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CCPR/C/45/D/396/1990
12 August 1992

Original: ENGLISH

HUMAN RIGHTS COMMITTEE
Forty-fifth session

DECISIONS

Communication No. 396/1990

Submitted by : M.S.
[represented by counsel]

Alleged victim : The author

State party : The Netherlands

Date of communication : 15 February 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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DEC396.45 cm

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. 396/1990

Submitted by : M.S. (name deleted)
[represented by counsel]
Alleged victim : The author
State party : The Netherlands
Date of communication : 15 February 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 15 February 1990) is M.S., a citizen of the Netherlands, residing at Utrecht, the Netherlands. He claims to be a victim of a violation by the Netherlands of article 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, on 27 March 1985, the court of first instance (Politierechter) at Utrecht convicted him of having assaulted, on 30 January 1985, the father of his ex-girlfriend. On 16 October 1985, the Court of Appeal dismissed his appeal and, on 3 February 1987, the Supreme Court (Hoge Raad) confirmed the

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Court of Appeal's judgment.

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

2.2 The author submits that he acted in self-defence, that he was assaulted by his ex-girlfriend's parents and brother, but that his assailants were not prosecuted, although he filed a complaint against them with the Utrecht police. He alleges that the police investigation in his case was biased and that evidence and facts were "manipulated" and distorted by the police. He states that the testimony of witnesses on his behalf would have established that the charges against him were fabricated. However, he did not call any witnesses because, in his opinion, he should not have to bear the burden of proof that the police investigation had been biased, as such a requirement would violate his right to "due process".

The complaint :

3. The author claims that he was not given a fair trial, because the Court relied on the allegedly biased evidence gathered by the police. He submits that the public prosecutor should have ordered supplementary investigations, to oppose the biased initial investigations made by the police. He further claims that the prosecutor's failure to prosecute his assailants violates the principle of equality of arms.

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

4.1 By submission of 27 November 1991 the State party argues that the communication is inadmissible on the grounds of non-exhaustion of domestic remedies. The State party submits that the author could have lodged a complaint with the Court of Appeal pursuant to article 12 of the Code of Criminal Procedure (Wetboek van Strafvordering), which reads:

"1. If no prosecution is brought in respect of an offence or the prosecution is dropped, the person concerned may lodge a complaint with the Court of Appeal in whose jurisdiction the prosecution ought to have been brought. The Court of Appeal may instruct the Public Prosecutor to draw up a report and may order that a prosecution be instituted or continued.

"2. The Court of Appeal may refuse to give such an order on grounds derived from the public interests.

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"3. ..."

4.2 The State party further submits that, as a general rule, the Public Prosecutor may decide not to prosecute someone "for reasons relating to the public interest" (Code of Criminal Procedure, art. 167, para. 2). It stresses that, in the author's case, the Public Prosecutor saw no reason to charge anyone but the author. The State party submits that the Covenant does not provide for the right to have another person prosecuted and refers in this context to the Committee's admissibility decision in communication No. 213/1986 ¹. It therefore argues that this part of the communication is inadmissible as being incompatible with the provisions of the Covenant.

4.3 As regards the author's contention that the police investigation in his case was biased, and that only evidence against him was gathered, the State party submits that the Court may convict someone only on the basis of convincing legal evidence, presented during the hearing (Code of Criminal Procedure, art. 338). Legal evidence includes, inter alia, the Court's own observations during the hearing, and statements made by the accused, witnesses and experts. The State party submits that the author had the opportunity during the trial to submit any information that could have been relevant to the case. It argues that the author's claims have not been substantiated and refers in this connection to the decision of the European Commission of Human Rights, dated 2 May 1989, in the same matter, which stated that the examination of the author's complaints "does not disclose any appearance of a violation of the rights and freedoms set out in the Convention and in particular in article 6".

5.1 In his comments, the author argues that lodging a complaint pursuant to article 12 of the Code of Criminal Procedure would not have given him the desired equality: it would only have resulted in the prosecution of the persons who had assaulted him, not in this acquittal.

5.2 The author further contends that the Court should have discharged him, because of the biased investigation by the police. Since the author appealed the Court's judgment to the

¹ H.C.M.A. v. the Netherlands, decision adopted on 30 March 1989; see para. 11.6.

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Court of Appeal and the Supreme Court, he claims to have exhausted all available domestic remedies.

The 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 As regards the author's claim that his rights were violated by the prosecutor's failure to prosecute the author's alleged assailants, the Committee observes that the Covenant does not provide for the right to see another person criminally prosecuted. Therefore, this part of the communication is inadmissible as incompatible with the provisions of the Covenant, pursuant to article 3 of the Optional Protocol.

6.3 As regards the author's allegation that the trial against him was unfair, the Committee recalls its constant jurisprudence that it is in principle not for the Committee, but for the Courts of States parties to the Covenant to evaluate facts and evidence in a particular case, unless it is apparent that the Court's decisions were arbitrary and amounted to a denial of justice. In the circumstances, the Committee concludes that this part of the communication is inadmissible under article 3 of the Optional Protocol.

7. The Human Rights Committee therefore decides:

- (a) That the communication is inadmissible under article 3 of the Optional Protocol;
- (b) That this decision shall be transmitted 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.]