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HUMAN RIGHTS COMMITTEE
Seventy-second session
9-27 July 2001

DECISION

Communication No. 791/1997

Submitted by:	Mr. Moti Singh
Alleged victim:	The author
State party:	New Zealand
Date of communication:	1 December 1996 (initial submission)
Prior decisions:	Special Rapporteur's rule 91 decision, transmitted to the State party on 21 January 1998 (not issued in document form)
Date present decision:	12 July 2001

[ANNEX]

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* Made public by decision of the Human Rights Committee.

ANNEX

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

Seventy-second session

concerning

Communication No. 791/1997**

Submitted by: Mr. Moti Singh

Alleged victim: The author

State party: New Zealand

Date of communication: 1 December 1996 (initial submission)

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

Meeting on: 12 July 2001,

Adopts the following:

Decision on admissibility

1. The author of the communication, dated 1 December 1996, is Moti Singh, a New Zealand citizen, born on 13 March 1960 in Fiji, now residing in Auckland. He claims to be a victim of violations by New Zealand of articles 2, 7, 10, 14, paragraphs 1, 2, 3 (d), (e) and (g), and 5, 16, 23 and 26 of the Covenant. He is not represented by counsel.

Facts as submitted

2.1 On 22 December 1993, the author was charged with 66 charges of tax fraud under the Income Tax Act 1976. He was also charged with "theft by failing to account" under section 222 of the Crimes Act 1961.[1]

** 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, Mr. Maurice Glèlè Ahanhanzo, Mr. Louis Henkin, Mr. Eckart Klein, 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 Tawfik Khalil, Mr. Patrick Vella and Mr. Maxwell Yalden.

2.2 On 8 June 1995, in the Otahuhu District Court, the author was tried and convicted of 66 charges of tax fraud. The author's complaint relates to the theft charges proceedings only.

2.3 The author made an application for legal aid in respect of the theft charges, but was refused by the registrar of the Otahuhu District Court on 24 January 1994. On 1 February 1994, the author appealed this decision and legal aid was granted. However, the author still had to pay NZ$ 150 as a contribution.

2.4 Having been convicted on the fraud charges, the author was of the opinion that he could not get a fair trial in the Otahuhu District Court, he therefore asked his counsel to seek a change of venue for the trial on theft charges. According to the author, the prosecutor objected and the venue was not changed.[2] The author was tried in the Otahuhu District Court on the theft charges, found guilty on 6 July 1995 (after a hearing lasting eight days), sentenced to nine months of periodic detention and ordered to make reparation of NZ$ 4,603.33.

2.5 On 10 August 1995, the author applied for legal aid to appeal his conviction and sentence on the grounds that the judge was biased and that he had not received a fair trial. On 4 October 1995, he was informed that his request for legal aid had been denied, because the grounds of appeal were "not substantial". The author appealed against the registrar's decision but on 31 October 1995, a judge of the Court of Appeal upheld the decision not to grant the author legal aid. Nevertheless, the author still appealed his conviction and sentence to the Court of Appeal. However, his case was dismissed on 24 July 1996.

The Complaint

3.1 The author makes the following complaints.[3]

Legal aid/inadequacy of counsel at the trial hearing/trial venue

3.2 The author states that although he received legal aid, he still had to pay NZ$ 150 as a contribution to his defence. He claims that as his first lawyer had impaired vision he could not prepare his case adequately. Also, the lawyer subsequently assigned to him was not a practitioner in tax law but criminal law and, therefore, could not represent him adequately. In addition, he complains that he could not choose experienced counsel, nor could he call expert witnesses in view of the budgetary constraints. The author further complains that as his request for a change of venue was not granted, his trial was unfair.

Conduct of trial

3.3 The author states that at his trial, the judge pressured his counsel to make him plead guilty because she found the evidence against him overwhelming. Notwithstanding the alleged pressure he pleaded not guilty.

3.4 The author further argues that the judge breached her duty to guarantee a fair trial by allowing the prosecution to proceed with the six charges together in one indictment. According to the author, the fact that these charges were not severed, prejudiced his trial. He states that he

could not make an application for severance because of the financial restraints under which he and his counsel were operating. Nevertheless, he states that the judge always has a discretion to sever charges in the interests of justice.

3.5 The author complains that the judge's attitude in general was biased and that she had a "profound hatred" towards him and his counsel because of their colour. The author claims that the judge hindered him in explaining his case in full, and that his counsel was prevented from effectively cross-examining the main witness for the prosecution. The author also claims that the judge's "body language" must have influenced the jury.

3.6 As further evidence of the judge's bias against him, the author refers to the sentencing notes in which the judge states, "the taxpayer was put to the expense of a two week trial on matters which in my view were totally indefensible". The author also complains that the judge told his counsel that, if the author were not to pay his NZ$ 150 contribution toward legal aid, this would be deducted from his counsel's fee.

3.7 The author states that his counsel became demoralized because of the judge's attitude and wished to withdraw at the end of the trial, but the judge refused to grant him leave to withdraw. The author argues that this deprived him of proper representation.

Prosecution

3.8 The author takes issue with the attitude of Crown counsel at the trial. He states that after he refused the prosecution's offer of plea-bargaining, Crown counsel informed counsel for the defence that he would strive to obtain convictions on all six counts. According to the author, this was calculated as "an emotional attack" on his counsel to intimidate and demoralize him. The Court of Appeal dismissed his appeal on this ground without calling his former counsel as a witness. According to the author, this constitutes a violation of article 14 (3) (e).

3.9 The author further complains about the alleged emotive and inflammatory language used by Crown counsel in his address to the jury. He claims that the way Crown counsel cross-examined him was highly prejudicial to his case; as he was compelled to answer self-incriminating questions and was insulted by him. Finally, he complains that the prosecutor tried to influence the judge with regard to the sentencing.

3.10 The author further alleges that an agreement between Crown counsel and the defence was breached by the Crown. According to the agreement, the Crown would only refer to the six counts of theft and not make reference to the 66 summary convictions on tax fraud. When the Crown counsel began to introduce precluded evidence, the author's counsel objected stating that such matters were inadmissible as they were in breach of the agreement. His objection was overruled by the judge. The author states that this was prejudicial to his defence. On appeal, the Court of Appeal found no merit in the author's complaint, since the agreement was sufficiently broad to allow the matters put by the Crown.

Hearing of witnesses

3.11 The author states that he could not call a certain Mr. Kumar as defence witness, because the individual concerned had been removed from New Zealand on 8 May 1993. He claims that this witness could have contradicted evidence given by prosecution witnesses and would have created serious doubts about the credibility of the testimony given by the main prosecution witness. On appeal, he filed an affidavit which the Court of Appeal considered did not constitute a basis to overturn the author's convictions.

3.12 He further contends that the main prosecution witness, lied in Court, and implies that the State's law enforcement and prosecuting agencies regularly resort to producing false evidence in order to secure convictions.

3.13 He alleges that a second witness for the prosecution, a Mr. Chandra, lied in court when he denied that the author assisted him in immigration matters and that counsel was not allowed to put copies of letters relating to the immigration matters to the witness. According to the author, these documents would have raised doubts as to the credibility of the witness, and the judge's ruling thus violated his right to an effective defence.

3.14 The author further argues that the evidence of one witness, who died before the beginning of the trial, should not have been allowed. He explains that the witness was dying of AIDS when his statement was taken from him. He argues that the witness was not fit to give a statement, since one day earlier he had not been fit to attend an interview. He further contests that the statement was voluntary. However, after a voire dire the judge allowed the statement.

Summing-up and sentencing

3.15 The author claims that the summing-up by the judge to the jury was unfair and favoured the prosecution's case.

3.16 As to the sentencing, the author complains that the judge made all sorts of disparaging remarks, and in particular he complains that she recommended the Crown to send a copy of her sentencing remarks to the New Zealand Society of Accountants and the Divisional Director of the National Institute of Accountants, in order to prevent him from continuing practicing as an accountant. The author, explaining that his disabled mother is dependent on him, claims that this constitutes a violation of article 23 (1) of the Covenant. The author further complains that the sentence was excessive and that he is unable to pay the reparation ordered. He claims that compared to similar cases, his sentence was most severe and again argues that this was because he is black. In this context, he also complains that white defendants are able to hire experienced counsel, whereas black offenders have to accept legal aid representation thereby limiting their chances of acquittal or of a mild sentence. This is said to amount to a denial of justice.

3.17 The author claims that the judge's bias against him was grounded in her prejudice against black defendants in general. He refers to several decisions made by the judge purportedly showing her prejudice. In this context, he mentions that his defence counsel (who was also black) told him to engage a white lawyer for the submissions on sentencing in order to escape

prison. The author further states that the Otahuhu District Court is well known for "its ease in securing convictions". The author also complains about the quality of the judiciary in New Zealand in general.

Appeal

3.18 The author maintains that the refusal of legal aid to conduct his appeal violated the interests of justice and discriminated against him on the basis of race, colour and other status. The author challenges the correctness of the decisions rendered by Court of Appeal judges, since more than 52 per cent of their decisions have been overturned by the Privy Council in the past, and claims that a judge's estimation that the grounds for appeal are not substantial is thus not necessarily correct. He further claims that by refusing him legal aid on the grounds that the appeal had no merit, the Court showed prejudice against him, in violation of article 26. He also argues that as he had received legal aid for his District Court hearing he had a "legitimate expectation" that he would be accorded it for his appeal. Referring to the discretion the registrar has in allowing/declining legal aid, the author states that the system is open to abuse with black minorities like himself always being refused legal aid. Moreover, he alleges that the registrar's refusal to grant him legal aid was mala fide because inter alia, he was "predetermined" to refuse it, he gave the author very little time to file his documents and used a malicious "tone" in his correspondence with him. He also claims that his review application was not examined properly as it was decided within two working days.

3.19 The author further complains that the judge at the Court of Appeal was biased against him and interrupted him rudely when he made a mistake thereby affecting his mental ability to argue his appeal. He states that the appeal was a farcical exercise and that the outcome was predetermined, as shown also by the refusal to grant him legal aid. Moreover, one of the appeal judges had previously sat in his appeal on the tax fraud charges[4] and, according to the author, should have disclosed his prior involvement in the author's case and stepped down as judge at the Court of Appeal hearing. The author explains that he did not bring this issue up during the appeal as he was afraid to be found in contempt of court. He further states that this judge is "notorious for making ill-considered remarks during sentencing of offenders who are either immigrants or aboriginal Maori people". In general, the author complains that the judiciary is predominantly white to the detriment of black defendants.

Miscellaneous

3.20 The author explains that he is serving his sentence by reporting to a detention centre every Saturday where he is then detained for eight hours and forced to do manual labour regardless of weather conditions. This is said to amount to a violation of articles 7 and 10 of the Covenant. In this context, he submits that there is only a portable "pit" toilet at the work site for 8 to 10 detainees and that no soap or detergent is provided. Further, he complains that the food served is insufficient, of bad quality and prepared under unhygienic conditions. He states that he is only given a cup of tea mid-morning and a cheese and pork sandwich for lunch. He further complains that despite the heavy manual labour, no safety gear or protective clothing is provided and that detainees have to buy their own safety shoes. He further claims that he has contracted a severe skin infection on his hands from wearing gloves, provided by the prison, but which were used by other detainees before and not disinfected.

3.21 He further claims that his mother is a victim of a violation of article 7 of the Covenant, since the State party's acts have caused her anguish and suffering and since he is not able to care for her during the eight hours he spends in detention each week.

Observations by the State party on admissibility and the merits

4.1 The State party submits that all the author's allegations are inadmissible on the basis of either incompatibility with the Covenant, failure to substantiate, or non-exhaustion of domestic remedies. In the event that the Committee consider any of the allegations admissible the State party contends that they fail for reasons of non-substantiation on the merits.

4.2 On a general basis the State party notes that most of the allegations relate to matters pertaining to the District Court trial which have already been dealt with and dismissed by the Court of Appeal. The State party refers to the Committee's jurisprudence that it is for the appellate courts of States parties and not the Committee to evaluate the facts and evidence of a particular case unless the proceedings are found to be manifestly arbitrary or to constitute a denial of justice. Accordingly, most of the matters raised in this communication are outside the scope of the Committee.

Legal aid/inadequacy of counsel at the trial hearing/trial venue

4.3 The State party contends that the author had effective representation. It states that the author's suggestion that the registrar deliberately assigned the author a blind lawyer is untrue and that all legal aid lawyers are assigned on a rotation basis from a roster. It states that a contribution towards legal aid is not an infrequent practice and that the amount would not have caused the author any hardship. In addition, it states that the author could have sought a review of the registrar's decision on the contribution but as he failed to do so domestic remedies in this regard have not been exhausted.

4.4 On the issue of the trial venue, the State party contends that the author has not exhausted domestic remedies as he failed to apply to the District Court judge under section 28 (d) of the District Courts Act 1947 and section 322 (1) of the Crimes Act 1961 for a change of venue.

Conduct of trial

4.5 With respect to the author's allegations on the conduct of the trial, the State party contends that all these issues, including the alleged bias of the trial judge, the alleged impropriety of the trial judge in raising the possibility of a guilty plea, and the reference by the judge that legal aid funds were being used unnecessarily, were dealt with in full by the Court of Appeal and that the author has failed to substantiate his claim. In this regard the State party highlights some of the reasons given by the Court of Appeal in coming to its decision.[5] In addition, on the issue of the judge's refusal to allow counsel to withdraw, the State party points to the judgement of the Court of Appeal stating that it was appropriate for the trial judge to seek to dissuade counsel from withdrawing at such a late stage in the trial (several days hearing into the trial) and that there is nothing in the record indicating counsel's application for leave.

Prosecution

4.6 On the issue of the prosecution's conduct, the State party contends that the majority of these issues were examined by the Court of Appeal and again quotes from the judgement.[6]

4.7 In relation to the alleged violation of article 14, paragraph 3 (c) by the courts, failure to allow the author to call his former counsel to give evidence, the State party contends that the author has not exhausted domestic remedies. Apparently, a letter was sent from the deputy registrar to the author, dated 10 July 1996, setting out the procedure the court should follow in arranging the examination of the author's counsel. The author did not follow-up on this letter. If he did not actually receive this letter, he should have attempted to follow it up with a telephone call.

4.8 Similarly, the State party claims that the author failed to exhaust domestic remedies in relation to the court's refusal to sever the charges on the indictment. As the author himself admitted, it was open to him to apply to the Court to do so. The State party contends that on the issue of the prosecution's alleged breach of the agreement between it and the defence, the State party argues that this issue was dealt with in full by the Court of Appeal and dismissed.[7]

Hearing of witnesses

4.9 On the matter of the hearing of witnesses the State party contends that these issues, in their entirety, were dealt with not only by the trial judge but also by the Court of Appeal and refers to the latter's judgement in this respect.[8] In relation to the allegation that one of the witnesses lied during the trial, the State party adds that the author failed to put this matter to the Court of Appeal and therefore has not exhausted domestic remedies in this regard.

Summing-up and sentencing

4.10 The State party contests the author's allegations on the issue of the judge's summing-up. On the issue of sentencing and the judge's invitation to the prosecution to inform the New Zealand Society of Accountants of the conviction, the State party claims that this is not an infrequent practice. It was, in the State party's view a prudent and reasonable course of action as it was reasonably apparent on the facts of the case that the author may attempt to act in the same way again.

4.11 On the issue of racial discrimination, the State party notes that the author did not raise this issue at any time at the Court of Appeal and therefore has not exhausted domestic remedies nor has he substantiated this claim. In addition, it is argued that the alleged excessive nature of the sentencing was brought before the Court of Appeal and dismissed.

Appeal

4.12 On the question of refusal of legal aid for the appeal the State party contests all the allegations made by the author. In particular, and in relation to the author's claim that the decision was unjust, it describes the procedure in detail whereby the author's application was examined by the registrar and subsequently independently examined by four judges of the Court

of Appeal. On the issue of the registrar's alleged male fide, the State party claims that the author has failed to substantiate this allegation. In addition, the author's submission on this issue was dismissed by the Court of Appeal which noted "the grounds of appeal put forward were not enough to justify it, and that it had been considered by three judges of the Court of Appeal" when the appeal was considered on the merits.

4.13 The State party argues that it fulfilled its obligations under article 14, paragraph 3 (d) of the Covenant in light of the following:

(a) That assessments were made independently by four judges of the Court of Appeal and that the interests of justice did not require that legal aid be accorded to the author for his appeal;

(b) That those preliminary assessments indicated that the grounds for appeal were not substantial;

(c) That the District Court sentence being appealed against was not in the upper category of severity: no sentence of incarceration was imposed (but only a moderate term of periodic detention), and although the author was ordered to make reparation of a sum of misappropriated moneys, no monetary fine additional thereto was levied;

(d) That the author was competent enough to prepare and argue his case on appeal to the extent that in its judgement the Court of Appeal commended his "careful, thorough and helpful written submissions and the responsibly made oral submissions to supplement them".

4.14 Furthermore, the State party argues that the author was not without means to pursue his appeal, that he privately engaged a lawyer to act for him and that the lawyer was under instructions from him from 24 October 1995 until mid-June 1996, i.e. for most of the period between the initial lodging of his appeal in mid-August 1995 and the hearing of his appeal on 23 July 1996.

4.15 On the author's argument that one of the judges who had previously been involved in the appeal on tax fraud charges should not subsequently have been involved in the legal aid decision, the State party submits that there are only a small number of Court of Appeal judges and that therefore the situation is not always avoidable. If a judge were to make a decision based on such reasoning, it would be contrary to his judicial oath. In addition, the State party argues that the author could have challenged the participation of the judge in question at the outset of the hearing. It is difficult, according to the State party, to accept the view that the author feared that he would be held in contempt of court since no such issue would have arisen. Thus, the author has failed to exhaust domestic remedies in this regard.

4.16 In response to the author's allegation that the decision was "pre-determined", the State party refers to the fact that several hours were devoted to this case and that the 20-page judgement of the Court of Appeal is very detailed and comprehensive.

Miscellaneous

4.17 On the issue of the conditions of detention, the State party explains in great detail the regime in place. As the island on which the detention takes place is a reserve, it is not possible to maintain a permanent toilet installation and a different type of facility had to be adopted. This toilet, which has met the requirements of the City Council, is fully enclosed, has proper seating, and lime is use in the "pit" to dispense with unpleasant odours. This is common practice with this type of toilet.

4.18 The State party contests that no soap or detergent is provided for and states that, in addition, each individual receives a towel. All these supplies are checked weekly and replenished when required. The detainee responsible for the preparation of food is issued with a pair of "food processing gloves" which he must wear at all times when handling food. This is closely monitored by a Work Party Supervisor. The State party describes in detail the rations of food provided to each detainee and contests that it is insufficient. It also states that the author never asked to receive special food in line with any religious or ethnic factors, yet he could have done so.

4.19 The State party contests that all tasks involve heavy labour. As to safety, all work sites are inspected by the Probation Officer before any work party is sent out to the site. During this inspection, health and safety guidelines are used in the inspection process. Where it is clear that protective equipment/clothing is necessary, this equipment is supplied to the Work Party Supervisor. Not all sites require protective clothing. The State party contests that detainees are expected to purchase protective clothing but states that it is supplied by the Period Detention Centre. It also states that footwear is provided to those who cannot afford to purchase their own and detainees may also use their own gloves if they wish. The State party also remarks that at no stage did the author inform or produce a medical certificate to any of the Centre staff regarding a skin infection. Nor did any of the staff receive verbal or written complaints from the author regarding these matters.

4.20 On the allegation of a violation of articles 7, 10 and 23 in relation to the author's mother, the State party contends that such a complaint could be lodged personally by his mother. However, on the merits, it states that the author attends the Centre only 8-10 hours each week and that both the author and his mother receive benefits from the State in relation to her illness.

The author's reply to the State party's submission

5.1 In his response, the author reiterates the arguments made in his initial communication. To the State party's argument that it is not for the Committee to evaluate facts and evidence, the author argues that the jurisprudence of the Committee can and should be revised and that, in any event, the proceedings were arbitrary and manifestly unfair. In this context, the author claims that the decision of the Court of Appeal was "subjective" and provides no legal authority to support its findings. He reiterates the fact that he was not represented and was no match for the Crown counsel.

5.2 To the State party's argument that he had not exhausted domestic remedies in respect of several of the violations, the author responds that this was his counsel's responsibility and he

should not be penalized for his counsel's error. Furthermore, and in response to the same argument by the State party on issues relating to his appeal, the author argued that he could not be expected to be aware of possible domestic remedies as he had no legal representation.

5.3 The author contests the State party's explanation on the system of assigning legal aid counsel from a roster.[9] On the issue of the change of venue, he argues that this is at the discretion of the judge and that the remedy "is not available and would not have been effective".

5.4 The author states that only three hours were devoted to his appeal and that this was insufficient time to demonstrate that he had received a fair hearing. He claims to have substantiated his allegations of discrimination in his reference to four different cases in which the same trial judge presided and which he alleges demonstrate her prejudice. He states that the domestic remedy alleged by the State party to have been open to the author was neither available, effective nor sufficient.

5.5 The author reiterates his claim in relation to the summing–up and sentencing and provides information on domestic cases, which he claims were similar to his and in which the individuals concerned received lighter sentences. On the issue of the judge's decision to bring the author's conviction to the attention of his professional body, the author states that the State party has not provided any examples of instances when this was done before and therefore failed to substantiate their argument.

5.6 The author rebuts the State party's explanation on the refusal of legal aid and claims that it has not provided any evidence to demonstrate that his application was examined by four judges of the Court of Appeal. The author claims that the reason he was refused legal aid was on the basis of the costs of such an appeal. The consideration of the costs of the appeal as a precondition to granting it is, in the author's view, "illegal" and a clear violation of article 14, paragraph 3 (d) and 14, paragraph 5.

5.7 The author contests the State party's explanation on the conditions of detention. He says that he and other detainees had complained on many occasions about the insufficient amounts of food provided but that nothing was done. He says that he told the wardens verbally and several times in writing about his cultural beliefs and that he could not eat beef. However, he continued to be provided with it in his meals.[10] He also claims to have told the wardens about his skin infection and to have supplied them with medical certificates.[11] In addition, he claims to have received punishment for minor things like talking to other detainees and was "hooded, forced to remain standing for 10 hours, and subjected to verbal abuse having racial connotations".[12]

5.8 The author confirms that he is receiving social security but that he only began to receive it after he lost his part-time job upon conviction. This does not, he claims, allow the State party to avoid its responsibility to protect the family.

Issues and proceedings before the Committee

6.1 Before considering any claims in the communication, the Human Rights Committee must, according to article 87 of the rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

6.2 On the issue of the contribution the author had to pay towards the cost of legal representation for the District Court trial hearing, the Committee notes that the author did not seek a review of the registrar's decision in this regard and therefore considers that the author has failed to exhaust domestic remedies. Thus, this claim is inadmissible under article 5, paragraph 2 (b) of the Optional Protocol.

6.3 Similarly, on the issue of the trial venue, the Committee notes that, the author failed to apply to the District Court judge for a change of venue and therefore has failed to exhaust domestic remedies. Thus, this claim is inadmissible under article 5, paragraph 2 (b) of the Optional Protocol.

6.4 In relation to the alleged violation of article 14, paragraph 3 (c) for failure to allow the author to call his former counsel as a witness at the Court of Appeal hearing, the Committee notes that the author did not follow the required procedure to allow his counsel to give evidence and therefore failed to exhaust domestic remedies. Thus, this claim is inadmissible under article 5, paragraph 2 (b) of the Optional Protocol.

6.5 On the issue of the court's refusal to sever the charges on the indictment, the author himself admitted that he failed to apply to the court to do so and therefore has not exhausted domestic remedies. Thus, this claim is inadmissible under article 5, paragraph 2 (b) of the Optional Protocol.

6.6 With respect to the allegation that one of the witnesses lied during the trial, the Committee notes that the author did not put this matter to the Court of Appeal and therefore has failed to exhaust domestic remedies. Thus, this claim is inadmissible under article 5, paragraph 2 (b) of the Optional Protocol.

6.7 On the issue of the alleged violation of article 26 of the Covenant, on the basis of the author's skin colour, the Committee notes that the author did not raise this issue at any time before the Court of Appeal and therefore has not exhausted domestic remedies. This claim is therefore inadmissible under article 5, paragraph 2 (b) of the Optional Protocol.

6.8 On the issue of the participation of a judge at the Court of Appeal who had previously been involved in the appeal on tax fraud charges, the Committee notes that the author did not challenge the participation of the judge during the hearing. This claim is therefore inadmissible for failure to exhaust domestic remedies under article 5, paragraph 2 (b) of the Optional Protocol.

6.9 With regard to the allegation that the representation the author received during the District Court trial was not effective and thus not in accordance with article 14, paragraph 3 (d), the Committee considers that the mere fact that the author's first lawyer was visually impaired and his second lawyer not a practising tax lawyer is not sufficient to demonstrate that they were ineffective within the terms of the Covenant. The Committee considers, therefore, that the author has not provided sufficient information to substantiate this claim for the purposes of admissibility. This claim is therefore inadmissible under article 2 of the Optional Protocol.

6.10 In respect of the claim that the refusal to grant the author legal aid for his appeal constituted a violation of article 14, paragraph 3 (d) and paragraph 5, of the Covenant, the Committee notes that the author's request was examined by the registrar and subsequently by four judges of the Court of Appeal who concluded that the interests of justice did not require the assignment of legal aid. The Committee is of the view that the author has not sufficiently substantiated his allegation to the contrary, for purposes of admissibility, and this claim is inadmissible under article 2 of the Optional Protocol.

6.11 The Committee notes that the author's remaining claims under article 14 of the Covenant essentially relate to the evaluation of facts and evidence as well as to the implementation of domestic law. The Committee recalls that it is in general for the courts of State parties, and not for the Committee, to evaluate the facts in a particular case and to interpret domestic legislation. The information before the Committee and the arguments advanced by the author do not show that the Courts' evaluation of the facts and their interpretation of the law were manifestly arbitrary or amounted to a denial of justice. These claims are therefore inadmissible under articles 2 and 3 of the Optional Protocol.

6.12 In relation to the alleged violations of articles 7 and 10 suffered by the author's mother as a result of the author's detention, the Committee observes that under article 2 of the Optional Protocol, it is the alleged victim himself or herself who has standing to submit a communication to the Committee. Further, even disregarding the fact that the author's mother has not submitted a communication, the Committee considers that the author has failed to substantiate these claims for the purposes of admissibility. This claim is therefore inadmissible under article 2 of the Optional Protocol.

6.13 With respect to the alleged violations of articles 7 and 10 of the Covenant suffered by the author as a result of the conditions during his eight-hour weekly work programme**,** the Committee is of the view that the allegations raised are not sufficient to establish a claim under article 7 or 10 of the Covenant. The same is true of the additional claims referred to in paragraph 5.7 which were subsequently brought forward by the author. These claims are therefore inadmissible under article 2 of the Optional Protocol.

7 The Committee therefore decides:

(a) That this communication is inadmissible under articles 2, 3, and 5, paragraph 2 (b) of the Optional Protocol;

(b) That this decision shall be transmitted to the State party and to the author.

Notes

[1] It appears that the author was accused of filing false tax returns in the name of his clients, most of them friends and relatives, and of subsequently keeping the refunds paid by the Inland Revenue in a bank account in his name and in the name of another relative. The author states that the money was deposited there in order to help this relative with immigration matters.

Moreover, he states that he also did immigration work for many of his clients and that he deducted the fee from the tax refunds.

[2] There is no trace of any request for change of venue, nor of Prosecution's objection, in the documents submitted by the author.

[3] In his initial submission the author did not always relate the alleged violations to any particular articles of the Covenant. In his response to the State party's submission he acknowledges this and claims that his communication relates to allegations of articles 2, 7, 10, 14, 23, and 26.

[4] His appeal in this regard was dismissed.

[5] For example, "We do not consider there is any substance in these submissions. It is not unusual for a judge to raise the possibility of a guilty plea. Any comment about the use of legal aid funds does not necessarily indicate bias. Nor does any order relating to the appellant's contribution, apparently intended to ensure that his contribution was met and he made this up to his counsel".

[6] In the decision of the Court of Appeal the following remark was made, "The appellant submitted that counsel for the Crown acted improperly in a number of respects. … The appellant claims that he was told by Mr. Chand that when counsel for the Crown offered to drop the charges in respect of counts 2 and 5 if the appellant pleaded guilty to the remaining and the appellant refused, Crown counsel said that he would 'strive for a conviction'. Quite apart from this being hearsay evidence, such a statement made between counsel could hardly amount to misconduct."

[7] The State party quotes from the Court of Appeal decision as follows: "… We do not accept this submission. Under the agreement the Crown was entitled to lead the witnesses any 'evidence that relates to returns which relate only to the counts in the indictment'. So as long as the evidence related to the returns, it was within the agreement. The evidence to which the appellant now objects is in that category."

[8] One of its remarks was as follows "… However, there must be significant doubt about Mr. Kumar's credibility. Had he been available to give evidence he would have faced cross-examination on the statement that he gave Mr. Hudson. He would have been forced to admit that he lied to Mr. Hudson. Even allowing for his explanation for these lies, that must throw considerable doubt on the credibility of the evidence contained in his affidavit. Even if some credibility is to be given to it, it would not, in our view, be sufficient to justify setting his conviction on count 2 relating to Mr. Puni, still less in respect of the other counts."

[9] The author provides an affidavit from Mr. Sharma (his former lawyer) on this issue.

[10] The author provides copies of these letters of complaint.

[11] No written documentation is provided in this regard.

[12] This allegation was not mentioned in his initial communication and the author provides no further information on this point in the subsequent submission.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be translated also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]