HUMAN RIGHTS COMMITTEE

Maille v. France

Communication No. 689/1996*

10 July 2000

CCPR/C/69/D/689/1996

VIEWS

Submitted by: Mr. Richard Maille (represented by François Roux, legal counsel)

Alleged victim: The author

State party: France

Date of the communication: 17 November 1995

Date of admissibility decision: 11 July 1997

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

Meeting on 10 July 2000

Having concluded its consideration of communication No. 689/1996 submitted to the Human Rights Committee by Mr. Richard Maille under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication, and the State party,

Adopts the following:

Views under article 5, paragraph 4, of the Optional Protocol**

1. The author of the communication is Richard Maille, a French citizen born in December 1966 and currently residing in Millau, France. He claims to be a victim of violations by France of articles 18,19 and 26, juncto article 8, of the International Covenant on Civil and Political Rights. He is

represented by counsel, François Roux.

The facts as submitted by the author

2.1 From June 1986 to July 1987 the author, a recognized conscientious objector, performed civilian national service duties. On 15 July 1987, after approximately one year of carrying out those duties, he left his duty station, invoking the allegedly discriminatory character of article 116, paragraph 6, of the National Service Code (Code du service national), pursuant to which conscientious objectors had been required to carry out civilian national service duties for a period of two years, whereas military service for conscripts had lasted one year.

2.2. As a result of his action, Mr. Maille was charged with insubordination in peacetime, pursuant to article 397, paragraph 1, of the Code of Military Justice. By a judgement of 27 January 1992, the Criminal Court (Tribunal Correctionnel) of Montpellier found him guilty as charged and sentenced him to 15 days' imprisonment (suspended). As the author had not completed his civilian service duties, he received an order dated 30 July 1992 to resume those duties; Mr. Maille decided to ignore the order. Accordingly, the Criminal Court of Montpellier resumed proceedings against him and, on 21 April 1994, found him guilty as charged and decided to rescind the decision recognizing him as a conscientious objector. On 23 January 1995, the Court of Appeal of Montpellier confirmed the judgement.

2.3. The author indicates that he did not further appeal to the Court of Cassation because, in the circumstances of his case and given the Court of Cassation's established jurisprudence unfavourable to him such an appeal would be futile. In this connection, he refers to several judgements handed down on 14 December 1994 by the Court of Cassation, which concluded that article 116 (6) was not discriminatory and did not violate articles 9,10 and 14 of the European Convention on Human Rights.[1] The author concludes that as no further effective remedy is available to him, he should be deemed to have complied with the requirements of article 5, paragraph 2(b), of the Optional Protocol.

The complaint

3.1. According to the author, both article 116 (6) of the National Service Code (in its version of July 1983 prescribing a period of 24 months of civilian service for conscientious objectors) and article L.2 of the National Service Code in its version of January 1992 (as amended by Act No. 92-9 of 4 January 1999), which sets the duration of civilian service for conscientious objectors at 20 months, violate articles 18, 19 and 26, juncto article 8, of the Covenant in that they double the duration of service for conscientious objectors in comparison with that for persons performing military service.

3.2. The author acknowledges that in case No. 295/1988, [2] the Committee had held that an extended length of alternative service was neither unreasonable nor punitive, and has found no violation of the Covenant. However, he invokes the individual opinions appended to those views by three members of the Committee, who had concluded that the challenged legislation was not based on reasonable or objective criteria, such as a more severe type of service or the need for special training in order to perform the longer service. The author fully endorses the conclusions of those three members of the Committee.

3.3 The author observes that articles L.116(2) to L.116(4) of the National Service Code provide for a rigorous test of the sincerity of the convictions of a conscientious objector. Each application for recognition as a conscientious objector has to be approved by the Minister for the Armed Forces. If he refuses, an appeal to the Administrative Tribunal is possible under article L.116 (3). In such circumstances, the author argues, it cannot be assumed that the length of civilian service was fixed purely for reasons of administrative convenience, since anyone agreeing to perform civilian service twice (or almost) as long as military service should be deemed to have genuine convictions. Rather, the length of civilian service must be deemed to have a punitive character, which is not based on reasonable or objective criteria.

3.4 In support of his contention, the author invokes a judgement of the Italian Constitutional Court of July 1989, which held that the provision for non-military service lasting eight months longer than military service was incompatible with the Italian Constitution. He further points to a decision adopted by the European Parliament in 1967 which, on the basis of article 9 of the European Convention on Human Rights, suggested that the duration of alternative service should be the same as that for military service. Moreover, the Committee of Ministers of the Council of Europe has declared that alternative service must not have a punitive character and that its duration, in relation to military service, must remain within reasonable limits (Recommendation No. R(87)8 of 9 April 1987). Finally, the author notes that the United Nations Commission on Human Rights declared, in a resolution adopted on 5 March 1987,[3] that conscientious objection to military service should be regarded as a legitimate exercise of the right to freedom of thought, conscience and religion, as recognized by the Covenant.

3.5. In these circumstances, the author submits that requiring him to perform civilian service for a period that is twice as ling as that set for military service constitutes unlawful and prohibited discrimination on the basis of opinion, and that the possibility of imprisonment for refusal to perform civilian service beyond the length of time of military service constitutes a violation of articles 18, paragraph 2, 19, paragraph 1, and 26 of the Covenant.

The State party's observations on admissibility and the author's comments thereon

4.1. The State party contends that the communication is incompatible ratione materiae with the provisions of the Covenant since, on the one hand, the Committee has acknowledged in its decision on communication No. 185/1984 (L.T.K. v. Finland) that "the Covenant does not provide for the right to conscientious objection; neither article 18 nor article 19 of the Covenant, especially taking into account paragraph 3 (c) (ii) of article 8, can be construed as to imply that right" and since, on the other hand, by virtue of article 8, paragraph 3 (c) (ii) of the Covenant, the internal regulation of national service, and therefore of conscientious objector status for those States which recognize it, does not fall within the scope of the Covenant and remains a matter for domestic legislation.

4.2. Subsidiarily, the State party contends that domestic remedies have not been exhausted by the author. In this connection, it submits that the author of the communication has not exhausted the available judicial remedies since he has not appealed the Montpellier Court of Appeal's judgement of 23 January 1995 to the Court of Cassation. The State party further submits that the author has not exhausted all administrative remedies. The argument put forward in this connection is that, by leaving his duty station before having received a reply from the military authorities concerning his

request for a reduction in the length of his service, the author violated the provisions of the National Service Code, thus becoming liable to criminal prosecution, and did not wait for the military authorities to refuse his request and then bring the matter before the Administrative Tribunal.[4]

4.3. Lastly, the State party contends that the author does not qualify as a victim. With regard to articles 18 and 19 of the Covenant, the State party claims that by recognizing conscientious objector status and offering conscripts a choice as to the form of their national service, it allows them to opt freely for the national service appropriate to their beliefs, thus enabling them to exercise their rights under articles 18 and 19 of the Covenant. In this connection, the State party concludes , quoting the decision on communication No. 185/1984 cited above, that as the author was "not prosecuted and sentenced because of his beliefs or opinions as such, but because he refused to perform military service", he cannot therefore claim to be a victim of a violation of articles 18 and 19 of the Covenant.

4.4. With regard to the alleged violation of article 26 of the Covenant, the State party, noting that the author complains of a violation of this article because the length of alternative civilian service is double that of military service,, submits first of all that "the Covenant, while prohibiting discrimination and guaranteeing equal protection of the law to everyone, does not prohibit all differences of treatment", which must be "based on reasonable and objective criteria" (see the Committee's views on communication No. 196/1985, Gueye v. France). The State party argues in this connection that the situation of conscripts performing alternative civilian service differs from that of those performing military service, notably in respect of the heavier constraints of service in the army, and that a longer period of alternative civilian service constitutes a test of the sincerity of conscientious objectors designed to prevent conscripts from claiming conscientious objector status for reasons of comfort, ease and security. The State party quotes the Committee's views on communication No. 295/1988 (Jäärvinen v. Finland), where the Committee held that the 16-month period of alternative service imposed for conscientious objectors - double the eight-month period of military service - was "neither unreasonable nor punitive". The State party therefore concludes that the difference of treatment complained of by the author is based on the principle of equality, which requires different treatment of different situations.

4.5. For all of these reasons, the State party requests the Committee to declare the communication inadmissible.

5.1. Concerning the State party's argument as to the Committee's competence ratione materiae, the author cites the Committee's General Comment No. 22 (48), where it is stated that the right to conscientious objection "can be derived from article 18, inasmuch as the obligation to use lethal force may seriously conflict with the freedom of conscience and the right to manifest one's religion or belief. When this right is recognized by law or practice, there shall be no differentiation among conscientious objectors on the basis of the nature of their particular beliefs; likewise, there shall be no discrimination against conscientious objectors because they have failed to perform military service". According to the author, it is clear from these comments that the Committee is competent to determine whether or not there has been a violation of the right to conscientious objection under article 18 of the Covenant.

5.2. The author claims that the problem posed in his case lies not in a possible infringement of

conscientious objectors' freedom of belief by French legislation, but in the conditions for the exercise of that freedom, since alternative civilian service is twice the length of military service, without this being justified by any provision to protect public order, in violation of article 18, paragraph 3, of the Covenant. The author invokes in this context the Committee's General Comment No. 22 (48), which states that "limitations imposed must be established by law and must not be applied in a manner that would vitiate the rights guaranteed in article 18. (...) Restrictions may not be imposed for discriminatory purposes or applied in a discriminatory manner" and concludes that requiring conscientious objectors to perform alternative civilian service which is twice the length of military service constitutes a discriminatory restriction on the enjoyment of the rights set forth in article 18 of the Covenant.

5.3. As to the question of the exhaustion of domestic remedies, the author states that an appeal to the Court of Cassation against the Court of Appeal's decision of 23 January 1995 would have been futile as it would have had no reasonable chance of success in view of the Court of Cassation's established jurisprudence on the matter. In this connection, the author cites three judgements of the Court of Cassation (judgement of 14 December 1994 in the Paul Nicolas, Marc Venier and Frédéric Foin cases), where the Court held that article 116 (6) of the National Service Code fixing the length of military service and alternative forms of service was not discriminatory. The author therefore concludes that he has exhausted all effective domestic remedies in respect of the proceedings brought against him. With regard to the non-exhaustion of administrative remedies, the author maintains that such remedies were not open to him inasmuch as, not having been notified of any administrative decision, he could not bring the matter before the Administrative Tribunal.

5.4. Concerning the alleged violation of article 26, the author claims that requiring a period of civilian service twice the length of military service constitutes a difference of treatment which is not based on "reasonable and objective criteria" and therefore constitutes discrimination prohibited by the Covenant (communication No. 196/1985 cited above). In support of this conclusion, the author argues that there is no justification for making civilian service twice the length of military service; in fact, unlike in the Järvinen case (communication No. 295/1988 cited above), the longer duration is not justified by any relaxation of the administrative procedures for obtaining conscientious objector status since, under articles L.116(2) and L.116 (4) of the National Service Code, applications for conscientious objector status are subject to approval by the Minister for the Armed Forces following an examination which may result in refusal. Nor is it justified in the general interest or as a test of the seriousness and sincerity of the beliefs of the conscientious objector. Indeed, the mere fact of taking special steps to test the sincerity and seriousness of the beliefs of conscientious objectors in itself constitutes discrimination based on the recognition of a difference of treatment between conscripts. Furthermore, conscientious objectors derive no benefit or privilege from their status - unlike, for example, persons assigned to perform international cooperation services instead of military service, who have the opportunity to work abroad in a professional field corresponding to their university qualifications for 16 months (i.e. four months less than the civilian service for conscientious objectors) and a difference of treatment is not, therefore, justified on that ground.

Issues and proceedings before the Committee

6.1. At its 60th session, the Human Rights Committee considered the admissibility of the

communication.

6.2. Concerning the requirement of exhaustion of available domestic remedies, the Committee took note of the fact that the author had not exhausted all the judicial remedies that were open to him. However, the Committee observed that an appeal by the author to the Court of Cassation against the Court of Appeal's judgement of 23 January 1995 would undoubtedly have been rejected by the Court of Cassation, inasmuch as it had dismissed earlier similar appeals based on the allegedly discriminatory nature of article 116 (6) of the National Service Code. From these legal precedents it might be concluded that an appeal by the author to the Court of Cassation would have had no chance of success. The Committee therefore considered that effective judicial remedies had been exhausted by the author.

6.3. As to the argument of the State party that the author had not exhausted all administrative remedies, the Committee noted that it did not appear from the State party's observations that any administrative decision was taken against the author, and that consequently no administrative appeal was immediately available to him at the time of the interruption of his civilian service. Nevertheless, the Committee noted also that by not waiting for the military authorities to respond to his decision to interrupt his civilian service after one year, and by choosing to leave his post after merely notifying those authorities, the author voluntarily did not avail himself of administrative remedies although, as indicated by the State party, it was open to him to lodge an administrative appeal challenging the applicability of a law as being contrary to the State party's international commitments to protect human rights. Notwithstanding this argument, however, the Committee noted that administrative remedies were no longer available to the author of the communication at this stage of the proceedings. The Committee therefore concluded that it was not prevented by article 5, paragraph 2 (b), of the Optional Protocol from dealing with the communication.

6.4. The Committee took note of the State party's arguments concerning the incompatibility of the communication ratione materiae with the provisions of the Covenant. In this regard, the Committee considered that the matter raised in the communication did not concern a violation of the right to conscientious objection as such. The Committee considered that the author had sufficiently demonstrated, for the purposes of admissibility, that the communication might raise issues under provisions of the Covenant.

7. Accordingly, on 11 July 1997, the Committee decided that the communication was admissible.

The State party's observations on the merits of the communication

8.1. By submission of 29 June 1998, the State party addresses the merits of the communication and at the same time requests the Committee to review its decision declaring the communication admissible.

8.2. The State party recalls that the author left his post the day after he had informed the authorities by letter that he was seeking a reduction in the time of service. He did not await the outcome of his request. The State party argues that he should have and that in case of a negative answer, or the absence of an answer after four months, he could have appealed to the administrative tribunal. In this context, the State party recalls that following the judgement by the Conseil d'Etat in the Nicolo

case (20 October 1989) individuals may contest the applicability of the law for reasons of incompatibility with international human rights obligations. The State party notes that, in its decision on admissibility, the Committee has recognized the existence of this remedy, but concluded that domestic remedies had nevertheless been exhausted because the remedy was no longer available to the author at this stage of the proceedings.

8.3. The State party challenges the Committee's decision in this respect and argues that the availability and effectiveness of a remedy have to be considered at the moment of the occurrence of the alleged violation, and not a posteriori, at the moment the author presents his communication. If not, it would suffice to abstain voluntarily from exhausting domestic remedies in the time and form prescribed by law in order to comply with the requirement of article 5(2)(b), which would make the requirement obsolete.

8.4. With regard to the exhaustion of domestic remedies in the criminal matter against the author, the State party recalls that there would have been no need for criminal proceedings in the author's case, if he had awaited the outcome of his request to the Minister. In this context, the State party emphasizes that the rule of exhaustion of domestic remedies implies that one exhausts all effective remedies, that is those remedies that can effectively redress the alleged violation. In the present case, the author complained about the length of the service for conscientious objectors. The available remedy was to present his claim to the military authorities, and then, if necessary, to appeal to the administrative tribunals. In its decision on admissibility, the Committee recognized that this possibility existed. It has not been shown that this procedure would have been ineffective or would have been unreasonably delayed. Consequently, the State party requests the Committee to review its decision on admissibility and to declare the communication inadmissible for failure to exhaust domestic remedies.

8.5. As to the merits, the State party argues that the author is not a victim of a violation of the Covenant.

8.6. According to the State party, article L.116 of the National Service Code in its version of July 1983 instituted a genuine right to conscientious objection, in the sense that the sincerity of the objections is said to be shown by the request alone, if presented in accordance with the legal requirements (that is, justified by an affirmation of the applicant that he has personal objections to using weapons). No verification of the objections took place. To be admissible, requests had to be presented on the 15th of the month preceding the incorporation into the military service. Thus a request could only be rejected if it was not justified or if it was not presented in time. A right to appeal existed to the administrative tribunal.

8.7. Although the normal length of military service since January 1992 in France was 10 months, some forms of national service lasted 12 months (military service of scientists) and 16 months (civil service of technical assistance). The length of the service for conscientious objectors was 20 months . The State party denies that the length has a punitive or discriminatory character. It is said to be the only way to verify the seriousness of the objections, since the objections are no longer tested by the administration. After having fulfilled their service, conscientious objectors have the same rights as those who have finished civil national service.

8.8. The State party informs the Committee that on 28 October 1997 a law was adopted to reform the national service. Under this law, all young men and women will have to participate between their 16th and 18th birthday in a one day call-up to prepare for defence. Optional voluntary service can be done for a duration of 12 months, renewable up to 60 months. The new law is applicable to men born after 31 December 1978 and women born after 31 December 1982.

8.9. According to the State party, its system of conscientious objection was in accordance with the requirements of articles 18, 19 and 26 of the Covenant, and with the Committee's general comment No. 22. The State party notes that its regime for conscientious objection did not make any difference on the basis of belief, and no process of verification of the reasons forwarded by the applicants occurred, other than in many neighbouring countries. No discrimination existed against conscientious objectors, as their service was a recognised form of the national service, on equal footing with military service or other forms of civil service. In 1997, just under 50% of those performing civil service were doing this on the basis of conscientious objections to military service.

8.10. The State party submits that the author of the present communication has not at all been discriminated on the basis of his choice to perform national service as a conscientious objector. It notes that the author was convicted for not complying with his obligations under the civil service, which he had freely chosen. After leaving his duty station without authorisation, the author was summoned several times to report at work but failed to do so. His conviction was thus not because of his personal beliefs, nor on the basis of his choice for alternative civil service, but on the basis of his refusal to respect the conditions of that type of service. The State party notes that at the time when the author requested to perform alternative military service, he had not indicated any objection to the length of service. In this context, the State party notes that it would have been open to the author to choose another form of unarmed national service, such as one of technical assistance. On this basis, the State party argues that the author has not established that he is a victim of a violation by the State party.

8.11. Subsidiarily, the State party argues that the author's claim is ill-founded. In this context, the State party recalls that according to the Committee's own jurisprudence, not all differences in treatment constitute discrimination, as long as they are based on reasonable and objective criteria. In this context, the State party refers to the Committee's Views in case No. 295/1988 (Jarvinen v. Finland), where the service for conscientious objectors was 16 months and that for other conscripts 8 months, but the Committee found that no violation of the Covenant had occurred because the length of the service ensured that those applying for conscientious objector status would be serious, since no further verification of the objections occurred. The State party submits that the same reasoning should apply to the present case.

8.12. In this context, the State party also notes that the conditions of the alternative civil service were less onerous than that of military service. The conscientious objectors had a wide choice of posts. They could also propose their own employer and could do their service within their professional interest. They also received a higher indemnity than those serving in the armed forces. In this context, the State party rejects counsel's claim that the persons performing international cooperation service received privileged treatment vis à vis conscientious objectors, and submits that those performing international cooperation service did so in often very difficult situations in a foreign country, whereas the conscientious objectors performed their service in France. In the author's case,

he performed his civil service in the Vaucluse, where he was responsible for the maintenance of forest roads, which corresponds with his professional background as an agricultural technician.

8.13. The State party concludes that the length of service for the author of the present communication had no discriminatory character compared with other forms of civil service or military service. The differences that existed in the length of the service were reasonable and reflected objective differences between the types of service. Moreover, the State party submits that in most European countries the time of service for conscientious objectors is longer than military service.

Counsel's comments on the State party's submission

9.1. In his comments of 21 December 1998, counsel argues that article 5(2)(b) of the Covenant does not require that an individual exhaust all imaginable remedies that are not effective or available. In the instant case, the author has been subjected to criminal proceedings for subordination in peace time. Counsel recalls that the requirement of exhaustion of domestic remedies does not apply when the domestic remedy is ineffective and provides no chance of success, or when due to circumstances an existing remedy has become impossible or ineffective. The author awaited the outcome of the effective domestic remedies concerning the criminal proceedings before coming to the Committee. As far as administrative remedies are concerned, the author has never been notified of an administrative decision against which he could have appealed. In the absence of such a decision, exhaustion of administrative remedies is illusory. In this context, counsel recalls that the letter sent by the author to the military authorities was a simple notification, and did not contain any request requiring an answer from the military authorities. Counsel concludes that administrative remedies were not available to the author at the time.

9.2. As to the merits, counsel submits that at issue are the modalities of civil service for conscientious objectors. He submits that the double length of this service was not justified by any reason of public order and refers in this context to paragraph 3 of article 18 of the Covenant which provides that the right to manifest one's religion or beliefs may be subject only to such limitations as are necessary to protect public safety, order, health, or morals or the fundamental rights and freedom of others. He also refers to the Committee's general comment No.22 where the Committee stated that restrictions may not be imposed for discriminatory purposes or applied in a discriminatory manner. He argues that the imposition upon conscientious objectors of civil service of double length as that of the military service constitutes a discriminatory restriction, because the manifestation of a conviction such as the refusal to carry arms, does not in itself affect the public safety, order, health, or morals or the fundamental rights and freedoms of others since the law expressly recognizes the right to conscientious objection.

9.3. Counsel states that, contrary to what the State party has submitted, persons who requested status as a conscientious objector were subject to administrative verification and did not have a choice as to the conditions of service. In this context, counsel refers to the legal requirements that a request had to be submitted before the 15th of the month of incorporation into the military service, and that it had to be justified. Thus, the Minister for the Armed Forces might refuse a request and no automatic right to conscientious objector status existed. According to counsel, it is therefore clear that the reasons given by the conscientious objector were being tested.

9.4. Counsel rejects the State party's argument that the author himself had made an informed choice as to the kind of service he was going to perform. Counsel emphasizes that the author made his choice on the basis of his conviction, not on the basis of the length of service. He had no choice in the modalities of the service. Counsel argues that no reasons of public order exist to justify that the length of civil service for conscientious objectors be twice the length of military service.

9.5. Counsel maintains that the length of service constitutes discrimination on the basis of opinion. Referring to the Committee's Views in communication No. 295/1988 (Järvinen v. Finland), counsel submits that the present case is to be distinguished, since in the earlier case the extra length of service was justified, in the opinion of the majority in the Committee, by the absence of administrative formalities in having the status of conscientious objector recognized.

9.6. As far as other forms of civil service are concerned, especially those doing international cooperation service, counsel rejects the State party's argument that these were often performed in difficult conditions and on the contrary, asserts that this service was often fulfilled in another European country and under pleasant conditions . Those performing the service moreover built up a professional experience. According to counsel, the conscientious objector did not draw any benefit from his service. As regards the State party's argument that the extra length of service is a test for the seriousness of a person's objections, counsel argues that to test the seriousness of conscientious objectors constitutes in itself a flagrant discrimination, since those who applied for another form of civil service were not being subjected to a test of their sincerity. With regard to the advantages mentioned by the State party (such as no obligation to carry a uniform, not being under military discipline), counsel notes that the same advantages were being enjoyed by those performing other kinds of civil service and that these did not exceed 16 months. With regard to the State party's argument that the conscientious objectors received a higher pay than those performing military service, counsel notes that they worked in structures where they were treated as employees and that it was thus normal that they would receive a certain remuneration. He states that the pay was little in comparison with the work done and much less than that received by normal employees. According to counsel, those performing cooperation service were better paid.

Issues and proceedings before the Committee

10.1. The Human Rights Committee has considered the present communication in the light of all the information made available to it by the parties, as provided in article 5, paragraph 1 of the Optional Protocol.

10.2. The Committee has noted the State party's request for a review of the Committee's admissibility decision in the present case. The Committee takes this opportunity to clarify its decision on admissibility and in particular to respond to the State party's concerns. The Committee emphasizes that under article 5(2)(b) of the Optional Protocol an individual, at the material time, has to exhaust available domestic remedies within the time and form as required by domestic legislation. In the instant case, the author was charged with and found guilty of insubordination. The Court of Appeal of Montpellier dismissed his appeal, and a further appeal to the Court of Cassation would not have succeeded, since that Court had recently rejected three cases similar to the author's. In this context, the Committee notes that the State party has not shown how an administrative tribunal could have taken a different position than that of the highest court of the country on the author's argument

that the length of service for conscientious objectors was in breach of the State's international obligations. There is thus no reason to revise the decision on admissibility and the Committee continues with the examination of the communication on its merits.

10.3. The Committee has noted the State party's argument that the author is not a victim of any violation, because he was not convicted for his personal beliefs, but for deserting the service freely chosen by him. The Committee notes, however, that during the proceedings before the courts, the author raised the right to equality of treatment between conscientious objectors and military conscripts as a defence justifying his desertion and that the courts' decisions refer to such claim. It also notes that the author contends that, as a conscientious objector to military service, he had no free choice in the service that he had to perform. The Committee therefore considers that the author qualifies as a victim for purposes of the Optional Protocol.

10.4. The issue before the Committee is whether the specific conditions under which alternative service had to be performed by the author constitute a violation of the Covenant [5]. The Committee observes that under article 8 of the Covenant, States parties may require service of a military character and, in case of conscientious objection, alternative national service, provided that such service is not discriminatory. The author has claimed that the requirement, under French law, of a length of 24 months for national alternative service, rather than 12 months for military service, is discriminatory and violates the principle of equality before the law and equal protection of the law set forth in article 26 of the Covenant. The Committee reiterates its position that article 26 does not prohibit all differences of treatment. Any differentiation, as the Committee has had the opportunity to state repeatedly, must however be based on reasonable and objective criteria. In this context, the Committee recognizes that the law and practice may establish differences between military and national alternative service and that such differences may, in a particular case, justify a longer period of service, provided that the differentiation is based on reasonable and objective criteria, such as the nature of the specific service concerned or the need for a special training in order to accomplish that service. In the present case, however, the reasons forwarded by the State party do not refer to such criteria or refer to criteria in general terms without specific reference to the author's case, and are rather based on the argument that doubling the length of service was the only way to test the sincerity of an individual's convictions. In the Committee's view, such argument does not satisfy the requirement that the difference in treatment involved in the present case was based on reasonable and objective criteria. In the circumstances, the Committee finds that a violation of article 26 occurred, since the author was discriminated against on the basis of his conviction of conscience.

11. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political rights, is of the view that the facts before it disclose a violation of article 26 of the Covenant.

12. The Human Rights Committee notes with satisfaction that the State party has changed the law so that similar violations will no longer occur in the future. In the circumstances of the present case, the Committee considers that the finding of a violation constitutes sufficient remedy for the author.

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* The following members of the Committee participated in the examination of the present

communication: Mr. Nisuke Ando, Lord Colville, Ms. Elizabeth Evatt, Mr. Louis Henkin, Mr. Eckart Klein, Mr. David Kretzmer, Mr. Rajsoomer Lallah, Ms. Cecilia Medina Quiroga, Mr. Martin Scheinin, Mr. Hipólito Solari Yrigoyen, Mr. Roman Wieruszewski, Mr. Maxwell Yalden, and Mr. Abdallah Zakhia. Pursuant to rule 85 of the Committee's rules of procedure, Ms. Christine Chanet did not participate in the examination of the case.

** The text of an individual opinion by Committee members Nisuke Ando, Eckart Klein, David Kretzmer and Abdallah Zakhia is appended to this document.

1/ Judgements of 14 December 1994 in the Foin and Nicolas cases.

2/ Järvinen v. Finland, views adopted on 25 July 1990, paras. 6.4 to 6.6.

3/ E/CN.4/1987/L.73 dated 5 March 1987.

4/ There is no indication that the author actually requested a reduction in service.

5/ See also the Committee's Views in case No. 666/1995, Foin v. France, CCPR/C/67/D/666/1995.

[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.]

Appendix

Individual opinion by Nisuke Ando, Eckart Klein, David Kretzmer and Abdallah Zakhia (dissenting)

We dissent from the Committee's Views for the same reasons we have laid down in our separate dissenting opinion on the Foin case (Communication No. 666/1995).

[Done in English, French and Spanish, the English text being the original version. Subsequently to be translated also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]