

HUMAN RIGHTS COMMITTEE

A.R.U. v. The Netherlands

Communication No. 509/1992**

19 October 1993

CCPR/C/49/D/509/1992*

ADMISSIBILITY

Submitted by: A.R.U. (name deleted)

Alleged victim: The author

State party: The Netherlands

Date of communication: 21 April 1992 (initial submission)

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

Meeting on 19 October 1993,

Adopts the following:

Decision on admissibility

1. The author of the communication is Mr. A.R.U., a Dutch citizen, presently residing in Delft, the Netherlands. He claims to be a victim of a violation by the Netherlands of articles 4, 5, 6, 7, 14, 18 and 26 of the International Covenant on Civil and Political Rights. He is represented by counsel.

The facts as submitted by the author:

2.1 In early 1987, the author received notice that he would be drafted for military service later that year. He objected, arguing that by performing military service, he would become an accessory to the commission of crimes against peace and the crime of genocide, as he would be forced to participate in the preparation for the use of nuclear weapons. His objections were rejected by the authorities.

2.2 Subsequently, the author initiated court action by summary procedure, requesting the Court for an injunction against drafting him for military service, or, alternatively, for a postponement until the merits of his objections against military service could be decided. On 31 March 1987, the president of the The Hague District Court (**Arrondissementsrechtbank**) rejected his request, considering that the request was premature, since the author's objections concerned an eventual nuclear war, and not military service as such. On 28 April 1988, the The Hague Court of Appeal (**Gerechtshof**) rejected the author's appeal, considering that he could have filed an application under the Act on Conscientious Objection to Military Service (**Wet Gewetensbezwaren Militaire Dienst**), which would have allowed an evaluation of the authors' objections with a view to exempting him from military service. The Supreme Court (**Hoge Raad**), on 12 January 1990, dismissed the author's appeal in cassation.

2.3 From the judgment of the Court of Appeal it appears that, prior to his court action, the author had requested the State to be exempted from military service under article 15 of the Military Service Act (**Dienstplichtwet**), which can be invoked in 'special cases'. This request was dismissed and, on 18 December 1986, the author's appeal was rejected by the Council of State (**Raad van State**), the highest relevant judicial instance. On 3 September 1987, he was arrested for not reporting for military service. On 3 December 1987, the Military Court (**Krijgsraad**) sentenced him to six months' imprisonment for refusal to obey military orders. The author appealed this judgment, and the Supreme Military Court (**Hoog Militair Gerechtshof**) rendered its judgment on 16 March 1988. However, no information is provided as to the contents of this judgment.

The complaint:

3.1 The author contends that military service in the Netherlands, within the framework of the NATO defence strategy, which is based on the threat with and the use of nuclear weapons, violates articles 6 and 7 of the Covenant. He submits that the possession of nuclear arms and the preparation for the use of nuclear weapons is in violation of public international law and amounts to a crime against peace and a conspiracy to commit genocide. In this connection, he refers *inter alia* to General Comment 14 of the Human Rights Committee on article 6 of the Covenant. He argues that the army of the Netherlands is a criminal organisation, since it is preparing a crime against peace by envisaging the use of nuclear weapons.

3.2 The author argues that by doing military service his life is being endangered, because of measures of retaliation in case of the use of nuclear weapons by NATO. He also submits that the use of nuclear weapons by NATO, through its consequences such as fall-out and nuclear winter, directly affects his right to life and his right not to be subjected to torture or to cruel, inhuman or degrading treatment. He argues that the Human Rights Committee should provide protection to such threat of a violation of these rights. He further claims that to be forced to become an accessory to crimes against peace and to violations of the right to life and the right not to be tortured, makes him a victim of the violation of these articles.

3.3 The author also contends that he is a victim of a violation of articles 14 and 26 of the Covenant, because he has allegedly been denied fair treatment before the Supreme Court,

which held that he was not entitled to seek a remedy from a civil court, since he could have filed an application under the Conscientious Objection Act. The author argues, however, that this law was created for conscientious objections to lawful obligations, arising from military service, not for objections to obligations that are illegally imposed and violate international law.

3.4 The author further claims to be a victim of article 18 **juncto** 5 of the Covenant. By considering that the author should have applied for alternative service under the Conscientious Objection Act, the Supreme Court limited the author's objections with regard to the illegal character of the military service to a matter of conscience. The author, however, argues that article 18 of the Covenant only applies in case of a conflict between one's conscience and a valid legal obligation. Thus, according to the author, the Supreme Court did not correctly interpret article 18 of the Covenant, thereby preventing him from protesting the participation by the defence force of the Netherlands in a conspiracy to commit a crime against peace and the crime of genocide.

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 As regards the author's claim that he is a victim of a violation by the State party of articles 6 and 7 of the Covenant, the Committee observes that the author cannot claim to be a victim of a violation of articles 6 and 7 by mere reference to the requirement to do military service¹. This part of the communication is therefore inadmissible under article 3 of the Optional Protocol.

4.3 The Committee considers that the author has failed to substantiate, for purposes of admissibility, his claim that he is a victim of violations of articles 14, 18 and 26 of the Covenant. This part of the communication is therefore inadmissible under article 2 of the Optional Protocol.

5. The Human Rights Committee therefore decides:

(a) that the communication is inadmissible under articles 2 and 3 of the Optional Protocol;

(b) that this decision shall be communicated to the author and, for information, to the State party.

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

Footnotes

*/ All persons handling this document are requested to respect and observe its confidentiality

nature.

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

1/ See the Committee's decisions in communications Nos. 401/1990 (J.P.K. v. the Netherlands) and 403/1990 (T.W.M.B. v. the Netherlands), declared inadmissible on 7 November 1991.