

HUMAN RIGHTS COMMITTEE

Gire v. France

Communication No 525/1992

28 March 1995

CCPR/C/53/D/525/1992

ADMISSIBILITY

Submitted by: Pierre Gire

Alleged victim: The author

State party: France

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

Meeting on 28 March 1995,

Adopts the following:

Decision on admissibility

1. The author of the communication is Pierre Gire, a French citizen, at the time of submission of the communication detained in the Maison d'arrêt at Nantes, France. He claims to be a victim of a violation of his human rights by France, without invoking specific articles of the Covenant.

Facts as submitted by the author

2.1 The author was the director of the Atlantic Festival, a music festival at Nantes. On 9 March 1991, he was arrested and, on 11 March 1991, charged with fraud and forgery. The charges relate to an unaccounted amount of 14 million French francs in the organization of the Festival. The author claims that he is innocent and that the money was paid out to artists upon instructions from the board of the Association Festival Atlantique. He further claims that the responsible politicians in Nantes were well aware of the financial problems of the Festival, but continued to encourage its funding.

2.2 The author states that he was kept in pre-trial detention for 22 months and 22 days, from 9 March

1991 to 28 January 1993, and that he filed numerous unsuccessful requests for his release.

Complaint

3.1 The author contends that the preliminary investigations were unduly prolonged and that his right to trial within a reasonable time has been violated. In this connection, he claims that some of the witnesses, all members of the Association, were heard only 16 months after his arrest.

3.2 The author further claims that the investigation has not been impartial and that he is being used as a scapegoat to avoid disclosures about the involvement of politicians in the matter. In this connection, he submits that a press conference was organized by the Prosecutor's Office on 11 March 1991, which depicted him as being solely responsible; he alleges that this press conference prejudiced witnesses against him.

3.3 Finally, the author alleges that he was not able to prepare his defence properly in the circumstances of his detention.

The State party's observations

4.1 The State party, by submission of 6 June 1994, explains that the author was arrested after the president of the Conseil Général de Loire-Atlantique and the director general of the departmental administrative authority had brought to the attention of the prosecutor a number of documents with their falsified signatures. The State party submits that in the course of the investigations evidence was found of at least 70 instances of fraud and forgery.

4.2 The State party argues that the communication is inadmissible. It submits that the author submitted a complaint under the European Convention for the Protection of Human Rights and Fundamental Freedoms to the European Commission of Human Rights, which, on 14 October 1993, declared the case inadmissible for failure to exhaust domestic remedies. The State party recalls that it entered a reservation, upon ratifying the Optional Protocol, with regard to article 5, paragraph 2 (a), to the effect that the Human Rights Committee is not competent to examine a communication if the same matter has already been considered by another procedure of international investigation or settlement.

4.3 Moreover, the State party argues that the communication is inadmissible for failure to exhaust domestic remedies. In this connection, it submits that it was open to the author to appeal the decisions of the Court of Appeal not to order his release, to the Court of Cassation, pursuant to articles 567 and 567-2 of the Code of Penal Procedure, but that he failed to make use of this remedy. The State party argues that the cassation appeal constitutes an effective remedy, since the Court of Cassation, when seized of a matter of pre-trial detention, reviews the question whether the Court of Appeal has correctly applied the requirements to justify the continuation of the pre-trial detention and whether the rules of fair procedure have been respected. The State party submits therefore that the communication does not fulfil the requirements of article 5, paragraph 2 (b), of the Optional Protocol.

4.4 As regards the author's remaining complaints about the partiality of the investigations against

him, the State party emphasizes that the criminal procedures against the author are still pending and that his guilt has not yet been determined by a tribunal. The State party argues that this complaint is therefore inadmissible for failure to exhaust domestic remedies.

5. No comments on the State party's submission were received from the author of the communication, despite a reminder sent on 22 December 1994.

Issues and proceedings before the Committee

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 State party has further argued that the communication is inadmissible for failure to exhaust domestic remedies. The Committee notes that the author has not contested that he could have appealed the decisions of the Court of Appeal, refusing his release from pre-trial detention, to the Court of Cassation and has not explained why he failed to make use of this remedy. Furthermore, as regards the author's complaints that the proceedings against him are biased and that he was not able to prepare his defence properly, the Committee notes that the author's trial is currently in process and that domestic remedies are thus not yet exhausted. The communication, therefore, does not fulfil the requirements of article 5, paragraph 2 (b), of the Optional Protocol.

7. The Human Rights Committee therefore decides:

- (a) The communication is inadmissible under article 5, paragraph 2 (b), of the Optional Protocol;
- (b) This decision shall be communicated to the State party and to the author.

[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.]