



**International covenant
on civil and
political rights**

Distr.
RESTRICTED*

CCPR/C/89/D/1451/2006
30 May 2007

Original: ENGLISH

HUMAN RIGHTS COMMITTEE
Eighty-ninth session
12 – 30 March 2007

DECISION

Communication No. 1451/2006

Submitted by: Mr. Rabindranath Gangadin (represented by
counsel, Mr. E. Hummels)

Alleged victim: The author

State Party: The Netherlands

Date of communication: 12 January 1998 (initial submission)

Date of adoption of decision: 26 March 2007

Subject matter: Unfair criminal proceedings and treatment of counter -claims;
inappropriate police investigation of complaints

Procedural issues: Sufficient substantiation for purposes of admissibility

Substantive issues: Fair trial; equality before the courts and the law

Articles of the Covenant: 14, 26

Articles of the Optional Protocol: 2

[ANNEX]

* Made public by decision of the Human Rights Committee.

ANNEX

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

Eighty-ninth session

concerning

Communication No. 1451/2006**

<u>Submitted by:</u>	Mr. Rabindranath Gangadin (represented by counsel, Mr. E. Hummels)
<u>Alleged victim:</u>	The author
<u>State Party:</u>	The Netherlands
<u>Date of communication:</u>	12 January 1998 (initial submission)

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

Meeting on 26 March 2007,

Adopts the following:

DECISION ON ADMISSIBILITY

1. The author of the communication, initially dated 12 January 1998, is Mr. Rabindranath Gangadin, of unknown citizenship and date of birth, currently living in the Netherlands. The author claims to be a victim of violations of articles 14 and 26 of the Covenant by The Netherlands. He is represented by counsel, Mr. E. Hummels.

Factual background

2.1 The author describes two sets of factual incidents. In the first, a neighbour of the author allegedly damaged the author's car on 19 February and again on 19 November 1990. The author thereupon commenced proceedings for damages against the neighbour. On 19 February 1991,

** The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Prafullachandra Natwarlal Bhagwati, Ms. Christine Chanet, Mr. Maurice Glèlè Ahanhanzo, Mr. Yuji Iwasawa, Mr. Edwin Johnson, Mr. Walter Kälin, Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer Lallah, Ms. Zonke Zanele Majodin a, Ms. Iulia Antoanella Motoc, Ms. Elisabeth Palm, Mr. José Luis Pérez Sanchez -Cerro, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Ivan Shearer and Ms. Ruth Wedgwood.

the author presented a witness statement by a Mr. G., according to which the latter claimed to have seen the neighbour inflict the damage in question. On 24 February 1992, after having been allegedly bribed by the neighbour, Mr. G. made an allegedly false statement to the magistrate. The proceedings concluded thereafter, with the author failing to win compensation for the damage to his car.

2.2 In September 1992, the author allegedly procured a statement from Mr. G to the effect that he had given false information to the magistrate. Mr. G. later denied having made such a statement, and the author himself was prosecuted under the charge of making a false statement. On 20 September 1995, the Utrecht District Court convicted the author and sentenced him to a fine of NFL 2,000 and two months conditional imprisonment. On 27 September 1995, the author applied to the Court of Appeal for an order directing prosecution of the neighbour and Mr. G. On 18 December 1996, the Court of Appeal denied the author's motion. On 7 July 1998, the Court of Appeal adjusted the sentence downward to two months imprisonment, while, on 14 September 1999, the Supreme Court rejected his appeal.

2.3 In the second incident, in June 1991, under cover of written loan, the aforementioned Mr. G. allegedly borrowed NFL 5000 from the author. In June 1994, Mr. G., claiming both that he had not borrowed any monies and that the deed of loan was invalid, sought criminal prosecution of the author. The author, in turn, sought Mr. G's prosecution for improper approach to the police. The public prosecutor denied the author's request, while, on 18 December 1996, the Court of Appeal rejected the author's motion that the prosecutor be directed to prosecute Mr. G. The author was successful at first instance with an underlying civil suit concerning the loan, but the finding was reversed on appeal.

2.4 On 8 December 1997, a Committee of three of the former European Commission of Human Rights unanimously decided that, in light of the material in its possession and in so far as the matters of complained of by the author were within its competence, there was no appearance of a violation of any of the rights and freedoms set out in the European Convention for the Protection of Human Rights and Fundamental Freedoms or its Protocols.

The complaint

3.1 The author argues that in both cases, the Court of Appeal rejected his requests to order the prosecution of the other party to the dispute, while the author himself was prosecuted. The author claims accordingly that he was a victim of violations of the principles of fairness and equality before the courts and the law, protected by articles 14 and 26 of the Covenant.

3.2 The author further contends that the police was biased against him and did not appropriately inquire into the substance of his complaints, as the father in law of the neighbour in the first incident was a police officer who acted on his behalf. He states that he was the victim of various crimes ranging from arson in 1996, to "attempted manslaughter" in 1997 and damage to his car at various occasions, and that the police refused to investigate his complaints because of "negative information" they had about him. This information is said to have followed the author from town to town when he moved.

Issues and proceedings before the Committee

Consideration of admissibility

4.1 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 it is admissible under the Optional Protocol to the Covenant.

4.2 The Committee notes, with respect to the author's claims of equality before the courts and the law, that the Covenant does not require parties to proceedings to be placed in an identical formal position, but rather that such distinctions as may be made are based upon reasonable and objective grounds.¹ The author has not shown that the decisions of the Court of Appeal not to accede to the author's motions that the opposing parties in the suits in question be prosecuted was motivated by anything other than the assessment of the facts made by the Court and that the distinction made between the author, who was convicted, and the other parties was not based upon reasonable and objective grounds, consistent with the requirements of the Covenant. The Committee accordingly finds that the claims of violations of articles 14 and 26 of the Covenant have been insufficiently substantiated, for purposes of admissibility, and are thus inadmissible under article 2 of the Optional Protocol.

4.3 As to the author's remaining claims, the Committee considers that the author has not sufficiently substantiated an issue under the Covenant in respect thereof. As a result, these claims are similarly inadmissible under article 2 of the Optional Protocol.

5. Accordingly, the Committee decides:

- a) that the communication is inadmissible under article 2 of the Optional Protocol; and
- b) that this decision will be transmitted 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.]

¹ See, for example, Kavanagh v Ireland, Case No 819/1998, Views adopted on 4 April 2001.