



**International covenant  
on civil and political  
rights**

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HUMAN RIGHTS COMMITTEE  
Ninety-third session  
7 to 25 July 2008

**VIEWS**

**Communication 1486/2006**

<u>Submitted by:</u>	Mr. Andreas Kalamiotis (represented by the World Organisation Against Torture and the Greek Helsinki Monitor)
<u>Alleged victims:</u>	The author
<u>State party:</u>	Greece
<u>Date of communication:</u>	28 March 2006 (initial submission)
<u>Document references:</u>	Special Rapporteur's rule 97 decision, transmitted to the State party on 19 July 2006 (not issued in document form)
<u>Date of adoption of Views</u>	24 July 2008

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

*Subject matter:* Alleged ill-treatment of the author.

*Procedural issue:* Non-exhaustion of domestic remedies; case already examined under another procedure of international investigation; abuse of the right of submission.

*Substantive issue:* Lack of effective remedy regarding the author's complaint of ill-treatment.

*Articles of the Covenant:* 2, paragraph 3 in connection with article 7.

*Articles of the Optional Protocol:* 3; 5, paragraph 2 (a) and (b).

On 24 July 2008, the Human Rights Committee adopted the annexed text as the Committee's Views, under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 1486/2006.

[ANNEX]

ANNEX

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

Ninety-third session

concerning

**Communication 1486/2006\***

<u>Submitted by:</u>	Mr. Andreas Kalamiotis (represented by the World Organisation Against Torture and the Greek Helsinki Monitor)
<u>Alleged victims:</u>	The author
<u>State party:</u>	Greece
<u>Date of communication:</u>	28 March 2006 (initial submission)

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

Meeting on 24 July 2008,

Having concluded its consideration of communication No. 1486/2006, submitted to the Human Rights Committee on behalf of Mr. Andreas Kalamiotis under the Optional Protocol to the International Covenant on Civil and Political Rights,

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

Adopts the following:

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

1. The author of the communication is Mr. Andreas Kalamiotis, a Greek national of Romani ethnic origin, born on 7 January 1980. He claims to be a victim of a violation by Greece of his rights under articles 2, paragraph 3, and 7 (separately and read together); 2, paragraph 1; and 26,

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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, Ms. Christine Chanet, Mr. Yuji Iwasawa, Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer Lallah, Ms. Iulia Antoanella Motoc, Mr. Michael O'Flaherty, Ms. Elisabeth Palm, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Ivan Shearer and Ms. Ruth Wedgwood.

of the Covenant. He is represented by counsel. The Covenant and the Optional Protocol to the Covenant entered into force for Greece on 5 May 1997.

### **The facts as presented by the author**

2.1 In the evening of 14 June 2001, the author was at home with friends listening to music. At around 1:30 a.m. on 15 June 2001 a police car arrived and an officer asked the author to turn off the music, as it was disturbing his neighbours. The author and his friends agreed that they would do so in five minutes and the police officer left. A few minutes later they switched off the radio and the author saw his friends out to their cars. They were about to leave and the author had already re-entered his house when he heard a noise outside and returned to the doorstep. Several police cars were parked in the street and police officers were pointing their guns. One of the police officers had his gun pointed at the author and was threatening to shoot him. Others came towards him, handcuffed him and dragged him to the police car, where they slammed him against the hood and started beating and kicking him repeatedly in front of his children. He did not see what instruments were used to beat him with but he believed they were truncheons. While he was being beaten some of the police officers searched the house.

2.2 The author was taken to the police station of Aghia Paraskevi, where he was kept handcuffed and refers to an exchange of insults with the police officers. Around 11 a.m. on 15 June 2001, the author was taken to the Athens Police Headquarters, where pictures of him were taken while he was still handcuffed. He was then taken to the Athens Misdemeanours Prosecutor with a lawyer of his choice. He was charged with resisting arrest and insulting and threatening the police authorities. The trial was set for 18 June 2001. On that date, before the hearing, the author and his lawyer went to the Forensic medical services, which refused to examine the author on the grounds that he had first to press charges or submit a complaint to the Police station of Aghia Paraskevi. At that point in time, the author hesitated to submit a complaint for fear of retaliation from the police officers who had beaten him.

2.3 The court did not have time to examine the case and the trial was postponed to 25 January 2002. After another postponement the author was tried in absentia on 5 April 2002 and convicted for resisting arrest, insults and threats against police officers. He was sentenced to one year and 80 days imprisonment convertible to a fine, suspended pending appeal. The appeal was heard on 19 January 2005 by the Appeals Court of Athens, which upheld the conviction for resisting arrest and insults but acquitted the author of threats against the police officers. The final sentence was one year and one month imprisonment convertible to a fine.

2.4 On 2 July 2001, the author filed a criminal complaint before the Athens Misdemeanours' Prosecutor against police officer Georgios Yannadakis, and constituted himself as a civil claimant, for the offence of simple bodily injuries. On the same day, the Prosecutor transmitted the complaint to the Magistrate of Koropi to conduct a criminal investigation. Following the author's request, the Prosecutor ordered his examination by the Forensic Services. That examination took place on 3 July 2001, i.e. 18 days after the incident. The forensic report indicated that "because of the long time elapsed since the reported incident and the development of scar tissue it is not possible to further investigate any possible bodily injuries coinciding with the time period of the alleged incident".

2.5 On 28 September 2001, the Magistrate returned the complaint to the Prosecutor informing him that he had declined to investigate for lack of competence. No other explanation was provided. The Prosecutor then sent the complaint, on 26 July 2002, to the Halandri police station for investigation. This station is subordinate to the police directorate where the police officer concerned served and adjacent to Aghia Paraskevi, where the author was held. The investigation started on 4 November 2002. According to the author, a number of procedural irregularities occurred. Thus, he was never asked to provide the addresses of the witnesses after the police could not find them at the addresses initially given. There was no attempt to obtain a statement from his wife, who was also present at the time of his arrest. The author himself was not summoned to testify for further details. Other police officers involved in the incident were not summoned either. The report of the investigation was sent to the Prosecutor on 25 November 2002.

2.6 In May 2003, the case was heard by the Judicial Council of Misdemeanours of Athens which, upon recommendation by the Prosecutor, decided to drop the charges against the police officer for lack of evidence. The ruling was published on 28 August 2003 and it observed that "since no witnesses for the prosecution give evidence in favour of the plaintiff's account, because both witnesses named by the plaintiff were not found at the addresses declared as their residence, the defendant's account and arguments are catalytic, able to shed light, in our opinion, on the true version of the events". It was served on the author by pasting it on his house door on 8 September 2003. No appeal is permitted against such order under Greek law.

2.7 In addition to the filing of a criminal complaint the author sent a letter to the Greek Ombudsman also on 2 July 2001, complaining about the ill-treatment he had suffered and asking that a formal inquiry - "Sworn Administrative Inquiry" - be conducted. As a result, a Brigadier General of the Northeast Attica Police Headquarters wrote to the author on 28 September 2001 indicating that an informal investigation had been conducted and it was concluded that the police had followed the procedures properly and that the author had, inter alia, resisted arrest, used abusive language and threatened the police officers.

2.8 In two letters subsequently addressed to the Directorate of Hellenic Police Staff and the Ombudsman the author insisted that a Sworn Administrative Inquiry be undertaken. On 6 March 2002 a response was received refusing to initiate such an inquiry since the investigation conducted did not reveal any disciplinary responsibilities. The findings of the investigation referred to in the letter showed discrepancies with the findings set out in the letter of 28 September 2001.

2.9 On 22 January 2004 the Ombudsman wrote to the Hellenic Police Headquarters indicating, inter alia, that an informal investigation cannot act as a substitute for the Sworn Administrative Inquiry when it comes to allegations of bodily harm and cruel behaviour and that such Inquiry provides procedural guarantees, as opposed to the informal methods of an informal investigation.

2.10 On 21 March 2002, the NGO Greek Helsinki Monitor submitted a report to the prosecutor containing several cases, including the author's case, of procedural and judicial shortcomings which had resulted in no effective remedies being provided to the victims. Under Greek law, a prosecutor who receives a report, criminal complaint or any information that a punishable act has been committed, is required to institute criminal proceedings by referring the case for

investigation. According to the author, the investigation of the report started only on 12 October 2005 and was summarily dismissed without any real investigation by the Prosecutor, who issued a ruling on 25 November 2005 rejecting all claims of wrongdoing on the part of the police. An appeal was also dismissed by an “Appeals Prosecutor”, without any additional investigation, on 23 September 2006.

### **The complaint**

3.1 The author claims that the facts reveal violations of article 2, paragraph 3, of the Covenant, on its own and in conjunction with article 7, as the State party failed to provide an effective remedy for the acts of torture and ill-treatment to which he was subjected. He recalls the Committee’s jurisprudence and General Comment No. 20, to the effect that complaints of torture and ill-treatment must be investigated promptly and impartially by competent authorities so as to make the remedy effective.

3.2 According to the author, his complaint was not investigated by an independent body with the capacity to impartially examine the allegations against police officers, but by fellow police officers following merely an Oral Administrative Inquiry.

3.3 The author adds that the disciplinary proceedings offer no guarantees of impartiality. The Oral Administrative Inquiry is a closed and internal investigation of the accused police officer conducted by fellow police officers. The evidence and testimonies gathered during this investigation remain inaccessible to the complainant, leaving victims of alleged police misconduct powerless to contest the findings and conclusion. Usually the investigation is limited to a questioning of the police officers involved and, as in the case of the author, neither the victim of ill-treatment nor his witnesses are examined.

3.4 The Sworn Administrative Inquiry is also an internal and confidential police procedure whose safeguards aim to protect the rights of the officer under investigation, rather than those of the complainant. Thus, the inquiry guarantees the right of the “accused” officer to nominate witnesses, to request the postponement of proceedings or the exclusion of the investigating officer, as well as the right of access to the evidence and the right of appeal. By contrast, there are no provisions setting out the rights of the complainant, who does not have the right of access to the hearings and cannot appeal against the findings. In common with the Oral Administrative Inquiry, the complainant only has the right to be informed of the outcome, which consists of a mere paragraph without any reference as to the type of disciplinary penalties imposed, if any. The complainant is usually not entitled to ask for copies of documents gathered in the course of the inquiry.

3.5 As for the judicial investigation, it was initiated over one year after the incident and was neither prompt nor effective, as it included merely the defendant’s statement. The author’s version and the testimony of his witnesses were never requested. Further, the medico-legal examination was futile, as the Forensic Services abstained from making any objective comments upon the author’s injuries.

3.6 Under Greek law, individuals do not have direct access to examination by forensic services. Such an examination can only be obtained by order of investigating officials on the basis of a request by a victim who has filed a complaint of ill-treatment or upon order by the public

prosecutor. The requirement of first filing a complaint restricts access to an effective forensic medical examination. Normally, a victim of ill-treatment will need time to consider the repercussions of filing a formal complaint and this may take weeks and even years, whereas some injuries caused by ill-treatment heal relatively quickly. Consequently, any failure on the part of the competent authorities to ensure prompt forensic examination may effectively result in the complete or partial loss of crucial evidence.

3.7 The treatment of the author amounts to a breach of article 7 of the Covenant. Apart from the beatings, the fact of having a gun pointed at him caused him to fear for his life. He also feared for the security of his wife and children, as they were defenceless against the acts of the police. For example, his wife was insulted when she tried to give her husband his shoes before being taken to the police station, and his children were crying at the sight of their father being beaten. Further, he was subjected to degrading treatment. For instance, while in police custody, he asked for a glass of water and the police officer responded that he could drink water from the toilet. He was also threatened and insulted. These acts are aggravated by the fact that they were committed with a significant level of racial motivation.

3.8 Finally, the author invokes violations of articles 2, paragraph 1 and 26, as he was subjected to discrimination on the basis of his ethnic Roma origin. The police officers used racist language and referred to his ethnic origin in a pejorative way. This fact should be reviewed in the broader context of systematic racism and hostility which law enforcement bodies in Greece display against Roma, as documented by NGOs and intergovernmental organizations. Despite the information in this regard submitted to the Greek authorities, there is no evidence that the judicial investigation or the administrative inquiry carried out by the public prosecutor or the police ever addressed this question. No information was provided concerning steps taken to verify that police officers had inflicted racial verbal abuse upon the author.

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

4.1 On 15 September 2006, the State party objected to the admissibility of the communication. It argues that when two policemen arrived at the house and asked the author to stop disturbing the peace, he reacted threateningly and refused to comply. At the same time, shots were fired from an unidentified source. These events obliged the officers to leave the settlement in order to return with reinforcements. Subsequently, six patrol cars arrived and the author came out of his house cursing the officers. In their efforts to restrict him and take him to the police station he reacted violently and resisted. As a result, he fell and his hands and face were scratched. This attitude continued at the police station, where he tried to attack the officers and refused to comply with their orders. A private citizen who happened to be at the police station at that time testified in this regard. Three other individuals who were at the author's house were also taken to the police station. However, they did not resist and after identity checking they were released without any charges.

4.2 Following these events, the Police filed charges against the author for threatening, insulting and resisting authority and he was brought before the Public Prosecutor, accompanied by a lawyer. He did not complain of any beating by the police officers. Neither did the Public Prosecutor observe any injuries so as to initiate a preliminary investigation procedure. After requesting a three-day postponement he appeared again before the Prosecutor on 18 June 2001,

this time accompanied by his lawyer. Again, he failed to report his alleged ill-treatment. Instead, he waited until 2 July 2001 to file a complaint, making claims against only one officer for simple bodily injury under article 308, para.1 of the Criminal Code. It was only then that he referred, in a vague manner, to beatings and blows to various parts of his body and asked for a forensic examination. The Prosecutor immediately instituted criminal proceedings for bodily injury, forwarded the case file to the Magistrate of Kropia for a preliminary investigation and asked the Forensic Services to examine the author.

4.3 The forensic report indicates that, as a long time had elapsed since the alleged incident, it was impossible to investigate the possible bodily injuries consistent with the allegations. In view of such findings, the fact that the witnesses proposed by the author had not been located at their residence and had therefore not testified and the author's conviction for resisting the authorities, insulting and threatening police officers, the Indictment Chamber of the First Instance Criminal Court of Athens dropped the charges against the police officer concerned.

4.4 The State party argues that, by not reporting the ill-treatment when he appeared before the Public Prosecution on 15 and 18 June 2001, the author did not provide the State, at least not in a timely manner, the opportunity to redress any violation of the Covenant by way of the institution of criminal proceedings by the Public Prosecutor. The Prosecutor was unable to initiate *ex officio* any investigation procedure, as he had no other sources of information apart from the author and his wife.

4.5 When the author filed a complaint on 2 July 2001 he did so only with respect to one officer. Instead of accusing him of serious bodily injury, under articles 309 and 310 of the Criminal Code, he accused him of simple bodily injury (carrying a lighter penalty), under article 308, para. 1, and he only stated his position in the proceedings as civil claimant. As a result, the author turned the prosecution authorities' attention towards the investigation of a minor case and rendered the prosecution of the accused impossible, since the forensic examination was carried out eighteen days after the incidents. Thus, the identification of credible findings after such a long period was impossible, and the Public Prosecutor of the First Instance Criminal Court had to introduce the case to the Indictment Chamber with a motion to acquit. The issue of an acquittal decision renders the criminal judge unable to deal with the civil action.

4.6 The above shows that the author failed to exhaust effective remedies in a timely and consistent manner, and therefore his communication must be considered inadmissible.

4.7 The State party also notes that the communication had been submitted under the 1503 procedure and discontinued. Accordingly, it should be declared inadmissible under article 5, para. 2 (a), of the Optional Protocol.

4.8 Finally, the State party argues that the submission of the communication to the Committee some three years after the acquittal decided by the Indictment Chamber of the First Instance Criminal Court of Athens should be considered abusive.

4.9 On 15 February 2007, the State party submitted observations on the merits of the communication. It argues that the evidence in the case file dealt with by the domestic judicial and police authorities does not show the minimum level of cruelty required to establish a violation of article 7 of the Covenant. The author complained on 2 July 2001 before the Public



Prosecutor of the Misdemeanours' Court of Athens about an assault by police officer Georgios Yannadakis which, however, resulted in a simple bodily injury. This offence is provided for by article 308, para. 1 of the Criminal Code. It is the mildest form of bodily injury provided for and punished by the criminal legislation, contrary to the offence of dangerous and grave bodily injury contained in articles 309 and 310 of the Code. He also notified the Public Prosecutor of the names and addresses of two prosecution witnesses. However, although they were sought in order to testify during the preliminary investigation of the case, they could not be located at the addresses given by the author.

4.10 The author alleges that he stayed in bed at home for 12 days after the events of 15 June 2001. However, instead of going to the forensic service immediately after that, he did so only 18 days later, thus making his examination impossible. According to the report established, no injuries were observed other than some circular scars in the palm of his hands and left elbow. The summary investigation of the case was completed without testimonies by prosecution witnesses. By contrast, the police officers who had participated in the event and testified in the context of the administrative inquiry confirmed that the author had repeatedly resisted their orders so that he was handcuffed and led to the police station. In none of the five police officers' testimonies was there any evidence of use of force by the police against the author. The latter was arrested, committed for trial on charges of resistance, disobedience and insult and sentenced to 14 months and 15 days imprisonment.

4.11 During the informal administrative inquiry by the Deputy Director of the North-Eastern Attica Police Directorate, a citizen who was at the Police Station of Agia Paraskevi on personal business when the author was brought there testified that the author looked like a person who had consumed alcohol and caused havoc at the police station, despite which the police officers were patient with him. The author made no complaint against the police officers and did not file charges against them while at the police station.

4.12 According to the evidence in the case file established during the preliminary investigation at both the judicial and administrative level, any mild bodily injury the author suffered was the result of his resistance to his arrest and did not exceed the minimum level of severity required by article 7 of the Covenant. The judgment of the domestic judicial authorities could only be reviewed by the Committee for manifest arbitrariness or denial of justice, neither of which were evident in this case.

4.13 In addition to the author's complaint of 2 July 2001, a second complaint was filed on 12 October 2005, by the Hellenic Helsinki Monitor against police officers and judicial personnel for violation of their duties in relation with this case. The Public Prosecutor of the Piraeus Court of Appeal dismissed the complaint as she considered that in the author's case no punishable act had been committed by police officers or members of the Judiciary. Although a criminal investigation was conducted against the competent state organs, it was found that they had dealt with the case without any indication of arbitrariness or denial of justice.

4.14 Regarding the author's allegations of violation of article 2, paragraph 3, of the Covenant, the State party explains that a sworn administrative inquiry is ordered together with the institution of disciplinary proceedings against police officers for the verification of offences, such as causing bodily injuries. By contrast, where the evidence is insufficient to initiate

disciplinary proceedings a preliminary investigation is ordered. The issuance of an order for a preliminary investigation is not equivalent to the institution of disciplinary proceedings, and its ultimate object is to carry out an informal but objective and impartial investigation, by collecting the necessary evidence. If sufficient evidence is collected, disciplinary proceedings will be instituted against the responsible officer. In the context of the preliminary investigation all acts required to establish the truth are carried out, such as examination of the complainant and witnesses, on-site inspection or expert investigation, as well as collection of documentary evidence. Because of the informal nature of the preliminary investigation, no administrative/investigative reports are prepared and witnesses are not examined under oath. The informal preliminary investigation and the formal sworn administrative inquiry by the Police provide equivalent guarantees of a reliable and effective investigation of a case. They differ only from a procedural point of view, since the latter is only ordered following the institution of disciplinary proceedings, while the former merely determines whether the conditions are fulfilled for the institution of such proceedings.

4.15 The informal preliminary investigation was carried out by a senior officer of the Hellenic Police who served at another police directorate (North-Eastern Attica Police Directorate), to which the police station where the officers involved serve is hierarchically inferior. His independence should be therefore taken for granted. If the case had been investigated by any other administrative authority it would not have gathered any different evidence.

4.16 In order for an examination under article 2 of the Covenant to be carried out, there should be a violation of article 7. However, in this case there has been no such violation, since the author's mistreatment, if any, did not rise to the minimum level of severity for establishing an offence to human dignity. Consequently, it is not possible to examine independently the author's complaint about lack of effective remedies that could lead to the identification and punishment of those responsible, since no violation of article 7 can be found. If the Committee were to find a violation of article 7, it should be pointed out that the investigation of the case at both the administrative and the judicial level was thorough, effective and capable of leading to the identification and punishment of those responsible. Therefore, the allegation of a violation of article 2 is ill-founded.

4.17 Regarding the author's allegations of discriminatory treatment, they were first raised before the Committee. He did not make any such complaint before any of the competent judicial and police authorities. The force used by the police during the arrest and transport of the author was within legal limits and proportional to the resistance he offered. The author's treatment was not based on his racial origin but on the strength and form of his resistance against the police officers' efforts to arrest him. Accordingly, this part of the communication should be considered as ill-founded on the merits as well.

### **Author's comments**

5.1 In comments dated 18 June 2007, counsel rejects the version of events of the State party. He states that the police officer against whom the author filed a complaint, in his defence testimony dated 4 November 2002, did not refer to any threatening behaviour by the author and that the reinforcements were requested not because of the author's attitude but because of the gunshot. As to the cause of the author's injuries, police documents indicate that they were the

result not of a fall but of the struggle with police officers while the author was resisting arrest. Regarding the testimony of the private citizen who was at the police station when the author was taken there, the State party fails to provide evidence of that testimony, which is simply mentioned as having being given orally to the police investigator. Accordingly, the author expresses doubts about its veracity. Such testimony is allegedly mentioned in the report of the police officer of the Directorate of North-Eastern Attica. However, this report was never provided to the author or the Committee.

5.2 When he appeared before the Prosecutor on 18 June 2001, the author had no opportunity to refer to the ill-treatment, as the hearing was postponed *ex officio*. It was on that same date that he went to the forensic service, but was refused examination.

5.3 The author recalls that neither he nor any of his friends who were eye witnesses were asked to give testimony during either the police or the judicial investigation and maintains his version of the facts as presented in his initial communication.

5.4 Regarding the alleged failure to exhaust domestic remedies, the author recalls that he did not complain about ill-treatment on 15 June 2001 because he was in police detention and feared reprisals. Moreover, the State claims inaccurately that he was taken before the Prosecutor on 18 June 2001. On that date he was scheduled to be tried, but the hearing was postponed. That is why he went to a forensic expert, hoping to get an examination that would strengthen his case.

5.5 The State party claims that the author did not exhaust domestic remedies because in his complaint he referred only to simple bodily injuries. However, according to Greek law, the Prosecutor does not need a complaint by the victim but can investigate *ex officio* any act of unprovoked bodily injury, grave bodily injury and dangerous bodily injury. Likewise, the prosecutor can investigate *ex officio* violations of the anti-racist Law and torture and other related offences against human dignity. The author expected that a proper investigation, once all facts were established, would include some or all of these *ex officio* prosecutable offences. He therefore reaffirms that he exhausted domestic remedies.

5.6 Regarding the State party's argument that the case was dealt with under the 1503 procedure, the author disagrees that this should be a valid reason for inadmissibility. He also objects that the communication should be considered abusive because it was submitted some three years after the final domestic decision and invokes the Committee's jurisprudence in that regard.

5.7 Regarding his claims of violation of article 7 of the Covenant, the author recalls that no court ever ruled on his complaint. The Judicial Council of Misdemeanours that decided not to press charges following a motion of the prosecutor is not a court that holds public hearings where both sides can argue their cases. It meets in camera, hears only the prosecutor and its ruling is not public. It can decide that there will be no trial when convinced that the complaint is "factually unfounded". In the two years following the incident neither he nor any of his witnesses were called to testify by any investigating officer in either the administrative or the judicial investigation. The whole investigation consisted of a sole defence statement the defendant gave to fellow police officers. The police ignored the Ombudsman's insistence that a sworn administrative investigation be carried out. In the context of such an investigation the complainant and his witnesses had to be summoned.

5.8 The State party's comments that the author was convicted by the Athens Misdemeanours Court also for disobedience is defamatory, as he was never charged with such a crime.

5.9 The State party admits that the investigating police officer belonged to the regional North-East Attica Police Directorate to which the Aghia Paraskevi police station is inferior. Yet, it is inaccurate to claim that this was another police directorate. The Aghia Paraskevi police station is one of the 35 police stations administratively subordinated to the North-East Attica Police Directorate; so is the Halandri police station which conducted the judicial investigation on behalf of the prosecutor. Actually, the Aghia Paraskevi police station is in the same building as the North-East Attica Police Directorate. So the "independent" investigating officer was an immediate superior of the officers involved and had an office one floor above them in the same building. In fact, police disciplinary law has since changed and no longer allows a Police Directorate to launch an investigation into alleged wrong-doings of an officer subordinated to it. Rather, it has to be assigned to an officer of a separate Police Directorate.

5.10 According to the author, the State party misleadingly claims that the author first complained of racial discrimination in his communication before the Committee. He did complain before the Ombudsman on 2 July 2001 and such complaint was sent to the Hellenic Police. However, this claim was ignored.

## **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 of procedure, decide whether or not it is admissible under the Optional Protocol of 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.

6.3 As to the State party's argument that the communication should be considered inadmissible because the case was submitted under the procedure established on the basis of ECOSOC Res. 1503 (XLVIII), the Committee recalls its constant jurisprudence that such procedure does not constitute another international procedure within the meaning of article 5, paragraph 2 (a) of the Optional Protocol. This preliminary contention of the State party must therefore be rejected.

6.4 The State party claims that the author did not exhaust domestic remedies, as he filed a complaint only on 2 July 2001 rather than immediately after the incidents, and also did not invoke the proper article of the Criminal Code. The Committee considers that the delays referred to by the State party and the manner in which the complaint was formulated are best dealt with when considering the merits of the case. Furthermore, the State party does not identify any additional remedies that the author should have availed himself of. Accordingly, the Committee considers that the requirements of article 5, paragraph 2 (b), of the Optional Protocol have been met.

6.5 Regarding the State party's contention that the communication should be considered an abuse of the right of submission because it was submitted some three years after the acquittal decision, the Committee recalls that there are no fixed time limits for the submission of communications under the Optional Protocol, and considers that the delay in this case was not so unreasonable as to amount to an abuse of the right of submission.

6.6 Regarding the author's claim under articles 2, paragraph 1 and 26 of the Covenant the Committee considers that it has not been sufficiently substantiated for purposes of admissibility and concludes that this part of the communication is inadmissible under article 2 of the Optional Protocol.

6.7 There being no other obstacles to the admissibility the Committee concludes that the communication is admissible as it raises issues under articles 7 and 2, paragraph 3 of the Covenant and proceeds to its examination on the merits.

### **Consideration of the merits**

7.1 The Human Rights Committee has considered the present communication in the light of all the information made available to it, as provided under article 5, paragraph 1, of the Optional Protocol.

7.2 With regard to the alleged violation of article 2, paragraph 3 in conjunction with article 7 of the Covenant, the Committee notes that the author filed a criminal complaint before the Athens Misdemeanours' Prosecutor on 2 July 2001 and that the Prosecutor forwarded the complaint to the Magistrate of Koropi to conduct a criminal investigation. However, the Magistrate declined to investigate for lack of competence without providing any explanation for his decision. The Committee also notes that disciplinary proceedings were not instituted either and that the only inquiry carried out was in the form of a preliminary police investigation. As confirmed by the State party, such investigation was of an informal nature, and neither the author nor the witnesses cited by him were ever heard. Finally, the case was disposed of by the Judicial Council of Misdemeanours which, on the basis of the police investigation, decided not to file charges against the accused. This decision was taken following a procedure in which the author was not allowed to participate and the concerned police officer's statement was used as the principal basis for coming to a decision.

7.3 The Committee recalls its jurisprudence that complaints against maltreatment must be investigated promptly and impartially by competent authorities and that expedition and effectiveness are particularly important in the adjudication of cases involving allegations of torture and other forms of mistreatment.<sup>1</sup> In view of the manner in which the author's complaint was investigated and decided, as described in the previous paragraph, the Committee is of the view that the requisite standard was not met in the present case. Accordingly, the Committee finds that the State party has violated article 2, paragraph 3 read together with article 7 of the Covenant. Having come to this conclusion the Committee does not consider it necessary to determine the issue of a possible violation of article 7 read on its own.

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<sup>1</sup> General comment No. 20: Article 7 (Prohibition of torture or other cruel, inhuman or degrading treatment or punishment), para. 14. See also Communication No. 1426/2005, *Banda v. Sri Lanka*, Views adopted on 26 October 2007, para. 7.4.

8. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts before it reveal violations by the State party of article 2, paragraph 3 read together with article 7 of the Covenant.

9. In accordance with article 2, paragraph 3, of the Covenant, the State party is under an obligation to provide the author with an effective remedy and appropriate reparation. The State party is also under an obligation to take measures to prevent similar violations in the future.

10. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, that State party has undertaken to ensure all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy in case a violation has been established, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the Committee's Views.

[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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