

HUMAN RIGHTS COMMITTEE

Koning v. The Netherlands

Communication No. 660/1995

3 November 1995

CCPR/C/55/D/660/1995

ADMISSIBILITY

Submitted by: Cornelis Johannes Koning [represented by counsel]

Alleged victim: The author

State party: The Netherlands

Date of communication: 5 January 1995 (initial submission)

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

Meeting on 3 November 1995,

Adopts the following:

Decision on Admissibility

1. The author of the communication is Cornelis Johannes Koning, a Dutch citizen, domiciled in Eindhoven, the Netherlands. He claims to be a victim of a violation by the Netherlands of articles 14 and 19 of the Covenant. He is represented by counsel.

The facts as submitted by the author:

2.1 On 9 and 12 August 1991, the author, a peace activist who had been sentenced to suspended sentences on at least two prior occasions, caused damages to an air force communications mast at the military complex of Erp, the Netherlands, out of protest against the alleged continuing militarization of the Netherlands and the involvement of the Netherlands economy, actively supported by the State, in the production and sale of weapons, resulting in wars elsewhere in the world. By judgment of 21 November 1991, the

district court of 's Hertogenbosch found him guilty of endangering the air traffic and sentenced him to eight months' imprisonment. On appeal filed by the prosecution, the Court of Appeal of 's Hertogenbosch, by judgment of 5 March 1992, increased the author's sentence to 16 months' imprisonment. The author's appeal in cassation to the Supreme Court was rejected on 25 May 1993.

2.2 It appears from the trial documents that the author informed the investigating magistrate on 10 October 1991 that he did not wish to be represented by counsel and that he asked to be given a copy of his file. On 11 October 1991, the magistrate transmitted to him copy of part of the file and referred him to counsel who had represented him until 10 October for the remaining part of the file, since only one copy could be provided. The author raised this issue in cassation, arguing that the failure of the magistrate to give him copy of the whole file violated the right to a fair trial. The Supreme Court dismissed this argument.

2.3 The author states that the Public Prosecutor informed the investigating magistrate on 24 October 1991 that the author had been summoned, whereas the summons was only served upon him on 25 October 1991. In cassation, it was argued that this amounts to a violation of the right to a fair trial and that the Court of Appeal should have declared the summons null and void ex officio. The Supreme Court, however, rejected this argument.

2.4 The author further submits that he was informed on 24 January 1992 that the Public Prosecutor had appealed the judgment of the District Court to the Court of Appeal. The President of the Court of Appeal set the hearing for 20 February 1992. The author claims that the court documents show that the President of the Court of Appeal urged the District Court already in December 1991 to forward the trial documents, and showed his intention to deal with the appeal expeditiously in order to prevent the author from being released from detention before the appeal would have been decided upon. The author claims that this shows that the President of the Court of Appeal was biased against him.

2.5 The author further submits that the Court of Appeal arbitrarily confiscated certain letters, which were in his possession when he was arrested, pertaining to protest actions in the context of the commemoration of the bombing of Hiroshima and Nagasaki.

The complaint:

3. The above is said to constitute violations of articles 14 and 19 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 has carefully examined all the material submitted by the author and considers that, with regard to his claim under article 19, the information before it does not substantiate, for purposes of admissibility, how the confiscation, in the context of the

criminal proceedings against him, of certain papers pertaining to protest actions against nuclear weapons, would constitute a violation of the right to freedom of expression.

4.3 Furthermore, the Committee considers that the author has failed to substantiate, for purposes of admissibility, how the alleged irregularities in his trial would constitute a violation of the right to a fair hearing under article 14 of the Covenant.

5. The Human Rights Committee therefore 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.

[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.]