

ANNEX VIII

Decisions of the Human Rights Committee declaring communications inadmissible under the Optional Protocol to the International Covenant on Civil and Political Rights

A. Communication No. 204/1986, A. P. v. Italy
(Decision adopted on 2 November 1987
at the thirty-first session)*

Submitted by: A. P. [name deleted]

Alleged victim: The author

State party concerned: Italy

Date of communication: 16 January 1986 (date of initial letter)

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

Meeting on 2 November 1987,

Adopts the following:

Decision on admissibility

1. The author of the communication (initial letter dated 16 January 1986 and a further letter of 7 September 1987) is A. P., an Italian citizen born on 12 March 1940 in Tunisia, at present residing in France. He claims to be the victim of a violation of article 14, paragraph 7, of the Covenant by the Italian Government. He is represented by counsel.

2.1 The author states that he was convicted on 27 September 1979 by the Criminal Court of Lugano, Switzerland, for complicity in the crime of conspiring to exchange currency notes amounting to the sum of 297,650,000 lire, which was the ransom paid for the release of a person who had been kidnapped in Italy in 1978. He was sentenced to two years' imprisonment, which he duly served. He was subsequently expelled from Switzerland.

2.2 It is claimed that the Italian Government, in violation of the principle of non bis in idem, is now seeking to punish the author for the same offence as that for which he had already been convicted in Switzerland. He was thus indicted by an Italian Court in 1981 (after which he apparently left Italy for France) and on 7 March 1983 the Milan Court of Appeal convicted him in absentia. On 11 January 1985, the Second Division of the Court of Cassation in Rome upheld the conviction and sentenced him to four years' imprisonment and a fine of 2 million lire.

* Pursuant to rule 85 of the provisional rules of procedure, Committee member Fausto Pocar did not take part in the adoption of the decision.

2.3 The author invokes article 14, paragraph 7, of the Covenant, which provides:

"No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country."

He further rejects the Italian Government's interpretation of this provision as being applicable only with regard to judicial decisions of the same State and not with regard to decisions of different States

2.4 The author further indicates that in 1984 the Italian Government addressed an extradition request to the Government of France, but that the Paris Court of Appeal, by judgement of 13 November 1985, denied extradition because it would violate French ordre public to make the author suffer two terms of imprisonment based on the same facts.

3. The Committee has ascertained that the same matter has not been submitted to another procedure of international investigation or settlement.

4. By its decision of 19 March 1986, the Working Group of the Human Rights Committee transmitted the communication under rule 91 of the provisional rules of procedure to the State party concerned, requesting information and observations relevant to the question of the admissibility of the communication, in particular details of the effective remedies available to the author in the particular circumstances of his case. It also requested the State party to provide the Committee with the text of any court orders or decisions of relevance to the case, including the 1981 indictment of the author, the judgement of 7 March 1983 of the Milan Court of Appeal and the judgement of 11 January 1985 of the Court of Cassation in Rome.

5.1 In its submission under rule 91, dated 24 June 1987, the State party provides copies of the court orders and decisions in the author's case and objects to the admissibility of the communication, which it considers unfounded (sans fondement). In particular, the State party argues that Mr. P. was tried for two different offences in Switzerland and in Italy.

5.2 The State party first provides an outline of the factual situation:

"A few months after the kidnapping of M. G. M., in Milan on 25 May 1978, and the payment by her family of 1,350 million lire, attempts were made to 'launder' sums deriving from the crime. In particular, on 4 September 1978, a person later identified as J. M. F. attempted to convert into a bank cheque the sum of 4,735,000 lire at the Milan branch of the Banca Nazionale del Lavoro; on 6 September 1978, the same individual negotiated the sum of 120 million lire at several banks in Lugano (Switzerland); on 12 September 1978, again at different banks in Lugano, J. M. F., this time accompanied by the author changed 100 million lire into Swiss francs. On that occasion, the Swiss police intervened and J. M. F. absconded, while A. P. was arrested. Some time later, a further sum of 57,650,000 lire was found hidden in a rented car that had been used by J. M. F. and A. P. to travel to Switzerland."

5.3 The State party then rejects the author's contention that article 14, paragraph 7, of the Covenant protects the principle of "international non bis in idem". In the opinion of the State party, article 14, paragraph 7, must be understood as referring exclusively to the relationships between judicial decisions of a single State and not between those of different States.

6. In his comments, dated 7 September 1987, the author contends that his allegations with respect to a violation of article 14, paragraph 7, are well founded and argues that article 14, paragraph 7, of the Covenant should be interpreted broadly, so as to apply to judicial decisions of different States.

7.1 Before considering any claims contained in a communication, the Human Rights Committee shall, in accordance with rule 87 of its provisional rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

7.2 The Committee notes that the State party does not claim that the communication is inadmissible under article 5, paragraph 2, of the Optional Protocol. With regard to article 5, paragraph 2 (a), the Committee observes that the matter complained of by A. P. has not been submitted to another procedure of international investigation or settlement. With regard to article 5, paragraph 2 (b), the State party has not claimed that there are domestic remedies which the author could still pursue in his case.

7.3 With regard to the admissibility of the communication under article 3 of the Optional Protocol, the Committee has examined the State party's objection that the communication is incompatible with the provisions of the Covenant, since article 14, paragraph 7, of the Covenant, which the author invokes, does not guarantee non bis in idem with regard to the national jurisdictions of two or more States. The Committee observes that this provision prohibits double jeopardy only with regard to an offence adjudicated in a given State.

8. In the light of the above, the Human Rights Committee concludes that the communication is incompatible with the provisions of the Covenant and thus inadmissible ratione materiae under article 3 of the Optional Protocol.

9. The Human Rights Committee therefore decides:

(a) That the communication is inadmissible;

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

B. Communication No. 212/1986, P. P. C. v. the Netherlands
(Decision adopted on 24 March 1988 at the
thirty-second session)

Submitted by: P. P. C. [name deleted]

Alleged victim: The author

State party concerned: The Netherlands

Date of communication: 27 October 1986