PERSBERICHT

VN-Mensenrechtencomité: Nederlandse hoger beroepsprocedure in strafzaken schendt mensenrechtenverdrag

Het VN-Mensenrechtencomité heeft op 18 augustus 2010 geoordeeld dat het nieuwe stelsel van hoger beroep tegen strafzaken in strijd is met het Internationaal verdrag inzake burgerrechten en politieke rechten (IVBPR). De procedure is bij de Verenigde Naties aanhangig gemaakt door strafrechtadvocaat Willem Jebbink van Jebbink Soeteman advocaten in Amsterdam. In 2008 diende hij namens zijn cliënt T.M. een klacht in tegen de beslissing van het gerechtshof Den Haag. T.M. kreeg geen verlof voor hoger beroep, nadat hij eerder door de politierechter was veroordeeld wegens het niet opvolgen van een ambtelijk bevel. Het Mensenrechtencomité oordeelt nu dat T.M. het recht is ontnomen zijn veroordeling effectief aan te vechten. Het Comité vindt bovendien dat Nederland zijn wetgeving in overeenstemming moet brengen met de Verdragseisen. Ook wordt Nederland opgedragen maatregelen te nemen om toekomstige schendingen van het Verdrag te voorkomen.

Willem Jebbink heeft zich van begin af aan verzet tegen deze nieuwe wetgeving, omdat hij deze in strijd achtte met het recht op hoger beroep zoals neergelegd in art. 14 van het verdrag. Willem Jebbink: 'Met deze uitspraak veegt het Mensenrechtencomité het verlofstelsel in wezen van tafel. Als Nederland toekomstige schendingen wil voorkomen, kan op grond van deze uitspraak hoger beroep in geen enkele zaak worden geweigerd. Het is zorgelijk te moeten constateren dat Nederland wetgeving invoert die zo flagrant in strijd is met de rechten van de mens. Over een dakkapel kan in drie instanties worden geprocedeerd, tot aan de Raad van State. Terwijl het bij iets zeer ingrijpends als strafzaken voor veel mensen na één keer ophoudt.'

Nederland voerde per 1 juli 2007 een verlofstelsel in voor hoger beroep. Als door de rechtbank voor feiten waarop maximaal 4 jaar gevangenisstraf staat een geldboete tot € 500 wordt opgelegd, moet het gerechtshof eerst beslissen of de zaak in hoger beroep wordt behandeld. Dat wordt alleen toegestaan 'in het belang van een goede rechtsbedeling', aldus art. 410a lid 1 van het wetboek van strafvordering. Om kosten te besparen en om rechters te ontlasten, werd in de wet opgenomen dat in dit soort zaken uitspraken niet schriftelijk hoeven te worden gemotiveerd. Ook hoeft geen proces-verbaal van de zitting te worden opgemaakt. Juist die ingrepen zijn het Mensenrechtencomité een doorn in het oog.

Artikel 14 lid 5 IVBPR luidt: 'Een ieder die wegens een strafbaar feit is veroordeeld heeft het recht de schuldigverklaring en veroordeling opnieuw te doen beoordelen door een hoger rechtscollege overeenkomstig de wet.'

In de praktijk wordt in meer dan de helft van alle zaken geen hoger beroep verleend.

Voor meer informatie:

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United Nations CCPR/C/99/D/1797/2008

International Covenant on Civil and Political Rights

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Human Rights Committee
Ninety-ninth session
12 – 30 July 2010

Views

Communication No. 1797/2008

Submitted by:	Th[redacted] W[redacted] H[redacted] M[redacted] (represented by counsel Mr. Willem Hendrik Jebbink)
Alleged victim:	The author
State Party:	The Netherlands
Date of communication:	8 May 2008 (initial submission)
Document references:	Special Rapporteur's rule 97 decision, transmitted to the State party on 3 July 2009 (not issued in document form)
Date of adoption of Views:	27 July 2010

* Made public by decision of the Human Rights Committee.

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Subject matter:	Right to have his sentence and conviction reviewed by a higher tribunal, effective remedy
Substantive issues:	Degree of substantiation of claims
Procedural issues:	None
Articles of the Covenant:	2(3), 14(5)
Articles of the Optional Protocol:	2

On 27 July 2010, the Human Rights Committee adopted the annexed text as the Committee's Views, under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 1797/2008.

[Annex]

Annex

Views of the Human Rights Committee under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political rights (Ninety-ninth session)

concerning

Communication No. 1797/2008**

Submitted by:	Th[redacted] W[redacted] H[redacted] M[redacted] (represented by counsel Mr. Willem Hendrik Jebbink)
Alleged victim:	The author
State Party:	The Netherlands
Date of communication:	8 May 2008 (initial submission)

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

Meeting on 27 July 2010,

Having concluded its consideration of communication No. 1797/2008, submitted to the Human Rights Committee on behalf of Mr. Th[redacted] W[redacted] H[redacted] M[redacted] 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 the State party,

Adopts the following:

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

1. The author of the communication is Th[redacted] W[redacted] H[redacted] M[redacted], a national of the Netherlands, born on 25 December 1981. He claims to be a victim of violations by the Netherlands of articles 2, paragraph 3, and 14, paragraph 5, of the International Covenant on Civil and Political Rights[1]. He is represented by counsel, Willem Hendrik Jebbink.

** The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Prafullachandra Natwarlal Bhagwati, Mr. Lazhari Bouzid, Ms. Christine Chanet, Mr. Mahjoub El Haiba, Mr. Yuji Iwasawa, Ms. Helen Keller, Ms. Zonke Zanele Majodina, Ms. Iulia Antoanella Motoc, Mr. Michael O'Flaherty, Mr. Rafael Rivas Posada, Mr. Fabian Omar Salvioli and Mr. Krister Thelin.

An individual opinion signed by Committee member Mr. Krister Thelin is appended to the text of the present Views.

[1] The Covenant and the Optional Protocol entered into force in relation to the Netherlands on 11 Dec 1978.

Facts as submitted by the author

2.1 On 17 June 2007, the author was summoned to appear before the District Court of Dordrecht on 14 September 2007, for failing to comply with an administrative order to move away from a railroad track, where he was demonstrating, as part of a group, against its use. Failure to comply with such an order is a criminal offence, under article 184 of the Criminal Code of the Netherlands.

2.2 The author didn't appear in person at the trial, but was represented by a lawyer. An oral judgment was rendered convicting the author without any reasoning and sentencing him to a fine of EUR 200. In accordance with article 365(a) of the Code of Criminal Procedure (CCP), the judge pronounced an "abridged" oral judgment, which did not need to be supplemented with evidence. Given that under articles 365(a), 378 and 378 (a) of the CCP, it is not necessary to draw up a trial transcript, none was drawn up in this case.

2.3 On 27 September 2007, the author applied for leave to appeal against this verdict in accordance with article 410 (a) of the CCP. On 8 October 2007, the author submitted his grounds of appeal, but had no reasoned written judgment upon which he could base it. On 19 November 2007, the presiding judge of the Court of Appeal of The Hague issued a decision declaring that the appeal would not be considered as the interests of proper administration of justice did not require this case to be heard on appeal.

2.4 According to article 410(a) (7) of the CCP it is not possible to lodge a cassation appeal against the decision of the Court of Appeal.

The complaint

3.1 The author claims that his right under article 14, paragraph 5 has been violated in two ways. Firstly, he has not been able to exercise his right to appeal in an effective and meaningful way. He invokes paragraph 49 of General Comment no.32 about the right to have access to a duly reasoned, written judgment of the trial court and at least in the court of first appeal, and to other documents such as trial transcripts. In the present case, the author didn't have access to these documents. He also quotes several Views of the Human Rights Committee, where States parties have been found in violation of article 14, paragraph 5 of the Covenant, as they had not provided access to the trial transcript or to duly reasoned written judgments in the trial court and in the court of first appeal. [2]

3.2 Secondly, the author invokes paragraph 48 of General Comment no.32 on the scope of review and refers to several recent cases against Spain. He states that the Covenant imposes an obligation on States parties to ensure that the higher tribunal deciding upon leave to appeal requests carries out a substantive assessment of the conviction and the sentence, both on the basis of sufficiency of the evidence and of the law, to allow for a proper assessment of the nature of the case. The author claims that in his case a substantive assessment has not taken place nor could it have taken place, as the higher tribunal did not possess a properly reasoned judgment of the court of first instance, a statement of the evidence used, or a transcript of the first instance trial. Lastly, the higher tribunal's judgment did not reflect a meticulous and thorough investigation of the arguments put forward by the author on appeal.

[2] Communication 662/1995, *Lumley v. Jamaica*, Views adopted on 31 March 1999, para. 7.5 ; Communication 903/2000, *Van Hulst v. Netherlands*, Views adopted on 1 November 2004, para 6.4; Communication 230/1987, *Raphael Henry v. Jamaica*, Views adopted on 1 November 1991, para 8.4.

State party's observations on admissibility and the merits

4.1 On 25 August 2008 and on 5 January 2009 the State party submits that the communication should be declared inadmissible under article 5, paragraph 2, (b) of the Optional Protocol for failure to exhaust the domestic remedies. Should the Committee not endorse that conclusion, the State party submits that the communication is unfounded. It provides detailed observations concerning the facts of the case, the applicable legislation, the admissibility and the merits of the communication.

4.2 As to the facts, the State party maintains that, on 16 June 2007, the author was arrested and charged as a result of intentionally failing to comply with an order to leave a railroad track, issued in accordance with a statutory regulation by a police officer. When he refused to comply with the order, he was arrested, refused to prove his identity, than was detained over night in a police station and released the next day.

4.3 The State party confirms that, on 17 September 2007, the author's case was heard by a single judge, who issued an oral judgment sentencing the author to a fine of 200 Euro, in accordance with article 184 of the Criminal Code of the Netherlands. The State party notes that the author's counsel had submitted a fifteen page memorandum of oral pleading for the first instance court hearing. The State party confirms that the oral judgment does not present any reasons for the judicial finding of fact and that it was issued on the basis of articles 365 (a), 378 and 378 (a) of the CCP.

4.4 The State party also submits that, on 25 September 2007, the author's counsel was provided with a number of official police reports on the case upon his request. On 27 September 2007, the author filed an application for leave to appeal and on 8 October 2007 his counsel submitted a statement of grounds for appeal, claiming that the judge has erred in a) declaring the case to be admissible and b) not acquitting the author. The State party confirms that, on 19 November 2007, the presiding judge of the Court of Appeal, having taken cognisance of the author's request and of the case documents, turned down the application for leave to appeal on the grounds that a hearing of the appeal was not in the interests of the proper administration of justice and that counsel's contentions were not supported in law.

4.5 On the applicable legislation, the State party quotes article 184 of the Criminal Code and articles 365 (a), 378, 378 (a) and 410 a of the CCP. The State party explains the legislative history of those provisions and submits that the nature and scope of procedural obligations in the State party are adapted to the weight of the interests at stake in a case: the more important the case in terms of consequences for the parties, the more precise and exacting the requirements of keeping the official record of the trial and the court's judgment.

4.6 On admissibility, the State party submits that the author did not invoke explicitly or implicitly article 14, paragraph 5, of the Covenant before the Court of Appeal or any other national court, thereby denying them the opportunity to respond. At the time of the submission of the statement containing the grounds of appeal against the judgment of the Dordrecht District court, the author was aware that the presiding judge could determine that the hearing of the appeal was not required in the interest of justice. Therefore, the State party maintains that had he challenged article 410a of the CCP, the Court of Appeal could have included this in its determination of whether such an appeal was required in the interest of the proper administration of justice. The State party concludes that the communication is inadmissible under article 5, paragraph 2 (b) of the Optional Protocol for failure to exhaust domestic remedies.

4.7 On the merits, the State party refers to paragraphs 45 to 51 of the General Comment no. 32 of the Human Rights Committee. It maintains that it has not violated article 14, paragraph 5 of the Covenant, as the above article does not prevent a state from using a

system in which the right to appeal in less serious criminal cases is limited by means of a system of leave and emphasizes that a decision taken by the presiding judge of a Court of Appeal on an application for appeal can be considered to constitute a review within the meaning of this provision.

4.8 The State party explains that its system of leave to appeal proceedings operates *de facto* for less serious criminal convictions, leading to fines of no more than 500 Euro. The aims of the system are to prevent the administration of justice from being overburdened, to guarantee timely trials and to ensure that the administration of justice remains affordable. It submits that the Public Prosecution Service had indicated that without such a system they would have to deal with 4200 additional appeals. The State party further refers to the drafting history of article 14, paragraph 5 of the Covenant, pointing out that the initial version of the text contained an exception for minor offences, which was removed following a proposal by the Ceylon delegation and replaced by a provision that the review by a higher tribunal will take place "according to law". The State party concludes that the authors of the Convention never intended to rule out the possibility of limiting the right to appeal for less serious convictions.

4.9 The State party further refers to article 2(2) of Protocol 7 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, which is comparable to article 14, paragraph 5 of the Covenant and points out that the former provides an exception for offences of a minor character.

4.10 The State party maintains that an unconditional right to appeal would be incompatible with a streamlined system of disposal of criminal cases; that it is reasonable to assume a degree of proportionality between the demands placed on appeal in criminal cases and the gravity of the case; and that the Committee itself places the heaviest demand on cases involving death penalty. In the State party's view, even though in General Comment no. 32 the Committee has noted that the right to appeal is not confined to the most serious offences, that does not mean that the right to appeal is fully and generally applicable to all criminal cases, including "the least serious offences". In support of its view the State party refers to para 7.3 of *Lumley v. Jamaica* and paras 2.3, 4.1-5 and 7.2 of *Bryhn v Norway.*[3]

4.11 The State party is of the opinion that a "review" at second instance does not imply a new and full assessment of questions of fact and law. It also states that while there is a difference of opinion with the author, as to the interpretation of "least serious offences", the individual complaints procedure does not provide for the review, in abstract terms, of alleged shortcomings in national legislation or legal practice.[4] The State party emphasizes that the sentence handed-out was small by local standards and that there was no question of a custodial sentence, which would, according to the Committee's practice, be serious enough to require a review by a higher tribunal.[5] The State party maintains that while the Committee's case law does require substantially reviewing the conviction and sentence, it does not require a factual retrial.

4.12 The State party does not dispute that the decision not to grant leave to appeal was not based on the abridged oral judgment of the first instance court. However, it maintains that the presiding judge based its decision on the entire case file, including on documents from the preliminary inquiry, as well as on the defendant's memorandum of oral pleading from the first instance and the defendant's contentions regarding why in his opinion the initial judgment could not be upheld and must be heard on appeal. The State party specifies that the defence must indicate clearly why the hearing of the appeal is required in the

[3] Communications 662/1995 and 789/1997 respectively.

[4] The State party refers to Communication 35/78, *Mauritian Women's case*, para 9.3.

[5] The State party refers to Communication 64/79, *Salgar de Montejo v. Colombia*, para 10.4.

interests of the proper administration of justice, according to the clear criteria of which cases may come under the limited system of leave set in article 410a of the CCP. The State party further submits that within that framework the author could have argued that the case concerned a serious offence and that withholding the leave to appeal would have violated article 14, paragraph 5 of the Covenant, but he did not do so.

Author's comments

5.1 On 2 March 2009 the author reiterates most of his previous arguments.

5.2 He challenges the State party's view concerning admissibility, stating that he did not need to make an express complaint about a violation of article 14, paragraph 5 of the Covenant, as the right guaranteed in this provision had not been violated until the decision of the Court of Appeal was delivered. At the time the violation appeared, no domestic remedy was available to the author since no cassation appeal exists against the judgment of the presiding judge of the Court of Appeal.

5.3 The author also challenges the State party's position that in his case a less serious criminal conviction appeared and points out that even under the case law of the European Court for Human Rights, a conviction for an offence that, according to law prescribes up to 15 days of detention as a maximum penalty, was considered sufficiently severe not to be regarded as being of "minor character" within the meaning of Article 2 (2) of Protocol 7.[6] He argues that according to the European Court's practice, a conviction might be considered of a "minor character" only when a risk of deprivation of liberty does not appear and that in the instant case the author risked a maximum term of imprisonment of three months. In fact, he was sentenced to a fine of 200 Euro, and the District Court also ruled that if he refused to pay, he would be alternatively detained for four days.

5.4 The author also notes that the wording, "according to law", in article 14, paragraph 5 of the Covenant has never been interpreted by the Human Rights Committee so as to exclude certain offences of a criminal character of a review by a higher tribunal and refers to Communication 1073/2002, *Terron v. Spain*, Views of 5 November 2004, which reads: "The Committee recalls that the right set out in article 14, paragraph 5, refers to all individuals convicted of an offence."

5.5 The author further states that the State party failed to point out how the presiding judge of the Court of Appeal was able to perform a full review of the initial verdict, as he was not provided with a properly motivated judgment and a trial transcript of the first instance trial. He maintains that in the absence of these documents it is illusionary to suggest that the presiding judge could have been able to offer a reasoned review (as required under article 410(a) of the CCP) on the sufficiency of the evidence and the law. He stresses that the District Court did not provide a statement of the evidence used, neither orally nor in writing, during or after its decision of 14 September 2007.

Additional comments by the parties

6.1 The State party submitted additional observations, maintaining that the communication should be declared inadmissible, as the author, being familiar with the Dutch system, was aware that it was not possible to institute an appeal in cassation against an appellate court's decision to dismiss an appeal and therefore should have raised the substance of his communication at that stage of the domestic proceedings.

[6] References to Galstyan v. Armenia, 15 November 2007, 26986/03, Gurepka v. Ukraine, 6 September 2005, 61406/00, and Ashughyan v. Armenia, 17 July 2008, 33268/03.

6.2 As to the reference of the author to the European Court's case law, the State party stresses that in all of the cited examples the complainants were not only in jeopardy of imprisonment, but were actually given custodial sentences and that fact played a role in the Court's decisions. The State party notes that in the instant case no custodial sentence was imposed and the offence was of limited gravity.

6.3 Further, the State party clarifies that it does not maintain that article 14, paragraph 5 of the Covenant does not apply to certain criminal offences, but rather that the review requirements of that article can be met in different ways, depending on the gravity of the offence and makes a reference to para 7.5 of the Views on communication 984/2001, (*Shukuru Juma v. Australia*).

6.4 The State party restates that the presiding judge evaluated the conduct of the trial and took the entire case file into consideration, including the various official reports, counsel's memorandum of oral pleading at the first instance and counsel's statement of grounds for appeal.

6.5 Lastly, the State party informs the Committee that the State party intends to ratify Protocol 7 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, article 2 of which stipulates the right to appeal in criminal matters. The State party declares that this intention does not affect its position in the present case in any way and that the appeals system laid out in article 410a of the CCP meets the human rights standards of the above Protocol 7.

6.6 The author submits an additional comment, stating that the State party in their observation that in European Court cases the fact that a custodial sentence was imposed played a role in the Court's decision, failed to substantiate what role that would be. In the author's opinion, from the decisions of the European Court it appears that this Court takes notice of the nature of the offence and moreover the explanatory report to Protocol 7 states that, "When deciding whether an offence is of a minor character, an important criterion is the question of whether the offence is punishable by imprisonment or not."

Issues and proceedings before the Committee

Consideration of admissibility

7.1 Pursuant to rule 93 of its rules of procedure, before considering any claim contained in a complaint, the Human Rights Committee must determine whether it is admissible under the Optional Protocol to the Covenant on Civil and Political Rights.

7.2 As required under article 5, paragraph 2 (a), of the Optional Protocol, the Committee has ascertained that the same matter is not being examined under another procedure of international investigation or settlement.

7.3 The Committee notes the State party's contention that the communication is inadmissible for failure to exhaust domestic remedies. However, the Committee observes that at the time of his application for leave to appeal, the author still had the realistic possibility to have the appeal granted by the Court of Appeal, and therefore he could not claim that his right to appeal under article 14, paragraph 5 of the Covenant were violated. The Committee also notes that according to the domestic legislation no cassation appeal exists against the judgment of the presiding judge of the Court of Appeal not to grant a leave to appeal. Accordingly, the Committee finds that all available remedies have been exhausted, declares the communication admissible and proceeds to a consideration of its merits.

Consideration of the merits

8.1 The Human Rights Committee has considered the present communication in the light of all the information made available to it, as provided under article 5, paragraph 1, of the Optional Protocol.

8.2 As to the author's claim that he has not been able to exercise his right to appeal under article 14, paragraph 5 in an effective and meaningful way, since he did not have access to a duly reasoned, written judgment of the trial court and to other documents such as trial transcripts, the Committee notes that the State party confirmed that in the present case no such document had been produced. The Committee notes the State party's submission that the author's counsel was provided with a number of official police reports on the case prior to his application for leave to appeal, without specifying their content and relevance to the verdict. The Committee, however, observes that these reports could not have provided guidance as to the motivation of the first instance court in convicting the author of a criminal offence, nor indication on what particular evidence had relied the court. The Committee recalls its established practice that in appellate proceedings guarantees of a fair trail are to be observed, including the right to have adequate facilities for the preparation of his defence.[7] In the circumstances of the instant case, the Committee does not consider that the reports provided, in the absence of a motivated judgment, a trial transcript or even a list of the evidence used, constituted adequate facilities for the preparation of the author's defence.

8.3 The Committee further notes that, according to the State party, the President of the Court of Appeal denied the leave to appeal with the motivation that a hearing of the appeal was not in the interests of the proper administration of justice and that counsel's contentions were not supported in law. The Committee considers this motivation inadequate and insufficient in order to satisfy the conditions of article 14, paragraph 5 of the Covenant, which require a review by a higher tribunal of the conviction and the sentence. Such review, in the frame of a decision regarding a leave to appeal, must be examined on its merits, taking into consideration on one the hand the evidence presented before the first instance judge, and on the other hand the conduct of the trial on the basis of the legal provisions applicable to the case in question.

8.4 Accordingly, in these specific circumstances, the Committee finds that the right to appeal of the author under article 14, paragraph 5 of the Covenant has been violated, due to failure of the State party to provide adequate facilities for the preparation of his defence and conditions for a genuine review of his case by a higher tribunal.

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 before it reveal violation of article 14, paragraph 5 of the Covenant.

10. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author with an effective remedy which allows a review of his conviction and sentence by a higher tribunal, and adequate compensation. The Committee invites the State party to review the relevant legislation with a view to aligning it with the requirements of article 14, paragraph 5 of the Covenant. The State party is also under an obligation to take measures to prevent similar violations in the future.

11. By becoming a party to the Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant and, pursuant to article 2 of the Covenant, the State party has undertaken to ensure all

[7] See General Comment 13.

individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy in case a violation has been established. In this respect, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the Committee's Views.

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

Appendix

Individual opinion by Committee member Mr. Krister Thelin (dissenting)

The majority has found a violation of article 14 paragraph 5 of the Covenant. I disagree.

The facts are not in dispute: The author, represented by counsel at the time, was convicted by the District Court of Dordrecht and sentenced to a fine of EUR 200. In accordance with the applicable Dutch law, the single judge pronounced an abridged oral judgment, which did not need to be supplemented with evidence. The author, through his counsel, appealed the judgment, after he had been provided with a number of official police reports on which the judgment obviously was based. For the appeal to be heard, the Dutch law requires that leave to appeal is granted. The Court of Appeal for the Hague, sitting with its presiding Justice, having to decide on the matter, denied leave to appeal, after having reviewed the entire case file, including the police reports, as well as counsel's memorandum of oral pleading at the District Court.

At issue is not whether the Dutch system of leave to appeal is in violation of article 14 paragraph 5 of the Covenant, which provides that "(e)everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law." It clearly is not.[1]

Rather, what is in dispute is whether the Dutch law, in this case, gives the author enough guarantees to satisfy his right to have the District Court judgment reviewed by a second instance court.

Despite the absence of a motivated judgment, i.e by only an abridged oral judgment, which the Dutch procedural law prescribes for certain minor criminal offences, the author and his counsel were clearly able to prepare and conduct a proper defence at the trial and launch the request for leave to appeal.

The appellate level reviewed the case file in its entirety, thus taking into account both matters of law and fact as they had obviously been considered by the lower court, and decided to use its discretion under the law not to grant leave to appeal.

Against this factual background, it is difficult to find that the author did not have his lower court conviction and sentence reviewed by a higher tribunal. He clearly had.

Consequently, I am of the view that there has not been a violation of article 14 paragraph 5 of the Covenant in the case before us.

[*signed*] Mr. Krister Thelin

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

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[1] Cf. Communication 789/1997, *Bryhn v. Norway*

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