



# International Covenant on Civil and Political Rights

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## Human Rights Committee

### Decision adopted by the Committee under the Optional Protocol, concerning communication No. 2564/2015\*, \*\*

<i>Communication submitted by:</i>	X (represented by counsel, Raimundas Jurka)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Lithuania
<i>Date of communication:</i>	14 August 2014 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 97 of the Committee's rules of procedure, transmitted to the State party on 9 February 2015 (not issued in document form)
<i>Date of adoption of decision:</i>	29 March 2019
<i>Subject matter:</i>	Fair trial
<i>Procedural issues:</i>	Exhaustion of domestic remedies; manifestly ill-founded case
<i>Substantive issues:</i>	Fair trial; undue delay to fair trial; retroactive application of criminal law; right to appeal
<i>Articles of the Covenant:</i>	14 (1), (3) (c) and (g) and (5) and 15 (1)
<i>Articles of the Optional Protocol:</i>	2 and 5 (2) (b)

1.1 The author of the communication is X, a national of Lithuania born in 1966. She claims that the State party has violated her rights under articles 14 (1), (3) (c) and (g) and (5) and 15 (1) of the Covenant. The Optional Protocol entered into force for the State party on 20 February 1992. The author is represented by counsel.

1.2 On 21 May 2015, the Committee, acting through its Special Rapporteur on new communications and interim measures, granted the State party's request to consider the admissibility of the communication separately from the merits.

\* Adopted by the Committee at its 125th session (4–29 March 2019).

\*\* The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Yadh Ben Achour, Ilze Brands Kehris, Christopher Arif Bulkan, Ahmed Amin Fathalla, Shuichi Furuya, Christof Heyns, Bamariam Koita, Marcia V.J. Kran, Duncan Laki Muhumuza, Photini Pazartzis, Hernán Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Yuval Shany, Hélène Tigroudja, Andreas Zimmermann and Gentian Zyberi.



**Factual background**

2.1 A group of three sisters wished to file an application for restoration of ownership rights over five plots of land in Vilnius that had belonged to their grandfather. One of the sisters, Y, was a Russian speaker, and she asked the author, who had experience in handling landownership restoration matters, to draft the application. Y granted the author a power of attorney, authorizing her to handle documents relating to the three sisters' ownership rights. On 18 January 2001, the author submitted the application on behalf of the sisters, furnishing the information and documents that had been provided to her. The application was successful, and Y and her sisters then sold the land and divided the sale proceeds among themselves. The author was not promised or paid any fee for her services in connection with the application.

2.2 It was later discovered that certain documents submitted with the application had been falsified, and that the land in question had been publicly owned. On 26 August 2004, the Vilnius District Prosecutor's Office initiated an investigation into the matter and, on 21 September 2004, investigation officers examined the author as a witness for the first time.

2.3 More than two years later, on 1 March 2007, Vilnius District Court No. 3 issued an order authorizing the Vilnius District Prosecutor's Office to intercept and record the author's telephone conversations and to monitor other information transmitted via her communication networks from 7 March to 7 May 2007. On 5 May 2007, the order was extended to cover the period from 8 May to 6 August 2007. On 18 September 2007, the criminal police investigator issued a report indicating that there had been no conversations of relevance to the pretrial investigation.

2.4 On 16 March 2007, the author received a notice from the Vilnius District Prosecutor's Office stating that she was under suspicion of fraud. The information obtained from her during her examination as a witness was used against her in the notice. On 31 October 2007, the author was indicted for developing and implementing a criminal plan in order to acquire publicly owned land free of charge by deceit, including by deliberately submitting the following falsified documents: (a) the aforementioned application of Y and her sisters for restoration of landownership rights; (b) a certificate indicating that the sisters' grandfather had owned plots of land in Vilnius; and (c) a death certificate indicating that the sisters' grandfather had died in Vilnius on 30 November 1948. The author maintains her innocence, stating that it was Y who approached her for assistance, and that she herself did not develop any plan to acquire property by deceit.

2.5 On 21 March 2008, Vilnius District Court No. 3 acquitted the author on the ground that the available information was not sufficient to prove the author's intent to acquire the land by deceit. On 9 April 2008, the Vilnius Regional Prosecutor appealed to the Vilnius Regional Court, which dismissed the appeal on 10 December 2008. The Regional Court rejected the Prosecutor's argument that the author was the person who was most interested in the acquisition of the land, having considered that there was no evidence that the author had materially benefited from the land transactions, as only Y and her sister had received payment (of 30,000 litas in total) for the land. On 10 March 2009, the Vilnius Regional Prosecutor filed a cassation appeal before the Supreme Court of Lithuania. On 23 June 2009, the Supreme Court annulled the Vilnius Regional Court's decision and referred the case back to that court for rehearing on appeal. The Supreme Court found that the Regional Court had failed to reasonably explain why the circumstances did not demonstrate that the author had acquired the publicly owned land by deceit by actively handling the property restoration matter, including by submitting falsified documents.

2.6 The initial composition of judges of the Vilnius Regional Court for the rehearing on appeal was determined in 2009. However, the composition of the Court changed on 29 March 2011, and again on 31 March 2011. The Court rejected the author's request for a rehearing, which she had made on the basis of the new composition of judges. The Court, in its final composition, examined only one witness, as the other witnesses had been examined by the initial composition of judges.

2.7 On 6 May 2011, the Vilnius Regional Court convicted the author of violating article 182 (2) of the Criminal Code, by acquiring publicly owned property for Y by deceit. The author was sentenced to four years' imprisonment. Invoking article 73 (2) of the Criminal

Code, the Regional Court also ordered that 143,000 litas, representing the price of the plots of land acquired, be confiscated from the author.

2.8 On 22, 26, 27, 28 and 29 April and 11 May 2011, the author applied to receive the transcript of the sentencing hearing before the Vilnius Regional Court. She was only able to access the transcript on 17 May 2011, after she had been convicted. The transcript contained material errors. First, according to the transcript, the sentencing hearing began at 8 a.m. and ended at 9 a.m., but the hearing was only 50 minutes long, because the judge was 10 minutes late. Second, according to the transcript, after the author's request for a rehearing following the change in the composition of judges was rejected, the Court disclosed the testimony given by the witnesses. However, only the names of the witnesses, not the content of their testimony, were disclosed. Indeed, it would not have been possible for the Court to read the 60 pages of witness testimony during the 50-minute hearing. The author's claims relating to these procedural errors were in essence rejected by the Vilnius Regional Court on 17 June 2011, when it refused to listen to the audio recording of the sentencing hearing. The Court did not comment on the author's allegation that the transcript was inconsistent with the facts of her case.

2.9 On 23 June 2011, the author appealed her conviction before the Supreme Court, alleging that the Vilnius Regional Court had made several material procedural errors during the rehearing and that its impartiality was in doubt. On 6 December 2011, the Supreme Court dismissed the appeal, having considered that there had been no material procedural errors.

### **The complaint**

3.1 The author submits that the State party has violated her right to a fair hearing under article 14 (1) of the Covenant in two ways. Firstly, in its decision of 23 June 2009, the Supreme Court made a presumption of the author's guilt and thereby induced the Regional Court to convict her on rehearing. Indeed, the Supreme Court stated that the evidence against the author had not been challenged or contradicted. That direct suggestion that the author was guilty and should be convicted violated the independence of the judiciary. Under article 386 (2) of the Code of Criminal Procedure, the court of cassation is not entitled to state conclusions that may be drawn during the rehearing of a case. Secondly, two changes to the composition of judges of the Vilnius Regional Court were made during the rehearing, without an objectively reasonable explanation. This resulted in an unjustifiably long and complicated rehearing.

3.2 The author's right to be tried without undue delay under article 14 (3) (c) of the Covenant was also violated, as the alleged crime took place in 2001, but the author was only formally notified that she was under suspicion of falsification of documents and fraud on 16 March 2007, and she was not convicted until 6 May 2011. This delay caused the author to feel anxious and insecure about her future for four years. Furthermore, the untimeliness of the conviction prevented the goals of sentencing (prevention, punishment, deterrence and implementation of the principle of justice) from being served.

3.3 In violation of the author's rights under article 14 (3) (g) of the Covenant, the testimony that she had given as a witness in the criminal case was used against her once she became a criminal defendant. The status accorded to a witness is different from that of a criminal suspect. Witnesses may not be asked questions if their answers would elicit information that could constitute the basis for suspicion or charges against them.

3.4 The author's rights under article 14 (5) of the Covenant were also violated, as she was unable to have a higher tribunal fully review her case. The court of cassation (the Supreme Court) only addressed the aspects of application and interpretation of the law. The Committee issued jurisprudence in which it found that the accused had the right to have a conviction reviewed by a court of higher instance.<sup>1</sup> In addition, the author's right to access the transcript of the sentencing hearing of the Vilnius Regional Court was restricted by

<sup>1</sup> The author cites, inter alia, *Carpintero Uclés v. Spain* (CCPR/C/96/D/1364/2005) and *Gelazauskas v. Lithuania* (CCPR/C/77/D/836/1998).

delays, whereas article 14 (5) protects the right of the accused to view case-related documents and judgments.

3.5 The author also asserts a violation of her rights under article 15 (1) of the Covenant.

#### **State party's observations on admissibility**

4.1 In its observations dated 8 April 2015, the State party considers that most of the author's claims are inadmissible under article 5 (2) (b) of the Optional Protocol to the Covenant, because the author did not exhaust domestic remedies. In her cassation appeal, she did not raise the issue of the alleged violation of the independence and impartiality of the Regional Court, including the matter of the change in the Court's composition.<sup>2</sup> Moreover, the author did not raise allegations with the domestic authorities about undue delay in criminal proceedings,<sup>3</sup> about being compelled to testify against herself<sup>4</sup> or about the limits of the court of cassation's competence with respect to the assessment of facts.

4.2 According to its jurisprudence, the Committee is not a court of fourth instance with competence to re-evaluate findings of fact or review the application of domestic legislation. The author's complaint aims to rebut decisions adopted at the domestic level. However, those decisions are well-founded, and the procedures leading to their adoption do not reveal any substantial violations of domestic law or of the Covenant.

4.3 All of the author's claims are inadmissible under article 2 of the Optional Protocol, due to non-substantiation. With reference to the author's claim under article 14 (1) of the Covenant that her right to a fair hearing was violated, the instance-based nature of the judicial system of Lithuania is designed to correct potential errors by the lower courts, to prevent injustice and to change convictions should new circumstances emerge. The court of cassation is obligated to provide grounds for its decisions or formulate guidelines for the correction of violations. In the author's case, the court of cassation (the Supreme Court), after fully examining the circumstances and the grounds of the decision of the appellate court (the Vilnius Regional Court), concluded that the appellate court had failed to thoroughly examine the prosecutor's appeal, to consider its main arguments and to provide persuasive arguments for dismissal. Contrary to the author's argument, and taking into account the entirety of the Supreme Court's decision, it cannot be concluded that the Supreme Court implied that the lower court should convict the author on rehearing. The Court noted that the seal of the forged death certificate of the applicants' grandfather had been copied from another death certificate that the author had verified before a notary. The Supreme Court observed that the appellate court had failed to reasonably rebut incriminatory evidence. That statement does not mean, however, that such evidence could not have been rebutted with well-founded arguments during the re-examination of the case.

4.4 Regarding the author's claim under article 14 (1) of the Covenant that proceedings were unnecessarily prolonged due to changes in the composition of the Regional Court during her trial, the State party states that the chairman of the Court's department of criminal cases determined the initial composition of judges on 26 June 2009. Due to the implementation of a presidential decree that entered into force on 29 March 2011, it was necessary to replace one judge. That was done on the same date, 29 March 2011. On 31 March 2011, a further change in the Court's composition was ordered. The case file indicates that, due to the unexpected dismissal of one judge, the Court had faced some organizational issues, resulting in inevitable changes to the Court's composition. Those changes were made in compliance with the law, specifically article 323 (4) of the Code of Criminal Procedure, and with the Court's rules. The Court did not assemble or hold any hearings in its composition as formed on 29 March 2011. The change made on that date therefore had no consequences for the examination of the case. In its decision, the Supreme

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<sup>2</sup> The State party states that article 57 of the Code of Criminal Procedure guarantees the right of the accused to have a judge withdrawn.

<sup>3</sup> According to the State party, the author could have raised this issue under article 6.272 of the Civil Code, which concerns liability for damage caused by unlawful actions of pretrial investigation officers, prosecutors, judges and the court.

<sup>4</sup> The State party considers that the author could have raised the issue of being compelled to testify against herself under article 31 of the Constitution and article 80 of the Code of Criminal Procedure.

Court noted that the author's case had been examined by the appellate court from 22 April to 6 May 2011, thus the new court's composition had enough time to get prepared for the examination and to get acquainted with the whole case file. Although the author claims that the Regional Court was biased in its decision to convict her, she has not substantiated that claim, as she has not shown how such bias manifested itself.

4.5 The author's claim of undue delay under article 14 (3) (c) of the Covenant is also unsubstantiated. The right to be tried without undue delay relates to the time between the formal charging of the accused and the inception of the trial, and to the time until a final judgment on appeal is rendered. It does not refer to the time between the commission of the criminal act and the adoption of a final judgment. The author was first notified of a suspicion against her on 6 February 2007 and was formally charged as an accused person on 31 October 2007. The Supreme Court adopted its final decision on 6 December 2011. Thus, proceedings lasted four years across all three instances, including the review of the case for re-examination before the appellate instance. The Committee has found in its jurisprudence that a delay of four years between the formal charging of the accused and the delivery of the judgment is not a violation of article 14 (3). In this case, the investigation was complex, because it concerned complicated questions of the restoration of property rights and the circumstances of fraud. The bill of indictment was based on the testimony of five individuals, and many documents had to be examined by experts from the Forensic Science Centre of Lithuania. Moreover, the findings of Vilnius District Court No. 3 in a civil matter relating to the criminal case were joined to the criminal case.

4.6 The author's argument under article 14 (3) (g) of the Covenant is wholly unsubstantiated. She never confessed her guilt when questioned as a witness during the pretrial investigation. According to the transcript of the testimony she gave as a witness on 21 September 2004, the author said that she could not provide any information because she did not know anything about the relevant archival documents and had not represented Y and her sisters in court proceedings. Thus, the author's right to remain silent was not violated. Moreover, the author has failed to indicate which incriminatory evidence was allegedly obtained from her during questioning, and how that evidence was later used to her detriment during criminal proceedings against her. Furthermore, neither the bill of indictment nor the author's conviction was based on the author's pretrial witness testimony. On the contrary, this testimony was referred to by the courts only insofar as it reflected the author's denial of guilt. The bill of indictment issued against the author was based on the testimony of witnesses and the conclusions of an expert from the Forensic Science Centre, who found that the author had forged Y's signature on the application for landownership.

4.7 The author's claim under article 14 (5) of the Covenant is also unsubstantiated, because the author had her conviction fully reviewed by a higher tribunal. The essence of cassation in Lithuania is the appeal of procedural judgments on points of law. In its jurisprudence, the Committee has not held that cassation, as a form of reviewing a conviction, is in and of itself a violation of article 14 (5) of the Covenant. Rather, the Committee has noted on numerous occasions that, when convictions are reviewed in cassation, the requirements under article 14 (5) of the Covenant are met. Under the law of Lithuania, the court of cassation does not re-evaluate the evidence of the case or collect new evidence. However, it does examine the arguments of the cassation appeal on which the findings of the lower courts concerning the establishment of the factual circumstances of the case and the assessment of evidence were based. The State party cites numerous examples of cases in Lithuanian jurisprudence where the court of cassation has overruled a conviction of the appellate court and has upheld an acquittal of the court of first instance. The State party considers that the jurisprudence cited by the author in support of her claim under article 14 (5) of the Covenant is inapposite. Although the author cites many communications concerning Spain<sup>5</sup> to support her argument that the facts and evidence should have been reviewed at the cassation level, the Spanish cassation system differs from that of Lithuania, in that criminal cases reach the Supreme Court of Lithuania after having already been examined by the courts of two instances (first and appellate), which have full jurisdiction concerning questions of fact and law. In cases where it is procedurally

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<sup>5</sup> See, for example, *Carpintero Uclés v. Spain*.

necessary, the court of cassation may transfer a criminal case back to the Court of Appeal for re-examination. Moreover, the court of cassation in Lithuania is not bound by the strict formal criteria that bind the Spanish cassation courts when exercising powers to review the assessment of evidence. In contrast to the cases to which she refers, the author's conviction was reviewed by the court of cassation, which examined the questions that she raised in the cassation appeal. Thus, the author was not in any way precluded from effectively exercising her right to review the conviction decision adopted by the Court of Appeal. Although the author invokes *Gelazauskas v. Lithuania*, in which the Committee found that the State party had violated article 14 (5) of the Covenant, the context of that case was materially different. The author in *Gelazauskas* was convicted in 1994 under the legislation in force at that time, according to which the Supreme Court of Lithuania acted as a court of first instance and its decisions could not be appealed. That legislation was annulled long ago. Thus, the *Gelazauskas* case is not relevant in assessing the situation of the author of the present communication.

4.8 Moreover, the author's claim under article 14 (5) that she was unable to access the trial transcript of 6 May 2011 is unsubstantiated. This claim was examined at the domestic level. As is indicated in the case files, including the decision of the Supreme Court of 6 December 2011, the author obtained access to the trial transcript and, in her cassation appeal, made claims concerning alleged errors in the transcript. The Court found that those claims related to alleged procedural violations linked to the announcement of the witnesses' testimony, but did not concern content or substance or factors that could have influenced the securing of a fair and reasoned conviction. Thus, the Court concluded that the alleged violations of criminal procedure law could not be considered as substantial.

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

5.1 In comments dated 12 May 2015, the author contests the State party's assertion that the author is attempting to rebut the decisions adopted by the domestic courts. Rather, the author's objective is to demonstrate violations of her procedural rights under the Covenant.

5.2 Concerning the exhaustion of domestic remedies and with respect to her claim under article 14 (1) of the Covenant, the author argues that although, in her cassation appeal of 23 June 2011, she did not explicitly raise the issue of a violation of the independence of the judiciary on the basis of the alleged presumption of guilt contained in the Supreme Court order of 23 June 2009, it was clear that her appeal concerned the reasoning of the order. Regarding her claim under article 14 (1) concerning the change in court composition, the State party's assertion that the author did not request to withdraw any of the judges of the Regional Court is groundless, because the author was unable to exercise this right, and her request for a re-examination of the case because of the changes in the Court's composition was denied. With reference to the author's claim of undue delay under article 14 (3), the author's counsel raised the issue of the lengthy pretrial investigation before the domestic courts. On 12 October 2007, Vilnius District Court No. 1 required the prosecutor to finish the pretrial investigation no later than 30 November 2007. The author argues that she may not be required to apply all possible legal remedies for the defence of her interests under national law because, if more than one remedy exists, she is only required to use one of them. Thus, if one remedy provides compensation for damage suffered as a result of a breach of the Covenant, the author is not obligated to use other remedies whose purpose is essentially the same.

5.3 The author reiterates her claims. With regard to her claim under article 14 (1) of the Covenant that the decision of the Supreme Court of 23 June 2009 was prejudicial, the Court opined that the author could not be acquitted based on the information available.<sup>6</sup> The Court

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<sup>6</sup> The author cites the Supreme Court decision of 23 June 2009 as stating the following: "Having in mind that the evidence in the case, that [the author] initiated the process of the restoration of the property rights and, being well aware of the peculiarities of such process, took care of all the issues in this regard, namely that she, by changing her handwriting on behalf of [Y] wrote the request of 18 January 2001 to the Vilnius City Planning Department to restore property rights to the remaining property, which carries a forged signature of [Y], and that the seal of the forged death certificate of [the sisters' grandfather] was copied from the other death certificate, which had been verified at the

thus created the preconditions for the restriction of the independence of the court that reheard the case by indirectly stating that a conviction must be rendered.

5.4 With reference to the claim relating to the immutability of the composition of the Vilnius Regional Court, article 223 of the Code of Criminal Procedure provides that every criminal case must be heard by a court of the same composition. If any of the judges is no longer present for any reason, that judge must be replaced during the hearing by another judge, and the hearing of the case must start from the beginning. That does not apply in cases where an alternate judge was appointed in advance. The hearing of the author's case did not restart from the beginning. The change that occurred on 31 March 2011 provides reasonable grounds for the author to believe that the examination of her case was not transparent, especially when considering that the Court failed to re-examine the evidence, denied the author's request to have the case re-examined because of the changes in the Court's composition, and recorded misleading information in the transcript of the trial.

5.5 Regarding the claim under article 14 (3) (c) of the Covenant, the author reiterates her arguments and maintains that the duration of criminal proceedings was unjustifiably lengthy, taking into account the "small volume of the case" and the "progress of investigation of the case". Only five witnesses were questioned, and only one expert examination was performed during the proceedings. An accused person has the right to the shortest possible trial. Officers of the court must act responsibly and expeditiously. Ten years elapsed between the commission of the offence and the adoption of the final judgment.

5.6 Concerning the claim under article 14 (3) (g) of the Covenant, the Committee broadly interprets the right of the accused not to testify against himself or herself. The Committee has opined that States must ensure that an accused person is not compelled to provide self-incriminating evidence.<sup>7</sup> The State party's assertion that the author's testimony as a witness was not used during the criminal proceedings is irrelevant. The author was questioned as a witness on circumstances (i.e. the fact that she represented the interests of Y and Y's sisters in a matter of property rights restoration) that later formed the basis for the suspicions raised against her.

5.7 With reference to the claim under article 14 (5), the Supreme Court has on numerous occasions stated that it does not examine evidence, but rather examines appeals on points of law and substantial violations of the Code of Criminal Procedure. In addition, and pursuant to article 376 (4) of the Code of Criminal Procedure, when the Court examines a case in cassation proceedings, it relies on evidence examined in hearings before the lower courts. However, an individual who was acquitted by the court of first instance but who was then convicted by the appellate court must be able to appeal the conviction in its entirety, without any limitations regarding the law and the evidence. The author was denied that right.

5.8 With reference to the author's claim regarding access to transcripts, the author maintains that her inability to access the transcript in a timely manner hindered her ability to prepare an appropriate cassation appeal. The Supreme Court admitted the procedural violations, but considered them to be mere formalities and did not correct the errors. Thus, the author's right to appeal the entirety of the conviction decision was restricted.

5.9 With respect to the claim made under article 15 (1) of the Covenant, at the time of the author's conviction, the statute of limitations for serious crimes under article 182 (1) of the Criminal Code was eight years. The author was tried on that basis. Hence, the criminal case against her lapsed on 7 May 2009. However, in the decisions rendered in 2011, the Supreme Court and the Regional Court dismissed the author's arguments regarding the statute of limitations. The Supreme Court assessed some aspects of the author's case in accordance with the original wording of the law and other aspects in accordance with the

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notary's by [the author], has not been contested or rebutted, this conclusion of the appellate court cannot be considered as grounded and persuasive."

<sup>7</sup> The author cites the Committee's general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial.

new wording of the law. This aggravated the author's situation and violated the imperative of *lex retro non agit*.

### **Issues and proceedings before the Committee**

#### *Consideration of admissibility*

6.1 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.

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

6.3 With regard to the requirement set out in article 5 (2) (b) of the Optional Protocol, the Committee notes the State party's argument that the author has not exhausted the available domestic remedies with respect to her claims under article 14 (1) and (3) (c) and (g) of the Covenant, or with respect to her claim under article 14 (5) that the court of cassation had limited competence with respect to the assessment of facts. Regarding the author's claim under article 14 (1) that the composition of the Vilnius Regional Court changed twice during her rehearing, the Committee notes the State party's argument that the author did not exercise her right under criminal procedure law to request the recusal of any of the judges of the Court's composition and did not raise the issue of the Court's composition in her cassation appeal. While noting that the author's request for a rehearing was denied, the Committee considers that the author has not adequately explained why she did not raise her allegations concerning the composition of the Court in her cassation appeal. With respect to article 14 (3) (c), the Committee notes that, although the author claims to have raised the issue of the length of the pretrial investigation before Vilnius District Court No. 1, she does not claim to have raised the issue of the length of the criminal trial in her appeals. Similarly, regarding her claims under articles 14 (1), (3) (g) and (5), the Committee notes that the author does not claim to have raised before the domestic courts her assertions that the Supreme Court, in its order of 23 June 2009, suggested (a) that she should be convicted upon rehearing; (b) that she was required to testify against herself; or (c) that the competence of the court of cassation was impermissibly restricted. The Committee also notes that the court of cassation evaluated the claims raised by the author in her cassation appeal. With regard to the author's assertion that she was only required to exhaust one available remedy, the Committee recalls its jurisprudence indicating that authors must avail themselves of all domestic remedies in order to fulfil the requirement of article 5 (2) (b) of the Optional Protocol, insofar as such remedies appear to be effective in the given case and are de facto available to the author.<sup>8</sup> The Committee therefore considers that the author's arguments under article 14 (1), (3) (c) and (g) and (5) (concerning the competence of the court of cassation) are inadmissible, due to the failure to exhaust domestic remedies.

6.4 With respect to the author's claim under article 14 (5) that her right to appeal was restricted by delays to her accessing the court transcript, the Committee considers that the author has not adequately explained how these delays adversely affected her appeal. The Committee notes that the author was able to raise claims relating to alleged errors in the transcript at appeal, and that those claims were duly analysed by the cassation court. Accordingly, the Committee finds this claim under article 14 (5) of the Covenant insufficiently substantiated and inadmissible under article 2 of the Optional Protocol.

6.5 The Committee takes note of the author's claim under article 15 (1) of the Covenant that the eight-year statute of limitations period for the crime of which she was convicted was exceeded. The Committee notes that the author has not responded to the explanations of the Vilnius Regional Court and the Supreme Court of Lithuania, according to which the applicable period of limitations was 10 years. The Committee considers that the

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<sup>8</sup> See, inter alia, *Young-kwan Kim et al. v. Republic of Korea* (CCPR/C/112/D/2179/2012), para. 6.3, and *P.L. v. Germany* (CCPR/C/79/D/1003/2001), para. 6.5.



information provided by the author does not suffice, for the purposes of admissibility, to indicate that criminal legislation was retroactively applied in her case. The Committee therefore considers that this claim is unsubstantiated and is inadmissible under article 2 of the Optional Protocol.

6.6 The Committee therefore decides:

- (a) That the communication is inadmissible under articles 2 and 5 (2) (b) of the Optional Protocol;
  - (b) That the present decision shall be transmitted to the State party and to the author.
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