

HUMAN RIGHTS COMMITTEE

T. K. v. France

Communication No. 220/1987

8 November 1989

CCPR/C/37/D/220/1987

ADMISSIBILITY

Submitted by: T. K. [name deleted]

Alleged victim: The author

State party concerned: France

Date of communication: 12 January 1987 (date of initial letter)

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

Meeting on 8 November 1989,

Adopts the following:

Decision on admissibility

1. The author of the communication (initial letter dated 12 January 1987 and a further letter dated 30 June 1987) is T. K., a French citizen of Breton ethnic origin, writing on his own behalf and in his capacity as president of the Unvaniezh Ar Galennerien Brezhoneg (UAGB, Union des Enseignants de Breton). He was born in 1937 in Brittany and is employed as a professor of philosophy and of the Breton language. He alleges violations by France of articles 2, 16, 19, 26 and 27 of the Covenant.

2.1 The author states that the Tribunal Administratif de Rennes has refused to consider a case which he submitted on behalf of the UAGB in the Breton language on 7 November 1984. In this case, the author sought the recognition of the license for the association that he is heading. In reply to an inquiry written in French and Breton, the Tribunal answered that the case had not been registered because it was not written in French. A subsequent letter of complaint to the French Minister of Justice has allegedly remained unanswered. In support of his case, the author encloses copies of two

decisions, one from the Tribunal Administratif de Rennes dated 21 November 1984, the other from the Conseil d'Etat dated 22 November 1985, both stating that a complaint drafted in the Breton language should not be registered. Such decisions, according to the author, constitute discrimination on the ground of language, in contravention of article 2, paragraph 1, of the Covenant. The author further claims that the State party has violated article 2, paragraph 2, with regard to legislative or other measures necessary to give effect to the rights recognized in the Covenant, article 2, paragraph 3, with regard to effective remedies, article 16 with regard to the right to recognition everywhere as a person before the law, article 19, paragraph 2, with regard to freedom of expression, article 26 with regard to equality before the law without discrimination on any ground, and article 27 with regard to the right to use one's own language.

2.2 Concerning the question of the exhaustion of domestic remedies, the author states that the complaint before the Tribunal Administratif de Rennes was not even registered and that the Minister of Justice has not responded to his written complaint. The author further states that he has not submitted the same matter to another procedure of international investigation or settlement.

3. Without transmitting the communication to the State party, the Human Rights Committee requested the author, by decision of 9 April 1987 under rule 91 of the rules of procedure, to clarify (a) whether he claimed, as an individual, to be personally affected by the alleged violations of the Covenant by the State party, or whether he claimed, in his capacity as President of an organization, that the organization was the victim of the alleged violations; and (b) whether he understood, read and wrote French. By letter dated 30 June 1987, the author replied that he had initially intended to submit the communication on behalf of the organization, although he maintained that he was also directly affected by the events described in his initial communication. He further stated that he understands, reads and writes French.

4. By further decision of 20 October 1988, the Working Group of the Human Rights Committee transmitted the communication to the State party, requesting it, under rule 91 of the rules of procedure, to provide information and observations relevant to the question of admissibility. The author was requested, under rule 91, (a) to specify in which way he claimed to have been denied the right to recognition as a person before the law, (b) to which extent and in which context he claimed that his freedom of expression had been curtailed and (c) to substantiate his allegation that French citizens of French mother tongue and those of Breton mother tongue are not equal before the law.

5. In his reply, dated 13 January 1989, to the Working Group's questions, the author claims that French citizens of French mother tongue and those of Breton mother tongue are not equal before the law because the former can express themselves in their mother tongue before the tribunals while the latter cannot. While there exists a "Secrétariat à la francophonie", a similar institution has not been created in defence of regional languages other than French. Because the government refuses to recognize the Breton language, those who use it daily are forced to abandon its use or to forgo their right to freely express themselves. The author adds that the violation of his freedom of expression is manifest in that the Administrative Tribunal refused to register a complaint submitted in Breton on the ground that its content was unintelligible, thereby refusing to recognize the validity of a complaint submitted in a local language and denying the citizens the use of their own language in court. Finally, the author affirms that he is barred, as a French citizen of Breton mother tongue, from access to courts, as the judicial authorities do not authorize him to submit complaints in his mother

tongue.

6.1 In its submission under rule 91, dated 15 January 1989, the State party argues that the communication is inadmissible on the ground of non-exhaustion of domestic remedies and that some of the author's claims are incompatible with the provisions of the Covenant. The State party recalls that the author did not contest, within the delays prescribed by law, the decision of the Administrative Tribunal not to register his complaint. His written complaint to the Minister of Justice that he had suffered a denial of justice cannot, in the State party's opinion, be considered to be a judicial remedy. Nor has he appealed to any other judicial instance. His communication thus fails to meet the requirements of article 5, paragraph 2 (b), of the Optional Protocol.

6.2 As to the alleged violation of article 2 of the Covenant, the State party argues that this article can never be violated directly and in isolation. A violation of article 2 can only be admitted to the extent that other rights recognized by the Covenant have been violated (paragraph 1) or if necessary steps to give effect to Covenant rights have not been taken (paragraph 2). A violation of article 2 can only be the corollary of another violation of a Covenant right. The State party contends that the author did not base his argumentation on any precise facts, and that he cannot demonstrate that he has been a victim of discrimination in his relations with the judicial authorities. It was up to him to use the remedies which were available to him.

6.3 With respect to the alleged violation of article 16, the State party notes that the author has not put forth any specific complaint and dismisses his interpretation of this provision as abusive. Thus, the standing of the author in the administrative procedure has never been at issue; what was refused was the possibility to submit his case in Breton, as "in the absence of legislative provision to the contrary, the language of procedure in French courts is the French language" (judgment of the Rennes Administrative Tribunal, 21 November 1984, Quillévére case).

6.4 Concerning the alleged violation of article 19, paragraph 2, the State party submits that the author has not substantiated how his freedom of expression has been violated. On the contrary, his letter to the Minister of Justice demonstrates that he had ample opportunity to present his position. Furthermore, "freedom of expression" within the meaning of article 19 cannot be construed to encompass the right of French citizens to use Breton before French administrative tribunals.

6.5 As to article 26, the State party rejects the author's contention that the refusal by the Administrative Tribunal of Rennes of a complaint submitted in Breton constitutes discrimination on grounds of language. On the contrary, the authorities based themselves on generally applicable rules, which are intended to facilitate the administration of justice by enabling the tribunals to rule on the original submission (without having to resort to translation).

6.6 Finally, the State party recalls that upon ratification of the Covenant, the French Government entered a reservation with respect to article 27: "In the light of article 2 of the Constitution of the French Republic, the French Government declares that article 27 is not applicable so far as the Republic is concerned".

7.1 In his comments, dated 23 May 1989, the author rejects the State party's contention that the communication is inadmissible because of non-exhaustion of domestic remedies. Thus, he submits

that his letter to the Minister of Justice was meant to be an appeal against the decision of the Administrative Tribunal not to register his complaint. Moreover, the State party has failed to indicate to the Committee exactly what kind of remedies would be open to him. To the author, this failure is easily explained, as the State party itself must be well aware that remedies are non-existent, once the court of first instance has refused to register a complaint submitted in Breton. Every subsequent complaint submitted in Breton is bound to suffer the same fate, regardless of which judicial instance is the addressee.

7.2 The author reaffirms that violations of his rights under articles 16, 19, 26 and 27 entail ipso facto a violation of article 2, paragraphs 1 and 2. He adds that several legislative proposals have deliberately been ignored by successive French governments, although they would have brought France at least partially into compliance with article 2. With respect to article 16, the author qualifies the State party's interpretation as restrictive if not discriminatory. He expresses surprise at its argument that his standing before the court was never at issue despite the fact that his complaint was not even registered, and contends that the refusal of his complaint necessarily meant a denial of standing. Furthermore, he argues that the Covenant does not link the issue of legal personality to the use, in court, of any specific language, and that in the absence of specific legal rules confirming the use of French as the official language in judicial proceedings, the use of Breton must be considered to be permissible.

7.3 With respect to article 19, paragraph 2, the author contends that freedom of expression cannot be limited to freedom to express oneself in French, and that freedom of expression for citizens of Breton mother tongue can only mean the freedom to express themselves in Breton. Furthermore, the refusal of the Administrative Tribunal to register his complaint is said to have been intended to restrict his freedom of expression, although the limitations laid down in paragraph 3 of article 19 are said to be inapplicable.

7.4 The author dismisses the State party's arguments concerning an alleged violation of article 26 and claims that a proper administration of justice would not rule out the use of Breton in court. He recalls that several States, including Switzerland and Belgium, allow the use of several languages before their courts and do not force their citizens to abandon the use of their mother tongue. The refusal to register his complaint, according to the author, constitutes discrimination on the ground of language, since French citizens of Breton mother tongue do not benefit from the same procedural guarantees before the tribunal as French citizens of French mother tongue.

7.5 Finally, the author indicates that France did not enter a "reservation" with respect to article 27 but contented itself with making a mere "declaration". The author points out that draft legislation supported by many parliamentarians acknowledges the various languages spoken in France as testimony to the singular character of a region or a community. To the author, there can be no doubt that the Breton community constitutes a linguistic minority within the meaning of article 27, entitled to enjoy the right to use its own language, including in the courts.

8.1 Before considering any claims contained in a communication, the Human Rights Committee must, pursuant to rule 87 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

8.2 Article 5, paragraph Z(b), of the Optional Protocol precludes the Committee from considering any communication by an individual who has failed to exhaust all available domestic remedies. This is a general rule, which applies unless the remedies are unreasonably prolonged, or the author of a Communication has convincingly demonstrated that domestic remedies are not effective, i. e. do not have any prospect of success.

8.3 On the basis of the information before the Committee, there are no circumstances which would absolve the author from attempting to pursue all domestic remedies. He has not been criminally prosecuted but seeks to initiate proceedings before an administrative court to establish that he has been denied rights protected by' the Covenant. The purpose of article 5, paragraph 2(b), of the Optional Protocol is, *inter alia*, to direct possible victims of violations of the provisions of the Covenant to seek, in the first place, satisfaction from the competent State party authorities and, at the same time, to enable States parties to examine, on the basis of individual complaints, the implementation, within their territory and by their organs, of the provisions of the Covenant and, if necessary, remedy the violations occurring, before the Committee is seized of the matter.

8.4 It remains to be determined whether recourse to the French courts must be considered an unavailable or ineffective remedy, given that the author must use French to establish his claim that it is a violation of his rights under the Covenant to have to use French, rather than Breton, in legal proceedings. The Committee observes that the matter of the exclusive use of French to institute proceedings in courts is the issue to be examined at first instance by the French judicial organs and that, under the applicable laws, this can be done only by using French. In view of the fact that the author has demonstrated his proficiency in French, the Committee finds that it would not be unreasonable for him to submit his claim in French to the French courts. Further, no irreparable harm would be done to the author's substantive case by using the French language to pursue his remedy.

8.5 The author has also invoked article 27 of the Covenant claiming that he has been a victim of a breach of its provisions. Upon accession to the Covenant, the French Government declared that "in the light of article 2 of the Constitution of the French Republic,... article 27 [of the Covenant] is not applicable so far as the Republic is concerned." This declaration - has not been objected to by other States parties, nor has it been withdrawn.

8.6 The Committee is therefore called upon to decide whether this declaration precludes it from examining a communication alleging a violation of article 27. Article 2, paragraph 1 (d), of the Vienna Convention on the Law of Treaties stipulates as follows: 'Reservation' means a unilateral statement, however phrased or named, made by a State, when . . . acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State." The Convention does not make a distinction between reservations and declarations. The Covenant itself does not provide any guidance in determining whether a unilateral statement made by a State party upon accession to it should have preclusionary effect regardless of whether it is termed a reservation or declaration. The Committee observes in this respect that it is not the formal designation but the effect the statement purports to have that determines its nature, If the statement displays a clear intent on the part of the State party to exclude or modify the legal effect of a specific provision of a treaty, it must be regarded as a binding reservation, 'even if the statement is phrased as a declaration. In the present case, the statement entered by the French

Government upon accession to the Covenant is clear: it seeks to exclude the application of article 27 to France and emphasizes this exclusion semantically with the words "is not applicable". The statement's intent is unequivocal and thus must be given preclusionary effect in spite of the terminology used. Furthermore, the State party's submission of 15 January 1989 also speaks of a French "reservation" in respect of article 27. Accordingly, 'the Committee considers that it is not competent to consider complaints directed against France concerning alleged violations of article 27 of the Covenant.

9. The Committee therefore decides:

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

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