

G. Communication No. 219/1986, Dominique Guesdon v. France (views adopted on 25 July 1990, at the thirty-ninth session)

Submitted by: Dominique Guesdon (represented by counsel)
Alleged victim: The author
State party concerned: France
Date of communication: 11 December 1986 (date of initial letter)
Date of decision on admissibility: 25 July 1989

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

Meeting on 25 July 1990,

Having concluded its consideration of communication No. 219/1986, submitted to the Committee by Dominique Guesdon under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication and by the State party,

Adopts the following:

Views under article 5, paragraph 4, of the Optional Protocol*

1. The author of the communication (initial letter of 11 December 1986 and subsequent correspondence) is Dominique Guesdon, a French citizen born in 1959, employed as an electrician and residing in Paimpont, France. He claims to be a victim of violations of articles 14, paragraphs 1, 3 (e) and (f); 19, paragraph 2; 26, and 27 of the Covenant by France. He is represented by counsel.

2.1 The author states that he is a Breton and that his mother tongue is Breton, which is the language in which he can express himself best, although he also speaks French. On 11 April 1984, before the Optional Protocol entered into force for France (17 May 1984), he appeared before the Tribunal Correctionnel of Rennes on charges of having damaged public property by defacing road signs in French. He admits that militant Bretons who advocate the use of the Breton language painted over some road signs in order to manifest their desire that road signs be henceforth bilingual. The author never admitted his participation in the offences he was charged with, and claims that he was convicted in the absence of any proof.

* Pursuant to rule 85 of the Committee's rules of procedure, Ms. Christine Chanet did not participate in the examination of the communication or in the adoption of the Committee's views.

2.2 On 11 April 1984, the day of the hearing, he requested that 12 witnesses be heard on his behalf. He indicated that all the witnesses and he himself wished to give testimony in Breton, which was the language used daily by most of them and in which they could most easily express themselves for the purposes of his defence. He therefore requested that their testimony be heard through the assistance of an interpreter. This request was refused by the court. He appealed the decision not to provide for interpretation to the President of the Court of Appeal who, on 24 April 1984, rejected the appeal on the ground that Mr. Guesdon was capable of defending himself without interpretation before the trial court. The merits of the case were examined by the Tribunal Correctionnel on 20 June 1984 (after the Optional Protocol had entered into force for France) at which time the defendant and the witnesses on his behalf again sought in vain to be allowed to express themselves in Breton. The court refused to hear them, as they were not willing to express themselves in French, and the author was given a four months' suspended sentence and ordered to pay a fine of 2,000 French francs. On appeal he reiterated his request for the same witnesses on his behalf to be heard. The Court of Appeal refused the request and, on 25 March 1985, sentenced him to a prison term of four months, suspended, and ordered him to pay a fine of 5,000 French francs. The author then appealed to the Court of Cassation on the ground that his defense rights had been violated. The appeal was dismissed by the Court of Cassation on 2 October 1985.

2.3 The author claims that the French courts violated his rights to a fair hearing, his right to have witnesses heard on his behalf, his right to have the assistance of an interpreter, his right to freedom of expression, his right to equal treatment and the enjoyment of minority rights, such as the use of a minority language.

3. Without transmitting the communication to the State party, the Human Rights Committee requested the author, by decision of 9 April 1987, under rule 91 of the rules of procedure, to clarify whether he and each of the witnesses who intended to testify on his behalf before the trial court and the Court of Appeal, understood and spoke French. By letter dated 2 June 1987, counsel for the author replied in the affirmative, adding, however, that some of those called as witnesses might have preferred to express themselves in Breton.

4. By further decision of 20 October 1988, the Working Group of the Human Rights Committee transmitted the communication to the State party, requesting it, under rule 91 of the rules of procedure, to provide information and observations relevant to the question of the admissibility of the communication.

5.1 In its submission under rule 91, dated 15 January 1989, the State party provides a detailed account of the facts of the case and concedes that, on the basis of that account, domestic remedies must be considered to have been exhausted following the dismissal, on 2 October 1985, of the author's appeal by the Court of Cassation.

5.2 Concerning the author's allegation that he was a victim of a violation of article 14, paragraph 1, of the Covenant, the State party contends that it was the author's own fault that he was not heard and assisted by counsel before the judge of first instance, because he refused to express himself in French. It adds that at the hearing on 5 March 1985 before the Court of Appeal, the author expressed himself without difficulty in French, and his counsel delivered his pleadings in French.

5.3 With respect to the alleged violations of article 14, paragraphs 3 (e) and (f), the State party contends that these provisions cannot be construed as encompassing the right of the accused to express himself in the language of his choice. Thus, the author cannot pretend that his right "to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him" was not observed, to the extent that the refusal of the witnesses called on his behalf to express themselves in French made it impossible for the judge to hear them. Concerning article 14, paragraph 3 (f), the State party recalls that this provision merely provides for the assistance of an interpreter if the accused "cannot understand or speak the language used in court". The State party submits that it was evident that the author and the witnesses on his behalf were perfectly capable of expressing themselves in French, and points out that article 407 of the Code of Penal Procedure, which stipulates that French is the official Court language, is not only compatible with article 14, paragraph 3 (f), but actually goes further in its protection of the rights of the accused, since it requires the judge to provide for the assistance of an interpreter if the accused or a witness do not sufficiently master the French language.

5.4 Concerning the alleged violation of article 19, paragraph 2, of the Covenant, the State party objects to the "abusive" interpretation by the author of the notion of "freedom of expression". It states that the author was never prevented from expressing himself before the courts; rather, it was, initially, his own decision not to present his case. Subsequently, before the Court of Appeal, on 25 March 1985, the author used his right under article 19, paragraph 2, as he was able to do throughout the judicial proceedings.

5.5 Concerning the alleged violation of article 26, the State party argues that if it were possible to speak of discrimination in the case, it is imputable directly and solely to the author's behaviour in court. The State party explains that the prohibition of discrimination laid down in article 26 does not extend to the right of the accused to choose, in the proceedings against him, whatever language he sees fit to use; rather, it implies that all the parties to a case accept and submit to the same constraints, that is, in the instant case, to inherent language constraints, and express themselves in the official court language, pursuant to the relevant provisions of the Code of Penal Procedure.

5.6 Finally, with respect to the alleged violation of article 27, the State party recalls that upon ratification of the Covenant, the French Government entered the following "reservation": "In the light of article 2 of the Constitution of the French Republic, the French Government declares that article 27 is not applicable as far as the Republic is concerned". Thus, the State party argues that "the idea of membership of an 'ethnic, religious or linguistic minority' which the applicant invokes is irrelevant in the case in point, and cannot be held against the French Government which does not recognize the existence of 'minorities' in the Republic, defined, in article 2 of the Constitution as 'indivisible, secular, democratic and social ...'."

6.1 In his comments, dated 8 May 1989, author's counsel notes that the State party does not contest the admissibility of the communication. He claims that the defiguration of road signs of which the author was accused should be seen as a reaction to the State party's systematic refusal to recognize the Breton language. Counsel recalls that in the Declaration of San José of December 1981, UNESCO termed policies similar to those pursued by the State party an "ethnocide", and affirms

that the criminal acts imputed to the author are acts of legitimate defense vis-à-vis a crime under international law.

6.2 Counsel reiterates that the author was denied a fair trial, in violation of article 14, paragraph 1, because he was unable to call witnesses and to present his version of the facts as well as his statement of defense. Similarly, before the Court of Appeal, he claims that he did not have a fair hearing, owing to his inability to have witnesses examined. Concerning article 14, paragraphs 3 (e) and (f), it is submitted that the Tribunal Correctionnel and the Court of Appeal failed to even ask the witnesses whether they accepted to express themselves in French. Furthermore, it is submitted that the courts wrongfully denied an interpreter to the author and his witnesses. In that context, counsel claims that the notion of a fair hearing implies that the parties be enabled to express themselves with ease (avec le maximum d'aisance) and in the language which they normally speak. Some of the witnesses, according to the author, would have experienced difficulties in expressing themselves in French; the court, however, allegedly did not attempt to verify their proficiency in the French language.

6.3 In as much as the general prohibition of discrimination in article 26 is concerned, counsel notes that numerous international conventions prohibit any form of discrimination before the tribunals. He refers to article 5 (a) of the International Convention on the Elimination of All Forms of Racial Discrimination, which recognizes a right to equal treatment before the tribunals and all other organs administering justice. In this context, he recalls that article 1 of the Convention against Discrimination in Education, adopted by the UNESCO on 14 December 1960 (in force 22 May 1962; France is a State party), defines "discrimination" as "any distinction, exclusion, limitation of preference which, being based on race, colour, sex, language, religion, political or other opinion, national or social origin, economic condition or birth, has the effect of nullifying or impairing equality of treatment ..." He further refers to article 1 (c) of the Resolution adopted by the European Parliament with respect to the European Community Charter on Regional Languages and Cultures, which invites governments to guarantee to minorities the possibility to use their own language, particularly before the judicial instances. He finally refers to article 20, paragraph 2, of the Draft International Convention on the Protection of Ethnic Groups and Minorities (draft submitted by the Minorities Rights Group, a non-governmental organization, to the Commission on Human Rights in January 1979, Doc. E/CN.4/NGO/231), which stipulates that "linguistic autonomy should particularly be observed with regard to the rights of personal liberty, of fair trial and in all matters of social welfare."

6.4 With respect to the alleged violation of article 19, paragraph 2, the author reiterates that he did not enjoy the right to freely express himself, since he was not allowed to express himself in Breton. He claims that the French Government appears to consider that "freedom of expression" does not encompass the right to express oneself in the language of one's ancestors. He cites the names of several politicians said to have made remarks to this effect and adds that such statements run counter to the Conventions ratified by the French Government and other statements of French officials, who are accused of displaying a "double standard" in this respect. It is submitted that the notion of "freedom of expression" must necessarily be defined in the light of international conventions and resolutions adhered to by the State party, not in the light of the statements made by a few officials. Counsel refers to several instruments adopted by the Council of Europe,

the European Parliament and the United Nations General Assembly which recognise the right of minorities to express themselves in their own language.

6.5 As to France's "reservation" with regard to article 27 of the Covenant, counsel affirms that France made a "declaration" in respect of this provision. He further claims that in spite of the State party's contention that there are no minorities within its territory, draft legislation on the promotion of the languages and cultures of France has obtained the support of many parliamentarians, and that the President of the Republic himself has deplored the destruction of the minorities' cultures and affirmed that all forms of bilingualism should be encouraged.

7.1 When deciding on the question of admissibility of the communication, as it is required to do under rule 87 of its rules of procedure, the Human Rights Committee noted that the requirements of article 5, paragraph 2 (a) and (b), were met.

7.2 As to the author's claim that he had been denied his freedom of expression, the Committee observed that the fact of not having been able to speak the language of his choice before the French courts raised no issues under article 19, paragraph 2. The Committee therefore found that this aspect of the communication was inadmissible under article 3 of the Optional Protocol as incompatible with the provisions of the Covenant. With respect to the alleged violations of articles 14 and 26, the Committee considered that the author had made reasonable efforts sufficiently to substantiate his allegations for purposes of admissibility.

7.3 In respect of the author's claim of a violation of article 27 of the Covenant, the Committee did not find it necessary to address the scope of the French "declaration" concerning article 27 of the Covenant in this case, as the facts of the communications did not raise issues under this provision. a/

7.4 On 25 July 1989, the Human Rights Committee, accordingly, declared the communication admissible in so far as it raised issues under articles 14 and 26 of the Covenant.

8.1 In its submission under article 4, paragraph 2, of the Optional Protocol, dated 17 April 1990, the State party reiterates that the author's allegations in respect of violations of articles 14, paragraphs 1 and 3 (e) and (f), are ill-founded. It argues that the notion of "fair trial" (procès équitable) within the meaning of article 14, paragraph 1, cannot be determined abstractly but must be examined in the light of the particular circumstances of any given case. Concerning the judicial proceedings in the author's case, it affirms that it is inexact to pretend that the Tribunal Correctionnel of Rennes did not seek to ascertain whether the witnesses called by the defence spoke and understood French; on the contrary, the President of the tribunal expressly requested information on whether they mastered French sufficiently. The State party asserts that in reply the author's representatives claimed not to know the answer, or indicated that some of the witnesses preferred expressing themselves in Breton. This led the court to conclude that it was not shown that the accused or the witnesses called did not master the French language, and that the sole reason for requesting an interpreter lay in the desire of the accused and the witnesses to express themselves in Breton so as to promote the use of that language. The State party reiterates that on various occasions during the judicial proceedings, the author clearly established that he was perfectly capable of expressing himself in French. He did so notably during the enquiry that resulted in his conviction by the Court of Appeal on 23 March 1985.

8.2 The State party submits that criminal proceedings are not an appropriate venue for expressing demands linked to the promotion of the use of regional languages. The sole purpose of criminal proceedings is to establish the guilt or the innocence of the accused. In this respect, it is important to facilitate a direct dialogue between the accused and the judge; since the intervention of an interpreter always encompasses the risk of the accused's statement being reproduced inexactly, resort to an interpreter must be reserved for strictly necessary cases, i.e. if the accused does not sufficiently understand or speak the court language.

8.3 The State party affirms that in the light of the above considerations, the President of the Tribunal of Rennes was perfectly justified not to apply article 407 of the French Penal Code, as requested by the author. This provision stipulates that whenever the accused or a witness do not sufficiently master French, the President of the Court must ex officio request the services of an interpreter. In the application of article 407, the President of the Court exercises a considerable margin of discretion, based on a detailed analysis of the individual case and all the relevant documents. This has been confirmed by the Criminal Chamber of the Court of Cassation on several occasions. b/

8.4 The State party recalls that the author and all the witnesses called on his behalf were francophone, a fact which was confirmed by author's counsel in his submission of 2 June 1987 to the Committee (see para. 3 above). Accordingly, the State party submits, there can be no question of a violation of article 14, paragraph 3 (f).

8.5 The State party rejects the author's argument that he did not benefit from a fair trial in that the court refused to hear the witnesses called on his behalf, in violation of article 14, paragraph 3 (e), of the Covenant. Rather, Mr. Guesdon was able to persuade the court to call these witnesses, and it was of their own volition that they did not testify. Using his discretionary power, the President of the Court found that it was neither alleged nor proven that the witnesses were unable to express themselves in French and that their request for an interpreter was merely intended as a means of promoting the cause of the Breton language. It was therefore due to the behaviour of the witnesses themselves that the court did not hear them.

8.6 In respect of the alleged violation of article 26, the State party recalls that the prohibition of discrimination is enshrined in article 2 of the French Constitution. It affirms that the author's argument that an imperfect knowledge of French legal terminology justified his refusal to express himself in French before the courts is irrelevant for purposes of article 26: the author was merely requested to express himself in "basic" French. Furthermore, article 407 of the Penal Code, far from operating as discrimination on the grounds of language within the meaning of article 26, ensures the equality of treatment of the accused and of witnesses before the criminal jurisdictions, because all are required to express themselves in French. Finally, the State party charges that the principle of venire contra factum proprium is applicable to the author's behaviour: he refused to express himself in French before the courts under the pretext that he did not master the language sufficiently, whereas his submissions to the Committee are made in impeccable French.

9.1 In his comments, dated 11 May 1990, counsel takes issue with the State party's presentation of the facts. Thus, he indicates that the Tribunal Correctionnel only asked the author's representatives but not the witnesses whether the latter spoke

French. Counsel notes that the rules of procedure of the Bar of Rennes stipulate that lawyers may not advise or influence witnesses on behalf of their clients (interdiction de solliciter des témoins), and that only the accused may call witnesses or provide his representative with the names of witnesses. According to counsel, it should have been obvious that the court could not obtain dispositive answers from the representatives on the question whether the witnesses spoke French; had it been otherwise, the lawyers would have implicitly acknowledged that they had violated professional ethics. Counsel argues that it was the tribunal's duty to ascertain by other means whether the witnesses were proficient in French.

9.2 Counsel reiterates that the notion of "fair trial" implies that any witness unable to express himself with ease in the official court language must be allowed to address the court in his mother tongue. Furthermore, this right extends to all the stages of the judicial procedure. Counsel recalls that before the Court of Appeal, the accused reiterated his request that the witnesses called on his behalf be heard. The Court of Appeal did not, however, consider this request, and failed to ascertain whether the witnesses would agree, at this stage, to express themselves in French. Counsel concludes that the court denied the author the right to have witnesses heard on his behalf.

10.1 The Human Rights Committee has considered the present communication in the light of the information provided by the parties. It bases its views on the following considerations.

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, g/ 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 courts complied with their 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 a 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 speaks with a maximum of ease. If the court is certain, as it follows from the decision of the Tribunal Correctionnel and of the Court of Appeal of Rennes, 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, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, 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, paragraphs 1 and 3 (e) and (f), or of article 26 of the Covenant.

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

Notes

a/ Following the decision on admissibility in this case, the Committee decided at its thirty-seventh session that France's declaration concerning article 27 had to be interpreted as a reservation (T. K. v. France, No.220/1987, paras. 8.5 and 8.6; H. K. v. France, No.222/1987, paras. 7.5 and 7.6).

b/ See, e.g., the judgment of the Criminal Chamber of the Cour de Cassation of 30 June 1981 (Fayomi).

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