

HUMAN RIGHTS COMMITTEE

Tamihere v. New Zealand

Communication No. 891/1999

15 March 2000

CCPR/C/68/D/891/1999*

ADMISSIBILITY

Submitted by: Mr. David Wayne Tamihere

Alleged victim: The author

State party: New Zealand

Date of the communication: 20 November 1997

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

Meeting on 15 March 2000

Adopts the following:

Decision on admissibility

1. The author of the communication is David Wayne Tamihere, a New Zealand citizen, born in 1953. He claims to be a victim of the violation of his rights under articles 2, 14 and 26 of the International Covenant for Civil and Political Rights by New Zealand.

Facts as submitted by the author

2.1 In April 1989, two Swedish tourists were murdered and their possessions were stolen in New Zealand. After an intense police investigation and much public and media interest, the author became the prime suspect. While the author confessed to the theft of the victims' car, he has continuously maintained his innocence as regards the murder. The author's trial before a jury commenced in October 1990, and in December 1990, the jury convicted the author of murder and theft.

2.2 The author appealed the trial court's decision. The hearing of the appeal was set for 21 August 1991 and the author was assigned legal aid for senior and junior counsel, who had represented him at trial, to argue the appeal. Shortly before the hearing, senior counsel requested the author to sign a letter accepting that there were no grounds on which to base his appeal. When the author refused to sign the letter, senior counsel advised the author that he would withdraw from the proceedings. The Court of Appeal initially rejected the author's request for legal aid to finance new counsel to argue the appeal, although it left the matter open so as to allow the author to present grounds to show why he should be granted such legal aid. Before the appeal was heard, new evidence was discovered and the Court of Appeal revised its previous decision and assigned legal aid to the author for a lawyer and a pathologist. The new lawyer argued the appeal before the court in May 1992.

2.3 In its May 1992 decision, the Court of Appeal rejected the appeal, and found that the author had not been a victim of a miscarriage of justice pursuant to Section 385(c) of the New Zealand Crimes Act, 1961. In 1994 the author was denied leave to appeal to the Privy Council.

2.4 In 1996, it was made public that one of the three prison informers who had given evidence against the author had retracted his evidence. In response to this, and upon the author's request, a Member of Parliament requested a ministerial inquiry into the case. The file was transferred to the independent Police Complaints Authority, which conducted an inquiry. After the inquiry was opened the said informer retracted his retraction. Nevertheless, the Police Complaints conducted a thorough inquiry the conclusion of which was that the police had not been guilty of any wrongdoing. As a result, the Minister of Justice rejected a call for further inquiry into the case. The author sent letters to members of several national political parties, but these were received with only lukewarm or minimal interest. The author claims that he has exhausted all domestic remedies.

The complaint

3.1 The author contends that his rights pursuant to articles 2, 14, and 26 of the Covenant have been violated. More specifically he makes the following claims:

(a) that there were three "secret" witnesses whose testimonies were crucial to the Crown's case. These witnesses had been fellow prisoners who, operating as informers for the police, claimed respectively that the author had confessed to the murder on separate occasions;

(b) that his right to fair trial was violated when, in August 1991, the Court of Appeal cancelled the author's access to legal aid, which would have given the author the means to pay for a new lawyer and the prepare for the appeal;

(c) that both the police procedure for obtaining evidence against him and their conduct during the investigation were subject to irregularities, including the manufacturing of evidence that, the author believes, was both perjurious and misleading;

(d) that the courts allowed evidence to be put forward by the prosecution even though some was misleading or its credibility was questionable. As a result, the author claims the courts failed to interpret the facts of the case correctly, which resulted in his wrongful conviction for murder.

Issues and proceedings before the Human Rights Committee

4.1 Before considering any claims contained in the 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 As regards the author's claim regarding the evidence of "secret" witnesses, from the materials submitted by the author it transpires that the identity of these witnesses was revealed to the author and his counsel as well as to the jury. The only "secrecy" involved was a "gag order" preventing publication of the witnesses' identity. In these circumstances, the Committee holds that the author has failed to substantiate his claim that his rights under article 14, paragraph 1, were violated in this respect.

4.3 As regards the author's claim that he was denied legal aid for the appeal, the Committee notes that the original decision denying legal aid for the appeal was revised before the date set down for the appeal and that the author was represented by counsel, funded by legal aid, in the Court of Appeal. The author has therefore failed to substantiate his claim that his rights under article 14, paragraph 3 (d) were violated.

4.4 The Committee notes that the documents submitted by the author show that the domestic courts rejected his claims of police irregularities and the lack of credibility of the witnesses who gave evidence on behalf of the prosecution. The Committee refers to its jurisprudence that it cannot review facts and evidence evaluated by domestic courts unless it is manifest that the evaluation was arbitrary or amounted to a denial of justice. The arguments advanced by the author and the material he submitted do not substantiate his claims that the court's decisions suffered from such defects. Accordingly, in respect to the author's claims regarding the police irregularities in gathering the evidence and the credibility of the evidence submitted, the communication is inadmissible under Article 2 of the Optional Protocol.

5. The 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.

*The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Nisuke Ando, Mr. Prafullachandra Natwarlal Bhagwati, Ms. Christine Chanet, Lord Colville, Ms. Elizabeth Evatt, Ms. Pilar Gaitáán de Pombo, Mr. Louis Henkin, Mr. Eckart Klein, Mr. David Kretzmer, Mr. Rajsoomer Lallah, Mr. Martin Scheinin, Mr. Hipóólito Solari Yrigoyen, Mr. Roman Wieruszewski, Mr. Maxwell Yalden and Mr. Abdallah Zakhia.

[Adopted in English, French and Spanish, the English text being the original version.]