



**International Covenant on
Civil and Political Rights**

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Human Rights Committee

Communication No. 2631/2015

**Decision adopted by the Committee at its 115th session (19 October-6
November 2015)**

<i>Submitted by:</i>	J.G. (represented by counsel, Ross Dillon)
<i>Alleged victim:</i>	The author
<i>State party:</i>	New Zealand
<i>Date of communication:</i>	24 June 2015 (initial submission)
<i>Date of decision:</i>	2 November 2015
<i>Subject matter:</i>	<i>Ne bis in idem</i> ; deportation to China
<i>Procedural issues:</i>	Admissibility <i>ratione materiae</i>
<i>Substantive issues:</i>	<i>Ne bis in idem</i>
<i>Articles of the Covenant:</i>	14 (7)
<i>Articles of the Optional Protocol:</i>	3



Annex

Decision of the Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political Rights (115th session)

concerning

Communication No. 2631/2015*

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

Meeting on 2 November 2015,

Having concluded its consideration of communication No. 2631/2015, submitted to it on behalf of J.G. 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 J.G., a Chinese national born in 1963, whose application for asylum in New Zealand was rejected. He claims that his deportation to China by the State party would constitute a violation of his rights under article 14 (7) of the Covenant and invites the Committee to issue a request for interim measures of protection to put his removal on hold. The author is represented by counsel.

1.2 On 10 July 2015, the Committee, acting through its Special Rapporteur on new communications and interim measures, decided not to issue a request for interim measures under rule 92 of the Committee's rules of procedure and determined that no observations from the State party were needed to ascertain the admissibility of the present communication.

The facts as presented by the author

2.1 The author, together with his wife, ran a granite-exporting business in China from 1993 to 2002. He arrived with his wife and child in New Zealand in March 2002 and they had two more children there. On 16 June 2006, he applied for residency in New Zealand. On 6 September 2006, he and his family were granted residency under the Business (Entrepreneur) Category. On the same day, the author was arrested and charged for importing a Class C controlled drug and possession of that drug for supply. On 12 December 2008, he was found guilty by a jury and, on 13 February 2009, he was convicted

* The following members of the Committee participated in the examination of the present communication: Yadh Ben Achour, Lazhari Bouzid, Sarah Cleveland, Ahmed Amin Fathalla, 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.

and sentenced to five years and three months' imprisonment for each offence, to be served concurrently. The possibility of deportation was not considered as a penalty in this decision. On 21 December 2009, the author unsuccessfully appealed against the conviction to the Court of Appeal.

2.2 On 25 June 2009, the author was served with a deportation order that specified his 13 February 2009 conviction as the reason for deportation. The deportation liability notice, issued by the Minister of Immigration, stated that the ground for deporting the author was his conviction for importing drugs and possessing drugs for supply. On 27 April 2011, the Immigration Protection Tribunal dismissed his appeal against his deportation.

2.3 In May 2011, he applied for a judicial review of the Tribunal's decision. The High Court remitted the decision for a rehearing to a differently constituted Tribunal. In December 2012, that Tribunal conducted a rehearing and dismissed the author's appeal by decision of 10 July 2013. On 25 July 2013, the Tribunal reissued its decision, which remained unchanged regarding the removal of the author, while the author's wife's appeal was deemed to be withdrawn as she had left New Zealand in the meantime.

2.4 On an unspecified date, the author applied again for a judicial review of the Immigration Protection Tribunal's decision and leave to appeal. The hearing was held on 19 March 2014. The author has held that his deportation would constitute a double penalty for an offence for which he had already been convicted and served a prison term. The High Court denied that the deportation was a further criminal penalty and argued that it was more a means, for the State, to remove undesirable migrants. On 16 April 2014, the High Court dismissed the author's application for leave to appeal and for a judicial review of the Tribunal's decision, stating that the applicants (the author and his two children who did not have New Zealand citizenship) in their appeal to the Tribunal were not able to cross the high threshold required even insofar as the initial point in appeal was concerned. As to the leave for judicial review, the High Court gave its assessment that the errors alleged by the author were of a type that could be simply dealt with on appeal if leave were to be granted and the question of any difference between appeal and review did not arise in this case. On 24 October 2014, the Court of Appeal dismissed the author's application for leave to appeal to the High Court against the decision of the Tribunal.

2.5 On 3 June 2015, the Supreme Court of New Zealand granted the applications for leave to appeal of the author's children who did not have New Zealand citizenship, while dismissing the author's application for leave to appeal. The author therefore claims to have exhausted all available and effective domestic remedies.

The complaint

3. The author claims that New Zealand has violated his rights under article 14 (7) of the Covenant by issuing a deportation order based on his drug-related convictions and thus subjecting him to double jeopardy. He further submits that the deportation order issued by the Minister of Immigration on 25 June 2009, after his final conviction and sentencing for his drug offences, did not refer to any factors other than his offence of importing/exporting drugs and his offence of possessing drugs for supply. Therefore, the author argues, he has been subjected to a further penalty for offences for which he has already been convicted and sentenced, which is double jeopardy. The author has been imprisoned and sentenced in the same way as any New Zealand resident. He claims that, having served his sentence, he therefore should not be subject to a further penalty. He adds that the deportation order is a punishment by administrative action outside the judicial process, imposing a penalty on the author as a retribution for his drug offence, and therefore amounting to double jeopardy. The author concludes that, if he is to be deported, his deportation defeats the purpose of his communication to the Human Rights Committee and thus causes irreparable harm.

Issues and proceedings before the Committee

4.1 Before considering any claim contained in a communication, the Committee must determine, in accordance with rule 93 of its rules of procedure, whether it is admissible under the Optional Protocol.

4.2 The Committee observes that the author and his family were granted residency under the Business (Entrepreneur) Category on 6 September 2006. Subsequently, he was arrested and charged for the importation of a large quantity of a Class C controlled drug and possession of the same drug for supply. He was sentenced to a term of imprisonment of five years and three months and his appeal against his convictions was dismissed by the court. In the light of his criminal activities, the author was served with a deportation order. The Immigration Protection Tribunal dismissed his appeals against the deportation and the High Court, the Court of Appeal and the Supreme Court of New Zealand dismissed his applications for a judicial review and for leave to appeal. In doing so, the State party's tribunals and courts found that it would not be unjust or unduly harsh for the author to be deported, while giving adequate consideration to the best interests of the author's children.¹

4.3 The author disagrees with these decisions and claims to be a victim of double jeopardy in violation of article 14 (7) of the Covenant.

4.4 The Committee notes first, that the *ne bis in idem* principle as protected by article 14 (7) of the Covenant prohibits States from trying someone for the same offence for which he/she have already been tried and sentenced. The Committee observes that, in the circumstances of the present case, the decision to proceed with the deportation of the author is a measure of administrative nature that is independent of his conviction and sentence under criminal law for drug-related crimes. Thus, it cannot be seen as constituting an additional punishment for the criminal offences the author has committed. Accordingly, the Committee considers that the author's claims do not raise any issue under article 14 (7) of the Covenant. Accordingly, the Committee concludes that the communication is inadmissible *ratione materiae* under article 3 of the Optional Protocol.

5. The Committee therefore decides:

- (a) That the communication is inadmissible under article 3 of the Optional Protocol;
- (b) That the decision be transmitted to the author and, for information, to the State party.

¹ On 3 June 2015 the Supreme Court granted the applications for leave to appeal of the author's first and third child. This judgement opens the possibility for the first and third child to be permitted to stay in New Zealand together with the second child, who is a New Zealand citizen, given the age (25 years old) and the role within the family of the first child, and despite the absence of their parents.