



# International Covenant on Civil and Political Rights

Distr.: General  
8 June 2023

Original: English

## Human Rights Committee

### Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2813/2016\*\*, \*\*\*, \*\*\*\*

<i>Communication submitted by:</i>	Christer Murne, Helene Franklert Murne and Mireille Franklert Murne (represented by counsel, John Stauffer and Johanna Westeson, of Civil Rights Defenders)
<i>Alleged victims:</i>	Daniel Franklert Murne and the authors
<i>State party:</i>	Sweden
<i>Date of communication:</i>	11 April 2016 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 29 September 2016 (not issued in document form)
<i>Date of adoption of Views:</i>	22 March 2023
<i>Subject matter:</i>	Use of lethal force by police against a person with a psychosocial disability
<i>Procedural issues:</i>	Abuse of the right of submission; other procedure of international investigation or settlement; exhaustion of domestic remedies; level of substantiation of claims
<i>Substantive issues:</i>	Right to life; torture; cruel, inhuman or degrading treatment or punishment; right to an effective remedy
<i>Articles of the Covenant:</i>	2 (3), 6 and 7
<i>Articles of the Optional Protocol:</i>	1, 3 and 5 (2) (a) and (b)

\* Reissued for technical reasons on 28 June 2023.

\*\* Adopted by the Committee at its 137th session (27 February–24 March 2023).

\*\*\* The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Farid Ahmadov, Wafaa Ashraf Moharram Bassim, Rodrigo A. Carazo, Yvonne Donders, Mahjoub El Haiba, Carlos Gómez Martínez, Laurence R. Helfer, Marcia V.J. Kran, Bacre Waly Ndiaye, Hernán Quezada Cabrera, José Manuel Santos Pais, Tijana Šurlan, Kobauyah Tchamdja Kpatcha, Teraya Koji, Hélène Tigroudja and Imeru Tamerat Yigezu.

\*\*\*\* A joint opinion by Committee members Farid Ahmadov, Carlos Gómez Martínez, Laurence R. Helfer, Marcia V.J. Kran, José Manuel Santos Pais, Kobauyah Tchamdja Kpatcha and Teraya Koji (dissenting) and an individual opinion by Committee member Yvonne Donders (partially dissenting) are annexed to the present Views.



1. The authors of the communication are Christer Murne, Helene Franklert Murne and Mireille Franklert Murne, nationals of Sweden born in 1949, 1955 and 1984, They are the father, mother and sister of Daniel Franklert Murne, a national of Sweden, deceased on 20 March 2005 at the age of 22. They claim that the State party breached the rights of Daniel Franklert Murne under article 6, read alone and in conjunction with article 2 (3), and their own rights under article 7, read alone and in conjunction with article 2 (3) of the Covenant. The Optional Protocol entered into force for the State party on 23 March 1976. The authors are represented by counsel.

### **Facts as submitted by the authors**

2.1 At the time of the events, Daniel Franklert Murne was 22 years old and lived with the authors. In March 2005, he started showing symptoms of psychosis. On 20 March 2005, his mental health deteriorated. His parents called the police so that he could be hospitalized. Four police officers came to their house, but according to the preliminary records, the officers did not discuss that one of them had been appointed as operational commander, that a doctor was on his way to the house or that the operation concerned a person with a severe psychosocial disability. When the police arrived, Daniel Franklert Murne was alone on the front porch, armed with kitchen knives. An iron gate separated him from the police officers on the street in front of the house. Upon their arrival, the police officers immediately drew their guns and ordered Daniel Franklert Murne to put down the knives and lie on the ground. One of them told him he would be shot if he came towards them with the knives. However, the guns frightened Daniel Franklert Murne who, being in a confused state of mind, increased the speed and intensity of his movements and shouted at the officers. The officers did not try to de-escalate the situation or wait for the doctor to arrive. Through radio communications to the police car from off-site, the duty officer attempted to tell the officers to calm the situation and pull back. However, before the order could be transmitted, one of the officers shot Daniel Franklert Murne. That police officer claimed in his statement that Daniel Franklert Murne had left the steps of the house and had begun running towards the police officers. The police officer testified that he had aimed for Daniel Franklert Murne's leg, but that the bullet had hit the open iron gate, ricocheted and then hit Daniel Franklert Murne in the abdomen. According to the authors, however, Daniel Franklert Murne was still walking down the steps when he was shot and the gate was closed. He died almost instantly.

2.2 The investigation of Daniel Franklert Murne's death by the Uppsala Police Department was inconclusive as to his position at the time of the shooting and that of the police officer who shot him. In its judgment of 3 March 2006, in a criminal case against the latter, the Örebro District Court questioned whether the operation had respected the applicable rules, as the police officers had not attempted to obtain any additional information about Daniel Franklert Murne and had directly aimed their weapons at him. However, the District Court found that Daniel Franklert Murne had suddenly started running towards the police officers, who were "a couple of metres" away from him, on the other side of the open gate and that he had a knife in each hand. The District Court also found that Daniel Franklert Murne was in an unpredictable and aggressive state and that he had made death threats towards the officers. The District Court therefore considered that the lives or health of the officers had been under attack. The District Court further accepted that the police officer who had shot him had aimed for his thigh. It therefore concluded that the police officer had acted in self-defence and dismissed the prosecution.

2.3 On 23 February 2007, the Göta Court of Appeal confirmed the ruling of the District Court. It accepted that the police officer had acted in self-defence, although it found that it was unclear whether Daniel Franklert Murne had been on the steps or between the steps and the gate. Inter alia, the Court of Appeal found that no serious objections could be made against the course of action adopted, as communication with Daniel Franklert Murne had not been possible, he was acting in a threatening and aggressive manner and was holding knives. The court also found that his parents no longer had any influence over him and a doctor could not have resolved the situation. On 15 January 2008, the Supreme Court denied the authors' application for leave to appeal.

2.4 The authors then commenced civil proceedings for damages for, inter alia, violation, pain and suffering and loss of income from work, before the Örebro District Court. They

argued that the police operation, as an exercise of public authority, contained errors and omissions, and that the police officers' actions had led to a breach of their relative's right to life. On 18 December 2009, the Örebro District Court dismissed the lawsuit, finding that the police officers had not erred in the planning of the operation, as they had been informed that it was a matter of arresting a person suspected of making an unlawful threat, armed with knives, and that the situation was so alarming that the officers wanted to arrive at the scene as quickly as possible to assess the situation. From the moment of their arrival, they found themselves in a very stressful situation, with little time for joint deliberations. Their assignment was to deal with a threatening situation involving a person suspected of an offence, not to take into care a person with mental illness. The District Court ruled out alternative courses of action that might have been taken, including consulting with the parents or waiting for the doctor, given the rapid sequence of events and the officers' explanation that they would not have allowed a doctor on the scene. The District Court also ruled out negotiation with Daniel Franklert Murne as neither the police officers nor the parents had been able to communicate with him and he had approached the police officers rapidly. In addition, the District Court ruled out the possibility of retreating, which would have entailed a risk for people on the street, or of overpowering him, given his lethal weapons. The Göta Court of Appeal and the Supreme Court denied the authors' applications for leave to appeal on 17 March and 8 October 2010, respectively.

2.5 On 8 March 2011, the authors lodged an application with the European Court of Human Rights. On 7 June 2012, the Court reported that, on 31 May 2012, sitting in a single-judge formation, it had decided to declare the application inadmissible. The Court found, in the light of all the material in its possession and insofar as the matters complained of were within its competence, that the admissibility criteria set out in articles 34 and 35 of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) had not been met.

### **Complaint**

3.1 The authors allege that the use of lethal force by the police during their intervention on 20 March 2005 resulted in the arbitrary deprivation of Daniel Franklert Murne's life, in violation of his rights under article 6, read alone and in conjunction with article 2 (3) of the Covenant. They submit that the police, in their intervention, did not respect requirements for the use of force.<sup>1</sup> They claim that the intervention was based on an outdated and vague legal framework, as section 10 of the Police Act (1984:387), which specifies when a police officer may use force, contains no specific provisions on the use of firearms. Moreover, Swedish experts find that the Decree on the use of firearms in the police service (1969:84) is difficult to interpret, which contributes to a situation whereby police officers wait for a situation of self-defence to arise. Neither the Police Act nor the Decree indicate whether a police officer's right to self-defence is formulated differently from that of the public. The stricter wording of the decree may indicate that the right to self-defence for police officers is more strictly observed than for individual citizens. The authors note that police officers invoked self-defence in all but 1 of the 26 cases involving the use of lethal use of firearms between 1990 and 2015. However, the obligation to protect the right to life comprises an obligation to adopt legal measures against violent crimes leading to death, which is incompatible with an expansive interpretation of the self-defence provision, particularly in the exercise of public functions.

3.2 The authors also claim that the use of lethal force against Daniel Franklert Murne had no legitimate objective. There was no imminent threat of death or serious injury, as he was never closer than 10 metres from the police officers, who were protected by their equipment. In addition, he was on the other side of the gate and the knives he held were unsuitable for throwing. Furthermore, less extreme measures than shooting had not been exhausted. The use of lethal force was unnecessary, as Daniel Franklert Murne was not suspected of a serious crime and had not committed any violent act. In addition, his mental condition was disregarded. The use of lethal force could have been avoided by waiting, calling in a

---

<sup>1</sup> The authors cite [A/HRC/26/36](#), paras. 55–74 and 78–85.

negotiator, contacting the off-site duty officer, waiting for reinforcements, conferring with Daniel Franklert Murne's parents, overpowering him, pulling back or firing a warning shot.

3.3 The use of lethal force was not compliant with the standard of prevention or precaution. The authors argue that the police officers' task was to detain a young man with a psychosocial disability and that medical staff were on their way, but that the police officers acted inappropriately by immediately drawing their guns, baiting him verbally and eventually shooting him with a gate in the firing line. They had not planned the operation or agreed on a strategy and, despite Daniel Franklert Murne's psychosocial disability, disregarded alternative, risk-minimizing strategies to avoid the use of firearms (see para. 3.2).<sup>2</sup> The absence of coordination between the officers led one of them to decide to shout to Daniel Franklert Murne that he would shoot him if he went down to the bottom step. While that action was in accordance with section 7 of the Public notice on police use of firearms (1969:84), which states that a police officer should consider, first, issuing a shouted warning, second, firing a warning shot and, third, seeking to only temporarily immobilize the person, the police officers did not implement the second and third elements, thus breaching section 7. The authors note that the Örebro District Court, in its judgment of 3 March 2006, questioned whether it had been correct for the police officers to draw their guns immediately and aim at Daniel Franklert Murne, as he had not posed a direct threat.

3.4 In addition, the use of lethal force was disproportionate, as the police officers were fully equipped and had access to shields, bulletproof vests, helmets, batons and pepper spray. Thus, they should have been able to handle the danger that Daniel Franklert Murne may have posed without resorting to lethal force.

3.5 The use of lethal force did not comply with the standard of non-discrimination, as the police officers' actions showed a lack of understanding of and training in dealing with persons with psychosocial disabilities. The authors refer to surveys conducted by the Swedish Police Union, which showed that police officers felt ill-prepared to deal with such persons. In the present case, the police officers' failure to consider Daniel Franklert Murne's disability amounted to discrimination.

3.6 The use of lethal force was also unable to be investigated effectively. Forensic evidence was lost because the police officers moved the knives after the shooting, did not rope off the crime scene and did not document the traces of blood between the steps and the gate. The officers could not explain how Daniel Franklert Murne's body had ended up to the right of the steps while asserting that he had been shot between the steps and the gate. The documentation in the forensic investigation on his position at the time of the shooting was based on information from the operational commander, who had not been present during the incident and who had referred vaguely to a location between the gate and the steps. Thus, Daniel Franklert Murne's exact position when he was shot was not determined. The Örebro District Court recognized the absence of a technical investigation of Daniel Franklert Murne's distance from the gate when he was shot and that, according to the authors, there had been no investigation of the question as to whether events "at the crucial moment" were other than as described by the police officer who fired the shot.<sup>3</sup> The latter was only questioned one week after the incident, which allowed him time to speak with his colleagues. Moreover, the courts were insufficiently critical, as they did not ask any questions about the blood spatters and did not investigate the circumstances in more detail, despite recognizing the flaws in the investigation. They also did not question why the testimonies of the parents and the police officers regarding Daniel Franklert Murne's movements after he was shot differed so considerably. In addition, the investigating bodies failed to hold anyone accountable for the lack of planning and control of the operation, as only the police officer who shot him was prosecuted. Moreover, the authors note that the Police Internal

---

<sup>2</sup> The authors refer to a case in which the European Court of Human Rights found that the death of a man with a psychiatric illness could be attributed to the unplanned and uncontrolled nature of the police operation (*Shchiborshch and Kuzmina v. Russian Federation*, Application No. 5269/08, Judgment, 2 June 2014, paras. 233 and 240).

<sup>3</sup> According to the translation of the judgment, the Örebro District Court noted that it could not be considered that the investigation had shown anything other than that the events of the crucial moment had proceeded as the police officer had described.

Investigation Unit, which investigates suspected crimes committed by police officers, is a body internal to the police.

3.7 The authors submit that the State party breached the parents' rights under article 7 of the Covenant, given their despair when they saw Daniel Franklert Murne shot dead. Their awareness of his psychosocial disability and the fact that they had called the police aggravated their suffering. The State party also breached the authors' rights under article 2 (3), read in conjunction with article 7 of the Covenant, as the lack of an effective investigation had increased their suffering.

3.8 The authors request an effective remedy, including compensation and compliance with the State party's obligation to prevent similar violations in the future, particularly by ensuring appropriate training for police officers, reviewing national legislation and establishing an independent mechanism mandated to investigate cases of suspected police misconduct.

#### **State party's observations on admissibility**

4.1 In its observations of 29 November 2016, the State party challenges the admissibility of the communication on five grounds. First, the State party submits that the communication constitutes an abuse of the right of submission under article 3 of the Optional Protocol and rule 99 (c) of the Committee's rules of procedure, as it was submitted more than five years after the exhaustion of domestic remedies and more than three years after the decision of inadmissibility of the European Court of Human Rights. The authors have not justified this delay. Moreover, they have had the same counsel since their application to the Court.

4.2 Second, the State party submits that the communication is inadmissible pursuant to its declaration concerning article 5 (2) (a) of the Optional Protocol. The State party presumes that the authors' application to the European Court of Human Rights concerned the same parties, facts and substantive rights as the present communication. Given the decision that the authors received and the fact that they submitted the application within six months of exhausting domestic remedies, and in the absence of indications to the contrary, the only grounds on which their application to the European Court of Human Rights could have been found inadmissible are those set out in article 35 (3) (a) and (b) of the European Convention on Human Rights; that process would have involved a sufficient consideration of the merits of the case. Thus, it must be considered that the Court has already examined the application.

4.3 Third, according to the State party, the communication is inadmissible under article 3 of the Optional Protocol and rule 99 (d) of the Committee's rules of procedure as insufficiently substantiated. The State party states that, should it be requested to submit observations on the merits, it would present its arguments in that regard.

4.4 Fourth, the State party argues that a deceased person cannot be afforded locus standi under article 1 of the Optional Protocol and rule 99 (a) of the rules of procedure to bring a communication. According to the State party, only the authors have locus standi.

4.5 Fifthly, the State party notes that the authors did not invoke article 7 of the Covenant, or the alleged flaws of the investigation and court proceedings before the domestic courts. The State party therefore submits that the authors have not exhausted domestic remedies pursuant to article 5 (2) (b) of the Optional Protocol and rule 99 (f) of the rules of procedure. Moreover, the actions before the domestic courts were exercised exclusively by the authors on their own behalf. Thus, the claims by Daniel Franklert Murne have not been exhausted, unless the Committee concludes that he does not have locus standi.

#### **Author's comments on the State party's observations on admissibility**

5.1 In their comments of 20 April 2017, the authors argue that they first submitted the communication less than five years and five months after the final decision by the Supreme Court. The authors explain that the delay was due to their trauma over having to accept that no one would be held responsible. The death of Daniel Franklert Murne affected them severely and in different ways and the parents no longer live together. The decision of the European Court of Human Rights rendered them hopeless. After some time, the authors' counsel raised the possibility of submitting a communication to the Committee. Fearing

another defeat, the authors needed time to reflect and eventually decided to proceed. The counsel's lack of capacity to pursue individual cases also explains the delay.

5.2 The authors note that the decision of the European Court of Human Rights of 31 May 2012 does not state the exact basis of its decision and does not suggest an examination of the merits. The State party's observations in this respect are speculative.

5.3 As for the locus standi of Daniel Franklert Murne, the authors note that they are bringing the communication on his behalf.

5.4 The authors contest the State party's observations on the exhaustion of domestic remedies. They note that, in the civil proceedings, they asserted that the death of Daniel Franklert Murne had caused them great pain, suffering and distress. It is therefore immaterial that they did not raise article 7 of the Covenant explicitly. On the exhaustion of their claim regarding the flaws in the investigation and the court proceedings, they argue that it is impossible to make a full assessment before the domestic procedures have been completed. Furthermore, they have repeatedly identified these deficiencies before the domestic courts. They argue that the rule of exhaustion of domestic remedies should be applied with some flexibility and without excessive formalism.<sup>4</sup>

#### **State party's additional observations on admissibility and observations on the merits**

6.1 In its observations of 2 December 2019, the State party notes that it maintains its arguments on admissibility, except for that on locus standi (see para. 4.4), as the authors have clarified that they submitted the communication on behalf of Daniel Franklert Murne.

6.2 Against the authors' claim that they invoked the alleged deficiencies (see para. 5.4), the State party observes that they failed to raise said deficiencies in the preliminary criminal investigation and did not raise them in the civil proceedings. The authors could have relied on the Tort Liability Act or the European Convention on Human Rights but failed to do so. Moreover, they did not raise the alleged flaws in the proceedings of the Örebro District Court before any other court and did not invoke before the Supreme Court the alleged flaws in the investigation by the Göta Court of Appeal. They also did not invoke issues concerning the criminal proceedings in the civil ones, despite the order of the Örebro District Court to stay the proceedings pending a final criminal judgment. The District Court delivered its judgment almost two years after the decision of the Supreme Court, in January 2008, not to grant leave to appeal in the criminal proceedings, leaving them time to supplement their claims.

6.3 The State party submits that the claim under article 7 of the Covenant should likewise be declared inadmissible insofar as it is based on the alleged flaws in the investigation and criminal proceedings. The State party acknowledges that the authors raised the issue of their psychological problems before the Örebro District Court. However, given the specific meaning of the term "cruel, inhuman or degrading treatment", this does not constitute the exhaustion of domestic remedies. Similarly, the authors did not raise the deficiencies of legislation or police training.

6.4 The State party submits that there was no breach of article 6 of the Covenant. It emphasizes that the domestic courts thoroughly examined the authors' claims made before them. Regarding the claims concerning national legislation, the State party argues that no one, in theoretical terms and by *actio popularis*, may object to a law or practice that he or she holds to be at variance with the Covenant.<sup>5</sup> In addition, the State party submits that its legislation on police officers' use of force is in accordance with the Covenant.<sup>6</sup> That legislation provides that force, including firearms, can only be used to the extent necessary and very restrictively. In addition, provisions on the use of firearms require that police

---

<sup>4</sup> The authors refer to the jurisprudence of the European Court of Human rights in *Guzzardi v. Italy*, Application No. 7367/76, Judgment, 6 November 1980; *Cardot v. France*, Application No. 11069/84, Judgment, 19 March 1991; *Demopoulos et al. v. Turkey*, Application Nos. 46113/99, 3843/02, 13751/02, 13466/03, 10200/04, 14163/04, 19993/04 and 21819/04, Decision, 1 March 2010; and *Akdivar et al. v. Turkey*, Application No. 21893/93, Judgment, 16 September 1996.

<sup>5</sup> *Picq v. France* (CCPR/C/94/D/1632/2007), para. 6.3.

<sup>6</sup> Police Act 1984:387, sects. 8 (1) and 10; Swedish Criminal Code, chap. 24, sects. 1, 2 and 4; and Decree on the use of firearms in the police service (1969:84).

officers use firearms only when no other means are available. The provisions in the Criminal Code on self-defence and necessity (chap. 24, sects. 1 and 4) also apply to police officers.<sup>7</sup> The State party refers to domestic jurisprudence on the use of lethal force in self-defence, which is conditional on the person attacked being in such a precarious situation that the force used does not clearly deviate from what is necessary to avert the attack and on the criminal attack the force is intended to avert being directly life-threatening or otherwise directed against a particularly significant interest.<sup>8</sup> The self-defence provision in the Criminal Code and the provisions in the Police Act relate to different situations. A police officer's right to use force and coercion often differs from the force that may need to be used to protect oneself from a criminal attack. The possibility of an intervention based on the Police Act becoming a situation of self-defence does not itself suggest that the legal framework is inadequate. In the present case, the Court of Appeal in the criminal proceedings dismissed the charge of gross assault and causing death and held that consideration of article 2 of the European Convention on Human Rights did not lead to a different assessment. In the civil proceedings, the Örebro District Court concluded that Swedish legislation was consistent with that article. Thus, the State party contends that it has appropriate legislation on the use of lethal force and procedures ensuring that law enforcement actions are planned consistently with the need to minimize the risk to human life.

6.5 Reiterating its argument about *acciones populares*, the State party argues that its police training complies with the Covenant. Police officers use defensive tactics and try to resolve situations through verbal communication. They do not actively seek confrontation, and engage in confrontation only when they consider it necessary, with use of a gun as the last resort. The training provided by the Swedish Police Authority covers communication, mental preparation, taking decisions and dealing with people with disabilities and mental health problems. The State party argues that the surveys invoked by the authors mainly concerned police officers' assistance in taking people with mental health problems into care; as noted by the Örebro District Court, the present case was not about such assistance.

6.6 The State party submits that the police intervention was in accordance with the Covenant. The courts undertook thorough and careful examinations and held three main hearings at which the authors, through their counsel, presented extensive oral and other evidence. The assessments were therefore clearly not arbitrary and did not amount to a manifest error or denial of justice. The State party notes that the Örebro District Court held that the use of force was absolutely necessary and proportional, as the circumstances had forced the police officer to use his firearm without firing a warning shot. Subsequently, the Göta Court of Appeal held that the police officer had acted in self-defence, noting his statement that Daniel Franklert Murne had threatened to throw the knives, that the police officer and the other officers had never encountered such an aggressive person and that Daniel Franklert Murne had begun to move quickly towards them. The Court of Appeal noted that the police officers had seen that it was not possible to communicate with Daniel Franklert Murne, that they had reason to assume that his parents had no influence over him, as they had called the police, and that it was not reasonable to think that any doctor could have resolved the immediate situation. The Court held that the force that the police officer had intended to use, a gunshot aimed at the thigh, was not manifestly unjustifiable.

6.7 The State party disputes the relevance of the jurisprudence of the European Court of Human Rights invoked by the authors (see para. 3.3), which does not concern a self-defence situation of the kind that arose in the present case. The argument that the knives were not sharp or suitable for throwing (see para. 3.2) was not raised in the domestic proceedings and would have had no bearing on the police officers' perception of the danger. In addition, Daniel Franklert Murne's psychosis did not alter the fact that a situation of self-defence had

<sup>7</sup> The Criminal Code provides that an act committed by a person in self-defence constitutes an offence only if, in view of the nature of the attack, the importance of what is attacked and the other circumstances, it is manifestly unjustifiable (chap. 24, sect. 1). It also provides that force can be used to avert a danger that threatens life, health, property or some other important interest protected by the legal order (sect. 4). In a situation of necessity, the act must not be unjustifiable.

<sup>8</sup> Supreme Court of Sweden, Judgment (NJA 2005), p. 237.

arisen and had increased the risk of unpredictable or violent behaviour. The intervention was therefore strictly necessary to protect life from an imminent threat or prevent serious injury.

6.8 The State party submits that neither the preliminary investigation nor the criminal proceedings breached article 6, whether read alone or together with article 2 (3) of the Covenant. The State party observes that, under its legislation, suspected offences involving police officers that are linked to their work must be referred immediately to a prosecutor. Moreover, the independence of the Special Investigations Department, which led the preliminary investigation, is ensured, as its Head is appointed by the Government, it maintains separate premises and only prosecutors at the Separate Public Prosecution Office oversee preliminary investigations. This office conducts its activities separately from regular police and prosecutor activities and is hierarchically independent of the officers involved in the incident.

6.9 The State party argues that an in-depth and independent preliminary investigation was conducted to establish the course of events. Several people were questioned, and extensive technical and forensic examinations were undertaken. The State party argues that the area was cordoned off and guarded shortly after the incident and that technicians arrived on the same day to begin the technical investigation. The scene was not free from external influence, as paramedics had to be allowed to enter. As they worked at the scene, the technicians subsequently concluded that it was not possible to establish Daniel Franklert Murne's position at the time of the shooting, as several people had moved about in the snow. One of the police officers moved the knives, as he did not want them lying near Daniel Franklert Murne. Three of the four officers present at the scene were questioned on the same day. As they had different recollections of Daniel Franklert Murne's position, there is no indication that they adjusted or agreed on their statements. The State party argues that nothing suggests that the preliminary investigation was not independent, thorough or effective.

6.10 The State party submits that the criminal proceedings were in accordance with the Covenant. Regarding the argument that the courts should have been more critical (see para. 3.6), the State party observes that judges have a very limited scope to take measures at their own initiative. Instead, the parties are expected to cite the evidence on which they rely. Indeed, the authors were represented by a member of the Swedish Bar Association, who could have supplemented the investigation. Moreover, the courts acknowledged the need to assess the police officers' accounts cautiously.

6.11 The State party disputes that a breach of the Covenant arose from the fact that the courts did not address the issue of the planning and control of the intervention (see para. 3.6). It notes that the Swedish Code of Judicial Procedure binds the courts to the description of the alleged criminal act by the prosecutor or the injured party. The authors could, within procedural limits, have adjusted their statement accordingly. Moreover, the issue of planning and control was examined in the civil proceedings.

6.12 Finally, the State party accepts that the death of Daniel Franklert Murne caused great suffering to the authors but contests that article 7 of the Covenant was breached. First, the absence of a breach of article 6 means that article 7 of the Covenant was not violated either. Second, cases in which the Committee or the European Court of Human Rights has ascertained violations of the prohibition of cruel, inhuman or degrading treatment of family members have been cases of enforced disappearance or exceptional circumstances.<sup>9</sup>

#### **Authors' comments on the State party's observations**

7.1 In their comments of 24 April 2020, the authors reiterate that they repeatedly raised the deficiencies of the preliminary investigation in the domestic proceedings. They also raised the flawed investigation by the Court of Appeal before the Supreme Court. They reiterate that the rule of exhaustion of domestic remedies should be applied with some

---

<sup>9</sup> *Amirov v. Russian Federation* (CCPR/C/95/D/1447/2006), para. 11.7; *Eshonov v. Uzbekistan* (CCPR/C/99/D/1225/2003), para. 9.10; and *Shchiborshch and Kuzmina v. Russian Federation*, para. 269.



flexibility and without excessive formalism. For the same reason, the claim concerning article 7 of the Covenant should be admitted.

7.2 The authors argue that the Swedish courts and the Chancellor of Justice are not mandated to examine claims concerning legislation or training in individual cases. Chapter 11, article 14, of the Constitution of Sweden authorizes the Supreme Court to invalidate legislation only where the law is obviously not in accordance with the Constitution. However, the Constitution does not clearly regulate the use of force by the police. Moreover, Sweden does not have a constitutional court to which individuals can submit a complaint of legislative deficiencies. Thus, it is impossible to submit a complaint for such shortcomings.

### **State party's additional observations**

8. In its additional observations dated 7 April 2022, the State party observes that when reviewing an individual case, a court or public body can decide not to apply a provision that conflicts with a rule of fundamental law or other superior statute. Thus, it is possible to examine the compatibility of the applicable provision with fundamental rights and freedoms. At the time of the domestic proceedings in the present case, the provision, even if already adopted by the Riksdag (legislature), could have been waived if the error was manifest. In the present case, the authors could thus have made such a claim.

### **Issues and proceedings before the Committee**

#### *Consideration of admissibility*

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

9.2 The Committee notes the State party's submission that the communication constitutes an abuse of the right of submission under article 3 of the Optional Protocol as it was submitted on 11 April 2016, more than five years after the exhaustion of domestic remedies, on 8 October 2010, and more than three years after the decision of the European Court of Human Rights, dated 7 June 2012. The Committee recalls that, pursuant to rule 99 (c) of its rules of procedure, an abuse of the right of submission is not, in principle, a basis for a decision of inadmissibility *ratione temporis* on grounds of delay in submission. However, a communication may constitute an abuse of the right of submission when it is submitted more than five years after the exhaustion of domestic remedies by the author of the communication, or, where applicable, three years from the conclusion of another procedure of international investigation or settlement, unless there are reasons justifying the delay, considering all the circumstances of the communication. The Committee notes that the application of this rule is discretionary and requires an assessment of the specific circumstances of each case.<sup>10</sup> The Committee notes that, in the present case, the five-year delay from the moment of exhaustion was exceeded by only a few months. It further notes the authors' explanations that the delay in the submission was attributable to the impact caused by the death of their son and brother, that their counsel took some time to raise the possibility of submitting a communication to the Committee, that the decision of the European Court of Human Rights had made them lose hope and that their counsel lacked the capacity to pursue the case. Taking into account the limited delay and the gravity of the violations claimed, the Committee considers that the authors' explanations justify the delay in presenting the communication. The Committee therefore considers that the communication does not constitute an abuse of the right of submission under article 3 of the Optional Protocol.

9.3 The Committee notes the State party's submission that the communication is inadmissible under article 5 (2) (a) of the Optional Protocol. In this regard, the Committee observes that, on 31 May 2012, the European Court of Human Rights, sitting in a single-judge formation, found, in the light of all the material in its possession, and insofar as the matters complained of were within its competence, that the admissibility criteria set out in articles 34 and 35 of the Convention had not been met. The Committee notes that, upon

<sup>10</sup> *F.A.H. et al. v. Colombia* (CCPR/C/119/D/2121/2011), para. 8.3, footnote 15.

ratifying the Optional Protocol, the State party made a declaration on the understanding that the provisions of article 5 (2) of the Protocol signified that the Human Rights Committee provided for in article 28 of the Covenant would not consider any communication from an individual unless it had ascertained that the same matter was not being examined or had not been examined under another procedure of international investigation or settlement. The Committee recalls its jurisprudence regarding article 5 (2) (a) of the Optional Protocol<sup>11</sup> to the effect that when the European Court bases a declaration of inadmissibility not solely on procedural grounds but also on reasons that include a certain consideration of the merits of a case, then the same matter should be deemed to have been examined within the meaning of the respective reservations to article 5 (2) (a) of the Optional Protocol.<sup>12</sup> However, in the particular circumstances of this case, the limited reasoning contained in the succinct terms of the Court's letter does not allow the Committee to assume that the examination included sufficient consideration of the merits in accordance with the information provided to the Committee by both the author and the State party. Consequently, the Committee considers that there is no obstacle to its examining the present communication under article 5 (2) (a), of the Optional Protocol.<sup>13</sup> Accordingly, the Committee considers that it is not precluded from considering the present communication in accordance with article 5 (2) (a) of the Optional Protocol.

9.4 The Committee notes that the State party submits that the communication is inadmissible under article 3 of the Optional Protocol and rule 99 (d) of the Committee's rules of procedure as insufficiently substantiated. The Committee finds that the authors' claim of their own rights under article 7 of the Covenant is insufficiently substantiated. While the Committee notes that the authors' witnessing of the death of Daniel Franklert Murne was tragic, it considers that the authors have failed to justify that the alleged violation of their relative's right to life constituted in itself a violation of their own rights under article 7 of the Covenant. The Committee therefore declares this claim inadmissible under article 3 of the Optional Protocol.

9.5 The Committee notes the State party's submission on the non-exhaustion of domestic remedies by the authors regarding the alleged flaws in the investigation and court proceedings in the context of the procedural aspects of articles 6 and 2 (3) of the Covenant. The Committee also notes the authors' argument that they had raised such alleged flaws in the investigation and the court proceedings before the domestic courts, including the Court of Appeal and the Supreme Court, with regard to the lack of examination of the planning and control of the police operation. The Committee notes that the procedural claims are all closely interlinked. The Committee therefore considers it inopportune to examine whether each procedural element was raised individually on substance before the domestic courts by the authors. The Committee notes that a review of the information on file shows that the authors raised issues concerning the design and planning of the police operation. Given the nature of the authors' claims and the fact that they brought both criminal and civil proceedings to the State party's highest competent court, the Committee considers that article 5 (2) (b) of the Optional Protocol does not preclude it from examining the authors' claims regarding the alleged flaws in the investigation and court proceedings.

9.6 The Committee considers that the communication raises issues concerning the arbitrary deprivation of Daniel Franklert Murne's life under articles 6 and 2 (3) (a) of the Covenant, which have been sufficiently substantiated for the purpose of admissibility. The Committee therefore declares the communication admissible insofar as it appears to raise issues under article 6 (1) alone and in conjunction with article 2 (3) (a) of the Covenant and proceeds with its consideration of the merits.

<sup>11</sup> See, for example, *Achabal Puertas v. Spain* (CCPR/C/107/D/1945/2010), para. 7.3; *Rivera Fernández v. Spain* (CCPR/C/85/D/1396/2005), para. 6.2; and *Genero v. Italy* (CCPR/C/128/D/2979/2017), para. 6.2.

<sup>12</sup> See, inter alia, *Achabal Puertas v. Spain*, para. 7.3; *Linderholm v. Croatia* (CCPR/C/66/D/744/1997), para. 4.2; *A.M. v. Denmark* (CCPR/C/16/D/121/1982), para. 6; and *Genero v. Italy*, para. 6.2.

<sup>13</sup> See *Achabal Puertas v. Spain*, para. 7.3; and *Genero v. Italy*, para. 6.2.

*Consideration of the merits*

10.1 The Committee has considered the communication in the light of all the information submitted to it by the parties, in accordance with article 5 (1) of the Optional Protocol.

10.2 The Committee notes the authors' claim that the use of lethal force by the police during its intervention on 20 March 2005 resulted in the arbitrary deprivation of Daniel Franklert Murne's life, in breach of article 6 of the Covenant.

10.3 The Committee recalls paragraph 2 of its general comment No. 36 (2018) on the right to life, according to which the right to life is the supreme right from which no derogation is permitted, even in situations of armed conflict and other public emergencies that threaten the life of the nation. It further recalls that article 6 (1) of the Covenant prohibits the arbitrary deprivation of life and that, as a rule, deprivation of life is arbitrary if it is inconsistent with international law or domestic law. In the same general comment, the Committee goes on to recall that deprivation of life may, nevertheless, be authorized by domestic law and still be arbitrary. The notion of "arbitrariness" is not to be fully equated with "against the law" but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law, as well as elements of reasonableness, necessity and proportionality. The use of potentially lethal force for law enforcement purposes is an extreme measure that should be resorted to only when strictly necessary in order to protect life or prevent serious injury from an imminent threat. The Committee further 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. Such measures of protection must include the provision of reasonable accommodation when necessary to ensure the right to life, such as ensuring access of persons with disabilities to essential facilities and services, and specific measures designed to prevent unwarranted use of force by law enforcement agents against persons with disabilities.<sup>14</sup>

10.4 The Committee also recalls that States parties are expected to take all necessary measures to prevent arbitrary deprivation of life by their law enforcement officials. These measures include, inter alia, putting in place appropriate legislation controlling the use of lethal force by law enforcement officials, procedures designed to ensure that law enforcement actions are adequately planned in a manner consistent with the need to minimize the risk they pose to human life, mandatory reporting and review and investigation of lethal incidents and other life-threatening incidents. In particular, all operations of law enforcement officials should comply with relevant international standards, including the Code of Conduct for Law Enforcement Officials and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, and law enforcement officials should undergo appropriate training designed to inculcate these standards so as to ensure, in all circumstances, the fullest respect for the right to life.<sup>15</sup>

10.5 The Committee further recalls that considerable weight should be given to the assessment conducted by the State party and that it is generally for the organs of the States parties to the Covenant to review and evaluate facts and evidence, unless it can be established that the evaluation was clearly arbitrary or amounted to a manifest error or denial of justice.<sup>16</sup>

10.6 In the present case, the Committee notes as uncontested facts that, on 20 March 2005, when police officers arrived at the family house in response to the authors' call for help because of Daniel Franklert Murne's behaviour, the latter was standing on the steps of the house, holding kitchen knives. Two officers were aware, according to the Örebro District Court, that Daniel Franklert Murne was "mentally unstable". The four officers were also aware that a doctor was on his way. Upon arrival, the police officers immediately drew their guns and ordered Daniel Franklert Murne to lie down. This increased his agitation and he

<sup>14</sup> General comment No. 36 (2018), para. 24.

<sup>15</sup> *Ibid.*, para. 13.

<sup>16</sup> *J.S. v. Australia* (CCPR/C/135/D/2804/2016), para. 7.5; *V.R. and N.R. v. Denmark* (CCPR/C/117/D/2745/2016), para. 4.4; *F.B.L. v. Costa Rica* (CCPR/C/109/D/1612/2007), para. 4.2; *Fernández Murcia v. Spain* (CCPR/C/92/D/1528/2006), para. 4.3; and *Schedko v. Belarus* (CCPR/C/77/D/886/1999), para. 9.3.

threatened to throw the knives at them. One of the officers shot Daniel Franklert Murne with a bullet that fatally ricocheted off the gate. The parties dispute the position of Daniel Franklert Murne at the time of the shooting, the speed at which he was moving towards the police officers and whether the gate between them was open or closed. The parties also dispute whether the use of force had a sufficiently clear legal basis and a legitimate objective, whether it was necessary and respected the principle of prevention or precaution and whether it was proportional, non-discriminatory and accountable.

10.7 The Committee notes the authors' claim that the use of lethal force was not necessary or proportionate. In this regard, the Committee notes that Daniel Franklert Murne was holding kitchen knives and that he had threatened to throw them. The Committee notes that the State party's authorities intervened with a contingent of four police officers with protective gear and access to shields, bulletproof vests, helmets, batons and pepper spray. The Committee also notes that the distance between Daniel Franklert Murne and the police officers was several metres and that there was a gate between them. The Committee notes, in this regard, that the police officers drew their firearms at Daniel Franklert Murne despite their awareness of his psychosocial disability. In this regard, the Committee notes that the State party has failed to provide specific information regarding the planning of the operation and, in particular, about any preventive measures taken by the police officers to ensure that the use of force would be no greater than necessary and to verify the adequacy of taking de-escalatory measures. Against this background, the Committee considers that the State party has failed to justify that any threat that Daniel Franklert Murne may have posed from a distance to four armed police officers was such that the use of lethal force was required to prevent an imminent death or serious injury. Nor has the State party adequately justified that the situation left no de-escalatory, preventative alternatives to the use of potentially lethal force.

10.8 The Committee notes the authors' claims of the alleged flaws in the investigation and court proceedings. The Committee also notes the State party's observation that an extensive technical and forensic examination was undertaken, that shortly after the incident the work of paramedics and the displacement of the knives caused external influence and that it was impossible to determine Daniel Franklert Murne's position at the time of the shooting, as several people had moved about in the snow. The Committee also notes that the area was cordoned off and guarded and that technicians began an investigation on the same day. The Committee further notes that three of the four police officers were questioned on the same day and that there was no indication that they had adjusted their statements. The Committee further notes the State party's observations regarding the limitations on the scope of judicial inquiry in the State party, given the requirements of adversarial proceedings. The Committee considers that the authors' claims are of such a nature as to request a re-evaluation of the facts and evidence in the domestic proceedings. Given the foregoing, the Committee considers that it has not been established that the investigation and the judicial proceedings were clearly arbitrary or manifestly erroneous or that they amounted to a denial of justice. The Committee therefore considers that the authors have not established that the alleged flaws in the investigation and the court proceedings constituted a breach of article 6, read alone or in conjunction with article 2 (3) (a) of the Covenant.

10.9 The Committee notes the authors' claims concerning deficiencies in police training and legislation on self-defence. The Committee notes, however, that the authors' allegations are of a general nature and do not establish specifically how Daniel Franklert Murne's rights were breached because of these alleged inadequacies. The Committee notes that the legal framework in the State party is such that lethal force can only be used in self-defence if the person attacked is in such a precarious situation that the lethal force does not clearly deviate from what is necessary and if the criminal attack is directly life-threatening or otherwise directed against a particularly significant interest. Further, the Committee notes that in the domestic proceedings, the authors submitted that if all the written rules, regulations and policy documents had been followed, Daniel Franklert Murne would not have lost his life, and that the police officer who shot him "must be considered to have received proper training". Considering the foregoing, and in the absence of any other pertinent information on file, the Committee finds that the authors have not established that Daniel Franklert Murne's rights under article 6 of the Covenant were breached due to alleged deficiencies in the legislative framework and police training in the State party.

10.10 The Committee takes into account the planning and organization of the police intervention, including concerning the consideration by the police of Daniel Franklert Murne's psychosocial disability. The Committee notes that the police officers met before they went to the family's house but did not speak about anything other than where they were going. They were aware that Daniel Franklert Murne was "mentally unstable" and that a doctor was on his way but did not obtain any more information about him. Neither do they appear to have discussed the distinction between using lethal and less lethal methods, despite their awareness of his psychosocial disability. The Committee notes, moreover, that other than referring to the work of paramedics after the shooting, the State party has not presented any information indicating that it fulfilled its obligation to protect Daniel Franklert Murne's life in the preparation of or during the operation. The Committee therefore notes a lack of planning and coordination as well as of measures of protection in relation to Daniel Franklert Murne's psychosocial disability. In this regard, the Committee finds that the absence of such measures, which must include specific measures designed to prevent unwarranted use of force by law enforcement agents against persons with disabilities, is incompatible with the State party's obligation to ensure the effective enjoyment by persons with disabilities, including psychosocial disabilities, of the right to life on an equal basis with others.<sup>17</sup> In the light of the foregoing (paras. 10.7 and 10.8), including the identified deficiencies in the planning and coordination of the operation, the unnecessary and disproportionate use of firearms and the failure to protect Daniel Franklert Murne by taking into account his psychosocial disability, the Committee considers that the operation that resulted in Daniel Franklert Murne's death amounted to the arbitrary deprivation of his life, in violation of article 6 (1) of the Covenant.

11. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the information before it discloses a violation of the rights of the authors' son and brother by the State party under article 6 (1) of the Covenant.

12. Pursuant to article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the authors with an effective remedy. This requires it to make full reparation to individuals whose Covenant rights have been violated. Accordingly, the State party is obligated, *inter alia*, to take appropriate steps to provide adequate compensation to the authors of the communication. The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future.

13. 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 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 present Views. In addition, it requests the State party to publish the present Views.

---

<sup>17</sup> General comment No. 36 (2018), para. 24.

## Annex I

### **Joint opinion of Committee members Farid Ahmadov, Carlos Gómez Martínez, Laurence R. Helfer, Marcia V.J. Kran, José Manuel Santos Pais, Kobauyah Tchamdja Kpatcha and Teraya Koji (dissenting)**

1. We regret not being able to concur with the majority of the Committee in the present case. The authors' communication should not have been admitted due to abuse of right of submission. In addition, even if we had considered it admissible, we would not have found a violation of the authors' rights under article 6 (1) of the Covenant.

2. As regards admissibility of the present Views, the question to decide is how to apply rule 99 (c) of the rules of procedure of the Committee under which a communication may constitute an abuse of the right of submission when it is submitted more than five years after the exhaustion of domestic remedies or, where applicable, three years from the conclusion of another procedure of international investigation or settlement, unless there are reasons justifying the delay. We understand that this rule needs to be applied with some discretion, without giving rise, however, to arbitrariness.<sup>18</sup> In the present case, the communication was submitted five years and six months after the exhaustion of domestic remedies and more than three years after the conclusion of another procedure of international investigation or settlement (see para. 9.2).

3. In finding the communication admissible, the majority relied on three grounds. First, the "gravity of the violations"; second, "the impact caused by the death" of the authors' son and brother; and third, the "lack of capacity" of the authors' counsel. In our view, none of these arguments constitutes justified grounds for the delay of the submission.

4. As for the "gravity of the violation", whether there has been a violation and its seriousness can be established only after the examination of the merits of a case and hence cannot be assumed at the admissibility stage. Moreover, the authors must demonstrate a causal link between the "gravity of the violation" and the ensuing delay. In the present communication, the authors have not convincingly established such a link.

5. As for "the impact caused by the death of their son and brother" and the authors' losing hope over the fate of the submission, such circumstances did not preclude the authors from pursuing the case through different proceedings before the domestic courts of the State party nor did they cause a delay in their submission of an application to the European Court of Human Rights, which had to be submitted within six months, a much shorter period (see para. 2.6). Hence, reliance on the impact caused by the death of the victim is not convincing on the facts presented.

6. As for the "lack of capacity" of the authors' counsel, that counsel represented the authors throughout the proceedings before the domestic courts and the European Court of Human Rights. Moreover, there is no evidence before the Committee that the authors displayed any dissatisfaction with such counsel during these proceedings. Therefore, the present communication should not have been admitted, as it constituted a clear and evident abuse of the right of submission.

7. Even if the present communication were to be admitted, we disagree with the finding of a violation of article 6 (1) of the Covenant. The facts of the case support this conclusion. The victim suffered from psychosis. His parents were informed that the only way that he could be admitted to a psychiatric institution was to seek treatment voluntarily, which he refused to do, or to have the police take him there, which was not possible, since he had committed no crime (see para. 2.1).

8. On 20 March 2005, the state of the victim's mental health deteriorated, and he was extremely disoriented. His parents called the police so that he could be hospitalized. Four

---

<sup>18</sup> *F.A.H. et al. v. Colombia*, para. 8.3, footnote 15.

police officers came to their house. When the police arrived, the victim was alone on the porch of the house armed with kitchen knives. He was ordered to put down the knives and lie on the ground and not to advance towards the police officers or he would be shot. The speed and intensity of the victim's movements increased and he shouted at the police officers, may have left the steps of the house and begun running towards the police officers. At this point, officers shot him, with the possibility that the shot was aimed at his leg but ricocheted when it hit the iron gate that stood between the victim and the police (see para. 2.2).

9. Our conclusion that no violation of article 6 (1) occurred is also supported by the extensive procedures in the State party reviewing these tragic events. The possible responsibility of the intervening police officers was investigated by the Uppsala Police Department, but the findings were inconclusive (see para. 2.3).

10. A prosecutor brought a criminal action, but the Örebro District Court found that it lacked factual support: the victim had suddenly started running towards the police officers, who were only "a couple of metres" away; he had a knife in each hand; he was in an unpredictable and aggressive state; and he had made death threats to the police officers. The District Court therefore considered that the lives or health of the officers had been under attack, that the police officer had aimed for the victim's thigh and that the officers had acted in self-defence. Hence, the court dismissed the prosecution (see para. 2.3).

11. The Göta Court of Appeal confirmed the ruling of the District Court and acquitted the police officer who had shot the victim, accepting that he had acted in self-defence. Moreover, the Court of Appeal found that "no serious objections" could be made against the course of action adopted by the officers because the victim was not receptive to communication, was threatening and aggressive and had knives, his parents had no influence over him and a doctor could not have solved the situation. On 15 January 2008, the Supreme Court denied the authors' application for leave to appeal (see para. 2.4). The authors then lodged a civil proceeding against the State.

12. On 18 December 2009, the Örebro District Court dismissed the lawsuit and confirmed the judicial findings in the criminal proceedings. Additionally, the District Court found that the police officers had not erred in the planning of the operation, as they were informed that it was a matter of arresting a person suspected of making an unlawful threat who was armed with knives. The situation was so alarming that the officers wanted to arrive at the scene as quickly as possible to assess the situation. From the moment of their arrival, with little time for joint deliberations, they found themselves in a very threatening and stressful situation involving a person suspected of an offence. The District Court ruled out alternative courses of action, including consulting with the parents or waiting for the doctor, given the rapid sequence of events and the officers' explanation that they would not have allowed a doctor on the scene. The Göta Court of Appeal and the Supreme Court denied the authors' applications for leave to appeal on 17 March and 8 October 2010, respectively (see para. 2.5).

13. In sum, the arguments presented by the State party, both on admissibility (see para. 4.1) and the merits (see paras. 6.4–6.11) seem, in our view, entirely justified.

14. The majority of the Committee nevertheless found a violation of article 6 (1) of the Covenant, amounting to the arbitrary deprivation of the victim's life, relying on "the identified deficiencies in the planning and coordination of the operation, the unnecessary and disproportionate use of firearms and the failure to protect Daniel Franklert Murne by taking into account his psychosocial disability" (see para. 10.10).

15. However, the Committee had, in direct contradiction to this finding, previously referred to the established case law according to which "considerable weight should be given to the assessment conducted by the State party and that it is generally for the organs of the States parties to the Covenant to review and evaluate facts and evidence, unless it can be established that the evaluation was clearly arbitrary or amounted to a manifest error or denial of justice" (see para. 10.5).<sup>19</sup>

16. In the present communication, the circumstances taken into account by the majority for finding a violation of the right to life all relate to facts and evidence duly assessed by

<sup>19</sup> General comment No. 32 (2007), para. 26.

domestic courts (see para. 6.6); the course of events (see para. 6.9), the reasons leading to the intervention of the police, the erratic and dangerous conduct of the victim (see paras. 6.6 and 6.7), the conduct of the police (see paras. 6.8–6.10), the use of firearms by the police officer acting in self-defence (see paras. 6.4–6.6) and even the planning and conduct of the operation (see para. 6.11).

17. It is particularly noteworthy that the majority did not conclude that the investigation and the judicial proceedings were clearly arbitrary or manifestly erroneous or that they amounted to a denial of justice (see para. 10.8).

18. In accordance with the above-mentioned reasons, we find that the State party adequately considered all the information and evidence that was available to them and their conclusions were not arbitrary or manifestly erroneous or amounted to a denial of justice. We would therefore have concluded in the present communication that there was no violation of article 6 (1).

19. Moreover, we fear that the present Views may deter law enforcement officials from intervening in similar situations in the future, where the life of others may be at serious risk.



## Annex II

### **Individual opinion of Committee member Yvonne Donders (partially dissenting)**

1. I agree with the majority of the Committee as regards the admissibility of this case, based on the application of rule 99 (c) of the rules of procedure and the conclusion that the application of this rule is discretionary and requires an assessment of the specific circumstances of each case (see para. 9.2).
  2. I do not agree, however, with part of the reasoning given in the present Views, namely, that the authors' explanations about "the gravity of the violations claimed" justified the delay in the submission of the communication (see para. 9.2). The reference to "violations" appears to predetermine a finding on the merits of the case, which is not an appropriate consideration at the stage of admissibility.
  3. In my view, it is rather the gravity of the situation presented, involving a person with disabilities and the use of force by police officers leading ultimately to the loss of life of the victim, that justified the present communication to have been declared admissible.
  4. As regards the decision on the merits, I regret not being able to agree with the majority's finding of a violation of the right to life in the present communication. Instead, I fully concur with the dissenting opinion of my colleagues Farid Ahmadov, Carlos Gómez Martínez, Laurence R. Helfer, Marcia V.J. Kran, José Manuel Santos Pais, Kobuayah Tchamdja Kpatcha and Teraya Koji, concluding a non-violation of article 6 of the Covenant for the reasons adduced by them, which, in my view, considering all the circumstances of the case, seem entirely justified.
-