



**International covenant
on civil and political
rights**

Distr.
RESTRICTED*

CCPR/C/92/D/1569/2007
28 April 2008

Original: ENGLISH

HUMAN RIGHTS COMMITTEE
Ninety-second session
17 March – 4 April 2008

DECISION

Communication No. 1569/2007

<u>Submitted by:</u>	Marcel Schuckink Kool (not represented by counsel)
<u>Alleged victim:</u>	The author
<u>State party:</u>	The Netherlands
<u>Date of communication:</u>	23 January 2007 (initial submission)
<u>Date of adoption of decision</u>	1 April 2008

* Made public by decision of the Human Rights Committee.

Subject matter: Absence of defendant during appeal hearing

Procedural issue: Non-substantiation of claim

Substantive issue: unfair hearing

Article of the Covenant: 14 paragraph 1, and paragraph 3 (b) and (d)

Article of the Optional Protocol: 2

[Annex]

ANNEX

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

Ninety-second session

concerning

Communication No. 1569/2007*

<u>Submitted by:</u>	Marcel Schuckink Kool (not represented by counsel)
<u>Alleged victim:</u>	The author
<u>State party:</u>	The Netherlands
<u>Date of communication:</u>	23 January 2007 (initial submission)

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

Meeting on 1 April 2008

Adopts the following:

DECISION ON ADMISSIBILITY

1. The author of the communication is Marcel Schuckink Kool, a Dutch citizen born on 9 February 1969, residing in the Netherlands. He claims to be a victim of violations by the State party of article 14, paragraph 3 (b) and (d), of the International Covenant on Civil and Political Rights. He is not represented by counsel but is himself a lawyer.

Facts as presented by the author

2.1 On 30 November 2001, the author was convicted along with others of having committed “public violence” by the Hague Law Court and ordered to pay a fine of 200 Euros.

* 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 Majodina, Ms. Iulia Antoanella Motoc, Mr. Michael O’Flaherty, Ms. Elisabeth Palm, Mr. José Luis Pérez Sanchez-Cerro, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Ivan Shearer and Ms. Ruth Wedgwood.

2.2 On 30 July 2004, the Amsterdam Appeal Court considered the author's case in his absence and confirmed the judgement of the trial court. The author had requested the court to postpone his hearing, as he was on holidays. The court requested evidence of his holiday, but he was unable to provide it, as it had not been booked by a travel agent. He provided this explanation to the court by telephone. He also claims that the appeal court did not take into account the fact that he had contested a policeman's evidence given in relation to the case. On 4 October 2005, the Court of Cassation, the Hoge Raad, rejected his complaints of an unfair hearing.

2.3 On 12 September 2006, the European Court of Human Rights found his case inadmissible, as not disclosing any appearance of a violation of the Convention¹.

The complaint

3.1 The author claims that the Amsterdam Appeal Court's refusal to postpone his case, despite his telephone call to the court that he was on holidays, violated his rights under article 14, to a fair trial, article 14, paragraph 3 (b), to have adequate time and facilities to prepare his defence and article 14, paragraph 3 (d), to be tried in his presence².

3.2 The author claims that he exhausted domestic remedies by the decision of 4 October 2005 of the highest court of the State party, the Hoge Raad.

Issues and proceedings before the Committee

4.1 Before considering any claims 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 As required under article 5, paragraph 2(a), of the Optional Protocol, the Committee has ascertained that the same matter is not being examined under another international procedure of investigation or settlement. It notes that this case was already considered by the European Court of Human Rights on 12 September 2006, but that in accordance with its jurisprudence³, the prior examination by another body does not preclude it from considering the claims raised herein.

4.3 The Committee notes the author's claims of violations under article 14, as the Amsterdam Appeal Court refused to adjourn the hearing of the appeal in his case because of his absence on holidays. As noted by the author himself, the Committee observes that the Court did not automatically refuse the adjournment request but merely asked for evidence of his holidays. The Committee considers the author's explanation, as to why he could not provide such evidence, to be unreasonable in the circumstances of the case. It notes that the author has not explained why he could not have returned from his holidays to attend the hearing or how his rights were violated if a request for postponement was rejected in the absence of serious circumstances. In

¹ It is noted that the Netherlands has not made a reservation to the effect of excluding a case which has already been examined by the European Court of Human Rights.

² The author does not state whether he is claiming a violation with respect to the substance of the court's decision.

³ Aalbersberg and 2,084 other Dutch citizens v. the Netherlands, Communication no. 1440/2005, decision of 12 July 2006.

addition, he does not further substantiate his claim that his absence in court for the appeal hearing, as opposed to the trial hearing, violates his rights under article 14. For these reasons, the Committee finds that his claims are insufficiently substantiated and thus inadmissible under article 2 of the Optional Protocol.

5. The Human Rights Committee therefore decides:

- (a) that the communication is inadmissible under article 2 of the Optional Protocol;
- (b) that this decision shall be communicated 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.]
