LANGUAGE RIGHTS

III. JURISPRUDENCE

CERD

- *Sefic v. Denmark* (32/2003), CERD, A/60/18 (7 March 2005) 134 at paras. 2.1-2.7, 7.2 and 8.

...

2.1 On 22 July 2002, the petitioner contacted Fair Insurance A/S to purchase insurance covering loss of and damage to his car, as well as third-party liability insurance. He was told that they could not offer him insurance, as he did not speak Danish. The conversation took place in English and the sales agent fully understood his request.

2.2 In late July 2002, the petitioner contacted DRC [Documentation and Advisory Centre on Racial Discrimination], which requested confirmation of the petitioner's allegations from Fair Insurance A/S. In the meantime, the petitioner contacted the company again and was rejected on the same grounds. By letter dated 23 September 2002, Fair Insurance A/S confirmed that the language requirement was necessary to obtain any insurance offered by the company for the following reasons:

> "...[to] ensure that we cover the need of the customer to the extent that we can ensure that both the coverage of the insurance and the prices are as correct as possible. "...ensure that the customer understands the conditions and rights connected to every insurance...ensure that the customer in connection with a damage claim, particularly when it is critical (accident, fire, etc.), can explain what has happened in order that he/she can be given the right treatment and compensation.
>
> "To fulfil these demands it is...of the utmost importance that the dialogue with the customers is carried out in a language that both the customer and we are familiar with and that for the time being we can only fulfil this requirement and offer service to our customers in Danish. The reason being that we as a young (3½ years) and relatively small company have limited resources to employ persons in our customer services department with knowledge of insurance issues in languages other than Danish or develop or maintain material on insurances in languages other than Danish."

2.3 On 8 October 2002, DRC filed a complaint with the Danish Financial Supervisory Authority, which monitors financial companies. By letter of 25 November 2002, the Supervisory Authority replied that the complaint should be made to the Board of Appeal of Insurances ("the Board"). However, the Supervisory Authority would consider whether a general policy of rejection on the basis of language was in accordance with Danish law. It pointed out that, under section 1 (1) of the Instruction on Third-Party Liability Insurances for

Motor Vehicles (No. 585, 9 July 2002), the company was legally obliged to offer any customer public liability insurance.

2.4 On 12 December 2002, DRC filed a complaint with the Board and specifically asked whether the language requirement was compatible with the Act against Discrimination. On 31 January 2003, the Board informed DRC that it was highly unlikely that it would consider the legality of the requirement in regard to any legislation other than the Act on Insurance Agreements. However, the case was being given due consideration. The letter also contained a response, dated 29 January 2003, from Fair Insurance A/S to the Board, which stated as follows:

> "Regarding the Act on Insurance Agreements...we are clearly aware of the fact that anybody accepting our conditions of insurance can demand to be offered third-party liability insurance. We regret that Emir Sefic was not offered [the] third-party liability insurance that he could have claimed. On this basis, we have explained in more detail to our employees the legal rules in regard to the liability insurance."

2.5 On 10 January 2003, the Supervisory Authority informed DRC that in its determination on whether Fair Insurance A/S had complied with "upright business activity and good practice", its assessment would be based on section 3 of the Act on Financial Business. On 11 March 2003, it informed DRC that it was of the view that the requirement did not violate section 3. The Supervisory Authority did not consider whether the language requirement violated any other legislation, in particular the Act against Discrimination.

2.6 On 12 December 2002, DRC filed a complaint with the Commissioner of Police of Copenhagen ("the Commissioner"). On 24 April 2003, the Commissioner informed DRC that "it appears from the material received that the possible discrimination only consists of a requirement that the customers can speak Danish in order for the company to arrange the work routines in the firm. Any discrimination based on this explanation and being objectively motivated is not covered by the prohibition in section 1 (1) of the Act against Discrimination".

2.7 On 21 May 2003, DRC filed an appeal with the Regional Public Prosecutor of Copenhagen ("the Prosecutor"). On 13 June 2003, the Prosecutor rejected the complaint under section 749 (1) of the Administration of Justice Act. He explained that the language requirement "was not based on the customer's race, ethnic origin or the like, but in the wish to be able to communicate with the customers in Danish, as the company has no employees who in regard to insurances in other languages than Danish have skills. Discrimination based on such a clear linguistic basis combined with the information given by the company is not in my opinion covered by the Act on the prohibition of differential treatment based on race, etc. Moreover, it is my view that Fair Insurance A/S's acknowledgement of the fact that the

company was obliged to offer a third-party liability insurance to Emir Sefic, in accordance with the Act on Insurance Agreements, is of no relevance in regard to...the Act on the prohibition of differential treatment based on race, etc. ...I have based this on the information provided by Fair Insurance A/S that it was due to a mistake that no third-party liability insurance was offered to Emir Sefic".

...

7.2 The issue before the Committee is whether the State party fulfilled its positive obligation to take effective action against reported incidents of racial discrimination, with regard to the extent to which it investigated the petitioner's claim in this case.g/ The petitioner claims that the requirement to speak Danish as a prerequisite for the receipt of car insurance is not an objective requirement and that further investigation would have been necessary to find out the real reasons behind this policy. The Committee notes that it is not contested that he does not speak Danish. It observes that his claim together with all the evidence provided by him and the information about the reasons behind Fair Insurance A/S's policy were considered by both the police department and by the Public Prosecutor. The latter considered that the language requirement "was not based on the customer's race, ethnic origin or the like", but for the purposes of communicating with its customers. The Committee finds that the reasons provided by Fair Insurance A/S for the language requirement, including the ability to communicate with the customer, the lack of resources for a small company to employ persons speaking different languages, and the fact that it is a company operating primarily through telephone contact were reasonable and objective grounds for the requirement and would not have warranted further investigation.

8. In the circumstances, the Committee on the Elimination of Racial Discrimination...is of the opinion that the facts as submitted do not disclose a violation of the Convention by the State party.

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Notes

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g/ *L.K. v. The Netherlands* [Case No. 4/1991, decision adopted on 16 March 1993] and *Habassi v. Denmark*, [Case No. 10/1997, decision adopted on 17 March 1999].

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ICCPR

- *Guesdon v. France* (219/1986), ICCPR, A/45/40 vol. II (25 July 1990) 61 at paras. 10.2-10.4 and 11.

...

10.2 The Committee has noted the author's 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 mandate States parties to make available to a citizen whose mother tongue differs from the official court language, the services of an interpreter, if this citizen is capable of expressing himself adequately in the official language. Only if the accused or the defence witnesses have difficulties in understanding, or in expressing themselves in the court language, must the services of an interpreter be made available.

10.3 On the basis of the information before it, the Committee finds that the French court complied with the obligations under article 14, paragraph 1 in conjunction with paragraphs 3 (e) and (f). The author has not shown that he, or the witnesses called on his behalf, were unable to address the tribunal in simple but adequate French. In this context, the Committee notes that the notion of 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 which he normally speaks or speak with a maximum of ease. If the court is certain...that the accused is sufficiently proficient in the court's language, it is not required to ascertain whether it would be preferable for the accused to express himself in a language other than the court language.

10.4 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 author had the facts required it; as they did not, he suffered no discrimination under article 26 on the ground of his language.

11. The Human Rights Committee...is of the view that the facts as submitted do not sustain the author's claim that he is a victim of a violation of article 14, paragraph 1 and 3 (e) and (f), or of article 26 of the Covenant.

Notes

...

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

See also:

LANGUAGE RIGHTS

- *Cadoret and Le Bihan v. France* (221/1987 and 323/1988), ICCPR, A/46/40 (11 April 1991) 219 at paras. 5.6-5.8.
- *Barzhig v. France* (327/1988), ICCPR, A/46/40 (11 April 1991) 262 (CCPR/C/41/D/327/1988) at paras. 5.5-5.7.

- *Davidson and McIntyre v. Canada* (359/1989 and 385/1989), ICCPR, A/48/40 vol. II (31 March 1993) 91 (CCPR/C/47/D/359/1989/385/1989) at paras. 2.1, 2.2, 4.4, 11.1, 11.3-11.5, 13 and Individual Opinion by Mr. Kurt Herndl (concurring in part), 107, Mr. Bertil Wennergren, 108, Mrs. Elizabeth Evatt, Messrs. Nisuke Ando, Marco Tulio Bruni Celli and Vojin Dimitrijevic, 109.

...

2.1 The authors of the first communication (No. 359/1989), Mr. Ballantyne and Ms. Davidson, sell clothes and paintings to a predominantly English-speaking clientele, and have always used English signs to attract customers.

2.2 The author of the second communication (No. 385/1989), Mr. McIntyre, states that in July 1988, he received notice from the Commissioner-Enquirer of the "*Commission de protection de la langue française*" that following a "checkup" it had been ascertained that he had installed a sign carrying the firm name "Kelly Funeral Home" on the grounds of his establishment, which constituted an infraction of the Charter of the French Language. He was requested to inform the Commissioner within 15 days in writing of measures taken to correct the situation and to prevent the recurrence of a similar incident. The author has since removed his company sign.

...

4.4 Section 58 of the Charter, as modified in 1989 by section 1 of Bill No. 178, now reads:

> "58. Public signs and posters and commercial advertising, outside or intended for the public outside, shall be solely in French..."

...

11.1 On the merits, three major issues are before the Committee:

> (a) whether Sec.58 of the Charter of the French Language, as amended by Bill 178, Sec.1, violates any right that the authors might have by virtue of article 27;
>
> (b) whether Sec.58 of the Charter of the French Language, as amended by Bill 178, Sec.1, violates the authors' right to freedom of expression; and
>
> (c) whether the same provision is compatible with the authors' right to

equality before the law.

11.2 As to article 27, the Committee observes that this provision refers to minorities in States; this refers, as do all references to the "State" or to "States" in the provisions of the Covenant, to ratifying States. Further, article 50 of the Covenant provides that its provisions extend to all parts of Federal States without any limitations or exceptions. Accordingly, the minorities referred to in article 27 are minorities within such a State, and not minorities within any province. A group may constitute a majority in a province but still be a minority in a State and thus be entitled to the benefits of article 27. English speaking citizens of Canada cannot be considered a linguistic minority. The authors therefore have no claim under article 27 of the Covenant.

11.3 Under article 19 of the Covenant, everyone shall have the right to freedom of expression; this right may be subjected to restrictions, conditions for which are set out in article 19, paragraph 3. The Government of Quebec has asserted that commercial activity such as outdoor advertising does not fall within the ambit of article 19. The Committee does not share this opinion. Article 19, paragraph 2, must be interpreted as encompassing every form of subjective ideas and opinions capable of transmission to others, which are compatible with article 20 of the Covenant, of news and information, of commercial expression and advertising, of works of art, etc.; it should not be confined to means of political, cultural or artistic expression. In the Committee's opinion, the commercial element in an expression taking the form of outdoor advertising cannot have the effect of removing this expression from the scope of protected freedom. The Committee does not agree either that any of the above forms of expression can be subjected to varying degrees of limitation, with the result that some forms of expression may suffer broader restrictions than others.

11.4 Any restriction of the freedom of expression must cumulatively meet the following conditions: it must be provided for by law, it must address one of the aims enumerated in paragraph 3 (a) and (b) of article 19, and must be necessary to achieve the legitimate purpose. While the restrictions on outdoor advertising are indeed provided for by law, the issue to be addressed is whether they are necessary for the respect of the rights of others. The rights of others could only be the rights of the francophone minority within Canada under article 27. This is the right to use their own language, which is not jeopardized by the freedom of others to advertise in other than the French language. Nor does the Committee have reason to believe that public order would be jeopardized by commercial advertising outdoors in a language other than French. The Committee notes that the State party does not seek to defend Bill 178 on these grounds. Any constraints under paragraphs 3 (a) and 3 (b) of article 19 would in any event have to be shown to be necessary. The Committee believes that it is not necessary, in order to protect the vulnerable position in Canada of the francophone group, to prohibit commercial advertising in English. This protection may be achieved in other ways that do not preclude the freedom of expression, in a language of their choice, of those

engaged in such fields as trade. For example, the law could have required that advertising be in both French and English. A State may choose one or more official languages, but it may not exclude, outside the spheres of public life, the freedom to express oneself in a language of one's choice. The Committee accordingly concludes that there has been a violation of article 19, paragraph 2.

11.5 The authors have claimed a violation of their right, under article 26, to equality before the law; the Government of Quebec has contended that Sections 1 and 6 of Bill 178 are general measures applicable to all those engaged in trade, regardless of their language. The Committee notes that Sections 1 and 6 of Bill 178 operate to prohibit the use of commercial advertising outdoors in other than the French language. This prohibition applies to French speakers as well as English speakers, so that a French speaking person wishing to advertise in English, in order to reach those of his of her clientele who are English speaking, may not do so. Accordingly, the Committee finds that the authors have not been discriminated against on the ground of their language, and concludes that there has been no violation of article 26 of the Covenant.

...

13. The Committee calls upon the State party to remedy the violation of article 19 of the Covenant by an appropriate amendment to the law.

...

C. Individual Opinion by Mr. Kurt Herndl

...

With respect to the Committee's rationale in paragraph 11.2 of its Views, the communications in my opinion do not raise issues under article 27 of the Covenant. The question as to whether the authors can or cannot be considered as belonging to a "minority" in the sense of article 27 would seem to be moot in as much as the rights that the authors invoke are not "minority rights" as such, but rather rights pertaining to the principle of freedom of expression, as protected by article 19 of the Covenant, which obviously must be taken to include commercial advertising. On this account, as the Committee rightly states in paragraphs 11.3 and 11.4 of its Views, there has been violation of a provision of the Covenant, i.e. article 19.

D. Individual Opinion by Mr. Bertil Wennergren

I concur with the Committee's findings...that the authors have no claim under article 27 of the Covenant, but I do so because a prohibition to use any other language than French for commercial outdoor advertising in Quebec does not infringe on any of the rights protected under article 27. It is, under the circumstances, of no relevance, whether English speaking persons in Quebec are entitled to the protection of article 27 or not. I feel, however, that...the issue of what constitutes a minority in a State must be decided on a case by case basis, due regard being given to the particular circumstances of each case.

E. Individual Opinion by Mrs. Elizabeth Evatt, Messrs. Nisuke Ando, Marco Tulio Bruni Celli and Vojin Dimitrijevic

...

It may be correct to conclude that the authors are not members of a linguistic minority whose right to use their own language in community with the other members of their group have been violated by the Quebec laws in question. This conclusion can be supported by reference to the general application of those laws - they apply to all languages other than French - and to their specific purpose - which attracts the protection of article 19.

My difficulty with the decision is that it interprets the term "minorities" in article 27 solely on the basis of the number of members of the group in question in the State party. The reasoning is that because English speaking Canadians are not a numerical minority in Canada they cannot be a minority for the purposes of article 27.

I do not agree, however, that persons are necessarily excluded from the protection of article 27 where their group is an ethnic, linguistic or cultural minority in an autonomous province of a State, but is not clearly a numerical minority in the State itself, taken as a whole entity. The criteria for determining what is a minority in a State (in the sense of article 27) has not yet been considered by the Committee, and does not need to be foreclosed by a decision in the present matter, which can in any event be determined on other grounds. The history of the protection of minorities in international law shows that the question of definition has been difficult and controversial and that many different criteria have been proposed. For example, it has been argued that factors other than strictly numerical ones need to be taken into account. Alternatively, article 50, which envisages the application of the Covenant to "parts of federal States" could affect the interpretation of article 27.

To take a narrow view of the meaning of minorities in article 27 could have the result that a State party would have no obligation under the Covenant to ensure that a minority in an autonomous province had the protection of article 27 where it was not clear that the group in question was a minority in the State considered as a whole entity. These questions do not need to be finally resolved in the present matter and are better deferred until the proper context arises.

For dissenting opinion in this context, see Davidson and McIntyre v. Canada (359/1989 and 385/1989), ICCPR, A/48/40 vol. II (31 March 1993) 91 (CCPR/C/47/D/359/1989/385/1989) at Individual Opinion by Birame Ndiaye, 105.

See also:

- *Singer v. Canada* (455/1991), ICCPR, A/49/40 vol. II (26 July 1994) 155 (CCPR/C/51/D/455/1991) at paras. 12.1 and 12.2.

LANGUAGE RIGHTS

- *Harward v. Norway* (451/1991), ICCPR, A/49/40 vol. II (15 July 1994) 146 (CCPR/C/51/D/451/1991) at paras. 9.4 and 9.5.

...
9.4 Article 14 of the Covenant protects the right to a fair trial. An essential element of this right is that an accused must have adequate time and facilities to prepare his defence, as is reflected in paragraph 3(b) of article 14. Article 14, however, does not contain an explicit right of an accused to have direct access to all documents used in the preparation of the trial against him in a language he can understand. The question before the Committee is whether, in the specific circumstances of the author's case, the failure of the State party to provide written translations of all the documents used in the preparation of the trial has violated Mr. Harward's right to a fair trial, more specifically his right under article 14, paragraph 3(b), to have adequate facilities to prepare his defence.

9.5 In the opinion of the Committee, it is important for the guarantee of fair trial that the defence has the opportunity to familiarize itself with the documentary evidence against an accused. However, this does not entail that an accused who does not understand the language used in court, has the right to be furnished with translations of all relevant documents in a criminal investigation, provided that the relevant documents are made available to his counsel. The Committee notes that Mr. Harward was represented by a Norwegian lawyer of his choice, who had access to the entire file, and that the lawyer had the assistance of an interpreter in his meetings with Mr. Harward. Defence counsel therefore had opportunity to familiarize himself with the file and, if he thought it necessary, to read out Norwegian documents to Mr. Harward during their meetings, so that Mr. Harward could take note of its contents through interpretation. If counsel would have deemed the time available to prepare the defence (just over six weeks) inadequate to familiarize himself with the entire file, he could have requested a postponement of the trial, which he did not do. The Committee concludes that, in the particular circumstances of the case, Mr. Harward's right to a fair trial, more specifically his right to have adequate facilities to prepare his defence, was not violated.

- *Kulomin v. Hungary* (521/1992), ICCPR, A/51/40 vol. II (22 March 1996) 73 (CCPR/C/50/D/521/1992) at para. 11.4.

...
11.4 The author has further claimed that he was not allowed to study Hungarian while in police custody and that he was not allowed to correspond with his family and friends. The State party denied the allegations, stating that the author requested permission for reading on 9 November 1988, which request was granted, and there is no trace of a request concerning

correspondence, but that no records of the inmates's correspondence are kept. In the circumstances, the Committee finds that the facts before it do not sustain a finding that the author was a victim of a violation of article 10 of the Covenant.

- *Hill v. Spain* (526/1993), ICCPR, A/52/40 vol. II (2 April 1997) 5 (CCPR/C/59/D/526/1993) at para. 14.1.

...
14.1 With regard to the right of everyone charged with a criminal offence to have adequate time and facilities for the preparation of his defence, the authors have stated that they had little time with their legal aid lawyer and that when the latter visited them for only 20 minutes two days before the trial, he did not have the case file or any paper for taking notes. The Committee notes that the State party contests this allegation and points out that the authors had counsel of their own choosing. Moreover, in order to allow the legal aid lawyer to prepare the case, the hearing was adjourned. The authors have also alleged that even though they do not speak Spanish, the State party failed to provide them with translations of many documents that would have helped them to better understand the charges against them and to organize their defence. The Committee refers to its prior jurisprudence 2/ and recalls that the right to fair trial does not entail that an accused who does not understand the language used in Court, has the right to be furnished with translations of all relevant documents in a criminal investigation, provided that the relevant documents are made available to his counsel. Based on the records, the Committee finds that the facts do not reveal a violation of article 14, paragraph 3(b), of the Covenant.

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Notes

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2/ Views in Communication No. 451/1991, *Harward v. Norway*, adopted on 15 July 1994, paras. 9.4 and 9.5.

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- *Diergaardt et al. v. Namibia* (760/1997), ICCPR, A/55/40 vol. II (25 July 2000) 140 at paras. 10.9, 10.10, 12 and Individual Opinion by Elizabeth Evatt, Eckart Klein, David Kretzmer and Cecilia Medina Quiroga (concurring), 156.

...
10.9 The authors have claimed that they were forced to use English during the proceedings in court, although this is not their mother tongue. In the instant case, the Committee considers that the authors have not shown how the use of English during the court proceedings has affected their right to a fair hearing. The Committee is therefore of the

opinion that the facts before it do not reveal a violation of article 14, paragraph 1.

10.10 The authors have also claimed that the lack of language legislation in Namibia has had as a consequence that they have been denied the use of their mother tongue in administration, justice, education and public life. The Committee notes that the authors have shown that the State party has instructed civil servants not to reply to the authors' written or oral communications with the authorities in the Afrikaans language, even when they are perfectly capable of doing so. These instructions barring the use of Afrikaans do not relate merely to the issuing of public documents but even to telephone conversations. In the absence of any response from the State party the Committee must give due weight to the allegation of the authors that the circular in question is intentionally targeted against the possibility to use Afrikaans when dealing with public authorities. Consequently, the Committee finds that the authors, as Afrikaans speakers, are victims of a violation of article 26 of the Covenant.

...

12. ...[T]he State party is under the obligation to provide the authors and the other members of their community an effective remedy by allowing its officials to respond in other languages than the official one in a nondiscriminatory manner. The State party is under an obligation to ensure that similar violations do not occur in the future.

Individual Opinion by Elizabeth Evatt, Eckart Klein, David Kretzmer and Cecilia Medina Quiroga

We agree with the Committee's Views in this matter. However, we consider that the instruction given by the State party to civil servants not to respond in the Afrikaans language, even if they have the personal capacity to do so, restricts the freedom of the authors to receive and impart information in that language (art. 19, para. 2 of the Covenant). In the absence of a justification for this restriction, which meets the criteria set out in paragraph 3 of article 19, we consider that there has been a violation of the authors' right to freedom of expression under article 19 of the Covenant.

For dissenting opinions in this context, see Diergaardt et al. v. Namibia (760/1997), ICCPR, A/55/40 vol. II (25 July 2000) 140 at Individual Opinion by Abdalfattah Amor, 149, Individual Opinion by Nisuke Ando, 151, Individual Opinion by P.N. Bhagwati, Lord Colville, and Maxwell Yalden, 152 at paras. 2-6 and Individual Opinion by Rajsoomer Lallah, 158 at paras. 5-8.

- *Ignatane v. Latvia* (884/1999), ICCPR, A/56/40 vol. II (25 July 2001) 191 at paras. 2.1, 2.2, 2.6-2.8 and 7.3-7.5.

...

2.1 At the time of the events in question, Ms. Ignatane was a teacher in Riga. In 1993, she

had appeared before a certification board to take a Latvian language test and had subsequently been awarded a language aptitude certificate stating that she had level 3 proficiency (the highest level).

2.2 In 1997, the author stood for local elections to be held on 9 March 1997, as a candidate of the Movement of Social Justice and Equal Rights in Latvia list. On 11 February 1997, she was struck off the list by decision of the Riga Election Commission, on the basis of an opinion issued by the State Language Board (SLB) to the effect that she did not have the required proficiency in the official language.

...

2.6 The author has submitted to the Committee a translation of articles 9, 17 and 22 of the Law on Elections to Town Councils and Municipal Councils, of 13 January 1994. Article 9 of the Law lists the categories of people who may not stand for local elections. According to article 9, paragraph 7, no one who does not have level 3 (higher) proficiency in the State language may stand for election. According to article 17, if anyone standing for election is not a graduate of a school in which Latvian is the language of instruction, a copy of his or her language aptitude certificate showing higher level (3) proficiency in the State language must be attached to the "candidate's application". The author's counsel has explained that the copy of the certificate is required to enable SLB to check its authenticity, not its validity.

2.7 According to article 22, only the Election Commission registering a list of candidates is competent to alter the list, and then only:

> (1) By striking a candidate from the list if: ...
>
> (b) The conditions mentioned under article 9 of the present Law are applicable to the candidate ... and, in cases covered by paragraph 1 (a), (b) and (c) of the present article, a candidate may be struck off the list on the basis of an opinion from the relevant institution or by court decision.
>
> In the case of a candidate who: ...
>
> (8) Does not meet the requirements corresponding to the higher level (3) of language proficiency in the State language, that fact must be certified by an opinion of the SLB.

2.8 Lastly, Ms. Ignatane recalls that, according to statements made by the SLB at the time of the case hearings, the certification board in the Ministry of Education had received complaints about her proficiency in Latvian. It so happens, the author says, that it was just that Ministry that, in 1996, had been involved in a widely publicized controversy surrounding the closure of No. 9 secondary school in Riga, where she was the head teacher. The school

was a Russian-language school and its closure had had a very bad effect on the Russian minority in Latvia.

...

7.3 According to the State party participation in public affairs requires a high level of proficiency in the State language and a language requirement for standing as a candidate in elections is hence reasonable and objective. The Committee notes that article 25 secures to every citizen the right and the opportunity to be elected at genuine periodic elections without any of the distinctions mentioned in article 2, including language.

7.4 The Committee notes that, in this case, the decision of a single inspector, taken a few days before the elections and contradicting a language aptitude certificate issued some years earlier, for an unlimited period, by a board of Latvian language specialists, was enough for the Election Commission to decide to strike the author off the list of candidates for the municipal elections. The Committee notes that the State party does not contest the validity of the certificate as it relates to the author's professional position, but argues on the basis of the results of the inspector's review in the matter of the author's eligibility. The Committee also notes that the State party has not contested counsel's argument that Latvian law does not provide for separate levels of proficiency in the official language in order to stand for election, but applies the standards and certification used in other instances. The results of the review led to the author's being prevented from exercising her right to participate in public life in conformity with article 25 of the Covenant. The Committee notes that the first examination, in 1993, was conducted in accordance with formal requirements and was assessed by five experts, whereas the 1997 review was conducted in an ad hoc manner and assessed by a single individual. The annulment of the author's candidacy pursuant to a review that was not based on objective criteria and which the State party has not demonstrated to be procedurally correct is not compatible with the State party's obligations under article 25 of the Covenant.

7.5 The Committee concludes that Mrs. Ignatane has suffered specific injury in being prevented from standing for the local elections in the city of Riga in 1997, because of having been struck off the list of candidates on the basis of insufficient proficiency in the official language. The Human Rights Committee considers that the author is a victim of a violation of article 25, in conjunction with article 2 of the Covenant.

- *Shukuru Juma v. Australia* (984/2001), ICCPR, A/58/40 vol. II (28 July 2003) 521 (CCPR/C/78/D/984/2001) at paras. 2.2, 2.3 and 7.3.

...

2.2 From the time of his arrest to the final appeal of his case the author was not provided with interpretation facilities, despite his requests for an interpreter at each stage of the

proceedings. He claims that he requested the assistance of an interpreter prior to the interview with the police, and that he requested interpretation from his lawyer during the trial at first instance. During the Court of Appeal hearing, the author was provided access to an interpreter to conduct interpretation by telephone conference. However, the author refused this facility as the interpreter was not in the courtroom and he believed that he could not trust him/her. He states that he refused to talk to the interpreter, as "the police had forced me against my will to give a record of interview and I was assaulted by ...[a Detective] of the Queensland police".1/

2.3 In his application for special leave to appeal to the High Court, the author alleged that he was "forced" to accept a legal aid lawyer who was only assigned to his case on the morning of the appeal, and was, therefore, unfamiliar with it. In addition, the lawyer refused to refer to the points of law raised in the application prepared by the author. Also during the hearing, the author alleges that one of the judges asked on three occasions where the interpreter was but his counsel merely responded that he knew the case.

...

7.3 With respect to the claim that the author was denied the services of an interpreter, the Committee finds that the author has failed to substantiate his claim sufficiently, for the purposes of admissibility. It notes from the documentation provided that the author could express himself adequately in English, that he did not apply for an interpreter during the trial at which he gave evidence, that he refused the assistance of an interpreter during the Court of Appeal hearing at which he represented himself, and that he concedes in his response to the State party's submission that "he could express himself reasonably" in the English language. The Committee reaffirms that the requirement of a fair hearing does not obligate States parties to make the services of an interpreter available *ex officio* or upon application to a person whose mother tongue differs from the official court language, if such person is otherwise capable of expressing himself adequately in the official language of the court.17/ The Committee therefore finds this part of the claim inadmissible as incompatible with the provisions of the Covenant, pursuant to article 3 of the Optional Protocol.

Notes

1/ No further information on this point is provided and the author does not specifically state it as a claim.

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17/ Communication No. 219/1986, *Guesdon v. France*, Views adopted on 25 July 1990.

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