



**International Covenant on  
Civil and Political Rights**

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**Human Rights Committee**

**Communication No. 1886/2009**

**Decision adopted by the Committee at its 107th session  
(11-28 March 2013)**

<i>Submitted by:</i>	X (represented by counsel, Marcel Schuckink Kool)
<i>Alleged victim:</i>	The author
<i>State party:</i>	The Netherlands
<i>Date of communication:</i>	22 October 2005 (initial submission)
<i>Document references:</i>	Special Rapporteur's rule 97 decision, transmitted to the State party on 17 July 2009 (not issued in document form)
<i>Date of adoption of Decision:</i>	28 March 2013
<i>Subject matter:</i>	Anonymity
<i>Substantive issues:</i>	Inability of a higher tribunal to review a sentence for reasons of anonymity
<i>Procedural issues:</i>	Insufficient substantiation
<i>Article of the Covenant:</i>	14, paragraph 5
<i>Article of the Optional Protocol:</i>	2

## Annex

### **Decision of the Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political Rights (107th session)**

concerning

#### **Communication No. 1886/2009\***

*Submitted by:* X (represented by counsel, Marcel Schuckink Kool)

*Alleged victim:* The author

*State party:* The Netherlands

*Date of communication:* 22 October 2005 (initial submission)

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

*Meeting on 28 March 2013,*

*Adopts the following:*

#### **Decision on admissibility**

1. The author of the communication is Ms. X,<sup>1</sup> a Dutch national born in 1968. She claims to be a victim of a violation by the Netherlands of her rights under article 14, paragraph 5, of the International Covenant on Civil and Political Rights.<sup>2</sup> She is represented by counsel, Marcel Schuckink Kool.<sup>3</sup>

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\* The following members of the Committee participated in the examination of the present communication: Mr. Yadh Ben Achour, Mr. Lazhari Bouzid, Mr. Yuji Iwasawa, Ms. Zonke Zanele Majodina, Mr. Kheshoe Parsad Matadeen, Ms. Iulia Antoanella Motoc, Mr. Gerald L. Neuman, Sir Nigel Rodley, Mr. Victor Manuel Rodríguez-Rescia, Mr. Fabián Omar Salvioli, Ms. Anja Seibert-Fohr, Mr. Yuval Shany, Mr. Konstantine Vardzelashvili and Ms. Margo Waterval. Pursuant to rule 90 of the Committee's rules of procedure, Committee member Mr. Cornelis Flinterman did not participate in the adoption of the present decision.

<sup>1</sup> The author claims that she was sentenced in criminal proceedings Nr. 13/410898-05; she refuses to disclose her identity in the present communication, as, in her opinion, the criminal case file reference number is sufficient for the authorities to identify her. She subsequently provided the Committee with her name, on a strictly confidential basis (see also paragraphs 2.4 and 2.5 below).

<sup>2</sup> The Optional Protocol entered into force for the Netherlands on 11 March 1979.

<sup>3</sup> The author presented her initial submission on 22 October 2005, and provided additional submissions on 28 October, 8 and 17 November and 2 December 2005, 16 February and 9 June 2006, 30 January 2007 and 12 April 2009.

### **The facts as submitted by the author**

2.1 The author contends, without further explanation, that she was found guilty of committing an offence on 22 April 2005.<sup>4</sup> She claims that she had not attempted to appeal her sentence, as she refused to disclose her identity in an appeal. She refers to a decision of the Supreme Court dated 24 June 2003 in case No. 01948/02, according to which “it must be inferred from articles 449-452 of the Code of Criminal Procedure, which specify the way in which legal remedies are to be applied, that a suspect who is the subject of a court ruling, in which he has been identified in another way than by name, cannot apply a legal remedy against a final verdict any other way than by disclosing his personal identifying information.” The author notes, however, that her refusal to disclose her identity within the criminal proceedings before the court of first instance did not preclude the authorities from finding her guilty of an offence. She adds that, until recently, it was possible to appeal without disclosing one’s identity. However, the legislation was amended, excluding this possibility, although not definitively.

2.2 Since she wished to remain anonymous in the context of her criminal proceedings and given that she considers the State party to be able to identify her through the reference numbers she provides, the author decided not to disclose her identity to the Committee either.

2.3 On 28 October, 8 November and 2 December 2005, the author reiterated her request not to have her identity disclosed. In particular, on 2 December 2005, she recalled that she was precluded from appealing her sentence as she would not reveal her identity, which amounted, in her opinion, to a violation of her rights under article 14, paragraph 5, of the Covenant. She adds that in her view, the right to remain anonymous is directly linked to the right to a fair trial, which includes the right not to incriminate oneself.

2.4 The author reiterates that her wish to remain anonymous does not preclude the State party from identifying her, as she had submitted the relevant identification numbers and thus could be easily identified.

2.5 On 9 June 2006, the author disclosed her name to the Committee, on the strict condition that it would be kept confidential and would not be disclosed to the State party.

### **The complaint**

3. The author claims to be the victim of a violation of her rights under article 14, paragraph 5, of the Covenant, as she was unable to appeal her sentence because she would not disclose her name.

### **State party’s observations on admissibility**

4. By note verbale of 27 August 2009, the State party challenged the admissibility of the communication. It points out that the communication is anonymous, although article 3 of the Optional Protocol explicitly precludes the Committee from considering anonymous communications. It further notes that it finds no explanation as to why this communication was brought to its attention notwithstanding the requirements of article 3 of the Optional Protocol. In addition, according to the State party, the communication itself does not provide any reasons for the need to keep the author’s identity undisclosed.

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<sup>4</sup> The author provides no information on the charges brought against her or on the court which convicted and sentenced her; she merely specifies that the judgement was delivered orally.

### Author's comments on the State party's observations

5.1 On 26 July 2011, the author rejected the State party's observations. With regard to the issue of her anonymity, she explains that the communication is not anonymous, as the State party would be able to identify her. She adds that in, any case, her anonymity had not prevented the State party from pursuing criminal proceedings against her.

5.2 The author reiterates her comments of 2 December 2005,<sup>5</sup> and refers to the conclusions of the European Court of Human Rights in Application No. 36378/02, *Shamayev v. Georgia and Russia*,<sup>6</sup> in which, according to the author, the Court had concluded that behind the strategy of concealing their true identities, for understandable reasons, were real people, sufficiently identifiable from a number of indications other than their names.

### Issues and proceedings before the Committee

#### *Consideration of admissibility*

6.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 93 of its rules of procedure, decide whether or not the case is admissible under the Optional Protocol to the Covenant.

6.2 The Committee has noted the State party's objections to the admissibility of the communication under article 3 of the Optional Protocol to the Covenant. It further notes that, pursuant to article 3 of the Optional Protocol, as well as to rule 96, paragraph (a), of the Committee's rules of procedure "the Committee shall consider inadmissible any communication under the present Protocol which is anonymous (...)."

6.3 The Committee notes that the author wished to remain anonymous, both to the Committee and the State party. On 9 June 2006, the author disclosed her identity to the Committee; however she insisted on preserving her anonymity to the State party, as, according to her, she could be easily identified by the authorities.<sup>7</sup> In this connection, the Committee notes that neither in her initial submission, nor in subsequent submissions, had the author provided substantiation for the reasons as to why she wished not to have her name disclosed in the context of the present communication and the appeal proceedings in the State party. The Committee notes that article 14, paragraph 5, of the Covenant does not protect the right of parties to litigation to remain anonymous. On the contrary, under article 14 of the Covenant, in the absence of special circumstances a trial and an appeal must be held in public.

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<sup>5</sup> See para. 2.3 above.

<sup>6</sup> The author refers to *Shamayev and Others v. Georgia and Russia*, (application No.36378/02), judgement of 16 September 2003. It appears that she is referring to paragraph 275 of the judgement: "The Court notes at the outset that it has already dismissed the Russian Government's preliminary objections that the application was anonymous and amounted to an abuse of process (see *Shamayev and Others v. Georgia and Russia* (dec.), no. 36378/02, 16 September 2003). In particular, it found that the present application concerned real, specific and identifiable individuals and that their complaints, relating to alleged violations of the rights guaranteed to them under the Convention, were based on actual events, including some that were not contested by either of the two respondent Governments. The Court does not perceive any "special circumstance" at this stage which would entail a fresh examination of the arguments that the present case was abstract in nature and amounted to an abuse of process (see *Stankov and United Macedonian Organisation Ilinden v. Bulgaria*, nos. 29221/95 and 29225/95, §§ 55 and 57, ECHR 2001-IX)".

<sup>7</sup> See Note 1 above.

6.4 In light of the above, and in the absence of any further pertinent information on file, the Committee concludes that the author has failed to sufficiently substantiate her claim, for purposes of admissibility, and therefore declares it inadmissible under article 2, of the Optional Protocol.

7. The Human Rights Committee therefore decides:

(a) That the communication is inadmissible under article 2, of the Optional Protocol;

(b) That the decision be transmitted to the State party and to the author.

[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.]

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