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HUMAN RIGHTS COMMITTEE  
Forty-fifth session

DECISIONS

Communication No. 393/1990

Submitted by : A.C.  
Alleged victim : The author  
State party : France  
Date of communication : 16 March 1990 (initial submission)  
Documentation references : Prior decisions - Special Rapporteur's  
rule 91 decision,  
transmitted to the  
State party on  
30 July 1990 (not  
issued in document  
form)  
Date of present decision : 21 July 1992

Decision on admissibility

[See Annex]

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\*/ All persons handling this document are requested to respect and observe its confidential nature.

DEC393.45 cm

ANNEX \*\*/

Decision of the Human Rights Committee under the Optional  
Protocol  
to the International Covenant on Civil and Political Rights  
- Forty-fifth session -

concerning

Communication No. 393/1990

Submitted by : A.C. [name deleted]  
Alleged victim : The author  
State party : France  
Date of communication : 16 March 1990 (initial submission)

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

Meeting on 21 July 1992,

Adopts the following:

Decision on admissibility

1. The author of the communication is A.C., a French citizen born in 1940, currently residing in Paris. He claims to be a victim of a violation of his human rights by France. While not specifically invoking any provisions of the International Covenant on Civil and Political Rights, it appears from the context of his submissions that he claims to be a victim of violations of article 14 of the Covenant.

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\*\*/ Made public by decision of the Human Rights Committee.

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The facts as submitted by the author :

2.1 On 26 June 1984, on the platform of a Paris metro station, the author had an altercation with a transportation officer of the Paris Underground (Régie autonome des transports parisiens (RATP)) about the validity of his transportation ticket; he claims that he received several blows, the effect of which allegedly was compounded by a pre-existing ailment.

2.2 The author did not initiate proceedings against the RATP agent who had intercepted him. Instead, this agent filed criminal charges against A.C. and, on 18 April 1986, the Tribunal Correctionnel convicted him of assault against RATP agents in the line of duty and fined him 1,000 French francs. The author denies having resorted to any physical violence and notes that the hospital which admitted the RATP agent did not want to place her on sick leave or issue a medical certificate: the document produced subsequently is dismissed as a forgery. Both he and the public prosecutor appealed the judgement. On 4 November 1986, the Court of Appeal dismissed the author's appeal, considering that the judge of first instance had correctly evaluated, both in fact and in law, the events of 26 June 1984. On 8 April 1987, the Court of Cassation rejected the author's further appeal.

2.3 The author submits that he was not notified of the date of the hearing of his appeal and observes, inter alia, that, when appealing to the Court of Cassation on 10 November 1986, he was told to file his written brief within 10 days, although the written judgement of the Court of Appeal was not yet available; the author only received the latter judgement during the first days of 1987.

2.4 On 11 January 1989, the author filed a complaint against the two judges of the Tribunal Correctionnel and the Court of Appeal, respectively. As to the former, he claimed that the judge chose to rely on evidence known to be incorrect; in respect of the latter judge, it was contended that he had endorsed the unfair and arbitrary allegations made against the author during the appeal. On 22 February 1989, the Criminal Chamber of the Court of Cassation refused to designate a jurisdiction charged with the examination of the complaint, on the grounds that the author in fact sought to challenge the motivation of the judgements of the Tribunal Correctionnel and the Court of Appeal, which was not susceptible of review:

"Whereas the complaint consists, in the absence of any other accusation, of a criticism of jurisdictional decisions...

"In principle, decisions of such a nature cannot be reviewed...

"These are no grounds for designating a jurisdiction".

Notified of this decision on 16 May 1989, the author withdrew his complaint against the judges by letter of 13 June 1989.

2.5 Subsequently, the author requested that his conviction be reviewed and a re-trial ordered. On 17 May 1991, the Committee on Review of Criminal Convictions of the Court of Cassation decided that the request was inadmissible, as it was neither based on fresh evidence nor on facts overlooked during the criminal proceedings, within the meaning of article 622, paragraph 4, of the Code of Criminal Procedure.

2.6 On 5 May 1987, the author submitted his case to the European Commission of Human Rights. On 11 October 1989, the Commission declared his application inadmissible under articles 26 and 27, paragraph 3, of the European Convention on Human Rights, on the ground of non-exhaustion of domestic remedies. The Commission considered, in particular, that the author should have submitted a supplementary brief to his appeal to the Court of Cassation without delay upon receipt, on or around 10 January 1987, of the judgement of the Court of Appeal.

#### The complaint :

3.1 The author claims that he did not have a fair trial in the Tribunal Correctionnel because he was convicted on the basis of false evidence. He further submits that the proceedings before the Court of Cassation were unfair, notably because he did not have adequate time and opportunity to prepare his defence, and because he was not able to defend himself in person before the Court, since he was not notified of the date of the hearing.

3.2 The author contends that he was denied access to what he terms a particularly important element of the file, namely a written deposition made on 27 June 1984 by the RATP agent who had accused him of assault. Despite several requests, the author only

obtained a copy of this deposition on 8 June 1989, i.e., after the rejection of his appeal by the Court of Cassation and after submitting his case to the European Commission of Human Rights.

3.3 The author contends that the events of 26 June 1984 and the judicial proceedings aggravated his ailments; after numerous periods of absence from work, he lost his employment. In the circumstances, he asks the Committee to award damages in the order of 600,000 French francs, as well as an annual invalidity pension of 60,000 francs from the State party.

3.4 With regard to the reservation made by France in respect of the competence of the Human Rights Committee to consider communications which have already been considered under another procedure of international investigation or settlement (article 5, paragraph 2(a), of the Optional Protocol), the author submits that his communication raises issues that were not considered by the European Commission. Thus, his complaint before the Court of Cassation about the fact that he was not notified of the date of the appeal and that the Court of Appeal did not make available to him documents deemed essential for the preparation of the defence was not looked at by the Commission. Secondly, he submits that since the Commission was not in receipt of the written deposition of G.L., because he himself only obtained a copy after filing his complaint, the matter now before the Committee is not "the same" within the meaning of article 5, paragraph 2(a), of the Optional Protocol. Thirdly, he notes that the Commission could not examine his complaint of misuse of power against the judges referred to in paragraph 2.4 above, as it was submitted subsequent to his application to the Commission. In respect of the second allegation, the author observes that he also was not notified of the date of the hearing and was therefore unable to prepare his case properly; he further notes that the decision of the Court of Cassation of 22 February 1989 is final. Domestic remedies therefore are said to be exhausted.

The State party's information and observations :

4.1 The State party argues that the communication is inadmissible under article 5, paragraphs 2(a) and 2(b), of the Optional Protocol.

4.2 With respect to the author's conviction of assault and the ensuing judicial proceedings, the State party notes that the same matter was previously examined and dismissed by the European Commission of Human Rights. It recalls its reservation made in respect of article 5, paragraph 2(a), of the Optional Protocol



(see paragraph 3.4 above), and submits that this part of the communication should be declared inadmissible under that provision.

4.3 As to the author's complaint directed against the judges of the Tribunal Correctionnel and the Court of Appeal, the State party contends that it is inadmissible on the ground of non-exhaustion of domestic remedies, since the author withdrew his complaint on 13 June 1989. In addition, the State party notes that the author never deposited the security ("consignation") of 3,000 French francs requested by the senior examining magistrate (doyen des juges d'instruction), which would, in any event, have resulted in the complaint being declared inadmissible, pursuant to article 88 of the French Code of Criminal Procedure.

Issues and proceedings before the Committee :

5.1 Before considering any claims 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.

5.2 The author has challenged the State party's contention that he failed to exhaust available domestic remedies in respect of his complaint against the judges of the Tribunal Correctionnel and the Court of Appeal. For the reasons set out in the following paragraph, the Committee need not pronounce itself on this point.

5.3 The Committee notes that the complaint pertains to the evaluation of evidence and alleged bias of the judges in the case, and recalls its established jurisprudence that it is generally for the appellate courts of States parties to the Covenant to evaluate facts and evidence in any given case. It is not in principle for the Committee to make such an evaluation or challenge the motivation of decisions handed down by national courts, unless it can be ascertained that the evaluation of evidence was clearly arbitrary or amounted to a denial of justice, or that the judge manifestly violated his obligation of impartiality. Although it has been requested to examine matters belonging into the latter category, the Committee considers that while the author has sought to substantiate his allegation, the material before it does not reveal that the conduct of either trial or appeal suffered from such obvious defects. Accordingly,

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the communication is inadmissible as incompatible with the provisions of the Covenant, pursuant to article 3 of the Optional Protocol.

6. The Human Rights Committee therefore decides:

(a) That the communication is inadmissible under article 3 of the Optional Protocol;

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

[Done in English, French, Russian and Spanish, the English text being the original version.]