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Report of the Human Rights Committee

Volume II (Part Two)

100th session
(11–29 October 2010)

101st session
(14 March – 1 April 2011)

102nd session
(11–29 July 2011)

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Note

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

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

A. Communication No. 1344/2005, *Korolko v. Russian Federation* (Decision adopted on 25 October 2010, 100th session)*

Submitted by:	Mikhail Korolko (not represented by counsel)
Alleged victim:	The author
State party:	Russian Federation
Date of communication:	25 June 2004 (initial submission)
Subject matter:	Allegations of criminal procedure violations, inhuman conditions of detention and discrimination on the grounds of social status
Procedural issues:	Evaluation of facts and evidence, insufficient substantiation
Substantive issues:	Right to fair trial, right to obtain examination of witnesses, inhuman conditions of detention, discrimination on social grounds, right to appeal to higher instances
Articles of the Covenant:	10, 14, paragraphs 1, 3 (e) and 5, 26
Article of the Optional Protocol:	2

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

Meeting on 25 October 2010,

Adopts the following:

Decision on admissibility

1. The author of the communication is Mr. Mikhail Korolko, a Russian citizen born in 1969, who is currently serving a prison sentence in the Russian Federation. He claims that his rights have been violated by the State party, but invokes no specific articles of the Covenant. However, the communication may raise issues under articles 10, 14, paragraphs

* The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Prafullachandra Natwarlal Bhagwati, Mr. Lazhari Bouzid, Ms. Christine Chanet, Mr. Mahjoub El Haiba, Mr. Ahmad Amin Fathalla, Mr. Yuji Iwasawa, Ms. Helen Keller, Mr. Rajsoomer Lallah, Ms. Zonke Zanele Majodina, Ms. Iulia Antoanella Motoc, Mr. Michael O'Flaherty, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Fabián Omar Salvioli and Mr. Krister Thelin.

1, 3(e) and 5, and 26, of the Covenant. The Optional Protocol entered into force for the State party on 1 January 1992. The author is unrepresented.

The alleged facts as presented by the author

2.1 On 17 January 2000, the Labytnangski City Court found the author guilty of planning and executing escape from a prison where he was serving a nine-year sentence for theft. The author claims that he escaped from the prison due to death threats from the prison chief, who allegedly tried to extort bribes from him. He did not mention the reason for his escape during investigation and trial, as he had been returned to the same prison, and feared for his life.

2.2 During the investigation and trial, neither the police nor the court examined the question of his reasons for escaping, as they were required to do under Russian law. None of the available witnesses were questioned on that. The author's request to call prison guards and other persons as witnesses was denied by the Court. The court transcript submitted by the author mentions his request to invite the Director of one school, where he hid after his escape. The request was denied as the Director was not an eyewitness of the crime. He adds that had these people been called to give evidence, the true reasons for his escape would have come to light, i.e. without having to raise it himself. The author submits that it was not incumbent on him to explain his reasons for escaping, as he was entitled to remain silent.

2.3 The author filed appeals in the Regional Court and the Supreme Court, in which he explained the reasons for his escape, and in particular that, while he was waiting for the judgement to be delivered, he was at the mercy of the same prison commandant who had caused him to escape. After his conviction for escape, he was moved to a different prison, and felt safe to complain. He claims to have requested an investigation into his complaint against unlawful actions by the prison administration and such request be added it to his case file. In his appeals the author complained that the prosecution had the obligation to inquire into the reasons for his escape, but that it failed to do this.

2.4 The author's appeals were dismissed because the author had not raised the relevant issues at first instance, and had in fact told the court that his reason for escaping was to flee to Central Asia. The author denies the latter argument and notes that this would have been one of the consequences of his escape, but not a reason for it. He claims that his appeals were not examined on the merits and that his case file does not have his petitions concerning his conditions in prison.

2.5 The author refers to the response of the General Prosecutor's office to his complaint, which stated that he did not mention the death threats to any of his accomplices in escape. He claims that the statement is false, as none of his accomplices was asked about the reasons for his escape.

2.6 He adds that he was discriminated against on the basis of his social status as he was already convicted for another crime.

The complaint

3.1 The author does not claim a violation of specific provisions of the Covenant. He states, however, that his right to fair trial was violated as the court did not take into account the bribery and death threats from the prison chief - his reasons for escape from prison. He also claims that his right to obtain examination of witnesses was violated as the court denied his request to call witnesses who could testify on his reasons for escape.

3.2 The author further alleges that his right to have his claim in relation to the reason for his escape reviewed by higher instances was violated and he was discriminated on the grounds of his social status as a convicted person.

3.3 As stated, the author does not invoke any articles of the Covenant. However, as noted, the communication may raise issues under articles 10, 14, paragraphs 1, 3(e) and 5, and 26, of the Covenant.

State party's observations on admissibility and merits

4.1 On 15 June 2005, the State party submitted that the author was found guilty under section 313, paragraph 2 (a), of the Criminal Code for planned escape from a place of detention and sentenced to eight years of imprisonment. In addition to his previous sentences, that made a total of 13 years of imprisonment in a colony of special regime. The case was examined in a public hearing in accordance with the criminal procedure law and the Constitution. The author's guilt was proven by thoroughly investigated evidence.

4.2 The State party submits that none of the author's claims were confirmed. According to his accomplices, the author never mentioned that he had received death threats. The prosecutor's office of Yamalo-Nenets Autonomous Region informed that the author did not complain of any illegal actions by the prison staff during 1998-1999.

4.3 During the court proceedings, the author requested to call the director of the school No. 6 in Salekhard as a witness. He was hiding at the building of this school after his escape. The request was denied by the court as the person in question was not an eye-witness of the crime. No other requests were made by the author during the court proceedings.

4.4 The State party argues that the author's statement regarding his request for investigation into his complaint against unlawful actions by the prison administration and that this request be added to his case file is false. According to the court transcript the author confessed his guilt regarding his escape and asked that his confession statement be included in his case file. The author's petitions in his case file do not contain any statements that his escape was forced.

4.5 On 31 March 2005, the Labitnanski City Court changed the sentence of the author to 10 years of imprisonment in a colony of strict regime.

4.6 The author's claim that his right to appeal was violated is unfounded. He was explained the terms and procedure of appeal as well as his right to study the court transcript and to comment on it. The cassation court examined all his arguments and responded to each of them. The matters raised in the cassation appeal were related to the severity of the penalty and calculation of his prison term.

4.7 The State party concludes that no violation has been found either during the investigation or during the trial. The supervisory complaint of the author of 11 March 2005 is under consideration by the Supreme Court. Therefore, the State party claims that the author has not exhausted domestic remedies.

4.8 The State party reiterated the same arguments in its submission of 24 May 2006.

Author's comments on the State party's observations

5.1 In a letter dated 15 August 2005, the author argues that none of his accomplices were asked whether he had received death threats. The fact that his accomplices were not aware of the death threats does not prove that he did not have such a reason. In its decision the court indicated that they were not part of an organized group, which means that each of

them had his own reason for escape. This does not exclude the fact that some of his accomplices were not aware of the reasons the others had.

5.2 Regarding the State party's comment that he did not file any complaint against the prison administration during 1998 and 1999, he argues that all correspondence of inmates is censored. Thus, a complaint against the prison administration would never have reached its destination and it would have made his situation even worse. In addition, the complaint to the prosecutor's office is not effective and its consideration is usually prolonged.

5.3 He refers to the State party's submission, which states that his request to call a witness was refused as the person was not an eyewitness of the crime, and submits that such refusal violates his right, as this witness could prove that he was forced to escape. He adds that the court transcript was not well written, as it misses some of the questions and answers. For example, it does not reflect a statement by the judge that he would have to leave the court room, if he did not stop repeating that he was forced to escape due to the conditions in prison. He had no opportunity to provide his comments to the court transcript as he was in a punishment cell and all his correspondence was checked by the same prison chief who had threatened him with death.

5.4 He confirms that on 31 March 2005 his term was reduced by 3 years and his regime was changed to strict. The rest of the State party's information is false, for example the statement that he submitted a complaint under the supervisory review procedure on 11 March 2005.

Issues and proceedings before the Committee

Consideration of admissibility

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

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

6.3 The Committee notes the State party's argument that the author has not exhausted domestic remedies, as the author's appeal of 11 March 2005 under the supervisory review procedure was under consideration by the Supreme Court. The author contested that such statement is false. The Committee recalls its previous jurisprudence,[1] according to which supervisory review procedures against court decisions which have entered into force constitute an extraordinary mean of appeal which is dependent on the discretionary power of a judge or prosecutor. When such review takes place, it is limited to issues of law only and does not permit any review of facts and evidence. In such circumstances, the Committee considers that, in the present case, it is not precluded, for purposes of admissibility, by article 5, paragraph 2 (b), from examining the communication.

[1] See the Committee's general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, *Official Records of the General Assembly, Sixty-second Session, Supplement No. 40*, vol. I (A/62/40 (Vol. I)), annex VI, para. 50: "A system of supervisory review that only applies to sentences whose execution has commenced does not meet the requirements of article 14, paragraph 5, regardless of whether such review can be requested by the convicted person or is dependent on the discretionary power of a judge or prosecutor." See also, for example, communication No. 836 of 1998, *Gelazauskas v. Lithuania*, Views adopted 17 March 2003.

6.4 As for the author's claim that the court did not examine the question of his reasons for escaping and refused his request to invite a witness who could testify in that respect, the Committee notes the State party's argument that the author confessed his guilt in escape, that his case file does not contain any statements that the escape was forced and that his request to invite one witness was denied because the person in question was not an eyewitness of the crime. The Committee observes that the author's claims relate to the evaluation of facts and evidence by the State party's courts. It recalls that it is generally for the courts of States parties to evaluate facts and evidence in a particular case, unless it can be ascertained that the evaluation was clearly arbitrary or amounted to a denial of justice.[2] The material before the Committee does not contain enough elements to demonstrate that the court proceedings suffered from such defects. Accordingly, the Committee considers that the author has failed to substantiate his claims under article 14, paragraphs 1 and 3 (e), of the Covenant and thus declares them inadmissible under article 2 of the Optional Protocol.

6.5 As for the author's claims concerning the bribery and death threats from the prison chief as well as discrimination on the grounds of his status, the Committee notes the State party's argument that the author did not complain of any illegal actions by the prison staff in the period 1998-1999. The author claims that he made a request for investigation of unlawful actions by the prison chief, while at the same time he states that he could not complain as he was under the mercy of the same prison chief who threatened him. The Committee notes the contradictions in the author's statements as well as lack of sufficient information in the file on the nature and circumstances surrounding the alleged death threats. Accordingly, the Committee considers that the claims under articles 10 and 26 of the Covenant are also insufficiently substantiated for purposes of admissibility and declares them inadmissible under article 2 of the Optional Protocol.

6.6 With regard to the author's claim that the reason for his escape was not reviewed by higher instances, the State party submitted that the cassation court examined all his arguments and responded on each of them. The Committee notes that from the materials provided by the author and his own statements it would appear that he did not explain the reason for his escape either during the investigation or during the trial. It therefore considers that his allegations under article 14, paragraph 5, have not been sufficiently substantiated and thus finds them inadmissible under article 2, of the Optional Protocol.

7. The Committee therefore, for reasons just stated, decides:

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

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

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

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

B. Communication No. 1404/2005, *N.Z. v. Ukraine* (Decision adopted on 25 March 2011, 101st session)*

Submitted by:	N.Z. (not represented by counsel)
Alleged victim:	The author
State party:	Ukraine
Date of communication:	11 May 2004 (initial submission)
Subject matter:	Torture, unfair trial and other criminal procedure violations
Procedural issue:	Non-substantiation
Substantive issues:	Torture, unfair trial, right to obtain examination of witnesses, presumption of innocence
Articles of the Covenant:	7; 14, paragraphs 1, 2 and 3 (b), (e) and (g)
Article of the Optional Protocol:	2

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

Meeting on 25 March 2011,

Adopts the following:

Decision on admissibility

1. The author of the communication is N.Z., a Ukrainian national born in 1972, who is currently serving a prison sentence in Ukraine. He claims to be a victim of violations, by Ukraine, of his rights under article 2, paragraphs 1 and 3 (a); article 4, paragraph 2; article 7; article 14, paragraphs 1, 2, 3 (b), (e), and (g), and 5; and article 19, of the Covenant. The Optional Protocol entered into force for the State party on 25 October 1991. The author is unrepresented.

The facts as presented by the author

2.1 On 15 December 2000, the author was approached by an acquaintance, one R.L., who asked for his help in settling a conflict with his creditors. The author agreed and once the conflict was settled, they decided to celebrate the event. They were joined by other friends of R.L. and went to a forest for a picnic. During the celebration, the author went away for about 15-20 minutes. When he returned, he saw that R.L. and one of his friends were beating up the creditors with tools, such as screwdrivers. The creditors soon died and the author buried the corpses as per R.L.'s instructions.

* The following members of the Committee participated in the examination of the present communication: Mr. Lazhari Bouzid, Ms. Christine Chanet, Mr. Cornelis Flinterman, Mr. Yuji Iwasawa, Ms. Helen Keller, Ms. Zonke Zanele Majodina, Ms. Iulia Motoc, Mr. Gerald L. Neuman, Mr. Michael O'Flaherty, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Fabián Omar Salvioli, Mr. Krister Thelin and Ms. Margo Waterval.

2.2 On 6 September 2002, the author was arrested on suspicion of having committed two murders. He claims that he was not granted access to a lawyer until 10 days after his arrest. From the moment of his arrest, he was subjected to ill-treatment and severe beatings by the police officers, who forced him to sign a confession.

2.3 During the investigation and his trial, there were numerous reports in the media that he was guilty of the murders, which he claims influenced the testimony of witnesses. The author sought to question a witness, who could testify to his alibi, as well as to bring forward additional experts' examination; however, his requests were rejected without any explanations by the court.

2.4 On 8 May 2003, the author was convicted of murder by the Lviv Regional Court, together with several other co-accused persons. His conviction was based largely on the testimony of R.L., given during the preliminary investigation. R. L. testified that the author had poisoned the deceased by placing chemicals for meat preservation in their drinks. The medical forensic expertise found no trace of such poison in the corpses of the deceased. Their death was said to be caused from mechanical injuries. During the trial, R.L. admitted that he had concocted his testimony against the author. Despite this, the trial court convicted the author and the Supreme Court upheld the sentence. The author adds that he was not allowed to defend himself during the trial and that the court wrongly assessed the incriminating evidence. He further states that he had raised the fact of his ill-treatment by the police during the trial, but this was ignored. The court also refused to have audio and video recording of the trial in violation of domestic laws.

The complaint

3.1 The author claims a violation of his rights under articles 7 and 14, paragraph 3 (g), as he was subjected to ill-treatment by the police officers in order to coerce him to confess guilt.

3.2 He further claims a violation of article 14, paragraph 1, as he was convicted on the basis of a testimony by a co-accused; medical forensic expert's examination did not find any incriminating evidence; the court wrongly assessed the evidence and he was not allowed to defend himself during the trial.

3.3 The author claims also a violation of 14, paragraph 3 (b), as he was not provided with legal assistance until 10 days after his arrest.

3.4 He claims a violation of his rights under article 14, paragraph 2, as it was reported in the media that he was guilty of murder before the court proceedings had been completed.

3.5 According to the author, his rights under article 14, paragraph 3 (e), were also violated, as his requests to obtain additional expert's examination and to question several witnesses were denied.

3.6 The author further contends that the Supreme Court of Ukraine upheld the sentence of the Appellate Court of Lviv Region, in violation of article 14, paragraph 5, of the Covenant.

3.7 The author claims that all the above mentioned violations also amount to a violation of his rights under article 2, paragraphs 1 and 3 (a), and article 4, paragraph 2, of the Covenant.

3.8 Finally, the author claims a violation of article 19, since his correspondence of a newspaper article was intercepted by the authorities.

State party's observations on admissibility and merits

4.1 On 29 December 2005, the State party submitted first, that article 2, paragraph 1, is of a general nature, and that, therefore, it does not find it necessary to comment thereon.

4.2 As for the author's allegations under article 2, paragraph 3 (a), the State party submits that in the author's case, the court of first instance was the Appellate Court of Lviv Region and both the appeal and cassation instances were at the Supreme Court. The author appealed his sentence to the Supreme Court. It refers to the jurisprudence of the European Court of Human Rights and argues that the remedy does not mean a remedy which is bound to succeed, but an accessible remedy before an authority competent to examine the matter on the merits. The remedy which the author claims to be ineffective was accessible to him and therefore its effectiveness does not depend on the certainty of a favourable outcome for the applicant.

4.3 As for his allegations under article 7, the State party submits that under the national legislation the author could complain of ill-treatment to the relevant authorities. Such complaint would serve as a basis to initiate criminal proceedings. However, the author did not avail himself of such remedy. It submits that there is no evidence of beatings, and no medical records were submitted by the author in support of his allegations. On the contrary, there is a record that he was examined by medical doctor on the day of his confession and no bodily injuries were revealed. Therefore, he had confessed guilt of his own free will. The author stated during the court proceedings on 12 February 2003 that he had been coerced by the policemen during his interrogation on 4 December 2002. The judge, in reply presented him the interrogation record of 4 December 2002, which stated that the interrogation was carried out in the presence of his counsel. On 6 September 2002, counsel asked the author whether he had been subjected to coercion, to which the author replied: "No". The State party thus submits that the author was not treated in a manner violating the requirements of article 7.

4.4 On the author's claim that his trial was unfair and that his guilt was not proven as no poison was found by the forensic medical examination, the State party submits that although the forensic medical expert failed to find any chemical agents in the victims' bodies, he underlined that bearing in mind the period of 1.5-2 years during which the corpses were in the soil, it did not mean that those chemical agents could not initially have been there. According to the decisions by the Appellate Court of the Lviv Region and the Supreme Court, the author was found guilty as there was an intent and a fortiori initial agreement between him and the other co-accused to kill the deceased; he at least intended to poison them; he took part in the murder also by beating one of them; he buried the corpses and concealed the evidence of the crime; he failed to inform the police about the crime; he also took part in another crime (theft) considered by the court in the same proceedings; and finally, he had a previous conviction when he committed the crime.

4.5 The State party submits that the author's sentence was well grounded. In addition, the Supreme Court re-examined the lower court's decision and found it legitimate. It refers to the author's argument that he was slandered in the media by the co-accused and submits that the national court examined the guilt of each accused separately. Therefore, no violation of the author's rights under article 14, paragraph 1, of the Covenant, has occurred in the present case.

4.6 As to the author's allegations under article 14, paragraph 2, that he was declared guilty by the media of the murder of two persons before the court handed down its judgment, it argues that the author did not provide any evidence, e.g. copy of the newspaper article containing such information. The only announcement in the press was the article "Criminal chronicle" published on 17 September 2002 in a local newspaper, "*Our Region*". According to that article, local police and prosecution apprehended four persons on

suspicion of murder. The State party submits there was no report of any guilty person in that article and considers it to be impartial. It submits thus, that there was no violation of article 14, paragraph 2, of the Covenant.

4.7 The State party submits that the investigator issued an order to provide the author with a counsel on the same day, when he initiated the criminal proceedings, i.e. on 6 September 2002. Henceforward, the author was represented by a counsel of his own choice. Thus, there was no violation of the author's right to have access to a lawyer.

4.8 With regard to the author's claim that he was not able to obtain the attendance and examination of witnesses on his behalf, the State party submits that such a right is not absolute and refers to the case law of the European Court of Human Rights. It contends that the national court examined all the witnesses who could contribute to establishing the fact and achieving justice, in particular the relatives of the deceased, all the persons who saw the deceased together with the author on 15 December 2000, experts, etc. It submits that the author's claim that he was refused the possibility of calling witnesses who could corroborate his alibi is not justified. The testimonies of all the accused, including the author's own statement, suggest that the author was present at the time and at the place where the crime was committed. Thus, the author's defence of alibi could not exist in the present case. Therefore, the State party submits that there was no violation of article 14, paragraph 3 (e), of the Covenant.

4.9 As to the author's claim that he was forced to confess guilt by the police, the State party refers to the Committee's general comment No. 13 (1984) on equality before the courts and the right to a fair and public hearing by an independent court established by law, pursuant to which "in considering this safeguard the provisions of articles 7 and 10, paragraph 1, should be born in mind".[1] Therefore, it does not find it necessary to reiterate the same arguments again and maintains that there was no breach of the author's right not to be compelled to testify against himself.

4.10 As to the author's claim that the Supreme Court violated his right under article 14, paragraph 5, for having upheld the sentence of the Appellate Court of the Lviv Region despite his innocence, the State party submits that such an interpretation of the said article is unsubstantiated, as it cannot guarantee a favourable outcome for the author. The term "review" does not imply reversal of the judgment, but means "re-examination" thereof.

4.11 The State party reiterates that the Supreme Court of Ukraine assessed the arguments presented by the parties, re-examined the compliance of the judgment to the facts and laws of Ukraine and arrived at the conclusion that the Appellate Court of the Lviv Region had not breached Ukrainian legislation by sentencing the author to life imprisonment.

Author's comments on the State party's observations

5.1 On 10 March 2006, the author submitted that the State party's legislation as well as the judicial practice contradicts the provisions of the Covenant. He claims that the Supreme Court examines appeals superficially, as no more than 15-20 minutes are spent on each appeal and only the incriminating material is examined. He argues that such procedure cannot be considered as constituting an "effective judicial remedy".

5.2 The author further refers to the State party's arguments denying his ill-treatment and beatings, and claims that he was beaten while he was detained at the police station, and he would have to send his complaint through the same people who beat him. He refers to

[1] *Official Records of the General Assembly, Thirty-ninth Session, Supplement No. 40* (A/39/40), annex VI, para. 14.

reports stating that torture and ill-treatment are systematic in places of detention in Ukraine. He also claims that he did not undergo medical examination on the day of his ill-treatment, but he only had a conversation with a psychiatrist, in the presence of the police.

5.3 The author reiterates that he does not agree with the arguments of the State party that his trial was fair. He argues that the court relied only on the assumption that there could have been a poison in the bodies of the victims while the expert's conclusion showed this was not the case. He adds that the "poison" in question was not even deadly. The testimonies by the co-accused persons cannot be accepted as evidence as they were not witnesses. He argues that his co-accused tried to place the blame on him in order to avoid liability.

5.4 As to the State party's argument that he participated in the beatings of one of the deceased, the author claims that he hit him only once when the person tried to attack him, being already wounded by another co-accused person. He was coerced to help bury the bodies, this he did for fear for his life and thus he cannot be considered as accomplice. For the same reasons, he did not report the events to the police. He argues that the fact that he participated in a theft does not prove his guilt in the murders, as they are not connected with each other.

5.5 As to his previous convictions, the author explains that he was convicted of that crime much later. He argues that it was related to a minor offence, which does not make him "dangerous to the society".

5.6 On his claims under article 14, paragraph 3 (b), the author submits that it is possible that counsel was appointed on the day of his arrest, but his first meeting with the counsel was held only 10 days later. Moreover, the same counsel was appointed not only to him, but also to all four co-accused persons with a clear conflict of interest between the co-accused.

5.7 As to the State party's argument that the right to obtain the questioning of witnesses is not absolute, the author argues that such statement contradicts the criminal procedure law of Ukraine. The court invited only those witnesses who supported the accusation. He submits he made a mistake using the term alibi, in fact he meant that he did not participate in the murder.

5.8 With regard to the violation of article 14, paragraph 3 (g), he submits that it is linked to his claims under article 7. He also maintains his claims under article 14, paragraph 5, since the Supreme Court has failed to eradicate the subsisting contradictions in his case.

5.9 On 17 March 2008, the author submitted that he sent a copy of the newspaper article which he alleges violates his right to the presumption of innocence and submits that it is common practice in Ukraine to intercept correspondence addressed to international organizations. He assumes that his correspondence might have been intercepted as he did not receive any acknowledgement letter.

5.10 The author finally refers to the State party's argument that he did not complain of torture in court, and notes that in a letter of the Ministry of Interior it is stated that he did complain of torture and psychological pressure.

Issues and proceedings before the Committee

Consideration of admissibility

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

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

6.3 The Committee notes the author's arguments in relation to articles 7 and 14, paragraph 3 (g), that he was subjected to ill-treatment by the police officers to force him confess guilt. The State party has refuted this claim and has argued that no medical records were submitted in support of his allegations and that, on the contrary, there is a record that he was examined by medical doctors on the day of his arrest, which revealed no bodily injuries. The author, in turn, claims that he only had a conversation with a psychiatrist in the presence of the police officers but has offered no details of the alleged ill-treatment. On the basis of the conflicting information before it, the Committee concludes that the author has failed to sufficiently substantiate his claim of ill-treatment and forced confession, for purposes of admissibility, and therefore declares these claims inadmissible under article 2, of the Optional Protocol.

6.4 With regard to the author's allegation of a violation of article 14, paragraphs 1, 3 (e) and 5, of the Covenant, on the grounds that he was convicted based on a false testimony, that the medical forensic experts' examination did not find incriminating evidence, that the court wrongly assessed the evidence, that he was not allowed to defend himself during the trial, that his requests to obtain an additional experts' examination and questioning of a witness were denied, and that the Supreme Court considered his appeal superficially and upheld the sentence of the Appellate Court of the Lviv Region despite his innocence, the Committee recalls its jurisprudence to the effect, that it is for the courts of the States parties to assess the facts in a particular case, and that the Committee will defer to this assessment, unless it can be ascertained that the evaluation was clearly arbitrary or amounted to a denial of justice.[2] The Committee considers that the author has failed to substantiate, for purposes of admissibility, that the conduct of the courts in the present case were arbitrary or amounted to denial of justice, and therefore declares these claims inadmissible under article 2 of the Optional Protocol.

6.5 The Committee has noted the author's claims under articles 14, paragraphs 2 and 3 (b), of the Covenant, that as he was not provided with legal assistance until 10 days after his arrest and that during the investigation and his trial, there were numerous reports in the media stating that he was guilty of the murders. The Committee notes that the State party has refuted these allegations by contending, first, that no media has designated the author as a criminal, and, second, that the author had been assigned an ex officio lawyer on the day his criminal proceedings were initiated, i.e. on 6 September 2002. The Committee notes that, despite its inquiry with the author, it did not receive any documentary evidence to support his claims. In the absence of any other information in this connection on file, the Committee considers that this part of the communication is insufficiently substantiated, for purposes of admissibility, and is therefore inadmissible under article 2 of the Optional Protocol.

6.6 The Committee has noted that the author has also invoked articles 2, 4, and 19, of the Covenant. With regard to article 2, the Committee recalls that article 2 of the Covenant can be invoked only in conjunction with a substantive right protected by the Covenant[3] and only if a violation of that right has been sufficiently well founded to be arguable under the

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

[3] See, for example, communication No. 275/1988, *S.E. v. Argentina*, decision on inadmissibility adopted on 26 March 1990, para. 5.3

Covenant.[4] The Committee further considers that the author has failed to provide any information to substantiate his allegations under articles 4 and 19 of the Covenant. Accordingly, the Committee concludes that this part of the communication is insufficiently substantiated, for purposes of admissibility, and is therefore inadmissible under article 2 of the Optional Protocol.

7. The Human Rights Committee therefore decides:

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

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

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

[4] See, for example, communication No. 972/2001, *Kazantzis v. Cyprus*, decision on inadmissibility adopted on 8 August 2003, para. 6.6.

C. Communication No. 1521/2006, *Y.D. v. Russian Federation* (Decision adopted on 25 March 2011, 101st session)*

Submitted by:	Y.D. (not represented by counsel)
Alleged victim:	The author
State party:	Russian Federation
Date of communication:	17 June 2006 (initial submission)
Subject matter:	Unlawful dismissal from a job
Procedural issue:	Non-substantiation
Substantive issues:	Right to a fair and public hearing, right to privacy, non-discrimination.
Articles of the Covenant:	2, paragraph 3 (a) and (b); 5; 14; 17 and 26
Article of the Optional Protocol:	2, 3

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

Meeting on 25 March 2011,

Adopts the following:

Decision on admissibility

1. The author of the communication is Y.D., a Russian national, born in 1962, who claims to be a victim of violation by the Russian Federation of his rights under article 2, paragraph 3 (a) and (b); article 5; article 17 and article 26, of the Covenant. The Optional Protocol entered into force for the State party on 1 January 1992. The author is unrepresented.

The facts as presented by the author

2.1 On 21 August 1995, the author was dismissed from his job at the Ministry of Internal Affairs under section 58, paragraph l, of the Regulations on the Service in the Internal Affairs Offices of 23 December 1992 (the Regulations). Under this provision, an employee can be dismissed for 'having committed minor offences incompatible with moral standards required from an employee of the internal affairs offices. The author claims that under section 19 of the Law on militia, adopted on 18 April 1991, a militia (police) officer can be dismissed from the service only on the grounds that are listed in this section. The section, however, does not mention the ground of having committed minor offences incompatible with moral standards required from the employee of the internal affairs offices.

* The following members of the Committee participated in the examination of the present communication: Mr. Lazhari Bouzid, Ms. Christine Chanet, Mr. Cornelis Flinterman, Mr. Yuji Iwasawa, Ms. Helen Keller, Ms. Zonke Zanele Majodina, Ms. Iulia Motoc, Mr. Gerald L. Neuman, Mr. Michael O'Flaherty, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Fabián Omar Salvioli, Mr. Krister Thelin and Ms. Margo Waterval.

2.2 On 22 December 1995, the author's complaint to the Zaingiraev District Court of the Republic of Buryatia (Russian Federation) was rejected. On an unspecified date thereafter, this decision was upheld by the appeal body of the same court. The author did not appeal the latter ruling under the supervisory review procedure, as he missed the deadline. On 12 July 2005, the Zaingiraev District Court of the Republic of Buryatia rejected the author's request to renew the deadline for an appeal under the supervisory review procedure. The author appealed against this decision, on 23 August 2005, with the Supreme Court of the Republic of Buryatia. On 10 September 2005, the Supreme Court of the Republic of Buryatia upheld the District Court's decision. On 28 November 2005, the Supreme Court of the Republic of Buryatia again refused to review the author's case upon his request to renew the deadline. Similarly, the author's requests were denied by the Chairman of the Supreme Court of the Republic of Buryatia on 20 January 2006, by the Supreme Court of the Russian Federation on 16 March 2006 and by the Deputy Chairman of the Supreme Court of the Russian Federation, on 10 May 2006.

The complaint

3. The author claims that by failing to provide him with an effective remedy through the judicial procedure, the State party violated his rights under article 2, paragraph 3 (a) and (b), of the Covenant. He also claims violation of article 5 as his right to work and protection from unemployment was unlawfully restricted. He invokes article 17 as he was prevented from obtaining further employment because of the record in his work-book which reflects the grounds for his dismissal, and he invokes article 26 as he claims that his dismissal resulted in a violation of his right to equal protection under the law.

State party's observations on admissibility and merits

4.1 On 15 February 2007, the State party explained that the author's lawsuit was rejected by the Zaingiraev District Court of the Republic of Buryatia on 22 December 1995. On 12 July 2005, the same court also denied his request for renewal of the deadline for his appeal under the supervisory review procedure. The latter ruling was upheld by the Supreme Court of the Republic of Buryatia on 19 September 2005. On 28 November 2005, the Supreme Court refused his request to renew the deadline. Similar refusals were issued by the Chairman of the Supreme Court of the Republic of Buryatia on 20 January 2006, by the Supreme Court of the Russian Federation on 16 March 2006 and by the Deputy Chairman of the Supreme Court of the Russian Federation on 10 May 2006. It submits that under the Civil Procedure Code, the Deputy Chairman of the Supreme Court has the same right as the Chairman of the Supreme Court to agree or to disagree with a lower court's decision.

4.2 The Civil Procedure Code does not foresee any further appeal procedures. The appeals under the supervisory review procedure can be filed only within a year after the court's decision is effective. The State party submits that the court correctly assessed that the author missed the deadline for the supervisory review appeal without any valid justification. Moreover, his case file had already been destroyed because its term had expired.

Author's comments on the State party's observations

5.1 On 20 June 2007, the author argued that the supervisory review of a decision that has already entered into force is not an effective remedy. Therefore, he claims that he had exhausted all domestic remedies.

5.2 He adds that the State party violated his right to a fair and public hearing of his case by a competent, independent and impartial court.

Issues and proceedings before the Committee

Consideration of admissibility

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

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

6.3 The Committee notes the author's claim on the allegedly unlawful restriction of his right to work, which, according to him, amounts to a violation of his rights under article 5 of the Covenant. The Committee notes that the right to work is not a right or freedom which is among those protected under the Covenant. Accordingly, the Committee considers that this part of the communication is inadmissible *ratione materiae* under article 3 of the Optional Protocol.

6.4 The Committee also notes that the author invoked articles 2, 14, 17 and 26 of the Covenant as he claimed that the State party violated his right to a fair and public hearing of his case, that he was prevented from obtaining employment because of the record in his work-book reflecting the grounds for his dismissal, and that his dismissal resulted in a violation of his right to equal protection under the law, and he could not obtain an effective remedy in this connection. The Committee notes that the author has failed to provide any further information or explanations with regard to these allegations. Accordingly, it considers that the author has failed to sufficiently substantiate his claims, for purposes of admissibility, and declares this part of the communication inadmissible under article 2 of the Optional Protocol.

7. The Human Rights Committee therefore, decides:

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

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

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

D. Communication No. 1546/2007, *V.H. v. Czech Republic* (Decision adopted on 19 July 2011, 102nd session)*

Submitted by:	V.H. (represented by Gebhard Klötzl)
Alleged victim:	The author
State party:	The Czech Republic
Date of communication:	11 November 2006 (initial submission)
Subject matter:	Discrimination on the basis of citizenship, political opinion and social background with respect to restitution of property
Procedural issues:	Abuse of the right to submit a communication; non-exhaustion of domestic remedies; inadmissibility *ratione temporis*
Substantive issues:	Equality before the law; equal protection of the law
Article of the Covenant:	26
Articles of the Optional Protocol:	1; 5, paragraph 2 (b); and 3

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

Meeting on 19 July 2011,

Adopts the following:

Decision on admissibility

1. The author of the communication, dated 11 November 2006, is V.H., Austrian (former Czech) citizen, born in 1927 in Czechoslovakia. He claims to be a victim of a violation by the Czech Republic of article 26, of the International Covenant on Civil and Political Rights.[1] He is represented by Mr. Gebhard Klötzl.

The facts as submitted by the author

2.1 The author's family opposed the communist regime. His mother owned, among other things, a property in Ceske Velenice, a building with several flats, a small shop and a garden. The property consists, legally speaking, of two plots registered in the cadastre, i.e. plots 1088/11 (building) and 1088/14 (garden).

2.2 In 1959, the municipality of Ceske Velenice transferred the possession of the shop, located in the building, to a South Bohemian Co-operative on a compulsory basis. The co-

* The following members of the Committee participated in the examination of the present communication: Mr. Lazhari Bouzid, Ms. Christine Chanet, Mr. Ahmad Amin Fathalla, Mr. Cornelis Flinterman, Mr. Yuji Iwasawa, Ms. Helen Keller, Mr. Rajsoomer Lallah, Ms. Iulia Antoanella Motoc, Mr. Gerald L. Neuman, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Fabián Omar Salvioli, Mr. Krister Thelin and Ms. Margo Waterval.

[1] The Optional Protocol entered into force for the State party on 22 February 1993.

operative then undertook work on the building and refused to pay any rent for 17 months, because it claimed a right to deduct the investment from the rent. The author's mother was still obliged to cover maintenance costs of the building and other duties, which were higher than the rent income.

2.3 Under such conditions, the author's mother gave the building to the State in 1960. A donation contract between the author's mother and the State was passed. According to the author, this was a donation passed under political and material pressure, which is characterized as "forced donation" under the Czech Restitution Laws of 1991 and 1994. The expropriated building is now owned by the municipality of Ceske Velenice.

2.4 In 1966, at the time of the Prague Spring, the author had the opportunity to study abroad, which he did. In August 1970, he ignored an individual order of the Czechoslovak Home Authority to return immediately to his country. Instead, he established himself in Austria. On 5 October 1971, he was granted Austrian citizenship. On 21 January 1972, the District Court of Plzen convicted the author *in absentia*, of absconding from the Republic. He was sentenced to an unconditional imprisonment of three years. He was rehabilitated by an order of the District Court of the City of Plzen dated 23 October 1990. The author's mother was allowed to leave the country legally and also moved to Austria. She died in Vienna on 7 September 1986. The author was declared sole heir of the property by Order of the District Court of Jindrichuv Hradec of 19 October 1998. Since then, he is the sole successor with respect to his mother's rights and has thus also inherited the claim for restitution of the property in question in Ceské Velenice.

2.5 The author started his restitution efforts in 1991. According to him, he could not complain under the special restitution law No 87/1991 (which became law No 116/1994, after the Czech Republic and the Slovak Republic separated into independent States on 1 January 1993) because he did not have the Czech nationality.[2] Therefore the author contested the validity of the "contract of donation" according to the general principles of civil law before civil courts.

2.6 The author's case was examined by the District Court of Jindrichuv Hradec (judgement of 30 April 1993), the Regional Court of Ceske Budejovice (judgement of 14 July 1993), and the Supreme Court in Brno (judgment of 27 June 1996). In all instances, the courts recognized the coercive character of donation, but dismissed the action because the validity of the donation had to be contested within three years, under the Czech Civil Code of 1951, and the author had missed the deadline.

2.7 The Supreme Court found, however, when analysing the contract of 1960 that the author's mother had signed a donation with respect to the building, not with respect to the garden plot. The Court thus declared that the plots continued to be the author's property. The building was finally adjudged to the municipality of Ceske Velenice. For the plots without the building, the municipality of Ceske Velenice has been paying a minimal rent to the author since the judgement of the Supreme Court of 1996.

[2] Law No. 87/1991 on Extra-judicial Rehabilitation was adopted by the Government of the Czech Republic, spelling out the conditions for recovery of property for persons whose property had been confiscated under the Communist rule. Under the Act, in order to claim entitlement to recover property, a person claiming restitution of the property had to be, inter alia, (a) a Czech citizen, and (b) a permanent resident in the Czech Republic. These requirements had to be fulfilled during the time period in which restitution claims could be filed, namely between 1 April and 1 October 1991. A judgment by the Czech Constitutional Court of 12 July 1994 (No. 164/1994) annulled the condition of permanent residence and established a new time frame for the submission of restitution claims by persons who had thereby become entitled persons, running from 1 November 1994 to 1 May 1995.

2.8 The author lodged an application with the European Court of Human Rights in Strasbourg. This application was declared inadmissible by the European Court on 15 March 2002, for failure to observe the six-month time limit since exhaustion of domestic remedies.

The complaint

3.1 The author argues that, while the Government of the Czech Republic today recognizes that the expropriation of the property of the author's family was discriminatory on grounds of political opinion and social origin, it has prevented the author from obtaining restitution because of narrow formal requirements. According to the author, this represents discrimination in comparison to thousands of persons to whom the Government of the Czech Republic has already granted restitution in similar cases, and thus violates article 26 of the International Covenant on Civil and Political Rights.

3.2 The author states that as he was not in a position to file an application for restitution according to special restitutions laws No 87/1991 and No 116/1994, because of the lack of Czech citizenship, he was obliged to assert his claims under civil law before ordinary courts. He considers that if the decision on forced donation made in 1960 had to be challenged within three years by his mother, this period would have run out in 1963. The author states that even assuming that a new three-year period had started running after his mother's death on 7 September 1986, for him as her heir, this period would have expired on 6 September 1989. The author states that it was unconceivable in the political circumstances of that time to file a complaint against the Government of the Czech Republic. He argues that in such cases, the person concerned must be granted a suspension of the Statute of Limitations with respect to his claims, until the end of political pressure and until the situation allows him to raise his claim.

3.3 The author refers to the Committee's Views regarding communication No. 765/1997, in which a limitation of prosecution of Nazi injustice during communist times was asserted on the part of the Government, which the Committee considered to be in violation of the article 26 of the Covenant. He also refers to the Committee's Views regarding communications No. 747/1997, *Des Fours Walderode*, adopted on 30 October 2001, No. 757/1997 *Pezoldova* of 9 December 2002, No. 945/2000 *Marik* of 4 August 2005, and No. 1054/2002 *Kriz* , views adopted on 1 November 2005.

The State party's observations on admissibility and merits

4.1 On 5 September 2007, the State party submitted its observations on the admissibility and merits. It states that the author has been an Austrian citizen since 1971 but notes that contrary to his claim, the author is also a citizen of the Czech Republic. He never lost his Czech (earlier also Czechoslovak) citizenship.

4.2 The State party submit that while in 1972 the Plzen District Court sentenced the author for illegally emigrating from the Republic of Czechoslovakia (he was rehabilitated under a legislation passed in 1990), he has never been deprived of his citizenship. Under the legislation then in place, his acquiring of the Austrian citizenship in 1971 did not imply a simultaneous loss of his Czech citizenship. Nor has the author ever applied for release from the bond of national citizenship. The State party further notes that on 1 February 2007, the author applied, through the Embassy of the Czech Republic in Vienna for the issuance of a certificate of Czech citizenship. Since he has never lost his citizenship, the Plzen 3 Municipal District Authority, which was competent in this case, issued him with the relevant certificate on 9 February 2007.

4.3 With regard to court proceedings, the State party notes that on 29 March 1991, the author commenced proceedings before the Jindrichuv Hradec District Court against the

state-owned enterprise Okresni bytovy podinik (District Housing Entreprise), seeking the vacation and restitution of this property. The author claimed that the donation contract between his mother and the State had been passed under duress and under conspicuously disadvantageous conditions on 7 November 1960. On 25 February 1992, the author sent a motion to the District Court requesting a change of plea. Instead of requesting the vacation and restitution of the property, the author demanded a declaration from the Court that his mother had been the sole owner of the property until she died. In its judgment of 30 April 1993, the District Court decided that as of the date of her death, the author's mother had been the owner of both parcels of the property, since these parcels had not become State's property. However, the house itself was the property of the State as it had been donated by the author's mother on 7 November 1960. The District Court rejected the plea of nullity of the donation contract on the ground that the Civil Code in force at the time of the contract provided for a relative nullity of contracts passed under duress.[3] Relative nullities can be invoked within a period of three years. This statute of limitation having expired, the District Court rejected the author's claim.

4.4 The author appealed the District Court's decision to the Ceske Budejovice Regional Court, which upheld the District Court's decision on 14 July 1993, coming to the same conclusion than the District Court as to the relative nullity of acts passed under duress. The author appealed the Regional Court's decision on a point of law to the Supreme Court which rejected the appeal on 27 June 1996. In addition to the arguments set forth by the lower courts, the Supreme Court argued that an heir may invoke the nullity of an act, but only within the limitation period to which he/she has subrogated as the deceased's successor and only provided that the limitation period has not yet expired. The State party deduces that where nullity of a legal act is pleaded after the expiry of the limitation period, the legal act suffers from a defect, but is nevertheless regarded as a valid legal act.

4.5 As for the author's claim under article 26, the State party interprets it as a claim based on the assumption that the "expropriation" suffered by the author's family amounted to discrimination on the grounds of political and social origin. The State party further notes that the author also sees a violation of article 26 in what he claims was his inability to proceed under the applicable restitution law, Act No. 87/1991 on Extrajudicial Rehabilitations, because he purportedly failed to meet the statutory requirements of citizenship and permanent residence. As discriminatory, the author would see the fact that the national courts of first and second instances concluded that the limitation period had started running from the day of the acceptance of the deed of donation by the State and ended upon completion of the general three-year limitation period. The author invoked the impossibility for his mother to act within these three years and further considered that even if the three-year period had started after his mother's death in 1986, he could not have acted within the time line due to the risk upon return in Czechoslovakia of being imprisoned for illegal emigration from the Republic. The author therefore contends that in order to restore justice, the limitation period should be suspended until political changes occur, thus enabling the author to successfully invoke the nullity of the legal act.

4.6 The State party rejects the author's claim and considers it inadmissible for failure to exhaust all domestic remedies, *ratione temporis* and on the grounds of abuse of the right of submission. In the event that the Committee found the communication admissible, the State party invokes the non-violation of article 26 of the Covenant.

4.7 The State party considers that the author has failed to exhaust domestic remedies as he did not file a constitutional complaint against the decisions rendered by the ordinary courts, laying his argumentation as to where in the respective court proceedings he saw a

[3] Section 37 of Act. 141/1950 (integrated in the Civil Code in force at the time of facts).

violation of constitutional laws and international treaties, including article 26 of the Covenant. Moreover, since the author never lost his Czech nationality, he could have sought the restitution of his property under the provisions of Act No. 87/1991 on Extrajudicial Rehabilitations, after the abolition of the permanent residence requirement (after the Constitutional Court's judgment was published in the Official Gazette under No. 164/1991). The State party notes that the author did not use this remedy. The State party notes the author's contention that ordinary courts failed to interpret the rule of statute of limitation in the light of the external circumstances such as the political situation which did not enable him to return to Czechoslovakia to invoke the nullity of the donation contract. It remarks however that such point of contention was never invoked before ordinary courts. The State party therefore considers that the author has failed to exhaust domestic remedies.

4.8 The State party further notes that the deed of donation was executed in 1961 and at a time when the Covenant did not yet exist and when Czechoslovakia could not be a party to it. The communication should therefore be declared inadmissible *ratione temporis*.

4.9 The State party also submits that the communication should be found inadmissible for abuse of the right of submission under article 3, of the Optional Protocol. The State party recalls the Committee's jurisprudence according to which the Optional Protocol does not set forth any fixed time limits and that a mere delay in submitting a communication in itself does not constitute an abuse of the right of its submission. However, it recalls the Committee's jurisprudence which, when such time lapse occurs, requires a reasonable and objectively understandable explanation.[4] The State party recalls that the author submitted his communication on 11 November 2006, more than 10 years after the last decision of the domestic court dated 27 June 1996 and four years from the European Court of Human Rights' decision of 15 March 2002. The State party argues that the author has not presented any reasonable justification for this delay and therefore the communication should be declared inadmissible under article 3 of the Optional Protocol.

4.10 On the merits, the State party recalls the Committee's jurisprudence on article 26, which asserts that a differentiation based on reasonable and objective criteria does not amount to prohibited discrimination within the meaning of article 26, of the Covenant.[5] The State party considers that article 26 does not suggest any obligation for the State party to make right the injustices that occurred in the period of the previous regime, moreover at a time when the Covenant did not exist, by suspending the running of limitation periods for the exercise of the right to invoke nullity of civil-law acts made under duress caused by political circumstances, or otherwise. According to the State party, there has been no discriminatory treatment of the author within the meaning of this provision. It contends that it was at the sole discretion of the legislator to decide on its approach to reparation of the injustices committed by the previous regime and that not all injustices could ever be repaired.

4.11 The State party contends that it is unaware of any claimant who benefited from a suspension of the statute of limitation on the ground of a change of regime. In the domain of civil law, a legal regulation based on the suspension of the running of the limitation period for invoking nullity of civil-laws acts executed under duress due to political circumstances would seriously unsettle, and for a long time, the legal certainty and stability of civil-law relationships that may have lasted for decades. It was also in the light of these

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

[5] See for example communication No. 182/1984, *Zwaan-de Vries v. the Netherlands*, Views adopted on 9 April 1987, paras. 12.1 to 13.

considerations that the legislator adopted a special solution in the form of property restitution legislation. This legislation provided for a prescribed and quite strictly time-limited procedure for reacquiring the ownership of property that had passed to the State under circumstances specified in the legislation.

4.12 The State party notes that after the Constitutional Court's judgement No. 164/1994 (effective from 1 November 1994), the author satisfied the preconditions for being granted the status of entitled person under Act No. 87/1991 on Extrajudicial Rehabilitations. The author failed to seek restitution of his mother's property within the new six-month time limit running from 1 November 1994. The State party adds that since the author is Czech, the jurisprudence of the Committee considering the requirement of citizenship for the purpose of property restitution to be discriminatory within the meaning of article 26 is not applicable to this case.

The author's comments

5.1 On 12 January 2008, the author submitted that for several decades, he was not aware that, although he had been convicted by the Plzen District Court for absconding from the Republic and although he had obtained the Austrian citizenship, he had not lost the Czechoslovak (then Czech) citizenship.

5.2 The author based his assumption that he had lost his Czechoslovak citizenship on his knowledge of international law, which in his view states that each individual should have only one nationality. As he was already Austrian at that time, he had reasons to believe that he had lost his nationality of origin. Until 1989, it was impossible for him to establish contact with the Government of the then Czechoslovak Socialist Republic (CSSR), with respect to the issue of his citizenship, for fear of arrest and imprisonment. The author still thought he had lost his citizenship at the time of initial submission to the Committee. Around that time, he decided to inquire about his nationality to the Consular Section of the Embassy of the Czech Republic in Vienna. There, he was advised to initiate citizenship determination proceedings before the Plzen 3 Municipal authority (last place of residence). The author initiated such proceedings and obtained a certificate of citizenship dated 9 February 2007 indicating that his citizenship had continued to exist without interruption. The author argues that he himself sent this information to the Committee on 17 July 2007 with the official documents attached. He therefore rejects the State party's assumption that he would have omitted to mention this fact in his submission. The author considers he is not liable for not having inquired earlier on his status based on the circumstances of past years.

5.3 The author considers he has been the victim of discrimination based on his social status and political opinions. He considers that he is discriminated against only because he lived in exile and had no adequate possibilities there to obtain proper legal advice on the options he had. The State party never informed Czech emigrants in exile, through their diplomatic mission, about the possibility of restitution of property. The author adds that he was always treated as if he was a foreigner without Czech citizenship because the Czech authorities and courts were no longer aware of his continuing citizenship. Thus, the author considers the State party's contention that he could have resorted to the new restitution Law of 1994, to be baseless.

5.4 The author further argues that the implementation of the Czech Restitution Law No. 87/1991 continues to be politically and socially biased, since restitutions were granted in a disproportionate manner to individuals from socially privileged backgrounds, thus violating article 26 of the Covenant. The author also refers to two resolutions from the United States' Congress calling inter alia on the Czech Republic to remove restrictions based on nationality for restitution of properties expropriated by Communist and Nazi regimes.

5.5 With regard to the State party's contention on exhaustion of domestic remedies, the author replies that after consulting with a lawyer on this issue, he was advised that his claim had no prospect of success before the Constitutional Court.

5.6 As for the State party's arguments on the impossibility to suspend the limitation period until political changes occur in a country, the author refers back to his arguments of his initial submission of 11 November 1996 and insists on the importance of restoring justice in this regard.

State party's further observations on admissibility and merits

6.1 On 13 October 2008, the State party responded to the allegations further brought by the author in his comments. With regard to the author's presumption of having lost the Czechoslovak citizenship, and while admitting that the author could have reasonable fears of being arrested on the Czechoslovak territory before 1989, the State party points out that the author could have taken measures to inquire about his citizenship without taking any risks. Indeed, according to the Act of the Czech National Council No. 39/1969, a Czechoslovak citizen who acquired a foreign citizenship on his own request did not automatically lose his original citizenship. Since the author did not ask for the release from his citizenship bond and since the decision of the Ministry of Interior following his absconding from the Republic did not deprive him of his Czech citizenship, there was no reason to assume that he had lost the Czechoslovak nationality. The only measure the author needed to take was to inquire about the above regulation. Even if it could be admitted that potential obstacles prevented the author from seeking such information before 1989, those obstacles did not exist anymore after the change of political regime in that year. The State party thus considers that it cannot be reproached for consequences stemming from the author's failure to take the necessary steps in due time.

6.2 The State party rejects the author's affirmation that the determination of his citizenship was cumbersome. Indeed, the Plzen 3 municipal authorities was able to determine that the author was Czech only by verifying that he had acquired his nationality at birth and that he had not lost it under the Act of the Czech National Council No. 39/1969. When drafting its initial observations to the Committee, the State party also performed a routine check to determine whether the author was indeed Czech, especially since this information was not contained in the author's submission. When seeking this piece of information from the Ministry of Interior, the State party was informed of the author's own request for information on his citizenship status through the Czech Embassy in Vienna in February 2007 and of the provision of a citizenship certificate to the author the same month. The State party notes that the letter dated 16 July 2007 by which the author informed the Committee about the result of his citizenship determination request never reached the State party. As to the author's reference to international law's general preference for the existence of a single citizenship, the State party recalls that issues of acquisition and loss of citizenship are principally in the domain of national legal systems, which very often allow for dual or multiple citizenships.

6.3 The State party further rejects the author's claim that he was discriminated against for having lived outside the country without adequate possibilities to know his legal options related to property restitution. The State party contends that it is under no international obligation to inform potential beneficiaries of restitutions. In any event, the adoption of restitution laws was a subject of wide political debate which was extensively covered by the media. The author could also at any time consult the Czech Embassy in Vienna on potential developments. The State party remarks that the author was well aware of the existence of the Act on Extrajudicial Rehabilitations since 1991 as he himself mentioned in his initial submission (see par. 2.5 above). From 1994, all Czech citizens, irrespective of whether they live in the Czech Republic or abroad, were able to claim their rights under the Act on

Extrajudicial Rehabilitations. If a person was unsure about his or her Czech citizenship, he or she could turn to the competent authorities of the country to have the issue of the Czech citizenship determined.

6.4 With regard to the author's claim that he was considered to be a foreigner by the judicial authorities, the State party contends that the author presented himself as a foreigner and that no authority was obliged to challenge it since the Czech citizenship is not a requirement to seek justice before national courts. The State party emphasizes that the author's nationality was particularly irrelevant to the case he brought to the national courts. The State party also rejects the author's claim with respect to the differential treatment existing between claimants from the Aristocracy and other individuals. The State party notes that the author has given no example or else supporting such claim. The State party also rejects the author's mention of the United States Congress resolution as these documents do not form part of international law and rather constitute political proclamations. The State party concludes that the author's claim that he was discriminated against have not been substantiated.

6.5 As to the exhaustion of domestic remedies and the author's contention that recourse to the Constitutional Court would have offered no prospect of success, the State party replies that its observations on the author's failure to exhaust domestic remedies were based on three arguments, the author's failure to file a constitutional complaint being only one of them. The State party notes that the Constitutional Court's jurisdiction is not limited to Czech citizens. There were therefore no obstacles for the author to submit a claim to the Constitutional Court for a violation of article 26 of the Covenant, even if the author thought that he was no longer a Czech citizen. The State party finally insists on the fact that the author has not raised his claims related to article 26 before any of the national courts. The author's claim should therefore be considered inadmissible for non exhaustion of domestic remedies.

Issues and proceedings before the Committee

Consideration of admissibility

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

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

7.3 The Committee notes the State party's contention that the author did not exhaust domestic remedies pursuant to article 5, paragraph 2 (b), of the Optional Protocol, as he never raised the issue of discrimination based on political opinion and social background or any other status as provided by article 26 before national authorities; and that he also failed to seek restitution of his property under Act 87/1991 after the entry into force of the Constitutional Court's judgement No. 164/1994.

7.4 The Committee notes that the author has only commented on the State party's contention related to his failure to bring a constitutional claim against the ordinary courts, which he considered futile. The Committee notes that the author has not commented on the other aspects raised by the State party in relation to exhaustion of domestic remedies.

7.5 The Committee observes that the author has never raised in any domestic proceedings the issue of discrimination against him in relation to the restitution of his mother's property.[6] The Committee therefore concludes that the communication is inadmissible for failure to exhaust domestic remedies pursuant to article 5, paragraph 2 (b), of the Optional Protocol.

7.6 In the light of the conclusion reached by the Committee, it does not find it necessary to refer to the arguments of the State party related to the author's abuse of the right of submission and the inadmissibility of the communication *ratione temporis.*

8. The Human Rights Committee therefore decides:

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

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

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

[6] See communication No. 1575/2007, *Aster v. the Czech Republic*, decision on inadmissibility adopted on 27 March 2009, para. 6.2.

E. Communication No. 1583/2007, *Jahelka v. Czech Republic* (Decision adopted on 25 October 2010, 100th session)*

Submitted by:	Josef and Vlasta Jahelka (not represented by counsel)
Alleged victims:	The authors
State party:	Czech Republic
Date of communication:	22 January 2007 (initial submission)
Subject matter:	Discrimination on the basis of citizenship with respect to restitution of property
Procedural issue:	Abuse of the right to submit a communication
Substantive issues:	Equality before the law; equal protection of the law
Article of the Covenant:	26
Article of the Optional Protocol:	3

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

Meeting on 25 October 2010,

Adopts the following:

Decision on admissibility

1. The authors of the communication are Mr. Josef Jahelka, born on 1 November 1948 and Ms. Vlasta Jahelka, born on 2 May 1952. They are both citizens of the United States of America and the Czech Republic. The authors claim to be victims of a violation by the Czech Republic of article 26, of the International Covenant on Civil and Political Rights.[1] They are not represented by counsel.

The facts as submitted by the authors

2.1 In 1975, the authors purchased a family home, No. 289 in Chrast near Pilsen, together with a parcel of land, No. 454. In August 1983, the authors escaped from Czechoslovakia and obtained, in 1989, citizenship of the United States. They thereby lost their Czechoslovak citizenship, which they regained in 2005. After their escape, the authors' property was confiscated and is presently held by the municipality of Chrast.

* The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Prafullachandra Natwarlal Bhagwati, Mr. Lazhari Bouzid, Ms. Christine Chanet, Mr. Mahjoub El Haiba, Mr. Ahmad Amin Fathalla, Mr. Yuji Iwasawa, Ms. Helen Keller, Mr. Rajsoomer Lallah, Ms. Zonke Zanele Majodina, Ms. Iulia Antoanella Motoc, Mr. Michael O'Flaherty, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Fabián Omar Salvioli and Mr. Krister Thelin.

[1] The Optional Protocol entered into force for the State party on 22 February 1993.

2.2 On 27 March 1996, the District Court in Pilsen rejected the authors' application for property restitution in view of Law No. 87/1991 and the Constitutional Court decision No. 164/1994, on the ground that the authors did not have Czech citizenship.

2.3 On 2 May 1997, the Supreme Court rejected the authors' appeal stating that the requirements for the release of the property according to Law No. 119/1990 were not met as the authors did not have citizenship of the Czech Republic. On 12 January 1998, the Constitutional Court found that the district court, by applying Law No. 87/1991, did not violate the authors' right to property and to fair proceedings, as the authors did not fulfil the citizenship requirement.

The complaint

3. The authors claim that the Czech Republic violated their rights under article 26, of the Covenant in its applying Law No. 87/1991, which requires Czech citizenship for property restitution.

The State party's observations on admissibility and merits

4.1 On 1 February 2008, the State party submitted its observations on the admissibility and merits. It clarifies the facts as submitted by the authors. On 12 and 13 July 1989 respectively, the authors lost their Czechoslovak citizenship and on 29 July 2004, they acquired Czech citizenship again. The State party submits that the authors lost their property on the basis of a district court decision of 8 February 1984, in which they were condemned for the criminal offence of leaving the Republic. On 14 February 1991, pursuant to Law No. 119/1990 on Judicial Rehabilitation, this decision was reversed.

4.2 On 27 March 1996, the district court rejected the authors' application for property restitution on account of their failure to meet the citizenship requirement of Law No. 87/1991. On 8 July 1996, the Plzen Regional Court rejected the authors' appeal. On 2 May 1997, the Supreme Court equally rejected their appeal stating that Law No. 87/1991 is *lex specialis* for all claims relating to property restitution and that the requirements of the Law, including the citizenship requirement must be met. On 12 January 1998, the authors' constitutional appeal was dismissed as manifestly ill-founded.

4.3 The State party submits that the communication should be found inadmissible for abuse of the right of submission under article 3, of the Optional Protocol. The State party recalls the Committee's jurisprudence according to which the Optional Protocol does not set forth any fixed time limits and that a mere delay in submitting a communication in itself does not constitute an abuse of the right of its submission. The State party however submits that the authors submitted their communication on 22 January 2007, which is more than nine years after the last decision of the domestic court dated on 12 January 1998. The State party argues that the authors have not presented any reasonable justification for this delay and therefore the communication should be declared inadmissible.[2] The State party further observes that it shares the view expressed by a Committee member in his dissenting opinion in similar cases against the Czech Republic, according to which in the absence of an explicit definition of the notion of abuse of the right of submission of a communication in the Optional Protocol, the Committee itself is called upon to define the time limits within which communications should be submitted.

[2] See communications No. 787/1997, *Gobin v. Mauritius*, decision on inadmissibility adopted on 16 July 2001, para. 6.3; No. 1434/2005, *Fillacier v. France*, decision on inadmissibility adopted on 27 March 2006, para. 4.3; No. 1452/2006, *Chytil v. the Czech Republic*, decision on inadmissibility adopted on 24 July 2007, para. 6.2; and *a contrario* communication No. 1533/2006, *Ondracka v. the Czech Republic*, Views adopted on 31 October 2007, para. 6.4.

4.4 The State party further adds that the authors' property was forfeited in 1984, thus a long time before it ratified the Optional Protocol. The communication should therefore be declared inadmissible *ratione temporis*.

4.5 On the merits, the State party recalls the Committee's jurisprudence on article 26, which asserts that a differentiation based on reasonable and objective criteria does not amount to prohibited discrimination within the meaning of article 26 of the Covenant.[3] The State party argues that the authors failed to comply with the legal citizenship requirement and their application for property restitution was therefore not supported by the legislation in force. The State party further reiterates its earlier submissions in similar cases.[4]

The authors' comments

5.1 On 1 March 2008, the authors submitted their comments on the State party's observations on the admissibility and merits. The authors argue that all domestic court decisions have denied their applications for property restitution on the ground of loss of their Czech citizenship according to Law No. 87/1991, which in the Committee's view is in violation of article 26, of the Covenant.

5.2 On the issue of the delay in submitting their communication to the Committee, the authors explain that they were mislead by the closing sentence of the Constitutional Court decision, which states that against that decision no appeal is possible. They further argue that the State party does not publish the Committee's decisions in similar cases and that they learned of the Committee's jurisprudence only from the Czech Coordinating Office in Canada.

5.3 The authors further submit that, while being aware that the confiscations were carried out during the Communist era, they dispute the behaviour of the State party's current administration.

5.4 On the merits, the authors refer to the Committee's previous jurisprudence, its concluding observations of 27 August 2001 and 9 August 2007, as well as General Assembly resolution 60/147 of 16 December 2005.

Issues and proceedings before the Committee

Consideration of admissibility

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

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

6.3 The Committee has also considered whether the violations alleged can be examined *ratione temporis*. It notes that although the confiscations took place before the entry into force of the Covenant and of the Optional Protocol for the Czech Republic, the new legislation that excludes claimants who are not Czech citizens from claiming restitution

[3] See for example communication No. 182/1984, *Zwaan-de Vries v. the Netherlands*, Views adopted on 9 April 1987, paras. 12.1 to 13.

[4] See for example, State party observations on communication No. 586/1994, *Adam v. the Czech Republic*, Views adopted on 23 July 1996. It also refers to the constructive dialogue with the Committee during the review of its periodic report, see CCPR/C/CZE/CO/2.

continues to be operative, having consequences even after the entry into force of the Optional Protocol in the Czech Republic and therefore does not preclude the Committee from considering the communication.[5]

6.4 As to the State party's argument that the submission of the communication to the Committee amounts to an abuse of the right of submission under article 3 of the Optional Protocol, the Committee notes that the last decision complained of by the authors is the one delivered by the Constitutional Court on 12 January 1998, rejecting the authors' application as manifestly ill-founded. Thus, a period of nine years and 10 days passed before the authors submitted their communication to the Committee on 22 January 2007. The Committee recalls its jurisprudence, according to which there are no fixed time limits for the submission of communications under the Optional Protocol and that the mere delay in submission does not of itself, except in exceptional circumstances, constitute an abuse of the right to submit a communication.[6] In this regard, it observes that the authors waited for nine years and 10 days after the date of the Constitutional Court judgment before submitting their complaint to the Committee. The Committee observes that it is for the authors to diligently pursue their claim and considers that in the present case, they have not provided any reasonable justification for the delay in submitting their communication to the Committee. The Committee, therefore, regards the delay to be so unreasonable and excessive as to amount to an abuse of the right of submission, which renders the communication inadmissible under article 3, of the Optional Protocol.

7. The Human Rights Committee therefore decides:

(a) that the communication is inadmissible under article 3, of the Optional Protocol;

(b) that this decision shall be communicated to the State party and to the authors.

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

[5] See for example *Adam v. the Czech Republic* (note 4 above), para. 6.3.

[6] See *Gobin v. Mauritius* (note 2 above), para. 6.3; *Fillacier v. France* (note 2 above), para. 4.3; *Chytil v. the Czech Republic* (note 2 above); and communication No. 1582/2007, *Kudrna v. the Czech Republic*, decision on inadmissibility adopted on 21 July 2009.

F. Communication No. 1617/2007, *L.G.M. v. Spain* (Decision adopted on 26 July 2011, 102nd session)*

Submitted by:	L.G.M. (represented by counsel Fernando Pamo de la Hoz)
Alleged victim:	The author
State party:	Spain
Date of communication:	2 May 2006 (initial submission)
Subject matter:	Scope of review on appeal in criminal proceedings
Procedural issues:	Exhaustion of domestic remedies; degree of substantiation of the complaint; abuse of rights
Substantive issue:	The right to have a conviction and sentence reviewed by a higher tribunal
Article of the Covenant:	14, paragraph 5
Article of the Optional Protocol:	2

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

Meeting on 26 July 2011,

Adopts the following:

Decision on admissibility

1. The author of the communication is Mr. L.G.M., an Iranian citizen, born in 1965, who claims to be the victim of a violation by Spain of article 14, paragraph 5, of the Covenant. The Optional Protocol entered into force for the State party on 25 January 1985. The author is represented by counsel Fernando Pamo de la Hoz.

Factual background

2.1 On 23 January 2004 the author was sentenced by the National High Court to 20 years and 7 months' imprisonment and a fine of 41 million euro for offences against public health, money laundering and forgery of an official document. According to the judgement handed down by the National High Court, the author belonged to and headed a drug-trafficking organization.

* The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Lazhari Bouzid, Ms. Christine Chanet, Mr. Ahmad Amin Fathalla, Mr. Cornelis Flinterman, Mr. Yuji Iwasawa, Ms. Helen Keller, Mr. Rajsoomer Lallah, Ms. Zonke Zanele Majodina, Ms. Iulia Antoanella Motoc, Mr. Gerald L. Neuman, Mr. Michael O'Flaherty, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Fabián Omar Salvioli, Mr. Krister Thelin and Ms. Margo Waterval.

2.2 The case was heard by the National High Court between 27 October and 5 December 2003. At those hearings the author requested the annulment of various proceedings. In particular, he alleged procedural infringements, a breach of the right to an effective remedy and violation of the right to a defence. These annulment pleas were entered at different stages of the proceedings and were all dismissed. On 30 January 2004, the National High Court took a decision on the author's request for clarification of his sentence.

2.3 On 14 April 2004, the author lodged an appeal in cassation before the Supreme Court. In a ruling on 10 February 2006, the Court decided to uphold the decision of the National High Court. The author alleges before the Committee that he was unable to obtain a proper review of the National High Court's judgement on the ground that, by law, cassation proceedings do not allow the evidence leading to a conviction to be re-examined. He maintains that the limitations of cassation proceedings prevented him from either questioning the credibility of the testimony of witnesses and experts or re-examining contradictory documentary evidence.[1]

2.4 During his appeal in cassation, the author alleged that the judgement of the National High Court was null and void *ipso jure* and contained omissions, errors and flaws. The ruling of the Supreme Court, which the author attaches, replies to the 14 grounds for cassation put forward. These are some extracts of the ruling:

(a) The author alleges that the National High Court had dismissed an item of documentary evidence (the transcription of a document in Persian) on the ground that it was time-barred. Nevertheless, the same evidence was subsequently taken into consideration in the judgement handed down by the National High Court. To this allegation the Supreme Court replied that its examination of the records of the proceedings had led it to conclude that the National High Court had not declared the evidence as such to be invalid but had instead invalidated only the conclusions procedure, which had begun before the transcription of the document in question had been made available to the parties;

(b) The author alleged a violation of the right to an effective remedy and a legal defence. To this allegation the Supreme Court replied that the author had failed to substantiate this aspect of his appeal and that not all procedural infringements prevent the exercise of the right to a proper defence. It also pointed out that the author did not lodge an appeal or a challenge when he had the opportunity to do so;

(c) The author alleged a violation of the right of defence with respect to his spouse on the grounds that she did not receive any legal assistance during the investigation to which she was subject. In this regard the Supreme Court argued that, under Spanish law, cassation proceedings are intended only to ensure the defence and exercise of the rights of the person concerned, not those of another person. The author's own right of defence was respected, since he was always assisted by a lawyer, as shown in the records of the proceedings of the case;

(d) The author alleged that Turkish documentation had been added to the file by the Public Prosecution Service. The Supreme Court noted, however, that the documentation in question had been entered under a request for judicial assistance prior to closure of the preliminary proceedings;[2]

[1] The author's communication is couched in very general terms and does not specify which testimony or documentary evidence he is referring to. The author merely attaches copies of the judgements handed down by the domestic courts. Nor does he highlight the elements of those judgements which might be relevant in relation to article 14, paragraph 5, of the Covenant.

[2] According to the Supreme Court, that documentation appeared in volume 30 of the preliminary

(e) The author argued that one of the co-defendants was not summoned personally and therefore did not appear at the trial, which deprived the author of a means of defence. The Supreme Court commented that the author had not shown for what reason the presence of the co-defendant would have been necessary or essential. The Court pointed out that the whereabouts of the person in question were unknown and that the trial of the other defendants was conducted in compliance with domestic legislation and with article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, i.e. with the right to be tried without undue delay and within a reasonable time. The Supreme Court argued that it was necessary to proceed with the trial because some of the defendants had been held in pretrial detention for almost as long as was legally permitted, and it was impossible to tell how long it would take before those not present could be brought to trial;

(f) The author alleged that he had been denied the right to due process and to use all available evidence, on the ground that one of the co-defendants was tried only a few days after the author's own trial[3] was concluded. Sentence was passed on the author after the separate trial of this co-defendant, who confirmed all the arguments put forward by the prosecutor in his indictment and introduced new incriminatory elements. According to the author, this considerably influenced the views of the judges when passing judgement on him. With regard to this allegation, the Supreme Court concluded that the author's arguments were pure speculation, especially since the factual record of the judgement handed down to the co-defendant contained no reference whatsoever to the author. The Court argued, moreover, that the author did not voice an objection at the appropriate stage of the proceedings. The co-defendant was at the disposal of the parties at the author's trial but did not wish to make a statement;

(g) The author alleged a violation of his right to a fair trial. He argued that the reporting judge had shown, through certain questions that he had asked during the trial, that he was biased against the argument adduced by the author. The Supreme Court considered that if the author had thought that any questions had been intended to discredit a concrete piece of evidence which he considered to be vital, then he should have voiced the appropriate complaint. That day's record, however, contains no mention of any such challenge;

(h) The author maintained that the requirements for establishing the constitutionality of the telephone taps had not been met. The Supreme Court commented that the taps had been authorized and monitored by the courts in compliance with the principles of proportionality, legality and motivation. The manner in which the information obtained from those telephone taps was incorporated into the proceedings may have affected their evidential value, but not the basic right which had allegedly been violated. With regard to the author's complaint that the translations of the recordings of telephone calls were faulty, the Court concluded that the existence of different translations did not imply an irregularity, but rather reflected an exceedingly zealous judicial precaution. The corrections made by the Turkish interpreter did not influence the proceedings or the author's defence in any vital way. Furthermore, the interpreters' presence in the courtroom made it possible to be apprised of the exact content of the calls and to verify the accuracy of the transcriptions. The author did not, on the other hand, draw attention to any passage which might have weighed against his case on account of an incorrect or confused translation.

proceedings rather than in volume 38, as alleged by the author.

[3] The co-defendant was tried on 13 January 2004.

2.5 On 4 April 2006, the author lodged an appeal of *amparo* with the Constitutional Court.[4] He maintains, however, that *amparo* proceedings are not effective in cases such as his, as already established by the Committee in *Gómez Vázquez v. Spain*.[5]

The complaint

3. The author claims a violation by the State party of article 14, paragraph 5, of the Covenant, on the ground that full account was not taken of the evidence and the questions of fact produced in first instance.

State party's observations on admissibility and merits

4.1 The State party, in its notes verbales dated 10 January and 14 May 2008, maintains that the author failed to exhaust all domestic remedies, since the *amparo* proceedings had not yet run their course.

4.2 It considers that, following the Committee's decision in the *Gómez Vázquez* case, the Constitutional Court incorporated the Committee's legal tenet that the appeal in cassation in criminal proceedings should be of sufficient scope to meet the requirements of article 14, paragraph 5, of the Covenant. This requirement has been consistently observed in subsequent rulings of the Constitutional Court.

4.3 Nevertheless, the State party points out that, while the appeal in cassation lodged by the author before the Supreme Court put forward 14 grounds for appeal, none of these refers to a flaw in the application of evidence or a violation of the presumption of innocence. The Supreme Court considered all the grounds of appeal very carefully. The State party therefore requests that the Committee declare the communication inadmissible on the grounds that domestic remedies were not exhausted and that the communication constitutes an abuse of the provisions of the Covenant.

Author's comments on the State party's observations

5. On 6 February 2008 the author informed the Committee that his *amparo* appeal had been dismissed on 17 July 2006. The author argued that this dismissal demonstrates the lack of due process in the appeal procedure.

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 it is admissible under the Optional Protocol to the Covenant.

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

6.3 The Committee notes the State party's observations regarding the non-exhaustion of domestic remedies and that the author subsequently submitted a copy of the Constitutional Court's decision in the *amparo* proceedings. The Committee recalls that it has consistently held that only those remedies that have a reasonable prospect of success need be exhausted[6]

[4] This appeal was pending when the author submitted the communication to the Committee.

[5] Communication No. 701/1996, *Gómez Vázquez v. Spain*, Views adopted on 11 August 2000.

[6] See, for example, communications No. 1095/2002, *Gomariz v. Spain*, Views adopted on 22 July 2005, para. 6.4; No. 1101/2002, *Alba Cabriada v. Spain*, Views adopted on 1 November 2004, para. 6.5; and No. 1293/2004, *Dios Prieto v. Spain*, decision of 17 June 2002, para. 6.3.

and that it is not necessary to have exhausted the remedy of *amparo* in cases concerning the review of judgements brought against Spain under article 14, paragraph 5, of the Covenant.[7] The Committee therefore considers that domestic remedies have been exhausted.

6.4 The Committee notes the State party's argument that the communication should be declared inadmissible on the ground of abusive use of the provisions of the Covenant, but it does not agree with that argument.

6.5 With regard to the author's complaint that the review of his case was not conducted in accordance with article 14, paragraph 5, of the Covenant, the Committee takes note of the State party's argument that the Supreme Court examined all the grounds for appeal in cassation very carefully. The Committee considers that the author has formulated his complaint in general terms, without specifying the exact matters which he considers were not reviewed by the Supreme Court. Moreover, it appears from the ruling of the Supreme Court that the latter examined all the grounds for cassation put forward by the author, many of which refer to the assessment of some pieces of evidence made by the lower court. In the light of the explanations given by the author regarding the cassation ruling, the Committee considers that the complaint relating to article 14, paragraph 5, has not been sufficiently substantiated for purposes of admissibility and concludes that it is therefore inadmissible under article 2 of the Optional Protocol.

7. The Human Rights Committee therefore decides:

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

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

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

[7] *Gómez Vázquez v. Spain* (note 5 above).

G. Communication No. 1622/2007, *L.D.L.P. v. Spain* (Decision adopted on 26 July 2011, 102nd session)*

Submitted by:	L.D.L.P. (represented by counsel, Luis Olay Pichel)
Alleged victim:	The author
State party:	Spain
Date of communication:	23 December 2006 (initial submission)
Subject matter:	Author's removal from his post on grounds of unsuitability
Procedural issues:	Degree of substantiation of the claim; admissibility *ratione materiae*
Substantive issues:	Right to a fair and public hearing by a competent, independent and impartial tribunal; right to have a conviction and sentence reviewed by a higher tribunal according to law; right not to be subjected to arbitrary or unlawful interference with one's privacy, family and home; right to hold opinions without interference; right to equal protection of the law without discrimination
Articles of the Covenant:	2, paragraph 3 (a); 8, paragraph 3 (a); 12; 14; 15; 17; 18; 19; and 26
Article of the Optional Protocol:	2 and 3

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

Meeting on 26 July 2011,

Adopts the following:

Decision on admissibility

1.1 The author of the communication is L.D.L.P., a Spanish citizen born on 26 May 1961. He claims to be a victim of a violation by Spain of article 2, paragraph 3 (a), read in conjunction with article 14; article 8, paragraph 3 (a); article 12; article 15; article 17; article 18; article 19; and article 26 of the Covenant. The Optional Protocol entered into force for Spain on 25 January 1985. The author is represented by counsel, Mr. Luis Olay Pichel.

* The following members of the Committee took part in the consideration of the communication: Mr. Abdelfattah Amor, Mr. Lazhari Bouzid, Ms. Christine Chanet, Mr. Ahmad Amin Fathalla, Mr. Cornelis Flinterman, Mr. Yuji Iwasawa, Ms. Helen Keller, Mr. Rajsoomer Lallah, Ms. Zonke Zanele Majodina, Ms. Iulia Antoanella Motoc, Mr. Gerald L. Neuman, Mr. Michael O'Flaherty, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Fabián Omar Salvioli, Mr. Krister Thelin and Ms. Margo Waterval.

1.2 On 4 February 2008, the Committee, acting through the Special Rapporteur on new communications and interim measures, agreed to the State party's request that the admissibility of the communication should be considered separately from the merits of the case.

Factual background

2.1 The author is a career military officer. In June 2002, he was posted to the Garellano Regiment in Munguía in the province of Vizcaya, where he had served for three years with the rank of captain and a further three with the rank of major. He had also performed highly responsible duties, acting, for example, as Chief of the Classified Documentation Service and of the Second Section (information) from September 1999 to August 2000 and as Chief of Security for the Munguía barracks for the first six months of 2000. He performed these duties to the full satisfaction of three different colonels when they commanded the regiment, who awarded him the Cross of the Order of Military Merit and issued three of the four written commendations which he has in his service record. He volunteered for a posting to the Basque Country, which is one of the most hazardous and most demanding places of duty and one to which most officers are posted under a compulsory rotational system for periods of approximately one year.

2.2 During the first year of Colonel G.A.'s command, the author had a good relationship with him, and it was evident that the Colonel was pleased with his work. Subsequently, however, the Colonel's attitude towards him changed dramatically. During the first half of 2002, the author began to be subjected to various types of psychological harassment, including two arrests lasting four days each. A third arrest, lasting one month and five days, occurred in 2003. In addition, on 10 June 2002, his home was searched without a warrant and without authorization from a neutral military authority. The author claims that these actions were taken in retaliation for the fact that, after the Colonel had started levelling false accusations against him, he had exercised his right to defend himself by requesting reports from his subordinates. As a result of this harassment, the author fell ill and remained on sick leave for a total of 21 months up to 18 February 2004.

2.3 On 7 June 2002, the author filed a complaint against Lieutenant Colonel B., who had also begun to participate in the harassment. He subsequently extended his complaint to include Colonel G.A., accusing him of abuse of command authority. On 12 June, the author lodged a complaint against Colonel G.A. for having ordered a search of his home without a warrant.

2.4 On 8 July 2002, Colonel G.A. requested the author's removal from his posting in Munguía on the grounds that he was unsuited to perform the associated duties. The author had requested a transfer in the intervening period. The transfer was eventually granted on 19 July 2002, when the author was assigned to the 45th Light Infantry Garellano Regiment in Vitoria. However, his illness prevented him from taking up this post.

2.5 On 23 August 2002, the author requested that the Minister of Defence take disciplinary action in order to curtail Colonel G.A.'s harassment, having learned that the Colonel had, among other things, refused to accept the sick-leave certifications that had been submitted to him. This request prompted an investigation during which the circumstances surrounding the author's sick leave and illness were examined for the first time. This investigation did not begin until 22 November 2002, however. In December 2002, Colonel G.A. was charged with misconduct in respect of the author. Colonel G.A. was tried in October 2005 and was ultimately acquitted.

2.6 On 20 September 2002, the author was summoned to a barracks in Asturias to collect an official letter inviting his submissions in relation to his proposed removal. When his father, who was legally empowered to represent the author, went to collect the letter on

his son's behalf, the authorities refused to release the letter to him on the grounds that it was a confidential document. The letter was not sent to the author's home until many months later, after it had been specifically requested from the authorities and the author had already been removed from his position. The author asserts that the report in which the Colonel proposed his removal was not attached to the official letter and that he could therefore not make any counterclaims on this basis.

2.7 Colonel G.A. made various unfounded allegations against the author on different occasions, holding him responsible for a number of serious infractions and offences. All of these allegations were dismissed and the author was not found to be responsible in any of these instances.

2.8 The author was informed of his removal at the Vitoria Unit by an official letter dated 8 November 2002. The letter stated that, since the Vitoria Unit was composed of a battalion belonging to the same regiment that was under Colonel G.A.'s command, the circumstances set out in the proposal of removal remained applicable. The author claims that the decision concerning his removal was taken without having given him an opportunity to defend himself, was based solely on the report issued by Colonel G.A. and was issued before the investigation into the author's complaint against the Colonel had been concluded. The author tried to gain access to his case file on several occasions, but his requests were denied. He claims that his removal was undoubtedly an act of retaliation for having filed a complaint against his superior officer. Furthermore, the author's suitability for his post was not analysed at any point in time, despite the existence of a legally established procedure for this purpose.

2.9 On 11 December 2002, the author asked the Directorate of Army Personnel Management to set aside the decision to remove him. On 21 December 2002, he filed a provisional appeal with the Ministry of Defence, being unable to file a definitive appeal because he had not yet received the case file regarding the proposed removal. On 18 January 2003, the author received a copy of the case file containing the report in which his removal from his post was proposed, and on 4 February 2003 he filed a definitive appeal with the Minister of Defence.

2.10 The appeal was rejected on 25 February 2003. The accompanying legal report addresses the issue of notification which the author had raised in his appeal. The report says that the author's mother took delivery of the notification at his home on 13 September 2002 and that the decision to remove him from his posting was taken once the period granted to the author to prepare his submissions had passed. The author alleges that the Ministry of Defence acted improperly by considering only his provisional appeal rather than the definitive appeal filed on 4 February 2003.

2.11 In April 2003, the author was ordered to take up a discretionary assignment to a similar but higher post in a unit requiring a higher skill level than the unit from which he had been removed. When the author objected to this posting on the grounds that it was inappropriate because, according to the regulations, he could not be given an assignment similar to the one from which he had been removed, his objection was accepted. At the same time he was refused postings for which he applied, with the authorities preferring to state that no qualified candidates had applied for those vacancies.

2.12 On 29 October 2003, the author filed an appeal with the administrative litigation division of the National High Court in which he adduced: (a) procedural irregularities, inasmuch as the failure to hold a hearing had denied him his right to defend himself; (b) a lack of evidence to substantiate the allegations of unsuitability; and (c) abuse of power on the part of the military authorities in finding against the author, presumably out of support for Colonel G.A. The High Court rejected the appeal on 28 September 2004. In its ruling, the Court recognizes that holding a hearing for the interested party is a legal obligation but

states that, in order to fulfil this obligation, the author had been summoned to appear on 20 September 2002 to collect an official letter dated 3 September 2002 from the 45th Light Infantry Garellano Regiment concerning allegations regarding the processing of his removal from his posting. This summons was sent to the author's home in Oviedo and was received by his mother on 13 September 2002. It constituted a fully valid notification issued in accordance with the law. On 20 September 2002, the author's father went to collect the letter on his behalf, bringing with him a medical certificate attesting to his son's condition. However, the authorities did not release the letter to his father because they did not recognize his claim to be duly authorized to represent his son and because, as the document was confidential, it should be delivered to the author in person. According to the High Court, the authorities' refusal to recognize his father's capacity to represent his son cannot be challenged, as the document presented in support of that claim did not conform to legal requirements, since it was not a certified record of the authorization. The decision to remove the author from his posting was issued 10 days later. The author lodged an appeal against that decision in which, among other applications, he requested true copies of all documents in the case file. The authorities granted this request and provided the author with true copies of the file's entire contents and gave him a further 15 days, counting from the date of their receipt, in which to file his appeal. In view of these facts, the High Court found the claim of a denial of the right of defence unfounded. With regard to the claim that evidence of unsuitability was lacking, the Court considered that Colonel G.A.'s report of 8 July 2002, which detailed the reasons for the proposed removal, provided sufficient grounds to justify that removal. With regard to the alleged abuse of power, the Court ruled that there was no evidence to substantiate that claim.

2.13 On 2 November 2004, the author filed a writ of *amparo* before the Constitutional Court. The Constitutional Court dismissed the writ on 6 June 2006, finding that the author had not appeared in court with proper legal representation when he should have, that the decision to remove him from his post was a reasonable, appropriate and justified action based on coherent documentary evidence, and that there had been no violation of the principle of legality.

2.14 On 30 June 2006, the author lodged a malfeasance complaint with the General Council of the Judiciary against the three judges of the Constitutional Court who had dismissed the writ of *amparo*. On 20 September 2006, the Council rejected his complaint on the grounds that it was not competent to act in the matter, since the Constitutional Court is not subject to the disciplinary regime for members of the legal profession which falls under the mandate of the Council. The author therefore considers that he has exhausted all domestic remedies.

The complaint

3.1 The author claims that the events described above constitute a violation of article 2, paragraph 3 (a), read in conjunction with article 14 of the Covenant, since none of the remedies to which he had recourse were effective and the principle of presumption of innocence was not respected.

3.2 The author explains that there are two types of vacancies in the Spanish Army: discretionary vacancies for which any officer can be considered, and vacancies awarded on the basis of length of service. Any officer can be removed from a post falling into the first category simply on the grounds of "loss of confidence", without any further explanation being required. In such cases, the person can be reassigned to any other vacant post, including one of the same nature. The author, however, was removed from a non-discretionary post to which he had been appointed on the basis of seniority, with the only requirement being that he was the longest-serving candidate. A person in a seniority-based position does not lose it under any circumstances (except in the case of criminal convictions

entailing a loss of position in the seniority rankings). A member of the armed forces can be removed from a post on grounds of insufficient physical or mental fitness or loss of professional competence, but never on grounds of "unsuitability". The law provides for removal on this type of ground only in those cases where a person is not even minimally effective in the post to which he is assigned, which was not the case here. This also has the effect of greatly limiting the number of posts for which the person in question may be eligible in the future. The result of this has been that the author has ended up carrying out administrative duties for which he has not been trained.

3.3 The author contends that the judicial decisions in question were not based on sufficient evidence of his alleged unsuitability for his post, that they failed to consider the lawfulness of the decision to remove him and the context in which it was made, and that they were insufficiently reasoned. They were also arbitrary in that they did not take account of the fact that he was removed from a posting (Vitoria) other than the one from which his removal had been requested (Munguía). The author asks how it was possible to determine that he was unsuitable for a post which he had not yet taken up, in a new battalion, with a different set of colleagues. What is more, the posting in Vitoria to which the Army assigned him was also under the command of Colonel G.A.

3.4 The author claims that there were irregularities in the administrative proceedings: the authorities circumvented the requirement that the author be given a hearing by refusing to accept his father's authorization to represent his son for the purpose of receiving notifications, in contravention of applicable laws; the full texts of the notifications were not delivered to his home; the legally established procedure for assessing suitability was not conducted; the case file was not sent directly to his counsel, whereas, if it had been, he would have had full cognizance of the charges sufficiently ahead of time to prepare an effective appeal instead of a provisional one; and the Minister of Defence ruled on the provisional appeal, instead of the definitive appeal which the author had submitted within the required deadline after finally receiving the case file. With regard to the court proceedings, the author affirms that the High Court failed to perform the checks that he had requested, such as reviewing the ratings that he had received in previous years (by consulting his personnel evaluation reports), when he had never received a negative rating. In addition, the copious documentation that the author provided to attest to his professional merits was not taken into account in either the administrative or the judicial proceedings. Despite the availability of all of this documentation, the authorities made reference only to Colonel G.A.'s report, as if this document constituted irrefutable rather than purely circumstantial evidence. These irregularities seriously compromised the author's right to an effective remedy and to proceedings offering minimum guarantees of objectivity, fairness and respect for the right of defence. He also maintains that there was a violation of article 14, paragraph 5, of the Covenant, as the High Court was the only court that ruled on this case and he did not have the opportunity to appeal to a higher tribunal.

3.5 He notes that the Constitutional Court's decision contains errors in that it refers to a "removal on disciplinary grounds", whereas this was actually an administrative case not subject to Organization Act No. 8/98 on the Armed Forces' disciplinary system or to any other disciplinary procedures, but rather solely to Professional Military Personnel Act No. 17/99 and other related provisions.

3.6 The author claims a violation of article 8, paragraph 3 (a), of the Covenant, given the type of work that he is now obliged to perform. He also alleges a violation of article 12 of the Covenant on the grounds that he has been denied the freedom that his colleagues enjoy in choosing their place of residence or duty station, since the decision to remove him from his position limits the postings available to him.

3.7 In relation to the violation of article 15 of the Covenant, the author claims that administrative removal is too severe a penalty for the alleged faults. He also recalls that he

did not have the opportunity to defend himself and that the adversarial principle was not respected in the proceedings. His administrative removal was based on a single item of evidence, i.e., a report produced by a person against whom the author had filed a complaint and who was supported by the authorities because of the particular corporativist nature of the Army.

3.8 The author also alleges a violation of article 17 of the Covenant in connection with the fact that his home was searched, without the authorization of the competent authority, on the instructions of Colonel G.A. These events were the cause of severe suffering on the part of his family and were never investigated.

3.9 With regard to article 18 of the Covenant, the author claims that he suffered prejudice because he had made complaints against Colonel G.A., in the fulfilment of his duty and the exercise of his rights. With regard to the violation of article 19, the author claims that he was the object of reprisals after filing complaints against Colonel G.A. Although members of the military are restricted in the exercise of certain rights, it was his duty and his right under the law to file the complaint. With regard to the violation of article 26 of the Covenant, the author contends that the complaint against his superior does not justify his removal on the grounds of unsuitability and that this action was a disguised form of punishment.

3.10 Lastly, he maintains that he should be compensated for the injury suffered.

State party's observations on admissibility

4.1 The State party submitted observations regarding the admissibility of the communication in a note verbale dated 28 January 2008 in which it stated that the communication should be declared inadmissible.

4.2 The State party maintains that the removal does not in any way constitute a disciplinary sanction and does not affect the author's military status but is simply an expression of the State party's authority to organize its operations freely and independently and, in application of that authority, to remove any person from a given post if that person is deemed unsuitable. The removal was carried out on the basis of a reasoned decision, and the author was given the opportunity to make submissions and to have the decision reviewed on several occasions: in administrative proceedings, before the administrative litigation division of the High Court and before the Constitutional Court.

4.3 The State party maintains that the invocation of articles 8, 12, 15, 17, 18, 19 and 26 is purely rhetorical. With regard to the alleged violation of article 14, since the subject of the communication is not a criminal matter, the claim is incompatible *ratione materiae* with the Covenant. As the author himself states, this was not a disciplinary procedure but simply a case of the State party's use of its organizational authority to decide that the author was unsuitable for a specific post within the Armed Forces. It is nothing more than an adjustment or outcome of the State's special relationship of superiority vis-à-vis the author, as a member of the military, and the State is not at any point under an obligation under the Covenant to retain a member of the military in a specific post if it believes that the person is unsuitable for that post. It is therefore not even a question of determining rights and obligations in a suit at law. Rather, it is simply an outcome of a specific relationship of superiority existing within the context of the service relationship of a career officer who retains his military status.

4.4 The State argues that the communication is unfounded. The author has had repeated opportunities to make submissions and to challenge the decision that he was unsuitable for the posting to which he was assigned. A hearing process was initiated in which he attempted to participate through a third party without providing legally authenticated proof of that party's authorization to represent him. He was sent true copies of all documents in

the case file and was given a further period of 15 days in which to file an appeal, and he was again given access to the entire case file during the administrative appeal process. The author lodged an appeal with the administrative litigation division of the High Court and eventually obtained a reasoned decision from the Constitutional Court.

Author's comments on the State party's submission

5.1 The author submitted comments on the State party's observations on 13 March and 7 October 2008. He reiterates, inter alia, that the reasons for his removal are not specified in the decision. In addition, the observations are inaccurate, in that the State party says that the author and his counsel refused to accept the notification. The High Court did not review the case properly and failed in its duty of impartiality by not ordering the authorities to present a vital piece of evidence — namely, the author's personnel evaluations from previous years — in full. The Constitutional Court regarded his removal as being equivalent to a disciplinary sanction.

5.2 The author argues that his case falls within the scope of article 14, which also covers the determination of rights and obligations in a suit at law. Firstly, the administrative decision was issued in a context of disciplinary sanctions that limited the freedom of the author. Secondly, when a person is removed from a seniority-based posting by administrative decision on grounds of unsuitability, that person cannot be reassigned to a similar post in another unit in Spain, cannot exercise the command of another unit and cannot serve in the upper echelons of the military or at army headquarters. In addition, persons finding themselves in this situation are grouped together with those who have been subject to serious disciplinary sanctions in that they are singled out for exhaustive assessments of their suitability for any future promotion. His removal from the post was effectively a disguised form of punishment and is therefore analogous to a criminal or disciplinary procedure. It turns out to be even more serious than a "removal from station of posting", which is the most serious disciplinary sanction and prohibits the person in question from returning to a duty station (military region) for a period of two years. It is lawful for a member of the military to be removed from a posting on grounds of unsuitability when the circumstances warrant such action, but such circumstances did not exist in the case in point.

5.3 The author reiterates his initial allegations regarding the administrative proceedings brought against him and rejects the State party's arguments. He claims that his father's authorization to represent him was perfectly valid. The author's father had no need to furnish any further documents in addition to those presented (from the military notary and his doctor) in order to collect the official letter. The summons should have indicated that the document to be collected was confidential and whether or not the Colonel's report was attached to it; both documents could have been sent to the address at which the author was authorized to reside during his convalescence. The author should have been allowed to rectify the document that was deemed to be inadequate or given another opportunity to pick the letter up himself. The case file should have been made available in time. The ruling should have been issued on the basis of the definitive appeal. The full set of recognized evidence should have been submitted to the National High Court, etc. In addition, no hearing was held.

Issues and proceedings before the Committee

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

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

6.3 The Committee notes the author's claims under article 2, paragraph 3 (a), and article 14 that the remedies to which he had recourse were not effective, that there was insufficient evidence to support the judicial decisions that were issued, that the merits of the case were not examined, that his right to defend himself was not respected and that the decision was not reviewed by a higher tribunal. The Committee observes that these complaints relate to the evaluation of facts and evidence by the State party's courts. The Committee recalls its jurisprudence according to which it is incumbent upon the courts of States parties to evaluate the facts and evidence in each case, or the application of domestic legislation, unless it can be shown that such evaluation or application was clearly arbitrary or amounted to a manifest error or denial of justice.[1] The Committee has examined the materials submitted by the author, including the decisions of the High Court and the Constitutional Court, and is of the opinion that those decisions do not provide sufficient elements to support the conclusion that the court proceedings suffered from such defects. Accordingly, the Committee considers that the author has failed to provide sufficient substantiation of his claims of a violation of article 2, paragraph 3 (a), and article 14, and the communication is therefore inadmissible under article 2 of the Optional Protocol.

6.4 The author's allegations of violations of article 8, paragraph 3 (a), article 12, article 15, article 17, article 18, article 19, and article 26 have not been sufficiently substantiated to support a finding of admissibility and they are therefore considered inadmissible under article 2 of the Optional Protocol.

7. The Human Rights Committee therefore decides:

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

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

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

[1] See, inter alia, communication No. 1616/2007, *Manzano v. Colombia*, decision on inadmissibility adopted on 19 March 2010, para. 6.4.

H. Communication No. 1636/2007, *Onoufriou v. Cyprus* (Decision adopted on 25 October 2010, 100th session)*

Submitted by:	Andreas Onoufriou (not represented by counsel)
Alleged victim:	The author
State party:	Cyprus
Date of communication:	5 October 2006 (initial submission)
Subject matter:	Legality of the trial and sentencing to 18 years' jail of the author for attempted murder of a judge and his daughter
Procedural issues:	Non-exhaustion of domestic remedies; non-substantiation of allegations
Substantive issues:	Fair hearing; prohibition of discrimination
Articles of the Covenant:	14, paragraph 3 (b), (d) and (e); 2; 26
Articles of the Optional Protocol:	2; 5, paragraph 2 (b)

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

Meeting on 25 October 2010,

Adopts the following:

Decision on admissibility

1. The author of the communication, dated 5 October 2006, is Andreas Onoufriou, a national of Cyprus, currently detained in the Central Prison of Nicosia, serving 18 years of imprisonment pursuant to his conviction for two counts of attempted murder. He claims to be a victim of violations of article 14, paragraph 3 (b), (d), and (e), article 2, and article 26 of the International Covenant on Civil and Political Rights by Cyprus[1]. He is not represented.

Factual background

2.1 The author is a Cypriot national who, on 5 August 1998, was found guilty by the Limassol Assizes Court of the attempted murder of a district court judge and his young daughter. The morning of 29 October 1996, Judge M.M. was ready to go to work and drive

* The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Prafullachandra Natwarlal Bhagwati, Mr. Lazhari Bouzid, Ms. Christine Chanet, Mr. Mahjoub El Haiba, Mr. Ahmad Amin Fathalla, Mr. Yuji Iwasawa, Ms. Helen Keller, Mr. Rajsoomer Lallah, Ms. Zonke Zanele Majodina, Ms. Iulia Antoanella Motoc, Mr. Michael O'Flaherty, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Fabián Omar Salvioli and Mr. Krister Thelin.

[1] The Covenant and its Optional Protocol entered into force for the State party on 2 April 1969 and 15 April 1992 respectively.

his daughter to the kindergarten on his way. He first moved his wife's car,[2] which was parked on the driveway, behind his, and then proceeded towards his own car, followed by his daughter. When he approached the rear right wheel of the car, there was a strong explosion, which threw him to the ground, and resulted in severe injury. He had to undertake a series of surgical operations, but he still retains physical sequelae.[3] His daughter, who was further away from the explosion, suffered burns from the blast, but escaped serious injury. The explosion was caused by a self-made bomb activated by a mechanism of explosives, which had been placed near the right wheel of the car, and which could be activated either with a plastic wire hamper, or with the slightest movement of the car.

2.2 During their investigation, the attention of the police was drawn to an ongoing judicial procedure, dealt with by Judge M.M., which involved the author as respondent for recovery of £5,000 in debts, incurred in relation to his ownership of a medical clinic in Limassol, which he wanted to transform into a private hospital. The case had been posted before Judge M.M. on 16 October 1996, and a hearing was scheduled for 21 October 1996. It appears from the judicial proceedings that the author considered Judge M.M.'s attitude to be hostile to his case, and that he confided to prosecution witness No. 63 his intention to kill the judge. The Limassol Assizes Court also found, based on available evidence, that the author had acquired the knowledge to construct such explosive device during his time at the National Guard.

2.3 From the information contained in the file before the Committee, it also appears that after the commission of the crime, the author confirmed to prosecution witness No. 63 having placed the bomb at Judge M.M.'s house on 29 October 1996. On the night between 29 and 30 October 1996,[4] the author flew to England, where he stayed until his extradition to Cyprus by the British authorities on 4 April 1997. The author contends that he travelled to England to marry his Romanian girlfriend. According to the Supreme Court decision of 17 November 2000, it appears that while he was in England, the author frequently phoned prosecution witness No. 63, to request from him to move weapons, explosives and electric switches from his apartment in Limassol to a warehouse. A plastic wire similar to the one found on the crime scene was reportedly found in the warehouse, after having been transferred from the author's apartment.

2.4 On 9 January 1997, the author was arrested in the United Kingdom of Great Britain and Northern Ireland for possession of explosives, and remanded to the Brixton prison, following an extradition request from the Cypriot authorities, for the author to face charges of the attempted murder of Judge M.M. and his daughter. After he was extradited, the author was charged with attempted murder by the Limassol District Court on 11 April 1997 and remanded to Nicosia's Central Prison. The author experienced considerable difficulty finding legal representation. He contends that this was due to the negative publicity against him carried out by the media, and the lawyers' fear of pressure if they agreed to represent him, in view of the victim's position as a judge.

2.5 The Assizes Court sought the assistance of the Limassol Bar Association, whose President managed to identify two lawyers who were ready to represent the author. However, the author declined the offer, insisting that he wanted two specific lawyers, who however refused to represent him.[5] The Assizes Court finally appointed a lawyer to

[2] The author challenges this factual element.

[3] It is reported that the judge lost a toe in the explosion.

[4] That is, the day of the commission of the offence

[5] This information is drawn from the minutes of the Limassol Assizes Court proceedings (Hearing of 18 June 1997).

represent the author, in the form of legal aid, as the latter did not have the financial means to appoint one himself. This lawyer was however discharged of his functions by the author on 26 November 1997, on his second court appearance, after the lawyer requested the hearing to be adjourned for health reasons. After that, the author requested to be allowed to defend himself without legal representation.

2.6 The author submitted a request for conditional release before the Limassol Assizes Court, arguing that since he would be detained until the trial date, he was not in a position to organize his defence from prison, especially since he was not represented by a lawyer. This request was denied by the Limassol Assizes Court, in the light of the gravity of the charges levelled against the accused, and in the absence of specific circumstances, which may have justified a different decision.

2.7 On 4 August 1998, the Assizes Court found the author guilty on two counts of attempted murder, and sentenced him to a total of 18 years of imprisonment on 7 August 1998. He lodged an appeal before the Supreme Court, in which he raised the following issues, which he considered to be in violation of his due process rights: (a) the fact that the prosecution failed to show that he had the intent to murder Judge M.M. and his daughter; (b) the evaluation of the evidence presented by prosecution witness No. 63 was not proper and correct, as the prosecution failed to give due weight to contradictions in this witness' testimony to the police; (c) the lack of credibility of the specialist appointed by the Assizes Court to analyse the explosive materials used for the crime; (d) police failure to authorize the author to examine the victim's car; (e) the failure to provide the author with the initial testimony of prosecution witness No. 63 before or during the trial; (f) the retention of the author's notes prepared for the cross-examination of witnesses.

2.8 On 17 November 2000, the Supreme Court rejected the author's appeal. Regarding access to the victim's car, the Court noted it was considered not to be necessary to retain it as an exhibit, since it was not objectively necessary for the purpose of proving the crime, nor was it relevant to the possible defence of the accused. Rather, the Court noted that what was necessary for the investigation was the collection of bomb fragments, which would be clearly indicative of how the bomb was made, the explosive mechanism used, its power, and its way of detonation. The Court stressed that the author did not seek access to such evidence.

2.9 The author lodged several applications with the European Court of Human Rights, three of which were declared inadmissible.[6] On 7 January 2010, the European Court of Human Rights adopted a decision,[7] in which it found the State party to be in breach of article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms,[8] with regard to the conditions of detention of the author, who had been maintained in solitary confinement between 21 September 2003 and 7 November 2003 for failing to report to the Nicosia Central Prison at the end of a 24-hour leave.

The complaint

3.1 The author claims that he was illegally tried and sentenced to 18 years' imprisonment, in breach of article 14 of the Covenant. Firstly, he claims that after reading the minutes of court proceedings of the Limassol Assizes Court, he realized that a number

[6] Applications No. 14171/04, No. 26844/06, and No. 10181/07. The author's applications to the European Court of Human Rights in connection with these decisions are not in the file, thus his allegations before that Court for these complaints are unknown.

[7] *Onoufriou v. Cyprus*, application No. 24407/04, Judgment of 7 January 2010 (final 7 April 2010)

[8] Prohibition of torture and inhumane or degrading treatment or punishment.

of pages were missing.[9] On 8 November 2000, he wrote to the Supreme Court President to bring the matter to his attention. The author claims that he only received an answer from Supreme Court Registrar in March 2001, which denied the absence of pages from the Court records. As the author's appeal was rejected by the Supreme Court on 17 November 2000, he contends that the matter could not be investigated, nor could the issue be considered by the Court.

3.2 The author further alleges that he was denied the right to legal assistance by the Limassol Assizes Court, in violation of article 14, paragraph 3 (d), of the Covenant. He claims that following the Assizes Court's request, the Limassol Bar Association identified two lawyers who were ready to represent him; however, according to the author, the first was rejected by the Court because he was considered too young, while the second reportedly requested the author to plead guilty to the charge of attempted murder, after he was influenced by media reports on his case.[10]

3.3 The author also contends that the Limassol Assizes Court's refusal to release him on bail, so as to adequately prepare his defence, was in violation of article 14, paragraph 3 (b) of the Covenant.

3.4 It is also the author's contention that he was forced to accept the testimony of prosecution witness No. 63, whose single testimony constituted the basis for his conviction, in violation of his rights under article 14, paragraph 3 (b) of the Covenant. He claims that the prosecution had made a deal with this witness, asking him to testify against the author, in exchange of which a number of charges against him as accomplice in the same case were withdrawn.

3.5 The author further claims that the police denied him the possibility to visit and examine the crime scene, more specifically the victim's car, where the bomb was placed. According to him, such refusal amounted to a violation of his rights under article 14, paragraph 3 (e) of the Covenant.

3.6 Finally, the author contends that the Assizes Court denied him the right to have his Romanian girlfriend testify as a defence witness on his behalf. He claims that as a foreign national, she had been deported from Cyprus, and her name had been registered on a "stop-list". The author claims that this resulted in a violation of his rights under article 14, paragraph 3 (e) of the Covenant on his behalf.

State party's observations on admissibility and merits

4.1 On 22 May 2008, the State party submitted observations both on the admissibility and the merits of the communication. Firstly, it argues that the author's complaint under article 14, paragraph 3) (b), that he was denied the right to have legal assistance, was not raised on appeal before the Supreme Court. As such, the State party claims that this part of the communication should be declared inadmissible under article 5, paragraph 2 (b) of the Optional Protocol, for failure to exhaust domestic remedies.

[9] The author claims that pages reproducing the cross-examination by prosecution of defence witness No. 4, and the examination of defence witness No. 5, are missing from the minutes. The author does not provide details on the contents of the relevant declarations, nor on their impact on his right to a defence.

[10] This is in contradiction with the records of the Limassol Assizes Court proceeding, which show that out of the two lawyers identified by the Bar Association, neither was accepted by the author. It also transpires from the records of Court proceedings that the Court ultimately assigned a lawyer to the author, but the latter dismissed him on the second court appearance, after the lawyer had requested that the hearing be adjourned, for health reasons. (See para. 2.5 above.)

4.2 Similarly, the State party claims that the author's contention that one of his defence witnesses was prevented from testifying on his behalf, was not addressed before the Supreme Court, and should therefore be declared inadmissible under article 5, paragraph 2 (b) of the Optional Protocol.

4.3 In the same view, the State party submits that the author's allegation that he was denied the right to adequately prepare his defence by being released pending trial, is inadmissible under article 5, paragraph 2 (b) of the Optional Protocol, as it was not raised before the Supreme Court on appeal.

4.4 On the merits, with regard to the author's complaint that he was denied the right to legal assistance, the State party contends that this allegation is factually unfounded. The decision of the Limassol Assizes Court, and the minutes of Court proceedings show that although a lawyer was appointed by the Court for the author, the latter dismissed him on the second court appearance. Repeated reminders and encouragements from the Court for the author to seek the representation of another lawyer were rejected, on the ground that the counsels he wished to represent him were not available at the fee provided through legal aid regulations. Finally, the author claimed that he wanted to represent himself in court. The State party is of the view that in the circumstances of the case, the lack of legal representation for the author derived from his own choice, and did not violate article 14 paragraph 3 (d), of the Covenant.

4.5 Regarding the author's claim that his Romanian girlfriend, who he wished could testify as a defence witness, was on the "stop-list" and could not travel to Cyprus, the State party contests that fact, affirming that she had been removed from that list, and hence was authorized to travel to Cyprus, but never appeared in Court.[11] As such, the author's allegation that this resulted in a violation of article 14, paragraph 3 (e) of the Covenant, cannot be sustained.

4.6 The fact that the author was not given access to the victim's car did not result in any prejudice to the author's defence, or constitute a violation of his rights guaranteed under article 14 of the Covenant. Recalling that this issue was dealt with both by the Assizes and the Supreme Courts, the State party reiterates that the victim's car was not retained as an exhibit, as its production was not deemed necessary for the investigation, and thus for proving the elements of the crime and the author's guilt. Rather, it was the collection of fragments of the bomb and other elements, which could reveal the type of explosive used, its power, and its way of denotation, which were the key elements for the investigation. The State party notes that the author did not request access to this evidence. It therefore submits that he did not suffer any prejudice under article 14 on this count.

4.7 Regarding the author's allegation that the Assizes Court's denial to release him on bail to prepare his defence amounted to a violation of his rights under article 14, paragraph 3 (b), the State party reiterates that the fact that he was not represented by a lawyer derived from the author's own decision. The right to be released on bail so as to prepare one's defence, when the accused has himself chosen not to be legally represented, is not covered by article 14 of the Covenant. The State party adds that for the purposes of the Supreme Court proceedings, the author was represented by a Counsel.

4.8 Concerning the author's allegations under article 26, the State party notes that this allegation is not substantiated and was not addressed before national courts. In conclusion, it affirms that the communication is partly inadmissible under article 5, paragraph 2 (b), of

[11] The State party refers to the Assizes Court Minutes of Proceedings of 9 January 1998, which show that the Attorney General of Cyprus affirmed that this person had been removed from the stop-list following the Assizes Court Order.

the Optional Protocol, and that on the merits, there was no violation of articles 14, 2 and 26 of the Covenant with regard to the author.

Author's comments on the State party's observations

5.1 On 26 July 2008, the author, in his comments on the State party's observations, claims that he exhausted all domestic remedies. He affirms that he has invoked all the grounds presented to the Committee before national courts, either in writing or orally.[12] Regarding the testimony of his girlfriend as a defence witness, the author contends that on three occasions in 1997,[13] he requested from the Limassol Assizes Court that she be removed from the "stop-list". After his last request of 17 October 1997, an order was issued by the Court in that regard, but was never implemented by the Attorney General or the police. He adds that when the trial began, his girlfriend was authorized to come to Cyprus for two days only, but because of fixed flight dates,[14] it was impossible for her to attend the trial.

5.2 The author affirms that he needed to have access to the victim's car in order to establish that the bomb had been placed behind the right rear wheel, and that the perpetrator did not have the intention to kill, but merely to terrorize, and cause damage to the car.

5.3 Regarding lack of legal representation, the author reiterates that of the two lawyers proposed to him by the Limassol Bar Association, one was found too young by the Court to represent him, while the other asked him to plead guilty.

5.4 In regard to his allegation that pages of court proceedings were missing, the author observes that the State party did not contest his allegation, and consequently urges the Committee to accept this fact, and reach the inevitable conclusion that his trial was held in breach of article 14 of the Covenant.

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 article 93 of its rules and procedures, decide whether or not it is admissible under the Optional Protocol to the Covenant.

6.2 The Committee has ascertained that the same matter is not being examined under another procedure of international investigation or settlement for the purposes of article 5, paragraph 2 (a), of the Optional Protocol.[15]

6.3 With regard to the requirement laid down in article 5, paragraph 2 (b), of the Optional Protocol, the Committee noted the argument of the State party, that the author did not exhaust domestic remedies with respect to (a) his claim, under article 14, paragraph 3 (d) of the Covenant, that he was denied the right to legal assistance by the Limassol Assizes Court; (b) his complaint, under article 14, paragraph 3 (b) of the Covenant, that as the Assizes Court refused to release him on bail, he was not able to adequately prepare his defence; and (c) his allegation that the denial, by the Assizes Court, of his right to have his

[12] The author does not provide further details.

[13] 6 June 1997, 11 June 1997, and 17 October 1997.

[14] The author claims that the Romanian airline company Tarom only has flights to Cyprus on two definite days of the week.

[15] Four decisions were adopted by the European Court of Human Rights in the author's case, three of which were declared inadmissible, while one was decided on the merits, regarding a different matter than the issues presented by the author before the Committee. See para. 2.9 above.

girlfriend testify as defence witness during his trial, amounted to a breach of his rights under article 14, paragraph 3 (e) of the Covenant.

6.4 The Committee notes that the author raised a number of other allegations on appeal before the Supreme Court, but failed to explain why he did not raise any of these three additional counts, or try any other appropriate recourse in that respect. While noting that the author does not challenge the effectiveness of remedies available to him, the Committee is of the view that the pursuit of such remedy could have clarified the facts, particularly with regard to the issue of legal representation, and the authorization to have the author's girlfriend testify as defence witness in the trial. Based on the material before it, the Committee finds that the author did not exhaust domestic remedies with respect to these three allegations, and thus declares this part of the communication inadmissible under article 5, paragraph 2 (b), of the Optional Protocol.

6.5 With regard to his contention that a number of pages were missing from the minutes of the Limassol Assizes Court proceedings, the Committee notes that this fact was denied by an official communication of the Supreme Court Registrar to the author on 21 March 2000. It also notes that the author has failed to provide details about the contents of this communication. While the State party did not provide information on this issue, the Committee finds that the author has not substantiated his claim, for the purposes of admissibility. Consequently, the Committee finds that this part of the communication is inadmissible under article 2 of the Optional Protocol.

6.6 Concerning his claim under article 14, paragraph 3 (b) of the Covenant, that he was "forced to accept" the testimony of prosecution witness No. 63, which constituted the basis for his conviction for attempted murder, the Committee first recalls that in essence, the consideration of such an allegation involves the appraisal by the Committee of facts and evidence adduced at trial, a matter falling in principle within the prerogative of national courts, unless such appraisal was clearly arbitrary, or constituted a denial of justice.[16]

6.7 Based on the material before it, in particular the Supreme Court judgement of 17 November 2000, the Committee observes that at least five other witnesses, in addition to witness No. 63, were called by the prosecution to testify before the Limassol Assizes Court. The Committee further observes from the records of proceedings and court decisions, that the author's guilt was established by the prosecution based on circumstantial evidence, which the Court used as corroborative evidence to the testimonies of prosecution witnesses.

6.8 Under the circumstances of the case, the Committee is of the view that the author has failed to demonstrate, for purposes of admissibility, that he was forced to accept the inculpatory testimony of a prosecution witness. He also failed to demonstrate that the evaluation of evidence made by the Court was arbitrary, or amounted to a denial of justice. Consequently, the Committee considers that this part of the communication is also inadmissible under article 2 of the Optional Protocol.

6.9 With regard to articles 2 and 26 of the Covenant, the Committee considers that the author has not substantiated any allegation under these provisions. It also therefore finds

[16] See general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, *Official Records of the General Assembly, Sixty-second Session, Supplement No. 40*, vol. I (A/62/40 (Vol. I)), annex VI, para. 26. See also, inter alia, communications No. 541/1993, *Simms v. Jamaica*, decision on inadmissibility adopted on 3 April 1995, para. 6.2; No. 1138/2002, *Arenz et al. v. Germany*, decision on inadmissibility adopted on 24 March 2004, para. 8.6; No. 1167/2003, *Rayos v. Philippines*, Views adopted on 27 July 2004, para. 6.7; No. 1399/2005, *Cuartero Casado v. Spain*, decision adopted on 25 July 2005, para. 4.3; and No. 1771/2008, *Gbondo Sama v. Germany*, decision on inadmissibility adopted on 28 July 2009, para. 6.4.

that this part of the communication is also inadmissible under article 2 of the Optional Protocol.

6.10 The Committee notes the author's allegation under article 14, paragraph 3 (e), that the police denied him the possibility to examine the crime scene, in particular the victim's car within which, or in the vicinity of which, the bomb was placed. Noting that the author has failed to substantiate this allegation under article 14, paragraph 3 (e) for the purpose of admissibility, the Committee finds that it may still raise issues under article 14 3 (b) of the Covenant, and, notes that the author has exhausted domestic remedies on this count.

6.11 The Committee reiterates that the appraisal of facts and evidence adduced at trial are a matter falling in principle within the prerogative of national courts, unless such appraisal was clearly arbitrary, or constituted a denial of justice.[17] It also recalls that "adequate facilities" for the preparation of one's defence, within the meaning of article 14, paragraph 3 (b) of the Covenant, include access to all evidentiary materials that the prosecution plans to offer in court against the accused, or that are exculpatory,[18] The scope of protection of this provision must be understood to be such as to ensure that individuals cannot be condemned on the basis of evidence to which they, or those representing them, do not have full access.[19]

6.12 The Committee observes that in the case under consideration, the investigation did not retain the victim's car as material evidence to prove the elements of the crime, and thereby the author's guilt, but rather based itself on other evidentiary elements, such as fragments of the explosive device and other samples. The Committee noted the State party's contention that the author's grievance in this regard is unjustified, and that the latter never sought access to this evidence. The author did not contest this. In the circumstances of the case, the Committee concludes that the author failed to demonstrate, for admissibility purposes, that his rights under article 14, paragraph 3 (b) of the Covenant were infringed. As a result, this part of the Communication is also inadmissible under article 2 of the Optional Protocol.

7. The Human Rights Committee therefore decides:

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

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

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

[17] See para. 6.6 above.

[18] General comment No. 32 (note16 above), para. 33.

[19] See Human Rights Committee, concluding observations on the fifth periodic report of Canada (CCPR/C/CAN/CO/5), para. 13.

I. Communication No. 1748/2008, *Bergauer et al. v. Czech Republic* (Decision adopted on 28 October 2010, 100th session)*

Submitted by:	Josef Bergauer et al. (represented by counsel Thomas Gertner)
Alleged victims:	The authors
State party:	Czech Republic
Date of communication:	5 October 2007 (initial submission)
Subject matter:	Discrimination with respect to restitution of property and absence of an effective remedy
Procedural issues:	Abuse of the right of submission, preclusion *ratione temporis*, *ratione materiae*, failure to exhaust domestic remedies
Substantive issues:	Equality before the law; equal protection of the law without any discrimination; effective remedy
Articles of the Covenant:	26; 2, paragraph 3
Articles of the Optional Protocol:	3, 5, paragraph 2 (b)

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

Meeting on 28 October 2010,

Adopts the following:

Decision on admissibility

1. The authors of this communication, dated 5 October 2007, are the following 47 persons: Mr. Josef Bergauer (born in 1928); Ms. Brunhilde Biehal (born in 1931); Mr. Friedebert Volk (born in 1935); Mr. Gerald Glasauer (born in 1969); Mr. Ernst Proksch (born in 1940); Mr. Johann Liebl (born in 1937); Mr. Gerhard Mucha (born in 1927); Mr. Gerolf Fritsche (born in 1940); Ms. Ilse Wiesner (born in 1920); Mr. Otto Höfner (born in 1930); Mr. Walter Frey (born in 1945); Mr. Herwig Dittrich (born in 1929); Mr. Berthold Theimer (born in 1930); Ms. Rosa Saller (born in 1927); Mr. Franz Penka (born in 1926); Mr. Adolf Linhard (born in 1941); Ms. Herlinde Lindner (born in 1928); Ms. Aloisia Leier (born in 1932); Mr. Walter Larisch (born in 1930); Mr. Karl Hausner (born in 1929); Mr. Erich Klimesch (born in 1927); Mr. Walther Staffa (born in 1917); Mr. Rüdiger Stöhr (born in 1941); Mr. Walter Titze (born in 1942); Mr. Edmund Liepold (born in 1927); Ms. Rotraut Wilsch-Binsteiner (born in 1931); Mr. Karl Röttel (born in 1939); Mr. Johann Pöchmann (born in 1934); Ms. Jutta Ammer (born in 1940); Ms. Erika Titze (born in

* The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Prafullachandra Natwarlal Bhagwati, Mr. Lazhari Bouzid, Ms. Christine Chanet, Mr. Mahjoub El Haiba, Mr. Ahmad Amin Fathalla, Ms. Helen Keller, Mr. Rajsoomer Lallah, Ms. Zonke Zanele Majodina, Mr. Michael O'Flaherty, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Fabián Omar Salvioli and Mr. Krister Thelin.

1933); Mr. Wolfgang Kromer (born in 1936); Mr. Roland Kauler (born in 1928); Mr. Johann Beschta (born in 1933); Mr. Kurt Peschke (born in 1931); Mr. Wenzel Pöhnl (born in 1932); Ms. Marianne Scharf (born in 1930); Mr. Herbert Vonach (born in 1931); Mr. Heinrich Brditschka (born in 1930); Ms. Elisabeth Ruckenbauer (born in 1929); Mr. Wenzel Valta (born in 1936); Mr. Ferdinand Hausmann (born in 1923); Mr. Peter Bönisch (born in 1971); Mr. Karl Peter Spörl (born in 1932); Mr. Franz Rudolf Drachsler (born in 1924); Ms. Elisabeth Teicher (born in 1932); Ms. Inge Walleczek (born in 1942); and Mr. Günther Karl Johann Hofmann (born in 1932). They claim to be victims of a violation by the Czech Republic of articles 26 and 2, paragraphs 3 (a) and (b), of the International Covenant on Civil and Political Rights.[1] They are represented by counsel, Mr. Thomas Gertner.

The facts as submitted by the authors

2.1 The authors, or their legal predecessors, are Sudeten Germans who were expelled from their homes in former Czechoslovakia at the end of the Second World War, and whose property was confiscated without compensation. The authors state that 3,000,400 of the 3,477,000 Sudeten Germans were expelled from former Czechoslovakia and 249,900 died and that they were collectively punished without trial and expelled on the basis of their ethnicity. Sudeten Germans still feel discriminated against by the Czech Republic, as it refuses to provide them with appropriate indemnities in accordance with international law.[2] The authors underline that Sudeten Germans have been treated differently from victims of Communist persecution holding Czech or Slovak nationality, who were rehabilitated and granted restitution claims for injustices of less serious nature than the ones suffered by the authors.

2.2 The authors review various decrees of 1945 and 1946, which remain valid as "fossilized rights", to show that property of Sudeten Germans was confiscated, and that Czechoslovakian citizens of German or Hungarian origin were deprived of their Czechoslovak citizenship:

(a) Presidential decree of 19 May 1945 (No. 5/1945): which ordered the sequestration of private and business properties of Germans and Hungarians and administration of the property by the State;

(b) Constitutional decree of the President of 2 August 1945 (No. 33), Benes Decree: by which Czechoslovakian citizens of German or Hungarian origin were deprived of their Czechoslovak citizenship, whether they had involuntarily acquired German or Hungarian citizenship, or whether they had "confessed to their nationality". The authors or their legal predecessors all "confessed" to their nationality, and they therefore have no possibility of regaining Czech or Slovak citizenship;

(c) Presidential decree of 25 October 1945 (No. 108): which ordered the confiscation of property owned by persons of German or Hungarian nationality previously sequestrated, with the exception of "persons who demonstrate their loyalty to the Czechoslovak Republic, have never committed any offence against the Czech or Slovak nations, and who either actively participated in the fight for the liberation of the country, or have suffered under Nazi or fascist terror";

[1] The Covenant was ratified by Czechoslovakia in December 1975 and the Optional Protocol in March 1991. The Czech and Slovak Federal Republic ceased to exist on 31 December 1992. On 22 February 1993, the Czech Republic notified its succession to the Covenant and the Optional Protocol.

[2] The authors refer to article 35 in conjunction with articles 40 and 41 of the draft articles on responsibility of States for internationally wrongful acts, General Assembly resolution 56/83, annex.

(d) Law of 8 May 1946 (No. 115):[3] by which all acts of violence or other criminal actions were retroactively declared legal, if they had been committed prima facie as "a contribution to the fight for the regaining of freedom for Czechs and Slovaks or as a just retaliation for actions of the occupants and their accomplices".

2.3 Due to the fact that all legal predecessors of the authors had lost their citizenship, they could not apply for restitution of their property under Law No 87/1991 of 21 January 1991 on extrajudicial rehabilitation or under Law No. 229/1991 of 21 May 1991 on the return of agricultural property. In addition to that, both Laws were limited to restitution of property that had been confiscated during the Communist regime between 1948 and 1991. On 15 April 1992, the State party passed Law No. 243/1992, which provides restricted restitution possibilities for agricultural property of German and Hungarian minorities, if the person is a Czechoslovak citizen and has not committed any offence against the Czechoslovak state. This law however is not applicable to the authors, as they or their predecessors had lost their nationality on account of the Benes presidential decree No. 33/1945. Furthermore, Law No. 30/1996 amended Law No. 243/1992 on restitution of agricultural property and introduced the requirement of continued possession of Czechoslovak citizenship.

2.4 On 13 December 2005, the European Court of Human Rights dismissed the authors' (and others) application as inadmissible[4]. The Court deemed that the authors' assertion on the absence of domestic remedies was unsubstantiated and it could not anticipate the outcome of proceedings brought by the applicants before the Czech courts, had such proceedings been pursued. However, even assuming that the applicants had complied with the criteria of the exhaustion of domestic remedies, the application remained inadmissible, as the applicants had no "existing possessions" within the meaning of article 1, of Protocol No. 1 to the European Convention on Human Rights (ECHR), at the time of the entry into force of the ECHR or when they filed their application. The fact that the property had been confiscated under decrees which continue to be part of the national legal system did not alter this position. Secondly, the Court held that, in absence of any general obligation to restore property which was expropriated before the ratification of the ECHR, the Czech Republic is not obliged to restore the applicants' property, and therefore this aspect of the case was deemed incompatible ratione materiae with the provisions of the Convention. In any event, the ECHR noted that the case-law of the Czech courts made the restitution of property available even to persons expropriated contrary to the Presidential decrees, thus providing for reparation. The allegations of genocide were deemed incompatible ratione temporis. As to the allegations of discrimination, the ECHR held that article 14 of the Convention does not have an independent existence and declared this part of the case also inadmissible.

The complaint

3.1 The authors submit that the State party continues to violate article 26 of the Covenant by maintaining the discriminatory laws of 1945 to 1948, and the confiscation decree. The State party, by not passing any property restitution law applicable to Sudeten Germans, is depriving the victims of their right to restitution and rehabilitation, in contrast to the rights granted to persons whose property was confiscated under the Communist regime. The authors claim that the Czech courts only apply international law that the State party has ratified, whereas they claim that all persons must be able to rely on the rules of

[3] The authors explain that this law is still part of the Czech legal system, and therefore violates article 41(2) of the Articles of the International Law Commission on Responsibility of States for Internationally Wrongful Acts.

[4] European Court of Human Rights, App. No. 17120/04, Bergauer and 87 others v. the Czech Republic.

ius cogens in international law, including the ILC Articles on State Responsibility. Their right to equality before the law is also violated as no laws exist which would enable them to bring their restitution claims before domestic courts.

3.2 The authors further argue that they have been collectively punished for crimes committed by Nazi Germany against Czechoslovakia and had been expelled from their homeland on account of their ethnicity. The measures taken against the Sudeten Germans amount to 'composite actions' under article 15, of the ILC Articles, and have continuing effect if these actions were already prohibited by *ius cogens* at the time when the first action was committed. This is undoubtedly the case for crimes against humanity committed against Sudeten Germans.

3.3 With regard to the exhaustion of domestic remedies in accordance with article 5, paragraph 2 (b), of the Optional Protocol, the authors submit that they have not initiated the "futile attempt to assert rehabilitation and restitution" in Czech courts, given the clear jurisprudence of the Constitutional Court and the absence of any restitution legislation applicable to Sudeten Germans. On 8 March 1995, the Constitutional Court, in the case of Dreithaler, established that the confiscation decree No. 108 of 25 October 1945 (see 2.2), on the basis of which the authors had lost their property, is part of the Czech legal system and does not breach any constitutional principles. The authors argue that re-submitting the question for examination would not lead to any different result. In another judgment of 1 November 2005 (in the case of Count Kinský), the Constitutional Court held that it was not possible to examine the lawfulness of the confiscation decree No. 108/1945.

3.4 The authors further argue that they could not invoke before domestic courts any breach of a higher norm of law, such as the Articles on Responsibility of States for Internationally Wrongful Acts, as the Constitution only recognises treaties which have been ratified, and therefore excludes claims based on rules of ius cogens. The authors submit that they are deprived of an effective remedy against the discrimination they suffered and that this constitutes a violation of article 2, paragraph 3, of the Covenant.

The State party's submission on admissibility and merits

4.1 On 3 July 2008, the State party submits its comments on admissibility and merits of the communication. It highlights that, with the exception of the municipality in which the property was situated, the authors have not provided any details on the characteristics of the property. With regard to the historical information submitted by the authors, the State party disagrees with their assertions. Referring to the findings of the Czech-German Commission of Historians, the State party corrects the figures of Sudeten Germans victims of the transfer to a maximum of 30,000 casualties.

4.2 The State party recapitulates the relevant international agreements, domestic legislation and practice. It cites the Agreements of the Berlin (Potsdam) Conference of 1 August 1945, in particular Article XIII, which regulates the transfer of German populations from Czechoslovakia to Germany. It further refers to the Czech-German Declaration, regarding Mutual Relations and their Future Development of 21 January 1997, and qualifies it as a political document that asserts that injustices of the past belong to the past but does not create any legal obligations. The State party further provides the official text of the following relevant domestic legislation:

a) Presidential Decree No. 5/1945 on the Invalidation of Certain Property Transactions during the Period of Lack of Freedom and on the National Administration of the Values of Germans, Hungarians, Traitors and Collaborators, and Certain Organisations and Institutes;

b) Presidential Decree No. 12/1945 (not cited by the authors) on the Confiscation and Accelerated Allocation of Agricultural Property of Germans, Hungarians, Traitors and Enemies of the Czech and Slovak nations;

c) Presidential Decree No. 108/1945 on the Confiscation of Enemy Property and the National Restoration Funds;

d) Constitutional Presidential Decree No. 33/1945 on the Adjustment of the Czechoslovak Citizenship of Persons of German and Hungarian Nationality;

e) Act No. 194/1949 on the Acquisition and Loss of Czechoslovak Citizenship;

f) Act. No. 34/1953 on Certain Person's Acquisition of Czechoslovak Citizenship.

4.3 The State party further refers to the laws aimed at mitigating the property injustices caused during the Communist regime, from 1948 to 1989, such as Act No. 87/1991 on Extra-judicial Rehabilitation and Act No. 229/1991 on Ownership of Land and other Agricultural Property, which provide that persons who are Czech citizens and have been expropriated under Presidential Decree No. 5/1945 and Act No. 128/1946 on the Invalidation of Certain Property Transactions during the period of Lack of Freedom and Claims Arising from this Invalidation and from other Infringements of Property, may be considered entitled persons if their claim, due to political persecution, had not been settled after 25 February 1948.

4.4 With regard to the admissibility of the communication, the State party submits that the communication should be declared inadmissible as incompatible with the Covenant pursuant to article 3, of the Optional Protocol. It considers the communication inadmissible ratione temporis, as the events occurred after the Second World War and thus a long time prior to the entry into force of the Covenant and the Optional Protocol, on 23 December 1975 and 12 March 1991 respectively. With regard to the authors' claim that they are victims of a continuing violation, the State party argues that confiscation is an instantaneous act and the fact that the effects of the expropriation of 1945 can still be brought before a court today, does not change the character of the initial confiscation. It further highlights that the confiscation legislation was based on an international agreement adopted by the Allies at the Potsdam conference and was considered a right of the Allies in retaliation for international responsibility by Germany for crimes committed against the Czechoslovak people. The State party further submits that even if the events of 1945 could be examined on the basis of the Articles on Responsibility, the element of unlawfulness would be missing. It concludes that the communication should only be examined as it relates to the alleged discrimination contained in restitution laws adopted after the entry into force of the Optional Protocol on 12 March 1991.

4.5 The State party further submits that the Committee should declare the communication incompatible ratione materiae, as the authors claim relates to the right to property, which is not protected by the Covenant.

4.6 With regard to the exhaustion of domestic remedies, the State party submits that the authors have not exhausted any domestic remedies. The State party's courts have therefore not been able to examine the authors' claims with regard to discrimination and could not make a legal assessment on the facts and evidence related to the authors' property confiscation. The State party further underlines that the findings by its Constitutional Court in the case Dreithaler, date from 1995 and since then certain constitutional developments have taken place, which would require that the authors bring the matter before domestic courts. While admitting that it does not have knowledge of a case, in which property was restituted for claims lodged by Sudeten Germans on confiscations that took place before 1945, the State party argues that it could not predict if its domestic courts would not extend

the restitution laws, given that the authors did not raise this question before them. It further cites the decision by the European Court of Human Rights in the application *Bergauer and 89 others v. the Czech Republic*, which declared the case inadmissible for non-exhaustion of domestic remedies, as it could not anticipate the outcome of proceedings brought before Czech courts, had such proceedings been pursued. Referring to Presidential and Constitutional Decrees No. 5/1945, 12/1945, 33/1945 and 108/1945, the State party asserts that persons concerned could file remedies, including judicial ones.

4.7 The State party further argues that it considers it an abuse of the right to submit a communication, as the Covenant neither provides for a right to property nor for a right to compensation for past injustices. In addition to that, the time limits to submit claims under the restitution legislation expired on 1 April 1995 under Act No. 87/1991, on 31 December 1996 under Act No. 229/1991 and on 15 July 1996 under Act No. 243/1992. The authors however only approached the Committee in October 2007, more than ten years after the expiry of national restitution legislation, without providing any reasonable explanation to justify this delay. Moreover, the State party argues that the distortion of historical facts to the authors' benefit also constitutes an abuse of the right to submit a communication.

4.8 The State party recalls the Committee's jurisprudence on issues of compensation for property seizure prior to 1948[5], according to which not every distinction or differentiation in treatment amounts to discrimination within the meaning of articles 2 and 26 of the Covenant. The State party highlights that there is a fundamental difference between persons whose property was confiscated because they were considered as war enemies and property confiscation during the Communist regime. It further underlines that confiscation of enemy property was based on international agreements, in particular the Potsdam Agreement, while property confiscation during the Communist regime had its grounds in domestic legislation. In this context, the State party refers to article 107 of the UN Charter, and the impediment to unilaterally and retroactively revoke measures approved in the Potsdam agreement, including enemy property seizure. The State party further submits that the communication before the Committee differs greatly from other communications, in which the Committee had found that the citizenship requirement for restitution of property seized during the Communist regime violated article 26, in as much the legislator differentiated between situations that it considered injustices of the Communist past with the aim of mitigating them feasibly.

The authors' comments to the State party's observations

5.1 On 4 November 2008, the authors comment on the State party's submission and argue that the State party had acknowledged in the German-Czech Declaration regarding Mutual Relations and their Future Development of 21 January 1997 that "much suffering and injustice was inflicted on innocent people due to their expulsion after the war with expropriation and withdrawal of citizenship and the forced resettlement of the Sudeten Germans from the then Czechoslovakia". Nonetheless, the State party still considers the collective persecution at the time legitimate. The authors reiterate that they were punished by denaturalisation, expulsion and violence, including killings on grounds of their ethnicity. The authors consider that, in violation of article 26, of the Covenant, they were victims of ethnic cleansing and made globally responsible for all crimes committed by the authorities of National Socialist Germany.

[5] See communications No. 643/1995, *Drobek v. Slovakia*, decision on inadmissibility adopted on 14 July 1997, paras. 6.4, 6.5; No. 669/1995, *Malik v. the Czech Republic*, decision on inadmissibility adopted on 21 October 1998; No. 670/1995, *Schlosser v. the Czech Republic*, decision on inadmissibility on 21 October 1998.

5.2 The authors explain that the aim of their communication is to induce the State party to pass a restitution law enabling Sudeten Germans and their legal successors to bring property claims before domestic courts. The State party has not made any attempt to start judicial, political and social rehabilitation for Sudeten Germans. Instead, on 24 April 2008 the Parliament passed a resolution confirming that the post-war Presidential Decrees (Benes-Decrees) were "undisputable, sacrosanct and unchangeable". In the absence of any legislation applicable to their situation, they are not able to exhaust domestic remedies. They submit that entitlement to rehabilitation could not be based on article 26, of the Covenant but needed domestic legislation for its assertion.

5.3 With regard to the State party's submission that the communication should be declared inadmissible ratione temporis, the authors maintain that ethnic cleansing is not an instantaneous act but a continuous situation. Furthermore, they consider the State party's refusal to accord restitution on the basis of Article 35 of the Articles on State Responsibility and ius cogens as one aspect of their discrimination. Referring to communication No. 1463/2006, *Gratzinger v. the Czech Republic*, they claim that, as victims of crimes against humanity, were not rehabilitated while victims of the Communist regime, who had been sentenced in absentia and had their property seized which they deliberately left behind, were rehabilitated.

5.4 The authors also submit additional information and clarification on historical facts and assert that the expulsion of Sudeten Germans began on 15 May 1945, thus months before the Potsdam conference. They further argue that the Potsdam agreement cannot be called an international treaty, as it has never been published in the UN Treaty Series.

Additional submissions by the parties

6. On 21 May 2009, the State party submits additional observations and reiterates that it does not consider the post-war transfer of Sudeten German inhabitants to be a crime against humanity. It further finds it inappropriate to compare the situation of the Sudeten Germans with the victims of the Communist regime, as the property of the Sudeten Germans was considered by the Allies as enemy property and therefore usable for reparations.

7. On 29 June and 24 November 2009, the authors reiterate their comments and highlight that the Sudeten Germans were collectively blamed for all atrocities committed by the German Reich on Czechoslovak territory, and that this fact has never been acknowledged by the State party.

Issues and proceedings before the Committee

Consideration of admissibility

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

8.2 The Committee notes that certain facets of the same matter have already been considered by the European Court of Human Rights, which declared the application on 13 December 2005 inadmissible. The Committee observes that the present case is not being examined under another procedure of international investigation or settlement and, therefore, concludes that article 5, paragraph 2 (a), of the Optional Protocol is not an obstacle in the present case.

8.3 The Committee notes the State party's argument that the communication should be declared inadmissible *ratione temporis* pursuant to article 1 of the Optional Protocol, because the events occurred a long time prior to the entry into force of the Covenant and the

Optional Protocol and confiscation is an instantaneous act. It also notes the authors' claim that they are victims of a continuous violation. With regard to the application *ratione temporis* of the International Covenant on Civil and Political Rights and the Optional Protocol for the State party, the Committee recalls that the Covenant entered into force on 23 December 1975 and the Optional Protocol on 12 March 1991. It observes that the Covenant cannot be applied retroactively. The Committee observes that the authors' property was confiscated in 1945, at the end of the Second World War. It further observes that this was an instantaneous act without continuing effects. Therefore, the Committee considers that, pursuant to article 1, of the Optional Protocol, it is precluded *ratione temporis* from examining the alleged violations that occurred prior to the entry into force of the Covenant and the Optional Protocol for the State party.[6]

9. The Human Rights Committee therefore decides:

(a) That the communication is inadmissible under article 1, of the Optional Protocol;

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

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

[6] See communications No. 275/1988, *S.E. v. Argentina*, decision on inadmissibility adopted on 26 March 1990, para. 5.2; No. 573/1994, *Atkinson et al. v. Canada*, decision on inadmissibility adopted on 31 October 1995, para. 8.2; No. 579/1994, *Warenbeck v. Australia*, decision on inadmissibility adopted on 27 March 1997, paras. 9.2, 9.3; No. 601/1994, *Drake and Drake v. New Zealand*, decision on inadmissibility adopted on 3 April 1997, paras. 8.2 and 8.3.

J. Communication No. 1768/2008, *Pingault-Parkinson v. France* (Decision adopted on 21 October 2010, 100th session)*

Submitted by:	Fabienne Pingault-Parkinson (represented by counsel, Maître Alain Lestourneaud)
Alleged victim:	The author
State party:	France
Date of communication:	5 July 2007 (date of initial submission)
Subject matter:	Arbitrary committal to a psychiatric hospital and denial of justice
Procedural issue:	Exhaustion of domestic remedies; substantiation of allegations; same matter being examined under another procedure of international investigation or settlement
Substantive issue:	Arbitrary detention; inhuman treatment; right to an effective remedy
Articles of the Covenant:	7, 9, 10 and 14
Article of the Optional Protocol:	2; 5, paragraphs (2) (a) and (b)

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

Meeting on 21 October 2010,

Adopts the following:

Decision on admissibility

1.1 The author of the communication is Ms. Fabienne Pingault-Parkinson, a French national, born on 15 June 1964. She claims to be a victim of a violation by France of articles 7, 9, 10 and 14 of the International Covenant on Civil and Political Rights. She is represented by counsel, Maître Alain Lestourneaud. The Covenant and Optional Protocol entered into force for the State party on 4 February 1981 and 17 May 1984 respectively.

1.2 On 4 June 2008, at the State party's request, the Special Rapporteur on New Communications and Interim Measures, acting on behalf of the Committee, decided to examine the admissibility of the communication separately from its merits.

* The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Prafullachandra Natwarlal Bhagwati, Mr. Lazhari Bouzid, Mr. Mahjoub El Haiba, Mr. Ahmad Amin Fathalla, Mr. Yuji Iwasawa, Ms. Helen Keller, Mr. Rajsoomer Lallah, Ms. Zonke Zanele Majodina, Mr. Michael O'Flaherty, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Fabián Omar Salvioli and Mr. Krister Thelin.

Pursuant to rule 90 of the Committee's rules of procedure, Committee member Ms. Christine Chanet did not take part in the adoption of the present decision.

The facts as submitted by the author

2.1 The author married Mr. Etienne Parkinson in 1988. In 1997, the Pingault-Parkinsons, parents of an adopted daughter, went through a marital crisis. On 1 December 1997, the author's husband did not return home, and she had no news from him for a week. Very worried, she went to the police, then contacted her husband's office in Switzerland, which informed her, without providing further explanations, that he had been coming in to work every day. On 6 December 1997, the author's husband appeared at the family home. At approximately 2 p.m., the author noticed that her adopted daughter was not at home. She realized that her daughter had been taken away from home by her husband without her consent. At 6 p.m., Dr. Woestelandt, a homeopathic physician, visited the home at the request of the author's husband, who was his patient, in order to talk to the author. He said to her, "Either you see the psychiatrist that I tell you to see, or I will have you committed."[1] The author, a nurse since 1988, did not think that he had the authority to do so; besides, her own attending physician had never told her that she had any need of psychiatric treatment, indeed, as part of the adoption procedure some years previously, she had successfully undergone several psychological examinations to ascertain that she was fit to adopt the child. At approximately 8 p.m., she received a telephone call from the fire brigade requesting her address. At 8.30 p.m., the fire brigade and a physician from the casualty ward at Thonon-les-Bains hospital arrived and took the author to hospital against her will.

2.2 Upon her arrival in the casualty ward, a nurse took some administrative details from her. Dr. Schmidt, assistant physician at Thonon-les-Bains hospital, came to ask the author some questions, to which she replied calmly. The author's father, with whom she was not close, arrived at the hospital along with the author's husband, and Dr. Schmidt questioned them in her presence, but she was not allowed to intervene to correct what she considered to be inaccuracies. She asked if she could leave the office. Twenty or 30 minutes later, the physician called her back and informed her of his decision to have her committed. At no point was she given a proper medical, psychological or even psychometric examination that might have revealed a disorder justifying involuntary committal. At no point did the author pose any danger to herself or to others.[2] Dr. Schmidt asked her husband, in the author's presence, whether he was prepared to sign the request for hospitalization at the request of a third party, but he declined, asking the author's father to sign it instead, which he did.

2.3 During her 11-day hospitalization on Dr. Girard's ward (from 6 to 17 December 1997), the author submits that she was deprived of all her clothes and personal effects, dressed in a white smock and locked in a room without being allowed out or being able to contact anyone. A night nurse allegedly administered neuroleptics to her in an authoritarian manner, threatening to inject them if she did not take them voluntarily. At no point during her hospitalization, the author alleges, was she given any information about her right to challenge her involuntary committal.

2.4 When the author was discharged from hospital, on 17 December 1997, Dr. Girard allegedly told her brother that "there is no reason for her to remain on my ward" and that he had been under considerable pressure from her husband and father to keep her committed. In the months that followed, the husband contacted Dr. Girard seeking information allowing him to gain custody of the child.

2.5 The author decided to seek redress for her improper committal since, she submits, the committal procedure was flawed. First, Dr. Woestelandt was not medically competent

[1] Before this date, the author had only met Dr. Woestelandt once: the previous Tuesday, at his surgery, to discuss her husband's behaviour towards her.

[2] According to the author, if she had done, Dr. Schmidt would surely not have left her unsupervised for 20 to 30 minutes while talking to her husband and father.

to request her hospitalization. Second, she contends that Dr. Schmidt did not examine her before issuing the medical certificate on 6 December 1997 prior to her committal. Third, Dr. Girard, who was supposed to prepare a new medical certificate within 24 hours of her admission, did not do so, she says, until 48 hours after admission. The author clarifies that she had requested to see a physician on Sunday, 7 December 1997, but that her request had been denied. It was not until 8 December that she saw the doctor and the certificate was prepared. The author also submits that the medical observations in the "24-hour certificate" and the hospital discharge certificate are inconsistent, in that they do not relate to the same psychiatric disorders. The disorder mentioned in the certificate of discharge does not appear to be of a kind that would render confinement or administration of neuroleptics necessary. When the author requested access to her medical and administrative files for the purposes of obtaining redress, the files she was given were incomplete. As for involvement by such judicial or administrative authorities as the Prefect or Public Prosecutor, the author has been told by those authorities that they had no information about or notice of her committal.

2.6 On 15 June 2001, the author wrote to the hospital director seeking redress, but to no avail. On 13 December 2001, she filed a complaint with the Grenoble Administrative Court. She told the Court that she had not been informed of her rights upon admission, in particular that under article L351 of the Public Health Code she could have appealed directly to the President of the Court of Major Jurisdiction who, after listening to both sides of the argument and making any necessary enquiries, could have ordered her immediate release. She furnished several documents showing that her requests for access to her medical and administrative files had been turned down by the relevant offices on the grounds that administrative notifications were kept for only one year after committal. In the author's view, the reason it had not been possible for her to obtain these documents was that the hospital had failed to transmit the administrative notifications stipulated by law to the representative of the State and to the psychiatric hospitalization committee of the department in question, in accordance with article L334 of the Public Health Code. She asked the courts to declare her committal improper and unlawful, in violation of article 5 of the European Convention on Human Rights.[3]

2.7 On 19 January 2005, the Grenoble Administrative Court declined jurisdiction on the grounds that, while it fell to the competence of the ordinary courts, on the one hand, to assess the need for involuntary committal to a psychiatric facility, and to the administrative courts, on the other, to assess the legality of such committal, only the ordinary courts were competent to rule on the detrimental impact of all the various irregularities associated with the committal in question. On 2 February 2006, the Lyon Administrative Appeals Court dismissed the author's petition and upheld the Administrative Court's judgement. By decision dated 1 December 2006, the State Council rejected the author's extraordinary appeal to it on the grounds that none of the legal arguments advanced by the author would make the case admissible. The author's counsel thus submits that domestic remedies have been exhausted.

The complaint

3.1 The author submits that the State party has violated articles 7, 9, 10 and 14 of the Covenant. She submits that her committal to a psychiatric facility amounts to detention within the meaning of article 9, paragraph 1; that it was made arbitrarily, without valid medical grounds and not in accordance with legally established procedure; and that it was

[3] Before the State Council, the author also alleged a violation of the International Covenant on Civil and Political Rights.

arbitrarily prolonged insofar as the procedure by which she was kept in the facility was irregular (24-hour certificate).

3.2 The author submits that she was deprived of her right to challenge her detention during the period of committal by means of the remedy provided for under article L351 of the Public Health Code, allowing her to appeal directly to the President of the Court of Major Jurisdiction for immediate release. This, she contends, is a violation of article 9, paragraph 4, and article 14, paragraph 1: the lack of information made the remedy ineffective. In support of her argument, the author cites the Committee's jurisprudence in the case of *Bozena Fijalkowska v. Poland*.[4] On that occasion, the Committee set aside the requirement that domestic remedies must be exhausted, concluding that the author had been unable to challenge her detention in good time since she had had to await release before learning that such a remedy existed and being able to have recourse to it. The author also submits that her rights were infringed in that the administrative courts should not have declined jurisdiction during the appeal proceedings, since the decision to admit her to Dr. Girard's ward and the committal procedure were being challenged simultaneously.

3.3 With regard to recourse to the administrative courts for compensation, guaranteed under article 9, paragraph 5, for damages arising from unlawful detention, the author submits that the administrative court should consider the whole of her claim and accordingly rule on the procedural irregularities and their impact. The proliferation of procedural obstacles infringes her right to seek compensation under article 9, paragraph 5, of the Covenant and is, incidentally, also a violation of article 14, paragraph 1.

3.4 The author also submits that her rights were infringed by the manner in which she was treated during her committal (locked up, undressed, given neuroleptics, denied communication with her relatives); such treatment of a person who does not pose a present and serious danger to herself or others is unjustifiable. The author submits that this treatment is inconsistent with both article 7 and article 10 of the Covenant.

3.5 The author submits that the State Council did not respect her right to a fair trial since it arbitrarily failed to examine certain remedies provided for in the Public Health Code, and in the European Convention on Human Rights (arts. 3 and 5) and the Covenant (art. 7), which are detailed at length in the author's submission. In support of the alleged violations, the author cites communication No. 1061/2002.

State party's observations

4.1 On 15 May 2008, the State party contested the admissibility of the communication submitted by the author, on the grounds that domestic remedies had not been exhausted in respect of the complaint of a violation of articles 9 and 14 of the Covenant. Moreover, the allegations relating to articles 7 and 10, on the one hand, and article 14, on the other hand, were not sufficiently substantiated.

4.2 With regard to failure to exhaust domestic remedies, the State party submits that the documentation in the case file indicates that the author failed to address her complaints to the appropriate domestic courts despite being assisted throughout the proceedings by a lawyer, Maître Lestourneaud, who continues to represent her before the Committee.

4.3 With regard to involuntary committals and hospitalizations at the request of a third party, the division of jurisdiction between the administrative and ordinary courts was established at the time of the author's hospitalization and has remained constant since. The State party cites the judgement of the Court of Conflicts dated 6 April 1946, *Sieur*

[4] Communication No. 1061/2002, *Bozena Fijalkowska v. Poland*, Views adopted on 26 July 2005.

Machinot v. Commissioner of Police, and the more recent judgement by the same court dated 17 February 1997, which provides that, while it falls to the competence of the administrative courts to determine the legality of an administrative decision to order committal, [...] only the ordinary courts are competent both to assess the need for committal to a psychiatric facility and to [...] rule on all the detrimental consequences of such a decision, including those arising from any irregularity. Hence the administrative courts are competent to determine whether a hospitalization procedure is prima facie legal, i.e. to verify that the procedure has been properly followed in accordance with current law. If it is shown that there has been an irregularity, the court may annul the hospitalization order. The ordinary courts, on the other hand, can rule on the appropriateness of hospitalization and order compensation for damages that may be incurred as a result of improper or irregular hospitalization.

4.4 On the subject of failure to exhaust remedies and challenges to the legality of hospitalization, the State party points out that the author omitted to raise the legality of her hospitalization before the administrative courts. This can only be done by appealing against the administrative decision by the hospital director to hospitalize the appellant at the request of a third party, and the appeal must be lodged within two months of the decision. In the present case, it was only on 17 December 2001, i.e. more than four years later, that the author appealed to the administrative courts, and then in the form of a full appeal, seeking compensation for the damage she claimed to have suffered. The State party thus contends that the administrative court was right to decline jurisdiction. The author decided to pursue the appeal and apply for cassation even though the lower court had been very clear about its reasons for declining jurisdiction.

4.5 On the subjects of challenging the need for hospitalization, and of compensation for the ensuing damages, the State party submits that at no point did the author appeal to the ordinary courts, either when she was hospitalized to challenge the grounds for hospitalization, or subsequently to obtain compensation for damages. It emphasizes that the division of responsibilities may be confusing to the author, but her counsel surely cannot take refuge behind unfamiliarity with the law as an excuse for not exhausting domestic remedies. Consequently, the State party concludes that the complaint of a violation under articles 9 and 14 of the Covenant is inadmissible.

4.6 With regard to the allegations of ill-treatment within the meaning of articles 7 and 10, the State party submits that the author has not sufficiently substantiated these allegations for the purposes of admissibility: she merely regards her hospitalization as inhuman and degrading treatment. Yet the Committee's jurisprudence in *Fijalkowska v. Poland* was that the author had not submitted any argument or information to show in what way her rights [...] had been violated; the Committee recalled that a mere allegation of violation of the Covenant was insufficient to substantiate a complaint under the Optional Protocol and, consequently, found both complaints inadmissible under article 2 of the Optional Protocol. The State party submits that since the author's arguments in the present communication are no better substantiated there is no reason why the Committee should depart from its previous position, and concludes that the complaint of violations of articles 7 and 10 of the Covenant is thus inadmissible.

4.7 With regard to the insufficiently substantiated nature of the allegations of an unfair trial before the State Council, the State party emphasizes that the State Council's decision was a decision not to accept the appeal, not a judgement on its merits. The admissibility procedure for an appeal in cassation is regulated by article L822-1 of the Code of Administrative Justice as follows: "An appeal in cassation before the State Council shall be subject to a preliminary acceptance procedure. Acceptance shall be denied by judicial decision if the appeal is inadmissible or is not based on any bona fide legal argument." The State party emphasizes that this procedure is aimed, inter alia, at reducing the length of

proceedings and has been recognized by the European Court of Human Rights to be consistent with article 6, paragraph 1, of the European Convention for the Protection of Human Rights and Fundamental Freedoms.[5] The State party concludes that the communication is inadmissible in respect of the allegations of violations under article 14 of the Covenant.

4.8 Lastly, the State party observes that the author does not state in her communication that she is not pursuing a remedy under another procedure of international investigation or settlement. Consequently, it reserves the right to invoke inadmissibility at a later date under article 5, paragraph 2 (a), of the Optional Protocol.

Author's comments on the State party's observations

5.1 On 30 July 2008, the author argued that, contrary to the State party's assertion, the original communication clearly specifies that the matter submitted to the Committee is not subject to any other procedure of international investigation or settlement.

5.2 In response to the contention that her claims under article 9, paragraphs 1, 4 and 5, and article 14 of the Covenant are inadmissible, the author challenges the State party's interpretation of the Committee's jurisprudence in the case of *Fijalkowska v. Poland*. On that occasion, the Committee set aside the requirement that domestic remedies must be exhausted on the grounds that the author's inability to challenge the legality of her detention raised issues under articles 9 and 14 of the Covenant. Just as in the present case, the author had not been in a position to challenge her detention in good time, insofar as she had had to await release before learning that a remedy existed and being able to have recourse to it. In its consideration of the merits of the case, the Committee had also emphasized that the right to challenge her detention had been rendered ineffective, and had found a violation of article 9, paragraph 4, of the Covenant.

5.3 Accordingly, the author submits that the Committee, as in the case mentioned above, is in a position to examine her communication in the light of articles 9 and 14. Should the Committee decide not to apply its jurisprudence to this case, the author contends that her communication ought at least to be found admissible under article 9, paragraph 4, of the Covenant.

5.4 With regard to her claims under articles 7 and 10, contrary to the State party's assertion, the author did, according to counsel, detail in her initial communication how her rights had been violated.

5.5 Finally, with regard to the allegations under article 14, paragraph 1, of the Covenant, the author submits that the State Council — which was asked to make a final ruling on the matter — failed to consider the arguments submitted by the author, namely those based on the Public Health Code, on articles 3 and 5 of the European Convention and on article 7 of the Covenant, even though those arguments had been developed at length by the author in her submission in support of the appeal. The State Council expressed a position only on the arguments based on articles 6 and 13 of the European Convention and article 14 of the Covenant, deeming them unworthy of consideration; it did not rule on article 7 of the Covenant.

[5] Case of *Immeuble Groupe Kosser v. France* (application 38748/97), judgement of the European Court of Human Rights on 9 March 1999, ruled partly admissible. In this judgement, according to the State party, the Court recalls its jurisprudence to the effect that article 6 did not require detailed substantiation of a ruling in which an appellate court dismisses an appeal as unlikely to succeed based on a specific legal provision. The State party also cites *Rebai v. France* (application 26561/93), judgement of the European Court of Human Rights on 25 February 1997.

Committee's decision on admissibility

6.1 On 6 October 2009, at its ninety-seventh session, the Committee considered the admissibility of the communication.

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

6.3 The Committee noted the State party's argument that domestic remedies with regard to the claims under articles 9 and 14 of the Covenant had not been exhausted. On the question of an immediate challenge to detention, the Committee took note of the State party's argument that the author did not appeal to the ordinary courts at the time of her hospitalization when she could have done so under the Public Health Code. It did, however, note the author's explanation that it was not possible for her to challenge the legality of her detention in good time, since she was not informed of possible remedies during her committal and had to await her release in order to find out that such a remedy existed and have recourse to it. In the light of the information at its disposal, the Committee concluded that this part of the communication was admissible insofar as it might raise issues under article 9, paragraphs 1 and 4, and under article 14 of the Covenant.[6] The Committee also found that the State party had not given an adequate explanation as to why the administrative court had been unable to determine the legality of the author's committal and that the claims under article 9, paragraphs 1 and 4, of the Covenant were also admissible.

6.4 The Committee noted the author's contention that the manner in which she was allegedly treated during her committal, in particular the fact that she was locked up, undressed, forced to take neuroleptics and prohibited from communicating with the outside, constitutes a violation of articles 7 and 10 of the Covenant. The Committee found that the claims under articles 7 and 10 of the Covenant had been sufficiently substantiated.

6.5 The author submitted, lastly, that the State Council had not respected her right to a fair trial since it had rejected her claim of a violation of article 7 although that claim was being submitted to the Council for the first time. The Committee took note of the State party's argument that the State Council's decision was a decision not to accept the appeal, not a judgement on the merits of the case, and that the intention was to reduce the length of proceedings. The Committee found that the author's claims under article 14 of the Covenant had been sufficiently substantiated. In light of the foregoing, the Committee found the communication admissible.

Revision of the admissibility decision

7. Rule 99, paragraph 4, of the Committee's rules of procedure states that upon consideration of the merits, the Committee may review a decision that a communication is admissible in the light of any explanations or statements submitted by the State party pursuant to this rule. In accordance with the latter, the Committee considers that, in the light of the information and clarifications provided by the State party in its observations of 11 May 2010, it is necessary to reconsider the admissibility of the present communication. The basis for this decision is set out in paragraphs 10.1 to 10.4.

[6] Communication No. 1061/2002, *Bozena Fijalkowska v. Poland*, decision adopted on 9 March 2004. See also communications Nos. 221/1987 and 323/1988, *Cadoret and le Bihan v. France*, decision adopted on 11 April 1991; No. 327/1988, *Barzhig v. France*, decision adopted on 11 April 1991.

Observations by the State party on the merits of the communication

8.1 On 11 May 2010, the State party submitted its observations to the Committee. Although they are entitled "Observations on the merits of the communication", most of the evidence submitted has more to do with the admissibility of the communication. For purposes of clarity and since the Committee has decided, according to rule 99, paragraph 4, of its rules of procedure, to reconsider the admissibility of the communication, the parts of the observations which related only to the merits of the communication have been omitted. The omitted parts refer to the State party's arguments on articles 7 and 10 of the Covenant.

8.2 To begin with, the State party points out that, under the law on the rights of persons hospitalized for mental disorders and the conditions for hospitalization, there are two kinds of involuntary committal, either under a committal order or committal at the request of a third party. The first kind is governed by the Public Health Code, articles L3213-1 ff., and covers those whose state of mental health represents a danger to others or a serious breach of law and order. The decision is taken in this case by the Prefect on the basis of a medical certificate. Committal at the request of a third party is governed by the Public Health Code, articles L3212-1 ff., and is a measure taken in the interests of patients themselves for strictly medical reasons. The author was not the subject of a committal order but committal at the request of a third party. The State party refutes the contention that the author was not informed of the remedies available at the time she was committed. The State party refers in this regard to a letter dated 19 October 2001 from the director of the hospital in question, confirming that the author was informed of her situation and her rights in the presence of a witness, while she was in hospital.

8.3 On the question of the legality of the hospitalization, the State party recalls that the conditions for hospitalization at the request of a third party are set forth in the Public Health Code, articles L3212-1 and L3212-2. The requirements of the law were met, given that a written request for admission was made by the author's father on 6 December 1997 and that request addressed all the mandatory items; an initial medical certificate stating that the individual's disturbed mental state prevented her consenting to treatment and that her condition required hospital treatment with round-the-clock surveillance was issued on 6 December 1997 by a doctor who was not attached to the hospital where the patient was admitted; a second certificate was issued on the same day by a doctor at the admitting hospital; and, in accordance with the Public Health Code, article L3212-4, a certificate was issued following hospitalization by a psychiatrist from the admitting hospital but not one of the two doctors who had already seen the patient; that certificate confirmed the need for hospitalization. On 17 December 1997, the psychiatrist who had issued the certificate after the first 24 hours in hospital determined that the patient could be discharged under the Public Health Code, article L3212-7, since the improvement brought about by the treatment given to the author made it possible for her to return home. The correct procedure had thus been followed.

8.4 The State party further notes that it is clear from the case file, notably letters from the responsible physician at the author's hospital, that the author had in fact been informed of her rights at the time of committal, in the presence of her parents. The fact that there is no documentary evidence of this information, which was given orally, does not affect the validity or legality of the information. The law does not prescribe any particular form for such information. The State party reiterates that it was because of the author's own omissions that she was unable to apply to the Court of Major Jurisdiction for immediate release. If that was what she wanted, then, given that she appeared to be in contact with third parties, she could have asked them to apply to the court on her behalf. Yet the Court of Major Jurisdiction does not appear to have received any application for compensation either during the period in hospital or after the author was discharged.

8.5 Furthermore, the State party explains that compensation for harm suffered as a result of involuntary hospitalization does not depend solely on a ruling of the administrative court that the committal was unlawful. In its judgement of 17 February 1997, the Court of Conflicts explained the new division of jurisdiction between the two kinds of court: while only the ordinary courts are competent, under the Public Health Code, articles L333 ff., to assess the need for committal to a psychiatric facility and to rule on the possible consequences, it falls to the administrative court to determine the legality of the administrative decision to order committal; when the administrative court has given a ruling on that question, the ordinary court may rule on damages incurred as a result of any irregularities in the committal procedure. The State party emphasizes that this case law has been confirmed in subsequent rulings. The ordinary courts are thus competent in all proceedings for reparation, whether the damages arise from irregularities of form or of substance. By that token, the ordinary courts are also competent in matters relating to compensation for harm arising from irregularities of form previously established by the administrative court. Where harm arises from the fact that there was no necessity for a committal order, an application may be made directly to the ordinary court. This ruling therefore separates challenges relating to legality from those relating to liability: once the committal order has been examined, only the ordinary court is competent to establish the consequences of that order in terms of liability. The State party therefore contends that the author would have been able to obtain reparation for damages incurred by applying to the ordinary court, always providing the medical authorities' liability had been established.

8.6 In addition, the State party explains that the author, with the assistance of counsel, should have lodged an appeal against the administrative decision within two months of receipt of the letter from Thonon hospital dated 17 December 2001. That would have enabled the administrative court, if appropriate, to annul the committal order with retroactive effect. It is true that the author applied to the administrative court in time, but she lodged a full appeal with a view to obtaining compensation and failed to request annulment of the committal order on grounds of irregularity. Consequently, it is not the lack of any decision that prevented the author from establishing the irregularity of the committal order but rather a procedural error for which she alone, or at least her counsel, bears the responsibility. The administrative court is competent to try the prima facie legality of the committal procedure, that is to say to verify that the proper procedure has been followed in accordance with the law. Where an irregularity is detected, the court may annul the committal order. The ordinary court, on the other hand, rules on the appropriateness of committal and on compensation for any damages arising from improper or irregular hospitalization. Thus the court could not rule on compensation without exceeding its jurisdiction and it rightly rejected the author's application. The State party argues that the author never sought, at least initially, to challenge the legality of the committal order — for otherwise she would have lodged an appeal against the administrative decision — but rather attempted to obtain compensation. It cannot therefore be claimed that the author had no access to a court.

Author's comments on the State party's observations

9.1 For purposes of clarity and since the Committee has decided, under rule 99, paragraph 4, of its rules of procedure, to reconsider the admissibility of the communication, the parts of the author's comments which related only to the merits of the communication have been omitted. The omitted parts refer mainly to the author's comments on articles 7 and 10 of the Covenant.

9.2 In her comments dated 22 June 2010, the author recalls the circumstances leading to her enforced committal at the request of a third party between 6 and 17 December 1997. She emphasizes that her husband's homeopathic physician had no authority to commit her, that at no time did she display aggressive or volatile behaviour and that she was not

informed of her rights on admission to hospital. She also recalls the treatment she underwent during her confinement, namely the forcible administration of neuroleptics and her subsequent psychological isolation during the entire time she was in hospital. In this regard, she recalls that the record of clinical observations provided by Hôpitaux du Léman at her request in the course of domestic proceedings in the administrative court shows that she was given an injection on arrival on 6 December 1997, that she dozed all day on 7 December and that her request to telephone friends was denied. The author recalls that Dr. Girard stated that he had been under considerable pressure from her husband to extend the committal order beyond 17 December 1997.

9.3 Through proceedings with the family court of Thonon-les-Bains, the author's husband established that their child, Estelle, would live with him. The ruling was handed down in an order dated 3 July 1998 but was overturned by the Appeal Court of Chambéry in a ruling of 15 October 2001. The Appeal Court found, on the basis of documents provided by the author, and notably medical certificates from four different doctors and a second expert opinion by a fifth, that the author was suffering from no impairment of her mental faculties or from psychological problems and that her contention that the breakdown leading to her hospitalization was brought about by the break-up of her marriage and did not require such a serious measure as committal to a psychiatric facility was credible. In the best interests of the child, the Appeal Court therefore awarded the author care of her adopted child.

9.4 With regard to her placement in a psychiatric facility, the author emphasizes that the procedure was initiated by a doctor who was not a psychiatric specialist, that Dr. Schmidt's medical certificate was issued without a thorough medical examination and that the procedure was subsequently vitiated by the fact that the 24-hour certificate was not issued within the required time. Under article L335, now article L3212-5, of the Public Health Code, the Prefect should notify, within three days of committal, (a) the prosecutor with the Court of Major Jurisdiction whose jurisdiction includes the domicile of the committed person; and (b) the prosecutor with the Court of Major Jurisdiction whose jurisdiction includes the place where the hospital is located, of the full name, occupation and address of both the person committed and the person requesting committal. In both cases this was the Court of Major Jurisdiction of Thonon-les-Bains. In a letter from her counsel dated 23 September 2002 to the prosecutor at Thonon-les-Bains, the author requested a copy of the notification required under article L335. On 22 October 2002 the prosecutor replied that he did not have the case and that information on the committal had been provided as a notice, with no further details. Writing again on 23 January 2003, the author's counsel requested the admission and discharge notices relating to the author's committal but the prosecutor replied on 29 January 2003 that only committal notices for the current year were kept by the prosecution service. Other administrative authorities, including the departmental committee on psychiatric hospitalization, stated that they did not have any such documents since the committal was made at the request of a third party. The author therefore considers that she was arbitrarily deprived of her liberty and that the safeguards established in law had proved ineffective.

9.5 Moreover, the author rejects the State party's argument that she was informed of her rights as stated by Hôpitaux du Léman and that the absence of documentary evidence of this information, which was given orally, does not affect the validity or legality of the information. In fact, in matters of deprivation of liberty, notification of individual rights is of the utmost importance, as recalled by the national working group set up to evaluate the Act of 27 June 1990, which reported in September 1997.[7] The need for a strict regime of

[7] According to this report, published in September 1997 and annexed to the initial communication, the

safeguards was also noted by the Parliamentary Assembly of the Council of Europe in its recommendation 1235 (1994) on psychiatry and human rights. In the author's view, Hôpitaux du Léman did not strictly observe the procedures and should have informed her of the remedies available at the time she was admitted and before administering neuroleptics against her will. She points out that, in any case, information provided orally to a person committed involuntarily is ineffective owing to that person's extreme vulnerability and is not sufficient to meet the requirements and objectives of the Covenant. As to the letter of 19 October 2001 from the deputy director of Hôpitaux du Léman, Mr. Giray, in the author's view this document is not conclusive since it does not state in what form the information is supposed to have been communicated to her or who is supposed to have provided this information as prescribed by law.

9.6 The author further states that, in the course of the proceedings in the Grenoble Administrative Court, the hospital submitted a letter from Dr. Girard dated 4 October 2001, i.e., four years after her hospitalization, according to which the author was informed of her rights at the time of her admission, whereas she had only seen Dr. Girard for the first time on 8 December 1997, i.e., more than 24 hours after going into hospital. There is thus no objective documentary evidence of the fact that the author was informed of her rights. Even the record of clinical observations provided by Hôpitaux du Léman in the course of the proceedings makes no mention of any information on these rights. Lastly, the author recalls the Committee's jurisprudence in *Bozena Fijalkowska v. Poland*,[8] in which it found arbitrary detention and an absence of effective remedies, a conclusion that, in the author's view, is perfectly applicable to the current case.

9.7 The author reiterates her earlier contentions to the effect that the administrative courts should not have declined jurisdiction in favour of the ordinary courts, insofar as the decision to admit her to the psychiatric facility and the committal procedure were being challenged simultaneously. The proliferation of procedural obstacles infringes her right to seek compensation and is, incidentally, also a violation of her right of access to a court under article 14, paragraph 1, of the Covenant. In the event that the Committee were to find the domestic arrangements apportioning the jurisdiction of the courts in respect of compensation justified, the author asks the Committee nevertheless to give a ruling on the alleged violations of the Covenant. In this regard she recalls the case law of the European Court of Human Rights in *Francisco v. France*,[9] which takes up the question of the division of jurisdiction between the administrative and ordinary courts and finds that the right to compensation under article 5, paragraph 5, of the European Convention on Human Rights

national working group on the Act of 27 June 1990 found that hospitalization without consent was a serious measure that needed to be strictly regulated and that, on admission to hospital, patients should be informed of their administrative status and the grounds for committal. If the patients' state of health makes them incapable of receiving this notification, a witness should countersign the notification to testify that it has been made. The notification should be presented to patients a second time when they are more lucid, and at the latest after the same lapse of time as that established for extension of the measure, i.e., one month. The working group goes on to say that the decision must be justified, that is to say that the medical certificate on which the decision of the Prefect or the hospital director is based must be reasoned, citing facts to demonstrate that patients are a danger to themselves or others, but also establishing a link between those facts and the mental disorder, and stating why involuntary committal is warranted. The working group also suggests that the certificate could be communicated to patients on request and that it should indicate in clear language to those concerned, and giving titles and addresses, the ordinary courts, the prefectural authorities, the departmental committee on psychiatric hospitalization and the administrative court.

[8] Communication No. 1061/2002, *Bozena Fijalkowska v. Poland*, Views adopted on 26 July 2005.

[9] ECHR, *Francisco v. France*, decision of 29 August 2000.

arises only where a violation of article 5, paragraph 1, has first been established, either by the Court itself or by domestic courts.

9.8 In the author's view, there has been a violation of article 14, paragraph 1, not only because she was not permitted effective access to a court owing to the proliferation of procedural obstacles, but also because the State Council arbitrarily omitted to consider any of the appeals brought by the complainant and, in particular, her appeals under the Public Health Code, articles 3 and 5 of the European Convention on Human Rights and article 7 of the Covenant.

Basis for the revision of the admissibility decision

10.1 The Committee takes note of the clarifications provided by the State party, to the effect that the author had the right to challenge the administrative decision within two months of receipt of the letter of 17 December 2001 from Hôpitaux du Léman refusing to consider any compensation and thereby bringing the author's application for reconsideration to an end. The Committee notes that, according to the State party, this remedy would have allowed the administrative court, if appropriate, to annul the committal order with retroactive effect. The Committee notes that, according to the State party, the author did indeed apply to the administrative court in time, but she lodged a full appeal with a view to obtaining compensation and failed to request annulment of the committal order on grounds of irregularity and that it is consequently not the lack of any decision that prevented the author from establishing the irregularity of the committal order but rather a procedural error for which she alone, or at least her counsel, bears responsibility. The Committee notes that this point has not been countered by the author.

10.2 On the question of an immediate challenge to the legality of detention, whereby the author could have lodged an appeal under article L351 of the Public Health Code requesting the President of the Court of Major Jurisdiction to order her immediate release, the Committee notes that the facts submitted by the author are contested by the State party, which believes the author was in fact informed of her rights and that the fact that there is no documentary evidence of this information, which was given orally, does not affect the validity or legality of the information, since the law does not prescribe any particular form for such information. Without determining whether the author was indeed informed of her right to appeal under article L351 of the Public Health Code, the Committee observes that the author has not explained why she did not contest the failure to provide her with information on admission when her hospitalization came to an end, either in the administrative court in proceedings to challenge the administrative decision, or in the ordinary court in proceedings to challenge the appropriateness of committal and seek compensation for damages.

10.3 Furthermore, by failing to apply (a) to the administrative court to challenge the administrative decision and then (b) to the ordinary court to evaluate the need for committal at the request of a third party and seek compensation, the author deprived herself of her right to compensation under article 9, paragraph 5, having failed to properly exhaust the available domestic remedies.

10.4 In the light of all the information provided by the parties but especially the State party's clarifications regarding domestic administrative and judicial procedure, and notwithstanding the important issues of substance that could have been relevant, the Committee finds the communication inadmissible on grounds of non-exhaustion of domestic remedies under articles 9 and 14 of the Covenant.

10.5 The Committee notes that the author also claimed a violation of article 7 before the State Council. However, in the light of the foregoing and of the clarifications by the State party, it seems clear to the Committee that the author's counsel did not apply to the

appropriate courts in order to assert her rights and that, as a result, domestic remedies have not been exhausted with regard to articles 7 and 10 of the Covenant.

11. Accordingly, the Committee 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 French text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the present report.]

K. Communication No. 1814/2008, *P.L. v. Belarus* (Decision adopted on 26 July 2011, 102nd session)*

Submitted by:	P.L. (not represented by counsel)
Alleged victim:	The author
State party:	Belarus
Date of communication:	12 May 2008 (initial submission)
Subject matter:	Freedom of expression; fair trial, discrimination, equality before the law, effective remedy
Procedural issue:	Level of substantiation of claims.
Substantive issues:	Unjustified restrictions on freedom to receive information from independent media; access to independent court; discrimination on political grounds.
Articles of the Covenant:	Article 2, article 5, article 14, paragraph 1, article 19, article 26.
Article of the Optional Protocol:	2

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

Meeting on 26 July 2011,

Adopts the following:

Decision on admissibility

1. The author is Mr. P.L., a Belarusian national born in 1961. He claims to be victim of violations, by Belarus, of his rights under article 2; article 5; article 14, paragraph 1; article 19, paragraphs 1 and 2; and article 26, of the International Covenant on Civil and Political Rights. The Optional Protocol entered into force for the State party on 30 December 1992. The author is unrepresented by counsel.

The facts as submitted by the author

2.1 The author was a regular reader of the newspaper *Vitebsky Courrier M* which was duly registered by the Ministry of Information of Belarus. For a number of years, the author's subscription and delivery of the newspaper was operated through the State-owned Belpochta company. At the beginning of 2006, the author tried to renew his subscription in

* The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Lazhari Bouzid, Ms. Christine Chanet, Mr. Ahmad Amin Fathalla, Mr. Cornelis Flinterman, Mr. Yuji Iwasawa, Ms. Helen Keller, Mr. Rajsoomer Lallah, Ms. Zonke Zanele Majodina, Ms. Iulia Antoanella Motoc, Mr. Gerald L. Neuman, Mr. Michael O'Flaherty, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Fabián Omar Salvioli, Mr. Krister Thelin and Ms. Margo Waterval.

a postal office in Vitebsk, but was informed that the newspaper was no longer included in the catalogue of periodicals available for subscription with Belpochta, and therefore he could not have a subscription there. As a consequence, the author has to buy his newspaper directly at the newspaper's office.

2.2 According to the author, Belpochta has excluded from its catalogue only private newspapers, presenting opinions differing from the positions of the pro-government press. He believes that this was done on political grounds, and amounts to a discrimination against his right to receive information as part of the freedom of expression.

2.3 In October 2006, the author requested Belpochta in a letter to include the *Vitebsky Courrier M* in the catalogue for subscription for the following year. On 3 November 2006, Belpochta informed the author that the newspaper in question was not included in the catalogue for 2007, that Belpochta was free to select the periodicals to be included in the catalogue, and that no obligation to include a particular periodical in the catalogue existed under the law. On 6 December 2006, the author complained about this refusal to the Leninsky District Court of Vitebsk. His complaint was dismissed on 10 January 2007. The author was informed that he should have complained to the Ministry of Communications and Informatization first.

2.4 On 8 March 2007, the author appealed the decision of the Leninsky District Court to the Minsk City Court. On 30 June 2007, the Minsk City Court cancelled the decision of the district court, as it considered that the (district) court had had no jurisdiction in the matter and dismissed the author's claim. On 11 February 2008, the author complained to the President of the Minsk City Court against the decisions of the district court and the Minsk City Court, under the supervisory proceedings. His request was rejected on 10 March 2008. On 14 March 2008, the author submitted a request for a protest motion, with the Supreme Court, to have the case examined under the supervisory proceedings, contesting both the district court and the Minsk City Court decisions. On 25 April 2008, the Supreme Court rejected his request. The author claims that courts in Belarus are not independent.[1]

2.5 In the meantime, on 8 March 2007, the author complained to the Ministry of Communications and Informatization, asking to have the newspaper included in the subscription catalogue. On 27 March 2007, the Ministry rejected his complaint, arguing that decisions to include periodicals in the subscription catalogue are within the competence of Belpochta.

The complaint

3. The author claims that the above mentioned facts demonstrate a violation of his rights under article 2; article 5, paragraph 1; article 14, paragraph 1; article 19, paragraphs 1 and 2; and article 26, of the Covenant, as, according to him, the State party has violated his right to freedom of expression, in particular his right to receive information from private media, amounting to a discrimination, and has subsequently denied him access to an independent tribunal, has violated the principle of equality before the law, and has failed to provide him with an effective remedy.

State party's observations on admissibility and merits

4.1 By note verbale of 4 December 2008, the State party notes that under the supervisory proceedings, the author could have also appealed to the President of the

[1] The author refers to the report dated 8 February 2001, by the Special Rapporteur on the independence of judges and lawyers, concerning Belarus (E/CN.4/2001/65/Add.1).

Supreme Court and to the Prosecutor General, but he failed to do so. Therefore, according to the State party, the author has failed to exhaust all available domestic remedies.

4.2 The State party further notes that in substance, in his complaint to Belpochta in October 2006, the author has challenged the decision of Belpochta not to include a particular newspaper in its subscription list. As it was noted by the representatives of the firm in their reply to the author, Belpochta had no legal obligation to include any particular newspaper in its catalogue, and the choice which periodicals to include was within its prerogatives. The author complained against this decision, claiming that it had violated his right to receive information. On 10 January 2007, the Leninsky District Court rejected his claim. The author appealed against this decision, claiming that it was unlawful, to the Minsk City Court. The Minsk City Court noted that in fact, the author's claim challenged the decision of Belpochta not to include the newspaper *Vitebsk Courrier M* in its subscription catalogue. The Minsk City Court annulled the district court decision and dismissed the case, as it was outside of its jurisdiction.

4.3 On 14 May 2009, the State party reiterated its previous observations added that pursuant to the Law on printed and other means of mass information, distribution of mass media products is left to the discretion of the media themselves, and may be direct or through State, cooperative, or collective entities, or through private individuals. Thus, the issue of the conclusion of distribution contract between the redaction of *Vitebsky Courrier M* and Belpochta was outside of courts' jurisdiction. The State party adds that the author has been informed by the courts of his right to submit an extrajudicial complaint to the Ministry of Communications and Informatization, but he did not avail himself of this possibility.

4.4 On 21 September 2009, the State party contested the author's allegations on the independence of Belarusian judiciary. It explains that according to the Constitution and the laws, judges are independent in administrating justice, and no interference in their work is permitted. In addition, judges of the Supreme Court and the Supreme Economic Court are appointed by the President of Belarus following the agreement of the Council of the Republic of the National Assembly, at the proposal of the Chairman of the Supreme Court and the Supreme Economic Court, respectively.

Author's comments on the State party's observations

5.1 The author presented his comments on the State party's observations on 24 April 2009. He notes, first, that the appeals under the supervisory proceedings both to the Supreme Court and the Prosecutor-General do not constitute remedies to be exhausted for purposes of article 5, paragraph 2 (b), of the Optional Protocol, as they are discretionary and concern court decisions which are final and enforceable. In addition, there is no obligation to submit supervisory complaints under national law.

5.2 The author adds that he has complained to the Ministry of Communications and Informatization on 8 March 2007, asking whether Belpochta was subordinated to the Ministry in question. From the Ministry's reply of 27 March 2007, it transpired that Belpochta was an autonomous economic entity, and the decision to include or not a given newspaper in its subscription catalogue was strictly within the firm's competence.

Issues and proceedings before the Committee

Consideration of admissibility

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

6.2 The Committee has noted the author's explanation that he had exhausted all available domestic remedies, up to the Supreme Court of Belarus. As to the State party's contention that the author could have further appealed to the Prosecutor-General with a request to have a protest motion filed under the supervisory proceedings, the Committee recalls its jurisprudence that such remedies do not constitute a remedy, which has to be exhausted for purposes of article 5, paragraph 2 (b), of the Optional Protocol.[2] The Committee has also noted that the same matter is not being examined under another procedure of international investigation or settlement. Accordingly, the Committee considers that the requirements of article 5, paragraphs 2 (a) and (b) have been met in the present case.

6.3 The Committee notes that in substance, the author claims that the discretionary decision of Belpochta not to retain the newspaper *Vitebsky Courrier M* in its list of periodicals available for subscription amounted to an unjustified limitation of his right to freedom of expression, in particular of his right to receive information, as protected by article 19, paragraph 2, of the Covenant. The Committee notes, first, that according to the State party Belpochta, is an autonomous entity and is entitled to decide which periodicals to include in its subscription catalogue. It notes further that neither the provisions of the national law nor the Covenant's provisions impose any obligation on States parties to ensure obligatory distribution of printed media material. Although the Committee considers that, even if in some circumstances denial of access to State-owned or State-controlled distribution services may amount to an interference with rights protected by article 19, in the present case, the author has not provided sufficient information that would permit the Committee to evaluate the extent of the interference or to determine whether the denial of such access is discriminatory. The Committee further notes that in any event, even if the newspaper in question was not included in the Belpochta subscription list and was not delivered to his home address by mail, the author was able to obtain it by other means. Accordingly, the Committee considers that the author has failed to sufficiently substantiate his claim, for purposes of admissibility, and that therefore this part of the communication is inadmissible under article 2, of the Optional Protocol.

6.4 In the light of this conclusion, the Committee will not examine separately the remaining part of the author's claims under articles 2; 5; 14; and 26, of the Covenant, as they are linked to the author's principal claim under article 19, of the Covenant.

7. The Human Rights Committee therefore decides:

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

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

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

[2] See, for example, communication No. 1537/2006, *Gerashchenko v. Belarus*, decision on inadmissibility adopted on 23 October 2009, paragraph 6.3.

L. Communication No. 1994/2010, *I.S. v. Belarus* (Decision adopted on 25 March 2011, 101st session)*

Submitted by:	I.S. (not represented by counsel)
Alleged victim:	The author
State party:	Belarus
Date of communication:	14 December 2009 (initial submission)
Subject matter:	Compulsory labour / fair trial.
Procedural issue:	Obligation to work for a particular enterprise after receiving a state funded university education
Substantive issue:	Incompatibility of claims with the Covenant; level of substantiation of claim
Articles of the Covenant:	8, paragraph 3 (a); article 14, paragraph 1
Article of the Optional Protocol:	2 and 3

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

Meeting on 25 March 2011,

Adopts the following:

Decision on admissibility

1. The author of the communication is I.S., a Belarusian national born in 1984. He claims to be a victim of violations by Belarus of his rights under article 8, paragraph 3 (a), and article 14, paragraph 1, of the International Covenant on Civil and Political Rights. The Optional Protocol entered into force for Belarus on 30 December 1992. The author is unrepresented.

The facts as presented by the author:

2.1 Having successfully passed an examination, on 6 August 2001, the author enrolled as a student in the Belarusian State Polytechnic Academy, (later transformed into Belarusian National Technical University), and graduated, on 29 June 2006, with a degree in engineering. The author was assigned to work for two years as a young specialist in the State-owned Construction Trust No. 21 in Borisov town, in accordance with a Bulletin for Personnel Allocation issued by the University. The Bulletin for Personnel Allocation was issued on the basis of article 10 of the Law on Education, the 2006 amendment of which provides that universities' graduates, whose studies had been funded by the State or the municipal budgets, must work for the State "mandatorily allocated" for a period of two

* The following members of the Committee participated in the examination of the present communication: Mr. Lazhari Bouzid, Ms. Christine Chanet, Mr. Cornelis Flinterman, Mr. Yuji Iwasawa, Ms. Helen Keller, Ms. Zonke Zanele Majodina, Ms. Iulia Motoc, Mr. Gerald L. Neuman, Mr. Michael O'Flaherty, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Fabián Omar Salvioli, Mr. Krister Thelin and Ms. Margo Waterval.

years, according to the order established by the Government of Belarus. If they fail to comply with the "mandatory assignment" in return for the educational program that they chose to undertake, they are obliged to reimburse the funds spent on their education to the respective budget.

2.2 The author accepted and signed a work contract with the Construction Trust No. 21. He started to work on 28 August 2006.[1] The author's residence being in Minsk, he had to travel for three hours every day to his work station and he could not find living arrangements in the town of Borisov. He requested his employer to release him from the contract, but the latter refused, claiming that he was not permitted to dismiss a young specialist in the first two years after his graduation. The author stopped going to work and on 21 January 2007 he was dismissed for absenteeism based on article 42 of the Labour Code.

2.3 The Belarusian National Technical University filed a law suit against the author, claiming reimbursement of the funds for his education. The author objected, claiming that the Law on Education contradicts article 49 of the Constitution, which declares that education in Belarus is free of charge, and that forcing him to work in a company where he does not want to work, under the penalty of having to repay his education costs, constitutes compulsory labour. On 4 March 1998, the Borisov Regional Court granted the University's claim and convicted the author to pay 13,071,253 roubles to the State budget, based on the fact that he did not complete his mandatory work allocation term.

2.4 The author appealed the court decision before the Minsk District Court, which rejected his appeal on 19 May 2008. The author attempted to file for a supervisory review with the President of the Minsk District Court and with the Supreme Court of Belarus, but his appeals were rejected. The author contends that he has exhausted all available and effective domestic remedies.

The complaint

3.1 The author refers to article 2, paragraph 1, of ILO Convention No. 29 (1930) concerning Forced or Compulsory Labour which defines forced or compulsory labour to mean "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily". The author further refers to ILO Convention No. 105 (1957) concerning the Abolition of Forced Labour, to which Belarus is a State party, and therefore has undertaken "to suppress and not to make use of any form of forced or compulsory labour as a method of mobilizing and using labour for purposes of economic development".[2] The author also refers to article 41, paragraph 4 of the Belarus Constitution which also prohibits compulsory labour. The author submits that after having enjoyed his right to free education, guaranteed by the constitution, he was forced to work following a mandatory allocation under the threat of heavy financial penalty. He maintains that the mandatory allocation is used by the State party as a method of mobilization of the work force for the purpose of economic development of certain regions by placing there young specialists on a non-voluntary basis. He claims that his mandatory placement in the Construction Trust No. 21 violated his right under article 8, paragraph 3(a), of the Covenant.

3.2 The author also submits that neither the first instance court, nor the subsequent instances took into consideration his arguments that his constitutional and Covenant rights were violated. He also submits that, since article 10 of the Law on Education was not

[1] The author submits a copy of his work contract. According to the contract, his salary was 732,974 Belarusian roubles per month, for five working days, eight hours a day.

[2] Article 1(b).

enacted until June 2006, during his education in the period 2001- 2006, the rules on mandatory allocation of young specialists, whose education was paid by the State budget, did not exist and therefore the courts applied the law retroactively in violation of his rights under article 14, paragraph 1, of the Covenant.

Issues and proceedings before the Committee

Consideration of Admissibility

4.1 Pursuant to rule 93 of its rules of procedure, before considering any claim contained in a complaint, the Human Rights Committee must determine whether it is admissible under the Optional Protocol to the Covenant on Civil and Political Rights.

4.2 The Committee notes the author's claim that that his mandatory placement in the Construction Trust No. 21 violated his right under article 8, paragraph 3 (a), of the Covenant. The Committee considers that, for the purpose of article 2 of the Optional Protocol, the author has not sufficiently substantiated, for purpose of admissibility, how the requirement to pay the expenses for his State-funded education or to work in a specific enterprise for two years could be seen as constituting a violation of article 8, paragraph 3 (a), of the Covenant.

4.3 With regard to the author's claims that his rights under article 14, paragraph 1 have been violated, the Committee observes that these allegations relate primarily to the evaluation of facts and evidence by the State party's courts. The Committee recalls its jurisprudence in this respect and reiterates that, in general, it is for the relevant domestic courts to review or evaluate facts and evidence, unless their evaluation is manifestly arbitrary or amounts to a denial of justice.[3] Based on the material before it the Committee considers that the author has not shown sufficient grounds to support his claims that the judicial proceedings in his case have suffered from such defects. The Committee, therefore, concludes that the communication is inadmissible under article 2, of the Optional Protocol.

4.4 The Committee also notes the author's allegation that the Law on Education was applied retroactively in his case. The Committee, however, observes that article 14, paragraph 1, of the Covenant does not contain a prohibition of the retroactive application of laws regulating civil matters. The Committee also observes that article 15, paragraph 1, of the Covenant prohibits retroactive application of laws only in relation to criminal law matters. Accordingly, the Committee considers that the above allegation of the author is incompatible with the provisions of the Covenant, and therefore declares this part of the communication inadmissible under article 3 of the Optional Protocol.

5. The Human Rights Committee therefore decides:

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

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

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

[3] See, for example, communication No. 1212/2003, *Lanzarote v. Spain*, decision on inadmissibility adopted on 25 July 2006, para. 6.3.

Annex VIII

Follow-up activities under the Optional Protocol

1. In July 1990, the Committee established a procedure for the monitoring of follow-up to its Views under article 5, paragraph 4, of the Optional Protocol, and created the mandate of the Special Rapporteur for follow-up on Views to this effect. Mr. Krister Thelin has been the Special Rapporteur since March 2010 (101st session).

2. In 1991, the Special Rapporteur began to request follow-up information from States parties. Such information had been systematically requested in respect of all Views with a finding of a violation of Covenant rights; 574 Views out of the 716 Views adopted since 1979 concluded that there had been a violation of the Covenant.

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

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

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

6. The present annual report adopts the same format for the presentation of follow-up information as the last annual report. The table below displays a complete picture of follow-up replies from States parties received up to the 102nd session (11 to 29 July 2011), in relation to Views in which the Committee found violations of the Covenant. Wherever possible, it indicates whether follow-up replies are or have been considered as satisfactory or unsatisfactory, in terms of their compliance with the Committee's Views, or whether the dialogue between the State party and the Special Rapporteur for follow-up on Views continues. The notes following a number of case entries convey an idea of the difficulties in categorizing follow-up replies.

7. Follow-up information provided by States parties and by petitioners or their representatives subsequent to the last annual report (A/65/40) is set out in chapter VI (vol. I) of the present annual report.

State party and number of cases with violation	*Communication number, author and relevant Committee report*	*Follow-up response received from State party*	*Satisfactory response*	*Unsatisfactory response*	*No response*	*Follow-up dialogue ongoing*
Algeria (12)	992/2001, *Bousroual* A/61/40				X	X
	1085/2002, *Tarigh* A/61/40				X	X
	1172/2003, *Madani* A/62/40				X	X
	1173/2003, *Benhadj* A/62/40				X	X
	1196/2003, *Boucherf* A/61/40				X A/64/40	X
	1297/2004, *Medjnoune* A/61/40				X A/63/40	X
	1327/2004, *Grioua* A/62/40				X	X
	1328/2004, *Kimouche* A/62/40				X	X
	1439/2005, *Aber* A/62/40				X	X
	1495/2006, *Madoui* A/64/40				X	X
	1588/2007, *Benaziza* A/65/40					X
	1780/2008, *Aouabdia et al.* A/66/40					X
Angola (2)	711/1996, *Dias* A/55/40	X A/61/40		X A/61/40		X
	1128/2002, *Marques* A/60/40	X A/61/40		X A/61/40		X
Argentina (4)	400/1990, *Mónaco de Gallichio* A/50/40	X A/51/40				X
	1458/2006, *González et al.* A/66/40					X

State party and number of cases with violation	*Communication number, author and relevant Committee report*	*Follow-up response received from State party*	*Satisfactory response*	*Unsatisfactory response*	*No response*	*Follow-up dialogue ongoing*
Argentina (*cont'd*)	1608/2007, *L.M.R.* A/66/40					X
	1610/2007, *L.N.P.* A/66/40					X
Australia (24)	560/1993, *A.* A/52/40	X A/53/40, A/55/40, A/56/40		X		X
	900/1999, *C.* A/58/40	X A/58/40, CCPR/C/80/FU/1, A/60/40, A/62/40				X
	930/2000, *Winata et al.* A/56/40	X CCPR/C/80/FU/1, A/57/40, A/60/40, A/62/40 and A/63/40				X
	941/2000, *Young* A/58/40	X A/58/40, A/60/40, A/62/40 and A/63/40		X		X
	1014/2001, *Baban et al.* A/58/40	X A/60/40, A/62/40		X		X
	1020/2001, *Cabal and Pasini* A/58/40	X A/58/40, CCPR/C/80/FU/1		X*		X
	**Note*: The State party's response is set out in CCPR/C/80/FU/1. The State party submits that it is unusual for two persons to share cells and that it has asked the Victoria police to take the necessary steps to ensure that a similar situation does not arise again. It does not accept that the authors are entitled to compensation. The Committee considered that this case should not be considered any further under the follow-up procedure.					
	1036/2001, *Faure* A/61/40	X A/61/40				X
	1050/2002, *Rafie and Safdel* A/61/40	X A/62/40 and A/63/40				X
	1069/2002, *Bakhitiyari* A/59/40	X A/60/40, A/62/40		X		X
	1157/2003, *Coleman* A/61/40	X A/62/40				X A/62/40
	1184/2003, *Brough* A/61/40	X A/62/40				X A/62/40

State party and number of cases with violation	*Communication number, author and relevant Committee report*	*Follow-up response received from State party*	*Satisfactory response*	*Unsatisfactory response*	*No response*	*Follow-up dialogue ongoing*
Australia (*cont'd*)	1255, 1256, 1259, 1260, 1266, 1268, 1270, and 1288/2004, *Shams, Atvan, Shahrooei, Saadat, Ramezani, Boostani, Behrooz* and *Sefed*, A/62/40	X A/63/40				X
	1324/2004, *Shafiq* A/62/40	X A/62/40 and A/63/40				X A/62/40
	1347/2005, *Dudko* A/62/40	X A/63/40, A/64/40				X A/63/40
	1629/2007, *Fardon* A/65/40	X A/66/40		X		X
	1557/2007, *Nystrom et al.* A/66/40					X
	1635/2007, *Tillman* A/65/40	X A/66/40		X		X
Austria (5)	415/1990, *Pauger* A/57/40	X A/47/40, A/52/40, A/66/40	X*			
	716/1996, *Pauger* A/54/40	X A/54/40, A/55/40, A/57/40, A/66/40, CCPR/C/80/FU/1	X*			
	**Note*: Although the State party has made amendments to its legislation as a result of the Committee's findings, the legislation is not retroactive and the author himself has not been provided with a remedy. At its 102nd session, the Committee decided to close the follow-up scrutiny of the case, with a partly satisfactory resolution in the light of the measures taken so far by the State party.					
	965/2001, *Karakurt* A/57/40	X A/58/40, CCPR/C/80/FU/1, A/61/40				X
	1086/2002, *Weiss* A/58/40	X A/58/40, A/59/40, CCPR/C/80/FU/1, A/60/40, A/61/40				X
	1454/2006, *Lederbauer* A/62/40	X A/63/40				X
Azerbaijan (1)	1633/2007, *Avadanov*					X

State party and number of cases with violation	*Communication number, author and relevant Committee report*	*Follow-up response received from State party*	*Satisfactory response*	*Unsatisfactory response*	*No response*	*Follow-up dialogue ongoing*
	A/66/40					
Belarus (24)	780/1997, *Laptsevich* A/55/40				X A/56/40, A/57/40	X
	814/1998, *Pastukhov* A/58/40				X A/59/40	X
	886/1999, *Bondarenko* A/58/40	X A/59/40, A/62/40 and A/63/40				X
	887/1999, *Lyashkevich* A/58/40	X A/59/40, A/62/40 and A/63/40				X
	921/2000, *Dergachev* A/57/40				X	X
	927/2000, *Svetik* A/59/40	X A/60/40, A/61/40 and A/62/40				X A/62/40
	1009/2001, *Shchetko* A/61/40				X	X
	1022/2001, *Velichkin* A/61/40				X A/61/40	X
	1039/2001, *Boris et al.* A/62/40	X A/62/40				X
	1047/2002, *Sinitsin, Leonid* A/62/40				X	X
	1100/2002, *Bandazhewsky* A/61/40	X A/62/40				X
	1178/2003, *Smantser* A/64/40	X A/65/40		X A/65/40		X
	1207/2003, *Malakhovsky* A/60/40	X A/61/40		X		X
	1274/2004, *Korneenko* A/62/40	X A/62/40				X A/62/40
	1296/2004, *Belyatsky* A/62/40	 A/63/40				X

State party and number of cases with violation	*Communication number, author and relevant Committee report*	*Follow-up response received from State party*	*Satisfactory response*	*Unsatisfactory response*	*No response*	*Follow-up dialogue ongoing*
Belarus (*cont'd*)	1311/2004, *Osiyuk* A/64/40					X
	1354/2005, *Sudalenko* A/66/40					X
	1377/2005, *Katsora* A/65/40					X
	1383/2005, *Katsora et al.* A/66/40					X
	1390/2005, *Koreba* A/66/40					X
	1392/2005, *Lukyanchik* A/65/40	X A/66/40				X
	1502/2006, *Marinich* A/65/40	X A/66/40				X
	1553/2007, *Korneenko*; *Milinkevich*, A/64/40	X A/65/40		X A/65/40		X
	1604/2007, *Zalesskaya* A/66/40					X
Belgium (1)	1472/2006, *Sayadi*, A/64/40				X	X
Bolivia (Plurinational State of) (1)	176/1984, *Peñarrieta* A/43/40	X A/52/40				X
Cameroon (6)	458/1991, *Mukong* A/49/40				X A/52/40	X
	1134/2002, *Gorji-Dinka* A/60/40	X A/65/40			X	X
	1186/2003, *Titiahongo* A/63/40				X	X
	1353/2005, *Afuson* A/62/40	X A/65/40			X	X
	1397/2005, *Engo* A/64/40				X	X
	1813/2008, *Akwanga*					X

State party and number of cases with violation	*Communication number, author and relevant Committee report*	*Follow-up response received from State party*	*Satisfactory response*	*Unsatisfactory response*	*No response*	*Follow-up dialogue ongoing*
	A/66/40					
Canada (11)	27/1978, *Pinkney* Fourteenth session Selected Decisions, vol. 1				X	X
	167/1984, *Ominayak et al.* A/45/50	X A/59/40,* A/61/40, A/62/40				X A/62/40
	**Note*: According to this report, information was provided on 25 November 1991 (unpublished). It appears from the follow-up file that, in this response, the State party stated that the remedy was to consist of a comprehensive package of benefits and programmes valued at $Can 45 million and a 95 square mile reserve. Negotiations were still ongoing as to whether the Lubicon Lake Band should receive additional compensation.					
	694/1996, *Waldman* A/55/40	X A/55/40, A/56/40, A/57/40, A/59/40, A/61/40		X		X
	829/1998, *Judge* A/58/40	X A/59/40, A/60/40	X A/60/40, A/61/40			X* A/60/40
	**Note*: The Committee decided that it should monitor the outcome of the author's situation and take any appropriate action.					
	1051/2002, *Ahani* A/59/40	X A/60/40, A/61/40		X		X* A/60/40
	**Note*: The State party went some way to implementing the Views: the Committee has not specifically said implementation is satisfactory.					
	1465/2006, *Kaba* A/65/40	X A/66/40				
	1467/2006, *Dumont* A/65/40	X A/66/40				X
	1544/2007, *Hamida* A/65/40	X A/66/40				X
	1763/2008, *Pillai et al.* A/66/40					X
	1792/2008 *Dauphin* A/64/40	X A/65/40		X A/65/40		X
	1959/2010, *Warsame* A/66/40					X
Central African Republic (1)	1587/2007 *Mamour*					X

State party and number of cases with violation	*Communication number, author and relevant Committee report*	*Follow-up response received from State party*	*Satisfactory response*	*Unsatisfactory response*	*No response*	*Follow-up dialogue ongoing*
	A/64/40					
Colombia (15)	45/1979, *Suárez de Guerrero* Fifteenth session Selected Decisions, vol. 1	X A/52/40*				X
	**Note*: In this case, the Committee recommended that the State party should take the necessary measures to compensate the husband of Ms. Maria Fanny Suárez de Guerrero for the death of his wife and to ensure that the right to life is duly protected by amending the law. The State party replied that the Ministerial Committee set up pursuant to enabling legislation No. 288/1996 had recommended that compensation be paid to the author.					
	46/1979, *Fals Borda* Sixteenth session Selected Decisions, vol. 1	X A/52/40*		X		X
	**Note*: In this case, the Committee recommended adequate remedies and for the State party to adjust its laws in order to give effect to the right set forth in article 9, paragraph 4, of the Covenant. The State party responded that, given the absence of a specific remedy recommended by the Committee, the Ministerial Committee set up pursuant to enabling legislation No. 288/1996 did not recommend that compensation should be paid to the victim.					
	64/1979, *Salgar de Montejo* Fifteenth session Selected Decisions, vol. 1	X A/52/40*		X		X
	**Note*: In this case, the Committee recommended adequate remedies and for the State party to adjust its laws in order to give effect to the right set forth in article 14, paragraph 5, of the Covenant. Given the absence of a specific remedy recommended by the Committee, the Ministerial Committee set up pursuant to Act No. 288/1996 did not recommend that compensation be paid to the victim.					
	161/1983, *Herrera Rubio* Thirty-first session Selected Decisions, vol. 2	X A/52/40*				X
	**Note*: The Committee recommended effective measures to remedy the violations that Mr. Herrera Rubio has suffered and further to investigate said violations, to take action thereon as appropriate and to take steps to ensure that similar violations do not occur in the future. The State party provided compensation to the victim.					
	181/1984, *Sanjuán Arévalo brothers* A/45/40	X, A/64/40 A/52/40*		X		X
	**Note*: The Committee takes this opportunity to affirm that it would welcome information on any relevant measures taken by the State party in respect of the Committee's Views and, in particular, invites the State party to inform the Committee of further developments in the investigation of the disappearance of the Sanjuán brothers. Given the absence of a specific remedy recommended by the Committee, the Ministerial Committee set up pursuant to Act No. 288/1996 did not recommend that compensation be paid to the victim.					
	195/1985, *Delgado Paez* A/45/40	X A/52/40*				X

State party and number of cases with violation	*Communication number, author and relevant Committee report*	*Follow-up response received from State party*	*Satisfactory response*	*Unsatisfactory response*	*No response*	*Follow-up dialogue ongoing*
Colombia (*cont'd*)	**Note*: In accordance with the provisions of article 2 of the Covenant, the State party is under an obligation to take effective measures to remedy the violations suffered by the author, including the granting of appropriate compensation, and to ensure that similar violations do not occur in the future. The State party provided compensation.					
	514/1992, *Fei* A/50/40	X A/51/40*		X		X
	**Note*: The Committee recommended that the State party provide the author with an effective remedy. In the Committee's opinion, this entails guaranteeing the author regular access to her daughters, and that the State party ensure that the terms of the judgements in the author's favour are complied with. Given the absence of a specific remedy recommended by the Committee, the Ministerial Committee set up pursuant to Act No. 288/1996 did not recommend that compensation be paid to the victim.					
	612/1995, *Arhuacos* A/52/40				X	X
	687/1996, *Rojas García* A/56/40	X A/58/40, A/59/40				X
	778/1997, *Coronel et al.* A/58/40	X A/59/40				X
	848/1999, *Rodríguez Orejuela*, A/57/40	X A/58/40, A/59/40		X		X
	859/1999, *Jiménez Vaca* A/57/40	X A/58/40, A/59/40, A/61/40		X		X
	1298/2004, *Becerra* A/61/40	X A/62/40				X A/62/40
	1361/2005, *Casadiego* A/62/40	X A/63/40				X
	1611/2007, *Bonilla Lerma* A/66/40					X
Croatia (2)	727/1996, *Paraga* A/56/40	X A/56/40, A/58/40				X
	1510/2006, *Vojnović*, A/64/40	X A/65/40, A/66/40	X			
Czech Republic (25)*	**Note*: For all of these property cases, see also follow-up to concluding observations for the State party's reply in A/59/40.					
	516/1992, *Simunek et al.* A/50/40	X A/51/40,* A/57/40, A/58/40, A/61/40, A/62/40				X
	**Note*: One author confirmed that the Views were partially implemented. The others claimed that their property was not restored to them					

State party and number of cases with violation	*Communication number, author and relevant Committee report*	*Follow-up response received from State party*	*Satisfactory response*	*Unsatisfactory response*	*No response*	*Follow-up dialogue ongoing*
	or that they were not compensated.					
Czech Republic (*cont'd*)	586/1994, *Adam* A/51/40	X A/51/40, A/53/40, A/54/40, A/57/40, A/61/40, A/62/40				X
	747/1997, *Des Fours Walderode* A/57/40	X A/57/40, A/58/40, A/61/40, A/62/40				X
	757/1997, *Pezoldova* A/58/40	X A/60/40, A/61/40 and A/62/40				X
	765/1997, *Fábryová* A/57/40	X A/57/40, A/58/40, A/61/40, A/62/40				X
	823/1998, *Czernin* A/60/40	X A/62/40				X
	857/1999, *Blazek et al*. A/56/40	X A/62/40				X
	945/2000, *Marik* A/60/40	X A/62/40				X
	946/2000, *Patera* A/57/40	X A/62/40				X
	1054/2002, *Kriz* A/61/40	X A/62/40				X
	1445/2006, *Polacek* A/62/40				X	X
	1448/2006, *Kohoutek* A/63/40	X A/66/40				X
	1463/2006, *Gratzinger* A/63/40				X	X
	1479/2006, *Persan* A/64/40				X	X
	1484/2006, *Lnenicka* A/63/40				X	X
	1485/2006, *Vlcek*				X	X

State party and number of cases with violation	*Communication number, author and relevant Committee report*	*Follow-up response received from State party*	*Satisfactory response*	*Unsatisfactory response*	*No response*	*Follow-up dialogue ongoing*
	A/63/40					
	1488/2006, *Süsser* A/63/40				X	X
	1491/2006, *Blücher von Wahlstatt* A/65/40					
	1497/2006, *Preiss* A/63/40				X	X
	1508/2006, *Amundson* A/64/40				X	X
	1533/2006, *Ondracka* A/63/40				X	X
	1581/2007, *Drda* A/66/40					X
	1586/2007, *Lange* A/66/40					X
	1615/2007, *Zavrel* A/65/40					
	1742/2007, *Gschwind* A/65/40					
Democratic Republic of the Congo (14)*	**Note*: See A/59/40 for details of follow-up consultations.					
	16/1977, *Mbenge* Eighteenth session Selected Decisions, vol. 2				X	X
	90/1981, *Luyeye* Nineteenth session Selected Decisions, vol. 2				X A/61/40	X
	124/1982, *Muteba* Twenty-second session Selected Decisions, vol. 2				X A/61/40	X
	138/1983, *Mpandanjila et al.* Twenty-seventh session Selected Decisions, vol. 2				X A/61/40	X
	157/1983, *Mpaka Nsusu*				X	X

State party and number of cases with violation	*Communication number, author and relevant Committee report*	*Follow-up response received from State party*	*Satisfactory response*	*Unsatisfactory response*	*No response*	*Follow-up dialogue ongoing*
	Twenty-seventh session Selected Decisions, vol. 2				A/61/40	
Democratic Republic of the Congo (*cont'd*)	194/1985, *Miango* Thirty-first session Selected Decisions, vol. 2				X A/61/40	X
	241/1987, *Birindwa* A/45/40				X A/61/40	X
	242/1987, *Tshisekedi* A/45/40				X A/61/40	X
	366/1989, *Kanana* A/49/40				X A/61/40	X
	542/1993, *Tshishimbi* A/51/40				X A/61/40	X
	641/1995, *Gedumbe* A/57/40				X A/61/40	X
	933/2000, *Adrien Mundyo Busyo et al.* (68 judges) A/58/40				X A/61/40	X
	962/2001, *Marcel Mulezi* A/59/40				X A/61/40	X
	1177/2003, *Wenga and Shandwe* A/61/40				X	X
Denmark (1)	1554/2007, *El-Hichou* A/65/40	X A/66/40	X			
Dominican Republic (2)	193/1985, *Giry* A/45/40	X A/52/40, A/59/40		X		X
	449/1991, *Mojica* A/49/40	X A/52/40, A/59/40		X		X
Ecuador (2)	277/1988, *Terán Jijón* A/47/40	X A/59/40*		X		X
	**Note*: According to this report, information was provided on 11 June 1992, but was not published. It appears from the follow-up file that in this response, the State party merely forwarded copies of two reports of the national police on the investigation of the crimes in which Mr. Terán Jijón was involved, including the statements he made on 12 March 1986 concerning his participation in such crimes.					
	319/1988, *Cañón García*			X		X

State party and number of cases with violation	*Communication number, author and relevant Committee report*	*Follow-up response received from State party*	*Satisfactory response*	*Unsatisfactory response*	*No response*	*Follow-up dialogue ongoing*
	A/47/40					
Equatorial Guinea (3)	414/1990, *Primo Essono* A/49/40	A/62/40*			X	X
	468/1991, *Oló Bahamonde* A/49/40	A/62/40*			X	X
	1152 and 1190/2003, *Ndong et al*. and *Mic Abogo* A/61/40	A/62/40*			X	X
	* The State party has not replied but it has met several times with the Rapporteur.					
Finland (1)	779/1997, *Äärelä et al*. A/57/40	X A/57/40, A/59/40				X
France (3)	1620/2007, *J.O.* A/66/40					X
	1760/2008, *Cochet* A/66/40					X
	1876/2009, *Singh* A/66/40					X
Georgia (3)	626/1995, *Gelbekhiani* A/53/40	X A/54/40		X		X
	627/1995, *Dokvadze* A/53/40	X A/54/40		X		X
	975/2001, *Ratiani* A/60/40	X A/61/40				X
Germany (1)	1482/2006, *Gerlach* A/63/40	X A/64/40				X
Greece (3)	1070/2002, *Kouldis* A/61/40	X A/61/40				X
	1486/2006, *Kalamiotis* A/63/40	X A/64/40				X
	1799/2008, *Georgopoulos et al.* A/65/40	X A/66/40				X
Guyana (9)	676/1996, *Yasseen and Thomas* A/53/40	A/60/40* A/62/40			X A/60/40	X

State party and number of cases with violation	*Communication number, author and relevant Committee report*	*Follow-up response received from State party*	*Satisfactory response*	*Unsatisfactory response*	*No response*	*Follow-up dialogue ongoing*
Guyana (*cont'd*)	728/1996, *Sahadeo* A/57/40	A/60/40* A/62/40			X A/60/40	X
	811/1998, *Mulai*, A/59/40	A/60/40* A/62/40			X A/60/40	X
	812/1998, *Persaud* A/61/40	A/60/40* A/62/40			X	X
	862/1999, *Hussain and Hussain* A/61/40	A/60/40* A/62/40			X	X
	838/1998, *Hendriks* A/58/40	A/60/40* A/62/40			X A/60/40	X
	867/1999, *Smartt* A/59/40	A/60/40* A/62/40			X A/60/40	X
	912/2000, *Ganga* A/60/40	A/60/40* A/62/40			X A/60/40	X
	913/2000, *Chan* A/61/40	A/60/40* A/62/40			X	X
	* The State party has not replied but it has met several times with the Special Rapporteur.					
Hungary (3)	410/1990, *Párkányi* A/47/40	X*		X		X
	**Note*: Follow-up information referred to in the State party's reply, dated February 1993 (unpublished), indicates that compensation cannot be paid to the author due to lack of specific enabling legislation.					
	521/1992, *Kulomin* A/51/40	X A/52/40				X
	852/1999, *Borisenko* A/58/40	X A/58/40, A/59/40		X		X
Iceland (1)	1306/2004, *Haraldsson and Sveinsson*, A/62/40	X A/63/40, A/64/40				X
Italy (1)	699/1996, *Maleki* A/54/40	X A/55/40		X		X
Jamaica (98)	92 cases*					X

State party and number of cases with violation	*Communication number, author and relevant Committee report*	*Follow-up response received from State party*	*Satisfactory response*	*Unsatisfactory response*	*No response*	*Follow-up dialogue ongoing*
Jamaica (*cont'd*)	**Note*: See A/59/40. Twenty-five detailed replies were received, of which 19 indicated that the State party would not implement the Committee's recommendations; in 2, it promises to investigate; in 1, it announces the author's release (592/1994 — Clive Johnson — see A/54/40). There were 36 general replies indicating that death sentences have been commuted. No follow-up replies in 31 cases.					
	695/1996, *Simpson* A/57/40	X A/57/40, A/58/40, A/59/40, A/63/40, A/64/40				X
	792/1998, *Higginson* A/57/40				X	X
	793/1998, *Pryce* A/59/40				X	X
	796/1998, *Reece* A/58/40				X	X
	797/1998, *Lobban* A/59/40				X	X
	798/1998, *Howell* A/59/40	X A/61/40				X
Kyrgyzstan (13)	1275/2004, *Umetaliev and Tashtanbekova* A/64/40	X A/65/40				X
	1312/2004, *Latifulin* A/65/40	X A/66/40				X
	1338/2005, *Kaldarov* A/65/40	X A/66/40				X
	1369/2005, *Kulov* A/65/40	X A/66/40				X
	1402/2005, *Krasnov* A/66/40	X A/66/40				X
	1461, 1462, 1476 and 1477/2006, *Maksudov, Rakhimov, Tashbaev, Pirmatov* A/63/40	X A/65/40				X
	1470/2006, *Toktakunov* A/66/40					X

State party and number of cases with violation	*Communication number, author and relevant Committee report*	*Follow-up response received from State party*	*Satisfactory response*	*Unsatisfactory response*	*No response*	*Follow-up dialogue ongoing*
Kyrgyzstan (*cont'd*)	1503/2006, *Akhadov* A/66/40					X
	1545/2007, *Gunan* A/66/40					X
	1756/2008, *Moidunov and Zhumbaeva* A/66/40					X
Latvia (1)	1621/2007, *Raihman* A/66/40					X
Libyan Arab Jamahiriya (8)	440/1990, *El-Megreisi* A/49/40				X	X
	1107/2002, *El Ghar* A/60/40	X A/61/40, A/62/40				X A/62/40
	1143/2002, *Dernawi* A/62/40				X	X
	1295/2004, *El Awani* A/62/40				X	X
	1422/2005, *El Hassy* A/63/40				X	X
	1640/2007, *El Abani* A/65/40					X
	1751/2008, *Aboussedra et al.* A/66/40					X
	1776/2008, *Ali Bashasha and Hussein Bashasha* A/66/40					X
Madagascar (4)	49/1979, *Marais* Eighteenth session Selected Decisions, vol. 2	A/52/40			X*	X
	**Note*: According to the annual report (A/52/40), the author indicated that he had been released. No further information provided.					
	115/1982, *Wight* Twenty-fourth session Selected Decisions, vol. 2	A/52/40			X*	X
	**Note*: According to the annual report (A/52/40), the author indicated that he had been released. No further information provided.					

State party and number of cases with violation	*Communication number, author and relevant Committee report*	*Follow-up response received from State party*	*Satisfactory response*	*Unsatisfactory response*	*No response*	*Follow-up dialogue ongoing*
	132/1982, *Jaona* Twenty-fourth session Selected Decisions, vol. 2	A/52/40			X	X
	155/1983, *Hammel* A/42/40 Selected Decisions, vol. 2	A/52/40			X	X
Nepal (3)	1469/2006, *Sharma* A/64/40	X A/64/40, A/66/40				X
	1761/2008, *Giri et al.* A/66/40					X
	1870/2009, *Sobhraj* A/65/40	X A/66/40				X
Netherlands (5)	786/1997, *Vos* A/54/40	X A/55/40		X		X
	976/2001, *Derksen* A/59/40	X A/60/40				X
	1238/2003, *Jongenburger Veerman* A/61/40				X	X
	1564/2007, *X.H.L.* A/66/40					X
	1797/2008, *Mennen* A/65/40					X
New Zealand (2)	1368/2005, *Britton* A/62/40	X A/63/40				X
	1512/2006, *Dean* A/64/40	X A/65/40			X	X
Nicaragua (1)	328/1988, *Zelaya Blanco* A/49/40	X A/56/40, A/57/40, A/59/40				X
Norway (2)	1155/2003, *Leirvag* A/60/40	X A/61/40	X* (A/61/40)			X
	**Note*: Additional follow-up information expected.					
	1542/2007, *Aboushanif* A/63/40	X A/65/40				X

State party and number of cases with violation	*Communication number, author and relevant Committee report*	*Follow-up response received from State party*	*Satisfactory response*	*Unsatisfactory response*	*No response*	*Follow-up dialogue ongoing*
Panama (2)	289/1988, *Wolf* A/47/40	X A/53/40				X
	473/1991, *Barroso* A/50/40	X A/53/40				X
Paraguay (1)	1407/2005, *Asensi* A/64/40	X A/65/40, A/66/40				X
Peru (14)	202/1986, *Ato del Avellanal* A/44/40	X A/52/40, A/59/40, A/62/40 and A/63/40				X
	203/1986, *Muñoz Hermosa* A/44/40	X A/52/40, A/59/40				X
	263/1987, *González del Río* A/48/40	X A/52/40, A/59/40				X
	309/1988, *Orihuela Valenzuela* A/48/40	X A/52/40, A/59/40				X
	540/1993, *Celis Laureano* A/51/40	X A/59/40				X
	577/1994, *Polay Campos* A/53/40	X A/53/40, A/59/40				X
	678/1996, *Gutiérrez Vivanco* A/57/40	X A/58/40, A/59/40, A/64/40				X
	906/1999, *Vargas-Machuca* A/57/40				X A/58/40, A/59/40	X
	981/2001, *Gómez Casafranca* A/58/40	X A/59/40				X
	1058/2002, *Vargas* A/61/40	X A/61/40 and A/62/40				X
	1125/2002, *Quispe* A/61/40	X A/61/40				X
	1126/2002, *Carranza* A/61/40	X A/61/40, A/62/40				X

State party and number of cases with violation	*Communication number, author and relevant Committee report*	*Follow-up response received from State party*	*Satisfactory response*	*Unsatisfactory response*	*No response*	*Follow-up dialogue ongoing*
Peru (*cont'd*)	1153/2003, *K.N.L.H.* A/61/40	X A/61/40, A/62/40 and A/63/40				X
	1457/2006, *Poma Poma* A/64/40	X A/65/40,				X
Philippines (10)	788/1997, *Cagas* A/57/40	X A/59/40, A/60/40, A/61/40				X
	868/1999, *Wilson* A/59/40	X A/60/40, A/61/40, A/62/40		X A/62/40		X
	869/1999, *Piandiong et al*. A/56/40	X N/A				X
	1089/2002, *Rouse* A/60/40				X	X
	1320/2004, *Pimentel et al*. A/62/40	X A/63/40, A/64/40, A/66/40				X
	1421/2005, *Larrañaga* A/61/40				X	X
	1466/2006, *Lumanog and Santos* A/63/40	X A/65/40, A/66/40				X
	1559/2007, *Hernandez* A/65/40					X
	1560/2007, *Marcellana and Gumanoy*, A/64/40				X	X
	1619/2007, *Pestaño* A/65/40	X A/66/40				X
Portugal (1)	1123/2002, *Correia de Matos* A/61/40	X A/62/40,				X
Republic of Korea (119)	518/1992, *Sohn* A/50/40	X A/60/40, A/62/40				X
	574/1994, *Kim* A/54/40	X A/60/40, A/62/40, A/64/40				X
	628/1995, *Park* A/54/40	X A/54/40, A/64/40				X
	878/1999, *Kang*	X				X

State party and number of cases with violation	*Communication number, author and relevant Committee report*	*Follow-up response received from State party*	*Satisfactory response*	*Unsatisfactory response*	*No response*	*Follow-up dialogue ongoing*
	A/58/40	A/59/40, A/64/40				
Republic of Korea (*cont'd*)	926/2000, *Shin* A/59/40	X A/60/40, A/62/40, A/64/40				X
	1119/2002, *Lee* A/60/40	X A/61/40, A/64/40				X
	1321-1322/2004, *Yoon, Yeo-Bzum and Choi, Myung-Jin* A/62/40	X A/62/40 and A/63/40 A/64/40				X
	1593 to 1603/2007, *Jung et al.* A/65/40	X A/66/40				X
	1642-1741/2007, *Jeong et al.* A/66/40					X
Romania (1)	1158/2003, *Blaga* A/60/40				X	X
Russian Federation (15)	712/1996, *Smirnova* A/59/40	X A/60/40				X
	763/1997, *Lantsov* A/57/40	A/58/40, A/60/40		X		X
	770/1997, *Gridin* A/55/40	A/57/40, A/60/40		X		X
	888/1999, *Telitsin* A/59/40	X A/60/40				X
	815/1997, *Dugin* A/59/40	X A/60/40				X
	889/1999, *Zheikov* A/61/40	X A/62/40				X A/62/40
	1218/2003, *Platanov* A/61/40	X A/61/40				X
	1232/2003, *Pustovalov* A/65/40	X A/66/40				X
	1278/2004, *Reshnetnikov* A/64/40				X	X

State party and number of cases with violation	*Communication number, author and relevant Committee report*	*Follow-up response received from State party*	*Satisfactory response*	*Unsatisfactory response*	*No response*	*Follow-up dialogue ongoing*
Russian Federation (*cont'd*)	1304/2004, *Khoroshenko* A/66/40					X
	1310/2004, *Babkin* A/63/40	X, A/64/40, A/66/40				X
	1410/2005, *Yevdokimov and Rezanov* A/66/40					X
	1447/2006, *Amirov* A/64/40	X A/65/40, A/66/40				X
	1577/2007, *Usaev* A/65/40	X A/66/40				X
	1605/2007, *Zyuskin* A/66/40					X
Saint Vincent and the Grenadines (1)	806/1998, *Thompson* A/56/40				X A/61/40	X
Serbia (1)	1556/2007, *Novaković* A/66/40	X A/66/40				X
Sierra Leone (3)	839/1998, *Mansaraj et al*. A/56/40	X A/57/40, A/59/40				X
	840/1998, *Gborie et al*. A/56/40	X A/57/40, A/59/40				X
	841/1998, *Sesay et al*. A/56/40	X A/57/40, A/59/40				X
South Africa (1)	1818/2008, *McCallum* A/66/40					X
Spain (22)	493/1992, *Griffin* A/50/40	X A/59/40,* A/58/40				X
	**Note*: According to this report, information was provided in 1995, but was not published. It appears from the follow-up file that, in this response, dated 30 June 1995, the State party challenged the Committee's Views.					
	526/1993, *Hill* A/52/40	X A/53/40, A/56/40, A/58/40, A/59/40, A/60/40, A/61/40, A/64/40				X
	701/1996, *Gómez Vásquez*	X				X

State party and number of cases with violation	*Communication number, author and relevant Committee report*	*Follow-up response received from State party*	*Satisfactory response*	*Unsatisfactory response*	*No response*	*Follow-up dialogue ongoing*
	A/55/40	A/56/40, A/57/40, A/58/40, A/60/40, A/61/40				
Spain (*cont'd*)	864/1999, *Ruiz Agudo* A/58/40				X A/61/40	X
	986/2001, *Semey* A/58/40	X A/59/40, A/60/40, A/61/40				X
	1006/2001, *Muñoz* A/59/40				X A/61/40	X
	1007/2001, *Sineiro Fernando* A/58/40	X A/59/40, A/60/40, A/61/40				X
	1073/2002, *Terón Jesús* A/60/40				X A/61/40	X
	1095/2002, *Gomariz* A/60/40				X A/61/40	X
	1101/2002, *Alba Cabriada* A/60/40				X A/61/40	X
	1104/2002, *Martínez Fernández* A/60/40				X A/61/40	X
	1122/2002, *Lagunas Castedo*, A/64/40				X	X
	1211/2003, *Oliveró* A/61/40				X	X
	1325/2004, *Conde* A/62/40				X	X
	1332/2004, *Garcia et al.* A/62/40				X	X
	1351 and 1352/2005, *Hens and Corujo* A/63/40				X	X
	1363/2005, *Gayoso Martínez* A/65/40	X A/66/40				X
	1364/2005, *Carpintero* A/64/40					X

State party and number of cases with violation	*Communication number, author and relevant Committee report*	*Follow-up response received from State party*	*Satisfactory response*	*Unsatisfactory response*	*No response*	*Follow-up dialogue ongoing*
Spain (*cont'd*)	1381/2005, *Hachuel* A/62/40				X	X
	1473/2006, *Morales Tornel*, A/64/40	X A/66/40				X
	1493/2006, *Williams Lecraft* A/64/40	X A/65/40, A/66/40	X			
Sri Lanka (13)	916/2000, *Jayawardena* A/57/40	X A/58/40, A/59/40, A/60/40, A/61/40				X
	950/2000, *Sarma* A/58/40	X A/59/40, A/60/40, A/63/40				X
	909/2000, *Kankanamge* A/59/40	X A/60/40				X
	1033/2001, *Nallaratnam* A/59/40	X A/60/40, A/64/40				X
	1189/2003, *Fernando* A/60/40	X A/61/40		X (A/61/40)		X
	1249/2004, *Immaculate Joseph et al.* A/61/40	X A/61/40				X
	1250/2004, *Rajapakse* A/61/40				X	X
	1373/2005, *Dissanakye* A/63/40					X
	1376/2005, *Bandaranayake* A/63/40					X
	1406/2005, *Weerawanza*, A/64/40				X	X
	1426/2005, *Dingiri Banda* A/63/40				X	X
	1432/2005, *Gunaratna* A/64/40				X	X

State party and number of cases with violation	*Communication number, author and relevant Committee report*	*Follow-up response received from State party*	*Satisfactory response*	*Unsatisfactory response*	*No response*	*Follow-up dialogue ongoing*
Sri Lanka (*cont'd*)	1436/2005, *Sathasivam* A/63/40				X A/65/40	X
Suriname (8)	146/1983, *Baboeram* Twenty-fourth session Selected Decisions, vol. 2	X A/51/40, A/52/40, A/53/40, A/55/40, A/61/40				X
	148 to 154/1983, *Kamperveen*, *Riedewald*, *Leckie*, *Demrawsingh*, *Sohansingh*, *Rahman*, *Hoost* Twenty-fourth session Selected Decisions, vol. 2	X A/51/40, A/52/40, A/53/40, A/55/40, A/61/40				X
Sweden (1)	1416/2005, *Alzery* A/62/40	X A/62/40				X
Tajikistan (23)	964/2001, *Saidov* A/59/40	X A/60/40, A/62/40*				X
	973/2001, *Khalilov* A/60/40	X A/60/40, A/62/40*				X
	985/2001, *Aliboeva* A/61/40	A/62/40*			X A/61/40	X
	1042/2002, *Boymurudov* A/61/40	X A/62/40, A/63/40				X
	1044/2002, *Nazriev* A/61/40	X A/62/40, A/63/40				X
	1096/2002, *Abdulali Ismatovich Kurbanov*	A/59/40, A/60/40, A/62/40*				X
	* The State party has not replied but it has met several times with the Special Rapporteur.					
	1108 and 1121/2002, *Karimov* and *Nursatov* A/62/40	X A/63/40				X
	1117/2002, *Khomidov* A/59/40	X A/60/40				X
	1195/2003, *Dunaev*, A/64/40				X	X
	1208/2003, *B. Kurbanov* A/61/40	X A/62/40		X A/62/40		X

State party and number of cases with violation	*Communication number, author and relevant Committee report*	*Follow-up response received from State party*	*Satisfactory response*	*Unsatisfactory response*	*No response*	*Follow-up dialogue ongoing*
Tajikistan (*cont'd*)	1200/2003, *Sattorova* A/64/40	X A/65/40				X
	1209/2003, 1231/2003 and 1241/2004, *Rakhmatov, Safarov and Salimov*, and *Mukhammadiev* A/63/40					X
	1263/2004 and 1264/2004, *Khuseynov, Butaev* A/64/40	X A/65/40				X
	1276/2004, *Idiev* A/64/40	X A/65/40			X	X
	1348/2005, *Ashurov* A/62/40				X	X
	1401/2005, *Kirpo* A/65/40	X A/66/40				X
	1499/2006, *Iskandarov* A/66/40					X
	1519/2006, *Khostikoev* A/65/40	X A/66/40				X
Togo (4)	422 to 424/1990, *Aduayom et al*. A/51/40	X A/56/40, A/57/40		X A/59/40		X
	505/1992, *Ackla* A/51/40	X A/56/40, A/57/40		X A/59/40		X
Trinidad and Tobago (23)	232/1987, *Pinto* A/45/40 and 512/1992, *Pinto* A/51/40	X A/51/40, A/52/40, A/53/40		X		X
	362/1989, *Soogrim* A/48/40	X A/51/40, A/52/40 A/53/40, A/58/40			X	X
	434/1990, *Seerattan* A/51/40	X A/51/40, A/52/40, A/53/40		X		X
	523/1992, *Neptune*	X		X		X

State party and number of cases with violation	*Communication number, author and relevant Committee report*	*Follow-up response received from State party*	*Satisfactory response*	*Unsatisfactory response*	*No response*	*Follow-up dialogue ongoing*
	A/51/40	A/51/40, A/52/40 A/53/40, A/58/40				
Trinidad and Tobago (*cont'd*)	533/1993, *Elahie* A/52/40				X	X
	554/1993, *La Vende* A/53/40				X	X
	555/1993, *Bickaroo* A/53/40				X	X
	569/1996, *Mathews* A/43/40				X	X
	580/1994, *Ashby* A/57/40				X	X
	594/1992, *Phillip* A/54/40				X	X
	672/1995, *Smart* A/53/40				X	X
	677/1996, *Teesdale* A/57/40				X	X
	683/1996, *Wanza* A/57/40				X	X
	684/1996, *Sahadath* A/57/40				X	X
	721/1996, *Boodoo* A/57/40				X	X
	752/1997, *Henry* A/54/40				X	X
	818/1998, *Sextus* A/56/40				X	X
	845/1998, *Kennedy* A/57/40				X A/58/40	X
	899/1999, *Francis et al.* A/57/40				X A/58/40	X
	908/2000, *Evans* A/58/40				X	X

State party and number of cases with violation	*Communication number, author and relevant Committee report*	*Follow-up response received from State party*	*Satisfactory response*	*Unsatisfactory response*	*No response*	*Follow-up dialogue ongoing*
Trinidad and Tobago (*cont'd*)	928/2000, *Sooklal* A/57/40				X	X
	938/2000, *Girjadat Siewpers et al.* A/59/40				X A/51/40, A/53/40	X
Turkmenistan (3)	1450/2006, *Komarovsky* A/63/40				X	X
	1460/2006, *Yklymova* A/64/40					X
	1530/2006, *Bozbey* A/66/40					X
Ukraine (3)	781/1997, *Aliev* A/58/40	X A/60/40		X A/60/40		X
	1412/2005, *Butovenko* A/66/40					X
	1535/2006, *Shchetka* A/66/40					X
Uruguay (44)	**A.** [5/1977, *Massera* Seventh session 43/1979, *Caldas* Nineteenth session 63/1979, *Antonaccio* Fourteenth session 73/1980, *Izquierdo* Fifteenth session 80/1980, *Vasiliskis* Eighteenth session 83/1981, *Machado* Twentieth session 84/1981, *Dermit Barbato* Seventeenth session 85/1981, *Romero* Twenty-first session 88/1981, *Bequio* Eighteenth session 92/1981, *Nieto*	X 43 follow-up replies received in A/59/40*		X		X

State party and number of cases with violation	*Communication number, author and relevant Committee report*	*Follow-up response received from State party*	*Satisfactory response*	*Unsatisfactory response*	*No response*	*Follow-up dialogue ongoing*
	Nineteenth session 103/1981, *Scarone* Twentieth session 105/1981, *Cabreira* Nineteenth session 109/1981, *Voituret* Twenty-first session 123/1982, *Lluberas* Twenty-first session]					
Uruguay (*cont'd*)	**B.** [103/1981, *Scarone* 73/1980, *Izquierdo* 92/1981, *Nieto* 85/1981, *Romero*]					
	C. [63/1979, *Antonaccio* 80/1980, *Vasiliskis* 123/1982, *Lluberas*]					
	D. [4/1977, *Ramirez* Fourth session 6/1977, *Sequeiro* Sixth session 25/1978, *Massiotti* Sixteenth session 28/1978, *Weisz* Eleventh session 32/1978, *Touron* Twelfth session 33/1978, *Carballal* Twelfth session 37/1978, *De Boston* Twelfth session 44/1979, *Pietraroia* Twelfth session 52/1979, *Lopez Burgos* Thirteenth session 56/1979, *Celiberti* Thirteenth session 66/1980, *Schweizer* Seventeenth session 70/1980, *Simones*					

State party and number of cases with violation	*Communication number, author and relevant Committee report*	*Follow-up response received from State party*	*Satisfactory response*	*Unsatisfactory response*	*No response*	*Follow-up dialogue ongoing*
Uruguay (*cont'd*)	Fifteenth session 74/1980, *Estrella* Eighteenth session 110/1981, *Viana* Twenty-first session 139/1983, *Conteris* Twenty-fifth session 147/1983, *Gilboa* Twenty-sixth session 162/1983, *Acosta* Thirty-fourth session]					
	E. [30/1978, *Bleier* Fifteenth session 84/1981, *Dermit Barbato* Seventeenth session 107/1981, *Quinteros* Nineteenth session]					
	159/1983, *Cariboni*				X	X

Note*: Follow-up information was provided on 17 October 1991 (unpublished). The list of cases under **A: the State party submitted that on 1 March 1985, the competence of the civil courts was re-established. The amnesty law of 8 March 1985 benefited all the individuals who had been involved as authors, accomplices or accessory participants in political crimes or crimes committed for political purposes, from 1 January 1962 to 1 March 1985. The law allowed those individuals held responsible of intentional murder to have either their conviction reviewed or their sentence reduced. Pursuant to article 10 of the Act on National Pacification all the individuals imprisoned under "measures of security" were released. In cases subjected to review, appellate courts either acquitted or condemned the individuals. By virtue of Act 15.783 of 20 November all the individuals who had previously held a public office were entitled to return to their jobs. On cases under **B**: the State party indicates that these individuals were pardoned by virtue of Act 15.737 and released on 10 March 1985. On cases under **C**: these individuals were released on 14 March 1985; their cases were included under Act 15.737. On cases under **D**: from 1 March 1985, the possibility to file an action for damages was open to all of the victims of human rights violations which occurred during the de facto government. Since 1985, 36 suits for damages have been filed, 22 of them for arbitrary detention and 12 for the return of property. The Government settled Mr. Lopez's case on 21 November 1990, by paying him US$ 200,000. The suit filed by Ms. Lilian Celiberti is still pending. Besides the aforementioned cases, no other victim has filed a lawsuit against the State claiming compensation. On cases under **E**: on 22 December 1986, the Congress passed Act 15.848, known as "termination of public prosecutions". Under the Act, the State can no longer prosecute crimes committed before 1 March 1985 by the military or the police for political ends or on orders received from their superiors. All pending proceedings were discontinued. On 16 April 1989, the Act was confirmed by referendum. The Act required investigating judges to send reports submitted to the judiciary about victims of disappearances to the Government, for the latter to initiate inquiries.

State party and number of cases with violation	*Communication number, author and relevant Committee report*	*Follow-up response received from State party*	*Satisfactory response*	*Unsatisfactory response*	*No response*	*Follow-up dialogue ongoing*
	A/43/40 Selected Decisions, vol. 2					
Uruguay (*cont'd*)	322/1988, *Rodríguez* A/51/40, A/49/40				X A/51/40	X
	1887/2009, *Peirano Basso* A/66/40					X
Uzbekistan (29)	907/2000, *Siragev* A/61/40	X A/61/40				X
	911/2000, *Nazarov* A/59/40	X A/60/40		X		X
	915/2000, *Ruzmetov* A/61/40				X	X
	917/2000, *Arutyunyan* A/59/40	X A/60/40		X A/60/40		X
	931/2000, *Hudoyberganova* A/60/40	X A/60/40		X A/60/40		X
	959/2000, *Bazarov* A/61/40	X A/62/40				X A/62/40
	971/2001, *Arutyuniantz* A/60/40	X A/60/40				X
	1017/2001, *Maxim Strakhov* and 1066/2002, *V. Fayzulaev* A/62/40				X	X
	1041/2002, *Refat Tulayganov* A/62/40				X	X
	1043/2002, *Chikiunov* A/62/40				X	X
	1057/2002, *Korvetov* A/62/40	X A/62/40				X A/62/40
	1071/2002, *Agabekov* A/62/40				X	X

State party and number of cases with violation	*Communication number, author and relevant Committee report*	*Follow-up response received from State party*	*Satisfactory response*	*Unsatisfactory response*	*No response*	*Follow-up dialogue ongoing*
Uzbekistan (*cont'd*)	1140/2002, *Iskandar Khudayberganov* A/62/40				X	X
	1150/2002, *Azamat Uteev* A/63/40	X A/64/40		X		X
	1163/2003, *Isaev and Karimov* A/64/40	X A/65/40				X
	1225/2003, *Eshonov* A/65/40	X A/66/40				X
	1280/2004, *Tolipkhudzhaev* A/64/40	X A/66/40				X
	1284/2004, *Kodirov* A/65/40	X A/66/40				X
	1334/2004, *Mavlonov and Sa'di* A/64/40				X	X
	1378/2005, *Kasimov* A/64/40					X
	1382/2005, *Salikh*, A/64/40	X A/65/40				X
	1418/2005, *Iskiyaev*, A/64/40	X A/65/40				X
	1449/2006, *Umarov* A/66/40	X A/66/40				X
	1478/2006, *Kungurov* A/66/40					X
	1552/2007, *Lyashkevich* A/65/40	X A/66/40				X
	1585/2007, *Batyrov* A/64/40	X A/66/40				X
	1589/2007, *Gapirjanov* A/65/40	X A/66/40				X
	1769/2008, *Ismailov*					X

State party and number of cases with violation	*Communication number, author and relevant Committee report*	*Follow-up response received from State party*	*Satisfactory response*	*Unsatisfactory response*	*No response*	*Follow-up dialogue ongoing*
	A/66/40					
Venezuela (Bolivarian Republic of) (1)	156/1983, *Solórzano* A/41/40 Selected Decisions, vol. 2	X A/59/40*		X		X
	**Note*: According to this report, information was provided in 1995 (unpublished). In its response, the State party stated that it had failed to contact the author's sister and that the author had not initiated proceedings for compensation from the State party. It made no reference to any investigation carried out by the State, as requested by the Committee.					
Zambia (4)	390/1990, *Lubuto* A/51/40	X A/62/40			X	X
	821/1998, *Chongwe* A/56/40	X A/56/40, A/57/40, A/59/40, A/61/40, A/64/40, A/66/40				X
	856/1999, *Chambala* A/58/40	X A/62/40			X	X
	1132/2002, *Chisanga* A/61/40	X A/61/40, A/63/40, A/64/40, A/65/40				X