

HUMAN RIGHTS COMMITTEE

Gedumbe v. Democratic Republic of the Congo

Communication No. 641/1995

9 July 2002

CCPR/C/75/D/641/1995

VIEWS

Submitted by: Nyekuma Kopita Toro Gedumbe, on his own behalf

State party concerned: Democratic Republic of the Congo

Date of decision on admissibility: 1 August 1997

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

Meeting on 9 July 2002.

Having concluded its consideration of communication No. 641/1995 submitted by Mr. Nyekuma Kopita Toro Gedumbe 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 Mr. Nyekuma Kopita Toro Gedumbe, a citizen of the Democratic Republic of the Congo (ex-Zaire) residing in Bujumbura, Burundi. He claims to be a victim of a violation by the Democratic Republic of the Congo (ex-Zaire) of articles 2, paragraphs 1 and 3; 7; 14; 17; 23, paragraph 1; 25 (a) and (c); and 26 of the International Covenant on Civil and Political Rights. He is not represented by counsel.

The facts as presented by the author

2.1 In 1985 the author was appointed director of a Zairian consular school in Bujumbura, Burundi. In 1988 he was suspended from his duties by Mboloko Ikolo, the then Zairian ambassador to Burundi. This suspension allegedly was attributable to a complaint addressed by the author and by other staff members of the school¹ to several administrative authorities of Zaire, including the President and the Minister of Foreign Affairs, concerning the embezzlement by Mr. Ikolo of the salaries for the personnel of the consular school. More particularly, the ambassador allegedly embezzled the author's salary in order to force him to yield his wife.

2.2 In March 1988 a fact-finding commission was sent from Zaire to Bujumbura, which, purportedly, made an overwhelming report against the ambassador and confirmed all the allegations made against him. In August 1988 the Minister of Foreign Affairs of Zaire enjoined Mr. Ikolo to pay all the salary arrears to the author, who, in the meantime, had been transferred as director of the Zairian consular school to Kigali, Rwanda. The ambassador, who allegedly refused to obey this order, was suspended from his duties and recalled to Zaire on 20 June 1989.

2.3 In September 1989 the Ministry of Primary and Secondary Education issued an order to reinstate the author in his post in Bujumbura. Accordingly, the author moved back to Burundi in order to fill his post. Subsequently, Mr. Ikolo, who despite his suspension remained in Bujumbura until 20 December 1989, informed the authorities in Zaire that the author was a member of a network of political opponents of the Zairian Government, and that he therefore had requested the authorities of Burundi to expel him. For this reason, the author maintains, Mr. Ikolo and his successor at the embassy, Vizi Topi, refused to reinstate him in his post, even after confirmation by the Minister of Primary and Secondary Education, or to pay his salary arrears.

2.4 The author appealed to the Public Prosecutor of the County Court (Tribunal de Grande Instance) of Uvira, who passed on the file to the Public Prosecutor of the Court of Appeal (Cour d'Appel) of Bukavu on 25 July 1990. Both offices described the facts as being an abuse of rights and called into question the former ambassador's conduct. On 14 September 1990 the case was further transmitted for advice to the Office of the Public Prosecutor in Kinshasa, where the case was registered in February 1991. Since then, despite numerous reminders sent by the author, no further action has been taken. Consequently, the author appealed to the Minister of Justice and to the Chairman of the National Assembly. The latter interceded with the Minister of Foreign Affairs and the Minister of Education, who, allegedly, intervened on the author's behalf with Mr. Vizi Topi, all to no avail.

2.5 On 7 October 1990 the author served a summons on Mr. Ikolo for adultery, slanderous denunciation and prejudicial charges, abuse of power and embezzlement of private monies. By a letter dated 24 October 1990, the President of the Kinshasa Court of Appeal (Cour d'Appel) informed the author that Mr. Ikolo, as an ambassador, benefited from functional immunity and could only be brought to trial upon summons of the Public Prosecutor. All the author's requests to the latter to start legal proceedings against Mr. Ikolo have to date remained unanswered. According to the author, this is due to the fact that a special authorization of the President is required to start legal proceedings against members of the security police and that, therefore, the Public Prosecutor could not take the risk of serving a summons on Mr. Ikolo, who is also a senior official in the National Intelligence and Protection Service. Accordingly, the author's case cannot be the subject of a judicial determination. Therefore, it is submitted, all available and effective domestic remedies have been exhausted.

The complaint

3.1 The author argues that the arbitrary deprivation of his employment, the embezzlement of his salary and the destabilization of his family amounts to torture and to cruel and inhuman treatment. The author further contends that the Government, represented by the Public Prosecutor, denies him the right to a fair and public hearing by a competent, independent and impartial tribunal established by law.

3.2 The author further argues that his family has been destabilized by the immoral behaviour of the ambassador, who allegedly had adulterous relations with the author's wife, in violation of article 17. It is further alleged that, due to the difficult life the author and his family have led since he was suspended from his duties, the author's family does not enjoy the protection to which it is entitled, in breach of article 23, paragraph 1.

3.3 The author claims that, as a director of a public school being prevented from exercising his duties, his rights under article 25 (a) and (c) have been violated. The author finally contends that he is the victim of a violation of article 26, since he was suspended from public service without disciplinary sanctions having been imposed on him, and thus in breach of the law. In this connection, the author claims that the failure of the Government to compel the ambassador to allow him to exercise his duties, even after official reinstatement in his post, constitutes a violation of article 2, paragraphs 2 and 3.

3.4 The author indicates that the matter has not been submitted to any other procedure of international investigation or settlement.

Issues and proceedings before the Committee

4.1 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.

4.2 At its sixtieth session in July-August 1997, the Committee considered the admissibility of the communication.

4.3 The Committee considered that the author's claim that the facts as described by him constituted a violation of articles 7, 17, 23 and 25 (a) has been unsubstantiated for purposes of admissibility. This part of the communication is therefore inadmissible under article 2 of the Optional Protocol.

4.4 The Committee also considered that, in the absence of any information provided by the State party, the author's claims that he has been denied access to public service, as well as equality before the law and the courts because the State party failed to enforce its decisions to pay back the author's salary and to reinstate him and because he is being prevented from bringing his complaint before the courts may raise issues under articles 14, paragraph 1, 25 (c) and 26 of the Covenant, which need to be examined on the merits. On 1 August 1997 the Committee declared this part of the communication admissible.

On the merits

5.1 The Committee has examined the communication in the light of all the information made available to it by the parties, as required by article 5, paragraph 1, of the Optional Protocol. The Committee notes that, while it has received sufficient information from the author, the State party, despite reminders addressed to it, has not responded in respect of admissibility or the merits of the communication. The Committee recalls that under article 4, paragraph 2, of the Optional Protocol, a State party is bound to cooperate by submitting to it written explanations in clarification and by indicating, where appropriate, the measures taken to remedy the situation. In the light of the failure of the State party to cooperate with the Committee on the matter before it, due weight must be given to the author's allegations, to the extent that they have been substantiated.

5.2 With regard to the alleged violation of article 25 (c) of the Covenant, the Committee notes that the author has made specific allegations relating, on the one hand, to his suspension in complete disregard of legal procedure and, in particular, in violation of the Zairian regulations governing State employees, and, on the other hand, to the failure to reinstate him in his post, in contravention of decisions by the Ministry of Primary and Secondary Education. In this connection the Committee notes also that the non-payment of the author's salary arrears, notwithstanding the instructions by the Minister for Foreign Affairs, is the direct consequence of the failure to implement the above-mentioned decisions by the authorities. In the absence of a response by the State party, the Committee finds that the facts in the case show that the decisions by the authorities in the author's favour have not been acted upon and cannot be regarded as an effective remedy for violation of article 25 (c) read in conjunction with article 2 of the Covenant.

5.3 To the extent that the Committee has found that there was no effective legal procedure allowing the author to invoke his rights before a tribunal (article 25 (c) in conjunction with article 2), no separate issue arises concerning the conformity of proceedings before such a tribunal with article 14 of the Covenant. With regard to article 26, the Committee sustains the author's reasoning by finding a violation of article 25 (c).

6.1 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 before it disclose violations by the Democratic Republic of the Congo of articles 25 (c) in conjunction with article 2 of the Covenant.

6.2 Pursuant to article 2, paragraph 3 (a), of the Covenant, the Committee is of the view that the author is entitled to an appropriate remedy, namely: (a) effective reinstatement to public service and to his post, with all the consequences that that implies, or, if necessary, to a similar post;² (b) compensation comprising a sum equivalent to the payment of the arrears of salary and remuneration that he would have received from the time at which he was not reinstated to his post, beginning in September 1989.³

6.3 The Committee recalls that, by becoming a party to the Optional Protocol, the Democratic Republic of the Congo has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not 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 in case a violation has been established. Thus, the Committee wishes to receive from the State party, within 90 days of the transmission of these Views, information about the measures taken to give effect hereto. The State party is also requested to give publicity to the Committee's Views.

* The following members of the Committee participated in the examination of the present communication: Mr. Nisuke Ando, Mr. Prafullachandra Natwarlal Bhagwati, Ms. Christine Chanet, Mr. Louis Henkin, Mr. Ahmed Tawfik Khalil, Mr. Eckart Klein, Mr David Kretzmer, Ms. Cecilia Medina Quiroga, Mr. Rafael Rivas Posada, Mr. Martin Scheinin, Mr. Ivan Shearer, Mr. Hipóólito Solari Yrigoyen, Mr. Patrick Vella and Mr. Maxwell Yalden.

Notes

¹ This complaint was also signed by Odia Amisi; communication No. 497/1992 (Odia Amisi v. Zaire), declared inadmissible on 27 July 1994.

² Communication No. 630/1995 Abdoulaye Mazou v. Cameroon.

³ Communications No. 422/1990, 423/1990 and 424/1990, Adimayo M. Aduayom, Sofianou T. Diasso and Yawo S. Dobou v. Togo.