

Views of the Human Rights Committee under article 5, paragraph 4,
of the Optional Protocol to the International Covenant on Civil
and Political Rights

A. Communication No. 155/1983, Eric Hammel v. Madagascar (Views
adopted on 3 April 1987 at the twenty-ninth session)

Submitted by: Eric Hammel

Alleged victim: the author

State party concerned: Madagascar

Date of communication: 1 August 1983 (date of initial letter)

Date of decision on admissibility: 28 March 1985

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

Meeting on 3 April 1987;

Having concluded its consideration of communication No. 155/1983 submitted to the Committee by Maître Eric Hammel 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 concerned;

adopts the following:

VIEWS UNDER ARTICLE 5, PARAGRAPH 4, OF THE OPTIONAL PROTOCOL

1. The author of the communication (initial letter dated 1 August 1983 and further letters of 12 December 1983, 18 September and 17 October 1985, 30 May and 18 August 1986 and 25 February 1987) is Maître Eric Hammel, a French national and resident of France, formerly a practising attorney in Madagascar until his expulsion in February 1982. He claims to be a victim of violations by the State party of articles 9, 13 and 14 of the International Covenant on Civil and Political Rights. He also alleges a breach of article 2, paragraph 3 (b), of the Covenant.

2.1 Maître Hammel states that he was called to the Madagascar bar in May 1963 and practised law at Antananarivo. He claims to have built up over a period of 19 years one of the best law practices in Madagascar and that he defended the principal leaders of the Malagasy political opposition as well as other political prisoners. He alleges that on two occasions, in 1980 and 1981, he was detained by DGID (Malagasy political police) and released after one day of questioning. On 8 February 1982, the political police arrested him again at his law office, kept him in incommunicado detention in a basement cell of the prison of the political police and subsequently deported him from Madagascar on 11 February 1982, giving him only two hours to pack his belongings.

2.2 With regard to the exhaustion of domestic remedies, the author alleges that on 1 March 1982 he applied to the Malagasy Ministry of the Interior for the abrogation of the expulsion order as illegal and unfounded. In the absence of any response from the Ministry, the author formally applied to the Administrative Chamber of the Supreme Court of Madagascar on 10 June 1982 requesting abrogation of the expulsion order.

2.3 The author alleges certain interference with his correspondence by the Malagasy postal services and governmental interference in various court proceedings in which he was engaged.

2.4 It is claimed that the proceedings started by the author were deliberately paralysed by the Malagasy Government in violation of domestic laws and of the International Covenant on Civil and Political Rights. In this connection the author substantiates his allegations as follows:

"Article 13: After 19 years as a member of the Madagascar bar, I was expelled from Madagascar as a French national by order of 11 February 1982, with 24 hours' notice. I was notified of the order on 11 February 1982 and there was a plane leaving at 8 p.m. I had two hours to pack my baggage at my home under surveillance by political police officers. I thus had no opportunity to avail myself of any of the remedies of appeal against the expulsion order that are provided for by law. When I later applied to the Administrative Chamber of the Supreme Court to have the expulsion order repealed, the proceedings ... were thwarted by the Government."

...

"Article 14, paragraph 1: The Government has prevented the courts and tribunals from reviewing and ruling on the appeals and charges I have filed ..., although the Covenant provides that everyone shall be entitled in a suit at law to a hearing by the competent tribunal."

3. By its decision of 6 April 1984, the Human Rights Committee transmitted the communication under rule 91 of the provisional rules of procedure to the State party concerned, requesting information and observations relevant to the question of admissibility of the communication. The Committee also requested the State party to forward copies of any court orders or decisions relevant to the case.

4. The deadline for the State party's submission under rule 91 of the Committee's provisional rules of procedure expired on 14 July 1984. No submission was received from the State party prior to adoption of the Committee's decision on admissibility on 28 March 1985.

5.1 With regard to article 5, paragraph 2 (a), of the Optional Protocol, the Committee noted that it had not received any information that the subject-matter had been submitted to another procedure of international investigation or settlement.

5.2 With regard to article 5, paragraph 2 (b), of the Optional Protocol, the Committee was unable to conclude, on the basis of the information before it, that there were effective remedies which the alleged victim should have pursued.

6. On 28 March 1985, the Human Rights Committee decided that the communication was admissible. In accordance with article 4, paragraph 2, of the Optional Protocol, the State party was requested to submit to the Committee, within six months of the date of the transmittal to it of the decision on admissibility, written explanations or statements clarifying the matter and the remedy, if any, that might have been taken by it.

7.1 By letter dated 18 September 1985, the author submitted further clarification of the facts outlined in his original communication, in particular with respect to his arrest on 8 February and expulsion on 11 February 1982. He describes the search of his law offices carried out by the Malagasy political police on 8 February 1982 and continues:

"On the conclusion of the search, I was taken away by officers of the Malagasy political police and held in a basement cell in the Malagasy political police prison ... I was then informed that, in fact, I was suspected of being an international spy in view of my contacts and communications with Amnesty International and the Human Rights Committee since, according to the Malagasy political police, those contacts constituted the crime of international espionage. Consequently, from 8 to 11 February 1982, I was questioned solely about that alleged crime of international espionage and my contacts with the above-mentioned organizations. During that period, I was detained in the Malagasy political police prison (in an unlit, underground cell measuring 1.50 by 2.50 metres with no sanitary facilities and containing only a wooden platform on which to sleep) in the strictest solitary confinement, prohibited from contacting a fellow lawyer, the Catholic chaplain or my family and from receiving, writing or sending letters ... In the early afternoon of 11 February 1982, ... I ... was notified of the expulsion order, No. 737/82 of 11 February 1982, issued against me. ... In the early evening of Thursday, 11 February 1982, I was escorted back to my home and office where I was permitted to pack my belongings under the surveillance of two officers of the Malagasy political police. However, I was forbidden to contact anyone. I was then driven to the airport at Antananarivo in a Malagasy political police (DGID) vehicle guarded by the two police officers (reinforced by four soldiers armed with sub-machine-guns) and was immediately taken on board the aircraft leaving for Paris in the late evening of 11 February 1982. Even the representative of the French Embassy was not allowed to contact me at the airport ... Although I was arrested for so-called conspiracy, I was immediately informed that I was actually suspected of being an international spy. However, I was never indicted or brought before a magistrate on that charge."

7.2 These facts, the author alleges, also constitute a violation of article 9 of the International Covenant on Civil and Political Rights.

8.1 In its submission under article 4, paragraph 2, of the Optional Protocol, dated 27 September 1985, the State party objected to the admissibility of the communication, arguing that domestic remedies had not yet been exhausted. In particular, the State party rejected the author's allegations that the Government of Madagascar had "deliberately paralysed" (délibérément paralysées), the author's legal proceedings, stating that:

"As regards the two applications lodged with the Administrative Chamber, the application concerning the Postal Administration will be placed on the

case list very shortly. The application for abrogation of the expulsion order is, however, held up at the present time because Maître Eric Hammel has not received the last memoranda from the State. The latter were returned by the French postal service, with the envelopes marked 'not resident at the address indicated 9202'. The Court regards Maître Eric Hammel's reply to those memoranda as essential for the settlement of the dispute ...

"These facts make it quite clear that the inquiries into the cases involving Maître Eric Hammel have always taken a normal course without any move on the part of the Malagasy Government to interfere with them.

"Furthermore, Maître Eric Hammel never took the trouble to find out from the court concerned what stage had been reached in the proceedings instituted by him. If he felt that the court or judge was guilty of gross professional negligence by failing to deal with his application or suit, or that there was a denial of justice, he was free to make use of the procedure for claiming damages for miscarriage of justice as provided for under articles 53 to 63 of the Malagasy Code of Civil Procedure."

8.2 As to the merits, the State party denied the alleged violation of article 13 of the Covenant, arguing that Maître Hammel had been expelled in pursuance of a decision reached in accordance with Malagasy law, i.e., on the basis of an order from the Minister of the Interior acting pursuant to article 14 of Act No. 62-006 of 6 June 1962, which stipulates that "expulsion may be ordered by decision of the Minister of the Interior if the residence of the alien in Madagascar may give rise to a breach of the peace or threatens public security".

8.3 With respect to the requirement of article 13 that an alien subject to expulsion be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority, the State party makes reference to articles 15 and 16 of Act No. 62-006, pursuant to which Maître Hammel could have requested a review of his case:

"At no point, however, did Maître Eric Hammel make any such request. He preferred to make use of the administrative remedy and to apply to the Minister of the Interior. In the absence of any response on the part of the latter, he took his case directly to the Administrative Chamber of the Supreme Court where he was able to make his submissions for the defence without restriction. Under Malagasy administrative case law, the Administrative Chamber of the Supreme Court is competent to question the lawfulness of an expulsion measure not only from the legal standpoint but also from the standpoint of the material facts on the grounds of which the Administration took the measure."

8.4 Concerning the alleged violation of the provisions of article 2, paragraph 3 (b), and of article 14, paragraph 1, of the Covenant, the State party notes:

"This accusation is unfounded and is not substantiated by any evidence. It is not part either of the principles or of the practice of the Malagasy Government to obstruct the course of justice in any way. Not for the first time, or for the last, has an administrative act been the subject of appeal and the Administrative Chamber of the Supreme Court had before it an application for the abrogation of an administrative decision. Since attaining;

independence, the Malagasy State has always upheld the principle of legality and the subordination of the Administration to the law. The Administrative Chamber was established with a view to ensuring supervision of administrative acts; it has not hesitated to order the annulment of irregular measures on a number of occasions."

9.1 In his comments, dated 17 October 1985, the author denies the State party's assertion that he had the possibility of challenging his expulsion before a special commission provided for by Act No. 62-006. After reiterating the circumstances of his arrest and detention, the author indicates that early in the afternoon of 11 February 1982 he was taken from his cell to the offices of the political police, where he was served a notification of his expulsion. He continues:

"I was then taken back to the cell, from which I was removed again at about 6 p.m. and taken home under the supervision of two inspectors of the political police to pack my bags and then taken by the same inspectors, assisted by four soldiers armed with sub-machine-guns, to the airport and placed directly aboard the aircraft about to take off for Paris. In addition, the expulsion order notified to me on Thursday, 11 February 1982, at 2 p.m. provided for a deadline of 24 hours, which was thus to expire on Friday, 12 February at 2 p.m. There is a flight to France on Thursdays at 8 p.m. and another on Saturdays at 8 p.m. I was taken manu militari to the aircraft on Thursday, 11 February, but it would obviously have been impossible for me to take the Saturday flight since the expulsion deadline was 2 p.m. on Friday. It was thus materially impossible for me, as a result of the arrangements made by the political police, to use the remedies provided for by Act No. 62-006, since the period of eight days provided for by that Act would have ended on 19 February 1982 at 2 p.m., whereas the deadline for expulsion was 2 p.m. on 12 February 1982, and I was officially placed aboard the aircraft by the political police on the evening of 11 February 1982 and prevented from communicating with anybody whatsoever from the notification of the expulsion until my departure. The arrangements made by the Malagasy political police had precisely the purpose of preventing me from making use of the remedies against expulsion."

9.2 Finally, with respect to the State party's assertion that the proceedings were delayed by the author's change of address in France, Maître Hammel encloses as evidence copies of seven registered letters with his letterhead and exact address (including a specific indication as to his change of address), four of which are addressed to the President of the Administrative Chamber of the Supreme Court (dated 17 January 1983, 7 April 1983, 2 April 1985 and 10 April 1985) and three addressed to the Dean of the Examining Magistrates of the Antananarivo Court (dated 12 December 1982, 7 April 1983 and 2 April 1985). Maître Hammel alleges that all of these letters have remained unanswered, in some cases for more than three years, and he concludes that:

"From the end of 1982 or the beginning of 1983, the relevant branches of the Malagasy judiciary had my exact address and could have sent me or informed me of any documents, but have done nothing ... These letters are, moreover, requests for information concerning the proceedings in progress and the argument of the Malagasy party that I had never taken the trouble to find out what stage had been reached in the proceedings is thus negated by this evidence which shows, on the contrary, that the Malagasy judiciary was not prepared to inform me of the stage reached in the proceedings I had instituted."

10. In its further observations under article 4, paragraph 2, dated 13 January 1986, the State party again rejects the author's contention that the Government of Madagascar tried to paralyse the judicial proceedings commenced by him and reaffirms the independence of the Malagasy judiciary. According to the State party, the procedural delays in the case are attributable to the fact that the author is outside Madagascar.

11. In an interim decision dated 2 April 1986 the Human Rights Committee, noting the State party's observation that Maître Hammel could have sought review of the expulsion order pursuant to Act No. 62-006, requested the author to clarify further why he did not pursue this remedy from France during the week from 12 to 19 February 1982, i.e. within the time-limit provided for in the law.

12. In a reply dated 30 May 1986 Maître Hammel explains that article 15 of Act No. 62-006 provides for an administrative or voluntary remedy in respect of a contested decision. This, he states, involves the lodging of an appeal with the authorities calling for an administrative review of the decision in question and, under Malagasy law, has the effect of staying execution of the decision, since the aim is to bring about a review of the decision, with a view to its repeal before it is put into effect. The administrative appeal thus provides that the individual concerned is brought before and is heard by a special commission, which gives an opinion, with the final ruling being made by the Minister of the Interior. Once the expulsion has been carried out, the possibility of being heard by the commission no longer exists. Because of the circumstances of his detention and the rapidity of his expulsion, the author states, he was unable to lodge an appeal under Act No. 62-006 before he was expelled on 11 February 1982. Upon his arrival in France on 12 February 1982, he adds, an appeal under Act No. 62-006 had become pointless, as he could no longer be brought before and heard by the commission. Consequently, he opted for contentious appeal before the Administrative Chamber of the Supreme Court to obtain the cancellation of the expulsion order.

13.1 In its interim decision the Committee also requested the State party "to indicate when the proceedings lodged by Maître Eric Hammel before the Administrative Chamber of the Supreme Court are expected to be concluded, if pursued in a timely fashion by the parties" and "further to inform the Committee as to the reasons for Maître Eric Hammel's expulsion at such short notice, without his being able to seek review of the decision to expel him prior to his expulsion."

13.2 By note of 5 July 1986 the State party informed the Committee that a ruling on Maître Hammel's application requesting the cancellation of the expulsion order should be made in July 1986. With regard to the urgency of the enforcement of the expulsion order, the State party submits that, under Malagasy legislation, an order for the expulsion of an alien may be enforced at short notice, that the Minister of the Interior is alone responsible for deciding how soon an expulsion order will be enforced, that a unilateral decision by the Administration is enforceable as soon as it has been signed, and that Maître Hammel's expulsion was linked to a case of conspiracy against the security of the State tried in January 1982.

14. In a letter dated 20 August 1986 the author commented on the State party's reply to the interim decision as follows:

"The Malagasy State acknowledges having expelled me with such haste that I was prevented from pursuing the remedies provided for by law ... The Malagasy State maintains that I was expelled for having been involved in a plot in January 1982 ... I was in fact arrested allegedly because of this

plot, but on my arrival at the political police prison I was informed that I had been arrested on these alleged grounds only in order that I might be detained without limitation of time in the political police prison and that in fact I had been charged with international espionage because of my contacts with Sean MacBride, Chairman of the International Executive Committee of Amnesty International, and with the Human Rights Committee in Geneva ..."

The author further claims that already in February 1980 the chief of the political police, in the presence of witnesses, threatened him with expulsion for "having defended persons accused of political offences and having obtained their discharge ... I was summoned on 1 March 1980 ... by the political police and questioned the whole day, before being released in the evening. I was again summoned by the political police on 4 November 1980 and questioned the whole day before being released."

15. In a further submission dated 13 January 1987 the State party, commenting on the author's allegations, observes that "Maître Hammel continues to make deceitful and tendentious assertions with the intention of discrediting the Malagasy Government and judicial authorities." The State party also enclosed a copy of the text of the decision of the Administrative Chamber of the Supreme Court of Madagascar, dated 13 August 1986. As to the grounds for Maître Hammel's expulsion, the Court observes inter alia as follows:

"Whereas it is apparent from the investigation that Mr. Eric Hammel, making use both of his status as a corresponding member of Amnesty International and of the Human Rights Committee [*sic*] at Geneva, and as a barrister, of his own free will took the liberty of discrediting Madagascar by making assertions of such gravity that they should have been upheld by irrefutable evidence; whereas this has not always been the case; whereas this is also true of the assertion in his most recent memorandum that the camp of Tsiafaha, situated approximately 20 km south of Antananarivo on the Antsirabe road is obviously a camp for political prisoners, although the person in question has not been able to supply the slightest proof for his allegations that any internment has actually taken place; whereas, in addition, it is apparent from the documents in the case file that the applicant did not fail to inform his acquaintances abroad of the situation in Madagascar, blackening it to his convenience, without any concern for the difficult environment prevailing in the country, regardless of any assessment of the nature of the régime itself.

"Whereas conduct of this type was per se incompatible with the status of an alien and gave rise to the greatest suspicions as to the applicant's real intentions; whereas the Minister of the Interior was therefore right to have considered it his duty to proceed to the expulsion of Mr. Eric Hammel, in so far as his continued presence in Madagascar would have disturbed public order and security."

The court therefore rejected Maître Hammel's application to quash the expulsion order of 11 February 1982 and ordered him to pay costs.

16. In a further letter of 25 February 1987, the author observes that the State party has failed to give any valid reasons for his expulsion and none whatever for such urgency on the grounds of national security as could have justified immediate execution of the expulsion order. He emphasizes the relevance of his prior

allegation that the chief of the political police threatened him with expulsion in 1980 because of his human rights activities and states that, in spite of such intimidation and two arrests by the political police in 1980, he pursued his profession as a human rights lawyer. He denies the State party's submission that he made false assertions about conditions in Madagascar, in particular at the camp of Taiafaha, but admits that he saw it as his duty to bring to the attention of Amnesty International the conditions at Taiafaha camp, which he considered violative of human rights. He further states that the General Assembly of Malagasy Lawyers, in a resolution of 3 April 1982, protested against the conditions of his arrest and expulsion.

17. The Human Rights Committee has considered the present communication in the light of all information made available to it by the parties, as provided in article 5, paragraph 1, of the Optional Protocol. Before adopting its views, the Committee took into consideration the State party's late objection to the admissibility of the communication, but the Committee can see no justification for reviewing its decision on admissibility on the basis of the State party's contention that the author had not exhausted domestic remedies. It is clear that the author was expelled in circumstances which excluded an effective remedy under Act No. 62-006. The processing of the author's subsequent applications from France by registered communications to obtain the repeal of the expulsion order was delayed for over four years and, thus, was unreasonably prolonged in the sense of article 5, paragraph 2 (b), of the Optional Protocol.

18.1 The Committee therefore decides to base its views on the following facts which are undisputed or have not been refuted by the State party.

18.2 Maître Hammel is a French national and resident of France, formerly a practising attorney in Madagascar for 19 years until his expulsion on 11 February 1982. In February 1980 he was threatened with expulsion and was detained and interrogated on 1 March and again on 4 November 1980 in this connection. On 8 February 1982, he was arrested at his law office in Antananarivo by the Malagasy political police, who took him to a basement cell in the Malagasy political prison and kept him in incommunicado detention until 11 February 1982 when he was notified of an expulsion order against him issued on that same date by the Minister of the Interior. At that time he was taken under guard to his home where he had two hours to pack his belongings. He was deported on the same evening to France, where he arrived on 12 February 1982. He was not indicted nor brought before a magistrate on any charge; he was not afforded an opportunity to challenge the expulsion order prior to his expulsion. The proceedings concerning his subsequent application to have the expulsion order revoked ended with the decision of the Administrative Chamber of the Supreme Court of Madagascar, dated 13 August 1986, in which the Court rejected Maître Hammel's application and found the expulsion order valid on the grounds that Maître Hammel allegedly made "use both of his status as a corresponding member of Amnesty International and of the Human Rights Committee [sic] at Geneva, and as a barrister" to discredit Madagascar.

19.1 In this context, the Committee observes that article 13 of the Covenant provides, at any rate, that an alien lawfully in the territory of a State party "may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority".

19.2 The Committee notes that, in the circumstances of the present case, the author was not given an effective remedy to challenge his expulsion and that the State party has not shown that there were compelling reasons of national security to deprive him of that remedy. In formulating its views the Human Rights Committee also takes into account its general comment 15 (27), a/ on the position of aliens under the Covenant, and in particular points out that "an alien must be given full facilities for pursuing his remedy against expulsion so that this right will in all the circumstances of his case be an effective one".

19.3 The Committee further notes with concern that, based on the information provided by the State party (para. 15 above), the decision to expel Eric Hammel would appear to have been linked to the fact that he had represented persons before the Human Rights Committee. Were that to be the case, the Committee observes that it would be both untenable and incompatible with the spirit of the International Covenant on Civil and Political Rights and the Optional Protocol thereto, if States parties to these instruments were to take exception to anyone acting as legal counsel for persons placing their communications before the Committee for consideration under the Optional Protocol.

19.4 The issues raised in this case also relate to article 9, paragraph 4, of the Covenant, in the sense that, during his detention preceding expulsion, Eric Hammel was unable to challenge his arrest.

19.5 The Committee makes no findings with regard to the other claims made by the author.

20. 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 found by the Committee disclose violations of the International Covenant on Civil and Political Rights with respect to:

Article 9, paragraph 4, because Eric Hammel was unable to take proceedings before a court to determine the lawfulness of his arrest;

Article 13, because, for grounds that were not those of compelling reasons of national security, he was not allowed to submit the reasons against his expulsion and to have his case reviewed by a competent authority within a reasonable time.

21. The Committee, accordingly, is of the view that the State party is under an obligation, in accordance with the provisions of article 2 of the Covenant, to take effective measures to remedy the violations which Maître Hammel has suffered and to take steps to ensure that similar violations do not occur in the future.

Notes

a/ Official Records of the General Assembly, Forty-first Session, Supplement No. 40 (A/41/40), annex VI.