G. A. van Meurs v. The Netherlands, Communication No. 215/1986, U.N. Doc. CCPR/C/39/D/215/1986 (1990).

Communication No. 215/1986 : Netherlands. 23/07/90.
CCPR/C/39/D/215/1986. (Jurisprudence)

Convention Abbreviation: CCPR
Human Rights Committee
Thirty-ninth session

Decision of the Human Rights Committee under the Optional Protocol
to the International Covenant on Civil and Political Rights
Thirty-ninth session
concerning

Communication No. 215/1986

Submitted by: G. A. van Meurs

Alleged victim: The author

State party concerned: The Netherlands

Date of communication: 8 November 1986 (date of initial letter)

Date of decision on admissibility: 11 July 1990

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

Meeting on 13 July 1990,

Having concluded its consideration of communication No. 215/1986, submitted to the Committee by G. A. van Meurs under the Optional Protocol to the International Covenant on Civil and Political Rights,
Having taken into account all written information made available to it by the author of the communication and by the State party,

Adopts the following:

Views under article 5, paragraph 4, of the Optional Protocol

1. The author of the communication (initial letter dated 8 November 1986, numerous subsequent submissions) is G. A. van Meurs, a citizen of the Netherlands born in 1930 in Jakarta. He claims to be a victim of a violation by the Netherlands of article 14, paragraph 1, of the International Covenant on Civil and Political Rights, as a result of proceedings that led to the dissolution of his labour contract by a decision of the sub-district court of Beetsterzwaag.

The background

2.1 The author had been employed in various positions by firms belonging to the private pharmaceutical corporation CIBA GEIGY since 1969, in both New Zealand and the Netherlands.

2.2 In 1983, differences over the rating of the author's performance by his supervisor and his activities in relation to an election to the firm's labour council arose, which resulted in the initiation of judicial proceedings by the employer with a view to dissolving the author's labour contract, pursuant to article 1639w of the Civil Code of the Netherlands.

2.3 At the time of the proceedings, the relevant passages of article 163% read as follows:

"(1) Each of the parties shall at all times be empowered for compelling reasons to apply to the sub-district court judge with a written request that the contract of employment be dissolved. Any provision excluding or limiting this power shall be null and void.
. . .
"(3) The judge shall not grant the request until after the other party has been heard or been properly summoned.
"(4) If the judge grants the request, he shall decide on what date the employment is to terminate.
...
"(7) There shall be no remedy whatsoever against a decision under this article, without prejudice to the power of the Attorney General at the Supreme Court to appeal in cassation against the decision, solely in the interests of the law."
2.4 Under these provisions, the respondent may present a written statement in response to the initial application; subsequently, an oral hearing is conducted before a sub-district judge so as to establish the facts of the case.

2.5 It appears that in practice oral hearings under the then applicable article 1639w were held in camera and that the general statutory rules on evidence and the hearing of witnesses were not applicable.

Consequently, the judge was under no obligation to hear witnesses on request of the parties; he could, however, do so on his own initiative. In practice, the hearing of witnesses was, however, a regular feature of proceedings under article 1639w.

2.6 The author submitted a written statement of defence, as well as all other material he considered to be relevant, through his counsel to the judge, contending that the employer's request was based on false accusations of his former supervisor.

2.7 The oral hearing was held on 13 October 1983 in a small hearing-room (measuring approximately 5 x 7 metres)of the sub-district court at Beetsterzwaag. The room contained nine chairs, of which eight were occupied by the sub-district judge, the registrar, two representatives of the petitioner (CIBA GEIGY B. V.) and their counsel, the author, his counsel and the author's wife.

2.8 No witnesses were summoned; the official records of the hearing do not disclose whether the hearing was held in camera or in public.

2.9 There is no indication in the memorandum of defence presented by author's counsel, in the official records of the hearing or in the author's communication that he or his counsel formally requested the summoning of witnesses or formally requested the oral hearing to be held in public, or that they objected to the eventually non-public character of the hearing.

2.16 By sub-district court decisions of 8 and 17 November 1983, the author's labour contract with CIBA GEIGY was dissolved; the author, who has remained unemployed since, was however awarded damages in the amount of 240,000 guilders, to be paid in even sums in 1984, 1985, 1986, 1987, 1988 and 1989.

2.11 Prior to and subsequent to the hearing, the author contacted a number of lawyers for legal assistance, so as to initiate legal proceedings against his former supervisor for slander and to take recourse against the sub-district court decision. Several lawyers evaluated the merits of the case and advised against further proceedings, or refused to assist in such action. In addition, the author has sent several petitions to government departments, including the Ministry of Social Affairs and Employment and the Secretary of State, who confirmed that no recourse was available against the sub-district court's decision.

2.12 The author has not stated whether he initiated penal proceedings by filing a formal request with-the police or the prosecution authorities.

The complaint

3.1 The author claims that the State party violated his rights under article 14, paragraph 1, of the International Covenant on Civil and Political Rights by failing to provide a fair and public hearing in his case.

3.2 In particular, the author complains that the hearing before the sub-district court at Beetsterzwaag was

not public, because:

(a) According to the established practice of the courts of the Netherlands, hearings pursuant to article 1639w of the Civil Code of the Netherlands were held in camera. The possibility of requesting that the hearing be held in public was not indicated either to the author or to his counsel by the authorities;

(b) The legal opinion of a labour law expert contacted in the case noted that "article 429g of the Civil Code stated quite flatly that the court hearings should take place behind closed doors. It is incorrect to assert that article 838 of the Code of Civil Procedure would have provided for the possibility to request that the hearing be held in public".

(c)Two similar procedures governing the dissolution of labour contracts - that governed by article 1638o of the Civil Code ("unlawful dismissal")and that governed by article 1639w -were treated differently in respect of their public nature. It is stated that there was no justification for distinguishing between the former procedure, which was public, and the latter, which, in practice, was held in camera.

3.3 The author claims that no outsiders were admitted to the courtroom, and that the fact that his wife attended the meeting cannot be construed as evidence of the public nature of the hearing, given that his wife was directly involved. Furthermore, it is submitted that the size of the courtroom did not allow interested members of the public to attend.

3.4 He further alleges that the hearing was not fair, since:

(a)His former supervisor at CIBA GEIGY, on whose reports the employer's assessment of his performance relied, was not summoned ex officio as a witness;

(b)No member of the CIBA GEIGY labour council was summoned ex officio as a witness or expert;

(c)The conduct of the oral hearing was entirely dominated _by the employer's counsel, without intervention by the judge, so that the author was unable to respond to the petitioner's pleadings;

(d)He was not granted the opportunity to have his own witnesses or experts examined during the oral hearing;

(e)He was not afforded an opportunity to inspect the *'exhibits and pleading notes" presented by employer's counsel at the oral hearing;

(f)The official records did not note the presentation and the contents of these "exhibits and pleading notes";

(g)The facts presented by the author (i. e., documents on his professional performance)were not evaluated

correctly by the judge, although all relevant evidence had been made available to him.

3.5 The author also claims that he was "indirectly barred from the courts" in his attempts to "prosecute" his former supervisor for slander, because:

(a)The legal system of the Netherlands allegedly does not provide adequate facilities for legal aid;

(b)He could not find a lawyer willing to take his case or to do so without charging high fees;

(c)No government department advised him on how to handle his case or on recourse procedures open to him.

3.6 The author further contends that article 1639w of the Civil Code of the Netherlands as amended (in force since 25 April 1984), although now specifically providing for public hearings and for the application of general statutory rules on evidence, still remains incompatible with article 14, paragraph 1, of the Covenant.

3.7 The author requests the Committee to recommend that the State party compensate him for all financial losses resulting from the dissolution of his labour contract, in particular:

(a) To continue full payment of unemployment rates until his age of retirement;

(b) To grant him and his wife full general old age benefits (AOW)on retirement age;

(c) To exempt both of them from the application of the Code of Unemployment of the Netherlands.

State party's comments and observations

4.1 The State party objects to the admissibility of the communication under articles 2, 3 and 5 of the Optional Protocol and rule 90 of the rules of procedure, contending, inter alia, that the author had not sufficiently substantiated his allegations.

4.2 In its observations on the merits of the communication, the State party argues that the author's complaints are ill-founded, since:

(a) The non-public character of the oral hearing held on 13 October 1983 could not be assumed, as the information in the official records on this issue was insufficient;

(b) There was no evidence that anyone interested in the oral hearing was barred from the courtroom;

(c) The author did not formally request a hearing of witnesses or experts on his behalf;

(d) Article 14, paragraph 1, of the Covenant does not contain an absolute right to have witnesses and experts summoned and examined, or an overall court duty to order such a hearing ex officio;

(e) The communication did not show that the author petitioned the courts to take civil or criminal action against his former supervisor;

(f) No evidence was adduced as to whether, how and by whom the author was allegedly prevented from taking such action.

Issues and Proceedings before the Committee

5.1 On the basis of the information before it, the Committee concluded that the requirements of article 5, paragraph 2, of the Optional Protocol, including the requirement of exhaustion of domestic remedies, had been met.

5.2 With regard to the application of article 14, paragraph 1, of the Covenant to the facts, the Committee observed that the proceedings at issue related to the rights and obligations of the parties in a suit at law. The Committee noted the State party's contention that the communication should be declared inadmissible on the grounds of insufficient substantiation of claims, but considered that the author had made reasonable efforts to sustain his claim, for purposes of admissibility, that the procedure under article 1639w followed in his case was incompatible with article 14, paragraph 1, of the Covenant.

5.3 On 11 July 1988, the Human Rights Committee declared the communication admissible.

6.1 With respect to the author's claim related to the publicity of the sub-district court hearing, the Committee considers that if labour disputes are argued in oral hearing before a court, they fall within the requirement, in article 14, paragraph 1, that suits at law be held in public. That is a duty upon the State that is not dependent on any request, by the interested party, that the hearing be held in public. Both domestic legislation and judicial practice must provide for the possibility of the public attending, if members of the public so wish. In the instant case, the Committee notes that while the old. article 1639w of the Civil Code of the Netherlands was silent on the question of the public or non-public nature of the proceedings, it appears that in practice the public did not attend. It is far from clear in this case whether the hearing was or was not held in camera. The author's communication does not state that he or his counsel formally requested that the proceedings be held in public, or that the sub-district court made any determination that they be held in camera. On the basis of the information before it, the Committee is unable to find that the proceedings in the author's case were incompatible with the requirement of a "public hearing" within the meaning of article 14, paragraph 1.

6.2 The Committee observes that courts must make information on time and venue of the oral hearings

available to the public and provide for adequate facilities for the attendance of interested members of the public, within reasonable limits, taking into account, e.g., the potential public interest in the case, the duration of the oral hearing and the time the formal request for publicity has been made. Failure of the court to make large courtrooms available does not constitute a violation of the right to a public hearing, if in fact no interested member of the public is barred from attending an oral hearing.

7.1 With respect to the author's claims that the hearing of his case was not fair, the Committee 'refers to its constant jurisprudence that it is not a "fourth instance" competent to reevaluate findings of fact or to review the application of domestic legislation. It is generally for the appellate courts of States parties to the Covenant to evaluate the facts and the evidence in a particular case unless it can be ascertained that the proceedings before the domestic courts were clearly arbitrary or amounted to a denial of justice.

7.2 As far as the author claims that no witness was summoned for examination at the oral hearing, the Committee notes that no formal request to this effect was made by the author, although he was represented by counsel throughout the proceedings. The author's claim that article 14, paragraph 1, required the judge to do so ex officio is unfounded.

7.3 The author's claim that he was unable to respond to the petitioner's 'pleading is refuted by the official records, which reveal that author's counsel had the opportunity to plead extensively.

8. Regarding the author's claim of having been indirectly barred from the courts, the Committee observes that the author has repeatedly received legal advice from different lawyers and a measure of financial support to this end.

9. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts as submitted do not disclose a violation of any article of the International Covenant on Civil and Political Rights. The Committee welcomes the fact that the State party has amended article 1639w of the Civil Code to provide specifically for public hearings.