



**International Covenant
on Civil and Political
Rights**

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

DECISION

Communication No. 1400/2005

<u>Submitted by:</u>	Ms. Nicole Beydon and 19 other members of the association “ <i>DIH Mouvement de protestation civique</i> (represented by counsel, Mr. Francois Roux)
<u>Alleged victim:</u>	The authors
<u>State party:</u>	France
<u>Date of communication:</u>	16 July 2004 (initial submission)
<u>Date of adoption of decision:</u>	31 October 2005

* Made public by decision of the Human Rights Committee.

Subject matter: Alleged damages to members of a non-governmental organization by virtue of State party attitude vis-à-vis the International Criminal Court.

Procedural issues: Exhaustion of domestic remedies; subsidiary character of article 2 of the Covenant; incompatibility *ratione materiae* with the provisions of the Covenant.

Substantive issues: Right to access to courts; Right to take part in the conduct of public affairs.

Articles of the Covenant: 2, paragraph 3 (b) and (c), 14, paragraph 1, and 25 (a)

Articles of the Optional Protocol: 1 and 2

[ANNEX]

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. 1400/2005**

Submitted by: Ms. Nicole Beydon and 19 other members of
the association “*DIH Mouvement de
protestation civique*”

Alleged victim: The authors

State party: France

Date of communication: 16 July 2004 (initial submission)

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

Meeting on 31 October 2005

Adopts the following:

DECISION ON ADMISSIBILITY

1. The authors of the communication are Ms. Nicole Beydon and nineteen other persons, all French citizens. They claim to be victims of violations by France of article 2, paragraph 3 (b) and (c); article 14, paragraph 1; and article 25 (a), of the International Covenant on Civil and Political Rights¹. They are represented by counsel, Mr. Francois Roux.

** 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, Committee member Ms. Christine Chanet did not participate in the adoption of the present decision.

¹ The Optional Protocol entered into force for the State party on 17 May 1984.

Factual background

2.1 The authors are members of “*DIH Mouvement de protestation civique*” (“*DIH*”), a human rights non-governmental organization (NGO) established in 1991 in Chambon-sur-Lignon, France. One of the association’s objectives is to campaign for the creation of a permanent, independent, and effective international criminal court.

2.2 The authors mounted a legal challenge against the allegedly intransigent position of the Government of France regarding article 124 of the Rome Statute of the International Criminal Court (ICC) which entitles a State party to the Statute to declare that it does not accept the jurisdiction of the Court over war crimes, alleged to have been committed by its nationals or on its territory, for a period of seven years, with the declaration being renewable indefinitely. They specifically challenged the Government’s insistence on inclusion of article 124 being one of the most restrictive and controversial provisions governing the Court’s jurisdiction over war crimes which created a legal void and institutionalised impunity. The authors also criticized that France, when depositing the instrument of ratification on 9 June 2000, made a declaration under article 124² and alleged that this declaration not only restricted the Court’s competence vis-à-vis France but also directly affected themselves, and French citizens at large, by depriving them of a remedy to prosecute and punish human rights transgressors. They also alleged that the French position was motivated exclusively by internal political and strategic considerations, namely the pressure from the Ministry of Defence to protect its armed forces from testifying before the ICC.

2.3 On 14 January 1997, the *DIH* submitted a “pre-trial brief” (*mémoire préalable*) to the French Ministry of Foreign Affairs, alleging violations of article 2, paragraph 3 (b) and (c), and article 25 (a) of the Covenant, article 2, paragraph 2, of the Human Rights Charter, as well as article 28 of the Universal Declaration of Human Rights. In the absence of a reply, *DIH* filed a suit against the government before the Administrative Tribunal in Paris (*Tribunal administratif de Paris*) on 11 July 1997, requesting 60,000,000 French Francs (FF) in compensation. By judgment of 24 June 1999, the Tribunal dismissed the claim on the grounds that it lacked jurisdiction to entertain a complaint relating directly to the State’s exercise of its diplomatic prerogatives. The Tribunal also deemed *DIH*’s request for compensation to be an abuse of the submission procedure and fined the association 10,000 FF.

2.4 On 18 August 1999, *DIH* filed an appeal before the Administrative Court of Appeal in Paris (*Cour administrative d’appel de Paris*) on the grounds that the Tribunal had failed to provide a rationale for its verdict; that it had failed to consider the complainants’ arguments invoking the principles of unkept promises and reasonable expectations; and that it had mistaken its symbolic request for 60,000,000 FF (1 Franc per French citizen) for an abuse of the system. In later submissions, the *DIH* added that the French position in the negotiations not only engaged the state’s liability (“*responsabilité sans faute de l’Etat*”) but that it was also “separable” from an act of government which administrative courts were not competent to examine; it also reduced its demand for compensation to a symbolic sum of 1 FF. By judgement of 29 October 2002, the Court of Appeal upheld the Tribunal’s decision, finding

² French Declaration under article 124: “Pursuant to article 124 of the Statute of the International Criminal Court, the French Republic declares that it does not accept the jurisdiction of the Court with respect to the category of crimes referred to in article 8 when a crime is alleged to have been committed by its nationals or on its territory.”

that the Government's position in the ICC negotiations, not being detachable from the conduct of French international relations, fell outside the purview of domestic courts. However, it annulled as unjustified the Tribunal's decision to fine the complainants for abuse of the system.

2.5 In order to appeal (*pourvoi en cassation*) this verdict before the State Council (*Conseil d'Etat*), *DIH* applied for legal aid at the State Council's Legal Aid Office on 26 December 2002. Its request was rejected on 3 March 2003, on the grounds that the appeal was "manifestly inadmissible". The authors argue that this decision deprived them of all effective internal remedies and that the rationale for the rejection further shows that their appeal would have no prospect of succeeding in cassation.

The complaint

3.1 The authors allege that the French Government violated article 25 (a) of the Covenant by depriving them of the right and the opportunity to take part in the conduct of public affairs relating to the ICC. They claim that despite numerous calls by parliamentary groups, individual senators, and non-governmental organizations at the time of the National Assembly debates on the ratification of the Rome Statute in February 2000 not to invoke this clause, France did not take into account either the authors' objections or the widespread public opposition expressed both directly and through their elected representatives to the French declaration under article 124.

3.2 The authors also allege that they are victims of a violation by France of their rights under article 2, paragraph 3 (b), which obliges the State-party to ensure recourse to judicial remedies and to develop the possibilities of judicial remedy. The authors argue that the creation of an international criminal court had the very aim of developing judicial remedies to prosecute the perpetrators of war-crimes in States signatories to the Rome Statute and that by invoking article 124, France deprived its citizens of an "effective international judicial remedy".

3.3 The authors also claim a violation of article 2, paragraph 3 (c), read in conjunction with article 14, paragraph 1 (access to court) because the domestic courts had erroneously relied on the notion of "act of government" in international relations, invoked by the Ministry of Foreign Affairs, to declare their incompetence, for lack of jurisdiction, to decide the case brought to them by *DIH* because, according to the relevant domestic jurisprudence the French declaration under article 124 should have been considered an "*acte détachable*"- i.e. an act which could be separated from the broader conduct of foreign relations. The authors argue that the State Party cannot invoke the theory of *acte de gouvernement* since it was internal rather than external considerations that determined the French position in the negotiations on article 124. The authors further claim that article 2, paragraph 3 (c), along with article 14, paragraph 1 of the Covenant was violated because the State Council's Legal Aid Office denied their request for legal aid although the State representative (*Commissaire du Gouvernement*) before the Court of Appeal had suggested that it was "not without hesitation" that he found the administrative courts incompetent to review the matter.

3.4 The authors further invoke the principle of protection of legitimate expectation (*confiance légitime*) articulated by the Court of Justice of the European Communities, which extends to all individuals in situations where the administration's conduct may have led them to entertain reasonable expectations and which obliges the administration to honour its

promises. The authors note that French domestic law similarly recognizes the notion of unkept promises (*promesses non tenues*) and that the State Council has applied in the past the concept of “*responsabilité sans faute de l’Etat*” to cases in which the government repudiated a process it had already started or announced. Because France was one of the original supporters of the early proposals to create an international criminal court, by “radically” reversing its position in August 1996, the French government allegedly broke its earlier promise and acted in bad faith by invoking the provisions of article 124, which is said to amount to violations of article 2, paragraph 3 (b) and (c), read with article 25 (a) of the Covenant.

Issues and proceedings before the Committee

4.1 Before considering any claims 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.

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

4.3 The Committee notes that the authors of the communication claim that in the context of domestic proceedings, they have become victims of violation by the State party of their rights under article 2, paragraph 3(c), in conjunction with article 14, paragraph 1, of the Covenant. The Committee recalls³ that for a person to claim to be a victim of a violation of a right protected by the Covenant, he or she must show either that an act or an omission of a State party has already adversely affected his or her enjoyment of such right, or that such an effect is imminent, for example on the basis of existing law and/or judicial or administrative decision or practice. It notes that it was not the authors, but DIH, an association with legal personality under French law, that was party to the domestic proceedings. Thus, the Committee finds that that the authors were not victims, within the meaning of article 1 of the Optional Protocol, of the alleged violation of article 2, paragraph 3 (c), in conjunction with article 14, paragraph 1, of the Covenant

4.4 As regards the authors’ claim that their right under article 2, paragraph 3 (b) was violated because they are deprived of an effective judicial remedy in the case of war crimes, the Committee notes that the authors have not shown that the French position regarding article 124 of the ICC Statute has already adversely affected them, or that such an effect is imminent. Consequently, the authors are not victims under the meaning of article 1, of the Optional Protocol.

4.5 The Committee has further noted the authors’ claim under article 25 (a), that they were deprived, by the State party, of their right and opportunity to take part in the conduct of public affairs relating to the negotiations, and subsequent adhesion of France to the ICC Statute with a declaration under article 124 limiting the State party’s responsibility, the Committee recalls⁴ that citizens also take part in the conduct of public affairs by exerting influence through public debate and dialogue with their representatives or through their

³ See E.W. et al. v. The Netherlands, Communication No. 429/1990, Inadmissibility decision of 8 April 1993.

⁴ See General Comment No 25 (1996)

capacity to organize themselves. In the present case, the authors have participated in the public debate in France on the issue of its adhesion to the ICC and on the issue of article 124 declaration; they acted through elected representatives and through their association's actions. In the circumstances, the Committee considers that the authors have failed to substantiate, for purposes of admissibility, that their right to take part in the conduct of public affairs has been violated. Accordingly, this part of the communication is inadmissible under article 2 of the Optional Protocol.

5. The Human Rights Committee therefore decides:

- (a) That the communication is inadmissible under articles 1 and 2, of the Optional Protocol;
- (b) That this decision shall be transmitted to the State party and to the authors, for information.

[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.]
