

HUMAN RIGHTS COMMITTEE

J.S. v. The Netherlands

Communication No. 522/1992**

3 November 1993

CCPR/C/49/D/522/1992*

ADMISSIBILITY

Submitted by: J.S. (name deleted) [represented by counsel]

Alleged victim: The author

State party: The Netherlands

Date of communication: 26 August 1992 (initial submission)

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

Meeting on 3 November 1993,

Adopts the following:

Decision on admissibility

1. The author of the communication is J.S., a Dutch citizen, currently detained in the Netherlands. He claims to be a victim of violations by the Netherlands of article 14, paragraphs 1 and 3(e), 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 was charged with the murder, on 10 June 1985, of a drug dealer, one L.d.J. The prosecution's case was primarily based on statements obtained from the author and his co-accused, one T.H.; both confessed to the police and testified at the preliminary hearing that they had planned to kill L.d.J. as a revenge for his alleged involvement in the killing, several weeks earlier, of T.H.'s ex-boyfriend, one W.E. Initially, T.H. had wanted to kill

L.d.J. herself, but the author suggested that he would do so in her place. On 8 June 1985, they drove to Groningen where L.d.J. and the family of W.E. lived. In the early morning of 10 June 1985, the author and T.H. left the home of W.E. and went to the home of L.d.J. While T.H. was waiting in the car, the author entered the house and stabbed L.d.J. several times. He then left the premises and told T.H. what had happened and showed her a blood-stained knife.

2.2 Before the District Court of Groningen, the author confirmed that he had killed L.d.J. On 11 December 1985, the Court found him guilty of being an accessory to murder and sentenced him to ten years' imprisonment.

2.3 On 19 December 1985, the author appealed to the Court of Appeal of Leeuwarden. During the hearing, on 6 October 1986, the author retracted his earlier statements. He testified that "while I was present in the residence of [L.d.J.], the latter was stabbed several times with a knife". He further testified that "I did not kill L.d.J. When I was in the living-room, there was a third person present. I persist in saying that this third person stabbed L.d.J. I did not mention this before, as I received threats".

2.4 Counsel argued that the author's new version of the events could be corroborated by the statement which L.d.J.'s girlfriend, K.V., had given to the police on 10 and 11 June 1985. She had told the police that she had seen the murderer and described him. The police had shown her several photographs, two of which portrayed H.E., the brother of W.E.; She identified him as the murderer. Following identification through a two-way mirror, she again identified H.E. as the one whom she had seen stabbing her boyfriend. Counsel further argued that, in light of the author's new testimony, the earlier evidence against him was no longer conclusive. Since the author had never been placed on an identification parade, his guilt could only be ascertained if he was confronted with the only eye-witness alleged to be able to identify him. However, from the minutes of the hearing before the Court of Appeal, it appears that counsel as well as the author abandoned the idea of hearing further witnesses.

2.5 On 16 October 1986, the Court of Appeal quashed the District Court's decision, on the basis of a different evaluation of the evidence. It found the author guilty of murder and sentenced him to eight years' imprisonment. The decision was based on the evidence and testimonies before the court of first instance, and on the testimonies and evidence before the Court of Appeal.

2.6 The author then appealed to the Supreme Court, on the ground that the judgment of the Court of Appeal was not sufficiently motivated. Counsel affirmed that the Court of Appeal's findings were based, on one hand, on the author's previous confessional statements, and, on the other hand, on his statement at the hearing that L.d.J. was killed while he, the author, was present at the **locus in quo**. According to counsel, these statements were contradictory. Therefore, the Court of Appeal should have motivated: (a) why it used as evidence against the author only that part of the statement admitting to his presence at the time of the murder; and (b) why it ignored the author's denial of having committed the crime.

2.7 The Supreme Court dismissed the appeal on 24 November 1987, holding that the author's

testimony did not in fact rule out that he himself had committed the crime. The issue of contradiction with the previous confessions did not therefore arise.

2.8 On 12 January 1988, counsel requested the public prosecutor at the District Court of Groningen to once again review the case, on the ground that the author had decided to reveal the identity of the true culprit. The prosecutor refused to comply with the request. The author then petitioned the Supreme Court to review his case. Upon request of the Attorney-General at the Supreme Court, fresh investigations were conducted by the police in March 1989.

2.9 In the course of these investigations, the author testified, **inter alia**, that, on 10 June 1985, he and T.H. had gone to the home of the deceased with the purpose of punishing him for his involvement in the killing of T.H.'s ex-boyfriend. Upon entering the living-room, he saw H.E. who attacked L.d.J. and stabbed him. According to the author, T.H. plotted with H.E. Furthermore, T.H. reiterated her earlier statements.

2.10 K.V. testified that the intentions of H.E. were known in the neighbourhood. Thus, on 10 June 1985, she gave his name to the police, although she had never seen H.E. before and although she only had had a fleeting glance of the murderer. When she arrived at the police station, she saw a photograph held by one of the police officers, and heard that it concerned H.E. On that ground, she picked out the two photographs similar to the one she had already seen. She gave further evidence about her purported identification of H.E.

2.11 On 5 September 1989, the Supreme Court ruled that the author's request to review his case was inadmissible. It found, **inter alia**, that:

(a) the new statement of T.H. was substantially in conformity with her previous one that had been used by the Court of Appeal to establish the author's guilt;

(b) K.V.'s statement only shed new light on her previous testimony that H.E. was the murderer; her new statement only clarified why she had identified H.E.; and

(c) the author's testimony that he, as well as H.E., had been present at the **locus in quo**, was incompatible with K.V.'s statement.

The complaint:

3.1 The author alleges a violation of article 14, paragraph 1, because the Court of Appeal used as evidence against him that part of his statement which could not be said to reflect its tenor. While the author concedes that the Court of Appeal was entitled to use that part of his statement, he claims that the Court, in view of its divergent tenor, had to motivate why it left out his declaration that it was not he, but another person, who killed L.d.J.

3.2 The author further claims that article 14, paragraph 1, was violated since the Court of Appeal failed to explain why it rejected counsel's argument that the statement of K.V. was essential for the handling of the case.

3.3 Finally, the author claims that, in view of, on the one hand, his denial and, on the other hand, the exculpatory statement made by K.V., the Court of Appeal should have **ex officio** heard K.V. Furthermore, the Court of Appeal should have **ex officio** confronted him with K.V., as to obtain certainty about his guilt. The Court's failure to do this is said to amount to a violation of article 14, paragraph 3(e), of the Covenant.

Issues and proceedings before the Committee:

4.1 Before considering any claims contained in a communication, the Human Rights Committee must, in accordance with rule 87 of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

4.2 The Committee notes that the author's claims under article 14, paragraph 1, relate in essence to the evaluation of facts and evidence by the Court of Appeal of Leeuwarden. The Committee recalls that it is generally for the appellate courts of States parties to the Covenant to evaluate the facts and evidence in a particular case. It is not, in principle, for the Committee to review the facts and evidence presented to, and evaluated by, the domestic courts, unless it can be ascertained that the proceedings were manifestly arbitrary, that there were procedural irregularities amounting to a denial of justice, or that the judge manifestly violated his obligation of impartiality. After careful consideration of the information placed before it, the Committee cannot find such defects. Accordingly, this part of the communication is inadmissible under article 3 of the Optional Protocol.

4.3 As to the author's claims under article 14, paragraph 3(e), the Committee notes that these issues were raised by counsel during the hearing when he addressed the Court of Appeal. The Committee further notes that counsel subsequently stated that he did not wish to call the witnesses mentioned in his plea, to which the author agreed. Moreover, the Committee notes that the Court of Appeal had access to K.V.'s initial statement to the police. In these circumstances, the Committee considers that the author has failed to substantiate, for purposes of admissibility, his claim that the Court of Appeal's failure to **ex officio** hear and confront him with K.V. constitutes a violation of article 14, paragraph 3(e), of the Covenant. In this respect, therefore, the author has no claim within the meaning of 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 transmitted to the author, to his counsel 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 confidential nature.

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