



**International covenant
on civil and
political rights**

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

DECISION

Communication No. 1632/2007

<i>Submitted by:</i>	Raymond-Jacques Picq (represented by counsel, Alain Garay)
<i>Alleged victim:</i>	The author
<i>State party:</i>	France
<i>Date of communication:</i>	28 May 2007 (initial submission)
<i>Document references:</i>	Special Rapporteur's rule 97 decision, transmitted to the State party on 4 December 2007 (not issued in document form)
<i>Date of decision:</i>	30 October 2008

* Made public by decision of the Human Rights Committee.

<i>Subject matter:</i>	Classification of the Plymouth Brethren as a “cult” in a parliamentary report
<i>Procedural issues:</i>	Lack of standing as a victim, <i>actio popularis</i>
<i>Substantive issues:</i>	Right to an effective remedy, right to a fair hearing, freedom of religion
<i>Articles of the Covenant:</i>	2, paragraph 3, 14 and 18
<i>Articles of the Optional Protocol:</i>	1 and 2

[ANNEX]

Annex

**DECISION 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. 1632/2007*

Submitted by: Raymond-Jacques Picq (represented by counsel, Alain Garay)
Alleged victim: The author
State party: France
Date of communication: 28 May 2007 (initial submission)

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

Meeting on 30 October 2008,

Adopts the following:

Decision on admissibility

1.1 The author of the communication, dated 28 May 2007, is Raymond-Jacques Picq, a French national, born on 11 September 1943 in France. He claims to be the victim of violations by France of article 2, paragraph 3, and articles 14 and 18 of the Covenant. The author is represented by counsel, Alain Garay. The Covenant and the Optional Protocol to the Covenant entered into force for France on 4 February 1981 and 17 May 1984, respectively.

* The following members of the Committee participated in the consideration of the present communication: Mr. Abdelfattah Amor, Mr. Prafullachandra Natwarlal Bhagwati, Mr. Maurice Glèlè Ahanhanzo, Mr. Yuji Iwasawa, Mr. Edwin Johnson, Ms. Hellen Keller, Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer Lallah, Ms. Iulia Antoanella Motoc, Mr. Michael O'Flaherty, Ms. Elisabeth Palm, Mr. José Luis Pérez Sánchez-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 Chanut did not participate in the adoption of the present decision.

1.2 On 26 February 2008, the Special Rapporteur on new communications, on behalf of the Committee, decided that the admissibility of this case should be considered separately from the merits.

The facts as presented by the author

2.1 The author is a member of the Plymouth Brethren, a Protestant movement founded in the United Kingdom. He is also the president of the National Union of Plymouth Brethren in France. This cultural association ensures the legal representation and protection of the 13 local associations of Plymouth Brethren.

2.2 On 22 December 1995, a parliamentary commission of inquiry published a report on cults in France. The report defined 10 criteria for identifying cults¹ and listed 172 movements that met at least one of these criteria. The Plymouth Brethren did not appear on the list. In 1999, a second parliamentary commission was established. Again, the Plymouth Brethren did not appear in the report. At the initiative of the deputies who served on the first two parliamentary commissions of inquiry on cults, a law aimed at “strengthening the prevention and suppression of cult movements” was adopted on 12 June 2001. This law defines a cult movement as “a group pursuing activities with the purpose or effect of inducing, maintaining or exploiting the psychological or physical subjection of persons participating in its activities”.

2.3 In 2006, a third parliamentary commission of inquiry was established to discuss the influence of cult-like movements and their practices on the physical and mental health of minors. The chairman of the commission and the rapporteur sent a questionnaire comprising 30 questions to two local associations of Plymouth Brethren. The National Union of Plymouth Brethren in France replied on behalf of the two associations. On this occasion, the Plymouth Brethren were included in the commission’s report. According to the author, the parliamentary commission of inquiry based its conclusions solely on testimony gathered from persons known to be hostile to the religious and moral interests of the Plymouth Brethren and did not even interview members of the group.

2.4 It is claimed that the parliamentary inquiry reports gave rise to a series of negative reactions against the Plymouth Brethren. The Inter-Ministerial Task Force to Monitor and Combat Abuse by Cults (MIVILUDES) criticized the Plymouth Brethren in its 2006 annual report.² Owing to the wide media coverage given this official report, the Plymouth Brethren have

¹ These criteria are mental destabilization, exorbitant financial demands, severing of ties with the original social environment, attacks on physical integrity, indoctrination of children, antisocial discourse, breaches of public order, legal problems, bypassing of traditional economic networks and infiltration of the authorities.

² On 7 October 1998, the French Government issued a decree establishing an inter-ministerial task force responsible for combating cults. The task force trained public employees to combat cults and inform the public of their dangers. It was replaced, by a decree of 28 November 2002, with the Inter-Ministerial Task Force to Monitor and Combat Abuse by Cults, hereinafter “MIVILUDES”.

suffered numerous problems, such as denial of property insurance and the publication of hostile articles in the press. The Plymouth Brethren sent several letters to MIVILUDES, which merely acknowledged receipt of the letters but did not respond to them. According to the author, the National Assembly turned the Plymouth Brethren into second-class citizens, to be feared and avoided.

The complaint

3.1 The author believes that the parliamentary reports on cults and the MIVILUDES annual reports constituted a direct violation of the rights and freedoms of the Plymouth Brethren. He considers that the national authorities became directly involved in religious controversies, in violation of the constitutional principle of secularism.

3.2 The author claims a violation of article 2, paragraph 3, of the Covenant, read together with article 18. He argues that an individual or religious movement alleging injury as a result of a measure taken by parliament must have a remedy before a “national authority”, so that the allegation may be ruled on and redress obtained if necessary. He asserts that members of parliament, without any form of prior process and in violation of the adversarial principle, gratuitously maintained, without citing any judicial decision in support of their claim, that the Plymouth Brethren were engaging in “cult activities”. The author’s letter of response, dated 6 October 2006, to the deputies’ request for information was in vain (see paragraph 2.3 above). They confined themselves to gathering testimony from one former member of the Plymouth Brethren. The author points out that, following the publication of the parliamentary report in 2006, a media campaign of denigration against the Plymouth Brethren spread throughout the country. He has no effective remedy against the parliamentary reports, however, in violation of article 2, paragraph 3.

3.3 With regard to article 14, the author asserts that he has no access to a judicial procedure whereby he may challenge, in a fair hearing, the conclusions reached by parliament and the administration and that his right to be presumed innocent has not been respected. He points out that the content and effects of the parliamentary reports are accorded total and absolute legal immunity. For example, the 2006 parliamentary report accuses the author at length of committing abusive cult activities, a criminal offence since the adoption of the law of 12 June 2001. The author has no remedy against this accusation. Under cover of parliamentary immunity, the author was tried and convicted in the report, without any of the usual procedural guarantees of fairness. As to MIVILUDES, the author explains that it is an administrative service coming under the Prime Minister and, this being the case, there is no possibility of challenging the subjects it chooses to investigate or the results of the inquiries. He has thus no means of securing a fair hearing by a competent tribunal, owing to the legal immunity accorded the work of parliament and the legal status of the administrative reports of MIVILUDES. In addition, the author explains that the conclusions drawn by parliament and the administration constitute a serious violation of the principle of the presumption of innocence guaranteed by article 14, paragraph 2. He asserts that the authorities have a duty of discretion once accusations,

particularly criminal accusations, are made.³ In the present case, the author's right to be presumed innocent was not respected during the legal proceedings (parliamentary and administrative), seriously undermining his civil rights before any trial could take place.

3.4 Concerning article 18, the author asserts that the authorities seriously impaired the exercise of his freedom of religion. He points out that the parliamentary reports referring to the Plymouth Brethren as a "cult" triggered a series of unjustified administrative controls and a campaign of hostility in the media against the group. Members were subjected by the authorities to numerous discriminatory measures. The author cites general comment No. 22 (48) on article 18, which states that this provision "protects theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief. The terms 'belief' and 'religion' are to be broadly construed" and that the Committee views with concern "any tendency to discriminate against any religion or belief for any reason, including the fact that they are newly established". He explains that the Plymouth Brethren are often subjected to monitoring and controls, without any judicial procedure. He asserts that the restrictions and limitations imposed by the authorities constitute negative measures that violate his freedom to manifest his beliefs and are neither prescribed by law, nor necessary to protect public safety, order, health or morals, or the rights and freedoms of others.

3.5 As to exhaustion of domestic remedies, the author explains that the decisions of the parliamentary commissions of inquiry are not subject to any judicial remedy, although the commissions have very broad powers of investigation. They may decide to hold in camera hearings arbitrarily and without justification. Evidence may be gathered from dubious sources and used against individuals or groups, who have no right of defence. Refusal to cooperate with a commission may lead to criminal proceedings and, ultimately, a fine or imprisonment. It is impossible to challenge the procedures followed by the commissions or their conclusions. In particular, owing to parliamentary immunity, there is no domestic remedy whereby the author may secure the cessation of the violation of his rights. In addition, the author asserts that any action to set aside or contest the departmental orders on combating cults, documents based explicitly on the conclusions reached by parliament, would have no chance of success.

State party's observations on admissibility

4.1 On 4 February 2008, the State party summarized the law applicable in respect of parliamentary inquiries and parliamentary immunity. Regarding parliamentary commissions of inquiry, the State party emphasized that, under article 6 of Order No. 58-1100 of 17 November 1958, such commissions "are set up to gather information, either on specific events or on the management of public services or public enterprises, with a view to submitting their conclusions to the assembly that established them". These commissions are temporary in nature and their mission ends with the filing of their report.

4.2 Concerning parliamentary immunity, the State party explained that there are two types: exemption from liability (substantive immunity, which is absolute, covers all acts performed by

³ See communication No. 770/1997, *Gridin v. Russian Federation*, Views adopted on 20 July 2000.

deputies in the exercise of their mandates - from both criminal prosecution and civil actions - and is permanent, since it extends beyond the end of the mandate) and inviolability (procedural immunity, which enables deputies to fulfil without hindrance the obligations arising from their mandates, covers acts performed by them outside the scope of their functions and is thus temporary).

4.3 With regard to admissibility, the State party considers that the communication is inadmissible because the author lacks standing as a victim, in several respects moreover. It observes that the communication is submitted by the author as a natural person. Yet the documents produced by the author in support of his communication relate to the National Union of Plymouth Brethren in France, an association with the status of a legal person and referred to as such in the contested documents. Even though the author is the president of this association, it is in a personal capacity that he claims infringement of his rights guaranteed by the Covenant. He cannot therefore avail himself of the status of victim from this standpoint.

4.4 The State party adds that the author cannot claim to have been the victim of a “violation of any of his rights” set forth in the Covenant. By their very nature, the reports of the parliamentary commissions of inquiry challenged by the author are devoid of any legal import and cannot represent grounds for a complaint. The State party makes clear that the Plymouth Brethren appear only in the 2006 report (the author himself is not mentioned at all). The work of parliamentary commissions of inquiry is simply to reflect on and study from a theoretical perspective the questions of the day, to address social issues and to seek to propose outlines of the measures to be taken. This takes place as part of the democratic debate and is justified by the need to give elected members the opportunity freely to express their views on social problems. It is to guarantee this freedom that deputies are accorded legal immunity in the exercise of their functions, notably in respect of acts they perform in relation to parliamentary reports. It is for this reason that the administrative courts decline jurisdiction to hear cases in which the State’s legislative bodies are called into question.

4.5 In any case, a parliamentary inquiry report consists of recommendations and advice directed at lawmakers and has no legal force or prescriptive import.⁴ It has no direct effect on national regulations and creates no rights and no obligations towards third parties. It cannot therefore result in any violation of the Covenant. This is precisely the case of the 2006 report, the perusal of which demonstrates that it has no direct legal effect and does not modify national laws or practices in any way. In addition, the State party emphasizes that the author is not able to cite any provision of one of the parliamentary reports that infringes, directly and personally, one of his rights protected by the Covenant. Nor is he able to cite a law or regulation adopted on the basis of the parliamentary report in question that could have violated his rights. Moreover, had he been able to do so, the author could have submitted his case to the competent national courts, which would have examined the conformity of the law or regulation at issue.

⁴ The State party cites a decision of the European Court of Human Rights concluding that “a parliamentary report has no legal effect and cannot serve as the basis for any criminal or administrative proceedings” (Application No. 53430/99, *Fédération chrétienne des Témoins de Jéhovah de France v. France*, decision of 6 November 2001).

4.6 The State party comments that, in reality, the author is contesting *in abstracto* the national regulations and practices relating to the *modus operandi* of parliamentary commissions of inquiry, without proving as far as he is personally concerned a violation of a right protected by the Covenant, notably his right to religious freedom. The State party recalls the Committee's case law on *actio popularis*.⁵ In order for the author to be considered a victim, it is not sufficient for him to maintain that, by its very existence, a law or, still less, a parliamentary report violates his rights. He must establish that the disputed text has been applied to his disadvantage, causing him direct, personal and definite harm; this has not been established in the present case. Lastly, while the communication challenges certain measures to which the association's members have allegedly been subjected since the publication of the parliamentary report, this does not render it more admissible. In conclusion, the State party argues that the communication is inadmissible because the author is not a victim.

Author's comments on the State party's observations

5.1 On 25 April 2008, the author explained that the sole legal remedy available to him for the reinstatement of his rights consists in contesting the validity of the only domestic decision having become final, namely, the legal decision on the publication of the 2006 parliamentary report. He observed that the State party had not responded to his allegations of violations of article 2, paragraph 3, and article 14 of the Covenant, concerning procedural guarantees and the principle of the presumption of innocence. It had confined itself to summarizing the major general principles ensuring the legal protection of deputies, without being able to provide valid justification for the lack of an effective remedy in domestic law against the decision to produce, publish and disseminate the 2006 parliamentary report or to explain how these actions did not infringe the presumption of innocence.

5.2 The author explains that his family and given names were included in the 2006 parliamentary report, contrary to the State party's assertion. He acknowledges that domestic law protects deputies from frivolous actions brought against them. He believes, however, that this is not true of his application to challenge certain administrative decisions of the National Assembly, such as the decisions to produce, publish, print and disseminate the 2006 report. He argues that the legal regime of parliamentary immunity covers only the deputies of the National Assembly as natural persons, not their reports. Some decisions should incur specific legal liability. Indeed, by taking the decisions to produce, publish, print and disseminate the 2006 parliamentary inquiry report, the administrative services rendered themselves fully liable. These decisions were not intrinsically connected with the exercise of the deputies' mandates. Thus, the State party cannot maintain that no valid legal proceedings may be instituted in respect of the legal decision to produce the parliamentary report and the subsequent administrative decisions on its dissemination. The author maintains that there has been a violation of article 2, paragraph 3, read together with article 18. He further maintains that there has been a violation of article 14, since his treatment by parliament and the administration seriously infringed his right to be presumed innocent.

⁵ See communication No. 35/1978, *Aumeeruddy-Cziffra et al v. Mauritius*, Views adopted on 9 April 1981.

5.3 Regarding his standing as a victim, the author claims that he is, simultaneously, a direct, indirect and potential victim. He points out that he is complaining of several violations of the Covenant both in a personal capacity, having suffered material and moral harm, and in his capacity as the administrator representing a legal person, the National Union of Plymouth Brethren, the collective legal interests of the Plymouth Brethren having been undermined. Neither the author, nor the National Union of Plymouth Brethren, which he represents, has an effective remedy against the 2006 parliamentary report. The State party cannot maintain that the author is not a victim of the publication of the report, since he and his co-religionists are continuing to suffer the consequences of belonging to a denomination characterized as cult-like. The mere fact that the Plymouth Brethren are characterized as a “cult” constitutes, of itself, an infringement of the author’s personal and religious beliefs and convictions. The concept of cult is sufficiently pejorative for its use alone to represent a serious violation of the author’s rights.

5.4 The author argues that every member of the Plymouth Brethren is a victim, directly and indirectly, of the conclusions made public in the 2006 parliamentary report. He considers that the concept of indirect victim is applicable if there is a specific and personal link between the author and the direct victim. In the present case, the legal and institutional relationship between the author and the National Union of Plymouth Brethren is specific and personal in nature. The author is also an indirect victim if the violation of the international guarantee causes him harm or if he has a legitimate personal interest in securing the cessation of the violation. Like the Plymouth Brethren, as natural or legal persons, taken individually or collectively, the National Union of Plymouth Brethren has been targeted by the range of administrative measures for monitoring and combating abuse by cults. The author, as the president of the National Union, therefore has an interest in the cessation of these measures.

5.5 The author cites the case law of the European Court of Human Rights, according to which a “potential victim” is a person whose legal situation precludes him from exercising freely the rights guaranteed internationally. A person may claim to be the victim of a violation by reason of the existence of legislation under which he may be penalized, without having to prove that the legislation was actually applied to him. The harm may result from the mere fact of a violation of a guaranteed right, even if this violation has not manifested itself in a positive act, such as a criminal conviction or interference with private property or private life.⁶ In the present case, the author believes he has demonstrated that there is reasonable and compelling evidence of the likelihood of a violation of his rights, either personally, or through acts committed against the Plymouth Brethren, taken individually or collectively.

5.6 The author considers that his communication does not constitute an *actio popularis*. He is acting in a personal capacity: on the one hand, as a direct victim suffering material and moral harm on account of the aforementioned violations of the Covenant and, on the other hand, as an indirect victim, being the president of the National Union of Plymouth Brethren. He argues that it is not possible to conclude, on the basis of the procedural context of his complaint, thus established, that it is an *actio popularis*. An *actio popularis* is equivalent to a class action, whereas the present communication was submitted solely by the author.

⁶ See European Court of Human Rights, *Dudgeon v. the United Kingdom*, judgment of 22 October 1981, Series A, No. 45.

5.7 The author stresses that his complaint regarding the publication of the 2006 parliamentary report and its tangible effects on the exercise of his rights and freedoms is not theoretical. The report's publication constituted a material measure that has specifically infringed his rights. Notwithstanding the author's explicit explanations, addressed to the parliamentary commission of inquiry in his letters of 6 October 2006 and 18 and 30 November 2006, the published report offered no response to the information transmitted by him to the commission. The parliamentary report merely reproduced the replies to the commission's questionnaires. Moreover, the fact that the author had to explain himself before the deputies in the context of their inquiry into cult activities indicates that monitoring and suppression measures were already being implemented, against the author's interests. The inquiry constituted a monitoring measure that damaged his honour, reputation and religious standing. Thus, the publication of the 2006 report was indeed the realization of the risk incurred by the author and had tangible effects.

5.8 As to whether the public recommendations contained in the 2006 parliamentary report have binding force or practical impact, the author argues that it is inaccurate, from a legal and material standpoint, to maintain that parliamentary reports are devoid of legal effect. They have legal effect if they make conclusions and recommendations that result in either the adoption of new legal norms or the implementation of specific administrative practices, or at the very least in the formulation of official pronouncements cloaked in the authority of parliament. Given that the parliamentary inquiry method is intended to be authoritative, the conclusions - when published in a report given wide public and media coverage - are tantamount to accusations for those whose actions are qualified as cult-like.

Issues and proceedings before the Committee

6.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 93 of its rules of procedure, decide whether or not the communication is admissible under the Optional Protocol to the Covenant.

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

6.3 Concerning the author's allegations relating to articles 14 and 18 of the Covenant, the Committee observes that a person may not claim to be a victim within the meaning of article 1 of the Optional Protocol unless his rights have actually been violated. However, no person may, in theoretical terms and by *actio popularis*, object to a law or practice which he holds to be at variance with the Covenant.⁷ Any person claiming to be a victim of a violation of a right protected by the Covenant must demonstrate either that a State party has by an act or omission already impaired the exercise of his right or that such impairment is imminent, basing his argument for example on legislation in force or on a judicial or administrative decision or practice. The Committee recalls that, in the present case, the author complained of a series of

⁷ See communication No. 318/1988, *E.P. et al. v. Colombia*, inadmissibility decision of 25 July 1990, para. 8.2; and communication No. 35/1978, *Aumeeruddy-Cziffra and 19 other Mauritian women v. Mauritius*, Views adopted on 9 April 1981, para. 9.2.

hostile reactions to the Plymouth Brethren following the publication of the 2006 parliamentary report (a campaign of hostility in the media, for example). However, it considers that the author has not demonstrated that the report's publication had the purpose or effect of violating his guaranteed rights. In any case, it takes note of the State party's argument that a parliamentary report is without legal effect. It observes that the facts of the case do not show that the State party's position vis-à-vis the Plymouth Brethren constitutes an actual violation, or an imminent threat of violation, of the author's right to the presumption of innocence or his freedom of religion. After considering the arguments and material before it the Committee concludes therefore that the author cannot claim to be a "victim" of a violation of articles 14 and 18 of the Covenant within the meaning of article 1 of the Optional Protocol.⁸

6.4 The Committee points out that article 2 of the Covenant may be invoked by individuals only in relation to other provisions of the Covenant and observes that article 2, paragraph 3 (a), provides that each State party shall undertake "to ensure that any person whose rights or freedoms as recognized [in the Covenant] are violated shall have an effective remedy". Article 2, paragraph 3 (b), guarantees protection to persons claiming to be victims if their complaints are sufficiently well-founded to be protected under the Covenant. A State party cannot reasonably be required, on the basis of article 2, paragraph 3 (b), to make such procedures available in respect of complaints which are less well-founded.⁹ Since the author of the present complaint cannot claim to be a "victim" of violations of articles 14 and 18 of the Covenant, his allegation of violations of article 2 of the Covenant is also inadmissible under article 2 of the Optional Protocol.

7. The Committee decides therefore:

- (a) That the communication is inadmissible under articles 1 and 2 of the Optional Protocol;
- (b) That the present decision shall be communicated to the State party and to the author.

[Adopted in English, Spanish and French (original version). The text has also been translated into Arabic, Chinese and Russian for the purposes of the annual report.]

⁸ See communication No. 429/1990, *E.W. et al. v. the Netherlands*, inadmissibility decision of 8 April 1993, para. 6.4; communication No. 645/1995, *Bordes and Temeharo v. France*, inadmissibility decision of 22 July 1996, para. 5.5; communication No. 1400/2005, *Beydon and 19 other members of the association DIH Mouvement de protestation civique*, inadmissibility decision of 31 October 2005, para. 4.3; and communication No. 1440/2005, *Aalersberg et al. v. the Netherlands*, inadmissibility decision of 12 July 2006, para. 6.3.

⁹ See communication No. 972/2001, *Kazantzis v. Cyprus*, inadmissibility decision of 7 August 2003, para. 6.6; and communication No. 1036/2001, *Faure v. Australia*, Views adopted on 31 October 2005, para. 7.2.