HUMAN RIGHTS COMMITTEE

M. K. v. France

Communication No. 222/1987

8 November 1989

CCPR/C/37/D/222/1987 *

ADMISSIBILITY

Submitted by: M. K. (name deleted)

Alleged victims: The author

State party concerned: France

Date of communication: 20 February 1987 (date of initial letter)

Documentation references: Prior decisions - CCPR/C/29/D/222/1987 (Rule 91 decision to the author only, dated 9 April 1987) CCPR/C/WG/34/D/222/1987 (Working Group rule 91 decision, dated 20 October 1988)

Date of present decision: 8 November 1989

Decision on admissibility

1. The author of the communication (initial letter dated 20 February 1987; further submissions dated 10 March, 29 June 1987, 28 December 1988 and 22 May 1989) is M. K., a French citizen born in 1952, residing in Rennes, France and employed as a teacher. He claims to be a victim of violations of articles 2, 16, 19, 26 and 27 of the International Covenant on Civil and Political Rights by France.

2.1 The author states that he is a Breton and that his mother tongue is Breton. He complains that French courts have consistently refused him the right to express himself in Breton, and that his right to defence in Breton and the right to freedom of expression in Breton are not respected. His daughter allegedly does not enjoy the right to education in Breton, and television broadcasts in Breton amount only to one hour and a half per day, except in the summer when there are no Breton broadcasts at all.

2.2 In more detail, the author states that the Administrative Tribunal of Rennes refused to consider a complaint which he had submitted in Breton on 6 March 1987. This complaint was directed against

the steadfast refusal of the French tax authorities to write his address in Breton. Thus, the author sought to force the tax authorities to use his Breton address. On 6 March 1987 the Tribunal decided that the document had to be submitted in French if it was to be considered by the Court.

2.3 With respect to the exhaustion of domestic remedies, the author alleges that non are available, since French law does not recognize the right to the use of Breton before French tribunals, nor the right to be educated in the Breton language.

3. By decision of 9 April 1987, the Human Rights Committee, without transmitting the communication to the State party, requested the author, under rule 91 of the provisional rules of procedure, to clarify whether he understood and spoke French and to indicate whether, in additional to himself, he also purported to act on behalf of his daughter.

4.1. In his reply to the Committee's questions, dated 29 June 1987, the author states that, although he understands and speaks French, he nevertheless does not regard himself as sufficiently proficient in French or sufficiently acquainted with French legal terminology to be able to draft his petition to the Administrative Tribunal of Rennes or his communication to the Human Rights Committee without outside assistance.

4.2. The author alleges that his complaint to the Administrative Tribunal of Rennes should have been accepted, because article 27 recognizes his right to use his own language before the courts. Furthermore, the author claims, the Tribunal refuses his petition on the basis of a ruling that denied his legal personality (article 16 of the Covenant) and which therefore discriminated between French citizens on the ground of their Breton national origin and language in violation of article 26 of the Covenant.

4.3 With regard to the alleged violation of article 14, the author contends that the right to the assistance of interpreters, stipulated in article 14, paragraph 3 (f) of the Covenant, has always been denied to Breton-speaking French citizens. He finally asserts that the French judicial administration simply expects every French citizen to speak French.

5. By decision of 20 October 1988, the Working Group of the Human Rights Committee transmitted the communication under rule 91 of the provisional rules of procedure to the State party, requesting information and observations relevant to the question of the admissibility of the communication, in particular on the effective remedies available to the author in the specific circumstances of the case.

6.1 In its submission under rule 91 of the provisional rules of procedure, dated 15 January 1989, the State party contests the admissibility of the communication on several grounds. With regard to the exhaustion of domestic remedies, it argues that the author failed to exhaust them, as required under article 5, paragraph 2 (b), of the Optional Protocol. According to the State party, the author should have complied with the rules of submission of the Administrative Tribunal; moreover, he retained the right to appeal to the Conseil d'Etat should the Administrative Tribunal dismiss his claim.

6.2 With regard to the alleged violations of article 2, paragraphs 1 and 2, the State party submits that such violations cannot but be the result of an infringement of the author's right under other articles

of the Covenant. The State party adds that the author has not been able to establish such infringements.

6.3 With regard to the author's allegations that he has been denied the right to recognition as a person before the law (article 16), the State party submits that the author has provided no evidence in substantiation of this claim, and that the reference to article 16 constitutes an abusive interpretation of the notion of "person before the law". On the contrary, the State party continues, such right was fully recognized to the author inasmuch as it was open to him to initiate the procedure indicated to him by the Administrative Tribunal in its letter of 6 March 1987.

6.4 With regard to the author's allegations under article 19, paragraph 2, the State party submits that the claim is inadmissible because he has not substantiated his assertion to have been denied the right to freedom of expression. Furthermore, the State party contends, such right cannot be deemed to encompass the freedom of French citizens to use whatever language or dialect they choose before French administrative tribunals.

6.5 As to the author's claim that he was subjected to discrimination on grounds of his language, the State party submits that the refusal of the Administrative Tribunal of Rennes to register the author's complaint was in conformity with an established practice sanctioned by the jurisprudence of the Conseil d'Etat and destined to facilitate the administration of justice by relieving courts from the obligation to use translation services and allowing them to issue their decisions on the basis of the text of the original submission. Consequently, the State party concludes, the author cannot be deemed to have suffered any discrimination on account of the application to him of a general and uniform rule.

6.6 As to the author's allegations under article 27, the State party considers that the declaration made by it upon accession to the Covenant on 4 November 1980 excludes the Committee's competence to examine communications concerning purported violations of that article. The State party therefore concludes that the communication should be declared inadmissible as incompatible with the provisions of the Covenant.

7.1 Commenting on the State party's submission, the author, in a letter dated 22 May 1989, contends that the established jurisprudence of the Conseil d'Etat on the matter shows that the remedies indicated by the State party would have no prospect of success.

7.2 The author further explains that he has been a victim of discrimination on the ground of his mother tongue in the sense that some French citizens are allowed to use their own language in courts while others are not. In addition, the author claims, technical problems, such as the need for the courts to use translation services, should not constitute an obstacle to the full enjoyment of human rights. He refers in this context to the example of Belgium and Switzerland, where different practices prevail.

7.3 As far as article 27 is concerned, the author first noted that, upon accession to the Covenant on 4 November 1980, France made a "declaration" but not a "reservation", that since France made "reservations" with regard to other articles of the Covenant, its "declaration" with regard to article 27 should be treated differently; secondly, that a distinct Breton ethnic and linguistic minority is

internationally recognized by sociologists and scholarly publicists; and thirdly, that numerous French Parliamentarians (centre, communist, socialist) have proposed bills concerning the Breton language. Finally, the author submits that, notwithstanding the French declaration in respect of article 27, no reservation or declaration equivalent to a reservation has ever been made by the State party concerning articles 2, 16, 19 and 26 of the Covenant.

8.1 Before considering any claims contained in a communication, the Human Rights Committee shall, in accordance with rule 87 of the provisional rules of procedure, decide whether it is admissible under the Optional Protocol to the Covenant.

8.2 Article 5, paragraph 2 (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 the 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 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, and if necessary, remedy the violations occurring 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 If remains to be determined whether the fact that the author is obliged to use the French language in order to establish that his rights are being violated by having to use the French language in legal proceedings, renders the remedy ineffective. 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 done to the author's substantive case by using the French language to pursue his remedy. The objection raised by the author, that he is not sufficiently acquainted with French legal terminology to prepare submissions to courts cannot be entertained by the Committee; the same difficulty is faced by citizens in all countries, even when using their mother tongue, and is the principle reason for seeking professional legal assistance.

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 is not applicable so far as the republic is concerned"[1]. 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 of 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". This statement's intent is unequivocal and thus mus be given preclusionary effect in spite of the terminology used. Furthermore, the State party's submission of 15 January 1989 also speaks 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 Human Rights Committee therefore decides:

> (a) That the communication is inadmissible under articles 2 and 5, paragraph 2 (b), of the Optional Protocol;
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> (b) That this decision shall be communicated to the State party and to the author of the communication.

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

1/ The reason for the declaration are explained by the State party in its second periodic report to the Human Rights Committee under article 40 of the Covenant (document CCPR/C/46/Add.2) as follows: "Since the basic principles of public law prohibit distinctions between citizens on grounds of origin, race or religion, France is a country in which there are no minorities and, as stated in the declaration made by France, article 27 is not applicable as far as the Republic is concerned." The same explanation also appears in the initial report of France (document CCPR/C/22/Add.2).