

HUMAN RIGHTS COMMITTEE

N. K. T. G. v. Democratic Republic of the Congo

Communication No. 641/1995

10 July 1997

CCPR/C/60/D/641/1995 *

ADMISSIBILITY

Submitted by: N. K. T. G. (name deleted)

Alleged victim: The author

State party concerned: Democratic Republic of the Congo (ex-Zaire)

Date of communication: 19 November 1994 (initial submission)

Documentation references: List - CCPR/C/CL/R.61 Prior decision - Special Rapporteur's rule 91 decision transmitted to the State party on 1 August 1995 (not issued in document form)

Date of present decision: 10 July 1997

The Human Rights Committee, acting through its Working Group pursuant to rule 87, paragraph 2, of the Committee's rules of procedure, adopts the following decision on admissibility.

Decision on admissibility

1. The author of the communication is N. K. T. G., a citizen of the Democratic Republic of the Congo (ex-Zaire) residing in Bujumbura, Burundi. He claims to be a victim of a violation by the Democratic Republic of the Congo (ex-Zaire) of articles 2, paragraphs 1 and 3; 7; 14; 17; 23, paragraph 1; 25, paragraphs (a) and (c); and 26 of the International Covenant on Civil and Political Rights.

The facts as presented by the author

2.1 The author was employed since 1985 as the director of a Zairian consular school in Bujumbura, Burundi. In 1988, he was suspended from his duties by M. I., the then Zairian ambassador to Burundi. This suspension allegedly was attributable to a complaint addresses by the author and by

other staff members of the school¹ to several administrative authorities of Zaire, such as the President and the Minister of Foreign Affairs, concerning the embezzlement by Mr. M. I. of the salaries for the personnel of the consular school. More particularly, the ambassador allegedly embezzled the author's salary in order to force him to yield his wife.

2.2 In March 1988, a fact-finding commission was sent from Zaire to Bujumbura, which, purportedly, made an overwhelming report against the ambassador and confirmed all the allegations made against him. In August 1988, the Minister of Foreign Affairs of Zaire enjoined Mr M. I. to pay all the salary arrears to the author, who, in the meantime, had been transferred as director of the Zairian consular school to Kigali, Rwanda. The ambassador, who allegedly refused to obey this order, was suspended from his duties and recalled to Zaire on 20 June 1989.

2.3 In September 1989, the Ministry of Primary and Secondary Education issued an order to reinstate the author in his post in Bujumbura. Accordingly, the author moved back to Burundi in order to fill his post. Subsequently, Mr. M. I., who despite his suspension remained in Bujumbura until 20 December 1989, informed the authorities in Zaire that the author was a member of a network of political opponents of the Zairian government, and that he therefore had requested the authorities of Burundi to expel him. For this reason, Mr. M. I. and his successor at the embassy, V. T., refused to reinstate the author in his post, even after a confirmation by the Minister of Primary and Secondary Education, and to pay the author's salary arrears.

2.4 The author appealed to the Public Prosecutor of the County Court (Tribunal de Grande Instance) of Uvira, who passed on the file to the Public Prosecutor of the Court of Appeal (Cour d'Appel) of Bukavu on 25 July 1990. Both Offices described the facts as being an abuse of rights and called into question the former ambassador's conduct. On 14 September 1990, the case was further transmitted for advice to the Office of the Public Prosecutor in Kinshasa, where the case was registered in February 1991. Since then, despite numerous reminders sent by the author, no further action has been taken. Consequently, the author appealed to the Minister of Justice and to the Chairman of the National Assembly. The latter interceded with the Minister of Foreign Affairs and the Minister of Education, who, allegedly, intervened on the author's behalf with Mr. V. T., all to no avail.

2.5 On 7 October 1990, the author served a summons on Mr. M. I. for adultery, slanderous denunciation and prejudicial charges, abuse of power and embezzlement of private monies. However, Mr. M. I., as an ambassador, reportedly benefits from functional immunity and can only be brought to trial upon summons of the Public Prosecutor. All the author's requests to the latter to start legal proceedings against Mr. M. I. have to date remained unanswered. According to the author, this is due to the fact that a special authorization of the President is required to start legal proceedings against members of the security police and that, therefore, the Public Prosecutor cannot take the risk to serve a summons on Mr. M. I. Accordingly, the author's case cannot be the subject of a judicial determination. Therefore, it is submitted, all available and effective domestic remedies have been exhausted.

The complaint

3.1 The author argues that the arbitrary deprivation of his employment, the embezzlement of his salary and the destabilisation of his family amounts to torture and to cruel and inhuman treatment.

The author further contends that the Government, represented by the Public Prosecutor, denies him the right to a fair and public hearing by a competent, independent and impartial tribunal established by law.

3.2 The author further argues that his family has been destabilized by the immoral behaviour of the ambassador, who allegedly had adulterous relations with the author's wife, in violation of article 17. It is further alleged that, due to the difficult life the author and his family have led since he was suspended from his duties, the author's family does not enjoy the protection to which it was entitled, in breach of article 23 (1).

3.3 The author claims that, as a director of a public school being prevented from exercising his duties, his rights under article 25 (a) and (c) have been violated. The author finally contends that he is the victim of a violation of article 26, since he was suspended from public service without disciplinary sanctions having been imposed on him, and thus, in breach of the law. In this connection, the author claims that the failure of the Government to compel the ambassador to allow him to exercise his duties, even after official reinstatement in his post, constitutes a violation of article 2 (1) and (3).

3.4 The author indicates that the matter has not been submitted to any other procedure of international investigation or settlement.

Issues and proceedings before the Committee

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

4.2 The Committee considers that the author's claim that the facts as described by him constitute a violation of articles 7, 17, 23 and 25 (a), has been unsubstantiated for purposes of admissibility. This claim is therefore inadmissible under article 2 of the Optional Protocol.

4.3 The Committee considers that, in the absence of any information provided by the State party, the author's claims that he has been denied access to public service, as well as equality before the law and the Courts because the State party failed to enforce its decisions to pay back the author's salary and to reinstate him and because he is being prevented from bringing his complaint before the courts may raise issues under article 14, paragraph 1, 25 (c) and 26 of the Covenant, which need to be examined on the merits.

5. The Human Rights Committee therefore decides:

(a) that the communication is admissible in so far as it may raise issues under articles 14, paragraph 1, 25 (c) and 26;

(b) that, in accordance with article 4, paragraph 2, of the Optional Protocol, the State party shall be requested to submit to the Committee, within six months of the date of transmittal to it of this decision, written explanations or statements clarifying the matter and the measures, if any, that

may have been taken by it.

(c) that any explanations or statements received from the State party shall be communicated by the Secretary-General under rule 93, paragraph 3, of the rules of procedure to the author, with the request that any comments which he may wish to make should reach the Human Rights Committee, in care of the Centre for Human Rights, United Nations Office at Geneva, within six weeks of the date of the transmittal;

(d) that this decision shall be communicated to the State party and the author.

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

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

^{1/} This complaint was also signed by Odia Amisi; communication No. 497/1992 (Odia Amisi v. Zaire), declared inadmissible on 27 July 1994.