

N. Communication No. 409/1990, E.M.E.H. v. France (Decision of 2 November 1990, adopted at the fortieth session)

Submitted by: E.M.E.H. (name deleted)

Alleged victim: The author

State party concerned: France

Date of communication: 19 December 1989 (date of initial letter)

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

Meeting on 2 November 1990,

Adopts the following:

Decision on admissibility

1. The author of the communication dated 19 December 1989 is E.M.E.H., a French citizen of Moroccan origin, aged 72. He claims to be the victim of a violation by France of article 26 of the International Covenant on Civil and Political Rights. The Optional Protocol entered into force for France on 17 May 1984 and for Algeria on 12 December 1989.

2.1 From 1941 to 1963, the author was a full-time employee with the Chemins de Fer Marocains (C.M.F.). In 1963 he was transferred to the Société Nationale des Chemins de Fer Algériens (SNCF). He served as station manager ("Chef de gare 1ère classe au 9ème échelon") until 1972. In 1973, he retired and received from the Algerian SNCF the pension he was entitled to, until 1983, when he moved to France. By letter of 4 February 1984 from the SNCF Pension fund in Algiers, he was informed that, pursuant to Article 53, Title V of Law No. 83-12 of 2 July 1983, the payment was suspended on the ground that pensions are not paid outside the national territory of Algeria.

2.2 The author contends that his situation is similar to that in Communication No. 196/1985 (I. Gueye and 742 retired Senegalese Soldiers of the French Army v. France), in which the Human Rights Committee had found, in its views adopted on 3 April 1989, a violation of article 26, because retired Senegalese soldiers who had served in the French army prior to Senegal's independence received lower pensions than other retired soldiers of French nationality.

2.3 The author points out that he served for thirty-two years in two countries, one which had been part of France until 1962 (Algeria) and the other which had been a protectorate until 1956.

2.4 With respect to the exhaustion of domestic remedies, the author states that he wrote inter alia, to the Board of the French National Railways, the French Minister of Transports, the Minister of Foreign Affairs, the Prime Minister and the President of the Republic of France. It appears from the context of his submission that he did not submit his case to any French

tribunal. He does not mention what steps, if any, he took before Algerian administrative or judicial instances.

3.1 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.

3.2 With respect to article 1 of the Optional Protocol, the Committee reaffirms that it may only receive and consider communications from individuals subject to the jurisdiction of a State party to the Covenant and Optional Protocol "who claim to be victims of a violation by that State party of any of their rights set forth in the Covenant." (emphasis added) In this connection the Committee notes that although the author has addressed his complaint against France, his grievances actually relate to the laws and regulations in so far as they govern the retirement practices of the Algerian SNCFA. Although the author has, since his retirement, set up residence in France and is generally subject to French jurisdiction, he does not come within French jurisdiction in respect of his claims to retirement benefits from the Algerian SNCFA. Moreover, the Committee finds that the facts of this communication are materially different from those of communication No. 196/1985, in which the retired Senegalese Soldiers received payments from the French State pursuant to the French Code of Military Pensions, whereas in the instant case E.M.E.H. never received payments from France but rather from the Algerian SNCFA, which also discontinued them. Accordingly, the Committee cannot entertain E.M.E.H.'s communication against France under article 1 of the Optional Protocol.

4. The Human Rights Committee therefore decides:

(a) That the communication is inadmissible;

(b) That this decision shall be communicated to the author and, for information, to the State party.

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