

HUMAN RIGHTS COMMITTEE

Aduayom et al. v. Togo

Communications Nos. 422/1990, 423/1990 and 424/1990

30 June 1994

CCPR/C/51/D/422/1990, 423/1990 and 424/1990 */

DEAL JOINTLY & ADMISSIBILITY

Submitted by: Adimado M. Aduayom, Sofianou T. Diasso and Yawo S. Dobou

Alleged victims: The authors

State party: Togo

Date of communications: 31 July 1990, 31 July 1990 and 1 August 1990, respectively

Documentation references: *Prior decision:* - Special Rapporteur's rule 91 decision, transmitted to the State party on 13 February 1991 (not issued in document form); - Further rule 91 decision, transmitted to the State party and to the authors on 26 October 1993 (not issued in document form)

Date of present decision: 30 June 1994

The Human Rights Committee, acting through its Working Group pursuant to rule 87, paragraph 2, of the Committee's rules of procedure, adopts the following (a) decision to deal jointly with three communications and (b) decision on admissibility.

Decision to deal jointly with three communications

The Human Rights Committee,

Considering that communications Nos. 422/1990, 423/1990 and 424/1990, submitted for consideration under the Optional Protocol to the International Covenant on Civil and Political Rights by A.M. Aduayom, S.T. Diasso and Y.S. Dobou, refer to closely related issues affecting the authors and which arise from the same legislation,

1. Decides, pursuant to rule 88, paragraph 2, of its rules of procedure, to deal jointly with these

communications;

2. Further decides that this decision shall be communicated to the State party and the authors of the communications.

Decision on admissibility

1. The authors of the communications (initial submissions dated 31 July and 1 August 1990 and subsequent correspondence) are A.M. Aduayom, S.T. Diasso and Y.S. Dobou, three Togolese citizens currently residing in Lomé, Togo. All three claim to be victims of violations of articles 9 and 19 of the International Covenant on Civil and Political Rights by Togo. The Optional Protocol to the Covenant entered into force for Togo on 30 June 1988.

The facts as submitted by the authors

2.1 The author of the first communication (No. 422/1990), Mr. Aduayom, a teacher at the University of Benin (Togo) at Lomé, states that he was arrested on 18 September 1985 by the police of Lomé and transferred to a prison in Lomé on 25 September 1985. He was charged with the offence of *lèse-majesté* (*outrage au Chef de l'Etat dans l'exercice de sa fonction*), and criminal proceedings were instituted against him. On 23 April 1986, however, the charges were dropped, and the author was released. Since that date, he has unsuccessfully requested his reinstatement in the post of *maître assistant* at the University, which he had been occupying prior to his arrest.

2.2 The author of the second communication (No. 423/1990), Mr. Diasso, also was a teacher at the University of Benin. He was arrested on 17 December 1985 by agents of the Togolese Gendarmerie Nationale, allegedly on the ground that he was in possession of pamphlets criticizing the living conditions of foreign students in Togo and suggesting that money “wasted” on political propaganda would be better spent on improving the living conditions in, and the equipment of, Togolese universities. He was taken to a Lomé prison 29 January 1986. He was charged with the offence of *lèse-majesté*, but the Ministry, after conceding that the charges against him were unfounded, released him 2 July 1986. Since then, he has unsuccessfully sought reinstatement in his former post of adjunct professor of economics at the University.

2.3 The author of communication No. 424/1990, Mr. Dobou, was an inspector in the ministry of Postal and Telecommunications. He was arrested on 30 September 1985 and transferred to a Lomé prison on 4 October 1985, allegedly because he had been found reading a document outlining in draft form the statute of a new political party. He was charged with the offence of *lèse-majesté*. On 23 April 1986, however, the charges were dropped and the author was released. Since that date, he has unsuccessfully requested reinstatement in his former post.

2.4 The wages of the authors were suspended under administrative procedures subsequent to their arrest, on the ground that they had unjustifiably deserted their post.

2.5 With respect to the requirement of exhaustion of domestic remedies, the authors state that

they submitted their respective cases to the National Commission on Human Rights, an organ they claim was set up by the State party for the purpose of investigating human rights violations. The Commission, however, did not examine their complaints and simply passed their files on to the Administrative Chamber of the Court of Appeal. This body apparently has not seen fit to examine their cases. The author of the communication No. 424/1990 additionally complains about the delays in the procedure before the Court of Appeal: thus he was sent documents submitted by the Ministry of Postal and Telecommunications seven months after their receipt by the Court.

The complaint

3.1 The authors contend that both their arrest and their detention were arbitrary and contrary to article 9, paragraph 1, of the Covenant. This was implicitly conceded by the State party when it dropped all charges against them. They further claim that the State party violated article 19 in their respect, because they were persecuted for having carried, read or disseminated documents that contained no more than an assessment of the conduct of Togolese politics at the domestic or foreign policy level.

3.2 The authors request reinstatement in the posts they occupied prior to their arrest, and claim compensation under article 9, paragraph 5, of the Covenant.

The State party's information and observations

4.1 The State party objects to the admissibility of the communications, on the ground that the authors failed to exhaust available domestic remedies. It observes that the procedure is regularly engaged before the Court of Appeal. In the cases concerning Mr. Aduayom and Mr. Diasso (communications Nos. 422/1990 and 423/1990), the employer (the University of Benin) did not make its own submission, so that the Administrative Chamber of the Court of Appeal cannot pass sentence. With respect to the case of Mr. Dobou (communication No. 424/1990), the author allegedly did not comment on the statement of the Ministry of Postal and Telecommunications. The State party concludes that the domestic remedies have not been exhausted, as the Administrative Chamber has not handed down a decision.

4.2 The State party further asserts that the amnesty law of 11 April 1991 constitutes another remedy for the authors. This law applies to all political cases as defined by the criminal code (“infractions à caractère ou d’inspiration politiques, prévues par la législation pénale”) which occurred before 11 April 1991. Article 2 expressly allows for reinstatement in public and private office. The amnesty is granted by the Public Prosecutor (“Procureur de la République ou juge chargé du Ministère public”) within three days after the request (article 4). According to article three of the law, the petition under these provisions does not prevent the victim from requesting his claims before the regular judicial Tribunals.

Authors' observations and clarifications

5.1 Following a request from the Committee for further information formulated during the 49th session, the authors, by letters dated 23 December, 15 November and 16 December 1993 respectively, inform the Committee that they have been reinstated in their posts pursuant to the

Amnesty Law of 11 April 1991. Mr. Diasso states that he has been reinstated as of 27 May 1991, the other authors as of 1 July 1991.

5.2 The authors submit that there has been no progress in the proceedings before the Administrative Chamber of the Court of Appeal, and that their cases appear to have been filed, following their reinstatement under the Amnesty Law. They argue, however, that the Amnesty Law was improperly applied to them, since they were never tried and convicted for having committed an offence, but were unlawfully detained and subsequently released, once the charges against them had been dropped. They submit that they have not been given the arrears on their salaries for the period between their arrest and their reinstatement, during which they were wrongfully denied their income.

5.3 As regards the statute of the University of Benin, the authors submit that, although the University is, at least in theory, administratively and financially autonomous, it is in practice controlled by the State, since 95% of its budget is State-funded.

5.4 The authors dispute the State party's argument that they have not exhausted domestic remedies. In this context, they argue that the proceedings before the Administrative Chamber of the Court of Appeal are wholly ineffective, since their cases have obviously been filed after their reinstatement under the Amnesty Law, and nothing has happened since.

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 On 26 October 1993, the Committee requested the State party to provide additional information and clarifications in respect of the exhaustion of domestic remedies in the authors' cases and their reinstatement. The Committee notes with concern that no reply has been received from the State party, despite a reminder sent on 10 February 1994.

6.3 The Committee has further noted the authors' claim that their arrest and detention in 1985 and 1986 were unlawful, that they should have been reinstated in their posts immediately and that, under article 9, paragraph 5, they are entitled compensation for their loss of income for the period between their arrest in 1985 and their reinstatement in 1991. The Committee notes that the authors' arrest and detention occurred prior to the entry into force of the Optional Protocol for Togo (30 June 1988). The Committee further notes that the alleged violations had continuing effects after the entry into force of the Optional Protocol for Togo, in that the authors were denied reinstatement in their posts until 27 May respectively 1 July 1991, and that no payment of salary arrears or other forms of compensation have been made to them. The Committee considers that these continuing effects can be seen as an affirmation of the previous violations allegedly committed by the State party. The Committee concludes therefore that it is not precluded ratione temporis to consider the communications and considers that they may raise issues under articles 9, paragraph 5, 19 and 25(c) of the Covenant.

6.4 The Committee has taken note of the State party's argument that the authors have failed to exhaust domestic remedies, since their application before the Administrative Chamber of the Court of Appeal remains pending. The Committee has also noted the authors' claim that said remedy is ineffective, since no progress has been made in the proceedings and their cases appear to have been filed after their reinstatement under the Amnesty Act. On the basis of the information before it, the Committee does not consider that, in the specific circumstances, the application before the Administrative Chamber of the Court of Appeal constitutes an available and effective remedy within the meaning of article 5, paragraph 2(b) of the Optional Protocol, which the authors should still pursue.

7. The Human Rights Committee therefore decides:

(a) that the communications are admissible in as much as they appear to raise issues under articles 9, paragraph 5, 19 and 25(c) of the Covenant;

(b) that, in accordance with article 4, paragraph 2, of the Optional Protocol, the State party shall be requested to submit to the Committee, within six months of the date of transmittal to it of this decision, written explanations or statements clarifying the matter and the measures, if any, that may have been taken by it;

(c) that any explanations or statements received from the State party shall be communicated by the Secretary-General under rule 93, paragraph 3, of the rules of procedure to the authors, with the request that any comments which they may wish to make should reach the Human Rights Committee, in care of the Centre for Human Rights, United Nations Office at Geneva, within six weeks of the date of transmittal;

(d) that this decision shall be communicated to the State party and to the authors.

[Adopted in English, French and Spanish, the English text being the original version.]

*/ All persons handling this document are requested to respect and observe its confidential nature.