MOVEMENT - FREEDOM OF

III. JURISPRUDENCE

CERD

- *Koptova v. Slovak Republic* (13/1998), CERD, A/55/18 (8 August 2000) 136 at paras. 2.1-2.3 and 10.1-10.3.

...

2.1 The author reports that in 1981 seven Romany families from the villages of Rovne and Zbudske Dlhe, Slovak Republic, came to work in an agricultural cooperative located in the municipality of Krasny Brod. Shortly after their arrival each of the families sought and received permanent residence under Slovak Law (135/1982 Act) in what are today the municipalities of Nagov and Rokytovce (at the time part of Krasny Brod). When, at the end of 1989, the agricultural cooperative ceased operations the Romany families lost their jobs. Insofar as their living quarters at the cooperative were linked to their employment, they were compelled to leave the cooperative. Upon their departure, the authorities demolished the stables which they had occupied.

2.2 In May 1991 the Romany families returned to the municipalities where they were legally registered, i.e. Rokytovce and Nagov. For various periods over the following six years, they lived in temporary housing provided reluctantly by local authorities in the county of Medzilaborce. On more than one occasion during that period, however, anti-Roma hostility on the part of local officials and/or non-Romany residents forced the Romany families to flee. Thus, between May and December 1991 the Medzilaborce County Department of Social Affairs reserved a trailer for the families to rent. Although the families raised the money no village (Krasny Brod, Cabiny, Sukov, Rokytovce, Nagov or Cabalovce) allowed them to place the trailer on its territory. In 1993, after they had built temporary dwellings in the village of Cabiny, the dwellings were torn down by non-Romany residents. Throughout this period the Romany families were moving frequently from one town to another, in search of a permanent and secure home.

2.3 In spring 1997 the families again established temporary dwellings on agricultural land located in Cabiny. Local authorities from neighbouring villages met to discuss the situation. The mayor of Cabiny characterized as illegal the movement of Roma to Cabiny and warned of a possible negative reaction from the rest of the population. The mayors of Cabalovce and Nagov agreed to accommodate the homeless Roma. On 8 June 1997 the Municipal Council of Rokytovce, whose mayor had not been present at the above-mentioned meeting, enacted a resolution which expressly forbade the Romany families from settling in the village and threatened them with expulsion should they try to settle there. The resolution also declared that they were not native inhabitants of Rokytovce, since after the separation of Rokytovce and Krasny Brod in 1990 they had neither resided in the village nor claimed their permanent

residence there. On 16 July 1997 the Municipality of Nagov adopted resolution No. 22 which also forbade Roma citizens to enter the village or to settle in shelters in the village district. The resolution explicitly provided that its effect was of permanent duration.

...

10.1 Having received the full texts of resolutions 21 and 22 the Committee finds that, although their wording refers explicitly to Romas previously domiciled in the concerned municipalities, the context in which they were adopted clearly indicates that other Romas would have been equally prohibited from settling, which represented a violation of article 5 (d) (i) of the Convention.

10.2 The Committee notes, however, that the resolutions in question were rescinded in April 1999. It also notes that freedom of movement and residence is guaranteed under article 23 of the Constitution of the Slovak Republic.

10.3 The Committee recommends that the State party take the necessary measures to ensure that practices restricting the freedom of movement and residence of Romas under its jurisdiction are fully and promptly eliminated.

- *Diop v. France* (2/1989), CERD, A/46/18 (18 March 1991) 124 (CERD/C/39/D/2/1989/Rev.2). For text of communication, see **EQUALITY AND DISCRIMINATION** - EMPLOYMENT.

ICCPR

- *Lovelace v. Canada* (R.6/24) (24/1977), ICCPR, A/36/40 (30 July 1981) 166 at paras 13.1 and 15-18.

...

13.1 The Committee considers that the essence of the present complaint concerns the continuing effect of the Indian Act, in denying Sandra Lovelace legal status as an Indian, in particular because she cannot for this reason claim a legal right to reside where she wishes to, on the Tobique Reserve.

...

15. ...Restrictions on the right to residence, by way of national legislation, cannot be ruled out under article 27 of the Covenant. This also follows from the restrictions to article 12 (1) of the Covenant set out in article 12 (3). The Committee recognizes the need to define the category of persons entitled to live on a reserve, for such purposes as those explained by the Government regarding protection of its resources and preservation of the identity of its people. However, the obligations which the Government has since undertaken under the

Covenant must also be taken into account.

16. In this respect, the Committee is of the view that statutory restrictions affecting the right to residence on a reserve of a person belonging to the minority concerned, must have both a reasonable and objective justification and be consistent with the other provisions of the Covenant, read as a whole. Article 27 must be construed and applied in the light of the other provisions mentioned above, such as articles 12, 17 and 23 in so far as they may be relevant to the particular case, and also the provisions against discrimination, such as articles 2, 3 and 26, as the case may be...

17. The case of Sandra Lovelace should be considered in the light of the fact that her marriage to a non-Indian has broken up. It is natural that in such a situation she wishes to return to the environment in which she was born, particularly as after the dissolution of her marriage her main cultural attachment again was to the Maliseet band. Whatever may be the merits of the Indian Act in other respects, it does not seem to the Committee that to deny Sandra Lovelace the right to reside on the reserve is reasonable, or necessary to preserve the identity of the tribe. The Committee therefore concludes that to prevent her recognition as belonging to the band is an unjustifiable denial of her rights under article 27 of the Covenant, read in the context of the other provisions referred to.

18. In view of this finding, the Committee does not consider it necessary to examine whether the same facts also show separate breaches of the other rights invoked...The rights to choose one's residence (article 12), and the rights aimed at protecting family life and children (articles 17, 23 and 24) are only indirectly at stake in the present case. The facts of the case do not seem to require further examination under those articles...

- *Mpandanjila v. Zaire* (138/1983), ICCPR, A/41/40 (26 March 1986) 121 at paras. 8.2 and 10.

...
8.2 The authors are eight former Zairian parliamentarians and one Zairian businessman. In December 1980, they were subjected to measures of arrest, banishment or house arrest on account of the publication of an "open letter" to Zairian President Mobutu...Although they were covered by an amnesty decree of 17 January 1981, they were not released from detention or internal exile until 4 December 1981. They were subsequently brought to trial before the State Security Court on 28 June 1982 on charges of plotting to overthrow the regime and planning the creation of a political party, and of secreting documents concerning the establishment of said party...The accused were sentenced to 15 years' imprisonment with the exception of the businessman, who was sentenced to 5 years' imprisonment. The authors were released pursuant to an amnesty decree promulgated on 21 May 1983, but they were

then subjected to an "administrative banning measure" and deported along with their families to different parts of the country. The banned family members include children still of elementary-school age, adolescent boys and girls and married others who are heads of families and whose wives have been left in Kinshasa alone with small children and without any means of support...

...

10. The Human Rights Committee...is of the view that these facts disclose violations of the Covenant, with respect to:

> ...
>
> Article 12, paragraph 1, because they were deprived of their freedom of movement during long periods of administrative banishment...

- *Mpaka Nsusu v. Zaire* (157/1983), ICCPR, A/41/40 (26 March 1986) 142 at paras. 8.2 and 10.

...

8.2 Mr. André Alphonse Mpaka-Nsusu is a Zairian national at present living in exile. In 1977, he presented his candidacy for the presidency of Zaire in conformity with existing Zairian law. His candidacy, however, was rejected. On 1 July 1979, he was arrested and subsequently detained in the prison of the State Security Policy without trial until 31 January 1981. After being released from prison he was banished to his village of origin for an indefinite period. He fled the country on 15 February 1983.

...

10. The Human Rights Committee...is of the view that these facts disclose violations of the Covenant, with respect to:

> ...
>
> Article 12, paragraph 1, because he was banished to his village of origin for an indefinite period...

- *Voulanne v. Finland* (265/1987), ICCPR, A/44/40 (7 April 1989) 249 at para. 9.4.

...

9.4 The Committee acknowledges that it is normal for individuals performing military service to be subjected to restrictions in their freedom of movement. It is self evident that this does not fall within the purview of article 9, paragraph 4. Furthermore, the Committee agrees that a disciplinary penalty or measure which would be deemed a deprivation of liberty by detention, were it to be applied to a civilian may not be termed such when imposed upon a serviceman. Nevertheless, such penalty or measure may fall within the scope or application of article 9, paragraph 4, if it takes the form of restrictions that are imposed over and above

the exigencies of normal military service and deviate from the normal conditions of life within the armed forces of the State party concerned. In order to establish whether this is so, account should be taken of a whole range of factors such as the nature, duration, effects and manner of the execution of the penalty or measure in question.

- *Birindwa and Tshisekedi v. Zaire* (241 and 242/1987), ICCPR, A/45/40 vol. II (2 November 1989) 77 at paras. 12.2, 12.6 and 13.

...

12.2 The authors of the communication are two leading members of the *Union pour la Démocratie et le Progrès Social* (U.D.P.S), a political party in opposition to President Mobutu. From mid-June 1986 to the end of June 1987, they were subjected to administrative measures of internal banishment, as a result of the views adopted by the Human Rights Committee on 26 March 1986 in communication No. 138/1983. On 27 June and 1 July 1987, respectively, they were released following a presidential amnesty, and decided to travel abroad. Upon his return to Zaire in mid-January 1988, Mr. Tshisekedi sought to organize a manifestation which met with the disapproval of State authorities. On 17 January 1988 he was arrested...From 16 March to the beginning of April 1988, Mr. Tshisekedi was kept under house arrest at his home in Kinshasa - Gombe, and from 11 April to 19 September 1988, he was intermittently subjected to renewed administrative measures of banishment, which included his internment in several military camps...

...

12.6 ...Both Mr. Birindwa and Tshisekedi were, for a period of over one year, confined to their native villages and thus deprived of their freedom of movement within the State party's territory, in contravention of article 12, paragraph 1...

...

13. The Human Rights Committee...is of the view that the facts of the communications disclose violations of the International Covenant on Civil and Political Rights:

(a) in respect of Faustin Birindwa ci Birhashwirwa:

> of article 12 paragraph 1, because he was deprived of his freedom of movement during a period of internal banishment which lasted from mid-June 1986 to 1 July 1987...

(b) in respect of Etienne Tshisekedi wa Mulumba:

> ...
> of article 12, paragraph 1, because he was deprived of his freedom of movement during periods of internal banishments which lasted form mid-June 1986 to 27 June 1987 and again from 11 April to 19 September 1988...

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- *González del Río v. Peru* (263/1987), ICCPR, A/48/40 vol. II (28 October 1992) 17 (CCPR/C/46/D/263/1987) at paras. 3.2 and 5.1.

...
3.2 The author further complains that as one arrest warrant against him remains pending, his freedom of movement is restricted, in that he is prevented from leaving the territory of Peru.
...
5.1 As to the alleged violation of article 9, paragraphs 1 and 4, the Committee notes that the material before it does not reveal that, although a warrant for the author's arrest was issued, Mr. González del Río has in fact been subjected to either arrest or detention, or that he was at any time confined to a specific, circumscribed location or was restricted in his movements on the State party's territory. Accordingly, the Committee is of the view that the claim under article 9 has not been substantiated.

- *Bwalya v. Zambia* (314/1988), ICCPR, A/48/40 vol. II (14 July 1993) 52 (CCPR/C/48/D/314/1988) at para. 6.5.

...
6.5 The author has claimed, and the State party has not denied, that [the author] continues to suffer restrictions on his freedom of movement, and that the authorities have refused to issue a passport to him. This, in the Committee's opinion, amounts to a violation of article 12, paragraph 1, of the Covenant.

- *Celepli v. Sweden* (456/1991), ICCPR, A/49/40 vol. II (18 July 1994) 165 (CCPR/C/51/D/456/1991) at paras. 2.1-2.3 and 9.2.

...
2.1 In 1975, the author arrived in Sweden, fleeing political persecution in Turkey; he obtained permission to stay in Sweden but was not granted refugee status. Following the murder of a former member of the Workers Party of Kurdistan (PKK), in June 1984 at Uppsala, suspicions of the author's involvement in terrorist activities arose. On 18 September 1984, the author was arrested and taken into custody under the Aliens Act; he was not charged with any offence. On 10 December 1984, an expulsion order against him and eight other Kurds was issued, pursuant to sections 30 and 47 of the Swedish Aliens Act. The expulsion order was not, however, enforced as it was believed that the Kurds could be exposed to political persecution in Turkey in the event of their return. Instead, the Swedish authorities prescribed limitations and conditions concerning the Kurds' place of residence.

2.2 Under these restrictions, the author was confined to his home municipality (Västerhaninge, a town of 10,000 inhabitants, 25 kilometres south of Stockholm) and had to report to the police three times a week; he could not leave or change his town of residence nor change employment without prior permission from the police.

2.3 Under Swedish law, there exists no right to appeal against a decision to expel a suspected terrorist or to impose restrictions on his freedom of movement. The restrictions of the author's freedom of movement were alleviated in August 1989 and the obligation to report to the police was reduced to once a week. On 5 September 1991 the expulsion order was revoked; the restrictions on his liberty of movement and the reporting obligations were abolished.

...

9.2 The Committee notes that the author's expulsion was ordered on 10 December 1984, but that this order was not enforced and that the author was allowed to stay in Sweden, subject to restrictions on his freedom of movement. The Committee is of the view that, following the expulsion order, the author was lawfully in the territory of Sweden, for purposes of article 12, paragraph 1, of the Covenant, only under the restrictions placed upon him by the State party. Moreover, bearing in mind that the State party has invoked reasons of national security to justify the restrictions on the author's freedom of movement, the Committee finds that the restrictions to which the author was subjected were compatible with those allowed pursuant to article 12, paragraph 3, of the Covenant. In this connection, the Committee also notes that the State party *motu proprio* reviewed said restrictions and ultimately lifted them.

- *Ackla v. Togo* (505/1992), ICCPR, A/51/40 vol. II (25 March 1996) 57 (CCPR/C/56/D/505/1992) at para. 10.

...

10. The Committee notes that the only admissible issue, which has to be examined on the merits, is the author's uncontested allegation that he is under prohibition of entering the district of La Kozah and his native village which forms part of this district. Article 12 of the Covenant establishes the right to liberty of movement and freedom to choose residence for everyone lawfully within the territory of the State. In the absence of any explanation from the State party justifying the restrictions to which the author has been subjected, pursuant to paragraph 3 of article 12, the Committee is of the opinion that the restriction of the author's freedom of movement and residence is in violation of article 12, paragraph 1, of the Covenant.

- *Karker v. France* (833/1998), ICCPR, A/56/40 vol. II (26 October 2000) 144 at paras. 2.1-2.3 and 9.2.

MOVEMENT - FREEDOM OF

...

2.1 In 1987, Mr. Karker, who is co-founder of the political movement Ennahdha, fled Tunisia, where he had been sentenced to death by trial *in absentia*. In 1988, the French authorities recognized him as a political refugee. On 11 October 1993, under suspicion that he actively supported a terrorist movement, the Minister of the Interior ordered him expelled from French territory as a matter of urgency. The expulsion order was not, however, enforced, and instead Mr. Karker was ordered to compulsory residence in the department of Finistère. On 6 November 1993, Mr. Karker appealed the orders to the Administrative Tribunal of Paris. The Tribunal rejected his appeals on 16 December 1994, considering that the orders were lawful. The Tribunal considered that from the information before it, it appeared that the Ministry of the Interior was in possession of information showing that Mr. Karker maintained close links with Islamic organizations which use violent methods, and that in the light of the situation in France the Minister could have concluded legally that Mr. Karker's expulsion was imperative for reasons of public security. It also considered that the resulting interference with Mr. Karker's family life was justifiable for reasons of *ordre public*. The Tribunal considered that the compulsory residence order, issued by the Minister in order to allow Mr. Karker to find a third country willing to receive him, was lawful...in view of the fact that Mr. Karker was a recognized political refugee and could not be returned to Tunisia. On 29 December 1997, the Council of State rejected Mr. Karker's further appeal.

2.2 Following the orders, Mr. Karker was placed in a hotel in the department of Finistère, then he was transferred to Brest. Allegedly because of media pressure, he was then transferred to St. Julien in the Loire area, and from there to Cayres, and subsequently to the South East of France. Lastly, in October 1995, he was assigned to Digne-les-Bains (Alpes de Haute Provence), where he has resided since. According to the order fixing the conditions of his residence in Digne-les-Bains, Mr. Karker is required to report to the police once a day. The author emphasizes that her husband has not been brought before the courts in connection with the suspicions against him.

2.3 The author states that she lives in Paris with her six children, a thousand kilometres away from her husband. She states that it is difficult to maintain personal contact with her husband. On 3 April 1998, Mr. Karker was sentenced to a suspended sentence of six months' imprisonment for having breached the compulsory residence order by staying with his family during three weeks.

...

9.2. The Committee notes that Mr. Karker's expulsion was ordered in October 1993, but that his expulsion could not be enforced, following which his residence in France was subjected to restrictions of his freedom of movement. The State party has argued that the restrictions to which the author is subjected are necessary for reasons of national security. In this respect, the State party produced evidence to the domestic courts that Mr. Karker was an active

supporter of a movement which advocates violent action. It should also be noted that the restrictions of movement on Mr. Karker allowed him to reside in a comparatively wide area. Moreover, the restrictions on Mr. Karker's freedom of movement were examined by the domestic courts which, after reviewing all the evidence, held them to be necessary for reasons of national security. Mr. Karker has only challenged the courts' original decision on this question and chose not to challenge the necessity of subsequent restriction orders before the domestic courts. In these circumstances, the Committee is of the view that the materials before it do not allow it to conclude that the State party has misapplied the restrictions in article 12, paragraph 3.

- *El Ghar v. Libyan Arab Jamahiriya* (1107/2002), ICCPR, A/60/40 vol. II (2 November 2004) 156 at paras. 2.1-2.4, 3, 7.2, 7.3, 8 and 9.

...

2.1 The author, of Libyan nationality, has lived all her life in Morocco with her divorced mother and holds a residence permit for that country. As a student of French law at the Hassan II University faculty of law in Casablanca, she wished to continue her studies in France and to specialize in international law. To that end, she has been applying to the Libyan Consulate in Morocco for a passport since 1998.

2.2 The author claims that all her applications have been denied, without any lawful or legitimate grounds. She notes that although she is an adult, she attached to her application form an authorization from her father, who is resident in the Libyan Arab Jamahiriya, that was certified by the Libyan Ministry of Foreign Affairs in order to obtain any official document required. She adds that in September 2002 the Libyan consul stated, without giving any details, that on the basis of the pertinent regulations he could not issue her a passport, but could only provide her with a temporary travel document allowing her to travel to the Libyan Arab Jamahiriya.

2.3 The author also contacted the French diplomatic mission in Morocco to ascertain whether it would be possible to obtain a *laissez-passer* for France, a request which the French authorities were unable to comply with.

2.4 Since she had no passport, the author was unable to enrol in the University of Montpellier I in France.

3. The author claims that the refusal by the Libyan Consulate in Casablanca to issue her with a passport prevents her from travelling and studying and constitutes a violation of the Covenant.

...

MOVEMENT - FREEDOM OF

7.2 The Committee notes that to date the author has been unable to obtain a passport from the Libyan consular authorities even though, according to the authorities' own statements, her official application dates back at least to 1 September 1999. Moreover, it is clear that initially, on 18 September 2002, the Libyan consul had indicated to the author that it was not possible to issue her a passport but that she could be given a *laissez-passer* for Libya, by virtue of a regulation that was explained neither orally nor on the *laissez-passer* itself. The passport application submitted to the Libyan Consulate was thus rejected without any explanation of the grounds for the decision, the only comment being that since the author "is a native of Morocco and has not obtained a passport, this travel document [*laissez-passer*] is issued to enable her to return to national territory". The Committee considers that this *laissez-passer* cannot be considered a satisfactory substitute for a valid Libyan passport that would enable the author to travel abroad.

7.3 The Committee notes that subsequently, on 1 July 2003, the Passport Department sent a *communiqué* to the Libyan consular authorities in Morocco with a view to granting the author a passport; this information was certified by the State party, which produced a copy of the document. The State party alleges that the author was contacted personally by telephone at home and told to collect her passport from the Libyan Consulate. However, it appears that thus far, despite the author's two visits to the Libyan Consulate, no passport has been issued to her, through no fault of her own. The Committee recalls that a passport provides a national with the means "to leave any country, including his own", as stipulated in article 12, paragraph 2, of the Covenant, and that owing to the very nature of the right in question, in the case of a national residing abroad, article 12, paragraph 2, of the Covenant imposes obligations both on the individual's State of residence and on the State of nationality, and that article 12, paragraph 1, of the Covenant cannot be interpreted as limiting Libya's obligations under article 12, paragraph 2, to nationals living in its territory. The right recognized by article 12, paragraph 2, may, by virtue of paragraph 3 of that article, be subject to restrictions "which are provided by law [and] are necessary to protect national security, public order (*ordre public*), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant". Thus there are circumstances in which a State may, if the law so provides, refuse to issue a passport to one of its nationals. In the present case, however, the State party has not put forward any such argument in the information it has submitted to the Committee but has actually assured the Committee that it issued instructions to ensure that the author's passport application was successful, a statement that was not in fact followed up.

8. The Human Rights Committee...is of the view that the facts before it disclose a violation of article 12, paragraph 2, of the Covenant insofar as the author was denied a passport without any valid justification and subjected to an unreasonable delay, and as a result was prevented from travelling abroad to continue her studies.

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9. In accordance with article 2, paragraph 3, of the Covenant, the State party is under an obligation to ensure that the author has an effective remedy, including compensation. The Committee urges the State party to issue the author with a passport without further delay. The State party is also under an obligation to take effective measures to ensure that similar violations do not recur in future.

- *Gorji-Dinka v. Cameroon* (1134/2002), ICCPR, A/60/40 vol. II (17 March 2005) 194 at paras. 2.8, 2.9, 5.5, 6 and 7.

...
2.8 ...On 3 February 1986, the author was acquitted of all charges and released from detention.

2.9 President Biya's intention to appeal the judgement, after having ordered the author's rearrest, was frustrated because the law establishing the Military Tribunal did not provide for the possibility of appeal in cases involving high treason. The author was then placed under house arrest between 7 February 1986 and 28 March 1988. In a letter dated 15 May 1987, the Department of Political Affairs of the Ministry of Territorial Administration advised the author that his behaviour during house arrest was incompatible with his "probationary release" by the Military Tribunal, since he continued to hold meetings at his palace, to attend customary court sessions, to invoke his prerogatives as *Fon*, to contempt and disregard the law enforcement and other authorities, and to continue the practice of the illegal Olumba Olumba religion...
...
5.5 In the absence of any exceptional circumstances adduced by the State party, which would have justified any restrictions on the author's right to liberty of movement, the Committee finds that the author's rights under article 12, paragraph 1, of the Covenant were violated during his house arrest, which was itself unlawful and arbitrary.
...
6. The Human Rights Committee...is of the view that the facts before it reveal violations of articles 9, paragraph 1; 10, paragraphs 1 and 2 (a); 12, paragraph 1; and 25 (b) of the Covenant.

7. In accordance with article 2, paragraph 3, of the Covenant, the author is entitled to an effective remedy, including compensation and assurance of the enjoyment of his civil and political rights. The State party is also under an obligation to take measures to prevent similar violations in the future.

- *Marques v. Angola* (1128/2002), ICCPR, A/60/40 vol. II (29 March 2005) 181 at paras. 2.6,

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2.14, 6.7-6.9, 7 and 8.

...

2.6 On 25 November 1999, the author was released from prison on bail and informed of the charges against him for the first time. Together with the director, A. S., and the chief editor, A.J.F., of *Agora*, he was charged with "materially and continuously committ[ing] the crimes characteristic of defamation and slander against His Excellency the President of the Republic and the Attorney General of the Republic ... by arts. 44, 46 all of Law no 22/91 of June 15 (the Press Law) with aggravating circumstances 1, 2, 10, 20, 21 and 25, all of articles 34 of the Penal Code." The terms of bail obliged the author "not to leave the country" and "not to engage in certain activities that are punishable by the offence committed and that create the risk that new violations may be perpetrated - Art 270 of the Penal Code". Several requests by the author for clarification of these terms were unsuccessful.

...

2.14 On 12 December 2000, the author was prevented from leaving Angola for South Africa to participate in an Open Society Institute conference; his passport was confiscated. Despite repeated requests, his passport was not returned to him until 8 February 2001, following a court order of 2 February 2001 based on Amnesty Law 7/00 of 15 December 2000, 8/ which was declared applicable to the author's case. Regardless of this amnesty, on 19 January 2002, the author was summoned to the Provincial Court and ordered to pay compensation of Nkz. 30,000 to the President, which he refused to pay, and legal costs, for which he paid.

...

6.7 The next issue before the Committee is whether the author's arrest, detention and conviction, or his travel constraints, unlawfully restricted his right to freedom of expression, in violation of article 19 of the Covenant. The Committee reiterates that the right to freedom of expression in article 19, paragraph 2, includes the right of individuals to criticize or openly and publicly evaluate their Governments without fear of interference or punishment. 19/

6.8 The Committee refers to its jurisprudence that any restriction on the right to freedom of expression must cumulatively meet the following conditions set out in paragraph 3 of article 19: it must be provided for by law, it must serve one of the aims enumerated in article 19, paragraph 3 (a) and (b), and it must be necessary to achieve one of these purposes. The Committee notes that the author's final conviction was based on article 43 of the Press Law, in conjunction with section 410 of the Criminal Code. Even if it were assumed that his arrest and detention, or the restrictions on his travel, had a basis in Angolan law, and that these measures, as well as his conviction, pursued a legitimate aim, such as protecting the President's rights and reputation or public order, it cannot be said that the restrictions were necessary to achieve one of these aims. The Committee observes that the requirement of necessity implies an element of proportionality, in the sense that the scope of the restriction imposed on freedom of expression must be proportional to the value which the restriction serves to protect. Given the paramount importance, in a democratic society, of the right to

freedom of expression and of a free and uncensored press or other media, 20/ the severity of the sanctions imposed on the author cannot be considered as a proportionate measure to protect public order or the honour and the reputation of the President, a public figure who, as such, is subject to criticism and opposition. In addition, the Committee considers it an aggravating factor that the author's proposed truth defence against the libel charge was ruled out by the courts. In the circumstances, the Committee concludes that there has been a violation of article 19.

6.9 The last issue before the Committee is whether the author's prevention from leaving Angola on 12 December 2000 and the subsequent confiscation of his passport were in violation of article 12 of the Covenant. It notes the author's contention that his passport was confiscated without justification or legal basis, as his bail restrictions no longer applied, and that he was denied access to information about his entitlement to travel. In the absence of any justification advanced by the State party, the Committee finds that the author's rights under article 12, paragraph 1, have been violated.

7. The Human Rights Committee...is of the view that the facts before it reveal violations of article 9, paragraphs 1, 2, 3 and 4, and of articles 12 and 19 of the Covenant.

8. In accordance with article 2, paragraph 3, of the Covenant, the author is entitled to an effective remedy, including compensation for his arbitrary arrest and detention, as well as for the violations of his rights under articles 12 and 19 of the Covenant. The State party is under an obligation to take measures to prevent similar violations in the future.

Notes

...

8/ Amnesty Law 7/00 applies to "crimes against security which were committed […] within the sphere of the Angolan conflict, as long as its agents have presented themselves or may come to present themselves to the Angolan authorities [...]."

...

19/ See communications Nos. 422/1990, 423/1990 and 424/1990, *Aduayom et al. v. Togo*, Views adopted on 12 July 1996, at para. 7.4.

20/ See Human Rights Committee, general comment No. 25 [57], 12 July 1996, at para. 25.

For dissenting opinions in this context generally, see:

- *Giry v. Dominican Republic* (193/1985), ICCPR, A/45/40 vol. II (20 July 1990) 38 at Individual Opinion by Miss Christine Chanet and Messrs. Francisco Aguilar Urbina, Nisuke Ando and Bertil Wennergren (dissenting in part), 42.