HUMAN RIGHTS COMMITTEE

Cadoret and Bihan v. France

Communications Nos. 221/1987 and 323/1988

11 April 1991

VIEWS

Submitted by: Yves Cadoret & Hervé Le Bihan

Alleged victims: The authors

State party concerned: France

Date of communications: 15 January 1987 and 25 July 1988

Date of decisions on admissibility: 25 July and 9 November 1989

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

Meeting on 11 April 1991,

Having concluded its consideration of communications Nos. 221/1987 and 323/1988, submitted to the Committee by Yves Cadoret and Hervé Le Bihan 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 authors of the communications and by the State party,

Adopts the following:

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

1. The authors of the communications (initial submissions dated 15 January 1987 and 25 July 1988, respectively) are Yves Cadoret and Hervé Le Bihan, two French citizens employed as a teacher and an education advisor, respectively, and residing at Bretagne, France. They claim to be the victims of a violation by France of articles 14, 19, 26 and 27 of the International Covenant on Civil and Political Rights.

Facts as submitted

2.1 On 20 March 1985, the authors appeared before the Tribunal Correctionnel of Rennes on charges of having vandalized three road signs near Rennes in June 1984. They state that although Breton is their mother tongue, they were not allowed to express themselves in that language before the Tribunal, and that three witnesses they had called were unable to testify in the Breton language. No information about the actual sentences against the authors is provided, but they stated that they appealed against the decision of the Tribunal Correctionnel. At its hearing of 23 September 1985, The Court of Appeal of Rennes allegedly again denied them the possibility to address the Court in Breton.

2.2 With respect to the requirement of exhaustion of domestic remedies, the authors allege that no remedies are available, because the French judicial system does not recognize the use of Breton.

Complaint

3.1 The authors claim that they were denied a fair trial, in violation of article 14, paragraphs 1 and 3 (e) and (f) because they were denied the right to express themselves in Breton before the French courts and therefore did not testify. In particular, they allege that the courts steadfastly refuse to provide the services of interpreters for accused persons of Breton mother tongue on the ground that they are deemed to be proficient in French. In this connection, they maintain that the Tribunal Correctionnel did not ascertain whether they were proficient in French. Mr. Cadoret similarly denies that he was interrogated in French before the Court of Appeal. In this context, he claims that he never pretended that he was not fluent in French, but merely insisted on being heard in Breton. This also applies to his interrogation before the Court of Appeal, where he only spoke one sentence, by which he manifested his desire to express himself in Breton.

3.2 Mr. Cadoret contends that no provision of the French Code of Penal Procedure obliges the accused or a party to a case to express himself or herself in French before criminal tribunals. More specifically, he refers to article 407 of the French Code of Penal Procedure and argues that this provision does not impose the use of the French language. This is said to have been confirmed by a letter from the Minister of Justice, dated 29 March 1988, which indicates that article 407 only appears to impose the use of the French language ("semble imposer l'usage de la seule langue française"), and that the use of languages other than French in court is left to the discretion and case-by-case appreciation of the judicial authorities. This "uncertain situation", according to Mr. Cadoret, explains why some tribunals allow individuals charged with criminal offences as well as their witnesses to express themselves in Breton, as did, for example, the Tribunal of Lorient (Bretagne) on 3 February 1986 in a case similar to his. Mr. Cadoret further contends that the provisions of the Code of Penal Procedure governing the court language cannot be said to be designed to guarantee the equal treatment of citizens. Thus, one of the author's witnesses, a professor at the University of Rennes, was denied the opportunity to testify in Breton on behalf of the authors, while he was permitted to do so in a different case.

3.3 The authors claim that the refusal of the courts to let them present their defence in Breton is a clear and serious restriction of their freedom of expression, and that this implies that French citizens mastering both French and Breton can only air their ideas and their views in French. This, it is

claimed, is contrary to article 19, paragraph 2, of the Covenant.

3.4 Mr. Cadoret further contends that the denial of the use of Breton before the courts constitutes discrimination on the ground of language. He adds that even if he were bilingual, this would in no way prove that he has not been a victim of discrimination. He reiterates that French tribunals do not apply the Code of Penal Procedure with a view to guaranteeing equal treatment of all French citizens. In this context, he again refers to differences in the application of article 407 of the Code of Penal Procedure by the French tribunals and especially those in Bretagne, where some tribunals allegedly are reluctant to allow accused individuals to express themselves in Breton even if they experience severe difficulties of expression in French, whereas others now accept the use of the Breton language in court. In this way, he claims, French citizens who speak Breton are subjected to discrimination before the courts.

3.5 With respect to article 27, the authors argue that the fact that the State party does not recognize the existence of minorities on its territory does not mean that they do not exist. Although France has only one official language, the existence of minorities in Bretagne, Corsica or Alsace that speak languages other than French is well known and documented. There are said to be several hundred thousand French citizens who speak Breton.

States party's observations

4.1 In its submissions, the State party provides a detailed account of the facts of the cases and contends that available domestic remedies have not been exhausted by the authors. Thus, while the authors appealed against the sentence of the Tribunal Correctionnel, they did not appeal against the decision of the judge of first instance not to make available to them and their witnesses and interpreter. As a result, the State party claims, the authors are precluded from seizing the Human Rights Committee on the ground that they were denied the right to express themselves in Breton before the courts because, in that respect, they did not avail themselves of existing remedies.

4.2 The State party rejects the allegations that the authors were denied a fair hearing, that they and their witnesses were not afforded the possibility to testify and that therefore article 14, paragraph 1, and article 14, paragraphs 3 (e) and (f), of the Covenant have been violated. It contends that the authors' allegations concerning article 14, paragraph 1, cannot be determined in abstracto but must be examined in the light of the particular circumstances of the case. It submits that on numerous occasions during the judicial proceedings, the authors clearly established that they were perfectly capable of expressing themselves in French.

4.3 The State party further submits that criminal proceedings are an inappropriate venue for expressing demands linked to the promotion of the use of regional languages. The sole purpose of criminal proceedings is to establish the guilt or the innocence of the accused. In this respect, it is important to facilitate a direct dialogue between the accused and the judge. Since the intervention of an interpreter always encompasses the risk of the accused's statements being reproduced inexactly, resort to an interpreter must be reserved for strictly necessary cases, i.e., if the accused does not sufficiently understand or speak the court language.

4.4 The State party affirms that in the light of the above considerations, the President of the

Tribunal of Rennes was justified in not applying article 407 of the French Penal Code, as requested by Mr. Cadoret. This provision stipulates that whenever the accused or a witness does not sufficiently master French, the President of the Court must, ex officio, request the services of an interpreter. In the application of article 407, the President of the Court has a considerable margin of discretion, based on a detailed analysis of the individual case of all the relevant documents. This has been confirmed by the Criminal Chamber of the Court of Cassation on several occasions [a]. It adds that article 407 of the Code of Penal Procedure, which stipulates that the language used in criminal proceedings is French, is not only compatible with article 14, paragraph 3 (f), of the Covenant, but goes further in its protection of the rights of the accused, since it requires the judge to provide for the assistance of an interpreter if the accused or a witness has not sufficiently mastered the French language.

4.5 The State party recalls that the authors and all the witnesses called on their behalf were francophone. In particular, it observes that Mr. Le Bihan did not specifically request the services of an interpreter. The State party further acknowledges that two French courts - those of Guingamp and Lorient in Bretagne - allowed, in March 1984 and February 1985 respectively, French citizens of Breton origin to resort to interpreters: it contends, however, that these decisions were exceptions to the rule, and that the Court of Appeal of Rennes as well as the Tribunaux de Grande Instance de Guingamp and Lorient usually refuse to apply them vis-à-vis accused individuals or witnesses who are proficient in French. Accordingly, it is submitted, there can be no question of a violation of article 14, paragraph 3 (f).

4.6 The State party rejects the authors' argument that they did not benefit from a fair trial in that the court refused to hear the witnesses called on their behalf, in violation of article 14, paragraph 3 (e), of the Covenant. Rather, Mr. Cadoret was able to persuade the court to call these witnesses, and it was of their own volition that they did not testify. Using his discretionary power, the President of the Court found that it was neither alleged nor proven that the witnesses were unable to express themselves in French and that their request for an interpreter was merely intended as a means of promoting the cause of the Breton language. It was therefore owing to the behaviour of the witnesses themselves that the court did not hear them. The State party further contends that article 14, paragraph 3 (e) does not cover the language used before a criminal jurisdiction by witnesses called on behalf of or against the accused and that, in any case, witnesses are not entitled, under the Covenant or under article 407 of the Code of Penal Procedure, to rights broader than those conferred upon the accused.

4.7 With respect to violation of article 19, paragraph 2, the State party contends that the authors' freedom of expression was in no way restricted during the proceedings against them. They were not allowed to express themselves in Breton because they were bilingual. They were at all times at liberty to argue their defence in French, without any requirement to use legal terminology. If the need had arisen, the tribunal itself would have determined the legal significance of the arguments put forth by the authors.

4.8 As to the alleged violation of article 26, the State party recalls that the prohibition of discrimination is enshrined in article 2 of the French Constitution. It Further submits that the prohibition of discrimination laid down in article 26 does not extend to the right of an accused person to choose, in proceedings against him, whatever language he sees fit to use; rather, it implies

that the parties to a case accept and submit to the same constraints. The State party contends that the authors have not sufficiently substantiated their allegation to have been victims of discrimination, and adds that the author's argument that an imperfect knowledge of French legal terminology justified their refusal to express themselves in French before the courts is irrelevant for purposes of article 26. The authors were merely requested to express themselves in "basic" French. Furthermore, article 407 of the Code of Penal Procedure, far from operating as discrimination on the grounds of language within the meaning of article 26, ensures the equality of treatment of the accused of witnesses before the criminal jurisdictions, because all are required to express themselves in French. The sole exception in article 407 of the Code of Penal Procedure concerns accused persons and witnesses who objectively do not understand or speak the language of the court. This distinction is couched on "reasonable and objective criteria" and thus is compatible with article 26 of the Covenant. Finally, the State party charges that the principle of venire contra factum proprium is applicable to the authors' behaviour: they refused to express themselves in French before the courts under the pretext that they had not master the language sufficiently, whereas his submissions to the Committee are made in "irreproachable" French.

4.9 With respect to the alleged violation of article 27, the State party recalls that, upon ratification of the Covenant, the French Government made the following reservation: "In the light of article 2 of the Constitution of the French Republic, the French Government declares that article 27 is not applicable as far as the Republic is concerned." Thus, the State party argues that "the idea of membership of an 'ethnic, religious or linguistic minority' which the applicant invokes is irrelevant in the case in point, and is not opposable to the French Government, which does not recognize the existence of 'minorities' in the Republic, defined, in article 2 of the Constitution, as 'indivisible, secular, democratic and social' (indivisible, laïque démocratique et sociale)".

Issues and proceedings before the Committee

5.1 In considering the admissibility of the communications, the Committee took account of the State party's contention that the communications were inadmissible because the authors had not appealed against the decision of the judge of the Tribunal Correctionnel of Rennes not to make available to them and their witnesses the services of an interpreter. The Committee observed that what the authors sought was the recognition of Breton as a vehicle of expression in court. It recalled that domestic remedies need not be exhausted if they objectively have no prospect of success. This is the case where, under applicable domestic laws, the claim would inevitably be dismissed, or where established jurisprudence of the highest domestic tribunals precluded a positive result. On the basis of these observations, and taking into account relevant French legislation, as well as article 2 of the French Constitution, the Committee concluded that there were no effective remedies that the authors should have pursued in this respect. De lege lata, the objective pursued by the authors cannot be achieved by resorting to domestic remedies.

5.2 As to the authors' claim that they had been denied their freedom of expression, the Committee observed that the fact of not having been able to speak the language of their choice before the French courts raised no issues under article 19, paragraph 2. The Committee therefore found that this aspect of the communications was inadmissible under article 3 of the Optional Protocol as incompatible with the Covenant.

5.3 In respect of the authors' claim of a violation of article 27 of the Covenant, the Committee noted the French "declaration" but did not address its scope, finding that the facts of the communications did not raise issues under this provision [b].

5.4 With respect to the alleged violations of articles 14 and 26, the Committee considered that the authors had made reasonable efforts sufficiently to substantiate their allegations for purposes of admissibility.

5.5 On 25 July and 9 November 1989, the Human Rights Committee, accordingly, declared the communications admissible in so far as they appeared to raise issues under articles 14 and 26 of the Covenant. On 9 November 1989, the Committee also decided to deal jointly with the two communications.

5.6 The Committee has noted the authors' claim that the notion of a "fair trial", within the meaning of article 14 of the Covenant, implies that the accused be allowed, in criminal proceedings, to express himself in the language in which he normally expresses himself, and that the denial of an interpreter for himself and his witnesses constitutes a violation of article 14, paragraphs 3 (e) and (f). The Committee observes, as it has done on a previous occasion, [c] that article 14 is concerned with procedural equality; it enshrines, inter alia, the principle of equality of arms in criminal proceedings. The provision for the use of one official court language by States parties to the Covenant does not, in the Committee's opinion, violate article 14. Nor does the requirement of a fair hearing obligate States parties to make available to a person whose mother tongue differs from the official court language, the services of an interpreter, if that person is capable of understanding and expressing himself adequately in the official language. Only if the accused or the witnesses have difficulties in understanding or expressing themselves in the court language is it obligatory that the services of an interpreter be made available.

5.7 On the basis of the information before it, the Committee finds that the French courts complied with their obligations under article 14, paragraph 1, in conjunction with paragraphs 3 (e) and (f). The authors have not shown that they, or the witnesses called on their behalf, were unable to understand and express themselves adequately in French before the tribunals. In this context, the Committee notes that the notion of a fair trial in article 14, paragraph 1, juncto paragraph 3 (f), does not imply that the accused be afforded the possibility to express himself in the language that he normally speaks or speaks with a maximum of ease. If the court is certain, as it follows from the decision of the Tribunal Correctionnel and of the Court of Appeal of Rennes, that the accused are sufficiently proficient in the court's language, it need not take into account whether it would be preferable for the accused to express themselves in a language other than the court language.

5.8 French law does not, as such, give everyone a right to speak his own language in court. Those unable to speak or understand French are provided with the services of an interpreter. This service would have been available to the authors had the facts required it; as they did not, they suffered no discrimination under article 26 on the ground of their language.

6. 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 do not sustain the authors' claim that they are victims of a violation of any of the provisions of the

Covenant.

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

Notes

a/ See, for example, the judgements of the Criminal Chamber of the Court of Cassation of 21 November 1973 (Motta) and 30 June 1981 (Fayomi).

b/ Following the decision on admissibility in these cases, the Committee decided at its thirty-seventh session that France's declaration concerning article 27 has to be interpreted as a reservation (T. K. v. France, No. 220/1987, paras. 8.5 and 8.6; H.. K. v. France, No. 222/1987, paras. 7.5 and 7.6; cf. also separate opinion by one Committee member).

c/ See communication No. 273/1988 (B. d. B. v. Netherlands, decision on inadmissibility of 30 March 1989, paragraph 6.4).