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HUMAN RIGHTS COMMITTEE
Seventy-second session
9-27 July 2001

**DECISION**

**Communication No. 831/1998**

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| Submitted by: | Mr. Michael Meiers (represented by Mr. Roland Houver) |
| Alleged victim: | The author |
| State party: | France |
| Date of communication: | 11 February 1997 (initial submission) |
| Prior decisions: | Special Rapporteur's rule 91 decision, transmitted to the State party on 18 September 1998 (note issued in document form) |
| Date of present decision: | 16 July 2001 |

**[ANNEX]**

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

**ANNEX**

**DECISION OF THE HUMAN RIGHTS COMMITTEE UNDER THE OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS**

**Seventy-second session**

**Communication No. 831/1998***

Submitted by: Mr. Michael Meiers (represented by Mr. Roland Houver)

Alleged victim: The author

State party: France

Date of communication: 11 February 1997 (initial submission)

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

Meeting on 16 July 2001,

Adopts the following:

**Decision on admissibility**

1. The author of the communication is Michael Meiers, a French citizen residing in Belfort. He accuses the French authorities of a violation of article 14, paragraph 1, of the International Covenant on Civil and Political Rights.

**The facts**

2.1 The author completed a probationary appointment in the French National Police from November 1987 to 1 January 1990. He was not granted a permanent appointment at the end of the probationary period and was dismissed from employment by the Minister of the Interior on 27 December 1989.

2.2 He appealed the latter decision to the Administrative Tribunal of Versailles, which, by a judgement of 17 December 1991, almost two years later, quashed the decision not to grant him a

* The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Nisuke Ando, Mr. Prafullachandra Natwarlal Bhagwati, Mr. Louis Henkin, Mr. Eckart Klein, Mr. David Kretzmer, Mr. Rajsoomer Lallah, Mrs. Cecilia Medina Quiroga, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Martin Scheinin, Mr. Ivan Shearer, Mr. Hipólito Solari Yrigoyen, Mr. Ahmed Tawfik Khalil, Mr. Patrick Vella and Mr. Maxwell Yalden.

permanent appointment. Subsequently, because of the unwillingness of the Administration to comply with the ruling, the author turned to the claims section of the Council of State, asking to be reinstated. This induced the Minister of the Interior to decide, on 17 April 1992, that the author should be reinstated as from 1 January 1990.

2.3 However, on 23 March 1992, the Minister of the Interior appealed the ruling of the Administrative Tribunal of Versailles to the Council of State. Owing to an error in the postal address, the author was not notified by the Belfort Prefecture of the appeal or its underlying arguments until 19 November 1992. The author then sought the services of counsel, who filed observations in his defence with the Council of State on 20 July 1993.

2.4 After hearing nothing further about the matter, the author went on 3 July 1995 to the competent subsection of the Council of State to make inquiries. In response to his questions, the Council of State informed him by mail on 21 August 1995 that the preparation of his file was complete and that the rapporteur had filed his conclusions on the case but that it was nevertheless impossible to specify the date of the hearing.

2.5 The hearing "apparently" was held on 11 December 1996, but the author was not told about it and therefore was not present. The Council of State reversed the ruling of the Administrative Tribunal of Versailles and sided with the Administration. Its judgement was communicated to the parties on 14 January 1997.

2.6 The author observes that the procedure in the original jurisdiction took two years, which he maintains is an unreasonably long period of time for a matter involving the reinstatement of a public servant. Moreover, the procedure before the Council of State also was unduly prolonged, taking four years and ten months from the filing of the appeal to the notification of the judgement. In all, therefore, the proceedings took almost seven years.

**The complaint**

3.1 The author considers that the time taken by the administrative authorities to rule in his case was unreasonable, whether account is taken of the entire proceedings or only the part of them before the Council of State, and that there is therefore a flagrant violation of article 14, paragraph 1, of the International Covenant on Civil and Political Rights.

3.2 The author submits that the time taken is all the more unreasonable because the file presented no particular difficulty, he himself did nothing to obstruct the smooth conduct of the procedure and once his conclusions were filed with the Council of State in July 1993 the case was ready to proceed.

3.3 Furthermore, the author notes that the Administrative Tribunals Code sets a time limit of 60 days for the filing of statements in reply by the parties, a time limit which has hardly ever been respected by the Administration. Because of this, the European Court of Human Rights has ruled against the State party a number of times (*Vallée v. France*, ECHR 26 April 1994; *Karakaya v. France*, ECHR 8 February 1996).

3.4 As to the consequences of the prolonged proceedings, the author maintains that, as a result of the decision of the Council of State, he again found himself in the situation of five years earlier. Accordingly, even if he does not contest that the salary received by him during those years should remain his under the completed-service rule, he submits that the Administration will seek restitution of the allowance paid by it for the duration of the procedure in the original jurisdiction when he was not in post.

3.5 In addition, following his reinstatement in post, the author continually encountered problems with his supervisors, and those problems finally led to his removal from post on 4 April 1996 owing to his refusal to attend various psychiatric consultations which he regarded as inopportune. In the meantime, the author set in motion a considerable number of procedures (appeal against *ultra vires* action, liability procedure, procedures before the Medical Council, ...) which he would not have initiated if the Council of State had ruled within a reasonable time period.

3.6 The author evaluates the extent of the harm suffered on account of the length of the procedure at 3 million French francs (+/-428,000 United States dollars).

3.7 As to the admissibility of the communication, the author states that he was unable to bring an action before the European Court of Human Rights because the Court considers that disputes of established public servants in disciplinary matters are not "civil ... obligations" within the meaning of article 6, paragraph 1, of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

3.8 On the principle of admissibility before the Committee, on the other hand, the author refers expressly to the decision of the Committee in its *Casanovas* case (*Casanovas v. France*, 441/1990, 19 July 1994), in the course of which it was to consider that a procedure for dismissal of an official did indeed challenge his civil rights within the meaning of article 14, paragraph 1, of the Covenant. The author seeks the application of this decision in his case.

**Information and observations of the State party regarding the admissibility of the communication**

4.1 The State party considers that the communication is not admissible because it does not fall within the scope of article 14, paragraph 1, of the Covenant.

4.2 First of all, not granting a permanent appointment after a probationary period is not a disciplinary procedure and therefore by no means constitutes a criminal charge. In this regard, the State party makes a distinction between a disciplinary procedure occurring during or at the end of a probationary period and a decision marking the end of the probationary period in which a permanent appointment is not granted for reasons relating to the candidate's professional aptitude, as happened in the case of the author. While the law attaches important consequences to the disciplinary procedure as the grounds for decisions and the communication of the case, the same is not true of a decision not to grant a permanent appointment, which confirms the non-disciplinary nature of the latter.

4.3 Next, while the State party is aware of the Committee's decision in the *Casanovas* case, cited earlier, it nevertheless considers that the decision is not relevant in the present case, since the dispute, even if it involves a pecuniary interest for the author, relates to a moment in a public servant's career when the discretionary powers of the Administration are most marked and when the control of the judge is limited to finding a manifest error of evaluation.

4.4 In this respect, the State party recalls the decision of the European Court of Human Rights that disputes relating to the recruitment, career and cessation of functions of an official do not fall within the scope of article 6, paragraph 1, of the European Convention on Human Rights except insofar as they are of an asset-related nature, the latter term being interpreted in a very restrictive way.

4.5 It should be noted that article 14, paragraph 1, of the Covenant is drafted in very similar terms to those of the aforementioned article 6. Accordingly, to the extent that the present dispute does indeed appear to relate to the author's failure to secure a permanent appointment and in order to maintain consistency in the interpretation of international instruments, the State party deems that it would be desirable for the Committee to declare the communication inadmissible on the ground that it does not fall within the scope of article 14, paragraph 1, of the Covenant.

4.6 On a subsidiary point concerning the merits of the communication, the State party maintains that the author cannot claim to be a victim of a violation of the Covenant because the length of the proceedings before the Council of State did not prejudice his rights, the initial decision of the Administrative Tribunal of Versailles having already quashed the decision not to grant him a permanent contract, which meant that the author continued to work and to receive a salary in the normal way for completed service.

**Author's reply to the State party's observations**

5.1 The author recalls that in the *Casanovas* case the Committee was indeed of the opinion that a procedure to dismiss an official from employment was a challenge to civil rights within the meaning of article 14 of the Covenant.

5.2 The author considers that the same legal reasoning should apply in the present case. The procedure to dismiss in the *Casanovas* case resulted in the loss of employment with accompanying pecuniary consequences. Likewise, the decision not to grant permanent status following a probationary period constitutes, in the case of the author, a refusal to provide definitive employment, with identical pecuniary consequences. It is therefore a clear-cut case of challenge to a civil right, whose principal feature is its asset-related character.

5.3 In any event, the author points out that what is at issue here is to challenge, not the decision on the permanent appointment, but the length of the procedure, a question which is undoubtedly covered by the terms of article 14 of the Covenant.

5.4 In relation to the merits of the communication, the author considers that the material and moral prejudice deriving from the unreasonable time of the procedure is manifest. The procedures initiated by the author after the initial decision of the Administrative Tribunal were dismissed following the judgement of the Council of State. But if the author had been informed

promptly of the appeal lodged by the Administration and if the Council of State had reached its decision within a reasonable time, the cost of the subsequent procedures could have been avoided.

**Committee's decision on admissibility**

6.1 Before considering a complaint submitted in a communication, the Human Rights Committee must, in accordance with rule 87 of its rules of procedure, determine whether the communication is admissible under the Optional Protocol to the Covenant.

6.2 The Committee notes the State party's observations on the admissibility *ratione materiae* of the communication and the State party's and the author's argument that the *ratio decidendi* of the *Casanovas* case applies in the present case.

6.3 The Committee is of the opinion, however, that whereas there is no need to consider the scope of article 14, paragraph 1, of the Covenant, and while it expresses some concern at the length of the procedure, the author has not sufficiently established in the present case that the length of the procedure before the French administrative authorities concerning the decision of 23 December 1989 not to grant him a permanent appointment caused him genuine prejudice, firstly because he received compensation for the period prior to his reinstatement in 1992 and secondly because he continued to work and to receive a salary until his dismissal in 1996.

7. The Human Rights Committee therefore decides:

- that the communication is inadmissible in accordance with article 2 of the Optional Protocol;

- that this decision shall be communicated to the State party and to the representative of the author of the communication.

[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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