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International Covenant on Civil and Political Rights

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Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 3215/2018*, **

Communication submitted by:	Philippe Rudyard Bessis (represented by counsel, Frédéric Fabre)
Alleged victim:	The author
State party:	France
Date of communication:	26 October 2017 (initial submission)
Document references:	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 19 October 2018 (not issued in document form)
Date of adoption of Views:	13 October 2021
Subject matter:	Fair trial; freedom of expression; freedom of association
Procedural issue:	Exhaustion of domestic remedies
Substantive issues:	Right to a fair trial; right to freedom of expression; right to freedom of association
Articles of the Covenant:	14, 19 and 22
Articles of the Optional Protocol:	2 and 5 (2) (a)

1.1 The author of the communication is Philippe Rudyard Bessis, a national of France born in Tunisia in 1954. He claims that the State party has violated his rights under articles 14, 19 and 22 of the Covenant. France became a party to the Optional Protocol on 17 February 1984. The author is represented by counsel, Frédéric Fabre.

1.2 On 13 June 2017, a previous communication from the author dated 1 March 2017 alleging a violation of his right to freedom of opinion (under articles 2 (3), 14 and 19 of the Covenant) was registered as communication No. 2988/2017. In that communication, the author contested a decision of the national disciplinary panel of the National Association of Dental Surgeons concerning his expulsion from the Association for having written articles in

* Adopted by the Committee at its 133rd session (11 October–5 November 2021).

** The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Wafaa Ashraf Moharram Bassim, Yadh Ben Achour, Arif Bulkan, Mahjoub El Haiba, Furuya Shuichi, Carlos Gómez Martínez, Duncan Laki Muhumuza, Photini Pazartzis, Hernán Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Kobauyah Tchamdja Kpatcha, Imeru Tamerat Yigezu and Gentian Zyberi. Pursuant to rule 108 of the Committee's rules of procedure, Hélène Tigroudja did not take part in the examination of the present communication.

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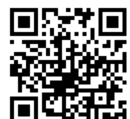

which he accused members of the Association of misconduct and abuse of authority. On 12 September 2017, the Special Rapporteur on new communications and interim measures agreed to attach to the communication of 13 June 2017 an additional submission from the author dated 13 July 2017, in which he raised new claims under articles 17 and 25 of the Covenant (concerning the impossibility of working as both a practising dentist and a practising lawyer).

1.3 The present communication, dated 26 October 2017, concerns different facts and claims and is being examined separately.

Facts as submitted by the author

2.1 The author is a lawyer by profession and is the former President of the Union of United Self-Employed Dentists. At the time of the events, he was also a dental surgeon, before he was expelled from the National Association of Dental Surgeons.

2.2 The author published an article on the blog of the Union of United Self-Employed Dentists in his capacity as President of the union. In this article, the author condemned the malpractice of the National Council of the National Association of Dental Surgeons, the dubious relationship between the Council and the French Union for Oral Health, the illegal use of membership fees by the Council, criminal acts committed by members of the Council, the questionable use of the Council’s funds, sums improperly collected by members of the Conseil d’État and the use of disciplinary procedures to blackmail him.

2.3 The author accuses certain members of the National Council of the National Association of Dental Surgeons of abusing their authority for an illegitimate purpose. Four of those members decided to sue the author for defamation before the Paris *Tribunal de Grande Instance* (court of major jurisdiction). As the basis for their accusation, the plaintiffs pointed to passages in the contentious article referring to the irregular use of membership fees, criminal acts committed by members of the National Council and their use of disciplinary procedures to engage in blackmail.

2.4 On 12 January 2012, the court issued four judgments acquitting the author and ordering the plaintiffs to pay him the sum of €500 each. On 10 April 2014, the plaintiffs appealed these judgments.

2.5 In its judgment of 10 April 2014, the Paris Court of Appeal ruled against the author for his remarks regarding the allegedly dubious use of membership fees by the National Council of the National Association of Dental Surgeons and its alleged use of disciplinary procedures to blackmail him. He was found not to have acted in good faith and to have failed to provide any evidence that the fees in question had been misappropriated. The Court of Appeal held that the members of the Council were not vested with a public service mission in their individual capacity but that they could be when acting jointly.

2.6 The author filed an appeal with the Court of Cassation, in which he requested the Court to uphold the judgment of 12 January 2012. On 1 December 2015, the Court of Cassation dismissed the author’s appeal on the grounds that the Paris Court of Appeal had already assessed the meaning and scope of the offending remarks and had ruled that the defamatory allegations had not been substantiated. The Court of Appeal had also rejected the possibility that the author had acted in good faith.

2.7 On 26 May 2016, the author filed an application with the European Court of Human Rights, claiming a violation by the State party of article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights). On 15 December 2016, the Court informed the author that his application had been declared inadmissible by a single-judge decision, since it did not meet the requirements of articles 34 and 35 of the Convention.

2.8 On 23 February 2017, the Court of Audit published a report entitled “L’Ordre national des chirurgiens-dentistes : retrouver le sens de ses missions de service public” (“The National Association of Dental Surgeons: Regaining a sense of its public service missions”) following an investigation conducted by the Court into the Association’s handling of its public service missions and various aspects of its management. In this report, the Court mentions the financial mismanagement of annual membership fees by the members of the Association.

Complaint

3.1 The author claims that the judgment of the Paris Court of Appeal is arbitrary within the meaning of article 14 of the Covenant. He argues that the four plaintiffs, who are members of the National Council of the National Association of Dental Surgeons, should not have been summoned to court under article 32 of the Act of 29 July 1881 on Freedom of the Press, which concerns the defamation of private persons, but rather under article 31 of the Act, which concerns the defamation of persons vested with a public service mission. Accordingly, the author argues that the four plaintiffs, who were represented by the same lawyers, acted on behalf of the Council in their joint capacity as persons vested with a public service mission, and not as private persons. The author considers that the decision of the Paris Court of Appeal, which was upheld by the Court of Cassation, is arbitrary within the meaning of article 14 of the Covenant, since the courts did not take into account or sanction the procedural error committed by the plaintiffs. The author argues that the national courts misinterpreted his writings in order to secure a judgment against him. He adds that he referred to a 2005 meeting of the Council in La Baule not as a vacation or resort trip, but rather as a conference; likewise, he did not refer to misappropriation (*abus de confiance*), but rather referred to “a transfer to cover the costs of a loss-making conference”.

3.2 The author reports that the plaintiffs’ lawyer was assisted by the official lawyer of the National Council of the National Association of Dental Surgeons, whose role is to combat unfair competition. The author recalls that the law does not permit the Association to act in this manner, since the Council is not a trade union but a professional association with a public service mission. He maintains that the courts may prosecute him only for defamation of a person vested with a public service mission, and not for defamation of a private person.

3.3 The author claims that the penalty imposed on him violates his right to freedom of expression under article 19 of the Covenant. He maintains that the facts reported in his article were subsequently established in an investigation by the Court of Audit, the results of which were published in the Court’s report of 23 February 2017. In this report, the Court of Audit described many dysfunctional aspects of the National Association of Dental Surgeons.

3.4 The author also claims a violation of his right to freedom of expression in the context of trade-union activity under article 22 of the Covenant. He considers that he was acting in his capacity as a union president when he posted his article about members of the National Association of Dental Surgeons on a union-affiliated blog. He claims that these members of the Association used the powers they enjoyed by virtue of their public service mission to expel him from the profession and dismantle his union.

State party’s observations on admissibility

4.1 On 25 September 2018, the State party submitted its observations on admissibility and requested that the Committee declare the communication inadmissible.

4.2 With regard to the claim based on article 19 of the Covenant read in conjunction with article 22, the State party argues that the facts presented by the author have already been examined by another procedure of international investigation or settlement. It points out that the author submitted an application to the European Court of Human Rights relating to the same facts and that he was informed by a letter dated 15 December 2016 that his application was inadmissible under articles 34 and 35 of the European Convention on Human Rights. The State party also recalls the reservation it made at the time of its becoming a party to the Optional Protocol concerning article 5 (2) (a). It recalls that, according to the Committee’s practice, an issue is not considered to have been “examined” under another international procedure if the case was rejected solely on procedural grounds. Conversely, an inadmissibility decision based on even a limited consideration of the merits of a case constitutes an examination within the meaning of article 5 (2) (a) of the Optional Protocol.

4.3 The State party points out that there are six grounds for inadmissibility established under articles 34 and 35 of the European Convention on Human Rights, namely: (a) the application was not submitted within six months from the date on which the final decision was taken; (b) the application is anonymous; (c) the matter has already been submitted to another procedure of international investigation or settlement; (d) domestic remedies have not been exhausted; (e) the application is manifestly ill-founded or an abuse of the right of

individual application; or (f) the applicant has not suffered a significant disadvantage. Considering that the application was not anonymous and was submitted within the requisite six-month period to the European Court of Human Rights only, that domestic remedies had been exhausted and that the judgment requiring the author to pay compensation to the civil parties constitutes a disadvantage, the State party deduces that the Court rejected the application on the grounds that it was manifestly ill-founded or an abuse of the right of individual application. In either case, the State party considers that such a conclusion implies that the Court necessarily examined the author's claims.

4.4 With regard to the admissibility of the author's claim based on article 14 of the Covenant, the State party notes that this article guarantees procedural equality and fairness only and cannot be interpreted as ensuring the absence of error on the part of the competent tribunal.[1] The State party considers that it is not for the Committee to review facts and evidence,[2] unless the evaluation of evidence was clearly arbitrary or amounted to a denial of justice, or the court otherwise violated its obligation of independence and impartiality.[3] The State party also considers that, in the present case, the author is merely challenging the assessment of the facts and the law as set out in the decisions of the national courts, in claiming that the Paris Court of Appeal erred in law by examining the facts alleged by the civil parties on the basis of article 32 of the Act of 29 July 1881, which concerns the defamation of private persons, and that the civil parties should have been regarded as a "corporate body", acting in the name of the National Association of Dental Surgeons, within the meaning of article 31 of the Act. Consequently, the author's claims relate exclusively to the legal classification of the facts in question under domestic law.

4.5 Moreover, the State party argues that the author has not exhausted all available domestic remedies in accordance with article 5 (2) of the Optional Protocol, since he did not invoke his right to a fair trial before the Court of Cassation, and that the Committee must therefore declare the author's claim under article 14 of the Covenant inadmissible.

Author's comments on the State party's observations

5.1 On 16 November 2018, the author submitted his comments on the State party's observations. He considers that the fact that the European Court of Human Rights did not address his claims does not preclude the Committee from considering his communication. He argues that, in its new approach to this issue, the Committee has established that the European Court's summary reasoning in respect of an individual communication does not imply that the matter has already been examined,[4] and that a rejection on procedural grounds cannot be considered to be an examination within the meaning of article 5 (2) (a) of the Optional Protocol.[5] The author recalls that the letter of 15 December 2016 from the European Court of Human Rights provided no explanation for the Court's decision. He rejects the argument advanced by the State party that, in view of the grounds for inadmissibility established in articles 34 and 35 of the European Convention on Human Rights, the judge must have rejected the application because it was manifestly ill-founded or an abuse of the right of individual application. The author concludes that it is impossible to know why the judge rejected his application.

5.2 The author argues that the State party's objection to the admissibility of his claim under article 14 of the Covenant is groundless. He contends that the State party failed to take into account the arbitrariness of the manner in which the Paris Court of Appeal interpreted the facts, in violation of article 14 of the Covenant.[6] The author considers that he should not have been found to have committed defamation, since the facts as reported in his own words,

1 Human Rights Committee, general comment No. 32 (2007), para. 26.

2 *Riedl-Riedenstein et al. v. Germany* (CCPR/C/82/D/1188/2003), para. 7.3; *Schedko v. Belarus* (CCPR/C/77/D/886/1999), para. 9.3; and *Arenz et al. v. Germany* (CCPR/C/80/D1138/2002), para. 8.6.

3 *Schedko v. Belarus*, para. 9.3.

4 *Achabal Puertas v. Spain* (CCPR/C/107/D/1945/2010 and CCPR/C/107/D/1945/2010/Corr.1), para. 7.3. See also *Yaker v. France* (CCPR/C/123/D/2747/2016), para. 6.2.

5 *Ory v. France* (CCPR/C/110/D/1960/2010), para. 7.2.

6 The author stresses that he did not use the words "vacation or resort trip", but rather referred to a "conference".

and not in those of the Paris Court of Appeal, were accurate and had been definitively established. He believes that the assessment of the facts by the Paris Court of Appeal that led to the ruling against him was arbitrary.

5.3 The author argues that the objection to the admissibility of his claim relating to articles 31 and 32 of the Act of 29 July 1881 should be rejected. He refutes the State party's argument that the decision of the Paris Court of Appeal not to apply article 31 of the Act of 29 July 1881 is simply a question of the interpretation of the law. The author considers that, in finding that the National Association of Dental Surgeons and its members could not be vested with a public service mission, the Criminal Division of the Court of Cassation committed an arbitrary act by upholding the arbitrary judgment issued against him by the Paris Court of Appeal. He believes that if the Court of Appeal had relied on article 31 of the Act of 29 July 1881 instead of article 32, it would have identified the error in the four writs of summons and acquitted him on the grounds that there had been a procedural error.

5.4 Lastly, the author argues that all the State party's objections to admissibility should be rejected, because his claims regarding violations of articles 14, 19 and 22 of the Covenant are well founded and substantiated.

State party's additional observations on the merits

6.1 On 24 January 2019, the State party submitted its observations on the merits of the communication.

6.2 With regard to the claim of a violation of article 14 of the Covenant, the State party reiterates that it is not for the Committee to review or evaluate facts and evidence, unless it can be ascertained that the conduct of the trial or the evaluation of facts and evidence was manifestly arbitrary or amounted to a denial of justice,[7] and that the Covenant guarantees procedural equality but cannot be interpreted as guaranteeing the absence of error on the part of the competent tribunal.[8]

6.3 With regard to the classification of the offence, the State party refutes the claim that the solution adopted by the national courts was arbitrary. It emphasizes that this solution derives from the application of an existing rule[9] and that it was properly reasoned by those courts.[10] The State party argues that the decision to consider the members of the National Council of the National Association of Dental Surgeons merely as private persons, and not as citizens entrusted with a public service mission within the meaning of article 31 of the Act of 29 July 1881, is in line with the settled case law of the Court of Cassation and was therefore entirely foreseeable by the author. The State party recalls that the Court of Cassation considers that agents who are not vested with public authority, i.e. who do not exercise public powers, do not fall into the category of citizens entrusted with a public service mission within the meaning of article 31 of the Act of 29 July 1881, even if their activities serve a public interest.[11] It argues that the author cannot claim that, by refusing to apply article 31 of the Act of 29 July 1881 to the dispute, the Paris Court of Appeal and the Court of Cassation confused a professional association with a trade union and denied that the National Association of Dental Surgeons was vested with a public service mission, thereby rendering an arbitrary decision, since such a public service mission, even if established, is not sufficient to give the members of the Association the status of citizens entrusted with a public service

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[7] See *Martínez Mercader et al. v. Spain* (CCPR/C/84/D/1097/2002). See also Human Rights Committee, general comment No. 32 (2007), para. 26.

[8] See *B.d.B. et al. v. Netherlands* (CCPR/C/35/D/273/1988).

[9] In French law, the concept of arbitrariness refers to the character of a decision that is not the result of the application of an existing rule but the product of free will. See Gérard Cornu, *Vocabulaire juridique* (Paris, Presses universitaires de France, 2009).

[10] European Court of Human Rights, *Moreira Ferreira v. Portugal (no. 2)*, application No. 19867/12, judgment, 11 July 2017, para. 85.

[11] In a judgment of 25 May 2004, prior to the publication of the offending text, the Court of Cassation ruled that since the President of the High Council of the Institute of Chartered Accountants is not vested with public authority, the offence in the case could not be classified as defamation of a citizen entrusted with a public service mission within the meaning of article 31 of the Act of 29 July 1881 (Court of Cassation, Criminal Division, appeal No. 03-81.876, 25 May 2004, annex 3).

mission within the meaning of article 31 of the Act of 29 July 1881. The State party argues that the civil parties acted in accordance with the law and case law when they sued the author for defamation of private persons; moreover, it notes that the offence of defamation of private persons is less serious than the offence established in article 31 of the Act. It was in application of this same case law that the national courts rejected the author's argument.

6.4 With regard to the allegation of a denial of justice, the State party notes that the author seems to infer a denial of justice from the error of law allegedly made by the national courts. The State party argues that, even in the event that the alleged error of law had in fact been made, the fact that the dispute was not settled in the author's favour does not constitute a denial of justice within the meaning of article L.141-3 of the Judicial Code, which provides that a denial of justice occurs when a judge refuses to respond to petitions or neglects to try a case that is ready for trial. The case law of the European Court of Human Rights with regard to the concept of "flagrant denial of justice" refers to a trial that is manifestly contrary to the principles of article 6 of the European Convention on Human Rights on the right to a fair trial.[12] The State party recalls that the author was assisted by counsel at all stages of the proceedings, that he was able to present his observations on the case against him and that the judges responded specifically to the arguments and claims that he raised.

6.5 The State party rejects the author's allegation that the civil parties' counsel was the same person who represented the National Association of Dental Surgeons and contests the argument that said counsel should have produced four separate statements in defence. It stresses that the circumstances of the case did not violate the author's right to a fair trial, since the parties were free to bring their case before the criminal court alone or collectively and to be assisted by counsel of their choice. The State party notes that there is nothing in the case file to suggest that the national courts lacked independence or impartiality in their handling of the proceedings.

6.6 With regard to the alleged error in the assessment of the facts, the State party points out that the author merely questions the assessment of the national courts without demonstrating how the decisions handed down in the proceedings concerning him were manifestly flawed,[13] which would mean not only that the national courts made an error in their assessment of the facts, but also that this error was entirely obvious. The State party argues that the Paris Court of Appeal did not distort the author's words or add extraneous elements but rather relied on "extrinsic elements" that revealed the true meaning of the offending text. It adds that certain phrases in the author's writings, such as "resort trips" and "a leisure trip in the form of a 'conference'", show that the author was implying that the La Baule conference was merely cover for a leisure trip, which is consistent with the analysis of the Paris Court of Appeal.

6.7 The State party claims, moreover, that the national courts did not make a manifest error in finding that the author's statements regarding the use of membership fees were defamatory, since these statements implied that the members of the National Council of the National Association of Dental Surgeons had committed the offence of misappropriation. The State party considers that, as noted by the Paris Court of Appeal, the author accused the members of the Council of having organized and benefited from the embezzlement of funds derived from membership fees and their use for purposes contrary to their intended aim, actions that constitute the criminal offence of misappropriation. The State party adds that the author's claim that the Paris Court of Appeal exaggerated his statements is further undermined by the fact that he himself filed a complaint for misappropriation on 26 February 2008 on the grounds that he suspected that membership fees had been used to finance the La Baule conference held in October 2005.[14]

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12 European Court of Human Rights, *Sejdovic v. Italy*, application No. 56581/00, judgment, 1 March 2006, para. 84; *Stoichkov v. Bulgaria*, application No. 9808/02, judgment, 24 March 2005, para. 56; and *Drozd and Janousek v. France and Spain*, application No. 12747/87, judgment, 26 June 1992, para. 110.

13 Human Rights Committee, general comment No. 32 (2007), para. 26.

14 This case was dismissed by the examining magistrate on 14 April 2010; the author appealed the decision, but it was upheld by the Investigating Division of the Paris Court of Appeal on 21 October 2010.

6.8 The State party stresses that no evidence of malpractice by the National Association of Dental Surgeons was presented before the Paris Court of Appeal or the Court of Cassation. The author cannot criticize the national courts for failing to address a claim that was not raised. Accordingly, the State party considers that the decisions of the national courts were neither "clearly arbitrary" nor manifestly flawed and did not amount to a denial of justice, and thus that the author's claim that these decisions amount to a violation of article 14 of the Covenant is ill-founded.

6.9 With regard to the claims of a violation of articles 19 and 22 of the Covenant, the State party emphasizes that it is unusual to invoke a violation of article 19 of the Covenant in conjunction with a violation of article 22, since these two articles are autonomous and independent and are not intended to be invoked jointly under a single claim.

6.10 The State party considers that, in the present case, the interference with the author's right to freedom of expression and freedom of association was based on a law that was clear and accessible and whose application in accordance with case law was foreseeable for the author. The State party argues that the civil judgment finding that the author's acts amounted to defamation pursued a legitimate aim, in this case, "respect of the rights or reputation of others", and that the author's writings damaged the honour and reputation of the civil parties, whom he accused of having organized and financed a weekend in La Baule using membership fees under the guise of organizing a conference – facts that constitute the offence of misappropriation – and of having used disciplinary procedures for the sole purpose of silencing their opponents. The State party claims that the author has not provided any evidence to support the allegation that the purpose of the interference with his right to freedom of expression was to censor him. The State party also claims that the interference was proportionate and that the civil judgment against the author was necessary in a democratic society. It adds that the national courts did not rule against the author for criticizing the National Association of Dental Surgeons in general terms in his capacity as a trade union leader, but for accusing four members of the Association of having engaged in very specific acts, thereby damaging their honour and reputation. The State party maintains that the national courts took due account of the context in which the remarks were made in weighing the right to freedom of expression in the context of trade-union activity against the right of the civil parties to respect for their honour and reputation.

6.11 The State party argues that the national courts looked into the existence of a factual basis for the statements made as part of their analysis of whether the author had acted in good faith. It notes that the critical remarks made in the February 2017 report of the Court of Audit do not concern the specific allegations made by the author that were the subject of the civil judgment against him, nor do they mention any misuse of the professional disciplinary tribunals by members of the National Council of the National Association of Dental Surgeons in order to undermine their opponents. The State party considers that the interference with the author's freedom of expression in the context of trade-union activity was proportionate to the aim pursued in view of the civil nature of the judgment. It recalls that the author was not convicted under criminal law for the defamatory statements and was acquitted by the criminal court. The disputed remarks were characterized only as misconduct, in the civil sense of the term, by the Paris Court of Appeal, and the author was consequently ordered to pay civil damages to the parties.

6.12 According to the State party, it follows from the foregoing that a fair balance was struck in this case between the need to protect the author's right to freedom of expression and the need to protect the rights and reputations of the plaintiffs. It therefore considers that there has been no violation of article 19 of the Covenant read in the light of article 22.

Author's comments on the State party's additional observations

7.1 In comments dated 7 May 2019, the author denies that he encouraged practitioners not to pay their membership fees but confirms that he asked them not to unduly pay a second fee. He believes that he was expelled from the National Association of Dental Surgeons for exposing the wrongdoing of members of the Association and not for any medical error or malpractice. The author recalls that, in 2007, the General Inspectorate of Social Affairs criticized the size of the allowances that members of the Medical Association were paying

themselves. He claims that, despite this criticism, the National Association of Dental Surgeons has followed the same practice as the Medical Association.

7.2 The author claims that, in the present case, the acts of which he accused the members of the National Association of Dental Surgeons are particularly serious. These acts were revealed by the General Inspectorate of Social Affairs and substantiated by the Court of Audit in its report of February 2017. He also claims that the Court of Cassation found that his allegations had a factual basis but that the acts he had reported had not been established. The author considers that the concept of a "sufficient factual basis" evoked by the State party is too imprecise. He argues that the judicial interpretation according to which a conviction may be handed down if the remarks in question lack a sufficient factual basis and constitute a personal attack exceeding the limits of freedom of expression[15] is too imprecise and open-ended.

7.3 The author reiterates that the State party violated article 14 of the Covenant, since he was ordered to pay compensation to the civil parties despite the fact that he had not been handed a criminal sentence and had in fact been acquitted, and since the national courts denied him the benefit of the second procedural error committed by the civil parties, whose case should have been considered in application of article 31 of the Act of 29 July 1881.

7.4 The author claims that the four civil parties were acting in their capacity as persons vested with a public mandate and public powers when they filed proceedings against him. He considers that when the President and three other members of the National Council of the National Association of Dental Surgeons used the Council's financial resources to defend themselves against accusations relating to acts performed in the course of their duties, they were indeed acting within the framework of their elective office in the Council.

7.5 The author stresses that the Court of Audit confirmed that the National Association of Dental Surgeons was vested with a public service mission and public powers. In support of his argument, he points to the title of the Court's February 2017 report: "The National Association of Dental Surgeons: Regaining a sense of its public service missions." The author also reiterates that the Association's decisions may be challenged before the Conseil d'État, which has responsibility for reviewing the acts of public authorities.

7.6 The author insists that the term "misappropriation" (*abus de confiance*), which was used by the Paris Court of Appeal and subsequently by the Court of Cassation to describe the facts, does not appear in the disputed text. He emphasizes that the fact that a judge with criminal jurisdiction ordered him to pay civil damages irrespective of his acquittal in the same proceedings with regard to the same facts, on the same charge and in respect of the same criminal law, is arbitrary and amounts to a denial of justice, since his acquittal had no effect in practice.

7.7 The author reiterates that the State party violated his rights under articles 19 and 22 of the Covenant, as he was prosecuted and punished for an offence of opinion while exercising his right to freedom of association. He believes that the judgment against him was purely a consequence of his union activity and constitutes an infringement of his freedom of expression as a union representative. The author claims that the charges against him are based on the interpretation of his open letter by the criminal courts and their replacement of certain terms appearing in the letter – including the term "conference", used by him to describe the stay in La Baule, which was replaced with the term "resort trip" – despite the fact that the June 2013 report of the General Inspectorate of Social Affairs and the February 2017 report of the Court of Audit confirmed the veracity of the facts reported. He stresses that the professional disciplinary justice system is arbitrary, since he has been banned for life from practising dentistry anywhere in the world on the basis of an offence of opinion.

7.8 Contrary to the State party's claim that the penalty imposed is proportionate since it is only civil in nature, the author considers that being ordered to pay €26,000 plus the costs of the proceedings by the Paris Court of Appeal is a particularly serious punishment for an acquitted defendant.

[15] See Court of Cassation of France, Criminal Division, appeal No. 09-87.083, 26 May 2010, and appeal No. 11-88.102, 16 October 2012.

Issues and proceedings before the Committee

Consideration of admissibility

8.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 97 of its rules of procedure, whether the communication is admissible under the Optional Protocol.

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

8.3 The Committee notes the author's claim that the State party has violated his rights under articles 14 (1), 19 and 22 of the Covenant.

8.4 The Committee observes that the author submitted an application relating to the same facts before the European Court of Human Rights. He was informed by a letter dated 15 December 2016 that the Court, sitting in single-judge formation, had declared his application inadmissible on the grounds that the admissibility criteria set out in articles 34 and 35 of the European Convention on Human Rights had not been met. The Committee recalls that, on becoming a party to the Optional Protocol, France entered a reservation excluding the competence of the Committee to consider cases that are being or have been examined under another procedure of international investigation or settlement.

8.5 With reference to its jurisprudence in relation to article 5 (2) (a) of the Optional Protocol,[16] the Committee recalls that when the European Court of Human Rights bases a declaration of inadmissibility not solely on procedural grounds but also on reasons based to some extent on consideration of the merits of the case, the matter is deemed to have been examined within the meaning of the reservations to article 5 (2) (a) of the Optional Protocol.[17] The issue before the Committee is therefore whether, in the present case, the Court proceeded beyond an examination of purely procedural admissibility criteria.

8.6 The Committee notes the summary nature of the reasoning set out in the letter from the European Court of Human Rights to the author, which does not put forward any argument or clarification indicating that the inadmissibility decision was based on the merits.[18] In the light of these specific circumstances, the Committee considers that it is not able to determine with certainty that the case presented by the author has already been the subject of even limited consideration of the merits[19] within the meaning of the reservation entered by the State party. For these reasons, the Committee considers that the reservation entered by the State party concerning article 5 (2) (a) of the Optional Protocol does not, in itself, constitute an obstacle to the Committee's consideration of the communication on the merits.[20]

8.7 The Committee notes that the State party challenges the admissibility of the communication under article 14 of the Covenant, arguing that domestic remedies have not been exhausted. In that regard, the Committee notes the State party's argument that the author's claim under this article was not raised before the Court of Cassation. The Committee also notes the author's argument that his communication is admissible with regard to article 14 of the Covenant because the interpretation of the facts by the Paris Court of Appeal was arbitrary. The Committee observes nevertheless that the author has not provided evidence that he submitted claims under article 14 of the Covenant and that these claims were considered by the domestic courts. The Committee reiterates the rule that, for a communication to be found admissible, all domestic remedies must have been exhausted.

8.8 In the light of the foregoing, the Committee finds that the author's claims relating to article 14 of the Covenant are inadmissible for failure to exhaust domestic remedies. However, the Committee considers that the author's claims under articles 19 and 22 of the Covenant

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16 *Rivera Fernández v. Spain* (CCPR/C/85/D/1396/2005), para. 6.2.

17 See, inter alia, *Mahabir v. Austria* (CCPR/C/82/D/944/2000), para. 8.3; *Linderholm v. Croatia* (CCPR/C/66/D/744/1997), para. 4.2; and *A.M. v. Denmark*, (CCPR/C/16/D/121/1982), para. 6.

18 *X. v. Norway* (CCPR/C/115/D/2474/2014), para. 6.2.

19 *Mahabir v. Austria*, para. 8.3.

20 *Yaker v. France*, para. 6.2.

have been sufficiently substantiated, declares the communication admissible and proceeds with its consideration on the merits.

Consideration of the merits

9.1 The Committee has considered the communication in the light of all the information submitted to it by the parties, in accordance with article 5 (1) of the Optional Protocol.

9.2 The Committee notes the author’s claim that his being ordered by the Paris Court of Appeal to pay civil damages to the plaintiffs despite his acquittal constitutes a violation of his right to freedom of expression under articles 19 and 22 of the Covenant. It also notes the author’s claim that the acts that he reported in his article were subsequently confirmed by the Court of Audit in its report of 23 February 2017. The Committee further notes the State party’s argument that the interference with the author’s right to freedom of expression and freedom of association was based on a law that was clear and accessible and whose application in accordance with case law was foreseeable for the author, and that the judgment against him was therefore lawful, foreseeable and proportionate and pursued a legitimate aim, in this case, respect for the rights or reputation of others. The Committee also takes note of the State party’s argument that the writings in question damaged the honour and reputation of the civil parties, whom the author accused of having organized and financed a weekend trip to La Baule in October 2005 using membership fees – facts that constitute the offence of misappropriation – and of having misused disciplinary procedures in order to punish their opponents.

9.3 The Committee observes, however, that although the author denied having accused the plaintiffs of misappropriation, he nevertheless filed a complaint against them on the basis of a such a charge before the Paris Criminal Court. The Committee notes the State party’s argument that the author has not substantiated his specific accusations against the plaintiffs and that the publication of the February 2017 report of the Court of Audit does not relieve the author of his obligation to respect the reputation of others, and that the critical remarks made in the report of the Court of Audit do not concern the specific allegations made by the author that are the subject of the civil judgment against him or mention any misuse of the professional disciplinary tribunals by members of the National Council of the National Association of Dental Surgeons in order to harm their opponents.

9.4 The Committee notes the author’s claim that the judgment against him is purely a consequence of his trade union activity and constitutes an infringement of his freedom of expression and that he was in fact punished for an offence of opinion. The Committee also notes the State party’s argument that the author was not convicted under criminal law, and that the Paris Court of Appeal ruled against him for making contentious remarks, characterized as misconduct, that caused harm to the plaintiffs. The Committee notes that the author considers that his being ordered by the Paris Court of Appeal to pay €26,000 plus the costs of the proceedings was neither necessary nor proportionate. The Committee also notes the State party’s argument that the interference with the author’s freedom of association was proportionate to the aim pursued, given the civil nature of the judgment issued against him for making allegations regarding the conduct of four members of the National Association of Dental Surgeons that damaged their honour and reputation. The State party also argues that the national courts took due account of the context in which the remarks had been made in weighing the right to freedom of expression in the context of trade-union activity against the right of the civil parties to respect for their honour and reputation and struck a fair balance in their assessment.

9.5 The Committee must therefore decide whether the restriction imposed on the author’s freedom of expression is allowed under article 19 of the Covenant. In this regard, it recalls that two limitative areas of restrictions on the right are permitted, which may relate either to respect for the rights or reputations of others or to the protection of national security, public order or public health or morals. However, when a State party imposes restrictions on the exercise of freedom of expression, these may not put in jeopardy the right itself.[21] In the present case, the Committee notes that the author has not demonstrated how the judgment

[21] Human Rights Committee, general comment No. 34 (2011), para. 21.

handed down against him in civil proceedings was not aimed at protecting the rights and reputation of the plaintiffs, as the State party claims in its observations.

9.6 The Committee underlines that the author has not demonstrated how the State party has violated its obligation under article 22 of the Covenant to guarantee his right to freedom of association with others, including the right to form and join trade unions for the protection of their interests. The Committee also observes that the restrictions alleged by the author do not relate to freedom of association as such, but rather to freedom of expression under article 19 of the Covenant.

9.7 The Committee notes the author’s argument that, in order to secure a judgment against him, the State party’s courts interpreted his words in such a way as to incriminate him. It also notes the State party’s argument that the author’s accusations correspond to the offence of misappropriation, which was also the subject of a specific complaint brought by the author against the plaintiffs.

9.8 The Committee notes that the judicial decisions submitted for its consideration do not allow it to conclude that they were handed down against the author by reason of his membership of the Union of United Self-Employed Dentists. It also notes that the author has been unable to show that the restrictions that he claims were imposed on him by the State party undermined his exercise of the right to freedom of association and violated articles 19 and 22 of the Covenant.

9.9 In the light of the foregoing, the Committee finds that the author has not demonstrated how his being ordered to pay civil damages to the plaintiffs constitutes a violation of articles 19 and 22 of the Covenant. The Committee therefore concludes that the facts before it do not disclose a violation of the author’s rights under articles 19 and 22 of the Covenant.

10. The Committee, acting under article 5 (4) of the Optional Protocol, finds that the facts before it do not disclose a violation by the State party of the author’s rights under articles 19 and 22 of the Covenant.