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Report of the Human Rights Committee

Volume II (Part Two)

108th session
(8–26 July 2013)

109th session
(14 October–1 November 2013)

110th session
(10–28 March 2014)

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Note

Symbols of United Nations documents are composed of letters combined with figures. Mention of such a symbol indicates a reference to a United Nations document.

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Decisions of the Human Rights Committee declaring communications inadmissible under the Optional Protocol to the International Covenant on Civil and Political Rights

A. Communication No. 1612/2007, *F.B.L. v. Costa Rica* (Decision adopted on 28 October 2013, 109th session)*

Submitted by:	F.B.L. (not represented by counsel)
Alleged victim:	The author
State party:	Costa Rica
Date of communication:	17 October 2006 (initial submission)
Subject matter:	Enforcement of a judgement (*exequatur*) issued by a foreign court
Procedural issue:	Insufficient substantiation of claims
Substantive issues:	Right to a fair trial, right to an effective remedy
Articles of the Covenant:	2 (paras. 1–3), 3, 5, 14 (para. 1) and 16
Article of the Optional Protocol:	2

Decision on admissibility

1.1 The author of the communication is F.B.L., a Colombian national born on 5 September 1956, who claims to be victim of a violation by Costa Rica of articles 2 (paras. 1–3), 3, 4, 5, 14 (para. 1) and 16 of the Covenant. The author is not represented by counsel.

1.2 On 18 June 2007, the Committee, acting through the Special Rapporteur on new communications and interim measures, determined that observations from the State party were not needed to ascertain the admissibility of this communication.

The facts as presented by the author

2.1 The author owned a fishing company called Incamar Ltda, which was registered at the port of Buenaventura, Colombia. A suit was brought against the author for failing to meet a financial obligation. As a result, in December 1989 a boat identified as *Puri* belonging to the company was seized, and in January 1990 it was placed in the custody of a

* The following members of the Committee participated in the examination of the present communication: Mr. Yadh Ben Achour, Mr. Lazhari Bouzid, Mr. Ahmad Amin Fathalla, Mr. Cornelis Flinterman, Mr. Walter Kälin, Ms. Zonke Zanele Majodina, Mr. Kheshoe Parsad Matadeen, Mr. Gerald L. Neuman, Sir Nigel Rodley, Mr. Víctor Manuel Rodríguez Rescia, Mr. Fabián Omar Salvioli, Ms. Anja Seibert-Fohr, Mr. Yuval Shany, Mr. Konstantine Vardzelashvili and Ms. Margo Waterval.

court official pending the outcome of the proceedings. In 1995 and 1996, respectively, the Second Civil Circuit Court of Cali and the Popayán High Court ruled in favour of the author and ordered the return of the boat and payment for damage to the boat, as well as compensation for loss of profits. Subsequently, the author tried unsuccessfully to enforce the Court of Cali's judgement in Colombia, through several applications filed before the Popayán High Court, the Administrative Court of Valle del Cauca, the Administrative Division of the Council of State, and the Constitutional Court.[1]

2.2 At the end of 2005, the author and his family moved to Costa Rica. On 4 November 2005, the author filed an application before the Supreme Court of Costa Rica against Colombia for enforcement of the judgement (*exequatur*) of the Popayán High Court of 1996. The author requested the State party's Supreme Court to order the return of the boat identified as *Puri* within the terms of the ruling of the Second Civil Circuit Court of Cali, and the payment of damages in the amount of US$ 138,348,104.52.

2.3 On 8 March 2006, the Supreme Court rejected the author's application. It held that Costa Rica had no jurisdiction to deal with the matter, given that the judgment in question had been handed down by a Colombian court, which had absolute and sovereign authority to enforce it; that under the principle of jurisdictional immunity, the State party's courts could not examine disputes in which one party was a sovereign State; and that, consequently, his application did not fall within the grounds established by article 46 of the Code of Civil Procedure.

2.4 On 3 April and 24 July 2006, the author applied to the Supreme Court of Costa Rica for reconsideration. On 23 August 2006, the Supreme Court upheld its decision of 8 March 2006.

The complaint

3.1 The author claims to be the victim of a violation by Costa Rica of articles 2 (paras. 1–3), 3, 4, 5, 14 (para. 1) and 16 of the Covenant.

3.2 The author argues that by rejecting his application for enforcement of the judgement of the Popayán High Court against Colombia, the Supreme Court breached article 2, paragraphs 1, 2 and 3, of the Covenant, as domestic remedies in the State party were ineffective with respect to enforcement of the Colombian judicial decision that granted him a restitution and compensation right.

3.3. He also claims a violation of article 3 of the Covenant, since his right to equality before the law was not respected.

3.4 The author argues that given that the State party demonstrated through its judicial proceedings that it was not willing to comply with obligations of international treaties to which it is a party, it has also violated article 5 of the Covenant.

3.5 As to article 14, paragraph 1, the author submits that the decision of the Supreme Court rejecting his requests constitutes unequal treatment before the courts and amounts to denial of justice.

3.6 The author claims a violation of article 16 of the Covenant on the grounds that the State party's judicial authorities did not recognize him as a person before the law.

[1] A detailed description of the facts concerning the applications submitted by the author before the courts of Colombia is contained in communication No. 1611/2007, *Bonilla Lerma v. Colombia*, Views adopted on 26 July 2011.

Issues and proceedings before the Committee

4.1 Before considering any claim contained in a communication, the Human Rights Committee must determine whether it is admissible under the Optional Protocol to the International Covenant on Civil and Political Rights.

4.2 The Committee notes that the author's claims are related to events that took place in Colombia which the Committee fully examined in its Views on communication No. 1611/2007.[2] It also notes that the author does not provide any substantiation of his claims under the articles of the Covenant invoked by him. Further, the Committee observes that the author's application for enforcement of the judgement (*exequatur*) of the Popayán High Court was considered and rejected twice by the State party's Supreme Court, and that the author's allegations against these decisions relate primarily to the application of Costa Rican domestic legislation. In this respect, the Committee recalls its jurisprudence, according to which it is incumbent on the courts of States parties to evaluate the facts and evidence in a specific case, or the application of domestic legislation, unless it can be shown that such evaluation or application was clearly arbitrary or amounted to a manifest error or denial of justice.[3] On the basis of the materials submitted by the author, including the Supreme Court's rulings, the Committee is not in a position to conclude that the Supreme Court acted arbitrarily or that its decisions entailed a manifest error or denial of justice. The Committee considers, therefore, that the author has failed to sufficiently substantiate his claims of violation of articles 2 (paras. 1–3), 3, 4, 5, 14 (para. 1) and 16 of the Covenant and that the communication is therefore inadmissible under article 2 of the Optional Protocol.

5. The Human Rights Committee therefore decides:

(a) That the communication is inadmissible under article 2 of the Optional Protocol;

(b) That this decision shall be transmitted to the State party and to the author.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the present report.]

[2] *Bonilla Lerma v. Colombia,* Views adopted on 26 July 2011.

[3] See communications No. 1616/2007, *Manzano and others v. Colombia*, decision adopted on 19 March 2010, para. 6.4, and No. 1622/2007, *L.D.L.P. v. Spain*, decision adopted on 26 July 2011, para. 6.3.

B. Communication No. 1809/2008, *V.B. v. Czech Republic* (Decision adopted on 24 July 2013, 108th session)*

Submitted by:	V.B. (represented by David Strupek)
Alleged victim:	The author
State party:	Czech Republic
Date of communication:	7 November 2007 (initial submission)
Subject matter:	Alleged discrimination in the access to social security while in detention
Procedural issue:	Insufficient substantiation of claims
Substantive issue:	Non-discrimination
Article of the Covenant:	26
Article of the Optional Protocol:	2

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

Meeting on 24 July 2013,

Adopts the following:

Decision on admissibility

1.1 The author of the communication is V.B., a Czech national of Roma origin, born on 25 February 1969. She claims to be a victim of a violation by the Czech Republic of article 26 of the International Covenant on Civil and Political Rights. She is represented by counsel, David Strupek.

1.2 On 14 September 2009, the Committee, through the Special Rapporteur on new communications and interim measures, decided not to consider the admissibility and the substance of the case separately.

The facts as submitted by the author

2.1 On 13 August 2002, the author was arrested and accused of the attempted murder of her co-habitant. On 15 August 2002, she was interrogated before the Prague Municipal Court, and she was detained on remand. On 1 October 2002, she was released awaiting trial upon the order of the Prague Municipal State Attorney Office. Following the trial, the author was acquitted of all charges by judgement of the Municipal Court of 9 April 2003.

2.2 On 16 June 2003, by letter to the Minister of Justice, the author claimed compensation for the time spent in detention, under section 30 of Act No. 82/1998 on

* The following members of the Committee participated in the examination of the present communication: Mr. Yadh Ben Achour, Mr. Lazhari Bouzid, Ms. Christine Chanet, Mr. Ahmad Amin Fathalla, Mr. Cornelis Flinterman, Mr. Yuji Iwasawa, Mr. Walter Kälin, Ms. Zonke Zanele Majodina, Mr. Kheshoe Parsad Matadeen, Mr. Gerald L. Neuman, Sir Nigel Rodley, Mr. Víctor Manuel Rodríguez Rescia, Mr. Fabián Omar Salvioli, Ms. Anja Seibert-Fohr, Mr. Yuval Shany, Mr. Konstantine Vardzelashvili and Ms. Margo Waterval.

Liability for Damage Caused by a Decision or an Incorrect Official Procedure of an Authority of the State.[1] Taking into account that she was unemployed when she was arrested, the author claimed a compensation of CZK 5,000[2] per month of detention. By letter of 19 August 2003, the Minister refused the author's claim, stating that section 30 of Act No. 82/1998 cannot be used where the lost profit is not proven. The Minister further considered that the establishment of pecuniary damage is a precondition to the State's responsibility under section 30 of Act No. 82/1998 and that, as pecuniary damage could not be proven in the present case, no compensation could be awarded.

2.3 The author filed a civil action against the State with the Prague District Court. She claimed that she should be compensated for the loss of the opportunity to find a job while detained. She noted that the amount fixed by section 30 (CZK 161 per day of detention in 2002, amounting to CZK 5,000 per month) was lower than the minimum wage. The legislator indicates that every person would usually have had the opportunity to earn at least that amount if she or he had not been deprived of liberty. She requested CZK 8,225 (CZK 3,064 for the 19 days of detention in August 2002, CZK 5,000 for her detention in September 2002, and CZK 161 for 1 day in detention in October 2002) plus interest and procedural costs.

2.4 On 4 August 2005, the District Court replied that the author was not entitled to compensation for detention in August and October, as she had been paid social security benefits during these two months, corresponding to the benefits she was entitled to before being taken into detention, and after her release. It took into account the author's lost income with respect to her lost social security benefits for September 2002, applying section 30 of Act No. 82/1998. It ordered the State to pay CZK 5,000 plus interest to the author. The Minister appealed this judgment before the Municipal Court of Prague, stating that the lost social security benefits could not be deemed to be "lost profit", as it is designed to satisfy the basic needs of a person, and such needs were satisfied during her detention. On 10 May 2006, the Municipal Court allowed the appeal and quashed the judgement of the District Court in relation to the compensation for September.

2.5 On 4 September 2006, the author filed an appeal to the Constitutional Court, arguing that she was aware that the entitlement of persons acquitted of criminal charges to compensation of damages was not guaranteed by the Constitution or by the international human rights treaties, but that the relevant legislation had to be applied in accordance with the principles of equality and non-discrimination. She admitted that the level of probability that she would have found a job at the time of her detention could be subject to dispute. She further considered that this should have been assessed, and that she had provided evidence in this respect. The author finally claimed that she had been discriminated against, not only because of her unemployment, but indirectly because of her ethnic origin. On 11 January 2007, the Constitutional Court rejected her constitutional appeal as manifestly ill-founded as the court is not another instance in a system of general justice and cannot review the assessments of facts and law as made by the general courts, and considered that the mere disagreement with the interpretation of the basic law does not challenge the decision's conformity with the constitutional order. The Constitutional Court further considered that pecuniary damages could be awarded only in cases of at least high probability that the

[1] Section 30: "The compensation of the lost income is provided in the amount of CZK 5000 per each month in detention on remand, imprisonment, protective education or protective medical treatment, unless the damaged person requests that the compensation for lost income is determined according to the special rules."

[2] Equivalent to about 194 euros (on 10 May 2013).

damage would occur. The court did not consider the issues of equality and non-discrimination.[3]

The complaint

3.1 The author states that persons who are taken into custody on remand and who are acquitted are protected by the law, which provides them with social security entitlements. She considers that section 30 of Act No. 82/1998 was designed also to accommodate unemployed persons who lost the opportunity to find a job because of detention, and that the authorities of the State party erroneously excluded such persons from the entitlement. The author further considers that, to determine the loss of profit, the national law violates article 26 of the Covenant, as it takes into account only the situation on the day the person is taken into custody, not allowing the consideration of the "loss of opportunity" to achieve an income, thereby directly discriminating against unemployed persons. Thus, the author considers that the aforementioned legislation and interpretation result in less favourable treatment of unemployed persons, as compared to employed and self-employed persons.

3.2 The author states that the law itself allows a differentiation in treatment. In this regard, the author refers to jurisprudence[4] in which the Committee found a violation of article 26, where the law had explicitly excluded persons who were not Czech citizens from the restitution of property confiscated by the Communist regime. She considers that the differentiation in treatment, that is, the fact that the Czech authorities refused to compensate the author for lost income during her detention only because she was unemployed when arrested, is not reasonably justified, and that it amounts to direct discrimination based on her economic and social status (unemployment). The author also argues that, even though her income at the time of detention on remand was hypothetical in so far as it depended on her employment then, the court should have the discretion to calculate such income on the basis of the "statistical figures of average or (of the) minimum wage".

3.3 The author further argues that she was indirectly discriminated against, based on her ethnic origin. In this regard, the author refers to the concluding observations of the Human Rights Committee and of the Committee on the Elimination of Racial Discrimination, highlighting the marginalization and social exclusion of the Roma people in the State party.[5] The author also refers to reports of the European Commission against Racism and Intolerance and of others, according to which the unemployment rate of Roma has been about 70 per cent while the general rate of unemployment has been about 7 to 10 per cent.[6] The author considers that, while the Roma community is socially and economically marginalized and strongly disadvantaged on the labour market, its members are indirectly discriminated against through the exclusion of unemployed persons from the application of section 30 of Act No. 82/1998.

State party's observations on admissibility and merits

4.1 By note verbale of 31 March 2010, the State party submitted its observations, making no objections to the description of the facts by the author. The State party indicated that, according to the explanatory report of section 30 of Act No. 82/1998, a lump-sum

[3] The author invoked the principle of equality and non-discrimination before the Constitutional Court only.

[4] For example, communication No. 586/1994, *Adam v. Czech Republic*, Views adopted on 23 July 1996.

[5] CCPR/CO/72/CZE, para. 10, and CERD/C/CZE/CO/7, para. 15. See also CERD/C/SR.1804, para. 42.

[6] See, among others, European Commission against Racism and Intolerance, "Third report on the Czech Republic", adopted on 5 December 2003, para. 59.

compensation would be provided instead of damages applicable under general regulations, and would not apply when the aggrieved person did not "lose any profit". If prior to custody or imprisonment the aggrieved person had no work but already had arranged for a specific employment or a similar relationship, the calculation would be based on the expected income that he would have received in this employment or in the exercise of another gainful activity. The legal system is based on the possibility to provide compensation for loss of earnings, also in relation to a gainful activity that is only expected at the moment of the beginning of the imprisonment or custody, the performance of which would begin later. The mere circumstance that in the period prior to serving the sentence a claimant was not working does not in principle exclude his or her claim for damages. Such damages can be claimed if the person suffered damage for not being able, as a consequence of his or her detention, to start an employment for which prior steps had already been taken. The opportunity for a gainful activity, or an offer or tentative promise by an employer, is not enough: there must be a finding that only due to the beginning of imprisonment the arranged gainful activity could not be performed and that the aggrieved person would actually have performed such activity for the arranged period had he or she not served the sentence. The State party further indicates that the decision of the Supreme Court in the present case reflects the established case law.

4.2 With regard to the author's claim of a violation of article 26 of the Covenant, the State party recalls the Committee's jurisprudence according to which the right to equal protection of the law without discrimination is an autonomous right independent of any other right provided for in the Covenant; and that not all differences of treatment are discriminatory, as long as a differentiation based on reasonable and objective criteria does not amount to prohibited discrimination within the meaning of article 26.[7]

4.3 On the ground that article 26 of the Covenant does not impose an obligation upon the States to adopt specific legal provisions, or to introduce legal dispositions to enable claims for compensation of a lost opportunity to realize a profit, the State party considers that the communication does not fall within the scope of competency of the Covenant and should be held inadmissible.

4.4 The State party further highlights that it agrees with the author that section 30 of Act No. 82/1998 allows for the awarding of compensation for loss of profit only in cases when the aggrieved person was engaged in a gainful activity on the day of being taken into custody, or had in place an arranged or prearranged contract for such activity. Compensation for loss of profit would be possible only when profit was actually lost, and a lump sum of CZK 5,000 was to be provided in cases where it was impossible or excessively difficult to quantify the lost profit. Additionally, when the facts referred to occurred, the legal system of the State party did not allow the courts to grant compensation for "loss of opportunity" to aggrieved persons, whatever their socioeconomic status. Consequently, the unemployed and the author herself were not victims of unequal treatment. The State party therefore considers that the claim is inadmissible under articles 2 and 3 of the Optional Protocol to the Covenant.

4.5 The State party further considers that the claim of the author with regard to alleged indirect discrimination against her should be held inadmissible for insufficient substantiation, in so far as the mere assertion of a 70 per cent unemployment rate in the Roma group in the State party is insufficient to establish a suspicion that article 26 of the Covenant was violated. The State party further considers that the author's assertion

[7] The State party specifically refers to communication No. 182/1984, *Zwaan de Vries v. Netherlands*, Views adopted on 9 April 1987, paras. 12.1 to 13.

according to which Roma persons are placed into custody more frequently than the rest of the population is a speculation, which is not justified by any factual basis.

4.6 As to the merits of the communication, the State party recalls that the claim of the author lies in the fact that she was not compensated for loss of profit for the period she spent in custody. The State party reiterates that the Czech legal system only allows compensation for loss of profit for the period in custody if, prior to his or her detention, the person detained was engaged in a gainful activity or had in place an arranged or prearranged contract for such activity. Taking into account that the author was unemployed when she was detained and did not demonstrate any arranged or prearranged employment contract, her claim for compensation on the grounds of "loss of opportunity" before domestic courts was rejected in compliance with the law and jurisprudence in place, without discrimination.

4.7 The State party further notes that the author compares her position with that of employed and self-employed persons, arguing that while these persons receive compensation for loss of profit for the period of their custody, she did not receive any. The State party considers that the situation of the author cannot be compared to the position of employed or self-employed persons who were engaged in a gainful activity before being taken into custody. The State party recalls that where it was not possible or excessively burdensome for the aggrieved person to determine exactly the amount of the lost profit or to provide the relevant evidence to this end, the law determined that a lump sum of CZK 5,000 could be awarded. However, the State party highlights that this disposition is not applicable where, as in the case of the author, the person was unemployed and had not contractually arranged or prearranged the exercise of a gainful activity before being taken into custody. Under such circumstances, the authorities of the State party had taken their decisions in full compliance with domestic law and were "reasonable, based on objective reasons and free of any arbitrariness". The State party therefore considers that article 26 of the Covenant was not violated.

4.8 The State party notes the author's position that, as she was not awarded compensation for a "loss of opportunity" to achieve some profit while she was in custody, she was treated less favourably than employed and self-employed persons. The State party reiterates that, at the time of the facts under consideration, the law did not allow employed or self-employed persons to claim compensation for loss of profit on the ground of "loss of opportunity". In that regard, the State party considers that, while the corresponding legislation and its interpretation were not necessarily the best solution to the problem, they could not be considered arbitrary or manifestly erroneous. The legislation was the same for employed, self-employed and unemployed persons, and the author was therefore not treated differently and less favourably.

4.9 The State party further suggests that if the Committee were to consider that compensation for "loss of opportunity" to achieve a profit for a period in custody should have been provided for by the legislation of the State party in application of the Covenant, the specific situation of the author should be examined to determine whether such disposition would be applicable to her case. The Committee should then establish how probable it would have been for the author to have found employment and achieved a profit in the period of one and a half months when she was deprived of liberty. In that regard, the State party indicates that according to the information provided by the author, she had been unemployed for seven months and six days before being taken into custody, and for one month and nine days after being released. Additionally, the State party recalls that the author was kept on the list of job applicants during 23 of the 33 months between January 2001 and September 2003. In view of this information, the State party considers that the probability that the author would have found an employment during the period she was held

in custody was not very high. The State party therefore considers that article 26 was not violated.

Author's comments on the State party's observations

5.1 On 9 July 2010, the author rejected the State party's observations on admissibility and merits. The author considers that the failure of domestic law to allow the claims for compensation for a loss of opportunity is not a consequence of the legislation itself, but of the interpretation of that law. The author highlights that the law does not explicitly exclude the concept of loss of opportunity from the notion of loss of profit, and that the concept of lost profit as a result of detention in custody pursuant to Act No. 82/1998 is much narrower than the same concept as interpreted in private (civil and commercial) law.

5.2 The author recalls that, under Czech case law, lost profit is the damage consisting in the fact that the value of the claimant's assets does not increase in the manner it would during the "natural course of events". The author considers that the requirement by State authorities for the claimant to have a particular concluded or pre-negotiated contract puts a much higher burden of proof on the claimant than for the assessment of the "normal course of events" in other circumstances.

5.3 The author reiterates the reference, made in her initial complaint, to the Committee's jurisprudence, according to which the State party violated article 26 of the Covenant when the law did not allow for the restitution of property claimed by persons without Czech citizenship. The author considers that the narrow interpretation of Act No. 82/1998 similarly excludes a specific category of persons (persons unemployed the day of apprehension) from an entitlement generally granted in cases of lawful detention of a defendant who is later acquitted of criminal charges. The author therefore considers that article 26 of the Covenant is applicable to her case and claims that the existing legislation should be interpreted in conformity with the Covenant.

5.4 The author further considers that the statistics of the European Commission against Racism and Intolerance referred to in her communication are credible and sufficient to demonstrate the indirect discrimination she suffered as a member of the Roma community. The author also considers that there is a "general tendency" to consider that communities that are segregated, undereducated and discriminated against are more inclined to perpetuate criminal acts, which results in de facto discrimination against the members of the Roma community, including in the interpretation of the legislation.

5.5 Additionally, the author claims that her case was not assessed individually, as the courts did not critically consider the evidence provided to demonstrate her efforts to find a job, but rather carried out a blanket assessment, considering that the author did not prove any assured gainful activity on the day of her detention. The author therefore considers that domestic courts treated her differently than other persons in a comparable position.

Additional State party's observations on admissibility and merits

6.1 By note verbale of 30 November 2010, in its response to the author's comments, the State party reiterated its initial observations of 31 March 2010. In particular, the State party recalls that, at the time of the facts referred to in the complaint, national legislation did not allow any assertion based on the concept of "loss of opportunity", regardless of the socioeconomic status of the person concerned.

6.2 The State party further refers to the established case law, according to which the Committee is not a fourth instance, and it is for the courts of States parties to interpret and

apply domestic legislation in a particular case, unless it can be shown that such evaluation or application was clearly arbitrary or amounted to a manifest error or denial of justice, or that the court otherwise violated its obligation of independence and impartiality.[8]

6.3 The State party considers that, even if the relevant legislation and its interpretation are not necessarily the best solution to the problem, they cannot be said to be arbitrary or manifestly erroneous. The State party considers that the Committee should not review the interpretation of the domestic legislation made by the Czech courts in the case under consideration.

Issues and proceedings before the Committee

Consideration of admissibility

7.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 93 of its rules of procedure, decide whether or not the case is admissible under the Optional Protocol to the Covenant.

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

7.3 The Committee notes that the author's claim relates to the failure of the State party to provide her with compensation for the loss of her security benefit for the month of September and for the lost opportunity to find a job, resulting from her remand in detention from 15 August to 1 October 2012, when she was released awaiting trial. Although the author acknowledges that her arrest and detention were lawful, she claims that the failure to provide her with compensation, on the basis of her status as "an unemployed person", resulted in a violation of article 26 of the Covenant. The Committee notes that the legislation in question (Act No. 82/1998) refers to the provision of compensation in cases of "lost income". It also notes that lost income has been interpreted by national courts as actual financial loss or, as acknowledged by the author, potential loss when there is a pre-negotiated labour contract in existence. In this regard, the Committee recalls that it is generally not for the Committee, but for the courts of States parties, to interpret legislation and to review or to evaluate facts and evidence in a particular case, unless it can be ascertained that the conduct of the trial or the evaluation of facts and evidence was clearly arbitrary or amounted to a denial of justice.[9] Based on the materials made available to it, the Committee is unable to conclude that the State party's authorities acted arbitrarily in evaluating the facts and evidence of the case and it considers that the claim is not sufficiently substantiated.

[8] The State party specifically refers to communication No. 1618/2007, *Brychta v. Czech Republic*, decision adopted on 27 October 2009, para. 6.5.

[9] Human Rights Committee general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, *Official Records of the General Assembly, Sixty-second Session, Supplement No. 40*, vol. I (A/62/40 (Vol. I)), annex VI, para. 26. See also, inter alia, communications No. 1943/2010, *H.P.N. v. Spain*, decision of inadmissibility adopted on 25 March 2013; No. 1500/2006, *M.N. et al. v. Tajikistan*, decision of inadmissibility adopted on 29 October 2012; No. 1210/2003, *Damianos v. Cyprus*, decision of inadmissibility adopted on 25 July 2005, para. 6.3; No. 1212/2003, *Lanzarote Sánchez et al. v. Spain*, decision of inadmissibility adopted on 25 July 2006, para. 6.3; No. 1358/2005, *Korneenko v. Belarus*, decision of inadmissibility adopted on 1 April 2008, para. 6.3; No. 1758/2008, *Jessop v. New Zealand*, Views adopted on 29 March 2011, paras. 7.11–7.12.

7.4 The Committee further observes that, when claiming a violation of article 26, the author refers to figures and information related to the situation of the Roma community in the Czech Republic. The Committee does not question the accuracy of the referred information. However, it considers that this information does not sufficiently substantiate the position of the author that, under the particular circumstances, she was a victim of direct and indirect discrimination on the basis of her ethnic origin. Accordingly, this communication is inadmissible, as insufficiently substantiated, under article 2 of the Optional Protocol.[10] The Human Rights Committee therefore decides:

(a) That the communication is inadmissible under article 2 of the Optional Protocol;

(b) That this decision shall be transmitted to the State party and to the author.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the present report.]

[10] Communication No. 1771/2008, *Mohamed Musa Gbondo Sama v. Germany*, decision on admissibility adopted on 28 July 2009, para. 6.9; communication No. 1537/2006, *Yekaterina Gerashchenko v. Belarus*, decision on admissibility adopted on 23 October 2009, para. 6.4.

C. Communication No. 1879/2009, *A.W.P. v. Denmark* (Decision adopted on 1 November 2013, 109th session)*

Submitted by:	A.W.P. (represented by Niels-Erik Hansen of the Documentation and Advisory Centre on Racial Discrimination (DACoRD))
Alleged victim:	The author
State party:	Denmark
Date of communication:	26 March 2009 (initial submission)
Subject matter:	Hate speech against the Muslim community in Denmark
Procedural issues:	Non-substantiation; non-exhaustion of domestic remedies; victim status
Substantive issues:	Hate speech; discrimination based on religious belief and minority rights; right to an effective remedy
Articles of the Covenant:	2, paragraph 3; 20, paragraph 2; and 27
Articles of the Optional Protocol:	1; 2; and 5, paragraph 2 (b)

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

Meeting on 1 November 2013,

Adopts the following:

Decision on admissibility

1. The author of the communication is Mr. A.W.P., a Danish citizen. He claims to be a victim of violations by Denmark of his rights under article 2; article 20, paragraph 2; and article 27 of the International Covenant on Civil and Political Rights. The author is represented by counsel.[1]

Facts as presented by the author

2.1 On 18 April 2007, Member of Parliament (MP) Søren Krarup, member of the Danish Popular Party (DPP) expressed his views in an article from the newspaper "Morgenavisen Jyllands-Posten", about allowing a female parliamentary candidate to speak in Parliament wearing her Muslim scarf. Mr. Krarup stated that "just like the Nazis believed

* The following members of the Committee participated in the examination of the present communication: Mr. Yadh Ben Achour, Mr. Lazhari Bouzid, Ms. Christine Chanet, Mr. Cornelis Flinterman, Mr. Yuji Iwasawa, Mr. Walter Kälin, Ms. Zonke Zanele Majodina, Mr. Gerald L. Neuman, Sir Nigel Rodley, Mr. Victor Manuel Rodríguez-Rescia, Mr. Fabián Omar Salvioli, Ms. Anja Seibert-Fohr, Mr. Yuval Shany, Mr. Konstantine Vardzelashvili and Ms. Margo Waterval.

The text of an individual opinion by Committee members Mr. Yuval Shany, Mr. Fabián Omar Salvioli and Mr. Victor Manuel Rodríguez-Resia is appended to the present views.

[1] The Optional Protocol entered into force for the State party on 6 April 1972.

that everyone from another race should be eliminated it is the belief in Islam that everyone of another faith must be converted and if not eliminated". On 20 April 2007, MP Morten Messerschmidt from the DPP stated in an article from Nyhedsavisen that "Muslim societies are per definition losers. Muslims cannot think critically […] and this produces losers […]" On the same date, Member of the European Parliament (MEP) Mogens Camre from the same political party stated in the same newspaper article that "the idea that a fundamentalist with headscarf should become member of the Danish Parliament is sick. She (the candidate for Parliament) needs mental treatment […]".

2.2 The author is a Muslim. In his opinion, the statement comparing Islam with Nazism is a personal insult to him. Furthermore, it creates a hostile environment and concrete discrimination against him.

2.3 The author filed a complaint before Copenhagen Metropolitan police. On 20 September 2007, the police informed the author by letter that the Regional Prosecutor had decided not to prosecute the three above-mentioned members of the DPP. The letter also advised the author about the possibility to appeal this decision to the Public Prosecutor General.

2.4 On 16 October 2007, the author appealed the decision to the Public Prosecutor General who, on 28 August 2008, upheld the decision of the Regional Prosecutor stating that neither the author nor his counsel could be considered legitimate complainants in the case. Statements covered by section 266 (b) of the Criminal Code[2] are usually of such a general nature that there generally would be no individuals who are legitimate complainants. He added that there was no information proving that the author could be regarded as an injured person according to the Act on the Administration of Justice section 749 (3). He could not be said to have such a substantial, direct, personal and legal interest in the outcome of the case to be considered as a legitimate complainant.

2.5 Under section 99, paragraph 3, subsection 2, of the Administration of Justice Act, this decision is final and cannot be appealed to. There are no other administrative remedies available and the public prosecuting authority has a monopoly to bring cases to courts in relation to section 266 (b) of the Criminal Code.

The complaint

3.1 The author claims that, by not fulfilling its positive obligation to take effective action against the reported incident of hate speech against Muslims in Denmark, the State party has violated the author's rights under article 2; article 20, paragraph 2; and article 27, of the Covenant.

3.2 According to the author, the comparison made in the incriminating statements between Islam and Nazism is just one example of the ongoing campaign by members of the DPP to stir up hatred against Danish Muslims. Some people who are influenced by such statements take action in the form of hate crimes against Muslims living in Denmark. A study published by the Danish Board for Ethnic Equality in 1999 indicated that people from

[2] The provision of the Criminal Code on racially discriminating statements is worded as follows:

Section 266 (b).

(1) Any person who, publicly or with the intention of wider dissemination, makes a statement or imparts other information by which a group of people are threatened, insulted or degraded on account of their race, colour, national or ethnic origin, religion, or sexual inclination shall be liable to a fine or to imprisonment for any term not exceeding two years.

(2) When the sentence is meted out, the fact that the offence is in the nature of propaganda activities shall be considered an aggravating circumstance.

Turkey, Lebanon and Somalia (all of them mainly Muslims) living in Denmark suffer from racist attacks in the street. The Board was dismantled by the Danish Government in 2002 and no further studies have been carried out since then. The State party fails to acknowledge the need to protect Muslims against hate speech in order to prevent future hate crimes against members of religious groups. The author notes that a statement made as part of a systematic racist propaganda, such as the one led by the DPP, is an aggravating factor under section 266 (b) subsection 2 of the Danish Criminal Code.

3.3 With regard to his status as a victim, the author refers to the opinion of the Committee on the Elimination of Racial Discrimination regarding communication No. 30/2003,[3] where Committee adopted an approach to the concept of "victim" status similar to that of the Human Rights Committee in the case of *Toonen v. Australia* and the European Court of Human Rights in Case of *Open Door and Dublin Well Women v. Ireland*.[4] In particular, the Court found certain authors to be "victims" because they belonged to a class/group of persons which might in the future be adversely affected by the acts complained of. The author argues, therefore, that as a member of such a group, he is also a victim.

The State party's observations on admissibility and merits

4.1 By note verbale of 14 July 2009, the State party submitted its observations on the admissibility and merits of the communication. It notes that the Copenhagen Police processed counsel's complaint and interviewed Mr. Messerschmidt on 22 August 2007. The latter confirmed his statements and explained that, at the time they were made, there was a debate in Denmark because a Muslim parliamentary candidate had stated that she would be wearing her scarf in the hall of the Parliament if she were elected. The purpose of his statement was to support Mr. Krarup. He had not intended to insult Muslims but simply express his view that Islamism was problematic because its adherents prized God's will above ordinary common sense and turned religion into a political ideology.

4.2 On 4 September 2007, the Copenhagen Police submitted the case to the Regional Prosecutor for Copenhagen and Bornholm, who decided on 7 September 2007 that the investigation should be discontinued pursuant to section 749(2) of the Danish Administration of Justice Act. On 20 September 2007, the Commissioner of the Copenhagen Police notified the author's counsel of the Regional Public Prosecutor's decision, stating that a particular extensive freedom of expression is enjoyed by politicians in respect of controversial social issues and the Regional Public Prosecutor found that the said persons had not transgressed the borderline into criminality. It is particularly during a political debate that statements that may appear as offending to some occur, but in such situations importance should be attached to the fact that they occur during a debate in which, by tradition, there are quite wide limits to the use of simplified allegations.

4.3 On 28 August 2008, the Director of Public Prosecutions decided that neither the author nor his counsel were entitled to appeal in this case because they did not show a reasonable interest pursuant to section 749(3) of the Administration of Justice Act (persons considered to be parties in the case).

4.4 The State party contests the admissibility of the communication on the ground that article 2 can be invoked only in conjunction with other articles of the Covenant.

[3] CERD communication No. 30/2003, *The Jewish community of Oslo et al. v. Norway*, Opinion adopted on 15 August 2005, para. 7.4.

[4] Communication No. 488/1992, *Toonen v. Australia*, Views adopted on 31 March 1994, para. 5.1; and the Judgement of the ECtHR, Case of *Open Door and Dublin Well Women v. Ireland*, Application No. 14234/88; 14235/88, Judgment of 29 October 1992.

Furthermore, article 2, paragraph 3 (b), obliges State parties to ensure determination of the right to such remedy "by a competent judicial, administrative or legislative authority", but a State Party cannot reasonably be required, on the basis of that article, to make such procedures available no matter how unmeritorious the claims may be. Article 2, paragraph 3, only provides protection to alleged victims if their claims are sufficiently well-founded to be arguable under the Covenant.

4.5 The State party further submits that the incriminating statements cannot be considered as falling within the scope of application of article 20, paragraph 2, of the Covenant. For statements to be comprised by article 20, paragraph 2, the wording of the provision requires them to imply advocacy of national, racial or religious hatred. In addition, such advocacy must constitute incitement to discrimination, hostility or violence. Advocacy of national, racial or religious hatred is not sufficient. The State party rejects that the relevant statements by some members of the DPP in any way advocated religious hatred. All the statements had their background in a public debate on how members of Parliament should appear when speaking from the rostrum of Parliament. All three statements were made as part of this intense public debate, which took place both in the press and in the Parliament. The State party insists that, during the debate, a large majority of Parliament sharply rejected those statements.

4.6 Although the statements may be seen as offensive, there is no basis for asserting that those statements were made with the purpose of inciting religious hatred. One of those statements was not directed at all Muslims but at this particular candidate for Parliament. The statements in question therefore fall outside the scope of article 20, paragraph 2 of the Covenant and the claims before the Committee should be considered as insufficiently substantiated pursuant to article 2 of the Optional Protocol.

4.7 The State party further claims that the author has not exhausted all domestic remedies. The State party opposes section 266 (b) of the Criminal Code on racially discriminating statements, which is subject to public prosecution and for which only persons with a personal interest can appeal the Prosecutor's decision to discontinue the investigation, to sections 267 and 268 on defamatory statements which are applicable to racist statements.[5] Contrary to section 266 (b), section 267 allows for private prosecution. Hence, the author could have instituted criminal proceedings against Mr. Krarup, Mr. Messerschmidt and Mr. Camre. By choosing not to do so, he has failed to exhaust all available domestic remedies. The State party refers to the Committee's jurisprudence concerning the publication of "The Face of Muhammad" where it declared a communication inadmissible as the authors who had filed a criminal complaint for defamation under section 267 had submitted the communication to the Committee before the High Court had issued its final decision on the matter.[6] In the State party's opinion, such

[5] The provision of the Criminal Code on defamatory statement is worded as follows:

Section 267.

Any person who violates the personal honour of another by offensive words or conduct, or by making or spreading allegations of an act likely to disparage him in the esteem of his fellow citizens, shall be liable to a fine or to imprisonment for any term not exceeding four months.

This provision is furthermore supplemented by section 268, which provides:

Section 268.

If an allegation has been made or disseminated in bad faith, or if the author has had no reasonable ground to regard it as true, he shall be guilty of defamation, and the punishment mentioned in section 267 may then be increased to imprisonment for two years.

[6] Communication No. 1487/2008, *Kasem Said Ahmad and Asmaa Abdol-Hamid v. Denmark*, 18 April 2008.

jurisprudence implies that criminal proceedings under section 267 are required to exhaust domestic remedies in issues related to allegations of incitement to religious hatred. It cannot be considered to be contrary to the Covenant to require the author to exhaust the remedy according to section 267, even after the public prosecutors have refused to institute proceedings under section 266 (b), as the requirements for prosecution under the former provision are not identical to those for prosecution under the latter one.

4.8 On the merits, the State party contends that the requirement of access to an effective remedy has been fully complied with in the present case, as the Danish authorities, i.e. the Prosecution Service, handled the author's complaint of alleged racial discrimination in a prompt, thorough and effective manner, fully consistent with the requirements of the Covenant. Article 2, paragraph 3 (a) and (b), of the Covenant, does not require access to the courts if a victim has had access to a competent administrative authority. Otherwise, the courts would be overburdened with cases where persons allege that something is a violation of the Covenant and must be determined by the courts regardless of how thoroughly the competent administrative authority investigated their allegations.

4.9 The fact that the author's criminal complaint did not lead to the result desired by the author, namely prosecution of Mr. Krarup, Mr. Messerschmidt and Mr. Camre, is irrelevant, as State parties are under no obligation to bring charges against a person when no violations of Covenant rights have been revealed. In this connection, it should be emphasized that the issue in the present case was solely whether there was a basis for presuming that the statements of Mr. Krarup, Mr. Messerschmidt and Mr. Camre would fall within the scope of application of section 266 (b) of the Criminal Code. The assessment to be made by the Prosecution Service was therefore a strictly legal test. In that connection, on 22 August 2007, the Copenhagen Police did interview one of the said persons, Mr. Messerschmidt, about the background for his statements. It was undisputed that those persons had made such statements in the newspapers and there was no doubt as to the context in which they were made. There was also no need to interview the author as his views were detailed in his complaint to the police and no other investigative measures were relevant in this case.

4.10 According to the *travaux préparatoires* of section 266 (b) of the Criminal Code, it was never intended to lay down narrow limits on the topics that can become the subject of political debate, nor details on the way in which the topics are discussed. The right to freedom of expression is especially important for an elected representative of the people. Interferences with the freedom of expression of an opposition member of Parliament call for the closest scrutiny. In the present case, the State party considers that the national authorities' handling of the author's complaint fully satisfied the requirements that can be inferred from article 2, paragraph 3 (a) and (b), of the Covenant.

4.11 Concerning the possibility of appealing the decision, the Covenant does not imply a right for the author or his counsel to appeal the decisions of administrative authorities to a higher administrative body. Nor does the Covenant govern the question of when a citizen or lobby organization should be able to appeal a decision to a superior administrative body. Any person who considers himself the victim of a criminal offence can appeal. Others can appeal only if they have a special interest in the outcome of the case other than having a sentence imposed on the offender. Therefore, there was no indication of circumstances showing that the author or his legal representative was entitled to appeal. The State party finds that the decision of the Director of Public Prosecutions, which was well reasoned and in accordance with the Danish rules, cannot be considered contrary to the Covenant.

4.12 The State party adds that the Commissioners of Police must notify the Director of Public Prosecutions of all cases in which a report concerning a violation of section 266 (b) is dismissed. This reporting scheme builds on the ability of the Director of Public Prosecutions, as part of his general power of supervision, to take a matter up for re-

consideration to ensure proper and uniform enforcement of section 266 (b). In that connection, reference is made to the case concerning publication of the article "The Face of Muhammad" and the accompanying 12 drawings of Muhammad, in which the Director of Public Prosecutions decided, due to the public interest about the matter, to consider the appeal without determining whether the organizations and persons who had appealed the decision of the Regional Public Prosecutor could be considered entitled to appeal.[7] In the present case, however, the Director of Public Prosecutions found no basis for exceptionally disregarding the fact that neither the author nor his counsel was entitled to appeal the decision.

4.13 The author's evidence proving the risk of attacks consists solely of a reference to a study from 1999 from which it appeared that people from Turkey, Lebanon and Somalia living in Denmark suffered from racist attacks in the streets. In the State party's view, such a study cannot be considered sufficient evidence to prove that the author, who is a native Dane, has a real reason to fear attacks or assaults, and in fact he has not stated anything about any actual attacks — whether verbal or physical — to which he has been subjected due to the statements made by Mr. Krarup, Mr. Messerschmidt and Mr. Camre.

4.14 The State party therefore requests the Committee to declare the communication inadmissible for failing to establish a prima facie case under article 20, paragraph 2, of the Covenant and for failing to exhaust domestic remedies. Should the Committee declare the communication admissible, it is requested to conclude that no violation of the Covenant has occurred.

Author's comments on the State party's observations

5.1 On 24 August 2009, the author provided his comments. He notes that, in the response of the State party, no reference has been made to article 27 of the Covenant. He therefore presumes that it must be taken for granted that the author has not been protected in his right to the peaceful enjoyment of his culture and religion and its symbols. According to article 27, members of minority groups have a right to their identity, and should not be forced to "disappear" or to submit to forced assimilation. This right should be absolute. As to the State party's observations that the incriminating statements fall outside article 20, paragraph 2, of the Covenant, the State party has not addressed the question of whether limits on statements fall within the positive duty of State parties under article 27 of the Covenant to protect the right of minorities in their enjoyment of their culture and its symbols, and the right to profess and practice their religion.

5.2 The author contests that a thorough investigation was made in this case. It is very difficult to understand how the Danish police were able to finalize the investigation without interviewing the three persons concerned (only Mr. Messerschmidt was interviewed by police). Given the repeated pattern of degrading and offensive statements from the political party of Mr. Krarup, Mr. Messerschmidt and Mr. Camre, it would have been appropriate to examine whether the statements met the definition of propaganda which has been deemed an aggravating circumstance under section 266 (b) paragraph 2. In the author's view, the incriminating statements fall outside the functional area of Parliamentary immunity and are not in accordance with an equal application of the ordinary strict legal test.

5.3 The author refers to the *travaux préparatoires* of section 266 (b) of the Criminal Code as well as to the *Glistrup* case[8] to affirm that there has been an intention to include acts of politicians or political statements in the scope of section 266 (b). A legislative

[7] Ibid.

[8] *Glistrup* case, Judgement of Danish Supreme Court, 23 August 2000, *Danish Weekly Law Reports*, UfR 000. 2234.

amendment of 1996 inserted paragraph 2 of section 266 (b) to counteract propaganda activities. The background of the bill was to be seen in the ever more prominent tendencies towards intolerance, xenophobia and racism both in Denmark and abroad. Propaganda acts, understood as a systematic dissemination of discriminatory statements with a view to influencing public opinion, were seen as an aggravating circumstance, allowing only for a penalty of imprisonment and not a simple fine. The explanatory report further contained a directive for the prosecution authorities that it should not show the same restraints as in the past in bringing charges if the acts were in the nature of propaganda. In the *Glistrup* case, the Supreme Court found that section 266 (b) was applicable as the defendant, who was a politician, had subjected a population group to hate on account of its creed or origin. The Court further noted that freedom of expression must be exercised with necessary respect for other human rights, including the right to protection against insulting and degrading discrimination on the basis of religious belief.

5.4 On the legal test the Prosecutor should have carried out, the author contends that the balance between all elements at stake was not performed. The incriminating statements did not take place during a debate involving an exchange between contending parties but emanated from a unilateral attack against a vulnerable group with no possibility to defend itself. By not carrying out an investigation, despite the existence of the Supreme Court's jurisprudence, which has recognized limitations to the freedom of expression of politicians, the prosecuting authorities have given no opportunity for the author, and the minority group he belongs to, to have his case adjudicated by a court of law. The author recalls that the Danish Prosecution authorities made a series of similar decisions not to investigate and prosecute complaints regarding statements made by politicians, such as in *Gelle v. Denmark*, where the Committee on the Elimination of Racial Discrimination found a violation of article 6 of the Convention on the Elimination of All Forms of Racial Discrimination.[9]

5.5 With regard to the exhaustion of domestic remedies, the author strongly rejects the argument of the State party whereby he should have instituted proceedings under sections 267 and 275 (1) of the Criminal Code for defamation. Section 266 refers to a public or general societal interest and is protective of a group (collective aspect) whereas section 267 derives from a traditional concept of injury to personal honour or reputation and refers to an individual person's moral act or qualities (individual aspect). Contrary to the requirement of section 267, an insulting or degrading statement under section 266 needs not be false to fall within the scope of that provision.

5.6 In *Gelle v. Denmark*,[10] the Committee on the Elimination of Racial Discrimination considered it unreasonable to expect the petitioner to initiate separate proceedings under the general provisions of section 267, after having unsuccessfully invoked section 266 (b) of the Criminal Code in respect of circumstances directly implicating the language and object of that provision. As for the inadmissibility decision of the Committee in *Ahmad and Abdol-Hamid v. Denmark*,[11] the author notes that the facts in that case were different from the present one, since it involved two different sets of proceedings, one with the second applicant under section 266 (b) and the other with the first applicant under section 267. Since the communication was submitted jointly and one of the two procedures was still pending at the time of examination by the Committee, the Committee declared the whole communication inadmissible. The State party can therefore not use this example as a reason to reject the admissibility of the present communication on that ground.

[9] Committee on the Elimination of Racial Discrimination, communication No. 34/2004, *Gelle v. Denmark*, opinion adopted on 6 March 2006, para. 6.5.

[10] Ibid., para. 6.2.

[11] Communication No. 1487/2008, op. cit.

5.7 The author maintains that he should be considered a victim of the incriminating statements since he has been directly affected by being singled out as a member of a minority group, distinguished by a cultural and religious symbol. He was exposed to the effects of the dissemination of ideas encouraging cultural and religious hatred, without being afforded adequate protection.

5.8 The author insists on the balance between the freedom of expression that public persons, including politicians and civil servants, enjoy and the duty of the State to limit this freedom when it contravenes other fundamental rights. With regard to the State party's contention that the statistical data on violence against Muslims is dated 1999, the author replies that it is specifically because the Board for Ethnic Equality was dismantled in 2002 that no updated data can be provided herein. Partial corroboration of the continued validity of these data can however be found in the recent publication by the EU Fundamental Rights Agency issued in May 2009.[12] In this report, the State party is noted for groups that have a high victimization rate but a low police report rate.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 93 of its rules of procedure, decide whether or not the case is admissible under the Optional Protocol to the Covenant.

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

6.3 The Committee notes the State party's argument that the author did not exhaust domestic remedies, by failing to institute proceedings for defamatory statements, which are applicable to racist statements (sections 267 and 275(1) of the Criminal Code). The Committee notes that (a) according to the author, section 266 (b) on the one hand (see footnote 2 above) and sections 267 and 268 on the other hand (see footnote 6 above), do not protect the same interests (collective interest vs. private interest); (b) section 266 (b) regards racist statements which the State party has the obligation to prosecute (collective interest) while section 267 regards personal defamation (civil suit) and is therefore directed at specific individuals; and (c) an insulting or degrading statement under section 266 needs not to be false to fall within the scope of that provision. It takes note of the author's argument that private litigation is not by definition a remedy to secure the implementation by the State party of its international obligations. The Committee considers that it would be unreasonable to expect the author to initiate separate proceedings under section 267, after having unsuccessfully invoked section 266 (b) of the Criminal Code in respect of circumstances directly implicating the language and object of that provision. Accordingly, the Committee concludes that domestic remedies have been exhausted pursuant to article 5, paragraph 2 (b) of the Optional Protocol.[13]

6.4 With regard to the author's allegations under articles 20, paragraph 2, and 27 of the Covenant, the Committee observes that no person may, in theoretical terms and by *actio popularis*, object to a law or practice which he holds to be at variance with the Covenant. Any person claiming to be a victim of a violation of a right protected by the Covenant must demonstrate either that a State party has by an act or omission already impaired the exercise

[12] EU-MIDIS 02, Data in Focus Report/Muslims.

[13] Communication No. 1868/2009, *Andersen v. Denmark*, Inadmissibility decision of 26 July 2010, para. 6.3.

of his right or that such impairment is imminent, basing his argument for example on legislation in force or on a judicial or administrative decision or practice. In the Committee's decision regarding *Toonen v. Australia*, the Committee had considered that the author had made reasonable efforts to demonstrate that the threat of enforcement and the pervasive impact of the continued existence of the incriminating facts on administrative practices and public opinion had affected him and continued to affect him personally. In the present case, without prejudice to the State party's obligations under article 20, paragraph 2 with regard to the statements made by Mr. Krarup, Mr. Messerschmidt and Mr. Camre, the Committee considers that the author has failed to establish that those specific statements had specific consequences for him or that the specific consequences of the statements were imminent and would personally affect him.[14] The Committee therefore considers that the author has failed to demonstrate that he was a victim for purposes of the Covenant. This part of the communication is therefore inadmissible under article 1 of the Optional Protocol.

6.5 The Committee points out that article 2 may be invoked by individuals only in relation to other provisions of the Covenant. A State party cannot reasonably be required, on the basis of article 2, paragraph 3 (b), to make such procedures available in respect of complaints which are insufficiently founded and where the author has not been able to prove that he was a direct victim of such violations.[15] Since the author has failed to demonstrate that he was a victim for purposes of admissibility in relation to articles 20, paragraph 2 and 27 of the Covenant, his allegation of a violation of article 2 of the Covenant is inadmissible, for lack of substantiation, under article 2 of the Optional Protocol.

7. The Committee therefore decides that:

(a) The communication is inadmissible pursuant to articles 1 and 2 of the Optional Protocol; and

(b) This decision will be transmitted to the author and, for information, to the State party.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the present report.]

[14] Ibid., para. 6.4.
[15] Ibid., para. 6.5.

Appendix

Individual opinion by Committee members Mr. Yuval Shany, Mr. Fabián Omar Salvioli and Mr. Victor Manuel Rodríguez-Rescia (concurring)

1. Although we agree that the author's petition is inadmissible, we are concerned that the language used by the Committee in its Views may be read to limit more than is necessary the right of victims to submit communications. The Optional Protocol only allows for submission of communications by persons claiming to be a victim of a violation of a right protected by the Covenant and does not recognize *actio popularis*. Still, in situations where an act or omission by a State party adversely affects a group of individuals, all members of the group who can demonstrate either that the act or omission already impaired the exercise of their right under the Covenant or that such impairment is imminent, may be considered as victims for the purposes of their right of standing. Indeed, in *Toonen v. Australia*, the Committee took the view that, although the law criminalizing private homosexual conduct was of a general nature and had a pervasive impact on administrative practices and public opinion in Tasmania, the author had demonstrated that the threat of enforcement of the law and the discriminatory social attitudes it sustained had actually affected him and continued to affect him personally.[a]

2. In the present case, the author failed to establish that the decision of the State party not to bring criminal charges in connection with the specific statements delivered by Mr. Krarup, Mr. Messerschmidt and Mr. Camre had actually affected him, or that the specific consequences of the said decision were imminent and would affect him personally. The fact that the author is a member of the Muslim minority in Denmark and that the said statements targeted this minority group is not enough to conclude that the State party prima facie failed to adequately protect the author and that such a failure had actually affected the exercise of his rights under the Covenant.

3. As a result, we are of the view that the correct ground for inadmissibility should be the author's failure to substantiate a violation of his rights under articles 20, paragraph 2, and 27 of the Covenant, and not lack of victim status due to the collective nature of the harm allegedly afflicted by the acts or omissions of the State party.

[Done in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the present report.]

[a] Communication No. 488/1992, *Toonen v. Australia*, Views adopted on 31 March 1994, para. 8.2.

D. Communication No. 1894/2009, *G.J. v. Lithuania* (Decision adopted on 25 March 2014, 110th session)*

Submitted by:	G.J. (not represented by counsel)
Alleged victim:	The author
State party:	Lithuania
Date of communication:	26 November 2007 (initial submission)
Subject matter:	Inhuman treatment; lawfulness of detention; adequate time and facilities to prepare defence and communicate with counsel; right to examine witness; right not to self-incriminate
Procedural issues:	Incompatibility with the provisions of the Covenant; substantiation of claims; exhaustion of domestic remedies
Substantive issues:	Inhuman treatment; unlawful detention; habeas corpus; fair trial guarantees
Articles of the Covenant:	7; 9, paras. 1 and 4; 10, para. 1; and 14, para. 3 (b), (d), (e) and (g)
Articles of the Optional Protocol:	2 and 3

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

Meeting on 25 March 2014,

Adopts the following:

Decision on admissibility

1. The author is G.J., a Lithuanian national born in 1950. He claims to be a victim of violations by Lithuania of his rights under articles 7; 9, paragraphs 1 and 4; 10, paragraph 1; and 14, paragraph 3 (b), (d), (e) and (g), of the International Covenant on Civil and Political Rights. He is not represented by counsel. The Optional Protocol entered into force for Lithuania on 20 February 1992.

The facts as submitted by the author

2.1 On 18 May 2005, the author, as part of an organized group, was arrested in connection with extortion and murder of one Mr. G.S. in 1993, pursuant to article 24,

* The following members of the Committee participated in the examination of the present communication: Mr. Yadh Ben Achour, Mr. Lazhari Bouzid, Ms. Christine Chanet, Mr. Ahmad Amin Fathalla, Mr. Cornelis Flinterman, Mr. Yuji Iwasawa, Mr. Walter Kälin, Ms. Zonke Zanele Majodina, Mr. Gerald L. Neuman, Sir Nigel Rodley, Mr. Victor Manuel Rodríguez-Rescia, Mr. Fabián Omar Salvioli, Ms. Anja Seibert-Fohr, Mr. Yuval Shany, Ms. Margo Waterval and Mr. Andrei Paul Zlatescu.

paragraph 4; article 25, paragraph 3; article 129, paragraph 2, subparagraph 9; and article 181, paragraph 3, of the Criminal Code of Lithuania.

2.2 On 19 May 2005, the Vilnius Second District Court placed him in custody for three months. The author informed the court that in March 2003, he had been diagnosed with incurable hepatitis C, and since January 2005, he had been participating in a clinical trial of a new drug for the disease, which was supposed to end in December 2005.

2.3 On 27 May 2005, his lawyer appealed the district court's decision to the Vilnius Regional Court. The appeal was rejected on 3 June 2005, as, inter alia, the Penitentiary Hospital had ensured that the author could continue the treatment in custody.

2.4 On 13 June 2005, the author requested the Prosecutor's Office to place him under house arrest in order to continue his treatment. His request was dismissed on 1 July 2005 by the prosecutor (name provided) of the Department of Investigation of Organized Crime and Corruption (hereinafter "the prosecutor"). On an unspecified date, he lodged an appeal against this decision, which was again dismissed on 20 July 2005. On 31 July 2005, he appealed both decisions to a pretrial investigation judge of the Vilnius Second District Court. Those appeals were rejected on 2 and 8 August 2005. The author appealed the investigation judge's decisions to the President of Vilnius Second District Court. On 22 August 2005, that appeal was rejected on procedural grounds.

2.5 On 18 July 2005, the author's lawyer requested the prosecutor to alter the author's custody, claiming that ceasing to take the experimental drug would pose a threat to the author's life. The request was dismissed on 29 July 2005 by the prosecutor. The author notes that his request was based on article 8, paragraph 3, of the Law on Pretrial Detention, which forbids scientific and medical tests to be performed on a detainee even with his or her consent. However, the prosecutor indicated that that provision did not apply when such actions were carried out at the detainee's initiative.

2.6 On 1 August 2005, the author was accused of having committed a number of serious and other crimes.

2.7 On 3 August 2005, his lawyer appealed the prosecutor's decision of 29 July 2005 to the Vilnius Second District Court, requesting that the restraint measure be altered. That appeal was dismissed on 8 August 2005.

2.8 On 16 August 2005, the Vilnius Second District Court extended the author's custody for another three months. On the same date, the author's lawyer again appealed the prosecutor's decision of 29 July 2005, and the Vilnius Second District Court's decision of 8 August 2005. On 22 August 2005, the acting President of the Vilnius Second District Court dismissed the appeal, noting, inter alia, that the pretrial judge's decision was final and not subject to appeal.

2.9 On 29 July 2005, the author's wife wrote to the Ministry of Health regarding the author's participation in the experimental drug programme while being in detention. The Ministry of Health instructed the Bioethics Committee to review the complaint.

2.10 The author stopped receiving the experimental medication on 16 August 2005.

2.11 In August 2005, after the author's treatment had been terminated, the author's wife appealed to different authorities to have the author provided with the necessary treatment. On 2 September 2005, the Ministry of Health replied that the author's participation in the clinical trial had been terminated as breaching article 8 of the Law on Pretrial Detention, and article 5, paragraph 2, of the Law on Ethics of Biomedical Research. The Ministry stated that remand in custody was an insuperable obstacle to continuing the clinical tests, and that the author would be prescribed a standard treatment. The Parliament's Committee

on Health Affairs stated on 11 October 2005 that it was not authorized to decide on the participation of specific individuals in biochemical research.

2.12 When the author's participation in the experiment was discontinued, the author's lawyer complained to the Vilnius First District Court, requesting that the Vilnius University Santariskes Hospital administration reinstate the author's participation in the clinical trial and that it take temporary precautionary measures, i.e., continuing the experimental treatment, pending a decision on the merits of the case. On 18 August 2005, the district court held that the content of the appeal did not meet the requirements of article 111 of the Code of Civil Procedure and ordered that the shortcomings be rectified by 7 September 2005.

2.13 On 30 August 2005, the author appealed the district court's decision of 18 August 2005 and requested the President of the Vilnius First District Court to refrain from stopping the experimental treatment, as 7 September 2005 would be too late to resume the treatment. That appeal was returned without examination as the author was released on 9 September 2005.

2.14 On 9 September 2005, the Vilnius Regional Court ordered the release of the author on bail and asked him to sign a statement that he would not leave the country. The author notes that the factual circumstances had not changed since his arrest, except that his health had deteriorated considerably in custody. On the same date, he was admitted to Klaipeda Regional Hospital.

2.15 On 3 and 10 January 2006, the author requested the Prosecutor's Office to impose disciplinary punishment on the prosecutor in question.[1] His request was forwarded to a pretrial investigation judge of the Vilnius Second District Court, who, on 30 January 2006, held that the author's custody was imposed by a court; that the author was given every opportunity to be treated with the experimental drugs while in detention; and that his treatment was stopped, not by the investigation or a prosecutor, but at the request of the author and his wife.

2.16 On 3 June 2005, he was admitted to the Penitentiary Hospital as he was at risk of a heart attack. A police officer tried to interrogate him but he lost consciousness. On 6 June 2005, he complained to the Prosecutor General about investigative actions being performed during his hospitalization, in the absence of his lawyer. On 20 July 2005, the prosecutor found his complaint unjustified.

2.17 The author and his wife then complained about the unlawful actions of the investigation to the President of the Human Rights League, the Human Rights Committee of the Parliament and the Lithuanian Institute for Monitoring Human Rights, but to no avail.

2.18 On 28 February 2006, the author complained to the Prosecutor's Office, reiterating his claims of 6 and 13 June 2005. On 26 May 2006, the same prosecutor warned him and his wife that during the pretrial investigation they had submitted more than 100 repetitive claims to different institutions. According to the prosecutor, by doing that, the complainants had abused their right to appeal procedural actions and decisions and, had thereby interfered with the investigation.

2.19 On 1 September 2006, the Deputy Prosecutor General notified the author that during the pretrial investigation, he and his lawyer had filed more than 150 complaints. He stated that that unreasonably large number of repeated requests and demands had adversely

[1] See paragraph 2.4 supra.

affected the effectiveness and thoroughness of the investigation of the case, thereby violating the principle of a speedy trial under the Code of Criminal Procedure.

2.20 On 15 September 2006, the author complained to the Vilnius Second District Court, listing the unlawful actions of the prosecutor in question, including the actions that resulted in the deterioration of his health condition and the termination of the experimental treatment. On 27 September 2006, a pretrial investigation declared the request groundless. On an unspecified date, the author appealed that decision to the President of the Vilnius Second District Court, but to no avail. His subsequent similar complaints were dismissed.

2.21 The author further elaborates at great lengths on the recommendations of 5 July 2007 of the Medical Panel of the Centre for Hepatology, Gastroenterology and Dietetics of Vilnius University Santariskes Hospital regarding the positive effects of the treatment with the experimental drug.

2.22 On 18 March 2008, while hospitalized in Klaipeda Hospital and contrary to the medical doctor's prohibition to conduct investigative actions with him, the author received notification that he was a suspect and was also questioned in hospital.

The complaint

3.1 The author claims a violation of his rights under articles 7 and 10, paragraph 1, of the International Covenant on Civil and Political Rights, stating that the discontinuation of his participation in the clinical experiment had negatively affected his health. The fact that he was interrogated while in hospital in a helpless state amounted to a breach of his rights under article 10, paragraph 1, of the Covenant.

3.2 The author claims a violation of article 9, paragraphs 1 and 4, of the Covenant, stating that he needed to participate in the clinical experiment, but was unlawfully placed in custody on 19 May 2005, and the authorities refused to impose a less restrictive restraint measure.

3.3 The author also claims a violation of his rights under articles 10 and 14, paragraph 3 (d) and (g), of the Covenant, stating that he was interrogated while hospitalized in a helpless state and in the absence of his lawyer, so that he was compelled to testify against himself. In the latter regard, the author also states that on a number of occasions, offers were made that if he confessed his guilt, in return he would be released from detention on remand and be able to continue his treatment.

3.4 The author further claims a violation of his rights under article 14, paragraph 3 (b) and (g), of the Covenant, stating that, on 18 March 2008, while in hospital and contrary to his medical doctor's prohibition that investigative actions be conducted, he was officially notified that he had been declared a suspect of crimes, and he was questioned by investigators.

3.5 On 15 March 2010, the author claimed additional violations of his rights under article 14, paragraph 3 (b) and (e), of the Covenant, stating that he did not have enough time to prepare his defence as he was unable to acquaint himself with the pretrial investigation materials and to supplement them; that he could not freely communicate with his lawyer while in custody; and that the restraint measure was replaced with the prohibition to leave the city of Palanga. On 11 September 2010, referring to article 14, paragraph 3 (e), of the Covenant, the author added that he was denied the opportunity to question particular witnesses.

State party's observations on admissibility and merits

4.1 On 13 November 2009, the State party challenged the admissibility of the communication. It notes that on 1 December 2004, prior to his detention in 2005, the

author, of his own free will, decided to participate in the clinical experiment, and that he decided to stop it on 16 August 2005, claiming that as a detainee, he could not continue his participation. Between 19 May 2005 and 16 August 2005, the authorities guaranteed his participation in the experiment, and three times a week, he was taken to the health care institution conducting the research.

4.2 The experimental research was introduced to verify whether a particular drug was effective and safe for persons suffering from slow-progressing hepatitis C.

4.3 On 1 December 2004, the Centre for Hepatology, Gastroenterology and Dietetics of the Vilnius University Hospital (hereinafter "the Centre") invited the author to participate in the said research and he agreed. In this connection, the State party notes that the effectiveness of the drug was controlled by the application of a substance with no medical effect (a placebo) to a number of participants. Neither the patient nor the treating doctor knew whether it was the drug or the placebo that was being injected. Under his agreement with the Centre, the author could terminate participation at any moment.

4.4 On 19 May 2005, the Vilnius Second District Court placed the author into custody for three months. However, his participation in the experiment was ensured while in detention. On 18 July 2005, one of his lawyers requested the prosecutor to impose a less restrictive restraint measure, invoking article 8 of the Law on Pretrial Detention which prohibited detainees from involvement in scientific or medical experiments. On 29 July 2005, the prosecutor explained that article 8 of the Law was unreasonably interpreted as the author had started the experiment before his detention, and the authorities were only ensuring his continued participation while in custody.

4.5 The State party adds that the author's wife had addressed various State institutions concerning his participation in the research while in detention. Moreover, on 1 August 2005, she published an open letter to the Minister of Health in the biggest daily newspaper, *Lietuvos Rytas*. In this context, on 11 August 2005, the organizer of the research decided that the author should be excluded from the research. According to the State party, the author used his participation in the experiment to have his restraint measure altered. In addition, the allegations that his discontinued participation in the research had fatal consequences to his health were unfounded.

4.6 In this connection, the State party considers that the author's claims do not fall within the scope of articles 7 and 10 of the International Covenant on Civil and Political Rights. Article 7 of the Covenant protects the individual from being subjected without his or her free consent to medical or scientific experiments, but not from the discontinuation of medical or scientific experiments. Accordingly, this part of the communication is inadmissible under article 3 of the Optional Protocol.

4.7 Alternatively, the State party considers that the author has failed to substantiate his allegations or that any harm or suffering was of such a level as to constitute a violation of the mentioned articles of the Covenant. Therefore, the author's allegations under article 7 and 10 of the Covenant are unsubstantiated and thus inadmissible under article 2 of the Optional Protocol.

4.8 The State party adds that, in any event, the author has failed to exhaust available domestic remedies as required under article 5, paragraph 2 (b), of the Optional Protocol. In particular, a patient's right to appropriate treatment is provided for in article 3 of the Law on the Rights of Patients and Compensation for Damage to Their Health. Thus, the State party emphasizes that, with the view to defending his allegedly violated rights to adequate medical care, the author could have applied to the national authorities, including the State Medical Audit Inspection and the courts, and could have appealed in court against the Vilnius University Hospital, which could also be liable to compensate eventual damage.

4.9 The State party notes that on 16 August 2005, a request was submitted to a court for the application of provisional safeguards, namely, the resumption of injections of the experimental drug. On 18 August 2005, given the numerous procedural deficiencies of the request, the court established a new deadline for its submission. The new deadline for the submission did not exclude earlier presentation of the submission. Ignoring the indicated procedural deficiencies that precluded the examination of the request, on 30 August 2005, the author submitted the request to the President of the Vilnius First District Court, requesting the withdrawal of the judge who had handed down the decision of 18 August 2005. That request was dismissed on 1 September 2005 as manifestly ill-founded. On 8 September 2005, given that no appeal without procedural deficiencies had been submitted, the Vilnius City First District Court decided not to consider the request for provisional safeguards.

4.10 The State party further notes that the author is claiming a violation of his rights under article 10 of the Covenant, stating that he was questioned by the police while in the Penitentiary Hospital. Since the author did not specify the date of the police visit, the State party assumes that he is referring to the visit by an investigator on 6 June 2005 as recorded in the domestic proceedings. It notes that the author was hospitalized from 3 to 13 June 2005 and stresses that his statement that he was in a "pre-heart attack" state is incorrect. At that time, the author's state of health was satisfactory and his hospitalization was planned beforehand; it was not an emergency. The author's medical file contains no record of special or extraordinary visits by medical doctors due to the allegedly worsened state of the author's health or loss of consciousness on 6 June 2005. In addition, according to the results of the medical examination on 7 June 2005, the author's heart was rhythmical and no coronary deficiency was revealed. Accordingly, the author's allegations under article 10 that the visit by the investigating police officer on 6 June 2005 negatively affected his health are unsubstantiated and inadmissible under article 2 of the Optional Protocol. The State party submits that, in any event, the author failed to exhaust domestic remedies in that regard.

4.11 Regarding the author's allegations under article 9, paragraphs 1 and 4, of the Covenant, the State party notes that at the time of submission of its observations, the pretrial investigation had been completed and the criminal case was pending before the first instance court. The criminal case consists of 105 files and 13 suspects, including the author, have been charged for different crimes.

4.12 The State party adds that on 19 May 2005, when deciding the author's custody, the Vilnius Second District Court, concluded that the criminal case file contained sufficient evidence to assume that the suspect had committed the incriminated acts; that the author was suspected of having committed grave and serious crimes and could face imprisonment; and that the foregoing might motivate him to attempt to escape. It was also observed that the investigation was not over and that not all the suspects had been arrested, making it possible for the author to attempt to influence other persons (e.g. witnesses, experts, other suspects, etc.), as well as to hide or falsify significant evidence. The court concluded that the author might obstruct the proceedings. The State party emphasizes that the court took into consideration the author's state of health and concluded that there were no grounds to assume that, while in detention, he would not be provided adequate medical care.

4.13 The State party notes that on 16 August 2005, the Vilnius Second District Court endorsed the prosecutor's request to prolong the author's custody by three months. On 9 September 2005, the Vilnius Regional Court, on appeal, quashed the lower court's decision and the author was released on that day.

4.14 The State party notes, with reference to the jurisprudence of the Human Rights Committee, that in instances where the allegations are, in their essence, related to the assessment of facts, evidence and issues of domestic law by domestic courts, it is generally

up to the courts of the State party, and not the Committee, to evaluate the facts in a particular case and to interpret domestic legislation, provided that the evaluation of the facts and their interpretation of the law are not manifestly arbitrary or do not amount to a denial of justice. In the present case, the issues of "sufficiency" of evidence, the existence of the grounds for the imposition of the detention on remand, as well as the circumstances that should be taken into account when deciding the particular type of remand measure have been addressed. Thus, the author's claims under article 9, paragraphs 1 and 4, of the Covenant are unsubstantiated and inadmissible.

4.15 Regarding the author's claims under article 14, paragraph 3 (b), (d) and (g), the State party notes that this provision of the Covenant contains a set of minimum guarantees for the accused in criminal cases. The State party notes that three lawyers represented the author in the domestic proceedings. The various State institutions, including the investigation and the pretrial prosecutors, were overloaded with repeated complaints by the author. For instance, on 26 May 2006 the pretrial prosecutor, responding to the author's submission of 22 May 2006, indicated that his requests had already been examined and partly satisfied. The pretrial prosecutor drew the author's attention to the over 100 complaints had already been received from him, and that the entirety of the complaints and their repetitiveness was tantamount to abuse of the right of submission. On 1 September 2006, the Deputy Prosecutor General also notified the author and his lawyers that over 150 complaints had already been received and examined, and some of them had been satisfied.

4.16 Regarding the visit by a police officer on 6 June 2005, the State party reiterates the facts concerning the nature of the author's placement in the Penitentiary Hospital and his subsequent treatment. It further notes that the author had complained about the visit to the General Prosecutor on 6 June 2005. On 13 June 2005, the said submission was referred to the pretrial prosecutor for consideration.

4.17 The State party points out that, according to the police officer's official record, the visit of 6 June 2005 was initiated by the author and a lawyer. In particular, they had expressed the willingness to meet to provide information, off the record, concerning other members of the organized criminal group. When the police officer arrived, the author's counsel was not present, and as the author did not wish to communicate, the officer left. In that regard, the State party submits that the initiative taken by the author's lawyer to contact the police officer could be supported by the "off the record" meeting that took place on 7 June 2005, as documented in the author's medical records. According to the record of 7 June 2005, a doctor was called to the ward at 1 p.m. because the author had complained about pain in his chest. The author explained that he had been working with his lawyer and the investigation officer but had become tired. On 8 June 2005, the medical records indicated that the author was feeling well and had no complaints. The results of the medical examinations performed thereafter did not show any coronary deficiency or any other health-related problems. The State party stresses that the author was never questioned within the framework of the pretrial investigation during his hospitalization between 3 and 13 June 2005.

4.18 Finally, the State party strongly denies all of the author's allegations concerning attempts to coerce him into confessing guilt. In particular, it notes that the author never acknowledged any of the charges laid against him and still continues to deny them.

4.19 The State party concludes that, insofar as the police officer's visit did not constitute interrogation and did not create any legal consequence to the author, the author's allegations in that regard fall outside the scope of article 14, paragraph 3 (d) and (g), of the Covenant, and that part of the communication is inadmissible under article 3 of the Optional Protocol. Alternatively, it is unsubstantiated and thus inadmissible under article 2 of the Optional Protocol. That part of the communication is also inadmissible under article 5, paragraph 2 (b), of the Optional Protocol, as the author had complained to the Office of

the Prosecutor General, inter alia, about the circumstances in which he was questioned on 6 June 2005, and his complaint had been dismissed. However, the author never appealed that decision in court, as permitted under article 63 of the Code of Criminal Procedure.

4.20 Regarding the official notification that he was a suspect on 18 March 2008, the State party submits that on 5 March 2008, the author and his three lawyers were informed that he was being summoned for questioning on 13 March 2008. At the author's request, the interrogation was rescheduled to 14 March 2008. However, the author did not show up at the set time; it transpired that he was being treated in the urology unit of Klaipeda Hospital since 13 March 2008 and he had undergone an operation. On 15 March 2008, the Head of the urology unit of Klaipeda Hospital was questioned by the police and he explained that the author was suffering from urethral stenosis. However, the doctor confirmed that the operation was not an emergency.

4.21 The medical doctor who treated the author at the time explained to the police that the author's condition was satisfactory, that he was able to read and write, and that he was conscious and oriented. The doctor did not object to the author being notified in hospital on 18 March 2008 that he was a suspect in a crime.

4.22 On 15 March 2008, the author's lawyers were informed that due to the author's inability to travel to Vilnius in the light of his health condition, he would be notified in hospital at 10 a.m. on 18 March 2008 that he was a suspect. That was done on 18 March 2008 in the presence of his lawyer and, on that occasion, an official record regarding the author's refusal to be questioned was made because the author claimed that, due to his state of health, he was unable to testify as he did not understand the charges against him; in the meantime, he categorically denied having committed any crime. Also, it was noted that the record was read by the author's lawyer who confirmed its accuracy. When contacted on 20 March 2008, the attending physician explained that the author had already been discharged from hospital and that no negative implications had occurred as a consequence of the notification that he was a suspect.

4.23 Since the author and his lawyers were informed in writing on 5, 7 and 15 March 2008 that the official notification that the author was a suspect was going to be carried out, the State party submits that the author was informed sufficiently in advance for the purposes of article 14, paragraph 3 (b), of the Covenant.[2] He was discharged from hospital on 20 March 2008, and was not hindered in any way in the enjoyment of his right to defence.

4.24 Consequently, the author's complaints under article 14, paragraph 3 (b) and (g), of the Covenant are unsubstantiated and inadmissible under article 2 of the Optional Protocol, and for non-exhaustion of domestic remedies, under article 5, paragraph 2 (b), of the Optional Protocol.

4.25 On 18 February 2010, the State party submitted its observations on the merits of the communication. Regarding the discontinuation of the author's participation in the clinical trial, the State party reiterates its previous observations and submits that no violation of the author's rights under articles 7 and 10 of the Covenant has occurred.

4.26 As regards the claim of the effects to his health due to his questioning in the hospital in June 2005, the State party reiterates, with reference to its previous submission, that the author's rights under article 10, paragraph 1, of the Covenant were not violated.

4.27 Regarding the author's allegations under article 9 of the Covenant, the State party reiterates its previous arguments, and stresses that the requirements prescribed by this

[2] The State party refers to *a contrario Aston Little v. Jamaica*, communication No. 283/88, para. 8.3.

provision were observed in this case, and that considerable attention was paid to the author's health status when deciding the restraint measure. It notes that, in general, people diagnosed with hepatitis C lead a normal life, if provided adequate care. Nevertheless, by nature, the disease does not preclude the possibility of detention and this, in particular, was not claimed by the author at the national level. Moreover, even after the author's participation was discontinued, an alternative treatment was prescribed to him.

4.28 As concerns the author's claims regarding the police officer's visit on 6 June 2005, the State party reiterates its previous arguments, noting that it has difficulties assessing the circumstances of the claim, as it was not evaluated at the domestic level. Moreover, nothing demonstrates that the author was forced to testify against himself, as he had never admitted guilt regarding any of the charges laid against him. Consequently, his rights under article 14, paragraph 3 (d) and (g), of the Covenant were not violated.

4.29 On the allegedly unlawful notification on 18 March 2008 that the author was a suspect, the State party reiterates its previous submissions and maintains that the author's rights under article 14, paragraph 3 (b) and (g), of the Covenant were not violated.

Author's comments on the State party's observations

5.1 On 5 February 2010, the author reiterated that the Vilnius Second District Court, when deciding his restraint measure on 19 May 2005, knew that termination of his participation in the experimental treatment would have adverse consequences to his health.

5.2 He adds that he was not taken three times a week to the medical institution that was conducting the research, but to the medical unit of Lukiske Pretrial Detention Centre, where he received the medication. Once a month, he underwent examinations at the research institution.

5.3 The author submits that he, his lawyers and his wife had exhausted all available domestic remedies as required by article 5, paragraph 2 (b), of the Optional Protocol to the International Covenant on Civil and Political Rights.

5.4 As to the claims under article 9 of the Covenant, he highlights the recommendations of 5 July 2007 of the Medical Panel of the Centre for Hepatology, Gastroenterology and Dietetics of Vilnius University Santariskes Hospital concerning the positive effects of the treatment with the experimental drug.

5.5 Concerning his interrogation in the absence of a lawyer, he submits that he was interrogated on 5 and 6 June 2005. He had filed a complaint about that with the Prosecutor's Office. From 3 to 13 June 2005, he was treated in the Penitentiary Hospital for, inter alia, hypertonia, nervous breakdown, insomnia, chronic viral hepatitis C, coronary disease. From 3 to 7 June 2005, he states that was not examined by doctors, because the cardiologist was absent.

5.6 Regarding the notification that he was a suspect on 18 March 2008, he emphasizes the breach of article 188 of the Code of Criminal Procedure (regulating interrogation of sick suspects). In addition, a medical doctor at Vilnius Psychoneurological Centre recommends that no investigative actions be conducted with him at the material time, due to his health condition.

5.7 He further submits that the fact that he never admitted his guilt does not contradict his claim under article 14, paragraph 3 (g), as his arrest and unlawful interrogations while hospitalized and in the absence of a lawyer were aimed at forcing him to confess guilt for crimes he never committed.

5.8 On 15 March 2010, he reiterated his claims and added, in particular, that in violation of article 14, paragraph 3 (b), of the Covenant, he did not have enough time and opportunity

to prepare his defence, as he was denied the right to get acquainted with the content of the criminal case during the pretrial investigation (e.g., related to questioning of several witnesses, the decision to perform a psychiatric examination, documents relating to witnesses being granted anonymity), or to adduce materials either during the pretrial investigation or during the trial.

5.9 On 24 August 2005, his lawyer asked the prosecutor to allow him to acquaint himself with author's criminal case file; the request was rejected on 25 August 2005. The lawyer appealed the refusal, but on 16 September 2005, the Vilnius Second District Court quashed it, stating that only in exceptional situations, a suspect and his defence lawyer may be refused permission to become acquainted with case file materials. On 6 October 2005, the prosecutor permitted the lawyer to acquaint himself with case materials not related to the information-gathering process. On 10 October 2005, the author's lawyer appealed that decision; however, the court dismissed the appeal on 12 October 2005, stating that pretrial operational work was still ongoing and details could not be disclosed. The author was permitted to acquaint himself with the case file materials as allowed on 3 November 2005. He notes that the requests to become acquainted with particular materials of the pretrial investigation were rejected by the Prosecutor's Office and the courts on 6 December 2005, 25 January 2006, 10 and 14 July 2006, 11 and 23 August 2006, 7 September 2006, 6 October 2006, 16 October 2006, 20 October 2006, 25 October 2006, 27 November 2006, 9 January 2007, 22 and 23 January 2007, 5 and 19 March 2007, 7 June 2007. On nine occasions the courts ordered the Prosecutor's Office to review its refusals to give access to different materials, all of which were ignored.

5.10 On 31 March 2008, the author was informed that the pretrial investigation was finished and that he could acquaint himself with all the case materials. On 15 May 2008, he informed the prosecutor that the prohibition to leave Palanga had been imposed on him since 13 September 2005 and therefore he could not go to Vilnius to familiarize himself with the materials. On the same day, he was informed by the Fourth Organized Crime Investigation Service of the Criminal Police Bureau that copies of the pretrial investigation materials would be ready for his attention by 23 May 2008. On 22 May 2008, the author requested the prosecutor to allow him to travel to Vilnius to consult the case file, as at that time, he was receiving treatment in a hospital and the request to send the criminal case file materials to his defence lawyers had been denied.

5.11 The author further submits that, after the completion of the pretrial investigation, his and/or his defence lawyers' requests to adduce additional documents were not examined in a timely manner. Consequently, the author alleges that he was "deprived of the right" to appeal the pretrial prosecutor's decision to a higher prosecutor and, therefore, was unable to present his defence evidence by 15 December 2008, when the court trial started. The author also notes that on 15 December 2008, the court dismissed his requests regarding defence evidence. He adds that during the adjudication of the criminal case, neither he nor his lawyers were able to become acquainted with the evidence which had been removed from the file, whereas some of his defence evidence was disregarded.

5.12 Furthermore, the author claims a violation of article 14, paragraph 3 (b), of the Covenant, stating that he was hindered in communicating with his defence lawyers while in custody from 19 May to 9 September 2005. He was not precluded from communicating with his lawyers who were working on his case in Vilnius, but he had to obtain separate permission for that from a prosecutor. On 1 and 5 December 2005, he requested the prosecutor to, inter alia, allow him to meet with his lawyers in Vilnius without specific permission, but on 3 January 2006, his requests were dismissed. On a number of other occasions, he requested the prosecutor to alter his prohibition to leave Palanga, but without success. On 24 April 2009, the Vilnius Regional Court decided to, inter alia, alter his prohibition to leave Palanga without prior written permission.

5.13 By letter of 23 June 2010, the author reiterated his previous claims and added that his custody had been unnecessary and that due to his detention, he had lost 65 per cent of his working capacity and was suffering deep depression. As to the State party's argument that he could have complained about the allegedly inadequate medical care, he notes that the essence of his claim was his participation in clinical research while in detention. The unlawful participation was terminated on 16 August 2005; however, the State institutions did nothing to ensure his participation in the research (i.e. by altering his restraint measure).

5.14 The author also reiterates that he was interrogated in hospital in the absence of a lawyer, despite his poor state of health, on 5 and 6 June 2005, to make him confess guilt. On 6 June 2005, he complained to the Prosecutor General about the interrogations. He states that the State party incorrectly determined the date of the interrogations. He further contests the State party's contention about his state of health between 3 and 13 June 2005.

5.15 As to the violations of article 9, paragraphs 1 and 4, of the Covenant, the author refers to the decision of 9 September 2005 of Vilnius Regional Court, wherein the court held that custody had been applied on him "unreasonably".

5.16 Regarding the notification that he was a suspect on 18 March 2008, the author points out that the officials ignored his doctor's recommendation that investigative actions not be conducted with him, and that they could have waited until 20 March 2008, when he was discharged. He also submits that he has exhausted all available domestic remedies in the context of the present claim.

5.17 The author further reiterates that his arrest and unlawful interrogations in the hospital in the absence of a lawyer were means to obtain his confession to crimes he never committed. He contends that he has exhausted all available domestic remedies, as his request to postpone all the interrogations until his recovery and his complaint about the inappropriate interrogation were not duly examined.

5.18 The author reiterates that his and his lawyers' requests to, inter alia, become acquainted with and/or adduce certain documents in the criminal case file were not duly and in a timely manner examined by the prosecutor. In particular, he said that he appealed the pretrial prosecutor's decision of 22 August 2008 to a higher prosecutor to satisfy only partly his request to add a number of documents to the case file and his appeal was dismissed on 8 September 2008, the reason being that the pretrial investigation had been completed. Although, under article 64 of the Code of Criminal Procedure (CCP), a prosecutor's decision during the pretrial investigation could be appealed during the pretrial investigation period. Consequently, he was "deprived of the right" to appeal the pretrial prosecutor's decision to a higher prosecutor.

5.19 In conclusion, the author maintains that the present communication fulfils the requirements of articles 2; 3 and 5, paragraph 2 (b), of the Optional Protocol to the International Covenant on Civil and Political Rights.

State party's additional observations

6.1 On 2 July 2010, the State party noted, with regard to the author's claims under article 14, paragraph 3 (b), that they concerned exclusively the period of the pretrial investigation. In that context, the author alleged that it was impossible for him to become acquainted with the materials in the case file before the questioning of one of the witnesses; to familiarize himself with the psychiatric examination records and with the evidence provided by the witnesses to whom anonymity was applied. He also alleged that he was denied the right to appeal the decision of a prosecutor in his request to supplement the documents for the pretrial investigation after it had been completed and that he was denied the right to communicate with his lawyers without interference.

6.2 The State party notes that the author's criminal case has been referred to the court of first instance, namely, Vilnius Regional Court, for examination. Therefore, the issues invoked in the author's additional claims at the material time could still be raised and addressed in court, as well as later within appeal and cassation proceedings.

6.3 The State party adds that after a case is transferred to court for adjudication, the court is not precluded from collecting additional data (CCP, article 287). Under article 98 of the CCP, everyone is entitled to submit relevant information to a court. Under article 20 of the CCP, data collected and recorded in the course of a pretrial investigation may be considered as evidence only by a court decision. The court examines the data collected, verifies that it was collected lawfully and assesses its relevance to the case. Data transforms into evidence solely upon examination by the court. Parties in the proceedings may object to data submitted to or collected by a court (e.g. a request may be made that the court does not consider certain facts or materials as evidence). The issue as to whether the author's rights have been violated or whether claims are substantiated can only be established in the light of the entire criminal proceedings. Consequently, the State party submits that the author's claims about the violation of his right to access the materials of the pretrial investigation, as well as about the restricted rights to defence are premature.

6.4 The State party notes that the right to have adequate time and facilities to prepare for his defence, including the right to access case materials, should be differentiated at the various stages of criminal proceedings. Regarding the pretrial investigation stage, it points out that the criminal procedure legislation does not prescribe an absolute right to familiarize oneself with case file materials during the pretrial investigation. Article 181, paragraph 1, of the CCP states that a prosecutor may not grant the right to the suspect or the defence lawyer to familiarize himself with all or part of the materials of the pretrial investigation if such familiarization could undermine the conduct of the pretrial investigation. Such refusals may be appealed to the pretrial judge, whose decision is final.

6.5 Under article 177, paragraph 1, of the CCP, information about a pretrial investigation shall not be disclosed or may be disclosed at the discretion of the prosecutor and only to the extent deemed permissible by the prosecutor. During the pretrial investigation, the author was permitted to familiarize himself with certain parts of the case materials, which, at the material time, did not concern materials related to ongoing investigative actions. Moreover, the author was allowed to acquaint himself with the whole case file when the pretrial investigation was completed.

6.6 The State party further rejects the author's statement that the prosecutor ignored the decisions of the pretrial judges. It notes that, on numerous occasions, the pretrial judges confirmed that the prosecutor's decisions were justified (e.g. the decisions of 12 October 2005, 14 July 2006, 1 January 2007, 22 January 2007 and 19 March 2007) and in cases where the author's appeals were satisfied by a court, the prosecutor duly observed the decisions of the pretrial judges.

6.7 The State party further notes that the author misleadingly contends that the decision of the pretrial judge of 16 September 2005 was not executed by the prosecutor. The pretrial judge ordered the prosecutor to re-examine the author's request to acquaint himself with the materials of the pretrial investigation and to indicate the documents to which access was restricted and provide the reasons. By the decision of 6 October 2005, the prosecutor indicated that the author's lawyer was refused access to familiarize himself with the materials of the pretrial investigation that concerned the ongoing gathering of information. The prosecutor also noted that the investigation involved acts constituting elements of serious and grave crimes and that fact-finding and operative measures were ongoing. He also indicated that there was sufficient information showing that the suspect was exerting unlawful pressure on the pretrial investigation by making use of information obtained. He further stated that the author had published in the main daily newspaper several "open

letters", in which he disclosed the essence of evidence against him that was given by a witness in an attempt to create a negative image of the witness. Such actions constituted an unlawful pressure on the pretrial investigation. Moreover, the author had listed the surnames of other persons involved in the ongoing pretrial investigation. The State party adds that although the author was permitted to examine some of the materials in the case file, he nevertheless appealed that decision. On 12 October 2005, a pretrial judge of Vilnius Second District Court dismissed the appeal, and confirmed the reasonableness of the prosecutor's decision. On 3 November 2005, the author's defence lawyer was allowed to acquaint himself with the part of the file to which access was permitted.

6.8 As to the author's claim concerning his inability to become acquainted with documents related to the questioning of a witness, the State party notes that the pretrial judge examining the lawyer's appeal in that regard on 14 July 2006, and found the prosecutor's decision to refuse access to certain materials before the questioning justified. The State party emphasizes that the author and his lawyers were informed about the questioning of the witness and could have participated therein. Moreover, the author and his defence lawyer could raise the issues related to the present claim, including the questionings, during the ongoing court trial.

6.9 As concerns the author's request to acquaint himself with the prosecutor's decision to perform a psychiatric examination on two other suspects, as well as with the consecutive records, the State party notes that on 6 October 2006, the prosecutor partly satisfied that request and allowed the author to acquaint himself with the content of the questions to the experts. On 25 October 2006, a pretrial judge quashed the prosecutor's decision and indicated that, in line with article 209 of the CCP, the prosecutor should inform a suspect beforehand of the necessity to perform such an examination. However, since the prosecutor had adopted the order of the examination on 13 May 2005, i.e., before the author was considered a suspect, he was not informed of the said decision. Therefore, the pretrial judge ruled that the author should be permitted to access the content of the examination records. Moreover, the author and/or his defence lawyers could still raise those issues during the court trial.

6.10 The State party further notes that the author incorrectly submits that, on 19 March 2005, a pretrial judge had ordered the prosecutor to grant leave for him and his lawyers to familiarize themselves with the entire case file, and that that order was ignored. It points out that, in fact, the pretrial judge's decision had confirmed the prosecutor's decision as lawful and has dismissed the appeal. However, in the decision of 21 June 2007 of Vilnius Second District Court, the pretrial judge quashed the prosecutor's decision and stated that the prosecutor should allow the author and his lawyer to acquaint themselves with materials in the case file whose disclosure would not impede the pretrial investigation. On 13 July 2007, the prosecutor satisfied the author's request and provided extensive motivation for partially restricting access to some of the case materials, as, in addition to the above-mentioned unlawful disclosure of information of the pretrial investigation on the part of the author, other unlawful actions hindering the investigation had occurred. In particular, the prosecutor noted that shortly after the questioning of a witness at the request of the author, a publication appeared in the main daily newspaper, in which the essence of the witness' testimony was revealed. Furthermore, in the course of the investigation, two broadcasts were aired on television about other ongoing activities of the investigation. In his decision of 31 August 2007, the prosecutor listed all the documents with which the author and his lawyers were permitted to familiarize themselves.

6.11 Finally, the State party reiterates that the author and his lawyers were informed about their right to familiarize themselves with the materials of the case file at the end of the pretrial investigation. Indeed, the author was able to familiarize himself with the

materials of the pretrial investigation after it had been completed, and had approximately half of year to prepare his defence.

6.12 Regarding the author's alleged impossibility to adduce additional evidence during the pretrial investigation, the State party notes that under article 218, paragraph 4, of the CCP, a prosecutor adopts the decisions in that regard. On 22 August 2008, the prosecutor rejected the author's request to supplement the case file. Since the case file was transmitted to Vilnius Regional Court on 2 September 2008, the author's appeal against the prosecutor's decision of 22 August 2008, together with the request to supplement materials, was transferred to the court of first instance. Contrary to the author's statement that, on 15 December 2008, the court had dismissed all his and his lawyer's requests without examination, the State party points out that the court indicated that, at that stage of the proceedings, the request had to be dismissed as it could not consider requests to supplement the case file before it had examined the materials already on file. This statement, according to the State party, should not be considered as a definitive rejection of the request, but rather as a postponement of addressing it.

6.13 Regarding access to materials regarding witnesses who were granted anonymity, the State party submits that, although after the completion of the pretrial investigation, suspects and lawyers are entitled to acquaint themselves with the case file, and the author had exercised that right, it does not affect the institution of witness anonymity in criminal proceedings. In particular, in his decision of 17 March 2008, the prosecutor indicated that certain witnesses had been questioned in an ordinary way, but later requested anonymity due to fears about retaliation by the author. As such, the records of their testimonies were removed from the file. Given that this issue was also raised during the hearing of 15 December 2008, the court of first instance explained to the author and his defence that they would be able to question the witnesses to whom anonymity was applied at a later stage. Similarly, the court stated that the author's request to additionally question certain witnesses would be dealt with at a later stage of the examination of the case.

6.14 In the light of the above, the State party maintains that the author's claims regarding his ability to familiarize himself with the materials and his right to defence are unsubstantiated. In any event, the author's right to access materials in the case file and his right to defence were not restricted in a manner incompatible with article 14, paragraph 3 (b), of the Covenant.

6.15 On the author's claims about inability to communicate with his lawyers without interference, the State party notes that according to the information on file, he sought the alteration of the prohibition to leave Palanga, because his defence lawyers were based in Vilnius. Article 14, paragraph 3 (b), of the Covenant establishes the right to have adequate time and facilities to communicate with counsel of one's own choosing. The State party asserts that nothing prevented the author from choosing a lawyer practicing in Palanga, especially given the restraint measure. However, he chose lawyers practicing elsewhere. Nevertheless, the State party notes that the author's visits to Vilnius to meet his lawyers, not to mention other possible forms of communication, were not hindered. Quite to the contrary, the author's requests to the prosecutor, who, in accordance with article 136, paragraph 1, of the CCP, had the power to grant permission to leave the place of residence, were settled in an informal and prompt manner by fax. On several occasions, when examining the author's appeals against the prosecutor's decisions refusing to change the conditions of the imposed prohibition to leave Palanga, Vilnius Second District Court stated that the author was not prevented from going to Vilnius in order to visit doctors or lawyers. Moreover, the State party notes that the author had never submitted any complaints about hindrance or preclusion with regard to meeting with his defence lawyers. Therefore, the State party submits that that claim is unsubstantiated.

6.16 In light of above, the State party maintains that the complaints additionally submitted by the author on 15 March 2010, are premature or unsubstantiated and therefore thus inadmissible. The State party maintains that, in any event, the author's rights were not violated.

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

7.1 On 11 September 2010, the author pointed out that the court had postponed the adjudication of his criminal case on 15 December 2008. Thereafter, his lawyer requested the court to question several witnesses; however, that request was dismissed on grounds that, at that stage of the criminal proceedings, that constituted new evidence, and new evidence could not be examined before evidence already gathered had been examined. The decision as to whether to alter the prohibition to leave Palanga was also postponed.

7.2 The author further explains in detail the alleged breaches of national law by the Vilnius Regional Court and the prosecution concerning the unjustified anonymity of witnesses.

7.3 With reference to the State party's argument that a prosecutor's decision may be appealed to a pretrial investigation judge, the author reiterates that, on nine occasions, the pretrial investigation judge quashed decisions of the prosecutor and ordered the prosecutor to re-examine his requests to access to case file materials. He gives instances of the prosecutor's non-compliance with the established time limits for examination of his requests, and notes that he could not influence witnesses. He reiterates that he was denied the possibility to participate in the questioning of several witnesses and points out that without being acquainted with the materials, he was unable to prepare for the questioning of witness N.

7.4 The author further states that the prosecutor did not allow him or his defence lawyer to become acquainted with the pretrial investigation materials concerning the questioning of witnesses P and N, which took place on 31 May 2006 and 30 June 2006, nor the questioning of witness B. He provides information on how he had unsuccessfully challenged the refusal decisions in court.

7.5 The author adds that on 29 May 2006, the prosecutor rejected his request to be questioned, as he felt that the questioning by the pretrial investigation officer lacked objectivity. That refusal was upheld by a court on 21 June 2006. Accordingly, the author submits that he was precluded from giving evidence; therefore, his rights guaranteed under article 2, paragraph 3, of the International Covenant on Civil and Political Rights have been violated.

7.6 As to the State party's statement that he was able to become acquainted with all the materials of the pretrial investigation after its completion in March 2008, he notes that he became acquaint with the materials on 26 May 2008. However, he still could not access "hidden rulings, prosecutor's letters, separate assignments".

7.7 He further notes that the prosecutor's decision of 22 August 2008, refusing permission to adduce evidence, was appealed on 2 September 2008 to a higher prosecutor. The appeal was referred for examination to Vilnius Regional Court and on 15 December 2008, the regional court refused to examine his request.

7.8 Regarding the State party's argument that he could have opted for a lawyer in Palanga, the author points out that the national law provides for, inter alia, unhindered communication with the defence lawyer of one's choice and that the prohibition to leave Palanga served in fact as a punishment and a hindrance to his enjoyment of his right to defence.

Issues and proceedings before the Committee

Consideration of admissibility

8.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 93 of its rules of procedure, decide whether or not the case is admissible under the Optional Protocol to the Covenant.

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

8.3 The Committee notes the author's claims under articles 7 and 10 of the International Covenant on Civil and Political Rights that the termination of his participation in the experimental clinical trial on 16 August 2005 negatively affected his state of health. In that connection, the Committee notes that the right to participate or not in experimental clinical tests organized by a private entity with the aim of testing a particular drug and which has been entered into at one's free will prior to one's detention, as in the circumstances of the present case, does not fall within the scope of the Covenant. Consequently, the Committee concludes that those claims are incompatible with the provisions of the Covenant and, therefore, that part of the communication is inadmissible under article 3 of the Optional Protocol to the Covenant.

8.4 The Committee notes the author's claim under article 10 of the Covenant concerning his interrogation on 5 and 6 June 2005 while hospitalized, and which allegedly resulted in the deterioration of his health. In the light of the information on file, the Committee considers that claim inadmissible under article 2 of the Optional Protocol, as it is insufficiently substantiated.

8.5 Similarly, regarding the author's claims under article 9 of the Covenant concerning his allegedly unlawful placement in custody from 19 May to 9 September 2005, taking into account all pertinent information on file, the Committee considers that those claims are not sufficiently substantiated for purposes of admissibility, and are therefore inadmissible under article 2 of the Optional Protocol.

8.6 Furthermore, the author claims violations of his rights under article 14, paragraph 3 (d) and (g), of the Covenant, as on 5 and 6 June 2005, he was interrogated while in hospital and in the absence of a lawyer, and his helpless state in hospital was used by the investigation officer in an attempt to force him to confess guilt. In that connection, the Committee notes that, given the available information on file and taking into account that the author never actually confessed guilt, those claims are also insufficiently substantiated for purposes of admissibility. Accordingly, the Committee concludes that that part of the communication is inadmissible under article 2 of the Optional Protocol.

8.7 The Committee further notes the author's claims under article 14, paragraph 3 (b) and (g), of the Covenant that on 18 March 2008, while he was hospitalized and contrary to his medical doctor's prohibition to conduct investigative actions, he was notified that he was a suspect and, despite his poor state of health, was questioned by investigators. In that regard and in the light of the information on file, the Committee considers that the author has failed to sufficiently substantiate those claims and, therefore, that part of the communication is inadmissible under article 2 of the Optional Protocol.

8.8 Regarding the author's additional claims under article 14, paragraph 3 (b) and (e), of the Covenant that he did not have sufficient time and opportunity to prepare his defence since he was denied the opportunity to acquaint himself with the materials of the pretrial investigation and to supplement them, as well as to freely communicate with his lawyer, the Committee notes, first of all, that according to the information provided by the parties,

during the pretrial investigation, the author was precluded from acquainting himself with specific parts of the materials in the case file. However, in the light of the information on file, the refusals to grant him access to part of the materials were motivated and on a number of occasions, reviewed by national courts and while some were upheld or modified with more specific grounds for refusal, others were overruled and permission was granted. In those circumstances, the Committee is unable to conclude that the refusals in question were arbitrary. Furthermore, the Committee notes that the issue of supplementing the materials of the pretrial investigation (at the court trial stage) relates to the manner in which the national authorities evaluated evidence and determined what evidence specifically was relevant in the framework of the court trial. The Committee observes that those allegations relate primarily to the evaluation of elements of facts and evidence by the national authorities.

8.9 The Committee further notes the author's claim regarding the alleged impossibility to communicate freely with his lawyers, but it also notes that the information on file does not contain further details thereon, such as, for example, the exact context in which his contacts with his lawyers were obstructed.

8.10 The Committee recalls that it is generally up to the courts of States parties to evaluate the facts and evidence in a particular case, and that it is not up to the Committee to review the evaluation, unless it can be ascertained that the court's evaluation was clearly arbitrary or amounted to denial of justice, or that the court had violated its obligation of independence and impartiality.[3] Given the fact that adjudication before the court of first instance was still ongoing at the time the present claims were submitted and in the light of the information received, the Committee considers that in this case, the author has failed to demonstrate that the refusal to supplement the materials of the pretrial investigation or the postponement of the decision in that respect by the court had reached the threshold of arbitrariness in the evaluation of the evidence or that it amounted to denial of justice.

8.11 In those circumstances, the Committee considers that the author has failed to sufficiently substantiate his allegations under article 14, paragraph 3 (b) and (e), of the Covenant, and therefore that part of the communication is inadmissible under article 2 of the Optional Protocol.

8.12 Finally, the Committee notes that the author also claims a violation of his right to examine particular witnesses, in violation of article 14, paragraph 3 (e), of the Covenant, without however providing further explanations thereon, in particular, on the relevance of the examination of the witnesses to his criminal case. In the circumstances and in the absence of any other pertinent information, the Committee considers that the author has failed to sufficiently substantiate his claim for purposes of admissibility, and accordingly, that part of the communication is inadmissible under article 2 of the Optional Protocol.

9. The Human Rights Committee therefore decides that:

(a) The communication is inadmissible under articles 2 and 3 of the Optional Protocol;

(b) The present decision shall be transmitted to the State party and the author.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the present report.]

[3] See, inter alia, communication No. 541/1993, *Simms v. Jamaica*, decision of inadmissibility adopted on 3 April 1995, para. 6.2.

E. Communication No. 1897/2009, *S.Y.L. et al. v. Australia* (Decision adopted on 24 July 2013, 108th session)*

Submitted by:	S.Y.L. (represented by Kon Karapanagiotidis, Asylum Resource Centre)
Alleged victim:	The author
State party:	Australia
Date of communication:	28 August 2009 (initial submission)
Subject matter:	Expulsion to a country where the person fears persecution and having no access to adequate medical care
Procedural issues:	Non-exhaustion of domestic remedies; non-substantiation; incompatibility with the Covenant
Substantive issue:	Right to protection from cruel, inhuman or degrading treatment or punishment
Article of the Covenant:	7
Articles of the Optional Protocol:	2; 3; and 5, paragraph 2 (b)

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

Meeting on 24 July 2013,

Adopts the following:

Decision on admissibility

1.1 The author of the communication is S.Y.L., a Timor-Leste citizen born in 1939. He claims to be a victim of a violation by the State party of article 7 of the Covenant. He is represented by counsel.[1]

1.2 Pursuant to rule 97 of the Committee's rules of procedure, the Committee, acting through its Special Rapporteur on new communications and interim measures, requested the State party not to expel the author while the communication was being examined.

The facts as submitted by the author

2.1 In April 2006, during the conflict between the army and the police in Timor-Leste, the author, his wife and two sons fled to Australia, fearing for their safety. The author has six children, six grandchildren, three great-grandchildren, five brothers and two sisters, who

* The following members of the Committee participated in the examination of the present communication: Mr. Yadh Ben Achour, Mr. Lazhari Bouzid, Ms. Christine Chanet, Mr. Ahmad Amin Fathalla, Mr. Cornelis Flinterman, Mr. Yuji Iwasawa, Mr. Walter Kälin, Ms. Zonke Zanele Majodina, Mr. Kheshoe Parsad Matadeen, Mr. Gerald L. Neuman, Sir Nigel Rodley, Mr. Victor Manuel Rodríguez-Rescia, Mr. Fabián Omar Salvioli, Ms. Anja Seibert-Fohr, Mr. Yuval Shany, Mr. Konstantine Vardzelashvili and Ms. Margo Waterval.

[1] The Optional Protocol entered into force for the State party on 26 December 1991.

are all Australian citizens and live in Australia.[2] They financially supported the author and his family while they were still living in Timor-Leste. The author, his wife and two sons arrived in Australia on Sponsored Family Visitor visas.

2.2 On 19 July 2006, the author applied for a protection visa to the Department of Immigration and Citizenship (DIAC) due to fear of persecution based on his Chinese origin and the violence that was occurring in Timor-Leste. On 3 October 2006, the DIAC refused the author's application, holding that he had not substantiated his claim of a well-founded fear of persecution. On 4 January 2007, the Refugee Review Tribunal (RRT) upheld the decision of the DIAC, but recognized that there were some humanitarian considerations in relation to the author's application. On 15 April 2008, the Minister of Immigration refused the author's application for humanitarian intervention under the Migration Act. The author had claimed that his deportation would result in irreparable harm, as he and his wife and two sons relied on family support from one of their daughters, who live in Australia. He also invoked serious health problems, including tuberculosis. On 14 July 2008, the Minister of Immigration refused the author's second application seeking humanitarian intervention. On 17 June 2009, the Minister of Immigration refused the author's third application seeking humanitarian intervention on the basis of his and his wife's deteriorating health. On 12 August 2009, the DIAC notified the author, his wife and two sons of their obligation to depart Australia by 27 August 2009 or face detention.

2.3 While in Australia, the author received treatment for his deteriorating health, including diabetes, gout, high blood pressure and tuberculosis.

The complaint

3.1 The author considers that by returning him to Timor-Leste the State party would violate his rights under article 7 of the Covenant, as his deportation would amount to cruel, inhuman and degrading treatment. The author is elderly and needs the family support and immediate medical care and assistance provided in Australia.

3.2 The author needs constant medical attention and there is no comparable treatment available in Timor-Leste. Medical facilities in Timor-Leste are limited and basic medicines are available only in limited quantities. The author refers to a medical certificate dated 6 December 2006 signed by Dr. Erica Peters, consultant physician at the Western Hospital in Victoria, stating that the author suffers from tuberculosis and that his complex medical needs would not be met in Timor-Leste. The author also refers to a medical certificate of 26 February 2009 by Dr. Karen Winter from the Asylum Seeker Resource Centre (ASRC) Health Clinic in Victoria confirming the previous statement that the author would be at risk if returned to Timor-Leste due to inadequate medical services. A similar certificate by Dr. Karen Winter, also dated 26 February 2009, mentions that the author's wife suffers from cardiovascular problems which would not be adequately dealt with in Timor-Leste. The author submits that their deportation would deny them their right to health, which they could not receive anywhere else.

State party's observations on admissibility and merits

4.1 On 13 October 2010, the State party provided observations on the admissibility and merits of the communication. The State party notes that, in his asylum claim, the author stated that he left Timor-Leste to escape violence arising from the conflict between security forces in the country and that there was ongoing social instability, with local security forces unable to provide protection. The author also stated that, if returned, his two sons would be

[2] In 2004, the author, his wife and two sons had previously visited them on a tourist visa for one month.

in constant fear of local martial arts gangs and he himself might be targeted because of his Chinese ethnic origin. He also mentioned that he had been traumatized by years of invasion by Japan (1940s), Indonesia (1975), by the Santa Cruz massacre in Dili in 1991 and the turmoil that arose following the independence of Timor-Leste in 1999.

4.2 On 19 July 2006, the author applied for a protection visa on the basis that he feared persecution if he were to be returned to Timor-Leste. The protection visa application was refused by the Department of Immigration and Citizenship on 3 October 2006. The author sought review of this decision by the Refugee Review Tribunal (RRT), which affirmed the Department's decision. The author was entitled to seek judicial review of the RRT decision; however he did not do so. The State party therefore considers that he has not exhausted domestic remedies, as required under article 5, paragraph 2 (b), of the Optional Protocol.

4.3 The State party contends that the author's claims are unsubstantiated or, in the alternative, without merit. In October 2008, the State party undertook inquiries into the ability of a resident in Aileu Province (the author's home province) with serious mobility problems to receive medication for Type 2 diabetes, high blood pressure, tuberculosis and gout from local clinics or dispensaries without needing to travel to Dili. The inquiries disclosed that, although the standard of health care available to residents of Timor-Leste is below that available in Australia, the medication for the conditions the author suffers from could be accessed locally at the health clinic by a resident of the Aileu area provided the relevant conditions had been diagnosed and the appropriate medications had been prescribed. It would not normally be required for that person to travel to Dili to obtain the medications for those conditions. The Australian Department of Immigration and Citizenship's Health Operations Centre (HOC) assessed the author's medical reports and advised that, while the author and his wife do suffer from several chronic illnesses, these are currently controlled and may be treated in Timor-Leste. Further inquiries by the State party in 2009 disclosed that the medications required by the author and his wife are available in Dili and usually in the Aileu province, although at times there could be supply problems depending on transport or government funding. The HOC report confirms that the author and his wife will require regular medical review of their conditions and that there are doctors capable of managing their conditions in the author's home province.

4.4 The State party refers to the jurisprudence of the Committee against Torture in *G.R.B v. Sweden*, where it found that the aggravation of the author's state of health which would possibly be caused by her deportation would not amount to the type of cruel, inhuman or degrading treatment envisaged in article 16 of the Convention against Torture.[3] By the same reasoning, the State party submits that neither the exacerbation of the author's circumstances nor the circumstances of the medical system in Timor-Leste alleged by the author amount to torture, cruel, inhuman or degrading treatment or punishment. Similarly, in *D. v. United Kingdom*,[4] the European Court of Human Rights found that there had been a violation of article 3 of the European Convention of Human Rights due only to the exceptional circumstances of the applicant, including the critical stage of his illness (HIV/AIDS), the fact that he had only one family member and that he could not be guaranteed a hospital bed in his home country that could offer care to AIDS patients. The author's situation in the present case can be distinguished from that of *D. v. United Kingdom* in that neither the author nor his wife suffers from a terminal illness and that it has been shown that he and his wife will be able to be treated for their conditions in Timor-Leste.

[3] CAT communication No. 83/1997, *G.R.B v. Sweden*, Views adopted on 15 May 1998, para. 6.7.

[4] European Court of Human Rights, *D. v. United Kingdom*, Application No. 30240/96, Judgment of 2 May 1997.

Author's comments on the State party's observations

5.1 On 20 December 2010 the author submitted his comments on the State party's observations. He recalls that on 25 October 2007 he sought review at the Refugee Review Tribunal (RRT). Although the latter upheld the decision not to grant a protection visa, it accepted that some experiences suffered in Timor-Leste would have been devastating for the family. It concluded that its role was limited to determining whether the author satisfied the criteria for the grant of a protection visa. A consideration of his circumstances on humanitarian grounds was a matter solely within the Minister's discretion. Therefore, on 31 January 2007, the author applied to the Minister of Immigration under section 417 of the Migration Act for humanitarian intervention. The basis was hardship in the event of a return to Timor-Leste and the importance of maintaining the family unit. The author mentioned that he and his wife reside with, and are being financially supported by, their daughter Sonya and her husband. Close links exist between the family members. The author mentioned his advanced age and dire health condition. On 15 April 2008, the Minister refused to intervene, without giving reasons for his decision.

5.2 On 6 June 2008, the author applied to the Minister for a second time, seeking humanitarian intervention under section 417 of the Migration Act. The application was rejected on 14 June 2008 with no reasons provided. On 5 May 2009, the author made a third application on the grounds of the deteriorating health of both himself and his wife. The author had also recently been diagnosed with kidney disease. On 17 June 2009, the Minister refused to intervene.

5.3 The author considers that he has exhausted domestic remedies, as the RRT itself stated that a consideration of the author's circumstances was solely within the competence of the Minister. The author made three unsuccessful applications for ministerial intervention. No right of appeal exists to challenge an exercise of the Minister's discretion.

5.4 The author considers that, in view of the exacerbation of his medical condition that he would experience upon return to Timor-Leste, the implementation of the decision to remove him from Australia would constitute inhuman treatment in violation of article 7 of the Covenant. During their stay in Australia, the author and his wife have been diagnosed with chronic and debilitating diseases which were either not diagnosed or not effectively treated in Timor-Leste. Despite the progress the author has shown in responding positively to medical treatment, his continuous illness and advanced age place him at serious risk of worsening illness and premature death if he were returned to Timor-Leste.

5.5 The author's mobility remains permanently impaired, with a laboured and unsteady gait and inability to walk long distances. He remains a high-risk category for stroke and renal failure and his diabetes is likely to progress, requiring insulin injections in the future. More recent medical reports demonstrate the ongoing need for regular specialist review, monitoring blood tests and change/adjustment of medication. In a letter from Dr. Andrew McDonald,[5] serious concerns were raised regarding the likelihood of a rapid decline in the author's health upon return to Timor-Leste. The difficulty lies with the possible unavailability of access to ongoing specialist care; quality of health care; continuous supply of multiple medications; lack of guidelines for the management of chronic diseases; poor management of chronic conditions; and high risk of infectious diseases. Dr. McDonald's analysis is supported by a report from the World Health Organization which states that health care delivery in Timor-Leste suffers from a severe shortage of human resources. In 2004, there were 79 physicians, 1,795 nurses/midwifes and 14 pharmaceutical personnel, who provided health-care services to the whole population. Dr. McDonald states that if the

[5] Letter dated 17 December 2009.

author is returned to Timor-Leste his health status would be likely to decline rapidly and result in his death within one to two years, as he would not be able to access and obtain the continuing and regular specialist review, investigations, pharmacological treatment, monitoring and care he requires.

5.6 The author notes that the State party refers to the case-law of the European Court of Human Rights in *D. v. the United Kingdom*, where the Court found that the removal to Saint Kitts and Nevis of an applicant who was suffering from HIV/AIDS would further reduce his already limited life expectancy and would subject him to acute mental and physical suffering. The author contends that, in referring to such case-law, the State party has failed to recognize important similarities which would support a determination to the effect that exceptional circumstances exist in the author's case. The State party's assertion fails to take into account that the author's health is likely to deteriorate if he were to rely on medical treatment in Timor-Leste. Moreover, the author has only one child residing in Timor-Leste, who is not in a position to sustain the author and his wife and take care of their medical condition. The overwhelming majority of the siblings live in Australia and, during the time the author and his wife have been living there, they have heavily relied on their support.

Additional information from both parties

6.1 On 1 July 2011, the State party submits that the author's claims regarding access to medical care and the exacerbation of his medical condition are not in relation to rights contained in the Covenant and are therefore inadmissible pursuant to article 3 of the Optional Protocol.

6.2 None of the information provided by the author suggests that there is a risk of irreparable harm as referred to in the Committee's general comment No. 31 (2004) on the nature of the general legal obligation imposed on States Parties to the Covenant.[6] As previously mentioned, the State party has conducted inquiries into access to medical treatment in Timor-Leste for the author's condition. All these inquiries disclosed that the author would be able to access medical services and treatment for his conditions. There is no information provided by the author to suggest that his condition and the condition of his wife are terminal in nature or that they will become so by their being returned to Timor-Leste. In the medical report submitted by the author dated 17 December 2009, his doctor states that his health status would be likely to decline rapidly and result in his death within one to two years. However, there is no compelling evidence to suggest that as a necessary and foreseeable consequence of his return to Timor-Leste the author will be unable to access medical care to the extent that it constitutes cruel or inhuman treatment under article 7.

6.3 A pre-existing condition that may possibly be exacerbated by a person's removal does not amount to inhuman treatment under article 7. This is the conclusion reached by the Committee against Torture in *G.R.B v. Sweden*. In *D. v. the United Kingdom*, the European Court of Human Rights rejected the applicant's argument that there would be a direct causal link between his expulsion and his accelerated death such as to give rise to a violation of the right to life. Moreover, the Court stated that the exacerbation of the applicant's conditions stemmed not from factors for which the Government could be held responsible, but from his own fatal illness in conjunction with the lack of medical treatment in the receiving country. The Court only found that, in view of the exceptional circumstances, removal would amount to inhuman treatment. There are significant factual

[6] *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 40*, vol. I (A/59/40 (Vol. I)), annex III.

differences between the author's circumstances and the exceptional circumstances in *D. v. United Kingdom*. The author's illness does not require the same level of treatment and support as the terminal situation of the applicant in *D. v. United Kingdom*. According to the author's own submission, all his conditions may be treated with oral medication.

7.1 On 7 September 2011, the author submits that, contrary to the State party's assertion, his serious health condition relates wholly to article 7 of the Covenant. On the merits, he considers that the State party's analysis of *D. v. United Kingdom* fails to take into account the likely consequences of the author's debilitating and chronic illnesses if he were to be removed and forced to rely on medical treatment in Timor-Leste. Furthermore, the State party's submission fails to take into account Dr. McDonald's prediction that the author's health would be likely to result in his death within one to two years if he were returned to Timor-Leste. The European Court's conclusion that article 3 of the European Convention would be violated did not rely solely on the applicant's exceptional circumstances but on the lack of a guarantee that medical care would be provided to the applicant and the lack of moral or social support. The aforementioned factors are analogous to those in his case, given the lack of availability of adequate medical care in Timor-Leste and the fact that the author and his wife currently rely on their Australian daughters' financial, moral and health support in Australia.

7.2 The State party has drawn a comparison between his situation and the situation of the complainant in the decision of the Committee against Torture in *G.R.B v. Sweden*. However, the two cases are different. The claim of G.R.B. was based on her fear of torture (article 3 of the Convention against Torture) whereas the author's claim is related to the fact that his removal would constitute inhuman treatment under article 7 of the Covenant.

Issues and proceedings before the Committee

Consideration of admissibility

8.1 Before considering any claims contained in a communication, the Human Rights Committee must, in accordance with rule 93 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

8.2 The Committee notes, as required by article 5, paragraph 2 (a), of the Optional Protocol, that the same matter is not being examined under any other procedure of international investigation or settlement.

8.3 The Committee notes the State party's argument that the author has failed to exhaust domestic remedies, as required under article 5, paragraph 2 (b), of the Optional Protocol, as he did not appeal the decision of the Refugee Review Tribunal. The Committee notes the author's reply, according to which a consideration of his circumstances on humanitarian grounds was a matter solely within the Minister's discretion and that no right of appeal exists to challenge the exercise of the Minister's discretion. The Committee notes that the author's statement has not been challenged by the State party. As the only claim before the Committee concerns the violation of the author's rights under article 7 in connection with the deterioration of his health in case of return to Timor-Leste, the Committee considers that domestic remedies have been exhausted.

8.4 Regarding the author's claim that his return to Timor-Leste will exacerbate his health condition to an extent that amounts to inhuman treatment, the Committee notes the author's reference to a medical report dated 2009, according to which his health status would be likely to decline rapidly in Timor-Leste and result in his death within one to two years, as he would not be able to access the continuing and regular specialist review, investigations, pharmacological treatment, monitoring and care he requires. The Committee also notes the State party's argument that the Australian Department of Immigration and

Citizenship's Health Operations Centre (HOC) assessed the author's medical reports and advised that, while the author and his wife do suffer from several chronic illnesses, these are currently controlled and may be treated in Timor-Leste; and that further inquiries by the State party in 2009 disclosed that the medications required by the author and his wife are available in Dili and usually in Aileu Province although at times there could be supply problems, depending on transport or government funding. The Committee observes that the medical reports provided by the author, dated 2009 for the most recent, make assertions on the unavailability of adequate health care for the author in Timor-Leste without supporting those assertions with concrete data concerning the specific situation of the author. The Committee further notes that the author has not presented any reasons as to why it would be unreasonable for him to live in a location in Timor-Leste where adequate health care would be more available than in the Aileu province, nor has the Committee received information indicating an acute condition that would make the author's return to Timor-Leste an immediate threat to his health. In light of the information before it, the Committee considers that the author has not sufficiently substantiated that the possible aggravation of his state of health as a result of his deportation would reach the threshold of inhuman treatment within the meaning of article 7 of the Covenant.

9. The Human Rights Committee therefore decides:

(a) That the communication is inadmissible under article 2 of the Optional Protocol;

(b) That this decision shall be communicated to the State party and to the author.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the present report.]

F. Communication No. 1922/2009, *Martinez et al. v. Algeria* (Decision adopted on 28 October 2013, 109th session)*

Submitted by:	Gilbert Martinez and others (represented by counsel Mr. Alain Garay)
Alleged victims:	The authors
State party:	Algeria
Date of communication:	24 November 2004 (initial submission)
Subject matter:	Dispossession of property following the declaration of the State party's independence
Procedural issues:	Abuse of right; non-exhaustion of domestic remedies; incompatibility with the provisions of the Covenant
Substantive issues:	Right of peoples to freely dispose of their natural wealth and resources; freedom to choose one's residence; arbitrary or illegal interference, slander and prejudice to reputation; violation of minority rights; discrimination with respect to dispossession and property rights
Articles of the Covenant:	Articles 1, 5, 12, 17, 27; 2 (para. 1) and 26, read separately or in conjunction; 26 and 17, read in conjunction
Article of the Optional Protocol:	3

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

Meeting on 28 October 2013,

Adopts the following:

Decision concerning admissibility

1.1 The authors of the communication, dated 24 November 2004 and supplemented by additional information submitted in 2005 and 2006, are 590 persons of French nationality. They claim to have been the victims of violations by Algeria of articles 1, 5, 12, 17 and 27;

* The following members of the Committee participated in the consideration of the present communication: Mr. Yadh Ben Achour, Mr. Ahmad Amin Fathalla, Mr. Cornelis Flinterman, Mr. Yuji Iwasawa, Mr. Walter Kälin, Ms. Zonke Zanele Majodina, Mr. Kheshoe Parsad Matadeen, Mr. Gerald L. Neuman, Sir Nigel Rodley, Mr. Victor Manual Rodríguez-Rescia, Mr. Fábian Omar Salvioli, Ms. Anja Seibert-Fohr, Mr. Yuval Shany, Mr. Konstantine Vardzelashvili and Ms. Margo Waterval.

In accordance with rule 90 of the Committee's rules of procedure, Mr. Lazhari Bouzid did not participate in the consideration of the communication.

In accordance with rule 91 of the Committee's rules of procedure, Ms. Christine Chanet did not participate in the consideration of the communication.

of article 2, paragraph 1, and article 26, read separately or in conjunction; and of articles 26 and 17, read in conjunction. They are represented by counsel. The International Covenant on Civil and Political Rights and its Optional Protocol entered into force for the State party on 12 December 1989.

1.2 On 10 March 2010, the Committee, acting through its Chairperson, decided that the question of admissibility would be considered separately from the merits.

The facts as submitted by the authors

2.1 The authors, French citizens who were obliged to leave Algeria when it gained independence in 1962, were dispossessed of property which they had held in that country, contrary to the provisions of the Évian Accords of 18 March 1962.[1] Each author has submitted a copy of the decision of the National Agency for Compensation of French Overseas Nationals (ANIFOM) whereby France granted them compensation for the property that they had held in Algeria. However, they contend that the action taken by France did not provide them with fair compensation for the value of the confiscated property as of 1962, i.e., the year in which Algeria became a sovereign and independent State.

2.2 The authors recount the history of Algerian independence and state that, after this date, the State party could not or would not assume its responsibilities, inter alia, to ensure the safety and protect the moral and material interests of population groups domiciled in Algeria.

2.3 With regard to the measures taken by the State party concerning the property of persons who had left the country, the authors identify several different periods. During the first period, from July to September 1962, the dispossessions had no legal basis. They were the result of isolated acts by individuals or groups of individuals or of unauthorized actions by local officials which elicited no clear response from the State party. Later, an ordinance issued on 24 August 1962[2] governed the fate of vacant properties (those that had not been used, occupied or enjoyed by their legal owner for at least two months), placing them under prefectural administration. The ordinance was intended to protect the properties and preserve the owners' rights. In most cases, however, what it did was to perpetuate and provide a legal justification for the situation as it stood, as well as paving the way for further dispossessions, with the relevant decisions being left to the discretion of prefects, without any safeguards or prior formalities being required and without any effective avenue of redress. Nevertheless, some restitutions were ordered and actually carried out pursuant to this ordinance. Later on, a decree was issued on 23 October 1962[3] that prohibited and annulled all contracts for the sale of vacant property, including sale and rental agreements concluded abroad after 1 July 1962. The properties covered by contracts subject to such annulments were reclassified as vacant within the meaning of the ordinance of 24 August 1962. Subsequently, the decree of 18 March 1963[4] established conditions and safeguards in

[1] The authors cite the Évian Accords, particularly the "provisions concerning French citizens of ordinary civil status", which state that: "their property rights will be respected. No measures of dispossession will be taken against them without their being granted fair compensation established in advance. They will receive guarantees appropriate to their particular culture, language and religion. ... A Court of Guarantees, a national institution under Algerian law, will be responsible for ensuring that these rights are respected."

[2] Ordinance No. 62-020 of 24 August 1962 concerns the protection and management of vacant property.

[3] Decree No. 62-03 of 23 October 1962 regulates the transaction, sale, rental, lease or concession of movable or immovable property.

[4] Decree No. 63-88 of 18 March 1963 governs vacant property.

respect of declarations of vacancy and provided a legal remedy.[5] According to the authors, this remedy was not effective because the judges who heard the cases took a long time to issue a decision, and new provisions were issued which invalidated virtually all judicial guarantees. In fact, a decree of 19 May 1963[6] ruled out any possibility of legal recourse other than an appeal before a departmental commission[7] and, in addition to the classification of vacancy, introduced the broad concept of public order and social peace, thereby giving the authorities nearly absolute power of discretion. From a procedural point of view, the presiding judges of courts seized of interim relief applications filed under the 18 March 1963 decree declared themselves not competent, since the administration of such property fell under new legislation that did not provide for the submission of applications to the interim relief judge. The discretionary appeals commissions provided for in the decree were never set up.

2.4 Since the measures prescribed by these provisions were not time-bound, the actual situation in fact approximates to a disguised type of expropriation, even though, in strictly legal terms, the titular owners did not lose their property rights. Decision No. 16 Z.F., which dealt with the transfer of the proceeds from harvests of crops grown on properties previously owned by French farmers and nationalized by the decree of 1 October 1963,[8] was the only official compensation measure adopted on behalf of French nationals who had lost their property. The decision provided for the payment of 10 million old francs as compensation to be distributed among farmers and growers. However, negotiations concerning the vacant properties were unsuccessful.[9]

The complaint

3.1 The authors claim that there have been six different kinds of violations: (a) deprivation of members of the French minority of their properties and means of subsistence (article 1 of the Covenant); (b) denial of the right to freely choose one's residence in Algeria (art. 12); (c) unlawful interference with the authors' homes in Algeria, together with attacks on their honour and reputation (art. 17); (d) violation of the authors' rights as members of a minority group with a distinct culture (art. 27); (e) discriminatory measures constituting rights violations involving differential and unjustified treatment by the State with respect to dispossession of property (article 2, paragraph 1, and article 26, read separately or in conjunction, and articles 17 and 26, read in conjunction); and (f) discrimination in respect of property rights (art. 5). The authors consider that rights of

[5] Within two months, "by suing the Algerian State in the person of the prefect … before the competent interim relief judge of the prefecture in question". This was a fast, inexpensive procedure, but once again the implementation of the decree fell short of the expectations it had created.

[6] Decree No. 63-168 of 9 May 1963 concerns the placement under State protection of movable and immovable property whose acquisition, management, development or use might undermine public order or social peace. This decree sets a one-month deadline for appeals against prefectural decisions to place property under State protection and provides that such appeals are to be made before a departmental commission. All previous provisions not in conformity with the decree were repealed.

[7] The establishment of such a commission is provided for by Decree No. 63-222 of 28 June 1963, which deals with appeals against prefectural decisions to place certain properties under State protection. Under this decree, appeals could be filed with the prefect, who would then refer the application to a departmental commission and, subsequently, to a national commission to be set up within the Ministry of the Interior.

[8] This decision was published in the Official Gazette of Algeria of 17 March 1964.

[9] Decree No. 63-64 of 18 February 1963, which set the amounts of compensation to be provided for the occupation of residential business premises considered vacant, explicitly provided that the owners of vacant property would receive no compensation and stated that the relevant rights would be covered in subsequent legislation.

individuals acquired under the predecessor State should be safeguarded by the successor State. This principle is part of general international law, and failure to recognize it engages a State's international responsibility. The State party should have upheld and protected the property rights of French nationals repatriated from Algeria, but it has failed to do so.

3.2 In respect of the exhaustion of domestic remedies, the authors are of the view that these remedies have no prospect of success. First, the failure to set up the court of guarantees provided for in the Évian Accords has resulted in a procedural deadlock, since that court was supposed to order investigations, annul laws that are incompatible with the *Déclaration des garanties* (declaration of guarantees) and rule on all compensation measures. Second, certain avenues of redress were opened under the regulations authorizing dispossession but have been closed by other decrees.

3.3 The following remedies were theoretically available to the wronged owners. First, before the Supreme Court,[10] they could: (1) bring annulment proceedings in respect of the decrees under which the vacant property regime was introduced, the decree of 9 May 1963 and that of 1 October 1963; (2) file an appeal against the decisions of the national commission ruling on appeals against measures enforcing the decree of 9 May 1963; (3) file an appeal against prefectural decisions taken pursuant to the decree of 1 October 1963; (4) an appeal against decisions to declare property vacant; (5) file an application for judicial review of appeals court judgements rendered under the procedure established by article 7 of the decree of 18 March 1963; and (6) file an application for judicial review of cases in which the seizure of property was the result of an administrative decision. Secondly, it was possible to appeal to an interim relief judge against any decision to declare property vacant at a future date. Lastly, an administrative appeal could have been filed with the commissions established under the decree of 9 May 1963 against decisions to place property under State protection or to declare property vacant. Three actions were brought before the president of the Algiers *Tribunal de Grande Instance* (court of major jurisdiction) under the decree of 18 March 1963;[11] these appeals were successful in the sense that the court either declared the decisions null and void or ordered an expert review that found that the property was not vacant. Encouraged by the outcome of these three cases, many other proceedings were instituted, but the favourable judgements could not be executed. The appeals filed under the decree of 9 May 1963 never came to anything because the commissions were never set up. Two decisions were rendered in May 1964 that set aside the judgement of the president of the court in Algiers and affirmed that the interim relief judge remained competent to hear cases brought under the terms of the 18 March 1963 decree.

3.4 All proceedings that could reasonably be brought were instituted. The Algerian courts either declared themselves not competent, referred the case to the administrative commission provided for by the decree of 9 May 1963 (which was never set up) or granted the appeal, but in these latter cases, the decisions were not enforced. As for appeals to the Supreme Court, applications for judicial review of administrative decisions stand no chance of success in practice. Given that no French citizen exiled from Algeria has obtained satisfaction for his or her dispossession, the burden of proof falls on the State party.

3.5 In view of the impossibility of obtaining justice in the State party, a number of French citizens exiled from Algeria turned to France: the Conseil d'État rejected 74 appeals on 25 November 1988, 17 February 1999 and 7 April 1999 (the *Teytaud and others*

[10] Established by Act No. 63-218 of 18 June 1963.

[11] However, the decrees nationalizing agricultural property, tobacco plantations, flour mills, semolina factories, transport firms, cinemas, etc., did not provide for any amicable settlement procedure or form of litigation. Only administrative appeals were possible.

cases[12]). They subsequently turned to the European Court of Human Rights.[13] The Court found that the applicants had been dispossessed of their property by the Algerian State, which was not a party to the European Convention for the Protection of Human Rights and Fundamental Freedoms.

3.6 With regard to the admissibility of the communication, the authors argue that it has been submitted by individuals who, when the violation of the Covenant first occurred, were subject to the State party's jurisdiction; that they are personally the victims of violations that have continued since 1962; and that the matter is not being examined under another procedure of international investigation or settlement.

3.7 With regard to the Committee's jurisdiction *ratione temporis*, the effects of the alleged violations of rights enshrined in the Covenant are continuing and lasting. While in principle the Committee has no jurisdiction *ratione temporis* over acts committed by a State party prior to its ratification of the Optional Protocol, the Committee becomes competent if the acts in question continue to have effects after the entry into force of the Protocol and continue to violate the Covenant or have effects that in themselves constitute a violation of the Covenant.

3.8 While it is true that the authors were obliged to wait until 2004 to submit their case to the Committee, inasmuch as the Covenant and the Optional Protocol set no time limits on submissions, the submission of the communications in 2004 in no way constitutes an abuse of the right of submission and is in keeping with the Committee's jurisprudence. In the first place, the appeals submitted to national courts in Algeria since 1962 have been unsuccessful. Second, Algeria did not ratify the Covenant and its Protocol until 1989. Third, after that, the authors, as French nationals and by reason of their nationality and culture, naturally turned to the French authorities rather than challenging a foreign State. Fourth, their recourse to French and European proceedings (from 1970 to 2001) accounts for the time elapsed between 1962 and 2004. Fifth, in August 2001, the authors, as applicants before the European Court of Human Rights, were informed by their counsel that the Court's decisions put a definitive end to all the proceedings instituted. It was not until January 2004 that the authors' current counsel was asked to look into the case and submit it to the Committee. Sixth, on 5 December 2002, the President of the French Republic announced the adoption of a fourth piece of legislation providing for national contributions to benefit repatriated French citizens, which raised hopes for a definitive and comprehensive solution. However, bill No. 1499 of 10 March 2004 did not include a mechanism for providing compensation for confiscated property.

3.9 With respect to the alleged violation of article 1, paragraph 2, of the Covenant, the authors contend that, because they belong to the community of French citizens exiled from Algeria, they have witnessed a serious infringement of their right as individuals to exercise collective rights (in particular because of their inability to dispose freely of their natural wealth and resources), which include the right to own property and the right to work.

[12] In a ruling concerning an appeal filed against the decisions rendered on 11 July 1996 by the Paris Administrative Appeal Court, on 17 February 1999 the Conseil d'État found that the State of France bore no responsibility in the matter, since the Évian Accords included no clauses or undertakings guaranteeing French citizens residing in Algeria that, if they were deprived of their property by the State of Algeria, the French Government would compensate them for their loss.

[13] See applications Nos. 48754/99, 49720/99, 49721/99, 49723/99, 49724–30/99, *Teytaud and others v. France*, inadmissibility decision of 25 January 2001; and applications Nos. 52240/99 to 52296/99, *Amsellem and others v. France*, inadmissibility decision of 10 July 2001.

3.10 With regard to the alleged violation of article 12, the authors consider that the conditions under which they fled from Algeria are comparable to exile. Because of the nature of Algerian laws on vacant property and confiscations, the authors were unable to establish residence in Algeria or remain there. They were unable to choose their residence freely and yet were never officially notified of any restrictions of the kind provided for in article 12, paragraph 3. The deprivation of the authors' freedom to choose their residence is incompatible with the rights enshrined in the Covenant.

3.11 With regard to the alleged violation of article 17, the authors submit that the dispossession measures were not legal. The regime instituted by the State of Algeria did not uphold the principle of lawfulness within the meaning of article 17. The interference with the authors' privacy, family and home had no basis in Algerian law. The State had no legal authority to proceed as it did purely on the basis of administrative regulations and did not provide legal protection of any sort to prevent the authors from being exiled.

3.12 Regarding the alleged violation of article 27, the authors identify themselves as members of a minority whose right to enjoy their own culture in community with other members of their group was denied in 1962. The authors have been deprived of their rights as a result of the failure to provide effective safeguards for the French minority. Having been forced into exile, they have been prevented from exercising their right to live in Algeria within their own cultural and linguistic milieu.

3.13 Concerning the alleged violation of article 2, paragraph 1, and article 26, read separately or in conjunction, and of articles 26 and 17, read in conjunction, the authors are victims of the continuing confiscation of their property based on discriminatory legislation that has impeded the exercise of their property rights without any objective, reasonable justification. The Algerian law of 26 July 1963[14] concerning confiscated property established the general principle, which has been applied in a selective and discriminatory manner, that property that had belonged to "agents of colonization" became the property of the State. Under certain conditions, nationalized property was then returned to people whose land had been nationalized, but only if they were "individuals of Algerian nationality",[15] in contravention of the guarantees provided under the Covenant and the Committee's jurisprudence.

3.14 Moreover, the compensation mechanism of 17 March 1964[16] benefits only one particular population group (farmers), thus constituting a form of discrimination. The mechanism unjustifiably established an arbitrary distinction in treatment that benefited farmers alone. Yet the obligation to compensate without discrimination is the corollary of the right to nationalize. There has therefore been a violation of article 2, paragraph 1, and article 26, read separately or in conjunction, and of articles 26 and 17, read in conjunction.

3.15 The alleged violation of article 5 of the Covenant stems from the denial of the authors' rights and freedoms in 1962. The scope of article 5, paragraph 2, also provides grounds for raising the question of the implementation of article 17 of the Universal Declaration of Human Rights. Given the alleged violations mentioned above, there has also been a violation of article 5.

[14] Act No. 63-276 of 26 July 1963 concerns property confiscated and retained by the colonial administration.

[15] Article 3, Ordinance No. 95-26 of 25 September 1995, amending and supplementing Act No. 90-25 of 18 November 1990 concerning land planning, with reference to Act No. 62-20 of 24 August 1962.

[16] Decision No. 16 Z.F., published 17 March 1964, which dealt only with French farmers whose property had been nationalized.

3.16 In view of the mental pain and anguish that they have suffered, the authors expressly ask the Committee to acknowledge that the State party, which is in breach of its obligations under the Covenant and under its national laws, is obligated to remedy this series of violations. Satisfaction in this case would constitute an appropriate form of compensation for the non-material damage suffered. There would be a degree of satisfaction in receiving an acknowledgement of the fact that the communication stands on its own merits. The authors do not, however, lose sight of the need for reparation in the form of just and equitable financial compensation for their confiscated property in Algeria.

State party's observations on admissibility

4.1 On 28 February 2010, the State party contested the admissibility of the communication. It points out that on 1 November 2006 the Committee declared a similar communication, submitted by Armand Anton, to be inadmissible. This decision was based on the non-retroactivity of the implementation of the Covenant and on the fact that the Covenant did not cover property rights. The Government of Algeria wishes to know why the Committee has not, despite the aforementioned precedent, declared all these communications to be inadmissible on the grounds that they are an abuse of the right of submission under article 3 of the Optional Protocol.

4.2 Additionally, the State party argues that the authors have not exhausted all domestic remedies. The Évian Accords provided safeguards for French citizens wishing to remain in Algeria. The authors or their heirs, however, voluntarily left Algerian territory, leaving their property "vacant". This led the Government to take measures to safeguard public order and security.

4.3 A United Nations body cannot agree to consider a communication of this nature because doing so would infringe the Charter of the United Nations, which establishes that the right to self-determination of peoples under foreign domination must be respected. The Committee should have considered these communications to be incompatible with article 1 of the Covenant. In the State party's view, the acceptance or consideration of such a communication would be tantamount to a legitimization of colonization and a reversal of the law, with the colonizers asking to be compensated by the colonized country, which itself has been the victim of colonial dispossession.

Authors' comments on the State party's observations

5.1 In letters dated 10 May 2010 and 3 January 2012, the authors submitted comments on the State party's observations. With regard to the exhaustion of domestic remedies, the authors reiterate their claims about the lack of effective remedies and ask the State party to effectively demonstrate which forms of appeal are open to them. The authors cite Ordinance 10-01 of 26 August 2012 containing the Supplementary Act on Finance for 2010, article 42 of which states: "Any transaction carried out by the original owners, inside or outside the country, involving immovable property whose ownership has been returned to the State following nationalization, establishment of State control or abandonment by the owners is null and void. Restitution of property whose ownership has been transferred by the State is also prohibited."

5.2 The authors deny the State party's claim that they "voluntarily" left Algeria. The State party states the "facts" without providing the least bit of documentary or detailed evidence. The authors also reject the State party's assertions concerning the right of self-determination.

5.3 With regard to the continuing nature of the violation, making a distinction between a non-recurring illicit act with continuing effects and a continuing illicit act requires a subtle analysis of the facts and the law. The deciding body will have jurisdiction if the dispute

between the parties (claims and responses) arises after the relevant instrument's entry into force, even if the disputed events or the situation that led to the dispute occurred earlier. If, however, the reason for the claim (or the source of the dispute) is a set of facts or events subsequent to the critical date, the deciding body will have jurisdiction even if the illicit nature of the acts stems from the modification of or failure to maintain a situation created earlier. The effect of time-based considerations therefore necessitates a close study of the facts and the law, and the question should be addressed as part of the examination of the merits.

Issues and proceedings before the Committee

6.1 Before considering any claim contained in a communication, the Human Rights Committee must decide, in accordance with rule 93 of its rules of procedure, whether the communication is admissible under the Optional Protocol to the Covenant.

6.2 The Committee takes note of the 15-year delay between the ratification of the Optional Protocol by the State party in 1989 and the submission of this communication in 2004. It observes that there are no explicit time limits for submission of communications under the Optional Protocol. However, in certain circumstances, the Committee is entitled to expect a reasonable explanation for such a delay. In the present case, the Committee notes counsel's various arguments, which, in his view, explain why the authors were obliged to wait until 2004 to submit the communication to the Committee (see para. 3.8). With regard to the argument that the State party did not ratify the Covenant and the Optional Protocol until 1989, counsel does not explain why the authors did not initiate proceedings in the State party at that stage. The Committee notes that the authors benefited from compensatory measures introduced by France[17] and that the authors decided to file a case against the State party, not with its national courts or administrative agencies, but directly with the Committee, only after becoming aware that the French bill No. 1499 of 10 March 2004[18] did not include a reparation mechanism that provided for further compensation for property confiscated in Algeria. The Committee is of the view that the authors could have had recourse to proceedings against the State party once the latter had acceded to the Covenant and the Optional Protocol and that the proceedings pursued in France did not prevent them from lodging a complaint against Algeria with the Committee. The authors have not provided any convincing explanation to justify their decision to wait until 2004 to submit their communication to the Committee. In the absence of such an explanation, the Committee considers that submitting the communication after so long a delay amounts to an abuse of the right of submission and finds the communication inadmissible under article 3 of the Optional Protocol.[19]

[17] Act No. 87-549 of 16 July 1987 relating to the payment of compensation to repatriated persons was intended to provide a final settlement of all cases of lost or "confiscated" overseas property.

[18] Act No. 2005-158 deals with national recognition and compensation for repatriated French nationals and was adopted on 23 February 2005. It primarily concerns two categories of persons: repatriated persons and *harkis*. In the case of repatriated persons, the Act provides for the reimbursement of the amounts that were deducted from compensation paid to them in the 1970s as repayment for resettlement loans. These loans had been granted to those who wished to start businesses in France. In the case of *harkis*, the law provides for an *allocation de reconnaissance* (gratitude payments).

[19] See communication No. 787/1997, *Gobin v. Mauritius*, decision on admissibility adopted on 16 July 2001, para. 6.3, and communication No. 1434/2005, *Fillacier v. France*, decision on admissibility adopted on 27 March 2006, para. 4.3.

7. The Human Rights Committee therefore decides:

(a) That the communication is inadmissible under article 3 of the Optional Protocol to the International Covenant on Civil and Political Rights;

(b) That this decision shall be transmitted to the State party and to the authors.

[Adopted in English, French and Spanish, the French text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the present report.]

Appendix

List of authors

1. Acquaviva Valero, Dolores
2. Adragna, Rose
3. Aguado, Antoine
4. Alberola, Marie
5. Albouy, Maryse (née Jurado)
6. Allione, Régine
7. Amador, Germaine
8. Amate, Henry – Marius
9. Amate, Henry
10. Amate, Henry-Marius
11. Amate, Maryse
12. Amate, Pierre
13. Anahory, Ambroise
14. Andreo, Emma
15. Andreo, Jean Joel
16. Anglade, Gérard
17. Anglade, Marcel
18. Anglade, Roleine
19. Aracil, Alain
20. Aracil, Lucie
21. Arnaud, Alain
22. Arnaud, Janine
23. Arnaud, Maryse
24. Arnaud, Rene
25. Asnar, Marie-Louise (née Castano)
26. Asnar, Michelle (née Brotons)
27. Astier, Nelly
28. Audisio, Danielle (née Faes)
29. Audouy, Marie (née Toustou)
30. Auzias, Monique
31. Averseng, Michel
32. Azorin, Rene
33. Azzopardi, Charles
34. Ballester, Jacqueline
35. Baltazar, Bernadette
36. Bandet, Huguette
37. Banon, Philippe
38. Barbaud, Francoise
39. Barbaud, Paul-Robert
40. Barcelo, Marcel
41. Barret, Carmen (née Garcia)
42. Barret, Jean-Louis
43. Barriere, Denise
44. Bartolo, Eliette
45. Bayard, Denise
46. Bayard, Serge
47. Bellier, Helene
48. Bellier, Paul
49. Belzer, Jacques
50. Bernad, Jean-Jacques
51. Bernad, Jean-Pierre
52. Bernad, Lucienne
53. Bernard, Olga
54. Billard, Andre
55. Billard, Marie
56. Billuart, Adele
57. Birebent, Danielle (née Garcia)
58. Birebent, Paul
59. Blandin, Marie-Claude
60. Blandin, Norbert
61. Bobbia, Jean-Charles
62. Bobbia, Marie-Claude
63. Bobbia, Renee
64. Bobbia, Marie-Yvonne
65. Boned, Claudine
66. Boronad, Vincent
67. Borras, Andre
68. Borras, Felicie
69. Borras, Gabriel
70. Borras, Jacques
71. Borras, Jacques Pierre
72. Bosc, Jean-Pierre
73. Bossert, Georges
74. Bossert, Luc
75. Boubay, Marie-Helene (née Dubuche)
76. Boucherat, Helyette
77. Boucherat, Rollande
78. Bouie, Jacqueline (épouse Mas)
79. Bourgeois, Alain
80. Bourgeois, Jean-Michel

81. Bourgeois, Micheline (née Sala)
82. Bourrel, Annie
83. Boutin, Georges
84. Brevard, Marcelle
85. Cabanie, Alfred
86. Cabanie, Simone (née Goillot)
87. Cabot, Jacques
88. Cabot, Jean-Louis
89. Cabot, Suzanne
90. Cachia, Henri
91. Calleja, Herve
92. Calmels, Renee
93. Cambos, Lydie (née Cannova)
94. Camelis, Jean-Michel
95. Campila LOUIS, Nicole
96. Camprubi, Josette
97. Camps, Albert
98. Camps, Nicole
99. Cantineau, Paule (née Cardona)
100. Caravaca, Joseph
101. Cardenti, Alain
102. Cardi, Edouard
103. Cardi, Ignace
104. Cardis, Hippolyte
105. Carriere, Jean
106. Casa, Marie-Therese
107. Casanova, Yves
108. Casavecchia, Fernande
109. Casin, Charlette
110. Cassagne, Jean-Marie
111. Cassagne, Pierre
112. Castet, Suzanne
113. Cazaux, Armand
114. Cazenave, Georges
115. Chamuel, Michele
116. Charrin, Georges
117. Charrin, Jean-Claude
118. Charrin, Pierre Yves
119. Cheymol, Edmond
120. Chieze, Jean
121. Ciomei, Pierre
122. Clavenad, Sylviane (née Malisson)
123. Cohen SOLAL, Fernand
124. Colin, Robert
125. Colino, Mathieu
126. Combes, Jacqueline (née Fernet)
127. Combes, Philippe
128. Comte, Chantal (née Serres)
129. Comte, Pierre-Yves
130. Conte, Anne
131. Corbalan, Vincent
132. Cordina, Francis
133. Cornus, Lydia
134. Cortes, Renee
135. Coutelier, Andre
136. Crivello, Marcel
137. Crombet, Michelle (née Birebent)
138. Cros, Claude
139. Cros, Guy
140. Cros, Jean Felix
141. Cros, Renee
142. Cuba, Francoise (épouse Bernardo)
143. Danet, Eliane
144. Daries, Jean-Marie
145. David, Alain
146. David, Angele (née Lledo)
147. David, Guy
148. Davin, Nicole (épouse Bobbia)
149. Daymand, Paulette
150. Debono, Louis
151. Delenseigne, Anny
152. Deleuze, Madeleine
153. Delzenne, Marie-France (née Borras)
154. Deom, Reine (née Dross)
155. Devaux, Jean-Marcel
156. Di Maio, Andre
157. Di Maio, Bernadette
158. Di Maio, Jean-Paul
159. Di Maio, Pierre
160. Dianoux, Adrienne
161. Dimech, Marcelle
162. Distinguin, Cyril
163. Doll, France
164. Doll, Veronique
165. Donnadieu, Jean-Marie
166. Doumens, Jean
167. Dubouch, Alain
168. Dubouch, Bernard
169. Dubouch, Roger
170. Dudognon, Jacqueline (née Noris)

171. Dumont, Georgette
172. Dupeux, Pierre
173. Duplan, Armand
174. Dupont, Arlette (née Gonzalez)
175. Dupont, Rene
176. Dupont, Suzanne
177. Dupuy, Jacques
178. Duvergey, Lisette (née Kientzler)
179. Dye, Jean-Marie
180. Espinera, Camille
181. Espinosa, Manuel
182. Eymard, Denise
183. Eymard, Monique
184. Fa, Odile
185. Fabrer, Bernard
186. Faur, Monique
187. Fedoul, Dris
188. Fenollar, Rene
189. Fernandez, Gilbert
190. Fernandez, Jose
191. Ferrer, Bernadette
192. Ferrer, Lucienne
193. Fieschi, Jacques
194. Fieschi, Marie-Jose
195. Fillacier, Claude
196. Fillacier, Monique
197. Flamant, Nelly (née Pitavin)
198. Flinois, Claude
199. Flouttard, Jean-Pierre
200. Flouttard, Suzanne (née Cotte)
201. Foissier, Gislaine (née Perles)
202. Fontaine, Christian
203. Fonti, Reine
204. Fort, Rolland
205. Fortesa, Louis
206. Fouilleron, Armande
207. Fouilleron, Jeanine (née Jandrieu)
208. Fouilleron, Jean-Pierre
209. Fouilleron, Monique
210. Fouilleron, Philippe
211. Fouroux, Lucien
212. Fraizier, Jean-Marc
213. Fraizier, Josette (née Puig)
214. Francois, Michel
215. Fuget, Marie-Laure
216. Fuget, Robert
217. Gadea, Vincent
218. Gadea, Vincent
219. Galves, Emmanuel
220. Galves, Michelle
221. Galvez, Emilie
222. Gandolphe, Leonce
223. Gandolphe, Leonce
224. Garcia, Arlette
225. Garcia, Carmen
226. Garcia, Clorinde
227. Garcia, Electre (née Fernandez)
228. Garcia, Gabriel
229. Garcia, Joseph
230. Garcin, Georges
231. Gasso, Jean-Claude
232. Gasso, Jeanne
233. Gasso, Michel
234. Gaubert, Maurice
235. Gauci, Charles
236. Gauci, Colette
237. Gaudichon, Bernard
238. Genthial, Gerald
239. Gigandet, Albert
240. Gigon, Paule
241. Giovannone, Alice
242. Giovannone, Christiane
243. Goillot, Gaston
244. Gonera, Florence (née Henri)
245. Gourbeyre, Claude
246. Granjon, Chantal
247. Grima, Gladys (née Federigi)
248. Grima, Jean
249. Grima, Paulette
250. Guareschi, Fernand
251. Guareschi, Marie (née Nocerino)
252. Guerry, Anne-Marie
253. Guiauchain, Jacques
254. Guichard, Georges
255. Guillaume, Maryvonne
256. Guiraud, Jean-Francois
257. Guisset, Colette
258. Guitoneau, Michelle
259. Guttierez, Francis
260. Guy, Roger

261. Hamelin, Albert
262. Hamelin, Odette
263. Haudricourt, Marlene
264. Haudricourt, Paul
265. Henri, Celine
266. Henri, Claude
267. Henri, Edmond
268. Henri, Jean Marc
269. Henri, Marc
270. Herault, Astride (née Kientzler)
271. Honnorat, Christiane
272. Houdou, Anne-Marie
273. Humbert, Yvon
274. Huntzinger, Marcelle (née Chieze)
275. Huot, Viviane
276. Iacono, Claude
277. Infantes, Antoine
278. Inzaina, Claudine
279. Jacomo, Huguette
280. Jaen, Jean-Claude
281. Juan, Antoine
282. Julien, Cyrille
283. Julien, Gautier
284. Jurado, Louise
285. Karsenty, Menahim
286. Kientzker, Charles
287. Kientzler, Rene
288. Klock, Chantal
289. Kraft, Suzanne
290. La Casa, Didier
291. Lacrampe, Yvette
292. Laemmel, Claude
293. Lafforgue, Cecile (née Croze)
294. Lagarde, Georges
295. Lamirault Marie, Chantal (née Louis)
296. Lancry, Denise (née Cherki)
297. Lancry, Roger
298. Laniel, Jean-Pierre
299. Lardeaux, Aristide
300. Large, Jean-Pierre
301. Lartigue, Josiane
302. Lasserre, Josee
303. Laurent, Daniel
304. Laurent, Odile
305. Lavaysse, Bernard
306. Lavaysse, Philippe
307. Leclercq, Regine
308. Lescombes, Germain
309. Lescombes, Raymond
310. Lissare, Dolores
311. Llacer, Frederic
312. Lellbach, Gérald
313. Lleu, Juliette
314. Lleu, Michel
315. Llorca, Jacqueline (née Magliozzi)
316. Lobell, Angèle
317. Lopez, Huguette
318. Lopez, Marie-Dolores (née Martinez)
319. Lopinto, Arlette
320. Lorenz Falzon, Andree
321. Lortie, Rolande
322. Louis, Christian
323. Louis, Edmonde (née Lucci)
324. Louis, Marie-France
325. Louvier, Ignace
326. Louvier, Sylviane
327. Lubrano, Alexandre
328. Lubrano, Lucie
329. Lucci, Alain
330. Lucci, Gilbert
331. Lucci, Louis
332. Lucci, Vincent
333. Lupisgich, Nieves (née Vixcaino)
334. Macalluso, Arlette
335. Maigues, Raymond
336. Marce, Solange
337. Marechal, Colette (née Ros)
338. Marguerite, Michele
339. Mari, Jean
340. Marin, Marie-Claire
341. Martin, Georges
342. Martin, Micheline (née Fabre)
343. Martin, Nicolas
344. Martinez, Alberta
345. Martinez, André
346. Martinez, Antoine
347. Martinez, Christian
348. Martinez, Denise
349. Martinez, Edmonde (née Vicente)
350. Martinez, Gilbert

351. Martinez, Guy
352. Martinez, Jean-Claude
353. Martinez, Jofrette
354. Martinez, Joseph
355. Martinez, Marcel
356. Marty, Anne-Marie
357. Marty, Simone (née Roux)
358. Mas, Jacqueline (née Bouie)
359. Masquefa, Antoinette
360. Masquefa, Hubert
361. Mathieu, Michele
362. Maurange, Janine (née Riquelme)
363. Mauranges, Claude
364. Medina, Victor
365. Mene, Gabriel
366. Mercuri, Monique
367. Merleng, Rose
368. Mestre, Edgar
369. Micaleff, Pierre
370. Mirbelle, Louis
371. Moatti, William
372. Mollar, Jean-Pierre
373. Mommeja, Alain
374. Mommeja, Helene (née Berthet)
375. Mommeja, Laurent
376. Mommeja, Marc
377. Mommeja, Marie-Jose
378. Mommeja, Michel
379. Mommeja, Regine
380. Monmirel, Janie (née Vial)
381. Monreal, Henri
382. Morales, Armand
383. Morand de la Genevraye, Jacqueline
384. Morel, Pierre
385. Moretti, Genevieve (née Cardi)
386. Moulis, Jean-Claude
387. Moulis, Roberte (née Moulis)
388. Muller, Georges
389. Naud, Claude
390. Naud, Elisabeth (née Lleu)
391. Naud, Henri
392. Naud, Jean
393. Naud, Robert
394. Navarro, Antoinette
395. Navarro, Germaine
396. Navarro, Joachim
397. Navarro, Marie (épouse Mucci)
398. Nebot, Daniel
399. Nebot, Didier
400. Nebot, Evelyne
401. Nogaret, Robert
402. Noiret, Jean Germain
403. Nougaro, Lydia
404. Nuncie, Genevieve (née Lavaysse)
405. Olibe, Louise
406. Olivieri, Andre
407. Olivieri, Charly
408. Olivieri, Louis
409. Papalia, Anne
410. Papalia, Dominique
411. Papalia, Francoise
412. Papalia, Michele
413. Parini, Louis
414. Pastor, Jeanne (née Lucci)
415. Pastor, Jeanne (née Lucci)
416. Pauly, Elizabeth (Granjon)
417. Paya, André
418. Payet, Marie-Jane (née Devesa)
419. Pellissier, Andre
420. Perez, Alain
421. Perez, Marie
422. Perles, Ginette
423. Perles, Marcelle
424. Perles, Serge
425. Petit, Robert
426. Petrequin, Paul
427. Petro, Marlyse (née Olivieri)
428. Peyre, Jacques
429. Peyrot, Jacqueline (née Di Napoli)
430. Philippe, Chantal
431. Pichot, Jean
432. Picone, Brigitte (née Bussutil)
433. Picone, Didier
434. Picone, Jean-Jacques
435. Picone, Marie-Therese
436. Pierre, Juliette
437. Pignodel, Hermine
438. Pina, Jeanine
439. Piro, Joseph
440. Podesta, Helene

441. Podesta, Jean
442. Poletti, Jean-Pierre
443. Pons, Colette
444. Pons, Jocelyne (née Seyler)
445. Pont, Achille
446. Pont, Huguette (née Martinez)
447. Pont, Louis
448. Pont, Lucette
449. Porcedo, Aline (née Giroud)
450. Portelli, Christian
451. Portelli, Jean-Pierre
452. Portelli, Michele
453. Portigliatti, Arielle (née Calleja)
454. Pouyet, Raphaelle (née Thyl)
455. Poveda, Antoine
456. Pra, Marc
457. Pradel, Andre
458. Pradel, Didier
459. Pradel, Henri
460. Pradel, Suzanne (née Tissot)
461. Praly, Herve
462. Puidebat, Rene
463. Quintard, Marie-Paule (née Morin)
464. Ramade, Jacques
465. Ramade, Marie-Helene (née Troussard)
466. Ramirez, Huguette (née Gimenez)
467. Rapin, Marie
468. Rapin, Yves
469. Ravot, Berthe
470. Ravot, Gilbert
471. Redon, Marius
472. Reinold, Eveline (née Font)
473. Rey, Roselys (née Reichert)
474. Ribas, Antoine
475. Ribas, Jose
476. Ribas, Maria
477. Ribas, Vincent
478. Rico, Zahrie
479. Rieu, Marcel
480. Riviere, Gisele (née Martinez)
481. Robert, Fernand
482. Romaggi, Georges
483. Romaggi, Paulette
484. Romera, Mathilde
485. Rongeat, Georges
486. Ros, Antoine
487. Ros, Suzel (née Troussard)
488. Rosemplatt, Marlene (épouse Haudricourt)
489. Rosenzweig, Guy
490. Rosenzweig, Jeannine
491. Roucoules, Guy
492. Roucoules, Josette
493. Roucoules, Maurice
494. Roucoules, Paul
495. Roucoules, Renée
496. Roux, Marie-Ange (née Valenti)
497. Roux, Rene
498. Rullier, Marie-Madeleine (née Wasmer)
499. Saiman, Alain
500. Saiman, Bernard
501. Saiman, Divine
502. Saiman, Janine (née Lellouche)
503. Sajous, Francine (née Male)
504. Sala, Jacqueline
505. Sala, Jean Claude
506. Sala, Renee (née Cazaux)
507. Salas, Pierre Louis
508. Sallan, Maryse
509. Salvat, Jean Pierre
510. Salvat, Joseph
511. Samtmann, Armand
512. Sanchez, Roger
513. Sancho, Laure (née Bernabeu)
514. Santana, Michel
515. Sanz, Henriette
516. Saves, Simone (née Jaubert)
517. Schreyeck, Huguette
518. Schwal, Jean-Michel
519. Schwal, Michèle (née Pierre)
520. Schwal, Stephane
521. Scotti, Jean-Claude
522. Scotto, Jean-Pierre
523. Segui, Jean-Luc
524. Segui, Martine
525. Segui, Paule
526. Segui, Paule (née Bosch)
527. Selles, Angele
528. Sempere, Marcel
529. Sempol, Emile

530. Sepet, Nicole
531. Serres, Helene
532. Severac, Louis
533. Seyler, Jean-Paul
534. Socias, Sebastien
535. Soler, Antoinette
536. Soler, Danielle (née Saramite)
537. Soler, Philippe
538. Soulier, Robert
539. Streit, Albert
540. Such, Odile
541. Such, Patrick
542. Tari, Emmanuelle (née Vidal Aveillan)
543. Tenza, Joseph
544. Teppet, Danielle
545. Teppet, Guy
546. Teppet, Marie-Jeanne (née Dross)
547. Thiebeaud, Jean-Paul
548. Tochon, Claude
549. Torra, Suzanne
550. Torregrosa, Jean-Pierre
551. Torres, Fernand
552. Toussaint, Edmee (née Acolas)
553. Traverse, Paule (née Fromental)
554. Tristan, Mathilde
555. Troussard, Gabriel
556. Truchi, Marcel
557. Valat, Marie-Rose (née Fuget)
558. Valverde, Louisette
559. Valverde, Marc
560. Valverde, Marie Christine (née Garcia)
561. Veillon, Christian
562. Vela, Claude
563. Vella, Therese
564. Verdoux, Agnes
565. Verdoux, Christian
566. Verdoux, Gerard
567. Verdoux, Sebastien
568. Vial, Jean
569. Vidal, Martine (née Pierre)
570. Vigier, Jean-Gilles
571. Vigier, Yvette
572. Vignau, Andre
573. Vignau, Danielle
574. Vitiello, Jackie
575. Vitiello, Michele (née Nachtripp)
576. Vitiello, Pierre
577. Viudes, Andre
578. Viudes, Fabienne
579. Viudes, Frederic
580. Vuillaume, Claude
581. Vuillaume, Rose
582. Vuillaume, Yves
583. Waas, Michel
584. Wagner, Georges
585. Wagner, Sylviane (née Morin)
586. Warisse, Marie-France
587. Warisse, Roger
588. Wietrich, Gislaine (née Fleddermann)
589. Wimet, Paulette (née Fullana)
590. Zammit, Charley

G. Communication No. 1923/2009, *R.C. v. France* (Decision adopted on 28 October 2013, 109th session)*

Submitted by:	R.C. (not represented by counsel)
Alleged victim:	The author
State party:	France
Date of communication:	4 August and 9 October 2009 (initial submission)
Subject matter:	Legality of the proceedings in which the Conseil d'Etat considered the author's appeal
Procedural issue:	Exhaustion of domestic remedies, incompatibility *ratione materiae*
Substantive issue:	Procedural rights
Article of the Covenant:	14 (para. 1)
Article of the Optional Protocol:	2

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

Meeting on 28 October 2013,

Adopts the following:

Decision on admissibility

1.1 The author of the communication, dated 4 August and 9 October 2009, is R.C., a French national. He claims that he is a victim of violations by France of article 14, paragraph 1, of the International Covenant on Civil and Political Rights. He is not represented by counsel. The Covenant and its Optional Protocol entered into force for France on 4 February 1981 and 17 May 1984 respectively.

1.2 On 22 April 2010, the Special Rapporteur on new communications and interim measures, acting on behalf of the Committee, decided that the admissibility of the communication should be considered separately from the merits.

The facts as submitted by the author

2.1 The author is a civil servant who is an associate university professor. His tax records for the years 2004, 2005 and 2006 were audited by the tax authority of the Pyrénées-Orientales department.

* The following members of the Committee took part in the consideration of the communication: Mr. Yadh Ben Achour, Mr. Lazhari Bouzid, Mr. Ahmad Amin Fathalla, Mr. Cornelis Flinterman, Mr. Yuji Iwasawa, Mr. Walter Kälin, Ms. Zonke Zanele Majodina, Mr. Kheshoe Parsad Matadeen, Mr. Gerald L. Neuman, Sir Nigel Rodley, Mr. Víctor Manuel Rodríguez-Rescia, Mr. Fabián Omar Salvioli, Ms. Anja Seibert-Fohr, Mr. Yuval Shany, Mr. Konstantine Vardzelashvili and Ms. Margo Waterval.

Pursuant to rule 90 of the Committee's rules of procedure, Committee member Ms. Christine Chanet did not participate in the consideration of the communication.

2.2 During the audit process, the author requested various documents from the tax authorities, including what is known as a "3609" file. In a letter dated 25 February 2008, the director of the Pyrénées-Orientales tax authority stated that access to the file could not be granted, as the authorities' investigation of tax and customs offences within the meaning of the law of 17 July 1978 would be jeopardized.

2.3 On 19 March 2008, the author appealed to the Commission on Access to Administrative Documents. The Commission issued an opinion, in a decision of 18 April 2008 that was taken based on information provided by the director of the Pyrénées-Orientales tax authority, stating that access to the "3609" file should not be granted. On 19 May 2008, the director of the Pyrénées-Orientales tax authority implicitly confirmed that the author's request had been denied. The author therefore filed an application for judicial review with the Montpellier administrative court and requested an annulment of the decision implicitly taken by the director of the Pyrénées-Orientales tax authority. On 23 April 2009, the Montpellier administrative court ruled in favour of the author, stating that the tax authority had been wrong to refuse to provide the "3609" file, annulling the implicit decision of the director of the Pyrénées-Orientales tax authority, and ordering the director to transmit the document to the author within 15 days.

2.4 On 7 July 2009, the litigation section of the Conseil d'Etat informed the author that the tax authority had filed an appeal on points of law and a motion to stay execution of the Montpellier administrative court judgement. The motion was to be considered as a matter of extreme urgency and the author had five days to comply with the obligation to have a defence brief submitted by a lawyer who was accredited by the Conseil d'Etat and the Court of Cassation.

2.5 With only five days in the middle of summer vacation to find a lawyer who would accept the case and prepare his defence brief, the author decided to draft the brief himself, which he then submitted to the Conseil d'Etat, as a matter of urgency, without having a lawyer review it. In the document, the author asserted that: the brief was admissible, even though it had not been prepared with the assistance of a lawyer; the requirement to have legal representation in the case ran counter to the principle of equality of arms, since it did not also apply to the authorities; and this breach in turn was a violation of the right to a fair hearing.

2.6 On 24 July 2009, the Conseil d'Etat dismissed the author's case, as it had been filed without the assistance of a lawyer. It ordered a stay of execution of the Montpellier administrative court judgement of 23 April 2009 and it dismissed the author's arguments concerning a violation of the principle of equality of arms and of the right to a fair hearing.

The complaint

3.1 The author claims that French law (the Code of Administrative Justice) does not uphold the principle of equality before the courts, as the State is not required to have legal representation before the Conseil d'Etat when the latter is sitting as a court of cassation, whereas private parties are obliged to have their defence brief submitted by a lawyer; otherwise, their claims will be declared inadmissible. Given that, in its decision of 24 July 2009, the Conseil d'Etat dismissed the author's case solely on the ground that he had not been represented by a lawyer who was accredited by the Conseil d'Etat and the Court of Cassation, the author considers that the State party has violated article 14, paragraph 1, of the Covenant with regard to him.

3.2 The author also alleges that French law is in breach of article 14, paragraph 1, of the Covenant, in that the French Conseil d'Etat does not meet the commonly accepted standards of independence and impartiality. The author cites the fact that the members of the Conseil d'Etat concurrently exercise judicial powers and act as advisers to the

Government, that its judges can be removed from office and are civil servants, not magistrates, and that decisions on their career development and promotion are taken largely at the discretion of the executive branch. He notes that the Conseil d'Etat decision of 24 July 2009 was issued by a section president whose impartiality is questionable, given that he has held several government posts, having served as a member of the Tax Council, a member of the Advisory Committee on Financial Legislation and Regulation, a member and the chairperson of the Advisory Committee on Tax Abuse and a member of the National Accounting Council.

3.3 The decision challenged by the author was issued at last instance by the Conseil d'Etat, which is the highest administrative court in France. It is not subject to appeal.

State party's observations on admissibility

4.1 On 1 March 2010, the State party challenged the admissibility of the communication. It asserted first of all that the stay of execution decision adopted by the Conseil d'Etat on 24 July 2009 was only an interim measure and had no bearing on the merits of the case. The Conseil d'Etat had merely suspended execution of the judgement that had been issued at first instance in favour of the author, pending a decision on the merits. The immediate execution of the judgement would have had irreversible consequences, given the subject of the dispute (access to a tax document). The question of the right of access to the document would only be addressed in the judgement on the merits. Therefore, the State party requested that the Committee should declare this part of the communication inadmissible under article 3 of the Optional Protocol.

4.2 The State party also argued that the author had not exhausted domestic remedies: at no time during his dispute with the tax authorities had he filed a claim with the domestic courts about any violation of the Covenant. Regarding the obligation to have his defence brief submitted by a lawyer who was accredited by the Conseil d'Etat, the author had merely asserted that the principle of equality of arms had been infringed and made a vague reference to the European Convention for the Protection of Human Rights and Fundamental Freedoms. As to the alleged lack of impartiality on the part of the Conseil d'Etat, the author had never raised the issue with that body. While he had claimed to the Committee that the president of the eighth section of the Conseil d'Etat was not impartial, he had never asked for the president to withdraw from the case, even though he knew that the hearing would be held by the eighth section.[1] For those reasons, the State party considered the communication to be inadmissible under article 5, paragraph 2 (b), of the Optional Protocol.

Author's comments on the State party's submission

5.1 On 28 March 2010, the author stated that the fact that the Conseil d'Etat decision was only an interim measure that did not affect the decision on the merits had no bearing on his claims. He argued that the violation of article 14 of the Covenant referred not to a substantive issue on which the Conseil d'Etat had yet to decide, but rather to the unfairness of the proceedings: the State was not required to have legal representation, but other parties were. That lack of fairness characterized all cases heard by the Conseil d'Etat, whether they involved interim measures ordered in the context of a stay of execution or decisions on the merits. Hence, according to the author, the Conseil d'Etat had not considered his arguments

[1] The State party has attached the notice of hearing, dated 17 July 2009 and addressed to the author, which states that his case is on the list of cases due to be heard by the eighth section at its 22 July 2009 session.

based on a fair and adversarial procedure, solely because they had not been presented to it by a lawyer.

5.2 In response to the State party's argument regarding the exhaustion of domestic remedies, the author contended that the fact that he had not explicitly invoked the Covenant, but rather the European Convention for the Protection of Human Rights and Fundamental Freedoms was of no consequence; the two instruments contained essentially the same provision on procedural rights. As for the argument that he should have filed a complaint with the Conseil d'Etat about lack of impartiality, the author argued that, in its settled case-law, the Conseil d'Etat stated that it would not consider any claim raising a legitimate doubt about the Conseil d'Etat as a whole. Such a claim would be admissible only if a higher court existed. In the case at hand there was no court higher than the Conseil d'Etat, which is the supreme administrative court.

5.3 With regard to the recusal of the president of the eighth section of the Conseil d'Etat, the author claimed he was not aware that the president would be presiding over the bench. It was not until he had been notified about the Conseil d'Etat judgement of 24 July 2009 that he learned of the judge's existence and name and was able to conduct research that threw light on the judge's lack of impartiality, given, in particular, his role with the tax authorities. In conclusion, the author invited the Committee to find that he had exhausted domestic remedies.

Additional submission from the author

6. On 11 June 2011, the author submitted a copy of Conseil d'Etat judgement No. 328914, which had been issued on 4 May 2011 on the merits of his case. In it, the Conseil d'Etat dismissed the author's claims on the ground that his defence brief had not been submitted by a lawyer, even though the author had been informed of the requirement to have legal representation. The decision rendered by the Montpellier administrative court on 23 April 2009 had also been struck down.

Issues and proceedings before the Committee

7.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 93 of its rules of procedure, whether the communication is admissible under the Optional Protocol.

7.2 The Committee takes note of the author's claim that his procedural rights under article 14, paragraph 1, of the Covenant were violated by the Conseil d'Etat, inasmuch as it denied his request for the tax authority to send him a "3609" file, merely on the ground that he had not been represented by a lawyer who was accredited by the Conseil d'Etat. The Committee notes that the author sought access to the document in the context of a tax case in which he was involved. The Pyrénées-Orientales tax authority stated that access to the file could not be granted, because the authorities' investigation into tax and customs offences within the meaning of the law of 17 July 1978 would be jeopardized. In its decision of 4 May 2011, the Conseil d'Etat upheld the tax authority's decision and disregarded the author's arguments on the ground that he had not been represented by a lawyer who was accredited by the Conseil d'Etat. The Committee notes that the author has not demonstrated how the requirement to have representation by an accredited Conseil d'Etat lawyer constituted an infringement of his right to equality before the courts and concludes that he has not sufficiently substantiated his claim regarding a violation under article 14, paragraph 1, of the Covenant. This part of the communication is therefore inadmissible under article 2 of the Optional Protocol.

7.3 The author also argues that the Conseil d'Etat, by virtue of its composition, is not an independent and impartial court. He raises doubts in particular about the impartiality of the

president of the Conseil d'Etat section that issued the judgement of 24 July 2009 ordering a stay of execution of the judgement of 23 April 2009. The Committee notes that the author has not demonstrated that the participation of this Conseil d'Etat member undermined the legality of the proceedings within the meaning of article 14, paragraph 1, of the Covenant. The Committee further notes that, in the decision of 4 May 2011 that was issued on the merits of the case, the Conseil d'Etat, whose composition had changed and no longer included the member whom the author had previously called into question, upheld the decision of the director of the Pyrénées-Orientales tax authority not to provide the author with the requested document. Given these circumstances, the Committee finds that the author has not sufficiently substantiated his claim regarding a violation under article 14, paragraph 1, of the Covenant and finds that this part of the communication is also inadmissible under article 2 of the Optional Protocol.

8. The Human Rights Committee therefore decides:

(a) That the communication is inadmissible under article 2 of the Optional Protocol to the International Covenant on Civil and Political Rights;

(b) That this decision shall be communicated to the State party and to the author.

[Adopted in English, French and Spanish, the French text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the present report.]

H. Communication No. 1935/2010, *O.K. v. Latvia* (Decision adopted on 19 March 2014, 110th session)*

Submitted by:	O.K. (represented by counsel, Tony Ellis, Barrister)
Alleged victims:	The author and the author's son, N.K. (deceased)
State party:	Latvia
Date of communication:	13 November 2009 (initial submission)
Subject matter:	Investigation of the circumstances of the death of the author's son
Procedural issues:	*Rationae materie*; non-exhaustion of domestic remedies; abuse of submission
Substantive issues:	Right to life; effective investigation; torture
Articles of the Covenant:	6 and 7
Articles of the Optional Protocol:	1, 3 and 5 (para. 2 (b))

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

Meeting on 19 March 2014,

Adopts the following:

Decision on admissibility

1. The author of the communication is O.K., a former resident of Latvia, currently residing in New Zealand, acting on her own behalf and on behalf of her son, N.K., deceased in 1994, at the age of 15. The author alleges that her son died as a result of a beating by a gang of teenagers believed to be of Russian nationality. She claims that the failure of the Latvian authorities to investigate her son's death and prior ill-treatment constitutes a breach by Latvia of the her son, N.K.'s rights under article 6, and of her rights under article 7 of the International Covenant on Civil and Political Rights.[1] She is represented by counsel, Tony Ellis, Barrister.

The facts as submitted by the author

2.1 The author, O.K., a former citizen of the former Union of Soviet Socialist Republics (USSR) and former resident of Latvia, submits that until 1996, she lived in Riga, the capital city of Latvia, where she was a teacher of the Russian language. Her son, N.K., a "college" student, studying art, lived with the author and his grandmother. On the evening before his

* The following members of the Committee participated in the examination of the present communication: Mr. Yadh Ben Achour, Mr. Lazhari Bouzid, Mr. Ahmad Amin Fathalla, Mr. Cornelis Flinterman, Mr. Yuji Iwasawa, Mr. Walter Kälin, Ms. Zonke Zanele Majodina, Mr. Kheshoe Parsad Matadeen, Mr. Gerald L. Neuman, Sir Nigel Rodley, Mr. Victor Manuel Rodríguez-Rescia, Mr. Fabián Omar Salvioli, Ms. Anja Seibert-Fohr, Mr. Yuval Shany, Mr. Konstantine Vardzelashvili and Ms. Margo Waterval.

[1] The Optional Protocol entered into force for Latvia on 22 September 1994.

death, he went out around 6 p.m. By 8 p.m., he had not returned home and the author was unable to locate him. Around 11 p.m., some local boys advised the author that her son had been taken to Hospital No. 1 in Riga, because four Russian boys had attacked him and he was bleeding severely. The author immediately went to the hospital, which was one hour travel time away. On her arrival, she was advised that her son was unconscious and attached to a respirator, and that she could not see him. The author was not allowed to see her son before he died, at approximately 1 a.m. the next day, from "massive head trauma". At his funeral, the author observed that he was badly bruised about the head.

2.2 While waiting in the hospital, the author was informed by the hospital registrar that the four Russian boys, whom she was told had beaten her son, had been drinking at a cheap local hotel. At an unspecified time, the author went to the closest police station to report the incident and provide the information that she had collected on the circumstances thereof. A police officer took the details and they went to the said hotel, but the suspects were not there. The author submits that the police failed to check the hotel register to ascertain the names of the four Russian boys or to make any attempt at a proper investigation. The author returned to the police station and made another statement, and was told to go home.

2.3 A post-mortem examination of the victim's body was carried out on 2 January 1995. The cause of death of the author's son was described as "massive head trauma; epidural hematoma caused by a fracture to the base of the skull; blunt head trauma". After the funeral, the author took the death certificate to the police to assist their investigation. The Russian detective she dealt with, however, was unable to read the certificate. A year later, she was advised by phone by a detective from another police station that her son had died of asthma. Her son, however, had never suffered from asthma. The author maintains that the police officers investigating her son's death had been bribed, an endemic problem in Latvia at the time.[2] Therefore, despite her complaint to the local police immediately after her son's death, no prompt and impartial investigation was carried out. The author submits that she continues to suffer from post-traumatic stress disorder and is seeking some form of finality into the improperly investigated cause of her son's death and the failure on the part of the authorities to bring any prosecution as a result of his beating.

2.4 The author submits that she had lost her husband in a train crash three months before her son's death. She also submits that her mother suffered a stroke shortly thereafter and she had to take care of her until her death in May 1996. The author alleges that, due to that unfortunate sequence of tragic events, she had a nervous breakdown and developed severe psychiatric problems, from which she continues to suffer.[3] Regarding the exhaustion of domestic remedies, she claims that she lacked the capacity to further push the authorities in that regard. She adds that, being a citizen of the USSR at the time, and only possessing a residence permit in Latvia, she was unable to pursue the matter. Following her attempts to obtain answers from the authorities of the State party on the circumstances of her son's death, in 1995, the author was allegedly "visited at home", and received death threats against herself and her daughter.

2.5 The author further contends that as a result of her remarriage and emigration to New Zealand, in 1997, and her deteriorated mental health condition, she was both mentally and physically unable to further follow up on the investigation into the death of her son in

[2] In support of her allegations, the author annexed to her second petition of 11 March 2010 a press article (in *The Independent*) of 8 November 1999 on a former Latvian secret agent who was seeking asylum in the United Kingdom of Great Britain and Northern Ireland because he had allegedly uncovered corrupt links between senior officials in the Latvian Government and the mafia.

[3] The author submits medical records from 1999, 2000, 2001, 2002, 2004 and 2006 testifying that she is suffering from psychotic disorders, post-traumatic stress disorder and depressed moods.

Latvia. Considering the time that had elapsed since the event, she considered it superfluous to follow up on the investigation with the Latvian authorities at the time of submission of the communication to the Committee. Although she has not exhausted all domestic remedies in Latvia, the author contends that her intentions to do so were clear and genuine in that regard,[4] but special circumstances prevented her from taking additional steps in that respect, and that it would be absurd to allow the State party to benefit from its failure to investigate. She claims that her son's death was a serious contributing factor to her trauma and ensuing inability to pursue the investigation.

The complaint

3.1 The author claims that the failure on the part of the State party's authorities to investigate the circumstances of her son's violent death is a breach of their positive duty to protect life under article 6 of the Covenant, including through preventing, investigating and punishing killings by private individuals.[5] She further contends that she believes that the lack of investigation into her son's death was motivated by ethnic factors, since both the gang of suspects who beat her son and the police officers in charge of the investigation were ethnic Russians, not Latvians. She believes that the investigation was insufficient, and/or a cover-up and that corruption was also involved.

3.2 Insofar as she has been deprived of the "right to know" the circumstances under which her son died, which is tantamount to inhuman or degrading treatment, the author also alleges a violation of article 7 of the Covenant on her own behalf.[6]

State party's observations on admissibility and merits

4.1 On 4 October 2010, the State party submitted a summary of the facts, as established by the competent authorities shortly after the incident concerned. The State party submits that around midday on 25 December 1994, the author's son together with acquaintances went to the centre of Riga to purchase food and beverages for a party, when he slipped on the ice and fell. In the evening of the same day, the author's son went to the hotel where the party was taking place and consumed about 200 ml of vodka. He then felt nausea, vomited and went to sleep around 9 p.m. Around 11 p.m., his acquaintances noticed that saliva with blood was coming out of his mouth and that his heart was beating unevenly. They tried to revive him, called an ambulance and informed his mother that he had been taken to a hospital. The author's son was admitted to hospital around 1.30 a.m. on 26 December 1994. In hospital, it was discovered that he had a head trauma, which had led to massive bleeding inside the brainpan and at 5 a.m., a trepanation was made.

4.2 The State party submits that, on the same day, the author filed a written complaint with the police, requesting them to search for the perpetrators, since her son was in a severe condition in the rehabilitation ward. She was questioned as a witness, and on the same day, the police interviewed the boys who were with the author's son the previous day and at the party. The boys were also repeatedly interrogated during the following days.

[4] The author refers to communication No. 138/1983 *Ngalula Mpandanjila et al. v. Zaire*, Views adopted on 26 March 1986, and Committee against Torture communication No. 6/1990, *Parot v. Spain*, Views adopted on 2 May 1995, para. 6.1.

[5] The author refers to the Committee's general comment No. 6 (1982) on the right to life; communication No. 859/1999, *Vaca v. Colombia*, Views adopted on 25 March 2002, para. 7.3; European Court of Human Rights, *Yildirim v. Turkey*, application No. 40074/99, Chamber judgment of 19 July 2007, paras. 74 and 75; and *Yasa v. Turkey*, application No. 63/1997/847/1054, Chamber judgment of 2 September 1998, para. 100.

[6] The author refers to the Committee's jurisprudence in communication No 107/1981, *Quinteros v. Uruguay*, Views adopted on 21 July 1983.

4.3 The author's son died on 28 December 1994 in hospital. On 30 December 1994, an autopsy was performed. It concluded that the cause of death was head trauma originating a few days before the death. On 2 January 1995, a decision was taken to open a criminal investigation under article 105, paragraph 2 (intentional infliction of serious bodily injuries), of the Criminal Code. On 6 January 1995, the officer responsible requested the medical records of the author's son; they were received on 16 January 1995 and indicated that he had already suffered a head trauma in 1993. On 15 January 1995, the hotel personnel who had worked during the night of the incident were questioned by the police. They testified that they had not witnessed a conflict between the individuals present in the hotel room, nor were there any signs of disturbance indicating that a fight had taken place. On 22 and 27 October 1997, the acquaintances who were with the author's son on 25 December 1994 were questioned again. They indicated that they had witnessed him slipping on the ice and falling backwards. On 16 March 2001, the criminal case was transferred to another police precinct in accordance with article 129 of the Criminal Procedure Code for further pretrial investigation. On 30 December 2004, the criminal investigation was closed because the statute of limitations for the alleged crime had expired.

4.4 The State party submitted the text of the domestic legislation in force at the time that it deemed relevant to the case: article 220 of the Criminal Procedure Code,[7] articles 27, 38 and 39 of the Law on "the Police".[8]

[7] Article 220 of the Criminal Procedure Code reads as follows:

"Procedure for lodging complaints against the acts of a preliminary investigator

A suspect, accused and their representatives and legal representatives, witnesses, experts […] may submit a complaint to a prosecutor against acts of a preliminary investigator. The complaints shall be submitted directly to a prosecutor or with assistance of a person, against whom the complaint is being submitted. Complaints may be both written and oral. In the latter case a prosecutor or a preliminary investigator shall record these complaints in the minutes, which shall be signed by the complainant. A complaint submitted to a preliminary investigator shall be forwarded together with his/her […] to a prosecutor within 24 hours.

The submission of a complaint does not suspend the performance of the activities complained about, unless such suspension is considered necessary by the preliminary investigator or prosecutor." (Translation provided by the State party.)

[8] These articles read as follows:

"Article 27. Liability of Police Officers

A police officer shall be liable for an unlawful action in accordance with the procedures specified in regulatory enactments. If a police officer has violated person's rights and lawful interests, the police institution shall take measures to redress the violated rights and interests and compensate the damage caused. […]

Complaints concerning the actions of subordinate police officers shall be reviewed and decided by the head of the police institution (subordinate unit); the decision by the head of the police institution (subordinate unit) is subject to appeal within the period of one month to a higher level police institution, prosecutor's office or court."

"Article 38. Control of Police Operations

[…] The Chief of the police department, his/her deputies and heads of subordinate units may revoke the decisions by subordinate police institutions, made within […] criminal procedures […], if said decisions are not in compliance with the law."

"Article 39. Supervision Regarding Observance of the Law in Police Operations

The Prosecutor General of the Republic of Latvia and prosecutors subordinate to him/her shall supervise the observance of the law in police operations." (Translation provided by the State party).

4.5 The State party further submits that the communication is inadmissible because it falls outside the scope of article 6 of the Covenant. The State party maintains that, contrary to the author's claims that her son was murdered, it firmly believes that his death was not a result of a criminal act, but rather resulted from a combination of unfortunate events – previous head trauma, weather conditions, slipping and falling on the ice. The State party concludes that the communication is inadmissible under article 1 of the Optional Protocol as it falls outside the scope of article 6 of the Covenant.

4.6 The State party further submits that the author failed to exhaust the available domestic remedies before submitting the communication to the Committee. It submits that the author could have submitted a complaint about the inaction of the police under article 27 of the Law on "the Police", but she never did so. The State party further submits that the author, as a witness in the criminal case, also had an opportunity to complain about police actions to the Prosecutor's office in accordance with article 220 of the Criminal Procedure Code, but she did not avail herself of this right. The State party further notes that the author's lack of citizenship did not affect her right to complain, since that right was not dependent on citizenship, but was determined by her status in the criminal proceeding (i.e. witness). The State party finally submits that even if the author's mental state did not allow her to actively follow the investigation, she could have asked for legal assistance or for the help of someone she trusted, for example, her daughter. Furthermore, 13 years after the author's emigration to another country, the authorities of the State party did not have information regarding her address where official correspondence could be sent. Accordingly, the State party submits that the author did not express in a sufficiently clear manner her intention to follow the investigation actively by availing herself of her right to complain about the actions of police officers to different institutions, and therefore has not exhausted the domestic remedies before submitting her communication to the Committee.

4.7 With regard to the author's allegation of a violation of article 6 of the Covenant, the State party submits that in accordance with the Committee's jurisprudence "a criminal investigation and consequential prosecution are necessary remedies for violations of human rights such as those protected by article 6."[9] The State party maintains that the investigation in the present case has established the cause of the death of the author's son and its circumstances, and that no crime had been committed. It acknowledges that the investigation did not end with a judicial decision; but maintains that, nevertheless, the acquired evidence sufficiently indicated that the death of the author's son was a tragic accident. Accordingly, the State party submits that no violation of article 6 of the Covenant has occurred.

4.8 With regard to the author's allegation of a violation of article 7 of the Covenant, the State party submits that in the Committee's jurisprudence, violations of article 7 with regard to mental suffering and distress to indirect victims were found due to failure on the part of State authorities to provide said victims with sufficient information, i.e. violations of victims' "right to know", thus subjecting them to anguish, stress and mental suffering.[10] The State party maintains that the present case may not be compared to such cases for the following reasons: the death of her son was not caused by a criminal activity; the State authorities that were involved in the investigation "may not be blamed" for his death; the author failed to complain about the quality of the investigation to the Prosecutor's office;

[9] The State party refers to communication No. 1447/2006, *Amirov v. Russian Federation*, Views adopted on 2 April 2009, para. 11.2.

[10] The State party refers to communications No. 107/1981, *Quinteros v. Uruguay*, Views adopted on 21 July 1983, para. 14; and No. 886/1999, *Schedko v. Belarus*, Views adopted on 3 April 2003, para. 10.2.

and she did not inform the State authorities of her change of residence. The State party concludes that no violation of article 7 of the Covenant has occurred in the present case.

Author's comments on the State party's observations

5.1 On 9 March 2011, the author submits that the State party provided no explanation as to why the criminal investigation, opened on 2 January 1995 and which was still ongoing in 1997, was than stalled until 16 March 2001 when it was transferred to another police precinct. Neither does it provide any details or explanations about what happened between 16 March 2001 and 30 December 2004 when the decision was taken to dismiss the case. The author maintains that the only reasonable explanation is that there was no prompt and thorough investigation of the death of her son and that a breach of article 6 should be found.

5.2 Regarding the admissibility of the case, the author submits that, not having promptly investigated whether a crime (murder or other unlawful death) had occurred, the State party then proceeded to state that the communication was inadmissible because the death was not a result of criminal acts. She maintains that the State party's belief that no murder was committed was based on a flawed investigation; that there was no judicial finding of the cause of death and that when her complaint was finally dismissed, 10 years after the start of the investigation, no attempt was made to notify her of the dismissal.

5.3 Regarding the issue of non-exhaustion of domestic remedies, the author maintains that she made a genuine complaint in order to exhaust the domestic remedies. She reiterates that she had serious mental health problems following the tragic death of her husband, the death of her son, and the serious illness and death of her mother, and that at the time she was unable to exercise her rights.

5.4 The author notes that the State party did not made any observations regarding her allegations of widespread corruption in the police that was prevalent at the time of the death of her son, nor regarding the death threats that she received against herself and her daughter, which also served as a deterrent to submitting any complaints to the authorities.

5.5 The author further submits that, on 3 October 1997, she informed the authorities of the State party that she had moved to New Zealand and that, in 2007, she sought advice as to whether she could receive a pension from Latvia and at that time again advised the authorities that she was living in New Zealand. She further submits that, at that time, she had a Russian passport and that the Russian authorities had her address in New Zealand. She maintains that the authorities of the State party were aware of that and if they had wanted to contact her, they could have forwarded correspondence to her through the Russian Embassy in Latvia. She maintains that the authorities never attempted to contact her in order to inform her of the development or the discontinuation of the investigation into her son's death.

5.6 The author underlines that, according to the State party's submission, no judicial decision concluded the investigation and that the investigation of a relatively simple assault case took 10 years. She maintains that a reasonable time within which to conclude such an investigation would have been one year at most, and that it is clear from the State party's submission that there had been years of inactivity during the investigation. She reiterates that there no prompt and through investigation of her son's death was carried out.[11]

5.7 The author further submits that she had the right to know, within one year of her son's death, not only the real cause of his death, but also what the State party claims had

[11] The author again refers to European Court of Human Rights, *Yasa v. Turkey*, application No. 63/1997/847/1054, Chamber judgment of 2 September 1998, para. 100.

happened to him. She should not have had to wait 10 years (which would have been the case, if she had been informed in 2004, which she was not) or 16 years, as was actually the case. The author maintains that complaints relating to death need to be determined expeditiously, otherwise failure to do so effectively may determine the merits of a communication; she refers by analogy to the Committee's jurisprudence in child custody cases.[12] She maintains that by taking so long to investigate and failing to inform her of the outcome of the investigation, the State party caused her to suffer continuing mental health difficulties, which amount to a breach of article 7 of the Covenant.

State party's additional observations

6.1 On 4 November 2011, the State party submitted that it had provided the Committee with all the materials that it was possible to acquire after such a long period of time since the events in question. With regard to the transfer of the investigation into the death of the author's son to another police precinct in 2001, the State party clarifies that that was done due to a reorganization within the State Police. The State party expresses regret that the author did not avail herself of the right to complain to the responsible authorities earlier, which is why there are no additional materials concerning the efficiency of the investigation into her son's death. The State party reiterates that, even if the author was afraid of threats from the State police, as she alleged, she could have made a request to the Prosecutor's office, thus turning the attention of the supervising institutions to possible investigation deficiencies. The State party also submits that it is difficult to imagine how the alleged threats could possibly have reached her in New Zealand. Therefore, the State party fails to see a reasonable explanation for the author's inactivity, that lasted 15 years, before she finally decided to submit a complaint to the Committee. It further refers to the Committee's practice that a reasonable explanation needs to be provided in order to submit a communication to the Committee with a considerable delay.[13] The State party maintains that, while the author has stated her mental health condition as an explanation for the delay, the medical documentation presented shows that she "is suffering from mental health problems periodically (i.e. not all the time)". The fact that the author decided to complain not in 1997 when she moved to New Zealand, but in 2010, leads the State party "to doubt the sincerity of the author's wish to know the details of her son's death".

6.2 The State party points out that the author had approached different State institutions about different questions and had contacted her relatives abroad; it therefore concludes that nothing prevented her from applying to and pursuing her communication before the Committee earlier. In addition, the State party maintains that the fact that the author had retained a counsel to represent her before the Committee "clearly indicates her ability to acknowledge consequences of her acts, her ability to formulate thoughts and opinion with a sufficient degree of clarity and consistency, notwithstanding her periodic health problems".

6.3 The State party submits that the author's allegation of police bribery are only supported by a newspaper "spy story" and it will not comment further on those allegations.

[12] The author refers to the Committee's jurisprudence in communication No. 1368/2005, *E.B. v. New Zealand*, Views adopted on 16 March 2007, para. 9.3, which states:

"The Committee refers to its constant jurisprudence that 'the very nature of custody proceedings or proceedings concerning access of a divorced parent to [the parent's] children requires that the issues complained of be adjudicated expeditiously. The failure to so ensure may readily itself dispose of the merits of application, […] and irreparably harm the interests of a non-custodial parent."

[13] The State party refers to communications No. 787/1997, *Gobin v. Mauritius*, decision of inadmissibility adopted on 16 July 2001, para. 6.3; and No. 1434/2005, *Fillacier v. France*, decision of inadmissibility adopted on 27 March 2006, para. 4.3.

6.4 The State party submits that the author's allegations that she had contacted the Latvian authorities shortly after moving to New Zealand are not supported by documentary evidence. It further refers to articles 3 and 15 of the Population Registry Law[14] and maintains that the author had the duty to inform the Office of Citizenship and Migration of her place of residence and address if she wanted the State authorities to be able to reach her (i.e. to inform her of the results of the investigation into her son's death).

6.5 The State party further submits that if the author's allegation about her Russian citizenship is true, than she "misleads the Committee and the Government as regards her nationality". The State party also states that "the facts of the present case disclose that the author has previously abused the right to receive State benefits from Latvia", because information provided by the State Social Security Insurance Agency indicates that, for almost three years following her son's death, she was receiving "State benefits granted for her minor son".[15] The State party submits that the above facts "raise serious doubts as to her true intentions when submitting the present communication to the Committee" and it maintains that the communication should be declared inadmissible pursuant to article 3 of the Optional Protocol (abuse of rights).

6.6 The State party concludes that the communication should be declared inadmissible pursuant to articles 1 to 3 of the Optional Protocol and invites the Committee to conclude that no violations had occurred.

Issues and proceedings before the Committee

Consideration of admissibility

7.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 93 of its rules of procedure, decide whether or not the case is admissible under the Optional Protocol to the Covenant.

[14] The respective articles read as follows:

"Section 3.

The main task of the Register shall be to ensure the records of Latvian citizens, Latvian non-citizens, as well as of aliens, stateless persons and refugees who have received residence permits in Latvia in accordance with the procedures specified in the Law, by including and updating information in the Register regarding such persons."

"Section 15.

(1) The duty of the persons referred to in Section 3 of this Law shall be to provide the Office with information regarding the person for inclusion in the Register. The legal representatives of the relevant persons shall provide information regarding persons who are under the age of 16 or subject to guardianship or trusteeship to the Office.

(2) If a person who has Latvian nationality resides outside Latvia for a period exceeding six months, the person has a duty to notify the Office of the address of the place of residence thereof in the foreign country, as well as of other changes in the information included in the Register regarding himself or herself, his or her children who are under the age of 16 and regarding persons who are subject to the guardianship or trusteeship thereof (through the diplomatic or consular representation of Latvia), if these changes have been made in foreign institutions."

Available from www.vvc.gov.lv/export/sites/default/docs/LRTA/Likumi/Population_Register_Law_.doc. Link provided by the State party.

[15] The State party refers to annex 1 of its submission to the Committee, which is in Latvian without translation.

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

7.3 The Committee notes the State party's submission that the communication is inadmissible under article 1 of the Optional Protocol, as it falls outside the scope of article 6 of the Covenant, because the State party believes that the death of the author's son was not the result of a criminal act, but rather resulted from an accident. The Committee, however, observes that the above conclusion is not based on an official conclusion of the investigation conducted by the authorities of the State party, since the criminal investigation initiated by the State party was under article 105, paragraph 2, of the Criminal Code (intentional infliction of serious bodily injuries) and the investigation was discontinued after the statute of limitation had run out, thus leaving open the possibility that the death of the victim resulted from a crime. In the circumstances, the Committee considers that it is not precluded by the requirements of article 1 of the Optional Protocol from examining the present communication.

7.4 With regard to the requirement set out in article 5, paragraph 2 (b), of the Optional Protocol, the Committee notes the State party's argument that the author has not exhausted the available domestic remedies, namely, by submitting a complaint about the inaction of the police under article 27 of the Law on "the Police", or a complaint about the lack of police actions to the Prosecutor's office, in accordance with article 220 of the Criminal Procedure Code. The Committee notes that the author acknowledges that she has failed to exhaust domestic remedies, but she argues that due to her mental health problems, she was unable to exercise her rights; that the widespread corruption prevalent in the police at the time of the death of her son and the death threats that she received against herself and her daughter served as a deterrent to submitting any complaints to the authorities. The Committee, however, observes that, other than her initial complaint to the police, the author did not make any other attempt to contest the alleged ineffectiveness of the investigation, apart from making oral inquiries, the latest of which she made a year after the death of her son. The Committee also observes that she has failed to substantiate any concrete instance of corruption associated with the investigation into the death of her son and that she has not provided any information on the alleged death threats. In those circumstances, the Committee considers that the author has not argued that the domestic remedies available to her were ineffective, nor that she was otherwise exempt from availing herself of those remedies. The Committee therefore concludes that the communication is inadmissible under article 5, paragraph 2 (b), of the Optional Protocol.

7.5 Having come to that conclusion, the Committee decides not to examine the State party's claim that the author had abused her right to submission.

8. The Committee therefore decides:

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

(b) That this decision shall be transmitted to the State party and to the author.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the present report.]

Appendix

Joint opinion of Committee members Fabián Salvioli and Victor Manuel Rodríguez-Rescia (dissenting)

1. We regret that we cannot concur with the decision of the Human Rights Committee concerning communication No. 1935/2010, which concluded in paragraph 8 (a) "that the communication is inadmissible under article 5, paragraph 2 (b), of the Optional Protocol". We do not agree with the Committee's reasoning for a finding of inadmissibility on the grounds that the author "has not argued that the domestic remedies available to her were ineffective, nor that she was otherwise exempt from availing herself of those remedies".

2. Rather, we are of the opinion that, inasmuch as it was a question of pursuing criminal proceedings, the author took such steps as were necessary in order for an investigation into her son's death to be opened ex officio, as is to be expected once a publicly actionable offence is reported. Accordingly, it was the State's responsibility to conduct the entire criminal investigation process with due diligence. However, it did not do so in this particular case, which, after a decade had gone by and with no court ruling on the merits, was eventually closed under the statute of limitations.

3. The facts set out in the communication relate to the failure to investigate the death of the author's son, which was reportedly the result of a beating by a gang of teenagers believed to be of Russian nationality. The case file indicates that the author lodged a complaint within a few hours of the incident at the closest police station, where her statement was taken (see para. 2.2). She also took steps to assist the police with the investigation, such as taking the death certificate to the police station. The author continued to follow the case until, about a year after the incident, a detective from another police station informed her that her son had died of asthma, even though the victim had never suffered from that condition and the report of the initial post-mortem examination had described the cause of death as "massive head trauma; epidural hematoma caused by a fracture to the base of the skull; blunt head trauma".

4. According to the State, the author did not exhaust the available domestic remedies before submitting the communication to the Committee because she failed to submit a complaint regarding the inaction of the police under article 27 of the Police Act and she failed to file a complaint about police inaction with the Prosecutor's Office in accordance with article 220 of the Code of Criminal Procedure. The State party did not deny that the author's mental state did not allow her to follow the investigation actively, but claimed that she could nonetheless have asked for legal assistance or for the help of someone she trusted, for example her daughter.

5. For the authors of this joint opinion, the police investigation initiated on 2 January 1995 and closed on 30 December 2004 under the statute of limitations was the ex officio responsibility of the State, given the fact that it was a criminal investigation (as it related to a publicly actionable offence). Criminal proceedings, unlike, for example, civil proceedings, do not require an application by the party concerned in order for them to go forward and be resolved by a court ruling, irrespective of the outcome. The criminal complaint filed by the author − the victim's mother − and the results of the forensic medical examination were sufficient grounds for initiating an in-depth investigation into the facts of the case. During the 10 years that it took for the case to expire under the statute of limitations, there was a failure to investigate with due diligence and, for long periods of time, no substantive proceedings of any sort were pursued.

6. The investigation was not swift, thorough or prompt, which resulted in an unreasonable prolongation of the proceedings. Under article 5, paragraph 2 (b), of the Optional Protocol, that is precisely one of the grounds which exempts a person from the obligation to exhaust domestic remedies. Given the criminal nature of the proceedings, and the State's obligation to initiate such proceedings ex officio, we do not consider it necessary to determine whether or not the author and complainant had mental health problems as a result of the tragic death of her husband, the death of her son and the serious illness and death of her mother.

7. The Committee should have, at least, declared the case admissible so that it could have been examined on the merits; the outcome of such an examination is not prejudged in any way by the authors of this opinion.

[Done in English, French and Spanish, the Spanish text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the present report.]

I. Communication No. 1963/2010, *T.W. and G.M. v. Slovakia* (Decision adopted on 25 March 2014, 110th session)*

Submitted by:	T.W. and G.M. (represented by counsel L'udovít Mráz)
Alleged victim:	The authors
State party:	Slovak Republic
Date of communication:	23 February 2009 (initial submission)
Subject matter:	Restitution of property
Procedural issue:	Exhaustion of domestic remedies
Substantive issues:	Discrimination; right to an effective remedy
Articles of the Covenant:	Articles 2, para. 3; 26
Article of the Optional Protocol:	Article 3

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

Meeting on 25 March 2014,

Adopts the following:

Decision on admissibility

1.1 The authors of the complaint, dated 23 February 2009, are T.W. and G.M., Slovak nationals born in 1960 and 1953 respectively and residing in the Slovak Republic. They claim to be victims of a violation by the Slovak Republic of their rights under article 26 of the International Covenant on Civil and Political Rights, having been forced to cede their property to the Slovak Republic.[1] The authors are represented by counsel, L'udovít Mráz.

1.2 On 15 December 2010, the Committee, acting through its Special Rapporteur on new communications, denied a request from the State party to split consideration of the admissibility of the communication from its merits.

The facts as submitted by the authors

2.1 The authors' ancestors, the Hermmans family, were Slovak citizens of Jewish confession and owned a residential building located in Trenčianske Teplice (parcels no. 843 and 844). During the Second World War, the Hermmans' property was expropriated under racial legislation and the Hermmans were deported to concentration camps, where they

* The following members of the Committee participated in the examination of the present communication: Mr. Yadh Ben Achour, Mr. Lazhari Bouzid, Ms. Christine Chanet, Mr. Ahmad Amin Fathalla, Mr. Cornelis Flinterman, Mr. Yuji Iwasawa, Mr. Walter Kälin, Ms. Zonke Zanele Majodina, Mr. Gerald L. Neuman, Sir Nigel Rodley, Mr. Victor Manuel Rodríguez-Rescia, Mr. Fabián Omar Salvioli, Ms. Anja Seibert-Fohr, Mr. Yuval Shany, Ms. Margo Waterval and Mr. Andrei Paul Zlătescu.

[1] The first Optional Protocol to the International Covenant on Civil and Political Rights entered into force for the Slovak Republic on 1 January 1993.

died. The authors assert that their property rights derive from the Hermmans' property rights.

2.2 In 1949, the Trenčín district court declared void the transfer of the Hermmans' property to S.Z. and his wife. The authors state that S.Z. had actively participated in the application of the aforementioned racial legislation.[2] In 1951, the Bratislava Court of Appeals confirmed the decision of the Trenčín district court.[3] Nevertheless, the same courts accepted the acquisition by S.Z. of the property because the law was applied in accordance with prevailing class ideology. The courts noted that S.Z., as a labourer, depended on having housing in the building in question, whereas the Hermman heiress was wealthy and had housing alternatives. The courts ordered S.Z. to pay half of the value of the building to the Hermman heiress. However, this order was never carried out.

2.3 The daughter of S.Z., M.S., applied for restitution of the building under Law No. 87/1991. The authors base their complaint on court proceedings involving M.S. On 14 September 1994, her application was rejected by the Bratislava Court of Appeals,[4] which based its decision on the fact that the Hermmans had been deported under racial legislation against the Jewish people and that S.Z. had actively participated in the deportation. However, thereafter, the Prosecutor General disputed the decision of the Court of Appeals by introducing an appeal on points of law.[5] This appeal was based on the claim that the law allowing M.S. to recover the property contained a provision stating that it was inapplicable if the property in question was acquired through the application of racial legislation.[6] On 17 December 1996, the Supreme Court rejected the Prosecutor General's appeal,[7] based on a decision of the Constitutional Court.[8]

2.4 M.S. advertised the property in question for sale, listing a price of 16 million Slovak crowns. In 2004, the Trenčín district court denied the claim of the authors, who are the successors in interest to the Hermmans, for half of the proceeds from the sale of the building.[9] In 2005, the authors' appeal was rejected by the Court of Appeals, and they were ordered to pay costs.[10] In 2006, the Prosecutor General rejected the authors' application for an appeal on points of law. On 9 June 2006, the authors filed a complaint before the Constitutional Court. On 22 November 2006, the complaint was declared inadmissible on the grounds that it was not filed within the applicable statutory limitations period.

The complaint

3.1 The authors submit that the refusal of the State party to allow them to invoke Law no. 87/1991 concerning restitution of property constitutes a violation of their rights under article 26 of the Covenant, as M.S., who was herself a victim of expropriation during a communist/fascist regime in similar circumstances as the one they had to face, was allowed to invoke the same law. The authors further assert that the courts ordered the restitution of

[2] The authors cite Ordinance no. NC II 823/48 (30 July 1949) of the Trenčín district court.

[3] The authors cite Ordinance No. RIII 630/50 (28 March 1951) of the Bratislava Court of Appeals.

[4] The authors cite the Bratislava Court of Appeals Decision no. 16 Co 53/94 – 51 (14 September 1994).

[5] The authors cite note of the Attorney General of the Slovak Republic No. VI Pz 123/96-57 (26 June 1996).

[6] The authors cite section 1, para. 5 of Law No. 87/1991.

[7] The authors cite note of the Attorney General of the Slovak Republic No. VI Pz 123/96-60 (17 December 1996).

[8] The authors cite Constitutional Court decision No. 281/1996.

[9] The authors cite decision No. 8C 1163/1994 of the Trenčín district court (*Okresny sud v. Trenčín e*) (27 February 2004).

[10] The authors cite decision no. 19 CO 220/05 of the Trenčín Court of Appeals (15 December 2005). The costs were 307,938.50 Sk.

the property to the descendant of individuals who had acquired it through legislation that discriminated against the Jewish people and that one of those individuals had actively participated in the genocide of the Jewish people. The authors maintain that these facts were noted by the Bratislava Court of Appeal. They further argue that international law calls for the restitution of property to rightful owners when the property was acquired by illegitimate means.[11]

3.2 The authors also submit that their right to an effective remedy under article 2, paragraph 3, of the Covenant was violated by the Constitutional Court, which declared their complaint inadmissible because it was filed after the expiration of the two-month statutory limitations period.[12] The authors maintain that they complied with the statutory period, as they were informed of the Prosecutor General's decision not to introduce an appeal on points of law on 12 April 2006, and filed their complaint on 9 June 2006. The authors assert that the Constitutional Court incorrectly held that the statutory period begins to run when the judicial decision on the merits is rendered (as opposed to when the application for an appeal on points of law by the Prosecutor General is rejected).[13] The authors state that in its decision, the Constitutional Court itself noted that the statutory period could begin to run when a public authority renders a communication. The authors maintain that the decision on inadmissibility of the Constitutional Court violated their fundamental rights by penalizing them for applying for the intervention of the Prosecutor General. The authors further assert that the Constitutional Court did not consider that the authors had tried to have the judicial decisions against them annulled by going through the Prosecutor General's Office. They also submit that the principle of legitimate expectations was violated because the State party led them to entertain reasonable expectations by opening proceedings through the Prosecutor General.[14] The authors state that they were unable to appeal to the Constitutional Court before the definitive decision of the Prosecutor General. They claim that the Prosecutor General had appealed to the Supreme Court in 1996 in the same matter. The authors therefore consider that they have exhausted all available domestic remedies.[15]

The State party's observations on the admissibility of the communication

4.1 In its submission of 4 October 2010, the State party requested that the Committee declare the communication inadmissible.

4.2 The State party considers that the authors did not meet the two-month statutory period for filing a complaint before the Constitutional Court, and that they did not exhaust all available domestic remedies. Under section 53(3) of the Act on the Constitutional Court, the statutory period begins to run upon the entry into force of a decision, notification of an injunction, or communication on another intervention. In the case of an injunction or

[11] The authors cite article 24, para. 3 of the Statute of the International Criminal Tribunal for the Former Yugoslavia.

[12] The authors cite Constitutional Court order No. II US 391/06-13 (22 November 2006).

[13] The authors' arguments on the issue of the basis of the decision of the Constitutional Court were made in a supplemental submission dated 24 September 2009.

[14] The authors cite the European Union definition of the principle of legitimate expectations as follows: "The protection of legitimate expectations extends to any individual who is in a situation in which it appears that the conduct of the Community administration has led him to entertain reasonable expectations". See *Jean-Louis Chomel v. Commission of the European Communities*, case T-123/89, summary, para. 2.

[15] The authors also note that their complaint is not currently being examined by another international tribunal or procedure. In 2008, the authors' complaint before the European Court of Human Rights was declared inadmissible due to non-exhaustion of domestic remedies.

another intervention, the statutory period begins to run on the day when the complainant could have learned of that injunction or other intervention. A failure to comply with the statutory period constitutes grounds for dismissal.[16] In this case, the contested proceedings were concluded on 12 January 2006, when the judgments of the Trenčín district court and the regional court became final.[17] The authors' complaint was delivered to the Constitutional Court by fax on 11 June 2006 (the original copy was delivered on 13 June 2006). The State party therefore considers that the complaint was filed after the expiration of the statutory period.

The authors' comments on the State party's submission

5. By submission dated 29 November 2010, the authors maintain that they have exhausted all domestic remedies, renewing the assertions made in their previous submissions. They further argue that their position is supported by the State party's observation that the statutory period in question may begin to run on the date on which the complainants could have learned of "another intervention". The authors assert that in their case, the definitive decision of the Prosecutor General constitutes "another intervention", and that the statutory period therefore began to run on the date on which the authors were notified of that decision, namely 12 April 2006.

The State party's further observations on admissibility and observations on the merits

6.1 On 3 February 2011, the State party submitted further observations on admissibility and merits. With regard to the authors' claim under article 26 of the Covenant, the State party considers that its legal system embodies the human rights standards set forth in the Covenant.[18] It considers that the Trenčín district court rejected the authors' claim for title to the property at issue on the grounds that they did not prove urgent legal interest. The part of the proceedings relating to the restitution of property was terminated due to the withdrawal of the claim. The State party further considers that M.S. acquired the title to the contested property through restitution proceedings before the Trenčín district court.[19] Her ownership of the property was confirmed by previous final court decisions.[20] In the subsequent proceedings on the determination of title to property, the reopening of final restitution proceedings was barred by the impediment of a finally adjudicated matter (the principle of res judicata). The Trenčín regional court upheld the contested judgment in a final decision.[21] On the basis of the above considerations, the General Prosecution Office of the Slovak Republic denied the authors' petition to lodge an appeal on points of law. Although the prosecution authority had previously challenged restitution proceedings in the case of M.S. in 1996 by lodging an appeal on points of law, it could not invoke this authority in favour of the authors in 2006, because the restitution case had been finally adjudicated and because the one-year statute of limitations had expired.[22] Furthermore, it was not possible to

[16] The State party cites section 25 (2) of the Act on the Constitutional Court.

[17] The State party cites a written opinion of deputy presiding judge of the Trenčín district court, Mgr. Frantisek Berec (20 September 2010). The State party also refers to the Trenčín district court judgment in case No. 8 C 1163/94, and the regional court judgment in case No. 19 C 220/05.

[18] The State party cites, inter alia, article 12, para. 5 of the Constitution of the Slovak Republic (guaranteeing freedom and equality in dignity and rights for all).

[19] The State party cites file ref. 8C 1639/93 (concluded in 1995).

[20] The State party cites Supreme Court of the Slovak Republic No. 3Cdo 55/1993 and No. 3Cdo 13/1995 and Bratislava regional court No. 17Co 345/1995.

[21] The State party cites file ref. 19Co 220/05 (15 December 2005).

[22] The State party cites section 243g of the Code of Civil Procedure.

file an appeal on points of law to stay the proceedings, because this was prevented by section 243 of the Code of Civil Procedure.

6.2 With respect to the authors' claim under article 2, paragraph 3 of the Covenant, the State party reiterates the arguments presented in its initial observations, and emphasizes that because complaints filed outside the two-month statutory period are inadmissible under the law, the Constitutional Court was required to reject the authors' complaint.[23] The State party further considers that the time of service of the notice stating that the authors' petition for an appeal on points of law was put aside has no effect on the running of the disputed statutory period. the determinative date is the day on which the contested decision of the regional Court became final. By its nature, the right to file an appeal on points of law is not granted constitutional protection. The jurisprudence of the Constitutional Court establishes that if a complainant cannot personally use a legal remedy, that remedy cannot be deemed to be effective and directly available to the complainant. Therefore, the Prosecutor General's denial of the authors' application for an appeal on points of law did not constitute denial of an "effective legal remedy" to the authors. Conversely, a Constitutional Court complaint challenging violations of human rights and fundamental freedoms is an effective domestic legal remedy that must be exhausted in order to present an admissible complaint before the Committee. Because the authors did not comply with the statutory period for filing a complaint before the Constitutional Court, they did not effectively use this legal remedy.[24]

6.3 The State party also considers that no further legal remedies are available to the authors in this case. Determination of title to property and changes to a cadaster can only be made by a court in judicial proceedings. In this case, the right of ownership of the disputed property was granted in judicial proceedings to M.S. and she used her right to dispose of property by transferring it to a third party.

Further comments by the authors

7.1 On 28 March 2011, the authors submitted further comments on the State party's observations, repeating their argument regarding the disputed statutory period. They further maintain that the Constitutional Court denied them an effective remedy by refusing to consider the merits of their complaint, because the Prosecutor General was obligated to appeal on the points of law, given the racial persecution that led to the acquisition of the disputed property by M.S. The authors assert that the Prosecutor General bears the responsibility of ensuring respect for the law and of appealing on points of law in cases where recognized rights are violated and no other remedies are available. The authors further maintain that the State party has unforeseeably changed its position with respect to the power of the Prosecutor General to appeal on points of law; the authors argue that this change of position has prejudiced them and is indicative of a lack of judicial security.

7.2 With regard to the State party's observation that the Trenčín district court rejected their claim because the authors did not prove "urgent legal interest", the authors maintain that title to the disputed property was erroneously transferred from M.S. to a third party because a court omitted to render a decision on the application by R.W. for provisional

[23] The State party cites section 53, para. 3 of the Act 38/1993 Coll. on the organization of the Constitutional Court of the Slovak Republic; and section 25, para. 2 of the Act on the Constitutional Court.

[24] The State party refers to "the established case law of the European Court of Human Rights" as providing that it is not sufficient to formally use (exhaust) domestic legal remedies; rather, legal remedies must be filed within relevant time limits and in compliance with the requirements of national legislation.

interim measures, in violation of the authors' right to swift proceedings.[25] The authors maintain that because their claim was concrete, real, and material, the court should have considered it on the merits.

7.3 As to the State party's observation that the reopening of the finally concluded restitution proceedings was barred by the principle of res judicata, the authors assert that the State party has in effect conceded that M.S. was erroneously granted title to the property. The authors maintain that only the civil court has the authority to take a position on the issue of res judicata, and never did so in this case. The authors should therefore have been free to resort to the civil court for a decision on their claim to title to the property.

7.4 The authors agree with the State party's observation that the Trenčín regional court and district court proceedings were finally concluded on 12 January 2006, but argue that this only serves to underline the excessive duration of the proceedings (11 years, 4 months and 2 weeks). The authors assert that their right to swift proceedings was clearly violated.

7.5 The authors dispute that they failed to meet the one-year statutory time limitation for requesting the Prosecutor General to appeal on points of law. They consider that the res judicata issue was decided on 12 January 2006 and that they requested the Prosecutor General to appeal in the same year. They further have doubts as to the impartiality of the judge who decided their case before the Trenčín regional court, as he bore the same surname as the attorney who represented M.S., and the Prosecutor General did not exclude the existence of such family relations. The authors also submit that, contrary to the State party's observation, the Prosecutor General was not barred from appealing on points of law, because the district court and the Court of Appeal decided the authors' case on the merits. The authors maintain that the Prosecutor General was obligated to appeal on points of law, because the law does not allow for discretion in this regard when all requisite conditions are met.[26]

Issues and proceedings before the Committee

Consideration of admissibility

8.1 Before considering any claims contained in a communication, the Human Rights Committee must, in accordance with rule 93 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

8.2 With regard to the authors' claim that they are entitled to restitution of the disputed property, the Committee recalls that the right to property is not protected by the Covenant,[27] and that it is thus incompetent *ratione materiae* to consider any alleged violations of this right. Accordingly, this claim is inadmissible under article 3 of the Optional Protocol.[28]

[25] The authors identify R.W. as a successor to the Hermmans.

[26] The authors cite section 243e of the Code of Civil Procedure as stating: "If the Prosecutor General, upon request of one of the parties to the proceeding […] finds a violation of law, and if the protection of rights and interests enjoyed by individuals […] requires it, and if there exists no other remedy assuring this protection, the Prosecutor General appeals such a judicial decision on points of law".

[27] See communication No. 724/1996, *Jarmila Mazurkiewiczova on her own behalf and on behalf of her father, Jaroslav Jakes v. Czech Republic*, inadmissibility decision of 26 July 1999, para 6.2 and communication No. 544/1993, *K.J.L. v. Finland*, inadmissibility decision of 3 November 1993.

[28] In light of this conclusion, the Committee does not deem it necessary to further examine the authors' claims that they met the one-year statutory time limitation for requesting the Prosecutor General to file an appeal on points of law, or that the State party violated the principle of legitimate expectations when the Prosecutor General initiated proceedings on their petition but declined to file an appeal on points of law.

8.3 The Committee further recalls that it has repeatedly held that it is not a final instance competent to re-evaluate findings of fact or the application of domestic legislation, unless it can be ascertained that the proceedings before the domestic courts were arbitrary or amounted to a denial of justice.[29] The Committee notes that the authors assert that the State party violated their right to an effective remedy under article 2, paragraph 3 of the Covenant because the Constitutional Court erroneously declared their complaint inadmissible due to untimeliness, because the domestic court proceedings were impermissibly lengthy and because the Prosecutor General declined to file an appeal on points of law in response to their petition. The Committee further notes the authors' argument that their inability to obtain restitution of the disputed property under Law No. 87/1991 amounted to discrimination, in violation of article 26 of the Covenant. The Committee deplores the discriminatory circumstances surrounding the expropriation of the property. However, the Committee observes that the Covenant cannot be applied retroactively and that the expropriation occurred during the Second World War, prior to the entry into force of the Covenant and of the Optional Protocol.[30] The Committee further considers that the authors' inability to have their case considered by the Constitutional Court and obtain restitution of the disputed property was due to procedural rules that were applicable to all equally. The Committee therefore considers that the authors have failed to substantiate, for purposes of admissibility, that the conduct of the domestic courts amounted to arbitrariness or a denial of justice. Accordingly, these claims are inadmissible under article 2 of the Optional Protocol.

9. The Human Rights Committee therefore decides:

(a) That the communication is inadmissible under articles 2 and 3 of the Optional Protocol;

(b) That the decision be transmitted to the State party and to the authors.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the present report.]

[29] See communications No. 541/1993, *Errol Simms v. Jamaica*, decision of 3 April 1995, para. 6.2; 1138/2002, *Arenz et al. v. Germany*, decision of 24 March 2004, para. 8.6; 917/2000, *Arutyunyan v. Uzbekistan*, Views of 29 March 2004, para. 5.7; 1528/2006, *Fernández Murcia v. Spain*, decision of 1 April 2008.

[30] Communication No. 1748/2008, *Josef Bergauer et al. v. Czech Republic*, inadmissibility decision of 28 October 2010, para 8.3.

J. Communication No. 1983/2010, *Y.B. v. Russian Federation* (Decision adopted on 25 March 2014, 110th session)*

Submitted by:	Y.B. (not represented by counsel)
Alleged victim:	The author
State party:	Russian Federation
Date of communication:	6 April 2010 (initial submission)
Subject matter:	Prosecution and placement of the author in a psychiatric institution following his criticism of a prosecutor and prosecutor's son
Procedural issues:	Non-substantiation; non-exhaustion; abuse of submission
Substantive issues:	Entitlement to a fair and public hearing by a competent, independent and impartial tribunal; arbitrary detention; inhuman and degrading treatment; conditions of detention; right to privacy; freedom of speech; discrimination
Articles of the Covenant:	7, 9, paragraph 1, 10, 14, paragraph 1, 17, paragraphs 1 and 2, 19, paragraphs 1 and 2, 26
Articles of the Optional Protocol:	2, 3, 5 paragraph 3(b)

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

Meeting on 25 March 2014,

Adopts the following:

Decision on admissibility

1.1 The author of the communication is Y.B., a Russian Federation national born in 1965, currently residing in Pskov. He claims to be a victim of a violation by the Russian Federation of his rights under article 7, article 9, paragraph 1, article 10, article 14, paragraph 1, article 17, paragraphs 1 and 2, article 19, paragraphs 1 and 2, and article 26 of the International Covenant on Civil and Political Rights.[1] The author is unrepresented.

1.2 On 5 September 2011, the Special Rapporteur on new communications decided that the admissibility of the communication should be considered separately from the merits.

* The following members of the Committee participated in the examination of the present communication: Mr. Yadh Ben Achour, Mr. Lazhari Bouzid, Ms. Christine Chanet, Mr. Ahmad Amin Fathalla, Mr. Cornelis Flinterman, Mr. Yuji Iwasawa, Mr. Walter Kälin, Ms. Zonke Zanele Majodina, Mr. Gerald L. Neuman, Sir Nigel Rodley, Mr. Victor Manuel Rodríguez-Rescia, Mr. Fabián Omar Salvioli, Ms. Anja Seibert-Fohr, Mr. Yuval Shany, Ms. Margo Waterval and Mr. Andrei Paul Zlătescu.

[1] The Optional Protocol entered into force for the Russian Federation on 1 October 1991.

The facts as presented by the author

2.1 On 26 June 2006, the Prosecutor's office in Velikie Luki, the town where the author resided, initiated criminal proceedings against him under article 319 of the Criminal Code (publicly offending a State agent).

2.2 On 27 May 2008, the justice of the peace of the 33rd district of Velikie Luki issued a decision to terminate the court case against the author based on the absence of corpus delicti of the crime.

2.3 On 10 September 2008, the criminal department of the Pskov regional court issued a cassation decision confirming the decision of 27 May 2008 of the justice of the peace to terminate the criminal prosecution against the author.

2.4 On 1 July 2009, an article was published on the website of the town court of Velikie Luki in the public information section, which included information to the effect that there was an ongoing criminal case against the author and that he was being investigated. The author was mentioned by name and information damaging to his reputation was accessible to all.

2.5 On 15 October 2009, the author filed an application with the town court of Velikie Luki seeking compensation for the moral damages inflicted to him by the public being wrongly informed that he was under investigation for criminal activity.

2.6 On 23 October 2009, the town court of Velikie Luki issued a ruling returning the author's claim for lack of jurisdiction. The author then appealed this ruling to the Pskov regional court, which, on 1 December 2009, issued a cassation decision confirming that the Velikie Luki town court had no jurisdiction and ruling that the claim should be filed with the Moscow city court. The author attempted to apply for a supervisory review of that decision, but his request was denied by the Pskov regional court on 18 January 2010.

The complaint

3.1 The author contends that he has exhausted all available and effective domestic remedies.

3.2 The author quotes article 29, paragraph 6, of the Civil Procedure Code of the Russian Federation,, which reads: "Claims for the restoration of the labour, pension and housing rights, for the return of the property or of the cost involved in the recompense of the losses inflicted upon a citizen by an unlawful conviction, by an unlawful bringing to criminal responsibility or by an unlawful application as a measure of restraint of taking into custody or of the recognisance not to leave, or by an unlawful imposition of an administrative punishment in the form of arrest, may also be instituted in the court at the place of the plaintiff's residence."[2] The author maintains that the provision of the domestic legislation cited above allows him to file a claim in the court of his place of residence, that, being a pensioner, he has no means to defend his rights in Moscow courts and that the refusal of the Velikie Luki town court to hear his case constitutes a denial of justice. Therefore, the author claims to be a victim of violations by the Russian Federation of his rights under article 14, paragraph 1 of the Covenant.

[2] See www.wipo.int/edocs/lexdocs/laws/en/ru/ru081en.pdf.

The State party's observations on admissibility

4.1 On 6 December 2010, the State party submitted that the communication did not meet the admissibility criteria under article 5, paragraph 2 (b) of the Optional Protocol, since the author had failed to exhaust all the available domestic legal remedies.

4.2 The State party submits that the following information was published on the internet site of the Velikie Luki town court: "In three criminal cases the proceeding have been ongoing for more than one year, out of which two, under articles 119 and 157 of the Criminal Code, had been suspended in relation to the search for the accused; in relation to the case against [the author]., (art. 319 CC RF), because the case was returned to the prosecutor (twice) and linguistic expertise was scheduled in expert institutes in Moscow and Saint Petersburg (three times)."[3] That information concerned the activities of the court during the first quarter of the year 2008, i.e. it related to a point in time when the case against the author was still ongoing. The criminal case in question was discontinued on 10 September 2008.

4.3 On 15 October 2009, before the town court of Velikie Luki, the author filed a lawsuit for moral damages against the Ministry of Finance of the Russian Federation, caused by the publication on the website of the court in Velikie Luki of information concerning his being subjected to criminal prosecution and because a number of procedural actions were conducted after the discontinuation of the criminal case. After the complaint from the author, his name was removed from the website and replaced with an initial and a reference was included stating that the case against the author had been discontinued and he had been rehabilitated following a finding of unlawful criminal prosecution. The author's complaint was returned to him by the town court of Velikie Luki with a note dated 23 October 2009, that the court lacked jurisdiction over the case, based on article 135, paragraph 1, point 2, of the Criminal Procedure Code.

4.4 The State party submits that the author filed a complaint with the town court of Velikie Luki on the ground of article 29, paragraph 6, of the Code and maintains that the complaint was based on a wrong interpretation by the author of the provision cited above. The State party quotes article 29, paragraph 6 of the Code and submits that the author's complaint is not related to "an unlawful bringing to criminal responsibility or by an unlawful application as a measure of restraint of taking into custody or of the recognisance not to leave, or by an unlawful imposition of an administrative punishment in the form of arrest" but to the publication on the website of the court in Velikie Luki of information revealing the name of the author. It was explained to the author that, since the respondent in his lawsuit was the Ministry of Finance, the jurisdiction in article 28 of the Code required that it should be filed at the location of the respondent, namely in the Tversk district court in Moscow. The Pskov regional court confirmed the ruling of the first instance court on 1 December 2009. On the same grounds, the Pskov regional court refused to transmit the author's request for a supervisory review on 18 January 2010. In a ruling on 12 March 2010, a Supreme Court judge rejected the author's request for a supervisory review by the Civil Cases Panel of the Supreme Court, because the judge did not consider that there were any serious violations of the law by the lower courts. That ruling also confirmed the lack of jurisdiction of the town court of Velikie Luki over the author's complaint.

4.5 The State party maintains that the court rulings mentioned above do not limit the access of the author to justice, but clarify the territorial jurisdiction of the courts over the case and that nothing prevents the author from addressing the Tversk district court in Moscow. Accordingly, the State party submits that the author's rights under article 14,

[3] Unofficial translation.

paragraph 1, of the Covenant have not been violated. It further submits that the author's communication should be rejected in accordance with article 5, paragraph 2 (b), of the Optional Protocol for failure to exhaust all available domestic remedies.[4]

Author's comments on the State party's observations

5.1 On 10 January 2011, the author submitted that the State party was misleading the Committee in its submission. He maintained that all lawsuits filed in the Russian Federation by rehabilitated persons were reviewed at the places of residence of the plaintiffs in accordance with article 29, paragraph 6, of the Criminal Procedure Code. In support, he submitted a copy of a ruling by the Pskov regional court, dated 7 December 2000, in which the latter allegedly ruled in favour of the author on a similar issue. The author stated that he was only submitting one such ruling, but that the Pskov regional court had ruled in his favour in seven separate cases in which he had disputed the rulings of the town court of Velikie Luki in refusing to review his complaints based on article 28 of the Criminal Procedure Code. The ruling of 7 December 2010 by the Pskov regional court states that "from the petition it appears that [the author] claimed compensation of damages in the order of rehabilitation, which in accordance with article 29, paragraph 6, may be presented in the place of residence of the plaintiff".

5.2 The author further rejected the submission by the State party that the requirement for review of his complaint by the Moscow court, and not by the court in Velikie Luki, did not constitute a limitation of his access to justice. He submitted that he was a pensioner, received a pension equivalent to 200 euros per month and he was supporting his underage son. He was not financially able to travel to Moscow to represent himself or to hire a lawyer to represent him. He also made reference to the poor state of his health, which would not allow him to travel the 500 km to Moscow, so that he would be deprived of the opportunity to participate in the first instance hearing and to defend his interests.

5.3 The author further made reference to the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, points 3 (c) and 12 (c).[5] The author regrets that rather than assisting him, as a victim of human rights violations, to gain access to justice, the State party is violating its obligations as outlined in the resolution.

Author's further submissions

6.1 On 10 October 2010, in addition to the allegations of violations of article 14, paragraph 1 of the Covenant, the author submitted that he was a victim of violations of his rights under article 9, paragraph 1, and article 17, paragraphs 1 and 2, of the Covenant.

6.2 The author reiterated the facts related to the prosecution against him under article 319 of the Criminal Code. He made reference to paragraph 18 of General Assembly resolution 60/147, claimed that since he was subjected to prosecution for a period of two years and three month, he was a victim of human rights violations and maintained that the Russian Federation refused to fulfil its obligations towards him as a victim.

6.3 The author submitted that, during the prosecution proceedings against him, he was forcibly placed in a psychiatric hospital for 30 days following the decision of a judge of the

[4] The State party submitted to the Committee copies of the ruling of 23 October 2009 by the town court of Velikie Luki, the ruling of 1 December 2009 by the Pskov regional court and the ruling of 12 March 2010 by the Supreme Court.

[5] General Assembly resolution 60/147, annex.

Velikie Luki town court dated 2 August 2006. The author submitted that the judge issued that decision because he had submitted 10 different motions during the pretrial proceedings. The author maintained that by submitting these motions he was attempting to defend his constitutional rights and that in response he was placed in a psychiatric hospital. No psychiatric condition was detected during his stay in the hospital. He also maintained that article 319 of the Criminal Code, under which he was prosecuted did not foresee imprisonment as a punishment if had been found guilty and that article 108 of the Criminal Procedure Code did not foresee detention of individuals charged with such crimes during the pretrial period. He submitted that, nonetheless, he was deprived of his liberty by being placed forcibly in a psychiatric hospital. He further maintained that article 29, part 2 of the Criminal Procedure Code, which allowed individuals accused of crimes that are not punishable by imprisonment, to be detained in psychiatric hospitals for psychiatric assessment, contradicted article 9 of the Covenant. The author submitted that, on 4 February 2010, he had addressed a petition to the justice of the peace in the 33rd district of Velikie Luki, requesting the court to recognize that he was a victim of violations of his rights under article 9 of the Covenant, based on the fact that he had been forcibly placed in a psychiatric hospital for a period of 30 days when he was not mentally ill. The justice of the peace had rejected the request on 9 April 2010. On 7 June 2010, the Velikie Luki town court had rejected the author's appeal against the decision of 9 April 2010. On 4 August 2010, his further appeal to the judicial panel on criminal cases of the Pskov regional court had also been rejected.

6.4 The author further submitted that during the pretrial investigation in 2006 a number of his medical records had been taken from medical establishments by investigating officers without a court order, in violation of his right to privacy under article 17, paragraph 1, of the Covenant. In that manner, confidential information regarding the state of the author's health had become known to a large number of persons. On 15 March 2010, the author had addressed a petition to the justice of the peace in the 33rd district of Velikie Luki requesting the latter to recognize that the author's rights under article 17 of the Covenant had been violated. The justice of the peace had rejected the request on 7 May 2010. On 29 July 2010, the Velikie Luki town court had rejected the author's appeal against the decision of 7 May 2010. On 8 September 2010, his further appeal to the judicial panel on criminal cases of the Pskov regional court had also been rejected.

6.5 The author submitted that during court hearings on 9 and 10 February 2010, a lawyer appointed for the author by the justice of the peace of the 33rd district of Velikie Luki, had supported the position of the prosecution, rather than supporting the position of the author. On 15 February 2010, the author had addressed a petition to the justice of the peace in the 33rd district of Velikie Luki, requesting the court to "restore his rights as a rehabilitated person", namely to recognize that the ex officio lawyer acted in violation of articles 1 and 4.3 of the law on advocacy and the legal profession in the Russian Federation. The justice of the peace had rejected his petition on 27 May 2010. On 13 July 2010, the Velikie Luki town court had rejected the author's appeal against the decision of 27 May 2010. On 25 August 2010, his further appeal to the judicial panel on criminal cases of the Pskov regional court was also rejected. The author submitted that the justice of the peace had issued a decision without his participation in the proceedings and that he had not been properly informed of the date of the cassation hearing. He maintained that the above facts led to a violation of his rights under article 14, paragraph 1, of the Covenant.

6.6 On 8 November 2010, the author submitted that on unspecified dates in 2009 and in 2010 he had submitted several complaints to the justice of the peace of the 33rd district in Velikie Luki, requesting that his rights as a rehabilitated person be reinstated, in accordance with article 138 of the Criminal Procedure Code. The author submitted that the judges of the Velikie Luki town court and the justice of the peace had deliberately scheduled court hearings on the same dates and at the same times in order to prevent him attending all the

hearings and that this had violated his right to a fair trial. He further submitted that the courts had refused to appoint a defence attorney to represent him in those proceedings and that a hearing of the appellate instance had taken place in his absence in violation of article 364, paragraph 2, of the Criminal Procedure Code.[6] The author maintained that this violated his rights under article 14, paragraph 1, of the Covenant.

6.7 The author made further allegations related to violations of his right to a fair trial during the proceedings that he had initiated in an attempt to reinstate his rights following the dismissal of the criminal charges against him.

6.8 On 17 November 2010, the author submitted that the original criminal charges were brought against him because he had publicly criticized the professional qualities of the son of a prosecutor and the abuse of power by the prosecutor himself. He maintained that bringing criminal charges against him, because he had expressed his opinion regarding those two individuals, violated his rights under article 19 of the Covenant. He further submitted that on 22 April 2010, he had addressed a complaint to the justice of the peace, requesting recognition that his rights under article 19 of the Covenant had been violated. The author further submitted that his involuntary placement in a psychiatric hospital because he had filed several motions trying to defend his rights during the criminal proceedings against him, amounted to inhuman and degrading treatment in violation of his rights under article 7 of the Covenant. On 3 March 2010, the author had addressed a complaint to the justice of the peace requesting recognition that his rights under article 7 of the Covenant had been violated. Subsequently the justice of the peace had combined the two cases and on 6 July 2010 had issued a decision rejecting the author's complaints. The author's appeals of that decision had been rejected by the town court of Velikie Luki on 17 September 2010 and the Pskov regional court on 7 October 2010. The author maintains that he has exhausted the available remedies. He further submits that his rights under article 14, paragraph 1, of the Covenant have been violated, because the first instance court in its decision did not mention the violation of article 19 and the appellate instance court discussed it, but in the absence of the author, despite the fact that he had submitted the appeal.

6.9 The author further alleges violations of his rights under article 14, paragraph 1 of the Covenant, because the justice of the peace rejected his request to cover his expenses for mailing complaints to the Human Rights Committee and other international institutions.

6.10 On 5 December 2010, the author alleged various violations of his rights under article 14, paragraph 1, of the Covenant in relation to court proceedings that had taken place between 1 March 2010 and 17 November 2010.

6.11 On 10 January 2011, the author alleged violations of his and his minor son's rights under article 14, paragraph 1, of the Covenant in relation to court proceedings in a criminal case regarding the theft of the mobile phone of the author's son.

6.12 On 17 March 2011, the author alleged various further violations of his rights under article 14, paragraph 1, of the Covenant in relation to court proceedings that had taken place between 30 October 2009 and 26 January 2011.

6.13 On 22 March 2011, the author alleged that during his enforced placement in a psychiatric hospital in 2006, he had been subjected to medical examinations in violation of the established safety rules. Namely, that he had been subjected to X-rays and forced to stay in the radiology room while other detainees were subjected to X-rays, while the medical

[6] The author maintained that since he had filed an appeal, the hearing should not have taken place without him.

personnel left the room during the procedures. The author submitted that the above treatment was in violation of the sanitary rules, which forbade the presence of more than one patient in the radiology room during procedures, that he had experienced health problems as a result of being exposed to the radiation in the radiology room and that such treatment had violated his rights under article 7 of the Covenant. On 22 January 2011, the author had submitted to the Velikie Luki town court a claim for compensation for moral damages for being subjected to radiation in violation of the sanitary rules during his forced stay in the psychiatric hospital. On 24 January 2011, the court had refused to initiate a court case on the issue. The author's appeal of that refusal had been rejected by the Pskov regional court on 1 March 2011. The author further alleged various violations of his rights under article 14, paragraph 1, and article 26 of the Covenant in relation to court proceedings that took place between 10 January and 1 March 2011.

6.14 On 11 April 2011, the author submitted that in 2006, when he was forcibly placed in a psychiatric institution by the court, he was detained together with individuals who were already convicted of crimes and were undergoing psychiatric evaluations after their verdicts. He maintained that such treatment constituted a violation of his rights under article 10 of the Covenant. On 2 November 2009, the author addressed a complaint to the justice of the peace, requesting recognition that his rights under article 10 of the Covenant had been violated. On 26 April 2010, the justice of the peace rejected the author's complaint. The author's appeals of that decision were rejected respectively on 10 June 2010 by the Velikie Luki town court and on 11 August 2010 by the Pskov regional court. The author submits that the courts did not review his complaint on the merits since they did not verify whether the individuals detained together with the author were convicts.

6.15 The author also submits that the bank, through which he was paid compensation for material damages for being subjected to criminal prosecution, is withholding commission on the payments and maintains that the above violates his rights under article 26 of the Covenant, since it constitutes discrimination against him as a victim of unlawful prosecution. The author further alleges various violations of his rights under article 14, paragraph 1, of the Covenant in relation to court proceedings that took place between 8 December 2009 and 2 June 2010.

6.16 On 28 April 2011, the author reiterated his submission that his involuntary placement in a psychiatric hospital, because he filed several motions trying to defend his rights during the criminal proceedings against him, amounted to inhuman and degrading treatment and violated his rights under article 7 of the Covenant. The author also submitted that he was subjected to degrading treatment in violation of his rights under article 7 because, on 9 September 2010, during a court hearing in which he participated, the prosecutor violated the dress code for prosecutors. The author further submitted that he was subjected to degrading treatment in violation of his rights under article 7 because, on 15 January 2010, a judge held a trial hearing in a court room where a crest was displayed that did not correspond to the official crest of the Russian Federation.

6.17 On 3 May 2011, the author alleged various violations of his rights under article 14, paragraph 1, of the Covenant in relation to court proceedings that took place between 27 January 2011 and 1 March 2011.

6.18 On 30 May 2011, the author alleged various violations of his rights under article 14, paragraph 1, of the Covenant in relation to court proceedings that took place between 3 February 2010 and 29 September 2010.

State party's further observations on admissibility

7.1 On 19 August 2011, the State party submitted that the author's submission of 10 January 2011 did not contain any arguments disproving the position of the State party. It

further submitted that the author's submission of 10 January 2011, bore no relation to the original communication by the author. It further submitted that, on 22 March 2011, it received four other submissions from the author, dated 10 October 2010, 8 November 2010, 17 November 2010 and 5 December 2010, which raised various allegations but did not disprove the position of the State party. The State party further submitted that the author's submissions of 17 March 2011, 11 April 2011, 28 April 2011, 3 May 2011 and 30 May 2011 had no connection with the original complaint.

7.2 The State party submits that it has been cooperating successfully with the Committee for a long time, including in relation to individual communications. It further submits that in the present case the correspondence process is practically blocked and, in the presence of the above numerous submissions registered under the same number, it is impossible to prepare substantive observations. It also submits that this is a unique situation.

7.3 The State party maintains that the communication should be declared inadmissible under article 3 of the Optional Protocol since the author is abusing his right to submission to the Committee.

Further observations from the author

8. On 14 October 2011, the author submitted that despite the submission of the State party that it had successfully cooperated with the Committee with regard to the rehabilitation of individuals who had been unlawfully subjected to criminal prosecution, the State party had defiantly refused to implement its international obligations. Those obligations were determined in resolution 60/147. The author submitted that thus far the Russian Federation had not passed domestic legislation regulating the implementation of that resolution with regard to the restoration of the rights of individuals who had been unlawfully subjected to criminal prosecution. He pointed out that in its decision of 2 March 2010, the justice of the peace of the 33rd district of Velikie Luki stated that resolution 60/147 was only a recommendation and its implementation was not mandatory for the Russian Federation[7] and the courts of the appellate and the cassation instances agreed with that statement. The author maintained that he was not abusing his right to submission, but merely attempting to reinstate all his rights, many of which had been violated during the unlawful prosecution against him, which lasted for more than two years.

Issues and proceedings before the Committee

Consideration of admissibility

9.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 93 of its rules of procedure, decide whether or not the case is admissible under the Optional Protocol to the Covenant.

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

9.3 With regard to the author's initial complaint that he was a victim of violations by the Russian Federation of his rights under article 14, paragraph 1, of the Covenant, because the Velikie Luki court refused to process his law suit for moral damages caused by erroneous information that he was under investigation, posted on the website of the court, the Committee notes the submission of the State party that since the author's complaint was

[7] The author enclosed a copy of the said court decision.

related to compensation for moral damages, the respondent in this lawsuit was the Ministry of Finance; that the domestic jurisdiction rules required that such claims should be filed at the location of the respondent, namely in the Tversk district court in Moscow; and that the communication should be declared inadmissible for failure to exhaust the domestic remedies.

9.4 The Committee also takes note of the author's explanation that he does not have the funds to finance a law suit in Moscow. The Committee recalls that if the judicial authorities of a State party laid such a cost burden on an individual that his access to court de facto would be prevented, then this might give rise to issues under article 14, paragraph 1, of the Covenant.[8] However, the Committee is of the opinion that, in the present case, the author has failed to substantiate such a claim for purposes of admissibility. Therefore, this part of the communication is inadmissible under article 2 of the Optional Protocol.

9.5 The Committee observes that the author's allegations of violations of his rights under article 7, article 9, paragraph 1, article 10, article 14, paragraph 1, article 17, paragraphs 1 and 2, article 19, paragraphs 1 and 2, and article 26 of the Covenant, contained in his subsequent submissions dated 10 October 2010, 8 November 2010, 5 December 2010, 10 January 2011, 17 March 2011, 22 March 2011, 11 April 2011, 28 April 2011, 3 May 2011 and 30 May 2011, are not substantiated in relation to the subject matter of his initial communication, namely that the refusal of the Velikie Luki town court to hear his case for moral damages caused by the publication of erroneous information on the court's website, constituted a denial of justice. Therefore, the allegations in the above submissions are inadmissible under article 2 of the Optional Protocol. The finding above is without prejudice to the author's ability to submit a separate communication with regard to any alleged violations of his rights under the Covenant that may have occurred.

10. The Committee therefore decides:

(a) That the communication is inadmissible pursuant to article 2 of the Optional Protocol; and

(b) That this decision shall be transmitted to the State party and to the author.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the present report.]

[8] See communication No. 646/1995, *Lindon v. Australia*, Decision of 20 October 1998, para. 6.4.

K. Communication No. 2014/2010, *Jusinskas v. Lithuania* (Decision adopted on 28 October 2013, 109th session)

Submitted by:	Darius Jusinskas (not represented by counsel)
Alleged victim:	The author
State party:	Lithuania
Date of communication:	2 April 2010 (initial submission)
Subject matter:	Competition to access to the State's Service
Procedural issues:	Incompatibility with the provisions of the Covenant; failure to substantiate allegations
Substantive issues:	Effective remedy; access to court; access, on general terms of equality, to public service
Articles of the Covenant:	2, paragraphs 2 and 3; 14, paragraph 1; and 25, subparagraph (c)
Articles of the Optional Protocol:	2 and 3

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

Meeting on 28 October 2013,

Adopts the following:

Decision on admissibility

1.1 The author of the communication is Mr. Darius Jusinskas, Lithuanian national, born on 1 January 1979. He claims that his rights under articles 14, paragraph 1 and 25, subparagraph (c) — alone and in conjunction of article 2, paragraph 3 of the Covenant — were violated by Lithuania. The author is not represented by counsel.

1.2 On 22 February 2011, the Committee, acting through its Special Rapporteur on New Communications and Interim Measures, decided to examine the admissibility of the communication separately from the merits.

Facts as presented by the author

2.1 In 2006, the author applied for a position of civil servant in the Department of Cultural Heritage of the Ministry of Culture. Under the *Procedure for Admission to the Position of State Servant*, the candidates to the post had to sit for a written and an oral examination. The author received the maximum score at the written test, 10 points, and 8.6 points at the oral exam. Another candidate was selected for the post.

2.2 On 24 April 2006, the author filed a complaint to the Vilnius Regional Administrative Court against the decision of the Admission Commission to select another candidate. He contested the result of the selection process and requested to be recognized as the successful candidate, and to be provided compensation for the wages that he did not receive, and for non-pecuniary damage. As the *Procedure for Admission into the Position of a State Servant's* regulations, approved by the Government's Resolution No. 966, did not require recording the oral exam, the author claimed that he did not have the possibility to prove that he was unfairly evaluated at his oral exam. Further, he also requested the Court

to apply to the Constitutional Court to examine whether the *Procedure for Admission* as well as the *Inventory Schedule of the Procedure for Organisation of Competitions to the Position of State Servant*, limited the right to judicial defence by not requiring the recording of the oral examinations. He claimed that access to court should be not only formal, but real; that is, the person must have the possibility to prove and to contest the violation of his rights or legitimate interests in court.

2.3 On 2 November 2006, the Vilnus Regional Administrative Court rejected the author's complaint and stated that it had not been proven that the evaluation of the author's oral examination by the Admission Commission was unfair. In the absence of unlawful action, no compensation could be awarded. The Court also rejected the author's request to apply to the Constitutional Court. The author appealed the Court's decision to the Supreme Administrative Court.

2.4 On 1 June 2007, the Supreme Administrative Court suspended its consideration of the case and applied to the Constitutional Court with a request to examine the constitutionality of the *Procedure for Admission* and the *Inventory Schedule*, to the extent that they did not establish the requirement to record the oral examination. The Supreme Administrative Court stressed that the absence of such requirement might limit the right of a person to de facto judicial defence and put in question the compliance with the principle of transparency enshrined in article 3, paragraph 1 of the Law on State Service.

2.5 On 22 January 2008, the Constitutional Court found that the *Procedure for Admission* and the *Inventory Schedule*, to the extent that they did not establish the requirement to record the questions asked by the members of the Admission Commission during the oral examination and the answers given by the aspirants, were in conflict with articles 30, paragraph 1 (right to access to court) and 33, paragraph 1 (right to enter on equal terms in the State service), and the principles of transparency of the State service enshrined in the Constitution. The Court stated that the reasoning of the decision to reject a candidate must be clear and accessible to the institutions and courts called to decide on disputes. On 2 April 2008, as a consequence of the ruling, the requirement to record the oral examination was introduced in the State party's legislation.

2.6 On 13 March 2008, the Supreme Administrative Court rejected the author's appeal and stated that, despite the decision of the Constitutional Court of 22 January 2008, there was no evidence that the Admission Commission had acted in a partial or unfair manner. The Court also rejected the author's request for non-pecuniary damage. The decisions by the Supreme Administrative Court are final and not subject to appeal.

The complaint

3.1 The author claims a violation by Lithuania of his rights under articles 14, paragraph 1 and 25, subparagraph (c), alone and in conjunction with article 2, paragraph 3 of the Covenant.

3.2 The author argues that the administrative proceedings which he undertook fall under the definition of a suit at law. Referring to the Committee's General Comment No. 32[1] and its jurisprudence,[2] the author maintains that, if the termination of employment of a civil servant falls under the definition of a suit at law as set forth in article 14, paragraph 1, of the Covenant, the admission to the position of a civil servant should also fall under that concept. In the absence of a statutory requirement to record the oral examinations of the

[1] General Comment No. 32 (CCPR/C/GC/32), para. 16.

[2] The communication refers to communication No. 441/1990, *Casanovas v. France*, Views adopted on 19 July 1994, para. 5.2.

evaluations to access to the position of State servant, the author did not have any possibility to prove in court that the Admission Commission's evaluations were unfair. Thus, his right to access to court was only formal and not real and resulted on the violation of article 14, paragraph 1.

3.3 The author further submits that the Supreme Administrative Court did not provide any reasons when rejecting his request for recovery of non-pecuniary damage. It only stated that there was no reason to state that the author had suffered non-pecuniary damage.

3.4 The Supreme Administrative Court found the evaluations of his oral examination were fair and did not raise doubts about the fairness of the Admission Commission. However, the Supreme Administrative Court failed to consider that no evidence could be adduced. Its decision was therefore clearly arbitrary and amounted to manifest error and denial of justice.

3.5 The author further submits that, as domestic legislation did not establish the requirement to record the course of the oral examination and that, in practice, there was no effective judicial review mechanism for the admission process to public service, his rights under article 25, subparagraph (c), read alone and in conjunction with article 2, paragraph 3, of the Covenant have been violated.

State party's observations on admissibility

4.1 On 7 February 2011, the State party submitted its observations on the admissibility of the communication and requested the Committee to examine it separately from the merits, pursuant to rule 97, paragraph 3 of the Committee's rules of procedure. It also requested the Committee to declare the communication inadmissible under articles 2 and 3 of the Optional Protocol, as the author's allegations are incompatible with the provisions of the Covenant and not sufficiently substantiated.

4.2 As to the facts related to the communication, the State party notes that, on 27 March 2009, the author applied for reopening of the proceedings before the Supreme Administrative Court under article 153, paragraph 2 of the Law on Administrative Procedure. On 27 March 2009, the Supreme Administrative Court dismissed the author application, finding that there were no grounds indicated by the author for reopening the case.

4.3 As to the author's claim concerning article 25, subparagraph (c) of the Covenant, the State party submits that the requirements for the State's service position were not discriminatory but uniform for all aspirants to the post. The author had not disputed that the criteria of selection were unreasonable or that the procedure of admission was discriminatory nor had he submitted any argument or evidence in this regard. All aspirants followed the same procedure of competition under the same conditions, namely, they had all been through written and oral exams, and none of the latter had been recorded. Likewise, it was not disputed that the criteria of selection had been unreasonable. The State party recalls the Committee's jurisprudence according to which article 25, subparagraph (c) does not entitle every citizen to obtain guaranteed employment in the public service, but rather to access public service on general terms of equality.[3] As regards the author's allegation that the lack of statutory requirement to record the verbal part of the examination resulted in his inability to prove before the courts that the results of the competition had been unfair, the State party submits that this allegation is not relevant to the right protected under article 25, subparagraph (c). Therefore, the author failed to substantiate his allegation

[3] The State party refers to the communication No. 552/1993, *Kall v. Poland*, Views adopted on 14 July 1997.

that the admission procedure was in any way discriminatory within the terms of article 2, paragraph 1 of the Covenant. In the circumstances, the author's allegations go beyond the scope of this provision and are therefore incompatible *ratione materiae* with the provisions of the Covenant, pursuant to article 3 of the Optional Protocol.

4.4 The author has failed to justify why the results of the competition had to be reversed in his favour. His allegations are simple statements of subjective self-evaluation, without any objective evidence that his oral examination was undervalued. Furthermore, the author was able to appeal before two administrative courts. Both instances assessed the author's application and evidence, and did not find that the Admission Commission was arbitrary or its decision would have been unfair. The mere fact that the courts' decisions were not in favour of the author do not demonstrate that these judicial decisions had been groundless or arbitrary. The author cannot therefore claim that he has not been provided with an effective remedy under article 2, paragraph 3 of the Covenant.[4] Thus, this claim should be declared inadmissible for failure to substantiate.

4.5 As to the author's claim under article 14, paragraph 1 of the Covenant, the State party maintains that, according to the Committee's jurisprudence, neither the procedure of appointing State servants, nor the related administrative proceedings, like the ones addressed in the present communication, fall within the scope of a determination of rights and obligations in a suit at law within the meaning of article 14, paragraph 1. Therefore, the claim should be declared inadmissible *ratione materiae* under article 3 of the Optional Protocol.

4.6 Should the Committee consider otherwise, this claim is unsubstantiated and should be declared inadmissible pursuant to article 2 of the Optional Protocol. Although there was no statutory requirement to record the course of the oral examination, the author could have provided other evidence, such as witnesses' statements or written material. Moreover, even if the law would have provided for the requirement to record the oral examination, it would have been only one piece of evidence for the court to be examined and assessed, but not necessarily the decisive one. Domestic courts thoroughly examined all the author's claims and evidence and the circumstances of the case. The Supreme Administrative Court took the Constitutional Court's finding into consideration while examining the author's application. However, it concluded that there was no evidence in the case that would cause doubts as to impartiality of the members of the Admission Commission or suspicions as to the arbitrariness of the evaluation of the aspirants. Against this background, it found that the Constitutional Court's findings had no essential influence in the author's case and that there was no causal link between them and the allegedly suffered damage.

4.7 The author did not submit any arguments as to the alleged arbitrariness and unfairness of the Supreme Administrative Court in its decision of 13 March 2008. Moreover, these allegations were brought by the author in his request for reopening the proceeding and thoroughly examined and dismissed by the Supreme Administrative Court in its decision of 27 March 2009. In all these applications, as well as in his communication before the Committee, the author has repeated the same allegations. Nevertheless, he has failed to submit objective arguments in this regard. Consequently, the State party submits that the author's allegation as to article 14, paragraph 1 is unsubstantiated and should be declared inadmissible pursuant to article 2 of the Optional Protocol.

[4] The State party refers to the Committee's jurisprudence concerning communication No. 971/2001, *Kazantzis v. Cyprus*, decision on admissibility adopted on 7 August 2003.

Author's comments to the State party's observations

5.1 On 3 March, 29 April and 3 October 2011, the author submitted comments and claimed that his communication also revealed a violation of article 2, paragraph 2, alone and read in conjunction with articles 2, paragraph 3; 14, paragraph 1; and 25, subparagraph (c), of the Covenant.

5.2 The author reiterates his claims and states that a statutory requirement to record the oral examination was necessary to give effect to the rights recognized in articles 2, paragraph 3; 14, paragraph 1; and 25, subparagraph (c), of the Covenant.

5.3 The Constitutional Court found that the *Procedure for Admission into the Position of a State's Servant* was in conflict with article 30, paragraph 1, and 109, paragraph 1, of the Constitution. Moreover, it also ruled that the imperative of equal conditions when entering the State service implied objective and impartial assessment of those who entered into the service and that the lack of record of the oral examination created preconditions for the right to access on equal terms to the public service. The author asserted that, as in his case this information was not available, the Vilnus Regional Administrative Court was not in a position to decide his complaint against the decision of the Admission Commission. The lack of records of the oral examination deprived the author of the possibility to adduce any evidence in order to challenge the fairness of the evaluation. Further, it made it impossible to prove unfairness of the oral examination (*probation diabolica*) and impeded the court to verify it. Therefore, in practice, there was no effective remedy to protect his rights under articles 2, paragraph 3; 14, paragraph 1; and 25, subparagraph (c) of the Covenant.

5.4 With reference to his claims under article 2, paragraph 3, alone and in conjunction with article 25, the author submits that there was no evidence that the aspirant winner was more qualified than him. However, in practice, he had no means to challenge it. As a result, he had no effective remedy to bring a judicial claim concerning the fairness of the oral examination. Further, despite the Constitutional Court's decision, the Supreme Administrative Court arbitrarily rejected his application because it considered that he failed to submit evidence as to the unfairness of the evaluation without providing any additional explanation, which amounted to a manifest error and denial of justice. The author submitted that he was undervalued at the oral examination and the aspirant winner of the competition overvalued. Therefore, he was treated unequally in relation to a person less qualified than him.[5] He also held that his claim was sufficiently substantiated and that the burden of proof may be regarded as resting on the State party to provide a satisfactory and convincing explanation. The author disagrees with the evaluation of 9, 8 and 7 points — which he considers too low — given to him by the members of the Admission Commission. However, the Supreme Administrative Court could not verify the fairness of the evaluation.

5.5 The author reiterated that his communication fell under the scope of article 14, paragraph 1 of the Covenant. As by law he was able to apply to court in order to contest the competition's results, it should be presumed that the rights and protection enshrined in this article were applicable to his case. In addition, his application was not limited to contesting the result of the completion to access to the State's service, but also requested compensation of non-pecuniary damage. In this regard, the author holds that the right to compensation for illegal actions clearly fall within the definition of "a suit at law" under

[5] The author provided a translation in English of the marks record concerning the four aspirants in the examination. The Admission Commission was formed of six members, each of them giving a mark. The author's oral examination was given: 9, 9, 9, 7, 8 and 8, respectively. In the written examination he obtained 10/10. The applicant selected for the post was given in the oral examination 8, 10, 10, 10, 9 and 9 points. In the written examination this person also obtained 10/10. (The author's submission does not provide any further detail or documentation concerning the claim of unequal treatment.)

article 14, paragraph 1 of the Covenant. Since a judicial body was entrusted with the review of an administrative decision concerning the admission into the civil service, the proceeding should respect the guarantees of a fair trial as set forth in article 14, paragraph 1. The author also reiterated that in practice there was no other possible evidence to be provided, as suggested by the State party. The possibility to submit written material was only abstract and not even the State party specified what kind of documentation he could submit. Likewise, he could not submit witnesses as in the oral examination room were present only the aspirant and the members of the Commission. The requirement of a fair trial also supposes that a court will give reasons for its judgment. However, the Supreme Administrative Court did not give any reasons when rejecting his application for compensation of non-pecuniary damage. Moreover, the Supreme Administrative Court's decision failed to take into account the link between the Constitutional Court's findings and his application, and to provide a reasonable explanation as to the rejection of his application. As a result, its decision was arbitrary and amounted to manifest error and denial of justice.

5.6 With regard to the claims under article 2, paragraph 2 — alone and in conjunction with articles 2, paragraph 3; 14, paragraph 1; and 25, subparagraph (c) — the State party failed to undertake the necessary steps to adopt the regulations to give effect to the rights recognized in the Covenant.

5.7 As to the claim of violation of article 2, paragraph 3 — alone and in conjunction with article 25, subparagraph (c) — the author claimed that he was not provided with an effective remedy, since the Supreme Administrative Court itself recognized that it could not verify the fairness of the evaluation and the Constitutional Court stated that the *Procedure for Admission* applicable when the author participated in the competition was in conflict with article 30, paragraph 1 of the Constitution about right to access to the court.

5.8 On 8 October 2012, the author informed the Committee that in examining a different case, in which he appealed against the result of the oral examination of the competition to the position of chief specialist of legal and personnel department in the State Territorial Planning and Construction Inspectorate of the Ministry of Environment, on 20 September 2012, the Supreme Administrative Court granted him 1,000 litai as compensation for non-pecuniary damage pursuant to article 6.250 (2) of the Civil Code, in particular due to the considerable length of the administrative proceeding. Further, the Supreme Administrative Court stated that the lack of record of the course of the verbal examination should be "treated as a violation of the author's right to appeal an administrative procedure against the result of the oral examination" and that it "could also be evaluated as certain violation of the [author's] right to effective judicial defence". Accordingly, the Court endorsed the allegations submitted in his communication before the Committee.

State party's additional observations on admissibility

6.1 On 23 January 2013, the State party provided further observations on the admissibility of the communication. As regards the author's allegation under article 25, subparagraph (c), the State party maintained that such a right is always connected with the prohibition of discrimination on any of the grounds set out in article 2, paragraph 1 of the Covenant. However, the author had not provided any evidence of discrimination. Furthermore, article 25, subparagraph (c) does not entitle every citizen to obtain guaranteed employment in the public service, but rather to access public services on general terms of equality. The author's allegations are solely based on his personal opinion that he should have been appointed to the State service position instead of the actual winner of the competition. The State party recalled the Committee's jurisprudence that it is generally for the courts of the States parties to the Covenant to assess facts and evidence or the application of domestic legislation, unless it can be ascertained that the assessment was

clearly arbitrary or amounted to denial of justice. The author's allegations — that lack of record of the oral examination part of the competition resulted in his inability to prove before courts that the results of the competition had been unfair — were not relevant to the right to have access, on general terms of equality, to public service, in the sense of article 25, subparagraph (c) of the Covenant. This part of the author's communication is therefore incompatible with the provisions of the Covenant and should be declared inadmissible *ratione materiae* under article 3 of the Optional Protocol.

6.2 With regard to the Supreme Administrative Court's decision of 20 September 2012, it was based on different circumstances. Should the author consider that this decision is inconsistent with the established case law of the Court and has relevance to the assessment of facts giving rise within the present communication, he has the possibility to request for reopening of the proceedings invoking one of the grounds provided for by article 153, paragraph 2 of the Law on Administrative Procedure, such as the necessity to ensure the formation of a uniform case law of administrative courts.

Issues and proceedings before the Committee

Consideration of admissibility

7.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 93 of its rules of procedure, decide whether or not the case is admissible under the Optional Protocol to the Covenant.

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

7.3 The Committee takes note of the author's claims that (a) within the competition for the position of State servant of the Department of Cultural Heritage, the Admission Commission undervalued his oral examination and overvalued the aspirant winner's one; and (b) although the law provided for a possibility to contest this result and he complained to the administrative courts, in practice he had no access to courts, since the latter were unable to verify the fairness of the evaluation made by the Admission Commission due to the absence of a statutory requirement to record the oral examinations in the *Procedure for Admission into the Position of a State Servant's*. Further, the Supreme Administrative Court's decision of 13 March 2008, failed to take into account the link between his complaint and the Constitutional Court's decision of 22 January 2008 that found that the *Procedure for Admission* and the *Inventory Schedule*, to the extent that they did not establish the requirement to record the oral examinations, were in conflict with the right to access to court and the right to enter on equal terms in the State service, enshrined in the State party's Constitution, as the reasoning of the decision to reject a candidate must be clear and accessible to the institutions and courts called to decide on disputes. Accordingly, by dismissing the case the Supreme Administrative Court acted in a manner that amounted to manifest error and denial of justice.

7.4 The Committee also takes note of the State party's arguments that (a) neither the procedure of appointing State's servants nor the related administrative proceedings fall within the scope of a determination of rights and obligations in a suit at law within the meaning of article 14, paragraph 1 of the Covenant; (b) the criteria of selection of the person suitable for the State's service position or the procedure of admission (the competition) itself was not discriminatory and that its reasonableness was not disputed by the author; (c) the author did not provide any direct or indirect evidence that his oral examination was undervalued in favour of other aspirant; and (d) his claims as well as the material and evidence submitted to its courts were thoroughly examined, by the Vilnius Regional Administrative Court and the Supreme Administrative Court, which did not find

evidence of partially by the Admission Commission or unfairness in the evaluations of the aspirants to the public service position. The Committee takes note of the State party's argument that article 25, subparagraph (c) of the Covenant does not entitle every citizen to obtain guaranteed employment in the public service, but rather to access public service on general terms of equality. Against this background, the mere fact that the courts' decisions were not in favour of the author does not demonstrate that these decisions were groundless or arbitrary.

7.5 The Committee notes that the allegations made under articles 14, paragraph 1 and 25, subparagraph (c) — alone and in conjunction with article 2, paragraph 3 — relate mainly to the evaluation of the facts and evidence made by Vilnius Regional Administrative Court and the Supreme Administrative Court. The Committee recalls its jurisprudence, according to which it is incumbent on the courts of States parties to evaluate the facts and evidence in each specific case, or the application of domestic legislation, unless it can be shown that such evaluation or application was clearly arbitrary or amounted to a manifest error or denial of justice.[6] The Committee has studied the materials submitted by the parties, including the Constitutional Court's decision regarding the constitutionality of the *Procedure for Admission* and the *Inventory Schedule*. Notwithstanding the Constitutional Court's finding regarding the unconstitutionality of the *Procedure for Admission* and the *Inventory Schedule*, as applied to the author, the Committee is not in a position, on the basis of the materials at its disposal, to conclude that, in deciding the author's case, the Administrative Courts acted arbitrarily or that their decision entailed a manifest error or denial of justice. The Committee considers, therefore, that the author has failed to sufficiently substantiate his claim of a violation of articles14, paragraph 1 and 25, subparagraph (c) — alone and in conjunction with article 2, paragraph 3 — and that these allegations are therefore inadmissible under article 2 of the Optional Protocol.

7.6 The Committee also takes note of the author's allegation under article 2, paragraph 2, that the State party failed to adopt timely measures to guarantee that the *Procedure for Admission into the Position of a State Servant* requires recording the oral examinations of the aspirants. The Committee recalls its jurisprudence in this connection, which indicates that the provisions of article 2 of the Covenant, which lay down general obligations for States parties, cannot, in and of themselves, give rise to a claim in a communication under the Optional Protocol.[7] The Committee therefore considers that the author's contentions in this regard are inadmissible under article 2 of the Optional Protocol.

8. The Committee therefore decides:

(a) That the communication is inadmissible under article 2 of the Optional Protocol; and

(b) That this decision shall be transmitted to the State party and to the author.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the present report.]

[6] See communication No. 1616/2007, *Manzano and Others v. Colombia*, decision adopted on 19 March 2010, para. 6.4, and communication No. 1622/2007, *L.D.L.P. v. Spain*, decision adopted on 26 July 2011, para. 6.3.

[7] See communication No. 1834/2008, *A.P. v. Ukraine*, decision adopted on 23 July 2012, para. 8.5; and communication No. 1887/2009, *Peirano Basso v. Uruguay*, Views adopted on 19 October 2010, para. 9.4.

L. Communication No. 2197/2012, *X.Q.H. v. New Zealand* (Decision adopted on 25 March 2014, 110th session)*

Submitted by:	X.Q.H. (represented by Frank Deliu)
Alleged victims:	The author and her son
State party:	New Zealand
Date of communication:	22 March 2012 (initial submission)
Subject matter:	Deportation to China
Procedural issues:	Victim status; exhaustion of domestic remedies; lack of substantiation
Substantive issue:	-
Articles of the Covenant:	17, para. 1; 23, para. 1; 24, para. 1; 14, para. 1; 2, para. 3 (a)
Articles of the Optional Protocol:	1, 2, 3 and 5, para. 2 (b)

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

Meeting on 25 March 2014,

Adopts the following:

Decision on admissibility

1.1 The author of the complaint, dated 22 March 2012, followed by a further submission dated 2 May 2012, is Ms. X.Q.H., who is a citizen of China. She submits her communication on her own behalf as well as on behalf of her son, a New Zealand national born on 20 November 2000. She claims that New Zealand has violated her rights as well as those of her son under articles 17, paragraph 1; 23, paragraph 1; 24, paragraph 1; and article 14, paragraph 1; and 2, paragraph 3 (a), of the Covenant. She is represented by Frank Deliu from the Amicus Barristers Chambers.[1]

1.2 On 8 March 2013, the Special Rapporteur on new communications and interim measures, acting on behalf of the Committee, decided that the admissibility of the communication should be examined separately from its merits.

The facts as presented by the author

2.1 The author alleges that she arrived in New Zealand on 27 April 1996, after being subjected to violations of her rights by the Chinese authorities. In March 1990, she was

* The following members of the Committee participated in the examination of the present communication: Mr. Yadh Ben Achour, Mr. Lazhari Bouzid, Ms. Christine Chanet, Mr. Ahmad Amin Fathalla, Mr. Cornelis Flinterman, Mr. Yuji Iwasawa, Mr. Walter Kälin, Ms. Zonke Zanele Majodina, Mr. Gerald L. Neuman, Sir Nigel Rodley, Mr. Victor Manuel Rodríguez-Rescia, Mr. Fabián Omar Salvioli, Ms. Anja Seibert-Fohr, Mr. Yuval Shany, Ms. Margo Waterval and Mr. Andrei Paul Zlatescu.

[1] The Optional Protocol entered into force for the State party on 26 May 1989.

forced to terminate a pregnancy by her doctor, who informed the street committee[2] that she was expecting her second child, in breach of the one-child policy in China. In August 1994, she fell pregnant again. In order to protect herself and her future child, she fled Guangzhou to go and stay in the countryside. However, the doctor informed the street committee of the author's pregnancy and they began to search for her, threatening and detaining members of her family until they informed the authorities of her location. By the time the author was found, she was approximately six months pregnant. The street committee brought the author back to Guangzhou and her pregnancy was terminated against her will. As a result, she lost a substantial amount of blood and had to remain hospitalized for a week.

2.2 The author and her then partner arrived in New Zealand on 27 April 1996 and 10 December 1996 respectively. They were both granted short-term visitor permits on arrival, which expired in due course. Eight days after her arrival in New Zealand, the author lodged a claim for refugee status. On 24 November 1997, the Refugee Status Board (RSB) declined her claim. The author appealed the decision to the Refugee Status Appeals Authority (RSAA), but her appeal was rejected on 3 April 1998. On 16 November 1998, the author was located and was issued with a removal order. She lodged an appeal with the Removal Review Authority (RAA) on 22 December 1998. On 13 December 1998, she lodged an application for another RSAA hearing on the basis that there had been a misunderstanding between her and her previous solicitors. The application was granted and her appeal was heard on 29 March 1999. On 17 June 1999 the RSAA dismissed that appeal.

2.3 On 2 August 2000, the RAA released its decision regarding the author's appeal dated 22 December 1998. At that time, the author was pregnant. Given that the author had already had two forced terminations of pregnancies whilst in China, the RAA found that there were exceptional circumstances of a humanitarian nature such as to make it "unjust or unduly harsh for her to return to China whilst pregnant". The RAA ordered the cancellation of the removal order and held that the author should be allowed to remain in New Zealand until she had given birth and fully recovered, and provided the author with a visitor's permit valid until 28 February 2001. In November 2000, the author and her partner married, and their son was born in New Zealand, thereby acquiring New Zealand nationality.

2.4 On 17 April 2001, a letter was written on behalf of the author to the Minister of Immigration asking for a special authorization to lodge a residence application under the humanitarian category. On 29 May 2001, the Minister advised that she was not prepared to intervene to grant the residence application. On 1 July 2001, the temporary permits for the author and her then husband expired. On 2 October 2001, the author lodged a further claim for refugee status. She was interviewed on 14 December 2001. The RSB rejected her claim on 18 February 2002. On 25 February 2002, the author lodged an appeal against the RSB decision with the RSAA. This appeal was withdrawn on 3 December 2002.[3] The author had also lodged an appeal to the RAA on 10 August 2001. This appeal was dismissed by the RAA on 27 June 2003. Further representations were made to the Associate Minister of Immigration. On 15 June 2004, the Associate Minister advised that he was not prepared to intervene.

2.5 Removal orders were served on the author and her husband on 19 September 2005 and 12 September 2005 respectively. Her husband was removed from New Zealand and is in China. The author is still living in New Zealand. The application to the High Court for judicial review of the decision to remove the author was examined and the trial Judge ruled[4]

[2] In the 1980s/90s, neighbourhood committees/street committees were heavily involved in law enforcement and mediation of disputes at the local level.

[3] The author does not explain why she withdrew the appeal.

[4] HC Auckland CIV-2005-404-5202, of 29 December 2006, see annex B.

that the decisions to remove the author were reasonable in the administrative law sense. The interim orders applications, as well as the substantive appeal lodged by the author, were unsuccessful.[5] In March 2010, the author divorced from her husband. In November 2011, she married a New Zealand citizen.

The complaint

3.1 The author considers that as a mother of a child who has New Zealand citizenship and given that she is now married to a New Zealand citizen, it is in the best interests of the extended family that she remains in New Zealand. She considers that, by removing her to China, the State party would violate her rights as well as the rights of her child, under articles 14, 17, 23, 24 and 2, paragraph 3, of the Covenant.

3.2 The author considers that her deportation would prejudice the rights of her son, who is a New Zealander and who has always lived in New Zealand. She specifies that her son could not become a Chinese citizen without relinquishing his New Zealand nationality. Further, he is not the first child of the author, and he is therefore considered as a "black child" in China. As such, he cannot be registered as part of his family's household and, in the event of returning to China, would not be given access to medical care, education or employment, unless the author could afford to pay a substantial fine as a punishment for breaching the family planning regulations. The author further argues that her son has had asthma since he was born, that he needs regular treatment with inhalers, and that his health would be affected in the event of returning to China because of the pollution and dampness.

3.3 The author refers to the Committee's jurisprudence, considering that the circumstances of her case fall within the "exceptional circumstances" identified in *Winata v. Australia*,[6] under which the Committee considered that a State party's refusal to allow one member of a family to remain in its territory would amount to interference in that person's family life. In the present case, her son was 12 at the time of the complaint, and he had only known New Zealand as his home. The author considers that if she is deported by the State party, both biological parents of her son would have to be in China, and the family would be under the obligation to choose between the author's leaving her son without his mother in New Zealand, or his going with her to China, where he has never been before. The author therefore considers that the decision of the State party to deport her constitutes an "interference" with their family life. Further, given that her son's biological father was expelled with a five-year ban on returning to New Zealand, the author considers it highly probable that, by analogy, she would be subject to the same ban. In this regard, the author refers to the Committee's jurisprudence in *Sahid v. New Zealand*:[7] in this case, the complaint was dismissed because "the author's removal [had] left his grandson with his mother and her husband in New Zealand". The author argues that her son has no other immediate relatives in New Zealand, and that to separate a child from both his biological parents would amount to a clear breach of articles 17 and 23 of the Covenant for the author and her son, and of article 24 for her son alone.

3.4 As regards her claims under articles 2 and 14, the author argues that the State party failed to apply the "proper legal test" during the asylum process for her partner, and that the relief to which she considers that her family should have been entitled was refused, without her being given an opportunity to be heard on the matter. The author further argues that the

[5] *X.Q.H. v. Minister of Immigration*, CA 236/06, 18 December 2006; and *X.Q.H. v. Minister of Immigration* (2009) 2 NZLR 700 (CA), annexes C and D.

[6] Communication No. 930/2000, *Winata v. Australia*, Views adopted on 26 July 2001.

[7] Communication No. 893/1999, *Sahid v. New Zealand*, Views adopted on 28 March 2003.

Supreme Court failed to engage in a proper analysis of her claim for relief insofar as the Court never informed the author's counsel that a decision would be adopted on that claim.

3.5 The author argues that she did not submit her communication before because she had continuously tried to seek redress at the national level, even after the Supreme Court's decision. Her removal order was issued on 19 September 2005, pursuant to Section 54 of the Immigration Act 1987, and it remained valid at the time of the complaint. The author also considers that, despite her new application for a residence permit following her marriage to a New Zealander, she could be deported at any time insofar as, under paragraph 11 of the Immigration Act 2009, the New Zealand immigration authorities are under no obligation to consider any new visa application. At the time of the complaint, the author was therefore in hiding for fear of deportation. Taking this situation into account, no interim measure was granted by the Committee.

The State party's observations on the admissibility of the communication

4.1 In its submission of 3 December 2012, the State party requested that the Committee declare the communication inadmissible.

4.2 The State party indicates that, prior[8] to the notification of her communication to the Human Rights Committee, the author was advised by the migration authorities to apply for a work visa. She did so on 6 November 2012 and a work visa was granted on 21 November 2012. The author is therefore no longer unlawful and subject to removal from New Zealand. The State party further specifies that the work visa was granted for an initial term of two years and may be renewed and/or followed by an application for permanent resident status.

4.3 As to the author's son, the State party considers that he has held New Zealand citizenship since birth and therefore does not require immigration permission to remain in the country. The State party argues that, as the communication is entirely concerned with the denial of immigration permission and the related court proceedings, its basis has been removed, and the communication is inadmissible under article 1 of the Optional Protocol.

4.4 The State party considers that the author's claims under articles 2, paragraph 3; 14, paragraph 1; 17, paragraph 1; 23, paragraph 1; and 24 were examined comprehensively and in accordance with those rights by the immigration authorities and the courts. It further considers that the communication makes no allegation of arbitrariness, manifest injustice or other permissible basis on which to revisit those findings. The State party therefore considers that the communication is inadmissible under articles 2 and 3 of the Protocol.

4.5 With regard to the author's claims in respect of family life, the State party considers that they only arose because of the author's pursuit of protracted legal proceedings since immediately after her arrival in New Zealand in 1996. The State party refers to the Committee's jurisprudence in *Rajan v. New Zealand*,[9] where it considered that the domestic authorities had contemplated the protection of the children and family at each stage of the process, and that the subsequent time in New Zealand had been "spent either in pursuing available remedies or in hiding", thereby concluding that the author's claims under articles 17, 23 and 24 were insufficiently substantiated, pursuant to article 2 of the Optional Protocol. The State party therefore considers that the author's claims under articles 17, 23 and 24 are inadmissible due to lack of substantiation.

[8] No specific date is provided.

[9] Communication No. 820/1998, *Rajan v. New Zealand*, Decision adopted on 6 August 2003, para. 7.3.

4.6 The State party further argues that the author's claims under articles 2, paragraph 3; and 14, paragraph 1; in relation to the hearing and to the determination of the author's appeal by the Supreme Court in May and July 2009 are inadmissible due to non-substantiation and non-exhaustion of domestic remedies. The State party first considers that the Supreme Court's decision to decline the author's request for judicial review was justified. Since 1994, the immigration authorities have been reviewing their approach to asylum seekers with the aim of incorporating the State party's international obligations into national law. The amended legislation gives priority to the best interest of the child and of the family. In three distinct cases, the Supreme Court found that the immigration authorities had not applied the appropriate criteria in the asylum proceedings. However, in the author's case, the Court considered that there had been a comparatively recent assessment of the author's circumstances, and that her counsel had not identified anything relevantly new that had not been considered by the immigration authorities. The State party considers that, had there been any error on the part of the authorities, this would not have had any effect on the outcome of the author's case, and that the author's claim on this point is insufficiently substantiated.

4.7 In addition, the State party considers that the author has not exhausted domestic remedies with regard to articles 2, paragraph 3, and 14, paragraph 1, insofar as the system in New Zealand permits parties to court proceedings to seek recall of a judgement where there has been an exceptional error. The author, who is assisted by counsel, did not avail herself of that possibility and her related claim should therefore be held inadmissible under article 5, paragraph 2 (b), of the Optional Protocol.

The authors' comments on the State party's submission

5.1 By submission dated 28 February 2013, the author argues that the fact that she was granted a work permit does not remedy the breach of the Covenant imputable to the State party. Had she not married a New Zealander, the author would never have obtained a work permit and she would have had to return to China. The State party is therefore responsible for a violation of articles 17, 23 and 24 of the Covenant.

5.2 With regard to the Supreme Court's judgement, the author states that, while it was recognized that the immigration officials had erred as a matter of law, relief was denied because there was no change in the factual circumstances of the case. The author considers that the legal error in respect of her family should still be compensated for. The author further contests the reference to *Rajan v. New Zealand*,[10] considering that, in her case, she was at risk of deportation during the whole duration of her stay in New Zealand, and that her son was permanently at risk of being separated from his mother.

5.3 As to the moot character of the complaint, the author considers that she has a temporary visa, and that if her relationship with a New Zealand man terminates, she will again be at risk of deportation. The author therefore considers that her immigration status remains unsolved.

5.4 In the light thereof, the author requests that the communication be declared admissible and be considered on the merits of the case.

[10] See footnote 12.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 93 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

6.2 The Committee notes the author's arguments that, should she be deported to China, her family life and the family life of her son would be at risk: her son would either have to remain without his biological parents in New Zealand; or he would have to go with her to China, where he would be considered as a "black child" and would therefore suffer all the civil, economic and social consequences of the Chinese one-child policy. The Committee also notes that the author's son, having held New Zealand citizenship since birth, does not require immigration permission. The author's arguments as to the alleged violation of articles 17 and 23 of the Covenant for the author and her son, and of article 24 for her son alone therefore fully depend on her own migration status. In this regard, the Committee notes that the State party advised the author to apply for a work visa before she submitted her communication to the Committee, but that she only did so afterwards. It also notes that the author was granted a work visa on 21 November 2012 and is no longer subject to deportation from New Zealand.

6.3 The Committee further notes that the author has mentioned on a purely hypothetical basis (i) the eventuality of not having married her present husband, which would have resulted in her not obtaining a work visa, and (ii) the eventuality of her separation from her present husband, following which she would again be at risk of deportation, taking into account the temporary character of her visa. The Committee considers that the latter arguments concerning the present and future marital status of the author do not go beyond the bounds of eventuality and theoretical possibility.[11] Consequently, the author is currently not in a position to claim the status of a victim within the meaning of article 1 of the Optional Protocol.

6.4 With regard to the claim of an alleged violation of articles 2, paragraph 3, and 14, paragraph 1, of the Covenant, the Committee observes that the author makes no allegation of arbitrariness, manifest injustice or other permissible basis on which to revisit the related judicial decisions and proceedings, but only refers to the rights of her ex-husband, who is not a party to the present communication. Thus, the Committee considers that the allegations concerning articles 2, paragraph 3, and 14, paragraph 1, of the Covenant have been insufficiently substantiated for the purposes of admissibility and concludes that they are inadmissible under article 2 of the Optional Protocol.

7. The Human Rights Committee therefore decides:

(a) That the communication is inadmissible under articles 1 and 2 of the Optional Protocol;

(b) That the decision be transmitted to the State party and to the author.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the present report.]

[11] See inter alia: communication No. 932/2000, *Gillot et al. v. France*, Views adopted on 15 July 2002, para. 10.5.

Annex VIII

Follow-up activities under the Optional Protocol

1. In July 1990, the Committee established a procedure for the monitoring of follow-up to its Views under article 5, paragraph 4, of the Optional Protocol, and created the mandate of the Special Rapporteur for follow-up on Views to this effect.

2. In 1991, the Special Rapporteur began to request follow-up information from States parties. Such information had been systematically requested in respect of all Views with a finding of a violation of Covenant rights; 850 of the 1,008 adopted since 1979 concluded that there had been a violation of the Covenant.

3. All attempts to categorize follow-up replies by States parties are inherently imprecise and subjective: it accordingly is not possible to provide a neat statistical breakdown of follow-up replies. Many follow-up replies received may be considered satisfactory, in that they display the willingness of the State party to implement the Committee's recommendations or to offer the complainant an appropriate remedy. Other replies cannot be considered satisfactory because they either do not address the Committee's Views or relate only to certain aspects of them. Some replies simply note that the victim has filed a claim for compensation outside statutory deadlines and that no compensation can therefore be paid. Still other replies indicate that there is no legal obligation on the State party to provide a remedy, but that a remedy will be afforded to the complainant on an ex gratia basis.

4. The remaining follow-up replies challenge the Committee's Views and findings on factual or legal grounds, constitute much-belated submissions on the merits of the complaint, promise an investigation of the matter considered by the Committee or indicate that the State party will not, for one reason or another, give effect to the Committee's recommendations.

5. In many cases, the Secretariat has also received information from complainants to the effect that the Committee's Views have not been implemented. Conversely, in rare instances, the petitioner has informed the Committee that the State party had in fact given effect to the Committee's recommendations, even though the State party had not itself provided that information.

6. The table below displays a complete picture of follow-up replies from States parties received up to the 107th session (11–28 March 2013), in relation to Views where the Committee concluded to a violation of the Covenant. It indicates whether follow-up replies are or have been considered as satisfactory or unsatisfactory, in terms of their compliance with the Committee's Views, or whether the dialogue between the State party and the Special Rapporteur for follow-up on Views continues. The notes following a number of case entries convey an idea of the difficulties in categorizing follow-up replies.

7. As of its 104th session, the Committee, in an effort to have its assessment on follow-up to Views issues disclosed in a more comprehensive, structured and transparent manner, decided to include an indication of its current assessment of the follow-up status in cases where submissions were received from the parties during the reporting period (see chap. V (vol. I) of the present report). Decisions to have the follow-up dialogue closed or suspended are also indicated in the table below.

8. Follow-up information provided by States parties and by petitioners or their representatives subsequent to the previous annual report (A/68/40) is set out in chapter VI (vol. I) of the present report.

State party and number of cases with violation	*Communication number, author and relevant Committee report*	*Follow-up response received from State party*	*No response*	*Follow-up dialogue ongoing*	*Observations*
Algeria (28)	992/2001, *Bousroual* A/61/40		X	X	
	1085/2002, *Tarigh* A/61/40		X	X	
	1172/2003, *Madani* A/62/40		X	X	
	1173/2003, *Benhadj* A/62/40		X	X	
	1196/2003, *Boucherf* A/61/40		X A/64/40	X	
	1297/2004, *Medjnoune* A/61/40		X A/67/40	X	
	1327/2004, *Grioua* A/62/40		X	X	
	1328/2004, *Kimouche* A/62/40		X	X	
	1439/2005, *Aber* A/62/40		X	X	
	1495/2006, *Madoui* A/64/40		X	X	
	1588/2007, *Benaziza* A/65/40		X	X	
	1753/2008, *Rakik* A/68/40		X	X	
	1779/2008, *Mezine* A/68/40		X	X	

State party and number of cases with violation	*Communication number, author and relevant Committee report*	*Follow-up response received from State party*	*No response*	*Follow-up dialogue ongoing*	*Observations*
Algeria (*cont'd*)	1780/2008, *Aouabdia et al.* A/66/40	X A/68/40		X A/68/40	
	1781/2008, *Berzig* A/67/40		X	X	
	1791/2008, *Sahbi* A/68/40		X	X	
	1796/2008, *Zerrougui* A/69/40		X	X	
	1798/2008, *Azouz* A/69/40		X	X	
	1806/2008, *Saadoun* A/68/40		X	X	
	1807/2008, *Mechani* A/68/40		X	X	
	1811/2008, *Djebbar* and *Chihoub* A/67/40		X	X	
	1831/2008, *Larbi* A/69/40		X	X	
	1874/2009, *Mihoubi* A/69/40		X	X	
	1884/2009, *Aouali et al.* A/69/40		X	X	
	1889/2009, *Marouf* A/69/40		Not due	X	
	1899/2009, *Terafi* A/69/40		Not due	X	

State party and number of cases with violation	*Communication number, author and relevant Committee report*	*Follow-up response received from State party*	*No response*	*Follow-up dialogue ongoing*	*Observations*
Algeria (*cont'd*)	1900/2009, *Mehalli* A/69/40		Not due	X	
	1905/2009, *Ouaghlissi* A/67/40		X	X	
Angola (2)	711/1996, *Dias* A/55/40	X A/61/40		X	
	1128/2002, *Marques* A/60/40	X A/61/40		X	
Argentina (4)	400/1990, *Mónaco de Gallichio* A/50/40	X A/51/40		X	
	1458/2006, *González et al.* A/66/40			X	
	1608/2007, *L.M.R.* A/66/40			X	
	1610/2007, *L.N.P.* A/66/40	X A/68/40			Follow-up dialogue closed, with a note of a satisfactory implementation of the recommendation (A/69/40).
Australia (28)	560/1993, *A.* A/52/40	X A/53/40, A/55/40, A/56/40		X	
	900/1999, *C.* A/58/40	X A/58/40, CCPR/C/80/FU/1, A/60/40, A/62/40		X	
	930/2000, *Winata et al.* A/56/40	X CCPR/C/80/FU/1, A/57/40, A/60/40, A/62/40 and A/63/40		X	

State party and number of cases with violation	*Communication number, author and relevant Committee report*	*Follow-up response received from State party*	*No response*	*Follow-up dialogue ongoing*	*Observations*
Australia (*cont'd*)	941/2000, *Young* A/58/40	X A/58/40, A/60/40, A/62/40 and A/63/40		X	
	1014/2001, *Baban et al.* A/58/40	X A/60/40, A/62/40		X	
	1020/2001, *Cabal* and *Pasini* A/58/40	X A/58/40, CCPR/C/80/FU/1		X	
	1036/2001, *Faure* A/61/40	X A/61/40		X	
	1050/2002, *Rafie* and *Safdel* A/61/40	X A/62/40 and A/63/40		X	
	1069/2002, *Bakhitiyari* A/59/40	X A/60/40, A/62/40		X	
	1157/2003, *Coleman* A/61/40	X A/62/40		X	
	1184/2003, *Brough* A/61/40	X A/62/40			
	1255, 1256, 1259, 1260, 1266, 1268, 1270 and 1288/2004, *Shams*, *Atvan*, *Shahrooei*, *Saadat*, *Ramezani*, *Boostani*, *Behrooz* and *Sefed* A/62/40	X A/63/40		X	
	1324/2004, *Shafiq* A/62/40	X A/62/40 and A/63/40		X	
	1347/2005, *Dudko* A/62/40	X A/63/40, A/64/40		X	

State party and number of cases with violation	*Communication number, author and relevant Committee report*	*Follow-up response received from State party*	*No response*	*Follow-up dialogue ongoing*	*Observations*
Australia (*cont'd*)	1442/2005, *Kwok* A/65/40	X A/67/40			Follow-up dialogue closed, with a note of a satisfactory implementation of the recommendation (see A/67/40, chap. VI).
	1629/2007, *Fardon* A/65/40	X A/66/40, A/67/40		A/68/40	Follow-up dialogue suspended, with a note of unsatisfactory implementation of the recommendation (A/69/40).
	1557/2007, *Nystrom et al.* A/66/40				Follow-up dialogue suspended, with a note of unsatisfactory implementation of the recommendation (A/68/40).
	1635/2007, *Tillman* A/65/40	X A/66/40, A/67/40		A/68/40	Follow-up dialogue suspended, with a note of unsatisfactory implementation of the recommendation (A/69/40).
	1885/2009, *Horvath* A/69/40	Not due		X	
	2094/2011, *F.K.A.G.* A/69/40			X	
	2136/2012, *M.M.M. et al.* A/69/40			X	
Austria (5)	415/1990, *Pauger* A/57/40	X A/47/40, A/52/40, A/66/40			
	716/1996, *Pauger* A/54/40	X A/54/40, A/55/40, A/57/40, A/66/40, CCPR/C/80/FU/1			

State party and number of cases with violation	*Communication number, author and relevant Committee report*	*Follow-up response received from State party*	*No response*	*Follow-up dialogue ongoing*	*Observations*
Austria (*cont'd*)	965/2001, *Karakurt* A/57/40	X A/58/40, CCPR/C/80/FU/1, A/61/40		X	
	1086/2002, *Weiss* A/58/40	X A/58/40, A/59/40, CCPR/C/80/FU/1, A/60/40, A/61/40		X	
	1454/2006, *Lederbauer* A/62/40	X A/63/40		X	
Azerbaijan (1)	1633/2007, *Avadanov* A/66/40		X	X A/68/40	
Belarus (49)	780/1997, *Laptsevich* A/55/40		X A/56/40, A/57/40	X	
	814/1998, *Pastukhov* A/58/40		X A/59/40	X	
	886/1999, *Bondarenko* A/58/40	X A/59/40, A/62/40 and A/63/40		X	
	887/1999, *Lyashkevich* A/58/40	X A/59/40, A/62/40 and A/63/40		X	
	921/2000, *Dergachev* A/57/40		X	X	
	927/2000, *Svetik* A/59/40	X A/60/40, A/61/40 and A/62/40		X A/62/40	

State party and number of cases with violation	*Communication number, author and relevant Committee report*	*Follow-up response received from State party*	*No response*	*Follow-up dialogue ongoing*	*Observations*
Belarus (*cont'd*)	1009/2001, *Shchetko* A/61/40		X	X	
	1022/2001, *Velichkin* A/61/40		X A/61/40	X	
	1039/2001, *Boris et al.* A/62/40	X A/62/40		X	
	1047/2002, *Sinitsin, Leonid* A/62/40		X	X	
	1100/2002, *Bandazhewsky* A/61/40	X A/62/40		X	
	1178/2003, *Smantser* A/64/40	X A/65/40		X	
	1207/2003, *Malakhovsky* A/60/40	X A/61/40		X	
	1226/2003, *Korneenko* A/68/40			X A/68/40	
	1274/2004, *Korneenko* A/62/40	X A/62/40		X A/62/40	
	1296/2004, *Belyatsky* A/62/40	X A/63/40		X	
	1311/2004, *Osiyuk* A/64/40		X	X	
	1316/2004, *Gryb* A/67/40		X	X A/68/40	
	1354/2005, *Sudalenko* A/66/40		X	X	

State party and number of cases with violation	*Communication number, author and relevant Committee report*	*Follow-up response received from State party*	*No response*	*Follow-up dialogue ongoing*	*Observations*
Belarus (*cont'd*)	1377/2005, *Katsora* A/65/40		X	X	
	1383/2005, *Katsora et al.* A/66/40		X	X	
	1390/2005, *Koreba* A/66/40		X	X	
	1392/2005, *Lukyanchik* A/65/40	X A/66/40		X	
	1502/2006, *Marinich* A/65/40	X A/66/40			
	1553/2007, *Korneenko* and *Milinkevich* A/64/40	X A/65/40		X	
	1592/2007, *Pichugina* A/69/40		X	X	
	1604/2007, *Zalesskaya* A/66/40		X	X	
	1750/2008, *Sudalenko* A/67/40		X	X	
	1772/2008, *Belyazeka* A/67/40		X	X	
	1784/2008, *Schumilin* A/68/40			X A/68/40	
	1785/2008, *Oleshkevish* A/68/40			X	
	1787/2008, *Kovsh (Abramova)* A/68/40			X	

State party and number of cases with violation	*Communication number, author and relevant Committee report*	*Follow-up response received from State party*	*No response*	*Follow-up dialogue ongoing*	*Observations*
Belarus (*cont'd*)	1790/2008, *Govsha et al.* A/68/40			X A/68/40	
	1820/2008, *Krassovskaya* A/67/40			X A/68/40	
	1808/2008, *Kovalenko* A/69/40			X	
	1830/2008, *Pivonos* A/68/40			X A/68/40	
	1835–1837/2008, *Yasinovich* A/68/40			X	
	1836/2008, *Katsora* A/68/40		X	X A/68/40	
	1838/2008, *Tulzhenkova* A/67/40		X	X	
	1839/2008, *Komarovsky* A/69/40		Not due	X	
	1851/2008, *Sekerko* A/69/40		X	X	
	1864/2009, *Kirsanov* A/69/40		Not due	X	
	1867/2009, 1936, 1975, 1977–1891/2010, 2010/2010, *Levinov* A/68/40		X	X A/68/40	
	1903/2009, *Youbko* A/69/40		Not due	X	
	1910/2009, *Zhuk* A/69/40		X	X	

State party and number of cases with violation	*Communication number, author and relevant Committee report*	*Follow-up response received from State party*	*No response*	*Follow-up dialogue ongoing*	*Observations*
Belarus (*cont'd*)	1919–1920/2009, *Protsko* and *Tolchin* A/69/40		X	X	
	1948/2010, *Turchenyak et al.* A/69/40		Not due	X	
	2065/2011, *Kvasha* A/68/40		X	X A/68/40	
	2120/2011, *Kovalev* A/68/40		X	A/68/40	
Belgium (1)	1472/2006, *Sayadi* A/64/40		X	X	
Bolivia (Plurinational State of) (1)	176/1984, *Peñarrieta* A/43/40	X A/52/40		X	
Bosnia and Herzegovina (3)	1917–1918–1925/2008, *Prutina et al.* A/68/40	X		X	
	1955/2010, *Al-Gertani* A/69/40	X		X	
	1997/2010, *Rizvanović et al.* A/69/40	Not due		X	
Bulgaria (1)	2073/2011, *Naidenova et al.*		X	X	
Burkina Faso (1)	1159/2003, *Sankara et al.* A/61/40	X A/63/40			Follow-up dialogue closed with a note of satisfactory implementation of the Committee's recommendation (A/63/40).
Cameroon (7)	458/1991, *Mukong* A/49/40		X A/52/40	X	

State party and number of cases with violation	*Communication number, author and relevant Committee report*	*Follow-up response received from State party*	*No response*	*Follow-up dialogue ongoing*	*Observations*
Cameroon (*cont'd*)	630/1995, *Mazou*	X A/57/40			The State party reported that it had reinstated the author to the judiciary, and that it had offered him compensation, which he refused to accept because he considered it to be inadequate. The follow-up dialogue in the case was closed as the Committee deemed that the State party complied with the Views (A/59/40).
	1134/2002, *Gorji-Dinka* A/60/40	X A/65/40		X	
	1186/2003, *Titiahongo* A/63/40		X	X	
	1353/2005, *Afuson* A/62/40	X A/65/40	X	X	
	1397/2005, *Engo* A/64/40	X A/67/40, A/68/40		X A/68/40	
	1813/2008, *Akwanga* A/66/40		X	X A/68/40	
Canada (14)	27/1978, *Pinkney* Fourteenth session Selected Decisions, vol. 1		X	X	
	167/1984, *Ominayak et al.* A/45/50	X A/59/40, A/61/40, A/62/40		X A/62/40	
	694/1996, *Waldman* A/55/40	X A/55/40, A/56/40, A/57/40, A/59/40, A/61/40		X	

State party and number of cases with violation	*Communication number, author and relevant Committee report*	*Follow-up response received from State party*	*No response*	*Follow-up dialogue ongoing*	*Observations*
Canada (*cont'd*)	829/1998, *Judge* A/58/40	X A/59/40, A/60/40		X A/60/40	
	1051/2002, *Ahani* A/59/40	X A/60/40, A/61/40		X A/60/40	The State party went some way to implementing the Views: the Committee has not specifically said implementation is satisfactory.
	1465/2006, *Kaba* A/65/40	X A/66/40		X	
	1467/2006, *Dumont* A/65/40	X A/66/40, A/67/40, A/68/40			Follow-up dialogue closed, with a note of a satisfactory implementation of the recommendation (A/69/40).
	1544/2007, *Hamida* A/65/40	X A/66/40		X	
	1763/2008, *Pillai et al.*	X A/67/40			Follow-up dialogue closed, with a note of a satisfactory implementation of the recommendation (see A/68/40).
	1792/2008 *Dauphin* A/64/40	X A/65/40		X	
	1881/2009, *Shakeel* A/69/40	X		X	
	1898/2009, *Choudhary* A/69/40	X		X	
	1912/2009, *Thuraisamy* A/68/40	X		X	
	1959/2010, *Warsame* A/66/40	X		X	

State party and number of cases with violation	*Communication number, author and relevant Committee report*	*Follow-up response received from State party*	*No response*	*Follow-up dialogue ongoing*	*Observations*
Central African Republic (1)	1587/2007 *Mamour* A/64/40		X	X	
Colombia (16)	45/1979, *Suárez de Guerrero* Fifteenth session Selected Decisions, vol. 1	X A/52/40, A/68/40		X A/68/40	
	46/1979, *Fals Borda* Sixteenth session Selected Decisions, vol. 1	X A/52/40		X	
	64/1979, *Salgar de Montejo* Fifteenth session Selected Decisions, vol. 1	X A/52/40, A/68/40		X (A/68/40)	
	161/1983, *Herrera Rubio* Thirty-first session Selected Decisions, vol. 2	X A/52/40, A/68/40		X A/68/40	
	181/1984, *Sanjuán Arévalo brothers* A/45/40	X, A/52/40, A/64/40, A/68/40		X A/68/40	
	195/1985, *Delgado Páez* A/45/40	X A/52/40, A/68/40		X A/68/40	
	514/1992, *Fei* A/50/40	X A/51/40, A/68/40		X A/68/40	
	612/1995, *Arhuacos* A/52/40	X A/68/40		X A/68/40	
	687/1996, *Rojas García* A/56/40	X A/58/40, A/59/40, A/68/40		X A/68/40	
	778/1997, *Coronel et al.* A/58/40	X A/59/40, A/68/40		X A/68/40	

State party and number of cases with violation	*Communication number, author and relevant Committee report*	*Follow-up response received from State party*	*No response*	*Follow-up dialogue ongoing*	*Observations*
Colombia (*cont'd*)	848/1999, *Rodríguez Orejuela* A/57/40	X A/58/40, A/59/40, A/68/40		X A/68/40	
	859/1999, *Jiménez Vaca* A/57/40	X A/58/40, A/59/40, A/61/40, A/68/40		X A/68/40	
	1298/2004, *Becerra* A/61/40	X A/62/40, A/68/40		X A/68/40	
	1361/2005, *Casadiego* A/62/40	X A/63/40, A/68/40		X A/68/40	
	1611/2007, *Bonilla Lerma* A/66/40	X		X A/68/40	
	1641/2007, *Calderón Bruges* A/67/40	X A/68/40		X A/68/40	
Côte d'Ivoire (1)	1759/2008, *Traoré* A/67/40		X	X	
Croatia (2)	727/1996, *Paraga* A/56/40	X A/56/40, A/58/40		X	
	1510/2006, *Vojnović* A/64/40	X A/65/40, A/66/40			
Czech Republic (27)	516/1992, *Simunek et al.* A/50/40	X A/51/40, A/57/40, A/58/40, A/61/40, A/62/40		X	For all of these property cases, see also follow-up to concluding observations for the State party's reply in A/59/40
	586/1994, *Adam* A/51/40	X A/51/40, A/53/40, A/54/40, A/57/40, A/61/40, A/62/40		X	

State party and number of cases with violation	*Communication number, author and relevant Committee report*	*Follow-up response received from State party*	*No response*	*Follow-up dialogue ongoing*	*Observations*
Czech Republic (*cont'd*)	747/1997, *Des Fours Walderode* A/57/40	X A/57/40, A/58/40, A/61/40, A/62/40		X	
	757/1997, *Pezoldova* A/58/40	X A/60/40, A/61/40 and A/62/40		X	
	765/1997, *Fábryová* A/57/40	X A/57/40, A/58/40, A/61/40, A/62/40		X	
	823/1998, *Czernin* A/60/40	X A/62/40		X	
	857/1999, *Blazek et al.* A/56/40	X A/62/40		X	
	945/2000, *Marik* A/60/40	X A/62/40		X	
	946/2000, *Patera* A/57/40	X A/62/40		X	
	1054/2002, *Kriz* A/61/40	X A/62/40		X	
	1445/2006, *Polacek* A/62/40		X	X	
	1448/2006, *Kohoutek* A/63/40	X A/66/40		X	
	1463/2006, *Gratzinger* A/63/40		X	X	
	1479/2006, *Persan* A/64/40		X	X	

State party and number of cases with violation	*Communication number, author and relevant Committee report*	*Follow-up response received from State party*	*No response*	*Follow-up dialogue ongoing*	*Observations*
Czech Republic (*cont'd*)	1484/2006, *Lnenicka* A/63/40		X	X	
	1485/2006, *Vlcek* A/63/40		X	X	
	1488/2006, *Süsser* A/63/40		X	X	
	1491/2006, *Fürst Blücher von Wahlstatt* A/65/40		X	X	
	1497/2006, *Preiss* A/63/40		X	X	
	1508/2006, *Amundson* A/64/40		X	X	
	1586/2007, *Lange* A/66/40		X	X	
	1533/2006, *Ondracka* A/63/40		X	X	
	1563/2007, *Jünglingová* A/67/40		X	X	
	1581/2007, *Drda* A/66/40		X	X	
	1615/2007, *Zavrel* A/65/40		X	X	
	1742/2007, *Gschwind* A/65/40		X	X	
	1847/2008, *Klain* and *Klain* A/67/40		X	X	

State party and number of cases with violation	*Communication number, author and relevant Committee report*	*Follow-up response received from State party*	*No response*	*Follow-up dialogue ongoing*	*Observations*
Democratic Republic of the Congo (15)	16/1977, *Mbenge* Eighteenth session Selected Decisions, vol. 2		X	X	See A/59/40 for details of follow-up consultations.
	90/1981, *Luyeye* Nineteenth session Selected Decisions, vol. 2		X A/61/40	X	
	124/1982, *Muteba* Twenty-second session Selected Decisions, vol. 2		X A/61/40	X	
	138/1983, *Mpandanjila et al.* Twenty-seventh session Selected Decisions, vol. 2		X A/61/40	X	
	157/1983, *Mpaka Nsusu* Twenty-seventh session Selected Decisions, vol. 2		X A/61/40	X	
	194/1985, *Miango* Thirty-first session Selected Decisions, vol. 2		X A/61/40	X	
	241/1987, *Birindwa* A/45/40		X A/61/40	X	
	242/1987, *Tshisekedi* A/45/40		X A/61/40	X	
	366/1989, *Kanana* A/49/40		X A/61/40	X	
	542/1993, *Tshishimbi* A/51/40		X A/61/40	X	
	641/1995, *Gedumbe* A/57/40		X A/61/40	X A/68/40	

State party and number of cases with violation	*Communication number, author and relevant Committee report*	*Follow-up response received from State party*	*No response*	*Follow-up dialogue ongoing*	*Observations*
Democratic Republic of the Congo (*cont'd*)	933/2000, *Mundyo Busyo et al.* (68 judges) A/58/40		X A/61/40	X	
	962/2001, *Mulezi* A/59/40		X A/61/40	X	
	1177/2003, *Wenga* and *Shandwe* A/61/40		X	X	
	1890/2009, *Baruani* A/69/40	Not due		X	
Denmark (2)	1554/2007, *El-Hichou* A/65/40	X A/66/40		X	
	2007/2010, *X.* A/69/40	Not due		X	
Dominican Republic (2)	193/1985, *Giry* A/45/40	X A/52/40, A/59/40		X	
	449/1991, *Mojica* A/49/40	X A/52/40, A/59/40		X	
Ecuador (2)	277/1988, *Terán Jijón* A/47/40	X A/59/40		X	
	319/1988, *Cañón García* A/47/40			X	
Equatorial Guinea (3)	414/1990, *Primo Essono* A/49/40	A/62/40*	X	X	
	468/1991, *Oló Bahamonde* A/49/40	A/62/40*	X	X	

State party and number of cases with violation	*Communication number, author and relevant Committee report*	*Follow-up response received from State party*	*No response*	*Follow-up dialogue ongoing*	*Observations*
Equatorial Guinea (*cont'd*)	1152 and 1190/2003, *Ndong et al.* and *Mic Abogo* A/61/40	A/62/40*	X	X	The State party has not replied in writing, but it has met several times with the Special Rapporteur.
Finland (1)	779/1997, *Äärelä et al.* A/57/40	X A/57/40, A/59/40		X	
France (6)	1620/2007, *J.O.* A/66/40	X A/67/40		X	
	1760/2008, *Cochet* A/66/40		X	X A/68/40	
	1852/2008, *Singh* A/68/40			X	
	1876/2009, *Singh* A/66/40	X A/68/40		X A/68/40	
	1928/2010, *Singh* A/69/40			X	
	1960/2010, *Ory* A/69/40			X	
Georgia (3)	626/1995, *Gelbekhiani* A/53/40	X A/54/40		X	
	627/1995, *Dokvadze* A/53/40	X A/54/40		X	
	975/2001, *Ratiani* A/60/40	X A/61/40		X	
Greece (4)	1070/2002, *Kouldis* A/61/40	X A/61/40		X	
	1486/2006, *Kalamiotis* A/63/40	X A/64/40		X	

State party and number of cases with violation	*Communication number, author and relevant Committee report*	*Follow-up response received from State party*	*No response*	*Follow-up dialogue ongoing*	*Observations*
Greece (*cont'd*)	1558/2007, *Katsaris* A/68/40	X A/68/40		X	
	1799/2008, *Georgopoulos et al.* A/65/40	X A/66/40, A/67/40, A/68/40		X A/68/40	
Guyana (9)	676/1996, *Yasseen* and *Thomas* A/53/40	A/60/40* A/62/40	X A/60/40	X	
	728/1996, *Sahadeo* A/57/40	A/60/40* A/62/40	X A/60/40	X	
	811/1998, *Mulai* A/59/40	A/60/40* A/62/40	X A/60/40	X	
	812/1998, *Persaud* A/61/40	A/60/40* A/62/40	X	X	
	862/1999, *Hussain* and *Hussain* A/61/40	A/60/40* A/62/40	X	X	
	838/1998, *Hendriks* A/58/40	A/60/40* A/62/40	X A/60/40	X	
	867/1999, *Smartt* A/59/40	A/60/40* A/62/40	X A/60/40	X	
	912/2000, *Ganga* A/60/40	A/60/40* A/62/40	X A/60/40	X	
	913/2000, *Chan* A/61/40	A/60/40* A/62/40	X	X	The State party has not replied in writing, but it has met several times with the Special Rapporteur.
Hungary (3)	410/1990, *Párkányi* A/47/40	X		X	

State party and number of cases with violation	*Communication number, author and relevant Committee report*	*Follow-up response received from State party*	*No response*	*Follow-up dialogue ongoing*	*Observations*
Hungary (*cont'd*)	521/1992, *Kulomin* A/51/40	X A/52/40		X	
	852/1999, *Borisenko* A/58/40	X A/58/40, A/59/40		X	
Iceland (1)	1306/2004, *Haraldsson* and *Sveinsson* A/62/40	X A/63/40, A/64/40, A/67/40			Follow-up dialogue closed, with a partly satisfactory implementation of the recommendation (see A/67/40, chap. VI).
Italy (1)	699/1996, *Maleki* A/54/40	X A/55/40		X	
Jamaica (98)	92 cases			X	See A/59/40. Twenty-five detailed replies were received, of which 19 indicated that the State party would not implement the Committee's recommendations; in 2, it promises to investigate; in 1, it announces the author's release (592/1994 — Clive Johnson — see A/54/40). There were 36 general replies indicating that death sentences have been commuted. No follow-up replies in 31 cases.
	695/1996, *Simpson* A/57/40	X A/57/40, A/58/40, A/59/40, A/63/40, A/64/40		X	
	792/1998, *Higginson* A/57/40		X	X	

State party and number of cases with violation	*Communication number, author and relevant Committee report*	*Follow-up response received from State party*	*No response*	*Follow-up dialogue ongoing*	*Observations*
Jamaica (*cont'd*)	793/1998, *Pryce* A/59/40		X	X	
	796/1998, *Reece* A/58/40		X	X	
	797/1998, *Lobban* A/59/40		X	X	
	798/1998, *Howell* A/59/40	X A/61/40		X	
Kazakhstan (2)	2024/2011, *Israil* A/67/40		X	X	
	2104/2011, *Valetov* A/69/40	Not due		X	
Kyrgyzstan (14)	1275/2004, *Umetaliev* and *Tashtanbekova* A/64/40	X A/65/40		X	
	1312/2004, *Latifulin* A/65/40	X A/66/40		X	
	1338/2005, *Kaldarov* A/65/40	X A/66/40		X A/68/40	
	1369/2005, *Kulov* A/65/40	X A/66/40		X A/68/40	
	1402/2005, *Krasnov* A/66/40	X A/66/40, A/67/40		X	
	1461, 1462, 1476 and 1477/2006, *Maksudov*, *Rakhimov*, *Tashbaev*, *Pirmatov* A/63/40	X A/65/40		X	

State party and number of cases with violation	*Communication number, author and relevant Committee report*	*Follow-up response received from State party*	*No response*	*Follow-up dialogue ongoing*	*Observations*
Kyrgyzstan (*cont'd*)	1470/2006, *Toktakunov* A/66/40	X A/67/40			Follow-up dialogue closed with a satisfactory implementation of the recommendation (see A/67/40, chap. VI).
	1503/2006, *Akhadov* A/66/40	X A/67/40		X	
	1545/2007, *Gunan* A/66/40	X A/67/40		X	
	1547/2007, *Torobekov* A/67/40	X		X A/68/40	
	1756/2008, *Moidunov* and *Zhumbaeva* A/66/40	X A/67/40, A/68/40		X A/68/40	
Latvia (2)	884/1999, *Ignatane* A/56/40	X A/57/40			
	1621/2007, *Raihman* A/66/40	X		X A/68/40	
Libya (16)	440/1990, *El-Megreisi* A/49/40		X	X	
	1107/2002, *El Ghar* A/60/40	X A/61/40, A/62/40		X A/68/40	
	1143/2002, *Dernawi* A/62/40		X	X	
	1755/2008, *El Hagog Jumaa* A/67/40		X	X	
	1782/2008, *Aboufaied* A/67/40		X	X	

State party and number of cases with violation	*Communication number, author and relevant Committee report*	*Follow-up response received from State party*	*No response*	*Follow-up dialogue ongoing*	*Observations*
Libya (*cont'd*)	1880/2009, *Nenova et al.* A/67/40		X	X	
	1295/2004, *El Awani* A/62/40		X	X	
	1422/2005, *El Hassy* A/63/40		X	X	
	1640/2007, *El Abani* A/65/40		X	X	
	1751/2008, *Aboussedra et al.* A/66/40		X	X	
	1776/2008, *Ali Bashasha* and *Hussein Bashasha* A/66/40		X	X	
	1804/2008, *Il Khwildy* A/68/40		X	X	
	1805/2008, *Benali* A/68/40		X	X	
	1832/2008, *Al Khazmi* A/69/40	Not due		X	
	1913/2009, *Abushala* A/68/40		X	X	
	2006/2010, *Almegaryaf* and *Matar* A/69/40	Not due		X	
Lithuania (1)	2155/2012, *Paksas* A/69/40	Not due		X	

State party and number of cases with violation	*Communication number, author and relevant Committee report*	*Follow-up response received from State party*	*No response*	*Follow-up dialogue ongoing*	*Observations*
Madagascar (4)	49/1979, *Marais* Eighteenth session Selected Decisions, vol. 2		X*	X	According to the annual report (A/52/40), the author indicated that he had been released. No further information provided
	115/1982, *Wight* Twenty-fourth session Selected Decisions, vol. 2		X*	X	According to the annual report (A/52/40), the author indicated that he had been released. No further information provided
	132/1982, *Jaona* Twenty-fourth session Selected Decisions, vol. 2		X	X	
	155/1983, *Hammel* A/42/40 Selected Decisions, vol. 2		X	X	
Mauritius (1)	1744/2007, *Narrain et al.* A/68/40	X A/68/40		X A/68/40	
Nepal (5)	1469/2006, *Sharma* A/64/40	X A/64/40, A/66/40, A/67/40, A/68/40		X A/68/40	
	1761/2008, *Giri et al.* A/66/40	X A/67/40		X	
	1863/2009, *Maharjan* A/68/40			X	
	1865/2009, *Sedhai* A/69/40	X		X	
	1870/2009, *Sobhraj* A/65/40	X A/66/40, A/67/40, A/68/40		X A/68/40	

State party and number of cases with violation	*Communication number, author and relevant Committee report*	*Follow-up response received from State party*	*No response*	*Follow-up dialogue ongoing*	*Observations*
Netherlands (5)	786/1997, *Vos* A/54/40	X A/55/40		X	
	976/2001, *Derksen* A/59/40	X A/60/40		X	
	1238/2003, *Jongenburger Veerman* A/61/40		X	X	
	1564/2007, *X.H.L.* A/66/40	X A/68/40		X A/68/40	
	1797/2008, *Mennen* A/65/40		X	X	
New Zealand (2)	1368/2005, *Britton* A/62/40	X A/63/40		X	
	1512/2006, *Dean* A/64/40	X A/65/40	X	X	
Nicaragua (1)	328/1988, *Zelaya Blanco* A/49/40	X A/56/40, A/57/40, A/59/40		X	
Norway (2)	1155/2003, *Leirvag* A/60/40	X A/61/40		X	Additional follow-up information expected
	1542/2007, *Aboushanif* A/63/40	X A/65/40			Follow-up dialogue closed, with a note of a satisfactory implementation of the recommendation (A/69/40)
Panama (2)	289/1988, *Wolf* A/47/40	X A/53/40		X	
	473/1991, *Barroso* A/50/40	X A/53/40		X	

State party and number of cases with violation	*Communication number, author and relevant Committee report*	*Follow-up response received from State party*	*No response*	*Follow-up dialogue ongoing*	*Observations*
Paraguay (3)	1407/2005, *Asensi* A/64/40	X A/65/40, A/66/40		X A/68/40	
	1828/2008, *Domínguez* A/67/40	X A/68/40		X A/68/40	
	1829/2008, *Benítez Gamarra* A/67/40	X A/68/40		X A/68/40	
Peru (15)	202/1986, *Ato del Avellanal* A/44/40	X A/52/40, A/59/40, A/62/40 and A/63/40		X A/68/40	
	203/1986, *Muñoz Hermosa* A/44/40	X A/52/40, A/59/40, A/68/40		A/68/40	Follow-up dialogue suspended, with a note of unsatisfactory implementation of the recommendation (A/69/40)
	263/1987, *González del Río* A/48/40	X A/52/40, A/59/40		X	
	309/1988, *Orihuela Valenzuela* A/48/40	X A/52/40, A/59/40		X	
	540/1993, *Celis Laureano* A/51/40	X A/59/40, A/68/40		X A/68/40	
	577/1994, *Polay Campos* A/53/40	X A/53/40, A/59/40		X	
	678/1996, *Gutiérrez Vivanco* A/57/40	X A/58/40, A/59/40, A/64/40, A/68/40		X A/68/40	
	688/1996, *Arredondo* A/68/40	X A/68/40		X A/68/40	

State party and number of cases with violation	*Communication number, author and relevant Committee report*	*Follow-up response received from State party*	*No response*	*Follow-up dialogue ongoing*	*Observations*
Peru (*cont'd*)	906/1999, *Vargas-Machuca* A/57/40		X A/58/40, A/59/40	X	
	981/2001, *Gómez Casafranca* A/58/40	X A/59/40, A/68/40		X A/68/40	
	1058/2002, *Vargas* A/61/40	X A/61/40 and A/62/40		X	
	1125/2002, *Quispe* A/61/40	X A/61/40, A/68/40		X A/68/40	
	1126/2002, *Carranza* A/61/40	X A/61/40, A/62/40, A/68/40		X A/68/40	
	1153/2003, *K.N.L.H.* A/61/40	X A/61/40, A/62/40 and A/63/40		X	
	1457/2006, *Poma Poma* A/64/40	X A/65/40		X A/68/40	
Philippines (11)	788/1997, *Cagas* A/57/40	X A/59/40, A/60/40, A/61/40		X	
	868/1999, *Wilson* A/59/40	X A/60/40, A/61/40, A/62/40		X	
	869/1999, *Piandiong et al.* A/56/40	X N/A		X	
	1089/2002, *Rouse* A/60/40			X A/68/40	

State party and number of cases with violation	*Communication number, author and relevant Committee report*	*Follow-up response received from State party*	*No response*	*Follow-up dialogue ongoing*	*Observations*
Philippines (*cont'd*)	1320/2004, *Pimentel et al.* A/62/40	X A/63/40, A/64/40, A/66/40, A/67/40			The Committee decided to suspend the follow up dialogue, with a finding of a non-satisfactory implementation of its recommendation (see A/67/40, chap. VI)
	1421/2005, *Larrañaga* A/61/40	X		X A/68/40	
	1466/2006, *Lumanog* and *Santos* A/63/40	X A/65/40, A/66/40		X	
	1559/2007, *Hernandez* A/65/40		X	X	
	1560/2007, *Marcellana* and *Gumanoy* A/64/40		X	X	
	1619/2007, *Pestaño* A/65/40	X A/66/40		X	
	1815/2008, *Adonis* A/67/40		X	X	
Portugal (1)	1123/2002, *Correia de Matos* A/61/40	X A/62/40, A/67/40		X A/68/40	
Republic of Korea (11)	518/1992, *Sohn* A/50/40	X A/60/40, A/62/40		X	
	574/1994, *Kim* A/54/40	X A/60/40, A/62/40, A/64/40		X	
	628/1995, *Park* A/54/40	X A/54/40, A/64/40			

State party and number of cases with violation	*Communication number, author and relevant Committee report*	*Follow-up response received from State party*	*No response*	*Follow-up dialogue ongoing*	*Observations*
Republic of Korea (*cont'd*)	878/1999, *Kang* A/58/40	X A/59/40, A/64/40			
	926/2000, *Shin* A/59/40	X A/60/40, A/62/40, A/64/40		X	
	1119/2002, *Lee* A/60/40	X A/61/40, A/64/40		X	
	1321 and 1322/2004, *Yoon, Yeo-Bzum* and *Choi, Myung-Jin* A/62/40	X A/62/40 and A/63/40 A/64/40		X	
	1593 to 1603/2007, *Jung et al.* A/65/40	X A/66/40		X	
	1642–1741/2007, *Jeong et al.* A/66/40	X A/67/40		X A/68/40	
	1786/2008, *Kim et al.* A/68/40			X	
	1908/2009, *Ostavari* A/69/40	Not due		X	
Romania (1)	1158/2003, *Blaga* A/60/40		X	X	
Russian Federation (22)	712/1996, *Smirnova* A/59/40	X A/60/40		X	
	763/1997, *Lantsov* A/57/40	A/58/40, A/60/40		X	
	770/1997, *Gridin* A/55/40	A/57/40, A/60/40		X	

State party and number of cases with violation	*Communication number, author and relevant Committee report*	*Follow-up response received from State party*	*No response*	*Follow-up dialogue ongoing*	*Observations*
Russian Federation (*cont'd*)	888/1999, *Telitsin* A/59/40	X A/60/40		X	
	815/1997, *Dugin* A/59/40	X A/60/40		X	
	889/1999, *Zheikov* A/61/40	X A/62/40		X A/68/40	
	1218/2003, *Platanov* A/61/40	X A/61/40		X	
	1232/2003, *Pustovalov* A/65/40	X A/66/40, A/67/40		X	
	1278/2004, *Reshnetnikov* A/64/40		X	X	
	1304/2004, *Khoroshenko* A/66/40		X	X A/68/40	
	1310/2004, *Babkin* A/63/40	X A/64/40, A/66/40		X	
	1410/2005, *Yevdokimov* and *Rezanov* A/66/40		X	X	
	1447/2006, *Amirov* A/64/40	X A/65/40, A/66/40		X	
	1548/2007, *Kholodov* A/68/40			X	
	1577/2007, *Usaev* A/65/40	X A/66/40		X	
	1605/2007, *Zyuskin* A/66/40		X	X A/68/40	

State party and number of cases with violation	*Communication number, author and relevant Committee report*	*Follow-up response received from State party*	*No response*	*Follow-up dialogue ongoing*	*Observations*
Russian Federation (*cont'd*)	1628/2007, *Pavlyuchenkov* A/68/40			X	
	1795/2008, *Zhirnov* A/69/40	Not due		X	
	1856/2008, *Sevostyanov* A/69/40	X		X	
	1866/2009, *Chebotareva* A/67/40		X	X	
	1873/2009, *Alekseev* A/69/40	X		X	
	1932/2010, *Fedotova* A/68/40		X	X	
Saint Vincent and the Grenadines (1)	806/1998, *Thompson* A/56/40		X A/61/40	X	
Serbia (1)	1556/2007, *Novaković* A/66/40	X A/66/40, A/67/40, A/68/40		X A/68/40	
Sierra Leone (3)	839/1998, *Mansaraj et al.* A/56/40	X A/57/40, A/59/40		X	
	840/1998, *Gborie et al.* A/56/40	X A/57/40, A/59/40		X	
	841/1998, *Sesay et al.* A/56/40	X A/57/40, A/59/40		X	
South Africa (1)	1818/2008, *McCallum* A/66/40		X	X	
Spain (23)	493/1992, *Griffin* A/50/40	X A/59/40, A/58/40		X	

State party and number of cases with violation	*Communication number, author and relevant Committee report*	*Follow-up response received from State party*	*No response*	*Follow-up dialogue ongoing*	*Observations*
Spain (*cont'd*)	526/1993, *Hill* A/52/40	X A/53/40, A/56/40, A/58/40, A/59/40, A/60/40, A/61/40, A/64/40		X A/68/40	
	701/1996, *Gómez Vásquez* A/55/40	X A/56/40, A/57/40, A/58/40, A/60/40, A/61/40		X	
	864/1999, *Ruiz Agudo* A/58/40		X A/61/40	X	
	986/2001, *Semey* A/58/40	X A/59/40, A/60/40, A/61/40		X	
	1006/2001, *Muñoz* A/59/40		X A/61/40	X	
	1007/2001, *Sineiro Fernando* A/58/40	X A/59/40, A/60/40, A/61/40		X	
	1073/2002, *Terón Jesús* A/60/40		X A/61/40	X	
	1095/2002, *Gomariz* A/60/40		X A/61/40	X	
	1101/2002, *Alba Cabriada* A/60/40		X A/61/40	X A/68/40	
	1104/2002, *Martínez Fernández* A/60/40		X A/61/40	X A/68/40	
	1122/2002, *Lagunas Castedo* A/64/40		X	X	

State party and number of cases with violation	*Communication number, author and relevant Committee report*	*Follow-up response received from State party*	*No response*	*Follow-up dialogue ongoing*	*Observations*
Spain (*cont'd*)	1211/2003, *Oliveró* A/61/40		X	X	
	1325/2004, *Conde* A/62/40		X	X	
	1332/2004, *Garcia et al.* A/62/40		X	X	
	1351 and 1352/2005, *Hens* and *Corujo* A/63/40		X	X	
	1363/2005, *Gayoso Martínez* A/65/40	X A/66/40, A/68/40		X A/68/40	
	1364/2005, *Carpintero* A/64/40	X A/68/40		X A/68/40	
	1381/2005, *Hachuel* A/62/40		X	X	
	1473/2006, *Morales Tornel*, A/64/40	X A/66/40, A/68/40		A/68/40	Follow-up dialogue suspended, with a note of unsatisfactory implementation of the recommendation (A/69/40)
	1493/2006, *Williams Lecraft* A/64/40	X A/65/40, A/66/40			
	1531/2006 *Cunillera Arias* A/66/40			X	
	1945/2010, *Achabal* A/68/40			X	
Sri Lanka (14)	916/2000, *Jayawardena* A/57/40	X A/58/40, A/59/40, A/60/40, A/61/40		X	

State party and number of cases with violation	*Communication number, author and relevant Committee report*	*Follow-up response received from State party*	*No response*	*Follow-up dialogue ongoing*	*Observations*
Sri Lanka (*cont'd*)	950/2000, *Sarma* A/58/40	X A/59/40, A/60/40, A/63/40		X	
	909/2000, *Kankanamge* A/59/40	X A/60/40		X	
	1033/2001, *Nallaratnam* A/59/40	X A/60/40, A/64/40		X	
	1189/2003, *Fernando* A/60/40	X A/61/40		X	
	1249/2004, I*mmaculate Joseph et al.* A/61/40	X A/61/40		X	
	1250/2004, *Rajapakse* A/61/40		X	X	
	1373/2005, *Dissanakye* A/63/40		X	X	
	1376/2005, *Bandaranayake* A/63/40		X	X A/68/40	
	1406/2005, *Weerawanza* A/64/40		X	X A/68/40	
	1426/2005, *Dingiri Banda* A/63/40		X	X	
	1432/2005, *Gunaratna* A/64/40		X	X	
	1436/2005, *Sathasivam* A/63/40		X	X	
	1862/2009, *Pathmini Peiris et al.* A/67/40		X	X	

State party and number of cases with violation	*Communication number, author and relevant Committee report*	*Follow-up response received from State party*	*No response*	*Follow-up dialogue ongoing*	*Observations*
Suriname (8)	146/1983, *Baboeram* Twenty-fourth session Selected Decisions, vol. 2	X A/51/40, A/52/40, A/53/40, A/55/40, A/61/40		X	
	148 to 154/1983, *Kamperveen, Riedewald, Leckie, Demrawsingh, Sohansingh, Rahman, Hoost* Twenty-fourth session Selected Decisions, vol. 2	X A/51/40, A/52/40, A/53/40, A/55/40, A/61/40		X	
Sweden (3)	1416/2005, *Alzery* A/62/40	X A/62/40		X	
	1833/2008, *X* A/67/40	X A/68/40		A/68/40	Follow-up dialogue closed, with a note of a satisfactory implementation of the recommendation (A/69/40)
	2149/2012, *Islam* A/69/40	X		X	
Tajikistan (22)	964/2001, *Saidov* A/59/40	X A/60/40, A/62/40, A/67/40			The Committee decided to suspend the follow-up dialogue, with a finding of a non-satisfactory implementation of its recommendation (see A/67/40, chap. VI)
	973/2001, *Khalilova* A/60/40	X A/60/40, A/62/40, A/67/40			The Committee decided to suspend the follow-up dialogue, with a finding of a non-satisfactory implementation of its recommendation (see A/67/40, chap. VI)

State party and number of cases with violation	*Communication number, author and relevant Committee report*	*Follow-up response received from State party*	*No response*	*Follow-up dialogue ongoing*	*Observations*
Tajikistan (*cont'd*)	985/2001, *Aliboev* A/61/40	A/62/40, A/67/40			The Committee decided to suspend the follow-up dialogue, with a finding of a non-satisfactory implementation of its recommendation (see A/67/40, chap. VI)
	1042/2002, *Boimurudov* A/61/40	X A/62/40, A/63/40, A/67/40			The Committee decided to suspend the follow-up dialogue, with a finding of a non-satisfactory implementation of its recommendation (see A/67/40, chap. VI)
	1044/2002, *Nazriev* A/61/40	X A/62/40, A/63/40		X	
	1096/2002, *Kurbonov* A/59/40	A/59/40, A/60/40, A/62/40, A/67/40			The Committee decided to suspend the follow-up dialogue, with a finding of a non-satisfactory implementation of its recommendation (see A/67/40, chap. VI)

State party and number of cases with violation	*Communication number, author and relevant Committee report*	*Follow-up response received from State party*	*No response*	*Follow-up dialogue ongoing*	*Observations*
Tajikistan (*cont'd*)	1108 and 1121/2002, *Karimov*, *Askarov* and *Davlatov* A/62/40	X A/63/40, A/67/40			The Committee decided to close the follow-up dialogue concerning the case of Mr. A. Davlatov, and to suspend the dialogue, with a finding of a non-satisfactory implementation of its recommendation, concerning Mr. Karimov, Mr. Askarov, and Mr. N. Davlatov (see A/67/40, chap. VI)
	1117/2002, *Khomidova* A/59/40 implementation of its recommendation (see A/67/40, chap. VI).	X A/60/40, A/67/40			The Committee decided to suspend the follow-up dialogue, with a finding of a non-satisfactory
	1195/2003, *Dunaev* A/64/40		X	X	
	1200/2003, *Sattorova* A/64/40	X A/65/40, A/67/40			The Committee decided to suspend the follow-up dialogue, with a finding of a non-satisfactory implementation of its recommendation (see A/67/40, chap. VI).
	1208/2003, *B. Kurbanov* A/61/40	X A/62/40, A/67/40			The Committee decided to suspend the follow-up dialogue, with a finding of a non-satisfactory implementation of its recommendation (see A/67/40, chap. VI)

State party and number of cases with violation	*Communication number, author and relevant Committee report*	*Follow-up response received from State party*	*No response*	*Follow-up dialogue ongoing*	*Observations*
Tajikistan (*cont'd*)	1209/2003, 1231/2003 and 1241/2004, *Rakhmatov*, *Safarov* and *Salimov*, and *Mukhammadiev* A/63/40	X A/67/40			The Committee decided to suspend the follow-up dialogue, with a finding of a non-satisfactory implementation of its recommendation (see A/67/40, chap. VI)
	1263/2004 and 1264/2004, *Khuseynov* and *Butaev* A/64/40	X A/65/40, A/67/40			The Committee decided to suspend the follow-up dialogue, with a finding of a non-satisfactory implementation of its recommendation (see A/67/40, chap. VI)
	1276/2004, *Idiev* A/64/40. VI).	X A/65/40, A/67/40			The Committee decided to suspend the follow-up dialogue, with a finding of a non-satisfactory implementation of its recommendation (see A/67/40, chap. VI)
	1348/2005, *Ashurov* A/62/40	X A/67/40			The Committee decided to suspend the follow-up dialogue, with a finding of a non-satisfactory implementation of its recommendation (see A/67/40, chap. VI)

State party and number of cases with violation	*Communication number, author and relevant Committee report*	*Follow-up response received from State party*	*No response*	*Follow-up dialogue ongoing*	*Observations*
Tajikistan (*cont'd*)	1401/2005, *Kirpo* A/65/40	X A/66/40, A/67/40			The Committee decided to suspend the follow-up dialogue, with a finding of a non-satisfactory implementation of its recommendation (see A/67/40, chap. VI)
	1499/2006, *Iskandarov* A/66/40				
	1519/2006, *Khostikoev* A/65/40	X A/66/40, A/67/40			The Committee decided to suspend the follow-up dialogue, with a finding of a non-satisfactory implementation of its recommendation (see A/67/40, chap. VI)
Togo (4)	422 to 424/1990, *Aduayom et al.* A/51/40	X A/56/40, A/57/40		X	
	505/1992, *Ackla* A/51/40	X A/56/40, A/57/40		X	
Trinidad and Tobago (23)	232/1987, *Pinto* A/45/40 and 512/1992, *Pinto* A/51/40	X A/51/40, A/52/40, A/53/40		X	
	362/1989, *Soogrim* A/48/40	X A/51/40, A/52/40 A/53/40, A/58/40	X	X	
	434/1990, *Seerattan* A/51/40	X A/51/40, A/52/40, A/53/40		X	

State party and number of cases with violation	*Communication number, author and relevant Committee report*	*Follow-up response received from State party*	*No response*	*Follow-up dialogue ongoing*	*Observations*
Trinidad and Tobago (*cont'd*)	523/1992, *Neptune* A/51/40	X A/51/40, A/52/40 A/53/40, A/58/40		X	
	533/1993, *Elahie* A/52/40		X	X	
	554/1993, *La Vende* A/53/40		X	X	
	555/1993, *Bickaroo* A/53/40		X	X	
	569/1996, *Mathews* A/43/40		X	X	
	580/1994, *Ashby* A/57/40		X	X	
	594/1992, *Phillip* A/54/40		X		
	672/1995, *Smart* A/53/40		X		
	677/1996, *Teesdale* A/57/40		X		
	683/1996, *Wanza* A/57/40		X		
	684/1996, *Sahadath* A/57/40		X		
	721/1996, *Boodoo* A/57/40		X	X	
	752/1997, *Henry* A/54/40		X	X	

State party and number of cases with violation	*Communication number, author and relevant Committee report*	*Follow-up response received from State party*	*No response*	*Follow-up dialogue ongoing*	*Observations*
Trinidad and Tobago (*cont'd*)	818/1998, *Sextus* A/56/40		X	X	
	845/1998, *Kennedy* A/57/40		X A/58/40	X	
	899/1999, *Francis et al.* A/57/40		X A/58/40	X	
	908/2000, *Evans* A/58/40		X	X	
	928/2000, *Sooklal* A/57/40		X	X	
	938/2000, *Siewpersaud et al.* A/59/40		X A/51/40, A/53/40	X	
Turkey (2)	1853/2008 and 1854/2008, *Atasoy* and *Sarkut* A/67/40	X A/68/40		X A/68/40	
Turkmenistan (4)	1450/2006, *Komarovsky* A/63/40		X	X	
	1460/2006, *Yklymova* A/64/40			X	
	1530/2006, *Bozbey* A/66/40			X	
	1883/2009, *Orazova* A/67/40			X	
Ukraine (5)	781/1997, *Aliev* A/58/40	X A/60/40		X	
	1405/2005, *Pustovoit* A/69/40			X	

State party and number of cases with violation	*Communication number, author and relevant Committee report*	*Follow-up response received from State party*	*No response*	*Follow-up dialogue ongoing*	*Observations*
Ukraine (*cont'd*)	1412/2005, *Butovenko* A/66/40		X	X A/68/40	
	1535/2006, *Shchetka* A/66/40		X	X	
	1803/2008, *Bulgakov* A/68/40			X	
Uruguay (39)	**A**. [5/1977, *Massera* Seventh session 43/1979, *Caldas* Nineteenth session 63/1979, *Antonaccio* Fourteenth session 73/1980, *Izquierdo* Fifteenth session 80/1980, *Vasiliskis* Eighteenth session 83/1981, *Machado* Twentieth session 84/1981, *Dermit Barbato* Seventeenth session 85/1981, *Romero* Twenty-first session 88/1981, *Bequio* Eighteenth session 92/1981, *Nieto* Nineteenth session 103/1981, *Scarone* Twentieth session 105/1981, *Cabreira* Nineteenth session 109/1981, *Voituret* Twenty-first session 123/1982, *Lluberas* Twenty-first session]	X 43 follow-up replies received A/59/40		X	Follow-up information was provided on 17 October 1991 (unpublished). The list of cases under **A**: the State party submitted that on 1 March 1985, the competence of the civil courts was re-established. The amnesty law of 8 March 1985 benefited all the individuals who had been involved as authors, accomplices or accessory participants in political crimes or crimes committed for political purposes, from 1 January 1962 to 1 March 1985. The law allowed those individuals held responsible for intentional murder to have either their conviction reviewed or their sentence reduced. Pursuant to article 10 of the Act on National Pacification all the individuals imprisoned under "measures of security" were released. In cases subjected to review, appellate courts either acquitted or condemned the individuals. By virtue of Act

State party and number of cases with violation	*Communication number, author and relevant Committee report*	*Follow-up response received from State party*	*No response*	*Follow-up dialogue ongoing*	*Observations*
	B. [103/1981, *Scarone* 73/1980, *Izquierdo* 92/1981, *Nieto* 85/1981, *Romero*] **C**. [63/1979, *Antonaccio* 80/1980, *Vasiliskis* 123/1982, *Lluberas*] **D**. [4/1977, *Ramirez* Fourth session 6/1977, *Sequeiro* Sixth session 25/1978, *Massiotti* Sixteenth session 28/1978, *Weisz* Eleventh session 32/1978, *Touron* Twelfth session 33/1978, *Carballal* Twelfth session 37/1978, *De Boston* Twelfth session 44/1979, *Pietraroia* Twelfth session 52/1979, *Lopez Burgos* Thirteenth session 56/1979, *Celiberti* Thirteenth session 66/1980, *Schweizer* Seventeenth session 70/1980, *Simones* Fifteenth session 74/1980, *Estrella* Eighteenth session 110/1981, *Viana* Twenty-first session 139/1983, *Conteris*				15.783 of 20 November all the individuals who had previously held a public office were entitled to return to their jobs. On cases under **B**: the State party indicates that these individuals were pardoned by virtue of Act 15.737 and released on 10 March 1985. On cases under **C**: these individuals were released on 14 March 1985; their cases were included under Act 15.737. On cases under **D**: from 1 March 1985, the possibility to file an action for damages was open to all of the victims of human rights violations which occurred during the de facto government. Since 1985, 36 suits for damages have been filed, 22 of them for arbitrary detention and 12 for the return of property. The Government settled Mr. Lopez's case on 21 November 1990, by paying him US$ 200,000. The suit filed by Ms. Lilian Celiberti is still pending. Besides the aforementioned cases, no other victim has filed a lawsuit against the State claiming compensation. On cases under **E**: on 22 December 1986, the Congress passed Act 15.848, known as "termination of public prosecutions". Under the

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	Twenty-fifth session 147/1983, *Gilboa* Twenty-sixth session 162/1983, *Acosta* Thirty-fourth session]				Act, the State can no longer prosecute crimes committed before 1 March 1985 by the military or the police for political ends or on orders received from their superiors. All pending proceedings were discontinued. On 16 April 1989, the Act was confirmed by referendum. The Act required investigating judges to send reports submitted to the judiciary about victims of disappearances to the Government, for the latter to initiate inquiries.
	E. [30/1978, *Bleier* Fifteenth session 84/1981, *Dermit Barbato* Seventeenth session 107/1981, *Quinteros* Nineteenth session]				
	159/1983, *Cariboni* A/43/40 Selected Decisions, vol. 2		X	X	
	322/1988, *Rodríguez* A/51/40, A/49/40		X A/51/40	X	
	1887/2009, *Peirano Basso* A/66/40			X A/68/40	
	1637/2007, 1757/2008, and 1765/2008, *Canessa Albareda et al.* A/67/40			X A/68/40	
Uzbekistan (32)	907/2000, *Siragev* A/61/40	X A/61/40		X	
	911/2000, *Nazarov* A/59/40	X A/60/40		X	

State party and number of cases with violation	*Communication number, author and relevant Committee report*	*Follow-up response received from State party*	*No response*	*Follow-up dialogue ongoing*	*Observations*
Uzbekistan (*cont'd*)	915/2000, *Ruzmetov* A/61/40		X	X	
	917/2000, *Arutyunyan* A/59/40	X A/60/40		X	
	931/2000, *Hudoyberganova* A/60/40	X A/60/40		X	
	959/2000, *Bazarov* A/61/40	X A/62/40		X A/62/40	
	971/2001, *Arutyuniantz* A/60/40	X A/60/40		X	
	1017/2001, *Strakhov* and 1066/2002, *Fayzulaev* A/62/40		X	X	
	1041/2002, *Tulayganov* A/62/40		X	X	
	1043/2002, *Chikiunov* A/62/40		X	X	
	1057/2002, *Korvetov* A/62/40	X A/62/40		X A/62/40	
	1071/2002, *Agabekov* A/62/40		X	X	
	1140/2002, *Khudayberganov* A/62/40		X	X	
	1150/2002, *Uteev* A/63/40	X A/64/40		X	
	1163/2003, *Isaev* and *Karimov* A/64/40	X A/65/40		X	

State party and number of cases with violation	*Communication number, author and relevant Committee report*	*Follow-up response received from State party*	*No response*	*Follow-up dialogue ongoing*	*Observations*
Uzbekistan (*cont'd*)	1225/2003, *Eshonov* A/65/40	X A/66/40		X	
	1280/2004, *Tolipkhudzhaev* A/64/40	X A/66/40		X	
	1284/2004, *Kodirov* A/65/40	X A/66/40		X	
	1334/2004, *Mavlonov* and *Sa'di* A/64/40		X	X	
	1378/2005, *Kasimov* A/64/40		X	X	
	1382/2005, *Salikh* A/64/40	X A/65/40		X	
	1418/2005, *Iskiyaev* A/64/40	X A/65/40		X	
	1449/2006, *Umarov* A/66/40	X A/66/40		X	
	1478/2006, *Kungurov* A/66/40		X	X	
	1552/2007, *Lyashkevich* A/65/40	X A/66/40		X	
	1585/2007, *Batyrov* A/64/40	X A/66/40		X	
	1589/2007, *Gapirjanov* A/65/40	X A/66/40		X	
	1769/2008, *Ismailov* A/66/40		X	X	

State party and number of cases with violation	*Communication number, author and relevant Committee report*	*Follow-up response received from State party*	*No response*	*Follow-up dialogue ongoing*	*Observations*
Uzbekistan (*cont'd*)	1914–1915–1916/2009, *Musaev* A/67/40	X A/68/40		X A/68/40	
Venezuela (Bolivarian Republic of) (2)	156/1983, *Solórzano* A/41/40 Selected Decisions, vol. 2	X A/59/40		X	
	1940/2010, *Eligio Cedeño* A/68/40			X	
Zambia (6)	390/1990, *Lubuto* A/51/40	X A/62/40	X	X	
	821/1998, *Chongwe* A/56/40	X A/56/40, A/57/40, A/59/40, A/61/40, A/64/40, A/66/40		X A/68/40	
	856/1999, *Chambala* A/58/40	X A/62/40	X	X	
	1132/2002, *Chisanga* A/61/40	X A/61/40, A/63/40, A/64/40,		X	
	1303/2004, *Chiti* A/68/40	A/65/40	X	X	
	1859/2009, *Kamoyo* A/67/40		X	X	