COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Regerat et al. v. France

Communication No 24/2002

21 March 2003

CERD/C/62/D/24/2002

ADMISSIBILITY

Submitted by: Nikolas Regerat et al. (represented by counsel, Ms. Yolanda Molina Ugarte)

Alleged victims: The petitioners

State party: France

Date of communication: 3 August 2001 (date of initial letter)

Decision on admissibility

1. The petitioners are Mr. Nikolas Regerat, Mr. Mizel Alibert, Ms. Annie Bacho, Ms. Kattin Bergara, Mr. Jakes Bortayrou, Ms. Maritxu Castillon, Mr. Jean-Michel Ceccon, Mr. Txomin Chembero, Ms. Maialen Errecart, Ms. Irene Ithursarry and Mr. Emmanuel Torree, French citizens residing in France. As members of the Euskal Herriko Alfabetatze Euskalduntze Koordinakundea (AEK) Association, they claim to be victims of a violation by France of article 1 of the Convention. They are represented by counsel.

The facts as presented by the petitioners

2.1 The AEK Association (hereinafter referred to as "the Association") is an organization which teaches the Basque language to adults. In order to publicize its existence and activity, the Association regularly engages in publicity campaigns through the post, addressing its mailings in the Basque language.

2.2 To this end, the Association concluded with the Post Office a standard contract for mass mailings. This agreement, called "*Postimpact mécanisable*", is reserved for commercial mailings. The preferential rate is based on the possibility of automatic mail processing by a sorter equipped

with a laser scanner. The scanner requires that mailings conform to specific regulations concerning message content and the format of the mailed item.

2.3 After first having benefited from a preferential rate of 1.87 French francs for each item, the Association was informed by the Post Office in May 1998 that in future the rate would be higher - 2.18 francs for each item - because the names of the villages that appeared on the envelopes were written in the Basque language. The Post Office pointed out that, unlike mail addressed in French, mail addressed in a regional language could not be processed automatically and entailed an additional cost over and above the preferential rate.

2.4 On 18 February 1999, the President of the Association, Mr. Nikolas Regerat, lodged a complaint against the Post Office in the Bayonne Correctional Court, considering that the Post Office's failure to maintain the agreed preferential rate constituted discrimination.

2.5 In its judgement of 3 June 1999, the Bayonne Correctional Court acquitted the Post Office of the offence of discrimination and dismissed the demand, made by the Association as a party to the proceedings, that the Post Office be ordered to pay damages. The court pointed out that it had not been established that the Post Office had changed its rate for the Association's mass mailings for one of the reasons set out in article 225-1 of the Penal Code, which deals with the offence of discrimination. 1/ The court considered that the Post Office had changed the rate for purely technical reasons.

2.6 On 9 and 10 June 1999, the Association and the public prosecutor lodged an appeal against the judgement. On 21 June 2000, the Pau Court of Appeal acquitted the Post Office of the offence of discrimination and dismissed the Association's claims. 2/

2.7 On 22 June 2000, the Association appealed to the Court of Cassation. On 16 January 2001, the Court of Cassation dismissed the appeal and notified the Association of its decision in a letter dated 27 February 2001 from the public prosecutor of the Pau Court of Appeal.

2.8 On 6 July 2000, the Association made a request for legal aid. In its decision of 14 December 2000, the legal aid office denied the request, considering that "no serious argument for quashing can be brought against the contested decision". On 22 January 2001, the Association lodged an appeal against this denial with the first president of the Court of Cassation. 3/ In his decision of 8 February 2001, the first president of the Court of Cassation dismissed the appeal on the grounds that the examination of the evidence submitted in the proceedings had not given rise to any serious argument for quashing the contested decision.

The complaint

3.1 The petitioners challenge the Post Office's position. They point out that the Association has to use the Basque language, particularly in its relations with its targeted public, in order to disseminate its objectives and activities for promoting the Basque language. According to the petitioners, since the Post Office is responsible for providing a public service, its imposition of

higher rates for correspondence addressed in the Basque language discriminates against the speakers of that language and persons belonging to the Basque ethnic group.

3.2 In addition, the petitioners reject the technical argument put forward by the Post Office, which was upheld by the French courts. They consider that it is technologically simple to add the 158 names of the Basque villages to the computers that control the automatic sorting of mail, and that the Post Office's updating of its computer facilities for that purpose would entail only minimal difficulty and not unreasonable cost.

3.3 The petitioners therefore consider that the Post Office's discriminatory behaviour constitutes a violation of article 1 of the Convention.

3.4 Finally, the petitioners consider that all available domestic remedies have been exhausted.

The State Party's observations on admissibility

4.1 In its observations dated 29 May 2002, the State party challenges the admissibility of the communication.

4.2 It maintains that the petitioners have not exhausted domestic remedies. In the case in point, the Association had, in the Bayonne regional court and the Pau Court of Appeal, put forward the argument of alleged discriminatory practice in contravention of the provisions of French penal law. According to the State party, the Association had not adduced any argument to support its appeal to the Court of Cassation. The lack of an argument to support the appeal had led the criminal division of the Court of Cassation to dismiss the appeal in its ruling of 16 January 2001.

4.3 In this regard, the State party points out that legal aid to the Association had in fact been granted on a provisional basis on 11 July 2000, and that the Jean-Pierre Ghestin SCP 4/ had been designated for that purpose. Subsequently, pursuant to the decision of the legal aid office of the Court of Cassation issued on 14 December 2000 and communicated on 21 December 2000, the request had been definitively denied on the grounds of the provisions of article 7 of the Act of 10 July 1991, considering that "no serious argument for quashing can be brought against the contested decision".

4.4 The State party explains that the system of legal aid in France has been designed to reconcile the right of the most disadvantaged to a defence with the interest of the effective administration of justice, which should not be hindered by dilatory or manifestly unfounded claims. A legal aid system cannot operate without a mechanism that allows it to select cases that are likely to receive legal aid.

4.5 This system was introduced by Act No. 91-647 of 10 July 1991 and its Implementing Decree No. 91-1266 of 19 December 1991, which were in force when the Association appealed to the Court of Cassation. Article 2 of the Act provides that "physical persons who do not have sufficient resources to assert their rights in court may benefit from legal aid. [...] Such aid may, in exceptional

cases, be granted to non-profit corporate bodies based in France and lacking sufficient resources".

4.6 The State party points out that although, when an appeal is brought before the criminal division of the Court of Cassation, the request for legal aid does not affect the time limits for the filing of the brief, article 20 of the above-mentioned Act nonetheless acknowledges that "in urgent cases [...] legal aid may be granted on a provisional basis [...]". The petitioners were in fact granted aid on a provisional basis. In this regard, the State party emphasizes that the advocate in council appointed on a provisional basis to provide legal aid did not deem it appropriate to put forward any argument in support of the appeal, as the Court of Cassation pointed out in its ruling.

4.7 Moreover, nothing prevented the Association, as the party bringing its case before the Court of Cassation, from filing a brief itself, adducing all the legal arguments it deemed relevant in support of its appeal. Pursuant to article 584 of the Code of Criminal Procedure, "The party appealing to the Court of Cassation, either at the time of its declaration, or within the following 10 days, may file, with the registry of the court that handed down the contested decision, a signed brief containing its arguments for quashing the decision." According to the State party, the Association cannot plead ignorance in order to justify its failure to file a personal brief since, during the appeal process, it was assisted by a counsel who could not have been unaware of the legal regulations governing the forms or conditions of appeals and who should have informed his clients of the procedural formalities that had to be observed.

4.8 Consequently, the petitioners who today are claiming before the Committee discrimination under article 1 of the Convention, owing to the rates applied by the French Post Office, did not enable the Court of Cassation to respond to their allegations. The communication therefore does not meet the requirements of article 14, paragraph 7 (a), of the Convention.

Comments by the petitioners on the State party's observations on admissibility

5.1 In their comments dated 31 January 2003, the petitioners challenge the State party's conclusions concerning the non-exhaustion of domestic remedies.

5.2 They contend that they were unable to support their appeal in the Court of Cassation because their request for legal aid had been denied. The participation of a lawyer in the Court of Cassation - a lawyer specializing exclusively in such courts - was essential and was the best way of ensuring an effective defence.

5.3 They also maintain that they did not have an effective domestic remedy since, on two occasions, the legal aid office of the Court of Cassation and the first president of the Court of Cassation considered that no serious argument for quashing the decision could be adduced.

Issues and proceedings before the Committee

6.1 Before considering any claim contained in a communication, the Committee on the

Elimination of Racial Discrimination must, in accordance with rule 91 of its rules of procedure, decide whether or not it is admissible under the Convention.

6.2 The Committee notes the State party's claim that the complaint by the petitioners is inadmissible owing to the non-exhaustion of domestic remedies, insofar as no argument - particularly that of discrimination - was put forward to support their appeal before the Court of Cassation. The petitioners replied that their appeal could not be upheld because their request for legal aid had been denied and that, moreover, the decisions to deny legal aid, which were based on the absence of a serious argument for quashing, deprived them of an effective domestic remedy.

6.3 The Committee notes, in the first place, that the petitioners did not file a personal brief in support of their appeal in cassation, a right provided under article 584 of the Code of Penal Procedure and which they did not use in spite of the assistance of a counsel - during the appeal process - who should have informed them of the procedural rules for their appeals. In the second place, the Committee notes that, from 11 July 2000, the petitioners had the services of an advocate in council appointed on a provisional basis to provide legal aid and that the latter did not deem it appropriate to put forward, in the Court of Cassation, any argument in support of the appeal, a fact that the petitioners do not dispute. The Committee considers that, on the above-mentioned grounds, the subsequent definitive denial of the request for legal aid did not in any way bind the Court of Cassation with respect to its decision regarding the petitioners' appeal; that the petitioners' reservations as to the effectiveness of their appeal did not exempt them, therefore, from exercising their remedy by adducing their complaint of discrimination; and that consequently, the decision not to exercise that remedy was the responsibility of the petitioners assisted by counsel and cannot be attributed to the State party.

6.4 In the light of the foregoing, the Committee considers that the petitioners have not met the requirements of article 14, paragraph 7 (a), of the Convention.

7. The Committee on the Elimination of Racial Discrimination therefore decides:
(a) That the communication is inadmissible;
(b) That this decision shall be transmitted to the State party and to the petitioners.[Done in English, French and Spanish, the French 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.]

Notes

1/ Article 225-1 of the Penal Code: "discrimination is defined as any distinction made against corporate bodies on the grounds of [……] actual or supposed membership or non-membership of a given ethnic group [or] nation [……] of members or certain members of such corporate bodies".
2/ The court noted that discriminatory intent could not be inferred from the mere fact that the Post Office had not taken the technical measures to enable the optical scanning of addresses in the

Basque language. Moreover, it pointed out that the Post Office had offered the Association another preferential rate, admittedly less advantageous than the first but nevertheless lower than the normal rate.

3/ In support of its appeal, the Association invoked the absence of grounds for the decision to refuse the request; the violation of the right to legal aid insofar as it had been established that the Association lacked the means to meet the costs of a lawyer in the Court of Cassation; and the fact that the contested decision made it impossible for the Association to bring its case before international bodies owing to the non-exhaustion of domestic remedies.

4/ Société Civile Professionnelle [Professional Partnership].