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Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 3740/2020*, **, ***

<i>Communication submitted by:</i>	Andreas Dafnis (represented by counsel, Electra Leda Koutra)
<i>Alleged victims:</i>	The author
<i>State party:</i>	Greece
<i>Date of communication:</i>	20 April 2020 (initial submission) ¹
<i>Document references:</i>	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 5 May 2020 (not issued in document form)
<i>Date of adoption of Views:</i>	19 July 2022
<i>Subject matter:</i>	Conditions of detention; lack of adequate medical care; right to life; inhuman or degrading treatment or punishment; respect for dignity; family life; right to liberty
<i>Procedural issues:</i>	Admissibility; exhaustion of domestic remedies
<i>Substantive issues:</i>	None
<i>Articles of the Covenant:</i>	2 (1), 2 (3), 6 (1), 7, 9 (1), 10, 15, 17 and 26
<i>Article of the Optional Protocol:</i>	5 (2) (b)

1.1 The author of the communication is Andreas Dafnis, a national of Greece born in 1962. The author, who is currently detained, serving a sentence of life imprisonment in Alikarnassos Closed Prison in Crete, Greece, claims that his detention violates his rights under articles 2 (1) (3), 6, 7, 9, 10, 15, 17 and 26 of the Covenant. The Optional Protocol entered into force for Greece on 5 May 1997. The author is represented by counsel.

* Adopted by the Committee at its 135th session (27 June–27 July 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, Hernán Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Soh Changrok, Kobauyah Tchamdja Kpatcha, Hélène Tigroudja, Imeru Tamerat Yigezu and Gentian Zyberi. Pursuant to rule 108 of the Committee's rules of procedure, Photini Pazartzis did not participate in the examination of the communication.

*** An individual opinion by Committee member José Manuel Santos Pais (dissenting) is annexed to the present Views.

¹ Supplemented on 24 November 2015 and 18 February 2017.



1.2 On 9 July 2020, pursuant to rule 94 of its rules of procedure, the Committee, acting through its Special Rapporteur on new communications and interim measures, requested the State party to ensure that the author had access to adequate health-care services and medicines, as required by his medical condition.

1.3 On 30 September 2021, pursuant to rule 94 of its rules of procedure, the Committee, acting through its Special Rapporteur on new communications and interim measures, reiterated its request that access to adequate health-care services and medicines be given to the author.

Facts as presented by the author

2.1 The author is a businessman who was sentenced to life imprisonment for murder. He has been in detention since December 2010. The author suffers from a rare condition called homocysteinemia,² which caused him to suffer from multiple minor and major ischaemic strokes during his detention. He is visually impaired,³ partly paralysed (with hemiparesis of his right side) and suffers from hypertensive heart disease, liver disease and chronic dental problems. He has suffered from bipolar disorder, which required his admission to psychiatric institutions before his detention. His cumulated disability rate was declared to be 50 per cent in 2013, 75 per cent in 2016 and 90 per cent in 2018.⁴

2.2 The author served the first seven years of his sentence in Korydallos Psychiatric Hospital, to which he was admitted because of his mental health problems. In September 2017, he was transferred to the Special Detainees Health Centre of Korydallos owing to a deterioration of his health. The author started having ischaemic strokes, including a major one which caused the hemiparesis on the right side of his body. Subsequent ischaemic strokes and subsequent delays in his transfer to hospital have caused total visual impairment of his right eye and left him with minimal sight in his left eye. Despite the fact that the author requires a specific diet for his condition, he submits that during his incarceration he has not received a diet adapted to his medical needs. As ischaemic strokes could be life-threatening in the case of delayed hospitalization, the Special Detainees Health Centre considered that the author could not be adequately treated within the detention facility and recommended that he be hospitalized.⁵

2.3 On 20 June 2018, the author, invoking his health condition and the unsuitable conditions of detention within the Special Detainees Health Centre, lodged a request for conditional release in accordance with article 110 A, paragraph 3, of the Penal Code. In his request, the author claimed that remaining in such conditions would put his life in extreme danger, as any future ischaemic stroke could be fatal.

2.4 On 8 October 2018, the Appellate Court Council of Piraeus rejected the author's request on the grounds that his disability rate of 90 per cent did not arise from a single severe disease and that 50 per cent of his disability stemmed from his mental illness.

2.5 In February 2020, the author was transferred to Alikarnassos Prison in the island of Crete, where he shares a cell with another person. The author submits that his sudden transfer to Alikarnassos Prison represented retaliation for his desperate pleas to the management of the Special Detainees Health Centre and his recourse before a supra-national jurisdiction to safeguard his human rights.

2.6 The author submits that his shared cell, designed for single occupancy, at Alikarnassos Prison measures 9 square metres (m²), with a non-partitioned latrine in one corner and no running water during most of the day. He claims that both inmates jointly share less than 2 m² square metres of effective personal space. The detention conditions in the prison are characterized by overcrowding as well as a lack of hygiene and smoke-free areas. Cells are

² According to the author, this condition is characterized by an excess of the amino acid homocysteine in the blood, rendering a person prone to endothelial cell injury, which leads in turn to inflammation in the blood vessels and atherogenesis and can result in ischaemic injury.

³ With 100 per cent visual impairment in one eye and 80 per cent visual impairment in the other eye.

⁴ The author provides certificates issued by the Disability Certification Centre.

⁵ The author refers to medical opinions issued on 14 February 2018 and 8 May 2018 at the Special Detainees Health Centre.

infested with cockroaches, bedbugs and mice and the non-partitioned toilet and garbage are the source of odours. The proximity of the prison to Heraklion airport has led many inmates to suffer from hearing problems, psychoneurotic disorders and sleep deprivation. The author submits that the conditions of his detention are incompatible with addressing his health condition. His visual impairment impedes him from walking independently to the communal basins and showers to access running water. The food served in the prison is low in nutritional value and inimical to his dietary needs as medically assessed.

2.7 The author submits that no measures have been taken to protect him in the context of the outbreak of the coronavirus disease (COVID-19) pandemic, despite his vulnerabilities. He adds that the Government has not taken measures towards achieving the decongestion of prisons. Preventive measures, such as ensuring social distancing and providing inmates with masks and hand sanitizers, have not been taken and a coherent policy for the treatment and isolation of suspected cases is lacking.

2.8 In additional submissions dated 3 and 5 July 2020, the author indicated that on 29 June 2020 he had suffered several strokes and was transferred to the emergency incidents unit at Venizeleio University General Hospital of Heraklion where he was treated. Severe microischaemic leukoencephalopathy, a cerebral blood circulation disorder, was a new finding of the doctor attending the author. The author was told by the doctors that they were unable to prevent the damage caused by the strokes, as he had been brought to the hospital too late. Hemiparesis in the author's hand and leg with a score of two out of five was also found by the doctor. Upon receiving instructions, the author was discharged from hospital and returned to Alikarnassos Prison.

Complaint

3.1 The author claims that his life was put in danger by the conditions of his detention, including, inter alia, the lack of nutrition adapted to his health condition, the lack of hygiene and sanitation, the absence of specialized medical personnel, the absence of a caretaker in the light of his disabilities, the overcrowded cells and the lack of preventive measures or initiatives to decongest overcrowded prisons in the context of the COVID-19 pandemic. The author claims that the State party ought to have known that his detention in the current situation would endanger his life, considering his medical condition and the fact that, admittedly, he cannot be treated in detention. He claims that this series of omissions on the part of the State party regarding his health care, including the life-threatening delays in transfers to hospital, therefore represent a violation of his right to life under article 6 of the Covenant.

3.2 The author claims that the general conditions of his detention in violation of his rights under article 10 of the Covenant are manifestly inhuman and humiliating. The author points to the Committee's jurisprudence, which has found violations of article 10 (1) of the Covenant arising from overcrowding, lack of natural light and ventilation and inadequate food and medical services.⁶ In the light of his particular circumstances as a severely disabled person, the author claims that the appalling conditions of his detention produce physical and psychological distress, amounting to inhumane and degrading treatment in violation of article 7 of the Covenant. Furthermore, his inability to have his life sentence reviewed after almost 10 years in detention⁷ is humiliating and contrary to respect for human dignity and thus in violation of article 7 of the Covenant in conjunction with article 2.

3.3 The author submits that his severe disability and inability to care for himself in a dignified manner have been demonstrated. He therefore claims that his detention amounts to

⁶ The author refers to cases such as *Mika Miha v. Equatorial Guinea*, communication No. 414/1990, 8 July 1994; *Griffin v. Spain*, communication No. 493/1992, 4 April 1995; *Yasseen and Thomas v. Guyana*, communication No. 676/1996, 30 March 1998; *M'Boissona v. Central African Republic*, communication No. 428/1990, 7 April 1994; *Sextus v. Trinidad and Tobago*, communication No. 818/1998, 16 July 2001; *Lantsova v. Russian Federation*, communication No. 763/1997, 26 March 2002; and *Madafferi v. Australia*, communication No. 1011/2001, 26 July 2004.

⁷ The author submits that there is no regular legal instrument under Greek law by means of which a prisoner sentenced to life imprisonment can achieve an examination of the necessity and legality of his sentence or its review.

a violation of article 9 of the Covenant, as it is disproportionate, unnecessary and arbitrary, especially in the context of the COVID-19 pandemic. He contends that it no longer serves the purposes of rehabilitation and social reintegration but rather that of pure punishment. The author claims that his detention is arbitrary and in breach of article 9, as it is contrary to the State party's legal provision regarding the conditional release of disabled detainees.⁸

3.4 The author claims that the Appellate Court Council of Piraeus, which rejected his application for conditional release under article 110 A of the Penal Code, interpreted the law in bad faith. Article 110 A of the Penal Code stipulates that anyone with a disability rate of over 67 per cent or of 50 per cent and unable to provide for him- or herself should be released without other prerequisites. The requirement that a disability rate be based on one main and severe disease is not stipulated under this legal provision. The author claims for this reason that the State party violated the principle of legality under article 15 of the Covenant.

3.5 The author alleges that the restrictions placed on his right to leave and receive visits, as opposed to other measures adopted in the context of the COVID-19 pandemic, have not been prescribed by law and are in contravention of the Penitentiary Code. The author considers that, in the absence of alternatives, these restrictions as disproportionate and in violation of his right to family and private life as protected under article 17 of the Covenant.

3.6 No preventive measures have been put in place to effectively protect prisoners, in contrast to the rest of the population, from the risks of COVID-19. The author claims that based on his status as a prisoner, he is being discriminated against in respect of accessing medical treatment, in violation of article 26 of the Covenant. The principle of equality, which entails equal treatment of people in the light of their circumstances, requires that, in the light of his disabilities, he be afforded special protection.

3.7 The author invokes the above-mentioned rights in conjunction with article 2 (1) and 2 (3) (a) and (b) of the Covenant, as he does not have any practical and effective remedy to end his conditions of detention. He claims that reports or complaints to the Prosecutor supervising a specific prison, as provided under article 567 of the Code of Criminal Procedure, are rarely responded to. When they do respond, Prosecutors deny their responsibility, pointing to structural issues such as prison overpopulation or inadequate facilities which they claim are beyond their control. The author claims that, filing a civil claim for damages, in addition to being burdensome, is not an effective remedy to end the conditions of his detention. The remedy under article 110 A of the Penal Code for conditional release was exercised by the author to no avail. The lack of effective legal remedy at hand for detainees to complain about their detention conditions has been acknowledged in judgments of the European Court of Human Rights⁹ and the concluding observations of the Committee against Torture on the seventh periodic report of Greece.¹⁰

State party's observations on admissibility and the merits

4.1 On 4 January 2021, the State party submitted its observations on admissibility and the merits. With regard to the author's conditions of detention, the State party submits that the author was detained in a two-person cell at Korydallos Inmate Psychiatric Clinic measuring 9.5 m² and provided with heating, artificial lighting and a toilet. The Clinic provided communal showers, meals adapted to the medical requirements of inmates and a medical office with permanent nurses and visiting doctors. The author received psychological support and participated in recreational activities. As an inpatient at the Special Inmate Health Centre of Korydallos, the author first shared a cell with a surface area of 42.60 m² with two other inmates and then shared a cell with a surface area of 8.4 m² with one other inmate. During his hospitalization, the author's health condition remained stable, with occasional temporary strokes. His visual acuity was impaired as the result of a stroke. He underwent all of the appropriate medical tests and was prescribed medication for his condition. The State party submits that at Korydallos Detention Facility I, the author was detained in cells with three

⁸ The author refers to the provision under article 110 A of the Penal Code.

⁹ See European Court of Human Rights, *Martzaklis et al. v. Greece*, Application No. 50385/99, Judgment, 20 December 2004.

¹⁰ [CAT/C/GRC/CO/7](#) (3 September 2019).

other inmates measuring up to 31.5 m²¹¹ and then with two other inmates in cells measuring 9.5 m² and containing a toilet and a basin separated by a screen. The cells have central heating, large windows and hot water and appointments with visiting doctors can be scheduled at the medical office. The State party notes that while detained in this facility the author never requested to be heard by the prosecutor and chose not to participate in the prison's recreational activities. The State party submits that on 24 February 2020, on the grounds of Korydallos Detention Facility policy, the author was transferred to Alikarnassos Detention Facility, which, with a total capacity of 210 inmates, currently holds 240. The author's cell, which he shares with another inmate, measures 8.58 m² and includes a small squat toilet and a window, with good access to natural light and ventilation. The State party submits that no cell has access to hot water. Upon his admission, the author underwent appropriate medical checks and was transferred to a local hospital to undergo exams and medical procedures. The author receives the appropriate medication for his condition.

4.2 As regards the issue of admissibility, the State party notes that the author has not exhausted domestic remedies, as he did not lodge a complaint to the respective Prison Councils¹² regarding his treatment and conditions of detention. Under article 6 of the Penitentiary Code, detainees have the right to report illegal acts or orders against them to their Prison Council and if this is rejected, to appeal before the Sentence Enforcement Court. The State party argues that this has been considered an effective and sufficient remedy by the European Court of Human Rights in similar cases regarding detention conditions.¹³ The author could have filed a complaint before the Public Prosecutor of the Misdemeanours Court under article 572 of the Code of Criminal Procedure, as the supervision and control of correctional facilities and the treatment of detainees fall within the competence of the Public Prosecutor. The State party submits that the action for damages under article 105 of the Introductory Law to the Civil Code is another legal remedy that was not exercised by the author. Under this provision, the State party is required to pay compensation for unlawful actions and omissions by any State body in the exercise of public power. For this to take effect, the administrative courts entrusted with implementing this provision must find a violation of a right protected under domestic law (e.g. under the Penitentiary Code¹⁴) or the Covenant to determine the unlawfulness of the omission or action of the relevant State body.¹⁵ The payment of compensation can be claimed for both pecuniary and non-pecuniary damages. The State party submits that the author did not appeal against the ruling of the Piraeus Appellate Court Council by which his application for conditional release was rejected. The State party argues that under article 110 A, paragraph 4, of the Penal Code the author was provided the opportunity to appeal in cassation. The State party notes that on 18 October 2019, the author filed an application before the European Court of Human Rights, which declared it inadmissible, inter alia, for non-exhaustion of domestic remedies.¹⁶

4.3 The State party contends that the author's claims under article 15 of the Covenant should be declared inadmissible, as they involve the re-evaluation of facts and evidence. The State party notes that the interpretation by the Piraeus Appellate Court Council of article 110 A of the Penal Code was based on the evaluation of several facts and pieces of evidence and cannot be held to be manifestly arbitrary or to amount to a denial of justice.

4.4 With regard to the merits of the communication and the alleged violation of article 2 (1) and (3) (a) and (b) of the Covenant, the State party submits that, as demonstrated above, it has taken the necessary measures to ensure the author's rights under the Covenant and has established all appropriate judicial and administrative mechanisms for claiming violations of rights under the Covenant.

¹¹ The State party submits that these cells included a toilet fully separated from the rest of the cell by walls or a door.

¹² The State party clarifies that Prison Councils are administrative bodies.

¹³ European Court of Human Rights, *Vaden v. Greece*, Application No. 35115/03, Judgment, 29 March 2007; and *Gehre v. Greece*, Application No. 5294/02, Judgment, 5 July 2007.

¹⁴ Articles 21, 25 and 32 of the Penitentiary Code.

¹⁵ The State party explains that the Covenant is directly applicable law in the Greek legal system and takes precedence over every contrary provision of law, pursuant to article 28, paragraph 1, of the Constitution.

¹⁶ See European Court of Human Rights, Application No. 55581/19.

4.5 The State party submits that the author's claims under which he alleged an imminent high risk to his life in violation of article 6 of the Covenant are unfounded. The author is provided with adequate medication free of charge and can access the infirmary for medical examination when such access is requested and deemed necessary. He was transferred to hospital whenever needed. With regard to the measures taken to reduce the propagation of COVID-19, the State party submits that the Government's orders were strictly implemented in Alikarnassos Prison, which was supplied with protective gear and introduced a protocol to deal with suspected cases of infection. New detainees are placed in quarantine and the temperature of prison employees is measured. The State party states that no cases of COVID-19 have been reported in Alikarnassos Prison.

4.6 The State party contends that the author was treated with humanity in accordance with article 10 of the Covenant. The conditions of his detention are satisfactory and do not evidence inhuman or degrading treatment according to the meaning of article 7 of the Covenant. The State party submits that the author was not subjected to any hardship during his detention other than that resulting from the deprivation of his liberty. The minimum standards of detention are met, including the provision of adapted medical care and treatment. Furthermore, the author's personal space in all detention facilities exceeded 4 m², which complies with the threshold established by the jurisprudence of the European Court of Human Rights regarding shared cells.

4.7 Regarding the alleged violation of article 9 of the Covenant, the State party submits that the author's arrest followed procedures established by law. An arrest warrant was issued, the author was informed of the reasons for his arrest and the period of his pretrial detention did not exceed the maximum period prescribed by law. In addition, the author had access to a lawyer and the opportunity to challenge the legality of his detention. The State party submits that the author is currently detained and is serving a sentence of life imprisonment by virtue of a judgment of the Mixed Jury Court of Appeal of Nafplio. According to the State party, all of the above information suggests that the author's detention was not arbitrary and did not breach the requirements imposed under article 9 of the Covenant.

4.8 The State party argues that the author's claims under article 15 of the Covenant are groundless and irrelevant. It submits that the author's disagreement with the Court's interpretation of article 110 A of the Penal Code in his case does not entail a violation of article 15 of the Covenant or the observance of the principle of legality.

4.9 Regarding the author's claims in which he alleges a violation of article 17 of the Covenant due to the measures taken in the light of the COVID-19 pandemic, the State party submits that no arbitrary or unlawful interference occurred with respect to the author's right to privacy, family and home. Furthermore, the State party states that on 4 March 2020, the Prison Council of Alikarnassos Detention Facility approved the visit of the author's fiancée. The State party reiterates that all of the detention facilities that are subjects of the present communication took the necessary health measures ordered by the authorities in the context of the COVID-19 pandemic.

4.10 The State party submits that the author's claims under article 26 of the Covenant are vague and unfounded, as he was not subjected to discriminatory treatment on any grounds. It recalls that not all differential treatment amounts to discrimination based on the grounds listed in article 26 of the Covenant, if based on objective and reasonable criteria, under which a legitimate aim under the Covenant is pursued.

Author's comments on the State party's observations

5.1 On 1 June 2021, the author submitted his comments on the State party's observations.

5.2 With regard to the State party's allegations of inadmissibility, the author argues that the remedies mentioned are neither available nor effective nor do they offer reasonable prospects of success without excessive delay. He therefore argues that he was not under the obligation to exhaust them. The absence of an effective remedy for prisoners to complain of

conditions of their detention has been admitted by the State party itself¹⁷ and found repeatedly by the European Court of Human Rights.¹⁸ The author reiterates that reports under article 572 of the Code of Criminal Procedure and article 6 of the Penitentiary Code are rarely responded to. Furthermore, the Prosecutors, who are responsible for both the treatment of detainees and for investigating their claims, do not appear impartial under such remedies.¹⁹ The author notes that the judgments referred to by the State party on the effectiveness of those remedies were issued over 15 years ago and are not representative of the current jurisprudence of the European Court on the matter.

5.3 Regarding the action for damages under article 105 of the Introductory Law to the Civil Code, the author considers this remedy to be solely compensatory and ineffective for the purposes of article 2 of the Covenant with regard to a prompt cessation of the conditions of his detention and protecting his right to life. He submits that such remedy has never succeeded in finding a violation of the Covenant or the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention of Human Rights) in relation to detention conditions in the State party.

5.4 Regarding the effectiveness of domestic remedies, the author did not attempt to appeal in cassation the ruling of the Piraeus Appellate Court Council, considering it a futile remedy as he does not meet the disability requirements established by the Greek courts' interpretation of article 110 A, paragraph 3, of the Penal Code. In December 2020, after completing 10 years in detention, the author lodged another request under article 110 A of the Penal Code, which received a negative recommendation from the Prosecutor of Eastern Crete on the same grounds. He objects to the effectiveness of this remedy, which has been found to be unduly prolonged by the European Court of Human Rights.²⁰

5.5 On his application to the European Court of Human Rights, the author submits that it concerned facts and claims different from those raised in the present communication to the Committee, which focus mainly on his detention conditions in Alikarnassos Prison in the context of the COVID-19 pandemic. The author adds that his application to the European Court was declared inadmissible and that no other international mechanism is examining his complaint.

5.6 The author strongly disagrees with the State party's assertion that adequate measures were taken in Alikarnassos Prison in response to the COVID-19 pandemic. The occasional distribution of mild antiseptic is far below the requirements under international standards. The author adds that the State party's measures in the context of the pandemic restrict transfers to hospital and rights to leave and visits, while falling short regarding the decongestion of prisons and other measures to reduce inmates' risk of contagion. He claims that these measures do not meet the requirements of legality, proportionality and necessity and fail to consider the particular requirements of disabled prisoners in the context of the COVID-19 pandemic.

5.7 The author reiterates that the State party arbitrarily violated his right to life by failing to provide him with the necessary medical assistance and by rejecting his conditional release, despite knowing indisputably the real and imminent risk incurred to his life. The slow

¹⁷ The author refers to question No. 9456 of 11 September 2020 of the member of Parliament G. Kaminis in regard to which the competent Minister admitted that an effective remedy for detainees had to be established in the context of the reform of the Penitentiary Code.

¹⁸ The author cites the following judgments of the European Court of Human Rights: *Papakonstantinou v. Greece*, Application No. 50765/11; *Zabelos v. Greece*, Application No. 1167/15, Judgment, 17 August 2018; *Martzaklis et al. v. Greece*, Application No. 50385/99, Judgment, 20 December 2004; *Kartelis and others v. Greece*, Application No. 53077/13; *Adiele et al. v. Greece*, Application No. 29769/13, Judgment, 25 February 2016; *Ali Cheema et al. v. Greece*, Application No. 7059/14, Judgment, 7 April 2016; *D.M. v. Greece*, Application No. 44559/15, Judgment, 16 February 2017; *Singh et al. v. Greece*, Application No. 60041/13, Judgment, 18 October 2017; *Konstantinopoulos et al. v. Greece*, Application No. 69781/13; *Pilalis v. Greece*, Application No. 5574/16, Judgment, 17 May 2018; *Pekov and Andreeva v. Greece* Application No. 36658/17, Judgment, 6 September 2018; and *Lautaru and Seed. v. Greece* Application No. 29760/15, Judgment, 23 July 2020.

¹⁹ See *Lautaru and Seed. v. Greece*, Application No. 29760/15, Judgment, 23 July 2020.

²⁰ See *Kalandia v. Greece*, Application No. 48684/15, Judgment, 6 October 2016.

response of the State party to his strokes considerably reduce his chances of survival. He submits that the State party has not provided a copy of his medical file in order to prove the adequacy of his treatment. The author also disputes the State party's allegation that there were no cases of COVID-19 in Alikarnassos Prison prior to submitting its observations.

5.8 The author reiterates his submission regarding his claims under articles 7 and 10 of the Covenant. The author points to reports and findings of regional and international human rights mechanisms confirming the inadequate detention conditions and health care for prisoners, in particular concerning the prisons of Korydallos and Alikarnassos, which contradict the State party's allegations.²¹ The author refers to a judgment of the European Court of Human Rights regarding a similar case involving a disabled detainee, in which it was found that detention conditions ill-suited for persons with disabilities exceeded the threshold of suffering inherent in the deprivation of liberty.²²

5.9 The author submits that the State party failed to comment on the substance of his claims under article 9 of the Covenant, thus ignoring the Committee's jurisprudence regarding the conditions under which a deprivation of liberty may result in arbitrary detention.

5.10 With regard to the State party's observations on his claims under article 15 of the Covenant, the author sustains that there have been two interpretations of article 110 A of the Penal Code. The first, based on the letter of the law, provides for the conditional release of convicted persons if their overall disability rate is over 80 per cent. The second interpretation followed by courts throughout the State party after 2018 grants conditional release only if the disability rate stems from a single severe disease, rejecting the notion that a combination of several diseases can be seriously impairing. The author reiterates that he considers the latter interpretation to be in bad faith.

5.11 The author reiterates his claims under article 17 of the Covenant that the suspension of visits and leaves due to the pandemic has not been prescribed by law. Inmates were not offered alternative means of communication in the light of these measures, which were not announced officially and therefore did not offer the possibility of being formally challenged.

5.12 The author notes that the State party does not substantively address his claims under article 26 of the Covenant. The author submits as an additional claim that he has been excluded from vaccination against COVID-19 on the basis of his status as a prisoner. He claims that appointments for vaccination are available to the rest of the members of the population who are of the same age and have the same health status as he, while he has not been able to express his interest in being vaccinated.

5.13 The author claims that, despite the Committee's request to the State party for interim measures to ensure that he has access to adequate health-care services and medicines as required based on his medical condition, the State party took no corresponding measures, such as transferring him to an environment compatible with his health condition. The author complained about the State party's non-compliance with the Committee's request for interim measures in a report that he lodged with the Greek Ombudsman on 24 August 2020, after the prison administration's attempt to place a third person in his single-occupancy cell.

5.14 On 29 September 2021, the author submitted additional comments on the State party's observations, following an outbreak of COVID-19 in Alikarnassos Prison. The author submits that he tested negative but had to quarantine in his cell together with his co-inmate who had tested positive to the virus. He also submits that on 27 September 2021, the area of Crete experienced powerful earthquakes. Houses in the surrounding areas became unsafe and residents were moved to tents with the support of the army and civil protection bodies. Except for the inmates placed in quarantine, including the author, all inmates of Alikarnassos Prison were moved outside to the yard. The author alleges that inmates in quarantine were not sufficiently monitored. As a result of the earthquake, the author fears that the cell will

²¹ The author refers to the reports of the Working Group on Arbitrary Detention on its visits to Greece from 21 to 31 January 2013 and in December 2019 and the report to the Greek Government on the visit to Greece carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment from 14 to 23 April 2015 (CPT/Inf (2016) 4).

²² European Court of Human Rights, *Kargakis v. Greece*, Application No. 27025/13, Judgment, 14 January 2021.

collapse above his head and that the stress generated by this situation will cause him to experience another stroke. He requested the Committee to so amend the interim measures requested of the State party, dated 9 July 2020, as to recommend his release, given that the current situation poses a risk to him of irreparable harm.

State party's additional observations

6.1 In a note verbale dated 9 November 2021, the State party submitted additional observations on the admissibility and merits of the complaint. The State party reiterates that the author had several available effective remedies to exhaust, such as filing a report to the Prison Council under article 6 of the Penitentiary Code, lodging a complaint with the Public Prosecutor of the Misdemeanours Court and appealing in cassation against the ruling of the Piraeus Appellate Court Council. The State party notes that no mention is made regarding an appeal in cassation against the similar ruling of the Eastern Crete Appellate Court Council. The State party contends that the author could have submitted an application for interim measures before the civil courts, in accordance with the Civil Procedure Code, to avert the alleged imminent danger to his health.

6.2 The State party reiterates its previous submission regarding the health care provided to the author. It submits that the author was admitted to the Venizeleio Hospital in Heraklion four times in the three months preceding the submission of the present observations. He had also visited regularly and had appointments set up with the neurological, surgical and ophthalmological infirmaries. Contrary to the author's allegations, the State party notes that, on 13 July 2021, the author was vaccinated against COVID-19, as confirmed by the prison doctor. When his cell mate tested positive for COVID-19, he was placed in quarantine for 10 days and was checked daily by the infirmary for possible symptoms. The State party argues that his stay in quarantine did not place him at risk of irreparable damage to his health.

6.3 The State party states that after an earthquake near Heraklion on 27 September 2021, Alikarnassos Prison was immediately inspected and no harm to prisoners or damages to the prison infrastructure were identified. The State party refutes the author's allegations regarding the degrading conditions of the facilities of Alikarnassos Prison, which are not supported by evidence and have not been denounced by the author before the competent authorities.

6.4 With regard to the author's reference to several reports of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, the State party argues that the European Court of Human Rights has found that a simple reference to such reports does not suffice to support claims regarding the particular aspects of an applicant's detention.²³ The State party notes that the author refers to reports dating back several years before he submitted the present communication.

6.5 The State party concludes that the author's conditions of detention, outlined in its previous submission, although not totally satisfactory, do not reach the threshold of inhuman or degrading treatment in accordance with the meaning of article 7 of the Covenant.

Issues and proceedings before the Committee

Consideration of admissibility

7.1 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.

7.2 The Committee notes that, on 23 January 2020, the European Court of Human Rights found in a single-judge formation that the author's similar complaint was inadmissible. Given that the complaint is no longer being examined by the European Court, the Committee

²³ The State party cites European Court of Human Rights, *Iatridis et al. v. Greece*, Application Nos. 25993/17 and 32048/17, Judgment, 19 November 2020, para. 45; and *Ali Cheema et al. v. Greece*, Application No. 7059/14, Judgment, 7 April 2016.

considers that it is not precluded by article 5 (2) (a) of the Optional Protocol from examining the author's claims on the merits.

7.3 The Committee notes the State party's submission that the communication should be considered inadmissible on the grounds of non-exhaustion of domestic remedies, as the author failed to (a) file a report to the respective Prison Councils and appeal subsequently to the Sentence Enforcement Court under article 6 of the Penitentiary Code; (b) lodge a complaint to the Public Prosecutor of the Misdemeanours Court under article 5; (c) lodge an action for compensation under article 105 of the Introductory Law to the Civil Code; and (d) submit an application for interim measures before civil courts.

7.4 The Committee notes the author's argument that the remedies before the Prison Councils and the Public Prosecutor are not effective, as they are rarely provided with an answer and offer no reasonable prospects of success in addressing conditions of detention.²⁴ It takes note of the State party's argument that the European Court of Human Rights has held that filing complaints to the respective Prison Council and Public Prosecutor constitutes effective remedies regarding individual detention conditions.²⁵ The Committee notes the author's argument regarding the outdatedness of the European Court's judgments referred to by the State party to support the effectiveness of those remedies. It also notes that the State party has not provided any additional specific information to refute the author's claims. It further notes that, although the European Court has found the procedures under article 572 of the Code of Criminal Procedure and article 6 of the Penitentiary Code to be effective remedies regarding the individual treatment and circumstances of detainees, to which prison authorities could put an end, it has found such remedies of no use for applicants claiming to be personally affected by the general conditions of detention in the prison.²⁶

7.5 The Committee takes note of the author's argument that an action for compensation under article 105 of the Introductory Law to the Civil Code would not provide an effective and prompt redress in his case in order to end his current conditions of detention. It notes the author's argument that this remedy has never succeeded in finding a violation of rights under the Covenant in relation to conditions of detention. The Committee also notes the State party's argument that this legal provision provides a suitable and effective remedy both in finding a violation of rights under the Covenant and in providing pecuniary restitution. The Committee takes note of the State party's argument that the European Court of Human Rights has found it to be an effective remedy, when invoking articles of the Penitentiary Code and the European Convention on Human Rights, which is directly applicable within the domestic legal order. The Committee notes that the State party has not provided any specific additional information refuting the author's claims regarding the lack of promptness and in particular the effectiveness of this remedy. The Committee also notes that the European Court of Human Rights has found that the effectiveness of the action for compensation under article 105 of the Introductory Law to the Civil Code, given its purely compensatory nature, depends on whether the claimant is deprived of his liberty or released.²⁷ The Committee further notes that in regard to claimants currently detained, the European Court considered the remedy to be ineffective with respect to obtaining an improvement of the conditions of their detention.²⁸

7.6 In the absence of any further information on file that would support the effectiveness of the remedies under article 572 of the Code of Criminal Procedure, article 6 of the Penitentiary Code and article 105 of the Introductory Law to the Civil Code, the Committee finds that, in the circumstances of the author's case, the State party has not shown how such

²⁴ To support his argument, the author refers to European Court of Human Rights, *Papakonstantinou v. Greece*, Application No. 50765/11, Judgment, 13 November 2014.

²⁵ See European Court of Human Rights, *Vaden v. Greece*, Application No. 35115/03, Judgment, 29 March 2007; and *Tsivis v. Greece*, Application No. 11553/05, Judgment, 6 November 2007.

²⁶ European Court of Human Rights, *Papakonstantinou v. Greece*, Application No. 50765/11, Judgment, 13 November 2014, para. 51.

²⁷ European Court of Human Rights, *Papadakis et al. v. Greece*, Application No. 34083/13, Judgment, 25 February 2016, para. 51; and *Konstantinopoulos v. Greece*, Application No. 69781/13, Judgment, 28 January 2016, para. 39.

²⁸ *Ibid.*

remedies would have been effective in promptly addressing and remedying the conditions of the author's detention.

7.7 The Committee notes the State party's submission that the author has failed to exhaust domestic remedies by not appealing in cassation against the ruling of the Piraeus Appellate Court Council. The Committee takes note of the author's argument that this remedy would be futile, offering no reasonable prospects of success, given that his disability status does not comply with the requirements established by the case law pursuant to article 110 A of the Penal Code. The Committee notes the author's argument claiming that this remedy is unduly prolonged.²⁹ The Committee also notes that the State party has not provided any information on the effectiveness on this remedy by which the author's arguments are refuted. The Committee refers to its established jurisprudence where it states that, for the purpose of article 5 (2) (b) of the Optional Protocol, domestic remedies must be not only available but also effective, which depends as well on the nature of the alleged violation.³⁰ The Committee recalls that an applicant must make use of all judicial or administrative avenues that offer him a reasonable prospect of redress.³¹ The Committee also recalls that domestic remedies need not be exhausted if they objectively have no prospect of success: where under applicable domestic laws the claim would inevitably be dismissed or where established jurisprudence of the highest domestic tribunals would preclude a positive result.³² In the absence of any further information on file that would support the effectiveness of the remedy of an appeal in cassation of the ruling of the Piraeus Appellate Court Council, the Committee finds that, in the circumstances of the author's case, the State party has not shown how such remedy would have been effective in promptly bringing an end to the author's conditions. The Committee considers that it is not precluded by article 5 (2) (b) of the Optional Protocol from examining the author's claims under articles 6, 7, 9 and 10.

7.8 As to the violation of article 7 in conjunction with article 2 of the Covenant, owing to the author's alleged inability to secure the review of his life sentence after almost 10 years in detention (para. 3.2), the Committee notes that the author was able to request on two occasions his conditional release, in accordance with the provisions under article 110 A of the Greek Penal Code, and therefore considers that the author has failed to sufficiently substantiate this claim for purposes of admissibility. It accordingly declares this part of the communication inadmissible pursuant to article 2 of the Optional Protocol.

7.9 As to the alleged violation of article 17 of the Covenant, the Committee considers that the author has failed to provide sufficient information and factual support to substantiate his claim regarding his right to privacy and why the restrictions on his right to leave and visits were unlawful, disproportionate and arbitrary. The Committee notes the author's claim under article 26, where he alleges that he was discriminated against on the grounds of his status as a prisoner in respect of his access to health care, including his access to vaccination against COVID-19. The Committee also notes the State party's argument that the author was not subject to discriminatory treatment and was vaccinated against COVID-19 on 13 July 2021. Consequently, and in the absence of any further pertinent information on file, the Committee considers that the author has failed to sufficiently substantiate these claims for the purposes of admissibility. It accordingly declares this part of the communication inadmissible pursuant to article 2 of the Optional Protocol.

7.10 The Committee notes the author's allegations concerning the violation of article 15 of the Covenant, according to which the Piraeus Appellate Court Council, in ruling to reject his application for conditional release, interpreted article 110 A of the Penal Code in an arbitrary and unlawful manner. The Committee takes note of the State party's argument that the Appellate Court Council's ruling was fully reasoned and based on the evaluation of various facts and evidence, which cannot be considered manifestly arbitrary or to amount to a denial of justice. The Committee notes the State party's argument that claims involving the re-

²⁹ See *Kalandia v. Greece*, Application No. 48684/15, Judgment, 6 October 2016.

³⁰ *R.T. v. France* (CCPR/C/35/D/262/1987), para. 7.4; and *Vicente et al. v. Colombia* (CCPR/C/60/D/612/1995), para. 5.2.

³¹ *Patiño v. Panama* (CCPR/C/52/D/437/1990), para. 5.2.

³² *Pratt and Morgan v. Jamaica* (CCPR/C/35/D/225/1987), para. 12.3; *Young v. Australia* (CCPR/C/78/D/941/2000), para. 9.4; and *Barzhig v. France* (CCPR/C/41/D/327/1988), para. 5.1.

evaluation of facts and evidence have previously been declared inadmissible by the Committee.³³

7.11 The Committee recalls its jurisprudence to the effect that it is incumbent on the courts of States parties to evaluate the facts and evidence in each case, or the application of domestic legislation, unless it can be shown that such evaluation or application was clearly arbitrary or amounted to a manifest error or denial of justice.³⁴ The Committee has considered the information provided by the parties, in particular the ruling of the Piraeus Appellate Court Council and Proposal of the Prosecutor of Eastern Crete, and is of the opinion that they were grounded in the jurisprudence of the domestic courts regarding article 110 A of the Penal Code and do not show that its interpretation in the author's case was arbitrary. The Committee therefore finds that the author has failed to sufficiently substantiate his claim of a violation of article 15 of the Covenant and that this claim is inadmissible under article 2 of the Optional Protocol.

7.12 The Committee notes that the author has also claimed a separate violation of article 2 (1) and (3) of the Covenant in his regard. The Committee recalls its jurisprudence, in which it indicates that the provisions under article 2 of the Covenant set forth a general obligation for States parties and cannot give rise, when invoked separately, to a claim in a communication under the Optional Protocol.³⁵ The Committee therefore considers that the author's claims invoked separately under articles 2 (1) and (3) of the Covenant to be inadmissible under article 3 of the Optional Protocol.

7.13 The Committee considers that the provisions of article 2 cannot be invoked as a claim in a communication under the Optional Protocol in conjunction with other provisions of the Covenant except when the failure by the State party to observe its obligations under article 2 is the proximate cause of a distinct violation of the Covenant directly affecting the individual claiming to be a victim.³⁶ The Committee notes, however, that the author has already alleged a violation of his rights under articles 6, 7, 9 and 10 of the Covenant and does not consider that examination of whether the State party also violated its general obligations under article 2 (1) of the Covenant, read in conjunction with articles 6, 7, 9 and 10, to be distinct from examination of the violation of the author's rights under articles 6, 7, 9 and 10. In light of the above, the Committee finds the author's claims under article 2 (1) of the Covenant, read in conjunction with articles 2 (3), 6, 7, 9, 10, 17 and 26, to be inadmissible under article 3 of the Optional Protocol.

7.14 In the absence of any other challenges to the admissibility of the communication, the Committee declares the communication admissible insofar as it concerns the claims regarding the general conditions of his detention raised under articles 6, 7, 9 and 10 of the Covenant, alone and in conjunction with article 2 (3), and proceeds with its consideration of the merits.

Consideration of the merits

8.1 The Committee has considered the communication in the light of all the information submitted to it by the parties, as required under article 5 (1) of the Optional Protocol.

8.2 The Committee notes the author's claims under article 6 (1) that the conditions of his detention, characterized by the absence of nutrition adapted to his health condition, the lack of hygiene and sanitation, the absence of specialized medical personnel, the absence of a

³³ The State party cites *Hicks v. Australia*, communication No. 2005/2010; *V.S. v. New Zealand*, communication No. 2072/2011; *M.A.B. v. Argentina*, communication No. 2122/2011; *E.P. and F.P. v. Denmark*, communication No. 2344/2014; *G.C.A.A. v. Uruguay*, communication No. 2358/2014; *V.S. v. Lithuania*, communication No. 2437/2014; and *J.P.D. v. France*, communication No. 2621/2015.

³⁴ *Manzano and others v. Colombia* (CCPR/C/98/D/1616/2007), para. 6.4; and *L.D.L.P. v. Spain* (CCPR/C/102/D/1622/2007), para. 6.3.

³⁵ *H.E.A.K. v. Denmark* (CCPR/C/114/D/2343/2014), para. 7.4; *Castañeda v. Mexico* (CCPR/C/108/D/2202/2012), para. 6.8; *Ch.H.O. v. Canada* (CCPR/C/118/D/2195/2012), para. 9.4; *Peirano Basso v. Uruguay* (CCPR/C/100/D/1887/2009), para. 9.4; *A.P. v. Ukraine* (CCPR/C/105/D/1834/2008), para. 8.5; and *Poliakov v. Belarus* (CCPR/C/111/D/2030/2011), para. 7.4, among others.

³⁶ *Poliakov v. Belarus* (CCPR/C/111/D/2030/2011), para. 7.4.

caretaker in the light of his disabilities to enable him to leave his cell, the overcrowded cells and the lack of preventive measures or initiative to decongest overcrowded prisons in the context of the COVID-19 pandemic, put his life in danger. The Committee also notes the author's claim that the State party was informed that his detention in an environment that was not adequately equipped medically would endanger his life, as the delays in transfers to hospital put his life at risk. At the same time, the Committee takes note of the State party's argument that the infirmary provides the author with regular medication and treatment, including while he is in quarantine, and that he is transferred to hospital when required.

8.3 The Committee observes that several medical opinions provided confirmation that the author's condition of homocysteinemia could not be treated adequately within the facilities where he was detained, as his recurring ischaemic strokes required rapid in-hospital treatment. The Committee notes that doctors have confirmed the deterioration of the author's health while in detention and even the concrete and serious risk of death if he is not adequately treated owing to delays in hospital transfers. The Committee recalls that in any case the State party remains responsible for the life and well-being of its detainees,³⁷ and that the duty to protect the life of all detained individuals includes providing them with the necessary medical care and appropriate regular monitoring of their health.³⁸ The Committee observes that, despite medical opinions provided at Korydallos Prison Hospital in which the urgent state of the author's health was highlighted and in-hospital treatment was recommended, he was transferred to Alikarnassos Prison, where he suffered an ischaemic stroke on 29 June 2020, causing him further damage owing to delays in hospital transfer. The Committee considers that the State party was informed of the author's particular health condition and that in the absence of specialized medical care in these detention facilities, he would need urgent transfers to hospital which could have fatal consequences. The Committee notes that the State party has not refuted the author's allegation regarding the inaccessibility of prison facilities, considering his disability and the absence of a caretaker and given that his cell has neither a shower nor hot water. The Committee recalls that persons with disabilities, including psychosocial or intellectual disabilities, are entitled to specific measures of protection so as to ensure their effective enjoyment of the right to life on an equal basis with others.³⁹ The Committee considers that it is apparent from the information on file that, despite receiving medication, the absence of specialized medical care within the detention facilities has delayed his access to health care and caused a disproportionate deterioration in his health in the light of his disability. Without further information on file regarding measures taken by the State party to discharge its duty to protect the author's life, and in view of the medically documented seriousness of his health condition while in detention, the Committee concludes that, in the specific circumstances of the case, there has been a violation of the rights of the author under article 6 (1) of the Covenant.

8.4 As to the conditions of detention in general, the Committee observes that certain minimum standards must be observed regardless of a State party's level of development. These include, in accordance with rules 10, 12, 17, 19 and 20 of the United Nations Standard Minimum Rules for the Treatment of Prisoners, minimum floor space and cubic content of air for each prisoner, adequate sanitary facilities, clothing that shall be in no manner degrading or humiliating, provision of a separate bed, and provision of food of nutritional value adequate for health and strength.⁴⁰ The Committee also observes that, as transpires from the information on file, the requirements relative to minimum floor space and cubic content of air and adequate sanitary facilities were not met, notably, during the author's detention in Korydallos Detention Facility I and Alikarnassos Prison. The Committee notes that the State party acknowledges that the conditions of the author's detention are not totally satisfactory. It also notes that the State party accepts the condition of overcrowdedness prevailing in Alikarnassos Prison alleged by the author and does not provide a response

³⁷ See *Fabrikant v. Canada* (CCPR/C/79/D/970/2001); and *Lantsova v. Russian Federation* (CCPR/C/74/D/763/1997).

³⁸ General comment No. 36 (2018) on the right to life, para. 25.

³⁹ *Ibid.*, para. 24; and Convention on the Rights of Persons with Disabilities, art. 10.

⁴⁰ See *Mukong v. Cameroon*, communication No. 458/91; and *Potter v. New Zealand*, communication No. 632/95.

regarding his allegation that he effectively has to share a space of 2 m² together with his co-inmate.

8.5 The Committee recalls that persons deprived of their liberty must not be subjected to any hardship or constraint other than that resulting from the deprivation of liberty.⁴¹ Inhuman treatment must attain a minimum level of severity to come within the scope of article 10 of the Covenant. The assessment of this minimum depends on all the circumstances of the case, such as the nature and context of the treatment, its duration, its physical or mental effects and, in some instances, the sex, age, state of health or other status of the victim.⁴² Prison authorities have a specific responsibility, among others, to provide prisoners with appropriate medical services and adequate sanitary facilities, and to prevent overcrowding.⁴³ The Committee notes that, in the light of the author's impaired vision and limited mobility, the sanitary facilities, in particular the form of a squat toilet, do not meet the minimum requirements in his case for adequate sanitary facilities. The Committee also notes that these general conditions of detention, ranging from lack of access to appropriate and timely medical care and overcrowded cells to inadequate sanitary facilities, had a disproportionate impact on the author as a person with disabilities, causing aggravated physical and mental suffering. The Committee considers that the conditions of the author's detention as described violated his right to be treated with humanity and with respect for the inherent dignity of the human person and are therefore contrary to article 10 (1) of the Covenant, a provision of the Covenant dealing specifically with the situation of persons deprived of their liberty and encompassing for such persons the elements set out generally in article 7.⁴⁴ On the basis of the information before it, the Committee finds that the conditions of detention, as described by the author and as acknowledged by the State party, constitute a violation of his right not to be subjected to inhuman or degrading treatment under article 7 of the Covenant. For these reasons, and in the light of the disproportionate impact of the conditions of detention on the author due to his multiple disabilities, the Committee finds that the circumstances of the author's detention, constitute a violation of articles 7 and 10 (1) of the Covenant.

8.6 The Committee recalls that States parties must ensure that individuals have accessible, effective and enforceable remedies to uphold rights under the Covenant. The Committee refers to its general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, according to which States parties must establish appropriate judicial and administrative mechanisms for addressing claims of rights violations.⁴⁵ In the present case, the information before the Committee indicates that the author did not have access to an effective remedy which would have allowed for the review and improvement of his conditions of detention in accordance with his urgent health-care situation. In these specific circumstances, the Committee consequently finds that the rights of the author under articles 6 (1), 7 and 10 of the Covenant, read alone and in conjunction with article 2 (3), have been violated.

8.7 Having found a violation of articles 6 (1), 7 and 10 of the Covenant, the Committee will not examine separately the author's remaining claims under article 9 (1).

9. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts before it disclose a violation of the author's rights under articles 6 (1), 7 and 10 of the Covenant, alone and in conjunction with article 2 (3).

10. Pursuant to article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the author with an effective remedy. This requires it to make full reparation to

⁴¹ General comment No. 21 (1992) on humane treatment of persons deprived of their liberty, para. 3.

⁴² See *Corey Brough v. Australia* (CCPR/C/86/D/1184/2003); and *Marinich v. Belarus* (CCPR/C/99/D/1502/2006).

⁴³ *Mukong v. Cameroon*, communication No. 458/1991, para. 9.3; *Rouse v. Philippines*, communication No. 1089/2002, para. 7.8; and United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules).

⁴⁴ *Pichugina v. Belarus* (CCPR/C/132/D/2711/2015), para. 6.3; *Bobrov v. Belarus* (CCPR/C/122/D/2181/2012), para. 8.2; *Weerawansa v. Sri Lanka* (CCPR/C/95/D/1406/2005), para. 7.4; and *Evans v. Trinidad and Tobago* (CCPR/C/77/D/908/2000), para. 6.4.

⁴⁵ General comment No. 31 (2004) on the nature of the general legal obligations imposed on States parties to the Covenant, para. 15.

individuals whose rights under the Covenant have been violated. The State party is accordingly obligated, *inter alia*, to take appropriate steps to (a) provide the author with continuous and effective access to health care in view of his needs and medical situation and with adequate conditions of detention in view of his disabilities; and (b) also provide the author with adequate compensation for the violations that have occurred. The State party is also under an obligation to take steps to prevent similar violations occurring in the future. In this regard, it should establish an effective remedy for detainees to complain about their conditions of detention and inadequate provision of medical support.

11. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant and to provide an effective remedy when it has been determined that a violation has occurred, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. In addition, it requests the State party to publish those Views.

Annex

Individual opinion of Committee member José Manuel Santos Pais (dissenting)

1. I regret not being able to concur with the majority in the present Views. The author's complaint should not have been admitted for non-exhaustion of domestic remedies. Were it to be admitted, I would not have found a violation of the author's rights under articles 6, 7, 9 and 10 of the Covenant.

2. The author complains of a series of omissions on the part of the State party regarding his health care, including life-threatening delays in transfers to hospital, in violation of article 6 of the Covenant (para. 3.1). He also complains of the general conditions of his detention, which he considers manifestly inhuman and humiliating, particularly owing to his being a severely disabled person, his detention conditions producing physical and psychological distress amounting to inhumane and degrading treatment in violation of article 7 (para. 3.2). He considers his detention to be disproportionate, unnecessary and arbitrary, especially in the context of the COVID-19 pandemic and his severe disability and inability to care for himself in a dignified manner (para. 3.3). The majority of the Committee was sensitive to some of these arguments, owing to the health problems faced by the author. However, if one looks more closely at the author's arguments, they may be seen as inconsistent.

3. Underlying the author's claim is his intention to be released conditionally (para. 3.4). The author was sentenced to life imprisonment for murder and has been in detention since December 2010 (para. 2.1). He suffers from bipolar disorder, which required his admission to psychiatric institutions before his detention. He served the first seven years of his sentence in Korydallos Psychiatric Hospital because of his mental health problems (para. 2.2). In October 2018, the Piraeus Appellate Court Council rejected the author's request for conditional release, as his disability rate of 90 per cent did not stem from a single severe disease but rather 50 per cent could be attributed to his mental illness (para. 2.4). The underlying reason for the rejection seems therefore to have been the possible danger posed by the author to society.

4. The author did not appeal against this decision of the Piraeus Appellate Court Council, although he could appeal in cassation (paras. 4.2 and 6.1). He also did not lodge any complaints with the Prison Council regarding his treatment and conditions of detention, did not appeal to the Sentence Enforcement Court or file a complaint with the Public Prosecutor of the Misdemeanours Court, entrusted with supervision and control of correctional facilities and treatment of detainees. The author therefore failed to exhaust domestic remedies and his complaint should not have been admitted by the Committee (article 5 (2) (b) of the Optional Protocol). The majority's reasoning in this regard (para. 7.7) seems unpersuasive. Which proof of the effectiveness of the cassation appeal should the State party have provided, since the author simply failed to explain why he considered it futile and just invoked the Appellate Court Council's interpretation of the law in bad faith (paras. 3.4, 5.4 and 5.10)? Even the majority found this last claim inadmissible (paras. 7.9–7.10).

5. It is true that the author alleges to suffer from homocysteinemia, supposedly causing ischaemic strokes during his detention; is visually impaired and partly paralysed; and suffers from hypertensive heart disease, liver disease and chronic dental problems. His cumulated disability rate was declared to be 90 per cent in 2018 (para. 2.1). All the more reason for the author, as regards his medical condition, to have exhausted domestic remedies, which he did not do. Doubts about the effectiveness of domestic remedies do not excuse the author from exercising due diligence with respect to using them.

6. I agree with the concerns underlying the majority's decision that the transfer of the author to Alikarnassos Prison in the island of Crete may have worsened his health conditions, particularly as regards access to specialized health care outside prison facilities (para. 2.8). However, I hesitate to conclude that such a transfer is a sufficient reason to hold the State party responsible for the author's present health conditions, since such conditions seem to derive primarily from the author's deteriorating and failing health, not necessarily from

delays in his transfer to specialized health units. Moreover, I would also hesitate to conclude that the solution to the problem of the author's disability-related conditions would be to release him conditionally from detention (para. 5.7), to have his life sentence reviewed (para. 3.2) or to place him in a psychiatric hospital or health centre, the type of facility in which he had already been placed for seven years (para. 2.2). In this respect, the State party not only addresses and rebuts the author's allegations concerning the conditions of his detention in the several facilities in which he was detained but also refers to the medical tests, exams and procedures that he underwent and the medication that he was prescribed free of charge (paras. 4.1, 4.5–4.6, 4.9 and 6.2–6.3). There is therefore no violation of articles 6, 7 and 10 of the Covenant.

7. The State party claims that procedures established by law were followed with regard to the author's detention; due process guarantees were observed throughout the criminal proceedings; and the author is currently serving a sentence of life imprisonment by virtue of a decision of a regular court (para. 4.7). The author's detention is therefore neither unnecessary nor arbitrary nor disproportionate and has not violated article 9 of the Covenant.

8. I would therefore not have found a violation of the author's rights under articles 6, 7, 9 and 10 of the Covenant.
