HUMAN RIGHTS COMMITTEE

Doukoure v. France

Communication No. 756/1997

29 March 2000

CCPR/C/68/D/756/1997

ADMISSIBILITY

Submitted by: Mrs. Mathia Doukoure (represented by Mr. Jean-Francois Gondard, lawyer in Paris)

Alleged victims: The author and 48 others

State party: France

Date of communication: 17 May 1996 (initial submission)

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

Meeting on 29 March 2000

Adopts the following:

Decision on admissibility

1. The authors of the communication are Mrs. Mathia Doukouré and 48 other widows of/or retired members themselves of the French Army, nationals from Senegal and the Ivory-Coast. They claim to be victims of a violation of article 26 of the International Covenant on Civil and Political Rights by France, due to an alleged discrimination on grounds of nationality and national origin in the determination of their right to receive a pension or survivors' pension. They are represented by Jean-François Gondard, legal counsel.

The facts as submitted

2.1 It is stated that following the independence of former French colonial territories, and the change of nationality of their inhabitants, a law was adopted on 26 December 1959, stipulating in its article 71-I that from 1st January 1961, pensions paid to retired members of the French Army native of

these territories were to be converted into personal life annuities. In the case of Senegal, the acquired rights of retired soldiers were nevertheless respected after independence in 1960, until the Finance Act of December 1974 and subsequent legislation, which extended the implementation of the law of 31 December 1959 to Senegal as of 1 January 1975.

2.2 The consequences of the legal provisions were that the level of these annuities was "frozen" for the future, and that they could not be converted into reversion pensions to widows of the beneficiaries. On the other hand, pensions of retired soldiers native of France were not converted into personal life indemnities and therefore continue to be subject to revaluation and to be convertible into reversion pensions.

2.3 The authors argue that pensions to former members of the French Army are essentially granted as an acknowledgment of the services rendered by them to the French nation, and that therefore national origin or a change in nationality are completely irrelevant in this matter.

2.4 Concerning more particularly the situation of Mrs. Doukouré from Senegal, it is stated that her husband, as native of a French colony, was of French nationality and a member of the French Army until his death on 12 October 1950, that is before the independence of Senegal. The annuity she receives since that time has been nevertheless frozen at the level it had on 1st January 1975, unlike pensions paid to French widows of soldiers native of metropolitan France.

2.5 Her claims for an augmentation of her pension have been dismissed by the French Defense Ministry on 12 February 1992 and 22 June 1994, on the grounds that pensions paid to Senegalese nationals had been frozen by the law of 31 December 1959. She appealed against the last decision of the Defense Ministry before the Poitier administrative court. Before deciding on the merits of the case, the court asked the French Conseil d'Etat to advice it on the question of compatibility between article 71-I of the law of 26 December 1959 and article 26 of the International Covenant on Civil and Political Rights.

2.6 The Conseil d'Etat adopted its views on 15 April 1996, stating that article 26 of the International Covenant on Civil and Political Rights only refers to rights set forth in that Covenant and thus does not guarantee the principle of non discrimination in pension issues. It further stated that individuals designated in article 71-I of the law of 26 December 1959 cannot therefore invoke article 26 of the Covenant.

2.7 Following the views of the Conseil d'Etat, the Poitier administrative court dismissed Mrs Doukouré's complaint on 3 July 1996. On the same day, it also dismissed the complaint by Ms. Donzo Bangaly. Ms. Yero Diallo's claim had already been dismissed by the Poitier administrative court on 19 June 1996. On 17 July 1996, the Paris administrative court rejected the claim submitted by 43 other authors.

The complaint

3.1 The applicants refer to the Views of the Human Rights Committee adopted on 3 April 1989 regarding communication N 196/1985 submitted by Mr. Ibrahima Gueye and others on a comparable pension issue. They allege that the decision of the Conseil d'Etat is in full contradiction with the

views adopted by the Committee in this case and with the constant jurisprudence of the Committee in considering the right protected in article 26 of the Covenant as an independent one, not only related to the other civil and political rights protected in the Covenant. They complain that French authorities did not take any relevant action concerning the views adopted by the Committee, and that they are thus violating article 2, paragraph 3, of the Covenant.

3.2 The authors further allege that discriminations in their cases are not merely based on nationality, but on national origin. The authors state that France arbitrarily deprived its nationals native of overseas territories of their French nationality, in order not to have to pay them any military pension. They further state that people from African French territories have been struck off the French Army's registry, and integrated into armies of new African States without their consent, thus involuntary losing French nationality. They allege that the change of status of former overseas territories, decided by Act of 4 June 1960, violated the right of self-determination of peoples as protected by article 1 of the Covenant. They further allege that the purpose of current French law on nationality, and the determination of French nationality by the authorities, is still to avoid granting military pension to former members of the French Army native of overseas territories. They complain that this has led to serious humanitarian problems.

3.3 As to the admissibility of the case, it is stated that although the alleged discriminations have begun before 17 May 1984, date of entry into force of the Optional Protocol for France, they also remain after that date, thus constituting a continuous violation of the authors' rights. Reference is also made to article 5, paragraph 2 (b) of the Optional Protocol. The applicants state that twenty years of procedures and negotiations with the French Government concerning the issue at stake did not have any success, and that the exhaustion of all available remedies will cause considerable delays, and will not lead to a satisfactory solution to the problem. It is further asserted that following the opinion of the French Conseil d'Etat on 15 April 1996, any subsequent appeal before French courts would be bound to fail. Moreover, on 21 May 1996, the authors' request for legal aid in this matter was rejected for alleged lack of merit of the claim.

3.4 The authors further state that they have not submitted the same matter to any other procedure of international investigation or settlement.

The State party's observations on admissibility

4.1 The State party argues that the communication is inadmissible for non-exhaustion of domestic remedies. One author, Ms. Diallo, has not appealed the judgement of the Administrative Tribunal of Poitiers of 19 June 1996, whereas two other authors, Ms. Doumbouya and Ms. Bathily have not appealed the refusal of their claim by the Administrative Tribunal of Paris on 15 April 1996. The other authors, having appealed the refusal of their claims, have not awaited the outcome of their appeals before presenting the communication to the Committee.

4.2 The State party also claims that the communication is inadmissible ratione materiae because the right to a pension is not protected by the Covenant on Civil and Political Rights.

4.3 The State party recalls its interpretative declaration[1] made upon ratifying the Optional Protocol, and argues that the communication is inadmissible ratione temporis, since it has its origin in acts or

events before 17 May 1984, the date on which the Optional Protocol entered into force for France.

4.4 With regard to the authors' complaint, the State party explains that according to the law, the right to a pension is suspended when the beneficiary loses the French nationality. In other words, any former soldier who served in the French army and later lost his nationality, no longer has a right to a pension. However, in recognition of the services rendered by the former soldiers of African origin, the law provides the possibility of granting an annuity to those who used to be entitled to a pension and later became nationals of the independent African states.

4.5 With regard to the specific situation of the widows of these soldiers, who now seek survivors' pensions, the State party notes that the personal character of the annuities opposes itself in principle to any reversion. Nevertheless, according to decrees based on paragraph III of article 71 of 1 January 1961, widows whose husband died before 1 January 1991, benefit of a survivors' pension. The State party rejects the authors' complaint that the annuities have been frozen at the level of 1 January 1975, and states that they have been increased with 4,75% on 1 September 1994. As to the invalidity pensions and retirements pensions, they have been adjusted regularly since 1971. Moreover, in 1993, the military pensions for beneficiaries residing in Senegal were revised and increased. On 1 January 1995, the invalidity pensions were increased with 14,55 % and the retirement pensions with 24,1 %. The State party concludes that the authors' claim should be rejected for lack of merit.

Counsel's comments

5.1 With regard to the exhaustion of domestic remedies, counsel states that the application of domestic remedies has been unreasonably prolonged. Moreover, the refusal of France to implement the Committee's Views in case No. 196/1985, renders domestic remedies ineffective. Counsel recalls further the advise given by the Conseil d'Etat and the refusal of legal aid to the authors for apparent lack of merit of their claim and argues that in the circumstances, the ineffectiveness of domestic remedies is clear. At the end of the day, the claim would have to be decided by the Conseil d'Etat who already has given a negative advise, and it cannot be expected that the Conseil d'Etat would change its opinion when seized of the case for decision.

5.2 As to the State party's claim that the communication is inadmissible ratione materiae and ratione temporis, counsel refers to the Committee's decision in case No. 196/1985, where the Committee rejected the State party's arguments in this respect.

5.3 Counsel maintains his claim of discrimination, and states that the adjustments of the annuities signify next to nothing.

5.4 By further submission of 16 March 2000, counsel informs the Committee that in July 1999 the Administrative Court of Appeal in Paris and Bordeaux allowed his appeals on behalf of the authors. In this context, he states that his appeals invoked article 1 of Protocol No. 1 of the European Convention. The Minister of Defence and the Minister of Finance have appealed the judgments to the Court of Cassation (Conseil d'Etat).[2]

5.5 Counsel also complains that the State party requests a tax of 100 FF, and that some of his clients have not been able to pay the tax, whereupon their appeal was declared inadmissible. In this context,

counsel states that the tax can only be paid in France.

Issues and proceedings before the Committee

6.1 Before considering any claim 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.

6.2 The Committee notes that the State party has challenged the admissibility of the communication for non-exhaustion of domestic remedies, as the authors have not awaited the outcome of their appeal, and some of them have failed to appeal the refusal of their claim. It notes also that counsel first claimed that domestic remedies were not effective, given the opinion by the Conseil d'Etat of 15 April 1996, but that it appears from a recent letter by counsel that the appeals on behalf of his clients were allowed, and that the cases are now pending before the Court of Cassation (Conseil d'Etat). In the circumstances, the Committee is of the opinion that the communication is inadmissible under article 5, paragraph 2(b), of the Optional Protocol.

7. The Human Rights Committee therefore decides:

(a) that the communication is inadmissible under article 5(2)(b) of the Optional Protocol;

(b) that this decision shall be communicated to the State party and to the authors' representative;

(c) that this decision may be reviewed, under rule 92(2) of the Committee's rules of procedure, upon written request by or on behalf of the authors containing information to the effect that the reasons for inadmissibility no longer apply.

---

*The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Nisuke Ando, Mr. Prafullachandra Natwarlal Bhagwati, Lord Colville, Ms. Elizabeth Evatt, Ms. Pilar Gaitáán de Pombo, Mr. Louis Henkin, Mr. Eckart Klein, Mr. David Kretzmer, Mr. Rajsoomer Lallah, Ms. Cecilia Medina Quiroga, Mr. Martin Scheinin, Mr. Hipólito Solari Yrigoyen, Mr. Roman Wieruszewski, Mr. Maxwell Yalden and Mr. Abdallah Zakhia.

**Under rule 85 Ms. Chanet did not participate in the examination of the present communication.

1/ The text of the declaration reads: "France interprets article 1 of the Protocol as giving to the Committee the competence to receive and consider communications from individuals subject to the jurisdiction of the French Republic who claim to be victims of a violation by the Republic of any of the rights set forth in the Covenant which results either from acts, omissions, developments or events occurring after the date on which the Protocol entered into force for the Republic, or from a decision relating to acts, omissions, developments or events after that date."

2/ According to counsel, other cases, which were presented by one of his colleagues and were based

on article 26 of the Covenant, were thrown out by the Courts of Appeal.

[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.]