



**International Covenant on
Civil and Political Rights**

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Human Rights Committee
Ninety-eighth session
8 to 26 March 2010

Decision

Communication No. 1572/2007

<u>Submitted by:</u>	Mr. Panteleimon Mathioudakis (represented by counsel, Mr. Yatagantzidis and Ms. Metaxaki)
<u>Alleged victim:</u>	The author
<u>State party:</u>	Greece
<u>Date of communication:</u>	12 January and 12 November 2006 (initial submissions)
<u>Date of adoption of decision:</u>	19 March 2010

* Made public by decision of the Human Rights Committee.

<i>Subject matter:</i>	Revocation of the author's University degree on falsification and forgery charges
<i>Procedural issues:</i>	Incompatibility of claims with the Covenant; Non-exhaustion of domestic remedies
<i>Substantive issues:</i>	Presumption of innocence; Right to review by a higher tribunal according to law
<i>Articles of the Covenant:</i>	14, paragraphs 2 and 5
<i>Articles of the Optional Protocol:</i>	3, 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 (ninety-eighth session)

concerning

Communication No. 1572/2007**

<u>Submitted by:</u>	Mr. Panteleimon Mathioudakis (represented by counsel, Mr. Yatagantzidis and Ms. Metaxaki)
<u>Alleged victim:</u>	The author
<u>State party:</u>	Greece
<u>Date of communication:</u>	12 January and 12 November 2006 (initial submissions)

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

Meeting on 19 March 2010,

Adopts the following:

Decision on admissibility

1. The author of the communication dated 12 January and 12 November 2006, is Panteleimon Mathioudakis, a Greek citizen born in 1968. The author claims to be a victim of a violation by Greece of his right to be presumed innocent and to appeal to a higher court, under article 14, paragraphs 2 and 5, of the Covenant. The author is represented by counsel, Mr. Panayotis Yatagantzidis and Ms. Eleni Metaxaki.

The facts as presented by the author

2.1 On 15 May 1998, the Senate of the National Technical University of Athens revoked the author's diploma in Electrical and Computer Engineering awarded in 1995, on the grounds of lack of a promotional grades on eight courses and the existence of forged (improved) grading on nine other courses, without making any reference on the author's implication in the falsification and forgery. It further decided that an Administrative Inquiry would evaluate if further actions were to be taken. For a job application, the author had asked the National Technical University for a statement of his grade points obtained during his studies. On 14 November 2000, the Administrative Court of Appeal of Athens annulled

** The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, 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. José Luis Pérez Sanchez-Cerro, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Fabian Omar Salvioli and Mr. Krister Thelin..

the University Senate's decision on the grounds that the author had not been heard. On 26 January 2001, after hearing of the author, the Senate of the University revoked his diploma on the same grounds as initially advanced. On 1 February 2002, the Athens Administrative Appeal Court dismissed the author's appeal. The court partly based its decision on the judgment by the one-member Misdemeanour Court of Athens sentencing the author on 1 September 2000 to 18 and 12 months imprisonment for the offences of forgery of certificates and of obtaining by fraud a false certificate (see para. 2.2). The author claims that an appeal in cassation before the Council of State would not have been effective, because such review is limited to legal errors and does not pertain to the ruling on questions of facts.

2.2 As mentioned, on 1 September 2000, the author was sentenced by the Misdemeanour Court of Athens, sitting as a single judge panel, to 18 and 12 months imprisonment for the offences of forgery of certificates and of obtaining by fraud a false certificate. The court found that he had forged his degree awarded by the Technological Education Institute, which allowed him to enter the University and that he had obtained his Electrical and Computer Engineering degree by fraud. On 14 January 2003, the Misdemeanour Court of Athens, sitting as a board of three on appeal, confirmed his conviction. Considering that the court had not proceeded to a new examination of the facts, the author appealed to the Supreme Court, claiming lack of legitimate basis for the decision and absence of reasons in the ruling. His appeal was dismissed on 16 July 2003.

2.3 On 5 November 2004, the European Court of Human Rights declared the author's complaint inadmissible¹.

The complaint

3.1 The author claims to be the victim of violations by the State party of article 14, paragraphs 2 and 5, of the Covenant. He claims that the decisions by the Administrative Court of Appeal violated the presumption of innocence, principle which according to the author, judges consider *ex officio*, as this decision was entirely based on the one-member Misdemeanour Court judgement, while the author's appeal was pending. The author further claims that the Supreme Court ruling of 16 July 2003 also violated article 14, paragraph 2, as it did not contain any reasoning for its dismissal. He further claims that the Misdemeanour Court decision of 1 September 2000 was based entirely on the administrative inquiry and did not proceed to a substantive examination of his case. Finally, he claims that the domestic courts evaluated the facts and evidence in his case arbitrarily, and that they did not address the issue of his knowledge of the forged content of his grading card, and that this amounts to a denial of justice.

3.2 The author further claims that Law No. 2944/2001, by virtue of which the decision rendered by the Administrative Court of Appeal is not subject to appeal, amounts to a violation of article 14, paragraph 5, of the Covenant. He maintains that an appeal in cassation before the Council of State could not be considered effective, as it does not rule on facts². The author argues that despite the administrative nature of the procedure before the Administrative Court of Appeal, the consequence of the cancellation of his university diploma resulted in his social marginalization and financial disablement and should be

¹ The application was declared inadmissible under articles 34 and 35 of the European Convention on Human Rights.

² See Communication No. 836/1998, *Gelazauskas v. Lithuania*, Views adopted on 17 March 2003; Communication No. 986/2001, *Joseph Semey v. Spain*, Views adopted on 30 July 2003; Communication No. 1073/2002, *Terron v. Spain*, Views adopted on 5 November 2004.

regarded as punishment³. The author submits that by not allowing an appeal of the Administrative Court of Appeal decision, the State party violated article 14, paragraph 5, of the Covenant.

Issues and proceedings before the Committee

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 the decision by the Administrative Court of Appeal was based on his first instance sentence while his appeal was still pending and that the Misdemeanour Court, sitting as a panel of a single judge, based its judgement on the administrative inquiry made by the University, as well as that the Supreme Court ruling lacked sufficient reasoning. The Committee recalls its General Comment 32 and its jurisprudence, according to which the presumption of innocence under article 14, paragraph 2, of the Covenant only applies to criminal procedures⁴. It therefore considers the author's claim with regard to the administrative proceedings to be incompatible with the provisions of the Covenant and therefore declares this part of the communication inadmissible under article 3 of the Optional Protocol.

4.3 With regard to the author's claims of a violation by the State of article 14, paragraph 2, of the Covenant, the Committee notes that the author has failed to substantiate this claim, and therefore declares this part of the communication inadmissible under article 2, of the Optional Protocol.

4.4 The Committee has noted the author's claim that despite the administrative nature of the procedure before the Administrative Court of Appeal, the cancellation of his university diplomas should be regarded as punishment. It also notes that the author's case was examined by both administrative and criminal courts. Recalling its General Comment 32, the Committee observes that article 14, paragraph 5, of the Covenant does not apply to any other procedure not being part of a criminal process⁵. Accordingly, the Committee considers that the author's allegation under article 14, paragraph 5, 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 article 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 Committee's annual report to the General Assembly.]

³ See *Engel and others v. The Netherlands*, ECHR, judgment of 23 November 1976; *Albert and Le Compte v. Belgium*, ECHR, judgement of 24 October 1983; *Garyfallou Aebe v. Greece*, ECHR, judgment 24 September 1997 ; *Communication No. 50/1979, Gordon D. van Duzen v. Canada*, views adopted on 7 April 1982, para. 10.2.

⁴ See CCPR/C/GC/32, para. 3.

⁵ See CCPR/C/GC/32, para. 46.