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HUMAN RIGHTS COMMITTEE
Ninety-third session
7-25 July 2008

DECISION

Communication No. 1562/2007

Submitted by:	Guillaume Kibale (not represented by counsel)
Alleged victim:	The author
State party:	Canada
Date of communication:	23 August 2005 (initial submission)
Document references:	Special Rapporteur's rule 91 decision, transmitted to the State party on 10 May 2007 (not issued in document form)
Date of decision:	22 July 2008
Subject matter:	Non-appointment of the author for discriminatory reasons

* Made public by decision of the Human Rights Committee.

Procedural issues:	Reassessment of the facts and evidence
Substantive issues:	Discrimination; right of access, on general terms of equality, to public service in one's country; right to a fair trial; right to an effective remedy
Articles of the Covenant:	2, 14, 25 and 26
Articles of the Optional Protocol:	2 and 3

[ANNEX]

Annex

DECISION OF THE HUMAN RIGHTS COMMITTEE UNDER THE OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

Ninety-third session

concerning

Communication No. 1562/2007*

Submitted by:	Guillaume Kibale (not represented by counsel)
Alleged victim:	The author
State party:	Canada
Date of communication:	23 August 2005 (initial submission)

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

Meeting on 22 July 2008,

Adopts the following:

Decision on admissibility

1. The author of this communication, which was received on 23 August 2005, is Guillaume Kibale, Canadian by nationality and French-Zairian by origin, who was born in 1941 in Marseilles, France. He claims to be the victim of violations by Canada of articles 2, paragraph 1, 14, 25 (c) and 26 of the International Covenant on Civil and Political Rights. The author is not represented by counsel. The Covenant and its Optional Protocol entered into force for Canada on 19 August 1976.

* The following members of the Committee took part in the consideration of the communication: Mr. Abdelfattah Amor, Mr. Prafullachandra Natwarlal Bhagwati, Ms. Christine Chanet, Mr. Maurice Glèlè-Ahanhanzo, Mr. Yuji Iwasawa, Mr. Edwin Johnson, Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer Lallah, Ms. Zonke Zanele Majodina, Ms. Iulia Antoanella Motoc, Mr. Michael O'Flaherty, Ms. Elisabeth Palm, Mr. José Luis Pérez Sanchez-Cerro, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Ivan Shearer and Ms. Ruth Wedgwood.

Factual background

2.1 In 1981 and 1988, the author sat two competitions for recruitment into the public service, following which he did not receive an appointment.

Competition in 1981 for posts in the Canadian Department of Transport and related procedures

2.2 In May 1981, the Public Service Commission of Canada announced a public competition to fill a vacancy for a strategic economist-analyst ("analyst position") at the Department of Transport. Since there were two other vacancies to be filled in the Department, in the area of systems planning ("administrator positions"), it was decided to call on the same pool of candidates to fill all three. Ten candidates were invited for an interview with a selection panel. On 15 July 1981, the author attended the interview and learned that it would cover all three vacancies to be filled. At the end of the interviews with a two-person panel, the author obtained the highest score. The first member of the panel recommended to his supervisor that the author should be appointed to the analyst position. As the supervisor had not been present at the selection interviews, he called the author in for a meeting on 28 July 1981. The author was informed on 14 August 1981 that the supervisor had decided that neither of the two candidates selected by the first member of the panel was qualified for the analyst position.

2.3 The author lodged a complaint with the Department of Transport, requesting an inquiry on the grounds of racially based discrimination. This complaint was rejected on 25 September 1981. The author then instituted legal proceedings before the Trial Division of the Federal Court. He submitted a writ of *mandamus* requesting that the Department appoint him to the analyst position. On 3 November 1981, the Trial Division of the Federal Court rejected the writ of *mandamus* on the grounds that there was no legal obligation on the Department to fill the position by way of the competition. The author appealed against this decision to the Federal Court of Appeal, but withdrew his appeal on 20 March 1985.[1]

2.4 In February 1982, the author submitted a complaint of discrimination to the Discrimination Prevention Branch of the Canadian Public Service Commission. The deputy director of the branch undertook an investigation, pursuant to which he drew up a report which concluded that the complaint of discrimination was well-founded. By contrast, the deputy undersecretary at the Department of Transport, with administrative responsibility for the personnel unit within the Department, informed the deputy director of the branch that, even though the recruitment procedure adopted in connection with the competition in question had been "unique" and "the facts relating to this particular selection process have neither been documented nor well supervised", he did not consider that the author had been a victim of discrimination. In November 1983, the Public Service Commissioners decided that the complaint was unfounded.

[1] The author subsequently requested that his case be reopened because he had discovered certain documents that might influence the outcome of the appeal. The Federal Court of Appeal refused this request on 31 May 1988, on the grounds that the appellant's affidavit was too vague and imprecise for the Court to be able to say that the documents had been discovered under circumstances that would allow them to be submitted to the Court of Appeal.

2.5 The author then submitted a complaint to the Human Rights Commission, alleging that he was the victim of discrimination. The Commission decided to refer the matter to the Human Rights Tribunal, which dismissed the complaint on 5 September 1985 on the grounds that the plaintiff had not proved discrimination. However, the Tribunal noted that the author had identified a number of irregular practices in the recruitment process and described the competition as "irredeemably irregular". The author lodged an appeal against the decision of the Human Rights Tribunal. The appeal court endorsed the Tribunal's decision on 27 January 1987, concurring with regard to the selection process but concluding that "the power to monitor and supervise the operation of the recruitment process does not lie with the Human Rights Tribunal". On 25 March 1988, the Federal Court of Appeal dismissed the author's application to appeal. He then applied for leave to appeal to the Supreme Court, which dismissed the application on 30 June 1988.

2.6 On 6 October 1988, the author brought an action for damages before the Trial Division of the Federal Court. This action was based on the 1970 Crown Liability Act, which provides that the Crown is answerable for a civil wrong committed by a Crown servant during the performance of his or her duties. On 9 December 1988, the Court was petitioned for dismissal on the grounds that the action had been brought more than six years after the origin of the cause of action. On 28 November 1990, the Federal Court of Appeal decided that the petition for dismissal was premature in that prescription does not eliminate the right of action; it merely gives the defendant a defence of a procedural nature. The matter was therefore returned to the Trial Division of the Federal Court for examination proceedings.[2]

2.7 On 2 November 1992, the Trial Division of the Federal Court noted that with regard to the analyst position, the origin of the cause of action occurred at the moment when the author was informed in August 1981 that he was not considered qualified by the supervisor whereas he knew that he had come first in the competition. The Court remarked that the action had become time-barred six years later, i.e. in August 1987, whereas the action before the Federal Court had not been brought until 6 October 1988. The author's appeal concerning the analyst position was therefore rejected by the Federal Court as time-barred. Examining the time limit for the complaint concerning the two administrator positions, the Federal Court took the view that it was only during the hearings before the Human Rights Tribunal in 1985 that the author had learned that he had obtained the highest marks for those positions. The Federal Court therefore concluded that the cause of action concerning the two administrator positions was not time-barred. The Federal Court also expressed a view on observance of the merit principle in the Public Service. It concluded that in the matter of the analyst position, it would have considered that the merit principle had not been observed. In the matter of the administrator positions, the Court concluded that the merit principle had been observed. The Court stressed that it was only by coincidence that the author had had the opportunity to apply for the administrator positions. The Court noted that one of the members of the panel had explained in a letter to his supervisor that although he had assigned the highest mark to the author, he had done so on the basis of his

[2] Following this decision, the author petitioned the Federal Court of Appeal to order the Department of Transport to pay him damages of 800,000 dollars, which the Court refused on the grounds that the matters at issue had still not been resolved by the Trial Division of the Federal Court.

academic standing, whereas the two other candidates had experience that was more in line with the needs of the administrator positions, which was why he had recommended them for those positions.

2.8 The author appealed to the Federal Court of Appeal, which confirmed the decision of the Trial Division of the Federal Court on 8 February 1994. He applied for leave to appeal to the Supreme Court, which dismissed the application on 23 June 1994. Between 1996 and 1997, the author presented four motions for revocation of the judgement of the Trial Division of the Federal Court dismissing his action for damages. All of his motions were dismissed. On 10 March 1998, the Federal Court of Appeal dismissed an appeal against the fourth of these dismissals. The author submitted an application for leave to appeal to the Supreme Court, which dismissed it on 19 November 1998.

2.9 In 1999, the author lodged a complaint with the Inter-American Commission on Human Rights. The Commission concluded its consideration of that complaint in 2000.

Competition in 1988 for posts in the Ministry of Supply and Services and related procedures

2.10 In 1984, the author had himself placed in the Public Service Commission's applicant inventory and in October 1986, in the inventory of members of visible minorities, which had recently been created by the Commission. From 1984 onwards, the Public Service Commission assisted the author in looking for employment. Between 1984 and 1988, those in charge of the two inventories referred the author to 13 competitions for positions in the public service. Staff working with the inventory of visible minorities also had numerous meetings with him in order to help him promote himself on the labour market.

2.11 In 1988, the author sat a recruitment competition for some management consultant positions at the Ministry of Supply and Services. He was not preselected, being said not to have the requisite knowledge and experience in statistics. The author alleges that he did not obtain any of the positions in question because the attorney of the Department of Justice carried out an investigation into his professional and academic life in Canada and Europe in order to prove that he did not have the qualifications required. He lodged a complaint with the Public Service Commission on grounds of racial discrimination. The Commission deemed the complaint unfounded. On 20 November 1989, he brought a new action for damages before the Trial Division of the Federal Court. On 1 February 1990, he submitted a motion for several paragraphs of his statement of claim to be struck out. On 6 March 1990, the motion was dismissed by the Trial Division of the Federal Court, which ordered the statement of claim to be struck out in its entirety. On 12 March 1990, the author submitted a new statement of claim.[3] On

[3] The State party recalls that, in 1990, the rules of the Federal Court provided that the plaintiff in a lawsuit was responsible for calling a pretrial conference of the parties to the suit within 360 days. The author failed to call such a conference, and took no steps to advance the matter. After several years of inaction, on 22 October 1998 the Trial Division of the Federal Court issued the parties with a notice of status review and ordered the author to supply any reasons why the proceedings should not be dismissed for delay. The author submitted his reasons why the proceedings should be maintained on 26 January 1999.

17 August 2000, a prothonotary dismissed the action brought by the author on the grounds of an absence of a valid cause of action.[4] On 12 February 2001, the Trial Division of the Federal Court dismissed the author's motion to appeal. On 4 October 2002, the Federal Court of Appeal dismissed the author's application for leave to appeal. The author petitioned for reconsideration of the judgement of the Federal Court of Appeal, which was rejected on 8 November 2002. He then made an application for leave to appeal to the Supreme Court, which rejected it on 15 May 2003.

The complaint

3.1 The author invokes article 26 because he did not obtain any post in the public service following the competitions in 1981 and 1988. He asserts that he suffered racial discrimination in those two competitions. He also asserts that he has suffered discrimination of a general nature with regard to access to the public service. Additionally, he alleges that he has been the victim of discrimination by the judicial system. He considers that the State party has failed in its obligation to guarantee all persons equal and effective protection from all forms of discrimination, notably racial discrimination.

3.2 The author invokes article 25 (c) because he considers that, despite obtaining first place in the 1981 competition and despite his excellent results in other competitions, for 20 years he has been unable to exercise his right to have access, on general terms of equality and without discrimination, to the public service of his country.

3.3 The author alleges several violations of article 14. He contends that the Supreme Court on several occasions pronounced its judgement in his absence and refused to hear him. He considers that the courts have not been fair and impartial when examining his suits and motions. He contends that their judgements have violated his right to a fair and public hearing by a competent, independent and impartial tribunal. He alleges that, in November 1981, the Federal Court refused him the right to present evidence in support of his affirmations and that his witnesses were not heard.

3.4 The author also invokes article 2, paragraph 1, because the State party refused to appoint him to positions for which he had applied.

3.5 The author explains that he was unable to approach the Committee with the two issues until the Supreme Court had rendered its decision at the end of May 2003.

3.6 The author requests the State party to compensate him for all the harm he has suffered over a period of more than 20 years.

[4] A prothonotary is an official of the Federal Court who is empowered to hear any motion and make any orders other than certain motions and orders laid down by the *Rules of the Federal Court*.

State party's observations on the admissibility and the merits of the communication

4.1 In its note verbale of 12 November 2007, the State party takes the view that the communication is inadmissible, for the following reasons. Firstly, the author has not exhausted all available domestic remedies, with regard to his allegations of violations of article 14 of the Covenant. He has not approached the Canadian courts of appeal regarding the bias of the judge at the Trial Division of the Federal Court or the judge at the Federal Court of Appeal, whom he now accuses of a lack of impartiality when they ruled on his motions in 1981 and 1990 respectively. Shortly after having lodged an appeal against the decision of 3 November 1981 adopted by the Trial Division of the Federal Court, the author himself withdrew his appeal. Thus no Canadian court has had an opportunity to examine this allegation of bias and discrimination. Nor has the author taken his allegation of discrimination on the part of the Federal Court of Appeal judge to the domestic courts.

4.2 The State party notes the allegations made by the author regarding discriminatory statements by an attorney of the Department of Justice, as well as the allegations that the same attorney, at the request of the Public Service Commission of Canada, carried out an investigation into the author. These allegations have never been submitted to any national body. The State party states that the attorney, who was handling two actions for damages brought by the author, decided on his own initiative to verify the information which the author gave on his various curricula vitae, having found out that some of these items of information were inaccurate. This verification demonstrated that several of the items of information contained in the author's various curricula vitae are false. The State party insists that the attorney from the Department of Justice did not make any discriminatory remarks against the author.

4.3 Secondly, the author is essentially petitioning the Committee to reassess facts already examined by national authorities. The State party recalls that it is not part of the Committee's mandate to substitute its opinion for the judgement of domestic courts.[5]

4.4 Thirdly, the State party asserts that what is involved here is an abuse of the right of submission of communications. It stresses that the author exhausted his domestic remedies relating to the 1981 competition in 1994 when the Supreme Court rejected his application for leave to appeal. It invokes the Committee's jurisprudence which states that, even if there is no time limit for submitting communications, the Committee expects a reasonable explanation in justification of the delay.[6] In the present case, the author exhausted his domestic remedies more than 10 years before submitting his communication to the Committee. The State party takes the view that the explanation given by the author (see paragraph 3.5 above) is not reasonable since the author could not have known in 1994, when he had exhausted his domestic remedies with

[5] See for example communication No. 541/1993, *Errol Simms v. Jamaica*, decision on inadmissibility adopted on 3 April 1995, para. 6.2.

[6] See communication No. 787/1997, *Gobin v. Mauritius*, decision on inadmissibility adopted on 16 July 2001, para. 6.3.

reference to the 1981 competition, that he was not going to win his action for damages arising out of the second competition. It maintains that the submission of the part of the communication relating to the 1981 competition is an abuse of the right of submission of communications and is therefore inadmissible under article 3 of the Optional Protocol.

4.5 With regard to the allegations of systematic violations of articles 2, paragraph 1, 14, 25 (c) and 26 of the Covenant, the State party asserts that an allegation of systematic discrimination in employment in the public service that is based solely on two failed recruitment competitions constitutes an abuse of the author's right of complaint. The author has not complained about the 13 other competitions to which the Public Service Commission referred him between 1984 and 1988. The public service recruitment processes are very competitive, and it is not unusual for a candidate to be unsuccessful in obtaining a post until he or she has taken part in several competitions. In the view of the State party, the author has not established a single occurrence of discrimination. All of the domestic courts concluded that there had been no discrimination in the 1981 competition. They also rejected the author's suit following the 1988 competition on the grounds that the suit had no hope of success. Furthermore, the author's allegations concerning the justice system and the Supreme Court are purely gratuitous and unsupported. The allegations of a systematic violation of article 14 are vexatious and constitute an abuse of the right of complaint. They should therefore be declared inadmissible under article 3 of the Optional Protocol.

4.6 Fourthly, the State party asserts that the claims of the author are incompatible with the provisions of the Covenant in that the decisions not to grant certain posts to the author are not "determinations of his rights and obligations in a suit at law" and thus do not fall under article 14, paragraph 1. Neither a selection panel nor the Public Service Commission (which is responsible for preselection of candidates) is a court. Such bodies do not rule on rights; they assess a person's capacity for meeting the demands of a post. The Committee has already ruled that the recruitment processes in a country's public service are not "determinations of rights and obligations in a suit at law".[7] This part of the communication is thus incompatible with article 14, paragraph 1, and inadmissible under article 3 of the Optional Protocol.

4.7 Furthermore, the State party notes that the Covenant does not provide for a right of appeal to a country's court of last resort, and that therefore the author's allegations concerning the Supreme Court are incompatible with the Covenant. Although article 14, paragraph 5, protects the right of any person convicted of a crime to have his conviction reviewed by a higher tribunal, the Covenant does not guarantee any right of appeal against a decision of a court with regard to a civil dispute. This part of the communication is incompatible *ratione materiae* with article 14 of the Covenant and thus inadmissible under article 3 of the Optional Protocol.

4.8 Lastly, the State party maintains that the author's allegations are not sufficiently substantiated. With regard to the allegations of violations of article 2, paragraph 1, article 25 and article 26, the author has not established that he did not have access to the public service under

[7] See communication No. 837/1998, *Kolanowski v. Poland*, decision on inadmissibility adopted on 6 August 2003, para. 6.4, and communication No. 972/2001, *Kazantzis v. Cyprus*, decision on inadmissibility adopted on 7 August 2003, para. 6.5.

general conditions of equality. The State party recalls that the right guaranteed by article 25 (c) is not the right to hold a position in the public service, but to be able to have access to the public service under the same conditions as those applying to the other citizens of the country. In its general comment No. 25 on article 25, the Committee stressed that States parties may impose certain restrictions on access to the public service, including the requirement of possessing the necessary skills and experience, provided that the selection criteria are objective and reasonable. The author has not established that the selection in the two competitions at issue was not in line with objective and reasonable criteria or that there was discrimination. He has appealed to several domestic tribunals and courts, all of which concluded that these allegations were unfounded. The State party recalls that, in the 1981 competition, the economist position was not offered to any candidate. As for the two administrator positions in the 1981 competition, the State party notes that the Trial Division of the Federal Court ruled on 2 November 1992 that even if the recruitment had followed the rules, the author would not have obtained either of those posts because he was less qualified for them than other candidates. With regard to the 1988 competition, the author does not present a single fact justifying the conclusion that irregularities were committed in this competition. Consequently, the State party maintains that the author has not established any prima facie violation of article 2, paragraph 1, article 25 (c) or article 26 in the matter of the 1981 and 1988 competitions. This part of the communication is therefore inadmissible under article 2 of the Optional Protocol.

4.9 With regard to the allegations of violations of article 14, the State party points out that the author was able to appeal against the decisions of the Canadian judicial bodies. He did, in fact, appeal against the decisions of the Trial Division of the Federal Court. He was also able to petition the Supreme Court for leave to appeal against the decisions of the Court of Appeal. The decisions of the Supreme Court to dismiss the author's applications for leave to appeal on the basis of written representations do not contravene article 14 of the Covenant. In general, the Supreme Court does not give explanations for its decisions with regard to applications for leave to appeal and does not permit oral representations on such applications. Consequently, the State party maintains that the author has not established a prima facie violation of article 14. Furthermore, the State party asserts that the allegation of a violation of article 14 on the basis of the striking out of the author's statement of claim by the prothonotary in 2000 is totally devoid of merit. Moreover, the State party recalls that a judgement that is not favourable to the author is not in itself proof of discrimination or of a denial of justice. For these reasons, the communication is inadmissible under article 2 of the Optional Protocol.

4.10 In the alternative, the State party maintains that the communication is devoid of foundation.

Author's comments on the State party's observations

5.1 In his comments of 28 January 2008, the author recalls that the requirements for the administrator positions were the same as for the economist position and that he has indeed studied economics up to doctorate level. He asserts that he has complained about several judges to the Canadian Judicial Council. He repeats that he wished to present his two matters at the same time and that he therefore waited until he had received the Supreme Court decision on 15 May 2003. He also explains that he suffers from an illness that often keeps him in bed.

5.2 The author repeats that the Supreme Court never gives reasons for its decisions with regard to applications for leave to appeal, in violation of article 14 of the Covenant. He repeats his demand for compensation from the State party, in the amount of 4 million dollars.

Issues and proceedings before the Committee

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 communication is admissible under the Optional Protocol to the Covenant.

6.2 As it is required to do 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.

6.3 The Committee takes note of the State party's argument that the author has abused the right of submission of communications. With regard to the 1981 competition, the State party maintains that the author exhausted the domestic remedies in 1994 when the Supreme Court rejected his application for leave to appeal. The Committee notes, however, that the Supreme Court decision of 23 June 1994 did not put an end to the procedure, since the author continued to present motions for revocation of the judgement handed down by the Trial Division of the Federal Court on 2 November 1992. Those motions were dismissed. The author appealed to the Federal Appeal Court. He then submitted an application for leave to appeal to the Supreme Court, which dismissed it on 19 November 1998. Hence, in the case of the 1981 competition, the most recent domestic decision dates back to 1998. The Committee also notes that the author took his complaint to the Inter-American Commission on Human Rights, which concluded its consideration of the complaint in 2000. The author finally submitted his complaint to the Committee on 23 August 2005, i.e. five years later. Although it regrets the delay in the submission of the communication, the Committee considers that the author did not abuse the right of submission of communications.

6.4 With regard to the allegations of violations of article 25 (c) and article 26 of the Covenant, the Committee notes that these issues have been examined several times by domestic courts. In the case of the competition in 1981, the Human Rights Tribunal, in its decision of 5 September 1985, took the view that the author had not proved discrimination. That decision was confirmed, following an appeal, by the appeals mechanism of the Human Rights Tribunal on 27 January 1987 and by the Federal Court of Appeal on 25 March 1988 (see paragraph 2.5 above). As for the competition in 1988, the Public Service Commission considered the author's complaint of discrimination to be unfounded. The author's motions submitted to the Trial Division of the Federal Court in 1989 and 1990 were dismissed on the grounds of a lack of valid cause of action. That decision was confirmed on appeal by the Federal Court of Appeal on 4 October 2002 (see paragraph 2.11 above). The Committee notes that the author is essentially requesting a revision of the judgements of the domestic courts concerning him. The Committee recalls its long-standing case law 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, in any given case, unless it can be ascertained that the assessment was clearly arbitrary or amounted to a

denial of justice.[8] The information supplied to the Committee does not indicate that the proceedings before the authorities of the State party suffered from such defects. Accordingly, the Committee considers that the author has not, for the purposes of the admissibility of his communication, sufficiently substantiated his allegations relating to article 25 (c) and article 26, and concludes that this part of the communication is inadmissible under article 2 of the Optional Protocol.[9]

6.5 With regard to the allegations of violations of article 14, the Committee notes that they have to do with the numerous efforts expended by the author to contest the decisions rejecting his applications for employment in the public service. Reiterating its view that the concept of "rights in a suit at law" referred to in article 14, paragraph 1, is based on the nature of the right in question and not on the status of one of the parties, the Committee recalls that this notion encompasses procedures aimed at determining rights and obligations pertaining to the areas of contract, property and torts in the area of private law, as well as equivalent notions in the area of administrative law.[10] On the other hand, the Committee considers that article 14 does not apply where domestic law does not grant any entitlement to the person concerned.[11] In the present case, the applicable domestic law does not confer any right upon the person concerned to an appointment in the public service. The Committee is therefore of the view that the procedures undertaken by the author to contest the decisions refusing his applications for positions in the public service do not constitute determinations of his rights and obligations in a suit at law within the meaning of article 14, paragraph 1, of the Covenant. Accordingly, this part of the communication is incompatible *ratione materiae* with that provision and inadmissible under article 3 of the Optional Protocol.[12] The Committee therefore considers that it is not necessary to decide on the question of the exhaustion of domestic remedies with respect to his allegations of violations of article 14 of the Covenant.

6.6 The Committee recalls that article 2 of the Covenant can be invoked by individuals only in conjunction with other articles of the Covenant, and notes that article 2, paragraph 3 (a), stipulates that each State party undertakes "to ensure that any person whose rights or freedoms as recognized [in the Covenant] are violated shall have an effective remedy". Article 2,

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[8] See for example communication No. 541/1993, *Errol Simms v. Jamaica*, decision on inadmissibility adopted on 3 April 1995, para. 6.2, and communication No. 958/2000, *Jazairi v. Canada*, decision on inadmissibility adopted on 26 October 2004, para. 7.5.

[9] See communication No. 1210/2003, *Damianos v. Cyprus*, decision on inadmissibility adopted on 25 July 2005, para. 6.3.

[10] See general comment No. 32 on article 14, para. 16.

[11] Ibid., para. 17.

[12] See communication No. 837/1998, *Kolanowski v. Poland*, decision on inadmissibility adopted on 6 August 2003, para. 6.4; communication No. 943/2000, *Jacobs v. Belgium*, Views adopted on 7 July 2004, para. 8.7; communication No. 972/2001, *Kazantis v. Cyprus*, decision on inadmissibility adopted on 7 August 2003, para. 6.5.

paragraph 3 (b), provides protection to alleged victims if their claims are sufficiently well-founded to be arguable under the Covenant. A State party cannot be reasonably required, on the basis of article 2, paragraph 3 (b), to make such procedures available no matter how unmeritorious such claims may be.[13] Considering that the author of the present communication has not substantiated his complaint for the purposes of admissibility under articles 14, 25 and 26, his allegation of a violation of article 2 of the Covenant is also inadmissible, under article 2 of the Optional Protocol.

7. In consequence, the Committee decides:

(a) That the communication is inadmissible under articles 2 and 3 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 French text being the original version. Subsequently to be issued in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

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[13] See communication No. 972/2001, *Kazantzis v. Cyprus*, decision on inadmissibility adopted on 7 August 2003, para. 6.6, and communication No. 1036/2001, *Faure v. Australia*, Views adopted on 31 October 2005, para. 7.2.