

D. Communication No. 262/1987, R. T. v. France (Decision of 30 March 1989, adopted at the thirty-fifth session)

Submitted by: R. T. [name deleted]

Alleged victim: The author

State party concerned: France

Date of communication: 14 October 1987 (date of initial letter)

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

Meeting on 30 March 1989,

Adopts the following:

Decision on admissibility

1. The author of the communication (initial submission dated 14 October 1987; further letters dated 30 June, 10 September and 20 October 1988) is R. T., a French citizen born in 1942, at present living at Sevran, France. He claims to be a victim of a violation by the French Government of articles 2, paragraphs 1-3, 19, paragraphs 2, 26 and 27 of the International Covenant on Civil and Political Rights.

2.1 The author states that he has taught the Breton language at a number of high schools in Paris for the past 10 years. The French authorities have allegedly tried to deny him the right to teach Breton and exerted pressure on him by, for example, reducing his salary. The author claims that there is no justification for this pressure, because over a million Bretons live in the Greater Paris area and there is a growing demand for the teaching of Breton among high school students.

2.2 The author states that he has taught only Breton over the past 10 years, and that he is the only teacher of the subject in the Paris Educational District. The French authorities have never officially recognised this fact and have instead classified him as a "teaching assistant" (adjoint d'enseignement) for English (which the author claims he has never taught) and an "auxiliary teacher" (maître auxiliaire) of Armenian (which he says he does not know). With effect from the school year 1987/88, the French authorities are said to have attempted to force him to teach English. Upon his refusing to comply, the Paris Educational District apparently threatened to consider him as having abandoned his post, which would mean that he would not be entitled to unemployment benefits. Since the Academy has in the past discontinued the teaching of other regional languages such as Basque and Catalan, the author considers himself particularly threatened.

2.3 With regard to the requirement of exhaustion of domestic remedies, the author encloses copies of his correspondence with the competent educational authorities, which illustrate his attempts at reaching an amiable solution (recours amiables).

3. By decision of 15 March 1988, the Working Group of the Human Rights Committee transmitted the communication to the State party, requesting it, under rule 91 of the provisional rules of procedure, to provide information and observations relevant to the question of the admissibility of the communication. The author was requested to clarify whether he had submitted his case to any administrative or judicial tribunal and, if so, with what result.

4.1 In his submission under rule 91, dated 30 June 1988, the author reiterates that the facts in his case testify to the desire of the French authorities to eliminate the teaching of the Breton language and adds that since his initial submission to the Committee, this issue has been raised by many members of the French National Assembly and of the European Parliament. With respect to his duties as a teacher, he states that he is required, in principle, to lecture 18 hours per week. Starting in 1982/83 he taught a full 18 hours a week at three high schools in the Greater Paris area, where he claims his work was constantly disrupted by administrative measures and delays of several months before permission to teach Breton was granted. For the year 1987/88 the educational authorities at first opposed the resumption of his teaching duties in September 1987. Finally, in December 1987, he was again permitted to give instruction in the Breton language, but only for 10 hours a week; 8 hours, which were allegedly guaranteed under an agreement with the Rectorate of the Paris Educational District, had been "arbitrarily eliminated". According to the author, the explanations advanced by the authorities for limiting the Breton classes to 10 hours per week cannot be justified.

4.2 The author claims that the decision to reduce severely the number of Breton classes is contrary to commitments made by the Minister of Education on 15 June 1987, when he stated that "the provisions in respect both of number of hours and of teaching posts made available to district rectors [concerning regional languages spoken in France] have been maintained for the academic year 1987/88". Moreover, officials of the Department of Education have allegedly asserted that there is no need to teach Breton to pupils in Paris. The author contends that this statement is at variance with the trend observed since the mid-1980s.

4.3 With respect to the requirement of exhaustion of domestic remedies, the author explains that his démarches, up to the time of his communication to the Committee, have been of an administrative nature. Since the change of Government in France in May 1988, he has written to the new Minister of Education denouncing the discriminatory measures described above. The author states that he has not submitted his case to an administrative tribunal or to any other judicial authority; he adds that this is an eventuality that he can no longer rule out.

5.1 In its submission under rule 91, dated 5 August 1988, the State party objects to the admissibility of the communication on the grounds of non-exhaustion of domestic remedies and of incompatibility with the provisions of the Covenant.

5.2 With respect to the exhaustion of domestic remedies, the State party affirms that correspondence with associations or members of Parliament cannot be considered as remedies under French law and that only two letters addressed by the author to the Rector of the Paris Educational District and to the Minister of Education on 9 September 1987 and 8 October 1988, respectively, present some of the characteristics of an administrative remedy. Several judicial remedies would also have been open to the author with respect to his assignment to teach English since 1984. The State party explains that in order to have this measure revoked, he

could have submitted an ex gratia appeal to a higher administrative authority. The advantage of such an appeal is that it may be based not only on the legally relevant facts of the case but also on considerations of equity and expediency. Furthermore, if he considered that any decision 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 should have been filed within two months after the date on which he was notified of the measure affecting him. But since the author did not respect the deadlines for pursuing this remedy, the decision became final.

5.3 The State party emphasizes that although it is no longer open to the author to have an administrative court annul the contested decision on grounds of illegality, this situation is entirely of his own making, and that his inactivity or negligence 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 been pursued purely through the fault of the interested party."

5.4 The State party further submits that the author could have brought his case before an administrative tribunal on the grounds of abuse of power, invoking violations of the Covenant resulting from the Minister of Education's explicit or implicit rejection of the author's request of 8 October 1987 for "resumption of Breton classes in Paris". Furthermore, although the author can no longer ask the courts to decide on the legality of the contested measure, he could still plead the damage caused to him by not having been given tenure as a teacher of the Breton language and lodge an appeal with a view to obtaining compensation for the damage he claims to have suffered. In conclusion, the State party contends that the author "did not exercise any of the jurisdictional remedies available to him".

5.5 Additionally, the State party submits that the communication should be declared inadmissible as incompatible with the provisions of the Covenant. With respect to the alleged violation of article 19, paragraph 2, of the Covenant, it claims that the author has failed to substantiate his complaint and that, on the contrary, each of his submissions proves that he had every 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.

5.6 Concerning the alleged violation of article 26, the State party recalls that under applicable law and regulations, tenure as a teacher of Breton can only be granted if two conditions are met: (a) the existence of a body into which the person to be given tenure can be integrated; and (b) the existence of a budgeted post enabling a teacher with tenure to be remunerated. Since, at the time of consideration of the author's case, these two conditions were not met, the authorities could not comply with his request. This did not entail discrimination against him, but merely the application of the existing rules to his case.

5.7 With respect to the alleged violation of article 27 of the Covenant, 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".

5.8 Finally, the State party contends that a violation of article 2 cannot be committed directly and in isolation, and that any violation of this provision can only be a corollary to the violation of another article of the Covenant. Since the author has not shown that he has been injured in respect of one of his rights protected by the Covenant, he cannot invoke article 2.

6.1 Commenting on the State party's submission under rule 91, the author, in a letter dated 10 September 1988, maintains that his allegations are well founded. He takes issue with the State party's contention that he has not been discriminated against and reiterates that obstacles to his teaching of the Breton language are frequent and numerous. Thus, the 1987/88 school year for him began in December and not in September, and half of his classes were discontinued contrary to earlier agreements. The situation for the years 1985/86 and 1986/87 is said to have been comparable. The author considers that "the deliberate intention to forbid or considerably hamper the teaching of an ethnic minority's language constitutes a violation of cultural rights", and that it constitutes not only language discrimination but also job discrimination. With respect to article 27, he suggests that the State party cannot simply, because of a mere declaration, be excused from respecting the rights of individuals belonging to an ethnic minority.

6.2 With respect to the requirement of exhaustion of domestic remedies, the author contends that the State party's argumentation on this point must fail, because the State party's submission itself demonstrates that he could not have challenged his tenure as an assistant teacher of English within two months after being given tenure in 1984. In particular, he explains that a small body of teachers of the Breton language, in which he had aimed to be included, was only established subsequently, in 1986. Furthermore, he affirms that an administrative court could not order the educational authorities to give him tenure in Breton and that, in order for him to exhaust domestic remedies, it would have been necessary for the State party to provide him with the judicial means. He concludes that in the circumstances it was more reasonable for him to redouble his efforts to obtain tenure in Breton and not in English by way of petitions for review, rather than to allow himself "to be kept in a vicious and empty legislative and judicial circle". He submits that because of the way its legal system operates the State party has not afforded him the means to challenge its decisions on an equal footing with other citizens and in particular with colleagues who teach modern foreign languages. He suggests that he has not enjoyed equal and effective protection by the courts simply because he wants to continue teaching his own language, the language of an ethnic minority in France.

6.3 By a further letter dated 20 October 1988, the author points out that since France acceded to the Covenant, no legislation that could enable the Breton minority to use its language without discrimination has been adopted by the National Assembly, and concludes that this constitutes a violation of article 2, paragraph 2, of the Covenant. He requests the Committee's opinion on whether the fact that France acceded to an international instrument that prohibits linguistic discrimination does not require it to modify its legislation so that Bretons may use their language at all levels.

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

7.2 The Committee has ascertained, as it is required to do under article 5, paragraph 2 (a), of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

7.3 With regard to the State party's submission that the communication should be declared inadmissible pursuant to article 3 of the Optional Protocol as incompatible with the provisions of the Covenant, the Committee observes that the author cannot invoke a violation of his right to freedom of expression under article 19, paragraph 2, of the Covenant, on grounds of having been denied tenure as a teacher of the Breton language. With respect to the alleged violation of article 26, the Committee finds that the author has made a reasonable effort sufficiently to substantiate his allegations, for purposes of admissibility, that he has been a victim of discrimination on grounds of language. For reasons set out below, the Committee finds it unnecessary to pronounce on the French declaration concerning article 27 of the Covenant.

7.4 The Committee observes that the author has not pursued any domestic judicial remedies. It understands his assertion that he did not want to become engaged in "a vicious and empty legislative and judicial circle" as an indication of his belief that the pursuit of such remedies would be futile, and takes note of his contention that, in the circumstances of the case, it was more reasonable for him to seek extra-judicial redress by way of petition for review of his situation to the educational authorities. The Committee observes 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. Even if the author's contention were accepted that an administrative tribunal could not have ordered the educational authorities to grant him tenure as a teacher of the Breton language, the fact remains that the decision challenged by the author might have been annulled. The author has not shown that he could not have resorted to the 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. The Committee notes that he himself mentions that he does not rule out submitting his case to an administrative tribunal. It finds that, in the circumstances disclosed by the communication, the author's doubts about the effectiveness of domestic remedies did not absolve him from exhausting them, and concludes that the requirements of article 5, paragraph 2 (b), have not been met.

8. The Human Rights Committee therefore decides:

- (a) The communication is inadmissible.
- (b) This decision shall be communicated to the State party and to the author.