



**International covenant
on civil and
political rights**

Distr.
RESTRICTED*

CCPR/C/81/D/1179/2003
16 July 2004

Original: ENGLISH

HUMAN RIGHTS COMMITTEE
Eighty-first session
5 to 30 July 2004

DECISION

Communication No. 1179/2003

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| <u>Submitted by:</u> | Benjamin Ngambi and Marie-Louise Nébol (not represented by counsel) |
| <u>Alleged victim:</u> | The authors |
| <u>State party:</u> | France |
| <u>Date of communication:</u> | 18 February 2003 (initial submission) |
| <u>Document references:</u> | Special Rapporteur's rule 91 decision, transmitted to the State party on 28 May 2003 (not issued in document form) |
| <u>Date of adoption of decision:</u> | 9 July 2004 |

[Annex]

* Made public by decision of the Human Rights Committee.

ANNEX

**DECISION OF THE HUMAN RIGHTS COMMITTEE UNDER THE
OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT
ON CIVIL AND POLITICAL RIGHTS**

Eighty-first session

concerning

Communication No. 1179/2003**

Submitted by: Benjamin Ngambi and Marie-Louise Nébol
(not represented by counsel)

Alleged victim: The authors

State party: France

Date of communication: 18 February 2003 (initial submission)

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

Meeting on 9 July 2004,

Adopts the following:

DECISION ON ADMISSIBILITY

1. The authors are Mr. Benjamin Ngambi, of Cameroonian origin and with refugee status in France, and Ms. Marie-Louise Nébol, of Cameroonian nationality and resident in Douala, Cameroon. They claim to be victims of violations by France of articles 17 and 23 of the International Covenant on Civil and Political Rights. They are not represented by counsel.

** The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Prafullachandra Natwarlal Bhagwati, Mr. Franco Depasquale, Mr. Maurice Glèlè Ahanhanzo, Mr. Walter Kälin, Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer Lallah, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Martin Scheinin, Mr. Ivan Shearer, Mr. Hipólito Solari Yrigoyen, Ms. Ruth Wedgwood and Mr. Roman Wieruszewski.

Pursuant to Rule 84, 1(a) of the Committee's rules of procedure, Ms. Christine Chanet did not participate in adoption of the decision.

1.2 On 15 October 2003 the Committee, acting through its Special Rapporteur on New Communications, decided to separate consideration of the admissibility and merits of the communication.

The facts as submitted

2.1 Mr. B. Ngambi states that he married Ms. M.-L. Nébol in Cameroon on 15 January 1983. After engaging in political activity, he was arrested by the police on two occasions and fled Cameroon in 1993. He submitted an application for refugee status in France in 1994.,

2.2 On 8 March 1995 the French authorities accorded refugee status to Mr. B. Ngambi and, on 16 May 1995, issued a record of civil status acknowledging his marriage to Ms. M.-L. Nébol.

2.3 Nevertheless, in a decision dated 19 September 1999, the Consul General of France in Douala, Cameroon, denied the application for a visa for Ms. M.-L. Nébol on the ground of family reunification, as the Cameroonian authorities had indicated that the authors' marriage certificate was not genuine. The decision states that the denial did not constitute a disproportionate interference with the right to privacy and to a family life owing to the circumstances indicated above, and to the fact that in practice Ms. M.-L. Nébol and Mr. B. Ngambi had no conjugal life together; the latter had in fact had a relationship with Ms. M.K., with whom he had had a child.

2.4 On 23 May 2001, in a ruling on Ms. M.-L. Nébol's appeal against the decision by the Consul General of France, the Council of State found that the fact that the marriage certificate submitted by the authors was not genuine, and that this circumstance became known subsequent to recognition by the French authorities of the authors' marriage certificate, constituted legal justification for the denial of a visa for Ms. M.L. Nébol. The Council concluded that, since the authors did not cohabit as spouses, the decision of 19 September 1999 was not a disproportionate interference with the right of the party to respect for private and family life, as guaranteed by article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

The complaint

3.1 The authors assert that the decision by the Council of State constitutes a serious infringement of their right to a private and family life, in violation of articles 17 and 23, paragraphs 1 and 3 of the Covenant. They claim that the State party has interfered in their private and romantic life by enquiring into Mr. B. Ngambi's extramarital relationship and by informing Ms. M.-L. Nébol of them.

3.2 The authors further maintain that the French authorities have attempted to compel Mr. B. Ngambi to marry Ms. M.K, in violation of article 23, paragraph 2 of the Covenant.

3.3 The authors state that they have exhausted domestic remedies and that the same matter is not being examined under another procedure of international investigation or settlement.

Observations by the State party

4.1 In its observations of 24 July 2003 the State party contests the admissibility of the communication.

4.2 Firstly, the State party offers the following clarifications as to the facts. On 7 March 1994 Mr. B. Ngambi applied for refugee status in France. On 19 December 1994 his application was denied by the French Office for the Protection of Refugees and Stateless Persons (OFPRA). Ruling on the author's appeal on 8 March 1995, the Refugee Appeals Commission accorded him refugee status.

4.3 On 23 August 1995 OFPRA, relying on declarations by Mr. B. Ngambi which later proved false, recorded the marriage of Mr. B. Ngambi with Ms. M.-L. Nébol and issued a marriage certificate and a family civil status record.

4.4 On 13 November 1996, Adeline, the child of Mr. B. Ngambi and Ms. M.K., was born in France.

4.5 On 7 January 1998 Ms. M.-L. Nébol, claiming to be Mr. B. Ngambi's wife, applied for a long-stay visa for entry into France.

4.6 On 2 March 1998 the Ministry of Foreign Affairs informed Mr. B. Ngambi that his "union with Ms. M.K." had had the effect of ending his conjugal life with Ms. M.-L. Nébol. Under these circumstances the "family reunification procedure was no longer applicable".

4.7 On 20 March 1998 Mr. B. Ngambi applied to the Paris Administrative Court for annulment of the decision of 2 March 1998.

4.8 On 30 March 1998 the mayor of Douala, Cameroon, wrote to the Consul General of France in Douala, stating that marriage certificate No. 117/83 (the number on the marriage certificate supplied by the authors in connection with their application for family reunification) related, in reality, to the marriage of Mr. François Yonkeu and Ms. Marceline Yakam. Accordingly, the marriage certificate supplied by the authors was not genuine.

4.9 On 3 April 1998 the Consul General of France transmitted this correspondence to OFPRA. On 11 May 1998 the consulate also informed OFPRA that the birth certificates of Ms. M.-L. Nébol and the authors' two claimed sons, Frank Ngambi and Emmanuel Ngambi, were not genuine and confirmed that the authors' marriage certificate was not genuine.

4.10 On 4 June 1999 the Paris Administrative Court annulled the decision by the Ministry of Foreign Affairs of 2 March 1998 as ultra vires.

4.11 On 19 September 1999 the Consul General denied Ms. M.-L. Nébol's visa application. On 7 October 1999 Mr. B. Ngambi submitted an application to the Paris Administrative Court for execution of the judgement of 4 June 1999 of the same court. On 18 November 1999 Ms. M.-L. Nébol submitted an application to the Council of State for rescission of the denial of a visa on 19 September 1999.

4.12 On 23 May 2001 the Council of State rejected the application by Ms. M.-L. Nébol. The council considered that, in taking his decision, the Consul General of France in Douala had

relied, in part, on the documents produced by Douala municipality, on the fact that the certificate produced by Ms. M.-L. Nébol attesting to her marriage with Mr. B. Ngambi was not genuine, and, in part, on the absence of conjugal life by the authors.

4.13 Lastly, with a view to assisting the Committee in forming its views on Mr. B. Ngambi and his family relationships, the State party thought it relevant to provide the following information.

4.14 By an order of 17 January 2000, the Paris District Court withdrew Ms. Sophie Ngambi Enono from the guardianship of Mr. B. Ngambi, her guardian. The order states that “Sophie Ngambi Enono, born on 17 February 1970 at Bertoua, Cameroon (...) is severely handicapped as the result of a trisomy, and is completely dependent; she is confined by her guardian to a study bedroom (...) where she is left alone and fed, at best, once a day”. The court ordered Mr. B. Ngambi to provide an accounting to the new legal representative, and in particular that “Benjamin Ngambi must provide a full account of the disposition of the amount of 35,193 French francs received on 16 September 1999 by Sophie Ngambi Enono as disability benefit arrears”.

4.15 Further, the Paris police chief, in transmitting to the Director of OFPRA on 23 May 2000 the order by the Paris District Court, stated that: “I wish to draw your attention in connection with acts by Mr. Ngambi to the fact that he appears to be responsible for the arrival in France of several asylum-seekers as well as of several children of Cameroonian nationality who entered France on false passports from the Central African Republic and in respect of whom he produced a guardianship order from the Douala District Court (...)”.

4.16 Secondly, the State party asserts that the allegations of violations of articles 23 and 17 of the Covenant are inadmissible. In the first place the State party contends that the communication by the authors is incompatible *ratione materiae* with the provisions of article 23 of the Covenant.

4.17 The State party recalls that it has not been established that the authors are married. In any event they have not provided any evidence to this effect. On the contrary, as certified by Douala municipality in its letter of 30 March 1998, the marriage certificate supplied to the French authorities by the authors was not genuine.

4.18 Furthermore, Mr. B. Ngambi left Cameroon in May 1993, according to information that he provided to the Refugee Appeals Commission, and has been living in France at least since 17 February 1994, the date on which a residence permit was issued at Bobigny, France. Accordingly, Mr. B. Ngambi cannot claim that he maintains a conjugal life with Ms. M.-L. Nébol, who lives in Cameroon. Lastly, Mr. B. Ngambi has been cohabiting with Ms. M.K. with whom he had a child, Adeline, born on 13 November 1996.

4.19 Thus, according to the State party, the authors do not constitute a “family” within the meaning of article 23 of the Covenant and thus cannot invoke protection by society and the State (art. 23, para. 1), which is not applicable in their case.

4.20 The State party also maintains that article 23, paragraphs 2 and 3, also fail to apply to the situation of the authors. In fact their “right to marry and to found a family” has never been contested. Contrary to the assertions by the authors, the French authorities have not put

any pressure either on the authors, or on Ms. M.K., to induce the latter to marry Mr. B. Ngambi. According to the State party these are mere assertions by the authors, who have provided no documentary evidence to substantiate their complaint. Further, for article 23, paragraphs 2 and 3, to be applicable in this case, the authors would need to establish that they had been frustrated in their plans to marry, either because they had been prevented from doing so, or, on the contrary, because they had been forced to do so. The State party concludes that no such factor is present in this case. In actuality the French authorities have contested the reality of their marriage, and not their desire to marry.

4.21 Lastly, the State party considers that article 23, paragraph 4, is inapplicable, since it relates to “spouses”, whereas the authors have not proved that they were married.

4.22 Secondly, the State party asserts that the authors are not victims of violations of article 23, on the grounds stated above.

4.23 The State party then explains that the allegation of a violation of article 17 of the Covenant is inadmissible in that the authors are not in fact victims. The State party recalls that Ms. M.-L. Nébol made an application for a long-stay visa for entry into France on the ground of family reunification. In consequence, according to the State party, it was completely logical for the French authorities to verify that the application had indeed been made by the wife of Mr. Ngambi. The checks carried out by the French authorities were further to the application by Ms. M.-L. Nébol. It was thus the visa application that led to the so-called “interference” by the French authorities in her private and family life. In the circumstances, according to the State party, the involvement by the French authorities, which was a natural consequence of the application for family reunification made by the authors, cannot have resulted in the slightest injury to them. They themselves sought this involvement with a view to obtaining a visa for Ms. M.-L. Nébol.

Comments by the authors on the observations by the State party

5.1 In their comments of 17 November 2003 the authors maintain that their communication is admissible.

5.2 With regard to article 23 of the Covenant, the authors reiterate that their marriage certificate No. 117/83, issued and authenticated by Douala municipality on 7 October 1997, was recognized as such in a letter from the Ministry of Foreign Affairs dated 30 December 1997, as well as by OFPRA; it thus cannot be questioned, and cannot justify the denial of a long-stay visa for Ms. Nébol.

5.3 As for their status as victims, the authors emphasize that their lack of a conjugal life is the result of the refusal of the consular authorities to allow them to be together in France.

5.4 With regard to article 17 of the Covenant, the authors are of the view that the authorities subsequently wrongly considered that their marriage certificate was a forgery; they take the view that denial of the visa for Ms. Nébol was an attempt to undermine their marriage. With regard to Mr. Ngambi’s liaison with Ms. M.K., the author states that “this was a short-lived liaison, reflecting the lifestyle led in France”, falling strictly within his private life, and that as such it should not be confused with polygamy and should not affect

his application for family reunification. Lastly, the authors maintain that the attitude of the French authorities amounts to pressure on and intimidation of them.

5.5 Regarding the subsidiary information provided by the State party concerning its rescission of guardianship over his cousin Ms. Sophie Ngambi Enono, the author asserts that this is exaggerated, and claims that the case indicates persecution of himself by the judicial authorities.

Issues and proceedings before the Committee

6.1 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 the communication is admissible under the Optional Protocol to the Covenant.

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

6.3 With regard to the claimed violation of article 23 of the Covenant, the Committee has noted the arguments of the authors and of the State party. Although the authenticity of the authors' "marriage certificate" was not at first questioned either by OFPRA or by the Ministry of Foreign Affairs in a letter dated 30 December 1997, nonetheless, marriage certificate No. 117/83 of 15 January 1983 purporting to be from the municipality of Douala was determined by the municipality on 30 March 1998 to be inauthentic and this report was invoked by the Consul General of France in Douala on 19 September 1999 as a ground for denial of Ms. Nébol's visa application. In addition, the birth certificates supplied by Ms. Nebol to authenticate the family relation of the authors' two claimed sons, Franck Ngambi and Emmanuel Ngambi, as well as her own birth certificate, were also determined by the Consul General to be inauthentic.

6.4 Article 23 of the Covenant guarantees the protection of family life including the interest in family reunification. The Committee recalls that the term "family", for purposes of the Covenant, must be understood broadly as to include all those comprising a family as understood in the society concerned. The protection of such family is not necessarily obviated, in any particular case, by the absence of formal marriage bonds, especially where there is a local practice of customary or common law marriage. Nor is the right to protection of family life necessarily displaced by geographical separation, infidelity, or the absence of conjugal relations. However, there must first be a family bond to protect. The Committee notes that the authors submitted to French authorities documents supposedly attesting to the family relationship, but these documents were determined by French authorities to be fabricated. The Committee further notes that the authors have not effectively refuted these findings, thus giving the French authorities sufficient basis to deny the authors' applications for a long-term visa and family reunification. The Committee considers that the authors have not substantiated their allegation that the right to protection of family life has been infringed by the French authorities.

6.5 With regard to the alleged violation of article 17 of the Covenant, that is, interference with private and family life, the Committee notes that the inquiries conducted by the French authorities as to Ms. Nébol's status and family relations followed upon her request for a visa

for family reunification, and necessarily had to cover considerations relating to the private and family life of the authors. The Committee considers that the authors have not demonstrated that these inquiries amounted to arbitrary and illegal interference in their private and family life. Nor have the authors substantiated their allegations of pressure and intimidation on the part of the French authorities aimed at undermining their so-called marriage.

7.1 Accordingly, the Committee finds the complaints inadmissible under article 2 of the Optional Protocol.

7.2 The Committee therefore decides:

- (a) That the communication is inadmissible under article 2 of the Optional Protocol;
- (b) That this decision shall be communicated to the State party and to the author.

[Adopted in English, French and Spanish, the French 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.]
