



**International covenant  
on civil and  
political rights**

Distr.  
RESTRICTED\*

CCPR/C/85/D/1056/2002  
21 November 2005

Original: ENGLISH

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HUMAN RIGHTS COMMITTEE  
Eighty-fifth session  
17 October – 3 November 2005

**DECISION**

**Communication No. 1056/2002**

<u>Submitted by:</u>	Svetlana Khachatrian (represented by counsel, Mr. Arthur Grigorian)
<u>Alleged victim:</u>	The author
<u>State Party:</u>	Armenia <sup>1</sup>
<u>Date of communication:</u>	24 September 2001 (initial submission)
<u>Document references:</u>	Special Rapporteur's rule 97 decision, transmitted to the State party on 4 March 2002 (not issued in document form)
<u>Date of adoption of decision:</u>	28 October 2005

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\* Made public by decision of the Human Rights Committee.

<sup>1</sup> The Covenant and the Optional Protocol entered into force in relation to Armenia on 23 September 1993

*Subject matter:* Conviction for assault; inability to examine young child to corroborate self-defence

*Substantive issues:* Equality of arms; right to examine a material witness

*Procedural issues:* None

*Articles of the Covenant:* 2(3); 14(1), 3(a),(b), and (e)

*Article of the Optional Protocol:* 2

[ANNEX]

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

Eighty-fifth session

concerning

**Communication No. 1056/2002\*\***

Submitted by: Svetlana Khachatrian (represented by counsel,  
Mr. Arthur Grigorian)

Alleged victim: The author

State Party: Armenia

Date of communication: 24 September 2001 (initial submission)

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

Meeting on 28 October 2005,

Adopts the following:

**DECISION ON ADMISSIBILITY**

1. The author is Svetlana Khachatrian, an Armenian citizen, born in 1958. She claims to be a victim of violations by Armenia of articles 2, paragraph 3; and 14, paragraphs 1, 3(a),(b) and (e) of the International Covenant on Civil and Political Rights. She is represented by counsel.

**Factual background**

2.1 Ms. Khachatrian lived with her daughter, her sister-in-law, Ms. Zakarian, and Ms. Zakarian's son in an apartment in Yerevan. Her relationship with Ms. Zakarian was strained, and on 7 April 2000, a domestic argument arose between them. Following the argument, Ms. Khachatrian was standing on the balcony with her daughter, when Ms. Zakarian approached them waving a knife, shouting that she was going to kill Ms. Khachatrian. Fearing that she or her daughter would be injured, Ms. Khachatrian reached for

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\*\* The following members of the Committee participated in the 7 examination of the present communication: Mr. Nisuke Ando, Mr. Prafullachandra Natwarlal Bhagwati, Mr. Alfredo Castillero Hoyos, Ms. Christine Chanet, Mr. Maurice Glèlè Ahanhanzo, Mr. Edwin Johnson, Mr. Walter Kälin, Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer Lallah, Mr. Michael O'Flaherty, Ms. Elisabeth Palm, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Ivan Shearer, Mr. Hipólito Solari-Yrigoyen, Ms. Ruth Wedgwood and Mr. Roman Wieruszewski.

a glass jar and threw it at Ms. Zakarian, hitting her in the face, and causing Ms. Zakarian to drop her knife; Ms. Zakarian sustained injuries to her face and was hospitalized. At the time of the attack, Ms. Zakarian's son was in a room adjoining the balcony, but the curtains were drawn, and so he could not have seen what occurred.

2.2 On 12 May 2000, a criminal investigation into the incident was opened, which was described in the police order opening the investigation as an incident in which Ms. Khachatrian had intentionally caused light bodily injury, in apparent contravention of section 109 of the Armenian Criminal Code. During the investigation, however, the author was questioned, but only as a witness, not as an accused. Ms. Zakarian's son was also questioned; he stated that he *had* seen what occurred, and that at the time of the incident his mother did not have a knife. However, Ms. Khachatrian's daughter, who was an eyewitness to the incident, and who could have corroborated her mother's version of events, was not questioned. Ms. Khachatrian made numerous oral requests to the investigator for the authorities to question her daughter, however her requests were refused. On 26 May 2000, she filed a complaint with the local Procurator about the biased investigation conducted in the case; she did not receive a reasoned answer to her complaint. On 1 June 2000, she filed a complaint with the city Procurator, complaining that Ms. Zakarian's son had been questioned about the incident but not her daughter; this complaint was left unanswered as well.

2.3 On 27 July 2000, the investigator informed her, in the presence of her lawyer who had only just been allowed to participate in the investigation, that she would be charged with causing serious bodily injury. She was presented with the police file and evidence against her, and learned that on 13 May, the prosecutor had issued an order recognizing Ms. Zakarian as the victim of the incident and as a civil plaintiff. He had also familiarized Ms. Zakarian with the criminal file against Ms. Khachatrian, including the medical assessment of her injuries as 'light'. Subsequently, the investigator had arranged for a further two examinations to be conducted, as a result of which Ms. Zakarian successfully applied to have her injuries reclassified as serious. Ms. Khachatrian was not advised of this until the end of the pre-trial investigation. The investigator had concluded that there was no evidence to charge Ms. Zakarian for attacking Ms. Khachatrian with a knife, and returned to Ms. Zakarian a knife which had previously been seized as evidence.

2.4 At Ms. Khachatrian's trial in the Arabkir and Kanaker-Zeitun Regional Court, her lawyer asked to examine the daughter, noting that the investigator had relied on the evidence provided by Ms. Zakarian's son in deciding to press charges against Ms. Khachatrian instead of Ms. Zakarian. He submitted that to deny his client the right to question her daughter in court would violate article 14 of the Covenant, but the court rejected her lawyer's request without giving a reason.

2.5 On 21 August 2000, Ms. Khachatrian was found guilty and sentenced to two years imprisonment, deferred for a period of two years. She appealed her conviction, complaining that she should have been allowed to question her daughter, and also requesting that she be allowed to question her partner, who at the time of the attack was waiting outside her building for a bus. On 29 September 2000, the Court of Appeal dismissed her appeal, stating that sufficient evidence had been compiled to reach a final decision in the case. Her appeal to the Court of Cassation was dismissed on 26 October 2000, on the same grounds.

### **The complaint**

3.1 The author claims that the courts' failure to allow her to question her daughter and partner about the events in question gave rise to violations of article 14, paragraphs (1) and 3(e), as she did not receive a fair trial, and was unable to examine two material witnesses in her defence, namely her daughter and her partner.

3.2 She claims that her rights under article 14, paragraph 3(a), were violated, as she was never formally charged with causing light bodily harm, even though she was being investigated in this regard; she was not provided with information about the basis of the charge. Only on 27 June 2000 was she formally presented with the revised charge of causing serious bodily injury, the same day on which the investigation formally was concluded.

3.3 The author claims that her rights under article 14, paragraph 3(b), were violated, because, as a result of not having had the formal status of an accused until the end of the investigation period, she was deprived of certain rights in the preparation of her defence, in particular the right to seek expert opinions. Further, she did not have any possibility to choose her own lawyer, or to meet with such a person to prepare her defence.

3.4 Finally, the author claims that her right to a remedy under article 2, paragraph 3, of the Covenant has been violated.

### **State party's observations on admissibility and merits and author's comments**

4.1 In its submission of 14 May 2002, the State party contended that the communication is inadmissible and unsubstantiated. It states that on 12 May 2000, a criminal case was opened in relation to an incident in which the author allegedly caused light bodily injury to Ms. Zakarian in apparent contravention of the Armenian Criminal Code. On 5 and 14 June 2000, in accordance with the Armenian Criminal Procedure Code, further medical examinations of the alleged victim were carried out, which determined that Ms. Zakarian had suffered permanent facial disfigurement. On 27 June 2000, the terms of the investigation were altered to reflect the new medical evidence (i.e. alleged causing of *serious* bodily injury).

4.2 On 17 May 2000, Ms. Khachatryan was questioned as a witness, as there was not yet enough evidence to formally charge her and question her as an accused. Through subsequent questioning of Ms. Zakarian, her son, and several other persons, sufficient evidence was obtained to charge Ms. Khachatryan. In the course of the investigation, based on the statements of Ms. Zakarian and her son, and the protocol of the inspection of the scene, it was found that Ms. Khachatryan's version of events was not substantiated.

4.3 The requests of Ms. Khachatryan and her lawyer that the authorities question her daughter, who was then only five years old, were rejected both by the investigating authorities and the courts, because article 207 of the Armenian Criminal Procedure Code provides that minors may be examined only if they are able to provide significant information in relation to a case. Further, evidence subsequently obtained by the authorities established that the author's daughter was not in fact at the scene of the incident.

4.4 The State party contends that all stages of the process were conducted lawfully. All available documentation indicates that the Armenian authorities involved in this matter acted in accordance with both national and international legal standards.

5.1 In comments dated 2 July 2002, the author submits that she was not informed about the nature of the investigation against her in relation to causing light bodily injury, and was not presented with the final charge and evidence against her until the end of the investigation; by contrast, Ms. Zakarian was recognized as a victim much earlier and given access to the criminal file, in particular the medical evidence.

5.2 The author states that the investigator must have had enough evidence to formally charge her with causing light bodily injury, because Ms. Zakarian was recognized as a victim and as a civil claimant.

5.3 The author notes that she suffered an attack on her life, in violation of article 6 of the Covenant, and that the State party refused to provide her with a remedy in relation to this, as required by article 2, paragraph 3 of the Covenant.

5.4 Finally, the author states that the State party offered no explanation of why her request to question her partner was rejected.

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

6.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 93 of its Rules of Procedure, decide whether or not the case 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 same matter is not being examined under another procedure of international investigation or settlement.

6.3 The Committee considers that the author's allegations in relation to the State party's alleged failure to provide her with a remedy for the alleged attack on her life by Ms. Zakarian have not been substantiated and are accordingly inadmissible under article 2 of the Optional Protocol.

6.4 As to the author's claim under articles 14, paragraph 3(a) and 3(b), the Committee notes that the authorities opened their investigation into the incident on 12 May 2000, and did not formally press charges against the author until 27 July 2000. However article 14, paragraph 3(a) applies only to criminal charges, not to criminal investigations; there were no charges against the author until 27 July 2000, when she was duly informed of the charge in question. Furthermore, it has not been established that the authorities used unfair tactics or deliberately refrained from formally laying charges they had every intention to press at a later time; rather, as the State party has explained, charges were not laid at an earlier stage because there was insufficient evidence to charge the author. Whilst the author contests this, the Committee is not in a position to resolve this factual question. Further, the fact that the police shared certain information with Ms. Zakarian, and issued a certificate recognizing her right to bring a civil claim against the author does not involve any violation of article 14(3) of the Covenant, which relates to criminal, and not to civil proceedings. Finally, the author has not substantiated her claim that, because she was not formally charged until the very end of the criminal investigation, she was deprived of the right to seek expert opinions or choose her own lawyer. Accordingly, the Committee considers these claims to be inadmissible under article 2 of the Optional Protocol.

6.5 As to the author's remaining claims under article 14, paragraphs 1 and 3(e), the Committee has noted the State party's arguments that the author's requests for her daughter, and later for her partner, to be examined were rejected on the basis that minors may only be examined if they are able to provide significant information in relation to the case, and that evidence subsequently obtained by the authorities established that in fact neither the author's daughter, nor her partner, were at the scene of the incident. The author maintains that her daughter's evidence was critical to her defence. The Committee observes that, in substance, this part of the communication relates to an evaluation of elements of facts and evidence. It refers to its prior jurisprudence and reiterates that it is generally for the appellate courts of States parties to the Covenant to evaluate facts and evidence in a particular case, unless it can be ascertained that this evaluation was clearly arbitrary or amounted to a denial of justice<sup>2</sup>. The material before the Committee does not show that the courts' examination of the above allegations suffered from such defects. The Committee is not in a position to evaluate the State party's assessment of the competence of the author's daughter and partner to give evidence, or the possible relevance of their evidence to the case. Accordingly, the Committee declares the author's claims in this regard 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, for information.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

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<sup>2</sup> See, for example, Errol Simms v. Jamaica, Communication No. 541/1993, Inadmissibility decision adopted on 3 April 1995.