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Decision

Communication No. 1768/2008

Submitted by:	Fabienne Pingault-Parkinson (represented by counsel, Maître Alain Lestourneaud)
Alleged victim:	The author
State party:	France
Date of communication:	5 July 2007 (date of initial submission)
Document reference:	Special Rapporteur's rule 97 decision, transmitted to the State party on 10 March 2008 (not issued in document form)
Date of decision:	21 October 2010
Subject matter:	Arbitrary committal to a psychiatric hospital and denial of justice
Procedural issues:	Exhaustion of domestic remedies; substantiation of allegations; same matter being examined under another procedure of international investigation or settlement
Substantive issues:	Arbitrary detention; inhuman treatment; right to an effective remedy
Articles of the Covenant:	7, 9, 10 and 14
Articles of the Optional Protocol:	2; 5, paragraphs (2) (a) and (b)

[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 (100th session)

concerning

Communication No. 1768/2008**

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Date of communication:	5 July 2007 (date of initial submission)

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

Meeting on 21 October 2010,

Adopts the following:

Decision on admissibility

1.1 The author of the communication is Ms. Fabienne Pingault-Parkinson, a French national, born on 15 June 1964. She claims to be a victim of a violation by France of articles 7, 9, 10 and 14 of the International Covenant on Civil and Political Rights. She is represented by counsel, Maître Alain Lestourneaud. The Covenant and Optional Protocol entered into force for the State party on 4 February 1981 and 17 May 1984 respectively.

1.2 On 4 June 2008, at the State party's request, the Special Rapporteur on New Communications and Interim Measures, acting on behalf of the Committee, decided to examine the admissibility of the communication separately from its merits.

The facts as submitted by the author

2.1 The author married Mr. Etienne Parkinson in 1988. In 1997, the Pingault-Parkinsons, parents of an adopted daughter, went through a marital crisis. On 1 December 1997, the author's husband did not return home, and she had no news from him for a week. Very worried, she went to the police, then contacted her husband's office in Switzerland,

** The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Prafullachandra Natwarlal Bhagwati, Mr. Lazhari Bouzid, Mr. Mahjoub El Haiba, Mr. Ahmad Amin Fathalla, Mr. Yuji Iwasawa, Ms. Helen Keller, Mr. Rajsoomer Lallah, Ms. Zonke Zanele Majodina, Mr. Michael O'Flaherty, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Fabian Omar Salvioli and Mr. Krister Thelin.

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

which informed her, without providing further explanations, that he had been coming in to work every day. On 6 December 1997, the author's husband appeared at the family home. At approximately 2 p.m., the author noticed that her adopted daughter was not at home. She realized that her daughter had been taken away from home by her husband without her consent. At 6 p.m., Dr. Woestelandt, a homeopathic physician, visited the home at the request of the author's husband, who was his patient, in order to talk to the author. He said to her, "Either you see the psychiatrist that I tell you to see, or I will have you committed."[1] The author, a nurse since 1988, did not think that he had the authority to do so; besides, her own attending physician had never told her that she had any need of psychiatric treatment, indeed, as part of the adoption procedure some years previously, she had successfully undergone several psychological examinations to ascertain that she was fit to adopt the child. At approximately 8 p.m., she received a telephone call from the fire brigade requesting her address. At 8.30 p.m., the fire brigade and a physician from the casualty ward at Thonon-les-Bains hospital arrived and took the author to hospital against her will.

2.2 Upon her arrival in the casualty ward, a nurse took some administrative details from her. Dr. Schmidt, assistant physician at Thonon-les-Bains hospital, came to ask the author some questions, to which she replied calmly. The author's father, with whom she was not close, arrived at the hospital along with the author's husband, and Dr. Schmidt questioned them in her presence, but she was not allowed to intervene to correct what she considered to be inaccuracies. She asked if she could leave the office. Twenty or 30 minutes later, the physician called her back and informed her of his decision to have her committed. At no point was she given a proper medical, psychological or even psychometric examination that might have revealed a disorder justifying involuntary committal. At no point did the author pose any danger to herself or to others.[2] Dr. Schmidt asked her husband, in the author's presence, whether he was prepared to sign the request for hospitalization at the request of a third party, but he declined, asking the author's father to sign it instead, which he did.

2.3 During her 11-day hospitalization on Dr. Girard's ward (from 6 to 17 December 1997), the author submits that she was deprived of all her clothes and personal effects, dressed in a white smock and locked in a room without being allowed out or being able to contact anyone. A night nurse allegedly administered neuroleptics to her in an authoritarian manner, threatening to inject them if she did not take them voluntarily. At no point during her hospitalization, the author alleges, was she given any information about her right to challenge her involuntary committal.

2.4 When the author was discharged from hospital, on 17 December 1997, Dr. Girard allegedly told her brother that "there is no reason for her to remain on my ward" and that he had been under considerable pressure from her husband and father to keep her committed. In the months that followed, the husband contacted Dr. Girard seeking information allowing him to gain custody of the child.

2.5 The author decided to seek redress for her improper committal since, she submits, the committal procedure was flawed. First, Dr. Woestelandt was not medically competent to request her hospitalization. Second, she contends that Dr. Schmidt did not examine her before issuing the medical certificate on 6 December 1997 prior to her committal. Third, Dr. Girard, who was supposed to prepare a new medical certificate within 24 hours of her admission, did not do so, she says, until 48 hours after admission. The author clarifies that she had requested to see a physician on Sunday, 7 December 1997, but that her request had

[1] Before this date, the author had only met Dr. Woestelandt once: the previous Tuesday, at his surgery, to discuss her husband's behaviour towards her.

[2] According to the author, if she had done, Dr. Schmidt would surely not have left her unsupervised for 20 to 30 minutes while talking to her husband and father.

been denied. It was not until 8 December that she saw the doctor and the certificate was prepared. The author also submits that the medical observations in the "24-hour certificate" and the hospital discharge certificate are inconsistent, in that they do not relate to the same psychiatric disorders. The disorder mentioned in the certificate of discharge does not appear to be of a kind that would render confinement or administration of neuroleptics necessary. When the author requested access to her medical and administrative files for the purposes of obtaining redress, the files she was given were incomplete. As for involvement by such judicial or administrative authorities as the Prefect or Public Prosecutor, the author has been told by those authorities that they had no information about or notice of her committal.

2.6 On 15 June 2001, the author wrote to the hospital director seeking redress, but to no avail. On 13 December 2001, she filed a complaint with the Grenoble Administrative Court. She told the Court that she had not been informed of her rights upon admission, in particular that under article L351 of the Public Health Code she could have appealed directly to the President of the Court of Major Jurisdiction who, after listening to both sides of the argument and making any necessary enquiries, could have ordered her immediate release. She furnished several documents showing that her requests for access to her medical and administrative files had been turned down by the relevant offices on the grounds that administrative notifications were kept for only one year after committal. In the author's view, the reason it had not been possible for her to obtain these documents was that the hospital had failed to transmit the administrative notifications stipulated by law to the representative of the State and to the psychiatric hospitalization committee of the department in question, in accordance with article L334 of the Public Health Code. She asked the courts to declare her committal improper and unlawful, in violation of article 5 of the European Convention on Human Rights.[3]

2.7 On 19 January 2005, the Grenoble Administrative Court declined jurisdiction on the grounds that, while it fell to the competence of the ordinary courts, on the one hand, to assess the need for involuntary committal to a psychiatric facility, and to the administrative courts, on the other, to assess the legality of such committal, only the ordinary courts were competent to rule on the detrimental impact of all the various irregularities associated with the committal in question. On 2 February 2006, the Lyon Administrative Appeals Court dismissed the author's petition and upheld the Administrative Court's judgement. By decision dated 1 December 2006, the State Council rejected the author's extraordinary appeal to it on the grounds that none of the legal arguments advanced by the author would make the case admissible. The author's counsel thus submits that domestic remedies have been exhausted.

The complaint

3.1 The author submits that the State party has violated articles 7, 9, 10 and 14 of the Covenant. She submits that her committal to a psychiatric facility amounts to detention within the meaning of article 9, paragraph 1; that it was made arbitrarily, without valid medical grounds and not in accordance with legally established procedure; and that it was arbitrarily prolonged insofar as the procedure by which she was kept in the facility was irregular (24-hour certificate).

3.2 The author submits that she was deprived of her right to challenge her detention during the period of committal by means of the remedy provided for under article L351 of the Public Health Code, allowing her to appeal directly to the President of the Court of Major Jurisdiction for immediate release. This, she contends, is a violation of article 9,

[3] Before the State Council, the author also alleged a violation of the International Covenant on Civil and Political Rights.

paragraph 4, and article 14, paragraph 1: the lack of information made the remedy ineffective. In support of her argument, the author cites the Committee's jurisprudence in the case of *Bozena Fijalkowska v. Poland*.[4] On that occasion, the Committee set aside the requirement that domestic remedies must be exhausted, concluding that the author had been unable to challenge her detention in good time since she had had to await release before learning that such a remedy existed and being able to have recourse to it. The author also submits that her rights were infringed in that the administrative courts should not have declined jurisdiction during the appeal proceedings, since the decision to admit her to Dr. Girard's ward and the committal procedure were being challenged simultaneously.

3.3 With regard to recourse to the administrative courts for compensation, guaranteed under article 9, paragraph 5, for damages arising from unlawful detention, the author submits that the administrative court should consider the whole of her claim and accordingly rule on the procedural irregularities and their impact. The proliferation of procedural obstacles infringes her right to seek compensation under article 9, paragraph 5, of the Covenant and is, incidentally, also a violation of article 14, paragraph 1.

3.4 The author also submits that her rights were infringed by the manner in which she was treated during her committal (locked up, undressed, given neuroleptics, denied communication with her relatives); such treatment of a person who does not pose a present and serious danger to herself or others is unjustifiable. The author submits that this treatment is inconsistent with both article 7 and article 10 of the Covenant.

3.5 The author submits that the State Council did not respect her right to a fair trial since it arbitrarily failed to examine certain remedies provided for in the Public Health Code, and in the European Convention on Human Rights (arts. 3 and 5) and the Covenant (art. 7), which are detailed at length in the author's submission. In support of the alleged violations, the author cites communication No. 1061/2002.

State party's observations

4.1 On 15 May 2008, the State party contested the admissibility of the communication submitted by the author, on the grounds that domestic remedies had not been exhausted in respect of the complaint of a violation of articles 9 and 14 of the Covenant. Moreover, the allegations relating to articles 7 and 10, on the one hand, and article 14, on the other hand, were not sufficiently substantiated.

4.2 With regard to failure to exhaust domestic remedies, the State party submits that the documentation in the case file indicates that the author failed to address her complaints to the appropriate domestic courts despite being assisted throughout the proceedings by a lawyer, Maître Lestourneaud, who continues to represent her before the Committee.

4.3 With regard to involuntary committals and hospitalizations at the request of a third party, the division of jurisdiction between the administrative and ordinary courts was established at the time of the author's hospitalization and has remained constant since. The State party cites the judgement of the Court of Conflicts dated 6 April 1946, *Sieur Machinot v. Commissioner of Police*, and the more recent judgement by the same court dated 17 February 1997, which provides that, while it falls to the competence of the administrative courts to determine the legality of an administrative decision to order committal, [...] only the ordinary courts are competent both to assess the need for committal to a psychiatric facility and to [...] rule on all the detrimental consequences of such a decision, including those arising from any irregularity. Hence the administrative courts are competent to determine whether a hospitalization procedure is prima facie legal, i.e. to

[4] Communication No. 1061/2002, *Bozena Fijalkowska v. Poland*, Views adopted on 26 July 2005.

verify that the procedure has been properly followed in accordance with current law. If it is shown that there has been an irregularity, the court may annul the hospitalization order. The ordinary courts, on the other hand, can rule on the appropriateness of hospitalization and order compensation for damages that may be incurred as a result of improper or irregular hospitalization.

4.4 On the subject of failure to exhaust remedies and challenges to the legality of hospitalization, the State party points out that the author omitted to raise the legality of her hospitalization before the administrative courts. This can only be done by appealing against the administrative decision by the hospital director to hospitalize the appellant at the request of a third party, and the appeal must be lodged within two months of the decision. In the present case, it was only on 17 December 2001, i.e. more than four years later, that the author appealed to the administrative courts, and then in the form of a full appeal, seeking compensation for the damage she claimed to have suffered. The State party thus contends that the administrative court was right to decline jurisdiction. The author decided to pursue the appeal and apply for cassation even though the lower court had been very clear about its reasons for declining jurisdiction.

4.5 On the subjects of challenging the need for hospitalization, and of compensation for the ensuing damages, the State party submits that at no point did the author appeal to the ordinary courts, either when she was hospitalized to challenge the grounds for hospitalization, or subsequently to obtain compensation for damages. It emphasizes that the division of responsibilities may be confusing to the author, but her counsel surely cannot take refuge behind unfamiliarity with the law as an excuse for not exhausting domestic remedies. Consequently, the State party concludes that the complaint of a violation under articles 9 and 14 of the Covenant is inadmissible.

4.6 With regard to the allegations of ill-treatment within the meaning of articles 7 and 10, the State party submits that the author has not sufficiently substantiated these allegations for the purposes of admissibility: she merely regards her hospitalization as inhuman and degrading treatment. Yet the Committee's jurisprudence in *Fijalkowska v. Poland* was that the author had not submitted any argument or information to show in what way her rights [...] had been violated; the Committee recalled that a mere allegation of violation of the Covenant was insufficient to substantiate a complaint under the Optional Protocol and, consequently, found both complaints inadmissible under article 2 of the Optional Protocol. The State party submits that since the author's arguments in the present communication are no better substantiated there is no reason why the Committee should depart from its previous position, and concludes that the complaint of violations of articles 7 and 10 of the Covenant is thus inadmissible.

4.7 With regard to the insufficiently substantiated nature of the allegations of an unfair trial before the State Council, the State party emphasizes that the State Council's decision was a decision not to accept the appeal, not a judgement on its merits. The admissibility procedure for an appeal in cassation is regulated by article L822-1 of the Code of Administrative Justice as follows: "An appeal in cassation before the State Council shall be subject to a preliminary acceptance procedure. Acceptance shall be denied by judicial decision if the appeal is inadmissible or is not based on any bona fide legal argument." The State party emphasizes that this procedure is aimed, inter alia, at reducing the length of proceedings and has been recognized by the European Court of Human Rights to be consistent with article 6, paragraph 1, of the European Convention for the Protection of Human Rights and Fundamental Freedoms.[5] The State party concludes that the

[5] Case of *Immeuble Groupe Kosser v. France* (application 38748/97), judgement of the European Court of Human Rights on 9 March 1999, ruled partly admissible. In this judgement, according to the State

communication is inadmissible in respect of the allegations of violations under article 14 of the Covenant.

4.8 Lastly, the State party observes that the author does not state in her communication that she is not pursuing a remedy under another procedure of international investigation or settlement. Consequently, it reserves the right to invoke inadmissibility at a later date under article 5, paragraph 2 (a), of the Optional Protocol.

Author's comments on the State party's observations

5.1 On 30 July 2008, the author argued that, contrary to the State party's assertion, the original communication clearly specifies that the matter submitted to the Committee is not subject to any other procedure of international investigation or settlement.

5.2 In response to the contention that her claims under article 9, paragraphs 1, 4 and 5, and article 14 of the Covenant are inadmissible, the author challenges the State party's interpretation of the Committee's jurisprudence in the case of *Fijalkowska v. Poland*. On that occasion, the Committee set aside the requirement that domestic remedies must be exhausted on the grounds that the author's inability to challenge the legality of her detention raised issues under articles 9 and 14 of the Covenant. Just as in the present case, the author had not been in a position to challenge her detention in good time, insofar as she had had to await release before learning that a remedy existed and being able to have recourse to it. In its consideration of the merits of the case, the Committee had also emphasized that the right to challenge her detention had been rendered ineffective, and had found a violation of article 9, paragraph 4, of the Covenant.

5.3 Accordingly, the author submits that the Committee, as in the case mentioned above, is in a position to examine her communication in the light of articles 9 and 14. Should the Committee decide not to apply its jurisprudence to this case, the author contends that her communication ought at least to be found admissible under article 9, paragraph 4, of the Covenant.

5.4 With regard to her claims under articles 7 and 10, contrary to the State party's assertion, the author did, according to counsel, detail in her initial communication how her rights had been violated.

5.5 Finally, with regard to the allegations under article 14, paragraph 1, of the Covenant, the author submits that the State Council — which was asked to make a final ruling on the matter — failed to consider the arguments submitted by the author, namely those based on the Public Health Code, on articles 3 and 5 of the European Convention and on article 7 of the Covenant, even though those arguments had been developed at length by the author in her submission in support of the appeal. The State Council expressed a position only on the arguments based on articles 6 and 13 of the European Convention and article 14 of the Covenant, deeming them unworthy of consideration; it did not rule on article 7 of the Covenant.

Committee's decision on admissibility

6.1 On 6 October 2009, at its ninety-seventh session, the Committee considered the admissibility of the communication.

party, the Court recalls its jurisprudence to the effect that article 6 did not require detailed substantiation of a ruling in which an appellate court dismisses an appeal as unlikely to succeed based on a specific legal provision. The State party also cites *Rebai v. France* (application 26561/93), judgement of the European Court of Human Rights on 25 February 1997.

6.2 The Committee ascertained, as required under article 5, paragraph 2 (a), of the Optional Protocol, that the same matter was not being examined under another procedure of international investigation or settlement.

6.3 The Committee noted the State party's argument that domestic remedies with regard to the claims under articles 9 and 14 of the Covenant had not been exhausted. On the question of an immediate challenge to detention, the Committee took note of the State party's argument that the author did not appeal to the ordinary courts at the time of her hospitalization when she could have done so under the Public Health Code. It did, however, note the author's explanation that it was not possible for her to challenge the legality of her detention in good time, since she was not informed of possible remedies during her committal and had to await her release in order to find out that such a remedy existed and have recourse to it. In the light of the information at its disposal, the Committee concluded that this part of the communication was admissible insofar as it might raise issues under article 9, paragraphs 1 and 4, and under article 14 of the Covenant.[6] The Committee also found that the State party had not given an adequate explanation as to why the administrative court had been unable to determine the legality of the author's committal and that the claims under article 9, paragraphs 1 and 4, of the Covenant were also admissible.

6.4 The Committee noted the author's contention that the manner in which she was allegedly treated during her committal, in particular the fact that she was locked up, undressed, forced to take neuroleptics and prohibited from communicating with the outside, constitutes a violation of articles 7 and 10 of the Covenant. The Committee found that the claims under articles 7 and 10 of the Covenant had been sufficiently substantiated.

6.5 The author submitted, lastly, that the State Council had not respected her right to a fair trial since it had rejected her claim of a violation of article 7 although that claim was being submitted to the Council for the first time. The Committee took note of the State party's argument that the State Council's decision was a decision not to accept the appeal, not a judgement on the merits of the case, and that the intention was to reduce the length of proceedings. The Committee found that the author's claims under article 14 of the Covenant had been sufficiently substantiated. In light of the foregoing, the Committee found the communication admissible.

Revision of the admissibility decision

7. Rule 99, paragraph 4, of the Committee's rules of procedure states that upon consideration of the merits, the Committee may review a decision that a communication is admissible in the light of any explanations or statements submitted by the State party pursuant to this rule. In accordance with the latter, the Committee considers that, in the light of the information and clarifications provided by the State party in its observations of 11 May 2010, it is necessary to reconsider the admissibility of the present communication. The basis for this decision is set out in paragraphs 10.1 to 10.4.

Observations by the State party on the merits of the communication

8.1 On 11 May 2010, the State party submitted its observations to the Committee. Although they are entitled "Observations on the merits of the communication", most of the evidence submitted has more to do with the admissibility of the communication. For purposes of clarity and since the Committee has decided, according to rule 99, paragraph 4,

[6] Communication No. 1061/2002, *Bozena Fijalkowska v. Poland*, decision adopted on 9 March 2004. See also communications Nos. 221/1987 and 323/1988, *Yves Cadoret and Hervé le Bihan v. France*, decision adopted on 11 April 1991; communication No. 327/1988, *Hervé Barzhig v. France*, decision adopted on 11 April 1991.

of its rules of procedure, to reconsider the admissibility of the communication, the parts of the observations which related only to the merits of the communication have been omitted. The omitted parts refer to the State party's arguments on articles 7 and 10 of the Covenant.

8.2 To begin with, the State party points out that, under the law on the rights of persons hospitalized for mental disorders and the conditions for hospitalization, there are two kinds of involuntary committal, either under a committal order or committal at the request of a third party. The first kind is governed by the Public Health Code, articles L3213-1 ff., and covers those whose state of mental health represents a danger to others or a serious breach of law and order. The decision is taken in this case by the Prefect on the basis of a medical certificate. Committal at the request of a third party is governed by the Public Health Code, articles L3212-1 ff., and is a measure taken in the interests of patients themselves for strictly medical reasons. The author was not the subject of a committal order but committal at the request of a third party. The State party refutes the contention that the author was not informed of the remedies available at the time she was committed. The State party refers in this regard to a letter dated 19 October 2001 from the director of the hospital in question, confirming that the author was informed of her situation and her rights in the presence of a witness, while she was in hospital.

8.3 On the question of the legality of the hospitalization, the State party recalls that the conditions for hospitalization at the request of a third party are set forth in the Public Health Code, articles L3212-1 and L3212-2. The requirements of the law were met, given that a written request for admission was made by the author's father on 6 December 1997 and that request addressed all the mandatory items; an initial medical certificate stating that the individual's disturbed mental state prevented her consenting to treatment and that her condition required hospital treatment with round-the-clock surveillance was issued on 6 December 1997 by a doctor who was not attached to the hospital where the patient was admitted; a second certificate was issued on the same day by a doctor at the admitting hospital; and, in accordance with the Public Health Code, article L3212-4, a certificate was issued following hospitalization by a psychiatrist from the admitting hospital but not one of the two doctors who had already seen the patient; that certificate confirmed the need for hospitalization. On 17 December 1997, the psychiatrist who had issued the certificate after the first 24 hours in hospital determined that the patient could be discharged under the Public Health Code, article L3212-7, since the improvement brought about by the treatment given to the author made it possible for her to return home. The correct procedure had thus been followed.

8.4 The State party further notes that it is clear from the case file, notably letters from the responsible physician at the author's hospital, that the author had in fact been informed of her rights at the time of committal, in the presence of her parents. The fact that there is no documentary evidence of this information, which was given orally, does not affect the validity or legality of the information. The law does not prescribe any particular form for such information. The State party reiterates that it was because of the author's own omissions that she was unable to apply to the Court of Major Jurisdiction for immediate release. If that was what she wanted, then, given that she appeared to be in contact with third parties, she could have asked them to apply to the court on her behalf. Yet the Court of Major Jurisdiction does not appear to have received any application for compensation either during the period in hospital or after the author was discharged.

8.5 Furthermore, the State party explains that compensation for harm suffered as a result of involuntary hospitalization does not depend solely on a ruling of the administrative court that the committal was unlawful. In its judgement of 17 February 1997, the Court of Conflicts explained the new division of jurisdiction between the two kinds of court: while only the ordinary courts are competent, under the Public Health Code, articles L333 ff., to assess the need for committal to a psychiatric facility and to rule on the possible

consequences, it falls to the administrative court to determine the legality of the administrative decision to order committal; when the administrative court has given a ruling on that question, the ordinary court may rule on damages incurred as a result of any irregularities in the committal procedure. The State party emphasizes that this case law has been confirmed in subsequent rulings. The ordinary courts are thus competent in all proceedings for reparation, whether the damages arise from irregularities of form or of substance. By that token, the ordinary courts are also competent in matters relating to compensation for harm arising from irregularities of form previously established by the administrative court. Where harm arises from the fact that there was no necessity for a committal order, an application may be made directly to the ordinary court. This ruling therefore separates challenges relating to legality from those relating to liability: once the committal order has been examined, only the ordinary court is competent to establish the consequences of that order in terms of liability. The State party therefore contends that the author would have been able to obtain reparation for damages incurred by applying to the ordinary court, always providing the medical authorities' liability had been established.

8.6 In addition, the State party explains that the author, with the assistance of counsel, should have lodged an appeal against the administrative decision within two months of receipt of the letter from Thonon hospital dated 17 December 2001. That would have enabled the administrative court, if appropriate, to annul the committal order with retroactive effect. It is true that the author applied to the administrative court in time, but she lodged a full appeal with a view to obtaining compensation and failed to request annulment of the committal order on grounds of irregularity. Consequently, it is not the lack of any decision that prevented the author from establishing the irregularity of the committal order but rather a procedural error for which she alone, or at least her counsel, bears the responsibility. The administrative court is competent to try the prima facie legality of the committal procedure, that is to say to verify that the proper procedure has been followed in accordance with the law. Where an irregularity is detected, the court may annul the committal order. The ordinary court, on the other hand, rules on the appropriateness of committal and on compensation for any damages arising from improper or irregular hospitalization. Thus the court could not rule on compensation without exceeding its jurisdiction and it rightly rejected the author's application. The State party argues that the author never sought, at least initially, to challenge the legality of the committal order — for otherwise she would have lodged an appeal against the administrative decision — but rather attempted to obtain compensation. It cannot therefore be claimed that the author had no access to a court.

Author's comments on the State party's observations

9.1 For purposes of clarity and since the Committee has decided, under rule 99, paragraph 4, of its rules of procedure, to reconsider the admissibility of the communication, the parts of the author's comments which related only to the merits of the communication have been omitted. The omitted parts refer mainly to the author's comments on articles 7 and 10 of the Covenant.

9.2 In her comments dated 22 June 2010, the author recalls the circumstances leading to her enforced committal at the request of a third party between 6 and 17 December 1997. She emphasizes that her husband's homeopathic physician had no authority to commit her, that at no time did she display aggressive or volatile behaviour and that she was not informed of her rights on admission to hospital. She also recalls the treatment she underwent during her confinement, namely the forcible administration of neuroleptics and her subsequent psychological isolation during the entire time she was in hospital. In this regard, she recalls that the record of clinical observations provided by Hôpitaux du Léman at her request in the course of domestic proceedings in the administrative court shows that she was given an injection on arrival on 6 December 1997, that she dozed all day on 7

December and that her request to telephone friends was denied. The author recalls that Dr. Girard stated that he had been under considerable pressure from her husband to extend the committal order beyond 17 December 1997.

9.3 Through proceedings with the family court of Thonon-les-Bains, the author's husband established that their child, Estelle, would live with him. The ruling was handed down in an order dated 3 July 1998 but was overturned by the Appeal Court of Chambéry in a ruling of 15 October 2001. The Appeal Court found, on the basis of documents provided by the author, and notably medical certificates from four different doctors and a second expert opinion by a fifth, that the author was suffering from no impairment of her mental faculties or from psychological problems and that her contention that the breakdown leading to her hospitalization was brought about by the break-up of her marriage and did not require such a serious measure as committal to a psychiatric facility was credible. In the best interests of the child, the Appeal Court therefore awarded the author care of her adopted child.

9.4 With regard to her placement in a psychiatric facility, the author emphasizes that the procedure was initiated by a doctor who was not a psychiatric specialist, that Dr. Schmidt's medical certificate was issued without a thorough medical examination and that the procedure was subsequently vitiated by the fact that the 24-hour certificate was not issued within the required time. Under article L335, now article L3212-5, of the Public Health Code, the Prefect should notify, within three days of committal, (a) the prosecutor with the Court of Major Jurisdiction whose jurisdiction includes the domicile of the committed person; and (b) the prosecutor with the Court of Major Jurisdiction whose jurisdiction includes the place where the hospital is located, of the full name, occupation and address of both the person committed and the person requesting committal. In both cases this was the Court of Major Jurisdiction of Thonon-les-Bains. In a letter from her counsel dated 23 September 2002 to the prosecutor at Thonon-les-Bains, the author requested a copy of the notification required under article L335. On 22 October 2002 the prosecutor replied that he did not have the case and that information on the committal had been provided as a notice, with no further details. Writing again on 23 January 2003, the author's counsel requested the admission and discharge notices relating to the author's committal but the prosecutor replied on 29 January 2003 that only committal notices for the current year were kept by the prosecution service. Other administrative authorities, including the departmental committee on psychiatric hospitalization, stated that they did not have any such documents since the committal was made at the request of a third party. The author therefore considers that she was arbitrarily deprived of her liberty and that the safeguards established in law had proved ineffective.

9.5 Moreover, the author rejects the State party's argument that she was informed of her rights as stated by Hôpitaux du Léman and that the absence of documentary evidence of this information, which was given orally, does not affect the validity or legality of the information. In fact, in matters of deprivation of liberty, notification of individual rights is of the utmost importance, as recalled by the national working group set up to evaluate the Act of 27 June 1990, which reported in September 1997.[7] The need for a strict regime of

[7] According to this report, published in September 1997 and annexed to the initial communication, the national working group on the Act of 27 June 1990 found that hospitalization without consent was a serious measure that needed to be strictly regulated and that, on admission to hospital, patients should be informed of their administrative status and the grounds for committal. If the patients' state of health makes them incapable of receiving this notification, a witness should countersign the notification to testify that it has been made. The notification should be presented to patients a second time when they are more lucid, and at the latest after the same lapse of time as that established for extension of the measure, i.e., one month. The working group goes on to say that the decision must be

safeguards was also noted by the Parliamentary Assembly of the Council of Europe in its recommendation 1235 (1994) on psychiatry and human rights. In the author's view, Hôpitaux du Léman did not strictly observe the procedures and should have informed her of the remedies available at the time she was admitted and before administering neuroleptics against her will. She points out that, in any case, information provided orally to a person committed involuntarily is ineffective owing to that person's extreme vulnerability and is not sufficient to meet the requirements and objectives of the Covenant. As to the letter of 19 October 2001 from the deputy director of Hôpitaux du Léman, Mr. Giray, in the author's view this document is not conclusive since it does not state in what form the information is supposed to have been communicated to her or who is supposed to have provided this information as prescribed by law.

9.6 The author further states that, in the course of the proceedings in the Grenoble Administrative Court, the hospital submitted a letter from Dr. Girard dated 4 October 2001, i.e., four years after her hospitalization, according to which the author was informed of her rights at the time of her admission, whereas she had only seen Dr. Girard for the first time on 8 December 1997, i.e., more than 24 hours after going into hospital. There is thus no objective documentary evidence of the fact that the author was informed of her rights. Even the record of clinical observations provided by Hôpitaux du Léman in the course of the proceedings makes no mention of any information on these rights. Lastly, the author recalls the Committee's jurisprudence in *Bozena Fijalkowska v. Poland*,[8] in which it found arbitrary detention and an absence of effective remedies, a conclusion that, in the author's view, is perfectly applicable to the current case.

9.7 The author reiterates her earlier contentions to the effect that the administrative courts should not have declined jurisdiction in favour of the ordinary courts, insofar as the decision to admit her to the psychiatric facility and the committal procedure were being challenged simultaneously. The proliferation of procedural obstacles infringes her right to seek compensation and is, incidentally, also a violation of her right of access to a court under article 14, paragraph 1, of the Covenant. In the event that the Committee were to find the domestic arrangements apportioning the jurisdiction of the courts in respect of compensation justified, the author asks the Committee nevertheless to give a ruling on the alleged violations of the Covenant. In this regard she recalls the case law of the European Court of Human Rights in *Francisco v. France*,[9] which takes up the question of the division of jurisdiction between the administrative and ordinary courts and finds that the right to compensation under article 5, paragraph 5, of the European Convention on Human Rights arises only where a violation of article 5, paragraph 1, has first been established, either by the Court itself or by domestic courts.

9.8 In the author's view, there has been a violation of article 14, paragraph 1, not only because she was not permitted effective access to a court owing to the proliferation of procedural obstacles, but also because the State Council arbitrarily omitted to consider any of the appeals brought by the complainant and, in particular, her appeals under the Public

justified, that is to say that the medical certificate on which the decision of the Prefect or the hospital director is based must be reasoned, citing facts to demonstrate that patients are a danger to themselves or others, but also establishing a link between those facts and the mental disorder, and stating why involuntary committal is warranted. The working group also suggests that the certificate could be communicated to patients on request and that it should indicate in clear language to those concerned, and giving titles and addresses, the ordinary courts, the prefectural authorities, the departmental committee on psychiatric hospitalization and the administrative court.

[8] Communication No. 1061/2002, *Bozena Fijalkowska v. Poland*, Views adopted on 26 July 2005.

[9] ECHR, *Francisco v. France*, decision of 29 August 2000.

Health Code, articles 3 and 5 of the European Convention on Human Rights and article 7 of the Covenant.

Basis for the revision of the admissibility decision

10.1 The Committee takes note of the clarifications provided by the State party, to the effect that the author had the right to challenge the administrative decision within two months of receipt of the letter of 17 December 2001 from Hôpitaux du Léman refusing to consider any compensation and thereby bringing the author's application for reconsideration to an end. The Committee notes that, according to the State party, this remedy would have allowed the administrative court, if appropriate, to annul the committal order with retroactive effect. The Committee notes that, according to the State party, the author did indeed apply to the administrative court in time, but she lodged a full appeal with a view to obtaining compensation and failed to request annulment of the committal order on grounds of irregularity and that it is consequently not the lack of any decision that prevented the author from establishing the irregularity of the committal order but rather a procedural error for which she alone, or at least her counsel, bears responsibility. The Committee notes that this point has not been countered by the author.

10.2 On the question of an immediate challenge to the legality of detention, whereby the author could have lodged an appeal under article L351 of the Public Health Code requesting the President of the Court of Major Jurisdiction to order her immediate release, the Committee notes that the facts submitted by the author are contested by the State party, which believes the author was in fact informed of her rights and that the fact that there is no documentary evidence of this information, which was given orally, does not affect the validity or legality of the information, since the law does not prescribe any particular form for such information. Without determining whether the author was indeed informed of her right to appeal under article L351 of the Public Health Code, the Committee observes that the author has not explained why she did not contest the failure to provide her with information on admission when her hospitalization came to an end, either in the administrative court in proceedings to challenge the administrative decision, or in the ordinary court in proceedings to challenge the appropriateness of committal and seek compensation for damages.

10.3 Furthermore, by failing to apply (a) to the administrative court to challenge the administrative decision and then (b) to the ordinary court to evaluate the need for committal at the request of a third party and seek compensation, the author deprived herself of her right to compensation under article 9, paragraph 5, having failed to properly exhaust the available domestic remedies.

10.4 In the light of all the information provided by the parties but especially the State party's clarifications regarding domestic administrative and judicial procedure, and notwithstanding the important issues of substance that could have been relevant, the Committee finds the communication inadmissible on grounds of non-exhaustion of domestic remedies under articles 9 and 14 of the Covenant.

10.5 The Committee notes that the author also claimed a violation of article 7 before the State Council. However, in the light of the foregoing and of the clarifications by the State party, it seems clear to the Committee that the author's counsel did not apply to the appropriate courts in order to assert her rights and that, as a result, domestic remedies have not been exhausted with regard to articles 7 and 10 of the Covenant.

11. Accordingly, the Committee decides:

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

(b) That this decision will be transmitted to the author and to the State party.

[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.]