

## HUMAN RIGHTS COMMITTEE

### Valentijn v. France

Communication No. 584/1994\*\*

22 July 1996

CCPR/C/57/D/584/1994\*

### ADMISSIBILITY

*Submitted by: Antonius Valentijn*

*Victim: The author*

*State party: France*

*Date of communication: 11 October 1993 (initial submission)*

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

Meeting on 22 July 1996,

Adopts the following:

### **Decision on admissibility**

1. The author of the communication is Antonius Valentijn, a citizen of the Netherlands born in 1940, currently detained at the penitentiary of Bapaume in France. He claims to be a victim of violations by France of articles 2, 3, 9, paragraph 1, 14, paragraphs 1, 2, and 3, and 15, paragraph 1, of the International Covenant on Civil and Political Rights.

#### Facts as submitted by the author

2.1 On 15 August 1986, the author and two other persons were arrested at sea, after officers of the French Customs Office had detected 639 kilograms of drugs on their sailboat; at the moment of the inspection and arrest, they were sailing in the English Channel.

2.2 On 19 August 1986, the author was charged with violations of the French legislation on

illicit drugs by the examining magistrate of the Tribunal of Boulogne-sur-Mer and placed under preventive detention. Charges against the author were based on reports (procès-verbaux) drawn up by French customs\*\* officers within the meaning of article 336, paragraph 1, of the Customs Code (Code des Douanes). The provision stipulates that customs reports which have been prepared by two customs officers or two officers of any other administrative unit are deemed to constitute evidence against an individual, unless he/she files a claim that the recordings were later falsified (inscription de faux de constatations matérielles).

2.3 During the preliminary hearing, the author and his co-accused denied that the inspection of the boat had taken place within French territorial waters and contended that they had been arrested on the high seas, in international waters. A maritime expert who was commissioned by the author to investigate the matter concluded in his report that "it was not possible to prove that the inspection of the sailboat took place in French waters, and that all indicators supported the opposite conclusion".

2.4 On 24 October 1986, the examining magistrate appointed another expert who, in his report dated 12 February 1987, confirmed that the inspection had indeed taken place within French territorial waters. On 30 April 1987, the examining magistrate issued an order referring the case to the tribunal (Tribunal de Grande Instance) of Boulogne-sur-Mer.

2.5 The author's case and that of his co-defendants was heard on 17 June 1987; by judgement of the same day, the Tribunal of Boulogne-sur-Mer decided to suspend the proceedings temporarily, on the ground that the author had indicated, during the hearing, that he wanted to institute proceedings contesting the validity of the reports prepared by the customs officers on or immediately after 15 August 1986. The Tribunal ordered the continued detention of the three accused, because it considered that there was a risk that they would escape, that it was necessary to protect public order and to prevent the recurrence of the offence. It then decided to take up the case again in a hearing scheduled for 16 December 1987.

#### Proceedings in respect of the author's criminal case

2.6 At hearings held on 16 December 1987, 16 March, 22 June, 17 August, 12 October 1988 and 11 January 1989, the Court, upon examining the case, decided once again to suspend the proceedings temporarily, as the proceedings concerning the author's claim of falsification of the customs reports were still pending. After each hearing, a date was set for the next hearing. By decisions of the same dates, the Court ordered the continued detention of the author and his co-accused. Appeals against these decisions were dismissed by the Court of Appeal of Douai on 9 September and 29 December 1987 and 5 April and 25 August 1988. The Court of Cassation dismissed further appeals on 5 July and 7 December 1988 and 30 January 1989.

2.7 On 1 March 1989, the author was found guilty of infraction of the French legislation on illicit drugs and of smuggling prohibited drugs, offences covered by the Code on Public Health and the French Customs Code, respectively. He was sentenced to 10 years'

imprisonment and the payment of a customs penalty. On 29 June 1989, the Court of Appeal of Douai sentenced the author to 12 years' imprisonment. It confirmed the customs penalty aspects of the judgement of first instance. On 5 October 1990, the Court of Appeal rejected the author's request for release. His appeal against the decision of 29 June 1989 was dismissed by the Court of Cassation on 17 December 1990.

#### Proceedings in respect of the forgery claim

2.8 On 19 June 1987, the author filed his arguments in respect of the forgery proceedings. Preliminary investigations into the matter were initiated on 26 June 1987, and the author joined the proceedings as a civil party on 7 October 1987. On 15 January 1988, the examining magistrate appointed an expert who confirmed, in a report dated 29 February 1988, that the inspection and seizure of the boat had taken place in French territorial waters.

2.9 By order of 7 March 1988, the examining magistrate rejected the author's request for a counter-expertise, considering that the request amounted to dilatory tactics. An appeal against the latter decision was declared inadmissible by the Indictment Chamber of the Court of Appeal on 16 March 1988.

2.10 On 31 March 1988, the examining magistrate issued an order dismissing the forgery proceedings (Ordonnance de non-lieu dans la procédure d'inscription de faux et usage de faux en écritures publiques). The Court of Appeal of Douai confirmed the decision on 26 April 1988; it further dismissed the author's request for supplementary information (supplément d'information) or an (other) expertise, indicating that in the light of the expertise submitted in the criminal proceedings against the author, there was insufficient evidence to sustain the falsification claim. The author's appeal against the latter decision was declared inadmissible by the Court of Cassation on 28 November 1988. It concluded that the Indictment Chamber of the Court of Appeal, having examined the facts, had properly assessed all the elements of the file and had decided in the light of all the available evidence.

2.11 On 8 November 1989, the European Commission on Human Rights declared inadmissible as "manifestly ill-founded" the author's complaint relating to the length of his provisional detention (défaut manifeste de fondement). On 10 June 1991, the author filed another complaint with the European Commission, which was registered as case No. 18563/91. In this new complaint, the author argued: (a) that he had been unlawfully arrested; (b) that he had not been tried within a reasonable period of time; (c) that his right to be presumed innocent until proven guilty according to law had been violated (argument related to the customs reports); and (d) that his right to obtain the attendance and examination of the maritime expert as a witness on his behalf had been violated.

2.12 On 5 May 1993, the European Commission on Human Rights declared case No. 18563/91 inadmissible, invoking different grounds. With respect to the claim of unlawful arrest, it noted that the final decision in the relevant judicial proceedings in respect of this claim, i.e., the forgery proceedings, had been delivered more than six months before the author had filed his case with the Commission. That part of the case was declared inadmissible ratione temporis. The claims about undue prolongation of the proceedings and

the violation of the presumption of innocence were dismissed as unsubstantiated. Concerning the alleged denial of the right to have a witness examined on the author's behalf, the Commission concluded that, as the author had failed to raise this issue before the Court of Cassation, domestic remedies had not been exhausted.

2.13 By letter dated 3 January 1994, the author notes that he has filed two further complaints with the European Commission on Human Rights, and that these complaints have been registered<sup>1</sup>. He points out that the issue of his allegedly unlawful arrest cannot be considered by the European Commission, because of the six months rule. He reaffirms that he was arrested in international waters, and that the customs officers falsified all documents, including the logbook and the radio journal. He reiterates that his trial was unfair, as he was not allowed to have an expert witness called on his behalf.

2.14 On 14 August 1994, the author noted that although the maximum prison term for the offences he was found guilty of, and initially sentenced to, was 10 years' imprisonment, the Court of Appeal of Douai sentenced him to 12 years. He indicates that, in 1993, a new Criminal Code entered into force in France, under which the maximum prison term for each of these offences is also 10 years<sup>2</sup>. In the same context, the author notes that, on 6 July 1994, the Court of Appeal of Douai rejected his complaint about a violation of article 15 of the Covenant and of article 7 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (which corresponds to article 15). He notes that, on the basis of previous experience, an appeal to the Court of Cassation would be futile and ineffective.

### The complaint

3. The facts as outlined above are said to amount to violations of articles 2, 3, 9, paragraph 1, 14, paragraphs 1, 2, 3 (c) and (e); and 15, paragraph 1, of the Covenant.

### State party's information and observations in respect of the admissibility of the communication

4.1 In its submission under rule 91 of the rules of procedure, the State party, after providing a detailed account of the factual situation as well as a chronology of the judicial proceedings in the case, contends that the communication is inadmissible on the basis of articles 3 and 5, paragraphs 2 (a) and (b), of the Optional Protocol.

4.2 With respect to the alleged violation of article 9, paragraph 1, on account of the presumed unlawful apprehension of Mr. Valentijn outside French territorial waters, the State party notes that the issue of whether the author's arrest took place inside or outside territorial waters is a question of fact, which was evaluated by the local courts in public hearings, and on the basis of two reports prepared by court-appointed experts as well as the arguments and counter-expertise produced by Mr. Valentijn. In this respect, accordingly, the State party concludes that the Committee has no competence ratione materiae to challenge evidence which was assessed in a sovereign manner by the domestic courts, in strict accordance with applicable procedure(s).

4.3 As to the alleged violation of article 14, paragraph 1, the State party first observes that the author has failed to substantiate this allegation. Subsidiarily, it emphasizes that all the allegations pertaining to article 14 had been examined by the European Commission on Human Rights in the first complaint submitted by the author to that body. This complaint, alleging a violation of article 6, paragraph 1, of the European Convention for the Protection of Human Rights and Fundamental Freedoms (the equivalent of article 14 of the Covenant), was declared inadmissible on 8 November 1988 on the basis of non-exhaustion of domestic remedies. Decision of 8 November 1988 on case No. 14033/88 (copy kept in the case file). The State party recalls its reservation to article 5, paragraph 2 (a), of the Optional Protocol, according to which "[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". This reservation is said to apply to the author's claim under article 14, paragraph 1, before the Committee, thereby excluding the Committee's competence.

4.4 Similar considerations apply, in the State party's opinion, to the author's claim under article 14, paragraph 2. Indeed, in his case No. 18563/91 placed before the European Commission on Human Rights, Mr. Valentijn had invoked article 6, paragraph 2, of the European Convention (the equivalent of article 14, paragraph 2, of the Covenant), on the basis that article 336 (1) of the French Customs Code was incompatible with the presumption of innocence. This complaint was declared inadmissible as manifestly ill-founded by the European Commission on 5 May 1993. Accordingly, this allegation is equally covered by the French reservation to article 5, paragraph 2 (a), thereby excluding the Committee's competence.

4.5 As to the alleged violation of article 14, paragraphs 3 (c) and (e), the State party notes that claims of undue delays in the proceedings and of failure to hear a defence witness had been raised by the author in his case No. 18563/91 placed before the European Commission. On 5 May 1993, the European Commission declared the claim related to the excessive length of the proceedings inadmissible as manifestly ill-founded, and the claim pertaining to the alleged failure to hear a defence witness inadmissible for non-exhaustion of domestic remedies. Accordingly, the French reservation to article 5, paragraph 2 (a), is said to apply.

4.6 Finally, with respect to the claim under article 15, the State party argues that the author has failed to exhaust available domestic remedies. It notes that while the confirmation and aggravation of the author's initial sentence by the Court of Appeal of Douai (29 June 1989) was appealed to the Court of Cassation, it was not argued before the Court of Cassation that the aggravation of the sentence constituted a retroactive imposition of a heavier sentence. The State party contends that it was incumbent upon the author to raise this issue before the Court of Cassation, all the more so considering that the principles enshrined in article 15 of the Covenant have constitutional rank in the French legal system. That the author failed to place this grievance before the domestic courts renders it inadmissible on the basis of non-exhaustion of domestic remedies.

Issues and proceedings before the Committee

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

5.2 With regard to the author's claims under article 14, paragraphs 1, 2 and 3 (c) and (e), of the Covenant, the Committee notes that the author's successive complaints submitted to the European Commission on Human Rights were based on the same events and facts as the complaint he submitted under the Optional Protocol. It recalls that in respect of article 5, paragraph 2 (a), of the Optional Protocol, France entered the following reservation upon ratification: "[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 examined under another procedure of international investigation or settlement" ("Le Comité 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"). In the instant case, the Committee is seized of the "same matter" as the European Commission was. As to whether the European Commission "examined" the same matter, the Committee observes that most of the author's claims under article 14, with the exception of that under article 14, paragraph 3 (e), were declared inadmissible as manifestly ill-founded. In that respect, the Committee concludes that the European Commission "examined" the author's allegations, and that the French reservation to article 5, paragraph 2 (a), of the Optional Protocol, applies. In respect of the author's claim under article 14, paragraph 3 (e), which was declared inadmissible on the basis of non-exhaustion of domestic remedies by the European Commission, the Committee notes that since the author failed to invoke, before the Court of Cassation, any issue relating to this provision of the Covenant, the Committee would also have to conclude that the requirements of article 5, paragraph 2 (b), of the Optional Protocol, have not been met.

5.3 Concerning the claim under article 9, paragraph 1, the Committee notes that the question of whether the author was arrested within or outside French territorial waters was carefully examined by the tribunals seized of the case, which evaluated it on the basis of two expert reports requested by the tribunals, as well as the expertise commissioned by the author himself. The claim, accordingly, relates to the evaluation of facts and evidence in the case, as has been observed by the State party itself. The Committee recalls that it is generally for domestic courts to assess facts and evidence in a particular case, and for appellate courts of States parties to review the assessment of such evidence by the lower courts. It is not for the Committee to question the evaluation of the evidence by the domestic courts unless this evaluation was manifestly arbitrary or amounted to a denial of justice. There is no evidence in the material before the Committee that the procedure before the courts suffered from such defects. Accordingly, the author has failed to substantiate, for purposes of admissibility, his allegation, and this claim is inadmissible under article 2 of the Optional Protocol.

5.4 In respect of the author's claim under article 15, which had not been submitted to the European Commission on Human Rights, the Committee notes that the author was found guilty of a number of offences under the French Code of Public Health as well as under the Customs Code. Before the Court of Cassation, in particular, the author did not, however, invoke the essence of the right protected by article 15 of the Covenant; accordingly, the

highest domestic tribunal never was confronted with the author's argument that he should have been given a lighter sentence after the amendment of the Criminal Code in 1993. In this respect, therefore, the author did not exhaust available domestic remedies within the meaning of article 5, paragraph 2 (b), of the Optional Protocol.

6. The Human Rights Committee therefore decides:

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

(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. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

#### Footnotes

\*/ Made public by decision of the Human Rights Committee.

\*\*/ Pursuant to rule 85 of the Committee's rules of procedure, Committee member Christine Chanet did not participate in the examination of the communication.

1/ The author does not specify the contents of these two new cases.

2/ The author fails to understand that the 12 years' prison sentence is a cumulative one. Under the new Criminal Code, the offences of which the author was convicted are:

(a) unauthorized transport of illicit drugs (sentence: up to 10 years' imprisonment and a maximum 50 million French francs' fine), and

(b) unauthorized import of illicit drugs (maximum sentence: 10 years' imprisonment and a maximum 50 million French francs' fine).