

HUMAN RIGHTS COMMITTEE

Bech v. Norway

Communication No 882/1999

15 March 2000

CCPR/C/68/D/882/1999

ADMISSIBILITY

Submitted by: Mr. Chris Bech (represented by Mr. Knut Rognlien from Oslo)

Alleged victim: The author

State party: Norway

Date of the communication: 28 September 1999

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

Meeting on 15 March 2000

Adopts the following:

Decision on admissibility

1. The author of the communication is Chris Bech, a Norwegian citizen, born on 23 May 1956. He claims to be a victim of a violation by Norway of article 14 of the International Covenant on Civil and Political Rights. He is represented by Mr. Knut Rognlien, a lawyer in Oslo.

The facts as presented

2.1 On 9 November 1995, the Oslo City Court found the author guilty of fraud and sentenced him to five years' imprisonment. The author appealed the judgement to the Borgarting High Court. A hearing was held from 15 January to 6 February 1997. Prior to the hearing, on 23 December 1996, the author was involved in a car accident. His injury caused him severe neck pains and thus difficulty in sleeping, which led to difficulties in concentration and disturbances of vision. He was prescribed medication for pain relief, which had a soporific effect. The doctors told him to take rest

and have as little stress as possible.

2.2 Due to the author's state of health, the defence requested that the hearing of the appeal be postponed. On the first day of the hearing, on 15 January 1997, after consulting with the specialist treating the author as well as with his general practitioner, the Court rejected the request. It decided, however, that the hearings would be of shorter duration than usual, and that short breaks would be permitted at hourly intervals, and that an armchair would be made available to the author.

2.3 It appears from a statement made by the author's specialist, that she told the Court that the author suffered pain which could be relieved with medication, and that he would be able to go through with the appeal if he were allowed regular breaks.

2.4 The next day, the author's condition deteriorated and on 17 January 1997, the Court decided to interrupt his testimony due to his condition. It was agreed that the author would see a doctor and do a blood test. The opinion by the National Institute of Forensic Toxicology of 21 January 1997 was that the blood test showed that it was likely that the author was influenced by the medication. On 23 January 1997, the author did not attend court and the hearing was postponed by one day. After that, the hearing resumed with the author present. On 27 February 1997, the Court rejected the author's appeal and sentenced him to five years' imprisonment.

2.5 On 19 March 1997, the author appealed the judgement on procedural grounds. The Appeals Committee of the Supreme Court decided not to hear the appeal. A second request for review was rejected on 14 May 1997. After having obtained an expert witness statement from a doctor at the National Institute of Forensic Toxicology on 5 June 1997, the author's lawyer again requested the Supreme Court to hear the appeal. In the statement, the doctor said that the medication the author was taking could have a calming, relaxing and stupor-inducing effect, and that it could adversely affect memory function, learning ability and concentration. The effects were said to be comparable to 0.1% alcohol. On 30 September 1997, the Appeal Committee of the Supreme Court rejected the author's appeal.

The complaint

3. The author claims that he did not receive a fair hearing on appeal, because he was not in a position to give an adequate and comprehensive explanation of his case, nor could he follow the testimony of other witnesses. As a consequence, his defence was impaired and he could not instruct his counsel properly. In this context, counsel points out that the case was complicated, with an indictment of over 15 pages, covering the author's business, financial plans and income. The author's testimony was central to his defence. Furthermore, the author claims that he was unable to prepare his defence properly, because he was not in a position to read the hundreds of documents placed before the Court.

Issues and proceedings 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 The author's allegation of unfair trial is based on his claim that his medical condition impaired his functioning in such a way as to impede the presentation of his appeal. The Committee notes that this claim was brought before the Courts, both at the time of the hearing and on appeal to the Supreme Court, and that the Courts rejected the author's claim after having heard medical expert testimony. The Committee recalls that it is generally not for the Committee but for the Courts of States parties to evaluate the facts and evidence in a specific case, unless it can be ascertained that the evaluation was clearly arbitrary or amounted to a denial of justice. The arguments advanced by the author and the material he provided do not substantiate, for purposes of admissibility, his claim that the Court's evaluation of his medical condition was arbitrary or amounted to a denial of justice. Accordingly, the communication is inadmissible under article 2 of the Optional Protocol.

5. Accordingly, the Human Rights Committee decides

- a) that the communication is inadmissible under article 2 of the Optional Protocol;
- b) that this decision shall be communicated to the author 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 Natwarlal Bhagwati, Ms. Christine Chanet, Lord Colville, Ms. Elizabeth Evatt, Ms. Pilar Gaitán de Pombo, Mr. Louis Henkin, Mr. Eckart Klein, Mr. David Kretzmer, Mr. Rajsoomer Lallah, Mr. Martin Scheinin, Mr. Hipólito Solari Yrigoyen, Mr. Maxwell Yalden and Mr. Abdallah Zakhia.

[Adopted in English, French and Spanish, the English text being the original version.]