L. Communication No. 372/1989, R.L.A.W. v. the Netherlands (Decision of 2 November 1990, adopted at the fortieth session)

Submitted by: R.L.A.W. (name deleted)

Alleged victim: The author

State party concerned: The Netherlands

Date of communication: 5 July 1989 (date of initial letter)

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

Meeting on 2 November 1990,

Adopts the following:

Decision on admissibility

1. The author of the communication (initial submission dated 5 July 1989 and subsequent correspondence) is R.L.A.W., born on 25 November 1942 in Paramaribo (Suriname), currently residing in Utrecht, the Netherlands. He claims to be the victim of a violation by the Netherlands of article 14 of the International Covenant on Civil and Political Rights. He is represented by counsel.

2.1 On 28 August 1984, the District Court of Utrecht found the author guilty of rape and sentenced him to six months' imprisonment. The Court of Appeal of Amsterdam upheld the conviction on 8 July 1985, increasing the sentence to twelve months of imprisonment, of which six months were suspended for a two years period of probation. On 10 June 1986, the Supreme Court dismissed the author's appeal. Thus, the author claims to have exhausted domestic remedies. He has already served his term of imprisonment.

2.2 In the proceedings the prosecutor's office adduced to a 1974 penal investigation against the author, which had been discontinued. The author contends that this evidence unduly influenced the proceedings. In particular he argues that since he was not even indicted on the earlier occasion, he was never in a position to prove in a trial that he was innocent of the charges against him. He contends that since he did not violate the conditions for discontinuing the case as agreed upon with the public prosecutors office, he should not have been confronted with these previous charges.

2.3 The author contends that he was denied a fair hearing, alleging that the investigating authorities only sought to gather evidence against him. Facts that could have proved his innocence were not investigated, although he repeatedly requested their investigation. Therefore, the author claims that he was denied equality of arms. According to the author, the authorities of the Netherlands should have sought to prove his innocence.

2.4 With respect to the evidence presented by the prosecution on the 1974 criminal investigation against the author, counsel claims that it was highly prejudicial and that it should have been held inadmissible. Contrary to the State party's statement that the Court of Appeal in Amsterdam received from the attorney general only extracts of the 1974 case, counsel maintains that the complete file was annexed.

3. The Communication was transmitted to the State party on 14 November 1989 under rule 91 of the Committee's rules of procedure, requesting the State party to provide information and observations relevant to the question of the admissibility of the communication.

4.1 The State party notes that the author submitted an identical complaint to the European Commission of Human Rights on 4 November 1986. On 15 December 1988 the Commission found that the application was manifestly ill-founded and declared it inadmissible.

4.2 The State party confirms that all domestic remedies have been exhausted and that the procedure involving the European Commission of Human Rights had been concluded at the time the present communication was submitted.

4.3 The State party, however, objects to admissibility under article 2 of the Optional Protocol, contending that the author has no claim because he has not sufficiently substantiated his allegations. On the issue of the Public Prosecutions Department having precluded the possibility of a fair trial, the Government states that neither the case file nor any other source has revealed that the Public Prosecutions Department intended to induce the court to take the old case file into account in deciding what penalty to impose. Nor is there evidence that the court did so in any way. The old documents were not before the district and appeal court. However, the summary contents of an extract from the General Judicial Documentation Register were added to the case file at the district court, as is customary in criminal cases.

4.4 The State party points out that the Judicial Documentation and Certificates of Good Behaviour Act and the decree which supplements it contain provisions governing both the nature of the information to be recorded in penal and general judicial documentation registers and the maintenance of such registers in the interests of the proper administration of justice.

4.5 In this respect the Judicial Documentation Service records information on punishment sheets in the penal documentation registers. The Service enters into the registers the official police reports concerning natural and legal persons suspected of having committed an offence, which have been considered by the public prosecutor.

4.6 The State party explains that the purpose of the registers is among other things to provide the judiciary, including public prosecutors, with the fullest possible information pertaining to the criminal record of the suspect. The judiciary receives information from these registers in the form of an extract which is added to the case file. It notes that in the past, the Netherlands Supreme Court has overturned sentences when the lower courts took into consideration official records which contained extracts from the registers on prior judicial investigations that did not result in a conviction.

4.7 The State party indicates that the Supreme Court rejected the author's appeal on the following grounds: (a) pursuant to section 11, subsection 1 of the Judicial Documentation Act, the Judicial Documentation Service provides to criminal courts information which is customary to disclose during a trial; (b) the Court of Appeal has considered the submission of the documents by the Public Prosecutor to have been intended to provide clarifications which the Court may use as it sees fit; (c) the Court attached to the submission no consequence other than that mentioned under (b). Subsequently, the submission of the documents neither contravenes the right to a fair trial nor amounts to a violation of the principle of due process.

4.8 With regard to the alleged violation of the principle of equality of arms, the State party holds that proof of the accused being guilty as indicted can be accepted by the court only if the substance of the lawful evidence presented to it during the examination at the trial induces the court to believe it. Only the court's perception of the facts arising from examination at the trial, the statements made by the accused, witnesses and experts, and the written documents specified by the law are recognized as lawful evidence. The court considers the question of the suspect's guilt on the basis of the indictment, the trial examination and the facts as proven. If it is ascertained that a punishable offence has been committed, the court proceeds to consider the penalty.

4.9 Following the author's arrest, he was remanded in police custody and later held in pre-trial detention by order of the district court. On 16 March 1984 the district court ordered, at the request of the public prosecutor, a preliminary judicial examination, during which the examining magistrate examined various witnesses in the presence of the author's counsel. The author was also questioned at length. The author and his counsel were able to provide all the information they considered relevant. The examining magistrate completed the examination on 15 May 1984.

4.10 On 19 June and on 14 August 1984 the case came to trial and witnesses were examined at the author's request. The official report of the trial reveals that the court took into account the extract from the General Judicial Documentation Register, the documents relating to the remand in police custody and pre-trial detention, the documents drawn up by the examining magistrate in the course of the preliminary judicial examination and the official reports drawn up by the Utrecht Municipal Police on 15 March 1984. The court found the applicant guilty as charged, and sentenced him to 6 months imprisonment.

4.11 On 11 April 1985 the Amsterdam Appeal Court again heard defence witnesses. Proceedings were halted at the request of the applicant's counsel in order to question the victim. The hearing was resumed on 23 May and on 24 June 1985, when expert witnesses and the victim gave testimony. On the basis of the examination conducted at the hearing and the official reports of the examining magistrate, the applicant's sentence was increased to 12 months imprisonment, of which 6 were suspended for a period of 2 years.

4.12 On 10 June 1986 the Supreme Court found that a court deciding on the facts is entitled, within the limits defined by the law, to select those items from the body of available evidence which it considers expedient from the point of view of reliability and to set aside those which it deems of no evidentiary value. The Supreme Court rejected the appeal.

4.13 The State party asserts that the criminal proceedings conducted against the author in no way violated the principle of equality of arms. Both the author and the Public Prosecutions Department were given the opportunity by the first and second instance courts to furnish all information which might have been relevant to the proceedings. Both courts reached their judgement on the basis of the lawful evidence.

5. In response to the State party's submission under rule 91, the author asserts that, notwithstanding the State party's contention, the Attorney-General presented the complete file of the 1974 case to the Court of Appeal and that the abstracts were submitted both to the courts of first and second instance.

6.1 Before considering any claims contained in a communication, the Human Rights Committee must, in accordance with rule 87 of its 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. The Committee has ascertained that the case is not under examination elsewhere. The consideration of the same matter in 1986-88 by the European Commission of Human Rights does not, however, preclude the Committee's competence.

6.3 With regard to article 5, paragraph 2 (b), of the Optional Protocol, the State party has confirmed that the author has exhausted domestic remedies.

6.4 The Committee has taken note of the State party's submission and of the texts of the decisions of the Court of Appeal and Supreme Court. The author has failed to refute in State party's contention that his conviction was based on various kinds of evidence, including witnesses testimony, or to adduce other facts in substantiation of his allegation that the conviction was tainted by the use of inadmissible or unlawful evidence, and because of that unfair. The Committee, therefore, finds this aspect of the communication inadmissible as not stating a claim under article 2 of the Optional Protocol.

6.5 As to the principle of equality of arms, a careful reading of the author's submission does not reveal sufficient evidence to show, for purposes of admissibility, that the State party failed to investigate facts that could have proven his innocence. Moreover, the trial and appeal records show that the author had ample opportunity to call and cross-examine witnesses. In this regard the claim is not substantiated within the meaning of article 2 of the Optional Protocol. As to the court's evaluation of facts and evidence, it is the Committee's consistent jurisprudence that this is properly a matter for the appellate courts of States' parties. a/ It is not, in principle, for the Committee to review the facts and the evidence evaluated by national courts, unless it can be ascertained that there is a clear denial of justice.

7. The Human Rights Committee therefore decides:

(a) The communication is inadmissible under article 2 of the Optional Protocol;

(b) This decision shall be transmitted to the State party, to the author and his counsel.

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

Notes

a/ For an application of this principle, see Communications Nos. 201/1985 (Hendriks v. Netherlands), views adopted on 27 July 1988, para. 10.4; and 369/1989 (G.S. v. Jamaica), declared inadmissible on 8 November 1989, para. 3.2.