United Nations CCPR/C/138/D/3213/2018

International Covenant on Civil and Political Rights

Distr.: General
23 February 2024
English
Original: French

Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 3213/2018*, **, ***

Communication submitted by:	Thierry Ehrmann (represented by counsel, Vincent Berger)
Alleged victim:	The author
State party:	France
Date of communication:	21 November 2017 (initial submission)
Document references:	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 23 July 2018 (not issued in document form)
Date of adoption of Views:	17 July 2023
Subject matter:	Fair trial
Procedural issue:	Exhaustion of domestic remedies
Substantive issue:	Right to a fair trial
Article of the Covenant:	14 (1)
Articles of the Optional Protocol:	2 and 5 (2) (a)

1. The author of the communication is Thierry Ehrmann, a national of France born in that country in 1952. He claims that the State party has violated his rights under article 14 (1) of the Covenant. The Optional Protocol entered into force for the State party on 17 May 1984. The author is represented by counsel, Vincent Berger.

Facts as submitted by the author

2.1 The author is a sculptor. He was diagnosed with a serious, incurable genetic disorder in 1978. In 1999, he created an artistic project titled La Demeure du Chaos (The House of Chaos) on an estate he purchased in Saint-Romain-au-Mont-d'Or, near Lyons. La Demeure du Chaos is a free museum that receives 100,000 visitors a year. The author did some work

* Adopted by the Committee at its 138th session (26 June–26 July 2023).

** The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Farid Ahmadov, Wafaa Ashraf Moharram Bassim, Rodrigo A. Carazo, Yvonne Donders, Mahjoub El Haiba, Carlos Gómez Martínez, Laurence R. Helfer, Bacre Waly Ndiaye, Hernán Quezada Cabrera, José Manuel Santos Pais, Soh Changrok, Tijana Šurlan, Kobauyah Tchamdja Kpatcha, Teraya Koji and Imeru Tamerat Yigezu. Pursuant to rule 108 of the Committee's rules of procedure, Hélène Tigroudja did not participate in the examination of the communication.

*** An individual opinion by Bacre Waly Ndiaye (dissenting) is annexed to the present Views.

to the outside of the property (paintings, engravings, drawings, stone block inserts). He explains that these works are part of his oeuvre. He was placed under guardianship by the guardianship judge of Lyons from 24 October 1984 to 2000. On 22 October 2003, after three years without any protection measures, the author was placed under the administration of his wife.

2.2 On 15 February 2005, the mayor of Saint-Romain-au-Mont-d'Or drew up a report enumerating a number of offences relating to works carried out on the façade and outer wall of La Demeure du Chaos. The author was accused of failing to register the works in advance and to comply with town planning regulations. On 16 February 2006, the Criminal Court of Lyons sentenced the author to a fine of 20,000 euros for carrying out works without prior registration. The court also ordered the property returned to its original condition, subject to a coercive fine of €75 per day of delay. Both the author and the public prosecutor appealed this decision. In a judgment of 13 September 2006, the Court of Appeal of Lyons sentenced the author to a €200,000 fine[1] for carrying out works without prior registration but did not order the works reversed, arguing that La Demeure du Chaos, as a whole, is work of art and therefore returning it to its original condition would result in a building totally devoid of architectural unity. The author, as well as the Principal State Prosecutor and the town of Saint-Romain-au-Mont-d'Or, appealed the judgment before the Court of Cassation.

2.3 In a judgment of 11 December 2007, the Court of Cassation overturned the judgment of the Court of Appeal of Lyons on the grounds that it had not considered whether the works were in line with the local land use plan, whose provisions were sufficiently clear and specific. The Court of Cassation referred the case to the Court of Appeal of Grenoble. In a judgment of 16 December 2008,[2] the Court of Appeal of Grenoble found the author guilty of several town planning offences and ordered the outside of the building and the outer wall returned to their original condition, within nine months, subject to a coercive fine of €75 per day of delay. The author appealed the judgment before the Court of Cassation, citing a violation of his freedom of expression.[3] In a judgment of 15 December 2009, the Court of Cassation rejected the author's appeal on the grounds that the interference with his right to freedom of expression was established by law and justified.[4]

2.4 On 29 November 2011, the guardianship judge lifted the administration measure regarding the author.[5] The various decisions of the guardianship judge have been recorded on the author's birth certificate and published in the civil register. The author has been on continuous sick leave since February 2012 and is prohibited from going outdoors. The health insurance scheme has recognized him as having a long-term condition, thereby entitling him to full coverage of his treatment.

2.5 On 20 December 2011, the prefect of the Rhône Region requested the intervention of the State prosecutor of Lyons because the author had not returned the property to its original condition and the coercive fine had had no effect. The State prosecutor of Lyons filed a suit with the Court of Appeal of Grenoble to order the author to comply with the measures imposed in the 2008 judgment. The author requested the Court to set aside the entirety of the criminal proceedings against him. He argued that his right to a fair trial had been violated, as his administrator had not been informed of the criminal proceedings against him. He also

[1] The firm VHI was also fined €100,000.

[2] By that time, Act No. 2007-308 of 5 March 2007, on the reform of legal protection for adults, had been promulgated pursuant to the European Court of Human Rights judgment of 30 January 2001 in the case *Vaudelle v. France* (application No. 35683/97). However, the author did not raise this argument during the proceedings before the Court of Appeal of Grenoble in 2008 or during his second appeal before the Court of Cassation in 2009.

[3] VHI also filed an appeal with the Court of Cassation.

[4] On 31 December 2009, the author and his wife, along with VHI, filed an application (No. 2777/10) with the European Court of Human Rights, claiming a violation of articles 6, 7 and 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) and Protocol No. 1. The subject of the application was different from that of the present communication.

[5] No reason has been provided for this decision.

argued that he had not undergone any psychiatric evaluation prior to the judgment of the Court of Appeal of Grenoble.

2.6 In a judgment of 6 May 2013, the Court of Appeal of Grenoble dismissed the author's claims and increased the amount of the coercive fine to €750 per day of delay. The author filed an appeal with the Court of Cassation against this judgment, making similar claims to those raised previously. On 24 June 2014, the Court of Cassation overturned the judgment of 6 May 2013 of the Court of Appeal of Grenoble on the grounds that the Court of Appeal could not dismiss the action to set aside based on the failure to notify the author's administrator of the hearing. The Court of Cassation referred the case to the Court of Appeal of Chambéry. Before that Court, the author requested a psychiatric evaluation to determine his level of criminal liability at the time of the events of which he was accused. In a judgment of 30 April 2015, the Court of Appeal of Chambéry dismissed all the author's arguments for setting aside the proceedings. It refused to order the psychiatric evaluation requested by the author on the basis that it was incompetent to rule on a case having obtained the force of res judicata. The author filed another appeal with the Court of Cassation, which was dismissed on 21 March 2017 on the grounds that not only had the author not returned the property to its original condition, he had actually made new changes to the building's façade.[6]

2.7 On 23 May 2017, the author submitted an application to the European Court of Human Rights on the same subject as that of the present communication. On 21 September 2017, a single judge dismissed the application on grounds of inadmissibility, as the facts submitted did not reveal any appearance of a violation of the rights and freedoms enshrined in the European Convention on Human Rights. In this regard, the author recalls the reservation made by France and contends that his case was not considered by the European Court,[7] as, in the absence of any further explanation, the general reference made to articles 34 and 35 of the Convention does not provide the reason or reasons that led the single judge to declare his application inadmissible.[8] Specifically, there is nothing in the decision to indicate that the application was deemed to be manifestly unfounded. Consequently, the author is of the view that his communication has not been considered by another international body.

Complaint

3.1 The author submits that his right to a fair trial, enshrined in article 14 (1) of the Covenant,[9] was violated by the failure to take into account his status as a protected adult during any of the proceedings brought against him. He also submits that, in violation of Act No. 2007-308 promulgated on 5 March 2007, his administrator was not notified of any of the procedural actions or judicial decisions in his case and was therefore unable to assist him with filings or with the trials before the Criminal Court of Lyons on 16 February 2006 and the Court of Appeal of Grenoble on 16 December 2008. He recalls that Act No. 2007-308 on the protection of protected adults, which was adopted pursuant to the judgment of the European Court of Human Rights in the case *Vaudelle v. France*,[10] requires the prosecutor, among others, to inform guardians and administrators of any action taken in the course of criminal proceedings brought against an adult under their protection. He adds that, even before the adoption of Act No. 2007-308, he did not enjoy the safeguards established in the Vaudelle judgment.

3.2 The author claims that the refusal by the State party's judicial authorities to order a psychiatric evaluation and to ensure that he enjoyed the measures enshrined in French law for protected adults who are suspected of an offence places him in a disadvantaged and vulnerable position compared to the party claiming damages and the public prosecution

[6] The author notes that this dismissal constitutes the final decision by the national courts.

[7] Although he does not mention them, some elements of the author's communication refer to another decision of the European Court concerning him, which was chiefly based on a violation of his right to freedom of expression.

[8] *Achabal Puertas v. Spain* (CCPR/C/107/D/1945/2010 and CCPR/C/107/D/1945/2010/Corr.1).

[9] According to the author, this is the first time that the Committee has been called upon to rule on the requirements of article 14 (1) of the Covenant in relation to the legal protection of protected adults in criminal proceedings.

[10] European Court of Human Rights, *Vaudelle v. France*, application No. 35683/97, judgment, 30 January 2001, para. 62.

service, in contravention of the principle of equality of arms. He claims that he was not afforded this fundamental procedural safeguard at any point of the criminal proceedings brought against him that culminated in the judgment of the Court of Cassation of 15 December 2009. The author submits that, in this case, an evaluation was all the more necessary given that he has been suffering from severe psychiatric problems for over 39 years.

State party's observations on admissibility

4.1 On 25 September 2018, the State party submitted its observations on the admissibility of the communication, which it requested the Committee to declare inadmissible.

4.2 The State party is of the opinion that, in the present case, the condition to exhaust domestic remedies has not been met in respect of the criminal proceedings that led to the author's conviction. The State party notes that this is the reason why the European Court of Human Rights found his application inadmissible under article 35 (1) of the European Convention on Human Rights, since the application had been filed less than six months after the definitive end of the proceedings before the national courts. It considers that the author's communication before the Committee is inadmissible for the same reasons.

4.3 The State party underscores that the author is the subject of two separate proceedings: one regarding his criminal conviction, the other regarding the increase of the coercive fine for failure to comply with the penalty[11] imposed in the first proceedings. It also underscores that, during the first proceedings,[12] the author did not raise any claims under article 14 (1) of the Covenant.[13]

4.4 The State party emphasizes that, at the time of the second proceedings against the author, he was no longer under administration and was not entitled to any legal protection measures.[14]

4.5 The State party points out that, while the provisions of the Act of 5 March 2007 had already come into force, the author did not claim an infringement of his right to a fair trial either at the hearing of 17 November 2008 before the Court of Appeal of Grenoble or in his appeal against that Court's judgment of 16 December 2008. The State party notes that this claim was raised only in the second appeal against the judgment of 16 December 2008, which was logically found inadmissible in a judgment of the Court of Cassation of 15 May 2012 on the grounds that it had been lodged late.[15] In the State party's view, the claim raised in this second appeal could never have succeeded in the first proceedings and, consequently, cannot be considered as the exercise of an effective domestic remedy by the author.

4.6 The State party considers that the claim that the author's right to a fair trial was violated during the second proceedings regarding the increase of the coercive fine could not call into question the judgment of 16 December 2008 containing the final ruling on his criminal liability. Therefore, the State party submits that the author did not claim a violation of the right to a fair trial before the competent court and that, consequently, the communication based on a violation of article 14 of the Covenant is inadmissible on grounds of non-exhaustion of domestic remedies.

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

5.1 On 15 November 2018, the author submitted his comments on the State party's observations on the admissibility of the communication.[16]

[11] Penalty provided for in article L480-7 of the Town Planning Code.

[12] These proceedings ended with the final judgment of the Court of Cassation of 15 December 2009, dismissing the author's appeal against the judgment of the Court of Appeal of Grenoble of 16 December 2008.

[13] *Singh v. France* (CCPR/C/106/D/1852/2008).

[14] The administration was lifted in a decision of 29 November 2011. The second proceedings against the author ended with the final judgment of the Court of Cassation of 21 March 2017.

[15] See article 618 of the Code of Criminal Procedure.

[16] In his preliminary comments, the author pointed out that the State party failed to meet the six-month deadline set by the Committee for submitting its observations on the merits of the communication.

5.2 The author contests the State party's argument according to which the Committee should come to the same conclusion as the European Court of Human Rights, which found his application inadmissible on the grounds that it was filed less than six months after the definitive end of the proceedings before the national courts. The author argues that, in finding that the admissibility criteria enumerated in articles 34 and 35 of the European Convention were not met, the Court deliberately refused to disclose a choice among the 11 criteria defined in those provisions. In the author's view, the State party is trying to make the Court say what it refrained from saying.

5.3 The author rejects the State party's argument that the requirement to exhaust domestic remedies has not been met since he omitted to claim a violation of the right to a fair trial in relation to the consideration of his status as a protected adult before the competent court.

5.4 The author notes that, in its judgment of 24 June 2014 overturning the judgment of the Court of Appeal of Grenoble of 6 May 2013, the Court of Cassation recalled that "the public prosecution service was necessarily aware of the administration measure since it had been published" but that the public prosecution service had nonetheless failed to meet its obligations towards him throughout the proceedings concerning the coercive fine, in other words from the summons of 5 September 2005 to the dismissal on 15 December 2009 of his appeal against the judgment of the Court of Appeal of Grenoble of 16 December 2008.

5.5 The author states that the public prosecution service attached to the different courts concerned (the Criminal Court of Lyons and the Courts of Appeal of Lyons[17] and Grenoble[18]) failed in their duty to notify his administrator at every stage of the proceedings. His administrator was therefore unable to provide him with assistance or guidance, choose and instruct a lawyer, familiarize herself with the findings, decide whether or not to appeal, or be heard as a witness during the hearings. The author submits that it was not for him or his administrator to request her participation in the various proceedings by virtue of his status as an adult under administration.

5.6 Referring to the Committee's jurisprudence concerning decisions of the European Court of Human Rights,[19] the author requests the Committee to reject the argument regarding non-exhaustion of domestic remedies. Alternatively, he requests the Committee to join the argument to the merits, as the European Court of Human Rights has done in relation to article 6 of the Convention.[20]

5.7 Contrary to the State party's statement, the author is of the opinion that the procedure to increase the coercive fine is an integral part of the proceedings that led to his criminal conviction. He adds that the procedure relates to "a criminal charge" within the meaning of article 14 (1) of the Covenant.[21] Furthermore, the author argues that the aim of the procedure is to make a criminal penalty stricter on the grounds that the penalty was not executed and that it follows that the rights enshrined in article 14 (1) of the Covenant apply to the procedure. The author recalls that he has made this claim at every stage of the procedure and has therefore exhausted domestic remedies in connection with this violation.

5.8 With regard to the State party's argument that he was no longer under administration during the procedure to increase the coercive fine, the author recalls that the administration was lifted ex officio on 29 November 2011, against medical advice, even though the guardianship judge had acknowledged that he suffered from a serious mental disorder

[17] Specifically in the summons of 5 September 2005 and at the hearing of 10 November 2005.

[18] Hence the impossibility for the administrator to provide him with assistance, in particular at the hearing of 17 November 2008.

[19] *Singh v. France.*

[20] European Court of Human Rights: *Airey v. Ireland*, application No. 6289/73, judgment, 9 October 1979, para. 19; *Kremzow v. Austria*, application No. 12350/86, judgment, 21 September 1993, paras. 41 and 42; *Josef Prinz v. Austria*, application No. 23867/94, 8 February 2000, paras. 29 and 30; and *Vaudelle v. France*, decision, 23 May 2000.

[21] See article L480-7 of the Town Planning Code.

impairing his autonomy. The author notes that the trial courts[22] paid no attention whatsoever to his poor mental health.[23]

5.9 The author points out that the State party did not submit observations on the admissibility of the claim relating to the refusal of the Court of Appeal of Chambéry to order a psychiatric evaluation in order to determine his criminal liability at the time of the events.[24]

5.10 On 10 December 2018, the author submitted his additional comments on the State party's observations on the admissibility of the communication. He is seeking a waiver of enforcement of the judgments of the Court of Appeal of Grenoble of 16 December 2008 and of the Court of Appeal of Chambéry of 30 April 2015. He is also seeking the discontinuation of any judicial and administrative proceedings against him whose subject is the same or analogous to the subject of the present communication, as well as the reimbursement of the costs and fees relating to his defence in the criminal proceedings brought against him and to his representation in the procedure before the Committee.

State party's observations on admissibility

6.1 The State party stresses that the author's right to a fair trial was respected in both of the proceedings brought against him. With regard to the main criminal proceedings, the State party points out that there is nothing in the Covenant or the Committee's jurisprudence stating that article 14 of the Covenant imposes a right for protected adults to be assisted by their administrator. It underscores that article 14 guarantees procedural equality and fairness only and cannot be interpreted as ensuring the absence of error on the part of the competent tribunal.[25] In this regard, the State party points out that it is not for the Committee to determine whether the national courts respected the provisions of national law but, rather, to assess, on the basis of the proceedings as a whole, whether the author received a fair trial.

6.2 In the State party's view, contrary to the author's statement, in the case *Vaudelle v. France*, the finding of a violation did not automatically flow from the lack of assistance by the administrator but from the fact that the applicant had been convicted in absentia, without the assistance of a lawyer or the presence of his administrator and without the national courts having verified that he understood the nature and cause of the charge against him. The State party submits that in its subsequent jurisprudence on the prosecution of persons with altered mental capacity, the European Court of Human Rights, in assessing whether their right to a fair trial had been violated, considered first and foremost whether the applicants had effectively enjoyed their right to a defence, including assistance of a lawyer.[26]

6.3 The State party emphasizes that, in the present case, the author does not explain what additional guarantee the assistance of his administrator would have afforded him. It also emphasizes that, while the author did not have the assistance of his administrator during the initial criminal proceedings, he enjoyed all fair trial guarantees, including the assistance of a lawyer in the various stages of the proceedings. It notes that the author was able to orally present legal and factual arguments in support of his defence. It recalls that even if the author's administrator was not formally notified of the prosecution or summoned before the national courts, the author cannot argue that she was unaware, as she is his wife and the proceedings took place over many years. The State party underscores that, according to the decision of 22 October 2003 imposing the administration, the powers given to the author's wife were exclusively intended to protect the interests of his estate and therefore the judge did not deem it necessary to expand the scope of the protection. The State party also underscores that, since the author attended the hearings, the judges were in a position to

[22] Court of Appeal of Grenoble, judgment of 6 May 2013; Court of Appeal of Chambéry, judgment of 30 April 2015.

[23] See para. 2.4.

[24] Judgment of 30 April 2015.

[25] Human Rights Committee, general comment No. 32 (2007), para. 26; *B.d.B. v. Netherlands*, communication No. 273/1989, para. 6.3; and *Martínez Mercader et al. v. Spain* (CCPR/C/84/D/1097/2002), para. 6.3.

[26] See European Court of Human Rights, *G. v. France*, application No. 27244/09, judgment, 23 February 2012.

assess his mental health and to verify that he understood the meaning and nature of the charges against him.

6.4 The State party clarifies that the author's placement under administration (rather than guardianship) does not mean that he was mentally incapable or that he was unable to understand the charges against him and mount a defence strategy. On the basis of a medical certificate dated 25 August 2010, the State party notes that the decision to lift the administration indicates that, while the author had bipolar disorder, he did not have any particular intellectual, comprehension or speech issues and that he was able to smoothly manage the two large companies of which he was president.

6.5 The State party recalls that the Court of Appeal of Grenoble noted that the author had mentioned that he was president of the company Artprice, whose legal division publishes various legal texts, including the statute on the taxation of artworks, that he had been involved in the Senate's work on the statute and that he was involved in post-graduate diploma classes at the Lyons III University. Consequently, the State party considers that the author was fully capable of understanding the charges against him and presenting a coherent defence and that not having his administrator's opinion did not violate his right to a fair trial, which was even strengthened by the fact that he was assisted by counsel throughout all of the proceedings, including those before the European Court of Human Rights.

6.6 The State party stresses that, in addition to presenting a detailed legal argument – including about the notion of artwork, the claim that the proceedings were devoid of legal basis and contrary to the principle of the legality of offences and penalties due to the law's lack of predictability and clarity, the scope of summonses by and jurisdiction of a court of appeal following the referral of a case by the Court of Cassation, the statute of limitations for public prosecution and the violation of his right to freedom of expression – before the lower courts and the Court of Cassation, the author was able to call a witness before the Criminal Court in support of his statements regarding the notion of artwork. The State party submits that, during the initial criminal proceedings leading to his conviction, the author effectively enjoyed the rights under article 14 of the Covenant.

6.7 The State party's main contention is that the national courts did not violate the author's right to a fair trial during the initial criminal proceedings. Consequently, the author cannot reproach the judges in the coercive fine proceedings for not setting aside the first proceedings. The State party notes that the author's right to a fair trial was also respected during these second proceedings. The State party considers that the author cannot claim that he should have benefited from the protective provisions of the Act of 5 March 2007, since the second proceedings were brought by the prefect of the Rhône Region on 20 December 2011 and the request for the coercive fine to be increased was made by the State prosecutor on 5 January 2013, in other words after the guardianship judge lifted the administration on 29 November 2011.[27]

6.8 The State party adds that the procedure to increase the coercive fine fully complied with his right to a fair trial, insofar as he was present or represented at the hearings. The State party notes that, although the author was not present at the hearing at the Court of Appeal of Grenoble on 18 March 2013, he was represented by his lawyer, and that he was present for the hearing at the Court of Appeal of Chambéry on 30 April 2015. It further notes that it was less important for the author to be present for the second proceedings because the courts no longer had to rule on his criminal liability, only on whether to increase the coercive fine. The State party stresses that, in the second proceedings, the author was again able to present several arguments in his defence, to present detailed findings and observations before the lower courts and the Court of Cassation and to submit three priority constitutional matters to the Court of Appeal of Grenoble and the Court of Cassation. He was also allowed to request the Court of Appeal of Chambéry to order a psychiatric evaluation, and to challenge, before that Court and the Court of Cassation, the questioning of officials from the Departmental Directorate of Territorial Development.

6.9 The State party refutes the author's argument that the refusal of the national courts to grant his request to set aside the proceedings constitutes a violation of his right to a fair trial.

[27] In this regard, see the judgment of the Court of Appeal of Chambéry of 30 April 2015.

The State party recalls that it is not for the Committee to review facts and evidence, or the application of national legislation, unless it can be shown that the evaluation of the facts and evidence or the application of national legislation was arbitrary or erroneous or amounted to denial of justice, or that the court otherwise violated its obligation of independence and impartiality.[28] The State party is of the view, in this case, that the author has not demonstrated that the decision against him was arbitrary or erroneous or that it amounted to denial of justice.

6.10 The State party points out that the Court of Cassation overturned the judgment in the appeal, not for failure to set aside the first proceedings, but for failure to summon the author's administrator to the hearings relating to the increase of the coercive fine. The State party recalls that, even though she was no longer administrator, the author's wife was summoned to the Court of Appeal of Grenoble but did not attend the hearing and to the Court of Appeal of Chambéry, where she was able to testify.

6.11 The State party notes that, under article 706-115 of the Code of Criminal Procedure, when persons under a protective measure are prosecuted, they "must undergo a medical examination prior to any judgment on the merits, in order to determine their criminal liability at the time of the events". However, at the time of the hearing before the Court of Appeal of Chambéry, the author had not been under a protective measure for almost four years, and the case had already been adjudicated on the merits by the Court of Appeal of Grenoble in its judgment of 16 December 2008. The State party notes that article D47-14 of the Code of Criminal Procedure, cited by the author in this connection, applies only to ongoing criminal proceedings and not to enforcement proceedings.

6.12 The State party adds that the purpose of the procedure to increase coercive fines is not to retry the case and that, under no circumstances, is it to rule on a convicted person's criminal liability, which has already been established in the main proceedings. It considers that a psychiatric evaluation was therefore unnecessary, given the purpose of the procedure to increase coercive fines, and was unlikely to have any impact on the outcome of the dispute. The State party recalls that the equality of arms, a principle raised by the author to substantiate his request for a psychiatric evaluation, does not entail that the parties' claims should be admitted, but only that the parties should be able to make the claims under the same conditions. In the light of the foregoing, the State party requests the Committee to declare the complaint inadmissible.

Author's comments on the merits

7.1 In his comments of 7 May 2019, the author stresses that, throughout its observations, the State party underestimates the severity of the psychiatric disorder that he has suffered for several decades and completely disregards the reports of the psychiatric evaluations that he has undergone. He denounces the fact that, despite the findings of the several psychiatric reports in his file, the State party considers him to be an ordinary defendant, capable of using all his mental faculties and defending himself. The author recalls that, at the request of the judicial authorities, he was examined by psychiatrists on several occasions and that no fewer than four reports were submitted between August 2010 and October 2017 in three different contexts, namely, administration proceedings, an investigation and review proceedings. He emphasizes that all these reports attest to the severity of his psychiatric disorder and the resulting need for assistance.

7.2 The author notes that, when his administration[29] was lifted ex officio on 29 November 2011, the guardianship judge of Lyons disregarded the expert psychiatrist's recommendation that the protective measure should be extended because the author had a serious mental disorder impairing his autonomy and judgment, as well as the author and his administrator's wish for the protective measure to be extended. The author recalls that, in the course of the investigation by the Regional Court of Lyons, in which he was an assisted witness, two experts concluded separately, in 2015 and 2017, that he could not be questioned and that he suffered from bipolar I disorder characterized by numerous severe manic and depressive

[28] Human Rights Committee, general comment No. 32 (2007), para. 26.

[29] On 22 October 2003, the guardianship judge of Lyons placed Mr. Ehrmann under the administration of his wife.

episodes together with suicidal behaviour and self-mutilation.[30] He adds that, as part of the investigation phase of the review of his criminal conviction, an expert psychiatrist concluded, in a report dated 15 September 2016, that the author had manic-depressive psychosis and should not be subject to criminal punishment.

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 claim that the State party violated his rights under article 14 (1) of the Covenant.

8.4 The Committee notes that the author filed an application concerning the same facts with the European Court of Human Rights. It was informed by letter dated 21 September 2017 that a single judge had found "the application inadmissible on the grounds that the admissibility criteria under articles 34 and 35 of the Convention were not met." The Committee recalls that, upon ratification of the Optional Protocol, France made a reservation excluding the Committee from examining matters that are being examined or have already been considered under another procedure of international investigation or settlement.

8.5 The Committee recalls its jurisprudence regarding article 5 (2) (a) of the Optional Protocol[31] to the effect that when the European Court of Human Rights bases a declaration of inadmissibility not solely on procedural grounds but also on reasons that include a certain consideration of the merits of a case, then the same matter should be deemed to have been examined within the meaning of the reservations to article 5 (2) (a) of the Optional Protocol.[32] The Committee must, therefore, determine whether, in the present case, the Court did more than consider admissibility criteria of purely procedural nature.

8.6 The Committee notes the summary nature of the reasoning set out in the Court's letter to the author, which does not put forward any argument or clarification indicating that the inadmissibility decision was based on the merits.[33] In the light of the specific circumstances, the Committee is of the opinion that it cannot determine with certainty that the author's case has already been considered on the merits[34] within the meaning of the reservation made by the State party. Therefore, the Committee takes the view that the reservation made by the State party to article 5 (2) (a) of the Optional Protocol does not, in itself, constitute an obstacle to the Committee's consideration of the merits of the case.[35]

8.7 The Committee notes the State party's argument that, during the first proceedings that ended with the final judgment of the Court of Cassation of 15 December 2009, the author did not make any claims under article 14 (1) of the Covenant. It also notes that the author has not challenged this omission in relation to admissibility, as it does not appear from the material on file that he invoked, even in substance, his right under article 14 (1) of the Covenant.

8.8 In the case of the second proceedings, the Committee notes the State party's argument that the claim of a violation of article 14 (1) of the Convention was not raised until the second appeal in cassation against the judgment of 16 December 2008, in other words late,[36] and that

[30] See the medical reports of 10 May 2015 and 10 October 2017 contained in the file.

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

[32] See, for example, *Mahabir v. Austria* (CCPR/C/82/D/944/2000), para. 8.3; *Linderholm v. Croatia* (CCPR/C/66/D/744/1997), para. 4.2; and *A.M. v. Denmark*, communication No. 121/1982, para. 6.

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

[34] *Mahabir v. Austria*, para. 8.3

[35] *Yaker v. France* (CCPR/C/123/D/2747/2016), para. 6.2.

[36] See article 618 of the Code of Criminal Procedure.

domestic remedies have not therefore been exhausted. The Committee also notes the author's argument that the Court of Cassation, in its judgment of 24 June 2014, recalled that by virtue of its publication, the administration measure was necessarily known to the public prosecution service, which, according to the author, was under an obligation to inform his administrator of the proceedings brought against him. The Committee points out that the fact that the Court of Cassation mentioned this procedure shows that the author did raise this claim during the proceedings before the lower courts. Consequently, the Committee finds that the author did make the claim under article 14 (1) of the Covenant before the national courts. It considers that, since the two proceedings are linked, it is sufficient for the purposes of admissibility that article 14 (1) was invoked in the course of the second proceedings.

8.9 The Committee notes that the State party has not challenged the admissibility of the claim relating to the refusal of the Court of Appeal of Chambéry[37] to order a psychiatric evaluation in order to determine the author's criminal liability at the time of the events.

8.10 In the light of the foregoing, the Committee considers that the author's claims under article 14 (1) of the Covenant are sufficiently well-founded for the purposes of admissibility and therefore declares the communication admissible 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 notes the author's claim that the State party violated his rights under article 14 (1) of the Covenant, as the public prosecution service failed, at every stage of the proceedings, to inform his administrator that he had been convicted and that proceedings had been brought against him to increase the coercive fine. The Committee also notes the State party's argument that the author enjoyed fair trial guarantees, including legal counsel during the various stages of the proceedings, and that he was able to present fairly precise oral arguments in support of his defence.

9.3 The Committee notes the author's argument that the State party did not take into account the seriousness of the psychiatric disorder he has suffered for decades, treated him like an ordinary person and disregarded the opinion of psychiatric experts who stated that he needed assistance. The Committee also notes the State party's contention that, despite his psychiatric condition, the author was able to adequately present arguments in support of his defence, to submit detailed findings and observations to the competent courts and to make reasoned requests to the Court of Appeal of Grenoble and the Court of Cassation. The Committee further notes the State party's argument that the author failed to explain what additional guarantee receiving assistance from his administrator would have afforded him.

9.4 The Committee notes the author's argument that the refusal of the State party's judicial authorities to order a psychiatric evaluation to determine his criminal liability at the time of the events puts him in a disadvantaged and vulnerable position compared to the party claiming damages and the public prosecution service, in contravention of the principle of equality of arms, and that the evaluation was all the more necessary given that he has been suffering from severe psychiatric problems for over 39 years. The Committee also notes that, while it recognizes that persons under protection measures must undergo a medical examination prior to trial,[38] the State party nonetheless makes the following arguments: the author was no longer under a protection measure at the time of the hearing before the Court of Appeal of Chambéry; the case has already been tried on the merits by the Court of Appeal of Grenoble;[39] and the purpose of the procedure to increase coercive fines is not to determine a person's criminal liability, which has already been established in the main proceedings. In these circumstances, the Committee notes that: the argument regarding the lack of a psychiatric evaluation was duly considered by the national court; it is not in a position to determine the appropriateness of this measure in place of the judicial authorities; and its task

[37] Judgment of 30 April 2015.

[38] Article 706-115 of the Code of Criminal Procedure.

[39] See the judgment of the Court of Appeal of Grenoble of 16 December 2008.

is limited to verifying whether the absence of this measure resulted in a violation of the author's rights under article 14 (1) of the Covenant. Furthermore, the Committee considers that the author has not demonstrated how the refusal of the Court of the Appeal of Chambéry to order a psychiatric evaluation placed him at a disadvantage or hindered his exercise of the right to a fair trial.

9.5 The Committee must therefore determine whether the failure of the public prosecution service to issue a summons for the author's administrator to attend the various stages of the proceedings constitutes a violation of his rights under article 14 (1) of the Covenant. In this regard, the Committee recalls that article 14 of the Covenant aims, generally speaking, at ensuring the proper administration of justice.[40] As for vulnerable persons, such as persons with psychiatric disabilities, the support of an administrator or guardian, in addition to a lawyer, is likely to strengthen the fairness of the proceedings in line with article 14 (1) of the Covenant. The Committee recalls that article 14 sets forth the guarantees that States parties must respect regardless of their legal tradition and national legislation[41] but does not indicate how they are to implement the principles of a fair trial. The Committee considers that the assessment of fair trial guarantees in relation to the author's situation should be limited to generally accepted standards of international human rights law and not to procedures under national law, if their omission would not undermine the fairness or independence of the trial.

9.6 However, in the present case, the Committee points out that the author enjoyed the assistance of a lawyer before the lower court, the Courts of Appeal and the Court of Cassation. The Committee also points out that the author has not demonstrated how the absence of his administrator – in this case, his wife – had an adverse effect on his full enjoyment of the right to a fair trial or how her presence might have helped him better defend himself under article 14 (1) of the Covenant.

9.7 The Committee recalls in this regard that it is not its role to review the findings of facts in a case, unless it can be proved that the national courts' decisions were clearly arbitrary,[42] and that it is not for the Committee to interpret national legislation nor to substitute its assessment for that of the national authorities. In the present case, the Committee considers that it is not for it to review the national authorities' decision to convict the author of a criminal offence, nor the procedure to increase coercive fines. The Committee observes, moreover, that the judgment of 29 November 2011 lifting the author's administration did not affect the author's ability to defend himself, so that with or without the assistance of his administrator, the author was able to understand the charges against him and to present his arguments unrestricted, including with the assistance of counsel. While it notes that the State party failed to inform the author's administrator, the Committee considers that, on the basis of the information contained in the case file, it is unable to conclude that this failure constitutes arbitrary conduct or a denial of justice by the national courts or that the judges involved in the two proceedings against the author violated their obligation of independence and impartiality, during either the trials or the appeals.[43]

10. In the light of the foregoing, the Committee finds that the information before it does not enable it to conclude that the State party violated the author's rights under article 14 (1) of the Covenant.

11. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts before it do not disclose a violation by the State party of the author's rights under article 14 (1) of the Covenant.

[40] Human Rights Committee, general comment No. 32 (2007), para. 2.

[41] Ibid, para. 4.

[42] Human Rights Committee, *Torregrosa Lafuente et al. v. Spain*, communication No. 866/1999, para. 6.2; and *Hart v. Australia*, communication No. 947/2000, para. 4.3.

[43] See, inter alia, *Crochet v. France* (CCPR/C/100/D/1777/2008), para. 9.4; and *Morael v. France*, communication No. 207/1986.

Annex

Individual opinion of Committee member Bacre Waly Ndiaye (dissenting)

1. The protection of adults with a mental disability is first and foremost a question of law, not a question of fact.

2. This is especially true when they have to appear before the criminal courts for acts that are difficult to dissociate from their mental state.

3. For this reason, and for the same reasons that led the international community to adopt the Convention on the Rights of Persons with Disabilities and to elect a body of experts to monitor compliance with the treaty, the State party has introduced rules of procedure to ensure the protection of persons with disabilities and to offset the inequality between the parties before the criminal courts.

4. Both the Committee and the State party have acknowledged that these rules of procedure, including the rules governing the notification of administrators, were indisputably and repeatedly violated with regard to Mr. Ehrmann.

5. These rules of procedure are of a substantive nature, as they are intended to offset the inequality experienced by persons with disabilities and ensure their protection; therefore, once a violation was found to have occurred, a violation of the provisions of article 14 of the Covenant aimed at ensuring the equality of the parties and scrupulous respect for the rights of the defence should also have been found, without the need to embark on a dubious and empirical investigation of the author's mental capacities at every stage of the proceedings.

6. This is especially true since the psychiatric evaluation, which should have been the basis for the investigation, was rejected by the national judge.

7. The protection of adults incapable of managing their own affairs is based on the same rules and principles that apply to the protection of minors. Yet, compliance with the rules governing the protection of minors is guaranteed before both criminal and civil courts, with no option to assess the minor's maturity or to query whether, in the absence of a guardian, the minor had a competent lawyer.

8. The Human Rights Committee regularly recommends that States parties raise the age of criminal liability to expand the scope of protection. The same approach, precautions and strict protection should have been applied in the case of the author, as an adult with a mental disability.