

HUMAN RIGHTS COMMITTEE

Lestourneaud v. France

Communication No. 861/1999

3 November 1999

CCPR/C/67/D/861/1999

ADMISSIBILITY

Submitted by: Mr. Alain Lestourneaud

Alleged victim: The author

State party: France

Date of the communication: 16 September 1997 (initial communication)

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

Meeting on 3 November 1999

Adopts the following:

Decision on admissibility

1. The author of the communication is Mr. Alain Lestourneaud, a French citizen born on 23 September 1952. He claims to be a victim of a violation by the French Republic of articles 2 and 26 of the International Covenant on Civil and Political Rights.

The facts as submitted

2.1 On 23 March 1995, the author, as a member of the Bar of Thonon-les-Bains, was appointed, within the framework of legal aid, to defend the interests of a minor in a matter before the Assize Court of Haute Savoie. The minor was the civil claimant in a criminal case involving rape and other sexual abuse.

2.2 After proceedings that lasted for more than two years, the accused in the case was found guilty

and sentenced to seven years' imprisonment. The case having been finalized, the author and the lawyer of the defendant applied for payment of the legal aid fee. The said fee is calculated in accordance with a schedule reproduced in article 90 of the Decree of 19 December 1991 concerning legal aid.

2.3 According to the schedule regulating the fees of lawyers acting within the context of legal aid, the plaintiff's lawyer is remunerated on the basis of eight credits for representation at the examination stage and 24 credits for representation before the Assizes Court. The defendant's lawyer, on the other hand, is remunerated at the rate of 50 credits in the first case and 40 credits in the second case. The currently applicable credit is equivalent to FF 136.

2.4 Consequently, in his capacity as the claimant's lawyer, the author received a fee amounting to 32 credits at the end of the proceedings, while the defendant's lawyer received a fee of 90 credits.

The complaint

3.1 The author claims that this disparity constitutes discrimination on the basis of the position in the criminal trial. The author submits that the time spent by each lawyer at the hearings is exactly the same and that the difference in remuneration therefore constitutes a violation of article 26 of the Covenant.

3.2 Moreover, the Legal Aid Act excludes any possibility of an effective remedy insofar as the alleged violation cannot be effectively brought before a judicial authority for redress. The author contends that this constitutes a violation of article 2(3) of the Covenant. For the same reason, the author was unable to exhaust domestic remedies.

Issues and proceedings before the Committee

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

4.2 The Committee notes that the author's claim is based upon the difference in remuneration between legal aid services performed by counsel for the civil claimant and those performed by counsel for the defendant. The Committee recalls that differences in treatment do not constitute discrimination, when they are based on objective and reasonable criteria. In the present case, the Committee considers that representation of a person presenting a civil claim in a criminal case cannot be equalled to representing the accused. The arguments advanced by the author and the material he provided do not substantiate, for purposes of admissibility, the author's claim that he is a victim of discrimination.

4.3 With regard to the author's claim under article 2(3) of the Covenant, the Committee recalls that, for purposes of the Optional Protocol, article 2 can only be invoked in relation with any of the articles contained in part III of the Covenant. The author's claim under article 26 being inadmissible, as a consequence his claim under article 2 is likewise inadmissible.

5. Accordingly, the Human Rights Committee decides

a) that the communication is inadmissible under article 2 of the Optional Protocol;

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

*The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Nisuke Ando, Mr. Prafullachandra N. Bhagwati, Ms. Elizabeth Evatt, Mr. Louis Henkin, Mr. Eckart Klein, Mr. David Kretzmer, Ms. Cecilia Medina Quiroga, Mr. Fausto Pocar, Mr. Martin Scheinin, Mr. Hipólito Solari Yrigoyen, Mr. Roman Wieruszewski, Mr. Maxwell Yalden and Mr. Abdallah Zakhia. Under rule 85 of the Committee's rules of procedure, Ms. Christine Chanet did not participate in the examination of the communication.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]