

**Communication No. 963/2001, Uebergang v. Australia
(Decision adopted on 22 March 2001, seventy-first session)***

Submitted by: Mr. Colin Uebergang

Alleged victim: The author

State party: Australia

Date of communication: 29 June 2000 (initial presentation)

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

Meeting on 22 March 2001

Adopts the following:

Decision on admissibility

1. The author of the communication is Colin Uebergang, an Australian citizen, currently residing in Brisbane in the State of Queensland, Australia. He claims to be a victim of violations by Australia of articles 9, paragraph 5 and 14, paragraph 6, of the International Covenant on Civil and Political Rights. The author is represented by counsel. The State party ratified the Covenant on 13 October 1966 and the Optional Protocol on 25 December 1991.

The facts as submitted on behalf of the author

2.1 Between 8 September and 11 September 1997, the author was tried on indictment on three counts of false pretences in the District Court at Brisbane and was found guilty on one count and discharged in respect of the other two counts. On 11 September 1997, he was sentenced to a term of two years imprisonment.

2.2 The author appealed his conviction to the Queensland Court of Appeal. On 27 February 1998, the Court of Appeal unanimously allowed his appeal, set his conviction aside and entered a verdict of acquittal. Mr. Uebergang was released from prison later that day.

* 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 Chanut, Mr. Louis Henkin, Mr. David Kretzmer, Mr. Rajsoomer Lallah, Ms. Cecilia Medina Quiroga, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Martin Scheinin, Mr. Ivan Shearer, Mr. Hipólito Solari Yrigoyen, Mr. Ahmed Tawfic Khalil, Mr. Patrick Vella and Mr. Maxwell Yalden.

2.3 The author wrote to the Queensland Attorney-General, on 10 February 1999 and 20 May 1999, seeking compensation for a miscarriage of justice occasioned by his allegedly wrongful imprisonment for five and a half months (from his conviction in the trial court until acceptance of his appeal). On 17 February, the advisor to the Office of the Attorney-General informed Mr. Uebergang that the Attorney-General refused to pay compensation to the victim as no exceptional circumstances which might justify the making of an ex gratia payment of compensation ... have been identified. The author's counsel wrote to the Attorney-General on 5 June 2000 and received the same negative response. In requesting compensation from the Attorney-General, the author claims that he has exhausted all domestic remedies within the meaning of article 2 and article 5, paragraph 2 (b), of the Optional Protocol.

The complaint

3.1 Counsel states that the refusal of the State of Queensland to compensate Mr. Uebergang for this period of wrongful imprisonment constitutes a breach by Australia of articles 9, paragraph 5 and 14, paragraph 6, of the Covenant.

3.2 Counsel argues that the refusal of the Attorney-General's office to grant compensation because there were no exceptional circumstances, is a violation of article 14, paragraph 6, as this criterion is not included in the terms of this article of the Covenant.

3.3 Counsel contends that the elements of article 14, paragraph 6, are as follows: that there is a final decision; that the complainant is convicted of a criminal offence; that the conviction is subsequently reversed or that the person is pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice; and it has not been proved that the non-disclosure of the unknown fact in issue is wholly or partly attributable to the complainant.

3.4 Counsel submits that all elements of article 14, paragraph 6, have been satisfied. He contests the Attorney-General's argument that this article only applies to cases where the convicted person has unsuccessfully exercised all their appeal rights, with the result that the final decision of the courts is that their conviction is affirmed. Counsel argues that such a view would mandate the limitation of the application of the Covenant only to those cases where a pardon had been granted and believes that the terms of this article are expressly intended to apply to cases of reversal of conviction, as well as cases of pardon.

3.5 Counsel makes no submissions with regard to a violation of article 9, paragraph 5, except to say that this article was violated.

Decision on inadmissibility

4.1 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.

4.2 With regard to the author's claim for compensation under article 14, paragraph 6, of the Covenant, the Committee observes that the conditions for the application of this article are:

- (a) A final decision convicting a person of a criminal offence;
- (b) Suffering of punishment as a consequence of such conviction; and
- (c) A subsequent reversal or pardon on the ground of a new or newly discovered fact showing conclusively that there has been a miscarriage of justice.

4.3 The Committee observes that the author's conviction by the District Court on 11 September 1997 was overturned by the Court of Appeal on 27 February 1998. The Committee is, therefore, of the view that the author's conviction was not a final decision within the meaning of article 14, paragraph 6 and that article 14, paragraph 6, does not apply to the facts of the instant case. This part of the communication is therefore inadmissible ratione materiae under article 3 of the Optional Protocol.

4.4 With respect to the author's allegation of a violation of article 9, paragraph 5, the Committee notes that after his conviction by the trial court the author was imprisoned on the basis of the sentence passed by that court. His subsequent acquittal by the Court of Appeal does not, per se, imply that his imprisonment on the strength of a court order was unlawful. Counsel has provided no further arguments to substantiate the claim under article 9, paragraph 5. This part of the communication is therefore 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.

[Done in English, French and Spanish, the English text being the original version. Subsequently issued also in Arabic, Chinese and Russian as part of the present report.]