

HUMAN RIGHTS COMMITTEE

Mazou v. Cameroon

Communication No. 630/1995

26 July 2001

CCPR/C/72/D/630/1995

VIEWS

Submitted by: Mr. Abdoulaye Mazou

Alleged victim: The author

State party: Cameroon

Date of communication: 31 October 1994 (initial submission)

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

Meeting on 26 July 2001,

Having concluded its consideration of communication No. 630/1995 submitted to the Human Rights Committee by Mr. Abdoulaye Mazou 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, dated 31 October 1994, is Abdoulaye Mazou, a Cameroonian citizen and professional magistrate, currently living in Yaoundé, Cameroon. He claims to be the victim of a violation by Cameroon of article 2, paragraph 3, article 14, paragraph 1, and article 25, subparagraph (c) of the International Covenant on Civil and Political Rights. The Covenant and the Optional Protocol entered into force for Cameroon on 27 September 1984.

The facts as submitted by the author

2.1 Following an attempted *coup d'état* in Cameroon in April 1984, the author, who at that time was a second class magistrate, was arrested on 16 April 1984. He was suspected of having sheltered his brother, who was wanted by the police for having taken part in the *coup d'état*. The author was found guilty and sentenced by the military court in Yaoundé to five years' imprisonment. According to the author, the charges against him were false, and no evidence was submitted and no witnesses were heard during the court proceedings. The trial was held in camera. Note by the secretariat: The author has not attached any documentation relating to the criminal trial. The communication focuses primarily on the fact that he was not reinstated in his post.

2.2 While the author was detained, the President of Cameroon signed a decree on 2 June 1987 (No. 87/747) removing the author from his post as Secretary-General in the Ministry of Education and Chairman of the Governing Council of the National Sports Office. The Decree gave no reasons for the action and, according to the author, was issued in violation of article 133 of the Civil Service Statute.

2.3 On 23 April 1990 the author was released from prison but placed under house arrest in Yagoua, his birthplace, in the far north of the country. Not until the end of April 1991, following the adoption of the Amnesty Act of 23 April 1991 (No. 91/002), were the restrictions lifted. On the date of transmission of the communication, however, the presidential decree of 2 June 1987 remained in force and the author had not been allowed to resume his duties.

2.4 On 12 June 1991 the author requested the President to reinstate him in the civil service. On 18 July 1991 he filed an appeal with the Ministry of Justice requesting the annulment of the presidential Decree of 2 June 1987. Receiving no response, on 9 September 1991 he applied for a judicial remedy to the administrative division of the Supreme Court, asking it to find that the Decree was illegal and ought therefore to be annulled. The author points out that although the Supreme Court has regularly ruled that such decrees should be annulled, as of 31 October 1994 the case had still not been settled.

2.5 On 4 May 1992, Decrees No. 92/091 and No. 92/092, setting out the terms of reinstatement and compensation of those covered by the Amnesty Act, were issued.

2.6 On 13 May 1992 the author applied to the Ministry of Justice for reinstatement in his post. Pursuant to Decree No. 92/091, his application was transmitted to the committee responsible for monitoring reinstatement in the civil service. On 12 May 1993 that committee issued an opinion in support of the author's reinstatement in the civil service. According to the author, however, the Ministry did not take action on this opinion.

2.7 On 22 September 1992 the author initiated proceedings before the administrative division of the Supreme Court to attack Decree No. 92/091 and Decree No. 92/092. In his view, the Decrees sought to block the full implementation of the Amnesty Act of 23 April 1991 which, he claims, provided for automatic reinstatement. This application was also pending at the time of submission of his communication.

2.8 In his initial communication the author stated that he had been out of work since being released from prison. He claimed that he was being persecuted for his opinions and on account of his ethnic origin. He added that other persons who had benefited from the Amnesty Act had been reinstated in their former posts.

2.9 At that time, the author stated that, in view of the silence of the judicial and political authorities, there were no further domestic remedies available to him.

2.10 Since the submission of his communication, however, the situation has improved significantly for the author; he was reinstated in his post on 16 April 1998 in accordance with a Supreme Court order of 30 January 1997 annulling Decree No. 87/747, the Decree removing him from his post.

The complaint

3. According to the author, the facts set out above constitute a violation of article 2, paragraph 3, article 14, paragraph 1, and article 25, subparagraph (c) of the Covenant. The author is asking the Committee to urge the State party to reinstate him in the civil service with retroactive effect and to award him damages in compensation for the injury done to him.

The State party's observations

4. In a note dated 13 May 1997 the State party informed the Committee that the administrative division of the Supreme Court, by an order dated 30 January 1997, had annulled Decree No. 87/747 (removing the author from his post).

The Committee's decision regarding admissibility

5.1 At its sixty-third session the Committee considered the admissibility of the communication.

5.2 At that time the Committee noted that the State party was not contesting the admissibility of the communication but had informed the Committee that the Supreme Court had annulled the Decree dismissing the author from his post. At the same time, the State party had not indicated whether the author had been reinstated in his post and if so, under what conditions, or if not, on what grounds. The Committee therefore decided that the communication should be considered on the merits.

5.3 Accordingly, on 6 July 1998 the Committee decided that the communication was admissible.

The State party's observations on the merits of the communication

6.1 By a letter dated 10 August 2000 the State party transmitted its observations regarding the merits of the communication.

6.2 The State party reports that pursuant to the Supreme Court decision of 30 January 1997 the author of the communication was reinstated as a second class magistrate in the Ministry of Justice as of 16 October 1998 and that his salary was calculated retroactive to 1 April 1987, the date on which he had been wrongfully suspended and subsequently dismissed.

The author's observations on the merits of the communication

7.1 In a letter dated 8 November 2000 the author transmitted his comments on the State party's observations.

7.2 The author first confirms that he was in fact reinstated in the Ministry of Justice and that the administration had indeed paid him his salary dating back to 1 April 1987.

7.3 However, the author considers that the administration did not fully grasp the significance of the Supreme Court decision of 30 January 1997. Given that the effects of that decision were retroactive, the author believes that he is entitled to have his career restored, i.e. to be reinstated at the grade he would have held had he not been dismissed. Despite his requests to the Ministry of Justice to that end, however, the author has yet to be informed of a decision.

7.4 The author is also requesting damages in compensation for the injury suffered by him following his dismissal.

The Committee's deliberations on the merits

8.1 The Human Rights Committee considered the communication in the light of the information provided by the parties, in accordance with article 5, paragraph 1, of the Optional Protocol.

8.2 The Committee learned that, pursuant to the Supreme Court decision of 30 January 1997, the author had been reinstated in his post and that his salary had been paid retroactively from the date of his dismissal. However, there seems to be no question that the State party neither honoured the request for damages in compensation for the injury suffered nor sought to restore the author's career, which would have resulted in his being reinstated at the grade to which he would have been entitled had he not been dismissed.

8.3 The Committee notes, however, that the author chose to bring his complaint to the Ministry of Justice by means of a letter, and submitted no evidence showing that a judicial authority had effectively been asked to give a ruling on the question of damages. This part of the communication is inconsistent with the principle of exhaustion of domestic remedies as set out in article 5, paragraph 2 (b) of the Optional Protocol and must therefore be deemed inadmissible.

8.4 With regard to the author's allegations that the State party violated both article 2 and article 25 of the Covenant, the Committee considers that the Supreme Court proceedings that gave rise to the decision of 30 January 1997 satisfying the request that the author had made in his communication were unduly delayed, taking place more than 10 years after the author's removal from his post, and were not followed by restoration of his career on reinstatement, to which he was legally entitled in view of the annulment decision of 30 January 1997. Such proceedings cannot, therefore, be considered to be a satisfactory remedy in the meaning of articles 2 and 25 of the Covenant.

9. Consequently, the State party has an obligation to reinstate the author of the communication in his career, with all the attendant consequences under Cameroonian law, and must ensure that similar violations do not recur in the future.

10. 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 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 its Views. The State party is also invited to publish the Committee's Views.

* The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Prafullachandra Natwarlal Bhagwati, Ms. Christine Chanet, Mr. Maurice Glèlè Ahanhanzo, Mr. Louis Henkin, Mr. Eckart Klein, Mr. David Kretzmer, Mr. Rajsoomer Lallah, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Martin Scheinin, Mr. Ivan Shearer, Mr. Hipólito Solari Yrigoyen, Mr. Ahmed Tawfik Khalil, Mr. Patrick Vella and Mr. Maxwell Yalden.