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HUMAN RIGHTS COMMITTEE
Ninety-fourth session
13-31 October 2008

VIEWS

Communication No. 1514/2006

Submitted by:	Robert Casanovas (not represented by counsel)
Alleged victim:	The author
State party:	France
Date of communication:	28 September 2006 (initial submission)
Document references:	Special Rapporteur's rule 97 decision, transmitted to the State party on 22 November 2006 (not issued in document form) CCPR/C/90/D/1514/2006 - decision on admissibility dated 3 July 2007
Date of adoption of Views:	28 October 2008
Subject matter:	Obligation to pay a deposit in order to be able to challenge speeding fines
Procedural issues:	Failure to exhaust domestic remedies; failure to substantiate the allegations of a violation

* Made public by decision of the Human Rights Committee.

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Substantive issues:	Effective remedy; judicial remedy; presumption of innocence; fair hearing by a competent, independent and impartial tribunal
Articles of the Covenant:	2, paragraphs 3 (a) and (b); 14, paragraphs 1 and 2
Articles of the Optional Protocol:	5, paragraph 2 (b); 2

On 28 October 2008, the Human Rights Committee adopted the annexed draft as the Committee's Views under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 1514/2006.

[ANNEX]

Annex

VIEWS OF THE HUMAN RIGHTS COMMITTEE UNDER ARTICLE 5, PARAGRAPH 4, OF THE OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

Ninety-fourth session

concerning

Communication No. 1514/2006*

Submitted by:	Robert Casanovas (not represented by counsel)
Alleged victim:	The author
State party:	France
Date of communication:	28 September 2006 (initial submission)
Decision on admissibility:	3 July 2007

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

Meeting on 28 October 2008,

Having concluded its consideration of communication No. 1514/2006, submitted by Robert Casanovas (not represented by counsel) under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication and the State party,

Adopts the following:

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* The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Prafullachandra Natwarlal Bhagwati, Mr. Maurice Glèlè Ahanhanzo, Mr. Yuji Iwasawa, Mr. Edwin Johnson, Ms. Helen Keller, Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer Lallah, Ms. Zonke Zanele Majodina, Ms. Iulia Antoanella Motoc, Mr. Michael O'Flaherty, Ms. Elisabeth Palm, Mr. José Luis Pérez Sanchez-Cerro, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Ivan Shearer and Ms. Ruth Wedgwood.

Pursuant to rule 90 of the Committee's rules of procedure, Committee member Ms. Christine Chanet did not participate in the adoption of the Views.

Views under article 5, paragraph 4, of the Optional Protocol

1.1 The author of the communication is Mr. Robert Casanovas, a French national. He claims to be a victim of violations by France of articles 2 and 14 of the International Covenant on Civil and Political Rights. He is not represented by counsel. The Covenant and the Optional Protocol thereto entered into force for the State party on 4 February 1980 and 17 February 1984 respectively.

1.2 On 4 March 2007, the Committee's Special Rapporteur on new communications decided to consider the admissibility and the merits of the communication separately.

Factual background

2.1 Between 5 and 15 July 2006, the author received three notices of driving offences from the road traffic offences computer centre. The first, dated 5 July 2006, informed him that, at 9.40 p.m. on 20 April 2006, his vehicle had passed an automatic radar control unit and a speeding offence had been noted for a recorded speed of 130 km per hour in an area where the speed limit was 110 km per hour. The second notice, dated 8 July 2006, informed him that, at 9.39 p.m. on 20 April 2006, his vehicle had passed an automatic radar control unit and a speeding offence had been noted for a recorded speed of 119 km per hour in an area where the speed limit was 110 km per hour. The third notice, dated 15 July 2006, informed him that, at 9.44 a.m. on 11 July 2006, his vehicle had passed an automatic radar control unit and a speeding offence had been noted for a recorded speed of 92 km per hour in an area where the speed limit was 90 km per hour.

2.2 The three notices informed the author that he could either pay a fixed penalty of €68 for the first two offences and of €135 for the third, and lose 4 of his 12 driving licence points, or challenge the notices by submitting a reasoned complaint to an officer of the public prosecutor's department; however, the admissibility of the complaint was subject to the prior deposit of the amount of the fines demanded, failing which his case would not be considered.

2.3 On 7, 13 and 20 July 2006, the author informed the public prosecutor's department by registered letter that he had not been driving the vehicle on the days or at the times when the offences had been noted and did not know who had been. In substantive terms, the author claimed that the strict regulations for signposting the two radar units had been violated, thereby nullifying the offences recorded by those units. The author further argued in his three letters that the radar had been set up by prefectural order following an irregular procedure, which renders the notice of the offence null and void. If the public prosecutor's department considered that it was not obliged to accept his complaints, the author asked to appear before the competent community court to obtain a judgement on the merits. On 4 July 2006 and 13 and 20 September 2006, an officer of the public prosecutor's department informed the author that his applications for exemption had been dismissed on the grounds that he had not deposited the sums

required under articles 529-10[1] and 530-1[2] of the Code of Criminal Procedure. The public prosecutor's department informed him that he could apply again, subject to prior payment of a deposit within 45 days, which the author refuses to do.

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[1] Article 529-10 of the Code of Criminal Procedure: "When a fixed penalty notice concerning one of the offences mentioned in article L.121-3 of the Traffic Code has been sent to the vehicle licence holder or to the persons specified in article L.121-2, paragraphs 2 and 3, of the Traffic Code, any application for exemption under article 529-2 or claim under article 530 shall be admissible only when sent by recorded delivery registered letter enclosing either:

1. One of the following documents:

(a) An official acknowledgement of the reporting of the theft or destruction of the vehicle or of the theft of the licence plate (an offence under article 317-4-1 of the Traffic Code), or a copy of the certificate of destruction issued in accordance with the provisions of the Traffic Code; or

(b) A letter signed by the author of the application or claim giving the name, address and driving licence number of the person alleged to have been driving the vehicle when the offence was recorded; or

2. A document acknowledging deposit of a sum equal to the amount of the fixed penalty provided for by article 529-2, paragraph 1, or the amount of the augmented fixed penalty provided for by article 530, paragraph 2; such deposit shall not be deemed tantamount to payment of the fixed penalty and shall not entail any loss of driving licence points under article L.223-1, paragraph 4, of the Traffic Code.

"An officer of the public prosecutor's department shall ascertain whether the application or claim meets the conditions of admissibility under the present article."

[2] Article 530-1 of the Code of Criminal Procedure: "In respect of an application made pursuant to article 529-2, paragraph 1, a protest filed pursuant to article 529-5, paragraph 1, or a claim made under article 530, paragraph 2, the public prosecutor may decide either not to prosecute, or to proceed in accordance with articles 524 to 528-2 or articles 531 et seq. or to inform the applicant that their claim is inadmissible since it is not substantiated or fails to attach the original notice.

"In the event of a conviction, the fine imposed may not be less than the amount of the fixed penalty or indemnity in cases under article 529-2, paragraph 1, and article 529-5, paragraph 1, or less than the amount of the augmented fixed penalty in cases under article 529-2, paragraph 2, and article 529-5, paragraph 2.

The complaint

3.1 In the author's view, his three claims were dismissed by the officer of the public prosecutor's department without any consideration of the merits whatsoever, solely on the grounds that the applicant had not first paid the deposit. Such a dismissal is a violation of article 2, paragraphs 3 (a) and (b), and article 14, paragraphs 1 and 2, of the Covenant.

3.2 On the question of admissibility under article 2 of the Covenant, the author considers that he has no genuinely effective remedy to oblige the French authorities to assess his three claims on the merits. The officer of the public prosecutor's department refused the application under articles 529-10 and 530-1 of the Code of Criminal Procedure, which constitutes binding domestic legal provisions. These provisions are binding on the officer but are a manifest violation of the Covenant. The author maintains that the ordinary and the administrative courts in France are loath to refuse to apply a law that violates an international treaty. Indeed, they decline to exercise any proper oversight of the constitutionality of laws, leaving that up to the Constitutional Council, which cannot consider cases brought by a private individual. Since his three applications have been dismissed by the officer of the public prosecutor's department, the author has exhausted all domestic remedies and has no judicial means of compelling the State party to assess the applications on the merits. Inasmuch as the author refuses to first pay a deposit, the proceedings are now closed. The fine is definitive and the points have been docked from his driving licence. The author cannot have the case tried in the courts, as referral to the ordinary courts is the sole competence of the officer of the public prosecutor's department, who has exclusive powers of prosecution.

3.3 As to article 2, paragraph 3 (a), of the Covenant, the author claims a violation because he does not have a genuinely effective remedy. Prosecuted for three criminal offences punishable by fines or administrative penalties (loss of driving licence points), his applications were definitively dismissed by a police officer representing the public prosecutor's department. The offer of a fresh assessment of his claims provided he pays a deposit cannot be considered a proper remedy. The officer is not a judge, who is by law independent and impartial, but a representative of the public prosecutor whose job it is to impose penalties. The officer did not assess the merits of the claims or in any real sense determine the rights of the person claiming the remedy, as article 2 requires, but simply dismissed the arguments out of hand because no deposit had been paid.

3.4 As to the violation of article 14, the author's case was not given a fair and public hearing by a competent, independent and impartial tribunal, since the representative of the public prosecutor had without justification blocked the author's application by rejecting it out of hand, thereby preventing the trial courts from making a determination. This dismissal violates article 14, paragraph 2, which establishes that everyone charged with a criminal offence shall be

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"In cases under article 529-10, where proceedings are discontinued or after an acquittal, and where the required deposit has been made, the amount of the deposit shall be refunded, on request, to the person to whom the fixed penalty notice was addressed or against whom proceedings were instituted. In the event of a conviction, the fine imposed may not be less than the amount provided for under the preceding paragraph plus 10 per cent."

presumed innocent. To compel a person facing prosecution to pay a deposit in the amount of the fine incurred, on pain of refusal to consider the arguments in their defence, violates the principle of innocence. The author indicates that the State party will argue that it is only a deposit, and that it will be reimbursed if the claim is upheld or the court decides to acquit; however, criminal proceedings for a minor offence take several years under the French justice system.

State party's observations on the admissibility of the communication

4.1 On 23 January 2007, the State party argued that the author has not exhausted all domestic remedies and that his allegations that his rights have been violated are insufficiently substantiated. The author maintains that article 529-10 of the Code of Criminal Procedure offers no effective remedy to challenge the three fines. This article in fact provides that, to contest a traffic-related charge before the public prosecutor, the vehicle licence holder, who is financially liable for the fines incurred, must either present an official acknowledgement of the reporting of the theft of the vehicle or a certificate of destruction or a letter stating who was driving the vehicle, or deposit the amount of the fines. In the present case, the author refused to deposit the sum of €271, which led the public prosecutor's department to find his claim inadmissible under article 529-10 of the Code of Criminal Procedure. He persisted in his refusal even when reminded by the public prosecutor's department that he could deposit the sum of €271 within 45 days. In this way he lost the opportunity he had been offered to challenge the justification for the fines imposed.

4.2 Under article 530-1 of the Code of Criminal Procedure, the public prosecutor's department could have referred the author's case to the police court, which, under articles 524 to 528 of the Code of Criminal Procedure, could have acquitted or convicted or sent the case to the public prosecutor's department for prosecution under the regular procedure. The Court of Cassation, in considering the compatibility of the remedy provided by article 530-1 of the Code of Criminal Procedure with article 6 of the European Convention on Human Rights, has ruled that it satisfies the requirements of that article, "since applicants have the opportunity to assert their rights before a police court in adversarial proceedings which may result in acquittal and discharge, and thus the nullification of the enforceable instrument" (Cass. civ. 16 May 2002).

4.3 The author does not show that he is in any financial difficulties, and so has barred the way to the remedies available by refusing to deposit the sum of €271. This deposit cannot be considered an obstacle to access to a court and a fair trial as protected under article 2, paragraphs 3 (a) and (b), and article 14, paragraphs 1 and 2, of the Covenant. It is rather intended as a means of dealing with the great number of challenges to traffic fines in such a way as to combine promptness with procedural guarantees.

4.4 The State party draws the Committee's attention to the specific nature of the fixed penalty procedure for offences under article L.121-3 of the Traffic Code.[3] These offences are the ones

[3] Article L.121-3 of the Traffic Code: "As an exception to article L.121-1, the vehicle licence holder is financially liable for fines incurred for violations in respect of maximum authorized speeds, compliance with safe distances between vehicles, the use of lanes and carriageways

that occur most frequently and they are being punished as part of a road accident reduction policy that has borne fruit. This procedure is applicable only to fines in categories 1 to 4, i.e. up to a maximum of €750 in 2007. This exceptional procedure does not violate the overall principles of criminal law. Although vehicle licence holders are financially liable for the fines, they are not criminally responsible for offences committed with the vehicle. Thus, in the present case, the author does not risk a loss of points or an entry on his criminal record. Under no circumstances will the author be deemed to have committed a criminal offence. Consequently, there are no grounds for his complaint of a violation of the presumption of innocence under article 14, paragraph 2.

4.5 In the light of the above, the State party considers that the author has not exhausted all domestic remedies and that his allegations of violations are not sufficiently substantiated.

Author's comments on the State party's observations

5.1 On 22 March 2007, the author indicated that he had tried to challenge the grounds for the fines imposed but that his challenge had been dismissed with no consideration of the merits, and not by a judge but by a mere police officer representing the public prosecutor, on the sole grounds that no prior deposit had been paid. Such a deposit should be unacceptable in a democratic society and constitutes a blatant violation of the principle of presumption of innocence. It represents a real obstacle to access to a court and a fair trial since the State party authorities refuse to conduct even a summary consideration of the challenge without the deposit. All citizens have the right to individual consideration of their situation and the State party's argument that the great number of challenges warrants the provision of fewer procedural guarantees is unacceptable. The State party's argument that the applicant was not in financial difficulty is inadmissible and his financial situation has no bearing on his refusal to pay a deposit. It is a matter of principle.

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reserved for certain types of vehicle, and signs requiring vehicles to stop, unless they can demonstrate theft or force majeure of any other kind or they provide all the evidence needed to show that they did not in fact commit the offence.

"Persons found financially liable under the present article are not criminally liable for the offence. When the police or community court applies this article, including by a summary order, that decision is not entered on the criminal record, cannot be taken into account in further offences and does not entail the loss of driving licence points. The rules of judicial constraint are not applicable to payment of the fine.

"Paragraphs 2 and 3 of article L.121-2 are applicable in the same circumstances.

"NOTE: Act No. 2005-47 of 26 January 2005, article 11: 'These provisions shall enter into force on the first day of the third month after publication. Nevertheless, cases duly brought before the police or community courts by that date shall remain within the jurisdiction of those courts.'"

5.2 In the author's view the State party makes an error of law when it asserts that this procedure, which is an exception to the general law, does not violate the main principles of criminal law. Under article 529-2 of the Code of Criminal Procedure,[4] "if no payment is made and no application is filed within 45 days, the fixed fine shall be automatically increased and recovered by the Treasury through an order executed by the public prosecutor". This means that, if the claim is dismissed by the public prosecutor's department because no deposit has been paid, French law considers that no valid claim exists and the public prosecutor's department can issue an enforcement order on behalf of the Treasury, without any consideration of the facts by an independent or impartial judge. The public prosecutor is therefore entitled to issue the enforcement order to recover the fines. The proceedings are closed and final, refusal to consider the claim being a necessary step in a procedure that precludes any consideration of the merits by a court. Domestic remedies are therefore exhausted.

Decision of the Committee on admissibility

6.1 On 3 July 2007, at its ninetieth session, the Committee considered the admissibility of the communication.

6.2 On the question of the exhaustion of domestic remedies, the author believed that he had had no effective remedy to oblige the French authorities to assess his three claims on the merits. The Committee took note of the State party's argument that the author had not shown that he was in any financial difficulties, and had barred the way to the remedies available by refusing to deposit the sum of €271, thereby rejecting the opportunity offered to him to challenge the fines. The Committee also took note of the author's arguments, and noted that the officer of the public prosecutor's department had declared his claim inadmissible under article 529-10 of the Code of Criminal Procedure for failure to pay a deposit. Under the circumstances, the Committee considered that the question of the exhaustion of domestic remedies was closely bound up with the issue of the author's refusal to pay a deposit and his allegations of violations of the Covenant deriving from the obligation to pay such a deposit. The Committee considered that those arguments should be taken up when the merits of the communication were examined.

7. The Human Rights Committee therefore decided that the communication was admissible insofar as it raised issues under articles 2 and 14 of the Covenant.

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[4] Article 529-2 of the Code of Criminal Procedure: "The offender must pay the amount of the fixed fine within the time limit stated in the previous article, unless within the same time limit they file an application for exemption with the office named in the notice. In cases under article 529-10, such application must be accompanied by one of the documents required under that article. The application shall be transmitted to the public prosecutor.

"If no payment is made and no application is filed within 45 days, the fixed fine shall be automatically increased and recovered by the Treasury through an order executed by the public prosecutor."

State party's observations on the merits

8.1 On 21 January 2008, the State party explained the role of the officer of the public prosecutor's department. It noted that according to article 529-10 of the Code of Criminal Procedure he "ascertains whether the application or claim meets the conditions of admissibility stipulated in the present article". Hence, the officer's sole function is to ascertain that the material conditions of admissibility, which include payment of the deposit, have been met. Article 529-10 assigns him a related task: if the claim contains all the necessary documents and information, the officer will transmit it to the court for consideration on the merits; if the claim is incomplete, he will declare it inadmissible. He is not authorized, therefore, to consider the claim on the merits. If an officer of the public prosecutor's department rejects a claim submitted under article 529-10 on the ground that it is unfounded, i.e. by assessing it on its merits, he oversteps his remit of simple material verification. It was on that basis that the European Court of Human Rights found an officer of the public prosecutor's department to have committed an error of law by rejecting an appeal from the perpetrator of an offence as "inadmissible because legally unfounded", thereby exceeding his legal authority. The Court found that there had been a violation of article 6, paragraph 1, of the European Convention on Human Rights.[5] For these reasons, the State party does not accept the author's allegation that the officer "without justification blocked the author's application" in that he simply "dismissed the arguments". The officer of the public prosecutor's department merely declared the application to be inadmissible under article 529-10, because the deposit had not been paid.

8.2 The State party argues that the requirement to pay a deposit as a condition of admissibility does not undermine the right of access to a court. It recalls that this right is not an absolute right, and that it is subject to certain restrictions, including with regard to the conditions of admissibility of an appeal. These restrictions must not undermine the very substance of this right, however. They must pursue a legitimate aim and maintain a reasonable relationship of proportionality between the aim pursued and the means employed. As part of the restrictions on access to a court, a State party may impose financial conditions, which may include payment of a deposit. These financial restrictions do not impede access to a court, since the legal aid system enables the State, where necessary, to defray the costs of a procedure that is beyond the means of the party concerned.

8.3 The State party recalls that this is a deposit of an amount equivalent to the fine established under articles 529-10 and 530-1 of the Code of Criminal Procedure. Hence, the requirement to pay a deposit is consistent with the principles of legality, legitimacy and proportionality. This requirement is legal, as it is provided for by law. It does not exclude fixed traffic fines. The Court of Cassation considered the requirement to pay a deposit part of the formal conditions of admissibility.[6] The requirement is legitimate because the purpose of the deposit is to deal with

[5] See European Court of Human Rights, *Peltier v. France*, judgment of 21 May 2002, para. 37, and *Besseau v. France*, judgment of 7 March 2006, para. 25.

[6] The State party cites two judgements of the Criminal Division of the Court of Cassation: the *Varela* judgement of 21 January 1997 and the *X. Jerome v. Voix du Nord* judgement of the same date.

the great number of challenges to fixed traffic fines with a view to the proper administration of justice and the dismissal of applications that are manifestly dilatory. It furthermore finds the requirement to be proportionate to the aim pursued, for the following reasons.

8.4 First, the State party recalls that the author refused "on principle" to deposit the amount required under articles 529-10 and 530-1 of the Code of Criminal Procedure. The author held to his position notwithstanding the fact that payment of the deposit is a condition of admissibility characterized by complete legal predictability. To uphold the author's claim would amount to allowing every person involved in a proceeding to challenge the applicable rules on admissibility by adapting them to individual circumstances, thereby countermining the imperative of ensuring the certainty of the law in a democratic society. The State party furthermore recalls that the deposit is a security which is not paid to the office that recovers the fine and may be returned to the party concerned if the court does not find the initial offence to have been proven. The European Court of Human Rights, for example, only considered the amount of the deposit an obstacle to the right of access to a court where the amount was so disproportionate as to constitute a genuine brake barring access to a court. In the present case, the State party notes that the amount of the deposit was small, did not in any case exceed the amount of the fixed fine and, furthermore, that the author could have applied for legal aid if he had considered the sum to be disproportionate to his means. It therefore concludes that the requirement to pay a deposit did not place a disproportionate burden on the author, considering the aim of this measure, and thus does not disclose a violation of article 2 of the Covenant.

8.5 Second, the State party argues that a detailed examination of the three claims shows that their main purpose is to challenge the prefectural order on the installation of the radar control unit which recorded the speeding offences. It points out that the prefectural order is an administrative decision and the author could therefore have applied to an administrative court for an annulment on grounds of ultra vires, something which he failed to do.

8.6 Third, the State party emphasizes that the author does not contest the offence itself, namely, that his vehicle was speeding; he merely asserts that he was not driving when the offences occurred and does not know who was. It recalls that the owner is legally responsible for his vehicle and furthermore that he is deemed to be the driver, unless he can prove that the vehicle was destroyed, stolen or driven by a third party. The owner cannot therefore exonerate himself of responsibility by stating that he does not know who was driving the vehicle at the time of the offence. In any case, the State party notes that in the three applications for exemption transmitted to the payment centre the author had ticked the box marked "I had lent (or rented) my vehicle to the following person, who was or may have been driving it when the offence was noted" and had added the handwritten comment "see enclosed letter". No letter was in fact included in his applications for exemption. Had the author identified the driver as he was required to do under the regulations, he would have provided evidence allowing him to be exonerated of responsibility.

8.7 As to the claim that the requirement to pay a deposit is incompatible with the presumption of innocence, the State party considers that this claim is bound up with the claim concerning the right of access to a court and should not be considered separately. If the Committee considers the claim separately, however, the State party recalls that payment of the deposit does not amount to a presumption of guilt, since a police court hearing a claim could acquit, discharge or convict the

claimant. Therefore, the deposit cannot be likened to a fine. Furthermore, article 529-10 of the Code of Criminal Procedure clearly states that "payment of this deposit cannot be compared to payment of the fixed fine and does not give rise to the docking of points from the driving licence". The deposit is merely a security. Indeed, the European Court of Human Rights concluded that the deposit could not be regarded as "a finding of guilt without guilt first having been proved and, in particular, without the party concerned having had the opportunity to avail himself of due process".[7] The State party concludes that the author's right to the presumption of innocence has not been infringed.

Author's comments on the State party's observations

9.1 On 18 February 2008, the author stated that he concurred with the State party's analysis of the role of the officer of the public prosecutor's department and that it is French law which is contrary to the Covenant. He recalls that under article 55 of the French Constitution international treaties have a higher authority than laws. The officer of the public prosecutor's department, subject to oversight by the ordinary courts, ought not to have applied French law as it is incompatible with the provisions of the Covenant.

9.2 As to the requirement to pay a deposit as a condition of the admissibility of the applicant's claim, the author notes that the *Varela* case invoked by the State party concerns a person who intended to sue for damages but had not paid the security ordered by the investigating judge. The author is not the party bringing proceedings here but the party facing them. He maintains that to be faced with criminal proceedings and, in addition, to have to pay a sum of money in order to be able to present a defence is a breach of due process and of the principle of presumption of innocence.

9.3 As to the possibility of applying for an annulment of the prefectural order concerning the installation of the radar unit that recorded the speeding offence, the author maintains that he did not need to file an application to set aside the order on grounds of ultra vires as the criminal courts have full jurisdiction and can determine whether a regulation which is the subject of a legal challenge before them is unlawful. In any event, the author could not have filed an application to set aside the order on grounds of ultra vires, because such an application would have had to be filed not more than two months from the date of publication of the contested prefectural order. Any administrative appeal was thus destined to fail. The author could only have argued before the criminal court that the prefectural order on which the prosecution was based was illegal; this he was unable to do because his claim did not reach the court after the procedure had been blocked by the officer of the public prosecutor's department.

9.4 As to the responsibility of the vehicle owner, the author maintains that there is nothing contradictory about his stating that he had lent the vehicle to another person without disclosing the identity of that person. He argues that it is not part of his ethical code to report the person to whom he may have lent his vehicle and that, in any case, he does not know who was driving the

[7] See European Court of Human Rights, *Leutscher v. the Netherlands*, judgment of 26 March 1996.

vehicle at the time in question, since over 30 persons regularly visit his home and have access to his vehicle. He refuses to report a member of his family. In his view, French law wrongly presumes that the vehicle owner is responsible, which is contrary to the Covenant.

Additional observations of the parties on the merits

10.1 On 12 May 2008, the author recalled that the State party had declared that the author did not risk losing points or being given a police record. The author had, however, received a letter dated 7 March 2008 from the Ministry of the Interior indicating that he had committed a criminal offence under the Traffic Code entailing the loss of a point on his driving licence and the inclusion of his name on the register of the national driving licence authority. He concluded that any driver who challenges the offence that he is accused of committing without first paying the deposit will have his application dismissed, while the criminal offence will be definitively recorded without any consideration of the merits, a point will be docked from his driving licence and the driver's name will be included in the register of the national driving licence authority.

10.2 On 16 May 2008, the State party informed the Committee of a recent decision of the European Court of Human Rights dismissing as manifestly unfounded an application invoking the same complaint as that in the present communication.[8] In that decision, the Court found the purpose of the deposit to be legitimate, namely, that of "preventing dilatory and groundless appeals and avoiding an excessive burden being placed on the role of the police court with regard to road traffic, an issue which affects the entire population and is the subject of frequent challenges".

10.3 On 13 June 2008, the author recalled that the Committee is in no way bound by the decisions of the European Court of Human Rights. In any event, the decision invoked by the State party concerns article 6, paragraphs 1 and 2, of the European Convention on Human Rights, the content of which differs from that of article 2, paragraph 3, and article 14, paragraphs 1 and 2, of the Covenant. Moreover, article 2, paragraph 3, guarantees the right to an effective remedy, a concept not found in article 6 of the European Convention on Human Rights.

10.4 The author recalls a ruling of the Constitutional Council that, under the French Constitution and European Convention on Human Rights, the licence holder of a vehicle which commits an offence recorded by an automatic radar unit may be simply presumed guilty and required to pay a court fine only if the licence holder can "effectively" present the arguments in his defence "at all stages of the procedure".[9] Since, however, the defence arguments were not considered owing to non-payment of the deposit, the author clearly did not have access to an "effective" remedy at all stages of the procedure. Even if the European Court of Human Rights takes the view that the deposit may be considered a legitimate means of ensuring the proper administration of justice and preventing dilatory and groundless appeals, the deposit should not preclude consideration of the defence arguments on the merits. The author suggests that the national legislation, while retaining the requirement of a prior deposit, could still make provision

[8] See European Court of Human Rights, *Thomas v. France*, decision of 29 April 2008.

[9] See Constitutional Council, Decision No. 99-411 of 16 June 1999.

in the event of non-payment for the defence arguments to be considered on the merits by an independent and impartial tribunal. Where the arguments proved groundless, the penalty could be increased, for example. In that way, dilatory and groundless appeals could be punished in a manner that would serve as a deterrent.

Consideration of the merits

11.1 The Committee has considered the present communication in the light of all written information made available to it by the parties, as provided for in article 5, paragraph 1, of the Optional Protocol.

11.2 With regard to the claim of a violation of article 2, paragraphs 3 (a) and (b), the Committee recalls that article 2 of the Covenant can be invoked by individuals only in conjunction with other articles of the Covenant. It notes that article 2, paragraph 3 (a), stipulates that each State party undertakes "to ensure that any person whose rights or freedoms as recognized [in the Covenant] are violated shall have an effective remedy", while article 2, paragraph 3 (b), provides that each State party undertakes "to ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State". In the present case, however, the Committee considers that the allegations of the author in respect of article 2, paragraphs 3 (a) and (b), are closely bound up with his allegation that he did not have access to a court within the meaning of article 14, paragraph 1, and should not be considered separately.

11.3 As to the author's claim of a violation of article 14, paragraph 1, the Committee takes note of the author's allegation that his right to have his case heard by a court that would weigh the merits of the criminal charges against him was violated by the obligation to pay the deposit. It recalls that the author was not required to pay the fines as such in order to have access to a court but to deposit an amount equivalent to the fines.[10] According to the State party, this system was put in place to improve efficiency in an area which engenders a very large number of cases. The Committee notes that the right of access to a court is not absolute and is subject to certain restrictions. These restrictions must not, however, limit access to the courts to such an extent that the very substance of the right of access to justice is undermined. In the present case, the Committee observes that the system put in place by the State party is used only for relatively small fines and that the amount of the deposit did not exceed that of the fixed fine under article 529-10 of the Code of Criminal Procedure. It notes that the author does not invoke any financial difficulties preventing him from paying the deposit within the set time limit. The Committee considers such a system as having a legitimate aim, in particular that of ensuring the proper administration of justice, and as being unlikely to undermine the substance of the author's right of access to the police court. As to the author's argument that his application was dismissed by an officer of the public prosecutor's department, rather than by a judge, the Committee notes that the decision in question was an administrative not a judicial one, requiring the officer only to determine whether the conditions of admissibility had been met. The Committee further notes

[10] In this regard, the exemption application form used in the author's case clearly states, "Payment of this deposit shall not be deemed tantamount to payment of the fixed penalty and shall not entail any loss of driving licence points."

that, under French law, the officer of the public prosecutor's department had the right to take the decision to dismiss the application for failure to pay the deposit. If the author had paid the deposit, he would have had access to the police court, which would have provided him with an effective remedy. Under these circumstances, the Committee finds that, in the present case, the obligation to pay a deposit does not impair either the author's right of access to a court or his right to an effective remedy. The Committee therefore concludes that the facts before it do not disclose a violation of article 14, paragraph 1, or article 2, paragraphs 3 (a) and (b), of the Covenant.

11.4 As to the claim of a violation of article 14, paragraph 2, the Committee takes note of the author's argument that the obligation to pay a deposit infringes the presumption of innocence. It also notes, however, that, under article 529-10 of the Code of Criminal Procedure, payment of the deposit does not amount to payment of the fixed fine. It therefore considers that payment of the deposit cannot be likened to a finding of guilt; had payment been made, the police court could have acquitted, discharged or convicted the author. Under these circumstances, the Committee concludes that the facts before it do not disclose a violation of article 14, paragraph 2, of the Covenant.

12. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts before it do not disclose a violation of article 2, paragraphs 3 (a) and (b), or article 14, paragraphs 1 and 2, of the Covenant.

[Adopted in French, Spanish and English, the French text being the original version. Subsequently to be issued in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]
