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International Convention on the Elimination of All Forms of Racial Discrimination

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Committee on the Elimination of Racial Discrimination

Opinion adopted by the Committee under article 14 of the Convention, concerning communication No. 66/2018*, **, ***

Communication submitted by:	Stanislas Breleur (represented by counsel, Jean-Claude Durimel)
Alleged victims:	The petitioner
State party:	France
Date of communication:	22 May 2017 (initial submission)
Date of Opinion:	30 August 2022
Document references:	Decision taken pursuant to rule 91 of the Committee's rules of procedure, transmitted to the State party on 12 December 2018 (not issued in document form)
Subject matter:	Discrimination in access to employment; right to equal treatment before courts and other judicial authorities; effective protection and remedies against an act of racial discrimination
Procedural issues:	Substantiation of claims
Substantive issues:	Discrimination on the basis of national or ethnic origin; right to full redress in case of discrimination
Articles of the Convention:	2, 3, 4, 5 and 6

1. The author of the communication, dated 22 May 2017, is Stanislas Breleur, a French national born in Martinique on 13 November 1946. He claims to be a victim of a violation by the State party of articles 2, 3, 4, 5 and 6 of the Convention. France acceded to the Convention on 28 July 1971 and made the declaration provided for in article 14 on 16 August 1982. The petitioner is represented by counsel, Jean-Claude Durimel.

* Adopted by the Committee at its 107th session (8–30 August 2022).

** The following members of the Committee participated in the examination of the communication: Sheikha Abdulla Ali Al-Misnad, Nourredine Amir, Michal Balcerzak, Chinsung Chung, Bakari Sidiki Diaby, Régine Esseneme, Ibrahima Guissé, Gün Kut, Li Yanduan, Gay McDougall, Mehrdad Payandeh, Vadili Mohamed Rayess, Stamatia Stavrinaki, Faith Dikeledi Pansy Tlakula and Yeung Kam John Yeung Sik Yuen.

*** An individual opinion by Committee member Régine Esseneme (dissenting) is annexed to the present Opinion.

Factual background

2.1 The petitioner was hired by Renault as an auto electrician on 31 August 1971. In December 2003, the petitioner retired.[1] He was classed as a technical service employee, with a salary coefficient of 220. Renault was nationalized in 1945, becoming *Régie nationale des usines Renault*, before becoming a public limited company in 1990. The State party held 80 per cent of the company's capital until 1996.

2.2 The petitioner claims that, for the entire duration of his employment at Renault, he was discriminated against vis-à-vis other employees with a professional profile similar to his own. Even though the quality of his work, in the opinion of his superiors, was impeccable, and he had undertaken more training to develop professionally, his career did not progress in the same way as that of his native European colleagues who were employed at the same grade and had a comparable professional profile.

2.3 On 20 March 2003, the petitioner applied to the Labour Court of Boulogne-Billancourt to have it established that he had suffered employment discrimination throughout his career at the company because of his origin, to obtain damages for the harm done to him and to have assigned to him retroactively the salary coefficients he should have reached.

2.4 On 12 December 2005, the Labour Court dismissed the petitioner's claims, justifying its decision on the basis that the petitioner had never mentioned the stagnation of his career or the discrimination he had suffered while working at Renault. The Labour Court recalled that, until these allegations of discrimination were brought to its attention, they had never been officially put on record. Moreover, the Labour Court indicated that the facts had to be assessed in the context prevailing at the time when they had occurred, taking into account the constraints resulting from restructuring processes and mergers, and their financial consequences. Similarly, the Labour Court noted that, taking into account the expert's report,[2] and despite there being differences in salary, coefficients and career progression, it was not possible to find "a single fact pointing to the exclusion of an employee because of his or her origin, opinions or beliefs". The Labour Court also recalled that the petitioner had already made an unsuccessful request to have his case examined in the context of trade union discrimination, and that the petitioner's actions appeared "to demonstrate his desire to obtain compensation for alleged harm done by means of discriminatory acts".

2.5 The petitioner appealed this decision and, in a partial reversal dated 2 April 2008, the Employment Division of the Versailles Court of Appeal ordered Renault to pay him the sum of 80,000 euros in compensation for pecuniary damages and harm done to his career, and the sum of 8,000 euros in compensation for non-pecuniary damages. The Court also ordered that the petitioner have assigned to him retroactively salary coefficient 260 from 1985 to 1989, then coefficient 285 from 1990 to 1999 and, lastly, coefficient 305 from 2000 until his retirement. In its judgment, the Court noted that, since Renault had not provided the proof necessary to show that the difference in treatment in terms of career development between the petitioner and employees in a comparable situation was "justified by objective factors unrelated to any discrimination based on actual or presumed membership or non-membership of an ethnic group, nation or race", "the discrimination must be considered to be established".

2.6 Renault did not appeal the judgment and partially complied with the decision by paying the amounts established therein; however, it refused to reclassify him by issuing an employment certificate attesting to the reclassification in question, as ordered by the Court of Appeal. The petitioner claims that this refusal adversely affected the calculation of his pension entitlements.

2.7 On 28 November 2008, the petitioner requested the enforcement judge of the Nanterre *Tribunal de Grande Instance* (court of major jurisdiction) to order Renault to issue him with

[1] In its observations of 13 March 2019, the State party points out that the petitioner was an employee of Renault from 31 August 1971 to 1 December 2003.

[2] The Labour Court of Boulogne-Billancourt, in a judgment dated 1 March 2004, appointed an expert whose tasks included reconstructing the careers of the claimants, including the petitioner, at Renault (salary, training, position). The expert's report was submitted to the Court and the parties on 9 May 2005.

an employment certificate pursuant to the reclassification decision issued by the Versailles Court of Appeal.

2.8 On 17 March 2009, the enforcement judge of the Nanterre *Tribunal de Grande Instance* declared that he lacked jurisdiction on the grounds that the obligation to issue a certificate and pay slips had been imposed on the employer, and that only the labour courts were competent to handle cases involving such obligations. The judge also held that, since no request had been made to the court, it could not, of its own motion, order Renault to provide its former employees with an employment certificate, as to do so would be to rule *ultra petita*. The petitioner appealed this decision.

2.9 On 6 May 2010, the Versailles Court of Appeal upheld the judgment of 17 March 2009 by the enforcement judge of the Nanterre *Tribunal de Grande Instance*.

2.10 In view of the real harm suffered by the petitioner in terms of the calculation of his retirement pension entitlements following the non-fulfilment by Renault of its obligation to reclassify him, the petitioner again appealed the decision before the enforcement judge with a view to having the obligation to reclassify him accompanied by a 1,000 euro fine for each day of delay in meeting that obligation.

2.11 On 3 July 2012, the enforcement judge of the Nanterre *Tribunal de Grande Instance* dismissed the petitioner's claims on the grounds that the judgment handed down by the Versailles Court of Appeal on 2 April 2008 had become res judicata. The petitioner subsequently appealed this decision.

2.12 On 5 September 2013, the Versailles Court of Appeal upheld the contested judgment because the petitioner had reportedly failed to request the court ruling on the appeal against the decision of the Labour Court to order Renault to issue him with an updated employment certificate and to request that this measure be accompanied by a fine. The Court also confirmed that the enforcement judge had no jurisdiction to order the issuance of employment certificates, and that the petitioner had reportedly failed to specify exactly how the obligation to reclassify him was to be fulfilled, with the result that no fine could have been attached to an indeterminate obligation.

2.13 The petitioner lodged an appeal in cassation on the grounds that Renault's failure to fulfil its obligation to reclassify him had caused him real harm in terms of the calculation of his retirement pension entitlements and that the sums paid by Renault by way of damages had not been taken into account by the pension fund in calculating his pension. On 4 December 2014, the Court of Cassation overturned the judgment of the Court of Appeal on the grounds that the enforcement judge could, in fact, combine the decision by another judge with a fine if the circumstances justified such a measure. The Court of Cassation also considered that it was for the Court of Appeal to take a decision on the implementation issue before it by interpreting the decision as necessary.

2.14 In the light of the decision by the Court of Cassation, the Versailles Court of Appeal, in a judgment dated 24 September 2015, reversed the judgment handed down by the enforcement judge on 3 July 2012. In its decision, the Court first declared admissible the petitioner's request for the obligation to reclassify him, imposed by the judgment of 2 April 2008, to be accompanied by a fine. However, the Court rejected his request on the merits, because, inter alia, the Court had allegedly repaired all the harm done to the employee by awarding damages alone, which would have included "the consequences of reclassifying" the petitioner. The latter lodged an appeal in cassation against this decision.

2.15 On 1 December 2016, the Second Civil Division of the Court of Cassation dismissed the appeal, without giving reasons for its decision, on the basis of article 1014 of the Code of Civil Procedure, finding that the grounds for cassation raised in support of the appeal were clearly not going to result in the annulment of the contested judgment.

Complaint

3.1 The petitioner claims a violation by the State party of articles 2, 3, 4, 5 and 6 of the Convention. He considers that the discrimination he suffered was based on his ethnicity, within the meaning of the above-mentioned articles. He recalls that the discrimination was recognized in the judgment handed down by the Versailles Court of Appeal on 2 April 2008,

in which it found that the petitioner had suffered racial discrimination from 1976 until his retirement in 2003.

3.2 The petitioner maintains that the State party must therefore be held accountable for the racial discrimination that he suffered, since it failed to ensure Renault's compliance with the Convention, even though it was common knowledge that certain categories of employees within the company were discriminated against. The petitioner states that internal documents subsequently made public bear testament to the systematic nature of this discrimination, in particular the ESCADRE system, which introduced what can only be described as an "ethnic codification" system, based on skin colour and ethnic origin, for internal use. The petitioner explains that, in an internal memorandum from Renault, it was mentioned that "the worst offenders in terms of adapting to the company's work culture are undoubtedly the black Africans and the Algerians, Moroccans and Tunisians, closely followed by the workers from the [overseas departments]" and that "the blacks are the most difficult to integrate into French society".

3.3 The petitioner alleges a violation of article 2 of the Convention, as he considers that the State party allowed discrimination to be practised against individuals or groups of individuals on the basis of their ethnic or geographical origin.

3.4 The petitioner also alleges a violation of article 3 of the Convention, as the State party failed to take measures to eliminate racial segregation within Renault.

3.5 With regard to article 4 of the Convention, the petitioner maintains that the State party, through its passivity, encouraged hatred and discrimination while it was a decision maker at Renault. The petitioner also claims that the State party has violated article 5 of the Convention by failing to ensure the protection of his fundamental rights, including his right to equal treatment without distinction as to race, colour or national or ethnic origin.

3.6 With regard to article 6 of the Convention, the petitioner maintains that he was able to secure only partial implementation of the judgment handed down on 2 April 2008 by the Versailles Court of Appeal, which recognized the racial discrimination to which he had been subjected, awarded him damages and ordered his reclassification, for which an employment certificate needed to be issued. The petitioner explains that, since his appeal was dismissed without any consideration being made on the merits, he was deprived of an effective remedy before a national court against the practices constituting racial discrimination to which he had been subjected. Lastly, the petitioner maintains that he was unable to obtain fair and adequate reparation for all the harm he suffered as a result of the racial discrimination to which he had been subjected.

State party's observations on the merits

4.1 On 13 March 2019, the State party submitted its observations on the merits of the communication, indicating that it did not intend to comment on admissibility.

4.2 The State party considers that the petitioner was able to put forward his arguments concerning the discrimination to which he believed himself to have been subjected by Renault, and that he was able to exercise his right to be heard by an impartial tribunal and enjoy all the guarantees associated with the exercise of such a right in satisfactory conditions. The State party considers that the damage suffered by the petitioner was established and fully compensated following the conviction of Renault by the Versailles Court of Appeal on 2 April 2008.

4.3 The State party refutes the petitioner's arguments alleging a violation of articles 2, 3, 4 and 5 of the Convention. Firstly, it considers that the inertia of which it is accused with regard to the discriminatory policies allegedly followed at Renault is completely baseless, all the more so since the petitioner failed to produce the supposed "internal documents subsequently made public" supporting this allegation.

4.4 Secondly, the State party recalls that it has a comprehensive legal framework to combat discrimination in the workplace, which covers racial discrimination. It notes that the principles of equality and non-discrimination are enshrined at the apex of the French legal

corpus, in the Constitution.[3] The State party also notes that the Labour Code enshrines these principles in the context of labour relations[4] and that employee protection also covers the harmful consequences of reporting discrimination.[5] If a judge recognizes the discriminatory nature of a provision or an act committed by an employer in respect of an employee, the provision or act in question is declared null and void.[6]

4.5 The State party explains that its legal system provides easy access to justice for employees who are victims of discrimination. It notes that, under section L1134-1 of the Labour Code, employees who are victims of discrimination benefit from an adjusted burden of proof before the civil courts. Employees are therefore exempt from having to prove the discrimination practised against them. In such cases, the onus is on the employer to prove that the difference in treatment is unrelated to any discriminatory ground. The State party points out that the Committee's Opinion in *Gabaroum v. France*,[7] which is cited by the petitioner in his observations, does not apply in the present case, as the Versailles Court of Appeal duly applied the principle of the reversal of the burden of proof provided for in section L122-45[8] of the Labour Code and convicted Renault.[9]

4.6 The State party maintains that the fight against racial discrimination in employment is enshrined in its criminal law. Thus, racial discrimination constitutes a criminal offence when it consists in an employer refusing to hire, punishing or dismissing a person, or attaching conditions to an offer of employment, an application for an internship or a period of on-the-job training. Employers guilty of such discrimination are liable to 3 years' imprisonment and a fine of 45,000 euros.[10]

4.7 The State party emphasizes that the discrimination alleged by the petitioner was recognized by the national courts, which ordered Renault to compensate him for the damage he suffered as a result. It recalls that the Versailles Court of Appeal, in its judgment of 2 April 2008, considered that, since Renault had not provided the proof necessary to show that the difference in treatment between the petitioner and employees in a comparable situation was "justified by objective factors unrelated to any discrimination based on actual or presumed membership or non-membership of an ethnic group, nation or race", "the discrimination must be considered to be established". The Versailles Court of Appeal also held "that Renault must compensate the petitioner for the damage suffered as a result of the stagnation of his career and his being underpaid" and ordered Renault to pay damages[11] and legal costs.[12]

4.8 The State party recalls that the Versailles Court of Appeal also ordered that the petitioner have assigned to him retroactively the different salary coefficients that he should have reached during his career. The damage done to the petitioner, which was found to amount to 88,000 euros, excluding legal costs, by the court seized of the case, was compensated in full by Renault when it paid the applicable penalties. The State party maintains, however, that the reclassification of the petitioner proved to be practically impossible, as he had already been retired for several years by the time his former employer was convicted. The State party points out that, in its judgment of 24 September 2015, the Versailles Court of Appeal, ruling on the petitioner's request for interpretation, held that the judgment of 2 April 2008 should be interpreted in a manner that favoured the petitioner's

[3] See Declaration of the Rights of Man and of the Citizen of 26 August 1789, art. 1; and French Constitution, art. 1.

[4] France, Labour Code, sections L1132-1, L1132-4, L1134-1 and L3221-1. See also Act No. 2008-496 of 27 May 2008, which aligns a number of provisions of French law with European Union law regarding the fight against discrimination.

[5] France, Labour Code, section L1132-3.

[6] Ibid, section L1132-4.

[7] CERD/C/89/D/52/2012.

[8] This section was repealed in 2007. Section L1134-1 of the Labour Code, as amended by Act No. 2008-496 of 27 May 2008, incorporates the content of this provision with regard to the reversal of the burden of proof.

[9] See *Gabaroum v. France*.

[10] France, Criminal Code, art. 225-2.

[11] The sum of 80,000 euros in compensation for pecuniary damages and the damage done to his career, and 8,000 euros in compensation for non-pecuniary damages.

[12] The sum of 2,000 euros, under article 700 of the Code of Civil Procedure.

reclassification, which justified ordering Renault to pay compensation for pecuniary damages and the damage done to the petitioner's career. The State party emphasizes that the petitioner has not contested the fact that the compensation ordered by the Court was paid to him. It indicates that the Court further stated that "since the judgment of 2 April 2008 did not order the payment of wages, it cannot be inferred from this decision that the employer is under an obligation to issue the appropriate pay slips or employment certificate. This last request has, moreover, been rejected by means of irrevocable decisions." Lastly, the State party submits that, in the light of the foregoing, there is no basis to the petitioner's claim before the Committee that the State party failed to act, since the petitioner obtained a conviction against Renault for the discrimination he claimed to have suffered and was compensated in full for the damage done. Consequently, the State party maintains that, in the present case, it cannot be accused of any failure to comply with articles 2, 3, 4 and 5 of the Convention.

4.9 As for the violation of article 6 of the Convention, the State party points out, firstly, that the petitioner cannot reasonably claim to have secured only partial implementation of the judgment handed down by the Versailles Court of Appeal on 2 April 2008, since his request for interpretation, on the contrary, allowed it to be confirmed that the decision had in fact been fully implemented. The State party notes that, in its decision on the interpretation of the judgment of 2 April 2008, the Versailles Court of Appeal determined that it had chosen to compensate the harm resulting from the discrimination by awarding damages that included the consequences of the petitioner's reclassification. The State party recalls that it is not the Committee's task to review the interpretation of national law made by national courts, unless the decisions were manifestly arbitrary or otherwise amounted to a denial of justice.[13] The State party considers that, in the present case, the Committee should simply find that the judgment of 2 April 2008 has been fully implemented and that the petitioner has been fully compensated for the damage done. Consequently, by initiating legal proceedings, the petitioner was able to have the discrimination he had suffered recognized and to receive full compensation for the damage done as a result. The petitioner's right of access to a court was therefore upheld.

4.10 Secondly, with regard to the dismissal of the petitioner's appeal in cassation against the judgment rendered by the Versailles Court of Appeal on 24 September 2015, the State party points out that, pursuant to article 1014 of the Code of Civil Procedure, after the parties to the dispute had submitted their briefs, the panel of the Court of Cassation, which is competent to rule on such appeals, may lawfully decide to dismiss the appeal by an unreasoned decision in cases where the appeal is clearly not going to result in the annulment of the contested judgment. The State party maintains that having a selection procedure for appeals in cassation is in keeping with the legitimate aim of the proper administration of justice, which requires the filtering of cases submitted so as not to overburden the Court and to prevent the submission of a large number of appeals.[14]

4.11 The State party, while stressing that the obligation to give reasons for judicial decisions is an inherent part of the concept of a fair trial,[15] considers that there is no obligation to give "detailed reasons for a decision by which an appellate court, on the basis of a specific legal provision, dismisses an appeal as having no prospect of success".[16] The State party maintains that the parties have access to the report drawn up by the judge who heard the case, who proposed that the Court of Cassation dismiss the appeal in accordance with the conditions laid down in article 1014 of the Code of Civil Procedure. This report sets out the objective reasons why, in his opinion, the appeal does not contain any serious grounds that might lead to the annulment of the contested judgment. Thus, the parties, through their lawyers, are free to make any observations to the contrary before the hearing, so that the panel of judges may decide to rule in the standard way. Lastly, the State party considers that

[13] *Er v. Denmark* (CERD/C/71/D/40/2007), para. 7.2.

[14] See Guy Canivet, *La procédure d'admission des pourvois en cassation. Bilan d'un semestre d'application de l'article 131-6 du Code de l'organisation judiciaire*, Recueil Dalloz, No. 28 (2002), p. 2195.

[15] See article 6 (1) of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights).

[16] See European Court of Human Rights, *Burg and Others v. France*, application No. 34763/02, decision, 28 January 2003.

the provisions of article 1014 of the Code of Civil Procedure in no way deprive the litigant of his right to have his case heard by a judge. Therefore, the State party considers that it has not violated article 6 of the Convention.

Author's comments on the State party's observations

5.1 On 17 July 2019, the petitioner submitted his comments on the State party's observations on the merits of the communication. The petitioner reiterates that the racial discrimination alleged by him was recognized by the courts in the judgment issued by the Employment Division of the Versailles Court of Appeal on 2 April 2008, a fact which is not contested by the State party. He claims, however, that full reparation has not been made for the harm that he suffered, as he has not been able to secure the implementation of the reclassification order contained in the Court of Appeal judgment, in particular the payment of related salaries and bonuses.

5.2 The petitioner reiterates the point that the differentiated treatment of employees at Renault based on their ethnic origin[17] was a constant over a long period of time, even when the company was nationally owned, and that this continued after Renault became a public limited company in which the French State had a majority holding. The petitioner maintains the fact that discrimination based on nationality and ethnic origin was practised at Renault is well-known and is documented.

5.3 The petitioner claims that there were two parts to the judgment of 2 April 2008, one involving compensation, through the awarding of damages, which were paid by Renault, and the other an obligation of reclassification, which was not honoured. The failure to meet the reclassification obligation is not contested by the State party, which justifies it on the grounds that it would have been practically impossible to fulfil, as the petitioner had retired several years previously. The petitioner maintains that this argument does not hold weight, since his retirement was not an obstacle to reclassification a posteriori. The petitioner, furthermore, views this argument as contradictory, as the State party recognizes, on the one hand, that the reclassification order was not carried out and maintains, on the other, that full reparation has been made for the harm done.

5.4 The petitioner states that the case law of the Court of Cassation is consistent when it comes to the fullness of reparation for harm done. It implies action to re-establish "as precisely as possible the equilibrium that was destroyed by the harm done and to restore the victim to the situation in which he or she would have found himself or herself had the harm not been done".[18] With regard to the reclassification of an employee, the petitioner emphasizes that the Employment Division of the Court of Cassation has stated on several occasions that his reclassification was an integral part of full reparation and that retirement was not a bar to his reclassification.[19]

5.5 The petitioner maintains that, in the present case, as acknowledged by the Versailles Court of Appeal, the failure to reclassify him has resulted in his receiving a lower retirement pension, as the calculation was based on salaries that were reduced because the discrimination he suffered had prevented him from reaching the salary coefficients to which he had a legitimate claim. This discrimination also had an impact on performance bonuses and incentives, insofar as they were based on an unfairly reduced salary. The petitioner therefore reiterates that the State party has violated his rights under articles 2, 3, 4 and 5 of the Convention.

[17] The petitioner cites, by way of supporting evidence, a service note dated 31 March 1972, which classified employees by their nationality and ethnicity and listed the advantages and disadvantages of each group.

[18] See, inter alia, France, Court of Cassation, Second Civil Division, judgment, 28 October 1954.

[19] See France, Court of Cassation, Employment Division, judgment, 30 June 2011, appeal No. 09-71.538.

5.6 With regard to the violation of article 6 of the Convention, the petitioner maintains that, even though he submitted a properly reasoned appeal to the Court of Cassation to denounce the harm that he had suffered, his case was dismissed without any consideration being made on the merits, thus depriving him of an effective remedy. In his view, this failure amounts to a denial of justice and, therefore, a violation of article 6 of the Convention.[20]

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claim contained in a communication, the Committee must decide, pursuant to article 14 (7) (a) of the Convention, whether the communication is admissible. The Committee notes that the State party has not contested the admissibility of the communication.

6.2 The Committee takes note of the petitioner's allegations that: (a) he was the victim of discrimination based on his ethnic origin while he was employed by Renault from 1976 until he retired in 2003; (b) the company discriminated against certain categories of employees, who were unable to enjoy equitable career advancement on account of their ethnic origin; and (c) this discrimination has been recognized by the national courts, specifically in the judgment handed down by the Versailles Court of Appeal on 2 April 2008. The Committee also takes note of the petitioner's allegations that the State party allowed such discrimination to occur (art. 2); took no steps to put an end to it within the company (art. 3); encouraged discriminatory practices through its inaction (art. 4); and failed to guarantee him the necessary equality of treatment, without distinction as to race, colour or national or ethnic origin (art. 5).

6.3 The Committee notes the State party's argument that its legal system allows for the protection of employees who are the victims of racial discrimination through the articulation of the principles of non-discrimination enshrined in its legal corpus, notably in the Constitution, the Labour Code and the Criminal Code. The Committee also notes that, in its observations, the State party acknowledges that the national courts have recognized the racial discrimination alleged by the petitioner. It notes that the petitioner had the opportunity to take legal action to uphold his right to equality of treatment before the State party's courts and that, in this connection, the Versailles Court of Appeal recognized that the petitioner had been subjected to discrimination and ordered Renault to pay damages and legal costs and to reclassify the petitioner for the period 1985–2003. The Committee also notes that, in convicting Renault, the State party's courts took account, in their decisions, of the principle by which the burden of proof must be reversed in cases of racial discrimination, in accordance with section L1134-1 (formerly section L122-45) of the Labour Code, and of its Opinion in *Gabaroum v. France*. The Committee further notes that, in its judgment of 2 April 2008, the Versailles Court of Appeal considered that, since Renault had not provided the proof necessary to show that the difference in treatment between the petitioner and employees in a comparable situation was "justified by objective factors unrelated to any discrimination based on actual or presumed membership or non-membership of an ethnic group, nation or race", "the discrimination must be considered to be established".

6.4 In the present case, the Committee considers that the petitioner's submissions do not demonstrate that the State party allowed the alleged discrimination to occur (art. 2); failed to take steps to put an end to it (art. 3); encouraged it through its inaction (art. 4); or failed to uphold the petitioner's right to equality of treatment (art. 5). The Committee considers that the information submitted in support of the petitioner's allegations does not allow it to conclude that the communication is admissible with regard to articles 2, 3, 4 and 5 of the Convention.

6.5 The Committee, having ascertained that all the admissibility conditions set out in article 14 of the Convention have been met, decides that the communication is admissible in respect of the claims made under article 6 of the Convention, and proceeds to consider it on the merits.

[20] See *Gabaroum v. France*.

Consideration of the merits

7.1 The Committee has considered the communication in the light of all the information made available to it by the parties, in accordance with article 14 (7) (a) of the Convention.

7.2 The Committee notes the similarity between the present communication and *Kotor v. France*, in respect of which the Committee issued an Opinion on 25 November 2021, at its 105th session.[21] In both cases, the petitioners received similar treatment from their employer. In the French justice system, their cases were decided by the same courts, on the same dates and using the same reasoning. Both petitioners were represented by the same counsel. Both cases therefore raise the same issues under the Convention.

7.3 Against this backdrop, the Committee considers that, for the same reasons as those set out in its Opinion in respect of *Kotor v. France*,[22] the State party has violated article 6 of the Convention.

8. The Committee again recommends that the State party ensure that victims of racial discrimination are able to receive full reparation, including through: (a) access to available domestic remedies; and (b) the examination of all claims involving the determination of what reparation victims are entitled to receive. The Committee also recommends that the reclassification of employees who are victims of racial discrimination be explicitly taken into account in the assessment of awards of damages. The State party is further requested to disseminate the present Opinion of the Committee widely, including among its judicial authorities.

9. The Committee wishes to receive from the State party, within 90 days, information on the measures taken to give effect to the present Opinion.

[21] *Kotor v. France* (CERD/C/105/D/65/2018).

[22] Ibid., paras. 7.2–8.

Annex

Individual opinion of Committee member Régine Esseneme (dissenting)

1. On 30 August 2022, the Committee adopted its Opinion on the communication submitted by Stanislas Breleur against France.

2. In matters of procedure, the Committee found that the petitioner's submissions did not demonstrate that the State party had allowed the alleged discrimination to occur (art. 2), had failed to take steps to put an end to it (art. 3), had encouraged it through its inaction (art. 4) or had failed to uphold the petitioner's right to equality of treatment (art. 5). It therefore concluded that the communication was inadmissible with regard to articles 2, 3, 4 and 5 of the Convention.

3. However, the Committee found that the requirements laid down in article 14 of the Convention had been met and that the communication was admissible with regard to the claims raised under article 6 of the Convention.

4. In considering the communication on the merits, the Committee found that, in view of the similarity between the present communication and *Kotor v. France*,[1] and for the same reasons as those set out in its Opinion in respect of the latter, the State party had violated article 6 of the Convention.

5. In my view, the present communication is an individual complaint within the meaning of article 14 (1) of the Convention, which makes the Committee a quasi-judicial body for the settlement of disputes between a State that recognizes its competence and persons subject to that State's jurisdiction. Since the present communication and *Kotor v. France* were not joined on account of their similarity and considered at the same time, the Committee should have considered the present communication on the merits.

6. With regard to the violation of article 6 of the Convention found by the Committee, the petitioner maintains that he secured only partial implementation of the judgment handed down by the Versailles Court of Appeal on 2 April 2008, which recognized that he had been subjected to racial discrimination, awarded him compensation and ordered his reclassification, for which an employment certificate needed to be issued.

7. The petitioner explains that, since the Court of Cassation dismissed his appeal without considering it on the merits, he was deprived of an effective remedy before a national court in relation to the practices constituting racial discrimination to which he had been subjected, and that, as a result, he was unable to obtain fair and adequate reparation for all the harm he had suffered.

8. Article 6 of the Convention provides that States parties are to assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which, contrary to the Convention, violate their human rights and fundamental freedoms, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination.

9. It transpires from the petitioner's allegations and the State party's observations that, on 20 March 2003, the same year he retired, the petitioner applied to the labour courts, in this case the Labour Court of Boulogne-Billancourt, in order to:

(a) Have it established that he had suffered employment discrimination on account of his ethnic origin while he was employed by Renault;

(b) Obtain compensation for the harm done to him;

[1] CERD/C/105/D/65/2018.

(c) Have assigned to him retroactively the salary coefficients that he should have reached before retiring.

10. In its judgment of 2 April 2008, five years after the petitioner had retired, the Employment Division of the Versailles Court of Appeal upheld the petitioner's three points of claim.

11. This court recognized that the petitioner had been subjected to racial discrimination and ordered that his salary coefficient upon retiring – 220 – be increased retroactively to coefficient 305 – in other words, by 85 points.

12. In terms of reparation, the Versailles Court of Appeal ordered Renault to pay the petitioner the following sums of money in compensation:

(a) Pecuniary damages: 80,000 euros;

(b) Non-pecuniary damages: 8,000 euros.

13. The pecuniary damages, and their adverse effect on the victim's assets, must be explained. In the social sphere, such damages are characterized by the loss or deprivation of remuneration. In this case, the pecuniary damages consisted in depriving the petitioner of the remuneration corresponding to the work he was actually performing.

14. To make reparation for the pecuniary damages suffered by the petitioner as a result, the Versailles Court of Appeal proceeded to reconstruct his career and to calculate, on that basis, the amount of compensation payable, determining it to be 80,000 euros.

15. To make reparation for the damage done to his honour and reputation, the Versailles Court of Appeal also awarded the petitioner 8,000 euros in compensation for non-pecuniary damages.

16. Renault paid these sums to the petitioner in full.

17. The petitioner subsequently filed an application with the enforcement judge claiming that Renault had failed to reclassify him as ordered by the Versailles Court of Appeal and had refused to issue him with the relevant employment certificate.

18. The enforcement judge declared that he lacked jurisdiction to enforce the application of measures not ordered by the Versailles Court of Appeal. This judgment was upheld by the Court on 24 September 2015.

19. The petitioner lodged an appeal in cassation against this judgment. On 1 December 2016, the Court of Cassation handed down a judgment declaring the appeal admissible but then dismissed it without considering it on the merits under the procedure for the non-admission of appeals provided for in the Code of Civil Procedure, citing insufficient grounds for cassation.

20. The dismissal judgment by the Court of Cassation cannot be considered to have deprived the petitioner of an effective remedy before a national court against the practices constituting racial discrimination to which he had been subjected.

21. Indeed, the filtering of appeals is a legal procedural step in most national high courts, since the function of a court of cassation is not to re-examine the factual circumstances of a case but to verify the consistency of the reasoning and the lawfulness of the decisions submitted to it. It is for this reason that the cases in which an appeal is possible are listed exhaustively in law; the grounds for appeal invoked must correspond to specific cases in which an appeal may be lodged and must be coherent and properly substantiated.

22. In non-criminal cases, the modalities of the trial are defined by the complainant, and the court seized of the case cannot overstep the bounds set for it by ruling on measures not requested of it, at the risk of ruling *ultra petita* and impairing the legal validity of its decision.

23. The issuance of the employment certificate is a separate point of claim that should have been raised at the outset of the proceedings. The petitioner did not request the issuance of the certificate in his application to the Labour Court on 20 March 2003. Consequently, the Versailles Court of Appeal did not take a decision on the issue.

24. The petitioner would, surreptitiously, have the Committee take a decision on a request that he did not previously submit to the national courts.

25. However, the Committee cannot take the place of a national court or become an appeal or review body for decisions handed down by national courts.

26. In the light of the foregoing analysis, and pursuant to rule 95 (4) of the Committee's rules of procedure, which provides that any member of the Committee may request that a summary of his or her individual opinion be appended to the Opinion of the Committee, my individual opinion is that the present communication is inadmissible for abuse of the right to submit a communication under article 14 of the Convention, a ground for inadmissibility provided for in rule 91 (d) of the Committee's rules of procedure.