

HUMAN RIGHTS COMMITTEE

C. L. D. v. France

Communication No. 228/1987

18 July 1988

ADMISSIBILITY

Submitted by: C. L. D. [name deleted]

Alleged victim: The author

State party concerned: France

Date of communication: 16 May 1987 (date of initial letter)

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

Meeting on 18 July 1988,

Adopts the following:

Decision on admissibility*

1. The author of the communication (initial letter dated 16 May 1987 and further letters dated 23 June, 21 July, 2 and 23 August, 30 October and 2 December 1987, 18 January, 10 February, 8 and 18 April, 4 and 10 May, 6, 8, 27 and 30 June 1988) is C. L. D., a French citizen born in 1956 at Lannejen, France. He claims to be the victim of violations by the Government of France of article 2, paragraphs 1-3, article 19, paragraph 2, articles 26 and 27 of the International Covenant on Civil and Political Rights.

2.1 In his initial submission, the author states that the French Postal Administration (PTT) has refused to issue him postal cheques printed in the Breton language, which he asserts is his mother tongue. Many persons in his district of residence are said to be proficient in Breton and numerous employees of the local postal administration process letters addressed in Breton. He observes in this connection that other countries have adjusted to multiple language correspondence. In a subsequent letter of 21 July 1987, the author claims that the refusal by the French fiscal authorities to acknowledge the text of his address written in

Breton also violates the above-mentioned articles of the Covenant. He further alleges that the fact that the fiscal authorities have refused to take into consideration information provided by him in Breton has resulted in his being asked to pay taxes which do not take into account tax-deductible professional expenses.

2.2 With respect to the requirement of exhaustion of domestic remedies, the author states that he has sought the annulment of a decision of the Regional Chief of the Postal Administration in Rennes, dated 27 August 1985, rejecting his request to have his postal cheques printed in Breton. The author states that on 28 October 1985 he filed an action against the PTT with the Administrative Tribunal Of Rennes with a view to having the above decision reversed. With respect to the second complaint, directed against the Ministry of the Economy and Finance, he states that he filed a complaint with the Administrative Tribunal of Rennes on 21 July 1986, requesting the annulment of what he refers to as the "implicit rejection of his complaint by the fiscal authorities". A further complaint submitted to the same tribunal asking for annulment of a request by the Regional Head Office of Fiscal Services (Finistere) to submit an account of his professional expenses for 1984 in French rather than in Breton was rejected by judgement of 13 May 1987.

3. By a decision dated 1 July 1987, addressed to the author only, the Working Group of the Human Rights Committee requested further clarification of the steps taken by the author to exhaust domestic remedies after his petition of 28 October 1985 to the Administrative Tribunal.

4.1 By a letter dated 30 October 1987, the author replied to the questions posed by the Working Group. He states that he has taken no steps to exhaust domestic remedies after petitioning the Administrative Tribunal on 28 October 1985. With respect to his action against the Ministry of the Economy and Finance (address in Breton and statements of professional expenditures), the author claims that there have been no new developments since his earlier submissions to the Committee.

4.2 Under cover of a letter dated 6 June 1988, the author forwards the texts of two judgements rendered by the Administrative Tribunal on 26 May 1988, dismissing his actions against the PTT and against the Ministry of the Economy and Finance. The Tribunal endorsed the conclusions of the representatives of the PTT and of the Ministry of the Economy and Finance, copies of which the author forwarded under cover of a letter dated 27 June 1988. The author argues that he does not intend to appeal against these judgements to the Conseil d'Etat, since this would cause "considerable delays" and because he is convinced that the result would, in any case, not be favourable to him.

5.1 Before considering any claims contained in a communication, the Human Rights Committee must, in accordance with rule 87 of its provisional rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

5.2 The Committee has ascertained, as it is required to do under article 5, paragraph 2 (a), of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

5.3 With respect to the requirement of exhaustion of domestic remedies under article 5, paragraph 2 (b), of the Optional Protocol, the Committee notes that the author does not intend to appeal against the judgements of the Administrative Tribunal of Rennes of 26 May 1988 to the Conseil d'Etat, given the delays that an appeal would entail and because he believes that such an appeal would be dismissed. The Committee finds, however, that, in the particular circumstances disclosed by the communication, the author's contentions did not absolve him from the obligation to pursue remedies available to him. It concludes that the further pursuit of the author's case could not be deemed a priori futile and observes that mere doubts about the success of a remedy do not render it ineffective and cannot be admitted as a justification for non-compliance. Unable to find that the application of domestic remedies in this case has been unreasonably prolonged, the Committee concludes that the requirement of article 5, paragraph 2 (b), of the Optional Protocol has not been met.

6. The Human Rights Committee therefore decides:

(a) That the communication is inadmissible;

(b) That this decision shall be communicated to the author and, for information, to the State party.

* The text of an individual opinion submitted by Mr. Vojin Dimitrijevic, Mrs. Rosalyn Higgins and Messrs. Andreas Mavrommatis, Fausto Pocar and Bertil Wennergren is reproduced in appendix I to section E of the present annex. The text of an individual opinion submitted by Mr. Birame Ndiaye is reproduced in appendix II.

Appendix

Individual opinion: submitted by Mr. Dimitrijevic, Mrs. Higgins and Messrs. Mavrommatis, Pocar and Wennergren concerning the admissibility of communication No. 228/1987, C. L. D. v. France

1. We agree with the decision of the Committee that the communication is inadmissible.

2. However, in our opinion, the finding of inadmissibility should be based on article 3 of the Optional Protocol, rather than article 5, paragraph 2 (b), thereof. There is an order of priority in those articles, in the sense that the initial task of the Committee must necessarily be to ascertain whether a communication appertains to a claim which, if proved as to its alleged facts, could entail a violation of the Covenant. If it could not entail a violation, because ratione materiae it is not within the Covenant, the communication will be inadmissible under article 3 of the Optional Protocol.

3. Even if all the domestic remedies had been exhausted in respect of such a claim, it would

still be beyond the competence of the Committee ratione materiae to proceed. Thus, although in this preliminary phase of its work the Committee is not, of course, examining matters relating to the merits, it has to examine the claim to see whether it is incompatible with the Covenant" that is, whether or not it potentially relates to a right within the scope of the Covenant.

4. In the present case the claims of the author reveal no facts which, even if proved, could occasion a violation of the Covenant. None of the articles cited by the author, including article 27, even potentially provide the entitlement to receive postal cheques or to have acknowledgement of one's address in one's mother tongue. In our view, this communication is inadmissible under article 3 of the Optional Protocol.

5. We therefore find it inappropriate to proceed to an examination of the local remedies. Nor is it necessary to examine whether the declaration of the Government of France made upon accession to the Covenant is to be interpreted as a reservation or as a declaration simpliciter. (The relevant clause states that "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".) Declarations do not have the same legal consequences as reservations. In any case where jurisdiction turned on the effect of a declaration, it would be necessary to see whether the statement of the country concerned was in fact, regardless of its nomenclature, a reservation as to the Committee's jurisdiction or a declaration of interpretation by the State party. This is not such a case and no view is offered here as to the legal effect of the French declaration regarding article 27.

Vojin Dimitrijevic

Rosalyn Higgins

Andreas Mavrommatis

Fausto Pocar

Bertil Wennergren

Individual opinion: submitted by Mr. Birame Ndiaye concerning the admissibility of communication No. 228/1987, C. L. D. v. France

1. A decision on the admissibility of a communication submitted to the Committee under the Optional Protocol to the International Covenant on Civil and Political Rights presupposes a prima facie examination of its content, the competence of the Committee being limited exclusively to the rights specified in the Covenant. If the Committee ventured to consider a complaint based on the alleged violation of a right not guaranteed by the Covenant, it would be acting ultra vires. Given that the competence of the Committee is limited ratione materiae, the order to be followed in examining the criteria for admissibility is not left purely to its discretion; it must correspond to the progression established by articles 1, 2 and 3 and

reflected in the Committee's rules of procedure (rule 90). The Committee should not examine the question of the exhaustion of domestic remedies without first considering the questions of the existence of a right guaranteed by the Covenant and a treaty obligation of the State which is the object of the complaint. In the present case, however, the Committee proceeded differently; it did not begin by asking whether the communication concerned a right guaranteed by the Covenant before going on to see whether or not France has an obligation to respect the provision invoked. Wrongly, the Committee based itself forthwith on the non-exhaustion of domestic remedies.

2. By proceeding in that manner, the Committee was unable to see that the only right which seemed to be involved was that provided for in article 27. However, article 27 has a precise content. It stipulates that persons belonging to "ethnic, religious or linguistic minorities ... shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language". This article certainly does not demand of States parties that they require their postal administrations to issue postal cheques in a language other than the official language, nor does it stipulate that the authorities should accept information provided in another language. The Covenant is indifferent to the centralized or decentralized character of States, to the existence or non-existence of an official language. By apparently overlooking that point, the Committee arrived at a decision which is all the more open to criticism in that the question of national languages has enormous political significance for third world States, particularly in Africa. But whatever its legitimacy, the problem of such languages cannot be solved by acts of the Committee and in any case not beyond the content of article 27.

3. The Committee's decision in the C. L. D. v. France case is also or more especially to be regretted in that it has in no way settled the question of whether or not France is a party to article 27. The separability of consent to be bound by an international convention is the rule in international law and its only limits are the rules stipulated in article 19 of the 1969 Vienna Convention on the Law of Treaties:

"A State may, when signing, ratifying, accepting, approving or acceding to a treaty, formulate a reservation unless:

"(a) The reservation is prohibited by the treaty;

"(b) The treaty provides that only specified reservations, which do not include the reservation in question, may be made; or

"(c) In cases not falling under subparagraphs (a) and (b), the reservation is incompatible with the object and purpose of the treaty."

4. Upon accession to the International Covenant on Civil and Political Rights, the Government of the French Republic declared that: "in the light of article 2 of the Constitution of the French Republic ... article 27 is not applicable so far as the Republic is concerned". Clearly France, in basing itself on a rule of its internal law of fundamental importance (Vienna Convention, 1969, art. 46), has excluded article 27 from its acceptance.

For France, the Covenant has 26 articles and no State party has challenged that by objecting to the reservation. Accordingly, it is incomprehensible that the Committee, which of course has no power to object to the reservations of States parties, should have acted as though France was a party to article 27. For me, the communication of C. L. D. is inadmissible in the first instance because France is not a party to article 27 and subsequently because the content of the article is not what the author claims. It was inappropriate to examine the criterion of exhaustion of domestic remedies, the Committee being incompetent ratione materiae.

5. Unfounded in terms of the Covenant and the Protocol thereto, this decision is an inducement to internal and external proceedings which is particularly unjustifiable in that they will achieve nothing in the Committee.

Birame Ndiaye