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Human Rights Committee

Decision adopted by the Committee under the Optional Protocol, concerning communication No. 2145/2012^{*, **}

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| <i>Communication submitted by:</i> | M.Z. |
| <i>Alleged victim:</i> | The author |
| <i>State party:</i> | Kazakhstan |
| <i>Date of communication:</i> | 28 March 2011 (initial submission) |
| <i>Document references:</i> | Special Rapporteur's rule 97 decision, transmitted to the State party on 3 April 2012 (not issued in document form) |
| <i>Date of adoption of decision:</i> | 28 March 2017 |
| <i>Subject matter:</i> | Facts and evidence; civil and criminal proceedings; abduction of a child |
| <i>Substantive issues:</i> | Right to a fair trial; right not to be subjected to interference with private life; equality of rights and responsibilities of spouses; right of a child to protection by the State; right to freedom from discrimination |
| <i>Procedural issues:</i> | Failure to substantiate claims, compatibility <i>ratione temporis</i> |
| <i>Articles of the Covenant:</i> | 2(1), 14, 17, 23, 24, 26 |
| <i>Articles of the Optional Protocol:</i> | 1, 2 |

* Adopted by the Committee at its 119th session (6-29 March 2017).

** The following members of the Committee participated in the examination of the present communication: Tania Abdo Rocholl, Yadh Ben Achour, Ilze Brands Kehris, Sarah Cleveland, Olivier de Frouville, Amin Ahmed Fathalla, Christof Heyns, Yuji Iwasawa, Bamarian Koita, Marcia V.J. Kran, Duncan Muhumuza Laki, Photini Pazartzis, Mauro Politi, Jose Manuel Santos Pais, Anja Seibert-Fohr, Yuval Shany, and Margo Waterval.

1. The author is M.Z., a Kazakh citizen born in 1965. He claims to be a victim of a violation, by Kazakhstan, of his rights under articles 14, 17, 23 and 24, in conjunction with articles 2, paragraph 1, and 26 of the International Covenant on Civil and Political Rights (“the Covenant”). The first Optional Protocol to the Covenant entered into force for Kazakhstan on 30 September 2009. The author is not represented by counsel.

Factual background¹

2.1 In 1987, the author got married. In 1988, his son was born. In 1994, the author bought an apartment for 12,000 USD in Almaty where he resided with his wife and son. According to article 219 of the Civil Code, real property acquired in a marriage is considered as common property of spouses. On 17 February 1997, the spouses divorced by mutual consent and decided on the division of property. Thus, the author kept their car whereas his former wife took custody of their son and renounced claiming alimony. It was also agreed that she would keep the apartment in exchange of the payment, in instalments, of her share of 6,000 USD. The author did not need the apartment as he wished to go abroad.

2.2 In September 1997, the author’s former wife started studies in France, whereas the author continued residing in the apartment with their son. In May 1998, the author married another woman.

2.3 In July 1998, the author’s former wife returned to Almaty with a new husband. The couple and the author’s son lived in the disputed apartment, while the author resided in another place with his new wife. The former spouses agreed that he would keep the family savings of 20,000 USD to cover the expenses of the child upbringing in the mother’s absence abroad.

2.4 On 23 September 1998, the author’s former wife paid him 200 USD, as a contribution to her share in the apartment. He issued a receipt for this amount. On 20 August 1998, they signed a contract and certified it at a notary. Thus, the author’s former wife had to pay 6,000 USD by 31 December 1998. On 29 November 1998, she paid 5,800 USD. The author issued a receipt to this effect. On 12 March 1999, the transaction was registered by the Real Estate Agency. She resided in the apartment until August 1999.

2.5 At some point in 1999, the author went abroad. In September 1999, his former wife went to France with their son and her new husband. She rented the apartment in Kazakhstan.

2.6 In 2001, the former wife visited Kazakhstan and met the author at some point. The author asked her to restart their relationship but she refused.

2.7 On 29 March 2002, the author was arrested on fraud-related charges. On 31 July 2002, the Court of the Almalinskiy District in Almaty sentenced him to four years’ imprisonment in this connection. On 10 September 2002, the City Court of Almaty upheld the conviction on appeal.

2.8 In 2003, the author’s former wife asked her sister to sell the apartment as she decided not to return to Kazakhstan anymore. In addition, as she continued paying utility bills, the apartment was a financial burden for her. She provided her sister with an authorisation to act on her behalf. In 2003, the sister of the author’s former wife sold the apartment. In 2005, the new owner also sold the apartment.

2.9 In March 2006, the author was released from prison. As he could not access the apartment, he went to the Property Inventory Agency and was provided with a copy of the contract regarding the sale of the apartment to his former wife in 1998. He claims that he then realised that his signature on the contact was forged. Also

¹ Reconstructed based on the author’s submissions and supporting documents.

only upon his release from prison, he realised that his son had been taken away by his former wife.

2.10 The author initiated civil and criminal proceedings in relation to the sale of the apartment; in relation to an alleged theft of a diary; and criminal proceedings concerning the alleged abduction of his son.

2.11 On 29 March 2006, the author sued his former wife, her sister, the new owner of the apartment and notaries, seeking the annulment of the sale. He acknowledged that he had issued a number of receipts confirming receipt of payments from his former wife but claimed that these were not related to the sale of the apartment. The receipts had been stolen from him and fraudulently used by his former wife.

2.12 On an unspecified date, the Court of the Almalinskiy District of Almaty requested the sister of the author's former wife to provide documents signed or written by the author, in order to conduct a graphological examination. The documents were stored in the apartment of the mother of the second husband of the author's former wife. The sister brought the documents, including the diary, which contained notes both of the author and his wife. On 20 August 2007, the District Court transmitted the diary for expert examination.

2.13 On 24 October 2007, the Court of the Almalinskiy District rejected the author's claims in the civil proceedings, based on the conclusions of the graphological examinations of his diary, witness statements and other evidence. The court noted that the author's identity documents and the apartment sales contract of 1994 were presented at the signature of the contract of 1998 and nothing demonstrated that those documents had been stolen. The court also noted that the author had failed to provide 5-6 additional samples of his signature, despite specific requests to this effect, therefore the experts had to examine the samples already available to them. The court rejected the author's argument that until 2006 he was unaware of the sale of the apartment in 1998 as he failed to provide evidence of his absence in Almaty from 1998 to March 2002. The court established that the apartment had been sold in accordance with the law and that in fact the author disputed the transaction because its price had increased.

2.14 On 13 December 2007, the Almaty City Court upheld the decision of 24 October 2007, on appeal. The author's applications for supervisory review were subsequently dismissed.

2.15 On 21 January 2008, the District Court endorsed a friendly settlement between the author and his former wife whereby the author withdrew his claims in exchange of the return of the diary. The diary was returned on the same day. On 18 November 2009, the prosecutor's office refused to initiate criminal proceedings concerning the theft of the diary, in the absence of *corpus delicti*.

2.16 On 7 August and 14 and 19 September 2006, the author informed the police and the prosecutor's office about the sale of his apartment by his former wife. On 19 October 2006, the author requested the police department of the Medeu District of Almaty to bring criminal proceedings against his former wife and her sister for having fraudulently sold his apartment. The author claims that the investigator refused to take action on his complaint. However, as it transpires from the material on file, on 21 October 2006, the investigator requested the author's assistance to collect information relating to the whereabouts of his former wife. The author claims that on an unspecified date, an official requested a bribe to ensure a proper investigation of the case. The author filed a complaint with the Committee of National Security, which remained without response.

2.17 On 18 March 2007, the district police department initiated criminal proceedings against his former wife for fraud, based on expert evidence that the author's signature on the sales and purchase contract of 1998 had been forged. However, this evidence was later nullified by additional examinations of the

author's handwriting. The experts found that the first experts' examination was based on a single sample of the author's signature, which did not allow to establish with certainty the authenticity of his handwriting. The investigation also established that the sale of the apartment by the author is confirmed by receipts, signed by him, to the effect that he had received 6,000 USD, accounting for half the price of the apartment, from his former wife, as well as by witness statements and other evidence.

2.18 On 12 February 2010, the police department of Almaty closed the criminal proceedings, for the absence of *corpus delicti*. Although the author was informed of the reasons for the termination of the criminal case in March 2010, he received a copy of the decision of 12 February 2010 only in October 2011, despite his repeated requests. Thus, he claims, he could not challenge it. At the same time however, it transpires that on 15 July, 2 August and 10 September 2010, the Prosecutor General's Office considered that there were no grounds to review the decision of 12 February 2010. The Prosecutor General stated that the investigation had taken all necessary measures to ensure a thorough investigation. The author's arguments about his allegedly forged signature on the contract of 1998 and the receipts of 6000 USD from his wife were dismissed as unsubstantiated, based on the results of expert examinations of his signature.

2.19 The author claims that he requested access to the criminal case-file relating to the sale of the apartment on several occasions. However, he was granted access to the case-file on 30 March 2011 only. After studying the file, he noticed that many documents had been removed.

2.20 On 10 September 2011, the Prosecutor General's Office responded to the author that he had been notified of every decision taken regarding the case and that he had studied the case-file on 30 March 2011, as confirmed by his signature; he was invited to additionally study the case-file. The Prosecutor General's Office terminated correspondence with the author on the issue and informed him that his eventual further complaints would be rejected without inquiry if they contain no new arguments.

2.21 The author filed a number of complaints against the investigator, alleging procedural violations in the investigation and asking to nullify the decision of 12 February 2010 to close the case. On 25 November 2011, the Court of the Almalynskiy District in Almaty cancelled the investigator's decision of 28 December 2010 to have physical evidence, including the author's diary, archived. On 31 March 2011, the Court of the Medeu District in Almaty ordered an additional investigation in relation to an expert; criminal proceedings against her were subsequently terminated in the absence of *corpus delicti*. However, the decision of 12 February 2010 has not been quashed.

2.22 The author appends a number of his complaints to domestic authorities in relation to the sale of the apartment and articles of 26 February 2009 and 24 November 2011 from the "Svoboda Slova" newspaper, where he criticised the investigation of the alleged fraud by the police and the outcome of the civil proceedings and questioned the competence of judges in Kazakhstan. He claims that the publications, as well as his conviction, contributed to the negative outcome of the criminal proceedings as investigators told him that he would never "win the case". He also claims that the head of the investigation department at the Almaty City Police Department threatened him and his family in connection with his complaints against the investigator. The author filed several complaints with the police and the prosecutor's office to "prevent illegal actions by the police," which remained without response.

2.23 On 1 December 2009, the author requested the police to initiate criminal proceedings in relation to the abduction of his son by his former wife, with the help of a notary who had forged the author's consent. He did not specify that as per the agreement between him and his former wife, he agreed that his son would reside

with her. The same day, the Medeu District Police Department opened an investigation. As the investigation was suspended on several occasions, the author complained to the City Prosecutor. In reply, he was informed that the investigation was ongoing. He complained about the prosecutor's inaction to the Court of the Medeu District, which granted his claims on 2 November 2011 and 16 January 2012. The author claims that the court decisions are ignored by the police and that he was not granted access to the case-file.

2.24 It follows from the material on file that a number of refusals to initiate criminal proceedings in relation to the abduction of the author's son were taken by the police, due to the absence of *corpus delicti* in the actions of the author's former wife. They were quashed by prosecuting authorities due to incomplete investigation.

2.25 The last decision to refuse the initiation of criminal proceedings was taken by the Medeu District Police Department on 4 November 2012, for the absence of *corpus delicti*, which was upheld by the City Prosecutor's Office. It was established that the son had left Kazakhstan for France with the author's former wife. The son got married and became a French citizen later on.

2.26 The author claims to have exhausted all available domestic remedies.

The complaint

3.1 The author claims a violation of his rights under articles 14, 17, 23, 24 and article 26, in conjunction with article 2(1), of the Covenant.

3.2 Under article 14 of the Covenant, he challenges the outcome of the civil and criminal proceedings and claims that they were unfair, based on inadmissible evidence and were dealt by an incompetent and biased court. He complains about the delay in granting him access to the criminal case-file regarding the sale of his apartment, which prevented him from appealing the decision of 12 February 2010 to have the criminal proceedings terminated.

3.3 The author claims that his rights to privacy and personal life under article 17 were violated when the court accepted his diary as an example of his handwriting, although it was stolen from him by his former wife.

3.4 The author also claims that the domestic authorities failed to investigate his complaint about the abduction of his son by his former wife, in violation of article 23, paragraph 4 of the Covenant. He also claims that the rights of his son under article 24 of the Covenant were violated as he may suffer improper treatment from his former wife and her new husband and that may need protection by the State party.

3.5 The author also claims a violation of article 26, in conjunction with article 2 (1), of the Covenant, because the police did not properly investigate his allegations of fraud due to his criminal record and no action was taken on his complaints about discrimination and threats by law enforcement officers.

State party's observations on the admissibility

4.1 On 14 June 2012, the State party submitted its observations on the admissibility of the communication and observed that the author has failed to exhaust all available domestic remedies. Therefore, the complaint should be declared inadmissible under article 5, paragraph 2(b), of the Optional Protocol to the Covenant.

4.2 In particular, the criminal proceedings in relation to the abduction of the author's son are on-going. Several refusals to initiate criminal proceedings were reversed by the prosecuting authorities due to incomplete investigation. On 11 May 2012, the City Prosecutor's Office reversed the refusal to initiate criminal proceedings of 9 April 2012 and transmitted the case for an additional investigation to the City Department of the Ministry of Internal Affairs.

4.3 The proceedings in relation to the notary, who registered a note of authorization whereby the author's former wife transferred the rights to administer the apartment to her sister are also the object of an additional investigation, which is pending.

4.4 Concerning the alleged theft of the author's diary, on 21 January 2008, the Court of the Almalinskiy District in Almaty established a friendly settlement between the author and his former wife whereby the author withdrew his claims against the return of his diary, which had been made available to the experts. On this ground, the prosecutor's office refused to initiate criminal proceedings, on 18 November 2009, in the absence of corpus delicti and also because the diary was created and kept by the spouses as common property. The author has not challenged the prosecutor's decision before a higher level prosecutor or in court.

4.5 The State party clarifies that access to case-materials upon the termination of criminal proceedings is regulated by article 270 of the CCP, according to which the victim is notified about the decision and the avenues of appeal in writing, whereas a copy of the decision is served on the victim upon request. On 12 and 13 February 2010, a notification about the decision of 12 February 2010 was mailed to the author. On 15 February 2010, he requested access to the case-file. On the same date, he was notified, by mail, that he could access the case-file at the City Prosecutor's Office. On 10 December 2010, the City Prosecutor's Office requested, further to the author's request, that the City Department of the Ministry of Internal Affairs ensure him access to the case-file. On 4, 6 and 9 January 2011, the Department of the Ministry of Internal Affairs invited the author, by mail, to study the case-file. His neighbours residing at the address provided by the author for correspondence testified that he had changed residence. On 17 and 24 March 2011, notifications were sent to the author's current address. Thereafter, he familiarised himself with the case-file. The delay in the author's access to the case-file is explained by his failure to inform the prosecuting authorities of his change of residence.

4.6 The author's allegations of threats, including by phone, were investigated but were not confirmed. In particular, a transcript of phone calls showed that he received no phone calls in the impugned period.

4.7 The State party observes that the author is challenging property rights, despite the fact that he received compensation for his share of the sale of the apartment, due to a substantive increase in property prices since 1998.

4.8 The State party considers that the claims should be dismissed as inadmissible for non-exhaustion and the lack of substantiation.

Author's comments on the State party's observations

5.1 On 11 August 2012, the author submitted his comments challenging the State party's admissibility arguments and reiterating his initial claims.

5.2 His last complaint about the abduction of his son was submitted to the Almaty City Prosecutor's Office on 7 August 2012.

5.3 Criminal proceedings with regard to the notary were terminated on 15 December 2011, in the absence of corpus delicti.

5.4 He has exhausted all available remedies with regard to the theft of his diary. He challenges the State party's submission that the diary was common property of the spouses. He was not provided with a copy of the refusal to initiate criminal proceedings of 18 November 2009. On 20 August 2007, the Court of the Almalinskiy District transmitted his diary for expert examination. An acquaintance of his former wife had transmitted the diary to the court. On 19 December 2007, the sister of his former wife asked the court to return the diary.

5.5 He finds that the State party discriminated against him while submitting that his attempts to restore his rights are driven by the increased property prices. The

apartment was purchased during the marriage. He claims that after the divorce, he was the sole owner of the apartment.

5.6 He claims a violation of his rights under article 14 of the Covenant due to the refusal to open criminal proceedings concerning the disappearance of materials from the criminal case-file related to the apartment. He was not provided with a copy of the relevant decision.

5.7 The author appends a decision of the Court of the Almalinskiy District of 5 August 2011 rejecting his request to be given a new deadline to appeal the decision of 12 February 2010, which was rejected by the court on 22 July 2011. Under article 109 of the CCP, the deadline is set at three days after the pronouncement of a decision. The author was informed that the decision would be pronounced on 22 July 2011 but did not attend the hearing. The court considered that he had missed the deadline without a valid justification.

5.8 The author submits that he changed residence only twice and his new addresses were indicated in all submissions to the authorities.

5.9 On 16 October 2012, the author transmitted the refusal of the Supreme Court to have the district court's decision of 24 October 2007 reviewed due to newly discovered evidence.

State party's observations on the merits

6.1 On 5 November 2012, the State party submitted its observations on the merits. It recalls the facts of the case, reiterates that the author's claims are groundless and provides copies of decisions pertaining to the case.

6.2 The State party refers to the written submission by the author's former wife to the court to the effect that the apartment was bought during the marriage. In February 1997, their marital relationships stopped. In September 1997, she left to study in France, whereas the author continued residing in the apartment with their son. When she left, the former spouses had 20,000 USD as savings and a car as common property. In July 1998, she returned to Almaty with a new husband and, together with her son, the three of them lived in the apartment, while the author resided at his new partner's apartment. When she came back, the author kept the family savings of 20,000 USD to cover the expenses of the child upbringing in her absence. They agreed that their son would stay with her. In exchange, she would not claim alimony and would stay in the apartment, after buying out her share, whereas he would get the car and reside at his new partner's apartment. Later, he suggested buying out his share of the apartment and took care of the administrative formalities.

6.3 A number of refusals to initiate criminal proceedings in relation to the abduction of the author's son were taken by the police, due to the absence of corpus delicti in the actions of the author's former wife. They were quashed by prosecuting authorities due to incomplete investigation. The last refusal to initiate criminal proceedings was taken by the Medeu district police department on 1 August 2012 and upheld by the City Prosecutor's Office. It was established that the author's former wife had flown from Kazakhstan to Saint-Petersburg in the Russian Federation in 2006 and had not returned to Kazakhstan ever since. According to her submission of 8 December 2009 to the French police, at the request by the Ministry of Internal Affairs of Kazakhstan of 26 May 2009, the division of property caused conflicts in their marriage. It took place between 1998 and two years after the divorce. The divorce was based on mutual agreement, they also decided on the division of property. As per the agreement, the author kept their car. They also agreed that she would keep the apartment in exchange of the payment of her share. At that time, the author wished to go to Turkey and did not need the apartment. They finally agreed that she would have the custody of the son.

6.4 On the author's claim about the delay in accessing the case-file, the State party submits that the delay is related to his change of residence without properly informing the authorities and his failure to appear when convoked by the investigator. According to the notification of 11 August 2010, on file, the author refused to study the case-file as he disagreed with the decision of 12 February 2010 and asked its cancellation. Nevertheless, the author was invited to study the case-file in the archives.

6.5 The personal diary was handed over to the author on 21 January 2008, when the friendly settlement was reached by the parties in court.

6.6 The State party transmits the author's 2002 conviction for fraud and submits that it "fully reflects his personality."

6.7 By Note verbale of 28 January 2013, the State party reiterated its previous submissions, emphasising that the author's claims should be declared inadmissible.

Author's comments on the State party's observations on the merits

7.1 On 1 February 2013, the author challenged the State party's observations on the merits. He reiterates his claims in full.

7.2 The author claims that the State party's observations and reference to his conviction violate his rights under article 26 in conjunction with article 2(1) of the Covenant. He has fully served the sentence and his criminal record is considered as nullified three years after the sentence is served, i.e. since 2009.

7.3 The Medeu district police department refused to enforce the decision of the Court of the Medeu District of 4 October 2012 concerning the abduction of his son, whereby the refusal to initiate criminal proceedings of 1 August 2012 was quashed and the case was sent for an additional investigation. The court found that the investigation had failed to establish the whereabouts of his son, when and how he had left Kazakhstan and to request data from the civil registration service. The author submitted several complaints about the lack of information on the investigation progress.

7.4 The author appends a decision of 31 May 2012 of the Court of the Amalinskiy District in Almaty quashing the refusal to initiate criminal proceedings in relation to the notary of 15 December 2011 and sending the case for a new investigation.

Further submission by the State party

8.1 On 21 May 2013, the State party reiterated its previous submissions and adds that the reference to the author's previous conviction does not trigger any legal consequences for him and was made to illustrate his personality, which is in compliance with domestic law.

8.2 Concerning the criminal proceedings related to the apartment, a number of notifications were sent to the author's address. As per his statement of 15 February 2010 to the District Department of the Ministry of Internal Affairs, he did not wish to study the case-file.

8.3 On 4 November 2012, the Medeu District Police Department took a final decision, to refuse to initiate criminal proceedings in relation to the abduction of the author's son, for the absence of *corpus delicti*, which was upheld by the City Prosecutor's Office. The sister of the author's former wife testified that the latter had left Kazakhstan for France with her son. The son got married and became a French citizen. According to the decision, the son resided with the author while his former wife was temporarily residing in France from September 1997 to the autumn of 1998. In May 1998, the author got married and subsequently moved abroad with his new wife, whereas his son resided with the author's former wife and the family

of her new husband. In September 2001, the author met his former wife and asked her to see the son but she refused. Thus, he has not seen his son since 1999.

8.4 The diary was used by the spouses as common property as they both wrote in it.

8.5 On 27 September 2012, the investigation refused to initiate criminal proceedings in relation to the notary, for the absence of *corpus delicti*. The author was informed thereof.

8.6 On 29 May 2013, the State party submitted copies of a number of decisions of domestic authorities in relation to the case.

Further submission by the author

9.1 On 9 September 2013, the author reiterated his claims and challenged the assessment of facts and evidence by the domestic authorities.

9.2 The author submits that the State party did not specify the law in compliance with which the reference to his previous conviction was made. He reiterates his claim under article 26 of the Covenant.

9.3 He adds that the diary was first presented to the courts as his personal diary. It contained his personal information and could not be considered as common property under the law.

9.4 The author claims that he still has no access to all the materials of the terminated criminal investigation in relation to the sale of the apartment and is therefore deprived of his right of appeal.

9.5 He contends that the State party has not addressed his claim about the threats by the Head of the investigation department.

Further submission by the State party

10.1 On 27 November 2013, the State party reiterated its previous submissions.

10.2 It adds that the decision of 4 November 2012 to refuse to initiate criminal proceedings in relation to the alleged abduction of the author's son by his former wife was taken in accordance with the law because voluntary movement of a person does not constitute a crime under article 125 of the Criminal Code (abduction). Taking a child against the will of the other parent or relative who was involved in his/her upbringing does not constitute abduction either.

10.3 The State party submits that the author's communication should be declared inadmissible and unsubstantiated.

Issues and proceedings before the Committee

Consideration of admissibility

11.1 Before considering any claim contained in a communication, the Human Rights Committee must decide, in accordance with rule 93 of its rules of procedure, whether the communication is admissible under the Optional Protocol to the Covenant.

11.2 As required under article 5 (2) (a) of the Optional Protocol, the Committee has ascertained that the same matter is not being examined under another procedure of international investigation or settlement.

11.3 The Committee notes that the alleged violation of article 14 of the Covenant concerning the civil proceedings in relation to the sale of the apartment by the author's former wife back in 2007, which happened before 30 September 2009, when the Optional Protocol entered into force for the State party. The Committee observes that it is precluded *ratione temporis* from examining alleged violations of

the Covenant which occurred before the entry into force of the Optional Protocol for the State party, unless the violations complained of continue after that date or continue to have effects which in themselves constitute a violation of the Covenant,² or an affirmation of a prior violation.³ In this light, the Committee notes the author's claims under article 14 of the Covenant that the civil proceedings concerning the sale of the apartment were unfair, based on inadmissible evidence and were dealt with by an incompetent and biased court. The Committee notes that the said domestic proceedings have been finalized before the entry into force of the Optional Protocol for the State party and finds them inadmissible *ratione temporis* under article 1 of the Optional Protocol.

11.4 The Committee notes the State party's argument that the author's remaining claims under articles 14, 17, 23, 24, 2(1) and 26 of the Covenant should be declared inadmissible due to the author's failure to exhaust domestic remedies and lack of substantiation.

11.5 The Committee notes the author's claims under article 14 of the Covenant concerning the refusal to initiate criminal proceedings in relation to the sale of the apartment by his former wife (12 February 2010) and the loss of material from the case-file. The Committee also notes the author's claim regarding the delay in accessing the case-file which prevented him from appealing the decision of 12 February 2010. The Committee recalls, first, that it is generally for States parties' courts 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, or that the court failed in its duty of independence and impartiality. In light of the information available on file, the Committee considers that, in the present case, the author has failed to demonstrate that the multiple decisions taken by the domestic courts of the State party evaluated the evidence before them in an arbitrary manner, or amounted to a denial of justice. Secondly, the Committee considers that the author has failed to substantiate the allegation, which the State party denies, according to which the State authorities prevented him from accessing the case-file and appealing the decision of 12 February 2010. The Committee therefore concludes that the author's claims under article 14 have not been sufficiently substantiated and are, therefore, inadmissible under article 2 of the Optional Protocol.

11.6 The Committee notes the author's claim under article 17 of the Covenant regarding the use of his diary by the court as an example of his handwriting in the civil proceedings involving him and his former wife. The Committee takes note of the State party's argument that the author has not exhausted all available domestic remedies as he had failed to challenge the prosecutor's refusal to open criminal proceedings in relation to the theft of the diary (18 November 2009). It also notes the author's contention that he did not challenge this decision because he was not provided with a copy of the decision. The Committee notes, however, that the author did not argue that he was not informed of the contents of the decision in a timely manner which would allow him to submit a complaint to the competent authorities, if he so wished. Furthermore, it observes that pursuant to the terms of the friendly settlement reached in court by the author and his former wife on 21 January 2008, the author withdrew his claims in relation to the diary, and it was returned to him on the same day. The Committee also notes that although the author disputes that the diary was common property of the spouses, he does not deny that both his former wife and himself entered notes in it and that the diary did not exclusively contain his own private information. Furthermore, it transpires that the diary was one of the documents used by the court to establish the authenticity of the

² See, inter alia, communications No. 1367/2005, *Anderson v. Australia*, inadmissibility decision adopted on 31 October 2006, para. 7.3; No. 1633/2007, *Avadanov v. Azerbaijan*, Views adopted on 25 October 2010, para. 6.2; No. 2027/2011, *Kusherbaev v. Kazakhstan*, Views adopted on 25 March 2013, para. 8.2.

³ No. 2027/2011, *Kusherbaev v. Kazakhstan*, Views adopted on 25 March 2013, para. 8.2.

author's signature through expert examination and that there is no indication in the case file that the information was used for other purposes that interfere in the author's private life. Therefore, the Committee considers that the author's claim under article 17 of the Covenant is insufficiently substantiated, for purposes of admissibility, and is therefore inadmissible under article 2 of the Optional Protocol.

11.7 The Committee notes the author's claim about the alleged abduction of his son, born in 1988, by his former wife, in violation of articles 23, paragraph 2, and 24 of the Covenant. The Committee notes, first, that the author informed the police about the alleged abduction of his son, born in 1988, in 2006 at the earliest, i.e. when his son had reached the age of majority, and asked to bring criminal proceedings in this connection only in 2009. The Committee also notes the author's submission that he had not been aware of his son's departure abroad until his release from prison in 2006. At the same time, the Committee notes that the author has not specified whether and how often he maintained contact with his son after his former wife returned from France in 1998. The material on file indicates that the author has not sought contact with his son except for once in 2001, when his former wife refused to allow the author to meet with his son, and that he has not seen him since 1999. The Committee notes that the author has not claimed that he was not aware of his former wife's departure to France in 1999 and he has not explained why he failed to consider the possibility that his son accompanied her.

11.8 Furthermore, the Committee notes that the author has not challenged the terms of the agreement with his former wife after their divorce by mutual consent in 1997, according to which she would take custody of their son who would reside with her and, in return, she would not claim alimony and he would keep their car. The Committee further notes the decision of the district police department, of 4 November 2012, to refuse to bring criminal proceedings in relation to the alleged abduction of the author's son, due to the absence of *corpus delicti*. It notes the reasoning that the son left Kazakhstan together with his mother and that he subsequently got married and acquired French citizenship. The Committee further notes that the decision was upheld by the Prosecutor's Office and remains unchallenged by the author. It also notes that nothing in the material before it indicates that the author's son was taken away by his mother against his free will and interest, that he needed protection by the State party's authorities or that his father adequately represents his interests in this matter. In the circumstances and based on the material on file, the Committee considers that the author's claims under article 23, paragraph 2, and 24 of the Covenant are insufficiently substantiated, for purposes of admissibility, and therefore inadmissible under article 2 of the Optional Protocol.

11.9 The Committee finally takes note of the author's claims under article 26, in conjunction with article 2(1), of the Covenant. The Committee notes the author's contention that he was a victim of discrimination by the police who failed to properly investigate his allegations of fraud because of his criminal record. It also notes his complaints about the alleged threats by the head of the investigation department, which the author considered discriminatory. It also notes his claim about the State party's reference to his conviction in its observations in the context of the present communication. In the absence of any other information or explanations on file, the Committee, however considers that these claims are insufficiently substantiated, for purposes of admissibility, and declares them inadmissible under article 2 of the Optional Protocol.

12. Therefore, the Human Rights Committee decides that:

- (a) The communication is inadmissible under articles 1 and 2 of the Optional Protocol;
- (b) The present decision shall be communicated to the author and to the State party.
