HUMAN RIGHTS COMMITTEE

Barzhig v. France

Communication No. 327/1988

11 April 1991

CCPR/C/41/D/327/1988 *

VIEWS

Submitted by: Hervé Barzhig

Alleged victim: The author

State party concerned: France

Date of communication: 9 September 1988 (date of initial letter)

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

Meeting on 11 April 1991,

Having concluded its consideration of communication No. 327/1988, submitted to the Committee by Hervé Barzhig 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 by the State party,

Adopts the following:

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

1. The authors of the communication (initial submission dated 9 September 1988 and subsequent correspondence) is Hervé Barzhig, a French citizen born in 1961 and a resident of Rennes, Bretagne, France. He claims to be the victim of a violation by France of articles 2, 14, 19, 26 and 27 of the International Covenant on Civil and Political Rights.

Facts as submitted by the author

2.1 On 7 January 1988, the author appeared before the Tribunal Correctionnel of Rennes on charges of having defaced 21 road signs on 7 August 1987. He requested permission of the court to express himself in Breton, which he states is his mother tongue, and asked for an interpreter. The court rejected the request and referred consideration of the merits to a later date.

2.2 The author appealed the decision not to make an interpreter available to him. By decision of 20 January 1988, the President of the Criminal Appeals Chamber of the Tribunal Correctionnel of Rennes dismissed his appeal. On 3 March 1988, the case was considered on its merits; the author was heard in French. He was given a suspended sentence of four months' imprisonment and fined 5,000 French francs. The Department of Criminal Prosecutions appealed the decision.

2.3 On 4 July 1988, the Court of Appeal of Rennes confirmed the judgement of the court of first instance. On appeal, the author was heard in French.

The complaint

3.1 The author submits that the State party's refusal to respect the rights of Bretons to express themselves in their mother tongue constitutes a violation of article 2 of the Covenant as well as language-based discrimination within the meaning of article 26, because French-mother-tongue citizens enjoy the right to express themselves in their language, whereas Bretons are denied this right simply because they are deemed to be proficient in French. This, in the author's opinion, reflects a long-standing policy, on the State party's part, of suppressing or eliminating the regional languages spoken in France.

3.2 With reference to the French declaration entered in respect of article 27, the author contends that the State party's refusal to recognize the linguistic entity of the Breton minority and to apply article 27 of the Covenant violates the Universal Declaration of Human Rights. In this context, he invokes a resolution adopted by the European Parliament on 30 October 1987, addressing the need to protect European regional and minority languages and cultures.

3.3 Although the author does not specifically invoke article 14 of the Covenant, it is clear from his submissions that he considers the refusal of the services of an interpreter to be a violation of article 14, paragraph 3 (f), of the Covenant. He affirms that as a matter of principle, French courts refuse to provide the services of interpreters to accused persons of Breton mother tongue on the ground that they are deemed to be proficient in French.

3.4 As to the requirement of exhaustion of domestic remedies, the author submits that there are no effective remedies available after the decision of the Court of Appeal of Rennes of 4 July 1988, as the French judicial system refuses to recognize the use of the Breton language.

The State party's observations

4.1 As to admissibility, the State party contents that the communication is inadmissible on the grounds of non-exhaustion of domestic remedies, since the author did not lodge an appeal to the

Court of Appeal of Rennes against the decision of the President of the Criminal Appeals Chamber of the Tribunal Correctionnel of 20 January 1988 not to allow him to express himself in Breton.

4.2 Concerning the author's allegations under article 14, the State party argues that the notion of a "fair trial" (procès équitable) in article 14, paragraph 1, cannot be determined in abstracto but must be examined in the light of the circumstances of each case. As to the judicial proceedings in Mr. Barzhig's case, the State party submits that the author and the witnesses he called on his behalf were perfectly capable of expressing themselves in French.

4.3 The State party submits that criminal proceedings are an inappropriate venue for expressing demands linked to the promotion of the use of regional languages. The sole purpose of criminal proceedings is to establish the guilt or the innocence of the accused. In this respect, it is important to facilitate a direct dialogue between the judge and the accused. As the intervention of an interpreter encompasses the risk of the accused's statements being reproduced inexactly, resort to an interpreter should be reserved for strictly necessary cases, i.e., if the accused does not sufficiently understand or speak the court language.

4.4 In the light of these considerations, the President of the Criminal Appeals Chamber of the Tribunal Correctionnel of Rennes was justified in not applying section 407 of the French Code of Penal Procedure, as requested by the author. Pursuant to this provision, the President of Court may, ex officio, order the services of an interpreter. In the application of article 407, the judge exercises a considerable margin of discretion, based on a detailed analysis of the individual case and all the relevant documents. This has been confirmed by the Criminal Chamber of the Court of Cassation on several occasions [1].

4.5 The State party recapitulates that the author and the witnesses called on his behalf were francophone, a fact confirmed by the author himself in a submission to the Human Rights Committee dated 21 January 1989. Accordingly, the State party submits, there can be no question of a violation of article 14, paragraph 3 (f).

4.6 In the State party's opinion, the author interprets the notion of "freedom of expression" in article 19, paragraph 2, in the excessively broad and abusive manner; it adds that Mr. Barzhig's freedom of expression was in no way restricted during the proceedings against him, and that he could always present the defence arguments in French.

4.7 In respect of the alleged violation of article 26, the State party recalls that the prohibition of discrimination is enshrined in article 2 of the French Constitution. More particularly, article 407 of the Code of Penal Procedure, far from operating as language-based discrimination within the meaning of article 26, ensures the equality of treatment of the accused of witnesses before the criminal jurisdictions, since all are required to express themselves in French. In addition, the State party charges that the principle of venire contra factum proprium is applicable to the authors' behaviour: he did not want to express himself in French before the courts under the pretext that he had not master the language sufficiently, whereas his submissions to the Committee were made in "irreproachable" French.

4.8 As to the alleged violation of article 27 of the Covenant, the State party recalls that upon

accession to the Covenant, the French Government entered the following reservation: "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." In the State party's opinion, the idea of ethnic, religious or linguistic minority invoked by the author is irrelevant to his case, and is not opposable to the Government, which does not recognize the existence of 'minorities' in the Republic, defined, in article 2 of the Constitution, as 'indivisible, secular, democratic and social' (indivisible, laïque démocratique et sociale...)".

Issues and proceedings before the Committee

5.1 The Committee noted the State party's contention that the communication was inadmissible because the author had failed to appeal against the decision of the judge of the Tribunal Correctionnel of Rennes not to let him express himself in Breton. It observed that the author sought, in effect, the recognition of Breton as a vehicle of expression in court, and recalled that domestic remedies need not be exhausted if they objectively had no prospect of success: this is the case where, under applicable domestic laws, the claim would inevitably be dismissed, or where established jurisprudence of the highest domestic tribunals precluded a positive result. Taking into account relevant French legislation, as well as article 2 of the French Constitution, the Committee concluded that there were no effective remedies that the author might have pursued: de lege lata, the objective pursued by him could not be achieved by resorting to domestic remedies.

5.2 In respect to the author's claim of a violation of article 27 of the Covenant, the Committee noted the French "declaration" but did not address its scope, finding that the facts of the communications did not raise issues under this provision [2]. Nor did the Committee consider that the communication raised issues under article 19 of the Covenant.

5.3 On 28 July 1989, therefore, the Human Rights Committee declared the communication admissible in so far as it appeared to raise issues under articles 14 and 26 of the Covenant.

5.4 The Human Rights Committee has considered the communication in the light of all the material placed before it by the parties. It bases its views on the following considerations.

5.5 The Committee has noted the author' claim that the denial of an interpreter for himself and for a witness willing to testify on his behalf constituted a violation of article 14 of the Covenant. The Committee observes, as it has done on previous occasions, [3] that article 14 is concerned with procedural equality; it enshrines, inter alia, the principle of equality of arms in criminal proceedings. The provision for the use of one official court language by States parties to the Covenant does not violate article 14 of the Covenant. Nor does the requirement of a fair hearing obligate States parties to make available to a person whose mother tongue differs from the official court language, the services of an interpreter, if that person is capable of understanding and expressing himself or herself adequately in the official language. Only if the accused or the witnesses have difficulties in understanding, or expressing themselves in the court language, is it obligatory that the services of an interpreter be made available.

5.6 On the basis of the information before it, the Committee considers that the French courts complied with their obligations under article 14. The author has failed to show that he and the

witness called on his behalf were unable to understand and to express themselves adequately in French before the tribunal. In this context, the Committee notes that the notion of a fair trial in article 14, paragraph 1, juncto paragraph 3 (f), does not imply that the accused be afforded the opportunity to express himself or herself in the language that he or she normally speaks or speaks with a maximum of ease. If the court is certain, as it follows from the decision of the Tribunal Correctionnel of Rennes, that the accused is sufficiently proficient in the court language, it need not take into account whether it would be preferable for the accused to express himself in a language other than the court language.

5.7 French law does not, as such, give everyone a right to speak his or her own language in court. Those unable to understand or speak French are provided with the services of an interpreter, pursuant to article 407 of the Code of Penal Procedure. This service would have been available to the author had the facts required it; as the facts did not, he suffered no discrimination under article 26 on the ground of his language.

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 as submitted do not disclose a violation of any of the provisions of the Covenant.

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

Notes

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

1/ See, for example, the judgements of the Criminal Chamber of the Court of Cassation of 30 June 1981 in the Fayomi case.

2/ Following the decision on admissibility in this case, the Committee decided at its thirty-seventh session that France's declaration concerning article 27 has to be interpreted as a reservation (T. K. v. France, No. 220/1987, paras. 8.5 and 8.6; H.. K. v. France, No. 222/1987, paras. 7.5 and 7.6; cf. also separate opinion by one Committee member).

3/ See communication No. 273/1988 (B. d. B. v. The Netherlands), inadmissibility decision of 30 March 1989, paragraph 6.4.