

## HUMAN RIGHTS COMMITTEE

### Glaziou v. France

Communication No 452/1991

18 July 1994

CCPR/C/51/D/452/1991

### ADMISSIBILITY

*Submitted by: Jean Glaziou*

*Alleged victim: The author*

*State party: France*

*Date of communication: 16 November 1990*

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

Meeting on 18 July 1994,

Adopts the following:

#### **Decision on admissibility**

1. The author of the communication is Jean Glaziou, a French citizen born in 1951, currently detained at the prison of Muret, France. He claims to be a victim of violations by France of articles 9, 10, 14 and 17 of the International Covenant on Civil and Political Rights.

#### **The facts as submitted by the author and the State party**

2.1 On 13 November 1987, the author was arrested and detained in Hasselt, Belgium, on charges of theft, fraud, embezzlement, forgery, fraud of cheques, etc. On 19 July 1988, he was tried in the Criminal Court of Antwerp, Belgium; he was found guilty as charged and sentenced to three years' imprisonment.

2.2 At the same time, in January 1988, the public prosecutor's office at the High Court (Tribunal de

grande instance) of Coutances, France, was seized of allegations of similar offences committed by the author in France. On 9 May 1988, the examining magistrate (juge d'instruction) of the High Court of Coutances issued a warrant for the author's arrest; the author was indicted inter alia, for theft, aggravated theft, embezzlement, fraud, forgery and use of forgeries, and several counts of check fraud.

2.3 The district prosecutor forwarded the arrest warrant, together with a request to the Belgian authorities to extradite the author, to the French Ministry of Justice. On 13 June 1988, the latter transmitted the request to the French Ministry for Foreign Affairs, in accordance with article 4 of the French-Belgian Extradition Treaty of 15 August 1874<sup>a</sup>. By a note verbale of 4 April 1989, the Belgian Ministry for Foreign Affairs informed the French Embassy in Brussels that the Government of Belgium was willing to extradite Jean Glaziou to France, but not until he had served part of his prison term in Belgium.

2.4 On 29 May 1989, the author was extradited to France; on 31 May 1989, he was brought before the examining magistrate of Coutances, who ordered his committal. On 27 December 1989, the French Ministry of Justice requested the Belgian authorities to grant an extension to the indictment on which the extradition request had been based, on the ground that new facts had been discovered which resulted in new charges against the author, for which extradition had not been granted.

2.5 The examining magistrate of Coutances issued an extended warrant of arrest on 26 September 1989, which was transmitted through diplomatic channels to the Belgian authorities. On 22 January 1990, the Belgian Ministry for Foreign Affairs informed the French Embassy that the extension of the extradition was granted for the charges appearing on the warrant of 26 September 1989, with the exception of two offences. On 25 May 1990, the examining magistrate referred the author's case to the Criminal Court of Coutances (Tribunal correctionnel), which, on 10 July 1990, sentenced the author to seven years' imprisonment.

2.6 During the period of his provisional detention,<sup>b</sup> the author several times appealed against the examining magistrate's orders concerning the prolongation of his detention; these appeals were rejected by the Court of Appeal of Caen. On 17 October 1990, the Court of Appeal of Caen dismissed the author's appeal against conviction and sentence. An appeal against this decision was rejected by the Criminal Chamber of the Court of Cassation (Chambre criminelle de la Cour de cassation) on 20 August 1991.

2.7 On 2 December 1991, the author filed a complaint with the European Commission of Human Rights based on the following grounds: that the international warrant of arrest was null and void; that his extradition was illegal; that all hearings in his case were null and void; that he was tried twice for the same offences; that his defense rights had been violated; that he was not tried within reasonable time; that he was arbitrarily detained; and that he had been subjected to arbitrary and unlawful interference with his private/family life, and correspondence. In July 1992, the author's case was registered before the Commission as case No. 20313/92. On 3 December 1992, the Commission declared the case inadmissible; it found the author's complaints manifestly ill-founded.

### The complaint

3.1 The author alleges procedural irregularities in connection with his extradition to France. He points to the absence of certain documents, which, according to him, are indispensable in the event of extradition<sup>c</sup>. He submits that in extradition cases, only officers of INTERPOL are entitled to hand over an accused to the requesting State, and that in his case no INTERPOL officer was present. He further submits that the extradition request was based upon a text which does not authorize the extradition of persons,<sup>d</sup> and not on the French-Belgian Extradition Treaty. He contends that the request for his extradition was not examined by the competent authorities, but was simply an arrangement between the French and Belgian prosecutors. The same illegal procedure was allegedly followed in the request for extension of the indictment. According to the author, the French-Belgian Extradition Treaty of August 1874 provides that in such cases, permission of the accused is required. He concludes that, because of the irregularities in the extradition procedure, all judicial proceedings against him were null and void, and that he was arbitrarily detained.

3.2 The author points out that he was arrested and detained on 13 November 1987 and that the preliminary investigations in France were opened in early January 1988, but that it took the examining magistrate another two years and four months, that is, until 25 May 1990, to complete the enquiry. He submits that the delay in the preliminary investigations in his case is unreasonable, in particular because he was kept detained. According to the author, there were no reasons to keep him detained; moreover, the period of incarceration is said to be disproportionate to the offences committed, "since he did not use violence, and it only prejudiced those who could financially afford it".

3.3 The author complains that prior to his extradition, he was already found guilty by the prosecutor and the examining magistrate of Coutances, and that the preliminary investigations in his case were merely a formality. He complains that the examining magistrate did not check his alibi and refused to hear witnesses on his behalf. He claims that he was forced to confess guilt and that all magistrates dealing with his case were biased. In this context, he submits that the judges of the Court of Cassation took advantage of the fact that his lawyer was on holiday to rule on his appeal. As to his defense, he claims that his legal aid lawyers were put under considerable pressure by the courts, and that on two occasions his lawyers were not even notified that a hearing was to be held. Furthermore, he submits that the offences he allegedly committed in Switzerland, Belgium and France are "concomitant, connected and inseparable"; since he had already been convicted in Belgium for the offences mentioned in the warrant, the French authorities, by prosecuting him again, violated the principle of non bis in idem.

3.4 The author complains about inhuman treatment; in this context, he submits that his correspondence is intercepted (for example, by the substitute prosecutor of Caen and by an official of the Ministry of Justice). He further complains that his friends and relatives have cut off all contact with him because of certain forms of persecution to which they allegedly have been subjected. He finally alleges that he was hit by warders of the prison at Fresnes, without giving any further details.

3.5 The above is said to amount to violations by France of articles 9, 10, 14 and 17 of the Covenant.

#### The State party's information and observations

4.1 By submission of 14 January 1993, the State party points out that, in so far as the author's

complaints about the extradition procedure are directed against Belgium, the communication is inadmissible. It is submitted that, in so far as these claims concern France, they are identical to the claims which were dismissed by the Court of Appeal of Caen on 17 October 1990. The Court found itself precluded from considering these claims under article 385 of the Code of Criminal Procedure, which provides that a defense on procedural grounds (That is, challenges related to the indictment or to a previous procedure) should be presented in court prior to any defense on substantive issues. In the State party's opinion, the incorrect use of a domestic remedy should be equated with a failure to resort to such a remedy. This part of the communication is therefore said to be inadmissible under article 5, paragraph 2 (b), of the Optional Protocol.

4.2 As to the author's complaint that he was punished, in violation of the principle of non bis in idem, for the same offences as those for which he had already been convicted in Belgium, the State party, on the one hand, submits that this claim is inadmissible *ratione materiae* within the meaning of article 3 of the Optional Protocol. It argues that this part of the communication is incompatible with article 14, paragraph 7, of the Covenant, since this provision only applies to judicial decisions of a single State and not of different States. Reference is made to communication No. 204/1986,<sup>e</sup> where the Committee held that article 14, paragraph 7, prohibits double jeopardy only with regard to an offence adjudicated in a given State. On the other hand, the State party affirms that article 392 of the French Code of Criminal Procedure provides that [in certain cases] no prosecution will take place when the accused shows that he has been finally tried in a foreign country and, in case of conviction, that he has served his sentence or that he has been pardoned. The State party submits that, accordingly, the French courts did address this particular claim and found that none of the facts covered by the indictment had been examined by the Belgium courts.

4.3 As to the author's claim of inhuman treatment because of alleged interception of his correspondence, the State party submits that this argument is incompatible *ratione materiae* with the provisions of article 10 of the Covenant. Furthermore, the issue of alleged interference with his correspondence was raised by the author during the judicial proceedings against him. The claim was rejected by the judges and the author was advised to initiate civil proceedings. The State party points out that the author has failed to do so, and that this part of the communication is therefore also inadmissible because of non-exhaustion of domestic remedies.

4.4 With regard to the author's complaint about the delay in the judicial proceedings against him, the State party submits that, taking into account the fact that when the preliminary enquiry was opened in France, the author was absent and could therefore not be interrogated by the examining magistrate, and that three jurisdictions were involved in the matter, the criminal proceedings cannot be qualified as unreasonably prolonged. Furthermore, the State party points out that the author was tried on 10 July 1990, that his appeal was heard 3 months later, on 17 October 1990 and that his appeal in cassation was heard on 20 August 1991, that is to say, 10 months later. As to the length of the author's provisional detention, it is submitted that the judicial authorities rejected the author's applications for release because there was a danger that he would abscond and because of his previous criminal record. Furthermore, the period of provisional detention was set off against his sentence. The State party concludes that the above-mentioned claims are an abuse of the right of submission (*manifestement abusif*), and should be declared inadmissible under article 3 of the Optional Protocol.

5. By submission of 3 March 1993, the author maintains that his extradition was unlawful; he complains that the Court of Appeal and Court of Cassation refused to pronounce themselves on his extradition, and that no documents concerning his extradition have ever been produced.

6. In a further submission, dated 18 October 1993, the State party submits that the communication is inadmissible under article 5, paragraph 2 (a), of the Optional Protocol, as the same matter was already examined and declared inadmissible by the European Commission of Human Rights. It recalls that upon ratifying the Optional Protocol, France entered a reservation in respect of article 5, paragraph 2 (a), to the effect that: "[T]he Human Rights Committee shall not have competence to consider a communication from an individual if the same matter is being or has already been considered under another procedure of international investigation or settlement" ("La France fait une réserve à l'alinéa a) du paragraphe 2 de l'article 5 en précisant que le Comité des droits de l'homme ne sera pas compétent pour examiner une communication émanant d'un particulier si la même question est en cours d'examen ou a déjà été examinée par une autre instance internationale d'enquête ou de règlement"). The State party notes that the claims raised by the author before the European Commission are in substance the same as those placed by him before the Human Rights Committee, and that the provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms invoked by him are identical to those of the International Covenant on Civil and Political Rights.

#### Issues and proceedings before the Committee

7.1 Before considering any claims contained in a communication, the Human Rights Committee must, in accordance with rule 87 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

7.2 The Committee has taken note of the State party's argument relating to the applicability of article 5, paragraph 2 (a), of the Optional Protocol. It notes that the author's claim that he was hit by prison warders was not before the European Commission. It considers, however, that the author has failed to substantiate this allegation, for purposes of admissibility. As to the author's remaining allegations, the Committee notes that the author's complaint before the European Commission was based on the same events and facts as the communication that was submitted under the Optional Protocol to the Covenant, and that it raised substantially the same issues; accordingly, the Committee is seized of the "same matter" as the European Commission of Human Rights was, and is, in light of the reservation of France to article 5, paragraph 2 (a), of the Optional Protocol, precluded from considering the author's communication. Finally, as to the author's claim that the French authorities continue to interfere with his correspondence, the Committee notes that the author has failed to exhaust available domestic remedies.

8. The Human Rights Committee therefore decides:

(a) That the communication is inadmissible;

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

[Adopted in English, French and Spanish, the English text being the original version.]

#### Notes

- a/ This treaty provides that a request for extradition should be made through diplomatic channels.
- b/ From 31 May 1989, the date of the committal order, to 10 July 1990, the date of conviction.
- c/ The complaint about the lack of certain documents is, however, primarily directed against Belgium. According to the author, the required documents in the case are: a (well-argued) advice of the indictment division of the Belgian court that pronounced itself on his extradition, the ministerial order for his extradition and the Royal Decree on his extradition.
- d/ The warrant for the author's arrest mentions the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959.
- e/ Official Records of the General Assembly, Forty-third Session, Supplement No. 40 (A/43/40), annex VIII.A, communication No. 204/1986 (A. P. v. Italy, declared inadmissible on 2 November 1987, at the Committee's thirty-first session.