HUMAN RIGHTS COMMITTEE

Veriter v. France

Communication No. 1088/2002**

6 August 2003

CCPR/C/78/D/1088/2002*

ADMISSIBILITY

Submitted by: Bernard Veriter

Alleged victim: The author

State party: France

Date of communication: 16 August 2001 (initial submission)

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

Meeting on 6 August 2003,

Adopts the following:

Decision on admissibility

1. The author of the communication is Mr. Bernard Veriter, a French citizen born in Belgium on 11 July 1946, residing at Moulins les Metz, France. He claims to be a victim of violations by France of articles 2 and 14 of the International Covenant on Civil and Political Rights. The author is not represented by counsel.

The facts as submitted by the author

2.1 After completing his military service in the Belgian army, the author acquired French nationality by marriage. He was taken on by the French administration on 1 January 1978 as a prefectoral officer. He then applied for his period of military service to be taken into account

when his entitlement to promotion on grounds of seniority and his pension rights were determined (on 24 November 1982 he requested a ruling from the Ministry of the Public Service; on 11 July 1988 he lodged a request with the Ministry of the Interior).

2.2 On 18 November 1988 and 20 July 1989, the author applied to the Strasbourg administrative court for the annulment of the decision by which the Minister of the Interior had implicitly rejected his request by failing to reply to his letter of 11 July 1988. In a ruling dated 5 September 1991, the court rejected these requests, noting inter alia that the Community regulations **(1)** invoked by the author related only to nationals of one State who were working in another, and that this did not apply to Mr. B. Veriter, a French citizen working in France. The author appealed against this ruling. By decision of 15 June 1994, the Council of State declared the appeal inadmissible **(2)**.

2.3 Following this ruling, the author lodged a complaint with the Commission of the European Communities. The Commission pointed out to the French Government that its refusal to validate past service was contrary to article 48, paragraph 4, of the EEC treaty relating to equal treatment between workers in different member States, as interpreted by the Court of Justice of the European Communities (case 15/69 UGLIOLA). The French Government then conceded that the rules in force, and specifically article L.63 of the National Service Code, needed to be amended.

2.4 This amendment stemmed from Act No. 96-1043 of 16 December 1996, on employment in the public service and various organizational measures. The new article 5 ter of Act No. 83-634 of 13 July 1983, on the rights and obligations of public officials, now provides, in relation to periods of military service performed in another member State, that "such time shall be taken into account in calculating the seniority required for promotion in the public service for the State, local government and the hospital service".

2.5 On 15 January 1997, the author lodged a new request for the period of his national service to be taken into account. Yet on 29 May 1997 the prefect of Moselle department conveyed to him the negative decision taken by the Minister of the Interior on 20 May 1997, on the grounds that the new legislation had not been in force at the time of his recruitment.

2.6 On 11 July 1997, the author once again applied to the Strasbourg administrative court for the annulment of this decision.

2.7 During the course of the proceedings, the Minister of the Interior reversed his decision and agreed to take the author's military service into account in considering his promotion. By ministerial order of 16 March 2001, the author's 13 months of military service were recognized for purposes of seniority when he was promoted to the sixth grade of principal prefectoral officers.

2.8 On 6 July 2001, the Strasbourg administrative court ruled that the failure to take the author's national service into account on the sole grounds that it had been performed in

Belgium constituted discrimination in breach of article 48 of the Treaty establishing the European Community and (EEC) regulation No. 1612/68 of 15 October 1968, which were both already in force when the complainant entered the French public service and were directly applicable by France. The court annulled the contested decision of 20 May 1997 as well as the order of 16 March 2001 insofar as it took into account the period of national service performed by the author only for the purposes of the next promotion exercise and not from the beginning of his career as a public official. The court called on the Minister of the Interior to upgrade the author's career file in accordance with the conditions thus defined.

The complaint

3.1 The author claims to have been the victim of discrimination based on nationality, covered by article 2 of the Covenant.

3.2 The author also complains of improper administration of justice in the present case, insofar as the Strasbourg administrative court reversed its ruling of 5 September 1991 in its order of 6 July 2001. The author calls for the enforcement of this order, though he does not consider the order to constitute redress for the discrimination he suffered over a period of 22 years.

3.3 The author states that he has exhausted domestic remedies, and that the matter has not been submitted under any other procedure of international investigation or settlement.

State party's observations on admissibility

4.1 In its observations submitted on 13 November 2002, the State party challenges the admissibility of the communication.

4.2 Firstly, it holds that the author can no longer claim to be a victim of a violation of article 2 of the Covenant.

4.3 The State party points out that the Committee, like the European Court of Human Rights, requires that the complainant must make a personal and effective claim to be the victim of a violation of one of the rights set out in the Covenant, and must have a personal interest in making such a claim. Invoking the case law of the European Court, the State party contends that the status of victim must be reviewed at all stages of the proceedings. Hence the complainant may lose this status during the proceedings, for example following adequate domestic redress of the consequences of the alleged violation. The Court considered that "a measure by a public authority … deprives such a person of his status as a victim only when the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, such breach (CEDH, Nsona judgement, 28 November 1996). In this way, the quashing by a domestic court of a disciplinary measure against a teacher removes the status of victim from the teacher once the sanction is considered never to have existed, and once it retrospectively ceases to have any effect (CEDH, *Akkoc v. Turkey* judgement, 10 October 2000).

4.4 In the present case, in the view of the State party, it must be acknowledged that the author

brought his case to the Committee a few days after being notified of the ruling of 6 July 2001, without giving the appropriate departments in the Ministry of the Interior an effective opportunity to take the enforcement measures called for in the ruling. The State party explains that, by order of the Minister of the Interior dated 19 October 2001 - only two months after the ruling had been communicated - the author's file had been upgraded as instructed by the court. In addition, the sum which the State had been ordered to pay in respect of procedural costs had been paid. The State party therefore considers that the author is no longer a victim of a violation of article 2 of the Covenant, and that the communication is therefore inadmissible under article 2 of the Protocol.

4.5 Secondly, in the view of the State party, the author is endeavouring to establish that the above admissibility criterion has been met by maintaining that, notwithstanding the court ruling of 6 July 2001, no redress had been made for the discrimination suffered for 22 years. In the view of the State party, if it were to be assumed that, despite the decision to upgrade the author's file, the author had not obtained redress for the entirety of the injury suffered, then it would have to be concluded that the communication did not satisfy the requirement that all domestic remedies must have been exhausted. This is a classic condition of admissibility **(3)** which "refers in the first place to judicial remedies" **(4)**, in other words, remedies which are available, are capable of providing relief in respect of the complainant's claims **(5)**, and "must offer a reasonable prospect of success"**(6)**.

4.6 The State party contends that, in the present case, it is all the more obvious that domestic remedies have not been exhausted as the author has recently applied once again to the Strasbourg administrative court for compensation for the injury suffered. On the very day when the author lodged his complaint with the Committee - 16 August 2001 - he submitted to the Minister of the Interior a demand for the payment of 2,500 French francs, apparently as compensation for the suffering caused by the illegal refusals of his requests. As no express reply had been given to this request, as early as 27 November 2001 the author lodged a further application with the Strasbourg administrative court requesting it to order the French authorities to pay him the above-mentioned sum, plus 400 French francs as costs. The court is not yet ready to rule on this application, but according to the State party it has reasonable prospects of success, since in domestic law, fault always attaches to an unlawful administrative decision, for which the administration may therefore incur liability (Council of State, 26 January 1973, Driancourt Rec., p. 77). Yet since the domestic courts have not yet been able to rule on this application, it is clear that domestic remedies have not been exhausted. In any event, in the opinion of the State party, if the author persists in his view that the administration has not fully taken on board the 6 July 2001 ruling and has not correctly upgraded his file, it is for him to apply once again to the Strasbourg administrative court for annulment of the above-mentioned order of 19 October 2001. Yet, as far as the State party is aware, the author has not done so. Hence the communication is inadmissible under articles 2 and 5, paragraph 2 (b), of the Protocol.

4.7 Thirdly, in the view of the State party, the allegation of improper administration of justice - on the grounds that, on the same matter, the Strasbourg administrative court rejected the

author's application, but ruled in his favour 10 years later on the basis of the same European Community instruments - is incompatible with article 14 of the Covenant. This article establishes no right to an absence of errors of law on the part of a judge.

Author's comments on the State party's observations concerning admissibility

5.1 In his comments made on 10 December 2002, the author states that he retains the status of a victim insofar as the upgrading of his file takes no account of compensation for the cumulative falling behind over a period of 20 years, and does not redress the injury resulting from such lengthy discrimination. He also states that a reasonable period of time would already appear to have been exceeded since his first appeal against discrimination, and that he should not be required to wait further.

5.2 In relation to the allegation of a violation of article 14 of the Covenant, the author challenges the impartiality of the Council of State in declaring his application inadmissible, in view of the fact that neither of the parties had raised that issue, and that the application had twice been declared admissible by the administrative court. Lastly, in the view of the author, it is very difficult to challenge an administrative court or the Council of State in the absence of gross negligence.

Issues and proceedings before the Committee concerning admissibility

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

6.3 In relation to the allegation of a violation of article 2 of the Covenant, the Committee takes note of the arguments invoked by the State party to the effect that the author has lost his status as a victim insofar as the Strasbourg administrative court's ruling of 6 July 2001 was enforced by the Minister of the Interior's order dated 19 October 2001, which both upgraded the author's file by validating his national service and paid his procedural costs. The Committee has also noted the author's argument challenging the State party's conclusion on the grounds that the discrimination had not been redressed. The Committee considers that the allegation of discrimination and the issue of redress constitute two distinct elements of the complaint. The Committee notes, first, that the complaint of discrimination was resolved by the ruling of 6 July 2001, whose enforcement was sought by the author, and that the State embarked thereon by means of the order of 19 October 2001. Moreover, any challenge to this order on the part of the author would involve an appeal to the Strasbourg administrative court. Secondly, the Committee notes that compensation for the discrimination is the subject of an appeal lodged in the Strasbourg administrative court by the author on 27 November 2001, in respect of which

proceedings are continuing. Lastly, the Committee considers that the author has not exhausted domestic remedies for the purpose of establishing the admissibility of the allegation of a violation of article 2 of the Covenant. This is without prejudice to the question whether article 2 is capable on its own of being violated independently of another provision of the Covenant or whether the complaint should have been made under article 26 rather than article 2.

6.4 Concerning the alleged violation of article 14 of the Covenant, the Committee has taken note of the arguments of the State party asserting that the elements of the complaint are incompatible *ratione materiae* with the provisions of the Covenant. The Committee has also noted the author's argument relating to improper administration of justice on the part of the administrative court and the Council of State, as well as the difficulty of appealing against their decisions. The Committee refers to its case law, under which it is generally a matter for domestic courts to examine the events and the evidence in a particular case, unless it is clear that their assessment was arbitrary or that it amounts to a denial of justice. The Committee considers that the author has not provided sufficient substantiation for his complaint of improper administration of justice. The Committee also considers that, notwithstanding any doubts the author may have had as to the effectiveness of the remedies, it was incumbent on him to seek all available remedies. Lastly, this part of the communication is inadmissible under article 2 and article 5, paragraph 2 (b), of the Optional Protocol.

7. The Committee therefore decides:

(a) That the communication is inadmissible under article 2 and article 5, paragraph 2 (b), of the Optional Protocol;

(b)That this decision shall be communicated to the State party and to the author.

[Adopted 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.]

* Made public by decision of the Human Rights Committee.

** The following members of the Committee participated in the examination of the present communication: Mr. Alfredo Castillero Hoyos, Mr. Franco Depasquale, Mr. Maurice Glèlè Ahanhanzo, Mr. Walter Kälin, Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer Lallah, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Martin Scheinin, Mr. Hipólito Solari Yrigoyen, Ms. Ruth Wedgwood and Mr. Roman Wieruszewski.

Notes

1. European Union rules.

2. Considering that in his request to the Minister of the Interior, the author had confined himself to asking for his military service in the Belgian army in Germany to be taken into account in determining his seniority and pension rights, without indicating which specific decision he was challenging or requesting; that consesquently the Minister's silence could not have given rise to an adverse decision against which an ultra vires action could be brought; that as a result Mr. Veriter had no grounds for his complaint that the Strasbourg administrative court, by adopting the contested ruling, had rejected his request.

3. Communication No. 130/1982 (*J. S. v. Canada*), decision of 6 April 1983.

4. Communication No. 262/1987 (*R. T. v. France*), decision of 3 April 1989.

5. Communication Nos. 146 and 148-154/1983 (*Baboeram v. Suriname*), Views dated 4 April 1985.

6. Communication No. 550/1993 (*Faurisson v. France*), Views dated 16 December 1996.