United Nations CCPR/C/100/D/1777/2008

International Covenant on Civil and Political Rights

Distr.: Restricted*
2 November 2010
English
Original: French

Human Rights Committee
100th session
11–29 October 2010

Views

Communication No. 1777/2008

Submitted by:	Roger Crochet (represented by Manuel Riera and Alain Lestourneaud)
Alleged victim:	The author
State party:	France
Date of communication:	28 December 2007 (initial submission)
Document references:	Special Rapporteur's rule 97 decision, transmitted to the State party on 4 April 2008 (not issued in document form) CCPR/C/97/D/1777/2008 – decision on admissibility of 5 October 2009
Date of adoption of Views:	25 October 2010
Subject matter:	Allegation of bias on the part of the courts and of a denial of justice
Procedural issue:	Status of victim – exhaustion of domestic remedies
Substantive issue:	Right to a fair trial – equality of arms
Article of the Optional Protocol:	5, paragraph 2 (b)
Article of the Covenant:	14, paragraph 1

On 25 October 2010, the Human Rights Committee adopted the annexed text as the Committee's Views under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 1777/2008.

[Annex]

* Made public by decision of the Human Rights Committee.

Please recycle

Annex

Views of the Human Rights Committee under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights (100th session)

concerning

Communication No. 1777/2008**

Submitted by:	Roger Crochet (represented by Manuel Riera and Alain Lestourneaud)
Alleged victim:	The author
State party:	France
Date of communication:	28 December 2007 (initial submission)
Decision on admissibility:	5 October 2009

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

Meeting on 25 October 2010,

Having concluded its consideration of communication No. 1777/2008, submitted to the Human Rights Committee on behalf of Mr. Roger Crochet under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication and the State party,

Adopts the following:

Views under article 5, paragraph 4, of the Optional Protocol

1.1 The author of the communication is Mr. Roger Crochet, a French national born on 15 April 1928. He considers himself and his limited company SA Celogen to be victims of a violation by the French State of article 14, paragraph 1, of the Covenant. He is represented by counsel, Mr. Manuel Riera and Mr. Alain Lestourneaud.[1]

** The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Lazhari Bouzid, Mr. Mahjoub El Haiba, Mr. Ahmad Amin Fathalla, Mr. Yuji Iwasawa, Ms. Helen Keller, Mr. Rajsoomer Lallah, Ms. Zonke Zanele Majodina, Mr. Michael O'Flaherty, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Fabian Omar Salvioli and Mr. Krister Thelin.

Pursuant to rule 90 of the Committee's rules of procedure, Committee member Ms. Christine Chanet did not take part in the adoption of the present decision.

[1] The Covenant and its Optional Protocol entered into force for France on 4 February 1981 and 17 May 1984 respectively.

1.2 On 12 June 2008, at the request of the State party, the Special Rapporteur on new communications, acting on behalf of the Committee, decided to consider the admissibility of the communication separately from the merits.

The facts as submitted by the author

2.1 On 12 October 1994, tax officers conducted a search on the premises of *Le Macumba* discotheque in Saint-Julien-en-Genevois, pursuant to an order issued on 11 October 1994 by the President of Thonon-les-Bains regional court. The search was conducted as part of an investigation into suspected company and turnover tax fraud by SA Celogen.[2] On that occasion, the officers seized a duplicate set of admission tickets with identical colours, prices and serial numbers.

2.2 On 7 February 1995, in implementation of an order issued by the President of the Bordeaux regional court on 17 January 1995, a search was also carried out on the premises of the Laborde printing works in Bordeaux. Various documents relating to the set of duplicates found on 12 October 1994 were seized on that occasion. On 21 March 1995, a police report[3] was filed on the existence of a double ticketing operation (regulations on entertainment facilities that charge an admission fee).

2.3 On 12 January 1996, the author and SA Celogen were summoned by the tax authorities to appear before the Thonon-les-Bains Criminal Court to answer charges involving 305,000 admission tickets. On 10 October 1997, the accused filed an application with the President of the Thonon-les-Bains regional court seeking an annulment of all the procedures carried out further to the President's order of 11 October 1994. Following several appeals brought by the author and his company, adjournments before the Thonon-les-Bains Criminal Court and the serving of several writs of summons by the tax authorities,[4] the Court of Cassation ruled in a judgement of 16 January 2002 that this application concerned the merits of the case.[5]

2.4 The hearing finally took place before the regional court, sitting as a criminal court, on 3 April 2002. The accused,[6] acting jointly and severally, drew attention to a series of procedural errors committed by the tax authorities which ought to have voided the procedure.[7] The author also cited article 6-1 of the European Convention of Human Rights which guarantees the right to a fair trial.

2.5 In its judgement of 18 September 2002, the Thonon-les-Bains regional court, sitting as a criminal court, convicted the author and his company jointly and severally.[8] On 13 November 2003, Chambéry Appeal Court rejected the line of argument that the accused presented for a second time at appeal. The Court upheld the guilty verdict and the sentence

[2] Book of Tax Procedures, art. 16 B.

[3] General Tax Code, art. 290 quater and annex IV, arts. 50 sexies B ff.

[4] Writs served on 10 November and 4 December 1998.

[5] The court that rules on the merits is the court of first instance or the court of appeal.

[6] The author and SA Celogen.

[7] The accused argued, inter alia, that the tax authorities had committed a procedural abuse by obtaining authorization for a search on the premises of the discotheque pursuant to article L16 B of the Book of Tax Procedures, an article which does not apply to indirect taxation or to the offences that were actually prosecuted. Originally, the search had in fact been authorized to seek evidence of fraud on the part of SA Celogen, which was suspected of evading company tax and turnover taxes (direct taxation).

[8] Mr. Crochet and SA Celogen were sentenced severally to pay the Tax Office a fine of €305,000 and a penalty of €109,581, and had €328,000 confiscated out of a potential total of €2,096,173.99. They were also sentenced to enforcement by committal.

handed down at first instance. In statements dated 14 and 18 November 2003, the author and SA Celogen filed an appeal with the Court of Cassation against the Appeal Court judgement. In support of the appeal, the accused submitted a supplementary memorial which concluded with a series of distinct points of law claiming, on various grounds, a violation of the fair trial principle enunciated in article 6-1 of the European Convention on Human Rights. In a judgement delivered on 1 December 2004, the Court of Cassation dismissed the appeal, thus terminating the procedure before the ordinary courts.

2.6 A second round of proceedings, this time before the domestic administrative courts, was the subject of a judgement handed down by the Lyon Administrative Appeal Court on 11 October 2007.[9]

The complaint

3.1 The author maintains that the State party breached article 14, paragraph 1, of the Covenant, inasmuch as the courts that heard the case failed to establish that an offence had actually been committed and that there was a case to answer on the basis of the legally applicable rules of evidence, without arbitrarily distorting the evidentiary system and by means that would ensure that any sentence handed down was legally consistent with the proven offence. The author maintains that the harsh sentence imposed on him and SA Celogen was arbitrary and also amounted to a denial of justice.

3.2 The conviction is based essentially on the seizure by administrative officials of a set of allegedly illegal admission tickets. Yet, no one has ever claimed that these duplicate tickets were ever put on the market or that they generated the slightest income. Hence, there were no grounds for allowing the charge to stand when the alleged offence was referred to the courts.

3.3 The author claims that the confiscation "arbitrated" by the domestic courts of the sum of €328,000 was calculated on the basis of an income that both the administrative authorities and the courts themselves acknowledge as being purely fictitious, since it was a hypothetical calculation based on the revenue that the seized tickets "might have generated" had they actually been put on the market.

3.4 Moreover, even though it is recognized that the seized tickets were never put on the market and thus no tax was owed on them at the time when they were seized, the proportional penalty applied with regard to the hypothetical confiscation included value added tax at a rate of 18.6 per cent.

3.5 Lastly, the author considers the evidentiary system used by the tax authorities and the domestic courts to be based entirely on a reversal of the burden of proof, which is not appropriate in criminal proceedings. On 21 March 1995, the authorities filed the contested police report, which was subsequently laid against the author and SA Celogen, imposing on them, the author claims, a disproportionate requirement to prove that they had not committed an offence. A preliminary examination conducted in the presence of both parties would have guaranteed the author and his company a better defence. This breach of the principle of equality of arms amounts to a violation of the right to a fair trial.

[9] The tax authorities initiated proceedings for a punitive tax assessment before the Grenoble administrative court, which acceded to their requests in a judgement dated 3 April 2003. SA Celogen, the respondent in the proceeding, appealed this judgement. The Administrative Appeal Court dismissed the appeal on 11 October 2007. SA Celogen lodged an appeal with the Council of State. At the time of consideration of the present communication, the Council of State had not yet delivered its decision.

State party's observations

4.1 In a note dated 3 June 2008, the State party contested the admissibility of the communication from the author on two grounds. First, it is claimed that the communication is partially inadmissible insofar as SA Celogen is concerned. The State party makes this claim based on article 1 of the Optional Protocol, which acknowledges "the competence of the Committee to receive and consider communications from individuals". Since SA Celogen is a commercial enterprise subject to private law and endowed with legal personality, it cannot be considered an "individual" within the meaning of the Protocol.

4.2 Second, the State party contends that the author has not exhausted all domestic remedies. The State party explains that, as the author has stated, two procedures were initiated: one before the civil courts[10] and another before the administrative courts. The case file documents confirm that the administrative procedure is still pending. It follows, the State party argues, that the communication should be declared inadmissible on the ground of non-exhaustion of domestic remedies.

Author's comments

5.1 On 7 August 2008, the author submitted comments on the State party's observations regarding the inadmissibility of the communication with respect to SA Celogen. He argued that, since the capital of SA Celogen is owned and controlled, directly or indirectly, by the family of Mr. Roger Crochet, the term "individuals" allows groups of individuals to submit communications to the Committee. The author goes on to cite Fact Sheet No. 7/Rev.1 issued by the Office of the United Nations High Commissioner for Human Rights which states that "anyone may bring a human rights problem to the attention of the United Nations" and that the procedures are "open to individuals and groups who want the United Nations to take action on a human rights situation of concern to them". According to the author, while public bodies corporate may not be allowed to benefit from article 1 of the Optional Protocol, because they are not made up of individuals, private bodies corporate made up of individuals ought to be allowed to submit communications to the Committee.

5.2 As to the claim regarding non-exhaustion of domestic remedies, the author states that, contrary to the State party's assertions, there is no domestic "procedure before the civil courts" under way. The communication submitted by the author and his limited company challenges a criminal procedure initiated by the tax authorities which culminated in the judgement handed down by the criminal division of the Court of Cassation on 1 December 2004. This judgement dismissed the joint appeal lodged by the author and his limited company. Therefore, there is no civil procedure in this case.

5.3 Following the criminal procedure against both the author and his limited company, the tax authorities initiated an administrative procedure for a punitive tax assessment of SA Celogen alone, based on evidence from the aforementioned criminal procedure. The authorities demanded payment of various taxes, surcharges and penalties, together with a fine for failing to report one or more persons who may have benefited from a distribution of profits.

5.4 The author maintains that there are two possibilities in the present case. Either Celogen is entitled to submit communications to the Committee, in which case it can be argued that domestic remedies have not been exhausted, or Celogen is not entitled to submit a communication to the Committee, in which case there is no point in waiting for the

[10] The Committee understands the term "civil courts", as used by the State party, to mean the ordinary courts, since the case brought by the tax authorities against the author and SA Celogen clearly involved criminal procedure.

outcome of the administrative procedure in order to take a decision on the violations alleged by the author, since he has no further remedies available.

The Committee's decision on admissibility

6.1 The Committee examined the admissibility of the communication at its ninety-seventh session, on 5 October 2009.

6.2 The Committee noted that the State party considered the communication to be partially inadmissible *rationae personae* in respect of SA Celogen, a limited company. The Committee also noted the author's argument that criminal proceedings had been brought against the author and SA Celogen jointly and severally. The Committee further noted the author's contention that the capital of SA Celogen was wholly owned and controlled, directly or indirectly, by the family of Mr. Roger Crochet and that the wording of article 1 of the Optional Protocol implied that groups of individuals were authorized to submit communications. The Committee recalled its consistent prior jurisprudence[11] and the unambiguous terms of article 1 of the Optional Protocol providing that individuals, and not bodies corporate, may submit a communication to the Human Rights Committee. The Committee found that the author, in referring to the Committee violations of his company's rights, rights which were not protected under the Covenant, was not entitled to lay the matter before the Committee as far as the communication pertained to SA Celogen. The Committee considered that the communication was admissible only with respect to the author, who, in the present case, claimed that he was a victim of a violation of his right under the Covenant to a fair trial.

6.3 With regard to the obligation to exhaust domestic remedies, the Committee took note of the State party's contention that two procedures had been initiated in this case: one before the civil courts and another before the administrative courts. Since the administrative procedure was still pending, the State party considered the communication inadmissible on this ground. The Committee took note of the author's argument that the Court of Cassation judgement of 1 December 2004 terminated the procedure brought against the author and his company jointly and severally and thus left the author with no further remedies and that the tax authorities then initiated an administrative procedure for a punitive tax assessment in respect of SA Celogen alone, based on evidence presented during the aforementioned criminal procedure.

6.4 The Committee recalled that, for a communication to be declared admissible for the purpose of article 5, paragraph 2 (b), of the Optional Protocol, the author must make use of all judicial or administrative avenues that offer him a reasonable prospect of redress.[12] In the present case, the Committee noted that the administrative procedure for a punitive tax assessment which was initiated against SA Celogen, and not against the author, did not entail, and was not in any case designed to offer, a remedy with respect to the irregularities which the author claimed vitiated the criminal procedure. The procedure before the administrative courts concerned a matter that was incidental but not similar to the case before the ordinary courts. Since the author had no other recourse open to him offering a prospect of compensation for the alleged violation of article 14, paragraph 1, of the

[11] Communication No. 502/1992, *Sharif Mohamed v. Barbados*, inadmissibility decision adopted on 31 March 1994, and communication No. 737/1997, *Michelle Lamagna v. Australia*, inadmissibility decision adopted on 7 April 1999.

[12] Communication No. 437/1990, *B. Colamarco Patiño v. Panama*, decision adopted on 21 October 1994, and communication No. 1533/2006, *Zdenek & Milada Ondracka v. the Czech Republic*, decision adopted on 31 October 2007.

Covenant by the ordinary courts, the Committee considered that article 5, paragraph 2 (b), did not preclude it from considering the communication.

6.5 The Committee considered that the author's allegations, which raise questions under article 14, paragraph 1, of the Covenant, had been sufficiently substantiated for the purposes of admissibility and therefore declared these allegations to be admissible.

State party's observations on the merits

7.1 On 7 May 2010 the State party submitted its observations on the merits, in which it recalled the facts submitted in the communication. It added that, subsequent to the seizure of the unlawful tickets on the premises of the author's company, the printer Mr. Laborde had acknowledged acts that constituted an offence against the law. Before the hearing finally took place before the regional court, sitting as a criminal court, on 3 April 2002, Mr. Laborde had been convicted in a final judgement handed down by Bordeaux Criminal Court on 16 November 2000 for the offences he had committed. During the hearing, he had confirmed his previous statements and explained that his acts had been prompted by his financial dependence on SA Celogen, which was a very large customer. The documents concerning the case against the Laborde printing works were added to the case file against the author and SA Celogen. The author and SA Celogen did not call Mr. Laborde during the hearing before the Thonon-les-Bains Criminal Court on 3 April 2002. The author and his company were convicted by a judgement of 18 September 2002.

7.2 The State party refers to article 290 quater of the General Tax Code in the version applicable at the time the acts were committed, which provides that, in entertainment facilities that charge an admission fee, the operator must issue a ticket to each spectator before he or she enters the theatre. It provides furthermore that offences against this provision or against its implementing legislation shall be investigated, established, prosecuted and punished as matters of indirect taxation. Under article 50 sexies B of annex IV of the General Tax Code, all tickets issued before the spectators enter the theatre must be numbered in an uninterrupted series and used in their numerical order. A ticketing operation that consists of duplicate sets of identical tickets is therefore unlawful. The State party maintains that the aim of these provisions is to avoid concealment of receipts and thus tax evasion.

7.3 Article 1791 of the General Tax Code in its version applicable to the case in question provides that any offence against legislation governing indirect taxation or its implementing acts is liable to a fine (the number of fines imposed being equal to the number of tickets found to be unlawful), and a penalty payment of between one and three times the duty, taxes, fees, monetary compensation or other assessments evaded or sought to be evaded, without prejudice to the confiscation of any unlawful objects, products or merchandise seized. Lastly, under article 1804B of the General Tax Code, the court orders the payment of sums fraudulently or improperly obtained as a result of the offence.

7.4 Regarding the provisions applicable to the proceedings before the criminal court, article L235 of the Book of Tax Procedures provides that offences in respect of indirect taxation are subject to prosecution before the criminal court, which hands down the sentence; and that the administrative authorities investigate and present the case brought before the court. Under article L236, the writ of summons provided for in article 550 of the Code of Criminal Procedure must be served within three years of the date of the official report of the offence. Article L238 provides that the official reports by administrative officials shall be considered authoritative in the absence of evidence to the contrary. The person against whom proceedings have been instituted may ask for refuting evidence to be included in the official report. The State party emphasizes that the proceedings are subject to the guiding principles for trials laid down in the preambular article of the Code of Criminal Procedure, which provides that the proceedings must be fair, allow due

participation of the contending parties and maintain the balance between the rights of the parties; it must guarantee separation between the prosecuting authorities and the judicial authorities. Persons in similar conditions who are prosecuted for the same offences should be judged according to the same rules. The authorities ensure that these rights are safeguarded, and the person being prosecuted has the right to be informed of the charges against him or her and to be assisted by a defence counsel.

7.5 On the question of the evidence considered by the criminal court, the State party notes that it was the tax authorities that in fact submitted the first evidence of the offence in support of their direct summons by producing an official report. Secondly, the provision in article L238 of the Book of Tax Procedures that the official report shall be considered authoritative in the absence of evidence to the contrary applies only to the facts given in that report as drawn up by sworn officials, and not to any classification of those facts as crimes. In that connection, the State party recalls that the official report noted, first of all, the seizure from the premises of the companies SA Celogen and Laborde of duplicate sets of entrance tickets and/or related documents. The author did not contend that the seizures had not taken place or that there were no duplicate sets of tickets. Indeed, the seized items were produced in court.

7.6 The official report then mentioned the statements by Mr. Laborde concerning the duplicate ticketing system. The State party considers that, if the author intended to challenge the veracity of Mr. Laborde's statements, then, as the Thonon-les-Bains Criminal Court observed, he should have summoned him as a witness to dispute the content of his statements, which the author did not do. As the law applied in this case contains no derogation from ordinary law in respect of the admissibility of evidence, the court may indeed reach a reasonable certainty of the guilt of the accused based on its sole discretion to assess the evidence argued before it by the parties. The State party also notes that the author had been aware of the content of the report since 1996, and thus had had sufficient time to bring evidence in his favour before the court. Thus the fact that the proceedings were brought by direct summons in no way impaired his right to a fair trial.

7.7 The State party challenges the author's argument that there was no offence because the tickets were never put on the market. Indeed, the Chambéry Appeal Court noted that a duplicate ticketing system "currently in operation and comprising 9,800 tickets, has been discovered in the possession of SA Celogen". The State party adds that the duplicate ticketing system discovered involved a total of 305,000 tickets, of which only a portion was "in operation" when the search and seizure was carried out. As to the method used to calculate the amount to be confiscated, the State party notes that, in the case of an offence against the regulations governing ticketing operations, it is the receipts represented by the unlawful tickets on which tax or inspection was evaded that constitute the instrument of fraud and they are therefore liable to confiscation. Hence the Appeal Court calculated the receipts by multiplying the sales price of each ticket by the total number of unlawful tickets. As concerns value added tax, the penalty applied was an amount of between one and three times the duty, taxes, fees, monetary compensation or other assessments evaded or sought to be evaded. In the present case, the effect of a duplicate ticketing system was that the receipts in question escaped value added tax, which amounts to tax evasion.

Author's comments on the State party's observations

8.1 In comments dated 25 June 2010, the author notes that, during the criminal hearing before the Thonon-les-Bains Criminal Court on 3 April 2002, he argued that the authorities had committed a procedural abuse by obtaining authorization for a search of the premises pursuant to article L16 B of the Book of Tax Procedures, an article which does not apply to indirect taxation or to the offences that were actually prosecuted. He then argued that the summons on the basis of the official report of 12 January 1996 was not admissible for the

reason that the Tax Administration is not the same as the Tax Office and that the name of the civil party was not included in the summons. Furthermore, the offence had lapsed, insofar as the writ of 12 January 1996 must be considered null and void, meaning that more than three years had thus passed between the official report of 21 March 1995 and the summons of 10 November 1998. The author also argued that, to be admissible, the proceedings, originally based on evasion of value added tax, should first have been referred to the Tax Offences Commission.

8.2 During the hearing, the author also noted that the final judgement handed down by Bordeaux Criminal Court in November 2000 in respect of the printer Laborde had fully redressed the harm caused to the administration; that the search and seizure of 12 October 1994 were null and void because of the lack of standing of the two administrative officials; that the official report of 21 March 1995 was null and void because the two signatories had not personally taken part in the findings noted; that the search and seizure at the premises of the Laborde printing works were null and void because the pressure brought to bear by the officials made Mr. Laborde contradict himself; and that there was no official report and thus no evidence establishing that a duplicate numbered ticketing system had actually been in operation.

8.3 In respect of the arguments put forward by the State party, the author notes that the tickets had not been used, as they were on the premises of SA Celogen, and that tickets that have not been seized cannot legally be used as a basis for any conviction, in that they do not exist. The author also challenges the domestic court's application of article 1791 of the General Tax Code, since the criminal court could not order the proportional penalty without determining exactly the total tax actually evaded or sought to be evaded. As to the text of article 1804B of the General Tax Code cited by the State party, it also requires there to have been actual sums fraudulently or improperly obtained as a result of the offence, which has not occurred in this case.

8.4 As to the criminal court proceedings, the author considers that here the administration is acting as victim, complainant, investigator and prosecutor in the criminal process. It thus has excessive powers, and the effect of this multiplication of powers is a violation of the principle of equality of arms and of fair trial. The author also points out that the tickets that have not been used cannot constitute an element of the offence. The author then repeats his arguments in respect of the method used to calculate the amount to be confiscated, saying that the prosecuting officials should first have determined precisely the number of duplicate tickets sold before then calculating the tax evaded. The author raises the same objection in the matter of value added tax.

8.5 Finally, the author mentions that the system derived from article L16B of the Book of Tax Procedures was called into question by the European Court of Human Rights in its judgement in *Ravon and others v. France*, in which it found that article L16B of the Book of Tax Procedures on searches related to tax matters conflicts with article 6 of the European Convention on Human Rights.

Consideration of the merits

9.1 The Committee has considered the present communication in the light of all the written information made available to it by the parties, as provided for in article 5, paragraph 1, of the Optional Protocol.

9.2 The Committee notes the arguments of the author, which are that the conviction is based essentially on the seizure of a series of admission tickets that had never been put on the market and thus could not have generated the slightest income; that the confiscation was calculated on the basis of an income acknowledged as being purely fictitious, since it was a hypothetical calculation based on the revenue that the tickets might have generated had they

actually been put on the market; that, even though the tickets were never put on the market and thus no tax was owed on them at the time when they were seized, the proportional penalty applied with regard to the hypothetical confiscation included value added tax at a rate of 18.6 per cent; and finally that the evidentiary system used by the tax authorities and the domestic courts was based entirely on a reversal of the burden of proof, which is not appropriate in criminal proceedings. The Committee also notes the arguments of the State party that the rules of representation of both parties were respected by the competent courts, that the evidentiary system was used in accordance with existing legislation, that the offence of a duplicate ticketing system was established when the facts occurred, that the penalties such as the amount to be confiscated and the issue of value added tax could only be calculated on the basis of the income that would have resulted from all the duplicate tickets being put on the market, and thus that the courts were right in pronouncing the sentence challenged by the author.

9.3 The Committee observes that the author's challenges as to form and substance were heard by the competent courts, and were all subject to detailed argumentation before being rejected. Regarding the allegation of procedural abuse, in particular, the Thonon-les-Bains regional court responded that the fact that the tax authorities had found offences in respect of indirect taxation as a result of the searches and seizures carried out with the authorization of the President of the regional court pursuant to article L16B of the Book of Tax Procedures did not establish a procedural abuse but, rather, constituted incidental findings; while the Tax Administration added that, in line with previous domestic jurisprudence, the search of business premises for violations of indirect taxation could have been carried out without any prior formalities. In respect of the lapse of time between the official report establishing the offence and the serving of the summons, and the application to set aside some of the earlier summonses, the court responded that the summons of 10 November 1998 was issued, not as insurance against a possible annulment of the previous one, but rather in order to prevent the offence becoming time-barred, which was clearly what the repeated appeals to the Court of Cassation were intended to achieve were the administrative authorities or the court not to remain alert. Concerning the reversal of the burden of proof, the State party observed that the tax authorities had in fact submitted the first evidence of the offence, in support of the direct summons, by producing an official report. Lastly, according to the State party, the provision in article L238 of the Book of Tax Procedures that the official report shall be considered authoritative in the absence of evidence to the contrary applies only to the facts given in that official report, as drawn up by sworn officials, and not to any classification of those facts as crimes.

9.4 The Committee recalls its general comment No. 32 in respect of article 14 and its consistent prior jurisprudence by which article 14 guarantees only procedural equality and fairness. It is generally for the courts of State parties to the Covenant to review facts and evidence, or the application of domestic legislation, in a particular case, unless it can be shown that such evaluation or application was clearly arbitrary or amounted to a manifest error or denial of justice, or that the court otherwise violated its obligation of independence and impartiality.[13] In the present case, the material before the Committee, and more particularly the decisions of the Thonon-les-Bains regional court, the Chambéry Appeal Court and the Court of Cassation, contain no element to demonstrate that the court proceedings suffered from such defects or that the classification as a crime of the existence of a duplicate ticketing system — a fact not challenged by the author — amounted to a

[13] See communications No. 207/1986, *Morael v. France*, Views adopted on 28 July 1989, para. 9.4; No. 541/1993, *Errol Simms v. Jamaica*, inadmissibility decision adopted on 3 April 1995, para. 6.2; No. 1537/2006, *Yekaterina Gerashchenko v. Belarus*, inadmissibility decision adopted on 23 October 2009, para. 6.5.

manifest error. The Committee therefore finds that the author's allegations do not disclose a violation of article 14, paragraph 1, of the Covenant.

10. In the light of the above, the Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts before it do not reveal any violation of the Covenant.

[Done in English, French and Spanish, the French 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.]