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CCPR/C/45/D/394/1990
12 August 1992

Original: ENGLISH

HUMAN RIGHTS COMMITTEE
Forty-fifth session

DECISIONS

Communication No. 394/1990

Submitted by : C.B.D.
[represented by counsel]

Alleged victim : The author

State party : The Netherlands

Date of communication : 9 January 1990 (initial submission)

Documentation references : Prior decisions - Special Rapporteur's
rule 91 decision,
transmitted to the
State party on
14 December 1990 (not
issued in document
form)

Date of present decision : 22 July 1992

Decision on admissibility

[See Annex]

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ANNEX **/

Decision of the Human Rights Committee under the Optional
Protocol
to the International Covenant on Civil and Political Rights
- Forty-fifth session -

concerning

Communication No. 394/1990

Submitted by : C.B.D. (name deleted)
[represented by counsel]
Alleged victim : The author
State party : The Netherlands
Date of communication : 9 January 1990 (initial submission)

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

Meeting on 22 July 1992,

Adopts the following:

Decision on admissibility

1. The author of the communication (dated 9 January 1990) is C.B.D., a citizen of the Netherlands, residing in Arnhem, the Netherlands. He claims to be the victim of a violation by the Netherlands of articles 6, 7 and 14 of the International Covenant on Civil and Political Rights. He is represented by counsel.

The facts as submitted by the author :

2.1 The author states that he was prosecuted for his refusal to perform alternative service pursuant to the Act on Conscientious Objection to Military Service (Wet Gewetensbezwaarden Militaire Dienst). On 22 March 1985, he was sentenced to six months imprisonment by the court of first instance. The Court of Appeal dismissed his appeal on 2 May 1986; this judgment was confirmed

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by the Supreme Court (Hoge Raad) on 19 May 1987.

**/ Made public by decision of the Human Rights Committee.

2.2 The author states that his application for calling the expert witness L.W. at the appeal hearing, was dismissed by the Court, on the ground that the Court was sufficiently informed by having had access to the file, which included documents produced by L.W. The author submits that this refusal was detrimental to his defence, as, during the trial at first instance, the witness had only given evidence as an expert, not as someone who knew the author personally and was in a position to inform the Court about the author's personal circumstances. The author concedes that said witness was already heard by the court of first instance, but argues that he wanted to put additional questions to him on appeal.

The complaint :

3.1 The author alleges that the refusal of the Court of Appeal to hear an important defence witness violated his right to a fair trial as protected by article 14 of the Covenant. He further alleges that the Netherlands defence policy violates articles 6 and 7 of the Covenant, and that therefore the requirement to perform (alternative) military service is of an illegal character.

3.2 In particular, the author contends that there was no lawful basis to require him to perform alternative service. He claims that the Netherlands nuclear obligations vis-à-vis the North Atlantic Treaty Organization (NATO) constitute a crime against peace. Therefore, the Act on Compulsory Military Service and the Act on Conscientious Objection to Military Service, which endorse this policy, allegedly are of an illegal character. The author further argues that the use of nuclear weapons violates the right to life and the right to be free of inhuman treatment.

The State party's observations and the author's comments thereon :

4.1 By submission dated 25 October 1991, the State party concedes that the author has exhausted all domestic remedies available to him.

4.2 With regard to the alleged violation of articles 6 and 7 of the Covenant, the State party argues that the communication is inadmissible, as the author has failed to substantiate his claim

that he has been a victim of said violation.

4.3 As regards the alleged violation of article 14 of the Covenant, the State party states that, pursuant to article 263 of the Code of Criminal Procedure (Wetboek van Strafvordering), an accused is entitled to have defence witnesses and experts summoned by the Public Prosecutor to testify at the court hearing. After an application by the defence, the court may also hear witnesses and experts who have not been summoned, but who are present at the hearing (article 280 juncto 296 of the Code of Criminal Procedure). The application may be dismissed if the court considers that not hearing a witness or expert cannot reasonably be said to prejudice the defence.

4.4 The State party submits that L.W. was heard as an expert by the Court of first instance; his testimony was not concerned with establishing the facts of the case. The Court of Appeal dismissed the author's application under article 280 juncto 296 of the Code to hear L.W. again, on the ground that it considered itself sufficiently informed through the documents in the record, which included the official transcript of the hearing at first instance and documents written by L.W.

4.5 The State party argues that the author's defence was not prejudiced by the failure of the Court to hear L.W. as an expert or witness, and that this part of the author's communication should therefore be declared inadmissible. The State party refers to the decision of the European Commission of Human Rights, dated 14 April 1989, concerning the same matter, which stated that "it does not appear that the Court of Appeal's decision not to hear the expert concerned was unfair or arbitrary".

4.6 The State party finally refers to the Committee's constant jurisprudence that the Covenant does not preclude the institution of compulsory national service by States parties. The author, while recognized as a conscientious objector to military service under the Military Service (Conscientious Objection) Act, refused to perform the alternative service and was consequently sentenced to six months' imprisonment. The State party argues that the Covenant does not contain a provision prohibiting the enforcement of military or alternative service, and that the communication is therefore inadmissible, as being incompatible with the provisions of the Covenant within the meaning of article 3 of the Optional Protocol.

5.1 In his comments on the State party's observations, the author concedes that the Covenant does not contain a provision prohibiting the enforcement of military and alternative service. He questions, however, the right of the State party to force him to become an accomplice to a crime against peace. The author stresses that the preparations by the State party to deploy nuclear weapons violate articles 6 and 7 of the Covenant. As the Conscientious Objection Act supports this policy, it is, according to the author, null and void. The author submits that, as he is forced to become an accomplice in a crime against peace, he is therefore a victim of the alleged violation of articles 6 and 7. The author further contends that the whole global population, including himself, is a victim of a crime against peace.

5.2 The author maintains that his defence has been compromised by the refusal of the Court of Appeal to hear L.W. as an expert and witness. The author states that he wanted to prove that his convictions, on which his refusal to perform alternative service was based, were just, and that L.W.'s testimony would have assisted him therein. He claims that the Court of Appeal's refusal to hear L.W. was unfair and arbitrary.

Issues and proceedings before the Committee :

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 The author alleges that he is a victim of a violation by the State party of article 14 of the Covenant, as the Court of Appeal refused to hear defence witness L.W. The Committee observes that article 14, paragraph 3(e), guarantees an accused in a criminal trial the right to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him. The Committee notes that the Court of Appeal had access to L.W.'s testimony given during the trial at first instance. In these circumstances, the Committee notes that the author has not substantiated, for purposes of admissibility, his claim to the effect that the Court of Appeal's refusal to hear the witness L.W. was arbitrary and could constitute a violation

of article 14, paragraph 3(e), of the Covenant. The author thus has failed to advance a claim within the meaning of article 2 of the Optional Protocol.

6.3 With regard to the author's objection to the right of the State to require him to perform military or alternative national service, the Committee observes that the Covenant does not preclude the institution of compulsory military service by States parties, and refers in this connection to the pertinent provision in article 8, paragraph 3(c)(ii). Consequently, by mere reference to the requirement to do military, or for that matter alternative service, the author cannot claim to be a victim of a violation of articles 6 and 7 of the Covenant. Therefore, this part of the communication is inadmissible under article 3 of the Optional Protocol.¹

7. The Human Rights Committee therefore decides:

- (a) That the communication is inadmissible under articles 2 and 3 of the Optional Protocol;
- (b) That this decision shall be communicated to the State party, to the author and to his counsel.

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

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¹ See the Committee's decision declaring communications Nos 401/1990 and 403/1990 inadmissible on similar grounds.