



International Covenant on Civil and Political Rights

Distr.: General
27 August 2015

Original: English

Human Rights Committee

Communication No. 2437/2014

Decision adopted by the Committee at its 114th session (29 June-24 July 2015)

<i>Submitted by:</i>	V. S., represented by counsel, Kestutis Stungys
<i>Alleged victim:</i>	V. S.
<i>State party:</i>	Lithuania
<i>Date of communication:</i>	31 October 2013 (initial submission)
<i>Document references:</i>	Special Rapporteur's decision under rules 92 and 97, transmitted to the State party on 16 June 2014 (not issued in document form)
<i>Date of decision:</i>	23 July 2015
<i>Subject matter:</i>	Rights of accused person to a fair trial and to review of conviction and sentence by a higher tribunal
<i>Procedural issues:</i>	Admissibility manifestly ill-founded
<i>Substantive issues:</i>	Accused persons/convicted persons; criminal charges; criminal conviction; criminal offence; facts and evidence; fair trial; right to appeal
<i>Articles of the Covenant:</i>	Articles 14 (1), (2), (5) and (7); 15 (1)
<i>Article of the Optional Protocol:</i>	Article 2



Annex

Decision of the Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political Rights (114th session)

concerning

Communication No. 2437/2014*

Submitted by: V. S., represented by counsel,
Kestutis Stungys

Alleged victim: V. S.

State party: Lithuania

Date of communication: 31 October 2013 (initial submission)

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

Meeting on 23 July 2015,

Having concluded its consideration of communication No. 2437/2014 submitted to the Human Rights Committee by V. S. 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:

Decision on admissibility

1.1 The author of the communication is V. S., a Lithuanian national born in 1968. At the time the communication was filed, the author was serving a criminal sentence in Lithuania. He asserts that his rights to a fair trial and to have his sentence reviewed by a higher court were denied by the State party, in violation of articles 14 (1), (2), (5) and (7) and 15 (1) of the International Covenant on Civil and Political Rights.¹ He is represented by counsel, Kestutis Stungys.

1.2 On 6 November 2014, the Committee, acting through its Special Rapporteur on new communications and interim measures, decided to consider the admissibility of the communication separately from the merits.

* The following members of the Committee participated in the consideration of the present communication: Yadh Ben Achour, Sarah Cleveland, Olivier de Frouville, Yuji Iwasawa, Ivana Jelić, Duncan Laki Muhumuza, Photini Pazartzis, Mauro Politi, Sir Nigel Rodley, Víctor Manuel Rodríguez-Rescia, Fabián Omar Salvioli, Dheerujlall Seetulsingh, Anja Seibert-Fohr, Yuval Shany, Konstantine Vardzelashvili and Margo Waterval.

¹ The first Optional Protocol to the Covenant entered into force for Lithuania on 20 February 1992.

Facts as presented by the author

2.1 The author asserts that in 2008, a person named R. contacted him and asked him to represent R. in inheritance proceedings and in selling property after the death of his mother. R. claimed that he needed money to pay his living expenses, and wanted to buy a horse and agricultural tools to earn a living doing agricultural jobs for neighbours. The author accepted R.'s request and was authorized to act on his behalf in all matters concerning his inheritance and his late mother's property.

2.2 On 20 February 2008, R. prepared a will and told the author that upon R.'s death, the author would inherit all of his property.² R.'s property consisted of three large plots of land and several buildings. Before finalizing his will, R. informed the notary that he had no close relatives.³

2.3 On 22 May 2008, the author represented R.'s interests in selling one plot of R.'s land for 11,000 Lithuanian litas⁴ and a second plot of R.'s land for 10,000 Lithuanian litas.⁵ The sales and purchase contract concerning the third plot of land was scheduled to be signed on 11 June 2008.

2.4 On 9 June 2008, R. passed away. On 10 June 2008, the author visited R.'s home and was told by his neighbours, R.J. and B.J., that R. was "lying on the firewood". The author would later find out that this expression meant that R. had died, but at the time, he did not understand and simply assumed that R. was not at home.

2.5 On 11 June 2008, the sales and purchase contract for R.'s third plot of land and its accompanying buildings was signed by the author, on R.'s behalf, and by the purchaser. Before proceeding with signing, the notary had checked the Residents' Register Service of the Ministry of the Interior and, at that time, there was no information available concerning R.'s death. The author maintains that at that time, he "had no concrete unambiguous knowledge of [R.'s] death" and asserts that he did not deceive R. or the notary. On 18 June 2008, after learning about R.'s death, the author accepted the inheritance bequeathed to him in R.'s will.

2.6 The author maintains that if R. had died intestate, R.'s aunt, J., would have been a possible beneficiary of his estate. He asserts that without any supporting evidence, on 28 October 2008, J. initiated two procedures against him. She filed a civil lawsuit before Trakai District Court, claiming that the author had embezzled her property. She requested cancellation of the sales and purchase contract for R.'s land, and restitution of the property. Those civil proceedings against the author are still pending. J. also initiated a criminal procedure with the Kaisiadorys District Prosecutor's Office, which began a pretrial investigation against the author on 29 October 2008 for embezzlement and forgery of documents. On 28 March 2011, the author was indicted and charged by the Kaisiadorys District Prosecutor's Office with embezzlement in violation of article 182 (2) of the Lithuanian Criminal Code. On 30 January 2012, Kaisiadorys District Court found the author not guilty of embezzlement.

2.7 On 20 February 2012, the prosecutor of the Kaisiadorys District Prosecutor's Office and J., who had standing as an aggrieved party, appealed the judgement of 30 January 2012,

² The author provides a copy and an English translation of R.'s will, dated 20 February 2008. The contents of the will consist of three plots of land and accompanying buildings, and names the author as the beneficiary.

³ On 21 April 2010, a forensics expert confirmed and certified that the signature on the will was R.'s signature. A copy of the expert's opinion is not provided by the author.

⁴ Equivalent to approximately US\$ 3,426.

⁵ Equivalent to approximately US\$ 3,114.

accusing the author of withholding information concerning R.'s death and benefiting from selling his property by using an expired power of attorney form.⁶ On 18 May 2012, Kaunas Regional Court found the author guilty of embezzlement under article 182 (2) of the Lithuanian Criminal Code and sentenced him to two years' imprisonment. The author was also ordered to pay J. compensation in the amount of 5,000 Lithuanian litas⁷ as non-pecuniary damages and 6,800 Lithuanian litas⁸ for legal expenses. Kaunas Regional Court also recognized J.'s right to seek further compensation within civil proceedings for alleged pecuniary damages.

2.8 On 22 May 2012, the author filed a cassation appeal against the Kaunas Regional Court judgement before the Supreme Court of Lithuania, arguing that the law had been incorrectly applied. According to the author, the offence of embezzlement requires intent to deceive, whereas given that he was the beneficiary of R.'s will and would have been able to sell the property in question by the time the sales and purchase contract was signed, he was the owner of the property and therefore did not have the requisite intent to deceive.

2.9 On 21 December 2012, the Supreme Court rejected the author's appeal. The author maintains that the Supreme Court reasoned that it has the legal authority to examine only the application and interpretation of the law by the lower courts, and does not review facts or evidence. The author claims that he has exhausted all available domestic remedies.

The complaint

3.1 The communication was registered on 1 July 2014. The author asserts that the State party violated his rights under article 14 (1) and (2) of the Covenant by unlawfully convicting him of embezzlement.⁹ He maintains that the crime of embezzlement requires intent to deceive and acquisition of the property of another for one's own benefit. The author asserts that he did not have the requisite intent when he signed the property sales and purchase contract on R.'s behalf. He argues that the Kaunas Regional Court judgement was biased because it ignored evidence of his innocence. Specifically, the author submits that when he signed the contract, he acted under a valid power of attorney and had no knowledge of R.'s death, which had occurred two days earlier. Moreover, the author maintains that in any case, at the time of signing, he had inherited the property as R.'s sole beneficiary. He therefore argues that the Supreme Court of Lithuania erred by concluding that he had made an "illegal contract by selling the property and mak[ing] barriers for third parties to inherit [the] property of [R.]"¹⁰

3.2 The author submits that the State party violated his rights under article 14 (5) of the Covenant because he did not have an opportunity to have the evidence on which his conviction and sentence were based fully reviewed by a higher tribunal.¹¹ The author maintains that the Supreme Court of Lithuania rejected the appeal of his conviction after examining only issues of law and without re-evaluating the facts and evidence. Specifically, the Supreme Court stated that it lacks the authority to examine the sufficiency and reliability of evidence that was assessed by the court of appeal, and therefore could not

⁶ The author states that, on 4 May 2011, J. was recognized as a victim by Kaisiadorys District local Court, and her action was submitted in criminal case No. 1-97-359/2011.

⁷ At current exchange rates, equivalent to approximately US\$ 1,557.

⁸ At current exchange rates, equivalent to approximately US\$ 2,118.

⁹ The author also invokes a violation of article 17, paragraph 2, of the Universal Declaration of Human Rights, as well as of the preamble and several other paragraphs of the Covenant.

¹⁰ The author does not specify how his rights under article 14 (2) of the Covenant were violated.

¹¹ The author refers to, inter alia, communications No. 1797/2008, *Thomas Wilhelmus Henricus Mennen v. The Netherlands*, Views adopted on 27 July 2010; and No. 1542/2007, *Abdeel Keerem Hassan Aboushanif v. Norway*, Views adopted on 17 July 2008.

“declare any ruling regarding confession reliability of witnesses [R.J. and B.J.]”. The author maintains that article 14 (5) of the Covenant guarantees the review of law application and its interpretation, as well as re-evaluation of facts (the evidence) and a right to adequate procedural decision-making.¹² He asserts that, according to the jurisprudence of the Committee, a violation of article 14 (5) occurs if there is no re-evaluation of evidence where a person has been declared innocent by a lower court and then convicted upon appeal.¹³ He submits that the Supreme Court did not evaluate “the substantial flaws of judgement when applying article 182 of the Criminal Code”, because it incorrectly concluded that the author had embezzled the property in question, since he was the rightful owner of the property.

3.3 The author also maintains that his rights under article 14 (7) of the Covenant were violated because he faced both a civil lawsuit and criminal proceedings concerning his alleged embezzlement of the same property. The author maintains that J. was involved in both the civil and criminal cases against him.

3.4 The author asserts that by convicting him of a crime for his “legal civil relations”, the State party violated his rights under article 15 (1) of the Covenant, according to which no one should be found guilty for an act that is not a crime under the law. He reiterates his assertions concerning his innocence of the crime for which he was convicted.

State party’s observations on admissibility

4.1 In its observations dated 1 September 2014, the State party considers that the author’s claims under articles 14 (1), (5) and (7) and 15 (1) of the Covenant are inadmissible owing to the author’s failure to exhaust effective domestic remedies.¹⁴

4.2 The State party also considers that the author’s claims are inadmissible as they are unsubstantiated. It is generally for the courts of States parties to review facts and evidence, or the application of domestic legislation, unless it can be shown that such evaluation or application was clearly arbitrary or amounted to a manifest error or denial of justice, or that the court otherwise violated its obligation of independence and impartiality. It is also beyond the competence of the Committee to review findings of fact made by national tribunals.

4.3 The State party considers that the author’s claim under article 14 (1) of the Covenant, namely that the appellate court erroneously relied exclusively upon the testimonies of two witnesses, was thoroughly examined by the Supreme Court of Lithuania (the Court of Cassation) and was dismissed. The author was given reasoned decisions to the effect that those allegations were unfounded. The mere fact that the author disagrees with the appellate court’s findings and interpretation of the evidence does not mean that the author’s guilt was determined on non-objective or incorrect grounds. All of the author’s claims raised before the domestic courts were thoroughly analysed and investigated. The author’s right to a fair trial does not guarantee the right to a certain outcome. With regard to the author’s claim that his right to a reasoned judgement was violated by the assessment of evidence and declarative statements made by the appellate court and the Supreme Court, respectively, the State party observes that while article 14 (1) of the Covenant may be interpreted as obliging courts to give reasons for their decisions, it cannot be interpreted as

¹² The author cites communications No. 1332/2004, *Juan García Sánchez and Bievenida González Clares v. Spain*, Views adopted on 31 October 2006; and No. 836/1998, *Kestutis Gelzauskas v. Lithuania*, Views adopted on 17 March 2003.

¹³ The author cites communication No. 1381/2005, *Jaques Hachuel Moreno v. Spain*, Views adopted on 25 July 2007.

¹⁴ The State party does not expand upon its argument that domestic remedies have not been exhausted.

requiring a detailed answer to every argument advanced by the author. The State party considers that under the Committee's jurisprudence, the need to ensure the effective operation of the judiciary may require courts, especially the highest courts of States parties, to merely endorse the reasons for the lower court's decision in dismissing the appeal, so as to handle their caseload. In this case, the Supreme Court dismissed the author's cassation appeal because he had failed to adduce any reasons that could cause the appellate decision to be overturned, and had failed to raise any substantial violations of the Code of Criminal Procedure. The author has therefore failed to substantiate, for the purposes of admissibility, that the Supreme Court decision was not sufficiently reasoned. The State party further considers that the author's allegations that the appellate decision was unfair and was based on unreliable witness testimony are insufficiently substantiated. The appellate court relied on the entirety of evidence in the case: oral testimonies of many persons including the two victims and nine witnesses notary; the author's inconsistent testimonies in court, which contradicted his testimony given during pretrial investigation as well as the circumstances of the case; and other written documents.

4.4 The State party also considers that the author's claims under article 14 (5) are inadmissible as they are unsubstantiated, because the author did have his conviction fully reviewed by a higher tribunal. The essence of cassation in Lithuania is the appeal upon the procedural judgements on application of points of law. The Committee has noted on numerous occasions that when convictions are reviewed in cassation, the requirements under article 14 (5) of the Covenant are met.¹⁵ Under Lithuanian law, the Court of Cassation does not re-evaluate the evidence of the case or collect new evidence. However, it does examine the arguments of the cassation appeal, on which the findings of the lower courts concerning the establishment of the factual circumstances of the case and the assessment of evidence were based. In the present case, as shown in its decision, the Court of Cassation indeed reviewed the judgement under appeal and established that the requirements of the Code of Criminal Procedure had not been violated. There is no ground for finding that the conviction was based on assumptions contrary to the author's allegations. The Court of Cassation ascertained that the appellate court clearly set out in its judgement the evidence establishing that the author fraudulently obtained a high-value property right, and provided reasons for its judgement. The Court of Cassation stated that it analysed the arguments of cassation appeal and compared them with the evidence set out in the appellate court judgement. Moreover, there is no evidence in the case file to support the author's allegation concerning the reliability of the testimony provided by the witnesses R.J. and B.J. The appellate court observed that their testimony was consistent with other data in the case, and that there was no reason to find that they had any interest in providing false testimony concerning the author's visit after R.'s death. Contrary to the author's claim that the judgement of the appellate court was based solely on the testimony of R.J. and B.J., the appellate court relied on the entirety of the evidence in the case. Thus, the conviction upon appeal was reviewed to a sufficient extent to meet the standards set by article 14 (5) of the Covenant.

4.5 The State party also considers that the jurisprudence cited by the author in support of his claim under article 14 (5) of the Covenant is inapposite. Although the author cites many communications brought against Spain to support his argument that the facts and evidence should have been reviewed at the cassation level, the Spanish cassation system differs from that of Lithuania in that criminal cases reach the Supreme Court of Lithuania after having been examined by the courts of two instances (first and appellate), which have full jurisdiction concerning questions of fact and law. In case of procedural necessity, the Court

¹⁵ The State party refers, inter alia, to communication No. 1389/2005, *Bertelli Gálvez v. Spain*, inadmissibility decision adopted on 25 July 2005.

of Cassation may further transfer the criminal case back to the Court of Appeal for re-examination. Moreover, the Court of Cassation in Lithuania is not bound by the strict formal criteria that bind the Spanish cassation courts when exercising powers to review the assessment of evidence.¹⁶ In contrast to the cases to which he refers, the author had his conviction reviewed by the court of cassation, which examined the questions that he raised in the cassation appeal. Thus, the author was not in any way precluded from effectively exercising his right to review of the conviction adopted by the judgement of the Court of Appeal. Although the author invokes *Gelzauskas v. Lithuania*, in which the Committee found that the State party had violated article 14 (5) of the Covenant, the context of that case was materially different.¹⁷ The author in *Gelzauskas* was convicted in 1994 under the legislation in force at that time, according to which the Supreme Court of Lithuania acted as a court of first instance and its decisions could not be appealed. That legislation was annulled long ago, contrary to the allegations of the author. Thus, the *Gelzauskas* case is not relevant in assessing the author's situation. Indeed, the Committee's jurisprudence indicates that the determinative issue in assessing compliance with article 14 (5) of the Covenant is the extent to which the court of cassation actually reviewed the case. The present case is similar to that of *Bertelli Gálvez v. Spain*, which was found to be inadmissible because, although the Supreme Court did not reassess the factual and evidentiary determinations of the trial court, it did extensively examine the author's arguments.¹⁸

4.6 The State party also considers that the author's claim under article 14 (7) is inadmissible as it is manifestly unsubstantiated, because the author has not been tried a second time for an offence for which he was already convicted. After his criminal conviction, the author was found by Kaunas Regional Court to bear civil liability to the victim, J. The civil and criminal cases are distinct, and Kaunas Regional Court made a clear distinction in its judgement between the elements of the criminal act of fraud and the civil tort. The State party considers that the author is attempting to mislead the Committee by conflating those different types of liability.

4.7 The State party further considers that the author's claim under article 15 (1) of the Covenant is inadmissible as unsubstantiated because the author does not raise any issues relating to the retroactive application of criminal law. Rather, he challenges the domestic courts' findings that his actions constituted elements of a criminal act under criminal law. Specifically, he argues that he was unlawfully and unreasonably found guilty for actions that cannot be considered a crime under article 182, section 2, of the Criminal Code, because he had no intention to deceive and appropriate R.'s property. The author's argument could be seen as an improper attempt to use the Committee as a fourth instance to re-evaluate the findings of the domestic courts.¹⁹ The author's criminal case was examined by the domestic courts of all three instances. The Court of Appeal and the Court of Cassation observed the requirements of a fair trial and thoroughly examined and addressed the author's allegations that he had been unlawfully convicted under article 182, section 2, of the Criminal Code. The State party cites the Supreme Court decision as stating that "although the court of first instance based its acquittal judgement on the ground that the actions of [the author] in concluding a real estate purchase and sale transaction are to be considered a civil tort ... the panel decides that the Court of Appeal, after having carried

¹⁶ The State party refers to communication No. 1364/2005, *Uclés v. Spain*, Views adopted on 22 July 2009.

¹⁷ See communication No. 836/1998.

¹⁸ See communication No. 1389/2005, para. 4.5.

¹⁹ The State party cites communication No. 215/1986, *G.A. van Meurs v. The Netherlands*, Views adopted on 13 July 1990.

out a more thorough assessment of evidence and establishing intentional actions in misleading the notary, has reasonably overruled the acquittal judgement of the court of first instance and convicted [the author] under article 182, section 2, of the Criminal Code". The State party considers that, because the author was found guilty for an act that clearly constituted a crime under Lithuanian law at the time when it was committed, his claim under article 15 (1) is not substantiated.

Author's comments on the State party's observations

5.1 In his comments dated 20 October 2014, the author asserts that by failing to comment on his claims of a violation of article 14 (2) of the Covenant, the State party fails to contest his claim.

5.2 With regard to article 14 (1) of the Covenant, the author asserts that Kaunas Regional Court did not assess the evidence showing that he entered into the relevant transactions with a valid power of attorney and an official will. He argues that his right to a fair trial was breached because Kaunas Regional Court and the Supreme Court did not follow the requirements to fully examine the evidence before adopting their positions. The witnesses and witnesses notary did not present any information about the alleged criminal acts. On the contrary, the notary, B., confirmed that R. was conscious and acting under free will when signing his will and power of attorney form. The notary also confirmed that the transaction for which the author pleaded guilty is legal. Other witnesses gave testimony beneficial to the author, but the court did not assess that evidence.

5.3 With respect to article 14 (5) of the Covenant, the author argues that the Supreme Court of Lithuania does not examine evidence. He asserts that, in his cassation appeal, he was unable to present evidence that the witness testimony from R.J. and B.J. was unreliable, because there are strict limits on what may be examined in cassation. The author maintains that his inability to have evidence examined by two courts represents a breach of his right to have his conviction reviewed.

5.4 Concerning article 14 (7) of the Covenant, the author maintains that on 28 October 2008, J. initiated two proceedings against him: a civil proceeding before Trakai Regional Court and a criminal proceeding before the Kaisiadorys Regional Prosecution. The author argues that if an individual's actions were justified in a civil case, he cannot be judged for the same actions in another court. He maintains that he was judged for the same crime twice.

5.5 With regard to article 15 (1) of the Covenant, the author asserts that the court of first instance accepted that he did not have the requisite fraudulent intent because he inherited the property after R. died, and that he had been authorized to enter into the transaction. He maintains that he had no reason to sell R.'s property immediately, because R. was dead (which he did not know at the time), and the author would have inherited all of R.'s property because he was the sole heir according to R.'s will. The author maintains that Kaunas Regional Court and the Supreme Court ignored the fact that he had no fraudulent intent and was legally entitled to R.'s property, and that his actions therefore bore no indications of fraud under article 182, section 2, of the Criminal Code.

Issues and proceedings before the Committee

Consideration of admissibility

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

6.2 The Committee notes, as required by article 5 (2) (a) of the Optional Protocol, that the same matter is not being examined under any other procedure of international investigation or settlement.

6.3 The Committee takes note of the author's claims that the State party violated his rights under article 14 (1), (2) and (5) of the Covenant because (a) he was unlawfully convicted of embezzlement after biased criminal proceedings that did not fairly assess the evidence concerning his intent; and (b) he was denied the right to file an effective appeal against his conviction, as the Supreme Court did not re-evaluate the facts and evidence assessed by Kaunas Regional Court and did not allow him to present unspecified evidence regarding the reliability of witness testimony that was used to convict him, thereby rendering a decision that was, according to him, not based on any actual evidence or legal arguments. The Committee recalls that article 14 guarantees procedural equality and fairness only and cannot be interpreted as ensuring the absence of error on the part of the competent tribunal.²⁰ The Committee takes the view that the author's allegations relate essentially to the evaluation of the facts and the evidence carried out by the Lithuanian courts, and to the application of domestic legislation. The Committee recalls that it is not a final instance competent to re-evaluate findings of fact or the application of domestic legislation, unless it can be ascertained that the proceedings before the domestic courts were arbitrary or amounted to a denial of justice, or that the courts otherwise violated their obligation of independence and impartiality.²¹ In the present case, the Committee is not in a position, on the basis of the materials at its disposal, to conclude that, in deciding the author's case, the domestic courts acted arbitrarily or that their decision amounted to arbitrariness or a denial of justice. Nor does the Committee consider, on the basis of the information before it, that the author substantiated his assertion that the scope of appellate jurisdiction exercised by the Supreme Court of Lithuania deprived him of his right to have his conviction and sentence reviewed by a higher tribunal according to law. Accordingly, these claims are inadmissible under article 2 of the Optional Protocol.

6.4 Concerning the author's claim under article 14 (7) of the Covenant, the Committee notes the author's argument that he was tried a second time for an offence for which he had already been convicted, because one criminal case and a civil lawsuit were brought against him on the same facts. The Committee recalls, however, that the guarantee of article 14 (7) applies only to criminal offences.²² The Committee therefore considers that article 14 (7) does not bar criminal prosecution of an individual on the sole ground that a civil claim concerning the same act or acts has been brought against the individual. Accordingly, this part of the claim is outside the scope of the Covenant, and is inadmissible, *ratione materiae*, under article 3 of the Optional Protocol.

6.5 With regard to the author's claim of a violation of article 15 (1) of the Covenant, the Committee notes that the author does not allege that any law was retroactively applied in

²⁰ See general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, para. 26. See also, inter alia, communication No. 1432/2005, *Dalkadura Arachchige Nimal Silva Gunaratna*, Views adopted on 17 March 2009, para. 7.3.

²¹ See communications No. 1998/2010, *A.W.K. v. New Zealand*, decision of inadmissibility adopted on 28 October 2014, para. 9.3; No. 541/1993, *Simms v. Jamaica*, decision of inadmissibility adopted on 3 April 1995, para. 6.2; No. 1138/2002, *Arenz et al. v. Germany*, decision of inadmissibility adopted on 24 March 2004, para. 8.6; No. 917/2000, *Arutyunyan v. Uzbekistan*, Views adopted on 29 March 2004, para. 5.7; and No. 1528/2006, *Fernández Murcia v. Spain*, decision of inadmissibility adopted on 1 April 2008, para. 4.3.

²² See general comment No. 32, para. 57. See also communication No. 1310/2004, *Konstantin Babkin v. Russian Federation*, Views adopted on 3 April 2008, para. 13.5.

his case. The Committee therefore considers that this claim is unsubstantiated and is therefore inadmissible under article 2 of the Optional Protocol.²³

7. The Human Rights Committee therefore decides:

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

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

²³ In the light of the foregoing, the Committee does not deem it necessary to examine the State party's argument that the author did not exhaust domestic remedies.