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Original: ENGLISH

HUMAN RIGHTS COMMITTEE  
Forty-fifth session

DECISIONS

Communication No. 408/1990

Submitted by : W.J.H.  
[represented by counsel]

Alleged victim : The author

State party : The Netherlands

Date of communication : 15 November 1989 (initial submission)

Documentation references : Prior decisions - Special Rapporteur's  
rule 91 decision,  
transmitted to the  
State party on  
9 October 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. 408/1990

Submitted by : W.J.H. [name deleted]  
Alleged victim : The author  
State party : The Netherlands  
Date of communication : 15 November 1989 (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 November 1989) is W.J.H., a citizen of the Netherlands, currently residing in Belgium. He claims to be a victim of a violation by the Netherlands of article 14, paragraphs 2 and 6, 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 was arrested on 8 December 1983 and kept in pre-trial detention until 8 February 1984. On 24 December 1985, the Arnhem Court of Appeal convicted him on a variety of criminal charges, including forgery and fraud. On 17 March 1987, the Supreme Court ( Hoge Raad ) quashed the earlier conviction and

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referred the case to the 's-Hertogenbosch Court of Appeal, which acquitted the author on 11 May 1988.

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

2.2 Pursuant to sections 89 and 591a of the Code of Criminal Procedure, the author subsequently filed a request with the 's-Hertogenbosch Court of Appeal for award of compensation for damages resulting from the time spent in pre-trial detention and for the costs of legal representation. Section 90, paragraph 1, of the Code of Criminal Procedure provides that, after an acquittal, the Court may grant compensation for reasons of equity. On 21 November 1988, the Court of Appeal rejected the author's request. The Court was of the opinion that it would not be fair to grant compensation to the author, since his acquittal was due to a procedural error; it referred in this context to the judgment of the Arnhem Court of Appeal of 24 December 1985, by which the author was convicted on the basis of evidence that later was found to have been irregularly obtained.

2.3 The author claims that, as no legal remedy for the denial of compensation is available, domestic remedies have been exhausted.

The complaint :

3.1 The author claims that the 's-Hertogenbosch Court of Appeal, by its decision of 21 November 1988, violated his right to be considered innocent, pursuant to article 14, paragraph 2, of the Covenant. He submits that, since he was not found guilty by the court, he should not suffer financial damage as a result of the institution of criminal proceedings against him.

3.2 He further contends that the failure to grant him compensation constitutes a violation of article 14, paragraph 6, of the Covenant. He claims that the judgment of the Arnhem Court of Appeal of 24 December 1985 was a final decision within the meaning of article 14, paragraph 6, because it was the judgment of the highest factual instance. In this context, he argues that the subsequent judgments acquitting the author, constitute "new facts" within the meaning of article 14, paragraph 6. He finally claims that his pre-trial detention should be considered equivalent to "punishment" in said paragraph.

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

4.1 By submission of 9 July 1991 the State party argues that the communication is inadmissible on the ground of non-exhaustion of

domestic remedies. It submits that the author did not invoke article 14, paragraph 6, of the Covenant when requesting compensation, but only argued that doubt concerning guilt or innocence should not be allowed to influence his right to compensation under article 89 of the Code of Criminal Procedure. The State party further contends that the author could, pursuant to article 1401 of the Civil Code, have demanded compensation in a civil action.

4.2 The State party also argues that article 14, paragraphs 2 and 6, of the Covenant does not apply to the author's case, and that the communication is therefore inadmissible as incompatible with the provisions of the Covenant under article 3 of the Optional Protocol.

4.3 The State party submits that the presumption of innocence, within the meaning of article 14, paragraph 2, does not preclude the imposition of pre-trial detention; it refers in this connection to article 9, paragraph 3, of the Covenant. It states that the author did not submit that his detention was unlawful and argues that no provision of the Covenant grants an accused the right to compensation for having undergone lawful pre-trial detention, in the event that he is subsequently acquitted.

4.4 The State party further notes that the judgment of the Supreme Court of 17 March 1987 cannot be regarded as a "new fact" within the meaning of article 14, paragraph 6, but that it is the outcome of an appeal and as such a continuation of the proceedings concerning the facts conducted before the lower courts. It also argues that, since an appeal to the Supreme Court is the final domestic remedy, the judgment of the Arnhem Court of Appeal of 24 December 1985 cannot be regarded as a "final decision". Finally, it contends that pre-trial detention cannot be considered as punishment within the meaning of article 14, paragraph 6, as it is an initial coercive measure and not imposed as a result of a conviction.

5.1 In his reply to the State party's observations, the author contests that a civil action under article 1401 of the Civil Code is available to him. He submits that a civil claim for compensation is only possible in case of governmental tort and refers in this connection to a judgment of the Supreme Court of 7 April 1989. Since his pre-trial detention is to be considered

lawful, the question of tort does not arise in his case. He further submits that it is highly unlikely that a civil court will refute the criminal court's judgment.

5.2 The author also states that he was not obliged to invoke the specific articles of the Covenant during the court proceedings. In this context, he refers to the Committee's Views in communication No. 305/1988 <sup>1</sup>. He submits that his argument that doubt about guilt or innocence should not be allowed to influence his right to compensation, clearly referred to the presumptio innocentiae, as reflected in article 14, paragraph 2.

5.3 The author submits that the interpretation by the State party of article 14, paragraphs 2 and 6, is too restrictive. He argues that there is no reason to make a distinction between a reversal of a conviction and an acquittal on appeal, as far as compensation for damages is concerned. He further stresses that an accused, who has not been proved guilty according to the law, should not bear the costs incurred in connection with the criminal prosecution. In this connection, he submits that his acquittal was exclusively due to the legal assistance provided by his counsel. He argues that under these circumstances the principle of fair procedure implies that the acquitted accused cannot be burdened with the costs of the defence.

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 With respect to the author's allegation of a violation of the principle of presumption of innocence enshrined in article 14, paragraph 2, of the Covenant, the Committee observes that this provision applies only to criminal proceedings and not to proceedings for compensation; it accordingly finds that this provision does not apply to the facts as submitted.

6.3 With regard to the author's claim for compensation under article 14, paragraph 6, of the Covenant, the Committee observes that the conditions for the application of this article are:

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<sup>1</sup> Hugo van Alphen v. the Netherlands , Views adopted on 23 July 1990, paragraph 5.5.



- (a) A final conviction for a criminal offence;

(b) Suffering of punishment as a consequence of such conviction; and

(c) A subsequent reversal or pardon on the ground of a new or newly discovered fact showing conclusively that there has been a miscarriage of justice;

The Committee observes that since the final decision in this case, that of the Court of Appeal of 11 May 1988, acquitted the author, and since he did not suffer any punishment as the result of his earlier conviction of 24 December 1985, the author's claim is outside the scope of article 14, paragraph 6, of the Covenant.

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.]