of Summary Jurisdiction (Magistrates' Court) sitting at Alice Springs, and fined $150. He appealed that conviction to the Supreme Court, which allowed the appeal in March 1989, on the ground that the author had not received a fair hearing, and remitted the matter to the former court for rehearing. The rehearing was set down for 2-4 August 1989.

2.2 In preparation for the rehearing, the author, who was then known as "Citizen Limbo", sought to raise several matters on interlocutory applications to each of the Magistrates' Courts and the Supreme Court of the Northern Territory. The numerous applications related to, amongst other things, his attempts to secure the attendance of witnesses, the conduct of the hearing of the various applications and the conduct of the proposed rehearing of the charge of trespassing. Each of the interlocutory applications was unsuccessful and the author sought to have those decisions reviewed either by way of appeal (in some cases, of administrative decisions), or by way of reference for the consideration of the Full Bench of the Supreme Court of the Northern Territory and the Court of Appeal (Full Court) constituted identically. The hearing commenced on 4 September 1989 and proceeded for five days before Justices Kearney, Rice and Martin. The author failed on each of these appeals and references before the Full Court and, on the Court's delivery of its judgement on 27 November 1989 concerning the interlocutory applications, the State applied for and was granted an order for its costs. Meanwhile, the author's application to defer (date unspecified) the rehearing of the trespassing case, had been successful.

2.3 After the judgment of the Supreme Court (Full Court) on the interlocutory matters, the author unsuccessfully sought in the High Court of Australia special leave to appeal from the orders of the Full Court.

2.4 On 21 October 1989, the author again trespassed at "Pine Gap". After several adjournments, both counts of trespass were heard on 15 April 1991 by the Court of Summary Jurisdiction, Alice Springs. The author was convicted in his absence and fined a total of $450, which has been paid. He was also ordered to pay costs of $3,856.44 for the rehearing.

2.5 On 15 June 1993, the author received notice from the Attorney-General's office of the intention to commence bankruptcy proceedings against him unless he remitted the litigation costs totalling $33,424.78 within 10 days. This amount represented the costs for the interlocutory motions and for the rehearing of the trespassing case. The author made requests to the Minister of Justice and to the Attorney-General, on 27 July 1993, to intervene to prevent the Australian Government from recovery. On 18 April 1994 the requests were rejected. On 19 July 1994 the Government Solicitor affirmed that bankruptcy proceedings would commence upon failure to remit the stated amount. The author then made an application for an injunction to restrain the Government. On 7 February 1995, the application was dismissed, with costs. The author indicates in his communication that he will file an appeal against this decision.

<u>The complaint</u>

3.1 It is the author's submission that the threat of bankruptcy constitutes a violation of article 14, paragraph 1, since it issues from proceedings which he claims breached his right to a fair hearing, inasmuch as the author's "rights and duties under international law" were not respected by the domestic courts. These rights and duties, the author submits, are such as to require the State to facilitate the author's attempts to prevent the crime of genocide. The author, citing literature on the Nuremberg trials, states that any person who, "'with actual knowledge that a crime against humanity (or war crime or crime against peace) is being committed, and having such knowledge, was "in a position to shape or influence the policy that brings about initiation or 'continuation' of the crime" to the extent of his ability... will be responsible if he could have influenced such policy and failed to do so'".Martin J., Limbo v. Little 65 NTR 19 at 45, quoting from Frank Lawrence, "The Nuremberg Defence", 40 Hastings L. J. (1989), no page cited. From this "Nuremberg Defence", the author claims that international law places a personal responsibility upon him as an individual, to do everything possible to prevent such crime not only if he knows that such a crime is being committed or planned, but also if he suspects that such circumstances exist. The author argues that a fortiori, such personal responsibility entails either an obligation to trespass upon prohibited land, or alternatively an exemption from prosecution for doing so. In this regard, the author notes that Australia is a party to both the International Covenant on Civil and Political Rights, the Genocide Convention 1949, and other instruments which condemn and/or prohibit the use of nuclear weapons.

3.2 The author submits that since the domestic courts refused to recognise the rights and duties under international law in the sense of making them directly enforceable in Australian courts, his right to a fair hearing has been violated. Despite the fact that the alleged violation occurred before the entry into force of the Optional Protocol for Australia, the author claims that the Human Rights Committee can consider it as the bankruptcy proceedings allegedly constitute continuing effects of the original violation. Reference is made to the Committee's jurisprudence.

3.3 The author also alleges a violation of his right to a fair trial as provided for in article 14, on the grounds that the State party's claim for costs in the domestic proceedings and the decisions by the courts to affirm these claims constitute an unreasonable burden on the author as a private individual involved in human rights litigation. Reference is made to the principle in article 14, paragraph 3(d), which contains the right for anyone facing a criminal charge to have assigned legal assistance without payment if he does not have sufficient means.

3.4 The author claims to be a victim of a violation of article 14, paragraph 3(d), as he was denied a legal aid lawyer of his own choosing in respect of the proceedings before the Full Court in September 1989.

3.5 The author further claims to be a victim of a violation of article 14, paragraph 1, as the Full Court which handled the proceedings in September 1989 was not an "independent and impartial tribunal" within the meaning of the Covenant. It is submitted on a general basis that an "unrepresentative minority group of white affluent elderly hetero males dominates the judiciary, the courts, the legal system and the executive and legislature." More

specifically, the author claims that Justice Martin disclosed in court on transcript that as a solicitor in Alice Springs he had been a public supporter of Pine Gap being established, that he had acted for Pine Gap companies and that his old law firm still so acted. The author argued in court that this should have disqualified Judge Martin, but despite this he still sat on the case. Though it is not clear from the author's submission, the file shows that this alleged bias later was made the ground for a Leave for Appeal to the High Court.

3.6 The author alleges a breach of article 14, paragraph 7, on the grounds that the threat of bankruptcy is a breach of the right not to be "punished again for an offence for which he has already been finally convicted."

3.7 Finally, the author alleges a violation of the right to life, as protected by article 6 of the Covenant. The author argues that by deploying nuclear weapons Australia imperils its own citizens, and is thereby a "complicity in a conspiracy" with the United States and the former Soviet Union to commit "imminent" genocide on the citizens of Australia, either because the weapons may be used, or because there may be accidents. The author maintains that both the prosecution for trespass and the recovery of costs reveal the aforementioned "conspiracy" on the part of Australia.

State party's observations and author's comments thereon

4.1 In its submission of February 1996, the State party argues that all claims put forward by the author should be declared inadmissible.

4.2 As to the alleged violation of article 14, paragraph 1, the State party claims that the proceedings were conducted before the entry into force of the Optional Protocol for Australia. The State party submits that it has not been substantiated that the proposal to commence bankruptcy proceedings is by act or clear implication a continuation of the alleged previous violation. Nor has it been substantiated that the intention to commence bankruptcy proceedings in itself is a violation of the Covenant. Thus, the State party submits that this claim should be declared inadmissible ratione temporis.

4.3 As to the alleged violation of article 14, paragraph 7, the State party submits that the author has failed to raise an issue set forth in the Covenant, and that this claim should be held inadmissible ratione materiae under article 1 of the Optional Protocol. The State party argues that the prohibition against double jeopardy applies exclusively in the context of criminal proceedings and has no application to bankruptcy proceedings.

4.4 As to the alleged violation of article 6, the State party submits that the author, for the purpose of admissibility, has failed to demonstrate how his right to life has been adversely affected or how an adverse effect is imminent. Thus, the State party claims that the author has failed to substantiate a position as a victim within the meaning of the Optional Protocol, and that this claim should be held inadmissible ratione personae under article 1 of the Optional Protocol.

4.5 With regard to all claims alleged by the author, the State party submits that the author

has failed to provide sufficient evidence to substantiate the claims, and that the communication therefore should be declared inadmissible ratione materiae under article 1 of the Covenant.

5.1 In a submission of 24 November 1997, the author gives his comments on the State party's observations. The author reiterates that Australia's domestic law on the threat or use of nuclear weapons is not in accordance with international law, and that the violation of article 6 therefore is continuing. The author makes reference to several international instruments, and in particular to the advisory opinion given on 8 July 1995 by the International Court of Justice on the legality or use of nuclear weapons.

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 The Committee notes that the author claims to represent other alleged victims of article 6 who have participated in mass protests at the Pine Gap Facility over the last 15 years. However, no authorization of the representation has been placed before the Committee, and therefore, this part of the communication is inadmissible under article 1 of the Optional Protocol.

6.3 The Committee notes that the author claims to have suffered an unfair trial, because Australia's policy on the threat and use of nuclear weapons is not in compliance with international law, and that he therefore, according to international law, should not have been convicted for two counts of trespassing. The Committee reiterates that it cannot reverse decisions made by domestic courts under domestic law. The Committee's competence in this case is solely to consider whether the domestic procedures were in compliance with the Covenant. The Committee considers that the author, for purposes of admissibility, has failed to substantiate that his trial was unfair due to the reason referred to above. This part of the communication is therefore inadmissible under article 2 of the Optional Protocol. Consequently, the author's claim that the proposal to commence bankruptcy proceedings against him is in violation of article 14, paragraph 1, because it is the result of an alleged unfair trial, is likewise inadmissible under article 2 of the Optional Protocol.

6.4 As to the author's claim of a violation of article 14, paragraph 1, because the State party claimed costs and the courts affirmed these claims, the Committee notes that if administrative, prosecutoral or judicial authorities of a State party laid such a cost burden on an individual that his access to court de facto would be prevented, then this might give rise to issues under article 14, paragraph 1. However, the Committee is of the opinion that in the present case the author, for purposes of admissibility, has failed to substantiate such a claim. The costs imposed on him originate mainly from legal proceedings initiated by the author himself, with no direct relationship to the author's defence against the trespassing charge. Therefore, this part of the communication is inadmissible under article 2 of the Optional Protocol.

6.5 The Committee has considered the author's claim that he is a victim of a violation of article 14, paragraph 3(d), as he at the proceedings before the Full Court in September 1989 was denied a legal aid lawyer of his own choosing. The Committee notes that the proceedings concerned the author's interlocutory applications regarding his defence against a trespassing charge where the penalty was a fine, and in the circumstances, the Committee finds that the author, for purposes of admissibility, has failed to substantiate his claim that the interests of justice required the assignment of legal aid. Therefore, this part of the communication is inadmissible under article 2 of the Optional Protocol.

6.6 As to the author's claim that article 14 has been violated because the Full Court which heard his interlocutory applications in September 1989 was not an "independent and impartial tribunal", the Committee notes that both the original hearing and the appeal were concluded before the entry into force of the Optional Protocol for Australia. In order for the Committee to consider the allegations, continuing effects of the violation which in themselves constitute a violation of the Covenant must therefore exist. The Committee takes note of the fact that the author was able to raise, in the hearing before the High Court that took place on 6 November 1997, the issue of a possible bias by certain judges that had dealt with his case. As the High Court heard the author's arguments and responded to them, the Committee finds that the author has failed to substantiate that any continuing effects of alleged lack of independence or impartiality by lower courts exist. Therefore, the communication is inadmissible ratione temporis under article 1 of the Optional Protocol.

6.7 The Committee has considered the author's claims that the opening of bankruptcy proceedings would be in violation of article 14, paragraph 7, as the grounds for bankruptcy proceedings are the costs imposed on him in court proceedings relating to the criminal charges against him. The Committee notes that it appears from the file that bankruptcy proceedings were never actually initiated, and therefore the author cannot be considered to be a victim within the meaning of article 1 of the Optional Protocol. With regard to this claim, the Committee also notes that the author has failed to exhaust domestic remedies. Therefore, this part of the communication is inadmissible both under article 1 and article 5, paragraph 2(b) of the Optional Protocol.

6.8 As to the author's claim that his right to life under article 6 has been violated, the Committee has considered whether the author, for purposes of admissibility, has substantiated a claim as a victim of a violation, within the meaning of article 1 of the Optional Protocol. For a person to be considered to be a victim of a violation of a right protected by the Covenant, he or she must show either that an act or an omission of a State party has already adversely affected his or her enjoyment of such a right, or that such an effect is imminent, for example on the basis of existing law and/or judicial or administrative decision [1]. The issue in this case is whether Australia's defence policy in general, and the facilities at "Pine Gap" in particular, constitute an imminent, adverse effect to the author's right to life. The Committee notes that the only way in which the author claims to be personally a victim of a violation of his rights under article 6 of the Covenant is his allegation that the bankruptcy proceedings brought against him would be a part of conspiracy to commit genocide. The author has failed, for purposes of admissibility, to demonstrate his position as the possible victim of such a violation. Therefore this part of the

communication is inadmissible under article 1 to the Optional Protocol.

7. The Human Rights Committee therefore decides:

(a) That the communication is inadmissible;

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

---

*The following members of the Committee participated in the examination of the present communication: Mr. Prafullachandra N. Bhagwati, Mr. Th. Buergenthal, Lord Colville, Mr. Omran El Shafei, Ms. Pilar Gitan de Pombo, Mr. Eckart Klein, Mr. David Kretzmer, Mr. Rajsommer Lallah, Ms. Cecilia Medina Quiroga, Mr. Julio Prado Vallejo, Mr. Martin Scheinin, Mr. Roman Wieruszewski, Mr. Maxwell Yalden and Mr. Abdallah Zakhia.

1/ See the Committee's decision in case 429/1990, E. Wobbes et al. v. the Netherlands, declared inadmissible on 8 April 1993.

[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.]