United Nations CCPR/C/101/D/1532/2006

International Covenant on Civil and Political Rights

Distr.: Restricted*
28 April 2011

Original: English

Human Rights Committee
One hundredth and first session
14 March to 1 April 2011

Views

Communication No. 1532/2006

Submitted by:	Roman Sedljar and Dmitry Lavrov (not represented by counsel)
Alleged victims:	The authors
State party:	Estonia
Date of communication:	26 October 2005 (initial submission)
Document references:	Special Rapporteur's rule 97 decision, transmitted to the State party on 28 November 2006 (not issued in document form)
Date of adoption of Views:	29 March 2011

* Made public by decision of the Human Rights Committee.

Subject matter:	Conviction of the authors in violation of fair trial guarantees
Substantive issues:	Fair hearing, right to be presumed innocent, right to defend oneself through legal assistance of his own choosing, right to examine witnesses
Procedural issues:	Same matter being examined under another procedure of international investigation or settlement
Articles of the Covenant:	Article 14, paragraphs 1, 2, 3(b), (d), (e)
Articles of the Optional Protocol:	Article 2, article 5, paragraph (2) (a)

On 29 March 2011, 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. 1532/2006.

[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 (one hundredth and first session)

concerning

Communication No. 1532/2006**

Submitted by:	Roman Sedljar and Dmitry Lavrov (not represented by counsel)
Alleged victims:	The authors
State party:	Estonia
Date of communication:	26 October 2005 (initial submission)

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

Meeting on 29 March 2011,

Having concluded its consideration of communication No. 1532/2006, submitted to the Human Rights Committee by Mr. Roman Sedljar and Mr. Dmitry Lavrov, 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 authors of the communication and the State party,

Adopts the following:

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

1. The authors of the communication are Mr. Roman Sedljar, born in 1963, and Mr. Dmitry Lavrov, born in 1970, both Estonian citizens. They claim to be victims of violations by Estonia of articles 14, paragraphs 1, 2, 3 (b), 3 (d) and 3 (e) of the International Covenant on Civil and Political Rights. The Optional Protocol entered into force for Estonia on 21 January 1992. Mr. Sedljar is submitting the communication on his own behalf and on behalf of Mr. Lavrov, who has authorized Mr. Sedljar to represent him.

** The following members of the Committee participated in the examination of the present communication: Mr. Lazhari Bouzid, Ms. Christine Chanet, Mr. Cornelis Flinterman, Mr. Yuji Iwasawa, Ms. Zonke Zanele Majodina, Ms. Iulia Antoanella Motoc, Mr. Gerald L. Neuman, Mr. Michael O'Flaherty, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Fabian Omar Salvioli, Mr. Krister Thelin and Ms. Margo Waterval.

The facts as submitted by the authors

2.1 The authors worked as hospital attendants in the psychiatric ward of the Charity Hospital of Narva-Joesuu. The most aggressive mentally sick patients resided in room No.52: Messr. V.G., P.K. and R.V. All of them were diagnosed with paranoid schizophrenia.

2.2 On 4 and 5 September 1999, the authors were on duty. Mr. Lavrov submits that he went home at approximately 19:00 on 5 September 1999. Between 20:00 and 21:00, the nurse on duty, Ms. M., asked Mr. Sedljar to check room No.52, because of the noise coming from inside. He discovered that there was a fight between Messr. V.G. and P.K... He threatened them that if they did not stop fighting he would call the police and they would be placed in isolation, whereupon they stopped fighting. Mr. Sedljar noticed that both men sustained light wounds as a result of the fight. He claims that this was the last time he entered room No.52. He attended to several other patients and around 23:00 went to sleep in the attendants' room. Early in the morning of 6 September 1999, the duty nurse discovered the dead body of Mr. V.G. lying on his bed. The same day, the body was taken to the Narva Hospital morgue and a post-mortem examination was carried out.

2.3 On 9 September 1999, Mr. Sedljar was dismissed from the Charity hospital on the basis of the Director's order for neglect of official duties causing the death of Mr. V.G. The next day, Mr. Lavrov resigned from the hospital on his own initiative.

2.4 On 18 October 1999, a Senior Inquiry Officer from the Sillamae Police charged the authors with causing the death of Mr. V.G. and summoned them to the police station on 20 October 1999. The authors went to the hospital early in the morning of 20 October 1999, to discuss the accusation with the hospital staff. Nurse M. told them that a policeman, one Mr. M., had interrogated her on 19 October 1999 and threatened her with considering her as an accomplice of the authors, should she refuse to sign the interrogation protocol drawn up by the investigating officer. She admitted to not having read the protocol she signed, since she did not have her glasses at hand.

2.5 On 20 October 1999, the authors went to the police station and were questioned. They were arrested as suspects the same day. On 29 October 1999, charges were formally brought against them. The investigation, led by the investigator Ms. V., continued until 5 June 2000. During that period, the authors filed numerous motions in which they requested: a) to be able to cross-examine the hospital patient Mr. R.V., whose testimony of 19 November 1999 was the main evidence against the authors; b) to have an assessment of the mental health of R.V. and his ability to act as a witness in the criminal case; and to add to the case file the medical history of Mr. P.K., who had a record of violent crimes but had never been convicted since he was mentally incapable of standing trial. These motions were all rejected on 24 May and 5 June 2000.

2.6 The authors submit that on 19 November 1999, the same day when the police was trying to obtain a testimony by "illegal means" from Mr. R.V., the latter was undergoing intensive treatment at Narva hospital, due to the exacerbation of his mental illness. According to relatives of Mr. R.V., he did not sign any testimony that day. Therefore, the authors submit that the protocol of the interrogation was falsified by the police, and hence "illegal". The authors filed motions related to this matter with the Ida-Virumaa Prosecutor's Office and the General Prosecutor's Office, which were all rejected. None of these motions were included in the authors' court case file. The authors filed a motion with the Yykhvi Administrative Court against the Narva hospital for its refusal to provide information on the above matter, but it was rejected. The subsequent appeals to the Tartus District Court and to the State Court on this issue were also rejected (final decision dated 28 March 2003).

2.7 The authors submit that investigator Ms. V., who was in charge of the investigation, had a direct interest in the outcome of their prosecution. In 1997, her husband worked as a

lawyer in the City Housing Service 'Narva Elamuvaldus', which organized a "suspect" deal to appropriate an apartment owned by Mr. Lavrov. When the authors learnt about this deal and tried to take action, they themselves were charged with the offence of 'forcible assertion of private rights' and sentenced to fines. They appealed the fines to the second and third instance courts, but the sentences were upheld. After the 8 November 2000 murder verdict, Mr. Lavrov's property was confiscated.

2.8 On 15 June 2000, the authors' criminal case on the death of Mr. V.G. was sent to the Ida-Viru County court for consideration. On 22 June 2000, the authors filed motions in which they listed violations of the Criminal Procedure Code in their case, including the refusal to allow them to examine the medical expertise regarding Mr. R.V.'s sanity and his ability to be a witness in the criminal case and the refusal to allow them to question the psychiatrists who conducted his psychiatric evaluation. They also asked that a new investigation be conducted, given that investigator Ms V. had a direct interest in the outcome of the case. These motions were all unsuccessful.

2.9 On 1 October 2000, the authors learned that Mr. R.V. had been found dead on 9 September 2000 in an area some eight kilometers away from the psychiatric hospital in which he was interned at the time. The authors questioned the cause of his death, provided in the death certificate, which states that Mr. R.V. died of hypothermia, while according to the information of the meteorological service the air temperature on that date was +17ºC. The authors filed a request to the State Prosecutor's Office to investigate the circumstances of Mr. R.V.'s death but this request was refused. The refusal was unsuccessfully appealed through three court instances.

2.10 On 2 November 2000, the authors learned that the court hearing would be held the following day, and as a result, neither they, nor their state-appointed counsel, could prepare for the hearing. The authors' request to appoint the same counsel who had defended them during the pre-trial investigation was rejected by the court. During the trial the authors maintained that they were innocent and that Mr. V.G. died as a result of injuries inflicted on him by his roommate Mr. P.K. during a fight. On 8 November 2000, the authors were convicted of the premeditated murder of a mentally deranged person to 15 years of imprisonment by the Ida-Viru County Court, in accordance with article 101, paragraphs 2 and 7 of the Criminal Code.

2.11 The authors filed the same motions to the court of first instance as during the pre-trial investigation, as well as a motion for calling a relative of Mr. R.V. as a witness, who could have confirmed that Mr. R.V. had not signed any testimony. All these motions were rejected by the court. From the beginning of the hearing, the court followed only the prosecutors' arguments.

2.12 The authors appealed their verdict to the Viru Court of Appeal. The authors submitted motions similar to the ones presented during the first instance trial. One of Mr. R.V.'s relatives, who could confirm that Mr. R.V. did not sign any testimony on 19 November 1999, volunteered to testify in front of the Viru Court of Appeal but was not given the opportunity to do so. The defense lawyer, hired by Mr. Lavrov's family, presented medical certificates confirming that Mr. R.V. underwent an intensive treatment at Narva hospital from 21 October until 30 November 1999 and could not have been physically interrogated at the police station on 19 November 1999, as indicated in the protocol of the interrogation. On 23 March 2001, the Viru Court of Appeal reduced the authors' sentence from 15 to 13 years of imprisonment, changing the qualification of the crime from 'premeditated murder' to 'murder'. On two occasions, (on 30 May and 20 June 2001), the Supreme Court denied the authors leave to appeal further.

2.13 Throughout the summer of 2001, the authors sent numerous complaints to the State Prosecutor's office, requesting the re-opening of their criminal case because of the forgery

of the interrogation protocol of 19 November 1999 and of a medical certificate on Mr. R.V.'s state of mental health of 31 December 1999. The State Prosecutor's office denied these requests. Its decision was unsuccessfully appealed through three court instances.

2.14 On 28 May 2004, the authors submitted another cassation appeal to the State Court requesting reconsideration of their criminal case due to newly discovered facts. This appeal was rejected on 9 June 2004.

2.15 In 2001, the authors filed submissions, based on the same facts as the present complaint, to the European Court for Human Rights (ECHR). On 11 March 2003, the ECHR found that neither complaint disclosed any violation of any rights under the Convention.

2.16 The authors contend that they have exhausted all available and effective domestic remedies.

The complaint

3.1 The authors claim to be victims of a violation by Estonia of article 14, paragraphs 1, 2, 3 (b), 3 (d) and 3 (e) of the Covenant.

3.2 The trial against them was not fair, and the courts were not impartial, in violation of article 14, paragraph 1 of the Covenant. They claim that the first instance court rejected their motion to be allowed to question the experts who conducted the psychiatric expertise of the main prosecution witness; that the first instance court rejected their motion to be allowed to question the expert who conducted the autopsy of the victim, an autopsy report which allegedly contained inconsistencies; and that they were refused the opportunity to question the main prosecution witness. They also submit that their motion to recuse the investigator Ms V., (who had a personal interest in their conviction), and to appoint another investigator was rejected. Further, they maintain that their motions to correct the court records, which presented incorrect testimonies of some witnesses, were rejected.

3.3 The authors were informed of the date of the court hearing only one day in advance, which did not allow them or their attorneys, appointed *ex officio*, to properly prepare for the trial. That was aggravated by the fact that the authors did not have funds to hire their own attorneys, and the attorneys appointed by the court were changing all the time and did not provide them with adequate legal assistance. The authors' request to be represented in court by the attorneys that were assisting them during the pre-trial investigation, and who were somewhat familiar with the case, was also rejected. This led to a violation of their rights under article 14, paragraphs 3 (b) and (d) of the Covenant.

3.4 The second instance court also ignored their motions, identical to the ones made during the first instance trial, and had the same "accusative tendency" as the first instance, literally adopting the position of the investigation and prosecution.

3.5 The authors submit that two months before the first instance trial, press articles appeared quoting the investigator and referring to them as guilty. Those articles could have influenced the court's decision. During the second instance trial numerous publications, accusing them of murder also appeared in the press. These facts constitute a violation of their rights under article 14, paragraph 2 of the Covenant.

3.6 The authors submit that they were not afforded the opportunity to call a witness who could have confirmed that the protocol of the interrogation of Mr. R.V. was false. This refusal violated their rights under article 14, paragraph 3 (e). They attached copy of the trial transcript of the first instance court, in which it is indicated that the Court refused to hear the witnesses proposed by the authors because their testimonies would not have been significant to establish the truth.

State party's observations on admissibility and merits

4.1 On 26 January 2007, the State party requested the Committee to declare the communication inadmissible under article 5, paragraph (2) (a) of the Optional Protocol, since an identical complaint had been reviewed and rejected by the European Court for Human Rights (ECHR). On 28 May 2007, the State party reiterated its request that the Committee should declare the communication inadmissible. Alternatively, the Committee should conclude that there is no violation of any of the articles of the Covenant.

4.2 As to the facts, the State party submits that the authors were convicted of having killed, while working as orderlies in the psychiatric ward at the Charity Hospital of Narva-Joesuu, on 5 September 1999, a mentally disabled patient, Mr. V.G., driven by "hooliganism" and in a particularly cruel manner, thus committing a criminal offence under article 101, paragraphs 2 and 7 of the Criminal Code. They were sentenced to 15 years of imprisonment by the Ida-Viru County Court. Mr. V.G. had insulted the authors earlier that day. In the evening, intoxicated, the authors entered the room and beat Mr. V.G. intentionally, hit him against the floor and the radiator and trampled over him. In the morning of 6 September 1999, he was discovered dead in his room. The autopsy revealed that he had injuries to vital parts of the body, such as internal traumas of the skull, chest and stomach, which caused massive internal bleeding.

4.3 During the pre-trial investigation the authors had state-appointed lawyers, who participated in the proceedings from the moment when the authors were declared as suspects, participated in all procedural actions and at the end of the investigation were familiar with all the materials of the criminal case. During the first instance trial the authors were represented by court appointed lawyers. At the first hearing they requested to be defended by the same lawyers who represented them during the investigation, but the court dismissed their request. The authors denied their guilt throughout the proceedings.

4.4 The Court interviewed the defendants and eleven witnesses and examined written evidence, including the statement given by R.V. on 19 October 1999 and the report on his psychiatric examination. According to this report, he did not suffer from acute mental disturbances during the examination and at the time of the killing, his memory was not distorted and he was able to explain correctly what he saw and heard. The court also examined the report on the psychiatric examination of P.K., according to which his mental condition excluded the possibility of verbal contact and he was not able to tell what he saw or heard. All the witnesses who knew V.G. and P.K. explained that V.G. was the most aggressive one and it was unlikely that P.K. had been able to beat V.G. so seriously without receiving any serious injuries himself.

4.5 The authors appealed the verdict before the Viru Court of Appeal, claiming that they were innocent, that the testimony of R.V. should not be taken into account and that the case against them was fabricated by a biased investigator. The defendants and their defence counsels were present at the second instance hearings, which took place on 10 January, 29 January, 14 March and 21-22 March 2001. Mr. Lavrov was defended by a lawyer of his own choice, Mr. Sedljar by a state-appointed counsel. On 23 March 2001, the Court of Appeal annulled the part of the verdict that concerned the conviction of the authors for "manslaughter driven by hooliganism" and reduced their sentences to 13 years of imprisonment. The Court of Appeal reviewed the authors request (dated 21 March 2001) to amend the minutes of the hearings, introduced some of the corrections requested by them and rejected others.

4.6 The Court of Appeal concluded that the decision of the County Court had been legal and justified, and was based on statements of six witnesses, including R.V.. The Court of Appeal reviewed the witnesses statements once again and reached the conclusion that such statements disproved the authors' version of the events, i.e. that V.G. had been beaten by

P.K.. The Court of Appeal agreed with the County Court conclusions that the psychiatric expert assessment made in respect of R.V. provided a basis to use his statements as evidence. It also found that the nature and location of V.G.'s injuries described in the forensic report coincided with R.V. statements about the beatings by the authors.

4.7 According to the Court of Appeal, the authors' claim that the investigator had been biased were not proved. This claim was only made in the appeal. Prior to that, there had been no request for removal of the investigator. Furthermore, the authors claimed that the Criminal Procedure Code was violated, but did not specify which particular rule the investigator and the County Court allegedly violated.

4.8 On 23 March 2001, the authors appealed the second instance decision to the Supreme Court, which on 30 May 2001 denied them leave to appeal. In 2004 Mr. Sedljar filed an additional request to the Supreme Court to reopen proceedings, because in his opinion new facts had been found. On 9 June 2004, the Supreme Court decided that the request for review was manifestly unfounded and dismissed it.

4.9 Mr. Sedljar filed an application for the initiation of criminal proceedings against the investigator in connection with his conviction on the basis of fabricated evidence. The application was reviewed by the Public Prosecutor's office, the administrative court and the Court of Appeal, all of which considered it unfounded and rejected it. The Supreme Court decided that the author's appeal against that decision should not be granted leave to appeal.

4.10 On the admissibility of the communication, the State party submits that the ECHR had reviewed the same matter and, on 11 March 2003, declared the authors' applications inadmissible, since they did not indicate any breach of applicants' rights and freedoms protected under the European Convention. The State party notes that the applications were reviewed and rejected by the ECHR not only on procedural grounds, but on the merits. The State party maintains that the communication should be declared inadmissible, in accordance with article 5, paragraph 2 (a) of the Optional Protocol, on the grounds that another international body has examined the complaint on its merits. The State party submits that it would be "particularly unfortunate", if the Committee started to review a communication in which the EHCR did not find any violations of article 6 of the European Convention, which is substantively analogous to article 14 of the Covenant. The State party also submits that even if the Committee does not declare the application inadmissible on the above ground, it should take into account the conclusions of the ECHR and should reject the communication on its merits in order to avoid the emergence of double standards and the weakening of human rights protection.

4.11 The communication should be declared inadmissible, as it constitutes an abuse of the right to submit communications under article 3 of the Optional Protocol, in view of the time elapsed since the exhaustion of domestic remedies. The criminal proceedings ended with the refusal of the Supreme Court to grant leave to their appeals in cassation on 30 May 2001, and their first communication to the Committee was submitted on 26 October 2005. The State party maintains that a communication should be submitted within a reasonable time as of the exhaustion of domestic remedies and that four and a half years can not be considered a reasonable time. The authors have not justified in any way why the submission of the communication took so long and they have not claimed that there had been any exceptional difficulties or obstacles that prevented them from submitting the communication within a reasonable timeframe.

4.12 The authors have not raised before any domestic court or other body the issue that the press coverage in their case adversely affected the procedures before the courts. Accordingly, this claim should be declared inadmissible on the ground of non-exhaustion of the domestic remedies.

4.13 The State party notes, that the authors are in effect attempting to challenge decisions handed down by the domestic courts in front of the Human Rights Committee and that the latter can not grant their requests, because it lacks the competence to annul or amend decisions made by the domestic courts. The State party refers to the Committee's jurisdiction stating that it is not a "fourth instance" competent to reevaluate findings of fact or review the application of domestic legislation. The State party maintains that in the instant case domestic courts dealt with the charges of manslaughter under aggravated circumstances that were brought against the authors and came to the conclusion that the guilt of the authors in respect of the acts they were accused of were proven beyond a reasonable doubt. The State party also refers to the case law of the Committee, according to which a mere disagreement of the author with the outcome of the court's decision is not sufficient to bring the issue within the scope of article 14 of the Covenant.

4.14 The State party makes reference to the Committee's jurisprudence according to which it is generally not for the Committee but for the courts of the State parties to evaluate the facts and evidence in a specific case, unless it can be ascertained that the evaluation was clearly arbitrary or amounted to a denial of justice. Further, it states that it is not for the Committee to review the interpretation of domestic law by the national courts. In the present case the County court ascertained all the facts after having examined all the evidence, and concluded that the authors were guilty of the offence they were charged with. The second instance court reviewed the appeals of the authors and their arguments, as well as the application of the law and concluded that the County court had correctly evaluated the evidence, but found and corrected certain shortcoming in the application of the law. The State party notes that the Court of Appeal is competent to verify within the scope of the appeal all the facts of the case, and to examine the matter on its substance. The judges are not bound by the facts as ascertained by the first instance court, but they verify issues of evidence themselves.

4.15 The State party submits that the verdict was not reached based on any one single piece of evidence (i.e. the statement of the mentally ill witness, who died prior to the trial), but on the entire body of evidence presented to the court. [1]

4.16 Both during the pre-trial investigation and the court proceedings, both authors had been ensured the participation of a defence lawyer. During the pre-trial investigation and the first instance proceedings the lawyers were appointed by the state. There are no facts to demonstrate that the lawyers were incompetent or not familiar with the proceedings. They actively defended their clients, filed requests, supported the views and positions of their clients, expressed opinions about the questions that arose during the hearings, made detailed and legally well justified statements. The only complaint that the authors made, (a request to be represented by the same lawyers they had during the investigation), was at the start of the first instance hearing, before the defence counsels could even begin their work. During the court hearing they made no other complaints concerning the unsuitability of the defence counsels. Moreover, they had the opportunity to choose their own lawyers, if they did not wish to have state appointed lawyers. Further, the authors have not filed any complaints to the Bar or its Court of Honour in connection with the alleged incompetence of the lawyers. Lastly, during the second instance proceedings Mr. Lavrov was represented by a lawyer of his own choice, while Mr. Sedljar was represented by a state appointed lawyer.

[1] The State party submits that it is important that a person's conviction is not based on an occasional piece of evidence and makes reference to cases where the Committee found communications inadmissible for non-substantiation as the authors challenged expert reports but not the rest of the evidence (communications 1329/2004 and 1330/2004, *Perez Munuera and Hernandez Mateo* v. *Spain*, para 6.4.)

4.17 The State party reiterates that the authors received a fair trial at all instances and that they have been provided with the guarantees under article 14, paragraph 5, namely that everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law. The State party maintains that the Covenant does not require that it should provide any other possibilities for challenging one's conviction and punishment. Nevertheless, the authors had the opportunity to file a cassation appeal to the Supreme Court and also made use of extraordinary legal remedies by filing requests for review of the case based on new evidence and for the amendment of court errors. The Supreme Court could not find errors in the work of the lower courts, nor did it find new evidence. The State party submits that there is no ground for the Committee to reach a different conclusion than that reached by the domestic courts.

Authors' comments and further submissions

5.1 On 22 March 2007, the authors submit that the State party has ignored the violations of the law committed against them, as described in their original communication. They reiterate that the investigative and judicial processes were "accusatory" in nature; that the investigation never explored any other line of investigation than the accusation against them; that the courts refused to question witnesses that could have proven their innocence; and that the court accepted the testimony of a mentally ill individual who was undergoing treatment for an acute phase of his illness. The authors also reiterate that they were deprived of effective legal defence and of fair trial.

5.2 The authors submit that they lost their cases before the ECHR because they were unrepresented, did not have money to hire an attorney and lacked legal knowledge to present their cases sufficiently well themselves. They maintain that they are not trying to appeal the ECHR decision before the Human Rights Committee, but are submitting an independent communication to a different international mechanism. They also state that when presenting their cases to the ECHR they lacked some documents related to the case, which they are now presenting to the Committee.

5.3 On 3 November 2007, the authors reiterate that the trial against them was unfair and illegal, since it was based on "artificially created" materials. They maintain that the protocol of the interrogation of the main witness Mr. R.V., dated 19 November 1999, was written by the investigator Ms V. in the police station, while Mr. R.V. was undergoing medical treatment in a mental hospital in Narva. They point out that doctors and other personnel in the hospital were not aware of Mr. R.V. being questioned at any time during his stay in Narva, which lasted from 20 October to 30 November 1999. They also maintain that the medical expertise of the mental condition of Mr. R.V. is also "artificially created" evidence of their guilt, since: it lacks a date of the expertise, (which is required by law); it states that the last stay of Mr. R.V. in the Narva psychiatric hospital was between 24 May 1999 and 9 June 1999, while in reality he was again hospitalized between 20 October and 30 November 1999; and the exact diagnosis of Mr. R.V. is not mentioned. The first instance court intentionally amended the testimony of some of the witnesses and refused to correct the court record, following the authors' request. They reiterate that they were refused the opportunity to cross examine Mr. R.V., and that the second instance court refused to summon nurse Ms. M., whose testimony according was misrepresented by the first instance court. The second instance court refused to call witnesses and to allow them to question the doctors who conducted the psychiatric expertise on Mr. R.V..

5.4 The authors explain the four and a half years delay in submitting their communication to the Committee by the fact that they first attempted to address a petition to the ECHR and were waiting for the outcome of that procedure. Furthermore, the first author had tried, in 2004, to reopen the case within the State party by petitioning the State court to review the case based on new evidence and the Prosecutor's office to start an

investigation into the false evidence used against them by the investigator. Once these avenues proved unsuccessful, the authors addressed their complaint to the Human Rights Committee.

5.5 On 29 July 2008, the authors submit that they were released on probation, (respectively on 27 June 2008 and on 25 July 2008), with a probation term until 20 October 2012. On 7 November 2008, the authors submit that they wish to maintain their communication to the Human Rights Committee. On 13 February 2010, the authors submit that two of the judges who participated in the adjudication of their case had been arrested on corruption charges. One of the judges, Mr. M.K. , (who had participated in the second instance court panel in the author's case), had been convicted on 18 January 2010. The other, Mr. Y.S., (who had participated in the first instance trial in the authors' case), plea-bargained with the prosecutors' office and took an early retirement. Prior to both court instances State appointed lawyers told them that the above judges were requesting money in exchange of non-guilty verdicts. Since the authors did not have money and considered themselves innocent, they refused these offers. They did not complain regarding these requests, since they were in jail and did not have any evidence of such proposals.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claims 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 to the Covenant.

6.2 The Committee notes the State party's challenge to the admissibility of the communication on the ground that the ECHR has reviewed the same matter and, on 11 March 2003, declared the authors' applications inadmissible, since they "did not indicate any breach of applicants' rights and freedoms protected under the European Convention". The Committee, however, observes that the State party has not entered a reservation concerning article 5, paragraph 2 (a) of the Optional Protocol to the effect that the competence of the Committee shall not apply to communications which have already been examined by the ECHR. The communication is presently not being considered by the ECHR or examined under another procedure of international investigation or settlement, and the Committee, therefore, considers that it is not precluded under article 5, paragraph 2 (a), of the Optional Protocol from considering the communication.

6.3 The Committee also notes the State party's contention regarding the abuse of the right to submit a communication in view of the time elapsed from the final exhaustion of domestic remedies, i.e. four and a half years. Two years and 7 months elapsed since ECHR declared the case inadmissible. The Committee observes that the Optional Protocol does not establish any deadline for the submission of communications, and that in the circumstances of the instant case the Committee does not consider the delay to amount to an abuse of the right of submission.

6.4 The Committee notes the authors' claim under article 14, paragraph 2 of the Covenant that, before and during the first and second instance trials, articles were published portraying them as guilty and quoting the investigator, which could have influenced the courts' decisions. However, the Committee observes that this claim does not appear to have been raised at any point in the domestic proceedings. This part of the communication is accordingly inadmissible for failure to exhaust all domestic remedies in accordance with article 5, paragraph 2(b) of the Optional Protocol.

6.5 The Committee notes the authors' claim that they were informed of the date of the court hearing only one day in advance, which did not allow them or their attorneys,

appointed *ex officio*, to properly prepare for the trial. The Committee also notes their claims that the attorneys appointed to represent them in court did not provide them with adequate legal assistance and that their request to be represented in court by the attorneys that were assisting them during the pre-trial investigation was rejected, which led to a violation of their rights under article 14, paragraphs 3 (b) and (d) of the Covenant. However, the Committee observes that, according to the documents contained in the file, the authors did not raise such complaints before the second instance court. This part of the communication is accordingly inadmissible for failure to exhaust domestic remedies, in accordance with article 5, paragraph 2(b) of the Optional Protocol.

6.6 The Committee notes the information submitted by the authors that two of the judges who participated in the adjudication of their cases were later arrested on corruption related charges and that one of them was convicted. The Committee observes that the authors have not presented any information that the arrests were in any way related to their particular case. The Committee also notes the authors' submission that "state appointed lawyers" requested money from them allegedly on behalf of the judges in order to secure a non-guilty verdict. The Committee, however, observes that, according to their own submission, the authors never attempted to complain to any national authority in relation to this claim, neither before their conviction nor after their conditional release from prison. This part of the communication is accordingly inadmissible for failure to exhaust all domestic remedies in accordance with article 5, paragraph 2 (b) of the Optional Protocol.

6.7 The Committee considers that the authors' claims under article 14, paragraphs 1 and 3 (e) have been sufficiently substantiated, for purposes of admissibility, declares them admissible and proceeds to their examination on their 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 by the parties, as provided for under article 5, paragraph 1, of the Optional Protocol.

7.2 The authors claim that their rights under article 14, paragraphs 1 and 3(e) have been violated on the grounds mainly that the courts rejected their request to question the expert who conducted the psychiatric evaluation of Mr. R.V., the expert who carried out the autopsy of the victim and the relative of Mr. R.V. who could testify on the statement made by Mr. R.V. before his death. Furthermore, their motion to recuse the investigator was also rejected. The Committee notes the State party's observations in this regard, in particular the fact that the Courts took their decision to convict the authors after hearing eleven witnesses and examining written evidence.

7.3 The Committee observes that the authors' claim relate primarily to the evaluation of facts and evidence by the State party's courts. The Committee recalls its jurisprudence in this respect and reiterates that, generally speaking, it is for the relevant domestic courts to evaluate facts and evidence, unless their evaluation is manifestly arbitrary or amounts to a denial of justice.[2] It also recalls its General Comment No. 32, according to which paragraph 3 (e) does not provide an unlimited right to obtain the attendance of any witness requested by the accused or their counsel, but only a right to have witnesses admitted that are relevant for the defence.[3] On the basis of the materials before it, the Committee considers that the

[2] See, for example, communication No. 1212/2003, *Lanzarote* v. *Spain*, decision of inadmissibility of 25 July 2006, para. 6.3; communication No. 1616/2007, *Manzano* v. *Colombia*, decision of inadmissibility of 19 March 2010, para. 6.4.

[3] General Comment No. 32 on Article 14: Right to equality before courts and tribunals and to a fair trial, CCPR/C/GC/32, para. 39.

authors have not shown sufficient grounds to support their claims that the domestic courts acted arbitrarily in that respect or that their decisions resulted in denial of justice. Accordingly, the Committee concludes that the facts before it do not disclose a violation of articles 14, paragraphs 1 and 3 (e) of the Covenant.

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 do not reveal a breach of any provision of the Covenant.

[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.]