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HUMAN RIGHTS COMMITTEE
Eighty-second session
18 October – 5 November 2004

DECISION

Communication No. 1235/2003

Submitted by:	Panayote Celal (represented by counsel, Mr. Branimir Plese of the European Roma Rights Center and Mr. Panayote Elias Dimitras of Greek Helsinki Monitor)
Alleged victim:	The author's son, Angelos Celal (deceased)
State party:	Greece
Date of initial communication:	14 October 2003 (initial submission)
Document references:	Special Rapporteur's rule 91 decision, transmitted to the Sate party on 10 December 2003. (not issued in document form)
Date of decision:	2 November 2004

[ANNEX]

* Made public by decision of the Human Rights Committee.

ANNEX

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

Eighty-second session

concerning

Communication No. 1235/2003*

Submitted by:	Panayote Celal (represented by counsel, Mr. Branimir Plese of the European Roma Rights Center and Mr. Panayote Elias Dimitras of Greek Helsinki Monitor)
Alleged victim:	The author's son, Angelos Celal (deceased)
State party:	Greece
Date of initial communication:	14 October 2003 (initial submission)

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

Meeting on 2 November 2004

Adopts the following:

Decision on admissibility

1.1 The author of the communication is Mr. Panayote Celal, father of the alleged victim Mr. Angelos Celal, a deceased Greek national of Romani origin. He claims that his son is a victim of violations by Greece of article 6, paragraph 1, both taken alone and in conjunction with article 2, paragraphs 1 and 3, as well as of article 14, paragraph 1, of the Covenant. He is represented by counsel. The Optional Protocol entered into force in respect of the State party on 5 August 1997.

1.2 By decision of 24 February 2004, the Committee, acting through its Special Rapporteur on New Communications, decided to separate the Committee's consideration of the admissibility and the merits of the case.

* The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Nisuke Ando, Ms. Christine Chanet, Mr. Franco Depasquale, Mr. Walter Kälin, Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer Lallah, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Martin Scheinin, Mr. Ivan Shearer, Mr. Hipólito Solari-Yrigoyen, Ms. Ruth Wedgwood and Mr. Maxwell Yalden.

The facts as presented by the author

2.1 In the evening of 1 April 1998, Angelos Celal (henceforth Mr. Celal) and two friends, Messrs. F and R, consumed hashish in Mr. Celal's pickup truck. As the two friends got out of the pickup to clean its floor of hashish residue, shots from an unknown location were heard. Mr. Celal drove off, while Mr. F was able to resume the passenger's seat in the process and Mr. R was left on foot. Mr. F in the passenger seat realised Mr. Celal had been shot in the head and could not drive, took control of the vehicle, allowed Mr. R to board and drove to relatives who took Mr. Celal to hospital. At the hospital, doctors pronounced Mr. Celal dead due to gunshot wounds to the head.

2.2 The author then provides the conflicting accounts of events subsequently offered by Messrs. F and R before the Mixed Criminal Court on 10 January 2001. Mr. F contended that he and Mr. Celal had stolen a vehicle and hidden it in a warehouse. On 1 April 1998, by this account, the three friends entered the warehouse to extract parts from the vehicle. Mr. F claimed to see someone in the warehouse and started running, whereupon shots were discharged. They were allegedly neither told to stop nor that they were under arrest. Mr. F claimed that police had followed him back to his settlement and that bullets recovered in his house had in fact been collected by his sister following a wedding. Mr. R, for his part, claimed that Mr. F tried to enter the warehouse but turned, shouted and started running. Mr. R claimed the police offered no warning or demand of surrender. Both men denied that they had a weapon or fired against police, and insisted that Mr. Celal drove the pickup.

2.3 The author describes the police version of events, according to which the local police station received a report on the night in question of an unidentified car discovered in the warehouse. Enquiries showed the car to have been stolen the night before. Officers P and T were despatched to the warehouse, conducted an on-site inspection and planned an ambush inside the warehouse to apprehend the thieves whom they expected. At 6pm, Officers Y and H joined the operation, dressed in plain clothes and wearing bullet proof vests. When Mr. F entered the warehouse late in the evening, Officer P attempted to arrest him, but he resisted and escaped. Pursuing him out of the warehouse, the officers saw the other two men, one sitting behind the wheel of a pickup and another standing close by. The officers identified themselves and told the three suspects that they were under arrest. One suspect fired a weapon in their direction, leading to an exchange of gunfire. The pickup sped away after one suspect entered the cabin and the other boarded the rear platform. The officers attempted to stand up, having sought ground cover during the exchange of gunfire, but were again shot at. As Officer P was able to identify one suspect, the officers pursued them to his neighbourhood.

2.4 The officers located Mr. F in the family house but without a search warrant they could not enter. As a magistrate was being sought, Mr. F escaped. At the same time, the officers noticed a bloodstained pickup that had been shot at. They were informed that Mr. F had driven the vehicle, and that Mr. R and a wounded Mr. Celal had been with him. The officers eventually returned to the police station where they learnt of Mr. Celal's death.

2.5 On 5 April 1998, the police launched an internal Sworn Administrative Inquiry into the incident, followed by a supplemental inquiry on 6 December 1999, with a view to establishing responsibility at the administrative level. Both inquiries recommended that police officers P, T, Y and H not be disciplined as they had acted in self-defence. The

inquiries accepted the officers' versions of the facts, finding their actions reasonable as they had opened fire against the suspects after having asked them to surrender and having been fired upon. Forensic evidence showed that an imprint of a bullet in the warehouse door was of a different calibre to the police weapons. The supplemental inquiry, which was able to hear evidence from Messrs. F and R, did not accept their account and further referred to the previous criminal records of all three suspects.

2.6 In the meantime, on 7 April 1998, the author had filed a criminal complaint with the Thessaloniki Misdemeanours Prosecutor against the four officers involved in Mr. Celal's shooting. On 16 April 1998, the police officially notified the Prosecutor of the incident.[1] On 22 May 1998, Officers P, Y and H were indicted by the Prosecutor for joint attempted homicide (articles 42, 83, 94 and 299 of the Criminal Code) and aggravated damage to another's property (articles 381 and 382 of the Code) before the Thessaloniki Misdemeanours Court and a main investigation was ordered.

2.7 On 31 January 2000, the Deputy Prosecutor, following his own investigation, filed a motion with the Judicial Council of the Misdemeanours Court, recommending acquittals for all three officers. On 23 February 2000, the Judicial Council of the Misdemeanours Court accepted the motion and acquitted the officers, reasoning that their acts could not be considered ultimately unjust, as their initial unjustness was eliminated by the fact that they had been performed in self-defence. On 25 April 2000, one of the author's counsel before the Committee made a reasoned request to the Appeals Court Prosecutor's Office to file an *ex officio* appeal against the Judicial Council's decision. On 26 April 2000, the Appeals Court Prosecutor ruled that there was no reason for lodging an appeal. On 15 June 2000, Mr. F was arrested. The same day, the author filed an appeal with the Judicial Council of the Appeals Court, arguing that as the three suspects had posed no threat to the safety of the officers, there could be no question of self-defence and Mr. Celal's death was accordingly unlawful. On 20 July 2000, the Judicial Council of the Appeals Court rejected the appeal on the procedural ground that the requisite power of attorney authorising the author's lawyer to act on his behalf was absent. Under Greek law, there are no grounds for a further appeal seeking leave that such a procedural flaw be remedied and thus the decision is effectively final. On 5 September 2000, Mr. R was arrested.

2.8 On 10 January 2001, Messrs. F and R were arraigned before the Serres Mixed Criminal Court, comprising three judges and four jurors. Mr. F was convicted of attempted murder and a variety of property and firearms offences, and Mr. R was convicted of an offence against property. On 1 April 2003, after the unsuccessful conclusion of criminal proceedings, the author filed a claim for civil damages before the Thessaloniki first instance court. The proceedings were pending at the time of submission of the communication.

The complaint

3.1 The author argues that Mr. Celal's death was an arbitrary deprivation of life contrary to article 6, paragraph 1, of the Covenant as the use of force was unjustified and/or excessive. The operation also reveals clearly inadequate planning and control on the part of the police. The author contends that the State party has not discharged its burden of providing a

[1] The author argues that this occurred in violation of Greek law requiring public officials to inform the prosecutor of an illegal act as soon as they become aware of it.

plausible alternative explanation, based on independent evidence, to what occurred.[2] He argues, referring to the Committee's Views in Suarez de Guerrero v Colombia,[3] that the officer's domestic acquittal does not absolve the State party from its Covenant obligations and independent international assessment of the facts claimed.

3.2 The author refers to the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials,[4] the Committee's General Comment on article 6 and jurisprudence of the European Court of Human Rights[5] for the proposition that where the security threat to police is not clearly imminent or grave and where the crime suspected is neither serious nor life-threatening, use of firearms is illegitimate. The author argues that the objective evidence in the case does not support the officers' claims that the suspects were armed, fired at least six times and thus posed a threat to their safety. The officers who conducted an *in situ* investigation hours after the incident found only one bullet of a different calibre to the police weapons, while recovering 14 cartridges and tow bullets from the latter. The author claims that the Prosecutor overlooked this discrepancy involving the number of shots allegedly fired by the suspects, and concluded on the basis of insufficient evidence – that ammunition of the same calibre had been discovered at Mr. F's house – that the bullet came from Mr. F's gun. The author points out that a minority of the Mixed Criminal Court were not convinced that any of the suspects were armed.

3.3 Even if the suspects opened fire, the author argues that the response of at least 14 bullets to one by the suspects was disproportionate. The high number of shots discharged in the direction of all three suspects (rather than at the shooter) suggests the officers were shooting with intent to kill or reckless disregard of such a consequence. The author proceeds to argue that even if the officers had been justified in initially opening fire, there is no evidence of continued threat at the end of the incident when Mr. Celal was shot and killed. The examination showed that the pickup was struck by nine bullets, six lodged at the rear, suggesting the vehicle was leaving the scene when fired upon. Officer Y deposed that when the suspects got on the pickup, the police stopped firing as the danger had passed. Officer P, by contrast, deposed that as the car was leaving, the officers stood up only to be fired upon again two or three times and he thus returned fire – his final shots, of which four cartridges were recovered - were found by the Prosecutor to have fatally wounded Mr. Celal. The other officers indicated that Officer P alone fired, as they were still lying on the ground.

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[2] Reference is made to the judgment of the European Court of Human Rights in Ogur v Turkey 21 EHRR 40, 2001, at paragraphs 73, 75, 77, 79, 81 and 84.

[3] Case No 45/1979, Views adopted on 31 March 1982, at paragraphs 13.1 and 13.3. Reference is also made to the judgment of the European Court of Human Rights to similar effect in Ribitsch v Austria 21 EHRR 573, at 34.

[4] Article 9 provides: "Law enforcement officials shall not use firearms against persons except in self-defence or defence of others against imminent threat of death or serious injury, to prevent the perpertration of a particluarly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional use of forearms may only be made when strictly unavoidable to protect life."

[5] Stewart v United Kingdom No 1044/82, 39 DR 162 (1984).

3.4 Even on Officer P's version of the facts, the author disputes whether the parting shots could be justified in self-defence. The three suspects were fleeing an ambush on a moonlit night in a veering car (the front tyre being flat). It was thus highly unlikely for them to be able to fire accurately on officers lying on the ground. It was for the same reason unnecessary and inappropriate for Officer P to stand, exposing himself to injury, and continue to use deadly force after the suspects had ceased to threaten his safety. In particular, there is no allegation that Mr. Celal, who the evidence showed was almost certainly driving the pickup away, posed any risk. There is no evidence that he, rather than the suspected who boarded the flatbed, fired a weapon.

3.5 The author argues that the failure in planning and controlling the ambush to take sufficient measures to minimise the threat to police contributed to Mr. Celal's arbitrary killing. The author argues, with reference to the European Court of Human Rights,[6] that issues of planning and control, including the making of allowance for alternative possibilities to use of deadly force, are relevant to the assessment of arbitrary deprivation of life. The judicial investigation did not consider this aspect of the incident. Officer P, the senior officer present, is to be held responsible in this regard – he was familiar with the area, had ample time to plan the operation and decided to place the police team in the warehouse in the absence of other natural cover. This latter decision exposed the officers to undue risk for – as indeed occurred – they would be vulnerable upon leaving the warehouse to confront any individual and increase the likelihood of resort to force. In addition, Officer P apparently assumed a high threat level by issuing (rare) bullet proof vests and ordering a sub-machine gun be brought, while neglecting other ready measures such as putting nearby units on standby and making provision for prompt communication with them, including for provision of necessary medical aid. Nor were safer measures apparently considered, such as putting the warehouse under surveillance or setting up a roadblock. The fact that the ambush took place on a moonless night in a poorly lit area also made a clear line of fire difficult, increasing the likelihood that Mr. Celal rather than the likely target Mr. F was struck. In addition, the fact that the police apparently used the stolen vehicle in the warehouse to pursue the suspects (their patrol car being parked some distance away) discloses, in the author's view, poor planning of the operation.

3.6 The author also claims a violation of article 2, paragraphs 1 and 3, in conjunction with article 6, paragraph 1, as the prosecuting and judicial authorities allegedly failed to conduct a prompt, comprehensive, thorough, independent and impartial investigation and subsequently acquitted the officers. They allegedly ignored independent incriminating evidence and failed to afford Mr. Celal's family any effective judicial remedy. With reference to the Committee's jurisprudence,[7] the United Nations Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions and jurisprudence of the European Court of Human Rights,[8] the author argues that the requirements of an effective investigation/remedy were not met. In particular, neither police nor judicial investigations plausibly showed that

[6] McCann v United Kingdom 21 EHRR 97, at 150.

[7] Herrera v Colombia Case No 161/1983, Views adopted on 2 November 1987, at paragraph 10.3; Santullo v Uruguay Case No 9/1977, Views adopted on 26 October 1979, at paragraph 12; and Bleier v Uruguay Case No 30/1978, Views adopted on 24 March 1980, at paragraphs 11.2 and 14.

[8] McCann op.cit., at 161, and Jordan v United Kingdom App. No. 24746/94. judgment of 4 May 2001, at 106-109.

the three suspects were armed, had at any point posed a threat to the officers or, alternatively, posed a threat sufficient to justify deadly force. The Prosecutor allegedly failed seriously and impartially to assess the detailed accounts offered by the suspects themselves, to compare their accounts to the forensic facts or take into account the inadequate planning and operation. The Prosecutor and courts overlooked factual discrepancies, incriminating objective evidence and unlikely statements of police officers. Finally, by acquitting the officers, the State party irrevocably denied redress for Mr. Celal's arbitrary killing.

3.7 The author claims a violation of article 14, paragraph 1, on the basis that the State party's courts arbitrarily assessed the available evidence and denied justice as a result to the surviving family members. The author refers, in particular, to the courts' alleged failure to consider the incident on its merits in a fair and public hearing despite allegedly compelling evidence of the arbitrary deprivation of Mr. Celal's life.

3.8 As to the exhaustion of domestic remedies, the author argues, with respect to the pending civil complaint, that a victim is only required to pursue one remedy to exhaustion (that is, the criminal complaint), even if other remedies are available. In any event, given the grave nature of the case, only a criminal remedy can be considered effective and sufficient and thus necessary to exhaust. He argues that the dismissal of the author's appeal on procedural grounds is of no consequence "as it does not alter the crucial fact that the Greek authorities had knowledge of the incident at issue yet still failed to provide redress."

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

4.1 By submission of 9 February 2003, the State party contested the admissibility of the communication for failure properly to exhaust domestic remedies. The State party offers its account of the material facts in the following terms to the extent that they differ or supplement the author's account: the three suspects arrived at the warehouse, with Mr. R driving. Mr. F was the first to enter the warehouse and was accosted by Officer P who identified himself and ordered him to surrender. Mr. F struck the officer in the face and ran out screaming "danger" to his accomplices. Mr. F and Mr. Celal fled to their pickup. Upon being ordered to freeze, Mr. F shot at the officers. Crossfire ensued as the officers sought to defend themselves and immobilise the pickup by shooting at its tyres. Mr. Celal, sitting next to the driver, was lethally wounded in the head. Another bullet struck a tyre of the car, however the suspects escaped in the vehicle to the Romani settlement where Mr. F lived. After the suspects handed Mr. Celal over to relatives who took him to hospital, Mr. F hid in the settlement. When the police arrived, they searched for him but due to delay in the arrival of a justice of the peace to authorise a home search he escaped.

4.2 The Security Division of Thessaloniki was immediately notified, and they sealed the area in the early morning of 2 April 1998 to prepare a search and seizure report. All findings (cartridge cases, holes, fingerprints) were evaluated and sworn testimony from officers and witnesses taken. A search report was made the same day on the suspects' pickup. On 7 April 1998, a report was made to the police's Criminal Investigation Division, who prepared an expert report dated 25 February 1999 after carrying out a laboratory examination of all findings (the officers' weapons, 14 cartridge cases, three bullets and one metal fragment) and taking witness testimony.

4.3 The State party explains how according to its criminal procedure, a civil claim for compensation can be attached by a victim (or, in the case of death, his or her family) to

criminal proceedings. Compensation is thus payable to this civil party in the event of a conviction, but only if the civil party joins the criminal proceedings in support of the charge. A declaration to this effect may be submitted either pre-trial or in court up to the time of the first instance verdict, but must be accompanied by the appointment by a process agent in the event that the civil party does not reside the in the court's territorial jurisdiction. If this condition is not fulfilled, the civil claim is inadmissible. The law also provides that a court on application for a legal remedy (appeal) shall hear the parties and receive the prosecutor's proposal before declaring a claim inadmissible. The State party observes that a properly joined civil party gains full right to participate in the overall criminal proceeding.

4.4 The State party argues that in the present case the author was summoned to appear before the Appeals Court to present his views on the admissibility and merits of the appeal, but did not do so.[9] Thus, he did not give the Appeals Court the opportunity to explain his failure to appoint a process agent or his arguments in favour of criminal liability for the police officers, as they are now presented to the Committee. The Appeals Court thus accepted the proposal of the prosecutor to declare the appeal inadmissible for failure to appoint a process agent between the filing of his initial claim on 7 April 1998 and the entry of acquittal by the Misdemeanours Court in 2000. The author's procedural conduct also made further review of the case by the Court of Cassation impossible, as that Court would be restricted to a determination of whether it was within the power of the Appeals Court to dismiss the case on the inadmissibility ground advanced.

4.5 With reference to jurisprudence of the European Court of Human Rights to the effect that domestic remedies cannot be considered to have been exhausted whether they are dismissed for technical reasons due to procedural negligence on the part of the applicant,[10] the State party argues that the present communication should be similarly dismissed under article 5, paragraph 2(b), of the Optional Protocol. The author himself was responsible for his failure to appoint a process agent or appear before the Appeals Court to explain his failure to do so, and thus for depriving both the Appeals Court as well as the Court of Cassation of the opportunity to engage in merits review of the case, and thus should not be permitted to claim that domestic remedies have been exhausted.

Comments by the author on the State party's submissions

5.1 By letter of 23 April 2004, the author responded to the State party's submissions on admissibility, arguing that the latter suggested it was up to the author to obtain redress rather than the authorities to afford it. The author contends that even under the State party's domestic law, there is an *ex officio* obligation in cases of murder, manslaughter or other serious crimes to prosecute, which does not involve relatives of victims at all. Relatives may simply constitute themselves as civil parties in the courtroom, as the State party has observed.

[9] Article 476 of the Code of Criminal Procedure provides that the appellant (or process agent) should be thus advised at least 24 hours before the case is to be heard by the clerk of the prosecutor's office either orally or by phone at the address listed in the appeal document, with a note to this effect being entered in the case file.

[10] T W v Malta App. No. 25644/94, judgment of 29 April 1994, at paragraph 34, and Navarra v France Series A No 273-B, judgment of 23 November 1993, at paragraph 24.

5.2 The author argues that the Prosecutor should and could have appealed *ex officio* the acquittal decree entered by the Misdemeanours Court, rather than recommending to it the dropping of the charges. Likewise, the Appeals Court Prosecutor should have filed an appeal against the decision, rather than concluding not to. It was after this refusal that the father filed his appeal. The author argues that it was his original complaint that even triggered the Prosecutor's investigation, contrary to usual practice where the police themselves inform the Prosecutor of an incident.

5.3 Concerning the appointment of a process agent, the author submits that this would be an additional burden on him as he would have to appoint, and pay, a second lawyer in the area of the court in order to ensure proper service of documentation. The author argues that his illiteracy and unawareness of the obligation to appoint such an agent should be taken into account. When the original complaint was filed, the Prosecutor's office did not inform him of the need to appoint a process agent, which would have led him – having travelled a significant distance to Thessaloniki – to seek one. In addition, the author's lawyer at the time who wrote the original complaint was told by the author that he did not want to get involved with a complaint against the police, so that the lawyer did not sign the complaint but handed it to the author to file on his own behalf.

5.4 The author argues that in any event the appointment of a process agent is a mere formality. Its absence did not prevent the authorities from conducting their investigation or serving the notice of acquittal on the author outside the court's district, or the courts from deliberating. The author did file a timely substantive appeal with the court, which was only not considered due to the technicality of the lacking process agent. In any case, the author submits that the procedure by which the author was said to be notified of the forthcoming hearing was "improper", as it cannot be ascertained whether an oral or phone call as required by the statute was indeed made.

5.5 The author thus argues that he exhausted adequate and effective domestic remedies, even though there was an *ex officio* obligation upon the prosecuting authorities to conduct a prompt and impartial investigation which was not initiated prior to the author's complaint. He argues that the European Court of Human Rights has held that only a criminal remedy identifying and punishing perpetrators, rather than compensation to the victim alone, may be considered effective, necessary and sufficient for such serious cases.[11] He contends that otherwise states would in effect be able to use civil damages awards to pay themselves out of the most serious human rights violations. The author concludes by arguing that even if he had never brought a complaint, the State party would have been under a duty to investigate the incident once it came to their attention.

Issues and proceedings before the Committee

6.1 Before considering any claims contained in a communication, the Human Rights Committee must, in accordance with article 87 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

6.2 The Committee observes that the State party challenges the admissibility of the communication on the basis of the author's failure properly to pursue his appeal against the

[11] A V v Bulgaria judgment of 18 May 1999 and Kaya v Turkey judgment of 18 May 1999, Reports 1998-I, p.329 at paragraph 105.

Thessaloniki Misdemeanours Court's acquittal of the three officers criminally charged, without making any argument relating to the author's institution of a separate civil action in 2003. The Committee refers to its constant jurisprudence that in cases involving violations of the most basic rights, such as the right to life, there is a Covenant duty upon the State party to investigate the conduct at issue.[12] The Committee observes that in this case, the State party did investigate the circumstances of Mr. Celal's loss of life, with the Misdemeanours Court concluding that no criminal liability should attach, the officers having on the facts of the case acted in self-defence. The Committee observes that it is not generally its role, as an international instance, to substitute its views of facts and evidence for those of the domestic court.

6.3 In a case such as the present where the first instance court has found against an individual's interest, it will usually be the victim, or an individual such as a relative acting on his or her behalf, who will be in a position to bring such a disposition of a case to a higher court for review thereof. The Committee recalls that the function of the exhaustion requirement under article 5, paragraph 2(b), of the Optional Protocol is to provide the State party itself with the opportunity to remedy the violation suffered, in this case, allegedly by the conduct of the investigating and prosecuting authorities and the first instance Misdemeanours Court. The Committee observes that, on the information before it, the author's appeal would not simply have concerned the question of civil party compensation, but concerned the overall resolution of the criminal proceedings – the State party describes a civil party as "entitled not only to pursue the satisfaction of his civil claims before the criminal court, but also to participate in the overall criminal proceedings (both at the pre-stage trial and during the trial) to support the charge and pursue the conviction of the offender".

6.4 The Committee refers to its jurisprudence that in situations where a State party circumscribes rights of appeal with certain procedural requirements such as time limits or other technical requirements, an author is required to comply with these requirements before he or she can be said to have exhausted domestic remedies.[13] In the present case, the author neither appointed a process agent in the court's district prior to the Misdemeanours Court's resolution of the case nor appeared before the Appeals Court to make submissions on the absence of an agent and the case as a whole. The result of the author's conduct was that both the Appeals Court and the Court of Cassation were deprived of the ability to consider the merits of the appeal. It follows that the author has failed to exhaust domestic remedies and that the communication is inadmissible under article 5, paragraph 2(b), of the Optional Protocol.

[12] Baboeram et al. v Suriname Case Nos. 146,148-154/1983, Views adopted on 4 April 1985, Herrera Rubio v Colombia Case No 161/1983, Views adopted on 2 November 1987, Sanjuán Arévalo v Colombia Case No 181/1984, Views adopted on 3 November 1989, Minago Muiyo v Zaire Case No 194/1985, Views adopted on 27 October 1987, Mojica v Dominican Republic Case No 449/1991, Views adopted on 15 July 1994.

[13] See A P A v Spain Case No 433/1990, Decision adopted on 25 March 1994, and P L v Germany Case No 1003/2001, Decision adopted on 22 October 2003.

7. 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 will be transmitted to the author and 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 Committee's annual report to the General Assembly.]
