



**International covenant
on civil and
political rights**

Distr.
RESTRICTED*

CCPR/C/85/D/1283/2004
22 November 2005

ENGLISH
Original: FRENCH

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

DECISION

Communication No. 1283/2004

Submitted by: Adela Calle Savigny (not represented by counsel)

Alleged victim: The author

State party: France

Date of communication: 16 April 2004 (initial submission)

Document references: Special Rapporteur's rule 97 decision, transmitted to the State party on 11 May 2004 (not issued in document form)

Date of decision: 28 October 2005

Subject matter: Divorce procedure and its consequences

Procedural issues: Exhaustion of domestic remedies; support of complaint

Substantive issues: Protection of the home, equal rights and responsibilities for divorcing spouses, protection of children in the event of divorce, non-discrimination

Articles of the Covenant: 17; 23, para. 4; 24, para. 1; 26

Articles of the Optional Protocol: 2; 5, 2 (b)

[ANNEX]

* Made public by decision of the Human Rights Committee.

Annex

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

Eighty-fifth session

concerning

Communication No. 1283/2004*

Submitted by: Adela Calle Savigny (not represented by counsel)

Alleged victim: The author

State party: France

Date of communication: 16 April 2004 (initial submission)

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

Meeting on 28 October 2005,

Adopts the following:

Decision on admissibility

1.1 The author is Ms. Adela Calle Savigny, a French and Peruvian national resident in France. She claims to be a victim of violations by France of articles 17; 23, paragraph 4; 24, paragraph 1; and 26 of the International Covenant on Civil and Political Rights. She is not represented by counsel.

1.2 On 1 September 2004 the Committee, through the person of its Special Rapporteur on new communications, decided to consider the admissibility of the communication separately from the substance.

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

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

The facts as presented by the author

2.1 The author married Mr. Jean-Marc Savigny on 10 October 1998 in Feigères (Haute-Savoie, France). On 26 September 2000, Mr. Savigny filed for a fault divorce before the family affairs judge at the High Court in Thonon-les-Bains. By a non-conciliation order dated 15 December 2000, the judge allowed the author free use of the marital home pending the issuance of the divorce decree and ordered Mr. Savigny to pay alimony.

2.2 On 5 December 2003, the author and her son (the issue of another union) were illegally evicted from the marital home by Mr. Savigny. The author appealed to the authorities, who afforded her no protection or redress.

2.3 Without a court order to that effect, Mr. Savigny stopped paying alimony in October 2003. The author applied to the judicial authorities, to no avail.

2.4 From the start of the divorce proceedings, the author claims to have suffered constant discrimination at the hands of the authorities, who failed to support her.

The complaint

3.1 The author contends that her forced eviction, together with her son, from the marital home by her former spouse in the absence of a court decision, and the lack of action by the authorities, are contrary to articles 17 and 24, paragraph 1, of the Covenant.

3.2 The author believes that her former spouse's suspension of alimony payments and the failure of the judicial authorities to intervene are in violation of article 23, paragraph 4, of the Covenant.

3.3 The author considers that the discrimination she suffered at the hands of the authorities, owing to her Peruvian origins in particular, amounts to a violation of article 26 of the Covenant.

State party's observations on admissibility

4.1 In observations dated 4 August 2004, the State party challenges the admissibility of the communication.

4.2 Given the sometimes approximate information supplied by the author, the State party offers an account of the proceedings associated with Ms. Calle Savigny's divorce and their consequences.

4.3 As regards civil proceedings before the family affairs judge, the State party indicates that on 26 September 2000, Mr. Savigny lodged a petition for fault divorce with the family affairs judge at the High Court in Thonon-les-Bains.

4.4 On 15 December 2000, the judge issued a non-conciliation order which permitted the spouses to live apart, granting free use of the marital home to the author pending the issuance of the divorce decree and ordering Mr. Savigny to pay alimony of 6,000 francs per month.

4.5 On 19 March 2001, continuing with the procedure after the non-conciliation order, Mr. Savigny sued his wife for divorce.

4.6 On 22 November 2001 the examining magistrate ruled in first instance, in adversarial proceedings, against an application by Mr. Savigny to reduce the size of his alimony payments. The judge also found, on the other hand, that the author had shown no indication of having looked for work since the issuance of the non-conciliation order and that “given the brevity of their life together and the absence of any common offspring, the possibility that Adela Calle Savigny might long remain in her current situation, occupying property belonging to her husband and living solely off the alimony her husband [was] paying to her, [was] not to be thought of”. The judge therefore ruled that, four months after the ruling, the author should no longer have free use of the marital home.

4.7 After several exchanges of proposals, the family affairs judge issued a preliminary ruling reopening the discussions in adversarial proceedings on 24 March 2003.

4.8 On 6 November 2003, the family affairs judge handed down a non-stayable ruling in first instance in which he found that that author had neither submitted a definitive claim nor supplied the evidence asked for in the preliminary ruling of 24 March 2003. He observed that the author appeared to be “profiting from the protraction of the procedure which, it may be pointed out, has already lasted much longer than is normal”. He also indicated that the marital home was no longer assigned to the author, whom he ordered to leave the premises within the month following the ruling. Lastly, the judge suspended the alimony payments due from Mr. Savigny. The State party notes that the author did not attend that hearing although she had been kept regularly informed of Mr. Savigny’s proposals.

4.9 By decision dated 12 February 2004, the family affairs judge, after discussions in chambers, publicly delivered a judgement in first instance after adversarial proceedings declaring the couple divorced with fault on both sides. He confirmed the ruling of 6 November 2003 to the effect that the author and any related occupant must remove herself and her belongings from the marital home, the personal property of Mr. Savigny. He also found that there were no grounds for a compensatory award given the brevity of the couple’s life together and the absence of any request of that kind.

4.10 The author had the support of counsel during the proceedings before the family affairs judge. She did not appeal any of the judge’s decisions.

4.11 As regards criminal proceedings, the State party refers first to the author’s complaint dated 12 December 2003. In response, it indicates, to a complaint lodged by the author (relating to issues including the conditions under which she had had to leave the housing she had been occupying with her minor son, under constraint from her husband and in the absence of a court decision) with the government prosecutor of Thonon-les-Bains on 12 December 2003, the gendarmerie conducted an investigation on instructions dated 19 December 2003 from the prosecutor’s office.

4.12 The prosecutor's office shelved the proceedings with no further action taken on 1 March 2004, given the particular circumstances of the case, especially the conduct of the author and the family affairs judge's decisions relating to the assignment of the housing in question and comments about the brevity of the couple's life together. When interviewed by the gendarmes, the mayor of the commune indicated that the town hall had lent the author somewhere to store her belongings and had also offered to help her find housing, but this the author had refused.

4.13 In reference to the complaint about non-payment of alimony, the State party contends that contrary to what the author claims, her complaint of 11 September 2003 about non-payment of alimony was investigated by the gendarmerie. Mr. Savigny acknowledged that he had not paid any alimony since April 2003 since the author was wilfully dragging out the divorce process. He was summoned before the correctional court to answer the charge of failure to pay alimony during the period when payment was due. The hearing was set for 24 September 2004.

4.14 The State party then sets out its grounds for considering the communication inadmissible.

4.15 Referring to the Committee's jurisprudence, the State party considers that the part of the complaint relating to a violation of article 26 of the Covenant is not adequately supported and thus inadmissible. It argues that the author's complaint is based on mere statements that the administrative, social and judicial authorities discriminated against her, with no specific evidence to support them. The author provides no indication as to how article 26 might have been violated.¹

4.16 On the alleged violation of article 17 of the Covenant, the State party points out that the housing in which the author stayed with her son was the personal property of Mr. Savigny of which she no longer had free use four months after the ruling of 22 November 2001 - a ruling of which she could not claim to be unaware since it had been issued in adversarial proceedings. Moreover, during the investigation by the gendarmerie, Mr. Savigny stated that his wife did not always stay there, and that for some months the neighbours had been looking after her son during her absences. Mr. Savigny himself had moved out during 2000 and did not return until 5 December 2003 - a period rather longer than he and his wife had lived together. At any rate, since the marital home was, by the time of the complaint (December 2003), no longer assigned to the author, that part of the communication was unfounded and thus fell *ratione materiae* outside the field of application of the Optional Protocol.

4.17 The State party explains that the communication is, furthermore, inadmissible owing to a failure to exhaust internal remedies.

4.18 In the case of the alleged violations of articles 17 and 24, paragraph 1, of the Covenant in connection with the eviction of the author from the marital home and its consequences, the State party draws attention to the fact that, assuming the Committee determines that article 17 applies,

¹ Assuming, for the purposes of argument, that the author could prove she and her son had been subjected to harassment and moral pressure, there is still nothing to show that such treatment stemmed from discrimination.

the author's complaint of 12 December 2003 was, contrary to what she asserts, not only investigated but also diligently handled. The government prosecutor's office referred the matter to the gendarmerie only days after receiving it. The gendarmes acted with equal dispatch, launching an investigation in January 2004. It was true that the case had been shelved with no further action taken; but there were available to the author codified, accessible, effective internal remedies against the decision to shelve the case, either by reporting Mr. Savigny directly to the correctional court or by complaining to the investigating magistrate about the matters raised in her complaint and applying for criminal indemnification. On the civil side, the State party observes that the author did not appeal against any of the decisions relating to alimony or assignment of the marital home which lie behind the alleged violations of articles 17 and 24, paragraph 1, either during the interim arrangements or when the divorce decree was issued; yet the related proceedings were adversarial and the author was assisted by counsel. Similarly, the author had never sought protection for her minor son from the family affairs judge or other court. In sum, the author has not exhausted the remedies available in the case of article 17 of the Covenant (if applicable), and has not given the national authorities the opportunity to rectify the alleged violation of article 24, paragraph 1. The complaints relating to the marital home and protection for her son are, therefore, inadmissible. In the case of her son, for whom the complaints stemming from articles 17 and 24, paragraph 1, are not substantially different, the author does not indicate how the child might actually have been in any danger since both he and she were later put up by friends.

4.19 In connection with the alleged violation of article 23, paragraph 4, of the Covenant, the State party points out that under French law, cases of divorce, separation and their consequences, both for spouses and for children of the union, are handled by family affairs judges. It was in this way that the author was originally awarded alimony, although, the State party also points out, she never requested financial support for her son (who is unrelated to Mr. Savigny) from any court. The State party draws attention to the fact that the author's complaint about non-payment of alimony, lodged on 11 September 2003, led to a gendarmerie investigation. Mr. Savigny was summoned before the correctional court for non-payment, and the hearing was set for 24 September 2004. Proceedings are thus in progress. It follows that internal remedies have not been exhausted. Further to these proceedings, on 8 July 2005 the State party forwarded the decision handed down on 1 December 2004 by the High Court in Thonon-les-Bains on the issue of non-payment of alimony. The court found Mr. Savigny guilty of not voluntarily making alimony payments for two months. Inasmuch as reparation had been made for the injury caused and the offence had thus ceased to cause any inconvenience, the court, pursuant to article 132-59 of the Penal Code, decided to impose no punishment on Mr. Savigny.

4.20 As regards the alleged violation of article 26 of the Covenant, the author has lodged no complaint about incidents of discrimination on the grounds of her nationality or other considerations. Articles 225-1 ff. of the French Penal Code as they applied at the time of the events at issue make any discrimination on grounds of origin, sex, family situation, or membership or otherwise of a specified ethnic group, nation, race or religion a punishable offence. The author has thus not given the French authorities the opportunity to rectify any violation of article 26.

Comments by the author on the State party's observations on admissibility

5. In comments submitted on 22 January and 23 September 2005, the author impugns the lawyer assigned to her under the legal aid system who, she states, did not keep her informed of the state of proceedings or the opportunities for appeal. She considers that the entire process was slanted in a manner designed to keep her at arm's length and allow her no opportunity to intervene. She accuses Mr. Savigny and his family of plotting to prevent her from defending herself before the French authorities. She states that she has not appealed against the decision of 1 December 2004 by the High Court of Thonon-les-Bains, but demands recognition and application of her rights.

The Committee's deliberations on admissibility

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

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

6.3 Concerning the matters raised by the author, the Committee observes that the author has not availed herself of the internal remedies available under criminal law, appealing against the decision to shelve her complaint of 12 December 2003 without further action and the decision handed down on 1 December 2004 by the High Court in Thonon-les-Bains or, civil law, appealing against the rulings by the family affairs judge on 6 November 2003 and 12 February 2004 concerning the assignment of the marital home and the award of alimony, these having been delivered in adversarial proceedings where the author was assisted by counsel. The case file and the parties' submissions also show that the author did not apply to the courts for protection for her son or make use of the internal remedies available to her for responding to her allegations of discrimination. As regards the author's argument that the lawyer assigned to her under the legal aid system did not keep her informed, even of the opportunities for appeal, it is clear from the case file that the author at no point during the proceedings challenged the aid her counsel was giving her or asked for a replacement. The Committee thus finds her complaints inadmissible under article 5, paragraph 2 (b), of the Optional Protocol.

7. The Committee therefore decides:

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

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