



International Covenant on Civil and Political Rights

Distr.: General
17 December 2021
English
Original: French

Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2988/2017*, **

<i>Communication submitted by:</i>	Philippe Rudyard Bessis (represented by counsel, Frédéric Fabre)
<i>Alleged victim:</i>	The author
<i>State party:</i>	France
<i>Date of communication:</i>	1 March 2017 (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 13 June 2017 (not issued in document form)
<i>Date of adoption of Views:</i>	24 March 2021
<i>Subject matter:</i>	Protection of the family; privacy; freedom of expression; fair trial; participation in public life
<i>Procedural issues:</i>	Admissibility; non-substantiation of claims
<i>Substantive issues:</i>	Right to a fair trial; right not to be subjected to arbitrary or unlawful interference with the family; right to freedom of expression
<i>Articles of the Covenant:</i>	2 (3), 14 (1), 17, 19 and 25
<i>Articles of the Optional Protocol:</i>	2 and 5 (2) (a)

1. The author of the communication is Philippe Rudyard Bessis, a national of France born in 1954 in Tunisia. He claims that the State party has violated his rights under articles 2 (3), 14 and 19 of the Covenant. France acceded to the Optional Protocol on 17 February 1984. The author is represented by counsel, Frédéric Fabre.

Facts as submitted by the author

2.1 The author was a dental surgeon at the time of the events in question. After he was struck from the register of the National Association of Dental Surgeons for life, he practised

* Adopted by the Committee at its 131st session (1–26 March 2021).

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



law. He was also a freelance journalist for *Indépendantaire*, a trade journal for dentists for which he wrote a column entitled “Justice-Injustice”.

2.2 On 21 November 1996, the magazine published an open letter from the author to Alain Juppé, then Prime Minister of France, describing the problems in professional disciplinary proceedings in France. The Association’s National Council was given the right of reply to the letter in issue No. 44 of *Indépendantaire*. The precedent set by the open letter was met with hostility within the National Council. In addition to this incident, the author was among those who had initiated proceedings that resulted in the Association and a member of the National Council being fined in 2006.

2.3 On 27 July 2007, the author was notified that the Association’s National Council and Paris Departmental Council had filed a complaint against him with the Association’s first-instance professional disciplinary panel for Île-de-France because he had written that the departure of a former president from the National Council’s tribunals, following a criminal judgment against the Association, was “a breath of fresh air”. It was also alleged that he had used his articles to call on practitioners to stop paying several of their dues to the Association and that he had provided advertising for paid training programmes by criticizing those provided by the Association.

2.4 On 11 September 2008, the reporting judge of the Association’s first-instance disciplinary panel noted that, while the author had written the article in question, he had neither created nor benefited from the advertisements placed in it.

2.5 On 12 December 2008, the first-instance disciplinary panel found the author guilty and struck him off the dental surgeons’ register for life.

2.6 On 12 January 2009, the author filed an appeal and, in his brief, described the irregularities in the proceedings against him, citing article 14 of the Covenant, and noted that he had been subjected to those proceedings because of his opinions, within the meaning of article 19 of the Covenant. On 31 July 2009, he also brought a challenge to the members of the profession’s disciplinary tribunal before the French Council of State, as they were both complainants and judges. On 10 September 2009, the Council rejected the challenge.

2.7 On 18 March 2010, the national disciplinary panel of the National Association of Dental Surgeons handed down a judgment barring the author from practising dentistry for a period of 18 months, which was suspended for 12 months. By order of 5 August 2010, the Council of State rejected his application for a stay of execution of the decision. On 27 June 2011, the court set aside the judgment against the author. It was claimed that he had filed his arguments on the merits too late. The Council referred the case to the national disciplinary panel.

2.8 On 7 October 2011, the union United Self-Employed Dentists filed a brief with the national disciplinary panel in support of the author under article 14 of the Covenant, alleging that his hearing had not been public, he had not been able to speak, opposing counsel was also counsel for seven of the nine judges and the judges had either been appointed and were being paid by the complainants or were simply complainants themselves.

2.9 On 24 October 2011, the national disciplinary panel rejected the author’s appeal. Accordingly, the 12 December 2008 decision of the first-instance disciplinary panel regarding the author’s removal from the register was upheld.

2.10 The author filed a new appeal on points of law before the Council of State, in which he alleged violations of his rights under articles 14 and 19 of the Covenant. On 4 April 2012, the court again rejected the appeal, without stating its grounds.

Complaint

3.1 The author claims that the State party has violated articles 14 and 19 of the Covenant. In relation to article 19, the author asserts that he was struck from the register because he had filed a complaint against Council of State judges and members of the professional disciplinary tribunals and had publicly criticized the excessive penalties imposed by those

tribunals and the fees improperly paid to the judges sitting on them.¹ The author argues that, under article 19 (3) of the Covenant, the penalty imposed on him was neither necessary nor justified in a democratic society and infringes on his freedom of expression.

3.2 The author also claims that the rights guaranteed to him under article 14 of the Covenant were not respected during the proceedings and that the hearing at first instance, which resulted in his being struck off the register for life, had not been public.

3.3 The author asserts that he twice brought challenges to the judges on the professional disciplinary tribunals before the Council of State on the grounds of bias, which the Council rejected. The author requested that execution of the judgment against him be stayed, citing inter alia the fact that Mr. de Vulpillières was present when the judgment was formed even though he had taken part in the meeting where the National Council of the National Association of Dental Surgeons had decided to file a complaint against the author. The author asserts that the minutes of 13 April 2007, which related to the complaint, were rewritten on 7 October 2009 to indicate that the members of the National Council who were liable to sit on the Council's appellate-level disciplinary panel had left the room before the decision was taken. The first set of minutes, dated 13 April 2007, made no mention of the fact that they had formally withdrawn. The author claims that there are reasonable grounds to treat with suspicion a second set of minutes, dated 7 October 2009, that states the contrary.

3.4 The Council of State initially held that the judges must hand down a decision before a challenge to them could be brought; however, if a decision had already been handed down by the challenged judges, it would be too late to bring any such challenge. Later, on 4 April 2012, the Council rejected the second challenge, this time without stating its grounds.

3.5 The author claims that the judges are paid by the complainants. He also asserts that it is the National Council of the National Association of Dental Surgeons that pays the members of the national disciplinary panel, on ill-defined grounds and with no legal basis, as the Court of Audit found in its report of February 2017.

3.6 In the author's view, the State party's failure to protect him from unlawful interference with his freedom of expression and his right to a fair trial amounts to a violation of article 2 (3) of the Covenant.

State party's observations on admissibility and the merits

4.1 On 14 December 2017, the State party submitted its observations on the admissibility and merits of the communication. It asks the Committee to declare the communication inadmissible.

4.2 The State party acknowledges that the communication submitted by the author relates to rights in a suit at law within the meaning of article 14 (1) of the Covenant. It also acknowledges that proceedings before French professional disciplinary tribunals must meet the requirements of article 14 (1).² However, the State party rejects the author's arguments that the hearing was not public and that the professional disciplinary tribunals were not impartial. The State party also rejects the author's claim that there was a violation of article 19 of the Covenant.

4.3 The State party notes that the public nature of a hearing under article 14 (1) of the Covenant means only that those members of the public who wish to attend must be given the opportunity to do so and that the public must be informed in a timely manner.³ It also notes that its domestic courts have recognized that, under article 6 (1) of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights), the counterpart to article 14 (1) of the Covenant, the rule that hearings must be public

¹ A February 2017 report of the Court of Audit, which raises many dysfunctional aspects of the National Association of Dental Surgeons, is attached to the author's submission.

² With reference to article 6 (1) of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights), the counterpart to article 14 (1) of the Covenant, see European Court of Human Rights, *Albert and Le Compte v. Belgium* (application. No. 7299/75), judgment of 10 February 1983, para. 29.

³ See *Van Meurs v. Netherlands* (CCPR/C/39/D/215/1986).

applies to the boards of professional colleges that rule on disciplinary matters.⁴ The rule is now recognized in the Public Health Code.⁵

4.4 The State party argues that the need to know the code for gaining entry to 27 Rue Ginoux, Paris, where the first-instance disciplinary panel for Île-de-France sits and the hearing before it was held, does not diminish the public nature of the hearing. The State party asserts that, contrary to the author's claims, the building, which is equipped with an intercom, was accessible to the public and a building attendant made sure that the building entrance was open at all times. The State party further notes that the list of cases scheduled for hearing before the disciplinary panel on 20 November 2008 had been posted eight days before the hearing. With regard to the national disciplinary panel, located at 16 Rue Spontini, Paris, the State party points out that the building entrance is automated and can be opened by pressing a button and that the door to the staircase leading to that appellate body is equipped with an intercom. The premises can be accessed at any time during the hearing, from beginning to end, and a secretary is always present. The State party notes that the list of cases for hearing was posted eight days before the hearing.

4.5 The State party asserts that the decisions of 18 March 2010 and 24 October 2011, the latter handed down after the case had been referred to the panel by the Council of State, both mention the public nature of the hearings of 3 December 2009 and 13 October 2011, during which the author's appeal was considered. The author, who was neither present nor represented by counsel at the first hearing, was represented at the second by his attorney, who made comments but did not contest the public nature of the hearing. The State party points out that if, as the author argues, the disciplinary panel, upon referral from the Council, did not examine his claims as to whether the penalty imposed on him at first instance was appropriate, it was only because, as noted by the Council in its 27 June 2011 decision, the claims had been raised too late.

4.6 The State party rejects the claim that the hearing held by the Council of State to consider the author's appeal on points of law was not public. It notes that the Council's first decision, handed down on 27 June 2011, was preceded by a public session held on 25 May 2011. At both this hearing and the hearing held by the Council before it issued its 4 April 2012 decision, the author's attorney was able to present his comments and a memorandum to the court after the reading of the findings of the reporting judge. Consequently, the State party argues that the author enjoyed the guarantee that his case would be considered in public at all stages of the proceedings.

4.7 With regard to the merits of the claim that the professional disciplinary tribunals lack independence and impartiality, the State party indicates that the members of these tribunals, who do not initiate the complaints against the dentists whose cases they hear in their judicial capacity, offer the guarantees of independence and impartiality required under article 14 (1) of the Covenant.⁶

4.8 The State party notes that the members of the professional disciplinary tribunals fulfil the required guarantees of independence and impartiality: they were, at the time of the events, elected to six-year terms renewable every three years⁷ and they are not under the direct authority of the regional or national councils of the professional association. The State party further notes that the first-instance disciplinary panel is presided over by a serving or honorary member of the corps of advisers to the administrative courts and administrative courts of appeal, while the national disciplinary panel is presided over by a member of the Council of State. The presidents of these panels are professional judges who are independent of the professional association's regional and national councils, which do not play a role in the presidents' appointments.

4.9 The State party points out that its domestic law prohibits the same judge from pursuing an investigation, bringing an indictment and trying a case at the same time. Similarly, at the time of the events, the Public Health Code provided for a separation between the judicial

⁴ See Conseil d'État de France, Assemblée, *Maubleu*, No. 132369, 14 February 1996.

⁵ France, Public Health Code, arts. R4126-26 and R4126-29.

⁶ Human Rights Committee, general comment No. 32 (2007), paras. 19 and 21.

⁷ France, Public Health Code, arts. R4122-5 and R4124-4 (at the time of the events).

functions of the members of the professional disciplinary tribunals and the functions that fell to the Association's National Council in terms of ensuring dentists' compliance with the rules of professional ethics.⁸ In particular, the Public Health Code prohibits a member of the appellate court from hearing a case when he or she took part in the meeting of the National Council at which the complaint against the practitioner in question was voted on or at which the decision was made to hear an appeal against a ruling of the first-instance disciplinary panel. The State party points out that this is the reason why, when a vote on a complaint is on the agenda of a meeting of the National Council, members of that council who are also members of the disciplinary panel must withdraw.⁹ The State party asserts that, in the present case, in accordance with the Public Health Code, the principle was properly applied at the meetings of the National Council held on 13 and 14 April 2007, where the decision was made to initiate disciplinary proceedings against the author. The State party notes that the minutes of this session, produced before the national disciplinary panel on 7 October 2009, show that the president and associate members of that panel, namely Mr. de Vulpillières, a member of the Council of State, Mr. Bouchet, Mr. Moutarde, Mr. Vadella and Mr. Volpelière, left the meeting when the proposal to initiate a complaint was reviewed. The minutes were approved by the National Council at its 22 June 2007 meeting. The State party points out that the author has provided no evidence that they had not withdrawn.

4.10 As for the failure of the Council of State to give reasons for its 4 April 2012 decision, the State party is of the view that, since the national disciplinary panel provided sufficient grounds for its decisions of 18 March 2010 and 24 October 2011, it was not necessary for the high administrative court to set out its grounds for rejecting the author's claim and this circumstance does not run counter to article 14 (1) of the Covenant.¹⁰

4.11 The State party points out that the author had had the opportunity to challenge the lack of impartiality of the members of the national disciplinary panel before domestic courts, in accordance with article L4126-2 of the version of the Public Health Code in force at the time of the events. The State party notes that, during this time, the national disciplinary panel ruled on the author's request on 18 March 2010, in the same decision that contained its ruling on the author's appeal of the 12 December 2008 decision. The panel found the author's request inadmissible, as it did not seek the disqualification of one member of the professional disciplinary tribunal, as allowed under article L721-1 of the Code of Administrative Justice, but rather the disqualification of all the members and, consequently, the transfer of the case to the Council of State. The State party indicates that the author could have voiced concerns about the composition of the panel at any stage of the proceedings and that there is nothing that calls into question the impartiality and independence of the judges in the case.

4.12 The State party argues that the author's claim that there has been a violation of article 19 of the Covenant is inadmissible because he has failed to exhaust domestic remedies under article 5 (2) (b) of the Optional Protocol. In the State party's view, the author was free to raise this claim before the national disciplinary tribunals and the Council of State. The State party notes that the author first contested the ruling of the first-instance disciplinary panel when it was already too late – that is, after the deadlines for appeal, 20 and 30 November 2009, had passed. The claim is therefore time-barred.¹¹ Consequently, the State party argues that, because the author has not exhausted domestic remedies with respect to the alleged violation of article 19 of the Covenant, he cannot claim that the Council failed to "protect" him, within the meaning of that article.

4.13 In the alternative, the State party asks the Committee to declare the claim under article 19 of the Covenant unfounded. While it acknowledges that the author, in his capacity as a dentist, enjoyed the right to freedom of expression guaranteed by article 19 of the Covenant, the State party points out that the restriction on the author's exercise of his freedom of

⁸ Ibid., art. L4122-3 (at the time of the events).

⁹ This rule was upheld by the Council of State. See Conseil d'État de France, No. 376323, 13 May 2015, para. 3; and Conseil d'État de France, No. 344225, 4 July 2012.

¹⁰ European Court of Human Rights, *García Ruiz v. Spain* (application No. 30544/96), judgment of 21 January 1999, para. 26.

¹¹ See Conseil d'État de France, Section, *Société Intercopie*, No. 9772, 20 February 1953.

expression was provided for by law, necessary and proportionate to the purposes for which it was imposed.

4.14 The State party argues that the author, as a dentist and a member of a profession organized as a professional association, had special duties and responsibilities in exercising his right to freedom of expression, which are set out in articles R4127-201 to R4127-284 of the Public Health Code. In the State party's view, the restriction on the author's freedom of expression that resulted from the penalty of striking him from the register of the National Association of Dental Surgeons was in pursuit of a legitimate aim that is one of the grounds for restriction allowed under article 19 (3) of the Covenant, namely respect for the rights or reputations of others. The State party also notes that the author practised the profession of dentistry as a business by resorting to advertising, in violation of articles R4127-215 and R4127-225 of the Public Health Code.

Author's comments on the State party's observations

5.1 On 5 May 2018, the author submitted his comments on the State party's observations. He reiterates his arguments regarding the admissibility and merits of the communication. He complains of the extreme severity of the penalty imposed on him and points out that being struck off the dental surgeons' register for life deprives him of the opportunity to practise dentistry not only in Europe but also worldwide. The author argues that he was exercising his freedom of expression as a whistle-blower and as the president of a dentists' union. He therefore objects to the prohibition on his exercise of his freedom of expression. He points out that the European Court of Human Rights has already found a mere reprimand against a doctor to be an infringement of his freedom of expression within the meaning of article 10 of the European Convention on Human Rights.¹²

5.2 The author maintains that the criticisms that resulted in disciplinary proceedings being brought against him were based on objective and true facts about a judge of the Council of State who was president of the national disciplinary panel of the National Association of Dental Surgeons. The author argues that, in a democratic society, members of the public have a fundamental right to criticize judges and external review of the work done by judges is of paramount importance.

5.3 The author asserts that, contrary to what the State party has stated, he had not been subjected to disciplinary proceedings because he had used advertising to find patients. The complaint against him was that he had set up a limited liability company to give paid lectures. However, such a company had never existed. The author points out that he was accused of having used an insert that included the line "because some advice is not written down" to advertise a training session on the list of reimbursable treatments. The author notes that the line in question has been used for other lectures and he did not come up with it. The author argues that he is not responsible for the advertising done by the training organizations that invite him to give talks. He points out that the claim related to advertising was not upheld on appeal.

5.4 With respect to the violation of article 14 (1) of the Covenant, the author argues that, in a situation similar to the one before the Committee, the European Court of Human Rights found that France had violated article 6 (1) of the European Convention on Human Rights in terms of the State party's treatment of professional disciplinary boards.¹³ The author rejects the State party's argument that the French professional disciplinary boards have been found by the Court to be in compliance with article 6 (1) of the Convention.

5.5 The author reiterates that the hearings were not public within the meaning of article 14 (1) of the Covenant. He notes that the European Court of Human Rights has found that the disciplinary tribunals of professional associations are held to the requirement that hearings must be public, as the Court reminded the State party in its judgment in *Serre v.*

¹² European Court of Human Rights, *Sosinowska v. Poland* (application No. 10247/09), judgment of 18 October 2011, para. 87.

¹³ See European Court of Human Rights, *Gautrin and others v. France* (applications No. 21257/93, No. 21258/93, No. 21259/93 and No. 21260/93), judgment of 20 May 1998.

France.¹⁴ The author points out that the Court has already found that, at the time of the events in question, the Council of State noted that the State party manifested indifference with respect to the obligation of professional disciplinary tribunals to ensure that their hearings were public.¹⁵ The Court had also noted the non-public nature of proceedings before French professional disciplinary tribunals.¹⁶

5.6 With respect to whether the hearing at first instance was public, the author considers the State party's assertion that the list of cases for hearing had been posted eight days prior to the hearing, without an indication of where it had been posted, to be too vague to be taken into consideration. He points out that, assuming that the list had been posted as required, it could only have been posted on private premises closed to the public, to which members of the public could only have gained access if they had the correct code. The author also points out that the State party has not demonstrated that a building attendant assigned to the proceedings by the professional association's tribunal had been available to provide members of the public access to the hearing, as the State party has asserted. He points out that the entry code to be used on the day of the hearing had been provided on the summonses of individuals who had been summoned, which shows that the room where the hearing was held was not open to the public, and that there was no specific signage that would lead a member of the public to believe that the building housed a disciplinary tribunal and that hearings were held there.

5.7 With respect to the public nature of the hearing on appeal, the author states that the details given by the State party in its submission regarding whether the public could access the premises of the national disciplinary panel – “a comfortable middle-class building in a wealthy Parisian neighbourhood” that is in no way distinguishable from the other buildings in the neighbourhood – are in themselves sufficient to demonstrate that the room where the hearing was held was not accessible to the public. The author denies that the list of cases for hearing was posted eight days prior to the hearing on appeal. In his view, the fact that a member of the public would need to search for the National Council, use an intercom, ring the bell and provide his or her identity in order to gain access to premises that are nowhere designated as being the home of a disciplinary board is evidence that the residence is not accessible to the public.

5.8 The author points out that the fact that the regional tribunal is presided over by a judge of the administrative court and the national tribunal by a judge of the Council of State does not guarantee the tribunals' independence, as both are paid by the National Association of Dental Surgeons, the complainant in the case.¹⁷ This is, moreover, what the Court of Audit indicated in its report of February 2017, which found a conflict of interest.¹⁸

5.9 As to whether or not the members of the National Association of Dental Surgeons who were also members of the national tribunal had withdrawn at the time of the vote on whether to bring proceedings against the author, the author reiterates his doubts as to the veracity of the second set of minutes (not released until 30 months after the hearing) that indicate that those members did withdraw. In the author's view, the second set of minutes had been released for the sole purpose of showing the National Council of the professional association that the judges had left the meeting room when the decision was taken on the complaint against the author. He adds that, contrary to the requirements of article R4126-1 of the Public Health Code, the minutes of the National Council meeting were not signed,

¹⁴ European Court of Human Rights, *Serre v. France* (application No. 29718/96), judgment of 29 September 1999, paras. 21–23.

¹⁵ Conseil d'État de France, No. 110332, 29 October 1990, cited in European Court of Human Rights, *Diennet v. France* (application No. 18160/91), judgment of 26 September 1995, para. 13.

¹⁶ European Court of Human Rights, *Serre v. France* (application No. 29718/96), judgment of 29 September 1999, para. 15; see also Conseil d'État de France, *Debout*, No. 7103, 27 October 1978; and Conseil d'État de France, *Subrini*, No. 41744, 11 July 1984.

¹⁷ The author refers to the judgment in *Gubler v. France* to argue that the impartiality and independence of the French professional disciplinary boards have been called into question by the European Court of Human Rights. See European Court of Human Rights, *Gubler v. France* (application No. 69742/01), judgment of 27 July 2006.

¹⁸ Cour des comptes de France, “L'Ordre national des chirurgiens-dentistes : retrouver le sens de ses missions de service public”, *Rapport public annuel 2017*, February 2017, pp. 115–164, at p. 131.

rendering them ipso facto inadmissible. In the author's view, Mr. de Vulpillières must by law participate in all National Council meetings, since the national councils of the medical professions and auxiliary medical services are supported by a member of the Council of State who is entitled to vote and appointed by the Minister of Justice. Because Mr. de Vulpillières was the sole senior member of the Council of State in the service of the National Council at the time of the events, the author concludes that he was necessarily present at all its meetings. Lastly, the fact that the Ministry of Public Health had been unable to provide the author proof that the meeting minutes had been sent to it raises doubts about the reliability of those minutes.

5.10 The author argues that the fact that opposing counsel was the regular attorney for several departmental councils of the National Association of Dental Surgeons and that the judges were members of and elected by those same departmental councils seriously undermines the independence of the disciplinary tribunal hearing the matter. He argues that, when domestic law provides for the right to challenge judges, the right must be effective, concrete and genuinely available. He asserts that a challenge on the grounds of bias must be brought before the judge issues a decision.¹⁹ In the author's view, there were several aspects of the challenge that he had brought that had not been thoroughly considered, including Mr. de Vulpillières' role as president of the disciplinary tribunal hearing the complaint and the fact that the judges are chosen, selected and paid by the Association's National Council, the complainant; that Mr. de Vulpillières receives payments from the National Council without any legal basis; and that Mr. de Vulpillières and the judges who are members of the National Council were directly concerned by the complaint filed by the author. The author also claims that Mr. de Vulpillières himself ruled on the challenge brought against him and that he signed off on the second set of minutes for the National Council meeting, which stated that he had left the meeting before the complaint against the author was raised. The author points out that, contrary to the assertion in the State party's observations, the national disciplinary panel could not reconsider the challenge. He notes that the matter had been settled by the Council of State, which had not addressed his arguments.

5.11 With regard to the claim under article 19 of the Covenant, the author reiterates that the communication is admissible. He asserts that proceedings had been brought against him not for professional misconduct but because of his opinions and that his arguments had not been considered. The author notes that the criticisms for which a judgment against him was passed were used by the Court of Audit, which interviewed him before it prepared its February 2017 report, in particular with respect to the partiality of judges on disciplinary tribunals, the questionable compensation that they received and the fact that practitioners subject to the decisions of the professional disciplinary tribunals had no defence. In the author's view, he had levelled criticisms against persons charged with carrying out a public service in the public interest and there should be much more room for such criticisms than for those directed at a private person.²⁰ The author argues that the restriction on his freedom of expression is not provided for by law. He reiterates that there is no prohibition on criticizing decisions taken by judges in the performance of their judicial duties.

Additional submissions

From the author

6.1 In his additional submission dated 13 July 2017, the author presents new claims regarding State party violations of articles 17 and 25 of the Covenant, read together with article 2 (3). The author states that, on 29 April 1997, he was removed from the roll of the Paris Bar on the grounds that the practice of law was incompatible with the simultaneous practice of dentistry. His appeals before the Paris Court of Appeals and the Court of Cassation were dismissed on 25 February 1998 and 4 July 2000, respectively. On 23 July 2002, the author applied to the Minister of Justice to have article 115 of Decree No. 91-1197 of 27 November 1991, governing the legal profession, repealed. After the Minister of Justice implicitly decided on the matter by remaining silent, the author brought the matter before the

¹⁹ France, Code of Civil Procedure, art. 342.

²⁰ European Court of Human Rights, *Ergüdoğan v. Turkey* (application No. 48979/10), judgment of 17 April 2018, para. 28. See also European Court of Human Rights, *Kuliš v. Poland* (application No. 15601/02), judgment of 18 March 2008, para. 47.

Council of State, which rejected his application on 28 June 2004. The author then applied to the European Court of Human Rights, which found his application inadmissible on 13 September 2011. Despite the Court's decision, the author is of the view that his claim is admissible before the Committee.²¹

6.2 The author was reinstated to the Paris Bar on 3 September 2012, after being struck off the dental surgeons register for life. He argues that the State party has violated his rights under article 17 of the Covenant, read together with article 2 (3), as the prohibition on the simultaneous practice of law and dentistry constitutes arbitrary interference in his private life.²² The author also claims that article 25 of the Covenant, read together with article 2 (3), was violated and argues that he could not exercise the legal profession, which falls under public service as that term is used in article 25.

From the State party

7.1 On 4 June 2018, the State party submitted its comments on the author's additional submission of 13 July 2017. The State party points out that, unlike the author's initial submission of 1 March 2017, his additional submission centred on whether the rule prohibiting lawyers from simultaneously practising dentistry is compatible with the Covenant. The State party notes that the two issues are actually completely separate and unrelated. In the State party's view, the author's additional submission constitutes an abuse of the right to submit an individual communication, as it was submitted late and there was no justification for the delay. It notes that the last two decisions relating to this submission, namely the 4 July 2000 decision of the Court of Cassation and the 28 June 2004 decision of the Council of State, were handed down well over five years before the author's additional submission.²³

7.2 The State party argues that the author has not shown that he was a victim, within the meaning of article 1 of the Optional Protocol, on the date of his communication. The State party asserts that, in the present case, once the author was formally removed from the roll of the Paris Bar on 29 April 1997, the rule regarding the incompatibility of the professions of law and dentistry under article 115 of Decree No. 91-1197 could no longer have any impact on him. Consequently, the author cannot be recognized as a victim. It points out that the author's additional submission amounts to an abstract challenge to the prohibition on simultaneous practice under article 115 of Decree No. 91-1197, since the author no longer runs any risk of the rule being applied to him personally. The State party argues that the claims under articles 17 and 25 of the Covenant are inadmissible because the author had never raised them at the domestic level. It further argues that the claim under article 25 of the Covenant is inadmissible *ratione materiae* because the concept of public service does not cover the legal profession.²⁴ According to the State party, the claim under article 17 of the Covenant is also inadmissible *ratione materiae* because the author has not explained, first, how the incompatibility between the professions of law and dentistry infringed on his right to a professional domicile and, second, how the inability to simultaneously practise law and dentistry affected his right to privacy.

7.3 In the alternative, the State party asks the Committee to declare the author's additional submission without merit. The State party argues that, in the present case, the alleged interference that the author claims amounts to a violation of article 17 of the Covenant was provided for by law,²⁵ in particular by the first paragraph of article 115 of Decree No. 91-1197, which prohibits the simultaneous exercise of the two professions, and that the interference with the author's privacy was reasonable and consistent with the aims and objectives of the Covenant.

²¹ *Achabal Puertas v. Spain* (CCPR/C/107/D/1945/2010 and CCPR/C/107/D/1945/2010/Corr.1), paras. 7.2 and 7.3.

²² See European Court of Human Rights, *Mateescu v. Romania* (application No. 1944/10), judgment of 14 January 2014.

²³ Article 99 (c) of the Committee's rules of procedure. See also *Fillacier v. France* (CCPR/C/86/D/1434/2005), para. 4.3.

²⁴ See article 1 of Act No. 83-634 of 13 July 1983 on the Rights and Obligations of Civil Servants, which sets out the general regulations governing the French civil service.

²⁵ See Human Rights Committee, general comment No. 16 (1988).

Issues and proceedings before the Committee

Consideration of admissibility

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

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

8.3 The Committee takes note of the author's claims that the State party has violated his rights under articles 14 (1) and 19 of the Covenant and under articles 17 and 25, read together with article 2 (3).

8.4 With regard to the admissibility *ratione materiae* of the communication, the Committee notes that the State party has not contested the admissibility of the claim under article 14 (1) of the Covenant and has acknowledged that proceedings before the French professional disciplinary tribunals are subject to the requirements of article 14 (1).²⁶

8.5 The Committee notes that the State party challenges the admissibility of the communication under article 19 of the Covenant, arguing that domestic remedies have not been exhausted. It notes the State party's argument that the author's claim under this article was raised too late, that is, after the deadline for appeal. The Committee also notes the author's argument that the communication is admissible under article 19, as proceedings had been brought against him because of criticisms that he had levelled against individuals charged with carrying out a public service, in the public interest. The Committee observes nevertheless that the author has not provided evidence that his claims had been submitted under article 19 of the Covenant and considered by domestic courts. The Committee reiterates the rule that, for a communication to be found admissible, all domestic remedies must have been exhausted. Accordingly, the author's communication is inadmissible under article 19 of the Covenant for failure to exhaust domestic remedies.

8.6 The Committee notes that, in his additional submission of 13 July 2017, the author claims a violation of articles 17 and 25 of the Covenant, read together with article 2 (3). It notes the State party's argument that the author's additional submission relates to new facts that have been ruled on in domestic decisions not subject to appeal, specifically those handed down by the Court of Cassation on 4 July 2000 and by the Council of State on 28 June 2004. The Committee observes that the author's additional submission relates to facts that were ruled on by the domestic courts more than 13 years ago. The Committee is of the view that, in the absence of a convincing explanation for such a delay, the submission of the communication after such a long period constitutes an abuse of the right of submission under rule 99 (c) of the Committee's rules of procedure and accordingly declares the author's additional submission inadmissible.²⁷ The Committee notes that the author's additional submission refers to his being struck off the roll of the Paris Bar; this is distinct from his being struck off the register of the National Association of Dental Surgeons, which is the main subject of the present communication. The Committee also notes the State party's assertion that the arguments raised by the author have never been put before domestic courts and that his additional submission should therefore be declared inadmissible for failure to exhaust domestic remedies. The Committee finds, on the basis of the material submitted by the author, that he has not raised his claims under articles 17 and 25 of the Covenant before domestic courts.

8.7 In the light of the foregoing, the Committee finds that the author's claims under articles 17, 19 and 25 of the Covenant are inadmissible for failure to exhaust domestic remedies. The Committee declares the claims raised by the author under articles 17 and 25 of the Covenant in his additional submission of 13 July 2017 inadmissible for not having

²⁶ With reference to article 6 (1) of the European Convention on Human Rights, the counterpart to article 14 (1) of the Covenant, see European Court of Human Rights, *Albert and Le Compte v. Belgium* (application No. 7299/75), judgment of 10 February 1983, para. 29.

²⁷ See *Fillacier v. France*, para. 4.3.

been submitted in a timely manner. However, the Committee finds that the author has sufficiently substantiated his claims under article 14 (1) of the Covenant and declares the communication admissible with respect to the claims raised under this article, read alone and together with article 2 (3) of the Covenant, and proceeds with its consideration of the merits.

Consideration of the merits

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

9.2 The Committee recalls that, generally speaking, article 14 of the Covenant aims at ensuring the proper administration of justice.²⁸ It takes note of the author's claim that, as a result of his public criticisms of members of the National Council of the National Association of Dental Surgeons, he was struck off the professional association's register for life and that there were irregularities in the various hearings in the proceedings against him, in that they were not public and he was unable to challenge the judges, in violation of article 14 (1) of the Covenant. The Committee takes note of the fact that the author contests the independence and impartiality of the judges on the professional disciplinary tribunals at all stages of the proceedings. It notes the State party's acknowledgement that proceedings before these tribunals are subject to the requirements of article 14 (1) of the Covenant.

9.3 The Committee notes the author's claims that the disciplinary tribunals hearing the matter failed to meet the requirements of article 14 (1) of the Covenant and that opposing counsel was also counsel to several departmental councils, including the council that had initiated disciplinary proceedings against the author. The Committee also takes note of the author's claims that his right to a fair trial was violated owing to the composition of the professional disciplinary tribunal, that the judges failed in their duty of impartiality and that the higher courts neglected to protect him from such dereliction of duty. The Committee notes the author's assertion that the judges were paid by the "complainants" and that his challenges to the judges had not been taken into account. The Committee notes, however, that, according to the State party, judges on professional disciplinary tribunals served six-year terms of office, which were renewable every three years at the time of the events, and were not under the authority of the professional association's regional or national councils. The Committee also notes the State party's assertion that the first-instance and national disciplinary panels were presided over by professional, independent judges of the professional association's regional and national councils, which did not intervene in their appointments. While the Committee notes the author's reservations regarding the minutes of the meetings of the association's National Council on 13 and 14 April 2007, presented to the national disciplinary panel on 7 October 2009, it also notes the State party's assertion that what emerges from these minutes is that, in order to preserve the independence of the professional disciplinary tribunal, the members who had taken part in the decision on the complaint against the author had withdrawn during the meetings of the association's National Council held on 13 and 14 April 2007. Similarly, the president and associate members of the national disciplinary panel had left the meeting when the proposal to initiate a complaint was considered. These facts have been examined by the professional disciplinary tribunals and it is not for the Committee to re-examine them, except in the event of a miscarriage of justice or a manifest error in their assessment. The Committee notes that the decisions of the tribunals of the professional association were reviewed by the Council of State, which, on application for a judicial review for the second time, dismissed the author's appeal on 4 April 2012. In addition, aside from criticisms relating to the lack of reasoning of the high administrative court's decision, the author did not demonstrate the arbitrary nature of the decision.

9.4 The Committee observes that it follows from the State party's acknowledgement that proceedings before professional disciplinary tribunals are subject to the requirements of article 14 (1) of the Covenant that those tribunals must be independent and impartial. It notes that the author has not sufficiently demonstrated how the decision to strike him off the dental surgeons' register was not commensurate with the charges against him. It also notes that the guarantees of independence relate to the procedure for the appointment of judges; their

²⁸ Human Rights Committee, general comment No. 32 (2007), para. 2.

qualifications; their security of tenure; the conditions for their promotion, transfer and suspension; the cessation of their functions; and the actual independence of the judiciary from political interference by the executive branch and legislature.²⁹ As for the guarantees of impartiality, they relate, on the one hand, to protection from personal bias or prejudice or any favouritism and, on the other, to the assurance that the tribunal will appear to a reasonable observer to be impartial.³⁰ The Committee notes that no interference by the authorities has been demonstrated in the case at hand and that, at the time of the events, judges on professional disciplinary tribunals were in fact elected. It also notes that, on the basis of the material submitted by the author, it cannot go beyond mere assertions or suppositions and conclude that the disciplinary tribunals before whom the author appeared were not independent or impartial. It further notes that there is insufficient evidence for the author's claims that members of those tribunals took part in the initiation of the complaint and the decisions taken against him, whereas the absence of evidence is established by the minutes produced by the judicial bodies in this respect. In addition, the Committee notes that, while the author has raised systemic issues relating to the functioning of professional disciplinary tribunals in France, he has not submitted sufficient evidence to demonstrate how, in this particular case, his rights have been violated under article 14 (1) of the Covenant.

9.5 With regard to the claim that the hearings were not public within the meaning of article 14 (1) of the Covenant, the Committee notes the author's argument that the hearings both at first instance and on appeal were held on private premises not accessible to the public and that an entry code was required to gain access. The Committee takes note of the author's assertion that, prior to the hearings in his case, the public did not have access to the lists of cases for hearing. It also takes note, however, of the State party's argument that the need to have a code to gain access to the premises of the first-instance disciplinary panel did not lessen the public nature of the hearing. The Committee also takes note of the State party's assertions that, with respect to the hearing on appeal, the premises of the national disciplinary panel were equipped with an intercom and a secretary had been posted there, thereby making them accessible at any time during the hearing, from beginning to end, and that, with respect to the hearings at first instance and on appeal, the lists of cases for hearing had been posted eight days earlier.

9.6 The Committee notes that the requirement that hearings be public ensures the transparency of proceedings and thus provides an important safeguard for the interest of the individual and of society at large.³¹ It also notes that, in order to comply with the requirements of article 14 (1) of the Covenant, courts must make information on the time and venue of the oral hearings available to the public and provide for adequate facilities for the attendance of interested members of the public, within reasonable limits, taking into account, inter alia, the potential interest in the case, the duration of the oral hearing and the time the formal request for publicity was made.³² The Committee observes that, in the present case, interested persons, in particular the author, who had been represented by counsel during the second hearing on 13 October 2011, were not prohibited from taking part in the various hearings, the minutes of which have attested to their public nature, which does not seem to have been challenged by the author at the time. The Committee notes that the author has failed to demonstrate that the lists of cases for hearing had not been posted eight days before the hearing either at first instance or on appeal. The Committee also notes that the author has not demonstrated that his friends or relatives or any other persons who might have had an interest in the proceedings were denied access to the rooms where the hearings were held.³³

9.7 In the light of the above, the Committee is of the view that the author has not demonstrated how the various hearings that led to the judgment against him involved a violation of article 14 (1) of the Covenant. The Committee thus concludes that, in view of the facts before it, it cannot find that there has been a violation of the author's rights under article 14 (1) of the Covenant, read alone and together with article 2 (3).

²⁹ Ibid., para. 19.

³⁰ Ibid., para. 21.

³¹ Ibid., para. 28. See also *Van Meurs v. Netherlands*, para. 6.2.

³² Human Rights Committee, general comment No. 32 (2007), para. 28.

³³ *Amanklychev v. Turkmenistan* (CCPR/C/116/D/2078/2011), para. 7.4.

10. The Committee, acting under article 5 (4) of the Optional Protocol, finds that the facts before it disclose no violation by the State party of the author's rights under article 14 (1) of the Covenant, read alone and together with article 2 (3).
