



**International covenant
on civil and
political rights**

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HUMAN RIGHTS COMMITTEE
Eighty-fourth session
11 – 29 July 2005

VIEWS

Communication No. 1089/2002

<u>Submitted by:</u>	Leon R. Rouse (not represented by counsel)
<u>Alleged victim:</u>	The author
<u>State party:</u>	The Philippines
<u>Date of communication:</u>	10 June 2002 (initial submission)
<u>Document references:</u>	Special Rapporteur's rule 97 decision, transmitted to the State party on 11 July 2002 (not issued in document form)
<u>Date of adoption of the views:</u>	25 July 2005

* Made public by decision of the Human Rights Committee.

Subject matter: Fair trial and equality of arms in child abuse trial

Procedural issues: None

Substantive issues: Fair and impartial trial; equality of arms; presumption of innocence; ability to cross-examine witnesses; undue delay in proceedings, review by a higher tribunal according to law, arbitrary arrest and detention, failure to provide medical treatment as a form of torture

Articles of the Covenant: 7; 9, paragraph 1; and 14, paragraphs 1, 2, 3(a), (c), (d) and (e), and 5

Articles of the Optional Protocol: 2, 3

On 25 July 2005, the Human Rights Committee adopted the annexed draft as the Committee's Views, under article 5, paragraph 4, of the Optional Protocol in respect of communication No.1089/2002. The text of the Views is appended to the present document.

[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

Eighty-fourth session

concerning

Communication No. 1089/2002*

Submitted by: Leon R. Rouse (not represented by counsel)

Alleged victim: The authors

State party: The Philippines

Date of communication: 10 June 2002 (initial submission)

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

Meeting on 25 July 2005,

Having concluded its consideration of communication No.1089/2002, submitted to the Human Rights Committee by Leon R. Rouse 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 dated 21 June 2002 is Leon R. Rouse, an American citizen who, at the time of the initial submission was detained at Bilibid Prison in Muntinlupa City in the Philippines. He was released and deported to the United States of America on 29 September 2003. He claims to be a victim of violations by the Philippines¹ of articles 7, 14, paragraphs 1, 2, 3 (a), (c), (d) and (e), 5, and article 9, paragraph 1, of the International Covenant

* The following members of the Committee participated in the examination of the present communication: Mr. Nisuke Ando, Mr. Prafullachandra Natwarlal Bhagwati, Mr. Alfredo Castillero Hoyos, Ms. Christine Chanet, Mr. Maurice Glèlè Ahanhanzo, Mr. Edwin Johnson, Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer Lallah, Mr. Michael O'Flaherty, Ms. Elisabeth Palm, Sir Nigel Rodley, Mr. Ivan Shearer, Mr. Hipólito Solari-Yrigoyen, Ms. Ruth Wedgwood and Mr. Roman Wieruszewski.

¹ The Covenant and the Optional Protocol of the Covenant entered into force for the State party on 23 January 1987 and 22 November 1989 respectively.

on Civil and Political Rights (the Covenant). He is not represented by counsel.

Factual background

2.1 During a visit to the Philippines, the author was arrested, on 4 October 1995, for alleged sexual relations with a male minor and for a violation of the Child Abuse Law, which criminalises sexual acts between an adult and a person under the age of 18. Although the police proposed bribes in return for dismissing the case, the author, claiming that he was innocent, chose to face trial.

2.2 The author claims that he was set up and framed by the police. Around noon on the day of arrest, he arrived at Pichay Lodging House, where he saw Harty Dancel, a former acquaintance, accompanied by two individuals, Pedro Augustin and Godfrey Domingo. The four of them had lunch in a restaurant, where Dancel offered Godfrey to have sex with the author. The author refused, arguing that the latter was too young, even after Dancel insisted and assured him he had reached the age of majority.

2.3 Later in the day, the same three persons waited for the author at his hotel. Dancel had them invited to the author's room. After the author had taken a shower, Dancel and Augustin left the room, leaving him alone with Godfrey. The latter requested to use the bathroom, where he undressed. When there were knocks on the door, the author opened, and police officers entered. At that moment, neither the author nor Godfrey wore clothes.

2.4 The author was arrested without a warrant; he and Godfrey were taken to the police station, where Godfrey Domingo (hereafter referred to as the alleged victim) signed a sworn statement, witnessed by his parents, and filed a complaint against the author. He claimed that he was fifteen years old and that the author had prompted him into sexual acts. In subsequent interviews, the alleged victim told the same story to Assistant City Prosecutor Aurelio, to one Dr. Caday, and two social workers.

2.5 Dr. Caday, who examined and interviewed the alleged victim after the incident, concluded in a medical certificate that the victim claimed to have been sodomised, but that the examination neither confirmed nor contradicted this statement.

2.6 On 11 October 1995, the alleged victim, assisted by his parents, signed an affidavit of desistance, confirming the version of the facts as related by the author, and admitted that he had been part of a set-up organised by police officers Augustin and Dancel. It transpires from the judgment of the Court of Appeal, that in this document, the alleged victim also stated that he was 18 years old when the author was arrested.

2.7 On 19 October, the author was charged with child abuse, under Article III, Section 5, paragraph b, of Republic Act 7610, otherwise known as "Special Protection of Children against Child Abuse, Exploitation and Discrimination Act". On 23 October, on arraignment, the author pleaded not guilty; that same day, he filed a petition for bail. On 10 November, the Regional Trial Court of Laoag City, Branch II (hereafter referred to as the Trial Court) ruled that "the petition for bail had been overtaken by the fact that the prosecution was about to terminate the presentation of its evidence".

2.8 Despite a subpoena order against the alleged victim and his parents, they did not appear in hearings on 31 October and 10 November 1995.

2.9 On 7 December 1995, the author filed a demurrer to the evidence, mainly based on the fact that the prosecution rested its case on the statements made to others by the alleged victim, who was the only eyewitness of the events and who, despite a subpoena order, was not present for cross-examination. The demurrer also pointed out the inconsistencies in the testimonies of the other witnesses and the illegality of the arrest, and invoked the principle of presumption of innocence. The Court was asked to dismiss the case for insufficiency of evidence.

2.10 On 22 January 1996, before the author had submitted his defence statement, the Trial Court issued a pre-trial order dismissing the demurrer to evidence for lack of merit, and found that “the evidence for the prosecution [was] sufficient to prove the guilt of the accused beyond reasonable doubt of the crime charged against him.” The prosecution had presented the following circumstantial evidence: 1. A twenty-one year old witness had reported that he and the author had engaged in sexual activities the day before the arrest, and the Court found that, despite his age, “his physical appearance shows that he looks like a minor”. The Trial Court based its order on such assessment of evidence, although it had not even been offered as evidence by the prosecution, and the author had no opportunity to defend himself against the charge. 2. The police had found the author and the alleged victim naked in the hotel room when entering it. 3. The alleged victim had told the same story consistently to two social workers, the medical officer who examined him, and the Assistant City Prosecutor. The Court considered that these accounts by the alleged victim, although made out of court, were not simple hearsay.

2.11 On 2 February, the author filed a motion for reconsideration, claiming that, in the absence of testimony of the alleged victim, the testimonies of the other prosecution witnesses constituted hearsay, and that there was no proof of the minor age of the victim.

2.12 On 11 March, the Trial Court dismissed the motion for reconsideration for lack of merit.

2.13 On 26 March, the author filed a petition for certiorari to the Court of Appeal, seeking to annul the order of the Trial Court, dismissing the demurrer to evidence of 22 January 1996, as well as the order of the same court of 11 March 1996, which denied the motion for reconsideration. The author based his petition on the deprivation of his right to confront or cross-examine witnesses against him and the alleged illegality of his arrest and of the search of his room, conducted without a warrant.

2.14 The author provides copies of the comments of the Solicitor General to the Appeal Brief, and his own reply to the Solicitor General’s comments. In his comments, the Solicitor General argues that there was no need to prove the fact of actual sodomy of the alleged victim, as a different section of Act 7610, Section 10(b), Article VI, penalises “any person who shall keep or have in his company a minor, twelve years or under or who is ten years or more his junior in any public or private place, hotel (...)”. The Solicitor General argued that “the mere fact that the petitioner was found keeping in his company Domingo (...) who is younger than him by twenty-four years (...) raises the presumption that there was, at least, the commission of other acts of child abuse”. The author recalls that he was charged for a violation of Article III, section 5, paragraph b, of Act 7610, and not Section 10(b), Article VI.

2.15 On 24 September 1996, the Court of Appeal dismissed the petition for certiorari, “which clearly suffered from procedural infirmity”, as the author had not presented his contradicting evidence, and because the pre-trial testimonies of the alleged victim were properly characterised as circumstantial evidence. The Court found that the evidence presented by the prosecution “may yet suffice to establish the lesser offence defined and penalised under Section 10(b) of the statute”. The Court also found that the alleged illegality of the author’s arrest only affected the admission into evidence of the pictures taken in the hotel room at the time of the arrest.

2.16 On 29 October 1996, the author filed a motion for reconsideration against the Court of Appeal’s decision. He submits a copy of the comments of the Solicitor General, and his own reply to these comments.

2.17 On 12 February 1997, the Court of Appeal dismissed the author’s motion for reconsideration.

2.18 On 20 March 1997, the author filed a Petition for Review in the Supreme Court, which dismissed it on 23 July 1997, for “failure by the petitioner to sufficiently show that the respondent court had committed any reversible error in rendering the questioned judgment”.

2.19 On 12 January 1998, the Trial Court found that “the admission of Godfrey Domingo on what transpired between him and the accused which he repeatedly related to the different public officers immediately after the incident (...) cannot be overcome by the affidavit of desistance executed by Godfrey Domingo assisted by his parents”, because the alleged victim was not in court to confirm the contents of the document. The Court ruled that the affidavit of desistance should be considered as hearsay, and had no probative value. It found the author guilty beyond reasonable doubt of the crime charged against him. He was sentenced to serve a penalty of 10 years, 2 months and 21 days, as a minimum, to 17 years, 4 months and 1 day maximum, of imprisonment.

2.20 The author appealed to the Court of Appeal which upheld the conviction on 18 August 1999. The Court of Appeal based its decision on the following grounds. On the issue of the age of the alleged victim, the Court of Appeal considered that “the trial court did not commit any error in not giving probative value to [the] affidavit of desistance because the well-known rule is that retractions are generally unreliable and are looked upon with considerable disfavour by the courts.” On the issue that the alleged victim did not appear in court for cross-examination, the Court of Appeal considered that this case constituted an exception to the general rule of non admissibility of hearsay evidence, because the alleged victim’s statements took place immediately after the alleged facts, and were therefore natural and spontaneous. On the contradicting versions of the facts and testimonies of witnesses of the prosecution and the defence, the Court ruled that the issue of credibility of witnesses was an issue under the competence of the trial court. As a result, the decision of the Trial Court was affirmed.

2.21 The author further appealed to the Supreme Court on 3 September 1999. The Solicitor General commented on the appeal on 21 January 2000, further to which the author replied on 25 May 2000. This was the last submission of the author to the Supreme Court. The author’s appeal was dismissed by the Supreme Court on 10 February 2003, on the ground that it did not raise a point of law. After a motion for reconsideration thereof on 7 March 2003, the Supreme Court

dismissed the author's appeal, on the same grounds. This decision, dated 23 April 2003, states that "this denial is FINAL".

2.22 From 2001, while in prison, the author allegedly experienced extensive suffering provoked by kidney stones. The author reports that all scheduled tests at an outside hospital were postponed for administrative reasons not imputable to the author (failure of the guards to come to work, lack of authorisation of the Department of Justice, insufficient requests from the prison's doctors). As a result, the requisite tests were not made and the author did not receive an effective diagnosis and treatment. He submits a copy of a medical certificate dated 13 March 2003, resulting from a medical examination performed that day, recommending that the author be granted conditional pardon and voluntary deportation so that a thorough examination and possible operation could be done in the United States.

2.23 On 26 October 2003, the author informed the Committee that he had been released on 29 September 2003 and deported to the United States, after spending 8 years in prison.

The complaint

3.1 The author claims that he is a victim of a violation of article 14, paragraphs 1, 2, 3 (a), (c), (d) and (e), 5; article 9, paragraph 1; and article 7 of the Covenant, as he did not receive a fair trial, was the victim of arbitrary arrest and as a result suffered torture, inhuman or degrading treatment in prison.

3.2 The author alleges a violation of article 14, paragraph 1, and the principle of equality before the courts. He submits a copy of a release order in another case, issued by the same court, three days after the order dismissing the author's demurrer to evidence. In that case, the Trial Court had ordered the release of a man accused of repeatedly raping a minor girl, because the victim had made an affidavit of desistance, and because she did not appear in Court. The Court found that there was no way the prosecution could prove the guilt of the accused beyond reasonable doubt. The author contends that his case should have been treated the same way.

3.3 The author claims that he is a victim of a violation of the right to a fair hearing by an impartial tribunal. He refers to the findings of the judge and claims that her evaluation of the evidence in the case was partial, and that she overlooked serious inconsistencies in the police officers' testimonies, as well as her choice and interpretation of national jurisprudence, was arbitrary and not impartial. In particular, he refers to a judgment of the Supreme Court used by the judge to underpin her order of 22 January 1996; in this judgment, the Supreme Court ruled that the admission of guilt by an accused through another person is not considered hearsay and is admissible in evidence. In the author's case, the judge used the "admissions" (in fact accusations) of the alleged victim and ruled that for the same reasons as in the above-mentioned judgment, these were not hearsay. The author affirms that this jurisprudence can only be relied on in case of confession of the accused, and that he never confessed. He also argues that the evidence based on what the alleged victim had told police officers, social workers and the doctor was not considered hearsay and thus admissible evidence, whereas the affidavit of desistance signed by the alleged victim, and the testimony of the district public attorney who administered it, was considered hearsay by the judge, because the alleged victim had not come to court to confirm its contents. The affidavit of desistance was considered not to have any probative value. To the author, this further confirms that the judge was partial and prejudiced.

3.4 The author claims that he was a victim of a violation of article 14, paragraph 2, as the presumption of innocence was not applied to him. He refers to the order of the Trial Court of 22 January 1996 (see paragraph 2.10 above), and recalls that this order was issued before he was able to present any defence arguments. He also claims that the inconsistencies in the police officers' testimonies cast serious doubt on their credibility, and that the court was presented with two conflicting versions of the facts. The author argues that the accused should receive the benefit of any doubt and that, instead, the court gave the benefit of doubt to the prosecution and convicted him, in violation of the principle of presumption of innocence.

3.5 The author alleges various violations of article 14, paragraph 3. He refers to the decision of the Court of Appeal of 24 September 1996, in which the Court ruled that he could be found guilty of a minor offence of child abuse, sanctioned in a different section of the law than the one he was charged for. He argues that this is contrary to his right to be informed of the nature and cause of the charge against him (article 14, paragraph 3 (a)) and that this prevented him from preparing a defence on this point. However, the author seems to have dropped this claim in a later submission, as he was not found guilty of this offence.

3.6 The author further claims to be a victim of a violation of article 14, paragraph 3 (c), protecting the right to be tried without undue delay, as the Supreme Court, which has an obligation to decide a case within 24 months, only ruled on the author's appeal more than 32 months after it was submitted for its consideration, while the author was in prison.

3.7 For the author, the fact that the court based its decisions and conviction on, *inter alia*, the alleged youthful looks of the twenty-one year old witness, a fact that was never presented as evidence by the prosecution, deprived him of his right to defend himself (article 14, paragraph 3 (d)).

3.8 The author claims to be a victim of a violation of his right to examine, or have examined, the witnesses against him (article 14, paragraph 3 (e)), as the alleged victim, who was the only eyewitness of the events which led to his conviction, was never present in court for cross-examination.

3.9 The author contends that by summarily dismissing his appeal, which contained questions of law, the Supreme Court denied him his right to have his conviction reviewed by a higher tribunal according to law (article 14, paragraph 5).

3.10 The author claims a violation of article 9, paragraph 1, and his right to be free from arbitrary arrest and detention, as he was arrested without a warrant, and his application for bail was refused because his application had been overtaken by events, in that the prosecution was about to terminate its investigation.

3.11 The author finally claims to be a victim of a violation of article 7, of both physical and emotional torture or cruel, inhuman and degrading treatment or punishment. He argues that the serious pain he started suffering in 2001 due to his kidney problems, and the fact that he was not able to do the necessary tests and receive a proper diagnosis and treatment, constituted torture or inhuman or degrading treatment. In this regard, he refers to the medical certificate of 13 March 2003. He also argues that the sufferings imposed by the decisions of the court, as well as denial

of his request to visit his dying father, amount to emotional torture or cruel, inhuman and degrading treatment or punishment.

The State party's submission on the merits of the communication and author's comments

4.1 By note verbale of 3 November 2004, the State party made its submission on the merits of the communication and did not contest the admissibility of the communication. It argues that the author's defence that he was framed was not considered credible by the Trial Court and the Court of Appeal, in view of the overwhelming evidence obtained through the testimonies of the police officers who caught the author in the hotel room with the alleged victim, and the testimonies of the social workers, public prosecutor and doctor who interviewed him after the author's arrest.

4.2 The State party argues that the Supreme Court could not examine the author's appeal by certiorari and motions for reconsideration, as his claims raised issues of fact and not points of law. The Supreme Court may not decide on questions involving an examination of the probative value of the evidence presented by the litigants.

4.3 The State party rejects the allegation that the author was unable to cross-examine witnesses in court. It states that he was able to, and did, confront and cross-examine the police officers and social workers, who had also signed the complaint against him (and were therefore also his accusers), and who testified in court.

4.4 With reference to the author's allegation of a violation of his right to equality before the courts under article 14, paragraph 1, the State party contends that the circumstances of the case of rape of a minor, referred to by the author, were completely different from those of the author's. It underlines that in that case, the private complainant desisted from further pursuing the case and did not testify before the trial court. The Supreme Court considered that the testimonies of the investigators, who repeated what the victim had told them, could not be admitted as evidence, as they constituted hearsay. The State party considers that in the present case, there were other witnesses who had personal knowledge of, and actually saw the author committing the offence, namely the police officers who caught him naked in the company of a child, who himself was naked, in a hotel room.

4.5 The State party concludes that the author was afforded a fair trial before the Trial Court.

5. On 9 March 2005, the author primarily commented on the State party's observations. He reiterates his claims and refutes the State party's argument that his conviction was based on testimonies of police officers who saw him committing the offence. He recalls that the police officers did not testify that they actually saw him commit sexual acts with the alleged victim.

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 rule 93 of its rules of procedure, decide whether or not the communication is admissible under the Optional Protocol to the Covenant.

6.2 The Committee notes that the State party has not raised any objections to the admissibility of the communication, that the author has exhausted available domestic remedies, and that the same matter is not being examined under another procedure of international investigation or settlement.

6.3 With regard to the alleged violation of equality before the courts (article 14, paragraph 1), the Committee notes that the author has complained about the outcome of the judicial proceedings, compared to the outcome of another similar case. The Committee notes that the State party contends that the circumstances of the case referred to by the author were completely different from those of the author's. The Committee further observes that article 14, paragraph 1, of the Covenant guarantees procedural equality but cannot be interpreted as guaranteeing equality of results in proceedings before the competent tribunal. This aspect of the author's communication falls outside the scope of application of article 14, paragraph 1, and is, therefore, inadmissible *ratione materiae* under article 3 of the Optional Protocol. However, the Committee notes that the communication raises issues with regard to the claim relating to the alleged violation of the right to a fair hearing by an impartial tribunal established by law and will examine that part of the claim under the same article.

6.4 With regard to the allegation of a violation of article 14, paragraph 3 (a), the Committee notes that the author was not found guilty of a different offence from the one he was charged with. This claim has thus not been substantiated for purposes of admissibility and is inadmissible, under article 2 of the Optional Protocol.

6.5 With regard to the alleged violation of article 14, paragraph 3 (d), the Committee notes that it is clear from the material before it, that the author was present at his trial and that he was afforded legal assistance. Reliance by the Court on the alleged youthful looks of the 21-year old witness, referred to by the author to support this claim, falls outside the scope of application of article 14, paragraph 3 (d), and is, therefore, inadmissible *ratione materiae* under article 3 of the Optional Protocol.

6.6 The Committee considers that the author's remaining allegations have been sufficiently substantiated for purposes of admissibility and therefore declares the communication admissible, insofar as it raises issues under article 14, paragraphs 1, 2, 3 (c) and (e), 5; article 9, paragraph 1; and article 7 of the Covenant.

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 in article 5, paragraph 1, of the Optional Protocol.

7.2 The Committee recalls its jurisprudence that it is generally for the courts of States parties to the Covenant to evaluate facts and evidence in a particular case, unless it can be ascertained that the evaluation was clearly arbitrary or amounted to a denial of justice. In the present case, the Committee notes that the judge convicted the author *inter alia* on evidence that the accounts made by the alleged victim, although made out of court, were not simple hearsay. In addition, the judge did not admit the affidavit of desistance of the alleged victim as evidence while she admitted his first statement, although both were equally confirmed by witnesses who did not

have a personal knowledge of the facts. Finally, the author had to overcome doubtful evidence, and even evidence that was not presented in court (the youthful looks of the 21 years old witness, as well as the minor age of the alleged victim). In the circumstances, the Committee finds that the court's choice of admissible evidence, in particular in the absence of any evidence confirmed by the alleged victim, as well as its evaluation thereof, were clearly arbitrary, in violation of article 14, paragraph 1 of the Covenant.

7.3 In the light of this finding in respect of article 14, paragraph 1, it is not necessary to consider the claim arising under article 14, paragraph 2.

7.4 In relation to the alleged undue delays in the proceedings, the Committee notes that the Supreme Court delivered its judgment of 10 February 2003, that is over 41 months after the appeal was lodged on 3 September 1999, complemented by appeal briefs, the last of which is dated 25 May 2000. There was thus a delay of two years and eight months between the last appeal brief and the Supreme Court's judgment. Altogether, there was a delay of six and a half years between the author's arrest and the judgment of the Supreme Court. On the strength of the material before the Committee, these delays cannot be attributed to the author's appeals. In the absence of any pertinent explanation from the State party, the Committee concludes that there has been a violation of article 14, paragraph 3 (c).

7.5 As to the claim that the author was deprived of his right to cross-examine a crucial prosecution witness, the Committee notes the State party's contention that he was afforded, and took advantage, of the possibility to cross-examine the public officers who had also filed a complaint against him. However, the Committee notes that although a subpoena order had been issued to bring the alleged victim to testify in court, neither the alleged victim nor his parents could allegedly be located. The Committee further recalls that considerable weight was given to that witness' out of court statement. Considering that the author was unable to cross-examine the alleged victim, although he was the sole eyewitness to the alleged crime², the Committee concludes that the author was the victim of a violation of article 14, paragraph 3(e).

7.6 On the alleged violation of article 14, paragraph 5, the Committee notes that the author complained that the Supreme Court had denied his appeal, which he maintains contained questions of law, without examining the substance of the case, on the ground that this court only reviews questions of law. He does not complain that his sentence was not reviewed by a higher tribunal. Moreover, it transpires from the facts that the Trial Court conviction of the author was reviewed by the Court of Appeal, which is a higher tribunal within the meaning of article 14, paragraph 5. The Committee observes that this article does not guarantee review by more than one tribunal. Consequently, the Committee concludes that the facts before it do not disclose a violation of article 14, paragraph 5, of the Covenant.

7.7 In relation to the alleged violation of the right to be free from arbitrary arrest and detention, it is uncontested that the author was arrested without a warrant. The State party has neither contested this allegation nor given any justification for arresting the author without a warrant. The Committee concludes that the author was the victim of a violation of article 9, paragraph 1.

² See Communication 815/1998, *Dugin v. Russian Federation*, Views adopted on 5 July 2004, paragraph 9.3

7.8 As to the author's claim under article 7, the Committee recalls that States parties are under an obligation to observe certain minimum standards of detention, which include provision of medical care and treatment for sick prisoners, in accordance with rule 22 (2) of the Standard Minimum Rules for the Treatment of Prisoners³. It is apparent from the author's uncontested account that he suffered from severe pain due to aggravated kidney problems, and that he was not able to obtain proper medical treatment from the prison authorities. As the author suffered such pain for a considerable amount of time, from 2001 up to his release in September 2003, the Committee finds that he was the victim of cruel and inhuman treatment in violation of article 7. In the light of this finding, it is unnecessary to consider the author's additional claim under article 7.

8. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol, is of the view that the facts before it disclose a violation of articles 14, paragraphs 1 and 3 (c) and (e); 9, paragraph 1; and 7 of the International Covenant on Civil and Political Rights.

9. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author with an effective remedy, including adequate compensation, inter alia for the time of his detention and imprisonment.

10. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognised the competence of the Committee to determine whether there has been a violation of the Covenant or not, and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory or subject to its jurisdiction the rights recognised 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 90 days, information about the measures taken to give effect to the Committee's views.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

³ Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council in its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977; see Human Rights: A Compilation of International Instruments (United Nations publication, Sales No. E.02.XIV.4), chap. J, sect. 34.