

ANNEX XI

Decisions of the Human Rights Committee declaring communications inadmissible under the Optional Protocol to the International Covenant on Civil and Political Rights

A. Communication No. 164/1984, G. F. Croes v. The Netherlands (Decision of 7 November 1988, adopted at the thirty-fourth session)

Submitted by: Gilberto François Croes, deceased, and his heirs

Alleged victim: G. F. Croes

State party concerned: The Netherlands

Date of communication: 11 January 1984 (date of initial letter)

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

Meeting on 7 November 1988,

Setting aside, pursuant to rule 93, paragraph 4, of its provisional rules of procedure, an earlier decision on admissibility, dated 25 October 1985,

Adopts the following:

Revised decision on admissibility

1. The author of the communication (initial letter dated 11 January 1984 and further letters dated 18 May, 8 June and 27 September 1984) is the late Gilberto François Croes, a native of the island of Aruba. Mr. Croes was the leader of the People's Electoral Movement (Movemento Electoral di Pueblo, MEP) of Aruba. When Aruba achieved the status of a self-governing country within the Kingdom of the Netherlands, on 1 January 1986, the author was elected a member of the Parliament of Aruba. On 26 November 1986, as a result of an automobile accident, the author passed away. By letter of 29 June 1988 his heirs requested the Committee to continue examination of the case. They are represented by counsel.

2.1 It is stated that the author founded the MEP in 1971 and that the party has been proposing Aruba's independence since 1972. Because of his political activity he was allegedly subjected to harassment, accusations of being radical and revolutionary as well as to physical threats and attacks by various political opponents; he deposited complaints with the prosecuting authorities for slander and other offences, but it is claimed that he was denied reasonable satisfaction and that the authorities have condoned these violations.

2.2 In connection with the preparation for the elections of the Island Parliament in April 1983, the MEP, which reportedly had been the majority party through six elections (in the November 1985 elections, the MEP lost its majority), was denied permission to hold a parade, apparently on the ground that the relevant request

submitted by the MEP had disappeared. The author was allegedly led to believe by police authorities that no obstacle would be laid if he were to hold the parade, but, on 24 April 1983, an order was given by the police authorities to break up the MEP parade and a policeman shot the author in the chest two inches below the heart. He was operated on and subsequently flown to a hospital in Miami, United States, where he underwent a second operation. It is further alleged that the policeman who did the shooting has not been prosecuted, although the author requested his prosecution on 11 June 1983 and again on 16 November 1983 in a complaint to the Judge of First Instance in Aruba. After the judge rejected prosecution on 22 December 1983, the author directed a request to the Supreme Court of the Netherlands Antilles, which, on 24 February 1984, declared the author's request inadmissible. It is thus claimed that domestic remedies have been exhausted with respect to this allegation, and that "the duration of the investigation itself had taken much too long, unreasonably long in the terminology of the Optional Protocol".

2.3 The author alleged, particularly, that his right to life, his right to being treated equally and his right to see others treated equally under the laws of the Netherlands Antilles was violated by the authorities of the Netherlands Antilles and of the Netherlands. He further alleged that the right to self-determination of the Aruban people was threatened with gross violation by the authorities concerned.

3. In response to a request for further information, the author, in a letter dated 27 September 1984, stated that the alleged attempt on his life "was the result of a conspiracy, inspired to kill me as a leader of the Aruba independence movement", and gave details on another shooting incident and on an alleged raid on his parents' home in August 1977.

4. By its decision of 26 October 1984 the Human Rights Committee transmitted the communication under rule 91 of the Committee's provisional rules of procedure to the State party, requesting information and observations relevant to the question of the admissibility of the communication.

5.1 In its submission dated 28 May 1985, the State party presented the facts as follows:

"The complainant, Mr. Gilberto François Croes, is the leader of a political party on the island of Aruba. Aruba is one of the islands which together constitute the Netherlands Antilles. The Netherlands Antilles is a part of the Kingdom of the Netherlands, consisting of two self-governing countries, the Netherlands and the Netherlands Antilles.

"The political party of which Mr. Croes is the leader strives for an independent status of Aruba.

"On 24 April 1983, during disturbances surrounding a car parade on the island of Aruba, held by Mr. Croes' political party without the required permission from the authorities, Mr. Croes was wounded by a pistol shot. He alleged that the shot was deliberately fired by a policeman.

"On 26 May 1983, the Minister of Justice of the Netherlands Antilles appointed a Committee of Inquiry to investigate the actions and conduct of the police during the events that took place on 24 April. This investigation was

concluded on 8 July 1983. The Committee of Inquiry concluded that the police forces serving that day had shown sufficient self-restraint and self-discipline.

"The Committee of Inquiry purposely did not go into the question whether the shot that wounded Mr. Croes was in fact fired by a policeman, and if so, whether the policeman could be held guilty of this fact, in view of the forthcoming investigations by the prosecuting authorities into these questions.

"The prosecuting authorities in their investigations came to the conclusion that there was no proof of premeditated or deliberate or intentional firing on the part of [the policeman], and moreover that there was even no proof of guilt on the part of [the policeman] that his gun fired the shot which hit Mr. Croes. For this reason the case against [the policeman] was dropped.

"On 16 November 1983, Mr. Croes filed a request with the court in first instance, requesting the prosecution of [the policeman]. The court, in a decision dated 12 December 1983, supported the Public Prosecutor's Decision not to prosecute [the policeman], and rejected the request of Mr. Croes.

"Mr. Croes then, on 12 January 1984, filed a complaint with the Court of Justice of the Netherlands Antilles, which was rejected on grounds of form."

5.2 With regard to the rights invoked by the author, the State party addresses itself to alleged violations of the following rights:

"(a) 'His right to life',

"(b) 'His right to being treated equally',

"(c) 'His right to see others treated equally',

"(d) 'The right to self-determination of the Aruban people',

"(e) Furthermore a complaint in a letter of Mr. Croes' lawyer dated 18 May 1984, 'that the duration of the investigation itself had taken much too long, unreasonably long'. It is unclear whether this complaint refers to the treatment of Mr. Croes himself or the treatment of the [policeman]. In the latter case, this part of the communication would in any case be inadmissible under rule 90, paragraph 1 (b) of the Committee's Rules."

5.3 With regard to the question of admissibility, the State party "starts from the assumption that Mr. Croes can be supposed to be invoking articles 6, 14, 26 and article 1 of the International Covenant on Civil and Political Rights. As for his "right to see others treated equally", the Government cannot find an article in the Covenant protecting such a right. Confronted with the question whether the Government considers Mr. Croes' communication to be admissible, the Government, to its regret, has to reply in the negative, for the following reasons:

Firstly, the communication indicates an abuse of the right to present a communication, for political and propagandistic motives. Mr. Croes is the leader of a political party propagating a "status aparte" for the island of Aruba. His principal accusation is that, as a political leader, he was discriminated by the

prosecuting and judicial authorities of the Kingdom of the Netherlands. A complaint based on article 26 of the Covenant could only be made on the basis of an allegation that either the prosecuting authorities or the courts applied the laws to Mr. Croes in a discriminatory way. Though Mr. Croes does indeed accuse the authorities of a "conspiracy" against him, and apparently fears that this spirit of conspiracy has even reached the Judicial Laboratory at Rijswijk in the Netherlands, he fails to bring any concrete evidence in support of his accusations and insinuations.

Secondly, Mr. Croes failed to exhaust the available domestic remedies with respect to his complaints under the Covenant. What he did submit to the national authorities were:

- (a) A protest against the decision not to prosecute [the policeman];
- (b) A protest against the decision not to prosecute Mr. Croes himself on charges of perjury and holding a car parade without a permit.

However, Mr. Croes failed to invoke before the national authorities any of the Covenant's rights mentioned above. Of these rights, at least articles 6 and 14 are, in accordance with article 93 of the Constitution, "self-executing" in the sense that they can be invoked by individuals before the national courts. In this way the Constitution provides an important "available domestic remedy" in the sense of article 5, paragraph 2 (b), of the Optional Protocol.

Thirdly, Mr. Croes' allegation that the investigating procedures took too long cannot be brought within the scope of article 14, paragraph 3 (b), of the Covenant, because Mr. Croes was not in the position of a person "charged with a criminal offence" within the meaning of that provision.

Fourthly, a complaint based on article 6 of the Covenant appears to be made as a result of allegations that:

- (a) The shots which wounded Mr. Croes were deliberately fired by a policeman in a premeditated attempt to kill him;
- (b) That the prosecuting and judicial authorities joined in efforts to cover up this fact and to protect [the policeman] from the normal administration of justice.

Mr. Croes fails to submit any evidence in support of such allegations.

Lastly, Mr. Croes cannot claim a right to invoke article 1 of the Covenant without submitting even a beginning of evidence to the effect that:

- (a) The people of Aruba claim to be the victim of a violation of article 1 of the Covenant by the Kingdom of the Netherlands;

- (b) This people has authorized Mr. Croes to submit on its behalf a complaint under article 1 of the Covenant;

- (c) the Kingdom of the Netherlands has violated article 1. In this respect it is significant that Mr. Croes' lawyer, in paragraph 28 of his letter of 11 January 1984, does not as yet allege an actual violation of article 1, but "a

threat" to the right of self-determination. This raises the question whether a possible future violation of a right protected by the Covenant could be the object of a complaint under the Optional Protocol. The Government answers this question in the negative.

For the reasons submitted in the foregoing paragraphs the Government of the Kingdom of the Netherlands submits that the communication of Mr. Gilberto François Croes is inadmissible under rule 90, paragraphs 1 (b), 1 (c), 1 (d) and 1 (f) of the Committee's Rules of Procedure."

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

6.2 Article 5, paragraph 2 (a), of the Optional Protocol precludes the Committee from considering a communication if the same matter is being examined under another procedure of international investigation or settlement. There was no indication that the case was under examination elsewhere.

6.3 Article 5, paragraph 2 (b), of the Optional Protocol precludes the Committee from considering a communication unless domestic remedies have been exhausted. In this connection the Committee recalled that in its decision under rule 91 of its provisional rules of procedure it requested the State party, in case it would contend that domestic remedies had not been exhausted, "to give details of the effective remedies available in the particular circumstances of this case". The Committee noted that in its submission of 28 May 1985 the State party contended that the author had failed to exhaust domestic remedies. It mentioned the steps taken by Mr. Croes, but did not specify what effective local remedies would have been available in the circumstances of this case, had Mr. Croes specifically invoked articles 6 and 14 of the Covenant in his submission of complaints to the national authorities. The Committee noted that the steps taken by the author to exhaust domestic remedies ended with the rejection of his appeal to the Supreme Court of the Netherlands Antilles on 24 February 1984. In the absence of any clear indication from the State party concerning other effective domestic remedies which the author should have pursued, the Committee concluded that it was not precluded by article 5, paragraph 2 (b), of the Optional Protocol from considering this case, but indicated that this conclusion could be reviewed in the light of any further information submitted by the State party under article 4, paragraph 2, of the Optional Protocol.

6.4 The Committee noted the State party's contention that the communication indicates an abuse of the right of submission. However, the Committee found that the grounds invoked by the State party in this connection did not appear to support such a conclusion.

7. On 25 October 1985, the Human Rights Committee therefore decided that the communication was admissible in so far as Mr. Croes claimed to be personally affected by the events which he described (as set out in paras. 2.2, 2.3 and 3 above), and in so far as these events could raise issues under articles 6, 9, paragraph 1, first sentence, 19, 21, 25 and 26 of the Covenant.

8.1 In its submission under article 4, paragraph 2, of the Optional Protocol, dated 16 May 1986, the State party, elaborating on its submission of 28 May 1985, reaffirms that the author failed to exhaust the domestic remedies that were

available to him. It states that the author, in his initial action brought against the State party, failed to invoke the self-executing provisions of the International Covenant on Civil and Political Rights. The State party's obligations under the Covenant were invoked for the first time before the Human Rights Committee. Furthermore, he could have initiated civil proceedings against the State alleging tort. The State party submits that the courts would have dealt with his complaints based on the Covenant except his allegation of a violation of the right of self-determination under article 1. Had the author acted as indicated above, he could have exhausted all domestic remedies up to and including the highest judicial authority in the Kingdom, the Supreme Court (Hoge Raad), and thus met the requirements of article 5, paragraph 2 (b), of the Optional Protocol.

8.2 With respect to the merits of the communication, the State party submits that there has not been any violation of the rights invoked by the author. Concerning article 6, it recalls that after due investigation the prosecuting authorities in Aruba concluded that there was no evidence whatsoever of premeditated or intentional firing on the part of the police officer, that there was no proof that the shot which wounded Mr. Croes had been fired from the police officer's gun, and that for that reason the case against the police officer was dismissed.

8.3 Concerning the alleged violation of article 9, paragraph 1, the State party affirms that it did not violate the author's right to liberty and security of person. It explains that the police forces that were on duty in Aruba on 24 April 1983 sought to uphold law and order, to prevent disorder and to protect all people, including the author, against any form of bodily harm. In this context, the author was neither deprived of his liberty nor of his security. The police forces on duty on the said day were not only sufficiently trained but also displayed behaviour which enabled them to fulfil their duties in every respect. Disturbances resulted because the MEP held a motorcade without permission and partly because of the behaviour of MEP supporters.

8.4 With respect to articles 19, 21 and 25 of the Covenant, the State party rejects the allegations put forth by the author. It points out that Mr. Croes exercised all his democratic rights to express political views, to found a political party and to be elected to the Parliament of the Netherlands Antilles. No violation of article 19 can thus be said to have taken place. In respect of article 21, the State party points out that under the laws of the Netherlands Antilles and Aruba, anyone who wishes to organize a manifestation on public roads must seek and obtain permission from the competent authorities. a/ In the present case, the request for authorization to hold a motorcade filed by the author's party did not reach the authorities, which is why permission to hold a parade was given to another political party. The author's party was, however, granted permission to hold a demonstration. In the interest of public order, the police broke up the motorcade which was held after the demonstration. The State party submits that the regulations in question are compatible with article 21, since the requirement of prior permission to hold public demonstrations is a restriction made in conformity with the law and necessary in the interest of public order. Concerning article 25, the State party summarizes the electoral system in force in the Netherlands Antilles and Aruba at the same time of the submission of the complaint, and emphasizes that the author's rights and the rights of his party under that article were in no way restricted.

8.5 Finally, with respect to the alleged violation of article 26, the State party refers to the decision of the Court of Justice of the Netherlands Antilles of

24 February 1984 and argues that the Court's considerations do not reveal that Mr. Croes was discriminated against.

9.1 Commenting on the State party's submission, the author's heirs, in a submission dated 29 June 1988, maintain that their father's initial allegations are well founded and that he did indeed exhaust all the domestic remedies available to him. In particular, they claim that the State party's argument that the author should have initiated civil proceedings against the Netherlands does not address his concerns, since monetary compensation cannot do away with the human rights violations of which the author was a victim, and which in their opinion still warrant criminal prosecution. Furthermore, they claim that Mr. Croes did not have to invoke international treaty norms and obligations of the State party, since the courts should have applied them ex officio. They claim in that context that the author, in his memorandum to the Supreme Court of the Netherlands dated 10 January 1984, did in fact invoke the Covenant.

9.2 With respect to the alleged violation of articles 6 and 9, paragraph 1, the author's heirs reiterate that the shot fired by [name deleted] which wounded the author was part of a premeditated plot against the author's life. They affirm that the "heavily armed police corps" intended to "victimize" the unarmed MEP loyalists, to cause Aruban citizens to turn against Aruban citizens, which in turn would provide a pretext to postpone the elections scheduled by the Government of the Netherlands Antilles. They deny that MEP supporters acted in any way that could be construed as aggressive during the motorcade and affirm that the parade was held following discussions with the highest police officer on duty on 24 April 1983.

9.3 With respect to the alleged violations of articles 19 and 21, the author's heirs claim that the State party's argumentation reflects an exceedingly narrow interpretation of the scope of these articles. They take issue with the State party's submissions concerning article 21 (see para. 8.4 above) and reiterate that the motorcade was broken up only after it had proceeded for several hours and covered approximately 20 miles, and that there was no danger of crossing the motorcade of a rival political party. Thus there was no basis for prohibiting and/or breaking up the parade.

9.4 Concerning an alleged violation of article 25, the author's heirs challenge without further substantiation the State party's claim that the rights of the author and of his party were in no way restricted. In respect of article 26, finally, they maintain that, under the pretext of justice, the author did suffer from discrimination because of the inadequate investigation of the shooting incident and the authorities' effort to hold back evidence. In other words, the discrimination is said to have consisted in the authorities' attempt to "cover up" the case of the police officer.

10. Pursuant to rule 93, paragraph 4, of its provisional rules of procedure and in accordance with its decision of 25 October 1985, the Human Rights Committee has reviewed its decision on admissibility of 25 October 1985. On the basis of the additional information provided by the State party in its submission of 16 May 1986, the Committee concludes that there would have been effective remedies available to the author both with respect to the shooting incident and the break-up of the motorcade. The Committee has stressed on previous occasions that remedies, the availability of which is not evident, cannot be invoked by the State party to the detriment of the author in proceedings under the Optional Protocol (Communication No. 113/1981, decision of 12 April 1985, para. 10.1). In this case,

however, the Committee comes to the conclusion that remedies were evident. It would have been open to Mr. Croes to institute civil proceedings against the State party and to claim compensation for the damages suffered as a result of the alleged failure of the State party to fulfil its obligations under the International Covenant on Civil and Political Rights. It is true that he claimed that this type of recourse would not address his concerns. In this context, the Committee observes that although States parties are obliged to investigate in good faith allegations of human rights violations, criminal proceedings would not be the only available remedy. Accordingly, the Committee cannot accept the argument of the author and his heirs that proceedings before the Aruban courts, other than those leading to the criminal prosecution of the policeman, do not constitute effective remedies within the meaning of article 5, paragraph 2 (b), of the Optional Protocol. The Committee adds that the authors' complaint could be directed, in all of its aspects, against the Aruban authorities in general and that he and his heirs have failed to pursue all avenues of judicial recourse open to them.

11. The Human Rights Committee therefore decides that:

(a) The decision of 25 October 1985 is set aside;

(b) The communication is inadmissible;

(c) This decision shall be communicated to the heirs of Gilberto François Croes and to the State party.

#### Notes

a/ Article 32 of the General Police Regulations for Aruba. The State party, in an annex to its submission, provides excerpts of these regulations.