

LEGAL RIGHTS - CRIMINAL - Right to an Interpreter

III. JURISPRUDENCE

ICCPR

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

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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.

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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

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(f), or of article 26 of the Covenant.

Notes

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

See also:

- *Cadoret 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.
- *Z. P. v. Canada* (341/1988), ICCPR, A/46/40 (11 April 1991) 297 (CCPR/C/41/D/341/1988) at para. 5.3.

- *Griffin v. Spain* (493/1992), ICCPR, A/50/40 vol. II (4 April 1995) 47 (CCPR/C/53/D/493/1992) at paras. 9.2, 9.5 and 9.7.

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9.2 With regard to the author's claim that, as there was no interpreter present at the time of his arrest, he was not informed of the reasons for his arrest and of the charges against him, the Committee notes from the information before it that the author was arrested and taken into custody at 11:30 p.m. on 17 April 1991, after the police, in the presence of the author, had searched the camper and discovered the drugs. The police reports further reveal that the police refrained from taking his statement in the absence of an interpreter, and that the following morning the drugs were weighed in the presence of the author. He was then brought before the examining magistrate and, with the use of an interpreter, he was informed of the charges against him. The Committee observes that, although no interpreter was present during the arrest, it is wholly unreasonable to argue that the author was unaware of the reasons for his arrest. In any event, he was promptly informed, in his own language, of the charges held against him. The Committee therefore finds no violation of article 9, paragraph 2, of the Covenant.

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9.5 The Committee notes that the author claims that he did not receive a fair trial because of the incompetence of the court interpreter and the judge's failure to intervene in this respect, and that he was convicted because of poor translation of a question, as a result of which his statement during the trial differed from his original statement to the examining magistrate. The Committee notes, however, that the author did not complain about the competence of the court interpreter to the judge, although he could have done so. In the

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circumstances, the Committee finds no violation of article 14, paragraph 3 (f), of the Covenant.

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9.7 The Committee notes that the author was assisted by a lawyer and interpreter when he made the statement to the examining magistrate...It further notes that the author has signed the statement, which makes no reference to the fact that he was often left behind by R. L. and the other Canadian and that they once returned with a different camper. Furthermore, it transpires from the *Acta del Juicio* that the author merely stated during the trial hearing that he had no knowledge of the drugs concealed in the camper, and that, as submitted by the State party, R. L. testified that the author accompanied him during the whole trip. In the Committee's opinion, the author's claim that he was not allowed to give evidence or that he had inadequate interpretation during the hearing is not sufficiently substantiated. He was given the opportunity to make a statement, and it was R. L. and not the author himself who made the disputed affirmation.

- *Hill v. Spain* (526/1993), ICCPR, A/52/40 vol. II (2 April 1997) 5 (CCPR/C/59/D/526/1993) at para. 12.2.

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12.2 With regard to the authors' allegations of violations of article 9 of the Covenant, the Committee considers that the authors' arrest was not illegal or arbitrary. Article 9, paragraph 2, of the Covenant requires that anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him. The authors specifically allege that seven and eight hours, respectively, elapsed before they were informed of the reason for their arrest, and complain that they did not understand the charges because of the lack of a competent interpreter. The documents submitted by the State party show that police formalities were suspended from 6 a.m. until 9 a.m., when the interpreter arrived, so that the accused could be duly informed in the presence of legal counsel. Furthermore, from the documents sent by the State it appears that the interpreter was not an *ad hoc* interpreter but an official interpreter appointed according to rules that should ensure her competence. In these circumstances, the Committee finds that the facts before it do not reveal a violation of article 9, paragraph 2, of the Covenant.

- *Domukovsky, Tsiklauri, Gelbakhiani and Dokvadze v. Georgia* (623,624,626 and 627/1995), ICCPR, A/53/40 vol. II (6 April 1998) 95 (CCPR/C/62/D/623/1995) at para. 18.7.

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18.7 The Committee has taken note of Mr. Domukovsky's claim that he did not receive a copy of the indictment in Russian and that he was denied the services of an interpreter,

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whereas he is Russian of nationality, not Georgian. The State party has submitted that the court found that the author's knowledge of the Georgian language was excellent. Moreover, the author is said to have given his statements in Georgian. The author's counsel has submitted that he did his studies and research in Russian, but has not shown that he did not have sufficient knowledge of Georgian. In the circumstances, the Committee finds that the information before it does not show that Mr. Domukovsky's right under article 14, paragraph 3(f), to have the free assistance of an interpreter if he cannot speak or understand the language used in court, has been violated.

- *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.

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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.

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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

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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.

- *Nallaratnam v. Sri Lanka* (1033/2001), ICCPR, A/59/40 vol. II (21 July 2004) 246 at paras. 7.2, 7.5 and 7.6.

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7.2 As to the claim of a violation of article 14, paragraph 3 (f), due to the absence of an external interpreter during the author's alleged confession, the Committee notes that this provision provides for the right to an interpreter during the court hearing only, a right which was granted to the author ^{15/}. However, as clearly appears from the court proceedings, the confession took place in the sole presence of the two investigating officers - the Assistant Superintendent of Police and the Police Constable; the latter typed the statement and provided interpretation between Tamil and Sinhalese. The Committee concludes that the author was denied a fair trial in accordance with article 14, paragraph 1, of the Covenant by solely relying on a confession obtained in such circumstances.

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7.5 The Human Rights Committee...is of the view that the facts before it disclose violations of articles 14, paragraphs 1, 2, 3, (c), and 14, paragraph (g), read together with articles 2, paragraph 3, and 7 of the Covenant.

7.6 In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author with an effective and appropriate remedy, including release or retrial and compensation. The State party is under an obligation to avoid similar violations in the future and should ensure that the impugned sections of the PTA are made compatible with the provisions of the Covenant.

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^{15/} *B.d.B. v. Netherlands*, case No. 273/1988, decision of 30 March 1989, and *Yves Cadoret*

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v. France, case No. 221/1987, decision of 11 April 1991 and *Herve Le Bihan v. France*, case No. 323/1988, decision of 9 November 1989.
