

HUMAN RIGHTS COMMITTEE

P.J.N. v. The Netherlands

Communication No. 510/1992

19 October 1993

CCPR/C/49/D/510/1992*

ADMISSIBILITY

Submitted by: P.J.N. (name deleted)

Alleged victim: The author

State party: The Netherlands

Date of communication: 28 April 1992

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. P.J.N., a Dutch citizen, presently living in Brunssum, the Netherlands. He claims to be a victim of a violation by the Netherlands of article 14, paragraphs 1 and 3(e), of the International Covenant on Civil and Political Rights.

The facts as submitted by the author:

2.1 The author, a car dealer, was arrested on 13 June 1983, on suspicion of dealing in stolen cars, mainly Mercedes. On 27 February 1984, the Maastricht District Court (**Arrondissementsrechtbank**) sentenced him to three years' imprisonment. On appeal, the Court of Appeal (**Gerechtshof**) at 's Hertogenbosch, re-evaluated the evidence and again, on 26 November 1984, sentenced him to three years' imprisonment. The author's appeal in cassation was dismissed by the Supreme Court (**Hoge Raad**) on 10 December 1985. The

author's request for review of the Court of Appeal's judgment, on the ground of new evidence, was rejected by the Supreme Court on 9 December 1986.

2.2 On 16 May 1989, the author filed a complaint with the European Commission of Human Rights. On 15 June 1990, he was informed that the Commission had declared his application inadmissible, since it was introduced more than six months after the date of the Supreme Court's final decision in the case.

The complaint:

3.1 The author complains that his trial suffered from procedural irregularities. He claims that the evidence of the main witness against him was unlawfully obtained, and should have been disallowed by the courts. This main witness, who was an accomplice, allegedly made false statements to the police, after the police had promised him a reduction of sentence. In particular, the author claims that this witness made his statements while in detention from 13 June to 17 June 1983, and not, as submitted to the Court, on 20 and 23 June 1983. He alleges that the investigating officers in the case falsified the statements and committed perjury.

3.2 During the trial, as well as during the appeal proceedings, these allegations were raised but dismissed by the court. On 30 September 1985, the witness made a written statement by notarial act, declaring that he had given statements to the police in Heerlen, not on 20 and 23 June 1983, but before 17 June 1983. On 12 December 1985, the author requested the Supreme Court, under article 466 of the Code of Criminal Procedure, to review the Court of Appeal's judgment of 26 November 1984, on the ground that this new evidence raised doubts about the reliability of the testimony of said witness. Subsequently, the Supreme Court ordered an investigation, during which the police officers concerned and the witness were heard. The police officers maintained that the statements were given by the witness on 20 and 23 June 1983; the witness told the investigating officer that the author had asked him to give a written statement to a notary, and that the author had dictated said statement, after which he had signed it. On the basis of the investigation, the Supreme Court dismissed the author's request for review on 9 December 1986. The author's request to prosecute the investigating officers concerned was, on 19 December 1986, dismissed by the Court of Appeal at 's Hertogenbosch.

3.3 The author further alleges that during the appeal proceedings his request for the hearing of expert witnesses was dismissed by the court and that he was not allowed to put certain questions to expert witnesses from the Legal Laboratory of the Ministry of Justice. These expert witnesses had identified cars, found on the author's premises, as stolen, using a secret working method on the basis of specific characteristics added to the car by the manufacturer. During the appeal hearing, counsel to the author requested the Court for a hearing of staff working for Daimler-Benz in Germany, with a view to understanding better the method of identification, used by this company. The Court dismissed this request as belated, considering that counsel had had the opportunity to make such request already during the preliminary proceedings, during the trial at first instance, or at the start of the appeal proceedings. Counsel was allowed, however, to play a tape-recording of a telephone

interview he had with a staff member of the Daimler-Benz company.

3.4 During the appeal hearing, on 12 November 1984, the Court did not allow counsel to put a question to the expert witnesses from the Judicial Laboratory concerning the procedure of identification, in particular in respect of the secret characteristics and where they can be found. The Court considered that the reply to that question would damage the effectiveness of criminal investigations in related matters. The Supreme Court, when dismissing the author's appeal in cassation, considered that the Court, taking into account the general nature of the question, was able to conclude that it was not meant to rebut the specific evidence against the author. The Supreme Court concluded that, weighing the interests concerned, the refusal by the Court did not violate the guarantees of a fair trial.

3.5 The author claims that the alleged irregularities during his trial amount to a violation of article 14, paragraphs 1 and 3(e), of the Covenant.

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 Committee observes that the author's allegations relate primarily to the evaluation of facts and evidence by the courts. It recalls that it is in principle for the courts of States parties, and not for the Committee, to evaluate facts and evidence in a particular case, unless it is apparent that the courts' decisions are manifestly arbitrary or amount to a denial of justice. In the instant case, the Committee has no evidence that the courts' decisions suffered from these defects. This part of the communication is therefore inadmissible under article 3 of the Optional Protocol.

4.3 As regards the author's allegations concerning the hearing of witnesses, the Committee considers that the author has not substantiated, for purposes of admissibility, his claim that the refusal of the Court of Appeal to hear certain expert witnesses and to allow certain questions, was arbitrary and could constitute a violation of article 14, paragraph 3(e), 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.]

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

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