



**International Covenant on  
Civil and Political Rights**

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Human Rights Committee  
**One hundredth session**  
11 – 29 October 2010

**Decision**

**Communication No. 1636/2007**

<u>Submitted by:</u>	Andreas Onoufriou (not represented by counsel)
<u>Alleged victim:</u>	The author
<u>State Party:</u>	Republic of Cyprus
<u>Date of communication:</u>	5 October 2006 (initial submission)
<u>Document references:</u>	Special Rapporteur's rule 97 decision, transmitted to the State party on 5 December 2007 (not issued in document form)
<u>Date of adoption of decision:</u>	25 October 2010

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

<i>Subject matter:</i>	Legality of the trial and sentencing to 18 years-jail of the author for attempted- murder of a judge and his daughter.
<i>Procedural issue:</i>	Non-exhaustion of domestic remedies; non-substantiation of allegations
<i>Substantive issues:</i>	Fair hearing; prohibition of discrimination
<i>Articles of the Covenant:</i>	Article 14(3) (b), 14(3) (d) and 14(3) (e); article 2; article 26
<i>Articles of the Optional Protocol:</i>	Articles 2; 5, paragraph 2(b)

[Annex]

## Annex

### **Decision of the Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political rights (one hundredth session)**

concerning

#### **Communication No. 1636/2007\*\***

Submitted by: Andreas Onoufriou (not represented by counsel)

Alleged victim: The author

State Party: Republic of Cyprus

Date of communication: 5 October 2006 (initial submission)

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 eighteen-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 the Republic of Cyprus<sup>1</sup>. 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 his daughter to the kindergarten on his way. He first moved his wife's car<sup>2</sup>, 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

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\*\* 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 Chanut, 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. Fabian Omar Salvioli and Mr. Krister Thelin.

<sup>1</sup> The Covenant and its Optional Protocol entered into force for the State party on 2 April 1969 and 15 April 1992 respectively.

<sup>2</sup> The author challenges this factual element.

explosion, which threw him on the ground, and resulted in severe injury. He had to undertake a series of surgical operations, but he still retains physical sequelae<sup>3</sup>. 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 activation mechanism of explosives, which had been placed near the right wheel of the car, and 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 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 n°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 n°63 having placed the bomb at Judge M.M.' house on 29 October 1996. On the night between 29 and 30 October 1996<sup>4</sup>, 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 n°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 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 attempted murder of Judge M.M. and his daughter. After he was extradited, the author was charged of 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<sup>5</sup>. The Assizes Court finally appointed a lawyer to 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.

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<sup>3</sup> It is reported that the Judge lost a toe in the explosion.

<sup>4</sup> i.e. the day of the commission of the offence

<sup>5</sup> This information is drawn from the minutes of the Limassol Assizes Court proceedings (Hearing of 18 June 1997)

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 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: (i) the fact that Prosecution failed to show that he had the intent to murder Judge M.M. and his daughter; (ii) the evaluation of the evidence presented by Prosecution witness n°63 was not proper and correct, as the Prosecution failed to give due weight to contradictions in this witness' testimony to the police; (iii) the lack of credibility of the specialist appointed by the Assizes Court to analyze the explosive materials used for the crime; (iv) police failure to authorize the author to examine the victim's car; (v) the failure to provide the author with the initial testimony of Prosecution witness n°63 before or during the trial; (vi) 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 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<sup>6</sup>. On 7 January 2010, the European Court adopted a decision<sup>7</sup>, in which it found the State party to be in breach of article 3 of the European Convention on Human Rights and fundamental freedoms<sup>8</sup>, 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 twenty-four hour leave.

### **The complaint**

3.1 The author claims that he was illegally tried and sentenced to 18 year-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 of pages were missing<sup>9</sup>. 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.

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<sup>6</sup> Applications N°14171/04, N°26844/06, and N°10181/07. The author's applications to the ECHR in connection with these decisions are not in the file, thus his allegations before the ECHR for these complaints are unknown.

<sup>7</sup> *Onoufriou v. Cyprus*, Application n° 24407/04, Judgment of 7 January 2010 (final 07 April 2010)

<sup>8</sup> Prohibition of torture and inhumane or degrading treatment or punishment.

<sup>9</sup> The author claims that pages reproducing the cross-examination by Prosecution of defense witness n°4, and the examination of defense witness n°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 defense.

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(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<sup>10</sup>.

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(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 n°63, whose single testimony constituted the basis for his conviction, in violation of his rights under article 14(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 (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 in a "stop-list". The author claims that this resulted in a violation of his rights under article 14(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 (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 (2) (b) of the Optional Protocol, for failure to exhaust domestic remedies.

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(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

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<sup>10</sup> 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, none 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 supra*, para. 2.5)

inadmissible under article 5(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(3) (d) of the Covenant.

4.5 Regarding the author's claim, that his Romanian girlfriend, who, he wished should testify as 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 authorized to travel to Cyprus, but never appeared in Court<sup>11</sup>. As such, the author's allegation, that this resulted in a violation of article 14(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(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(2) (b) of 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

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

grounds presented to the Committee before national courts, either in writing or orally<sup>12</sup>. Regarding the testimony of his girlfriend as a defence witness, the author contends that on 3 occasions in 1997<sup>13</sup>, 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<sup>14</sup>, 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.<sup>15</sup>

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 (i) his claim, under article 14(3)(d) of the Covenant, that he was denied the right to legal assistance by the Limassol Assizes Court; (ii) his complaint, under article 14(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 (iii) his allegation that the denial, by the Assizes Court, of his right to have his girlfriend testify as defence witness during his trial, amounted to a breach of his rights under article 14(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

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<sup>12</sup> The author does not provide further details.

<sup>13</sup> 6 June 1997, 11 June 1997, and 17 October 1997.

<sup>14</sup> The author claims that the Romanian airline company *Tarom* only has flights to Cyprus on two definite days of the week.

<sup>15</sup> 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, supra*, para. 2.9.



with regard to the issue of legal representation, and the authorization to have the author's girlfriend testify as defense 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(3)(b) of the Covenant, that he was “forced to accept” the testimony of Prosecution witness n°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<sup>16</sup>.

6.7 Based on the material before it, in particular the Supreme Court judgement of 17 November 2000, the Committee observes that at least 5 other witnesses, in addition to witness n°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 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(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(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.

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<sup>16</sup> See General Comment N°32, Right to equality before courts and tribunals and to a fair trial (article 14), CCPR/C/G/32 (2007), para. 26. See also, *inter alia*, Communications N°541/1993, *Errol Simms v. Jamaica*, inadmissibility decision adopted on 3 April 1995, para. 6.2; No. 1138/2002, *Arenz v. Germany*, decision of 24 March 2004, para. 8.6; No. 1167/2003, *Ramil Rayos v. Philippines*, Views adopted on 27 July 2004, para. 6.7; No. 1399/2005, *Cuartero Casado v. Spain*, decision of 25 July 2005, para. 4.3; and N°1771/2008, *Gbondó v. Germany*, inadmissibility decision adopted on 28 July 2009, para. 6.4.

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<sup>17</sup>. It also recalls that “adequate facilities” for the preparation of one’s defence, within the meaning of article 14(3) (b) of the Covenant, include access to all evidentiary materials, which the prosecution plans to offer in court against the accused, or which are exculpatory<sup>18</sup>. 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<sup>19</sup>.

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(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(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 Committee’s annual report to the General Assembly.]

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<sup>17</sup> See, *supra*, paragraph 6.6.

<sup>18</sup> General Comment N°32, *supra*, note 25, para. 33

<sup>19</sup> See the Concluding Observations on the report of Canada, CCPR/C/CAN/CO/5 (2005), para. 13.