

**Ibrahima Gueye et al. v. France, Communication No. 196/1985, U.N. Doc. CCPR/C/35/D/196/1985 (1989).**

**1) Reference Details**

Jurisdiction: UN Human Rights Committee  
Date of decision: 3 April 1989  
Case Status: Concluded by the Human Rights Committee

**2) Facts**

The applicants were, Ibrahima Gueye and 742 other retired Senegalese members of the French Army residing in Senegal. Prior to 1974, the applicants were entitled to the same pension rights as French soldiers, but in December 1974 a new law “froze” the pensions of Senegalese retired members, making their pension rights inferior to French retired army members. The applicants claimed direct *de jure* discrimination under article 26 of the International Covenant on Civil and Political Rights (ICCPR) on the grounds of nationality, and direct *de facto* discrimination on the grounds of national origin/ethnicity and skin colour.

The Human Rights Committee (the Committee) considered whether the difference in treatment of retired members of the arm, depending on whether or not they were French nationals, fell within the scope of discrimination as covered by article 26 of the ICCPR.

**3) Law**

*International law*

Article 26, International Covenant on Civil and Political Rights, (right to non-discrimination)

*National law*

Finance Act No. 74.1129

**4) Legal Arguments**

*The State*

The State claimed that the applicants’ communication was inadmissible partly because it concerned pension rights which fell outside the scope of the ICCPR and partly because the contested 1974 law did not contain discriminatory provisions within the meaning of article 26 of the ICCPR.

On the merits, the State argued that the different treatment of African (not only Senegalese) army members was justified on the grounds of, a) their loss of French nationality upon independence; b) the difficulty for French authorities to establish the identity and family situation of retired soldiers in African countries; and c) the differences in the economic, financial and social conditions prevailing in France and its former colonies.

The State also brought to the Committee's attention the submission that the difference in treatment was based purely on nationality (rather than national or social origin, race or ethnicity), explaining that for example, Senegalese nationals who acquired French nationality and kept it following Senegal's independence are entitled to the same pension scheme as other French former members of the armed forces. Further, a Senegalese former member of the armed forces who lost his French nationality following Senegal's independence and then recovered his French nationality would automatically recover the rights to which French nationals are entitled.

Further, the State purported to justify the reasons for the difference in treatment of the applicants by explaining that, a) in Senegal, registry records are not well kept and there is a great deal of fraud; and b) the applicants live in an under-developed country and do not need as much pension as those living in France.

### *The applicants*

The applicants rejected the State's justification for different treatment of Senegalese army members from French army members.

The applicants submitted that the State's argument concerning differentiation of treatment solely on the basis of nationality was just a pretext in order to deprive Senegalese of their rights. The applicants also argued that the State's purported justifications for differential treatment amounted to racial discrimination and rejected the argument that a debtor may reduce his debt in proportion to the degree of need and poverty of his creditor as being contrary to fundamental standards, principles of law, moral standards and equity.

## **5) Decision**

The Committee found no evidence that the applicants were subject to racial discrimination which is a ground of discrimination expressly prohibited under article 26. The Committee noted that there is no express prohibition of discrimination on the grounds of nationality and that the Covenant does not explicitly protect the right to a pension. However the Committee came to the view that there was differentiation by reference to nationality acquired upon independence. In the Committee's opinion, this falls within the reference to "other status" in the second sentence of article 26. However the Committee reiterated the principle under its jurisprudence that not all differential treatment amounts to prohibited discrimination, and such treatment may not fall under the article 26 prohibition if based on reasonable and objective criteria.

In deciding the reasonableness and objectivity of the differential treatment, the Committee considered that the basis for the grant of pensions was the service rendered by army members and not nationality. Prior to the 1974 legislation, Senegalese army members were given the same treatment as French army members for the reason that they had endured the same conditions of service and provided the same service. Further, the argument that Senegalese former army members needed a smaller pension by virtue of living in Senegal rather than France was not sustainable as French former army members would be entitled to the same preferential treatment even if living in Senegal. The Committee also dismissed the State's purported reasoning of administrative inconvenience or the possibility of abuse of pension rights as insufficient to justify

unequal treatment. Therefore, the Committee concluded the State's differential treatment of the applicants amounted to prohibited discrimination under article 26 of the ICCPR.