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HUMAN RIGHTS COMMITTEE
Fifty-first session

VIEWS

Communication No. 451/1991

Submitted by:	Barry Stephen Harward [represented by counsel]
Victim:	The author
State party:	Norway
Date of communication:	17 September 1990 (initial submission)
Documentation references:	Prior decisions: - Special Rapporteur's rule 91 decision, transmitted to the State party on 13 August 1991 (not issued in document form) - CCPR/C/48/D/451/1991 (Decision on admissibility, dated 26 July 1993)
Date of adoption of Views:	15 July 1994

On 15 July 1994, the Human Rights Committee adopted its Views under article 5, paragraph 4, of the Optional Protocol, in respect of communication No. 451/1991. The text of the Views is appended to the present document.

[Annex]

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

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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
- Fifty-first session -

concerning

Communication No. 451/1991

Submitted by:	Barry Stephen Harward [represented by counsel]
Victim:	The author
State party:	Norway
Date of communication:	17 September 1990 (initial submission)
Date of decision on admissibility:	26 July 1993

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

Meeting on 15 July 1994,

Having concluded its consideration of communication No. 451/1991 submitted to the Human Rights Committee by Mr. Barry Stephen Harward 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, his counsel and the State party,

Adopts its Views under article 5, paragraph 4, of the Optional Protocol.

1. The author of the communication (dated 17 September 1990) is Barry Stephen Harward, a British citizen, at the time of the submission of the communication imprisoned in Norway. He claims to be a victim of a violation by Norway of article 14, paragraphs 2, 3(a), (b), (e), (g), 5 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 states that he was arrested on 27 September 1986 in Tenerife, Spain, and informed that his extradition had been requested on suspicion of drug trafficking. He was kept in detention until his extradition on 21 August 1987 to Norway. He submits that, at that time, he was still waiting for the outcome of the appeal against his extradition, which he had filed with the Spanish Constitutional Court.

2.2 In Norway, the author was charged with having imported a considerable quantity of heroin into the country during 1985 and 1986. A legal-aid lawyer, who spoke only little English, was appointed. On 31 August 1987, a formal indictment was issued against him and his co-defendants, including his two brothers.

2.3 The trial started on 12 October 1987, in the Eidsivating High Court. On 3 November 1987, the author and his co-defendants were found guilty as charged; the author, who claims to be innocent, was sentenced to 10 years' imprisonment. On 25 March 1988, the Supreme Court rejected the author's appeal.

The complaint:

3.1 The author claims that he was denied a fair trial, that the charges against him were fabricated and that the evidence against him was contradictory and uncorroborated.

3.2 More specifically, the author claims to be a victim of a violation of article 14, paragraph 2, of the Covenant, because of the massive prejudicial media coverage, which allegedly influenced witnesses and jury members. According to the author, information about the accused and the charges was leaked to the press by police officers.

3.3 The author further claims to be a victim of a violation of article 14, paragraph 3(a), of the Covenant, since he was allegedly misinformed about the charges against him in Spain. He further submits that the 1,100 document pages used in the trial against him were in the Norwegian language, which he did not understand; only the indictment and a small proportion of the other papers were translated.

3.4 The author also claims that article 14, paragraph 3(b), was violated in his case. He claims that he was hindered in the preparation of his defence because the indictment was issued only six weeks before the start of the trial and his lawyer's request to have all documents pertaining to the case translated was refused. He further alleges that his defence

was obstructed, since the most damaging evidence against him was only introduced during the trial, and not included in the documents which were available beforehand. According to the author, this evidence consisted of uncorroborated and unsigned statements made by his co-defendants during their detention in solitary confinement, in the absence of an interpreter or lawyer.

3.5 The author further claims that his request to call his Spanish lawyer as a witness was refused, although she could have given evidence relating to his allegedly unlawful extradition. He further claims that he was not allowed to cross-examine his co-defendant Mette Westgård, whose evidence was used against him. He alleges that the statement she had made to the police was read out in court, but that she, although she was present, was not called to testify and could therefore not be cross-examined. The author submits that the defence for all six accused only called one witness. According to the author, these facts amount to a violation of article 14, paragraph 3(e), of the Covenant.

3.6 The author also claims to be a victim of a violation by Norway of article 14, paragraph 3(g), as he was allegedly told by the police that, if he refused to plead guilty, he would be sentenced to 21 years' imprisonment.

3.7 Finally, the author submits that under Norwegian law he could not appeal his conviction, but only his sentence to the Supreme Court. He claims that this constitutes a violation of article 14, paragraphs 5 and 6, of the Covenant.

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

4.1 The State party, in its submission under rule 91, provides information about the relevant domestic law and argues that the communication is inadmissible.

4.2 As regards the author's claim under article 14, paragraph 5, the State party observes that it made a reservation in relation to this paragraph when ratifying the Covenant, and argues that this part of the communication should therefore be declared inadmissible.

4.3 In respect of the author's claim under article 14, paragraph 2, that the jury was prejudiced against him, the State party argues that the author or his counsel could have brought objections concerning the impartiality of the jury members to the court's attention, and could have demanded their exclusion. As regards the author's allegations that the police leaked confidential information to the media, the State party argues that these allegations were never brought to the attention of the competent police authorities for investigation and possible punishment of the responsible officers. The State party therefore claims that this part of the communication is inadmissible on the ground of non-exhaustion of domestic remedies.

4.4 As regards the author's claim under article 14, paragraph 3(a), that he was wrongly informed about the charges against him when being arrested in Spain, the State party submits that it provided the proper information to the Spanish authorities when requesting the author's extradition in October 1986, pursuant to the European Convention on Extradition. It states that

it cannot be held responsible for mistakes made by those authorities in the communication of this information. Moreover, the State party argues that the documents of the case do not support the author's claim.

4.5 In respect of the author's other allegation under article 14, paragraph 3(a), that he was not informed of the charges against him in a language that he could understand, the State party submits that the author was immediately informed of the charges against him upon his arrival in Norway on 21 August 1987; an interpreter was present on that occasion. The next day, during the court hearing on custody, he was once more informed about the charges, also in the presence of an interpreter. The State party therefore argues that this part of the communication is inadmissible because the facts do not raise any issue under the Covenant.

4.6 As regards the author's claim that he did not have enough time and facilities for the preparation of his defence, the State party notes that neither the author nor his counsel ever requested a postponement of the trial. It therefore argues that in this respect domestic remedies have not been exhausted.

4.7 With regard to the author's claim that the refusal of the Prosecution to have all documents pertaining to his case translated constitutes a violation of article 14, paragraph 3(b), the State party submits that all documents in the case were available to the defence as from 27 August 1987. The State party argues that the Covenant does not provide an absolute right to have all documents in a criminal case translated. It submits that the most relevant documents, such as the indictment, the court records and important statements made by the accused to the police, were indeed translated, that all documents were available to counsel, and that counsel had the opportunity to use the services of an interpreter in his consultations with the defendant. It further submits that the author's counsel was informed by the Prosecution that he could demand the translation of specific documents which he deemed important, but that he failed to do this. According to the State party, this part of the communication is therefore likewise inadmissible on the ground of incompatibility with the Covenant and non-exhaustion of domestic remedies.

4.8 As regards the author's allegation that he was prevented from cross-examining one of his co-defendants, whose statement was read out in court, the State party observes that the Covenant does not prohibit the reading out of police reports in court. Moreover, it submits that article 14, paragraph 3(e), applies to the right of cross-examination of witnesses who are not themselves defendants in a case. In this context, the State party points out that under Norwegian law a defendant does not have to give any affirmation and is not criminally liable for giving a false statement. The State party further observes that, upon request from counsel, the co-defendant in question was not asked to continue her testimony, following the advice of a medical doctor. The State party argues that the reading of the evidence did not violate the author's right to a fair trial, and that this part of the communication therefore does not raise any issue under the Covenant.

4.9 In respect of the author's claim that he was not allowed to call his Spanish lawyer as a defence witness, the State party points out that the author wanted her to submit evidence about his extradition, which would have been irrelevant to the case on trial. It therefore argues

that this part of the communication is inadmissible as being incompatible with the Covenant. Furthermore, the State party argues that the author could have appealed the refusal to call a witness to the Supreme Court, which he did not do. This part of the communication should therefore also be declared inadmissible on the ground of non-exhaustion of domestic remedies.

4.10 In this connection, the State party submits that, on 19 October 1987, the author declared that he had no confidence in the court, that he no longer wanted to be represented and that he did not want any witness called.

4.11 As regards the author's claim under article 14, paragraph 3(g), the State party argues that this claim is not substantiated and should therefore be declared inadmissible. Moreover, domestic remedies have not been exhausted in this respect.

4.12 As regards the author's claim under article 14, paragraph 6, the State party argues that this provision does not apply to the facts of the present case, and that this part of the communication should therefore be declared inadmissible.

5.1 In his comments on the State party's submission, counsel argues that, as regards the partiality of the jury, there is no real possibility in Norway to change the composition of the jury in a criminal trial before the High Court. He submits that normally not more than two jury members can be challenged by the defence. He moreover argues that pursuant to article 14, paragraph 2, the presumptio innocentiae should be respected not only by judges, but also by other public authorities. Counsel argues that in this case the police clearly broke this obligation by leaking information to the press, and submits that in doing so the police did not break domestic law, since the police regulations are very liberal in this respect. Therefore, no effective domestic remedies are said to exist.

5.2 With regard to the claim under article 14, paragraph 3(b), counsel argues that no request for the postponement of the trial had been made because of the length of time the accused had already spent in custody. He further claims that the accused raised the issue of the translation of documents in court, but that the judges paid no attention to it. It was further raised during appeal, but the Supreme Court found no violation of article 6 of the European Convention on Human Rights. Counsel therefore argues that domestic remedies have been exhausted.

5.3 As regards the claim under article 14, paragraph 3(e), counsel concedes that there are differences between statements from witnesses and those from defendants. He points out, however, that the statement of Mette Westgård was particularly damaging for the author and was allegedly made under duress, while she was held in solitary confinement. He therefore argues that an opportunity to cross-examine her evidence should have been given. As regards the request to call the author's Spanish lawyer as witness for the defence, it is stated that her testimony could have clarified the circumstances of the author's extradition.

The Committee's admissibility decision:

6.1 During its 48th session, the Committee considered the admissibility of the communication. The Committee found that it was precluded from considering the author's claim under article 14, paragraph 5, of the Covenant, because of the reservation which the State party had made upon ratification of the Covenant with regard to this provision. It further considered that the author had failed to exhaust domestic remedies with respect to his claims under article 14, paragraphs 2 and 3(d), as well as with regard to his claim that he was not allowed to call a certain witness. The Committee also considered that the author had failed to substantiate, for purposes of admissibility, his claims under article 14, paragraphs 3(a) and 3(g), as well as his claim that the failure to allow the cross-examination of his co-defendant infringed the equality of arms between the prosecution and the defence in the examination of witnesses, as protected by article 14, paragraph 3(e). The Committee considered that the author's claim under article 14, paragraph 6, was incompatible with the provisions of the Covenant.

6.2 As regards the author's claim that the State party's failure to provide translation of all the documents pertaining to his case hindered his defence, the Committee noted that the author had raised this issue before the Supreme Court and that accordingly domestic remedies had been exhausted for purposes of article 5, paragraph 2(b), of the Optional Protocol. The Committee further noted that the author was defended by a legal aid lawyer and apparently had no independent means to have the documents translated. The Committee was of the opinion that the question whether a State party in those circumstances is under an obligation to provide translations of all documents in a criminal case, and whether the State party has a free choice in determining which documents to make available in translation, might raise issues under article 14, paragraphs 1 and 3(b). On 26 July 1993, therefore, the Committee declared the communication admissible in respect of this question.

The State party's submission on the merits and the author's comments thereon:

7.1 By submission of 28 February 1994, the State party explains that the defence counsel was chosen by the author himself and that, if he were unsatisfied with his performance or with his knowledge of the English language, he could have asked to have another counsel appointed. Moreover, an interpreter, remunerated by the State, was available for all meetings between counsel and his client. In this connection, the State party explains that under its legal aid system all accused persons *in* custody are entitled to a lawyer paid by the State, regardless of their financial situation. The accused may choose any lawyer who is willing to represent him.

7.2 As regards the more than 1,100 pages in the case file, the State party submits that these are documents which were collected and used by the police and prosecuting authorities for the purpose of investigation. "The document file in a criminal case is not given to the jurors. If any of the documents are to be presented during the trial as written evidence, they must be read aloud". According to the Court Record, 15 documents were presented by the prosecution in the case against the author, including five letters from the author, which were

originally in English. The State party submits that of the Norwegian documents presented by the prosecution during the trial, only four reports concerning confiscations and analyses were not available in English translation.

7.3 The State party notes that the Committee, in its decision on admissibility, concluded from the fact that a legal aid lawyer was appointed that the author apparently did not have independent means to have the documents in his case file translated. Referring to its explanation about the legal aid system (see paragraph 7.1), the State party argues that it is not clear whether or not the author did possess independent financial means and that it is not known to the Norwegian Government whether he could have afforded to hire a translator at his own expense.

7.4 As to the application of the Covenant to the facts of the instant case, the State party refers to its submission with regard to the admissibility of the communication and reiterates its argument that it would be beyond the purpose of article 14, paragraph 3(b), of the Covenant to require that all the documents in a criminal case should be translated. In this context, the State party refers to a decision by the European Court of Human Rights[1]. It argues that the purpose of article 14 is to ensure that the accused has a real opportunity to defend himself and that the whole situation of the accused must be taken into account when establishing to what extent the translation of all case documents is necessary. In this context, the State party reiterates that author's counsel had access to all case documents and that interpreters were available at all times.

7.5 The State party further questions, in view of the fact that translation of all documents in a case file would be extremely time-consuming, the compatibility of such translation with the requirement of article 14, paragraph 3(c), of the Covenant, that an accused be tried without undue delay. Such delay would be aggravated by the fact that the accused would remain in custody for the length of that period, since most cases involving defendants who do not understand Norwegian relate to serious crimes, like drug trafficking, and a danger exists that they would leave the country when released pending trial.

7.6 The Prosecution Instructions provide that "case documents shall be translated at public expense to the extent seen as necessary in order to safeguard the accused's interest in the case." the Rules were drafted in 1984, after consultation with the Bar Association, which was of the opinion that it was unnecessary to have all documents in a case file translated. The State party further points out that translation of all documents in a case would lead to great financial and practical problems and that therefore careful consideration must be given to whether such translation is really necessary for purposes of fair trial.

7.7 As to the particular circumstances of the author's case, the State party argues that the failure to provide translation of all documents in the case did not violate the author's right to fair trial. In this connection, the State party recalls that the author's defence counsel had access to all documents in the author's file and that an interpreter could be used at all meetings between author and counsel. It further recalls that many of the case documents were

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[1] Judgment of 19 December 1989, Kamasinski v. Austria.

irrelevant to the author's defence and of little relevance to the court trial. It furthermore argues that a translation of all documents would considerably have prolonged the pre-trial detention of the author and his co-defendants.

7.8 In the author's case, written translations were provided of the indictment, the court records and of important statements made by his co-defendants during the investigation. Moreover, some of the documents were originally written in English. The State party submits that, if the author or his counsel thought it necessary to have more documents translated, they should have specified the documents and requested their translation. Defence counsel was informed of this possibility by the prosecutors in the case. If such a request would have been rejected, counsel could have appealed to the higher prosecuting authority and finally to Court. According to the case documents, neither the author nor his defence counsel ever specified the documents of which they sought translation.

7.9 In a further submission, dated 15 March 1994, the State party furnishes a copy of a decision of the European Commission of Human Rights, dated 12 March 1990, in respect of an application of the author's brother. The Commission found that Mr. Harward's complaint that the failure to provide written translations of all documents in his case file was in violation of article 6, paragraph 3(b), of the European Convention for the Protection of Human Rights and Fundamental Freedoms[2] was manifestly ill-founded. The Commission considered that a system whereby the right to inspect the file is restricted to the defendant's lawyer is not in itself incompatible with article 6, paragraph 3, of the Convention.

8.1 In his comments on the State party's submission, author's counsel recalls the serious nature of the charges against the author and of the sentences he was facing. He emphasizes that the police investigation was extensive, covering several countries and lasting for more than a year. During that time the author was kept imprisoned in Spain, awaiting extradition without being informed in detail about the charges against him. Only after he had arrived in Norway and counsel had been appointed for him, at the end of August 1987, he learned that the case file against him consisted of more than 1,100 pages of documents. He did not ask for an adjournment of the trial, however, because of the length of time he and his co-defendants had already spent in detention.

8.2 Counsel argues that it is irrelevant that the case file was not given to the jurors and that only some of the documents were used in the trial. He emphasizes that all the 1,100 pages were available to and used by the police and the prosecution in the preparation of the trial, whereas they were not available to the author in translation. Moreover, counsel points out that a letter written by the author's counsel to the Court shows that, although he had access to the whole file, on 12 October 1987, the day the trial started, he still had not received copies of all documents he had asked for.

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[2] Article 6, paragraph 3(b), of the European Convention reads as follows:
"Everyone charged with a criminal offence has the following minimum rights:
[...]
(b) to have adequate time and facilities for the preparation of his defence".

8.3 Counsel further argues that counsel of the author's brothers, who faced almost identical charges, had tried for a long time, before the author arrived in Norway, to obtain translations of the documents they needed for the defence. Defence counsel for the author, after he had been assigned, worked closely with defence counsel for the brothers. Counsel for the brothers had demanded, but not obtained, a complete translation of all the documents, on the grounds that it "would be absolutely impossible to give the client a complete picture of this case with its mass of details, to give him the possibility to, if desired, control alibies i.a. without the client having the necessary time to go through the case documents". Counsel argues that the documents that were translated, such as the statements given to the police in Norway, were insufficient; he mentions that, among other, statements given to the police in Sweden, statements given by witnesses and the police reports, although used as evidence, were not provided in written translation. It is argued that by failing to provide the author with a translation of all documents, the State party placed the author in a worse position than a Norwegian facing a similar charge, who can have access to the documents in his case in a language he understands.

8.4 In this context, counsel points out that defence counsel for the author's brother considered withdrawing from the case, since he considered that the failure to obtain the documents in translation seriously hindered him in preparing the defence. In the end, he did not step down, since his client, who had been in custody for more than one year and a half, did not want to prolong the trial proceedings. It is submitted that both the author and his brother refused to give a statement in court, because they considered that they had not had the opportunity to repudiate the charges against them.

8.5 As regards the decision of the European Commission in the case of the author's brother, counsel notes that the Commission found that the brother, who had been in detention in Norway for over a year, had, through his defence counsel, every opportunity to familiarise himself with the documents in the case file. He argues that the author's case differs from his brother's on this point, since the author could only start preparing his defence after his arrival in Norway in August 1987, whereas the trial against him started on 12 October 1987.

Issues and proceedings before the Committee:

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

9.2 The Committee notes that the facts, to which the parties agree, show that Mr. Harward was assigned a lawyer on 28 August 1987 and that the trial against him started on 12 October 1987, that the indictment, the statements of co-defendants to the Norwegian police and the court records were provided in written translation to the author, and that the author's defence counsel had access to the entire case file. It is also undisputed that an interpreter was available to the defence for all meetings between counsel and Mr. Harward and that simultaneous interpretation was provided during the court hearings.

9.3 The Committee further notes that the State party has argued that not all documents in the case file were of relevance to the defence and that only fifteen documents were presented by the prosecution in Court and therefore available to the jurors, out of which only four police reports were not available in English or in English translation. The Committee has also taken note of counsel's argument that all documents in the case file, although not presented during the trial, were of relevance to the defence, since they had been used by the police and the prosecution in their preparation of the trial.

9.4 Article 14 of the Covenant protects the right to a fair trial. An essential element of this right is that an accused must have adequate time and facilities to prepare his defence, as is reflected in paragraph 3(b) of article 14. Article 14, however, does not contain an explicit right of an accused to have direct access to all documents used in the preparation of the trial against him in a language he can understand. The question before the Committee is whether, in the specific circumstances of the author's case, the failure of the State party to provide written translations of all the documents used in the preparation of the trial has violated Mr. Harward's right to a fair trial, more specifically his right under article 14, paragraph 3(b), to have adequate facilities to prepare his defence.

9.5 In the opinion of the Committee, it is important for the guarantee of fair trial that the defence has the opportunity to familiarize itself with the documentary evidence against an accused. However, this does not entail that an accused who does not understand the language used in court, has the right to be furnished with translations of all relevant documents in a criminal investigation, provided that the relevant documents are made available to his counsel. The Committee notes that Mr. Harward was represented by a Norwegian lawyer of his choice, who had access to the entire file, and that the lawyer had the assistance of an interpreter in his meetings with Mr. Harward. Defence counsel therefore had opportunity to familiarize himself with the file and, if he thought it necessary, to read out Norwegian documents to Mr. Harward during their meetings, so that Mr. Harward could take note of its contents through interpretation. If counsel would have deemed the time available to prepare the defence (just over six weeks) inadequate to familiarize himself with the entire file, he could have requested a postponement of the trial, which he did not do. The Committee concludes that, in the particular circumstances of the case, Mr. Harward's right to a fair trial, more specifically his right to have adequate facilities to prepare his defence, was not violated.

9.6 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 do not reveal a violation of any of the articles of the Covenant.

[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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