HUMAN RIGHTS COMMITEE

R.L.M.. v. France

Communication No. 363/1989

6 April 1992

ADMISSIBILITY

Submitted by: R.L.M. [name deleted]

Alleged victim: The author

State party concerned: France

Date of communication: 11 May 1989 (initial submission)

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

Meeting on 6 April 1992,

Adopts the following:

Decision on admissibility

1. The author of the communication is R.L.M., a French citizen born in 1946 and a teacher by profession, currently residing at Nantes, France. He claims to be a victim of violations by France of articles 2, 19, 26 and 27 of the International Covenant on Civil and Political Rights.

Facts as submitted by the author

2.1 Since 1968, the author has been teaching in various schools in the district of the Academy of Nantes (Académie De Nantes); since 1977 he has been teaching Breton, history and geography in private schools, which provide education in accordance with a contract with the Ministry of Education. Since 1980, the teaching of Breton has been part of his official timetable.

2.2 In the author's opinion, the Rectorate of the Academy of Nantes (Rectorat de l'Académie de Nantes) has systematically discouraged and obstructed by teaching of Breton. This obstruction is characterized, inter alia, by:

(a) The systematic denial to candidates to the Baccalauréat examinations of the possibility to sit exams in the centres usually provided for that purpose;

(b) The refusal to inform the students or their parents about the possibilities, laid down in specific regulations, of studying the Breton language in secondary schools in Nantes and in the Département de Loire-Atlantique;

(c) The refusal to create a tenured post of the teaching of Breton, on the ground that the limited demand for teaching of Breton does not justify the establishment of such a post;

(d) The refusal to initiate an official and objective inquiry in the matter.

2.3 The author explains that teachers wishing to obtain in Breton the Certificate of Aptitude for Secondary Education (Certificat d'Aptitude Professionnelle d'Enseignement Secondarie (CAPES)) must also choose a second subject. He adds that the text of the applicable regulations of 1983, governing the aims of the teaching of regional cultures and languages, are not applicable to those teachers who have obtained the CAPES for Breton; they do not have to volunteer to teach Breton, once there is some demand for it, but have certain acquired rights to teach their subject.

2.4 The author contends that he cannot submit his grievances to the French courts or administrative tribunals. He surmises that there is no effective remedy in his case because, as a civil servant, his teaching obligations are subordinate to the "exigencies of the service", which may require the teaching of subjects that do not correspond to the specialization of the complainant. It is therefore said to be futile to challenge the decisions of the authorities. Finally, he submits that the administrative authorities regularly deny him the opportunity of a meeting, presumably so as to avoid having to address the problem.

Complaint

3.1 The author contends that the Rectorate of the Academy of Nantes (and the Academy of Rennes) has systematically discriminated against him, both by obstructing his career development and by lowering his salary, allegedly without any explanation. He further claims that a course of Breton that he had been assigned to teach at the Lycée de Vannes has been systematically hindered by the Board of that high school, and that the educational authorities, including the Ministry of Education, have endorsed the discriminatory attitude of their subordinates against the author and against the teaching of Breton in general.

3.2 More generally, the author contends that the requirement of being able to teach two subjects for the award of the Certificate of Aptitude for the teaching of Breton has, in reality, the effect of seriously curtailing the possibilities of teaching Breton. Thus, a course given during the school year 1988/89 at the Collége Montaigne in Vannes could not be organized for the following school year, despite of the demand from students. This, it is submitted, is contrary to article 55 of the French Constitution and has been recognized in a judgement given by the Administrative Tribunal of Rennes on 27 January 1987.

3.3 Finally, the author submits that the result of a recent survey conducted by the Parents'

Association for the Teaching of Breton (Association des Parents d'Eléves pour l"Enseignement du Breton) confirms the discriminatory attitude of the Rectorate of the Academy of Nantes, since it challenges the Rector's opinion that the limited demand for the teaching of Breton does not justify the creation of established posts.

State party's information and observations

4.1 The State party submits that the communication is inadmissible on the ground of non-exhaustion of domestic remedies. Subsidiarily, it contends that many of the author's complaints concern alleged discrimination vis-à-vis the Breton language in general, and that, accordingly, the author cannot be deemed a victim within the meaning of article 1 of the Optional Protocol.

4.2 In respect of the allegedly discriminatory measures directly concerning the author, the State party argues that R.L.M. has failed to exhaust available remedies. His two letters addressed to the Rector of the Academy of Rennes in February 1988 and to the Rector of the Academy of Nantes in April 1988 do not display any of the characteristics of an administrative remedy. In fact, the author merely sought, through these letters, an audience with a view to secure the establishment of a post for the teaching of Breton, and did not complain about his personal situation.

4.3 The State party contends that the following remedies would be open to the author, adding that none of them has been utilized:

(a) Recourse to the representatives of his profession in the "administrative (parity) commission" (Commission administrative paritaire), which may be seized of all types of questions concerning personnel disputes (article 25 (4) of Decree 82-451 of 28 May 1982 concerning the Commission administrative paritaire);

(b) Filing of an ex gratia appeal to a higher administrative authority, including the Minister of Education. The advantage of such an appeal, while optional, is that it may be based not only on the legally relevant facts of the case but also on considerations of equity and expediency;

(c) Finally, if the author considered that any of the contested decisions violated his rights, he could have sought a contentious remedy for abuse of power, requesting the administrative judge to annul the decision. Such an application could have been filed within two months of the date on which he was notified of any adverse decision affecting him

4.4 The State party emphasizes that the inactivity of negligence of the author in respect of pursuit of domestic remedies cannot be attributed to State organs: "the right to submit a communication to the Human Rights Committee cannot be used as a substitute for the normal exercise of domestic remedies in cases where such remedies have not pursued purely through the fault of the interested party."

4.5 Additionally, the State party submits that the author has failed to advance a claim in the sense of the Optional Protocol. As to the alleged violation of article 19, paragraph 2, the State party contends that the author has failed to show how his freedom of expression might have been interfered with and that, on the contrary, each of his submissions and his correspondence with the

education authorities, parliamentarians and government officials show that he has ample opportunity to make his position known. It further affirms that "freedom of expression" within the meaning of article 19 cannot be construed as including a right to exercise a specific teaching activity.

4.6 With respect to the alleged violation of article 26, the State party affirms that nothing in the file substantiates the author's claim that the Rectorate of the Academy of Nantes systematically discriminates vis-à-vis the teaching of Breton and that it discriminated against the author by denying him regular career development. It notes that Law 51-46 of 11 January 1951 recognized Breton as a regional language and contained measures designed to encourage its teaching. This law was amended by circular No. 82-261 of 21 June 1982 concerning the teaching of regional languages and cultures in public education institutions, and by circular No. 83-547 of 30 December 1983 specifying objectives. The teaching of Breton, however, is not obligatory but a function of the optional choices of students and teachers. The Rectors of the various academies may adapt teaching requirements in the light of local characteristics and with a view to the financial resources available to them.

4.7 With respect to the author's allegation that his CAPES forces him to teach subjects other than Breton, the State party explains that all teachers who obtain CAPES may be called upon to teach in any of the academies created by the Minister of Education throughout France. The specificity of teaching requirements of Breton therefore has led the authorities to require candidates to CAPES to acquire the certificate for two subjects. Teachers of Breton are required to teach a second subject in addition to the hours of Breton taught, so as to fulfil the necessary service requirements laid down in their statute. The State party concludes that the author cannot pretend that he is discriminated on grounds of language if the Lycée de Vannes asked him to teach geography and history, in addition to Breton; if Breton classes are not organized, this is by no means owing to discriminatory considerations but to the fact that this option is chosen by too limited a number of students, and, in the author's case, norms that are of general application simply have been applied to his situation.

4.8 With respect to the alleged violation of article 27, the State party refers to the "declaration" made by the Government of France upon accession to the Covenant, which stipulates: "in the light of article 2 of the Constitution of the French Republic, ... article 27 [of the Covenant] is not applicable as far as the Republic is concerned".

4.9 Finally, the State party contends that a violation of article 2 of the Covenant cannot be committed directly and in isolation, and that any violation of this provision can only be a corollary to the violation of another provision of the Covenant. Since the author has not shown that his rights under the Covenant have been breached, he cannot invoke article 2.

Issues and proceedings before the Committee

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

5.2 Concerning the author's claim under article 19, paragraph 2, the Committee observes that R.L.M. has failed to substantiate how his freedom of expression was violated by the French authorities' policy vis-à-vis the teaching of Breton. In this respect, therefore, he has failed to

advance a claim within the meaning of article 2 of the Optional Protocol.

5.3 As to the claim of a violation of article 27, the Committee reiterates that France's "declaration" made in respect of this provision is tantamount to a reservation and therefore precludes the Committee from considering complaints against France alleging violations of article 27 of the Covenant [a].

5.4 With regard to the alleged violation of article 26, the Committee observes that although the author has claimed that effective remedies are lacking, it is clear from his submissions that he has not pursued any judicial or administrative remedies in this respect. His submissions to the competent authorities and his correspondence with the Rectorate of the Academy of Nantes and Rennes cannot be deemed as exhaustion of available administrative and judicial remedies. The Committee reiterates that article 5, paragraph 2 (b), of the Optional Protocol, by referring to "all available domestic remedies", clearly refers in the first place to judicial remedies [b]. The author has not shown that he could not have resorted to the administrative and judicial procedures which the State party has plausibly submitted were available to him, or that their pursuit could be deemed to be, a priori, futile. In fact, it appears from the author's submission that he does not envisage availing himself of these remedies. The Committee finds that his doubts about the availability and effectiveness of domestic remedies do not absolve him from exhausting them, and concludes that the requirements of article 5, paragraph 2 (b), have not been met.

5.5 The author has also invoked article 2 of the Covenant. The Committee recalls that article 2 is a general undertaking by States parties and cannot be invoked, in isolation, by individuals under the Optional Protocol [c]. As the author's claims relating to articles 19 and 26 are inadmissible under articles 2 and 5, paragraph 2 (b), of the Optional Protocol, it follows that R.L.M. cannot invoke a violation of article 2 of the Covenant.

6. The Human Rights Committee therefore decides:

(a) That the communication is inadmissible under articles 2 and 5, paragraph 2 (b), of the Optional Protocol;

(b) That this decision shall be communicated to the State party and the author of the communication.

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

Notes

a/ See Official Records of the General Assembly, Forty-fifth Session, Supplement No. 40 (A/45/40), vol. II, annex X, sect. A, communication No. 220/1987 (T.K. v. France), decision of 8 November 1990, para. 8.6 and appendices I and II.

b/ See ibid., Forty-fourth Session, Supplement No. 40 (A/44/40), annex XI, sect. D, communication No. 262/1987 (R.T. v. France), decision of 30 March 1989, para. 7.4.

c/ See ibid., Forty-fifth Session, Supplement No. 40 (A/45/40), vol. II, annex X, sect. I, communication No. 268/1978 (M.G.B. and S.P. v. Trinidad and Tobago), decision of 3 November 1989, para. 6.2.