



# International Covenant on Civil and Political Rights

Distr.: General  
17 December 2015  
English  
Original: French

## Human Rights Committee

### Communication No. 2621/2015

#### Decision adopted by the Committee at its 115th session (19 October-6 November 2015)

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| <i>Submitted by:</i>                      | J.P.D. (represented by counsel, Ms. Isabelle Coutant Peyre)  |
| <i>Alleged victim:</i>                    | The author   |
| <i>State party:</i>                       | France   |
| <i>Date of communication:</i>             | 3 September 2012 (initial submission)  |
| <i>Document reference:</i>                | Special Rapporteur's rule 97 decision, transmitted to the State party on 12 September 2013 (not issued in document form) |
| <i>Date of decision:</i>                  | 2 November 2015  |
| <i>Subject matter:</i>                    | Right to a fair trial; complicity of the State party; inhuman and degrading treatment                                    |
| <i>Procedural issues:</i>                 | Insufficient substantiation; same matter examined under another procedure of international investigation or settlement   |
| <i>Substantive issues:</i>                | None   |
| <i>Articles of the Covenant:</i>          | 7 and 14 (para. 1)   |
| <i>Articles of the Optional Protocol:</i> | 2 and 5 (para.2 (a))   |



## Annex

### **Decision of the Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political Rights (115th session)**

concerning

#### **Communication No. 2621/2015\***

*Submitted by:* J.P.D. (represented by counsel, Ms. Isabelle Coutant Peyre)

*Alleged victim:* The author

*State party:* France

*Date of communication:* 3 September 2012 (initial submission)

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

*Meeting on 2 November 2015,*

*Having concluded* its consideration of communication No. 2621/2015, submitted by J.P.D. 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 the State party,

*Adopts* the following:

#### **Decision on admissibility**

1.1 The author of the communication, dated 3 September 2012, is J.P.D., who was born on 6 February 1945 in Lodève, France. Between 1 April and 23 May 1969, he was committed against his will to the psychiatric ward of a facility within Montpellier University Hospital. He claims that France has violated articles 7 and 14, paragraph 1, of the Covenant. He is represented by counsel, Ms. Isabelle Coutant Peyre.

1.2 On 15 June 2015, the Committee, acting through the Special Rapporteur on new communications and interim measures, determined that observations from the State party were not needed to ascertain the admissibility of the present communication.

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\* The following members of the Committee participated in the consideration of the present communication: Mr. Yadh Ben Achour, Mr. Lazhari Bouzid, Ms. Sarah Cleveland, Mr. Ahmed Amin Fathalla, Mr. Olivier de Frouville, Mr. Yuji Iwasawa, Ms. Ivana Jelić, Mr. Duncan Laki Muhumuza, Ms. Photini Pazartzis, Mr. Mauro Politi, Sir Nigel Rodley, Mr. Víctor Manuel Rodríguez-Rescia, Mr. Fabián Omar Salvioli, Mr. Dheerujlall Seetulsingh, Ms. Anja Seibert-Fohr, Mr. Yuval Shany, Mr. Konstantine Vardzelashvili and Ms. Margo Waterval.

### The facts as submitted by the author

2.1 On 26 January 1968, the author wrote to the Grand Orient de France, stating that he was a “young man interested in the radio programmes broadcast by the association” and requesting to join. On 25 April of that year, the Secretary-General of the Grand Orient de France, M.C., replied in a letter that he was handling the application, which he had sent to “his friends” in Montpellier so that “preliminary enquiries” could be made about the author.

2.2 M.C. arranged to meet the author on 2 May 1968. When he failed to hear any news after the meeting, the author decided to write to the head office of the Grand Orient de France. On 25 July 1968, he received a reply from the Secretary-General of the association announcing that his application had been successful. Some time later, the author learned that M.C. had led his parents to believe that, during their meeting, he had been carrying explosives.

2.3 On 1 April 1969, M.C. made an appointment for the author to have a psychiatric consultation with the head of the psychiatric ward of Montpellier University Hospital. The author claims that he was committed<sup>1</sup> to the ward that same day and remained there against his will for 53 days. He alleges that he was subjected to 10 electroconvulsive therapy sessions, which caused him to have an epileptic seizure, and that he was subjected to brutal treatment, with the administration of several powerful neuroleptic drugs. In his reply of 25 March 2013 to a letter sent by the Petitions and Inquiries Section of the Office of the United Nations High Commissioner for Human Rights, the author maintains that the decision made by the French authorities was clearly arbitrary and biased, in that it “clearly favoured the Grand Orient de France”. He also claims that the French domestic courts wrongly found there to be no evidence of collusion between M.C. and the head of the psychiatric ward, despite accepting the existence of a relationship between them. The author further stresses that the Court of Appeal ruled, against all evidence, that no agreement was in place to commit him illegally.

2.4 On 6 June 1994, the author applied to the Montpellier Administrative Court to annul the decision of 1 April 1969 to admit him to the psychiatric ward of Montpellier University Hospital. His application was rejected on 25 November 1998. On 4 February 1999, the author appealed the decision.

2.5 On 30 June 1995, the author filed a claim for damages against Montpellier University Hospital and the Treasury with the Paris *Tribunal de Grande Instance* (Court of Major Jurisdiction) for the harm suffered as a result of his illegal committal.

2.6 On 27 June 2002, the Marseille Administrative Court of Appeal quashed the judgement of the Montpellier Administrative Court and ruled that, in the light of the documents submitted by the University Hospital, the author had been admitted to the psychiatric ward and detained there illegally.

2.7 On 27 June 2005, the Paris Court of Major Jurisdiction found that the author’s committal had been “improper” and ordered the University Hospital to pay the sum of €23,000 for “the anguish caused by being viewed as mentally retarded by his family and friends and for the effects of the treatment that he had undergone”.<sup>2</sup>

<sup>1</sup> In its ruling of 27 June 2005, the Paris *Tribunal de Grande Instance* (Court of Major Jurisdiction) noted that the application for admission had been signed by the author’s father, even though the author had reached the age of majority. Moreover, the author’s father had given permission for his son to undergo “all necessary treatment and examinations”. The court recognized that the author had not been admitted voluntarily.

<sup>2</sup> This account was submitted to the Human Rights Committee by the author on 3 September 2012

2.8 On 2 February 2007, the author brought an action against the Grand Orient de France before the Paris Court of Major Jurisdiction, calling for it to be brought to justice and for compensation.

2.9 On 11 December 2007, the Paris Court of Major Jurisdiction rejected the defence pleaded by the Grand Orient de France invoking the statute of limitations, but it dismissed all the author's claims, as "he provided no evidence of the acts attributed to M.C.". On 23 October 2009, the Paris Court of Appeal upheld the ruling of the Paris Court of Major Jurisdiction. On 17 February 2011, the Court of Cassation ruled that his appeal in cassation was "inadmissible".<sup>3</sup>

2.10 On 4 May 2002, the author submitted a complaint to the European Court of Human Rights. On 7 February 2006, the Court ruled that France was guilty of excessive delays in producing the victim's psychiatric committal documents. The Court found that the proceedings had been unduly long and had not met the requirement of "reasonable time", and that France had violated article 6, paragraph 1, and article 13 of the Convention for the Protection of Human Rights and Fundamental Freedoms. The author contests the ruling on the grounds that the decision imposed no penalty on the State for the inhuman treatment that he had endured. The author underlines that he has received no compensation for the torture and inhuman treatment that he underwent.<sup>4</sup>

### **The complaint**

3.1 The author considers that the State party violated article 14, paragraph 1, of the Covenant because it refused to assess the tort liability of the Grand Orient de France, which had been responsible for his arbitrary and illegal committal. He considers that the decision of the Paris Court of Appeal denies the existence of an agreement to commit him illegally, in violation of his fundamental rights.

3.2 The author also considers that the national courts committed an error when they failed to recognize that the scheming by the head of the association lay at the root of the inhuman treatment that he endured. He believes that he was denied the opportunity to invoke his right to redress by the judges' failure to recognize the liability of the Grand Orient de France.

3.3 Lastly, the author considers that the State party violated his rights under article 7 of the Covenant by becoming complicit in the inhuman and degrading treatment to which he was subjected.

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and in his reply of 25 March 2013 to the letter dated 5 December 2012 from the Petitions and Inquiries Section of the Office of the United Nations High Commissioner for Human Rights. In his letter of 25 March 2013, the author stated that France had granted compensation for his "illegal detention" and that no compensation had been awarded for the inhuman treatment inflicted on him.

<sup>3</sup> No information was given regarding the date on which the author filed an appeal in cassation.

<sup>4</sup> In its judgement of 7 May 2006, the European Court of Human Rights did not identify any causal link between the violation found and the material damage alleged, and therefore rejected the author's claim for €15,000 in compensation for material damage. The Court deemed that the unreasonable delays in the proceedings caused the complainant inconvenience and prolonged uncertainty that justified the granting of compensation for moral damage. Given the circumstances of the case, the Court awarded the complainant the sum of €3,000.

## Issues and proceedings before the Committee

### *Consideration of admissibility*

4.1 The Committee must decide, in accordance with rule 93 of its rules of procedure, whether the communication is admissible under the Optional Protocol to the Covenant.

4.2 As required under article 5, paragraph 2 (a), of the Optional Protocol, the Committee has ascertained whether the same matter is being examined under another procedure of international investigation or settlement. The Committee notes that, on 7 February 2006, the European Court of Human Rights found that the proceedings instituted in the author's case had been unduly long and had not met the requirement of "reasonable time", in violation of article 6, paragraph 1, and article 13 of the Convention for the Protection of Human Rights and Fundamental Freedoms. The Committee also recalls that, on acceding to the Optional Protocol, the State party entered a reservation to article 5, paragraph 2 (a), of that Protocol specifying that the Committee "shall not have competence to consider a communication from an individual if the same matter is being examined or has already been considered under another procedure of international investigation or settlement".

4.3 The Committee recalls its jurisprudence that the "same matter" within the meaning of article 5, paragraph 2 (a), must be understood as relating to the same author, the same facts and the same substantive rights.<sup>5</sup> It observes that the decision of the European Court of Human Rights of 7 February 2006 concerned a complaint submitted by the same author, was based on the same facts and related to the right to a fair trial on the same grounds as those put forward by the author to substantiate his complaint under article 14, paragraph 1, of the Covenant.

4.4 The Committee observes that the inadmissibility decision of the European Court with regard to part of the author's complaint, in which he claimed €15,000 in compensation for material damage, was justified by the lack of any causal link between the violation found and the alleged material damage. The Committee considers that such analysis constitutes an examination of the communication and concludes that the same matter has, for the purpose of the reservation entered by the State party, already been considered by the European Court. Consequently, the Committee is precluded by the State party's reservation to article 5, paragraph 2 (a), of the Optional Protocol from examining the present communication.

4.5 As for the author's claim that the State party violated article 7 of the Covenant by becoming complicit in the inhuman and degrading treatment to which he was subjected, the Committee observes that the author provides no evidence to substantiate his allegation. The Committee also notes that the State party's courts ordered Montpellier University Hospital to pay the author €23,000 in compensation for the inhuman and degrading treatment that he suffered during his hospitalization. Regarding the author's request to bring the Grand Orient de France to justice, the Committee notes that the facts were examined by the Paris Court of Major Jurisdiction and the Paris Court of Appeal, both of which found the claims to be inadmissible because they were not sufficiently substantiated. The claims were also rejected by the Court of Cassation, which declared the author's appeal in cassation "inadmissible". The Committee recalls its jurisprudence to the effect that it is generally for the courts of States parties to evaluate facts and evidence, unless it can be ascertained that the conduct of the trial or the evaluation of facts and evidence was clearly arbitrary or

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<sup>5</sup> See communications No. 1793/2008, *Marin v. France*, inadmissibility decision adopted on 27 July 2010, para. 6.3; and No. 998/2001, *Althammer et al. v. Austria*, Views adopted on 8 August 2003, para. 8.4.

amounted to a denial of justice.<sup>6</sup> On the basis of the information before it, the Committee is unable to conclude that the authorities of the State party acted arbitrarily in evaluating the facts and evidence of the case and it therefore considers that the claim is not sufficiently substantiated to be admissible under article 2 of the Optional Protocol.<sup>7</sup>

5. The Committee therefore decides:

(a) That the communication is inadmissible under article 2 and article 5, paragraph 2 (a), of the Optional Protocol;

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

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<sup>6</sup> See Human Rights Committee general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial (article 14), para. 26. See also, inter alia, communications No. 1943/2010, *H.P.N. v. Spain*, decision of inadmissibility adopted on 25 March 2013; No. 1500/2006, *M.N. et al. v. Tajikistan*, decision of inadmissibility adopted on 29 October 2012; No. 1210/2003, *Damianos v. Cyprus*, decision of inadmissibility adopted on 25 July 2005, para. 6.3; No. 1212/2003, *Lanzarote et al. v. Spain*, decision of inadmissibility adopted on 25 July 2006, para. 6.3; No. 1358/2005, *Korneenko v. Belarus*, decision of inadmissibility adopted on 1 April 2008, para. 6.3; and No. 1758/2008, *Jessop v. New Zealand*, Views adopted on 29 March 2011, paras. 7.11-7.12.

<sup>7</sup> See communications No. 1771/2008, *Gbondo Sama v. Germany*, decision of inadmissibility adopted on 28 July 2009, para. 6.9; and No. 1537/2006, *Gerashchenko v. Belarus*, decision of inadmissibility adopted on 23 October 2009, para. 6.4.