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on Civil and Political Rights**

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HUMAN RIGHTS COMMITTEE
Fifty-first session

DECISIONS

Communication No. 421/1990

Submitted by: Thierry Trébutien

Alleged victim: The author

State party: France

Date of communication: 27 June 1990 (initial submission)

Documentation references: Prior decisions:
- Special Rapporteur's rule 91 decision, transmitted
to the State party on 15 September 1992
(not issued in document form)

Date of present decision: 18 July 1994

[Annex]

*/ Made public by decision of the Human Rights Committee.
DEC421.51e cb

ANNEX

**Decision of the Human Rights Committee under the Optional Protocol
to the International Covenant on Civil and Political Rights
- Fifty-first session -**

concerning

Communication No. 421/1990

Submitted by: Thierry Trébutien
Alleged victim: The author
State party: France
Date of communication: 27 June 1990 (initial submission)

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

Meeting on 18 July 1994,

Adopts the following:

Decision on admissibility

1. The author of the communication is Thierry Trébutien, a French citizen born in 1960, currently detained in a French penitentiary. He claims to be a victim of violations by France of articles 9, paragraphs 1 to 3, 14, paragraphs 1 and 3(a) and (b), and 23, paragraph 1, of the International Covenant on Civil and Political Rights. The author requests compensation pursuant to article 9, paragraph 5, of the Covenant.

The facts as submitted by the author:

2.1 On 7 May 1982, the author was convicted on four counts of armed robbery in the city of Nantes and sentenced to eight years' imprisonment. He was incarcerated in the prison of Caen. After benefitting from a special leave in 1985, he failed to return to the prison. The author was rearrested in December 1986, after having committed a number of criminal offences, including armed robbery. On 28 February 1988, he managed to escape again, this time from the prison of Cherbourg, and allegedly committed another series of offences, mainly armed robberies (including bank robberies), together with two accomplices. In the course of a bank robbery committed on 22 March 1988 at Saint-Fargeau-Ponthierry (Seine et Marne), a bank cashier was seriously injured by a gunshot, which the author was alleged to have fired. Two other cases involved, on 25 March and on 19 and 20 April 1988, the taking of a total of five hostages.

2.2 The author and his accomplices then fled to Portugal; on 22 June 1988, they were arrested in Porto. A warrant for the author's arrest was issued by the examining magistrate of the tribunal of Fontainebleau on 23 June 1988. On 28 June 1988, the Court of Appeal of Evora (Portugal) ordered his extradition; he was extradited to France on 11 July 1988.

2.3 Upon his arrival in France, the author and his accomplices were charged with armed robbery under aggravating circumstances, illegal arrest and detention of individuals, taking of hostages, fraud and theft by the examining magistrate of the tribunal of Fontainebleau, and placed under detention.

2.4 On 19 September 1989, the author was convicted on another charge of armed robbery by the Court of Assizes of the Manche region (Cour d'Assises de la Manche) and sentenced to 12 years' imprisonment. The Cour de Cassation in Paris dismissed the appeal related to this conviction on 17 January 1990. On 6 November 1989, the Court of Appeal of Caen (Normandy) sentenced the author to two years' imprisonment for the escape from prison on 28 February 1988. On 8 February 1990, the Court of Cassation dismissed the appeal filed against this sentence. On 11 July 1990, the Criminal Chamber of the Court of Appeal of Caen referred the author's case, on the charges brought in relation to the offences committed on 28 February 1988, to the Cour d'Assises de la Manche. An appeal against this decision was rejected by the Court of Cassation on 6 November 1990. This case against the author was heard in early March 1991 and led to a sentence of eight years' imprisonment, pronounced by the Cour d'Assises de la Manche on 15 March 1991. Appeal against conviction and sentence was dismissed by the Cour de Cassation on 4 December 1991.

2.5 With regard to the preliminary investigation of the charges brought against Thierry Trébutien on 11 July, the examining magistrate suspended the permits for visits by the author's family on 3 November 1988; he reinstated them for the author's sister and mother on 7 March 1989, but not for his brothers or his female companion. The author is said to have been heard the last time by the examining magistrate on 7 April 1990 or when he appeared on 9 July 1990 before the presiding judge of the Fontainebleau court of major jurisdiction acting as examining magistrate, prior to the one-year extension of the author's pre-trial detention.

2.6 On 25 April 1990, the examining magistrate issued an order transmitting the papers relating to the case to the government procurator for a ruling. On 7 June 1990, the procurator requested further information. In addition, on dates which have not been specified, the examining magistrate issued several rogatory commissions. On 14 March 1991, the examining magistrate issued another order transmitting the papers relating to the case to the procurator, who handed down a definitive indictment on 29 January 1991. The examining magistrate closed the investigation by an order dated 14 March 1991; and by a decision dated 13 May 1991, the indictment division of the Court of Appeal of Paris referred the case to the Court of Assizes of Seine et Marne.

2.7 The author lodged an appeal against the referral decision, which was rejected by the Court of Cassation on 17 September 1991. Although the author received legal assistance, it appears that the barrister appointed by the court did not file a statement. Mr. Trébutien filed a statement on his own behalf. On 8 October 1991, the Court of Assizes of Seine et Marne sentenced the author to 8 years' imprisonment, for the crimes committed on 25 March and 19/20 April 1988.

2.8 Throughout his pre-trial detention, Mr. Trébutien filed several applications for release. One was rejected by the examining magistrate on 14 August 1990, which decision was confirmed by the indictment division on 30 August 1990. Under a judgement dated 18 December 1990, the Court of Cassation reversed that ruling on the grounds that the division had not responded to all the applications filed by the author and referred the case to the same indictment division composed of different members, which, under an order dated 7 May 1991, confirmed the rejection of the application for release. The Court of Cassation dismissed the appeal. In an order dated 21 and 24 August 1990, the examining magistrate rejected two other applications for release filed by the author. On appeal, the indictment division of the Court of Appeal of Paris confirmed those rejection orders on 12 September 1990.

2.9 In a judgement dated 4 January 1991, the Court of Cassation reversed that ruling and referred the case to the same indictment division composed of different members. On 28 February 1991, the division confirmed the orders rejecting the applications for release, referring in particular to the renewed danger of escape, the author's lengthy judicial record and the gravity of the punishment incurred. The author filed a further appeal and the Court of Cassation, in a judgement dated 11 June 1991, reversed the ruling on the grounds of a violation of the rights of the defence and referred the case to the indictment division of the Court of Appeal of Versailles. On 5 November 1991, that division ordered the author's release on the grounds that he had already served, for other acts, a definitive term of imprisonment. The author filed a further appeal for judicial review, referring to the length of time taken by the judicial authorities to rule on his applications. The Court of Cassation declared that appeal inadmissible in a judgement dated 2 March 1992 by reason of the fact that the decision in question did not constitute grounds for a complaint on his part.

2.10 Another application for release was rejected by the examining magistrate on 28 December 1990. On 17 January 1991, the indictment division confirmed the rejection, emphasizing in particular the danger that the author might escape. The Court of Cassation dismissed the appeal on 23 April 1991. A further application for release was submitted directly to the indictment division of the Court of Appeal of Paris, which, on 24 July 1991, ordered his release on the grounds that Mr. Trébutien had already served a sentence of a definitive term of imprisonment. The author lodged other applications for release subsequently, but the file does not provide further details.

2.11 The author points to irregularities said to have occurred in connection with the numerous judicial proceedings against him. In particular, he contends that the French judicial authorities did not seek to ascertain from him the circumstances of his extradition to France and his confinement at the prison of Fleury-Mérogis. He observes that under sections 132 and 133 of the French Code of Criminal Procedure (Code de Procédure Pénale), the Examining Magistrate was obliged to question him about these events within 24 hours. He thus concludes that he was held arbitrarily and that he should have been released, pursuant to sections 125 and 126 of the Code de Procédure Pénale.

2.12 The author also points out that when he appeared before the Court on 19 September 1989, he had been in detention for one year, two months and eight days, a period during which he was not questioned and was not provided with a court-appointed legal

representative. When counsel was finally appointed, the President of the Court allegedly withheld the necessary court documents for consultation and preparation of the defence. According to the author, because of this situation, the pleadings of counsel before the court lasted no more than a few minutes.

2.13 The author notes that between 1991 and 1993, he has been transferred from prison to prison, including to the prison of St. Maur. After a spectacular escape of some prisoners from the prison of St. Maur in June 1993, the prison authorities requested that the author be placed in isolation detention, because of "strong indications that he was preparing his own escape". The author claims that he had nothing to do with the escape of June 1993 and that he is now being arbitrarily transferred from one prison to another.

2.14 On 7 March 1990, the author filed a first complaint with the European Commission of Human Rights. It was based on an alleged violation of article 5, paragraph 1, of the European Convention, registered as case No. 17215/90, and declared inadmissible on 5 December 1990 as manifestly ill-founded. On 11 October 1991, the author filed a second complaint with the European Commission. This complaint was registered before the Commission as case No. 19228/91. On 14 October 1992, the Commission declared the case inadmissible, invoking different grounds. Concerning irregularities in the extradition proceedings, it found the complaint inadmissible ratione personae in the sense of article 27, paragraph 2, of the Convention. Concerning the denial of visits from family members in prison, it concluded that domestic remedies had not been exhausted. Finally, the complaints about inadequate legal representation, violations of the principle of equality of arms, and undue prolongation of the judicial proceedings, were dismissed as "manifestly ill-founded" within the meaning of article 27, paragraph 2, of the European Convention. The author then introduced a third complaint with the Commission, which was registered as case No. 21476/93 and declared inadmissible on 14 October 1993, on the ground that the facts were substantially the same as those that had been at the basis of the Commission's earlier decision of 14 October 1992.

The complaint:

3.1 It is alleged that the facts as described above reveal violations of articles 9, paragraphs 1 to 3, 14, paragraphs 1 and 3(a) and (b), and 23, paragraph 1, of the Covenant.

3.2 In particular, Mr. Trébutien submits that his detention between 11 July 1988 and September 1989 was arbitrary, as the charges on which he was convicted on 19 September 1989 had not been notified to him and were not those on which he was extradited from Portugal or on which the Portuguese authorities had accepted his extradition.¹

¹ This situation is explained in a decision of the First Criminal Chamber of the Court of Appeal of Paris of 29 May 1991, in which it is stated that the indictments against Mr. Trébutien and his accomplices could not be notified to them via the normal channels as they were then fugitives. A letter from the Ministry of Justice of 22 July 1991 addressed to the author explains that the author's detention from 11 July 1988 to 19 September 1989 can in no way be deemed arbitrary, given the existence of the international arrest warrant (*mandat d'arrêt international*) issued on 23 June 1988.

3.3 The author complains in particular about irregularities committed in the proceedings leading to his conviction of 15 March 1991. In this context, he accuses several of the judges in the indictment chamber of the Court of Appeal of Caen and on the Court of Cassation, alleging that they forged judicial documents, including the decisions of 10 July and 6 November 1990 ("... se sont rendus coupables de faux en écriture publique, sur des actes judiciaires").

3.4 The author complains further that he was denied the right to receive visits in prison from members of his family, in violation of article 23, paragraph 1, of the Covenant.

3.5 Finally, the author complains that the judicial proceedings against him have been unduly prolonged.

The State party's information and observations and the author's comments thereon:

4.1 In its submission under rule 91 of the rules of procedure, the State party contends that the communication is inadmissible, on the basis of articles 5, paragraph 2(a), 3 and 1 of the Optional Protocol.

4.2 The State party recalls that the author had submitted three complaints to the European Commission, all of which were declared inadmissible. In this context, the State party argues that the French reservation to article 5, paragraph 2(a), of the Protocol, which excludes the competence of the Committee if the same matter has already been examined by another instance of international investigation or settlement, applies to the present case. It is submitted that as the European Commission declared inadmissible the author's complaint based on alleged violations of article 5, paragraph 1, of the European Convention (case No. 17215/90), and the author's claims before the Committee relate primarily to article 9 of the Covenant, the Committee is seized of the "same matter" as was the European Commission. The State party does not specify, however, whether this argumentation extends to the other two complaints considered and dismissed by the European Commission of Human Rights.

4.3 The State party further contends that as the author complains about the alleged irregularity of the proceedings linked to his extradition from Portugal, his communication should be deemed inadmissible as incompatible with the provisions of the Covenant, pursuant to article 3 of the Optional Protocol, as extradition as such is outside the scope of application of the Covenant.

4.4 Subsidiarily, the State party contends that the author does not qualify as a victim within the meaning of article 1 of the Protocol. In this regard, it explains that if there were irregularities in the proceedings before the various French tribunals linked to a misinterpretation of the extradition order, these irregularities were corrected in February 1990, June 1990 and February 1991, respectively. As a result, it is submitted that since the latter date, the author has no reason to complain about violations of his rights under the Covenant in the context of the extradition process.

4.5 Finally, the State party contends that as far as the author's complaint about the judgment of the Cour d'Assises de la Manche of 19 September 1989 is concerned, available domestic remedies have not been exhausted, on the basis that the author failed to substantiate his grounds of appeal before the Court of Cassation.

5.1 In his comments, the author dismisses the State party's arguments and considers that his communication should be deemed admissible at least in as much as his claims under articles 9, paragraphs 3 and 4, and 14, paragraphs 1 and 3(a), are concerned.

5.2 In this context, the author submits that his complaints to the European Commission in fact differ significantly from those submitted to the Human Rights Committee. He notes that his third complaint to the European Commission (case No. 21476/93) concerned exclusively a request, filed with the Court of Appeal of Paris, that the prison terms imposed on him on 15 March and 8 October 1991, respectively, should run concurrently ("requête en confusion de peine"). The Court of Appeal had rejected this request on 30 June 1992, in Mr. Trébutien's opinion unjustifiably so. Mr. Trébutien notes that the terms of the European Commission's decision of 14 October 1993 refer specifically to the Commission's previous decision of 14 October 1992 on case No. 19228/91; he contends that this (second) case had only related to the proceedings leading to his conviction of 8 October 1991 by the Court of Assizes of Seine et Marne.

5.3 The author further explains that his initial complaint to the European Commission (case No. 17215/90) concerned his conviction for escape from prison by the Court of Appeal of Caen (6 November 1989) as well as his conviction of 19 September 1989 by the Cour d'Assises de la Manche. In respect of both convictions, he had invoked violations of article 5(1) of the European Convention, that is, the alleged arbitrariness of his detention on account of the non-observance of certain procedural requirements in the extradition proceedings. He contends that case No. 17215/90 in no way concerned his conviction to eight years' imprisonment pronounced by the Cour d'Assises de la Manche on 15 March 1991, for his escape from prison; and that alleged the irregularities leading to this conviction are at the basis of his "supplementary" communication of 27 January 1992 to the Human Rights Committee.

5.4 The author concludes that if the Committee is seized of the "same matter" as the European Commission, it is only in respect of the alleged arbitrariness of his detention from July 1988 to September 1989, that is, only in respect of allegations that could be subsumed under article 9, paragraph 1, of the Covenant. He submits that his other claims under articles 9, paragraphs 3 and 4, and 14, paragraphs 1 and 3(a), do not constitute the "same matter", as they were not examined, as such, by the European Commission of Human Rights.

Issues and proceedings before the Committee:

6.1 Before considering any claims contained in a communication, the Human Rights Committee must, in accordance with rule 87 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

6.2 The Committee has taken note of the State party's arguments related to article 5, paragraph 2(a), of the Protocol, as well as of the author's comments thereon. It recalls that in respect of article 5, paragraph 2(a), of the Optional Protocol, France entered the following reservation upon ratification: "[T]he Human Rights Committee shall not have competence to consider a communication from an individual if the same matter is being or has already been considered under another procedure of international investigation" (emphasis added) ("... Le Comité ... ne sera pas compétent pour examiner une communication émanant d'un particulier si la même question est en cours d'examen ou a déjà été examinée par une autre instance internationale d'enquête ou de règlement").

6.3 The author has argued that since the European Commission of Human Rights did not address all the complaints that have been placed before the Human Rights Committee, it did not consider the "same matter" within the meaning of article 5, paragraph 2(a), of the Optional Protocol. The Committee considers that what constitutes the "same matter" within the meaning of article 5, paragraph 2(a), of the Optional Protocol in the instant case must be understood as referring to the facts and events which were at the basis of the author's complaints to the European Commission of Human Rights.

6.4 Notwithstanding the fact that the author's case was declared inadmissible in respect of all of his claims, albeit on different grounds, under the European Convention of Human Rights and Fundamental Freedoms, the case was nonetheless examined by the European Commission. The Committee has ascertained that the author's complaint before that body is based on the same events and facts as the communication that has been submitted under the Optional Protocol to the Covenant; accordingly, the Committee is seized of the "same matter" as the European Commission of Human Rights, and, in the light of the French reservation to article 5, paragraph 2(a), of the Optional Protocol, is precluded from considering the author's communication.

7. The Human Rights Committee therefore decides:

(a) the communication is inadmissible under article 5, paragraph 2(a), of the Optional Protocol;

(b) that this decision shall be communicated to the State party and the author of the communication.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]