

## HUMAN RIGHTS COMMITTEE

### Ackla v. Togo

Communication No. 505/1992\*

25 March 1996

CCPR/C/51/D/505/1992

### VIEWS

*Submitted by: Kéténguéré Ackla*

*Victim: The author*

*State party: Togo*

*Date of communication: 11 October 1991 (initial submission)*

*Date of decision on admissibility: 30 June 1994*

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

Meeting on 25 March 1996,

Having concluded its consideration of communication No. 505/1992, submitted to the Committee by Mr. Kéténguéré Ackla 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 by the State party,

Adopts the following:

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

1. The author of the communication is Kéténguéré Ackla, a Togolese citizen currently residing in Lomé, Togo. He claims to be a victim of violations by Togo of articles 1, paragraphs 1 and 2; 2, paragraph 3 (a), (b) and (c); 7; 9, paragraphs 1, 2, 3 and 5; 10,

paragraph 1; 12, paragraph 4; and 17, paragraphs 1 and 2, of the International Covenant on Civil and Political Rights. The Optional Protocol entered into force for Togo on 30 June 1988.

#### Facts as submitted by the author

2.1 The author, formerly a police superintendent, was dismissed from his post by decision of 13 May 1986; according to him, the decision was unjustifiable and arbitrary, and based on fabricated charges of grave professional misbehaviour (faute grave de service). Mr. Ackla himself requested the establishment of a disciplinary committee to investigate his case, but this request was not followed up on.

2.2 On 29 May 1987, the author was arrested at his residence, upon order of the State party's President, Eyadema Gnassingbe. He was detained for eight days, apparently without charges. On the third day of his detention, he was able to contact the President. According to the author, he was detained because the President held personal grudges against him. The author contends that during his detention, his house and his other properties were seized and turned over to his former wife.

2.3 Prior to his release on 6 June 1987, Mr. Ackla was notified of the President's decision to deny him the right to enter the district of La Kozah (interdiction de séjour) and his native town of Kara, situated in this district. On 24 July 1987, the police once more tried to arrest him when he returned to Kara to retrieve some personal effects. He managed to escape and subsequently requested his sister to retrieve his belongings; she was unable to do so. The author adds that he was informed in June 1990 that the police had once again visited his home in his native town and ransacked it.

2.4 As to the requirement of exhaustion of domestic remedies, the author notes that he sent over 40 communications to the Togolese authorities, requesting his reinstatement in the police, a lift on the interdiction to enter the La Kozah district and his native village, and the restitution of his estate. He did not receive a reply. He also unsuccessfully discussed his case with two ministers. As to steps taken to exhaust available remedies before the local courts, Mr. Ackla states that he sent a petition to an unspecified court in charge of labour disputes, and that an examining magistrate informed him that he was not competent to investigate the validity of an order of President Eyadema. This magistrate allegedly told him that only the President could reinstate him in the police force. After submitting his complaint to the Human Rights Committee, the author appealed to the President of the Court of Appeal, who is said to have replied that the administrative tribunal did not function in Togo, owing to the lack of qualified judges.

2.5 The author adds that he sought help from various local organizations, including the Togolese human rights commission, to no avail. He concludes that no effective remedies exist, and that he cannot defend himself against a biased and discriminatory judicial system.

#### The complaint

3.1 The author seeks the restitution of his property, in particular of his home, as well as compensation for the lost revenue derived from the rental of his home, totalling 1,078,000 CFA francs by the beginning of 1992. He challenges the decision to deny him access to the La Kozah district and his native village, which remains in force, and the refusal of the Chief of National Security, dating from 1991, to reinstate him in his functions.

3.2 Mr. Ackla further complains about arbitrary and unlawful interferences with his privacy, family home and correspondence, and about unlawful attacks on his honour and his reputation. Furthermore, the seizure of his home and his unemployment have prevented him from meeting both his own medical expenses and the fees for the education of his children. He adds that he is by now unable to pay for appropriate legal representation.

#### The State party's submission on admissibility and the author's comments thereon

4. In its submission under rule 91, dated 20 October 1992, the State party notes that the author has been reinstated in the police force, at a higher grade. As a result, the State party submits, the author's complaint to the Human Rights Committee should be considered moot.

5.1 In his comments, the author confirms that he was reinstated in the police force on 26 May 1992 and that, while there were initial questions about his grade, he was later reclassified at a higher level. At the private level, however, there have been no changes: neither his property nor the sums derived from its rental (1,228,000 CFA francs as of mid-January 1993) have been restituted, and the order prohibiting him from visiting the La Kozah district and his native village remains in force.

5.2 In the latter context, the author notes that, on 9 January 1993, he visited his house in Kara at his own risk, having decided to sell it to a local merchant. Upon his arrival, he was threatened by his ex-wife and her sons, who sought to have him arrested upon orders of the mayor of Kara and tried to discourage the potential buyer of the house. As a result, Mr. Ackla was unable to sell the house.

#### The Committee's admissibility decision

6.1 At its 51st session, the Committee considered the admissibility of the communication. The Committee noted the State party's contention that as Mr. Ackla was reintegrated in the police, his complaint should be considered moot, but considered that the author's claims relating to arbitrary arrest and detention, to expropriation of his house and to the restrictions on his freedom of movement were distinct from his claims related to his dismissal, in 1986, from civil service, and thus had not become moot.

6.2 The Committee noted that the author's claims under articles 7, 9 and 10, paragraph 1, of the Covenant related to events that occurred prior to 30 June 1988, the date of entry into force of the Optional Protocol for the State party. In this respect, therefore, the Committee decided that the communication was inadmissible ratione temporis.

6.3 Concerning the author's claim relating to the failure of the authorities to restitute his

property and the rents derived from unlawful rental thereof, the Committee noted that, irrespective of the fact that the confiscation took place prior to the date of entry into force of the Optional Protocol for Togo, the right to property was not protected by the Covenant. Accordingly, the Committee decided that this claim was inadmissible ratione materiae, under article 3 of the Optional Protocol.

6.4 The Committee considered that the author had failed to substantiate, for purposes of admissibility, his claims under articles 1 and 2 of the Covenant and concluded that the facts as submitted did not raise issues under these provisions.

6.5 As to the author's claim under article 17, the Committee noted that on the basis of the information given by the author, which had remained uncontested, interferences with his home, his privacy and his honour and reputation continued after 30 June 1988. However, there was nothing to indicate that the author had sought to have this issue adjudicated before the domestic tribunals and in particular before the civil courts; his generalized claim that he was defenceless against a biased and partial judicial system had not been further corroborated. The Committee considered that mere doubts about the effectiveness of civil remedies did not absolve the author from attempting to exhaust them. In this respect, the Committee concluded that the author had not satisfied the requirements of article 5, paragraph 2 (b), of the Optional Protocol.

6.6 Finally, as to the author's claim under article 12, the Committee noted that the State party had not contested that the prohibition, pronounced against the author, to enter the La Kozah district and to visit his native village was still in force. The Committee noted that the author had sought to bring this matter to the attention of the judicial authorities, who had replied that administrative tribunals were inoperative in Togo. In these circumstances, the Committee concluded that no effective remedy was available to Mr. Ackla.

7. Accordingly, on 30 June 1994 the Human Rights Committee decided that the communication was admissible in so far as it might raise an issue under article 12 of the Covenant.

#### Issues and proceedings before the Committee

8. The deadline for the submission of the State party's observations under article 4, paragraph 2, of the Optional Protocol expired on 10 February 1995. No submission has been received from the State party, in spite of two reminders addressed to it on 14 July and 31 August 1995. The Committee regrets the absence of cooperation on the part of the State party, as far as the merits of the author's claims are concerned. It is implicit in article 4, paragraph 2, of the Optional Protocol, that a State party must furnish the Committee, in good faith and within the imparted deadlines, with all the information at its disposal. In the absence of information from the State party, due weight must be given to the author's allegations, to the extent that they have been substantiated.

9. Accordingly, the Human Rights Committee has considered the present communication in the light of all the information made available to it by the parties, as provided in article

5, paragraph 1, of the Optional Protocol.

10. The Committee notes that the only admissible issue, which has to be examined on the merits, is the author's uncontested allegation that he is under prohibition of entering the district of La Kozah and his native village which forms part of this district. Article 12 of the Covenant establishes the right to liberty of movement and freedom to choose residence for everyone lawfully within the territory of the State. In the absence of any explanation from the State party justifying the restrictions to which the author has been subjected, pursuant to paragraph 3 of article 12, the Committee is of the opinion that the restriction of the author's freedom of movement and residence is in violation of article 12, paragraph 1, of the Covenant.

11. 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 a violation of article 12, paragraph 1, of the International Covenant on Civil and Political Rights.

12. Pursuant to article 2, paragraph 3 (a), of the Covenant, Mr. Ackla is entitled to an effective remedy. In the Committee's opinion, this remedy should entail measures to immediately restore Mr. Ackla's freedom of movement and residence, as well as appropriate compensation. The State party is under an obligation to ensure that similar violations do not occur in the future.

13. Bearing in mind that, by becoming a State party to the Optional Protocol, the State party 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 and 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, the Committee wishes to receive from the State party, within 90 days, information about the measures taken to give effect to the Committee's Views.

#### Footnotes

\*/ Made public by decision of the Human Rights Committee.

[Adopted in English, French and Spanish, the English 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.]