United Nations CCPR/C/138/D/3198/2018

International Covenant on Civil and Political Rights

Distr.: General
8 September 2023

Original: English

Human Rights Committee

Decision adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communications No. 3198/2018*, **

Communication submitted by:	V.V. (represented by counsel, Stanislovas Tomas)
Alleged victim:	The author
State party:	Lithuania
Date of communication:	7 January 2017 (initial submission)
Document references:	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 6 July 2018 (not issued in document form)
Date of adoption of decision:	19 July 2023
Subject matter:	Fair trial
Procedural issues:	Abuse of right of submission; non-exhaustion of domestic remedies; lack of substantiation; rule 95 of the Committee's rules of procedure
Substantive issue:	Right to a fair trial
Articles of the Covenant:	7, 10 (1), 14 (1) and (3) (d), (e) and (g) and 17 (1)
Articles of the Optional Protocol:	2, 3 and 5 (2) (b)

1.1 The author of the communication is V.V., a national of Lithuania born in 1967. He claims that the State party has violated his rights under articles 7, 10(1), 14 (1) and (3) (d), (e) and (g) and 17 (1) of the Covenant. The Optional Protocol entered into force for the State party on 20 February 1992. The author is represented by counsel.

1.2 On 2 January 2021, the counsel requested protection measures under rule 95 of the Committee's rules of procedure, which were denied as non-substantiated.

* 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, 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, Soh Changrok, Tijana Šurlan, Kobauyah Tchamdja Kpatcha, Teraya Koji, Hélène Tigroudja and Imeru Tamerat Yigezu.

Facts as submitted by the author

2.1 The author is the director of a company named UAB Tauvita. The authorities suspected the company of buying stolen cars. On 15 June 2012, the district court of Klaipeda city authorized the police to search the premises of the company, as well as some of the author's property, with the aim of recovering a stolen car.[1]

2.2 On 15 June 2012, the search was carried out. However, the police officers mistakenly extended the search to premises not covered by the district court order. Specifically, the outside kitchen was searched, which was separate from the rest of the author's property according to the State registry records. Police officers seized a computer belonging to the author in the outside kitchen that was not included in the search warrant.

2.3 The author was detained from 18 to 31 October 2012. From 18 to 22 October 2012 and on 30 October 2012, the author was detained at the Chief Police Commissariat of the Klaipeda district in a cell of 15.96 m^2, which he shared with three other inmates.[2] From 25 to 29 October 2012, the author was detained at the Siauliai remand prison in a cell of 18.66 m^2, which he shared with eight other inmates.[3] The cell also had a table, nine chairs, a food shelf, a wardrobe, a washstand and an open toilet which the inmates were forced to use in front of one another. The cell walls were covered with fungus, the beds were full of parasitic insects and there were rats the "size of a cat". On 29 October 2012, the author was detained in a different cell, of 14.15 m^2, in the Chief Police Commissariat of the Klaipeda district with two other inmates.[4] The cell included beds, a toilet, a table and chairs. The author claims that he was not allowed to receive conjugal visits.

2.4 On 22 October 2012, the author refused legal representation during an interrogation after the investigator put pressure on him to do so. He took this decision under duress due to the degrading treatment and constant pressure from the prosecution officers to confess. After refusing legal representation, the author provided self-accusatory evidence, namely the password to his email address and the laptop that had been seized on 15 June 2012.

2.5 The prosecution found a file containing a list of details for Audi A3, A4 and A6 cars, along with their prices. They then used this as evidence to support the allegation that the author had sold these cars, resulting in a duty to pay 18,798.83 euros in value added tax (VAT), calculated at a rate of 24.73 per cent.[5]

2.6 During the pretrial investigation, three co-accused, employees of the company, made statements to investigating officers that a number of persons had several times sold car parts without vehicle identification numbers to the author's company. After giving those statements, the co-accused were released from detention and their procedural status changed from co-accused to witnesses.

2.7 On 2 April 2015, the district court of Taurage acquitted the author and set aside all the charges against him.[6] According to the author, he was acquitted because the witnesses (formerly the co-accused) had retracted their initial statements given while they had been in detention.

2.8 The prosecution appealed the acquittal and on 8 October 2015, the Klaipeda regional court reversed the district court judgment. The author was convicted and found guilty of buying a stolen car and selling the parts of Audi cars without entering the profit into the official records of UAB Tauvita to avoid paying 18,798.83 euros in VAT, under articles 220 (1) and 222 (1) of the Criminal Code. He was fined 7,000 euros. According to the author, the Klaipeda regional court based its decision on the statements given by the two

[1] Case No. 30-1-00211-12. The search was in relation to the production and completion buildings of the company, the arc stock building, the stock building and the author's apartment.

[2] An average of 3.99 m^2 per inmate.

[3] An average of 2.07 m^2 per inmate.

[4] An average of 4.72 m^2 per inmate.

[5] The author claims that from 1 January 2008 to 31 December 2008, the VAT was 18 per cent; from 1 January 2009 to 1 July 2009 200920 19 per cent; and from 1 September 2009 to 1 July 2012, 21 per cent.

[6] No further details are provided by the author.

witnesses (formerly the co-accused) while they had been in detention and disregarded their statements provided during the oral hearings.

2.9 The author filed a cassation appeal to the Supreme Court of Lithuania, and on 16 November 2015, the Supreme Court found it inadmissible. The author filed a second cassation appeal that was declared inadmissible by the same Court on 15 January 2016.

Complaint

3.1 The author claims that his rights under articles 7, 10 (1), 14 (1) and (3) (d), (e) and (g) and 17 (1) of the Covenant have been violated.

3.2 The author claims that his rights under articles 7 and 10 (1) of the Covenant have been violated given the inhuman conditions of his detention between 18 and 31 October 2012. He states that the limited space and conditions in the cells, and the inability to receive conjugal visits, constitute degrading treatment that does not respect the dignity of prisoners. The author did not complain about this situation, since there was no practical way for Lithuanian courts to improve it: prisons in Lithuania face a general problem of overcrowding, and conjugal visits are not allowed under Lithuanian law.

3.3 He claims a violation of articles 14 (1) and 17 (1) of the Covenant, since the search warrant issued by the district court of Klaipeda on 15 June 2012 did not extend to the outside kitchen where his laptop was found and that this constituted a breach of his right to fair trial. The author claims that his request to call as witnesses five other police officers who had participated in the search was unreasonably denied. As the outside kitchen was part of the author's property, he claims this constituted an unlawful interference with his home.

3.4 The author claims that article 14 (3) (d) of the Covenant was breached when he was forced to refuse legal representation on 22 October 2012 insofar as: (a) the refusal was signed while he was subject to degrading treatment in the detention facility; (b) a lawyer was not present at the time of the refusal; (c) the investigator initiated the refusal; and (d) the refusal was not sufficiently motivated.

3.5 The author considers that the refusal to hear the five additional witnesses, police officers present during the search, constitutes a violation of article 14 (3) (e) of the Covenant. He further claims that because the statements given by the two employees of the company while they were in detention were taken into account instead of the statements given by them during the oral hearings, he has been precluded from being able to cross-examine them. The author notes that when they made their first statements, the employees were co-accused and in detention, while during the oral hearings, they were witnesses, and that, under the applicable law, "accused persons enjoy the right to lie to defend themselves but witnesses are obliged to tell the truth".

3.6 The author claims that article 14 (3) (g) of the Covenant was violated when he was lured into providing self-accusatory evidence on 22 October 2012 after refusing legal representation. He submits that this evidence was given at the suggestion of the investigator and that immediately after providing such information, the author was released.

State party's observations on admissibility and the merits

4.1 In a note verbale dated 7 January 2019, the State party submitted its observations on admissibility and the merits of the communication.

4.2 The State party contends that the author's claims under articles 7 and 10 (1) of the Covenant must be declared inadmissible pursuant to articles 2 and 5 (2) (b) of the Optional Protocol to the Covenant, as the author has failed to exhaust domestic remedies. Moreover, the author's allegations are non-substantiated as he has not provided sufficient factual and legal argumentation to substantiate his allegations that the conditions of his detention gave rise to the appearance of a violation under articles 7 and 10 (1) of the Covenant. The author has never raised his claims about the conditions of his detention with the police or prisons department or any other institution, nor has he brought them before the domestic courts.

4.3 The State party indicates that the author failed to file a claim against the State in respect of the allegedly inhuman conditions of detention, in accordance with article 30 of the

Constitution and the Civil Code of Lithuania, valid from 1 July 2001, which provides for the right to obtain redress for damages caused by the unlawful actions of institutions of public authority, in accordance with article 6.271.

4.4 As far back as 2008, a number of court decisions were issued in favour of prisoners that recognized civil liability for damage caused by the unlawful acts of State institutions, and ordered moral damages caused by a violation of human rights to be paid. The Supreme Administrative Court of Lithuania has consistently held that the State must ensure that the conditions of detention are compatible with respect for human dignity, that the manner and method of execution of the measure do not subject the detainee to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, the health and well-being of the detainee are adequately secured.[7]

4.5 As regards the allegedly inadequate detention conditions, the State party notes that the Committee considers and applies the same criteria as the European Court of Human Rights. The Supreme Administrative Court of Lithuania[8] in principle follows the same criteria as those developed in the jurisprudence of the European Court of Human Rights in similar cases.

4.6 Furthermore, domestic courts do not apply the rule *affirmanti non neganti incumbit probatio*[9] in a very strict way, but order the prison authorities to provide supplementary evidence[10] or interpret the existing evidence in the applicant's favour.[11]

4.7 The State party noted that the author was detained in Klaipeda police station for 10 non-consecutive days and in Siauliai remand prison for 4 days. Following the rules on the inner procedure of the territorial police stations, approved by the Minister of the Interior in order No. 5-V-356 and the Lithuanian hygiene norm HN 76:2010, the author was supplied with food three times a day, adequate bedding, clothing and hygiene facilities. The bed linen was changed once a week. Adequate shower installations were provided so that he could have a shower at least once a week, the cells were cleaned every day by the inmates with the cleaning materials provided. Once a quarter the detention facilities organized preventive disinfection, disinsectization and disinfestation of the premises. At the facilities, the sanitary installations were adequate, clean and decent. The author had at least one hour of suitable exercise in the open air daily. Thus, the conditions of the author's detention met the requirements of the treatment of prisoners as set out in the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) and did not give rise to the appearance of a violation under articles 7 and 10 (1) of the Covenant.

4.8 As to family visits, the author never addressed the administration of any detention facility regarding long-term visits, nor did he specifically request such visits. He just hypothetically stated that he had no right to long-term visits. In view of the case law of the European Court of Human Rights and the facts at stake, the author could not claim to be a victim of a violation of article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights).[12] The State party further notes that under domestic law, the prison administration is not obliged to organize ex officio long-term visits to persons whose liberty is restricted. Such visits are only possible at the request of the person whose liberty is restricted and provided that they are justified.

4.9 The State party also invokes the author's failure to claim compensation for damages before the administrative court owing to the alleged difference in treatment on the grounds

[7] For example, cases No. A-556-345/2013 and No. A-492-375/2013.

[8] For example, case No. A-146-320/2012 in connection with *Kudla v. Poland*, Application No. 30210/96.

[9] The burden of proof is usually on the person who brings a claim in a dispute.

[10] For example, in case No. I-4753-580/2015, the Vilnius regional administrative court postponed the proceedings in order for the administration of the facility to provide additional information on the number of beds in a cell.

[11] For example, in case No. A-188-442/2015, the Supreme Administrative Court noted that the administration of the facility had failed to provide the exact date on the number of inmates in cells, thus the chamber of judges interpreted those uncertainties in the applicant's favour, acknowledging a violation of his rights in domestic legislation on account of overcrowding for the whole period.

[12] *Oskirko v. Lithuania*, Application No. 14411/16, Judgment, 25 September 2018, paras. 53–55.

of his status as a pretrial detainee regarding the right to long-term visits, which, in the State party's view, proves that the applicant could have obtained relief at the national level for the alleged violations with no need to resort to international mechanisms.

4.10 In 2013, the European Court of Human Rights adopted a judgment in the case of *Varnas v. Lithuania*, in which the Court found that by having forbidden the applicant from receiving conjugal visits when detained on remand, the authorities had failed to provide a reasonable and objective justification for the difference in treatment and acted in a discriminatory manner, and thus there had been a violation of article 14, read in conjunction with article 8, of the European Convention on Human Rights.[13] The State party acknowledges that if there is a conflict with domestic law, the provisions of the European Convention on Human Rights prevail over domestic legislation[14] and the domestic courts have established an effective compensatory domestic remedy in this regard.

4.11 Having regard to the case law of domestic courts, the State party therefore states that the author had an opportunity to avail himself of an effective domestic remedy offering reasonable prospects of success compatible with the practice of the Committee.[15] The existence of mere doubts as to the prospects of success of a particular remedy that is not absolutely futile is not a valid reason for failing to exhaust domestic remedies. This part of the complaint should therefore be declared inadmissible owing to non-exhaustion of effective domestic remedies under article 2 (b) of the Optional Protocol.

4.12 With regard to his claims under articles 14 (1) and 17 (1), the State party draws attention to the fact that the author never complained before the domestic authorities during the pretrial investigation or subsequently before the domestic criminal courts during the judicial proceedings about the alleged unlawfulness of the search of 15 June 2012.

4.13 The State party is of the firm view that this part of the present communication is non-substantiated, for the following reasons. Arbitrary or unlawful interference with the individual's home is prohibited under the Covenant. Under the jurisprudence of the Committee, the term "unlawful" means that no interference can take place except in cases envisaged by the law. The expression "arbitrary interference" is also relevant to the protection of the right provided for in article 14 of the Covenant. In the Committee's view, the expression can also extend to interference provided for under the law. The introduction of the concept of arbitrariness is intended to guarantee that even interference provided by law should be in accordance with the provisions, aims and objectives of the Covenant, and should in any event be reasonable in the particular circumstances in which such interference may be permitted. Searches of a person's home should be restricted to a search for necessary evidence and should not be allowed to amount to harassment.[16]

4.14 The search that is at issue was conducted in line with the provisions of domestic law[17] and the well-established case law of the domestic courts, and it was aimed at gathering relevant evidence in order to establish whether a criminal act had been committed and, if so, who was guilty of it. The accused person was in fact using the building as an auxiliary building to the main building, the limits of the search as established in the decision of the pretrial investigation judge were not exceeded and, as such, the search was lawful. Assessing whether the search carried out in the auxiliary building was lawful, the domestic courts used the following criteria: (a) whether the representative (the person connected to the place where the search was carried out) was present during the search in the auxiliary building; (b) whether the representative was familiarized with the decision of the pretrial investigation judge before the search was carried out; (c) whether the representative who signed the minutes of the search had any complaint with regard to the search; (d) whether the representative or the accused himself ever complained about the search; (e) whether the accused submitted any complaints during his familiarization with the materials of the pretrial investigation; (f) whether the objects relevant to the investigation that were found and seized during the search belonged to the accused; and (g) whether the representative or the accused

[13] Application No. 42615/06, Judgment, 9 July 2013.
[14] See decision A-248-58/08 of the Supreme Administrative Court of 18 April 2008.
[15] For example, *Lukyanchik v. Belarus* (CCPR/C/97/D/1392/2005), para. 7.4.
[16] See Human Rights Committee, general comment No. 16 (1988).
[17] See article 145 of the Code of Criminal Procedure.

possessed the keys to the building. According to the minutes of the search, it was conducted, inter alia, in presence of the manager of the company, who was aware of his right to participate in all actions of the officers, to see all the objects and documents being seized and to appeal with regard to those acts. The manager was also familiarized with the decision of the pretrial investigation judge and he signed the minutes of the search and a confirmation that he had received a copy of the minutes. As it transpired from the materials in the case, neither the manager of the company nor the employees ever submitted any complaints or requests about the allegedly improper location of the search on 15 June 2012. The domestic courts therefore found that the grounds for the search and the procedure according to which the search was conducted were not breached, as established under article 145 of the Code of Criminal Procedure.

4.15 Referring to the complaint of the author, who states that the laptop was found in the building with registry number 7796-4001-7129, the State party wishes to note that the minutes of the search do not mention that registration number and thus the State party is unable to agree with the author that the search was carried out in the building with registry number 7796-4001-7129. However, what can be seen from the minutes of 15 June 2012 is that the search was carried out in the auxiliary building that belonged to the company Tauvita. In any case, the State party wishes to specify that both buildings No. 7796-4001-7029 and No. 7796-4001-7129 are located on the grounds of the company Tauvita.

4.16 As the author himself indicated during his additional questioning on 24 October 2012,[18] the laptop found in the auxiliary building belonged to the company and he was using it, namely that the auxiliary building was used for the purposes of the company by the director of the company.[19] Finally, the fact that the auxiliary building was used for the purposes of the company is also demonstrated by the fact that an employee certificate of V.S. was found and seized in that building.

4.17 In the view of the State party, the author's allegations about his attempt to call five[20] witnesses should be rejected as non-substantiated. The State party recalls that, as in his reply to the prosecutor's appeal, the author contested the fact that he was aware that the cars had been stolen, and stated that not all the car documents had been seized by the officials during the search on 15 June 2012 and that objects had been thrown, broken and handled inappropriately. During the hearing of the Klaipeda regional court on 10 September 2015, the prosecutor asked the court to question the witness who had participated in the search and who could provide clarification as regards the documents seized. On the basis of the court hearing of 10 September 2015, one may come to the conclusion that the author misled the Committee by wrongly stating the facts.

4.18 The State party recalls that under the jurisprudence of the Committee, article 14 (3) (e) of the Covenant guarantees the right of accused persons to examine the witnesses against them and to obtain the attendance and examination of witnesses on their behalf under the same conditions as witnesses against them. However, the Committee recognizes that the provision does not provide an unlimited right to obtain the attendance of any witness requested by the accused or their counsel, but only a right to have witnesses admitted that are relevant for the defence, and to be given a proper opportunity to question and challenge witnesses against them at some stage of the proceedings. It is primarily for the domestic legislature of States parties to determine the admissibility of evidence and how their courts assess it.[21] In that connection, the State party wishes to specify that the panel of the Klaipeda regional court decided to dismiss the request of the author's defence lawyer to question the other witnesses (the three employees of the author), as they had already been questioned both during the pretrial investigation and the court hearing in the district court and both the author and his defence lawyer were participating in that court hearing. In addition, one of the employees stated in the court hearing that he had been drunk during the search and did not

[18] At which he was represented by a lawyer, M. Kepenis.

[19] The author admitted that the programme entitled "Management-Storehouse: Shop" on the computer was used only by him. The programme shows the prices of the vehicle parts on the market and for how much the author could buy and sell those parts, and allowed him to print out the barcodes of the vehicle parts.

[20] The number of witnesses was actually three and the author made a mistake in the initial complaint.

[21] Human Rights Committee, general comment No. 32 (2007), para. 39.

remember anything. Accordingly, the State party notes that his testimony would be of no help to the author. One may therefore conclude that the refusal of the regional court to call three employees of the author was reasonable, having regard to the necessity to gather information from different sources. The three employees of the author had already been questioned about the circumstances, inter alia, of the search of 15 June 2012 and it was only the testimony of the officers who had carried out the search that was needed for a comprehensive assessment of the relevant issues contested before the court.

4.19 The State party recalls that the Supreme Court analysed the author's complaint about the repeated refusal of the regional court to call his employees as witnesses. The Supreme Court upheld the position of the regional court, finding that the appellate court had renewed the examination of evidence, assessed the witness statements given both during the pretrial investigation and before the court of first instance and had come to their respective conclusions.

4.20 Under domestic law, the Supreme Court checks whether, while assessing the evidence and establishing the circumstances relevant to the case, the lower domestic courts did not breach the law on criminal procedure and whether on the basis of the established circumstances of the case the domestic courts properly applied the criminal law.[22] By dismissing the cassation appeal of the defence lawyer of the author, the Supreme Court therefore explicitly found no fundamental violations of the criminal law.

4.21 Lastly, as was stressed in the decision of the Supreme Court, the author contests the courts' assessment of evidence, has his own interpretation of the testimony of the witnesses and reaches different conclusions. The State party notes that it is generally for the courts of States parties to the Covenant to review facts and evidence or the application of domestic legislation in a particular case, unless it can be shown that such evaluation or application was clearly arbitrary or amounted to a manifest error or denial of justice, or that the court otherwise violated its obligation of independence and impartiality. In the present case, no arbitrariness or denial of justice on the part of the domestic courts can be found.

4.22 The State party is therefore of the view that the present complaint should be dismissed as manifestly unsubstantiated pursuant to article 2 of the Optional Protocol.

4.23 As regards the allegations under article 14 (1) and (3) (e) of the Covenant, namely the assessment of the testimony of the witnesses while they were suspects in the pretrial investigation, the author complains that during the pretrial investigation, three of them gave statements to a pretrial investigating officer accusing the author of knowingly buying parts of stolen cars when they were co-accused and that they changed their testimonies later. The court relied on the initial statements. Contrary to the statement of the author, the three witnesses were never suspected of being the author's accomplices and were therefore never under any pressure. The State party is thus of the view that the present complaint should be dismissed as manifestly unsubstantiated, pursuant to article 2 of the Optional Protocol.

4.24 As regards the allegations that the author's refusal to be assisted by a defence lawyer during the criminal interrogation on 22 October 2012 breached article 14 (3) (d), the State party states that the author has not exhausted domestic remedies, as he never complained before the domestic authorities about any procedural violations, while waiving his right to be defended by a lawyer, nor did he complain about any unlawfulness of the evidence received during his questioning.[23]

4.25 The State party recalls the jurisprudence of the Committee, in its general comment No. 32 (2007), para 37, and indicates that, in a similar way, article 31 of the Constitution[24]

[22] Decision of the Supreme Court of 3 May 2018 in criminal case No. 2K-152-699/2018, available from http://liteko.teismai.lt/viesasprendimupaieska/tekstas.aspx?id=35cd90f7-72aa-4934-a7c7-11df1b3385da (in Lithuanian).

[23] The State party refers to examples of case law of the domestic courts in which the courts examined the suspect's waiver of his right to be defended. See the review of the Supreme Court on application of the norms of the Code of Criminal Procedure regulating the rights of a suspect and the accused, available from https://www.lat.lt/lat-praktika/teismu-praktikos-apzvalgos/baudziamuju-bylu-apzvalgos/-> (in Lithuanian).

[24] http://www.lrkt.lt/en/about-the-court/legal-information/the-constitution/192.

and domestic case law state that the right to defence is, inter alia, guaranteed by providing suspects with the right to defend themselves in person without a defence lawyer, or by guaranteeing the right to be defended by a lawyer, which relates to the right of the person to waive the right to be defended by a defence lawyer and to defend oneself without a defence lawyer.[25]

4.26 The author never claimed that there had been any pressure on the part of the officials to waive his right to be defended by a defence lawyer. There were no circumstances to prove that the author was unable to defend himself without the assistance of a lawyer. On the contrary, in its decision, the regional court, in examining the accusation that the author had committed a criminal act under article 189 (1) of the Criminal Code, stated that "during the hearing of the district court V.V. asked to rely on his testimony given during the pretrial investigation".

4.27 There were no grounds for believing that the author's waiver was not voluntary. The author had no disability, was middle-aged and was the director of the company, and what is of the utmost importance is the fact that he had already held consultations with a lawyer in relation to the proceedings and thus the competent authorities could have reasonably accepted his waiver.

4.28 The State party cannot agree with the statement of the author that the purpose of his detention on remand from 18 to 31 October 2012 was inhuman treatment in order to extract a self-accusation and that due to the degrading treatment and the repeated suggestion of the investigating officers that he make a self-accusation, on 22 October 2012 the author agreed to the suggestion of the investigating officer that he refuse to be represented by a lawyer during questioning. The State party notes that there is a protocol whereby the author confirmed that the waiver was on his own initiative and he never complained about the conditions of his detention to the domestic institutions.

4.29 In any case, it was for the author to decide whether to provide the information regarding his emails and email passwords. Under domestic law (article 21 of the Code of Criminal Procedure) the author being a suspect could have refused to give that testimony. Indeed, the questioning of 22 October 2012 was very short and of a technical nature. It cannot be stated that the author gave evidence against himself, and according to the materials of the case possessed by the State party, the information provided by the author during questioning was not used in the criminal case against him.

4.30 As regards the testimony given by the author during questioning and its impact on the further investigation in the author's criminal case, the State party is of the firm view that this part of the complaint should be dismissed, not only for reasons of non-exhaustion of domestic remedies, but also for abuse of the right of submission.

4.31 Article 14 (3) (g) guarantees the right not to be compelled to testify against oneself or to confess guilt. That safeguard must be understood in terms of the absence of any direct or indirect physical or undue psychological pressure by the investigating authorities on the accused, with a view to obtaining a confession of guilt.[26] The State party is of the firm view that during questioning, the author was not compelled to testify against himself or to confess guilt and indeed did not give any information that was used against him afterwards. The State party wishes to specify that the author misleads the Committee in stating that he gave both his email and laptop passwords to the investigation. Furthermore, the email password that he disclosed was not relevant for getting access to his laptop and accordingly was not relevant for finding information about the cars sold by the author. In addition, according to the author's own admission, other employees of the company had access to his email and the authorities could have obtained the relevant information from persons other than the author.

4.32 The State party concludes that this part the communication is unsubstantiated: domestic remedies were not exhausted and, due to the submission of incorrect data, the author could be considered as abusing his right of submission.

[25] See https://www.lat.lt/lat-praktika/teismu-praktikos-apzvalgos/baudziamuju-bylu-apzvalgos/68 (in Lithuanian).

[26] Human Rights Committee, general comment No. 32, para. 41.

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

5.1 In his submission of 6 December 2019, the author claims the State party violated his right to fair trial under article 14 (5) of the Covenant. According to the case of *B.G.V. v. Spain*,[27] since the author was convicted for the first time by an appellate court, he should have been able to get his sentence reviewed by another appellate court. However, the Supreme Court declared his cassation appeals inadmissible, as confirmed by the State party. Article 369 of the Code of Criminal Procedure does not provide that the Supreme Court has a duty to review a conviction that first appeared at the appellate level after acquittal by a court of first instance, which in itself is contrary to article 14 (5) of the Covenant.

5.2 The author reiterates his claim that the State party violated his rights under article 14 (1) of the Covenant and his right to privacy under article 17 (1) and considers the arguments of the State party manifestly unreasonable.

5.3 With regard to the location of the laptop, the author challenges the statement of the State party that the building with registry number 7796-4001-7129 belonged to the company Tauvita as incorrect and contradicted by the certificate of ownership.

5.4 In addition, as confirmed by the State party in its observations, the author was neither present nor represented during the search of his building. In doing so, the State party denied him a separate personality from the company and violated his rights under article 16 of the Covenant.

5.5 By exclusively relying on the statements given by the witnesses while they were suspected and detained in inhuman conditions rather than the statements given in a public and contradictory manner before the tribunal, in its observations the State party misunderstands the nature of the proceedings before the Committee. Communications such as the present one are complaints not about a particular conviction under the Lithuanian Criminal Code, but about breaches of human rights during domestic judicial proceedings taken as a whole. Even if one of the articles of the Covenant was not mentioned in the initial communication, the Committee was provided with a description of a breach of human rights that is related to domestic legislation.

5.6 The author is of the view that inhuman or degrading conditions of detention should be taken into consideration by default during sentencing, since inhuman and degrading conditions in themselves punish a suspect. The compensation paid by the State party for inhuman and degrading conditions of detention are insignificant and in any event freedom or a smaller fine is more important for the author (and in fact for most people) than the insignificant amounts of compensation. By failing to take the degrading conditions of detention into account by default, the State party's courts failed to observe the provisions of articles 7 and 10 of the Covenant.

5.7 As far as the right to physical contact meetings with family members are concerned, in the case *Varnas v. Lithuania*, the European Court of Human Rights explained that there was no effective remedy in a case when a detainee wanted actual physical contact instead of money and accepted that application without requiring an exhaustion of domestic remedies. The author's situation is the same. He does not need money for the breach of his right to physical contact with members of his family, but he wants to achieve a regime change in the State party.

5.8 Contrary to the State party's observations, the author indicates that the conditions of his detention did not meet the requirements of the treatment of prisoners as set out in the Nelson Mandela Rules.[28]

[27] CCPR/C/84/D/1095/2002/Rev.1.

[28] The author indicates that he was not provided with sufficient food and suffered from hunger, the bedding was full of insects and there were no hygiene facilities. The author was allowed to use the shower only once and he was not provided with shampoo. The cells were equipped with a hole in the ground that was not adequately separated from the living area, in order to humiliate the author by exposing him to other inmates while using the toilet and there was no toilet paper. He was never allowed an hour in the open air.

5.9 Contrary to the State party's observation, the senior investigator from the Klaipeda region main police office did not inform the author about his interest in being represented by a lawyer. On the contrary, he abused the author's confidence and his lack of legal education and convinced him that a defence lawyer would disturb him.

5.10 The author considers that the State party should pay pecuniary damages in the amount of lost income due to breaches of the Covenant and non-pecuniary damages in the amount of 30 average monthly gross salaries in the State party, as well as his legal costs.

State party's additional observations on admissibility and the merits

6.1 On 18 February 2020, the State party maintained its position that the author's claims concerning the alleged violation of articles 7 and 10 (1) of the Covenant with regard to the conditions of his detention and the lack of conjugal visits must be declared inadmissible pursuant to articles 2 and 5 (2) (b) of the Optional Protocol as those allegations were lodged with the Committee before the available and effective domestic remedies had been exhausted at the national level.

6.2 The State party also maintains its position that the claim concerning the alleged violation of articles 14 (1) and 17 (1) of the Covenant with regard to the search which was allegedly conducted in a building that did not fall under the decision of the domestic court must be declared inadmissible pursuant to articles 2 and 5(2)(b) of the Optional Protocol, as the allegations raised in the present communication were lodged with the Committee before the available and effective domestic remedies had been exhausted at the national level. Moreover, the author's allegations are not substantiated.

6.3 In his two cassation appeals the author admits that the computer "had been found and seized from the company Tauvita during the search". The location of the computer seized during the search was mentioned in those cassation appeals purely for the sake of specificity, but not for the purpose of contesting the lawfulness of the search itself.

6.4 As regards the author's statement that the court of first instance did not take into consideration the laptop as evidence proving his guilt and acquitted him, and that there was therefore no point in him complaining about the search before he was convicted by the appellate court, the State party notes that this argument once again proves that the author was not alleging a violation of his right to home, owing to the location where the search was conducted, before the domestic authorities, but he was contesting the appellate court's interpretation of the purpose of the use of the data in the laptop.

6.5 As regards the author's complaint that neither the author nor his representative participated in the search, the State party recalls that pursuant to article 145 (4) of the Code of Criminal Procedure, if a search is carried out on the premises of a company, it must be carried out in the presence of a representative of that company. In the author's case, the search was carried out in the presence of the company's representative who had access to the auxiliary building, accompanied the officials and had no complaints regarding the unlawfulness of the search. Under the law there is no requirement for a lawyer to be present during such a search. In that regard, it should also be added that another employee, namely the author's cohabiting partner, was also present during the search of 15June 2012. Neither the author's cohabiting partner nor the author ever complained about the buildings in which the search had been carried out.

6.6 The State party also upholds its position that the author's complaint, invoking article 14 (3) (d) and (g) of the Covenant, about his waiver of the right to be defended by a defence lawyer and providing self-accusatory testimony must be declared inadmissible pursuant to articles 2 and 5 (2) (b) of the Optional Protocol. The State party also notes that the allegations raised in the present communication were lodged with the Committee before the available and effective remedies had been exhausted at the national level and, moreover, that the author is abusing his right of submission.

6.7 The State party also notes that the author does not provide the Committee with a description of the alleged pressure to waive his right to be defended by a defence lawyer that the authorities put on him.

6.8 As regards the new issues raised by the author in his comments on the State party's observations, such as an alleged denial of the right to review after conviction, under article 14 (5) of the Covenant, and an alleged denial of the author's right to be recognized as a separate person from the company, under article 16, these issues were not raised in the author's initial communication, and thus should not be considered by the Committee.

6.9 Lastly, the State party notes that the author considers that it should pay him "pecuniary damages in the amount of lost incomes" and "non-pecuniary damages in the amount of 30 average monthly gross salaries in the State party". The author does not substantiate this amount and does not provide the reasons why he is asking for 30 average monthly gross salaries. The State party notes that the alleged "lost income" is not related to the complaints in the present case. The State party submits that since in its firm view the communication is to be considered unsubstantiated, the author's claims for compensation should accordingly be rejected.

Additional comments from the author

7.1 Following the approval of the Committee, in line with rule 92 (7) and (8) of the Committee's rules of procedure, the author submitted additional comments to the State party's observations on 7 July 2020.

7.2 Regarding the State party's observation that the new claims raised by the author under articles 14 (5) and 16 of the Covenant should be considered inadmissible because they were not raised in his initial communication, the author submits that claims before the Committee can be brought within five years of the exhaustion of domestic remedies. He can therefore raise any new claims as he wishes until those five years expire. He could also lodge a new communication, but did not do so in order not to burden the procedure.

7.3 The author continues to contest the State party's account about the property where the laptop was found.

Observations of the State party on the author's additional comments

8.1 On 9 September 2020, the State party submitted its observations on the author's additional comments.

8.2 The State party draws the particular attention of the Committee to the falsification of the official document (the plan of the buildings) provided and invoked by the author's representative in his additional comments to the Committee. That fact is particularly striking and the State party holds such conduct of the author as an outrageous deceit of the Committee that constitutes an abuse of the right of submission.

8.3 The State party maintains its position that the search was carried out on the territory of the company, in the buildings of the company and in the auxiliary building; in other words, in the buildings covered by the court decision. The lawfulness of the search therefore raised no doubts in the case at issue.

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 the communication is admissible under the Optional Protocol.

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

9.3 The author claims that his rights under articles 7 and 10 (1) of the Covenant were violated by the inhuman and degrading conditions of his detention between 18 and 31 October 2012 and the lack of conjugal visits during this period. The Committee notes the author's claims that he did not complain about this situation, claiming there was no practical possibility for the Lithuanian courts to improve his situation. The Committee notes the State

party's position that the author has not exhausted domestic remedies, as required by article 5 (2) (b) of the Optional Protocol. The Committee recalls its jurisprudence in which it has stated that although there is no obligation to exhaust domestic remedies if they have no chance of success, authors of communications must exercise due diligence in the pursuit of available remedies and that mere doubts or assumptions about their effectiveness do not absolve the authors from exhausting them.[29] The Committee notes the extensive information provided by the State party, listing available domestic remedies in accordance with national legislation and the relevant jurisprudence of the Committee in similar cases. It also notes that the author has neither raised the conditions of his detention with the national authorities, nor requested any conjugal visits. The Committee therefore considers that it is precluded from examining the author's claims under articles 7 and 10 (1) for failure to exhaust domestic remedies, as required by article 5 (2) (b) of the Optional Protocol.

9.4 The author claims that the search on 15 June 2012 violated his rights under articles14(1) and 17 (1) of the Covenant, arguing that the search warrant issued by the district court of Klaipeda did not extend to the outside kitchen, where his laptop was found, and that this constitutes a breach of his right to a fair trial. He also alleges that as the outside kitchen was part of his property, this constituted an unlawful interference with his home. The Committee notes the State party's observations that the search was conducted fully in line with the requirements of national law and the well-established case law of the domestic courts, and that the author did not complain about the location of the search before the domestic courts. The Committee considers that the author has failed to explain how, in view of the information submitted by the State party, the State party acted unreasonably and arbitrarily. The State party provided sufficient evidence that the search was conducted lawfully and that domestic remedies were available and effective at the national level. The Committee considers the claims under article 14 (1) and 17 (1) non-substantiated and inadmissible.

9.5 The author claims that article 14 (3) (d) of the Covenant was breached when he was forced to refuse legal representation on 22 October 2012, as the refusal was signed while he was subject to degrading treatment in the detention facility, a lawyer was not present at the time of refusal, the investigator initiated the refusal, and his refusal was not sufficiently motivated. The Committee takes note of the State party's observations that the author never complained to the domestic authorities about any procedural violations while waiving his right to be defended by a lawyer. The Committee recalls its jurisprudence under article 14 (3) (d), in which it refers to two types of defence that are not mutually exclusive. Persons assisted by a lawyer have the right to instruct their lawyer on the conduct of their case and to testify on their own behalf. The Covenant provides for a defence to be conducted in person or with legal assistance of one's own choosing, thus providing the possibility for the accused to reject being assisted by counsel. The Committee considers that if the author was of the view that his rights had been violated during the questioning when the lawyer was not participating, he could have complained about it to the domestic authorities. There were no circumstances to prove that the author was unable to defend himself without the assistance of counsel, nor that the investigating officers put pressure on him to reject the presence of his lawyer. In addition, the Committee notes the author's claim that the purpose of his inhuman detention was to extract a self-accusation; however, as the State party notes, there is a protocol whereby the author confirmed that the waiver was of his own initiative (see para. 4.28 above) and he never complained at the domestic level about the conditions of his detention . The Committee therefore considers the claims raised by the author under article 14 (3) (d) inadmissible, pursuant to articles 2 and 5 (2) (b) of the Optional Protocol, for non-exhaustion of domestic remedies.

9.6 The author considers that the refusal to hear the five additional witnesses, namely the police officers present during the search, constitutes a violation of article 14 (3) (e) of the Covenant, and further claims that because the statements given by the two employees of the company while in detention were taken into account, instead of the statements given by them during the oral hearings, he has been precluded from being able to examine those witnesses. The author notes that when they made their first statements, the employees were co-accused

[29] For example, *X et al. v. Greece* (CCPR/C/126/D/2701/2015), para 8.5, and *Zsolt Vargay v. Canada* (CCPR/C/96/D/1639/2007), para. 7.3.

and in detention, while during the oral hearings they were witnesses, and that, under the applicable law, "accused persons enjoy the right to lie to defend themselves but witnesses are obliged to tell the truth". The Committee notes that these claims concern the evaluation of the facts and evidence by the domestic courts, which the Committee does not review, unless it can be ascertained that the evaluation was clearly arbitrary or amounted to a denial of justice, or that the court failed in its duty to maintain independence and impartiality. The State party has explained at length the reasons behind the decisions of the domestic authorities, and those authorities specifically addressed the arguments of the author on the issue (see paras 4.17–4.23 above). The Committee therefore declares that the author's claims under article 14 (3) (e) are inadmissible as non-substantiated.

9.7 The author claims that his rights under article 14 (3) (g) of the Covenant were violated when he provided self-accusatory evidence, providing his email password on 22 October 2012 after refusing legal representation. The Committee notes the author's claim that providing his email password led to his conviction. The Committee takes note of the State party's observations that the author provided misleading information to the Committee, stating that the information available on the laptop and in his email account could only be accessible after the author provided the password. The Committee considers that according to the domestic legislation of the State party, the author was not obliged to provide the password, and considers, in view of the documents submitted by both parties, including the fact that other persons had access to the laptop, that this claim is unsubstantiated and that the author has not exhausted domestic remedies. In view of the submission of incorrect data, the Committee considers, based on the documents available and shared by both parties, that the author provided misleading information, considers it an abuse of the right of submission and declares these claims inadmissible pursuant to articles 2, 3 and 5 (2) (b) of the Optional Protocol.

9.8 On the additional claims raised in the author's comments under article 14 (5) relating to the denial of the right to a review after conviction and under article 16 of the Covenant relating to the refusal by the State party to recognize the author as a separate person from the company, the Committee also notes the author's interpretation of a five-year limitation rule in his additional comments, dated 13 January 2020, that at any point before expiration of the five-year period from exhaustion of domestic remedies, the author can submit additional claims to the present communication or even submit a new communication. The Committee notes in this respect that under rule 99 (c) of its rules of procedure, a communication should indeed be submitted within five years of the exhaustion of domestic remedies.[30] However, the Committee recalls its jurisprudence that all claims must be raised by the author in the initial submission before the State party is asked to provide its observations on admissibility and the merits of a communication, unless the author can demonstrate why all the claims could not have been raised at the same time.[31] Since the author has not demonstrated why his new claims could not have been raised at an earlier stage, it would be an abuse of process for the new claims to be addressed by the Committee. The Committee thus finds the author's claims under articles 14 (5) and 16 inadmissible under article 3 of the Optional Protocol.

10. The Committee therefore decides that:

(a) The communication is inadmissible under articles 2, 3 and 5 (2) (b) of the Optional Protocol;

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

[30] CCPR/C/3/Rev.12.

[31] For example, *Jazairi v. Canada* (CCPR/C/82/D/958/2000), para. 7.2.