

## HUMAN RIGHTS COMMITTEE

### **Berg v. The Netherlands**

Communication N° 835/1998\*

25 March 1999

CCPR/C/65/D/835/1998

### ADMISSIBILITY

*Submitted by: Messrs. Johannes and Arie Japhet van den Berg*

*Alleged victim: The authors*

*State party: The Netherlands*

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

Meeting on 25 March 1999

Adopts the following:

#### **Decision on admissibility**

1. The authors of the communication are Johannes and Arie Japhet van den Berg, Dutch citizens, born on 11 November 1924 and 10 April 1959, respectively. They claim to be victims of a violation of article 14, paragraph 1, of the Covenant by the Netherlands.

#### **The facts as submitted by the authors**

2.1 The authors were shareholders of the firm A. van den Berg (timber merchants).<sup>1</sup> After a long conflict among the shareholders, the other shareholder (who held 50 per cent of the shares), petitioned the Court to have the authors' shares transferred to him, in accordance with articles 2:335-343 of the Civil Code, which enables the transfer of shares if the co-shareholder damages the interests of the company to such an extent that he cannot be allowed to continue.

2.2 By judgement of 17 April 1991, the District Court of the Hague held that the authors had

been blocking decision-making in the General Meeting of Shareholders of the firm since 1986 and allowed the transfer of shares. On appeal, the Amsterdam Court of Appeal, by judgement of 10 September 1992, confirmed the judgement of first instance. A further appeal to the Supreme Court was rejected on 8 December 1993. With this, all domestic remedies are said to be exhausted.

2.3 On 13 October 1994, the European Commission on Human Rights rejected the authors' application as inadmissible.<sup>2</sup>

2.4 The authors submit that their behaviour at the shareholders' meetings (withholding approval of the annual accounts) was inspired by the interests of the company, but that the Courts did not take their reasons into account. They further refer to the company's rules and regulations, which provide that all decisions are taken by majority vote, and conclude that all decisions taken by the shareholders' meeting were thus lawful.

### The complaint

3. The authors claim that their right under paragraph 1 of article 14 of the Covenant, to a fair hearing by a competent independent and impartial tribunal has been violated, since the Courts did not interpret the evidence and the regulations correctly. In this context, the authors state that they are aware that the Committee cannot examine the question of whether the Courts have correctly interpreted the facts. They argue, however, that fair and impartial justice entails that the Courts interpret the facts correctly and note that in their case, the Courts' decisions are inconsistent with the rules and regulations of the firm. They add that the Court's decision that they blocked decision-making is not borne out by the facts, especially in the light of the company's rules and regulations, and thus violates the principle of impartiality.

### Issues and proceedings before the Human Rights Committee

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

4.2 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 authors and the material they provided do not substantiate for purposes of admissibility the claim that the court process was arbitrary or amounted to a denial of justice. Accordingly, the communication is inadmissible under article 2 of the Optional Protocol.

5. The Human Rights Committee therefore decides:

(a) That the communication is inadmissible;

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

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\*The following members of the Committee participated in the examination of the communication: Mr. Afdelfattah Amor, Mr. Nisuke Ando, Mr. Prafullachandra N. Bhagwati, Mr. Thomas Buergenthal, Lord Colville, Ms. Elizabeth Evatt, Mr. Eckart Klein, Mr. David Kretzmer, Mr. Rajsoomer Lallah, Mr. Fausto Pocar, Mr. Martin Scheinin, Mr. Hipólito Solari Yrigoyen, Mr. Roman Wieruszewski, Mr. Maxwell Yalden and Mr. Abdallah Zakhia.

1/ The firm was originally a family business. The three shareholders are related to each other.

2/ No copy of decision provided.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently also to be issued in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]