



International Covenant on Civil and Political Rights

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Human Rights Committee

Communication No. 2055/2011

Views adopted by the Committee at its 111th session (7–25 July 2014)

<i>Submitted by:</i>	Paul Mitonsou Zinsou (represented by Serge Roberto Prince Agbodjan)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Benin
<i>Date of communication:</i>	2 September 2010 (initial communication)
<i>Document reference:</i>	Special Rapporteur's rule 97 decision, transmitted to the State party on 26 April 2011 (not issued in document form)
<i>Date of decision:</i>	18 July 2014
<i>Subject matter:</i>	Requirement for the accused to appear at his trial handcuffed and wearing a jacket bearing the name of his place of detention
<i>Substantive issues:</i>	Prohibition of cruel, inhuman or degrading treatment; right to presumption of innocence
<i>Procedural issue:</i>	Exhaustion of domestic remedies
<i>Articles of the Covenant:</i>	7 and 14 (para. 2)
<i>Articles of the Optional Protocol:</i>	-



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 (111th session)

concerning

Communication No. 2055/2011*

Submitted by: Paul Mitonsou Zinsou (represented by Serge Roberto Prince Agbodjan)

Alleged victim: The author

State party: Benin

Date of communication: 2 September 2010 (initial communication)

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

Meeting on 18 July 2014,

Having concluded its consideration of communication No. 2055/2011, submitted by Mr. Paul Mitonsou Zinsou 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 the State party,

Adopts the following:

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

1. The author of the communication is Paul Mitonsou Zinsou, a Beninese national born in Cotonou in 1971. He claims violations by Benin of articles 7 and 14, paragraph 2, of the Covenant. He is represented by counsel. The Optional Protocol entered into force for the State party on 12 June 1992.

The facts as submitted by the author

2.1 The author is a mechanic and driver by trade. After being involved in a traffic accident on an unspecified date, he was remanded in custody for involuntary homicide and failure to control his vehicle.

* The following members of the Committee took part in the consideration of the communication: Mr. Yadh Ben Achour, Mr. Lazhari Bouzid, Ms. Christine Chanet, Mr. Cornelis Flinterman, Mr. Yuji Iwasawa, Mr. Walter Kälin, Ms. Zonke Zanele Majodina, Mr. Gerald L. Neuman, Sir Nigel Rodley, Mr. Víctor Manuel Rodríguez Rescia, Mr. Fabián Omar Salvioli, Mr. Dheerujlall Seetulsingh, Ms. Anja Seibert-Fohr, Mr. Yuval Shany, Mr. Konstantine Vardzelashvili, Ms. Margo Waterval and Mr. Andrei Paul Zlătescu.

The text of an individual opinion (concurring) by Mr. Yuval Shany and Mr. Walter Kälin is appended to the present document.

2.2 While awaiting trial in custody in Cotonou from 14 August to 5 September 2008, the date of his release, the author was subject to a rule requiring anyone held in a Beninese prison, including untried prisoners, to wear a jacket showing the name of their place of detention when they go to court and during their hearings. Dressed in this way, detainees attract jibes and ridicule from the gallery.

2.3 The author was required to do this every time he went to court, including for his hearing of 5 September 2008. He claims that he was obliged to go to court in handcuffs and wearing a jacket saying "Cotonou Civil Prison". He further states that, while in prison, he was obliged to wear the jacket when meeting all his visitors. This also attracted jibes and ridicule, which he found humiliating. Moreover, because of all his protests over the practice, he was subjected to physical punishment, reprimands and further ridicule.¹

2.4 On 8 December 2009, the author applied to the Constitutional Court of Benin to have these practices declared contrary to articles 17 and 18 of the Constitution, which respectively guarantee the presumption of innocence and the right not to be subjected to inhuman, humiliating or degrading treatment. In a decision of 13 July 2010, the Court rejected his application on the grounds that requiring prisoners to wear regulation dress to their trial was a security measure, to be applied at the sole discretion of the prison authorities, to prevent prisoners melting into the crowd in order to avoid their guards, and thus to forestall any attempt to escape. The Court found that prisoners' wearing of regulation dress could not be deemed degrading treatment or a violation of the right to presumption of innocence.

2.5 The author states that since, under article 124 of the Constitution, the decisions of the Constitutional Court are not subject to appeal, he has exhausted all domestic remedies open to him.

The complaint

3.1 The author claims a violation of article 7 of the Covenant, on the grounds that being required to wear a jacket saying "Cotonou Civil Prison" every day during pretrial detention in that prison, from 14 August to 5 September 2008, exposed him to jibes and ridicule from members of the public, including when receiving visitors from outside, which he found humiliating and which in his view amounted to degrading treatment.

3.2 The author also claims a violation of article 14, paragraph 2, of the Covenant, arguing that the requirement to appear at his hearing of 5 September 2008 in handcuffs and dressed as a prisoner, i.e., wearing a jacket indicating the place of detention, when he had not yet been convicted, was a violation of his right to presumption of innocence.

3.3 The author refers to the Committee's concluding observations following its consideration of the State party's initial report in 2004, in which the Committee had found that the requirement that pretrial detainees and convicts must wear jackets indicating their place of detention constitutes degrading treatment, and that the requirement that pretrial detainees must wear such jackets during their trial may infringe the principle of presumption of innocence (articles 7 and 14 of the Covenant).²

State party's observations on the merits

4.1 On 5 April 2012, the State party submitted observations on the merits of the communication.

¹ The author does not elaborate further.

² Concluding observations of the Committee on the initial report of Benin, adopted on 2 November 2004 (CCPR/C/82/BEN), para. 21.

4.2 The State party refers to the Standard Minimum Rules for the Treatment of Prisoners,³ rule 33 of which, on instruments of restraint, states that:

“Instruments of restraint, such as handcuffs, chains, irons and strait-jackets, shall never be applied as a punishment. Furthermore, chains or irons shall not be used as restraints. Other instruments of restraint shall not be used except in the following circumstances:

(a) As a precaution against escape during a transfer, provided that they shall be removed when the prisoner appears before a judicial or administrative authority.”

4.3 The State party claims that, in accordance with rule 33 (a), prisoners’ jackets are taken off when they appear before a judicial or administrative authority. It further states that far from constituting cruel, inhuman or degrading treatment or a violation of the presumption of innocence, the wearing of such a jacket in civil prisons in Benin should be construed as an essential security measure. In the State party’s view, the author’s analysis is mistaken, insofar as this practice has always been applied without discrimination to all detainees in civil prisons in Benin with no intent to inflict serious physical or psychological suffering.

Author’s comments on the State party’s observations

5. On 21 May 2012, the author submitted his comments on the State party’s observations, repeating all his initial claims. He repeats that, notwithstanding the recommendation adopted by the Committee in 2004 in its concluding observations on the initial report of Benin (see paragraph 3.3 of this document), prisoners in Benin still wear a jacket publicly displaying the name of their place of detention on their way to court hearings and appear at trial dressed in the same way, in violation of articles 7 and 14, paragraph 2, of the Covenant.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claim contained in a communication, the Human Rights Committee must decide, in accordance with rule 93 of its rules of procedure, whether the communication is admissible under the Optional Protocol to the Covenant.

6.2 As required under article 5, paragraph 2 (a), of the Optional Protocol, the Committee has ascertained that the same matter is not being examined under another procedure of international investigation or settlement.

6.3 The Committee finds that the author has sufficiently substantiated his allegations insofar as they raise issues under articles 7 and 14, paragraph 2, of the Covenant and that the admissibility criteria have been met. It therefore declares the communication admissible and proceeds to consider it on the merits.

Consideration of the merits

7.1 The Human Rights Committee has considered the present communication in the light of all the information made available to it, as required under article 5, paragraph 1, of the Optional Protocol.

³ Adopted by the Economic and Social Council in its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.

Wearing of the jacket within the prison precincts

7.2 The Committee takes note of the author's claim that, throughout his detention in Cotonou prison from 14 August to 5 September 2008, he was obliged to wear a jacket saying "Cotonou Civil Prison", including when he had visitors. The Committee also takes note of the State party's argument that this was an essential security measure. The Committee notes that the arguments put forward by the author, who merely asserts that he felt humiliated by wearing the jacket in prison, do not enable it to conclude that the effects of this measure were serious enough to violate the author's dignity to an extent amounting to a denial of his rights under article 7 of the Covenant.

Wearing of the jacket and handcuffs at the public hearing on 5 September 2008

7.3 The Committee notes that the State party has not replied to the author's claim of a violation of his right to presumption of innocence in the situation described above. The Committee recalls that everyone charged with a criminal offence is presumed innocent until proven guilty according to law. Accordingly, it is a duty for all public authorities to refrain from prejudging the outcome of a trial. Defendants should normally not be shackled or kept in cages during trials or otherwise presented to the court in a manner indicating that they may be dangerous criminals.⁴ In this case, and in the absence of any justification from the State party, the Committee considers that the requirement to appear at his public hearing handcuffed and wearing a jacket indicating his place of detention constitutes a violation of the author's right to presumption of innocence under article 14, paragraph 2, of the Covenant.

7.4 The author states that he was required to attend court on 5 September 2008 wearing a jacket saying "Cotonou Civil Prison" and that his appearance attracted jibes and ridicule from the gallery (see para. 2.3). The Committee notes that, although the State party asserts in its observations that the prisoners' jackets are taken off when they come before a judicial or administrative authority (see para. 4.3), it has failed, in the present case, to adduce any reason why the author had to wear such a jacket at his hearing. The Committee also takes note of the author's claim that he was taken to court, and appeared in court, in handcuffs, which the State party has not contested.

7.5 The Committee notes that the State party has confined itself to giving a general justification of the need for such a measure from the security standpoint, but has not demonstrated that the circumstances made a jacket of that kind and handcuffs necessary at the author's hearing on 5 September 2008. The Committee can find nothing in the file that would lead it to believe that there could be a risk of violence or flight, or any other risk to public safety, if he did not wear the jacket and handcuffs. Accordingly, and even though the facts do not show that the measure in question was intended to humiliate or belittle the author, the Committee accepts that, given the public nature of the hearing, the author may well have experienced a feeling of humiliation over and above the unavoidable humiliation associated with appearing in court. The Committee therefore finds that the measures imposed on the author constitute treatment incompatible with article 7 of the Covenant.

8. 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 information before it discloses violations by the State party of articles 7 and 14, paragraph 2, of the Covenant in respect of the author.

9. In accordance with article 2, paragraph 3, of the Covenant, the State party is under an obligation to provide the author with an effective remedy by, inter alia, providing

⁴ See the Committee's general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, para. 30.

appropriate compensation for the violation suffered. The State party is also under an obligation to take steps to prevent similar violations in the future.

10. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether or not there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy when a violation has been established, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the present Views and to have them widely disseminated in the official languages of the State party.

Appendix

[Original: English]

Separate opinion of Committee members Mr. Yuval Shany and Mr. Walter Kälin (concurring)

While we concur with the Committee's finding of a violation of article 14 of the Covenant, resulting from requiring the author to appear at his public hearing handcuffed and wearing a jacket indicating his place of detention, we do not consider that the author has substantiated the claim that the humiliation he suffered at the public hearing constituted a violation of article 7 of the Covenant. The Committee has accepted in paragraph 7.5 of its Views that the evidence in the case does not indicate that the State party intended to "humiliate or belittle" the author, and while the author may have felt humiliated by the way in which he was publically mistreated, he has not shown that he consequently experienced mental suffering that went significantly beyond the suffering incidental to his status as a criminal defendant in public proceedings and thus reached the minimum degree of intensity required to constitute degrading treatment. We are therefore not persuaded that the State party has violated article 7 of the Covenant with respect to the author.
