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HUMAN RIGHTS COMMITTEE
Ninety-fourth session
13-31 October 2008

DECISION

Communication No. 1746/2008

Submitted by:	Farida Goyet (not represented by counsel)
Alleged victim:	The author
State party:	France
Date of communication:	25 June 2007 (initial submission)
Document references:	Special Rapporteur's rule 97 decision, transmitted to the State party on 3 January 2008 (not issued in document form)
Date of decision:	30 October 2008
Subject matter:	Classification of Nichiren Daishonin, a denomination of Buddhism, also known as Soka Gakkai France, as a "cult" in parliamentary reports

* Made public by decision of the Human Rights Committee.

Procedural issues:	Lack of standing as victim, *actio popularis*, failure to exhaust domestic remedies
Substantive issues:	Right to effective remedy, right to a fair hearing, freedom of religion
Articles of the Covenant:	2, paragraph 3; 14; and 18
Articles of the Optional Protocol:	1, 2 and 5, paragraph 2 (b)

[ANNEX]

Annex

DECISION OF THE HUMAN RIGHTS COMMITTEE UNDER ARTICLE 5, PARAGRAPH 4, OF THE OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

Ninety-fourth session

concerning

Communication No. 1746/2008*

Submitted by:	Farida Goyet (not represented by counsel)
Alleged victim:	The author
State party:	France
Date of communication:	25 June 2007 (initial submission)

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

Meeting on 30 October 2008,

Adopts the following:

Decision on admissibility

1.1 The author of the communication, dated 25 June 2007, is Farida Goyet, a French national born in France on 20 January 1963. The author claims to be a victim of violations by France of articles 2, paragraph 3, 14 and 18 of the Covenant. The author is not represented by counsel. The Covenant and the Optional Protocol entered into force for France on 4 February 1981 and 17 May 1984, respectively.

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* The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Prafullachandra Natwarlal Bhagwati, Mr. Maurice Glèlè Ahanhanzo, Mr. Yuji Iwasawa, Mr. Edwin Johnson, Ms. Helen Keller, Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer Lallah, Ms. Iulia Antoanella Motoc, Mr. Michael O'Flaherty, Ms. Elisabeth Palm, Mr. José Luis Pérez Sanchez-Cerro, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Ivan Shearer and Ms. Ruth Wedgwood.

Pursuant to rule 90 of the Committee's rules of procedure, Committee member Ms. Christine Chanet did not participate in the adoption of this decision.

1.2 On 6 May 2008, the Special Rapporteur on new communications, acting on behalf of the Committee, decided that the admissibility of the communication should be considered separately from the merits.

The facts as submitted by the author

2.1 The author is a member of Nichiren Daishonin, a denomination of Buddhism also known as Soka Gakkai France. On 29 June 1995, the National Assembly adopted a resolution establishing a parliamentary commission to look into the question of cults and, if appropriate, propose amendments to the law. On 22 December 1995, the commission issued its report No. 2,468 on the subject of cults in France. Soka Gakkai France appeared on the list of cult movements contained in the report. The author notes that the commission decided to include this movement on the list after having interviewed, in camera, people who were either former members or "known to be hostile" to the groups mentioned. The commission never gave representatives of groups it describes as "cults" an opportunity to defend themselves from the accusations made against them. Two further commissions of enquiry were established, one in 1999 and one in 2006. Soka Gakkai France was again mentioned in their reports. Meanwhile, in 1998, an inter-ministerial task force on cults had been set up to train public officials in combating cults and providing information on their dangers to the general public. The task force was replaced in 2002 by the Inter-ministerial Task Force to Monitor and Combat Abuse by Cults (MIVILUDES).

2.2 The author has been manager of Kohésion, a management and human resources consultancy firm, since August 2000. Kohésion provided consultancy services to BW Marketing until 2003. On 1 April 2003 both parties signed an agreement terminating their contract. The agreement states that BW Marketing ended its contractual relationship with Kohésion because of rumours that the author was a member of a "cult". According to a statement from the managing director of BW Marketing that was attached to the agreement, contractual ties were broken because the author's membership in Soka Gakkai France, which is listed as a cult in the report of the parliamentary enquiry, could cause "definite harm" to his company's business. He stated that he had no complaints about the author in professional terms and that, if Soka Gakkai France ceased to be listed as a cult in a parliamentary report, he would not hesitate to call on Kohésion's services again. The author believes that the rumours about her, as well as negative press articles about Soka Gakkai France, led to the severing of financial ties with one of her major customers.

2.3 On 12 June 2003, the author filed criminal indemnification proceedings with the Aix-en-Provence regional court against persons unknown for discrimination by reason of membership in a religion and violation of privacy. On 17 November 2004, the investigating judge withdrew from the case, stating that, over the years, she had come to believe that Soka Gakkai France was "a cult characterized by unsafe behaviours, beliefs and methods". The case was assigned to another investigating judge. On 25 April 2006, the case was dismissed on the grounds that Soka Gakkai France is not a religion and that the termination of a contract by BW Marketing because the author was a member of Soka Gakkai France therefore did not constitute criminal discrimination. The author appealed against the dismissal order, but on 5 September 2006, the Aix-en-Provence appeals court upheld the lower court's decision. The

author then appealed in cassation, but on 3 April 2007, the criminal division of the court of cassation dismissed her application on the grounds that it included no point of law on which it could be admitted.

The complaint

3.1 The author believes that the parliamentary reports on cults and the MIVILUDES annual reports constitute a direct violation of the rights and freedoms of the followers of Nichiren Daishonin Buddhism. She considers that the national authorities became directly involved in religious controversies, in violation of the constitutional principle of secularism.

3.2 The author alleges a violation of article 2, paragraph 3, of the Covenant, read together with article 18. She argues that an individual or a religious movement alleging injury as a result of a measure taken by parliament should have recourse to a remedy before a "national authority" so that the allegation may be ruled upon and so that redress may be obtained if necessary. She asserts that members of parliament, without any form of prior process and in violation of the adversarial principle, gratuitously maintained, without citing any judicial decision in support of their claim, that Soka Gakkai France constituted a "cult" or were engaging in "cult abuses". The author points out that, following the publication of the first parliamentary report in 1995, a media smear campaign targeting the followers of Nichiren Daishonin Buddhism was conducted throughout the country. Yet she has no effective remedy against the parliamentary reports, in violation of article 2, paragraph 3.

3.3 With regard to article 14, the author asserts that she has no access to a judicial procedure whereby she may challenge, in a fair hearing, the conclusions reached by parliament and the Administration and that her right to be presumed innocent has not been respected. She points out that total and absolute legal immunity is accorded in respect of the content and effects of the parliamentary reports. As to MIVILUDES, the author explains that it is an administrative service coming under the Prime Minister and, this being the case, there is no possibility of challenging the subjects it chooses to investigate or the results of its enquiries. She thus has no means of securing a fair hearing by a competent tribunal, owing to the legal immunity accorded the work of parliament and the legal status of the administrative reports of MIVILUDES. In addition, the author explains that the conclusions drawn by parliament and the Administration constitute a serious violation of the principle of the presumption of innocence guaranteed by article 14, paragraph 2. She asserts that the authorities have a duty of discretion once accusations, particularly criminal accusations, are made.[1] In the present case, the author's right to be presumed innocent was not respected during parliamentary and administrative legal proceedings, seriously undermining her civil rights before any trial could take place.

3.4 Concerning article 18, the author asserts that the authorities have seriously impaired the exercise of her freedom of religion. She points out that the parliamentary reports referring to Soka Gakkai France as a "cult" triggered a series of unjustified administrative controls and a

[1] See communication No. 770/1997, *Gridin v. Russian Federation*, Views adopted on 20 July 2000.

smear campaign in the media against the followers of Nichiren Daishonin Buddhism. They were subjected by the authorities to numerous discriminatory measures. The author cites general comment No. 22 (48) on article 18, which states that this provision "protects theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief. The terms 'belief' and 'religion' are to be broadly construed" and that the Committee views with concern "any tendency to discriminate against any religion or belief for any reason, including the fact that they are newly established". She asserts that the restrictions and limitations imposed by the authorities constitute negative measures that violate her freedom to manifest her beliefs and are neither prescribed by law nor necessary to protect public safety, order, health or morals, or the rights and freedoms of others.

3.5 As to exhaustion of domestic remedies, the author explains that the decisions of the parliamentary commissions of enquiry are not subject to any judicial remedy, although the commissions have very broad powers of investigation. They may decide to hold in camera hearings arbitrarily and without citing any reason for doing so. Evidence may be gathered from dubious sources and used against individuals or groups who have no right of defence. Refusal to cooperate with a commission may lead to criminal proceedings and, ultimately, to a fine or imprisonment. It is impossible to challenge the procedures followed by the commissions or their conclusions. In particular, owing to parliamentary immunity, there is no domestic remedy whereby the author may secure the cessation of the violation of her rights. In addition, the author asserts that any action to set aside or contest the departmental orders on combating cults, documents that draw explicitly on the conclusions reached by parliament, would have no chance of success.

State party's observations on admissibility

4.1 On 28 April 2008, the State party outlined the laws applying to parliamentary enquiries and parliamentary immunities. Regarding parliamentary commissions of enquiry, the State party emphasized that, under article 6 of Order No. 58-1100 of 17 November 1958, such commissions "are set up to gather information, either on specific events or on the management of public services or public enterprises, with a view to submitting their conclusions to the assembly that established them". These commissions are temporary in nature and their mission ends with the filing of their report.

4.2 Concerning parliamentary immunities, the State party explained that there are two types. One is exemption from liability. This is substantive immunity from both criminal prosecution and civil actions. It is absolute, covers all acts performed by deputies in the exercise of their mandates and is permanent, since it extends beyond the end of the mandate. The other is inviolability. This is procedural immunity that enables deputies to fulfil the obligations arising from their mandates without hindrance; it covers acts performed by them outside the scope of their functions and is thus temporary.

4.3 With regard to admissibility, the State party notes that the communication falls into two parts, dealing with two different allegations. On the complaint concerning the Soka Gakkai France association as such, the State party considers that the communication is inadmissible because the author lacks standing as a victim. It observes that the communication is submitted by

the author as a natural person. Yet the documents produced by the author in support of her communication relate to Soka Gakkai France, an association with the status of a legal person and referred to as such in the contested parliamentary reports. Even though the author is a member of this association, no parliamentary report refers to her personally and she cannot therefore avail herself of the status of victim in respect of the provisions of the Covenant.

4.4 The State party adds that the author cannot claim to have been the victim of a "violation of any of her rights" as set forth in the Covenant. By their very nature, the reports of the parliamentary commissions of enquiry that are being challenged by the author are devoid of any legal import and cannot represent grounds for a complaint. The work of parliamentary commissions of enquiry is simply to reflect on and study the questions of the day from a theoretical perspective, to address social issues and to propose the broad outlines of measures to be taken. They pursue their work as part of the democratic debate, and their existence is justified by the need to give elected officials the opportunity to freely express their views on social problems. It is to guarantee this freedom that members of parliament are accorded legal immunity in the exercise of their functions, notably in respect of acts they perform in connection with the preparation of parliamentary reports. This is why administrative courts decline jurisdiction to hear cases involving the State's legislative bodies, especially those challenging the opinions they express in their reports.

4.5 In any case, a parliamentary enquiry report consists of recommendations and advice for lawmakers and has no legal force or prescriptive import.[2] It has no direct effect on national regulations, and it creates no rights or obligations in respect of third parties. It therefore cannot result in any violation of the Covenant. The State party emphasizes that the author is unable to cite any portion of a parliamentary report that infringes, directly and personally, one of her rights under the Covenant. Although the author states that various regulatory texts, including Ministry of Justice circulars, the decrees establishing MIVILUDES and Act No. 2001-504 of 12 June 2001 on the prevention and suppression of cult movements, were adopted in the wake of the reports, the State party argues that there is no causal link between the adoption of these texts and a direct, personal violation of the author's rights. Even if there had been, the author could have submitted her case to the competent national courts, which would have examined the provisions at issue.

4.6 As to the claim relating to the business contract, the State party observes that, in the first place, it concerns a business dispute between two legal persons governed by private law and that, in the second place, the dispute was settled by means of a written agreement whereby "the parties forgo all proceedings and/or action caused or occasioned by their contractual relationship or in respect thereof, thereby renouncing any claim, present or future, regarding the interpretation, implementation or termination of said contractual relationship". The State party therefore wonders what obligation the author seeks to ascribe to it under the Covenant, at least at

[2] The State party cites a decision of the European Court of Human Rights in which the Court concluded that "a parliamentary report has no legal effect and cannot serve as the basis for any criminal or administrative proceedings" (Application No. 53430/99, *Fédération chrétienne des Témoins de Jéhovah de France v. France*, decision of 6 November 2001).

this stage of the dispute. It observes, moreover, that the author filed a suit for damages against persons unknown in which she claimed that the settlement agreement made reference to rumours that the author belonged to a "cult" and that, on that basis, she sought redress for violation of privacy and discrimination. The State party argues that the only grounds on which the author could claim that she had been harmed are the reasons given by BW Marketing for breaking off the contractual relationship. Certainly the contested parliamentary reports cannot be seen as constituting the legal basis for that decision. The author had the right under domestic law to raise any matter she believed to constitute discrimination or a violation of her privacy in the national courts. She had been unable to lodge a complaint against BW Marketing on these grounds because she had chosen to sign an amicable settlement with that company and, in so doing, she had actually deprived the domestic courts of the ability to redress an alleged violation. Accordingly, this part of the communication is inadmissible on the grounds of non-exhaustion of domestic remedies.

4.7 The State party comments that, in reality, the author is contesting *in abstracto* the country's regulations and practices relating to the modus operandi of parliamentary commissions of enquiry without substantiating, as far as she is personally concerned, any violation of a right protected by the Covenant, notably her right to religious freedom. The State party recalls the Committee's case law on *actio popularis*.[3] In order for the author to be considered a victim, it is not sufficient for her to maintain that, by its very existence, a law or, still less, a parliamentary report violates her rights. She must establish that the disputed text has been applied to her detriment, causing her direct, personal and definite harm; this has not been established in the present case. In conclusion, the State party argues that the communication is inadmissible because the author lacks standing as a victim.

Author's comments on the State party's submission

5.1 On 23 June 2008 the author wrote that the State party's discussion of the "two different claims" is a distortion of the facts and the points of law she has raised. The case does not concern a narrow claim arising out of a professional dispute over a business contract but rather the prosecution of acts constituting criminal offences punishable under the Criminal Code. The author notes that the State party believes that "the only grounds on which the author could claim that she had been harmed are the reasons given by BW Marketing for breaking off the contractual relationship"; this amounts to an admission of material evidence of discrimination against the author with a view to obstructing her financial and professional activities.

5.2 The author points out that she has never claimed to have been mentioned in the parliamentary reports on cults or to be challenging those reports or the settlement of a business dispute or to be attempting an *actio popularis*. She has tried unsuccessfully to secure the prosecution and punishment of a series of discriminatory acts and has exhausted domestic remedies. The criminal actions brought by the author have concerned just two offences:

[3] See communication No. 35/1978, *Aumeeruddy-Cziffra et al. v. Mauritius*, Views adopted on 9 April 1981.

discrimination and violation of privacy. It was not simply a matter of the severance of business relations between her company and BW Marketing. She had instituted criminal proceedings because she was the object of discrimination owing to her beliefs and her practice of Buddhism, quite apart from any contractual relationship that might happen to arise. She had brought those actions in order to establish who precisely had started the defamatory rumours and revelations concerning her membership in a cult, which continue to cause her real harm in financial and professional terms. She points out that the possibility of undertaking criminal proceedings was allowed and provided for under article 3 of the agreement, given that the purveyors of the rumours were not from BW Marketing. Moreover, she does not believe that the fact that she has instituted criminal proceedings has made it impossible for the domestic courts to provide redress. She argues that she has exhausted all effective and useful remedies.

5.3 As to her status as a victim, the author points out that the Soka Gakkai movement has been listed as a "cult" in parliamentary reports and that this has had significant consequences in law and in practice. The severance of contractual ties between BW Marketing and Kohésion proves it. There is thus a direct link between the parliamentary reports in question and the discrimination suffered by the author. With respect to the agreement signed by the two companies, the author argues that it is not legally binding on her because she is a physical person with rights that differ from those of Kohésion. She points out that, in a statement that was attached to the agreement, the managing director of BW Marketing said that contractual relations were severed because of the author's membership in Soka Gakkai France, which is classified as a cult in a parliamentary report, and that, were Soka Gakkai France no longer to be listed as such, he would not hesitate to call on Kohésion's services again. In addition, the author argues that the parliamentary findings to some extent constitute the *ratio legis* underlying the decisions to dismiss her criminal proceedings for discrimination. She notes that the Aix-en-Provence appeals court referred to Soka Gakkai France as a "movement listed as a cult in various parliamentary reports" in its decision of 5 September 2006. In her view, therefore, the findings made public in those reports were used to her detriment by the Aix-en-Provence appeals court in issuing a ruling that caused her direct, personal and definite harm and that was upheld by the court of cassation on 3 April 2007.

Issues and proceedings before the Committee

6.1 Before considering any claim contained in a communication, the Human Rights Committee must decide, in accordance with rule 93 of its rules of procedure, whether or not the communication is admissible under the Optional Protocol to the Covenant.

6.2 As required 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 Concerning the author's allegations relating to articles 14 and 18 of the Covenant, the Committee observes that a person may not claim to be a victim within the meaning of article 1 of the Optional Protocol unless his or her rights have actually been violated. However, no person may contest a law or practice which that person holds to be at variance with the Covenant in

theoretical terms by *actio popularis*.[4] Any person claiming to be a victim of a violation of a right protected by the Covenant must demonstrate either that a State party has, by an act or omission, already impaired the exercise of that right or that its impairment is imminent, based on, for example, legislation in force or a judicial or administrative decision or practice. The Committee recalls that, in the present case, the author complained of a series of hostile reactions (a smear campaign in the media, for example) to Soka Gakkai France following the publication of parliamentary reports in 1995, 1999 and 2006. It considers, however, that the author has not demonstrated how the reports' publication had the purpose or effect of violating her rights. The Committee also notes that the author complains of the severance of a business contract between her company and a marketing company on the grounds that she belonged to a movement categorized as a cult in the parliamentary reports referred to above. The Committee takes note, however, of the State party's argument to the effect that this was a business dispute between two legal persons governed by private law which has already been addressed by a written agreement. In any case, it also notes the State party's argument that a parliamentary report is without legal effect. After considering the arguments and information before it, the Committee therefore concludes that the author cannot claim to be a victim of a violation of articles 14 and 18 of the Covenant within the meaning of article 1 of the Optional Protocol.[5]

6.4 The Committee points out that article 2 of the Covenant may be invoked by individuals only in relation to other provisions of the Covenant and observes that article 2, paragraph 3 (a), provides that each State party shall undertake "to ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy". Article 2, paragraph 3 (b), guarantees protection to persons claiming to be victims if their complaints are sufficiently well-founded to be protected under the Covenant. A State party cannot reasonably be required, on the basis of article 2, paragraph 3 (b), to make such procedures available in respect of complaints which are less well-founded.[6] Since the author of the present complaint cannot claim to be a victim of violations of articles 14 and 18 of the Covenant within the meaning of article 1 of the Optional Protocol, her allegation of violations of article 2 of the Covenant is inadmissible under article 2 of the Optional Protocol.

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[4] See communication No. 318/1988, *E.P. et al. v. Colombia*, inadmissibility decision of 25 July 1990, para. 8.2; and communication No. 35/1978, *Aumeeruddy-Cziffra and 19 other Mauritian women v. Mauritius*, Views adopted on 9 April 1981, para. 9.2.

[5] See communication No. 429/1990, *E.W. et al. v. the Netherlands*, inadmissibility decision of 8 April 1993, para. 6.4; communication No. 645/1995, *Bordes and Temeharo v. France*, inadmissibility decision of 22 July 1996, para. 5.5; communication No. 1400/2005, *Beydon and 19 other members of the association DIH Mouvement de protestation civique v. France*, inadmissibility decision of 31 October 2005, para. 4.3; and communication No. 1440/2005, *Aalersberg et al. v. the Netherlands*, inadmissibility decision of 12 July 2006, para. 6.3.

[6] See communication No. 972/2001, *Kazantzis v. Cyprus*, inadmissibility decision of 7 August 2003, para. 6.6; and communication No. 1036/2001, *Faure v. Australia*, Views adopted on 31 October 2005, para. 7.2.

7. The Committee therefore decides:

(a) That the communication is inadmissible under articles 1 and 2 of the Optional Protocol;

(b) That this decision shall be transmitted to the State party and to the author of the communication.

[Adopted in English, French and Spanish, the French text being the original version. The text has also been translated into Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]
