



**International covenant
on civil and
political rights**

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HUMAN RIGHTS COMMITTEE
Ninety-fifth session
16 March to 3 April 2009

VIEWS

Communication No. 1570/2007

<u>Submitted by:</u>	Vassilari, Maria et al. (represented by counsel Mr. Panayote Dimitras)
<u>Alleged victim:</u>	The authors
<u>State party:</u>	Greece
<u>Date of communication:</u>	1 November 2006 (initial submission)
<u>Document references:</u>	Special Rapporteur's rule 97 decision, transmitted to the State party on 4 June 2007 (not issued in document form)
<u>Date of adoption of Views:</u>	19 March 2009

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- Made public by decision of the Human Rights Committee.
GE.09-42021

Subject matter: State party's failure to prosecute signatories of a letter alleged to be discriminatory.

Procedural issue: Claim partly inadmissible for non-substantiation of claim and non-exhaustion of domestic remedies.

Substantive issues: Prohibition on the advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.

Articles of the Covenant: Article 20, paragraph 2; article 26; article 14, paragraph 1; article 18, paragraphs 1 and 2; and article 2, paragraphs 1 and 3(a).

Articles of the Optional Protocol: Article 2, and article 5, paragraph 2(b).

On 19 March 2009 the Human Rights Committee adopted the annexed text as the Committee's Views, under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 1570/2007.

[Annex]

ANNEX

Views of the Human Rights Committee under article 5, paragraph 4, of
the Optional Protocol to the International Covenant on Civil and Political rights

Ninety-fifth session

concerning

Communication No. 1570/2007**

Submitted by: Vassilari, Maria et al. (represented by counsel
Mr. Panayote Dimitras)

Alleged victim: The authors

State party: Greece

Date of communication: 1 November 2006 (initial submission)

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

Meeting on 19 March 2009,

Having concluded its consideration of communication No. 1570/2007, submitted to the
Human Rights Committee on behalf of Vassilari, Maria et al. under the Optional Protocol to the
International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the
communication, and the State party,

Adopts the following:

** The following members of the Committee participated in the examination of the present
communication: Mr. Abdelfattah Amor, Mr. Prafullachandra Natwarlal Bhagwati, Ms. Christine
Chanet, Mr. Ahmad Amin Fathalla, Mr. Yuji Iwasawa, Ms. Helen Keller, Mr. Lazhari Bouzid,
Ms. Zonke Zanele Majodina, Ms. Iulia Antoanella Motoc, Mr. José Luis Pérez Sanchez-Cerro,
Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Fabian Omar Salvioli, Mr. Krister Thelin and
Ms. Ruth Wedgwood.

The text of an individual opinion signed by Committee members Mr. Abdelfattah Amor,
Mr. Ahmad Amin Fathalla and Mr. Lazhari Bouzid has been appended to the present Views.

Views under article 5, paragraph 4, of the Optional Protocol

1.1 The authors of the communication are Ms. Maria Vassilari, born in 1961, Ms. Eleftheria Georgopoulou, born in 1964, Mr. Panayote Dimitras, born in 1953, and Ms. Nafiska Papanikolatos, born in 1955, all Greek citizens. They claim to be victims of violations of article 20, paragraph 2, taken together with article 2, paragraphs 1 and 3(a); article 26; article 14, paragraph 1; and article 18, paragraph 1, read alone and in conjunction with article 2, paragraphs 1 and 3(a), by Greece. The authors are represented by counsel, Mr. Panayote Dimitras from the Greek Helsinki Monitor.

1.2 On 24 September 2007, the Committee, acting through its Special Rapporteur on New Communications and Interim Measures, decided to examine the admissibility of the communication together with the merits.

The facts as presented by the authors

2.1 On 17 November 2001, a letter to the Rector and the Rector's Council of the University of Patras entitled, "Objection against the Gypsies: Residents gathered signature for their removal", was published in the newspaper "Peloponnisos". The letter was sent by the representatives of local associations of four districts of Patras, and contained 1200 signatures of non-Roma residents who lived in the vicinity of a Roma settlement situated in the area of Riganokampos. The settlement was built on land owned by the Rector and the Rector's Council of the University of Patras. The signatories of the letter collectively accused the Roma of specific crimes, including physical assault, battery, and an arson attack on a car, and demanded that they be "evicted" from the settlement and failing eviction threatened with "militant action".

2.2 On 29 March 2002, the first and second authors, who reside in the settlement, filed a criminal complaint against the local associations under the Anti-Racism Law, and joined the criminal proceedings to be initiated by the Public Prosecutor as civil claimants. They claimed violation of article 2 of the Anti-Racism Law 927/1979, because of the public expression of offensive ideas against the residents of the settlement on account of their racial origin. They also claimed a violation of article 1 of the same law, by the incitement, by means of public written expression, of discrimination, hatred or violence against the residents of the settlement on account of their racial origin.

2.3 A preliminary judicial investigation was opened, and those who had written the letter were charged. On 17 March 2003, the signatories of the letter and the owner and editor of the newspaper were indicted for the public expression of offensive ideas, in violation of article 2 of the Anti-Racism Law but the charge under article 1 of that law was dropped. On 25 June 2003, the trial took place at the Misdemeanors Court of Patras (the Patras Court). The criminal offences of which the Roma community had been accused of by the signatories of the letter were found to be unsubstantiated by the competent police authority. According to the authors, this fact was ignored by the Patras Court.

2.4 During the proceedings, the presiding judge allegedly made comments which compromised her impartiality and indicated a prejudicial attitude against the Roma. In reply to a comment made by defence counsel that Roma commit many crimes, the authors allege that she stated “it is true” and that there were, “many cases pending against Roma in the court of Patras”. When the first author indicated that the letter had offended her, the judge responded “you have to admit, you Roma do steal though”.

2.5 During the trial, the third and fourth authors were examined as witnesses. In the context of taking the oath, they had to declare that they were not Orthodox Christians but atheists, and that they could not take the Christian oath under article 218 of the Code of Criminal Procedure (CCP), which reads “I swear to God that I will tell in full conscience the whole truth and only the truth, without adding or hiding anything”. Instead, they made use of article 220 (2) of the CCP, which provides that “(.) if the investigating judge or the court are convinced after a related statement that the witness does not believe in any religion, the oath taken would be the following: I declare on my honour and conscience that I will tell the whole truth and only the truth, without adding or hiding anything”. According to the authors, to make this affirmation under article 220 (2) of the CCP, the witness must declare his/her religion or non-belief in any religion. However in the present case, it was mistakenly recorded in the minutes of the trial that the witnesses had taken the Christian oath rather than the civil oath.

2.6 On 25 June 2003, the defendants were acquitted and the court concluded that there was no violation of article 2 of the Anti-Racism Law, on the basis that “doubts remained regarding the ... *intention* [emphasis added] to offend the complainants by using expressions referred to in the indictment.” The Court found that the impugned letter merely intended to draw the authorities’ attention to the plight of the Roma in general. The Court did not examine whether such remarks were indeed offensive and did not provide any reasoning as to why the defendants could not be said to have intended to offend the complainants.

2.7 To support their complaint, the authors provide copies of reports from various NGOs and INGOs, which they claim attest to the forced eviction of Roma by the State party.

The Complaint

3.1 The first and second authors claim to be the victims of a violation of article 20, paragraph 2, read in conjunction with article 2, paragraphs 1 and 3 (a), of the Covenant, because the Patras Court failed to appreciate the racist nature of the impugned letter and to effectively implement the Anti-Racism Law 927/1979 aimed at prohibiting dissemination of racist speech. The present case allegedly discloses a violation of the State party’s obligation to ensure prohibition of the advocacy of racial hatred that constitutes incitement to discrimination, hatred or violence. In the authors’ view, the requirement of the law in question to prove intent is an impossible burden on the civil claimants, as the burden of proof in such criminal cases to prove such intent, “beyond reasonable doubt”, is almost impossible to prove. This point they argue is reflected in the fact that there has been no convictions to date under this Act. In this regard, the authors state that it is for this reason that

national courts of other States, as well as other international human rights bodies, hold that racist remarks can be made even by negligence, in other words, where there is an absence of intent.

3.2 The four authors claim a violation of article 26, read alone and in conjunction with article 2, paragraphs 1 and 3, because the writers of the letter accused an entire group on the basis of their racial origin for the alleged actions of a few individuals of the same racial group. The claim that the law itself is inadequate, as argued above, is also said to violate article 26, as the failure to punish perpetrators deprives potential victims from protection from such attacks. In addition, the failure of the State party's authorities, in particular the Patras court, to prosecute the signatories of the letter in question, thereby implementing the Anti-Racism Law, is said to constitute a violation of article 26.

3.3 The first and second authors reaffirm that the conduct of the presiding judge during the trial raised doubts about her impartiality and about whether their criminal complaint was examined by an impartial tribunal, as provided for in article 14, paragraph 1. They refer to the jurisprudence of the ECHR, which has accepted that as long as a plaintiff does not merely seek a criminal conviction, the fact that he/she joins criminal proceedings with the status of a civil claimant comes within the ambit of article 6 of the European Convention on Human Rights. In the present case, the first two authors were civil claimants and sought nominal compensation from the defendants. They also claim a violation of this article read alone and in conjunction with article 2, paragraphs 1 and 3.

3.4 The third and fourth authors claim a violation of article 18, paragraph 1¹, read alone and in conjunction with article 2, paragraphs 1 and 3, as the State party failed to respect their right to freedom of religion because they were obliged to disclose their religious beliefs to be able to testify. According to the authors, the State party is aware of this obligation as demonstrated by the amendment to its Code of Civil Procedure in 2001, under which a witness in civil proceedings is now merely asked whether they would like to take the civil or religious oath and thus does not have to disclose his/her religious beliefs. However, the Code of Criminal Procedure has not been similarly amended.

3.5 On the issue of exhaustion of domestic remedies, the authors argue that under article 486 of the CCP, civil claimants in criminal trials may appeal an acquittal only if they are found liable to pay court expenses or compensation. They cannot appeal the court's finding of guilt or innocence. The prosecutors, who could appeal the verdict, chose not to do so. As regards the claims of the third and fourth authors who testified as witnesses, there are no remedies concerning the obligation to publicly disclose religious beliefs, as the procedure followed was the one laid down by law. As their status was that of witnesses, they could not have made an application to have the minutes of the decision amended to reflect their choice of oath. The authors therefore claim to have exhausted domestic remedies. They also indicate that they have not submitted their claims to another international procedure.

¹ It would appear that the author's reference to article 18, paragraph 1, should in fact read article 18, paragraph 2.

The State party's submission on admissibility and merits

4.1 On 3 August 2007, the State party argued that the communication is inadmissible, as the authors failed to exhaust available domestic remedies with respect to two of their complaints. On the alleged violation of article 14, paragraph 1, the State party submits that the official transcripts of the judgement do not contain any of the comments reported by the authors, and notes that the unauthorized and secret recording of court proceedings is illegal under Greek law and thus cannot be considered as a form of proof. In addition, it submits that the first and second authors failed to take an action for "mal-judging", under article 99 of the Greek Constitution and Law No. 693/1977, requesting the competent court to consider whether the judge in question was impartial. A successful outcome would have led to effective redress for the damage caused.

4.2 As to the allegation that the third and fourth authors had no means to have the minutes of the relevant judgement amended, which indicating incorrectly that they had made a Christian oath, the State party refers to article 145 of the Greek Code of Criminal Procedure. Under this article, the presiding judge can, on his/her own motion correct or supplement the minutes. Although the relevant provision does not include witnesses among the persons that can request an amendment, a simple application filed by the authors would have given the judicial authorities the possibility of correcting the error.

4.3 On 4 December 2007, the State party provided its comments on the merits of the case. It submits that the authors exaggerate and provide inaccurate statements, including the inaccurate translation of words from the letter under consideration, and produce evidence that has nothing to do with their case. For the State party the claims are manifestly ill-founded. The words "eviction" and "militant action" do not appear in the original letter. According to the State party, the correct translation of the former would be "removal" and of the latter "dynamic mobilizations" which implies protests or demonstrations.

4.4 As to the letter itself half of it, as described by the third author in his Court testimony, refers to the poor living conditions of the Roma in the settlement and focuses on the lack of proper hygiene and prevalence of diseases. The authors of the letter then refer to incidents they claim had occurred, including the theft of fruit, swearing, beating etc and conclude that the Rector should "remove" the Roma from the settlement (not to evict them), otherwise any delay would lead to "dynamic action". In its evaluation, the court did not consider that the letter "was not insulting" to the authors, but merely found that the legal condition, namely the offence of a "public, via the press, expression of offensive ideas against a group of people, by virtue of their origin", is intentionally committed, was not met beyond reasonable doubt. It so concluded, after hearing all witnesses and evaluating all of the available evidence. While one may agree or disagree with the Court's evaluation of the evidence, there is no reason to regard its finding as arbitrary. In this regard, the State party refers to the Committee's jurisprudence that it is not for the Committee to evaluate the facts and evidence and interpretation of law in a case, unless it can be shown that the decision was manifestly arbitrary or amounted to a denial of justice.

4.5 As to the complaints about the presiding judge, the State party argues that the authors never raised any such concerns during the proceedings about the impartiality of the judge. They were represented throughout by a lawyer who could have filed such a complaint, which would have been immediately recorded in the Court's records. The only claim the authors admitted having raised was one filed with the Minister, but this application was not based on law and had no legal effect. In any event, the State party submits that there is no basis to conclude that the proceedings against the authors were biased.

4.6 The State party affirms that the claim under article 26 is manifestly ill-founded. The authors have not substantiated their claim and have not demonstrated that persons in a similar situation have been treated differently. As to the claim of a violation of article 2, the State party invokes to the Committee's jurisprudence that this right does not constitute a substantive right guaranteed under the Covenant.

4.7 As to the claim under article 18, the State party refers to articles 218 and 220 of the CPP, under which one can either choose to take either the religious or civil oath. According to the State party, a witness chooses the oath without actually declaring or being asked to declare his/her beliefs. No prior permission or further information is necessary. The State party acknowledges that an administrative error was made in this case, indicating that the third and fourth witnesses had made a religious oath. This unfortunate error occurred because the Court Registrar used a standard template and omitted to cross out the phrase that the witness "testified after swearing on the Holy Gospel". For the State party, this error does not amount to a violation of the authors' right to freedom of religion.

4.8 As to the NGO and INGO reports produced by the authors, the State party submits that these reports do not directly refer to the current case and, in its view, are only provided as a substitute to the lack of evidence provided by the authors.

Author's comments on State party's submission

5.1 On 30 January 2008, the authors commented on the State party's submission. On admissibility, they note that the State party does not appear to contest that domestic remedies have been exhausted with respect to the claims under articles 20, 26 and 18. As to the argument that the claim under article 14 is inadmissible for non-exhaustion, of domestic remedies, the authors clarify that even if they had taken an action for "mal-judging", and were successful, it could not have reversed the judgement itself, which left unpunished the allegations of violations of articles 20 and 26. Furthermore, article 16.2 of the same law explicitly provides that, "In any case, the force of the judicial decision or any other act that gave rise to the action for mal-judging is not affected." Thus, the suggested remedy would have been ineffective.

5.2 As to the claim that they have not exhausted remedies with respect to their claims under article 18, the authors note that their claim concerns the involuntary disclosure of their religious beliefs, which is not affected by the mistaken reference to the type of oath made in the minutes, nor the possibility of subsequently correcting them through a procedure which would have again led to yet

another involuntary disclosure of their religious beliefs. In any event, even if they had attempted to correct the minutes, it would have depended on the judge's goodwill, as it was not the authors' prerogative to have it corrected. As to the State party's remarks on the alleged comments made by the judge in question, the authors admit that the source of the judge's comments was their own notes. They claim that the official transcript of the trial is in many ways deficient and incomprehensive. However, they note that the State party has not offered any evidence suggesting that the relevant comments were not made by the judge in question.

5.3 On the merits, the authors defend their definition of the two terms questioned by the State party, namely "eviction" and "militant". The former, they claim, is not so different from the term "evacuation", which is the translation in the Oxford Greek-English dictionary. The latter refers to the militant action threatened by the signatories of the letter, which could include the use of force. The authors take issue with the State party's assessment of the importance of the NGO and INGO reports provided by them, and with its contention that these reports were only submitted to effectively slander Greece. The authors dispute that the purpose of the impugned letter was to draw the attention of the authorities to the poor living conditions of the Roma, but rather to force the authorities to take action and relocate the Roma, to another place. According to the authors, extensive reference was made to the alleged increase in the crimes committed by Roma, without producing any evidence but by merely holding them collectively responsible for certain offences, that some of them undoubtedly committed, as well as serious offences. They should not have collectively accused the Roma of committing crimes without, at the very least, producing evidence of a relatively higher crime rate among Roma as compared with non-Roma, to make their claims look bona fide rather than racist. In the authors' view, the signatories of the letter used this issue of criminality in an attempt to have the Roma evicted. The Court should have paid more attention to the nuanced anti-Roma speech and should have refrain from making, let alone silently endorsing, anti-Roma statements.

5.4 The authors argue that although "intention" is required in violation of article 1 of the Anti-Racism Law 927/79, it is not for violations of article 2 and that an incorrect notion of intent was applied by the court. As the authors had already made this argument in their initial submission which, they submit, remains answered by the State, they claim that the State party implicitly admits that the arguments are correct.

5.5 As to the possibility of filing a complaint concerning the impartiality of the judge, the authors acknowledge that an application for the disqualification of a judge may be made under article 17.2 of the Code of Criminal Procedure. However, such an application must be made early on in the proceedings and as the grounds for such disqualification only arose during the proceedings, such a request would have been rejected as inadmissible. The authors wrote to the Minister who could have asked the Appeals Prosecutor to file an appeal leading to a second trial where an impartial panel of judges would have evaluated the case anew. This was the only quasi-judicial means open to them to seek redress for the violation of their rights. On article 26, the authors submit that they have provided sufficient evidence to demonstrate prejudice specifically in this case and submit that the burden of proof is now reversed and rests on the State party. They maintain that it is mandatory in criminal proceedings to declare that one does not adhere to the Christian faith to be allowed to take

the civil oath, despite the State party's argument that one has a free choice of oath. The assumption that one will take the Christian oath unless otherwise expressly stated is reflected in the continued use of pre-printed forms, with the oath set out therein.

Issues and proceedings before the Committee

Consideration of Admissibility

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

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

6.3 The Committee notes the State party's argument that the authors did not exhaust domestic remedies with respect to the claim of a violation of article 14, paragraph 1, notably by their failure to initiate an action for "maljudging" against the presiding judge. The Committee also notes that, although the authors were represented by counsel, no complaint was raised during the proceedings about the remarks allegedly made by the judge in question. It may further be noted that the State party contests the claim that the alleged remarks were ever made by the presiding judge and refers to the official transcript of the proceedings. While noting that the effectiveness of the alleged remedy is contested by the authors, the pursuit of such a remedy would have, at the very least, established the contested facts, notably whether the judge had in fact made the remarks alleged by the authors. . Thus, without having to establish whether the claim itself comes within the scope of article 14, paragraph 1, the Committee considers that this claim is inadmissible for non-exhaustion of domestic remedies under article 5, paragraph 2 (b) of the Optional Protocol.

6.4 So far as concerns the claim under article 18, the State party contests the claim of the third and fourth authors that they were obliged to declare their religious or non-religious beliefs prior to taking the oath during the proceedings. It argues that under the terms of articles 218 and 220 of the CPP, a witness has the choice of taking either the religious or the civil oath and is not obliged to make any declaration as described by the authors. The Committee is unable to reconcile disputed interpretations of both facts and law. As to the issue relating to the error in recording the type of oath taken by the third and fourth authors, the Committee notes the State party's explanation and the authors' apparent recognition that this was clearly an administrative error which could easily be rectified. For these reasons, the Committee considers that the authors have failed to substantiate their claims under article 18, for purposes of admissibility, and this part of the communication is therefore inadmissible under article 2 of the Optional Protocol.

6.5 Without determining whether article 20 may be invoked under the Optional Protocol, the Committee considers that the authors have insufficiently substantiated the facts for the purposes of

admissibility. Thus, this part of the communication is inadmissible under article 2 of the Optional Protocol.

6.6 As to the claim of a violation of article 26 in conjunction with article 2, the Committee considers that the authors have provided sufficient substantiation to consider these claims on the merits.

Consideration of the merits

7.1 The Committee notes that the authors claim violations of article 26 in conjunction with article 2 of the Covenant, insofar as the Anti-Racism Law 927/79 is said to be inadequate for the purpose of protecting individuals against discrimination and because in this case the courts application of the law failed to protect the first and second authors from discrimination based on racial origin. The Committee notes that article 26 requires that all persons are entitled, without discrimination, to equality before the law and to receive equal protection of the law.

7.2 The Committee notes that the Anti-Racism Law provides for sanctions in the event of a violation. It observes that the signatories of the impugned letter were tried under article 2 of this Law but were subsequently acquitted. An acquittal in itself does not amount to a violation of article 26 and in this regard the Committee recalls that there is no right under the Covenant to see another person prosecuted². The authors challenge the failure of the Court to convict the defendants on the basis of the Court's interpretation of the domestic law, in particular, whether the requirement of "intent" is a necessary prerequisite for the finding of a violation of article 2 of the Anti-Racism Law. Both the authors and State party provide conflicting views in this regard. They also present conflicting opinions on the English translation of certain parts of the impugned letter. The Committee is not in a position to reconcile these disputed issues of fact and law. Upon a thorough review of the information before it, and bearing in mind the conflicting views of the authors and State party, the Committee finds that the authors have failed to demonstrate that either the terms of the Anti-Racism Law 927/79 or the application of the law by the courts discriminated against them within the terms of article 26.

8. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts before it do not disclose a violation of any of the articles of the International Covenant on Civil and Political Rights.

[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.]

² Communication No. 578/94, *De Groot v. the Netherlands*, Decision adopted on 14 July 1995, Communication No. 396/90, *M. S v. the Netherlands*, Decision adopted on 22 July 1992.

APPENDIX

Individual opinion of Committee member Mr. Abdelfattah Amor (dissenting)

“Without determining whether article 20 may be invoked under the Optional Protocol, the Committee considers that the authors have insufficiently substantiated the facts for the purposes of admissibility. Thus, this part of the communication is inadmissible under article 2 of the Optional Protocol.” This is the conclusion reached by the Committee in paragraph 6.5 of its Views in the Vassilari case.

I cannot agree with this conclusion, which prompts me to make the following remarks:

(1) The Committee has not ventured an opinion on the applicability of article 20, paragraph 2, to individual cases. While it may, of course, decide to do so in the future, the reasons for evading the question are puzzling. There is no logical or objective reason to do this. In stating that “any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law”, article 20, paragraph 2, provides protection for individuals and groups against this type of discrimination. Article 20 is not an invitation to add another law to the legal arsenal merely for form’s sake. Even if this was the purpose, which is not the case in Greece, such a law would be ineffective without procedures for complaints and penalties. In fact, the invocation of article 20, paragraph 2, by individuals who feel they have been wronged follows the logic of protection that underlies the entire Covenant and consequently affords protection to individuals and groups. It would be neither logical nor legally sound to consider excluding its applicability under the Optional Protocol. By declining to give an opinion on this aspect of the communication, the Committee allows uncertainty to persist on the scope of article 20, paragraph 2, particularly as, given the points raised, discussion was needed at the very least with regard to the question of admissibility. In my opinion, this approach is, frankly, questionable, especially given that:

(2) The State party did not object to the admissibility of the communication either on the grounds of the applicability of article 20, paragraph 2, or any other grounds. The Committee’s settled jurisprudence holds that, when the State party raises no objection to admissibility, the Committee declares the communication admissible unless the allegations are manifestly groundless or not serious or do not meet the other requirements set out in the Protocol.

(3) The Greek courts concerned ruled directly on the merits, without raising questions of admissibility or the individual nature of the complaint of racism.

(4) To say that, in the case in point, the authors have insufficiently substantiated the facts for the purposes of admissibility relies on an assessment that cannot be confirmed or justified by the contents of the file. While the facts may be discussed on the merits, they are sufficiently serious not to present an obstacle to admissibility under article 2 of the Optional Protocol. The case in point

concerns a letter signed by 1,200 non-Roma individuals, entitled “Objection against the Gypsies: Residents gathered signatures for their removal”. The letter accuses the Roma, as a group, of physical assault, battery and arson. The signatories demand that the Roma be “evicted” - “removed” according to the State party - from their settlement and threatened to take “militant action”. Individual Roma, as individual victims, initiated judicial proceedings for the public expression of offensive ideas expressing discrimination, hatred and violence on account of their racial origin, under the Greek Anti-Racism Law. The court hearing the case found no violation of that law, as “doubts remained regarding the ... intention to offend the complainants by using expressions referred to in the indictment”. The authors took their case to the Committee, claiming to be the victims of a violation by the State party of article 20, paragraph 2, read in conjunction with article 2, paragraph 1, of the Covenant, because the court “failed to appreciate the racist nature of the impugned letter and to effectively implement the Anti-Racism Law 927/1979 aimed at prohibiting dissemination of racist speech”. This allegedly “discloses a violation of the State party’s obligation to ensure prohibition of the advocacy of racial hatred that constitutes incitement to discrimination, hatred or violence”. Was it advocacy of racial hatred or just words? Was a racist offence committed or not? Was there the intention to offend, and who must prove this? These are questions that should be discussed, analysed and assessed on the merits. To say, subsequently, that *the facts have been insufficiently substantiated for the purposes of admissibility is indefensible both legally and factually*. Sometimes there are reasons which the legal mind knows nothing of!

(Signed): Mr. Abdelfattah Amor

[Done in French, English and Spanish, the French 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.]

Individual opinion of Committee members Mr. Ahmad Amin Fathalla and Mr. Bouzid Lazhari

We associate ourselves with the opinion of Mr. Abdelfattah Amor's in this case.

(Signed): Mr. Ahmad Amin Fathalla

(Signed): Mr. Bouzid Lazhari

[Done in French, English and Spanish, the French 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.]
