



International Covenant on Civil and Political Rights

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Human Rights Committee

Decision adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 3589/2019*, **

<i>Communication submitted by:</i>	M.A.S. and I.E.J. (represented by counsel, Davide Galimberti)
<i>Alleged victims:</i>	The authors
<i>State party:</i>	Italy
<i>Date of communication:</i>	3 May 2018 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 92 (2) of the Committee's rules of procedure, transmitted to the State party on 15 April 2019 (not issued in document form)
<i>Date of adoption of decision:</i>	25 March 2022
<i>Subject matter:</i>	Denial of application for citizenship due to family relations
<i>Procedural issues:</i>	Non-exhaustion of domestic remedies; lack of substantiation
<i>Substantive issues:</i>	Right to a fair trial; right to privacy; equal protection before the law (non-discrimination)
<i>Articles of the Covenant:</i>	14 (2), 17 and 26
<i>Articles of the Optional Protocol:</i>	2 and 5 (2) (b)

1. The authors of the communication are M.A.S., born on 5 February 1964, and I.E.J., born on 14 November 1959, both nationals of Jordan. The authors claim that the denial of their applications for Italian citizenship by the Ministry of the Interior constitutes a violation by Italy of their rights under articles 14 (2), 17 and 26 of the Covenant. The Optional Protocol entered into force for the State party on 23 March 1976. The authors are represented by counsel, Davide Galimberti.

* Adopted by the Committee at its 134th session (28 February–25 March 2022).

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



Facts as submitted by the authors

2.1 The authors live in Italy and have applied for Italian citizenship. I.E.J. moved to Italy in 1979 to study medicine, and currently works as a doctor and director of a hospital.¹ In addition, the authors' children live and study in Italy.

2.2 M.A.S. applied for Italian citizenship on 12 March 2010. On 3 February 2014, she received a letter from the Ministry of the Interior, dated 13 November 2013, stating that her application had been denied due to "particularly severe criminal proceedings"² against her husband, which were an "indication of untrustworthiness" and a lack of "complete integration into the national community".³ The decision referred to "negative opinions" of the family by the Bergamo police, dated 15 April 2013, and the Prefecture of Bergamo, dated 23 April 2013. The denial did not refer to any facts relating to M.A.S. personally. According to M.A.S., she was not consulted or interviewed at any stage of the procedure.

2.3 On 9 May 2014, M.A.S. appealed the decision of the Ministry of the Interior to the Regional Administrative Tribunal for Lazio-Rome, claiming that the denial of her application on the basis of her husband's circumstances was discriminatory.⁴ She states that she has not yet received a response to her appeal.

2.4 M.A.S. states that there is a two-step procedure to appeal the decision of the Ministry, first to the Administrative Tribunal and second to the Council of State, and that it may take four years for the appeal to progress to the next step of the procedure. Should her appeal before the Administrative Tribunal be unsuccessful, a total of eight years may therefore elapse between the initial decision of the Ministry and the final decision of the Council of State, meaning that she may not receive a final decision until 2022. She submits that such a delay is unreasonably prolonged, within the meaning of article 5 (2) (b) of the Optional Protocol to the Covenant and that no other domestic remedies are available.

2.5 I.E.J. applied for Italian citizenship on 23 December 2004. On 22 June 2015, he received a letter from the Ministry, dated 5 May 2015, stating that his application had been denied because his activities had "purposes not compatible with the security of the Republic". On 27 October 2015, he contested the rejection of his application to the President of Italy. On 19 October 2017, I.E.J. received a notification from the President that his recourse had been successful.

2.6 On 14 December 2017, the Ministry sent a letter to I.E.J., denying his application for citizenship on the grounds that he had been found guilty of practising as a doctor without a valid title and that there was a criminal trial pending against him for "misappropriation" before the courts in Bergamo. On 3 January 2018, he replied to the Ministry's letter, contesting both grounds. He submitted that he had not been found guilty of practising without a title, as the Court of Appeal of Brescia had absolved him of that charge. He also claimed that denial on the basis of a pending criminal trial violated the presumption of innocence, amounting to discrimination. I.E.J. also requested that the Ministry respect and execute the decision of the President of Italy.

2.7 On 28 July 2018, the Ministry sent a letter to I.E.J., denying him citizenship on the same two grounds as in the letter of 14 December 2017. On 20 September 2018, he replied to the Ministry's letter, contesting both grounds on the same basis as the ones contained in his reply of 3 January 2018. The Ministry subsequently sent another letter to I.E.J., stating that it had erred in determining that he had been found guilty of practising without a title and denying him citizenship on the sole basis of the pending criminal trial. The author did not appeal that decision, as the President had determined that his recourse was successful on 19 October 2017.

2.8 I.E.J. claims that no other effective domestic remedies are available.

¹ The communication does not specify when M.A.S moved to Italy.

² The authors do not provide details of the nature of the proceedings.

³ The authors provide a copy of the decision in Italian and a partial English translation.

⁴ The authors provide a copy of the appeal in Italian and a partial English translation.

Complaint

3.1 The authors claim that the denial of their applications by the Ministry of the Interior for Italian citizenship constitutes a violation by Italy of articles 14 (2), 17 and 26 of the Covenant.

3.2 M.A.S. claims that the denial of her application for Italian citizenship is contrary to the right not to be subjected to arbitrary or unlawful interference with her privacy, family, home or correspondence, nor to unlawful attacks on her honour and reputation under article 17 of the Covenant.

3.3 In addition, M.A.S. claims that the fact that she was denied Italian citizenship based on facts related to her husband, and not to her, amounts to gender-based discrimination and constitutes a violation by Italy of article 26 of the Covenant. She submits that the principle of equality contained in article 26 does not allow a State party to deny her citizenship on the sole basis that she is married to her husband (I.E.J.). She considers that the denial is particularly arbitrary, taking into account that the recourse presented by I.E.J. to the President of Italy was successful. M.A.S. argues that, had not she been married to her husband, the Ministry of the Interior would have granted her Italian citizenship, as she complies with all other requirements.

3.4 M.A.S. submits that a possible waiting period of eight years for a final decision to be taken on her appeal is “unreasonably prolonged”, within the meaning of article 5 (2) (b) of the Optional Protocol to the Covenant. She states that she submitted her application for Italian citizenship on 12 March 2010 and has been waiting for the Regional Administrative Tribunal to determine her appeal since 9 May 2014.

3.5 I.E.J. claims that the fact that his application for Italian citizenship has been denied, despite the successful outcome of his recourse to the President, constitutes a violation by Italy of article 17 of the Covenant.

3.6 He further claims that denial of his application for citizenship on the sole basis of the criminal trial currently pending against him⁵ is contrary to “the right to be presumed innocent until proven guilty according to law” under article 14 (2) of the Covenant. He argues that the Ministry of the Interior should have considered him innocent for the purposes of determining his citizenship application.

3.7 The authors also complain of the duration of the appeal proceedings, claiming undue delays in violation of article 26 of the Covenant.

State party’s observations on admissibility and the merits

4.1 On 9 October 2019, the State party submitted its observations on admissibility and the merits of the authors’ communication, recalling the constitutional framework of Italy, including respect for the rule of law and human rights and fundamental freedoms.

4.2 The Italian constitutional system of guarantees and safeguards is also expressed by the “principle of the double level of adjudication”, which is implemented through a system of appeals, characterized by three possible levels of judicial proceedings. Each stage represents a further level of judgment. While offering an extensive range of guarantees, the system of appeals and the three possible levels of adjudication may delay the resolution of the dispute at hand. In addition to the principle of due process of law, the State party’s Constitution defines the roles of the Council of State and of the Constitutional Court.⁶

4.3 Regarding the facts, the State party indicates that M.A.S. submitted an appeal to the Regional Administrative Tribunal on 9 May 2014, concerning the rejection of her application for citizenship (RG 6314/14), essentially founded on the relationship of marriage with a

⁵ I.E.J. informed the Committee that, as of the date of the communication, submitted on 20 November 2018, the criminal trial is still pending before the courts in Bergamo.

⁶ Act No. 2/1999 and the Constitution of Italy, arts. 103, 111, 113 and 134, which guarantee due process of law. The Constitutional Court monitors the authorities to judge whether they have observed the Constitution in their actions. It also arbitrates in case of disagreements between the highest organs of the State and decides in proceedings between central and local authorities.

person considered “contiguous to movements having purposes incompatible with the security of the Republic”. To date, the author’s appeal has not been decided.⁷ A hearing was scheduled for May 2020. The State party’s law stipulates that a proceeding at one instance can last up to three years.⁸

4.4 With regard to I.E.J., who is a physician, his application for citizenship was also rejected. He challenged the negative decision by filing an extraordinary appeal to the President of Italy. That appeal was granted after two years in 2017. However, the Ministry of the Interior denied I.E.J.’s application for citizenship once again, while the criminal proceedings against him for embezzlement were pending before the courts in Bergamo.

4.5 As for the authors’ claims under article 17 of the Covenant, and article 5 (2) (b) of the Optional Protocol, the State party argues that the authors focus on the relevant administrative and judicial proceedings, including the duration of the trials; alleged violation of the principle of presumption of innocence; and failure to implement the decision of the President of Italy, which annulled the refusal of citizenship for I.E.J. With regard to the duration of the trial against the administrative decision, the relevant framework is set out in Act No. 89/2001. The law stipulates that a reasonable duration is considered to have been respected “when the trial does not exceed the duration of three years in the first instance; of two years in the second instance; and of one year in the judgment of legitimacy. For the purposes of calculating its duration, the trial is considered to have been initiated with the filing of the complaint or with the notification of the writ of summons”.⁹ In particular, the appellant has the responsibility to promptly take action to request the definition of the subject of the trial, including by requesting a preventive remedy in the form of a request for urgent consideration. Inaction by a complainant who fails to activate precautionary remedies by not soliciting oral hearings excludes the responsibility of the State. In fact, the law states that “it is inadmissible to request just compensation proposed by a person who has not carried out preventive remedies in the event of an unreasonable duration of a trial”.¹⁰

4.6 With regard to the appeals proceeding initiated by M.A.S. following the denial of her application for citizenship in 2014, which was still pending before the Regional Administrative Tribunal, the State party submits that the author’s appeal was not supplemented by a specific request for suspension, which would have made it possible to hold a hearing in a very short space of time, within a few weeks. After filing an appeal on 9 May 2014 and a request for a hearing, dated 29 May 2014, the author remained completely inert, not performing any other “procedural act” until 29 November 2017, when a newly appointed defence lawyer filed an application to solicit a hearing. That request was reiterated on 8 May 2019, following a specific invitation by the secretariat of the Tribunal.¹¹ The public hearing would be held on 19 May 2020. The cause of the delay was the author’s inaction; she did not submit a precautionary request, having presented the request to arrange for a hearing well beyond the term contemplated in Act No. 89/2001 (art. 1-ter (3)), i.e. after more than three and a half years from filing the appeal.

4.7 No discriminatory treatment or harmful effects to the interests protected by article 17 of the Covenant (and article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms) can be found in the denial of citizenship, based on elements relating to M.A.S.’s husband. Indeed, the marriage relationship and the situation of material and spiritual communion that naturally follows from it can well be evaluated, inter alia, by the Administration in the exercise of its wide discretionary power enjoyed in *subiecta materia*, in order to protect the superior interest of public security and order when it comes to the denial of Italian citizenship to the wife of a person deemed “socially unreliable or dangerous” or “contiguous” to movements and groups “having incompatible purposes” with peaceful and free civil cohabitation in Italy.

⁷ By 9 October 2019.

⁸ Act No. 89/2001, article 2 bis.

⁹ Ibid.

¹⁰ Ibid., art. 2 (1)

¹¹ The State party refers to article 82 of the Code of Administrative Justice.

4.8 As for the trial concerning I.E.J., considering the appeal to the President of Italy,¹² the State party submits that when the appeal to the President against the first denial of application for citizenship was successful, the author failed to submit a proper motivation for his second application for citizenship and therefore his second application was also denied since the criminal proceedings against him were pending. It would be the author's responsibility to challenge the second negative decision by the Ministry of the Interior in a timely way, pointing to its harmful or elusive value vis-à-vis the decision by the President. Indeed, the presidential decree accepting the extraordinary appeal is similar to the final sentences by the administrative justice (*res judicata*). Therefore, it is likely to be brought to execution, either by activating the specific remedy, namely, the judgment of compliance before the Council of State, or, in the event of a new assessment of the case by the Administration, by I.E.J. challenging the new denial for "autonomous" defects of legitimacy before the administrative judge of first instance at the Regional Administrative Tribunal or making a new appeal to the President.

4.9 The State party further argues that the alleged violation of article 17 of the Covenant, when it comes to the granting of Italian citizenship, is without any merit. The granting of Italian citizenship presupposes that it has been ascertained that elements or circumstances that can endanger the values of free and peaceful civil coexistence are non-existent. The security of the Italian Republic is, in fact, a higher interest than the individual interest in obtaining Italian citizenship. Given its irrevocable nature, it is required that "no doubt, no shadow of unreliability of the applicant exists, also with a prospective evaluation for the future, about the full adherence to the constitutional values on which the Italian Republic is founded".¹³ The assessment by the Administration takes on an eminently preventive and precautionary nature, beyond and regardless of whether criminal liability on the part of the author has been ascertained. Indeed, verification of the motives affecting the security of the country cannot be reduced to ascertaining the facts that are criminally relevant, but must concern the prevention of any risks for public safety. In that regard, the Constitutional Court of Italy affirmed that the relevance of the interest of the security of the State, community to its own integrity and its own independence, finds expression in article 52 of the Constitution of Italy.¹⁴ The State party adds that the current alarming upsurge of terrorism and extremism makes the particular prudence and caution that inspires the administrative practice of granting citizenship even more understandable.¹⁵

4.10 The Administration enjoys a wide margin of discretion regarding the possibility of granting or not granting citizenship, with an assessment that extends not only to the ability of the foreigner to be optimally integrated into the national community in terms of his or her work and economic and social integration, but also with regard to the absence of risk for the security of the State. On the other hand, the particular caution in the exercise of the preventive and precautionary function, which must inform the evaluation of an application for citizenship, is balanced by the possibility of reapplying when the objective conditions underlying the original negative outcome have changed or, more generally, in order to obtain a re-evaluation by the Administration, five years after the initial assessment.¹⁶ Finally, the State party submits that effective domestic remedies against the decision rejecting their applications were available to the authors and that there was no denial of justice in their case.

4.11 Based on the explanation above, the State party requests the Committee to declare the authors' communication inadmissible, due to non-exhaustion of domestic remedies and lack of sufficient substantiation, or alternatively without merit.

¹² See presidential decree dated 2017.

¹³ Constant jurisprudence in administrative matters of the Council of State, sect. III, 14 February 2017, No. 657.

¹⁴ Constitutional Court decision No. 24/2014.

¹⁵ See Council of State, sect. III, 4 March 2015, No. 1084; and Administrative Tribunal for Lazio-Rome, sect. II quater, 11 November 2015, No. 12752.

¹⁶ Act No. 92/1991, article 8 (1).

Authors' comments on the State party's observations on admissibility and the merits

5.1 On 27 November 2019, the authors submitted comments on the State party's observations, asserting that no new information in relation to the circumstances of their complaint had been provided by the State party. Rather, the observations could be considered as conceding that the alleged violations had taken place.

5.2 The authors, in their initial communication of 3 May 2018, described violations of article 5 (2) (b) of the Optional Protocol and of article 17 of the Covenant. The initial communication was complemented by the following additional briefs, dated: 11 June 2018 (supporting the allegations by the authors of a violation of their rights under articles 17 and 26 of the Covenant); 20 November 2018 (demonstrating a violation of article 14 of the Covenant due to the unreasonable duration of their trial); 17 June 2019 (asserting discrimination against M.A.S.); and 10 July 2019 (claiming violations of articles 26 and 14 of the Covenant owing to a lack of respect for the principle of presumption of innocence in regard to I.E.J.).

5.3 M.A.S. recalls that the proceedings on the appeal against the rejection of her application for citizenship has been unreasonably prolonged. She submitted an appeal in 2014 and the hearing to consider her appeal was scheduled for 19 May 2020, six years later. The author recalls that she has also suffered discrimination, as the right to have her matter adjudicated in a reasonable time has not been respected. The author points out that Act No. 89/2001 stipulates a time limit of three years for the first instance proceedings. In reality, the proceedings in the author's case took double that time. The extensive duration of the appeals proceeding has aggravated the underlying discrimination against M.A.S., as she was judged on the alleged conduct of her husband, in violation of article 26 of the Covenant. The author objects to the State party's accusations that she was inert. Instead, she states, it took the State party six years to determine the date of the hearing of her appeal. It is the duty of the State in the administration of justice to decide to hold trials in proper time without shifting the burden of delay to the appellant. The author argues that her request of 29 November 2017 for determining the date of a hearing has still not been decided by the Regional Administrative Tribunal. One and a half years later, the Administrative Tribunal sent a communication to M.A.S. warning her about the classification of her recourse without any decision, should she not send the Tribunal a specific request for the hearing, confirming her interest in the case.¹⁷ According to the author, it was the Tribunal that omitted to take a decision on her request for a hearing. Appeals trials in Italy, when denial of an application for citizenship is concerned, take between 10 and 12 years. Such a practice can be considered discriminatory as it appears to discourage the taking of legal action against the denial of citizenship, since it may not be worth waiting so long.

5.4 With regard to the claims under articles 17 and 26 of the Covenant, M.A.S. reiterates that she was judged for circumstances concerning her husband, which has amounted to discrimination. Not considering her own circumstances has also amounted to a violation of the right to respect for private and family life.

5.5 M.A.S. objects to false assumptions made about her husband, with negative consequences for her. She argues that such a "false link" between a wife and husband was disproved by the Constitutional Court, which ruled in its judgment No. 78/2019 that wife and husband are not deemed to be relatives, namely, they are not linked as blood relatives. This principle disproves the "false and unfounded" assertion by which the Administration judged the author on account of her husband. On 29 October 2019, the author requested the Administration for a new evaluation of the denial of her application for citizenship based on the judgment of the Constitutional Court, but no answer has yet been provided. The author further denounces the State party's references to the upsurge of terrorism, which she finds offensive, and requests an apology.

5.6 M.A.S. further submits that the Regional Administrative Tribunal denied her access to certain documents, although it granted A.Y.O.AQ, the author in *A.Y.O.AQ v. Italy*, on the

¹⁷ Pursuant to article 82 of the Code of Administrative Justice.

same subject, access to documents.¹⁸ It is yet another sign of discrimination. Finally, the author considers the State party's argument that the appeal was not supplemented by a specific request for suspension, which would have made it possible to hold the hearing in a very short space of time, within a few weeks, is not correct and represents in fact an additional element of discrimination. There have been no appeals in which the Tribunal, in regard to a denial of citizenship, has suspended a negative decision pending a final determination.

5.7 With regard to the case of I.E.J., the State party has not submitted any clarification in relation to his claims of a violation of articles 14, 17 and 26 of the Covenant. I.E.J. had the first denial of his application for citizenship based on alleged reasons of security. He appealed that negative decision to the President of Italy and won his appeal because there had been no security reason for his application to be denied.¹⁹ However, the State party has not reviewed the case of M.A.S., which is considered another sign of discrimination against the authors. Instead of granting citizenship to I.E.J., he had his application denied for the second time, since the Administration stated that he had a criminal record. That is a misperception by the authorities because he has not been found guilty of anything. During his first application for citizenship, I.E.J.'s criminal trial was pending so he should not have been regarded as having a criminal record. There is a definitive sentence by the Appeal Court of Brescia, which acquitted I.E.J. Consequently, he suffered discrimination by the State party on two grounds: (a) by omitting to execute a favourable decision on his appeal against the first denial of citizenship; and (b) by issuing the second denial of citizenship based on alleged facts that have not been proven. I.E.J. submitted an appeal against the second denial of citizenship, which was pending at the Regional Administrative Tribunal. He requested the Administrative Tribunal to decide his appeal on 19 May 2020 at the same hearing as his wife's appeal. There was no answer to his request. The delay in determining the second appeal can be considered as discrimination.

5.8 In addition, the State party's remarks about the upsurge of terrorism are discriminatory and arbitrary in regard to both the authors and their family. The remarks are illusory, since the life of both the authors is orderly, as illustrated in the initial communication. I.E.J. also objected to the view that the domestic remedies in his case would be available or effective.

5.9 Concerning the remedies, the authors request the Committee (a) to find a violation of articles 17 and 26 of the Covenant in relation to M.A.S. and of articles 14, 17 and 26 of the Covenant in relation to I.E.J.; (b) to request the State party to review the denial of the authors' application for citizenship in the light of Constitutional Court decision No. 78/2019; and (c) to make a formal apology to the authors and their family for linking them to a risk of terrorism.

State party's additional observations

6.1 On 12 March 2020, the State party recalled its previous observations, dated 9 October 2019, reiterating that effective domestic remedies were available to the authors.

6.2 The State party refers to Constitutional Court ruling No. 78/2019, which "declared unfounded the questions of the constitutional legitimacy of article 18 (1) (b) of Act No. 240 of 30 December 2010²⁰ concerning rules on the organization of universities, their academic staff and recruitment, as well as delegation to the Government to encourage the quality and efficiency of the university system, raised by the Administrative Justice Council for the Sicilian Region, with reference to articles 3 and 97 of the Constitution".

6.3 Reference is also made to the decision of the Ministry of the Interior, dated 28 July 2018, whereby the second application for granting I.E.J. citizenship was rejected, pursuant

¹⁸ *A.Y.O.AQ v. Italy* (CCPR/C/134/D/3587/2019). However, *A.Y.O.AQ* also complains that she was denied access to certain documents.

¹⁹ It should be noted that the first denial of citizenship of I.E.J. was used by the State party to deny citizenship to M.A.S. (his wife).

²⁰ This part of the rule does not set out, among the conditions that prevent participation in the university professors' call, the marriage relationship with a professor belonging to the department or structure making the call, or with the Dean, the general manager or a member of the university's board of directors. However, it excludes the participation of other relatives, up to and including the fourth degree.

to article 9 of Law No. 91 of 5 February 1992. The State party notes that, on 20 August 2019, the National Guarantor for Privacy, following a complaint presented by I.E.J., invited the Ministry to verify the correct use of the information on the alleged criminal history of the author, given that he was acquitted on appeal on 13 October 2015 of the crime he was charged with for violating article 348 of the Penal Code regarding abusive exercise of a profession. Following some formal amendments, the dispositive and operative parts of the Ministry's decision, dated 28 July 2018, have been upheld. Reiterating its earlier submission of October 2019, the State party concludes that the authors' claims remain unfounded.

State party's further observations

7.1 On 7 July 2021, the State party recalled its previous observations of October 2019 and March 2020.

7.2 From a judicial standpoint, M.A.S. submitted an appeal (NRG 6314/2014) on 9 May 2014 to the Regional Administrative Tribunal (assigned to its section 1-ter), which requested the annulment of the decision of the Ministry of the Interior (K10/220307) of 3 February 2014, by which the author's application for citizenship had been rejected. In relation to the author's appeal, classified as ordinary and without a precautionary request, a request for an oral hearing was filed on 29 November 2017.

7.3 On 4 June 2019, the parties were invited to request a hearing,²¹ subsequent to which M.A.S. filed a new request on 6 June 2019. On 12 June 2019, a date for a hearing to discuss the merits of the appeal was set for 19 May 2020. At the end of that hearing, the chamber issued collegial order No. 5630/2020, published on 27 May 2020, ordering that preliminary investigations be completed, in accordance with M.A.S.'s request, and setting a public hearing for the continuation of the trial on 24 November 2020. At that hearing, the Regional Administrative Tribunal acknowledged that the Ministry of the Interior had accomplished the preliminary investigation, without observing the terms of the defence, by order No. 12782/2020, published on 1 December 2020, and set the hearing for the continuation of the trial for 7 April 2021.

7.4 By judgment No. 5269/2021, published on 6 May 2021, the appeals trial was concluded and the appeal rejected. As of the date of the State party's submission, the time limit for the submission of the second instance appeal was still unspent.

7.5 Appeal No. NRG 3374/2019, submitted by I.E.J. on 21 March 2019, requested annulment of the decision of the Ministry of the Interior (K10/800006), as notified on 11 September 2018, whereby his application for Italian citizenship was rejected. That appeal, classified as ordinary, was lodged with the Regional Administrative Tribunal following the submission of an extraordinary appeal against the Ministry's negative decision to the President of Italy.²² Together with the appeal to the Administrative Tribunal of 21 March 2019,²³ referring to the conclusions of the extraordinary appeal, I.E.J. submitted a waiver of precautionary measure.

7.6 On 26 April 2019, I.E.J. filed a specific application for an enquiry, pursuant to article 116 of the Code of Administrative Justice, with the Prefecture of Bergamo, following the author's request, dated 20 March 2019, to obtain access to the documents in his administrative file concerning the contrary preliminary elements provided by the Prefecture of Bergamo on 6 November 2007, as reflected in the refusal of the Ministry of the Interior of his application for citizenship that was notified to the author on 11 September 2018.

7.7 On 21 June 2019, the author filed a new application for enquiry and on 31 October 2019 a request for suspension, with a parallel request for joint consideration with the appeal registered under No. R.G. 6134/2014. The hearing was set for 19 May 2020, following which collegial order No. 5628/2020 was adopted and published on 27 May 2020, ordering the completion of investigations and setting a public hearing for 24 November 2020 for the continuation of the trial. On the occasion of the latter hearing, the Regional Administrative

²¹ Pursuant to article 82 of the Code of Administrative Justice.

²² Pursuant to article 10 of Presidential Decree No. 1199/1971.

²³ Pursuant to article 48 of the Code of Administrative Justice.

Tribunal acknowledged, by order No. 12795/2020, published on 1 December 2020, that the Ministry of the Interior had accomplished the investigation. The hearing for continuation of the proceedings was set for 7 April 2021. At the end of that hearing, the Administrative Tribunal issued verdict No. 5261/2021, as published on 5 May 2021, rejecting the appeal and ordering the author to pay the costs of the proceedings to the respondent Administration, in the amount of €1,500, plus the interest due by law. As of the date of the State party's submission, the time limit for lodging a second instance appeal was still unspent.

7.8 The State party reiterates that the Regional Administrative Tribunal registers appeals for public hearing, including those relating to citizenship matters, in chronological order, in accordance with the provisions of the Code of Administrative Justice.²⁴ This criterion may be departed from in cases where there are specific and significant reasons of urgency, as specified in requests for withdrawal.

7.9 The number of proceedings under the relevant section of the Administrative Tribunal concern the abbreviated procedures under article 119 of the Code of Administrative Justice, delicate disputes and protective measures, which necessarily require precedence in the determination of merit, although subject to the ordinary procedure.

7.10 Specifically, during 2020, some 1,009 ordinary appeals regarding citizenship were filed in section 1-ter, confirming the trend of previous years. A consultation of the database in January 2021 showed that 625 appeals regarding rejection of citizenship had been decided in public hearing by the section since 1 January 2016, with an average duration of proceedings of over 1,800 days or nearly 5 years.

7.11 With regard to the authors' allegations of discrimination, although no discriminatory elements were found, it is not within the competence of the administrative judicial authorities to enter into the merits of the judgments adopted by the panel of judges, against which the party has the right to use the ordinary means of appeal provided for by law.

7.12 Finally, the State party reiterates its earlier observations to conclude that the authors' claims are unsubstantiated, that respect for human rights and fundamental freedoms is at the core of the domestic judicial action and that the Government confirms its willingness to continue full and extensive cooperation with the United Nations treaty bodies and other human rights mechanisms.

Issues and proceedings before the Committee

Consideration 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 communication 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 that the State party has contested the admissibility of the present communication owing to non-exhaustion of available domestic remedies, as the appeals proceedings before the Administrative Tribunal were pending at the time of the initial submissions on 3 May 2018, and for lack of substantiation by the authors.

8.4 The Committee recalls its jurisprudence to the effect that authors must avail themselves of all domestic remedies in order to fulfil the requirement of article 5 (2) (b) of the Optional Protocol, insofar as such remedies appear to be effective in the given case and are de facto available to the author.²⁵ The Committee notes that the claims by M.A.S. of

²⁴ Article 8, annex 2, title III of the Code of Administrative Justice.

²⁵ See, for example, *Pereira v. Panama* (CCPR/C/52/D/437/1990), para. 5.2; *P.L. v. Germany* (CCPR/C/79/D/1003/2001), para. 6.5; *Riedl-Riedenstein and Scholtz v. Germany* (CCPR/C/82/D/1188/2003), para. 7.2; *Gilberg v. Germany* (CCPR/C/87/D/1403/2005), para. 6.5; *Warsame v. Canada* (CCPR/C/102/D/1959/2010), para. 7.3; and *H.S. et al. v. Canada* (CCPR/C/125/D/2948/2017), para. 6.4.

violations of her rights under articles 17 and 26 of the Covenant (since her application for citizenship was denied on the basis of circumstances relating to her husband without the author being heard in person and the appeal proceedings were unreasonably delayed) have been raised before the domestic courts. The Committee further notes that the claims by I.E.J. of violations of his rights under articles 14 (2), 17 and 26 of the Covenant (since his application for citizenship was denied on the basis of his presumed criminal record, although he was acquitted on appeal, and the appeal proceedings were unreasonably delayed) have also been raised before the domestic courts. In that context, the Committee observes that the authors have mainly contested the facts and evidence before the national authorities and objected to the use of confidential and imprecise information by the Ministry of the Interior for assessment of their applications for citizenship by residence, in which circumstances the State is granted by national law a largely discretionary power of assessment.

8.5 The Committee notes the State party's argument that following the authors' appeals to the Regional Administrative Tribunal, dated 9 May 2014 and 21 March 2019, against the denial of their applications for citizenship, M.A.S. was partly inert between May 2014 and November 2017 (that is, she did not submit a specific request for suspension and for a hearing); however, following both authors' repeated requests, their appeals were scheduled for hearings in May and November 2020 and in April 2021. The Committee also notes that the separate decisions of the Administrative Tribunal on the first instance appeals were adopted on 7 April 2021, after some delays attributable in part to procedural motions by the authors and to the substantial workload of the Tribunal, owing to the large number of appeals against rejections of citizenship. In that context, the Committee notes the State party's argument that M.A.S. submitted the collegium precautionary request for access to all information on file in October 2019 and that a public hearing was scheduled for 19 May 2020 to deal with the merits of the appeal. The Committee also notes the State party's argument that I.E.J. failed to properly substantiate both his applications for citizenship, but admitting the original misperception by the authorities of the author's alleged criminal record. The Committee observes the State party's argument that the appeals procedure is based on the chronological order of submissions and cannot be accelerated; and that its duration was partly attributable to processing the authors' precautionary requests and other preliminary assessments. The Committee further observes that the authors' communication to the Committee was submitted on 3 May 2018, pending the domestic appeals procedure. It also observes the authors' argument that the first instance appeals proceeding would not be concluded within the statutory period of three years and that the Tribunal adopted its decision rejecting the authors' appeals on 7 April 2021, after more than six years (for M.A.S.) and two years (for I.E.J.). However, according to the State party, the authors had enjoyed access to domestic remedies which were both available and effective. In that context, the State party has argued that there were no unreasonable delays in the authors' appeals procedures and that the authors could still submit a second instance appeal against the decision by the Administrative Tribunal to the Council of State.

8.6 In the light of the above, the Committee considers that the authors do not convincingly explain why the judicial remedies that the State party identified as available for appealing a denial of their applications for citizenship would not have been effective in their case, since they both presented several procedural motions that were acted on; the final decisions on their first instance appeals were adopted, even if partly late as concerns M.A.S.; and the authors could still submit an additional appeal to the Council of State. The Committee recalls its jurisprudence that mere doubts about the effectiveness of domestic remedies do not absolve authors of the requirement to exhaust them.²⁶ Accordingly, the Committee considers that it is precluded from examining the authors' claims under articles 14 (2), 17 and 26 of the Covenant by the requirements of articles 2 and 5 (2) (b) of the Optional Protocol, due to non-exhaustion of available domestic remedies.

²⁶ See, for example, *Kaaber v. Iceland* (CCPR/C/58/D/674/1995), para. 6.2, and *D.G. et al. v. the Philippines* (CCPR/C/128/D/2568/2015), para. 6.3. See also *A.M. v. Italy*, communication No. 266/1987), para. 7.3.

9. The Committee therefore decides:

(a) That the communication is inadmissible under articles 2 and 5 (2) (b) of the Optional Protocol;

(b) That the present decision shall be communicated to the State party and to the authors.
