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HUMAN RIGHTS COMMITTEE
Forty-third session

DECISIONS

Communication No. 348/1989

Submitted by : G.B.

Alleged victim : The author

State party : France

Date of communication : 9 January 1989 (initial submission)

Documentation references : Prior decisions - Special Rapporteur
rule 91 decision,
transmitted to State
party on 11 August
1989
document
(not issued in
form)

Date of present decision : 1 November 1991

Decision on admissibility

[Annex]

*/ All persons handling this document are requested to respect and observe its confidential nature.

DEC348.43

ANNEX */

Decision of the Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political Rights - Forty-third session -

concerning

Communication No. 348/1989

Submitted by : G.B. (name deleted)

Alleged victim : The author

State party : France

Date of communication : 9 January 1989 (initial submission)

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

Meeting on 1 November 1991,

Adopts the following:

Decision on admissibility **/

1. The author of the communication, dated 9 January 1989, is G.B., a French citizen born in 1964 and a resident of Rennes, France. She claims to be a victim of a violation by France of articles 2, paragraphs 1 to 3, 19, 25, 26 and 27 of the International Covenant on Civil and Political Rights.

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

**/ An individual opinion by Mrs. Rosalyn Higgins is appended to the present document.

The facts as submitted by the author :

2.1 The author was arrested during the night of 7 to 8 August 1987 on charges of having defaced a number of roadsigns in the Département d'Ile-et-Vilaine. Her action, she states, was part of a campaign led by the movement "Stourm ar Brezhoneg" (Fight for the Breton Language), whose aim is the posting of bilingual roadsigns, in French and Breton, throughout the Bretagne.

2.2 In December 1987, the Tribunal de Grande Instance of Rennes fined the author 5,000 French Francs and sentenced her to a term of four months of imprisonment (suspended); at the same time, she and the two co-defendants, H.B. ¹ and S.G. ², were sentenced to pay 53,000 French Francs, with interest, for the damage caused. G.B. states that the tribunal refused to accept the testimony of the defendants in Breton. On 4 July 1988, the Court of Appeal of Rennes confirmed the judgment of the court of first instance.

2.3 The author indicates that none of the above sentences has been the subject of an amnesty, as has been the case with respect to other, similar offences. The suspended prison sentence is, in her opinion, merely intended to prevent her from entering the civil service.

The complaint :

¹ Communication No. 327/1988, Views adopted at the 41st session, making a finding of no violation.

² Communication No. 347/1988, also declared inadmissible on 1 November 1991.

3. It is alleged that the facts described above constitute violations by France of articles 2, paragraphs 1 to 3, 19, 25, 26 and 27 of the International Covenant on Civil and Political Rights.

The State party's observations :

4.1 The State party contends that the communication is inadmissible on a number of grounds. As to the requirement of exhaustion of domestic remedies, it notes that the author failed to appeal the judgment of 4 July 1988 of the Court of Appeal of Rennes to the Court of Cassation. The State party further specifies that the author did not, at any stage in the judicial proceedings, request to be heard in Breton, and that she expressed herself without problems in French.

4.2 As to the alleged violation of article 2 of the Covenant, the State party notes that this provision cannot be violated directly and in isolation. A violation of article 2 can only be admitted to the extent that other rights protected under the Covenant have been violated (paragraph 1) or if necessary steps to give effects to rights protected under the Covenant have not been taken. A violation of article 2 can only be the corollary of another violation of a Covenant right. The State party adds that the author did not precisely spell out her allegations and that, in any event, she did not avail herself of available domestic remedies.

4.3 The State party rejects the claim of a violation of the author's rights under article 19, paragraph 2, as an abuse of the right of submission. Apart from having failed to properly substantiate her allegation, the State party notes that G.B. was not prevented, at any stage of the proceedings, from freely expressing herself. Defacing roadsigns cannot, by any reckoning, be construed as a manifestation of the freedom of expression, within the meaning of article 19, paragraph 2.

4.4 As to the alleged violations of articles 25 and 26, the State party contends that the author has failed to substantiate, for purposes of admissibility, how she considers her rights under these provisions to have been violated. While a criminal conviction may bar access to public office, G.B. at no time indicated that she intended to seek access to public office; nor did she file a request, pursuant to article 55, paragraph 1, of

the Penal Code, for non-inscription of her criminal conviction in her files (casier judiciaire).

4.5 Finally, the State party recalls that upon ratification of the Covenant, the French Government entered the following declaration in respect of article 27: "In the light of article 2 of the Constitution of the French Republic, the French Government declares that article 27 is not applicable so far as the Republic is concerned."

Issues and proceedings before the Committee :

5.1 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.

5.2 The Committee has considered the material placed before it by the parties. As to the claims under articles 19, paragraph 2, 25 and 26 of the Covenant, it considers that G.B. has failed to substantiate, for purposes of admissibility, how she was denied her freedom of expression (article 19, paragraph 2) and access to public service (article 25), or how she was discriminated against on the ground of her language (article 26). The Committee observes that the defacing of roadsigns does not raise any issues under article 19 and notes that the material before it shows that G.B. was perfectly capable of expressing herself in French, a language she did not claim not to understand, and freely chose to do so; there is no evidence that the sentence pronounced by the Tribunal de Grande Instance of Rennes was intended to prevent her from becoming a civil servant.

5.3 As to the claim of a violation of article 27, the Committee reiterates that France's "declaration" made in respect of this provision is tantamount to a reservation and therefore precludes the Committee from considering complaints against France alleging violations of article 27 of the Covenant. ³

³ Communication No. 220/1987 (T.K. v. France), declared inadmissible on 8 November 1989, paragraph 8.6 and Appendices I

5.4 The author has also invoked article 2 of the Covenant. The Committee recalls that article 2 is a general undertaking by States parties and cannot be invoked, in isolation, by individuals under the Optional Protocol (communication No. 268/1987, M.G.B. and S.P. v. Trinidad and Tobago, declared inadmissible on 3 November 1989, paragraph 6.2). Since the author's claims relating to articles 19, 25 and 26 of the Covenant are inadmissible pursuant to article 2 of the Optional Protocol, it follows that she cannot invoke a violation of article 2 of the Covenant.

6. The Human Rights Committee therefore decides:

- (a) that the communication is inadmissible under article 2 of the Optional Protocol;
- (b) that this decision shall be communicated to the State party and the author of the communication.

[Done in English, French, Russian and Spanish, the English text being the original version].

APPENDIX

Individual opinion of Mrs. Rosalyn Higgins
pursuant to rule 92, paragraph 3,
of the Committee's rules of procedure
concerning communication No. 348/1989 (G.B. v. France)

Taking the view already expressed in respect of communications Nos. 220/1987 (T.K. v. France) and 222/1987 (H.K. v. France)⁴ that the French "declaration" on article 27 is not properly to be interpreted as a reservation, I am unable to agree with the provisions of paragraph 5.3 of the decision, that the Committee

and II (Annual Report 1990, A/45/40, Vol. II, Annex X.A).

⁴ See Annual Report of the Human Rights Committee, Forty-fifth session (A/45/40), Vol. II, Annex X.A., Appendix II; Annex X.B., Appendix II.

CCPR/C/43/D/348/1989

Annex

English

Page

is precluded from considering complaints against France alleging a violation of article 27 of the Covenant.

However, the facts of the case reveal to me no substantiation of a claim under article 27, and I therefore also reach the conclusion that there are no grounds for admissibility.

Rosalyn Higgins

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