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Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2854/2016*,**

Communication submitted by:	Mr. Islam Johar (represented by counsel Carl K. Riber-Mohn)
Alleged victim:	The author
State party:	Norway
Date of communication:	6 April 2016 (initial submission)
Document references:	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 15 November 2016 (not issued in document form)
Date of adoption of Views:	7 July 2021
Subject matter:	Arbitrary detention
Procedural issue:	Exhaustion of domestic remedies
Substantive issue:	liberty and security of person
Article of the Covenant:	9 (3)
Article of the Optional Protocol:	5 (2) (b)

1. The author of the communication is Mr. Johar Islam, a national of Norway born in 1980. He claims that the State party has violated his rights under article 9 of the Covenant. The Optional Protocol entered into force for the State party on 23 March 1976. The author is represented by a counsel.

Background information[1]

2.1 The author was arrested on Thursday 4 July 2013 at 9:45 am and put in police custody at 10.14 am, suspected of a drug-related crime, for which he was subsequently charged, convicted and sentenced. The author was brought before a judge in Oslo City Court on Saturday 6 July 2013, at 2pm, which is 52 hours after the initial apprehension. The author

* Adopted by the Committee at its 132nd session (23 June – 23 July 2021).

** The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Yadh Ben Achour, Arif Bulkan, Wafaa Ashraf Moharram Bassim, Mahjoub El Haiba, Shuichi Furuya, Kobauyah Tchamdja Kpatcha, Duncan Laki Muhumuza, Carlos Gomez Martinez, Photini Pazartzis, Hernán Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Changrok Soh, Hélène Tigroudja, Imeru Tamerat Yigezu, and Gentian Zyberi.

[1] This section is a reconstruction of the facts by the secretariat on the basis of official documents.

claims that the State party violated the 48 hours rule set by the Committee under article 9 (3) of the Covenant.

2.2 On 6 July 2013, at 2pm, a hearing was held in the Oslo District Court. The Court ruled that the author was to be remanded in custody until otherwise decided by the prosecuting authority or the Court, but for no longer than 3 August 2013. The author was subjected to a ban on correspondence and visits throughout this period and full isolation until 20 July 2013. The Court considered that the investigation was still at its initial phase and that it was important that the author was not given an opportunity to communicate with other individuals potentially involved in the case[2]. On 8 July 2013, the author was transferred to Oslo Prison, after having been detained in isolation cell for four days.

2.3 On 15 October 2014, the author was sentenced to four years and 10 months imprisonment for the storage of a significant quantity of amphetamine. The author appealed the decision. On 24 April 2015, the Borgarting Court of Appeal confirmed the Oslo District Court's judgment.

2.4 The author filed an appeal to the Supreme Court against the sentence, arguing mainly that it was too strict, that there was no legal authority for the four days he spent in full isolation, that he was not brought before a judge by the 48 hour deadline in contravention with international human rights conventions. On 21 October 2015, the Court rejected the author's claims and confirmed his sentencing.[3]

The complaint

3.1 The author claims that the State party failed to provide a justifiable reason for the delay before he was brought before a judge, in violation of article 9 (3) of the Covenant. He believes that his rights were violated, even though the legislation in Norway allows for a detention of 72 hours before a person must be brought before a judge. The author, was brought before a judge 52 hours after he was detained and put in solitary confinement. He claims that there were no reasons for not bringing him before a judge earlier.

3.2 The author refers to *Kovs vs. Belarus*[4] arguing that according to the Committee, the time limit should be determined based on an individual case, and that a detention that goes beyond 48 hours requires a special justification. The author also refers to General Comment No 35, paragraph 33 and recalls that "*any delay longer than 48 hours must remain absolutely exceptional and be justified under the circumstances*." According to the author, there was no sufficient reasons to justify that he was brought before a judge about 52 hours after his arrest. He states that especially a country like Norway must fulfil its international obligations and not use convenience arguments to circumvent important political rights determined by the Committee.

State party's observations on the admissibility and merits

4.1 On 15 May 2017, the State party submitted its observations on the admissibility and merits. The State party considers that there is no reason to challenge the admissibility of the communication.

4.2 The State party recalls the facts and points out that the author was arrested and searched for suspicion of storing a considerable quantity of narcotics. The State party argues that the arrest was deemed necessary due to fear that the author would evade prosecution and that there was an imminent risk that he would interfere with any evidence of the case. On 4 July 2013, at 9:45, the author was arrested and put in police arrest in Oslo at 10:14. On the same day, at 4pm, the author talked to his counsel on the phone. On Friday 5 July 2013 from 10:10 to 14:28, the author was interrogated by the police, at the same time as a co-suspect, B. On Saturday 6 July 2013 at 10:20 (48 hours and 35 minutes after his arrest), the author was brought from the police detention centre to Oslo District Court, where he was placed in

[2] The Court took its decision pursuant to Section 186 of the Criminal Procedure Act.

[3] With regards to the time elapsed before the author was conducted in front of a judge, the Court assessed that the author was transported from the custody facility to the courthouse only 35 minutes after the deadline, and the delay had to do with the District Court's scheduling practice.

[4] Kovsh vs Belarus, CCPR/C/107/D/1787/2008, 27 March 2013.

a holding cell until the judicial hearing commenced at 2pm. The District Court decided to ban communication and visits for the author until 20 July 2013 in order to prevent him from communicating with the co-accused or other persons involved in the case and affect the investigation. The ruling was not appealed. The author was later found guilty for storing drugs by the District Court and sentenced to four years and 10 months of imprisonment, which was confirmed by the Borgarting Court of Appeal and by the Norwegian Supreme Court (the Supreme Court) in its judgment of 21 October 2015.

4.3 The State party recalls that the Supreme Court in its judgment, dated 21 October 2015, addressed the question of the timeline from the arrest of the author to the judicial hearing for the custody. The Supreme Court held that sufficient grounds were provided for exceeding the 48 hours rule and concluded that there was no violation of article 9 (3) of the Covenant.

4.4 The State party refers to its domestic law, section 183 of the Criminal Procedure Act (CPA), which states that the time limit for bringing an arrested person, who the prosecuting authority wishes to detain, before a judge is "*as soon as possible*" and "*at the latest the third day after the arrest*". This wording was amended by Act 28 June 2002 No55, based on a wish to introduce an absolute time limit and on the assumption that by being able to keep suspects in custody for up to three days, the total use of custody during the investigation would decrease. Several factors could contribute to this effect: for instance that the police would have sufficient time to investigate and thereby there would be no need for custody (e.g. the risk for evidence interference would diminish) or that a more thorough investigation would entail a better factual basis for the District Courts to evaluate the conditions for custody, thereby leading to shorter custody periods granted or more persons being released[5]. This rational should be understood in the light of the strict conditions for granting custody under Norwegian law, where two minimum conditions apply: (i) The person is with just cause (i.e. more than 50% probability) suspected of a crime that is punishable by imprisonment for a term exceeding six months. (ii) Custody may only be used if there is sufficient reason to do so, and not when it would be a disproportionate intervention in view of the nature of the case and other circumstances. Further, at least one of the additional conditions must be fulfilled: (i) There is reason to fear that the person will evade prosecution. (ii) There is an imminent risk that the person will interfere with any evidence in the case, e.g. by removing clues or influencing witnesses or accomplices, or (iii) it is deemed necessary in order to prevent the person from again committing a criminal act punishable by imprisonment for a term exceeding six months.[6]

4.5 With regards to article 9 (3) of the Covenant, the State party recalls that the Covenant, among other human rights treaties, shall have force as Norwegian law insofar as they are binding for Norway and shall take precedence over any other legislative provisions that conflict with them[7]. Thus, it is well established that the time limit that follows from section 183 of the CPA must be construed in accordance with article 9 (3) of the Covenant and that the obligations under the Covenant will take precedence over the CPA in the event of conflict of norms. As to the interpretation of Article 9 (3), the Supreme Court has held that views from the Committee shall carry "considerable weight" as sources of law when interpreting not only the Covenant but also domestic legal provisions. Thus, the Supreme Court held in its judgement regarding the author that "the time that lapses should only exceptionally exceed 48 hours and only if this is justified under the circumstances". The deadline is based on the Committee's consideration that 48 hours is normally sufficient to transport the apprehended person and prepare the remand hearing. The Supreme Court's view entails that the general rule for the time limit to bring an arrested person before a judge under Norwegian law is aligned with General Comment No 35, i.e. 48 hours. The State party is aware of the possible tension between the wording of section 183 of the CPA, but points out that several factors

[5] The State party refers to proposition No 66 (2001-2002), Appendix 3, section 4.1.7, page 21-22 and points out that it is an on-going discussion whether this assumption has been met. The State party also points out that in this document, there were arguments against the prolongation of the time limit, for instance the risk that some persons are held longer than necessary and that the wording does not fully reflect the requirements under international sources. A consultation regarding the question to amend the time limit was held in 2010 and in 2017.

[6] The State party refers to chapter 14 of the CPA, section 184, 171-173 and 170a.

[7] Human Rights Act of 21 May 1999, translation available here: lov-19990521-030-eng.PDF (uio.no).

mitigate the effect of this possible tension: (i) the term "as soon as possible" entails that it is not always sufficient to wait until the end of the absolute limit[8]. (ii) Legal players are familiar with the need to read traditional Norwegian law source in the light of rules set forth in international sources (iii) The legislator has emphasized the need for the courts to ensure the actual compliance with international sources, including the Covenant (iv) The development under the Covenant has been continuously monitored by the Director General of Public Prosecutions.

4.6 The State party recalls that the Committee has on numerous occasions expressed its views on the interpretation of the "promptly" criterion that stems from article 9 (3). First, according to the Committee's jurisprudence, detention of respectively 50 hours[9] and 73 hours[10] were not considered as a violation of article 9 (3). Gradually, the Committee added to the "not exceed a few days" doctrine a recommendation that the period should not exceed 48 hours,[11] which was later included in the General Comment No 35.[12] Firstly, the State party argues that the question arises whether the wording "absolutely exceptional" is a qualitative measure in each case, or rather a quantitative measure addressed to State parties as such, i.e. that (i) the number of delayed judicial hearings in that State must be relatively few and (ii) each case must be justified under the circumstances. The State party also points out that the facts of the present communication occurred in 2013, prior to the adoption of the General Comment No 35 in December 2014. Secondly, the State party argues that the Committee has not elaborated on the application of the exception to the 48 hours rule in a case similar to the present communication: either the time in detention exceeded the 48 hour rule by a significant margin,[13] or the person never has been brought before a judge prior to the trial,[14] and/or that the State party in question has not provided any[15] or clearly unsatisfactory[16] reasons for the delay.

4.7 In the State party's view, the Supreme Court of Norway took the correct starting point for this assessment of the 48 hours rule.[17] The State party notes that the risk of ill-treatment in the police custody from law enforcement officials is a significant motive underlying the 48 hours rule. According to the State party, at least in borderline cases it may be relevant to consider whether the arrested person had access to counsel while in custody. The time the person was taken out of the police arrest and brought to the court house may be a factor, as the risk for ill-treatment for law officials in the court house is significantly reduced, and even more so if the person meets his counsel at the court house. The State party also suggests that

[8] Proposition No 66 (2001-2002), section 4.1.7.1.

[9] *Portorreal v. Dominican Republic*, Communication No 188/1984 (CCPR/C/31/D/188/1984), para10.2.

[10] *Van der Houwen v. The Netherlands* (583/1994), communication No 583/1984 (CCPR/C/54/D/583/1994) para 4.3.

[11] *Pichigina v. Belarus* (1592/2007, para 7.4); *Kovsh v. Belarus* (1787/2008, para 7.4-7.5), *Zhuk v. Belarus* (1910/2009, para 8.3), *Yuzepchuk v. Belarus* (1906/2009, para 8.3).

[12] « Any delay longer than 48 hours must remain absolutely exceptional and be justified under the circumstances ». GC No 35 (2014), 16 December 2014, (CCPR/C/GC/35), para 33.

[13] McLawrence v. Jamaica (CCPR/C/60/D/702/1996), para 5.6 ; Pichugina v. Belarus (1910/2009, para 8.3), Kozulina v. Belarus (CCPR/112/D/1773/2008).

[14] Cf. inter alia *Grishkovtsov v Belarus*, Communication No. 2013/2010 (CCPR/C/113/D/2013/2010), in which the author was arrested 14 October 2009, placed in pretrial detention by a decision of a prosecutor on 21 October 2009 and not brought before a judge until the beginning of the court trial on 30 March 2010. Similar facts and findings were found in *Burdyko v. Belarus* (Communication 2017/2010, (CCPR/C/114/D/2017/2010).

[15] Cf. inter alia *Kovaleva v. Belarus*, Communication 2120/2011 (CCPR/V/106/D/2120/2011) in which a period of five months constituted a violation as the State had failed to address these allegations). Similar conclusions are found in *Kozulina v. Belarus* in *Mclawrence v. Jamaica.*

[16] In *Kovsh v. Belarus*, the Committee held that detaining the author for 61 and 72 hours without bringing her before a judge, constituted a violation of Article 9, paragraph 3, of the Covenant. Although somewhat similar in terms of time between the arrest and the judicial hearing, the case does not however shed any light on the assessment in the present communication, as the only explanations provided by Belarus was that the person had not initiated a complaint.

[17] Para. 33 of the judgement "Grounds for exceeding the deadline will vary according to, among other things, the amount of time by which it is exceeded, the gravity of the suspected offence and the time required to clarify the grounds for remand in custody (…)".

the Committee may build on the European Court of Human Right's case law which has held that the initial review by a judge must take place within a maximum of four days after the arrest.[18] The State party does not argue that the Committee should align the general rule under the Covenant with that of the European Court of Human Right, but rather suggests that the Committee, when operationalizing the exception from the 48 hours rule under the Covenant, take into consideration and build upon the extensive case law of the ECHR regarding the promptness criteria.

4.8 The State party is of the opinion that the author has not been subjected to a violation of article 9(3) of the Covenant. The delay in question (four hours and fifteen minutes) is relatively marginal and the author was indeed brought before a judge on the second day after his arrest. The petition for his arrest was sent to the District Court the day before. Then, the author was taken out of the police arrest and brought to the District Court 48 hours and 35 minutes after his arrest. The author talked to his counsel on the day of the arrest and the day after, and he met his counsel again at the Courthouse in connection with the judicial hearing. In the State party's view, it is evident from the facts that this was a complex case, involving a serious crime and a fellow accused and a broader view in the investigation was necessary to investigate whether the case could be part of a bigger criminal co-operation. The State party submits that the investigation progressed adequately in the relevant period. The time was used effectively to clarify the reasons the District Court invoked to keep the author further in custody and to gather information relevant for the subsequent investigation. In its ruling for custody, the District Court underlined that the case was clearly in its initial phase and with comprehensive investigation remaining. The complexity of the case required the police to prepare thoroughly for the interrogation, including studying the police reports from the surveillance. After the interrogation, a certain time was also required to analyse and compare the information gathered from both interrogations, and subsequently to incorporate the reasoning for custody in the petition to the District Court. As for the time for the judicial hearing on Saturday 6 July 2013, it should be noted that the judge uses the time earlier in the day to prepare for the judicial hearing(s). As it was done in this case, the case documents and the petition from the prosecuting authority are normally sent to the court the day before the hearing. On this note, reference is made to the strict conditions of detention under Norwegian law, including a requirement of just cause, minimum one additional criteria (in this case an imminent risk of interference with any evidence in the case) and the requirement that detention should not be a disproportionate measure. In particular in complex cases like the present one, the judge must necessarily be given sufficient time to prepare for the hearing in order to evaluate whether the conditions for detention are fulfilled.

4.9 Consequently, the State party is of the view that the minor deviation from the 48 hours rule that occurred in this case, is justified under the circumstances and does not constitute a violation of article 9(3) of the Covenant.

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

5.1 On 28 June 2018, the author submitted his comments to the State party observations. The author submits that it stems from the Committee's jurisprudence and General Comment No 35 that any delay longer than 48 hours has to be '*absolutely exceptional*' and '*justified under the circumstances*'. This applies even if the State party claims there is no risk of ill-treatment.

5.2 The author argues that the State party did not attempt to show any '*absolutely exceptional*' reasons for the delay and has not shown that the delay was '*justified under the circumstances*'.

5.3 The author points out that, according to the Supreme Court's ruling, one of the reasons that the delay was so great was '*the fact that Oslo District Court schedules initial remand hearings to after lunch, meaning that it was not possible to bring him before the court much earlier on the same day*'. According to the author, that is not a reason that could be qualified as '*absolutely exceptional and be justified under the circumstances*'. If the trivialities of the

[18] Cf. Döner and others v. Turkey, no. 29994/02, § 53. Judgment (Merits and Just Satisfaction) by the European Court of Human Rights (Second Section), 7 March 2017.

scheduling of lunch breaks are made to take precedence and to justify breaches of the 48 hours rule, then the 48 hours rule would be rendered entirely nugatory. The author refers to the Committee's case law, in *Fillastre and Bizouarn v Bolivia*, where the serious budgetary constraints of a country in a rather different economic situation from that of Norway were not held to justify a breach of the rule.[19]

5.4 The author submits that the State party cannot argue that, in spite of the 48 hours rule having been breached in principle, there was no physical ill-treatment, so therefore there is no breach after all. The author argues that the State party undermines the fact that '*Longer detention in the custody of law enforcement officials without judicial control unnecessarily increases the risk of ill-treatment*'.[20] The author refers to communication 1787/2008, *Kovsh v. Belarus*, where the Committee clarified how a time limit is a time limit and must not be exceeded.

5.5 The author submits that the State party tends to argue that even if it '*recognizes the Committee's understanding of Article 9 paragraph 3 on this point, including the importance and desirability of a general rule of 48 hours on a global basis*' it is just that the 48 hour rule does not apply to Norway or in this case. The author recalls that in his complaint, he stated that *"especially a country like Norway must fulfil its international obligations and not as here use convenience arguments to circumvent important political rights previously determined by the Human Rights Committee*'.

5.6 The author argues that, even if the State party submits that the author talked to his counsel on the day of the arrest and after he was brought to the District Court, he was still in police custody. Moreover, it does not matter whether the author had spoken to his lawyer at the time.

5.7 The author submits that, according to General Comment No. 35, some States fix time limits shorter than 48 hours, whereas the State party fixed it to 48 hours before an extension to 76 hours, adopted in 2002. Thus, exceptions to the 48 hours rule have become more of a rule than an exception. Even if the aim of the State party was to reduce the average time in police custody, 76 hours have now become the rule with further exceptions for extensions. The 2002 extension project was to be accompanied by close and continuous review and assessment, which have not taken place as intended. Rather, there has been more delays, year after year, in breach of the new extended time limit. This has been criticised by the Norwegian Association of Judges in 2011, the Parliamentary Ombudsman and several United Nations and Council of Europe supervisory organs.

5.8 The author argues that his case is one of many routine narcotics cases as it concerned less than five kilos amphetamine and drugs found at his residence, which cannot be qualified as complex.

5.9 As to the State party's argument that the facts occurred after the adoption of the General Comment No. 35, the author points out that the Supreme Court judgment of 2015 does not raise this point. Moreover, the case law of the Committee was well-established long before the facts or court decisions of the complaint.[21]

5.10 The author requires the Committee to clarify the consequences of a delay longer than 48 hours which is not '*absolutely exceptional*' and '*justified under the circumstances*'. The author submits that the Committee should clarify to the State party that there is a duty to release and compensate if such delay over 48 hours occurs.

State Party's additional observations

6.1 On 29 November 2018, the State party submitted further observations. With regards to its domestic law, the State party points out that it is not correct to assert that the State party "*fixed the time limit to 48 hours before an extension to 76 hours adopted in 2002*". The State party reiterates that the previous wording of the Norwegian law was that a detained person should be brought before the District Court "as soon as possible and as far as possible on the

[19] 336/1988, Fillastre and Bizouarn v Bolivia, para. 6.4.
[20] General Comment No. 35, para 33.
[21] 1787/2008 Kovsh v. Belarus.

day after the arrest". The deadline was not absolute, and exceptions could be made if it was impossible to do it the day after the arrest, and when the deadline expired on a Saturday or a public holiday. The State party further argues that it is not correct to assert that 76 hours is the rule under Norwegian law. Rather, section 183 of the CPA sets an absolute time limit of three days after the arrest. Within this timeframe, authorities are obliged to present the arrested person "as soon as possible". Extensions beyond three days are never allowed. The general rule in Norway is aligned with the views of the Committee in General Comment No. 35, i.e. a 48 hours rule with a room for deviations if justified under the circumstances, however never beyond the absolute time limit of three days.

6.2 The State party rejects the assertion of the author that there has been more delays, year after year. The State party is not familiar with such a practice and the counsel's argument is not supported by any statistics or relevant case law examples. The State party further argues that, contrarily to the author's assertion, a follow up review of the 2002 amendment of the CPA was conducted and sent for consultation in 2010. No amendments have been adopted yet, but this has to be viewed in connection with the fact that Norwegian legislation is applied in accordance with the Committee's views in General Comment No 35. On 21 June 2018, a consultation paper regarding the question of amending the wording of section 183 was published, with two alternative proposals: (i) as soon as possible and at the latest the second day after the arrest; (ii) as soon as possible and at the latest 48 hours after the arrest, or later if required (i.e. justified under the circumstances, cf. inter alia the Committee's views in General Comment No. 35), but never later than the third day after the arrest. The consultations are under consideration at the Ministry of Justice.

6.3 The State party points out that the central question of the present communication is the understanding of exceptions from the 48 hours rule, not the viability of the general rule as such. As far as the State party is aware, it is the first communication before the Committee where the impugned passing of time exceeding the general rule is a matter of hours, not days and where the State in question has provided adequate reasons for the delay. In that regard, the State party argues that the wording of article 9 (3) must be assessed on a case by case basis, not only that exceeding 48 hours must be justified under the circumstances, but that the reasons invoked for the time sued will be scrutinized more thoroughly the longer the time. It is not obvious from the wording that the justification reasons should be subject to significantly stricter conditions in the exact moment the period exceeds 48 hours. The State party reiterates that it supports the general 48 hours rule, but points out the Committee should take this starting point into consideration when applying the exception from the 48 hours rule to the facts of this case.

6.4 The State party disagrees with the counsel's comment that the exact wording of General Comment No. 35 stemmed from view of the Committee that was established long before the facts or court decisions of the complaint. In *Kovsh v. Belarus*, the wording used is "any longer period of delay would require special justification[22]" and there is no reference to the fact that such delays must remain "absolutely exceptional" as is the term applied in General Comment No. 35. In any case, in the State party's view, the criteria in General Comment No. 35 do not imply a stricter threshold for exceptions from the 48 hours rule than the threshold set forth in the Committee's view prior to the adoption of General Comment No. 35. The State party reiterates its argumentation that the "absolutely exceptional" criterion cannot be understood as a qualitative requirement pertaining to the "circumstances" that in a particular case may or may not justify an exception from the 48 hours rule, but rather as a quantitative measure that sets a strict limit for how often a State party may exempt from the 48 hours rule. In the State party's view, it is not required that the circumstances in any particular case are inherently "exceptional" in themselves. It is sufficient that the circumstances are such that the time exceeding 48 hours is "justified", a question that will vary with the length of the time exceeding 48 hours. If "absolutely exceptional" circumstances were required in every case of detention exceeding 48 hours, no matter how long or how short, the meaning of the term "promptly" would no longer be determined on a case-by-case basis.

[22] 1787/2008 *Kovsh v. Belarus*, Para 7.4.

6.5 The State party reiterates that the present case involved a serious crime and a fellow accused, and does not agree that the facts of the case amount to a "routine narcotics case", as argued by the author. Finally, the State party reiterates that in hearings, the judge uses the time earlier in the day to prepare for the judicial hearing, in particular in complex case like the present one, which cannot be characterised as "the trivialities of the scheduling of lunch breaks", like the author argued.

Additional comments from the author

7.1 On 31 March 2019, the author submitted additional comments on the State party's additional observations. The author reiterates that there is no exceptional grounds as to justify a breach of article 9 (3) of the Covenant.

7.2 The author argues that preparing for the judicial hearing in a complex case cannot possibly justify the breach of the 48 hours rule. The author points out that the argument of the State party seems to be that "complexity" increases the need to "prepare for the hearing". In that case, it would mean that this is a general exception or extension and it is not clear how "complexity" in general could be a justification to the 48 hours rule. The author submits that the State party has not showed the relevance of the alleged complexity for the issue before the Committee.

7.3 The author points out that the main issue brought before the Supreme Court was the reduction of the complainant's sentence due to the four days he spent in full isolation in a police holding cell ("glattcelle"). The author adds that the State party tends to censure its over-use of isolation to the Committee. In its judgement, the Supreme Court considers the four days full isolation in a holding to be proportionate. The judge further admitted that on a literal interpretation the legislative provisions concerning isolation in prison do not apply to isolation in police holding cell. The author stresses that his complaint is a classic case justifying a strict application of the 48 hours rule.

7.4 The author argues that the criterion "absolutely exceptional" and "justified under the circumstances" are not alternative criteria but cumulative. According to the author, "complexity", the need to "prepare for the hearing" or "scheduling" in any other way cannot justify any breach of the 48 hours rule.

7.5 With regards to the ongoing consultation of the amendment 2002[23], the author recalls that the Norwegian Bar Association/Law Society has requested that an express 48 hours rule be included in the CPA and that a higher threshold for further delay than "required" is necessary in order to comply with article 9 and General Comment No. 35. The author supports these requests.

7.6 The author requests the Committee to "clarify" and restate the 48 hours rule and its exceptions in view of the present communication.

Issues and proceedings before the Committee

Considerations of admissibility

8.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 97 of its rules of procedure, whether the case is admissible under the Optional Protocol.

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

8.3 The Committee notes the author's claim that he has exhausted "all reasonable domestic remedies" available to him. In the absence of any objection by the State party in that connection, the Committee considers that the requirements of article 5 (2) (b) of the Optional Protocol have been met.

[23] Proposition No 66 (2001-2002), section 4.1.7.1.

8.4 The Committee considers the author has sufficiently substantiated, for the purposes of admissibility, his claim of violations of his rights under article 9 (3). The Committee declares this claim admissible and proceeds with its consideration of the merits.

Consideration of the merits

8.5 The Committee has considered the communication in the light of all the information made available to it by the parties, as provided under article 5 (1) of the Optional Protocol.

8.6 The Committee notes the author's claim that his rights under article 9 (3) of the Covenant were violated, because from 4 July 2013 at 9:20 am, when he was initially arrested, to 6 July 2013, at 2pm, which is a total of 52 hours, he was not brought before a judge. The Committee notes the author's argument that the State party failed to provide a justifiable reason for a delay longer than 48 hours before he was brought to a judge, in violation of article 9 (3) of the Covenant.

8.7 The Committee notes the State party's argument that the delay in question (four hours and fifteen minutes) is relatively marginal and the author was indeed brought before a judge on the second day after his arrest. The Committee also notes that the State party argues that the time limit was exceeded partly due to the complexity of the case, and partly to the Court's scheduling practice (para 4.8). The Committee also notes the State party's statement that according to the Human Rights Act of 21 May 1999, the Covenant, amongst other human rights instruments, shall have force as Norwegian law and that the obligations under the Covenant will take precedence over the CPA in the event of conflict of norms. The Committee also notes the State party expressed support to the general 48 hours rule, and that section 183 of the CPA states that the time limit for bringing an arrested person before a judge is "*as soon as possible*" and "*at the latest the third day after the arrest*".

8.8 In this regard, the Committee recalls that any person arrested or detained on a criminal charge shall be brought promptly before a judge and that any delay longer than 48 hours is ordinarily sufficient and any delay longer must remain absolutely exceptional and be justified under the circumstances [24]. Prompt initiation of judicial oversight also constitutes an important safeguard against the risk of ill-treatment of the detained person[25]. The period for evaluating promptness begins at the time of arrest and not at the time when the person arrives in a place of detention.[26] The meaning of the term "promptly" in article 9 (3) of the Covenant must be determined on a case-by-case basis[27] and any longer period of delay than 48 hours would require special justification to be compatible with article 9 (3) of the Covenant.[28]

8.9 In the present case, the Committee notes that the author was brought to the District Court 48 hours and 35 minutes after he was arrested, and presented to the judge 52 hours and 15 minutes after he was initially apprehended. While this amount of time formally exceeds the 48 hours rule enunciated in the Committee's jurisprudence and General Comment No. 35, the Committee notes that the delay of four hours was purely logistical and merely due to the court schedule and was neither excessive nor arbitrary. During the four additional hours, the author was in the premises of the tribunal and had access to his lawyer. In light of the information before it, the Committee cannot conclude that the State party has not demonstrated sufficiently that the delay in the 48 hours rule was absolutely exceptional and justified by the circumstances and accordingly finds no breach of the authors' rights under article 9 (3) of the Covenant.

[24] GC No 35 (2014), 16 December 2014, (CCPR/C/GC/35), para 33, *Kovsh vs Belarus*, CCPR/C/107/D/1787/2008, 27 March 2013, para 7.4.

[25] *Kovsh vs Belarus*, CCPR/C/107/D/1787/2008, 27 March 2013, para 7.3.

[26] See, for example, *Kovsh vs Belarus*, CCPR/C/107/D/1787/2008, 27 March 2013 and *Leehong v. Jamaica*, 613/1995, views adopted on 13 July 1999, para. 9.5.

[27] See, for example, communication No. 702/1996, *McLawrence v. Jamaica*, Views adopted on 18 July 1997, para. 5.6.

[28] See Communication No. 852/1999, *Borisenko v. Hungary*, Views adopted on 14 October 2002, para. 7.4.

8.10 The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the information before it does not disclose a violation by the State party of article 9 (3) of the Covenant.