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HUMAN RIGHTS COMMITTEE
Eighty-fourth session
11 – 29 July 2005

DECISION

Communication No. 1193/2003

Submitted by:	Teun Sanders (represented by counsel, B.W.M. Zegers)
Alleged victim:	The author
State party:	The Netherlands
Date of communication:	12 June 2002 (initial submission)
Document references:	Special Rapporteur's rule 97 decision, transmitted to the State party on 3 July 2003 (not issued in document form)
Date of decision:	25 July 2005

* Made public by decision of the Human Rights Committee.

Subject matter: Independence of the judiciary: Practising lawyers appointed as substitute judges

Procedural issues: None

Substantive issues: Right to fair and impartial hearing

Articles of the Covenant: 14

Articles of the Optional Protocol: 2

[ANNEX]

ANNEX

DECISION OF THE HUMAN RIGHTS COMMITTEE UNDER THE OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

Eighty-fourth session

concerning

Communication No. 1193/2003*[*]*

Submitted by: Teun Sanders (represented by counsel, B.W.M. Zegers)

Alleged victim: The author

State party: The Netherlands

Date of communication: 12 June 2002 (initial submission)

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

Meeting on 25 July 2005

Adopts the following:

DECISION ON ADMISSIBILITY

1.1 The author of the communication is Mr. Teun Sanders, a Dutch citizen. He claims to be a victim of a violation by the Netherlands under article 14 of the International Covenant on Civil and Political Rights. He is represented by counsel; Mr. B. W. M. Zegers.

1.2 On 28 August 2003, pursuant to the State party's submission on admissibility, the Special Rapporteur on New Communications, acting on behalf of the Committee, decided that the admissibility of this communication should be considered separately from the merits.

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[*] The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Nisuke Ando, Mr. Prafullachandra Natwarlal Bhagwati, Mr. Alfredo Castillero Hoyos, Ms. Christine Chanet, Mr. Maurice Glèlè Ahanhanzo, Mr. Edwin Johnson, Mr. Walter Kälin, Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer Lallah, Mr. Michael O'Flaherty, Ms. Elisabeth Palm, Sir Nigel Rodley, Mr. Ivan Shearer, Mr. Hipólito Solari-Yrigoyen, Ms. Ruth Wedgwood and Mr. Roman Wieruszewski.

Factual background

2.1 On 4 February 1997, the author lodged civil proceedings against the Dutch Touring Club (ANWB) and the Dutch Technical Institute (TNO), in which he requested the court to: (a) order the ANWB to rectify an article published in the ANWB magazine about the working and safety of a coupling stabilizer designed by the author; (b) prohibit the ANWB from distributing the article; order the ANWB and TNO to pay compensation for the damage he suffered; and (c) to order the ANWB and TNO to hand over the "report" mentioned in the summons.

2.2 On 10 February 1997, at the beginning of the court hearing, the author asked the "trial judge" to refer the case to another court, claiming that The Hague Regional Court could not be considered an independent and impartial tribunal. He argued that "a number of lawyers" working at the same law firm[1] as the lawyers representing ANWB and TNO also served as substitute judges on the Hague Regional Court and on the Court of Appeal. The judge rejected his request.

2.3 The author appealed to the Hague Court of Appeal and, at the beginning of the hearing, sought referral of the case to another Court of Appeal, for the same reason as in 2.2 above. On 22 September 1998, the Hague Court of Appeal declared the author's claim inadmissible as, under Dutch law, the decision not to refer the case to another court could not be appealed separately from the Court's ruling on the case itself. On 30 June 2000, his appeal to the Supreme Court was rejected.

The complaint

3.1 The author claims a violation of article 14 of the Covenant, as he was not afforded a "fair trial" before an independent and impartial tribunal. He claims that both the Hague Regional Court and Court of Appeal cannot be considered to be independent and impartial tribunals, as "a number of lawyers" working in the same firm as the lawyers representing ANWB and TNO also served as substitute judges on the same court, therefore creating a conflict of interest. He contends that the fact that the case was not referred to another Regional Court proved that the Hague Court of Appeal had an "interest" in passing judgement on the author's case.

3.2 The author adds that the lawyer for ANWB was also a professor at the Vrije University in Amsterdam, and that three other professors of the same university were substitute judges on The Hague Regional Court. He argues that the "trial judge" had been a member of the Disciplinary Council of The Hague bar association until 1996, together with Ms. Nouwen-Kronenberg, a judge on the Dordrecht (Municipal) Court and sister-in-law of Mr. Nouwen, a former manager of ANWB. When this fact was pointed out to the "trial judge", he answered that he was unaware of this fact and that it was no ground for him to rule himself out as a judge in the case.

3.3 Finally, the author claims that the institution *per se* of substitute judges, who always have additional functions besides their work as judges, violates article 14 of the Covenant, as it inevitably leads to conflicts of interest.

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[1] De Brauw Blackstone Westbroek Linklaters & Alliance (DBB)

The State party's submission on admissibility and author's comments thereon

4.1 On 27 August 2003, the State party contested the admissibility of the communication on two grounds. Firstly, it submits that the author does not qualify as a "victim" within the meaning of article 1 of the Optional Protocol, as the President dealing with interim injunction proceedings (referred to by the author as the "trial judge") had no personal ties with the law firm of the defendant's lawyers. It recalls that the Optional Protocol is not intended for complaints couched in abstract terms about alleged shortcomings in national legislation or national legal practice. According to the State party, any challenge to a judge must be backed up with specific objections that demonstrate that the specific judge's impartiality was open to question, or in any case that objectively justifiable doubts exist concerning his/her impartiality or appearance of impartiality.

4.2 Secondly, the State party submits that the case falls outside the scope of the application of Covenant, as it concerns interim injunction proceedings before the President (referred to as the "trial judge" by the author). On the basis of article 254, paragraph 1, of the Code of Civil Procedure, a judge who hears applications for interim relief may grant an injunction "in all urgent cases in which an immediately enforceable injunction is required, having regard to the interests of the parties". Article 257 of the Code states, "immediately enforceable decisions shall not prejudice the principal action". The State party argues that the present case does not relate to the determination of a civil right, within the meaning of article 14, paragraph 1. It submits that the European Court of Human Rights reached the same conclusion on 29 May 2002, when it found the same case inadmissible, for being outside the scope of article 6 of the European Convention on Human Rights.

5.1 On 30 September 2004, the author commented on the State party's submission and reiterates that his claim does come within the scope of the Covenant, maintaining that it does relate to a civil right, i.e. the "right to a fair trial" and, that he has been a victim within the meaning of article 1 of the Optional Protocol. He concedes that the Regional Court judge who considered his case was not a substitute judge from the law firm in question but a full-time judge. However, this judge had "personal ties" with lawyers of the firm. He argues that in practice, judges consult or confer with other substitute judges who are also lawyers at the [DBB] law firm. He argues that the Covenant makes no distinction between summary proceedings and principal proceedings and the fact that the European Court of Human Rights found his claim inadmissible does not mean that the Committee should find likewise.

5.2 Finally, he refers to the consideration of an unrelated case before The Hague Regional Court on 21 June 2001, in respect of which the court held that because of the close connection between the judges of the Court and the law firm DBB, the applicant's request to have his case referred to another court was granted.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 93 of its rules of procedure, decide whether or not the complaint is admissible under the Optional Protocol to the Covenant.

6.2 The Committee notes that this matter was already considered by the European Court of Human Rights on 29 May 2002. However, it recalls its jurisprudence[2] that it is only where the same matter is being examined under another procedure of international investigation or settlement that the Committee has no competence to deal with a communication under article 5, paragraph 2 (a), of the Optional Protocol. Thus, article 5, paragraph 2(a), does not bar the Committee from considering the present communication.

6.3 The Committee notes the author's claim that the court was not independent and impartial as "a number of judges" on The Hague Regional Court and Court of Appeal were also practicing lawyers in the law firm against whom the author was taking legal action. It notes the State party's argument that the President of the court in which injunction proceedings were pending had no ties with the law firm in question and that the author conceded, in his own comments on the State party's observations, that the judge who considered his case was employed as a full-time judge and not a practising lawyer with the law firm in question. The Committee notes that the author has failed to provide any additional information which would substantiate his claim of lack of impartiality or lack of independence on the part of the judges who examined his case. It therefore concludes that the author has failed to substantiate his claims for purposes of admissibility, under article 2 of the Optional Protocol, and that these claims are thus inadmissible.

7. 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 State party and to the author.

[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.]

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[2] See Communication, No. 824/1998, *N.M. Nicolov v. Bulgaria*, decision adopted on 24 March 2000.