



**International covenant
on civil and
political rights**

Distr.
RESTRICTED*

CCPR/C/85/D/993-995/2001
18 November 2005

ENGLISH
Original: FRENCH

HUMAN RIGHTS COMMITTEE
Eighty-fifth session
17 October-3 November 2005

DECISION

Communications Nos. 993/2001, 994/2001 and 995/2001

- Submitted by:* Gabriel Crippa, Jean-Louis Masson and Marie-Joe Zimmermann
(not represented by counsel)
- Alleged victim:* The authors
- State party:* France
- Date of communications:* 1 September 2000, 13 March 2001, 13 March 2001
(initial submissions)
- Document references:* Special Rapporteur's rule 97 decision, transmitted to the State party
on 20 July 2001 (not issued in document form)
- Date of decision:* 28 October 2005
- Subject matter:* Electoral dispute brought before the Constitutional Council
- Procedural issues:* Reservation made by the State party; status of victim; inadmissibility
ratione materiae; substantiation of the complaint

* Made public by decision of the Human Rights Committee.

Substantive issues: Nature of the electoral dispute in the context of article 14 of the Covenant; right to free elections; attack on a person's honour; right to a remedy

Articles of the Covenant: 2 (3) (a), (b); 14 (1), (3) (a), (b), (5), (7); 15 (1); 17 (1) and 25

Articles of the

Optional Protocol: 1; 2; 3; 5, 2 (a)

[ANNEX]

Annex

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

Eighty-fifth session

concerning

Communications Nos. 993/2001, 994/2001 and 995/2001*

Submitted by: Gabriel Crippa, Jean-Louis Masson and Marie-Joe Zimmermann
(not represented by counsel)

Alleged victim: The authors

State party: France

Date of communications: 1 September 2000, 13 March 2001, 13 March 2001
(initial submissions)

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

Meeting on 28 October 2005,

Adopts the following:

Decision on admissibility

1. The authors of the communications, French citizens Ms. Marie-Joe Zimmermann, Mr. Jean-Louis Masson and Mr. Gabriel Crippa, claim to have been victims of violations by France of article 2, paragraphs 3 (a) and (b), article 14, paragraphs 1, 3 (a) and (b), 5 and 7, article 15, paragraph 1, article 17, paragraph 1, and article 25 of the Covenant. They are not represented by counsel.

* The following members of the Committee participated in the examination of the present communication: Mr. Nisuke Ando, Mr. Prafullachandra Natwarlal Bhagwati, Mr. Alfredo Castillero Hoyos, Mr. Maurice Glèlè Ahanhanzo, Mr. Edwin Johnson, Mr. Walter Kälin, Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer Lallah, Mr. Michael O'Flaherty, Ms. Elisabeth Palm, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Ivan Shearer, Mr. Hipólito Solari-Yrigoyen, Ms. Ruth Wedgwood and Mr. Roman Wieruszewski.

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

Factual background

2.1 Following the parliamentary elections which took place on 25 May and 1 June 1997, Mr. Masson, the chair of the local party “*Metz pour tous*” (Metz for all), was re-elected deputy for the third constituency in Moselle department, with Ms. Zimmermann as his substitute.

2.2 He defeated the other candidates, including Mr. Crippa, the representative of ADL, the *Association de défense des locataires* (Tenants’ Protection Association), which had been set up to denounce embezzlement in the operations of the public office managing low-rent housing in the city of Metz.

2.3 Mr. Crippa’s and Mr. Masson’s campaign accounts were approved by the National Commission on Election Campaign Accounts and Political Funding.

2.4 Nevertheless, in response to two applications lodged by voters registered on the electoral rolls for the constituency, the Constitutional Council, in a decision of 16 December 1997, annulled the electoral operations. The Constitutional Court ruled that Mr. Crippa’s candidature must be regarded as constituting a manoeuvre which enabled Mr. Masson to make use, for the purposes of his campaign, of certain electoral materials the cost of which is not recorded in his own campaign accounts, but in those of Mr. Crippa; that Mr. Crippa and Mr. Masson ignored the principles of single and exhaustive campaign accounts as set out in article L.52-12 of the Elections Code. It also disqualified Mr. Crippa and Mr. Masson from standing for election for a period of one year from that date.

The Constitutional Council considered that it had before it sufficient reliable and consistent evidence to establish that Mr. Masson, the outgoing deputy, had prompted Mr. Crippa to stand with the sole aim of favouring his own candidature through the presence of a third candidate, and had fully financed Mr. Crippa’s campaign through an association of which he was the founder and the chair.

2.5 The annulment of the contested electoral operations also entailed annulment of the election of Ms. Zimmermann as a substitute, in accordance with the legislation and constant jurisprudence of France.

The complaint

3.1 The authors challenge the procedure followed within the Constitutional Council as well as the Council’s decision. They point out that when an application is not declared inadmissible or manifestly ill-founded by the Council, the member of parliament whose election has been challenged and, where appropriate, his or her substitute, are notified accordingly; they may designate a person of their choice to represent them and assist them in the various procedural steps. After having been notified of the application, they may submit written observations. In addition, the complainants and the deputies whose election has been challenged may ask to be heard by the Council. Lastly, no appeal is possible against the decisions of the Constitutional Council. Ms. Zimmermann states that she has been the direct victim of a violation of her rights as protected under the Covenant by virtue of the annulment of her election as substitute, and an indirect victim of the violations of the rights of Mr. Masson and Mr. Crippa by the Constitutional Council.

3.2 The authors allege violations of the right to a fair trial and the consequential guarantees under article 14, paragraphs 1 and 3 (a) and (b). They denounce the fact that Mr. Crippa was not informed that proceedings had been instituted against him, which they consider an irregularity which amounts to a procedural violation that affects all the authors. They also complain that Mr. Masson was not notified that he had been charged with ignoring the principle of the single account, and that they did not have access to the case files (consulting the campaign accounts of their adversaries in the elections). They further challenge the secret and non-adversary nature of the proceedings before the Constitutional Council, pointing out that, as the report prepared by the Constitutional Council's reporting member is not made available to the parties, the parties are unable to respond to any accusations made against them.

3.3 The authors point out that the Constitutional Council's decision constitutes a violation of article 14, paragraph 7, of the Covenant, insofar as the candidates' accounts had been approved by the National Commission on Election Campaign Accounts, in a final ruling.

3.4 The authors state that they were convicted for an act or omission which is not a criminal offence under French law, in violation of article 15, paragraph 1, of the Covenant. In that regard, they state that the principle of a single campaign account invoked against them by the Constitutional Council is in fact contrary to the law, which stipulates that each candidate shall submit a separate account. Accordingly, in the authors' view, the Constitutional Council failed to give their case a fair hearing, in breach of article 14, paragraph 1, of the Covenant.

3.5 The authors state that the Constitutional Council's decision was not impartial, but stemmed from a political desire on the part of the Council, which was composed of left-wing figures, to harm the interests of right-wing and extreme right-wing deputies during the parliamentary elections, and, in the case of J.-L. Masson, to punish him for his statements in the National Assembly denouncing the involvement of senior Freemasons and former ministers in left-wing governments, including the former Chair of the Constitutional Council and the Mayor of Metz, in political and financial scandals. The authors claim a violation of article 14, paragraph 1, of the Covenant.

3.6 They also consider that the Constitutional Council's decision constitutes a violation of the right to stand for election and to organize an election campaign freely, as protected under article 25 of the Covenant, and an attack on their honour, in breach of article 17, paragraph 1, of the Covenant.

3.7 They emphasize the seriousness of the "civil" consequences of the disqualification of Mr. Masson and Mr. Crippa. They explain that, following the Constitutional Council's decision, the two authors the Council had ruled against were obliged to repay to the authorities the amount they had been paid by the State under the law. Mr. Masson was denied the financial guarantee paid to former deputies who had not been re-elected (30,000 francs for a period of six months) because of his disqualification, as well as the honorary title granted to all deputies of more than 18 years' standing. Moreover, according to the authors, disqualification is a penal measure because it involves a loss of civil rights, because under article L.131-26 of the new Penal Code it is ancillary or additional to certain penalties imposed by the criminal courts, and because candidates whose campaign accounts are rejected can be prosecuted under article L.113-1 of the Elections Code and can be sentenced to a fine or a prison term.

3.8 Lastly, according to the authors, the fact that no appeals can be lodged against the Constitutional Council's decisions is contrary to article 2, paragraph 3 (a) and (b), and article 14, paragraph 5, of the Covenant. The authors also consider that France's reservation concerning article 14, paragraph 5, cannot apply in the present case since it relates to minor and major offences, but not ordinary offences.

3.9 The authors state that they have exhausted all domestic remedies. Ms. Zimmermann and Mr. Crippa state that the case has not been submitted to another procedure of international investigation or settlement. Mr. Masson states that the present case was brought before the European Court of Human Rights, which declared it inadmissible on the grounds that the dispute is exclusively electoral in nature (not civil or criminal). Citing communication No. 441/1990 (*Casanovas v. France*), Mr. Masson considers that the European Court did not rule on the substance and that France's reservation therefore does not apply.

State party's observations

4.1 In its observations dated 22 October 2001, the State party challenges the admissibility of the communications.

4.2 Firstly, the State party cites France's reservation concerning article 5, paragraph 2 (a), of the Optional Protocol in respect of the communication from Mr. Masson. Regarding the reference made by the author to communication No. 441/1990 (*Casanovas v. France*), it should be pointed out, in the view of the State party, that the European Court declared Mr. Masson's application inadmissible not only because some of his claims were incompatible *ratione materiae* with the Convention, but also because the communication was manifestly unfounded. The claims based on the violation of article 3 of the Protocol, articles 1, 13 and 14 of the Convention were declared inadmissible on the grounds that they were manifestly ill-founded. Consequently, according to the State party, the claims based on the violation of article 2, paragraph 3, and article 25 of the Covenant, relating to the same rights as those which the European Court considered not to have been violated, namely the right to a remedy and the right to free elections, are clearly inadmissible, bearing in mind France's reservation. As regards the claims in the communication that article 6, paragraphs 1 and 3, of the Convention had been ignored, which were considered inadmissible *ratione materiae*, the State party considers that the same conclusion of inadmissibility should be reached. In its observations on communication No. 441/1990 (*Casanovas v. France*), the Committee had considered the communication admissible after having taken care to point out that "the rights of the European Convention differed in substance and with regard to their implementation procedures from the rights set out in the Covenant". In this case, the State party considers that the rights guaranteed by article 6, paragraphs 1 and 3, of the Convention are of exactly the same kind as those guaranteed by articles 14 and 15 of the Covenant, so that these complaints are inadmissible. The State party points out that the Committee adopted such a solution in its observations on communication No. 168/1984 (*V.Ø. v. Norway*). The State party notes that its reservation is drafted in terms strictly identical to those of the Norwegian reservation, and that the dispute brought before the Committee concerns the same parties, the same complaints and the same facts as those at issue before the European Court.

4.3 Secondly, the State party considers that Ms. Zimmermann's communication is inadmissible as she has not demonstrated her status as a victim of a violation of the Covenant. The decision by which the Constitutional Council annulled the electoral operations and disqualified Mr. Crippa and Mr. Masson for a year infringed none of Ms. Zimmermann's rights. Under article L.O. 176-1 of the Elections Code, her status as Mr. Masson's substitute authorized her to replace him only in the event of "death, acceptance of government office or membership of the Constitutional Council or extension beyond six months of a temporary mission assigned by the government". In contrast, the annulment of the electoral operations and the disqualification of Mr. Masson enabled her to stand in the parliamentary election which was held following the annulment and to be elected as a deputy on 1 February 1998.

4.4 Thirdly, the State party maintains that the claims made are incompatible with the provisions of the Covenant, directly, in the case of Mr. Crippa, and in a subsidiary manner for Mr. Masson and Ms. Zimmermann.

4.5 According to the State party, this incompatibility relates in the first place to the complaints raised under articles 14 and 15 of the Covenant. The State party explains that these two articles concern only civil rights and obligations and criminal charges, and are not applicable to the present dispute, which is political in nature. Referring to general comment No. 13, the State party points out that in domestic law, the present dispute falls outside the criminal realm and does not relate to any right of a civil nature. It raises the issue of a political right, one governed by a completely separate set of rules, which accounts for the competence not of the ordinary courts, but of the Constitutional Council, as article 59 of the Constitution provides. Consequently, the authors cannot invoke any right of a civil nature within the meaning of article 14, paragraph 1, of the Covenant. The State party adds that the European Court of Human Rights has already ruled along these lines in relation to the provisions of article 6, paragraph 1, of the Convention, which is similarly worded. The right to stand for election to the National Assembly and to keep one's seat "is a political one and not a 'civil' one within the meaning of article 6, paragraph 1, so that disputes relating to the arrangements for the exercise of it - such as ones concerning candidates' obligation to limit their election expenditure - lie outside the scope of that provision", even if disqualification has the corollary that it is impossible to secure reimbursement of campaign expenditure from public funds, and is therefore partly economic in nature. What is more, the Court reiterated its position on the matter when, in the circumstances referred to above, it considered Mr. Masson's application in relation to the disputed elections: "The Court notes that the dispute in question concerned whether the electoral operations were properly conducted, notwithstanding its economic implications for the applicant. Therefore it did not involve a determination of the latter's civil rights and obligations ...". According to the State party, in this case, the distinction between disputes of a civil and those of a political nature is all the more clear since it is necessarily imposed by the title of the Covenant. If the Covenant's authors had planned to harness these distinct rights together, no reference would have been made to political rights.

4.6 The State party also considers that the authors could not claim that any criminal charge had been brought against them, again within the meaning of article 14, paragraph 1, of the Covenant. Once again, it must be noted that article 14, paragraph 1, of the Covenant contains similar wording to the European Convention. The European Court refuses to consider that disqualification constitutes a criminal matter. In order to determine whether a criminal charge has been brought against an applicant within the meaning of article 6, paragraph 1, of the

Convention, the Court has regard to three criteria: “the legal classification of the offence in question in national law, the very nature of the offence and the nature and degree of severity of the penalty”. In the above-mentioned Masson ruling, the Court very precisely analysed the arrangements for the financing of electoral campaigns in the following terms: “(The Court) observes that the Elections Code establishes the principle of capping election expenditure by parliamentary candidates and monitoring compliance with that principle. Each candidate is thus required, inter alia, to prepare and file campaign accounts in keeping with the provisions of article L.52-12 of the Elections Code. A person who has not filed his or her campaign accounts in accordance with the requirements and within the time limit laid down in article L.52-12 (such as the applicant), whose campaign accounts have been rejected or who has exceeded the maximum permitted amount of electoral expenditure may be disqualified from standing for election for a period of one year (Elections Code, art. L.O. 128); if that person was the candidate elected, the Constitutional Council declares that the person has forfeited his or her seat (Elections Code, art. L.O. 136-1)”. Applying the three above-mentioned criteria, the Court concluded: “Those provisions clearly do not belong to French criminal law, but to electoral law. Nor can a breach of a legal rule governing such a matter be described as ‘criminal’ by nature. Moreover, the disqualification for one year does not constitute, either by nature or in terms of the degree of severity of that penalty, a punishment which brings the issue into the ‘criminal’ realm. Lastly, the punishments stipulated in article L.113-1 of the Elections Code could not be applicable in this case, as no proceedings were brought against the applicant on the basis of that article.” Consequently, the Court considered that the complaints, which were identical to those lodged by Mr. Masson in the present case, and were based on the assertion that his case had not been given a fair and public hearing by an independent and impartial tribunal, are incompatible *ratione materiae* with the provisions of the Convention. According to the State party, the same solution should be adopted in the present case.

4.7 Concerning the authors’ complaints that they were not informed that the Constitutional Council held them responsible for ignoring the principle of single accounts, in breach of article 14, paragraph 3, of the Covenant, that they were convicted when the decision of the National Commission on Election Campaign Accounts had become final, in breach of article 14, paragraph 7, of the Covenant, and that there was no appeal against the ruling of the Constitutional Council, in disregard of article 14, paragraph 5, of the Covenant, the State party points out that here too, the European Court considered that this part of Mr. Masson’s application, citing a violation of article 6, paragraphs 3 and 7, of the Convention, was incompatible *ratione materiae* with these provisions. The Court ruled that “as no criminal charge, in the meaning of article 6, paragraph 1, of the Convention had been brought against the applicant, he could not claim to have been ‘charged with a criminal offence’ in the meaning of article 6, paragraph 3”. The Court added: “The same applies to article 7 of the Convention, as the applicant has not been ‘held guilty’ of a criminal ‘offence’.” According to the State party, this solution may be adopted in the present case since article 14, paragraph 3, of the Covenant enumerates the rights of “everyone [who has been] charged”, article 14, paragraph 5, provides for appeal for “everyone [who has been] charged” and article 14, paragraph 7, deals with the case of a person “punished again for an offence for which he has already been ... convicted”.

4.8 Concerning the complaint of a violation of article 15 of the Covenant, the State party considers that this part of the communications is incompatible with the provisions of the Covenant insofar as article 15 refers to a person held guilty of a “criminal offence”, whereas exceeding the cap on electoral expenditure, with which Mr. Masson and Mr. Crippa are charged, does not constitute a criminal offence either in French law or within the meaning of the Covenant.

4.9 With regard to the claimed violation of article 17 of the Covenant, the State party points out that disqualification does not constitute an attack on the honour of the authors, but is based solely on the fact that the cap on campaign expenditure was exceeded. Disqualification is provided for in article L.O. 128, paragraph 2, of the Elections Code, under which “a person who has not filed his or her campaign accounts in accordance with the requirements and within the time limit laid down in article 52-12, or whose campaign accounts have been rightly rejected, is disqualified from standing for election for a period of one year. Anyone who has exceeded the maximum permitted amount of electoral expenditure as laid down in article L.52-11 may likewise be disqualified from standing for election for the same length of time”. Hence it follows from the very terms of these provisions that disqualification is the automatic consequence of exceeding the cap on campaign expenditure. Furthermore, the Committee has pointed out that the term “unlawful” means that no interference can take place except in cases envisaged by the law. Interference authorized by States can only take place on the basis of law, which itself must comply with the provisions, aims and objectives of the Covenant. As provision is made for disqualification in article L.O. 128 of the Elections Code, it is therefore not “unlawful”. What is more, according to the State party, this disqualification is in keeping with the purposes of article 25 of the Covenant. Capping the electoral expenditure effected by the candidates clearly has the purpose of guaranteeing freedom of expression for voters, a fair and genuine ballot and equal access to elective public office. The disqualification which may be imposed in the event that these rules are ignored has the same purpose. Hence this is an interference based on a law which is in keeping with the objectives of the Covenant. Lastly, it should be emphasized that the law entrusts the task of imposing this disqualification to a court, clearly affording an additional safeguard for those concerned. The State party therefore considers that the alleged violation of article 17 of the Covenant is incompatible with the provisions of the Covenant.

4.10 Concerning the alleged violation of article 25 of the Covenant, the State party explains that this article is worded similarly to article 3 of the Additional Protocol to the European Convention. When considering the admissibility of Mr. Masson’s application, the European Court pointed out that “this article guarantees the right to stand for election to the legislature, and to serve one’s term once elected”. The Court then recognized that “this right is, however, not absolute: States may attach conditions to it, and they have a wide margin of appreciation in this sphere. The Court’s task then involves satisfying itself that the conditions do not curtail the right in question to such an extent as to impair its very essence and deprive it of its effectiveness; that they are imposed in pursuit of a legitimate aim; and that the means employed are not disproportionate. In particular, such conditions must not thwart “the free expression of the opinion of the people in the choice of the legislature”. The Court then provided the following assessment of the French system governing campaign expenditure: “The capping of election expenditure by parliamentary candidates and the monitoring of compliance with that principle, as applied by the French Elections Code, are designed to ensure a degree of equality among the candidates, and thus form part of measures to safeguard ‘the free expression of the opinion of the

people in the choice of the legislature'; the threat of disqualification then constitutes an appropriate means of obliging the candidates to comply with these rules. In this way, although the measure adopted in respect of the applicant is viewed as an interference with his right to stand for election as a deputy and to serve his term, the legitimacy of the purpose of the measure is not in doubt. Indeed, it is not truly called into question by the applicant, whose criticisms relate essentially to the allegedly arbitrary and unfair nature of the decision on his case taken by the Constitutional Council." After enumerating the grounds for the Constitutional Council's decision, and expressing the view that the disputed measure cannot be regarded as disproportionate to the legitimate purpose, the Court ruled that this part is manifestly ill-founded and therefore inadmissible. The State party considers that by the same reasoning the authors' complaint of a violation of article 25 is inadmissible because it is incompatible with the provisions of the Covenant.

4.11 In relation to the complaint concerning a violation of article 2, paragraph 3, of the Covenant, on the grounds that there is no appeal against decisions of the Constitutional Council, the State party considers that the authors do not cite a grievance which is an arguable one in terms of the Covenant, as set out above. The Committee has pointed out that the general right to a remedy is an accessory one.¹ According to the State party, the European Court, in its decision on the admissibility of Mr. Masson's application, adopted similar reasoning: "The Court points out that, while article 13 of the Convention guarantees that domestic law will contain provision for a remedy whereby the rights and freedoms enshrined in the Convention can be invoked, this provision is valid only for grievances which are arguable in terms of the Convention. In the light of its conclusions relating to the other complaints raised by the applicant, the Court considers that this condition has not been met in this case." The Court considered that this part of the application too was manifestly ill-founded. The State party consequently considers that the same solution of inadmissibility will apply in this case.

Comments by the authors on the State party's observations

5.1 In their comments dated 22 January and 7 October 2002, the authors challenge the arguments of the State party in favour of inadmissibility. Concerning the reservation lodged by France under article 5, paragraph 2 (a), of the Optional Protocol in respect of Mr. Masson's communication, they challenge that ground for inadmissibility insofar as the Committee and the European Court of Human Rights, in their view, perform different monitoring functions, and the Covenant differs in part from the European Convention, specifically article 25. In addition, the authors call into question the European Court's inadmissibility ruling, which, in their view, while acknowledging the existence of civil and criminal implications of the decisions of the Constitutional Council, wrongly deems them to be of an accessory nature, and considers that the principal decision is a political one.

5.2 With regard to the State party's inadmissibility arguments under article 1 of the Optional Protocol in respect of Ms. Zimmermann, the authors point out that she had initially been elected as substitute to Mr. Masson. Consequently, the annulment of the election by the Constitutional Council was prejudicial to her in three ways: politically, as a result of the annulment of her election; civilly, because of the cancellation of the reimbursement by the State for her election campaign; and criminally, because the disqualification of Mr. Masson had moral repercussions for his substitute. The authors state that the subsequent election of Ms. Zimmermann as a deputy did not eliminate the initial injustice caused by the Constitutional Council.

5.3 Lastly, the authors challenge the State party's other inadmissibility arguments and reiterate the content of their complaint.

The Committee's deliberations on admissibility

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

6.2 In view of the fact that communications Nos. 993/2001, 994/2001 and 995/2001 relate to the same subject and can therefore legitimately be dealt with together, the Committee decides to deal with these three communications jointly.

6.3 In relation to Mr. Masson and his complaints under article 14, paragraphs 1, 3 (a) and 5; article 15, paragraph 1; article 25; and article 2, paragraphs 3 (a) and (b), of the Covenant, the Committee notes that the European Court of Human Rights, on 14 September 1999, denied the author's appeal relating to the same facts and points in dispute as those now before the Committee. The Committee also points out that at the time of its accession to the Optional Protocol, the State party lodged a reservation concerning article 5, paragraph 2 (a), of the Optional 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".

6.4 The Committee notes that the European Court considered that the author's allegations concerning violations of the right to a fair trial and certain related guarantees for persons charged with a criminal offence, as well as conviction for an act which did not constitute an offence in domestic law, were incompatible *ratione materiae* with the provisions of the European Convention insofar as, according to the Court, the dispute in question did not involve a determination of civil rights and obligations and no criminal charges had been brought against the author. The Committee recalls its jurisprudence that complaints that had been declared inadmissible *ratione materiae* had not, in the meaning of the reservation, been considered in such a way that, in the case in question, the Committee was precluded from examining them. In this regard, the Committee cannot accept the State party's argument in favour of inadmissibility based on communication No. 168/1984 (*V.Ø. v. Norway*) insofar as that complaint submitted to the Committee had been declared manifestly ill-founded by the European Commission of Human Rights, and not incompatible *ratione materiae*.

6.5 The Committee also notes that the European Court considered that the provisions of the European Convention which had been breached, according to the author in his complaints relating to violation of the right to free elections, the right to an effective remedy, and discrimination based on political opinions, were applicable, and examined all the points of fact and of law which arose in the case in question. Having examined all the aspects of the question in a thorough and exhaustive manner, the Court declared these complaints inadmissible because they were manifestly ill-founded.

6.6 Regarding the author's argument that the provisions of Protocol No. 1 to the European Convention relating to the right to free elections are different from those of the Covenant as cited in the case in question, the fact that there are differences in wording between the provisions is

not in itself sufficient to justify the conclusion that a question which is raised as a matter protected under the Protocol was not considered by the European Court. Evidence must be supplied of a substantial difference between the applicable provisions in the case in question. In the matter at hand, the provisions of article 3 of the Protocol as interpreted by the Court are sufficiently close to those of article 25 of the Covenant as cited in Mr. Masson's communication for the relevant issues to be deemed to have been considered.²

6.7 It follows that the communication has been considered by another international body as regards the complaints relating to the right to free elections and political opinions. Regarding the right to an effective remedy, the Committee notes that the European Court declared this grievance manifestly ill-founded insofar as the other grievances had been declared inadmissible.

6.8 Lastly, it is apparent that Mr. Masson's communication was considered by another international body in respect of the complaints concerning violations of article 14, paragraph 1 (complaint that the Constitutional Council's decision was partial and political in nature), and article 25 of the Covenant. Consequently, subparagraph (a) of the State party's reservation concerning the Optional Protocol is applicable, and the Committee cannot consider these aspects of Mr. Masson's communication.

6.9 In relation to the other complaints under article 14, paragraphs 1, 3 (a) and (b), 5 and 7; article 15, paragraph 1; article 17, paragraph 1; and article 2, paragraphs 3 (a) and (b), of the Covenant, the Committee considers that as these matters were not considered by the European Court - and, in the case of some of them, namely those under articles 14, 3 (b) and 17, not raised by the applicant - they cannot be covered by France's reservation and must be examined together with the complaints of Ms. Zimmermann and Mr. Crippa.

6.10 In relation to Ms. Zimmermann, the Committee took note of the State party's argument that her communication was inadmissible on the grounds that she did not have the status of victim of a violation of the Covenant. The Committee also noted the author's arguments to the effect that, as a substitute deputy, she had been affected by the annulment of Mr. Masson's election. The Committee considers that in spite of the fact that she was affected by the decision of the Constitutional Council, Ms. Zimmermann cannot be considered as a victim of a violation of the Covenant. The decision of the Constitutional Council did not ignore her right to stand for election, and indeed, she was elected as a deputy when new parliamentary elections were organized. Accordingly, the author's complaint must be declared inadmissible under article 1 of the Optional Protocol.

6.11 Concerning Mr. Crippa, in respect of the first part of his communication relating to article 14, paragraphs 1, 3 (a) and (b), 5 and 7, and article 15, paragraph 1, of the Covenant, a complaint also covering that of Mr. Masson, the Committee considers that the case in question, as it deals with the regularity of the electoral dispute, neither constitutes a determination, nor can it be addressed within the framework of a criminal charge. The Committee therefore declares these claims incompatible *ratione materiae* with the provisions of the Covenant under article 3 of the Optional Protocol.

6.12 In relation to the complaint of violation of article 17, paragraph 1, of the Covenant raised by Mr. Crippa and accepted in respect of Mr. Masson, the Committee, after having examined the State party's argument and the authors' claim of an attack on their honour through the annulment

of their election and, for the two candidates Mr. Crippa and Mr. Masson, their disqualification for a year, considers that, bearing in mind the circumstances of the case, the elements presented by the applicants are not sufficiently substantiated and hence do not support the admissibility of the complaints under article 2 of the Optional Protocol.

6.13 Concerning the alleged violation of article 25 of the Covenant raised by Mr. Crippa, the Committee, having taken note of the State party's arguments and the authors' assertion that the Constitutional Council's ruling represents a violation of the right to be elected and to organize an election campaign freely, recalls its jurisprudence on this matter under article 25 of the Covenant, namely that the right to vote and to be elected is not an absolute right, and that restrictions may be imposed on it provided they are not discriminatory or unreasonable.³ The Committee considers that the authors have not substantiated the elements of their complaint in respect of the restrictions placed on their right to be elected, which are alleged to be contrary to article 25 of the Covenant, and therefore declares their complaint to be inadmissible under article 2 of the Optional Protocol.

7. The Committee therefore decides:

(a) That the communications are inadmissible under articles 1, 2, 3 and article 5, paragraph 2 (a), of the Optional Protocol;

(b) That this decision shall be communicated to the State party and to the authors.

[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.]

Notes

¹ Communication No. 75/1980, *Dulio Fanali v. Italy*, Views of 31 March 1983, para. 13.

² Communication No. 808/1998 (*Georg Rogl v. Germany*), Decision of 25 October 2000, para. 9.4.

³ Communications No. 500/1992, *J. Debreczeny v. Netherlands*; No. 44/1979, *Alba Pietrarroia on behalf of Rosaria Zapala v. Uruguay*; No. 932/2002, *Gillot v. France*; general comment No. 25 relating to article 25 (fifty-seventh session, 1996).
