



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. 2584/2015*, **

<i>Communication submitted by:</i>	Alain Rosenberg and Sabine Jacquart (represented by counsel, Lord Lester of Herne Hill)
<i>Alleged victims:</i>	The authors
<i>State party:</i>	France
<i>Date of communication:</i>	15 December 2014 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 9 March 2015 (not issued in document form)
<i>Date of adoption of Views:</i>	14 October 2020
<i>Subject matter:</i>	Discriminatory treatment of a religion and its members
<i>Procedural issues:</i>	Admissibility; other procedure of international investigation or settlement
<i>Substantive issues:</i>	Freedom of religion; non-discrimination; right to a fair trial; judicial independence and impartiality; equality of arms
<i>Articles of the Covenant:</i>	2 (1), 14, 18 and 26
<i>Articles of the Optional Protocol:</i>	2 and 5 (2) (a)

1.1 The authors of the communication are Alain Rosenberg, a French national born on 23 March 1949, and Sabine Jacquart, also a French national, born on 30 January 1965. They claim to be victims of a violation by France of their rights under articles 2 (1), 14, 18 and 26

* Adopted by the Committee at its 130th session (12 October–6 November 2020).

** The following members of the Committee participated in the consideration of the communication: Yadh Ben Achour, Arif Bulkan, Ahmed Amin Fathalla, Furuya Shuichi, Christof Heyns, Bamariam Koita, Marcia V.J. Kran, David H. Moore, Duncan Laki Muhumuza, Photini Pazartzis, Hernán Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Yuval Shany, Andreas Zimmermann and Gentian Zyberi. In accordance with rule 108 of the Committee's rules of procedure, Hélène Tigroudja did not participate in the examination of the communication.



of the Covenant, which entered into force for the State party on 4 February 1981.¹ They are represented by counsel, Lord Lester of Herne Hill.

1.2 Pursuant to rule 93 (1), of its rules of procedure, the Committee, acting through the Special Rapporteur on new communications and interim measures, granted the State party's request to consider the admissibility of the communication separately from the merits and informed the State party and the authors accordingly, on 6 July 2015.

The facts as submitted by the authors

2.1 Alain Rosenberg is the Director General of the Association spirituelle de l'Eglise de scientologie (Spiritual Association of the Church of Scientology) and has been a Scientologist since 1967. He coordinates the Church's religious activities. Sabine Jacquart was President of the Association spirituelle de l'Eglise de scientologie at the time of the events in question and has been a Scientologist since 1988. This non-profit association carries out congregationalist activities, religious education, a religious purification programme and spiritual counselling.

2.2 According to the authors, France has described the following practices and beliefs of Scientology as fraudulent and without scientific value: auditing; purification treatments; the personality test; and the funding arrangements. Auditing consists of spiritual exercises and questions put by an auditor that are intended to help the follower in his or her personal and spiritual quest for understanding. The purification treatments consist of detoxification of the body through the use of a sauna and diverse substances with a view to greater spiritual growth. The personality test, which can also serve as a method of proselytizing, consists of identifying 10 personality traits and makes it possible to measure the spiritual and individual progress made as the follower goes through the process. The funding arrangements consist of donations by followers in connection with their participation in the programmes of the Church of Scientology. The authors make clear that access to the Church of Scientology or to its activities is by no means dependent on financial contributions. They consider that the Church of Scientology fully accepts the principles of submission to the law and rejects any criminal conduct.

2.3 On 29 February 1996 and 1 December 1998, the Minister of Justice issued two circulars addressed to public prosecutors, urging them to prosecute 172 movements characterized by the intelligence service of the police (Renseignements généraux) as cults, including the Church of Scientology. The circulars emphasized the need for close collaboration with anti-cult associations, including the Union nationale des associations de défense des familles et de l'individu victimes de sectes (UNADFI) (National Union of Associations for the Protection of Families and Individuals Victims of Cults), a publicly funded association whose purpose is to gather information with a view to taking legal action against cult movements. Since March 1998, at the request of the Ministry of Justice, yearly training sessions have been organized at the National School for the Judiciary on the theme of cults. Scientology has been the focus of specific meetings based on information provided by UNADFI, described by the authors as biased and hostile. On 12 June 2001, after a media campaign conducted by the Government since 1999 referring implicitly to the Church of Scientology, Act No. 2001-504 entered into force, aimed at enhancing the prevention and punishment of cult movements that infringe on fundamental human rights and freedoms. Introduced by Catherine Picard, a member of the National Assembly and President of UNADFI, this law incorporates into the Criminal Code the offence of abuse of a person's weakness (abus de faiblesse). Ms. Picard has stated that this was a necessary remedy to the problem of prosecutions being impeded by the withholding of consent, past or present, by followers. Between 18 and 29 September 2005, France received a visit by the Special Rapporteur on freedom of religion or belief. The authors refer to the Special Rapporteur's report, in which she considered that the policy of the Government may have contributed to a

¹ At the time of its accession to the Covenant's Optional Protocol, on 17 February 1984, France filed the following reservation: "France makes a reservation to article 5, paragraph 2 (a), specifying that the Human Rights Committee shall not have competence to consider a communication from an individual if the same matter is being examined or has already been considered under another procedure of international investigation or settlement."

climate of general suspicion and intolerance towards the communities included in a list established further to a parliamentary report, and negatively affected the right to freedom of religion or belief of some members of these communities or groups.² In April 2008, the Prime Minister assigned Georges Fenech with the task of producing a study on the legal system's capacity to combat abuse by cults. The final recommendations of the study called for the training of the judiciary on the crime of the abuse of a person's weakness, as described in Act No. 2001-504, and, in September 2008, Mr. Fenech was appointed chair of the interministerial task force to monitor and combat abuse by cults. On 19 September 2011, the Minister of Justice issued a circular addressed to prosecutors general attached to the courts of appeal and public prosecutors attached to higher courts of appeal. The purpose of the circular was to give instructions to prosecutors on how to find evidence of abuse of a person's weakness, with reference to practical examples such as "tests", "purification treatments" or "repeated initiation courses". The circular also referred to UNADFI as a major partner in cases involving cults.

2.4 The chronology of these legislative and institutional shifts has to be considered, according to the authors, in connection with the legal proceedings against them. The authors believe that such changes were calculated for the purpose of influencing the proceedings and emphasize how closely the dates of the major steps taken by the legislature and executive match the dates of the legal proceedings against them.

2.5 In December 1998, a lawyer from UNADFI filed a complaint with the investigating judge in Paris on behalf of Ms. M. against the authors for gang fraud, which called for breaking up and banning the Church of Scientology. Ms. M., who had joined the Church of Scientology in May 1998, was alleged to be the victim of mind control. The authors point out that the Church of Scientology had returned most of her financial contributions to Ms. M. She subsequently brought a civil action in the case and then withdrew the complaint as a plaintiff claiming damages in 2010. The public prosecutor instituted criminal proceedings and an investigating judge was appointed in January 1999. The case of Mr. P.A. was combined with the investigation into gang fraud in June 2000, even though it was his brother who had contacted the prosecutor and he himself had refused to bring a civil action. He was characterized as a "consenting victim" after using his own company's funds to pay the Church of Scientology for its services. The authors point out that his financial contributions were reimbursed. The case of Mr. E.A., a follower of the Church of Scientology from 1997 to 1999 and advised by UNADFI, was also included in the case in September 2000. Mr. E.A. also brought a civil action. Nevertheless, he withdrew from the proceedings in December 2007, stating that the dispute with the person whom he had accused had been resolved.

2.6 On 4 September 2006, the public prosecutor applied for proceedings to be terminated, considering that there was no evidence of fraud or of any criminal conduct. The arguments involving mind control and loss of will were not recognized and the prosecutor noted that Mr. P.A. had never filed a complaint.

2.7 On 8 September 2008, the investigating judge rejected the decision to dismiss the case and applied to the court with an order challenging the decision and charging the authors with gang fraud against Ms. M., Mr. E.A. and Mr. P.A. The investigating judge based the decision on the concepts of psychological control and abuse of a person's weakness, elaborated upon by Act No. 2001-504, referring retroactively to the law for acts committed between 1997 and 1999.

2.8 The trial took place in May and June 2009 and, according to the authors, failed to meet the standards of fairness called for under the Covenant. The authors argue that, despite their request, they never learned whether the judges who ruled on their case had attended the training sessions organized by the National School for the Judiciary on the basis of information provided by UNADFI. On 27 October 2009, the Paris *Tribunal de Grande Instance* (court of major jurisdiction) rejected Mr. P.A.'s complaint but convicted the authors of gang fraud against Ms. M. and Mr. E.A. The court found that the authors had exerted psychological control in the guise of the doctrine of Scientology by fraudulently convincing the victims that they could be helped, for the sole purpose of making the Church of

² E/CN.4/2006/5/Add.4, p. 2.

Scientology grow rich. The authors lodged an appeal, and the hearings before the Paris Court of Appeal began in October 2011. The authors asserted that the decision of the *Tribunal de Grande Instance*, which found the practices of the Church of Scientology to be fraudulent, constituted interference with the religious freedom of its members. They also denounced the violation of the principle of impartiality resulting from the influence exerted by the public authorities on public prosecutors through the publication of a new anti-cult circular on 19 September 2011 (complementing those of 29 February 1996 and 1 December 1998), just a few days before the appeal proceedings commenced. They challenged the establishment of training courses at the National School for the Judiciary whose content had been developed by persons hostile to Scientology and which were sometimes even led by UNADFI or its lawyers, i.e., the same association that had taken civil action in the case in question. On 2 February 2012, the Paris Court of Appeal upheld the conviction for gang fraud and complicity in the illegal practice of pharmacy, referring to the concept of psychological control in order to disallow letters from Ms. M. and Mr. E.A., in which they expressed their complete satisfaction with the Church of Scientology. The Court of Appeal found that both the Church of Scientology and the authors had purely financial designs. The authors recall that they were convicted, even though they had never been in contact with the alleged victims, for the mere fact of coordinating the activities of the Church of Scientology. They describe this decision as unjust. The authors point out that UNADFI was recognized as a civil plaintiff in the initial proceedings and on appeal and influenced the entirety of the proceedings, despite the fact that the authors had challenged the admissibility of the civil action filed by UNADFI at the outset of the proceedings. In both courts, the civil action brought by UNADFI was found inadmissible only at the end of the proceedings. The authors also stress the fact that, on appeal, no individual victim was present, as Mr. E.A. had withdrawn his complaint in 2007 and Ms. M. had withdrawn hers in 2010. On 16 October 2013, the Court of Cassation upheld the imposition of heavy fines on the authors, the suspended prison sentences and the order to publish the judgment in the main national newspapers and two international newspapers.³

2.9 Following that conviction, Sabine Jacquart moved to the United Kingdom of Great Britain and Northern Ireland in order to practise her religion in peace. She left her two sons in France and suffers from serious health problems due to the ordeal of the trial and its consequences. Alain Rosenberg, who continues to run his religious ministry, is harassed by hate groups on entering or leaving the premises of the Church of Scientology. Because of his conviction, his bank has refused to give him a loan and he has been refused authorization to travel to the United States of America,⁴ where his daughter, son-in-law, son and grandchildren live.

2.10 On 15 April 2014, the authors and the Association spirituelle de l'Eglise de scientologie filed an application with the European Court of Human Rights, citing a violation of their rights as protected under the Convention for the Protection of Human Rights and Fundamental Freedoms (the European Convention on Human Rights). On 12 June 2014, the authors received a letter informing them of the fact that a single judge had declared their application inadmissible "on the ground that the conditions of admissibility provided for under articles 34 and 35 of the Convention had not been met". The authors emphasize that this letter did not in any way indicate the reasons for which these conditions had not been met and that there was nothing in the letter to suggest that the single judge had considered the case on the merits. The authors consider their case to be similar to that of *Achabal Puertas v. Spain* (CCPR/C/107/D/1945/2010), in which the Committee decided to declare the complaint admissible, despite the fact that: (a) Spain had entered a reservation similar to that of France to article 5 (2) (a) of the Optional Protocol to the Covenant; and (b) the European Court of Human Rights had informed the author in a brief letter that a committee composed of three judges had decided to declare her application to the Court inadmissible on the ground that it did not find "any appearance of violation of the rights and freedoms guaranteed by the Convention and its Protocols". The authors consider that, in their case, it was not a question of a decision by three judges, but by a single judge, and that it is impossible to know whether even a limited consideration of the merits was carried out. They add that the short period

³ The authors were sentenced to 2 years' imprisonment, suspended, and fined €30,000.

⁴ The submission by the authors does not provide more information on this denial of travel to the United States.

between the submission of the application and the single judge's decision suggests that the judge could not have considered the case on the merits.

The complaint

3.1 First of all, the authors consider that their conviction by the French courts constitutes an obstacle to their right and the right of other followers to practise and manifest their religion without interference by the State. They consider that the interference of the French State in this case cannot be justified by article 18 (3) of the Covenant. They further consider that, by making the practices and beliefs of the Church of Scientology criminal offences, the judicial authorities failed to observe the principles of neutrality, pluralism, impartiality and fairness in matters involving religious beliefs protected under the Covenant.

3.2 Secondly, the authors consider that article 2 (1) and 26 of the Covenant have been violated. They argue that the Church of Scientology received unequal treatment and was stigmatized by being described as a "cult". They consider that the treatment suffered by the authors would never have been meted out to followers of a traditional religion.

3.3 Lastly, the authors consider that article 14 of the Covenant has been violated. They argue that the Government's relentless and public position of hostility towards Scientology and the pressure and various calls on the judicial authorities to prosecute and punish representatives of the Church of Scientology under criminal law raise doubts about the independence and impartiality of the French courts in the present case. Such doubts were backed up by the fact that the judges, in order to reach their verdicts, ultimately relied on the claims of three persons only, all of whom withdrew their complaints. The authors also claim that the principle of equality of arms was not observed, as UNADFI, an association subsidized publicly and involved in the process of training judges in the fight against cults, played a prominent role in the entire legal process by taking civil action against the authors and the Church of Scientology. The authors recall that UNADFI was able to make these allegations and submissions even though the association did not have the right to take part in court proceedings in this case, as recognized by the *Tribunal de Grande Instance* and the Court of Appeal in their respective judgments.

State party's observations on admissibility

4.1 On 11 May 2015, the State party submitted its observations on admissibility, asking the Committee to reject the communication as inadmissible.

4.2 The State party first recalls and summarizes the national legal proceedings against the authors. Secondly, it asserts that the facts presented by the authors had already been examined under another procedure of international investigation or settlement. It points out that the authors submitted an application to the European Court of Human Rights relating to the same facts and that they were informed by a letter dated 12 June 2014 that their 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 accession to the Optional Protocol concerning article 5 (2) (a). It recalls the Committee's practice that an issue may not be considered "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 period of six months from the date on which the final decision was taken has passed; (b) the application is anonymous; (c) the matter has already been examined under another procedure of international investigation or settlement; (d) not all domestic remedies have been exhausted; (e) the application is manifestly ill-founded or an abuse of the right of individual application; and (f) the applicant has not suffered a significant disadvantage. Considering that the application was signed and submitted within the requisite six-month period to the European Court of Human Rights only, that domestic remedies were exhausted and that the two-year suspended prison sentence and fine of 30,000 euros constitute a loss, the State party deduces that the Court rejected the application on the grounds that it was clearly 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 authors' grievances.

4.4 Referring to the authors' allegations that the consideration given by the European Court of Human Rights may be described as cursory, the State party maintains that it is not for the Committee to speculate on the quality of the work of the Court's judges. It also refers to the separate opinion (dissenting) of six members of the Committee in the case of *Achabal Puertas v. Spain*. Recalling that the matter was examined by another procedure of international investigation within the meaning of the reservation made by France, the State party requests the Committee to declare the authors' communication inadmissible.

Authors' comments on the State party's observations on the merits

5.1 On 24 June 2015, the authors submitted their comments on the State party's observations. They recalled that the letter of the European Court of Human Rights of 12 June 2014 gave no explanation of the Court's decision and that the State party itself had acknowledged as much. They maintain that the single judge of the Court did not examine the application within the meaning of the reservation made by France and that the communication must therefore be considered admissible.

5.2 The authors reject the argument advanced by the State party that, in view of the grounds for inadmissibility established under articles 34 and 35 of the European Convention on Human Rights, the judge had necessarily rejected the application on the ground that it was manifestly ill-founded or an abuse of the right of individual application. They describe this reasoning as speculative and based on a presumption that the European Court of Human Rights never makes mistakes. They conclude that it is impossible to know why the judge rejected the application or to determine whether the judge had carried out even a limited consideration of the merits.

5.3 Basing themselves on the case of *Achabal Puertas v. Spain*, the authors recall the similarity between the two cases and note that the Committee had described the arguments put forward by the European Court of Human Rights in its letter of rejection as succinct. The present case should be described in the same way. The authors maintain that transparency of legal reasoning is crucial for establishing trust in the judicial system and in its credibility.

5.4 The authors recall that this case raises serious legal issues concerning their right to religious freedom, their right to equality and non-discrimination and their right to a fair trial. At the international level, they consider that it is crucial for their case to be examined, where their application was summarily declared inadmissible by the European Court of Human Rights without it being possible for them to understand the reasons for this decision. The authors therefore request the Committee to declare the communication admissible, consistent with the decision taken in the case of *Achabal Puertas v. Spain*.

Authors' further comments on admissibility

6.1 On 15 January 2016, the authors submitted further observations in order to inform the Committee of a procedural reform in the European Court of Human Rights. Following a high-level conference entitled "Implementation of the European Convention on Human Rights, our shared responsibility", held in Brussels, member States welcomed the Court's intention to account for, in a brief manner, its inadmissibility decisions by a single judge and invited the Court to act on its stated intention as from January 2016.

6.2 The authors welcome this reform but note that, as the decision was not retroactive, they cannot know the reasons why their application was found inadmissible. While emphasizing that the reform of 2016 is aimed at rectifying shortcomings in the single judge procedure, the authors recall that, in these circumstances, they consider that the single judge did not examine their case within the meaning of the reservation made by France.

Decision on admissibility

7.1 On 18 July 2017, the Committee considered the admissibility of the communication.

7.2 The Committee observed that the authors had presented an application relating to the same events before the European Court of Human Rights, and that they had been informed

by a letter of 12 June 2014 that a single judge had decided to declare “the application inadmissible on the grounds that the conditions of admissibility laid down in articles 34 and 35 of the European Convention on Human Rights had not been met”. The Committee recalled that, in acceding to the Optional Protocol, France had introduced a reservation excluding the competence of the Committee to take cognizance of cases that were being or had been examined under another procedure of international investigation or settlement.

7.3 The Committee recalled its jurisprudence relating to article 5 (2) (a) of the Optional Protocol.⁵ It also recalled that, when the European Court of Human Rights bases a declaration of inadmissibility not solely on procedural grounds, but also on grounds based to some extent on a consideration of the merits of the case, then the same matter should be deemed to have been “examined” within the meaning of the respective reservations to article 5 (2) (a) of the Optional Protocol,⁶ and that it was therefore for the Committee to determine whether, in the case in question, the Court had gone beyond the examination of the purely formal criteria of admissibility when it declared the “application inadmissible on the ground that the conditions of admissibility provided for under articles 34 and 35 of the Convention had not been met”.

7.4 The Committee noted that the European Court of Human Rights had examined the authors’ application and had declared it inadmissible under articles 34 and 35 of the European Convention on Human Rights. However, the Committee noted the brevity of the reasoning that the Court set out in the letter sent to the authors, which did not put forward any argument or clarification regarding the grounds for the decision on inadmissibility on the merits.⁷ In the light of these particular circumstances, the Committee considered that it was not possible for it to determine with certainty that the case as presented by the authors had already been the subject of even a limited examination on the merits⁸ within the meaning of the reservation made by France. For these reasons, the Committee considered that the reservation made by France regarding article 5 (2) (a) of the Optional Protocol did not constitute, in itself, an obstacle to consideration on the merits by the Committee.⁹

7.5 The Committee noted that the authors alleged that the criminalization of the practices and beliefs of the Church of Scientology and the associated prosecutions and convictions had improperly interfered with the freedom of religion of its followers. It also noted their allegations that the Church of Scientology and the authors themselves had been subjected to unequal treatment in comparison with traditional religions, and that the judicial proceedings against them had violated the principles of impartiality and independence and equality of arms. The authors contended, *inter alia*, that their prosecutions and convictions had been conducted in a broader context where legal and policy measures were simultaneously being put into place by the State party in a manner affecting the impartiality of those proceedings. These measures included: (a) circulars issued in 1996 and 1998 by the Minister of Justice calling for the prosecution of 172 entities identified as cults, including the Church of Scientology; (b) training sessions for judges on the theme of cults conducted by UNADFI – a publicly funded association that also played a prominent role in the legal proceedings by bringing, simultaneously with its training sessions, a civil action against the authors and the Church of Scientology; and (c) the introduction in 2001 of the offence of abuse of a person’s weakness, in Act No. 2001-504, and the Minister of Justice’s circular to public prosecutors issued in September 2011 identifying practices used by members of the Church of Scientology, such as “tests”, “purification treatments” and “repeated initiation courses”, as constituting that offence.

7.6 The Committee further noted that the State party had not contested the admissibility of the authors’ allegations on any grounds other than those related to the inadmissibility

⁵ See, for example, *Rivera Fernández v. Spain* (CCPR/C/85/D/1396/2005), para. 6.2.

⁶ 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.

⁷ *X. v. Norway* (CCPR/C/115/D/2474/2014), para. 6.2: “However, the Court did not explain its finding of inadmissibility and no reasons were given for its decision. It also notes that the State party did not challenge the author’s argument concerning the non-preclusive effect of the decision of the European Court. The Committee therefore considers that it is not precluded by article 5 (2) (a) of the Optional Protocol from examining the communication.”

⁸ *Mahabir v. Austria*, para. 8.3.

⁹ See also *A.G.S. v. Spain* (CCPR/C/115/D/2626/2015), para. 4.2.

decision of the European Court of Human Rights. The Committee therefore considered that the authors had adequately substantiated, for the purpose of admissibility, their claims that articles 2 (1), 14, 18 and 26 of the Covenant had been violated, and that the communication was admissible under article 2 of the Optional Protocol.

State party's observations on the merits

8.1 On 18 September 2018, the State party submitted its observations on the merits of the communication. With regard to the alleged violation of article 18 of the Covenant, the State party rejects the authors' argument that they were convicted solely on the basis of their membership of the Church of Scientology. The State party emphasizes that, according to article 18 (3) of the Covenant, while freedom of belief is an absolute right, freedom to manifest one's religion or beliefs may be subject to such limitations as are prescribed by law and are necessary to protect public safety, order, public health or morals or the fundamental rights and freedoms of others. The State party stresses that recognition of the right to freedom of religion under article 18 of the Covenant does not exempt the authors from the obligations incumbent upon them and does not legitimize criminal behaviour.¹⁰ The authors were convicted in accordance with regular procedure on the charges of gang fraud and complicity in the illegal practice of pharmacy, in accordance with articles 132-71 and 313-1 of the Criminal Code and article L.4223-1 of the Public Health Code. The State party affirms that the authors' convictions do not prevent them from continuing to manifest their beliefs, provided that their actions in this regard respect the fundamental rights and freedoms of others. The State party also explains that the restriction alleged by the authors is proportionate to the legitimate aims pursued by the legislature and is provided for in French criminal law, which punishes fraud and the illegal practice of pharmacy. The State party further indicates that this restriction pursues a legitimate aim under article 18 (3) of the Covenant, namely the cessation of a violation of the fundamental rights of others and a safety threat posed by the authors.

8.2 Regarding the claims under articles 2 and 26 of the Covenant, the State party rejects the authors' argument that they were subjected to discrimination on the basis of their membership of the Church of Scientology. The State party recalls that the Committee has consistently held that not every differentiation based on the grounds listed in article 26 of the Covenant¹¹ amounts to discrimination, as long as the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the Covenant.¹² The State party affirms that in the present case the authors were convicted under criminal law on the charges of gang fraud and complicity in the illegal practice of pharmacy on the sole basis that the constituent elements of those offences had been established, not because of their membership of the Church of Scientology, and that the word "cult" was not used by the French courts during the proceedings in this case. In the alternative, the State party argues that even if a differentiation affecting the authors could be determined, it would in any event be based on objective and reasonable grounds.¹³ The State party therefore considers that the claim of a violation of articles 2 and 26 of the Covenant should be dismissed.

8.3 Regarding the alleged violation of article 14 of the Covenant, the State party argues that the authors have not established how the application of the law by the domestic courts constitutes a denial of justice, an obvious error or arbitrary application of the law. The State Party rejects the claim that its judges lack independence. It emphasizes that the circulars issued in 1996 and 1998 by the Minister of Justice and cited by the authors are not binding. The State party recalls that the European Court of Human Rights has recognized that Act No. 2001-504, which establishes the offence of fraudulent abuse of a person's weakness (inserted in article 223-15-2 of the Criminal Code), is in conformity with article 9 of the European

¹⁰ See the judgment handed down in this case by the Court of Cassation on 16 October 2013 dismissing an appeal lodged on grounds of non-compliance with treaty law, specifically article 9 of the European Convention on Human Rights (which is the counterpart of article 18 of the Covenant).

¹¹ See, for example, *Fedotova v. Russian Federation* (CCPR/C/106/D/1932/2010), para. 10.6.

¹² Human Rights Committee, general comment No. 18 (1989), para. 13.

¹³ *Prince v. South Africa* (CCPR/C/91/D/1474/2006), para. 7.5.

Convention on Human Rights,¹⁴ which is the counterpart of article 18 of the Covenant. The State party adds that this law was not applied by the judges in the authors' case. It rejects the argument that the public statements against the Church of Scientology by the Interministerial Task Force to monitor and combat abuse by cults constituted pressure on the French judiciary, whose independence is enshrined in article 64 of the French Constitution.

8.4 With regard to the impartiality of the judges in the case, the State party considers that the authors have not established how the participation of UNADFI in the training of judges led to a miscarriage of justice. The State party submits that if the authors had doubts as to the impartiality of the judges in the case, they could have petitioned for the recusal of one or more judges on the basis of article 668 of the Code of Criminal Procedure, which they failed to do. The State party specifies that, pursuant to article 2 (2) of the Code of Criminal Procedure, the waiver of complaints by victims cannot extinguish criminal proceedings. With regard to the alleged violation of the principle of equality of arms, the State party rejects the authors' claim that UNADFI played a prominent role in the proceedings of the case. It recalls that the application submitted by UNADFI to file a civil action was rejected by the Paris *Tribunal de Grande Instance* and that its decision was upheld both on appeal and in cassation.

Authors' comments on the State party's observations on the merits

9.1 In comments dated 26 December 2018, the authors reiterate that the French authorities failed to respect their fundamental rights, including their right to manifest their religious beliefs as members of the Church of Scientology, in violation of article 18 of the Covenant. They claim to be victims of religious discrimination in violation of articles 2 (1) and 26 of the Covenant, in view of the fact that the Church of Scientology has not been afforded the same treatment as other, traditional religions. They reiterate their allegations regarding the violation of article 14 of the Covenant.

9.2 The authors claim that the State party has been unable to justify the limitations that it imposed on their enjoyment of freedom of religion, guaranteed under article 18 of the Covenant. They consider that their conviction under criminal law was motivated solely by the fact that they coordinated the religious activities of the Church of Scientology, which constitutes a violation of their right to manifest their religion.¹⁵ The authors indicate that they have been the target of unjustified public attacks by representatives of the Government, who have described the Church of Scientology as a cult and its members as swindlers who are motivated by financial gain. The authors stress that the religious practices of Scientology, which have been characterized by the French courts as dishonest, consist of spiritual and fundraising activities necessary for the operation of the Church. The authors reiterate that the training sessions organized for judges by the State party since March 1998, which include sessions devoted to Scientology based on inimical information and circulars issued by the authorities urging the judiciary to crack down on groups considered to be cults, including the Church of Scientology, constitute an infringement on their freedom of belief. As for the characterization of the Church of Scientology as a cult, the authors recall that the European Court of Human Rights has found that the use of pejorative terms to describe religious communities in official documents constitutes interference insofar as it can have negative consequences for the exercise of freedom of religion.¹⁶ The authors further assert that Act No. 2001-504 was specifically conceived to target followers of Scientology. They emphasize that on the eve of the hearing on their appeal against the decision of the Paris court, the Government issued a circular addressed to public prosecutors, with the presidents of the courts of appeal in copy, which referred to some of the practices of the Church of Scientology.

9.3 With regard to the violation of articles 2 (1) and 26 of the Covenant, the authors argue that their religion has not been afforded the same treatment as other, traditional religions, whose representatives have never been tried or convicted because of their practices, which

¹⁴ European Court of Human Rights, *Fédération chrétienne des Témoins de Jéhovah de France v. France*, application No. 53430/99, decision on admissibility, 6 November 2001.

¹⁵ European Court of Human Rights, *Kokkinakis v. Greece*, application No. 14307/88, judgment of 25 May 1993, para. 36.

¹⁶ European Court of Human Rights, *Leela Förderkreis E.V. and Others v. Germany*, application No. 58911/00, judgment of 6 November 2008, para. 84.

are based on numerous unscientific beliefs, nor prosecuted for fraud because of the financial contributions made by followers.

9.4 With regard to the alleged violation of article 14 of the Covenant, the authors point out that officials of the French justice system clearly admitted in October 2011 that the circulars issued in 1996 and 1998 were not only addressed to prosecutors but were also disseminated for information purposes among sitting judges, including the presidents of the courts of appeal. The authors emphasize that, contrary to the claims of the State party, the statements of the authorities were not made after their conviction, but before and during the criminal proceedings against them. While acknowledging that it is impossible to know the extent to which this hostile campaign influenced the courts, the authors argue that it undermined the impartiality of the judiciary. The authors reiterate their claim that the principle of equality of arms was not respected because of the roles of UNADFI in the training of judges and as a civil plaintiff at the beginning of the proceedings. They consider that the Paris Court of Appeal and the Court of Cassation did not sufficiently assess the unfairness of the proceedings on the basis of article 14 of the Covenant.

9.5 Accordingly, the authors urge the Committee to reject the State party's arguments on the merits of their communication and to find that they have been deprived of their rights protected under articles 2, 14, 18 and 26 of the Covenant.

Issues and proceedings before the Committee

Consideration of the merits

10.1 The Committee has considered the present communication in the light of all the information made available to it by the parties, as provided under article 5 (1) of the Optional Protocol.

10.2 The Committee takes note of the authors' claim that their conviction under criminal law constitutes an obstacle to their right to exercise and manifest their religion and that the interference of the State party violates article 18 (3) of the Covenant. It also notes the authors' claim that their conviction was motivated solely by their membership of the Church of Scientology and that the French authorities conducted a media campaign against them and issued administrative circulars addressed to public prosecutors specifically targeting the practices of the Church of Scientology. The Committee also notes the State party's argument that recognition of the right to freedom of religion under article 18 of the Covenant does not exempt the authors from the obligations incumbent upon them and does not legitimize criminal behaviour, and that the authors were convicted under criminal law on the basis of objective elements corresponding to the offences of gang fraud and the illegal practice of pharmacy, in accordance with the criminal legislation in force, and not on the basis of their religious affiliation. The State party affirms that the authors' convictions do not prevent them from continuing to manifest their beliefs, provided that their actions in this regard respect the fundamental rights and freedoms of others. The State party also adds that the restriction alleged by the authors is proportionate to the legitimate aims pursued by the legislature and is provided for in French criminal law, which punishes fraud and the illegal practice of pharmacy.

10.3 The Committee must therefore determine whether this restriction is authorized by article 18 (3) of the Covenant. The Committee recalls that article 18 (3) permits limitations on the freedom to manifest religion or belief only if such limitations are prescribed by law and are necessary to protect public safety, order, health, morals or the fundamental rights and freedoms of others. It further recalls that article 18 (3) of the Covenant must be interpreted strictly. Limitations may be applied only for those purposes for which they were prescribed and must be directly related and proportionate to the specific need on which they are predicated. Restrictions may not be imposed for discriminatory purposes or applied in a discriminatory manner.¹⁷

¹⁷ *Yaker v. France* (CCPR/C/123/D/2747/2016), para. 8.4; and *F.A. v. France* (CCPR/C/123/D/2662/2015), para. 8.4.

10.4 The Committee notes that the judicial decisions submitted for its consideration do not allow it to conclude that they were handed down against the authors for the sole reason of their membership of the Church of Scientology but rather that they were issued with a view to the prosecution of acts specifically considered to be criminal offences, in particular, acts of gang fraud and complicity in the illegal practice of pharmacy. The Committee also notes that the authors have been unable to establish that the restrictions that they claim were imposed on them by the State party because of their manifestation of their religion or beliefs did not meet the requirements set forth in article 18 (3) of the Covenant. The Committee also observes that, in their communication, the authors did not challenge the grounds of their conviction on the basis of the constituent elements of the offences with which they were charged and for which they were prosecuted and convicted. It also observes that the mere fact of belonging to a religious denomination is not a ground for exemption from national criminal law. The Committee further observes that the Church of Scientology continues to operate in the territory of the State party and that the authors have not provided the Committee with any relevant information that would lead it to conclude that their conviction under criminal law was not a result of their having violated criminal law but rather was motivated solely by their membership of the Church of Scientology. The Committee finds that, in the light of the information in the file, it is not in a position to conclude that there has been a violation of article 18 of the Covenant.

10.5 With regard to the claims under articles 2 (1) and 26 of the Covenant, the Committee notes the authors' argument that the Church of Scientology has been stigmatized and characterized as a cult and has not been afforded the same treatment as a traditional religion. The Committee also notes the State party's argument that the authors were convicted on the sole basis of the criminal acts of which they were accused, and that these acts were classified, according to regular procedure, as gang fraud and complicity in the illegal practice of pharmacy, in accordance with articles 132-71 and 313-1 of the Criminal Code and article L.4223-1 of the Public Health Code.

10.6 The Committee recalls its general comment No. 18 (1989), in which "discrimination" is defined, in paragraph 7, as "any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms". However, not every differentiation based on the grounds listed in article 26 amounts to discrimination, provided that such a differentiation is based on reasonable and objective criteria,¹⁸ in pursuit of a legitimate aim.¹⁹ The Committee observes that in the present case the authors have not demonstrated how their conviction under criminal law resulted from unequal treatment based on unreasonable criteria that would call into question the objectivity of the national courts and the pursuit of a legitimate aim. The Committee notes that the authors have asserted that the violation of their rights under articles 2 (1) and 26 of the Covenant stems from the fact that they have been treated differently, as Scientologists. The Committee recalls, however, that, according to the authors' own statements, the circulars issued by the Minister of Justice in 1996 and 1998 concerned 172 movements classified as cults, and not just the Church of Scientology. The Committee notes that nothing in Act No. 2001-504, incorporating the offence of abuse of weakness into the Criminal Code, seems to indicate that the Church of Scientology was specifically targeted. The Committee also notes that the Paris *Tribunal de Grande Instance*, in its decision of 27 October 2009, convicted the authors not for their religious beliefs but for gang fraud and for complicity in the illegal practice of pharmacy. The Paris Court of Appeal, in its ruling of 2 February 2012, upheld these convictions. Lastly, the Committee notes that the Court of Cassation, in its judgment of 16 October 2013, also upheld the convictions. Consequently, the domestic courts have systematically addressed the constituent elements of the criminal offences charged against the authors and the serious financial consequences of their activities on the victims, who, although they subsequently withdrew their complaints, did so only after many years of litigation and after repayment of the contributions they had made to the Church

¹⁸ See, for example, *Broeks v. Netherlands* (CCPR/C/29/D/172/1984), para. 13; and *Zwaan-de Vries v. Netherlands* (CCPR/C/29/D/182/1984), para. 13.

¹⁹ *Yaker v. France*, para. 8.14; and *O'Neill and Quinn v. Ireland* (CCPR/C/87/D/1314/2004), para. 8.3.

of Scientology. The Committee further notes that members of other, traditional religions have also been convicted in France for similar offences²⁰ and that in the case in question the courts have not used the word “cult” to refer to the Church of Scientology, which has continued to operate freely in the country. Based on the information in the file, the Committee is consequently not in a position to conclude that the authors’ rights under articles 2 (1) and 26 of the Covenant have been violated.

10.7 With regard to the alleged violation of article 14 of the Covenant, the Committee notes the authors’ argument that the authorities’ obvious hostility towards the Church of Scientology, the adoption of Act No. 2001-504 and the pressure and calls on the judicial authorities to prosecute representatives of the Church of Scientology raise doubts about the independence and impartiality of the French courts in the present case. The Committee also notes the authors’ claim that the principle of equality of arms was not respected, in the sense that UNADFI, which receives funding from the State, was involved in the training of judges and played a prominent role in the entire judicial process, including by taking civil action against the authors and the Church of Scientology. The Committee observes, however, that the authors have not established how the issuance by the Minister of Justice of circulars addressed to prosecutors and disseminated for information purposes among sitting judges necessarily undermined the independence of the judiciary. With regard to the complaints that were submitted and subsequently withdrawn, the Committee observes that, according to article 2 (2) of the Code of Criminal Procedure, the withdrawal of a complaint by a victim is not an obstacle to the pursuit of criminal prosecution. The Committee also notes that Act No. 2001-504 was not applied by the judges in the case. The status of UNADFI as a civil plaintiff was not recognized by the *Tribunal de Grande Instance* or the Court of Appeal in their respective judgments. The Committee also observes that the legislation of the State party afforded the authors the possibility of petitioning for the withdrawal of the judges in their case, but that they did not avail themselves of this opportunity.

10.8 The Committee recalls that, generally speaking, article 14 of the Covenant aims at ensuring the proper administration of justice.²¹ However, in the light of the information contained in the case file, the Committee is not in a position to conclude that there has been arbitrary conduct or a denial of justice by the domestic courts, or that the judges in this case, who sat in three different courts, violated their obligation of independence and impartiality at first instance or in the context of the appeals subsequently submitted.²²

11. In the light of the foregoing, the Committee considers that the information before it does not allow it to conclude that the State party violated the authors’ rights under articles 2 (1), 14, 18 and 26 of the Covenant.

²⁰ See, for example, the judgment of the Ajaccio Criminal Court dated 26 June 2010 against Antoine Videau, a former priest of the Roman Catholic Church in Corsica, convicted of fraud, and the judgment of the Grasse Criminal Court against Wladimir Prokofieff, a former bishop of the Russian Orthodox Church, in 2011. See also the judgment of the Nanterre Criminal Court against Mohamed Boudjedi, an imam convicted of embezzlement, in 2014.

²¹ Human Rights Committee, general comment No. 32 (2007), para. 2.

²² See, inter alia, *Crochet v. France* (CCPR/C/100/D/1777/2008), para. 9.4; and *Moraël v. France* (CCPR/C/36/D/207/1986).