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HUMAN RIGHTS COMMITTEE
Eightieth session
15 March-2 April 2004

DECISION

Communication No. 1084/2002

Submitted by:	Lionel Bochaton (represented by counsel Mr. Alain Lestourneaud)
Alleged victim:	The author
State party:	France
Date of communication:	11 April 2002 (initial submission)
Prior decision:	Special Rapporteur's rule 91 decision, transmitted to the State party on 23 May 2002 (not issued in document form)
Date of decision:	1 April 2004

* Made public by decision of the Human Rights Committee.

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Annex

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

Eightieth session

concerning

Communication No. 1084/2002*

Submitted by: Lionel Bochaton (represented by counsel Mr. Alain Lestourneaud)

Alleged victim: The author

State party: France

Date of communication: 11 April 2002 (initial submission)

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

Meeting on 1 April 2004,

Adopts the following:

Decision on admissibility

1. The author of the communication is Mr. Lionel Bochaton, a French citizen residing in Saint-Paul-en-Chablais, France. He claims to be a victim of violations by France of article 14, paragraphs 1, 2 and 3 (c), of the International Covenant on Civil and Political Rights. He is represented by counsel.

* The following members of the Committee participated in the examination of the present communication: Mr. Nisuke Ando, Mr. Alfredo Castillero Hoyos, Mr. Franco Depasquale, Mr. Maurice Glèlè Ahanhanzo, Mr. Walter Kälin, Mr. Ahmed Tawfik Khalil, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Martin Scheinin, Mr. Ivan Shearer, Mr. Hipólito Solari Yrigoyen, Mr. Roman Wieruszewski and Mr. Maxwell Yalden.

Under rule 85 of the Committee's rules of procedure, Ms. Christine Chanet did not participate in the examination of the present communication.

The facts as submitted by the author

2.1 On 28 November 1996, following an investigation by the gendarmerie, the author was charged with indecent exposure by the examining magistrate of the Thonon-les-Bains regional court.

2.2 By court order of 11 June 1997, the examining magistrate referred the author's case to the criminal court on the grounds that "the investigation had brought to light sufficient evidence to show that, during the summer of 1996 and up to 21 September 1996, Lionel Bochaton had, by walking around naked in a place open to public view, engaged in acts of indecent exposure in Vacheresse".

2.3 By order issued on 1 July 1997 by the public prosecutor, the author was indicted on these charges before the regional criminal court in Thonon-les-Bains.

2.4 By judgement dated 17 September 1997, the court acquitted the author of the offences with which he had been charged for lack of evidence.

2.5 On 24 September 1997 the public prosecutor appealed this judgement.

2.6 By decision of 30 June 1999, the Chambéry Court of Appeal struck down the judgement and sentenced the author to three months' imprisonment (suspended) for indecent exposure and to five years' deprivation of civil and family rights.

2.7 On 1 July 1999 the author filed an application for review of this decision in the Court of Cassation.

2.8 In a judgement of 13 September 2000, the Criminal Division of the Court of Cassation rejected the appeal.

The complaint

3.1 The author claims he is not guilty of the offences with which he is charged, namely, acts of indecent exposure.

3.2 The author's complaint concerns the criminal proceedings which resulted in his conviction and, in this regard, he alleges the following:

> The imprecision of the charges: the indictment served by the prosecution in the Thonon-les-Bains regional court failed to cite specific events or dates, as shown by the vagueness and lack of detail in expressions such as "during the summer of 1996 and up to 21 September 1996" and "repeatedly";
>
> Disregard of the principle of the presumption of innocence: the vagueness of the charges meant that the author himself was obliged to establish the dates of the offences of which he was accused;
>
> Absence of any legal grounds for the conviction: the author considers that the domestic courts found him guilty of indecent exposure without providing any evidence thereof;

Violation of the right to a defence and to a fair trial: the indictment delivered in the Chambéry Court of Appeal made no mention of article 131-26 of the Criminal Code, which provides for a further penalty of deprivation of civil and family rights, even though that penalty was imposed by the court;

The undue length of the proceedings: the appeal stage lasted 1 year, 9 months and 6 days, which the author considers excessive, inasmuch as the case was tried in 1 month and 11 days (hearing on 19 May 1999 and decision on 30 June 1999).

3.3 In conclusion, the author claims a violation of article 14, paragraphs 1, 2 and 3 (c), of the International Covenant on Civil and Political Rights.

3.4 The author states that all domestic remedies have been exhausted and indicates that the matter has not been submitted to any other procedure of international investigation or settlement.

State party's observations on admissibility

4.1 In its observations of 14 August 2002, the State party challenges the admissibility of the communication.

4.2 In respect of the allegation of unduly lengthy proceedings, the State party maintains that the author has not exhausted all domestic remedies.

4.3 In the first place, according to the State party, the author has not availed himself of the remedy provided under article L 781-1 of the Judicial Code, which stipulates: "The State is required to make good any damage caused by the improper administration of justice. Such liability is occurred only in the event of gross negligence or a denial of justice." Proceedings brought by private individuals against the State under this article fall within the jurisdiction of the ordinary courts of justice. The State party points out that, in a decision dated 7 November 2000 in cases Nos. 44952/98 and 44953/98, submitted by Ms. Van Der Kar and Ms. Lissaur Van West, the European Court of Human Rights acknowledged the admissibility of an appeal based on article L 781-1 of the Judicial Code, thereby accepting "the French Government's contention that it is now well established in domestic case law that an appeal based on article L 781-1 of the Judicial Code provides a remedy for an alleged violation when domestic procedures have been exhausted". According to the State party, the Court recognized that, in the wake of the decision handed down by the Paris Court of Appeal on 20 January 1999 and subsequent judgements by other courts, this remedy could be effectively used to contest the length of both civil proceedings (cf. the rulings handed down by the Paris regional court on 9 June and 22 September 1999 in *Quillichini and Legrix de la Salle*) and criminal proceedings (cf. the judgements handed down by the Lyon Court of Appeal, the *Association Défense Libre* decision of 27 October 1999, and by the Aix-en-Provence Court of Appeal, the *Lagarde* decision of 14 June 1999). In the case at hand, the European Court had before it a complaint concerning unduly lengthy proceedings that was submitted pursuant to the provisions of article 6, paragraph 1, of the European Convention on Human Rights, the wording of which is similar to that of article 14 of the Covenant. Mutatis mutandis, the State party is of the view that this case law can be equally applied by the Human Rights Committee. The State party points out that, in the present case, the author submitted his communication to the Committee on 11 April 2002, i.e. after the Paris Court of Appeal judgement and the other French

rulings under article L 781-1 of the Judicial Code relating to the length of proceedings. The State party therefore considers that the author had every opportunity to learn about the existence and effectiveness of that remedy.

4.4 Secondly, the State party argues that the author's statement of claim to the Court of Cassation, contained no allegation of unduly prolonged proceedings. The State party recalls that, according to the jurisprudence of the Human Rights Committee, the author must have brought a substantive complaint in the domestic courts in respect of any allegation subsequently referred to. The State party recalls that, in communication No. 661/1995 (*Paul Triboulet v. France*), the Committee found the claim of excessively lengthy examination and judicial proceedings inadmissible for non-exhaustion of domestic remedies, on the grounds that the author had not brought that claim before the Court of Cassation.

4.5 With regard to the complaints concerning the vagueness of the indictment, disregard of the principle of presumption of innocence and the absence of any legal grounds for the conviction, the State party is of the view that the author is in fact attempting to challenge his conviction. According to the State party, the author asserts in support of his allegations that, in finding him guilty, the judges reversed the burden of proof: "The approach adopted by the appeal court judges was to confuse the issue by muddling the dates of the events and the witnesses' statements, while failing to provide objective and verifiable evidence to support each individual act." In this regard, the State party recalls that, according to the Committee's jurisprudence, the Committee may not consider facts or evidence submitted to the domestic courts unless it is clear that their evaluation was arbitrary or amounted to a denial of justice. In the State party's view, however, the judgement handed down by the Chambéry Court of Appeal is extensively reasoned and shows that every point in the case has been considered. The State party considers that there can be no serious question of arbitrary treatment or a denial of justice. Moreover, the State party says that, in the view of the Criminal Division of the Court of Cassation - as expressed in its reply to the second appeal, which covers the three complaints raised before the Committee - "(...) applications which merely seek to question the Court's final decision on the merits of the events and circumstances of the case and on the evidence argued in the presence of both parties shall not be deemed admissible".

4.6 With regard to the complaint concerning the indictment before the Chambéry Court of Appeal, the State party considers that the author has not exhausted domestic remedies insofar as he did not challenge the indictment either in the Chambéry Court of Appeal or in the Court of Cassation. Indeed, according to the State party, at no time did the author allege before the Court of Cassation any violation of the provisions of article 14 of the Covenant on the grounds that his indictment before the appeal court had failed to mention article 131-26 of the Criminal Code or even the principle involved.

Author's comments on the State party's observations concerning admissibility

5.1 In his letter of 8 November 2002, the author contests the State party's arguments.

5.2 With regard to the allegation that the proceedings were unduly prolonged, the author maintains that article L 781-1 of the Judicial Code in fact establishes a highly restrictive, or even unworkable, form of State responsibility. The author further considers that the solution adopted by the European Court of Human Rights, cited by the State party, contradicts its own case law.

According to the author, requiring claimants to avail themselves of the restrictive, ineffective remedy provided under article L 781-1 of the Judicial Code before any application to the Committee would prolong the proceedings in the domestic courts beyond all reason and deprive the Committee of any effective oversight of the guarantees afforded under article 14, paragraph 3 (c), of the Covenant. Lastly, the author points out that the aforementioned decision of the European Court was handed down on 7 November 2000, or subsequent to the period covered by this case and to the 13 September 2000 ruling of the Court of Cassation.

5.3 As to the complaints concerning the vagueness of the charges, disregard of the principle of the presumption of innocence and the absence of any legal basis for the conviction, the author argues that it is universally recognized that, in criminal cases, the accused has the right to be provided with detailed information concerning acts of which he has been accused and on which the charges are based. In his view, convicting a person for offences committed on an unspecified date, as in the present case, amounts to arbitrary treatment. Given the potentially serious consequences of a criminal conviction, the author stresses that States have a duty to ensure that charges are quite specific. Otherwise the accused is forced to prove that he or she did not engage in such acts. This shifting of the burden of proof, the author believes, amounts to an arbitrary disregard of the principle of the presumption of innocence.

5.4 As to the complaint concerning the indictment before the Chambéry Court of Appeal, the author states that he sought to challenge not the indictment itself but the fact that he had been sentenced to a further penalty that was not mentioned in the indictment read out in the Chambéry Court of Appeal. The author argues that he could not be expected to point to the invalidity of an indictment that failed to invoke article 131-26 of the Criminal Code, which provided for further penalties, since that oversight meant that the Court of Appeal would be unable to apply that provision. In his view, it was hardly in his interest to draw attention to the invalidity of an indictment that excluded the possibility of invoking a particular criminal law in his case. It was only when the decision of the domestic court was read out that he realized that he had been arbitrarily sentenced to a penality that the indictment had failed to mention, and this deprived him of any possibility of mounting a defence on that point.

Issues and proceedings before the Committee concerning admissibility

6.1 Before considering any claim 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.

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

6.3 With regard to the complaint that the proceedings were unduly prolonged, the Committee takes note of the State party's argument that no appeal had been brought under article L 781-1 of the Judicial Code in respect of the alleged violation, and that the author did not raise the issue before the Court of Cassation. The Committee also notes the author's contention that the remedy provided under article L 781-1 of the Judicial Code is restrictive and ineffective. In the Committee's view, the author has failed to substantiate sufficiently his arguments in rebuttal of the State party's claim that article L 781-1 of the Judicial Code provided an effective remedy. It

further notes that the author does not contest the fact that his complaint was never raised before the Court of Cassation. Lastly, it considers that the allegation of unduly lengthy proceedings has not been sufficiently substantiated. The Committee therefore considers that this part of the communication is inadmissible under article 2 and article 5, paragraph 2 (b), of the Optional Protocol.

6.4 As to the complaints concerning the vagueness of the charges, disregard of the principle of the presumption of innocence and the absence of any basis in law for the conviction, the Committee recalls that, according to its jurisprudence, it is generally for the courts of States parties to the Covenant to evaluate facts and evidence in a particular case. In considering allegations of violations of article 14 in this regard, the Committee may only establish whether the conviction was arbitrary or amounted to a denial of justice. The material before the Committee does not show that the courts' assessment of the evidence suffered from such defects. Accordingly, this part of the communication has not been sufficiently substantiated, for the purposes of admissibility, and is thus inadmissible under article 2 of the Optional Protocol.

6.5 As to the complaints relating to the indictment delivered before the Chambéry Court of Appeal, after having considered the arguments of the State party and the author, the Committee finds that the author did not, in his statement of claim to the Court of Cassation, refer to the alleged violation arising from his sentencing, on appeal, to further penalties despite the fact that the indictment failed to invoke article 131-26 of the Criminal Code, which provides for such penalties. The Committee therefore finds this part of the communication inadmissible under article 5, paragraph 2 (b), of the Optional Protocol.

Accordingly, the Committee declares these complaints inadmissible pursuant to articles 2 and 5, paragraph 2 (b), of the Optional Protocol.

7. The Committee therefore decides:

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

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

[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.]
