International Covenant on Civil and Political Rights

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Human Rights Committee

Decision adopted by the Committee under the Optional Protocol, concerning communication No. 2958/2017*, **

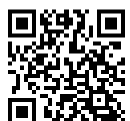
Communication submitted by:	G.J. (represented by counsel, Rutsel Silvestre J. Martha)
Alleged victim:	The author
State party:	Kingdom of the Netherlands
Date of communication:	8 February 2017 (initial submission)
Document references:	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 23 February 2017 (not issued in document form)
Date of adoption of decision:	19 July 2023
Subject matter:	Right to fair trial without undue delay and equality of arms
Procedural issues:	Exhaustion of domestic remedies; level of substantiation of claims
Substantive issues:	Equality of arms; right to be presumed innocent; right to be tried without undue delay; right to an effective remedy; right to hold political office
Articles of the Covenant:	2 (3), 14 (1), (2) and (3) (c) and 25
Articles of the Optional Protocol:	2 and 5 (2) (b)

1.1 The author of the communication is G.J., a national of the Kingdom of the Netherlands, born in 1967. He claims that the State party has violated his rights under articles 2 (3), 14 (1), (2) and (3) (c) and 25 of the Covenant. The Optional Protocol entered into force for the State party on 11 March 1979. The author is represented by counsel.

1.2 On 5 April 2017, the State party requested the admissibility of the communication to be examined separately from the merits. On 6 May 2017, pursuant to rule 94 of its rules of procedure, the Committee, acting through its Special Rapporteurs on new communications

* Adopted by the Committee at its 138th session (26 June–26 July 2023).

** The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Wafaa Ashraf Moharram Bassim, Rodrigo A. Carazo, 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. Pursuant to rule 108 of the Committee's rules of procedure, Yvonne Donders did not participate in the examination of the communication.



and interim measures decided to examine the admissibility of the communication together with its merits.

1.3 On 18 August 2017, the author requested the Committee to issue interim measures in the form of a request to stay his extradition from the Bolivarian Republic of Venezuela to Curaçao and any other form of criminal proceeding by the State party while his case was under consideration by the Committee. On 6 October 2017, the Committee, acting through its Special Rapporteurs on new communications and interim measures, decided not to issue a request for interim measures under rule 94 of the Committee's rules of procedure.

Facts as submitted by the author

2.1 The author notes that he served as the first Minister of Finance of Curaçao after the island obtained the status of an autonomous country within the Kingdom of the Netherlands (*land*) upon the dissolution of the Netherlands Antilles on 10 October 2010. In September 2012, he was dismissed from his post following the loss of the parliamentary majority by the coalition of which his party was a member.

2.2 On 5 May 2013, the leader of the majority party in the Parliament of Curaçao, Helmin Magno Wiels, was murdered. At the time of the murder, the victim led the majority party in a parliamentary coalition that was due to succeed the interim Government that had governed since the elections of September 2012. The author states that within days of the murder, Mr. Wiels' political allies proffered the theory that the murder had been politically motivated, as the victim had continuously delivered speeches condemning corruption. The Office of the Public Prosecutor structured the investigation into the murder on the basis of those rumours and on the assumption that there were two groups of perpetrators: those who had actually killed Mr. Wiels or assisted in the execution of the plan (this section of the case was named "Magnus"); and those who had commissioned and paid for the crime (this section of the case was named "Maximus"). The author states that the Magnus investigation was premised on the theory that those who had commissioned and paid for the crime had used an intermediary who had allegedly enlisted the services of a man named Luigi Lorenzo Florentina, whose responsibility was to plan and organize the murder, recruit the perpetrators and pay them for their services. He was considered to be of such high profile that, upon his arrest, he was held in a secure facility at a Netherlands military base in Curaçao. However, following a court intervention, he was transferred to a police detention facility. A few days after the transfer, Mr. Florentina was found dead. His death was later ruled a suicide. Ultimately, several persons were indicted and brought to trial. One person was found guilty of murder in that trial, the so-called Magnus trial, while the other defendants were acquitted.

2.3 On 29 July 2014, the author's brother was detained on suspicion of having commissioned and paid for the murder of Mr. Wiels. On 24 July 2014, the author was also arrested on suspicion of having been instrumental in organizing the payment for the murder through an intermediary. He was alleged to have received the money for the payment to the murderer from his brother and of having made the money available to the intermediary. The author and his brother successfully challenged their detention before the Court of First Instance of Curaçao, presided over by an examining magistrate. As far as the author is concerned, in an order of 6 August 2014, the examining magistrate found that no evidence existed of any movement of money relating to the suspicion that the author had been instrumental in arranging the payment for the murder. Given that the public prosecutor stated that the financial investigation had not yet been completed, the examining magistrate stopped short of declaring that there was no basis for further suspicion.

2.4 After 24 months of waiting to hear from either the police or the Office of the Public Prosecutor regarding the progress of the investigation, the author filed a petition with the examining magistrate under article 56 of the Code of Criminal Procedure of Curaçao, under which anyone who is the subject of a criminal proceeding can seek protection against the infringement of his or her right to a speedy trial. Upon receipt of the petition, the examining magistrate sent a request to the Office of the Public Prosecutor for a copy of the criminal file concerning the author, whereupon the Office responded that no such file existed yet and suggested that the file compiled on the intermediary be used instead. The examining magistrate informed the author's counsel and the representative of the Office of the Public Prosecutor that an ex parte meeting would be held with the latter before the hearing on the

author's petition. Citing the fundamental right to a fair trial, particularly regarding the equality of arms, the author's counsel questioned the legal propriety of the examining magistrate's intention to hold an ex parte meeting with the Office of the Public Prosecutor in relation to the petition filed on behalf of the author. On 3 October 2016, the examining magistrate rejected the author's request under article 56 of the Code of Criminal Procedure. It was noted in the order that an ex parte meeting with the Office of the Public Prosecutor had been held on 16 September 2016, that the records of that meeting had been filed as a so-called declaration to the vault (*kluisverklaring*) and that, for reasons not to be disclosed to the author, the criminal proceedings against him should be permitted to proceed. The request by the author's counsel to obtain a copy of the declaration was denied on 29 November 2016.

2.5 The author notes that orders under article 56 of the Code of Criminal Procedure are final. The author acknowledges that he could technically resubmit a request to the examining magistrate to discontinue the proceedings against him or to set a deadline for the Office of the Public Prosecutor to finalize the investigations. However, he argues that such as request would not be an actual appeal proceeding and that, in practice, such reconsiderations objectively have no prospect of success. In this connection, the author notes that another suspect in the Maximus investigation had filed repeated attempts to obtain a different ruling from the examining magistrate without success.

Complaint

3.1 The author claims that the State party failed to respect his rights at the pretrial stage as, he claims, it designed and implemented a system in which the police and the prosecution branded him as a suspect on unfounded grounds and subjected him to an endless and biased investigation. He submits that this procedure violated his right to be presumed innocent and to be treated as such, disregarded his right to a trial without undue delay and denied him the means to effectively protect his rights before an impartial and fair judicial body.

3.2 The author claims that by holding an ex parte meeting with the Office of the Public Prosecutor on 16 September 2016 on the subject of his petition under article 56 of the Code of Criminal Procedure, the examining magistrate violated his right to equality of arms and adversarial procedures. He claims that the Office of the Public Prosecutor was given the opportunity to respond to his petition under article 56 of the Code of Criminal Procedure, but that he was denied the opportunity to challenge the views of the prosecution. He argues that this was exacerbated by the fact that the minutes of that meeting, the so-called declaration to the vault, were made an integral part of the examining magistrate's order without its contents being disclosed to him. The author further argues that the substance of the ex parte meeting was used to decide on his request without giving him an opportunity to contest any evidence put forward. He submits that this action is unfair and cannot be considered to be in compliance with the presumption of innocence.

3.3 The author further claims that it is not foreseen in the Code of Criminal Procedure that ex parte meetings are permitted when petitions under article 56 of the Code are being considered and that it is therefore unclear on what grounds the examining magistrate decided that an ex parte meeting with the Office of Public Prosecutor was called for.

3.4 The author claims that the State party branded him as a suspect in a crime and encroached upon his reputation while pursuing an "unchecked gossip-infused investigation". He notes that, in his petition under article 56, he expressly requested the court to examine the lack of due diligence in the case against him, which, he claims, is the result of the fact that the prosecution failed to examine alternative scenarios, which might have shown that their initial hypothesis was incorrect. He argues that, as a result, after more than three and a half years of investigation and the use of extensive resources, the Office of the Public Prosecutor has been unable to substantiate its initial hypothesis in any meaningful way.

3.5 The author argues that, in forming their suspicions against him, the prosecution relied on statements that could have been verified forensically and hence disproved the suspicions, but that, for reasons that are unclear, such verifications have not taken place. In addition, he claims that certain witness statements could be verified by checking the security videos confiscated at his place of business. The author submits that, in accordance with the

presumption of innocence, it is incumbent upon the State party to reconsider whether he should still be treated as a suspect in the light of the results of the investigation thus far.

3.6 The author submits that, with regard to the fact that more than three and a half years of intensive and extensive investigation have not yielded any corroborating evidence to support the hearsay foundations of the suspicions against him, the pretrial investigation against him must be concluded and the suspicions withdrawn. He notes that, in the proceedings under article 56 of the Code of Criminal Procedure, his counsel argued that the pretrial investigations against him should be concluded and the case dismissed. However, the examining magistrate took the view that an examination of the evidence and an evaluation of whether the continued suspicion was justified were matters reserved for the trial judge, despite the fact that the author has not yet been indicted and that consequently no trial date has been set. The author argues that this reasoning is irreconcilable with his right to be tried without undue delay. He further notes that another reason provided by the prosecution for the delay is that it wanted to finalize the case against another suspect first. The author argues that his right to a trial without undue delay requires the State party to proceed expeditiously, and independently of the trial of any other suspect.

3.7 The author also claims that his rights under article 25 of the Covenant have been violated by the State party. He claims that his wish to be considered for another position as a cabinet minister is being thwarted due to his status as a suspect in a criminal case. This situation results from a statute passed in 2012 according to which it is a felony offence, punishable with imprisonment, to nominate someone who is officially a suspect in a criminal investigation as a cabinet minister. Thus, under the existing laws of Curaçao, the State party bars the author from the possibility of being appointed as a cabinet minister on the basis of his qualification as a suspect by the Office of the Public Prosecutor, even though he has not yet been tried, let alone convicted, in a court of law.

3.8 The author requests the Committee to recommend that the State party lift his status as a suspect in the matter of the murder of Mr. Wiels, discontinue, with prejudice, the attendant criminal proceedings against him and ensure that he receives full and adequate compensation for the harm suffered.

State party’s observations on admissibility

4.1 On 5 April 2017, the State party submitted its observations on the admissibility of the communication. The State party argues that the communication is inadmissible under article 5 (2) (b) of the Optional Protocol, for failure to exhaust domestic remedies. The State party notes that article 55 of the Code of Criminal Procedure of Curaçao provides for the right of suspects to have their case tried without undue delay and that article 56 of the Code gives suspects the opportunity to file an application with an examining magistrate requesting either the discontinuance of the investigation or the imposition on the public prosecution of a time limit for concluding the investigation. Suspects may submit repeat applications.

4.2 The State party notes that the author has submitted only one application under article 56 of the Code of Criminal Procedure and that he claims that a repeat application has no prospect of success. The State party argues that a negative outcome or an expected negative outcome of a procedure does not render that procedure ineffective. It submits that, in the investigation stage of criminal proceedings, a repeat application guarantees further assessment of the case file by the examining magistrate, which may lead to a different decision depending on whether progress has been made by the public prosecution. If no progress or little progress has been made, the public prosecution will have to demonstrate special circumstances justifying that situation. The State party refers to another case, involving a well-known politician from Bonaire, in which the investigation, for several reasons, had been going on for a long time, and the examining magistrate decided to set a very strict time limit for its conclusion. The State party argues that, in the present case, the examining magistrate rejected the author’s first application to discontinue the investigation because the public prosecution could show the progress made in the investigation and the necessity to continue it. The State party argues that, in the interests of the ongoing investigation, detailed information could not be shared with the author or his counsel. It further argues that it is well established that, in criminal proceedings, the principle of internal transparency is not absolute at the pretrial stage and can be deviated from when the interests

of the investigation so require. In this context, the State party argues that the delicate and complex nature of the Maximus investigation justify a longer time than would generally be desirable. It further notes that, as regards the author, the situation is also more complex since he is also a suspect in two other ongoing investigations, concerning fraud and money-laundering.

4.3 The State party notes that, on 19 October 2016, the Office of the Public Prosecutor issued a warrant for the author's arrest and made a request to the authorities of the Bolivarian Republic of Venezuela for the author's provisional arrest with a view to extradition. On 17 March 2017, the author was arrested and detained by the Venezuelan authorities.[1]

4.4 The State party also notes that, under article 55 of the Code of Criminal Procedure, suspects can invoke undue delay at a later stage in the proceedings if they have made use of the procedure under article 56 of the Code, which can be taken into account in the judgment at first instance. That judgment is then open for appeal to the Joint Court of Justice of Aruba, Curaçao, Sint Maarten and of Bonaire, Sint Eustatius and Saba and, at last instance, to the Supreme Court of the Kingdom of the Netherlands. The State party therefore argues that there is a comprehensive system in place that guarantees the author judicial recourse with regard to his rights under article 14 of the Covenant.

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

5.1 On 25 April 2017, the author submitted his comments on the State party's observations on admissibility. He maintains that the communication is admissible. Regarding the State party's argument that he may submit repeat applications under article 56 of the Code of Criminal Procedure, the author argues that this cannot be considered a requirement under the Optional Protocol in order to exhaust domestic remedies. The author maintains that as he has submitted an application under article 56 of the Code of Criminal Procedure, he has exhausted domestic remedies.

5.2 The author notes that the State party has argued that, in the case of a repeat application, if no progress or little progress has been made, the public prosecutor would be obliged to demonstrate special circumstances justifying that situation. The author refers to an order of the examining magistrate on the repeat application of another suspect in the Maximus investigation, dated 26 January 2017. He claims that it is stated in the order that the burden is not on the Office of the Public Prosecutor to show special circumstances to justify the continuance of an investigation. Rather, he claims that the examining magistrate deemed it incumbent upon the applicant to prove new facts that were not available when the decision on the original application was taken.[2]

5.3 The author argues that the procedure under article 56 allows for an examination only of whether an investigation is being conducted expeditiously. It does not confer jurisdiction on the examining magistrate to address the grievances raised by the author with regard to his right to be tried without undue delay and his right to be presumed innocent and treated as such. He argues that the examining magistrate lacks jurisdiction under article 56 of the Code of Criminal Procedure to grant relief in respect of the violations of the Covenant that he invokes in his complaint.

5.4 The author notes that the State party has argued that he will be able to raise the issue of undue delay at trial. The author also notes that this remedy can be invoked only if and when he is actually charged and brought to trial and only, if he were to be found guilty, by way of a reduction of sentence. He therefore submits that the remedy is not available or effective.

[1] In his further comments, dated 8 May 2020, the author notes that he was detained in the Bolivarian Republic of Venezuela between March 2017 and September 2018 and, according to media reports, he was extradited on 11 September 2018.

[2] In the decision of the Court of First Instance of Curaçao, dated 26 January 2017, the examining magistrate noted that it had been sufficiently demonstrated that the investigation was progressing and that no unnecessary delays or omission of essential investigative acts had been found.

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

6.1 On 18 September 2017, the State party submitted its observations on the merits of the communication and additional observations on admissibility. It maintains that the communication is inadmissible for non-exhaustion of domestic remedies.

6.2 The State party provides information on the facts of the investigation in which the author features as a suspect. It notes that, on 5 May 2013, Mr. Wiels – leader of Pueblo Soberano, at the time the largest party in the Parliament of Curaçao – was shot dead on a public beach near the capital city of Curaçao, Willemstad, in the presence of a number of bystanders. Several persons were identified as suspects in the investigation launched by the Office of the Public Prosecutor on the basis of the assumption that a number of persons had together agreed to commit the serious offence for a purpose relating directly or indirectly to obtaining a financial or other material benefit, whereby the participants undertook certain actions in furtherance of their agreement. The person who fired the shots that killed Mr. Wiels has subsequently been tried and sentenced to life imprisonment and the judgment has been upheld by the Supreme Court of the Kingdom of the Netherlands. The State party notes that the convicted defendant stated that he had been hired and paid to kill the victim by a named intermediary and others. The investigation into the parties who arranged the killing and the funders of the crime is known as the Maximus investigation. Information received by the police criminal intelligence team gave rise to the suspicion that the author's brother had arranged the murder and that the author himself was suspected of having been the financial intermediary between the parties who arranged the killing and the intermediary, and that he had he paid the intermediary a large sum of money to carry out preparations for the murder.

6.3 Between 23 July and 4 August 2014, the author was questioned on five occasions by the police and on one occasion by the examining magistrate. On 24 July 2014, he was placed in pretrial detention. During the police interviews, he made statements regarding his presence at the scene of the crime shortly after the murder and about his relationship with the intermediary. These statements were inconsistent with information obtained from witness statements and other investigative instruments. On 6 August 2014, the examining magistrate granted the author's request that he be released from pretrial detention. A number of witness statements revealed that the author had had a poor relationship, both politically and personally, with Mr. Wiels, that he had known the intermediary for years, that before and after the murder, the intermediary had on several occasions visited the author at the offices of his company and that efforts had been made to keep those meetings secret, that before the murder the author had repeatedly handed over large amounts of money to the intermediary and that he had paid a substantial sum to the intermediary's brother after the intermediary's arrest and detention. Further investigations revealed that, before the murder, the author and the intermediary had sent each other text messages in veiled language indicating that the intermediary apparently had to perform certain activities for the author. Such messages stopped on 4 May 2013, the day before the murder. Furthermore, information obtained through the use of special investigative powers showed that the author and the intermediary had talked to each other about how they should behave, since both were now suspects. The State party notes that the author left for the Bolivarian Republic of Venezuela in March 2016 and that, on 11 May 2017, the intermediary was convicted by the Court of First Instance of Curaçao of joint perpetration of the murder of Mr. Wiels and sentenced to 25 years' imprisonment. The court based its decision in part on the text messages exchanged by the intermediary and the author.

6.4 The State party notes that, on 1 August 2016, the author submitted a request to the examining magistrate under article 56 (3) of the Code of Criminal Procedure seeking the imposition of a time limit on the investigation being carried out by the Office of the Public Prosecutor or its discontinuation. The examining magistrate decided to hold a meeting with the public prosecutor, without the presence of the author or his representative, to obtain information on the progress of the investigation and any further steps expected to be taken as part of it. The public prosecutor and the author's representative were notified accordingly. The meeting took place on 16 September 2016. On 22 September 2016, the author's request was dealt with in oral proceedings. The author was abroad and could not be heard. The proceedings were adjourned until 29 September 2016, when the author was heard via Skype. On 3 October 2016, the examining magistrate denied the author's request. On 19 October

2016 the Office of the Public Prosecutor issued a warrant for the author's arrest and applied to the authorities of the Bolivarian Republic of Venezuela for the author's provisional arrest with a view to extradition. On 17 March 2017, the author was arrested and detained by the Venezuelan authorities. On 4 August 2017, the Supreme Court of Justice of the Bolivarian Republic of Venezuela ruled that the author would remain in detention until his surrender to the authorities of Curaçao.

6.5 The State party reiterates its argument that the communication should be found to be inadmissible for failure to exhaust domestic remedies. It notes that, at the time of submission, no proceedings on the merits had yet taken place in the author's domestic case, nor had a date been set for such proceedings, since the investigation had not yet been completed. The courts will assess the merits of the case at some point if the supplementary investigation fails to exonerate the author. In this event, the author will subsequently be entitled to lodge an appeal against the judgment of the Court of First Instance with the Joint Court of Justice and thereafter an appeal in cassation with the Supreme Court of the Kingdom of the Netherlands. The State party notes that the author has claimed that domestic remedies available at a later stage in the criminal proceedings are not an effective remedy since they are not available to him now. The State party notes in this respect that the author submitted the communication to the Committee on 8 February 2017, almost four months after the Office of the Public Prosecutor had issued a warrant for his arrest, from which, it argues, the author could have concluded that the investigation had reached a more advanced stage. The State party reiterates its argument that, during the pretrial investigation, the examining magistrate guards against unnecessary delays in the investigation. If the suspect so requests, the examining magistrate must form an opinion on whether the time taken thus far by the investigation is reasonable and on the amount of time reasonably needed for further investigation. If the examining magistrate takes the view that the Office of the Public Prosecutor is not acting with sufficient speed, the magistrate is empowered to impose a time limit on the investigation or to discontinue it. In this context, the question as to whether the reasonable time requirement, as provided for by article 14 of the Covenant, has been exceeded is not at issue. It is clear that article 55 (4) of the Code of Criminal Procedure leaves the assessment of the reasonable time requirement to the court hearing the merits of the case. Nor does the procedure under article 56 of the Code lend itself to an assessment by the examining magistrate of possible violations of the right to equality before the courts or of the right to a fair trial as set out in article 14 of the Covenant. Such violations must also be assessed by the court hearing the merits of the case.

6.6 The State party notes that the author also questions its position on the availability of remedies should the Office of the Public Prosecutor decide not to prosecute him or if the proceedings result in his acquittal. The State party observes that, in this event, the author can bring a civil action against the State on the grounds of a wrongful act (*onrechtmatige daad*). In such an action, the State is held liable under book 6, article 162, of the Civil Code for a wrongful act or a wrongful judgment and damages can be sought on the grounds of a violation of article 14 of the Covenant. Moreover, it is also possible to hold the State liable in civil proceedings under book 6, article 162, of the Civil Code for a violation of the presumption of innocence, as shown by a judgment of the Supreme Court in a case in which statements made to the press by the Office of the Public Prosecutor were at issue. In that judgment, the Supreme Court concluded that, in such circumstances, the defendant could sue for damages on the basis of a wrongful act by the State if, among other things, the disputed actions of the Office of the Public Prosecutor constituted a violation of the right protected by article 6 (2) of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights), which is equivalent to article 14 (2) of the Covenant. The State party therefore submits that those remedies offer the author a reasonable prospect of redress and should therefore have been exhausted by the author before the submission of a communication to the Committee.

6.7 As concerns the author's claims under article 2 (3) of the Covenant, the State party refers to its observations on admissibility and submits that effective remedies were available to the author to address his claims. Regarding the author's claims under article 14 (1) of the Covenant – that the principle of equality of arms was violated in his case because, following his request under article 56 of the Code of Criminal Procedure, the examining judge held an ex parte meeting with the Office of the Public Prosecutor and the author was denied access

to the record of that meeting – the State party submits that equality of arms is a principle that comes into full play at the hearing on the merits. That is where the investigation conducted by the Office of the Public Prosecutor is subjected to a full assessment by the court and the defence enjoys the same rights as the prosecution. At that point, the defendant must have access to the same case file as the prosecuting authority, as is also set out in article 53 of the Code of Criminal Procedure. The State party also argues that exceptions to the principle of equality of arms are possible and that, in the context of access to case documents at the investigation stage, it should not be interpreted as conferring an absolute right. Denying the suspect access to certain documents can thus be justified in the interests of the investigation, as stipulated under article 51 (2) of the Code of Criminal Procedure.

6.8 The State party notes the author's claims that the presumption of innocence has been violated in his case due to the way in which the investigation is being conducted and the examining magistrate's denial of his request for the discontinuation of the investigation or the imposition of a time limit. The State party notes that the author had not, at the time of submission, been charged with a criminal offence, and that a preliminary judicial investigation with respect to the author on the basis of information received during the course of the investigation was being conducted. In the author's case, this information has led to his being considered a suspect. The State party argues that there is a fundamental difference between, on the one hand, considering someone to be a suspect and on that basis conducting further investigative procedures, and, on the other, prejudging the outcome of a trial.

6.9 The State party notes the author's claim that his right to be tried without undue delay has been violated. It also notes that the question of what constitutes a reasonable amount of time must be assessed in the light of the circumstances of each case, taking into account the complexity of the case, the conduct of the accused and the manner in which the matter was dealt with by the administrative and judicial authorities.[3] It submits that, given the circumstances of the present case, there has been no undue delay. The matter is an investigation into the murder of the leader of the largest opposition party in Curaçao, in which political motives and the involvement of a number of persons at different levels cannot be excluded. The Office of the Public Prosecutor chose first to identify the shooter and then to focus the investigation on the persons who had arranged the killing and any intermediaries. This type of investigation is, by its very nature, complex. Suspects and witnesses refuse to talk to the police and the criminal justice authorities, or will do so only on the basis of anonymity, for fear of reprisals or out of self-interest. This is especially true in a small community such as that of Curaçao, where everyone knows each other and everyone knows who is in charge, whether openly or behind the scenes. Furthermore, at the author's request, the examining magistrate assessed how long the investigation had been going on at that point and weighed the author's interests against the interests of justice. The examining magistrate's decision of 3 October 2016 acknowledged that the investigation was taking a long time and was therefore particularly onerous for the author, but it also acknowledged that the suspicions arising from the crime justified a thorough, large-scale investigation, which would be time-consuming. The examining magistrate was of the opinion that there was no evidence of unnecessary delays or inactivity, or that essential investigative procedures had not been carried out. The State party further notes that, with regard to the author's conduct, it should be noted that he left the country during the investigation and is not prepared to return voluntarily to make a statement concerning the offences of which he is suspected.

6.10 Lastly, the State party notes the author's claim that his status as a suspect in a criminal investigation is an obstacle to his desire to be considered for another position as a cabinet minister. It submits that exclusion from public office on the grounds that a person is a suspect in an active investigation into a serious criminal offence is indisputably a restriction that is not unreasonable within the meaning of article 25 of the Covenant. In this context, the State party notes that the author is also a suspect in two other ongoing investigations, concerning fraud and money-laundering, which are not at issue in the present communication.

[3] The State party refers to the Committee's general comment 32 (2007), para. 35.

Author's comments on the State party's observations on the merits and additional observations on admissibility

7.1 On 6 December 2017, the author submitted his comments on the State party's observations. He maintains that the communication is admissible and he reiterates his claims that his rights under articles 2 (3), 14 (1), (2) and (3) (c) and 25 of the Covenant have been violated.

7.2 The author notes the State party's submission that under book 6, article 162, of the Civil Code of Curaçao, he could also pursue civil action against the State on the grounds of a wrongful act that could address the alleged violations of his rights. He argues that the order of 3 October 2016 constitutes the cause of action of his complaint and he claims that, according to the jurisprudence of the Supreme Court of the Kingdom of the Netherlands, civil courts lack the competence to review the conduct of criminal courts. He therefore submits that civil action against the State party on the grounds of a wrongful act would not address the claims that he has raised in his communication.

State party's further observations

8.1 On 5 April and 1 June 2018, the State party submitted further observations on the complaint. It argues that the author is seeking an overruling from the Committee of the examining magistrate's decision to permit the investigation by the Office of the Public Prosecutor to continue and consider whether there is any evidence to link him to the crime of which he is suspected. The State party argues that it is not for the Committee, as an international organ for subsidiary protection, to determine such issues while the domestic courts have not yet considered the merits of the case. In addition, the State party notes that the author has initiated further domestic procedures under article 43 of the Code of Criminal Procedure, which enables a suspect to apply for an order from the court in all cases in which such an order is urgently necessary for the proper administration of justice but the Code itself contains no relevant provision. The Committee argues that this action by the author contradicts his assertion that there are no domestic remedies against the decision of the examining magistrate under article 56 of the Code of Criminal Procedure.

8.2 The State party further clarifies the procedure by which the State can be held liable for damages arising from a wrongful judgment. It notes the author's claims that his right to equality of arms has been violated and refers to a judgment by the European Court of Human Rights in a case against the Kingdom of the Netherlands, in which the Court reaffirmed that the principle of equality of arms was not absolute.[4]

Additional comments from the author

9.1 On 27 April 2018, the author submitted additional comments on the State party's further observations. He notes the State party's reference to the proceedings that he initiated under article 43 of the Code of Criminal Procedure, and also notes that those proceedings concern an application in which he challenged his alleged unlawful arrest, pursuant to which he has been detained in the Bolivarian Republic of Venezuela since 17 March 2017 on behalf of the State party. He submits that this application has no bearing on the admissibility of his complaint before the Committee and he reiterates his claims as set out in his previous submissions.

9.2 On 8 May 2020, the author submitted further information on the proceedings against him. He notes that, on 13 July 2018, the intermediary's conviction for his role in the murder of Mr. Wiels was upheld on appeal by the Joint Court of Justice of Aruba, Curaçao, Sint

[4] The State party refers to European Court of Human Rights, *M v. The Netherlands*, Application No. 2156/10, Judgment, 25 July 2017, para. 66, in which the Court noted that it was a fundamental aspect of the right to a fair trial that criminal proceedings, including the elements of such proceedings that related to procedure, should be adversarial and that there should be equality of arms between the prosecution and defence, but that the entitlement to disclosure of relevant evidence was not an absolute right and that, in any criminal proceedings, there might be competing interests, such as national security or the need to protect witnesses at risk of reprisals or keep secret police methods of investigation of crime, which must be weighed against the rights of the accused.

Maarten, Bonaire, Sint Eustatius and Saba. On the same day the Court issued a press release in which it stated that it had concluded that the accused had accepted the assassination order from "J." and that he had negotiated the amount to be paid with "J.". The author argues that the Court thus publicly stated, by referring to his name, that he had ordered the murder of the victim and negotiated the amount to be paid for the murder, notwithstanding the fact that he was the subject of a preliminary judicial investigation and a decision to prosecute him had not yet been taken. He submits that the press release was a breach of his right to be presumed innocent, in violation of his rights under article 14 (2) of the Covenant.

9.3 The author further states that, on 16 August 2019, the Court of First Instance convicted him on the charge of solicitation of murder for hire in connection to the murder of Mr. Wiels. The author notes that he subsequently appealed his conviction and that the appeal is currently pending.

9.4 The author reiterates his claim under article 14 (1) of the Covenant and he notes that, under article 53 of the Code of Criminal Procedure, a suspect may not be denied access to any of the documents in the case once the preliminary investigation has been concluded. The author also notes that the preliminary investigation in his case ended on 7 December 2018, when an indictment was issued and he was served with a summons. However, he further notes that the criminal file did not contain the records of the ex parte meeting between the examining magistrate and the Office of the Public Prosecutor. The author requested to be provided with a copy of the records of the meeting, but his request was denied by the examining magistrate on 3 May 2019. The examining magistrate noted that, during the meeting, information on the progress of the Maximus investigation in its entirety was discussed and, as this information also concerned suspects who had not yet been detained, the examining magistrate had found that the investigative interest in the cases against those suspects precluded disclosure to the author. However, the examining magistrate reported that the investigation concerning the author had been discussed only in broad terms, as the author's request concerned only the assessment as to whether the preliminary investigation was being delayed. The examining magistrate noted that a redacted version of the document could be prepared, should the trial judge so decide. The author argues that the failure to provide him with a copy of the records of the ex parte meeting after the conclusion of the preliminary investigation is incompatible with article 53 of the Code of Criminal Procedure. Lastly, the author reiterates his argument that his right to trial without undue delay was violated, as he claims that there was no meaningful activity in the investigation concerning him between 3 October 2016 and 7 December 2018.

Issues and proceedings before the Committee

Consideration of admissibility

10.1 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 to the Covenant.

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

10.3 The Committee notes the author's claims that his rights under articles 2 (3), 14 (1), (2) and (3) (c) and 25 of the Covenant have been violated. In this connection, it understands his claims under article 2 (3) to have been raised in conjunction with his claims under articles 14 and 25 of the Covenant. The Committee also notes the State party's submission that the author's claims under article 14, read alone and in conjunction with article 2 (3), of the Covenant should be found inadmissible under article 5 (2) (b) of the Optional Protocol, for failure to exhaust domestic remedies. It further notes the information provided by the State party that repeat applications requesting either the discontinuance of the investigation or the imposition of a time limit for concluding an investigation can be filed under article 56 of the Code of Criminal Procedure. It notes the State party's argument that a repeat application guarantees further assessment of the case file by the examining magistrate, which may lead to a different decision depending on whether progress has been made by the public prosecution. The Committee also notes the State party's argument that, at the time of

submission of the complaint to the Committee, no proceedings on the merits had yet taken place in the author's domestic case and its argument that once such proceedings had been initiated, the author would be able to raise his claims under article 14, read alone and in conjunction with article 2 (3), of the Covenant in the domestic proceedings, at first instance and on appeal to the Joint Court of Justice, and thereafter would be able to bring an appeal in cassation to the Supreme Court of the Kingdom of the Netherlands. The Committee further notes the State party's argument that the author could seek redress by bringing a civil action against the State on the grounds of a wrongful act under book 6, article 162, of the Civil Code, seeking damages for his claims raised under article 14 of the Covenant.

10.4 The Committee notes the author's argument that he could technically have resubmitted a request to the examining magistrate to discontinue the proceedings against him or to set a deadline for the Office of the Public Prosecutor to finalize the investigations, which he did not do. According to him, a repeat application under article 56 of the Code of Criminal Procedure does not constitute an actual appeal, but allows only for an examination of whether an investigation is being conducted expeditiously and cannot address the claims raised by him before the Committee. The Committee also notes his claim that pursuing a civil action against the State party on the grounds of a wrongful act would not address the alleged violations of his rights, as civil courts lack the competence to review the conduct of criminal courts.

10.5 The Committee recalls its jurisprudence that, although there is no obligation to exhaust domestic remedies if they have no prospect of being successful, authors of communications must exercise due diligence in the pursuit of available remedies. It notes that mere doubts or assumptions about the effectiveness of domestic remedies do not absolve authors from exhausting them.[5] In the present case, the Committee notes the State party's argument that the author could have: (a) submitted a repeat application under article 56 of the Code of Criminal Procedure requesting either the discontinuance of the investigation or the imposition of a time limit for concluding the investigation based on the claim that no progress was being made in the investigation, following his initial application under article 56 of the Code of Criminal Procedure; (b) raised his claims under article 14, read alone and in conjunction with article 2 (3), of the Covenant, once the indictment had been filed against the author, in the proceedings on the merits at first instance and on appeal to the Joint Court of Justice and the Supreme Court of the Kingdom of the Netherlands; and (c) sought redress by bringing a civil action against the State party on the grounds of a wrongful act under the Civil Code, seeking damages for the claims raised in his complaint. The Committee observes that, while the author argues that the above-mentioned remedies would not be effective in addressing his claims as raised before the Committee, and that this was the reason that he did not pursue them, he has not presented any specific information or adduced any evidence to substantiate his claims that the remedies presented by the State party would not be effective or available to him. In this regard, the Committee notes that while the author, in his latest submission to the Committee, reported that the proceedings in the criminal case against him at first instance had since been concluded, he did not provide any information as to whether he had raised any of his claims as presented to the Committee in the domestic proceedings, or as to whether he had raised his claims in his subsequent appeal to the Joint Court of Justice. The Committee therefore finds the author's claims under article 14, read alone and in conjunction with article 2 (3), of the Covenant to be inadmissible for failure to exhaust domestic remedies, in accordance with article 5 (2) (b) of the Optional Protocol.

10.6 The Committee also notes the author's claim that his rights under article 25, read alone and in conjunction with article 2 (3), of the Covenant have been violated, as he claims that his wish to be considered for another position as a cabinet minister is being thwarted because his status as a suspect in a criminal case prevents him from holding that position under domestic legislation. The Committee observes, however, not only that the author has failed to provide sufficient information to support this claim, but also that he has subsequently been convicted for a serious offence (see para. 9.3 above). The Committee therefore concludes

[5] For example, *V.S. v. New Zealand* (CCPR/C/115/D/2072/2011), para. 6.3; *García Perea and García Perea v. Spain* (CCPR/C/95/D/1511/2006), para. 6.2; and *Zsolt Vargay v. Canada* (CCPR/C/96/D/1639/2007), para. 7.3.

that the author has failed to sufficiently substantiate his claim for the purposes of admissibility, and finds it inadmissible under article 2 of the Optional Protocol.

11. The Committee therefore decides:

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

(b) That the present decision shall be transmitted to the State party and to the author.