



**International covenant  
on civil and  
political rights**

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HUMAN RIGHTS COMMITTEE  
Eighty-sixth session  
13-31 March 2006

**DECISION**

**Communication No. 1434/2005**

*Submitted by:* Claude Fillacier (represented by counsel)

*Alleged victim:* The author

*State party:* France

*Date of communication:* 24 October 2005 (initial submission)

*Date of decision:* 27 March 2006

*Subject matter:* Reincorporation in the French public service following transfer from Algeria, request for compensation

*Procedural issues:* Abuse of the right of submission, State party's reservation

*Substantive issues:* Equal access to public employment

*Articles of the Covenant:* 2, 25 (c) and 26

*Articles of the Optional Protocol:* 3 and 5, paragraph 2 (a)

[ANNEX]

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\* 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**

**Eighty-sixth session**

**concerning**

**Communication No. 1434/2005\***

*Submitted by:* Claude Fillacier (represented by counsel)

*Alleged victim:* The author

*State party:* France

*Date of communication:* 24 May 2004 (initial submission)

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

*Meeting on 27 March 2006,*

*Adopts the following:*

**Decision on admissibility**

1. The author of the communication, dated 24 October 2005, is Claude Fillacier, a French citizen born at Bône in Algeria on 3 March 1927. He claims to have been a victim of violations by France of articles 2, 25 (c) and 26 of the International Covenant on Civil and Political Rights. He is represented by counsel, Alain Garay. The Optional Protocol entered into force for France on 17 May 1984.

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\* The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Nisuke Ando, Mr. Prafullachandra Natwarlal Bhagwati, 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 and Mr. Roman Wieruszewski.

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

## **The facts**

2.1 Between October 1953 and March 1963, the author occupied a variety of senior administrative posts in a number of social agencies in Algeria, during the period when it was part of France. From June 1960 onwards, he was simultaneously Deputy Director of the “Bône Assurances Sociales” regional mutual social insurance fund for farmers and Deputy Director of the “Bône-Assurance” regional mutual insurance fund for farmers.

2.2 The author left Algeria for France in March 1963, following decolonization. On 5 March 1963, he asked to be placed in an equivalent post in a similar social insurance agency for farmers in France. This request was based on article 2 of decree No. 62-941 of 9 August 1962 relating to conditions for the placement of permanent French personnel of the agencies listed in article 3 of order No. 62-401 of 11 April 1962 relating to conditions for the incorporation in the public service in metropolitan France of officials and agents of the public service in Algeria and the Sahara.

2.3 By letter of 11 May 1963, the French Ministry of Agriculture informed the author that he could not be placed because of his “shared” employment between the “Bône Assurances Sociales” regional mutual social insurance fund for farmers, which administered a legally obligatory insurance scheme, and the “Bône-Assurance” regional mutual insurance fund for farmers, a body not covered by order No. 62-401 of 11 April 1962. The author replied in a letter dated 11 July 1963. The Minister confirmed his decision by letter dated 29 July 1963.

2.4 The author endeavoured unsuccessfully to secure placement from various authorities. Eventually he lodged with the Administrative Court in Toulouse applications for placement and compensation for injury resulting from failure to place him in the corresponding grade in metropolitan France. His applications were denied on 27 June 1986. The author then appealed. On 8 June 1990 the Council of State upheld the ruling of the Toulouse Administrative Court. On 7 January 2004, the author brought the matter to the attention of the European Court of Human Rights, which on 9 November 2004 declared his application to be inadmissible on grounds of late submission.

## **The complaint**

3.1 The author states that his complaint was not “examined” by the European Court of Human Rights because his application was declared inadmissible on purely procedural grounds. He considers that the State party’s reservation does not apply to his case. The author goes so far as to challenge the lawfulness of the reservation, which he says infringes the principle of access to justice.

3.2 Although his communication relates to events which took place before the State party ratified the Optional Protocol, the author considers that the Human Rights Committee becomes competent if, after the entry into force of the Optional Protocol, the acts in question continue to produce consequences which themselves constitute violations of the Covenant.<sup>1</sup> He also points out that his application is admissible since the Covenant and the Optional Protocol lay down no deadline for the submission of communications.

3.3 The author considers that the French authorities failed to guarantee or protect the rights enumerated in article 25, paragraph (c), taken together with articles 2 and 26 of the Covenant, thereby fundamentally infringing his right to employment and exercising discrimination based on his circumstances and his nationality. He considers that he suffered discrimination as compared with other officials who at that time were simultaneously performing corresponding and identical functions in metropolitan France, in the Mutualité Agricole.<sup>2</sup> He cites the Human Rights Committee's general comment No. 25 (57), which states that "to ensure access on general terms of equality, the criteria and processes for appointment, promotion, suspension and dismissal must be objective and reasonable". Consequently, the author considers that the criteria used to draw a distinction in his case, namely the nature of the performance of a management function within the regional mutual social insurance fund for farmers, as interpreted by the State party, clearly underlie a difference in treatment which is not based on an objective and reasonable criterion.

3.4 Concerning the exhaustion of domestic remedies, the author states that, following the ruling handed down by the Council of State on 8 June 1990, no further domestic remedies are available to him.

3.5 The author requests the Committee to rule on the granting of just satisfaction to the author, who has suffered serious injury owing to the failures of the French administration. He also asks that the State party should be ordered to pay him the costs he incurred when bringing actions in the French courts.

#### **Issues and proceedings before the Committee**

4.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 93 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant on Civil and Political Rights.

4.2 In accordance with article 5, paragraph 2 (a), of the Optional Protocol, the Committee has ascertained that a similar complaint lodged by the author was declared inadmissible on grounds of late submission by the European Court of Human Rights on 18 November 2004 (application No. 2188/04). The Committee also points out that at the time of its accession to the Optional Protocol, the State party entered a reservation with regard to article 5, paragraph 2 (a), of the Optional Protocol indicating that the Committee shall not have competence to consider a communication from an individual if the same matter is being examined or has already been considered under another procedure of international investigation or settlement. However, the Committee finds that the European Court did not "examine" the case in the meaning of article 5, paragraph 2 (a), of the Optional Protocol insofar as its ruling dealt only with a question of procedure. Consequently, no issue arises with regard to article 5, paragraph 2 (a), of the Optional Protocol, as interpreted in the light of the State party's reservation.

4.3 The Committee notes the delay of 15 years in this case and observes that there are no explicit time limits for submission of communications under the Optional Protocol. However, in certain circumstances, the Committee is entitled to expect a reasonable explanation justifying such a delay. In the present case, the Council of State handed down its ruling on 8 June 1990, over 15 years before the communication was submitted to the Committee, but no convincing explanation has been provided to account for such a delay. In the absence of an explanation, the

Committee considers that submitting the communication after such a long delay amounts to an abuse of the right of submission, and finds the communication inadmissible under article 3 of the Optional Protocol<sup>3</sup> and rule 93 (3) of the rules of procedure.

5. Consequently, the Human Rights Committee decides:

(a) That the communication is inadmissible under article 3 of the Optional Protocol and rule 93 (3) of the rules of procedure;

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

[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.]

#### Notes

<sup>1</sup> See *Lovelace v. Canada*, communication No. 24/1977, Views adopted on 30 July 1981, para. 7.3.

<sup>2</sup> See *Gueye v. France*, communication No. 196/1985, Views adopted on 3 April 1989, para. 9.5.

<sup>3</sup> See *Gobin v. Mauritius*, communication No. 787/1997, decision on admissibility adopted on 16 July 2001, para. 6.3.

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