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HUMAN RIGHTS COMMITTEE
Fifty-fifth session

DECISIONS

Communication No. 472/1991

Submitted by:	Jean-Paul Lippmann
Alleged victims:	The author and his sons, Mathias and Arnaud
State party:	France
Date of communication:	16 August 1991 (initial submission)
Documentation references:	Prior decisions - none
Date of present decision:	26 October 1995

[ANNEX]

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

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ANNEX */

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

concerning

Communication No. 472/1991

Submitted by: J. P. L. [name deleted]

Alleged victims: The author and his sons, M. and A. [names deleted]

State party: France

Date of communication: 16 August 1991 (initial submission)

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

Meeting on 26 October 1995,

Adopts the following decision on admissibility:

1. The author of the communication is J. P. L., a French citizen born in 1946 and currently residing in Neuilly s/Seine, France. He submits the communication on his own behalf and that of his sons M. (born 1977) and A. (born 1981). He claims that he and his sons are victims of violations by France of articles 18, paragraph 4, 23, paragraph 4, and 24, paragraph 1, of the International Covenant on Civil and Political Rights.

The facts as submitted by the author:

2.1 The author married in 1974. At the beginning of 1988, his wife filed for divorce, and on 15 December 1988, the Tribunal of Nanterre (Tribunal de Grande Instance de Nanterre) pronounced the divorce. Mr. L. notes that the decision was reached in his absence and explains that in divorce proceedings in France, legal representation is mandatory. At the time, because of his position in a state-owned bank and his salary, he did not qualify for legal aid; he claims, however, that he would have incurred heavy debts had he retained a lawyer privately, especially in the light of substantial expenditures incurred by his departure from the family home.

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2.2 The judgment of 15 December 1988 awarded custody of the children to the mother; the author was granted what are considered to be customary visiting rights, i.e. every second weekend and for half of the yearly school vacations. He was further ordered to pay 3,500 FF per calendar month to his ex-wife.

2.3 In the summer of 1989, the author noted that the school results of his older son, M., were deteriorating, notably in mathematics and foreign languages, and that he was becoming obese. He therefore decided: (a) to take his son to the children's hospital in Paris for regular medical checks; (b) to buy two additional small personal computers and home education programmes, so as to enable his sons to "study more efficiently" on the occasions of their visits; and (c) to request the family judge to allow him to see his sons every weekend. From the documents submitted by the author, it transpires that the author requested several postponements of appointments at the children's hospital, arguing that his son had to follow school classes every morning.

2.4 On 30 August 1989, Mr. L. was ordered by the judge responsible for matrimonial and custody matters (juge aux affaires matrimoniales) of the Tribunal de Grande Instance of Nanterre to present himself the following day. On 1 September 1989, the judge, upon hearing the author, his ex-wife and the children, decided to suspend the author's visiting rights temporarily. She indicated that such a step was necessary because the author had made numerous incriminating comments with sexual connotations ("propos orduriers") to his sons and asked them repeated questions about the sexual behaviour of their mother. Moreover, the children had complained, by letter dated 11 June 1989 addressed to the family judge, about the difficult living conditions at their father's home, and about their being asked to study in his studio.

2.5 On 11 December 1989, the same judge ordered a social enquiry ("enquête sociale") and a psycho-medical examination ("examen psycho-médical") of both parents, in order to determine under which conditions the author might be allowed to exercise his visiting rights. The results of the study were to be transmitted to the judge within three months. On 13 July 1990, the family judge again heard the parties, including the author's older son, and examined the report of the social enquiry. The author confirmed that he had refused to meet with the social worker and explicitly stated that he would not submit to any psycho-medical examination. As a result, and on the basis of the report of the social enquiry as well as the wishes of the author's sons, the suspension of the author's visiting rights was confirmed.

2.6 Mr. L. does not deny the charges referred to in paragraph 2.4 above but contends that his behaviour in no way justified the suppression of his visiting rights. He submits that the absence of contacts with their father has been highly prejudicial to his sons' development and education. In this context, he explains that he holds a university degree, whereas his ex-wife does not; he observes that he used to enrol his older son in language courses (a two week course in English and a two week course in German) during summer vacations, which regrettably is no longer possible. Moreover, he can no longer impart to his sons his skills as a programmer of PC software and direct them towards higher studies in information technology, skills which he considers to be indispensable for their future career development.

2.7 The author appealed the decision of 1 September 1989. On 23 February 1990, the Court of Appeal of Versailles dismissed his appeal. The Court of Cassation rejected his further appeal on 9 April 1991. Subsequent letters to the Minister of Justice (Garde des Sceaux) and President Mitterrand did not change the situation, as the author was informed by the office of the Garde des Sceaux and the President that they could not interfere with pending judicial procedures.

2.8 The author continued his efforts to obtain custody of his sons or "at least daily visiting rights". On 13 March 1991, he filed another request to this effect with the family judge at Nanterre. He justified his request with the allegedly unsatisfactory school results of his sons and his desire to assist them in their studies. A hearing took place on 15 May, and the children were convoked for a separate hearing on 5 June 1991. On that date, only M. met with the judge, whereas A. sent a confidential letter.

2.9 On 10 July 1991, the judge confirmed the suspension of the author's visiting rights, for a duration of three years (i.e. until 10 July 1994). In her decision, the judge stated that the author's obsession with his sons' school education had eliminated every sign of affection vis-à-vis them and interest in their development, and that the sons were exasperated by the situation ("Le surinvestissement par le père de la réussite scolaire arrive à gommer toute manifestation d'affection et d'intérêt de sa part envers ses fils qui vivent très mal cette situation.")

2.10 The author adds that, as a result of the above events, he was dismissed from his post. After several written warnings from his employer and invitations that he agree to be treated "for personal and professional difficulties", which he refused to do, the employer terminated the author's contract with effect of 31 January 1991.

2.11 After the family judge's decision of 10 July 1991, the author stopped having direct contacts with his sons. He continued however to write to them on a regular basis (over 100 letters between July 1991 and July 1994). His ex-wife moved away from Paris, and the author's efforts to ascertain where his sons were enrolled in school were unsuccessful. On 1 April 1993, the police brought the author to a psychiatric institution located approximately 60 kilometres from Paris. He indicates that there were no grounds for assigning him to this institution for treatment of psychological disorder. On 25 June 1993, he was released.

2.12 Between December 1993 and August 1995, the author did not provide further information on his case. By letters dated 13 August and 17 September 1995, he indicates that by injunction ("ordonnance de référé") of 8 July 1994 handed down by the family judge at the Tribunal de Grande Instance de Caen, the suspension of his visiting rights was extended for another three years, until July 1997. In her decision, the judge, who had heard the parties on 4 July 1994, concluded that while the author had not seen his sons since 1991, he had addressed regular letters to them, reminding them of his proximity and their duties, and thereby reinforcing a sentiment of

animosity and persecution in his sons. Furthermore, in eight letters sent to them between 24 April and 24 June 1994, he had informed them of the imminent resumption of his visiting rights and of his intention to spend his vacations with them as of 11 July 1994. The tone of the letters, the fact that the author did not even consult with his sons then aged 13 and 17 years, and the latters' exasperation with their father's attitude, manifested in various letters, led the judge to conclude that an extension of the suspension order was justified.

2.13 The author dismisses the order of 8 July 1994 as an "arbitrary refusal" to let him see his sons. He requests compensation from the State party for the moral prejudice caused to him and his sons by the court orders. In addition, he requests to be examined by a foreign psychiatrist, as he suspects that he was subjected to arbitrary internment from April to June 1993.

The complaint:

3. The author contends that the above events constitute violations by France of article 18, paragraph 4, of the Covenant because, as the father, he cannot ensure the moral education of his sons. He further invokes article 23, paragraph 4, on the ground that the equality of spouses was not respected upon dissolution of his marriage, and that no measures were taken to ensure the necessary protection of his sons. Finally, he claims a violation of article 24, paragraph 1, because the French authorities allegedly did not take any measures for the protection of his minor sons.

Issues and proceedings before the Committee:

4.1 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.

4.2 The Committee has noted the author's claims related to articles 18, paragraph 4, and 24, paragraph 1, of the Covenant. It observes that the author has failed to show how the State party has in concreto restricted the liberty of parents to ensure in general the moral education of their children, or failed to take measures in protection of minors, including the author's sons. Rather, the State party's judicial authorities took measures in the present case, under the French Civil Code, which were designed to serve the best interests of the author's sons. In that respect, therefore, the author has failed to advance a claim within the meaning of article 2 of the Optional Protocol.

4.3 With respect to article 23, paragraph 4, the Committee accepts that this provision grants, barring exceptional circumstances, a right to regular

contact between children and both parents[1]. The material before the judges seized of the case clearly supported the conclusion that there were special circumstances which justified a denial of the author's access to his sons, in the interest of the children. The author has not advanced any grounds to show that the material before the courts could not support such a conclusion. In this respect, therefore, the Committee equally concludes that the author has made no claim within the meaning of article 2 of the Optional Protocol.

5. The Human Rights Committee therefore decides:

(a) that the communication is inadmissible under article 2 of the Optional Protocol;

(b) that this decision shall be communicated to the author and, for information, to the State party.

[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.]

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[1] See Views on communication No. 514/1992 (Sandra Fei v. Colombia), adopted on 4 April 1995, paragraph 8.9; see also General Comment No. 19[39] on article 23, paragraph 6.