



# International Covenant on Civil and Political Rights

Distr.: General  
28 November 2023  
English  
Original: French

## Human Rights Committee

### Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 3703/2020\*, \*\*

<i>Communication submitted by:</i>	Annie Daboussi, Samy Daboussi and Sarah Daboussi (represented by counsel, Julien Martin and Ludovic Hennebel)
<i>Alleged victim:</i>	Jilani Daboussi
<i>State party:</i>	Tunisia
<i>Date of communication:</i>	5 March 2019 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 10 February 2020 (not issued in document form)
<i>Date of adoption of Views:</i>	14 July 2023
<i>Subject matter:</i>	Conditions of detention; access to health care in prison; arbitrary detention
<i>Procedural issues:</i>	Exhaustion of domestic remedies
<i>Substantive issues:</i>	Right to life; cruel, inhuman or degrading treatment or punishment; arbitrary detention
<i>Articles of the Covenant:</i>	6 (1), 7, 9 (1), 10 (1), 14 (1) and (3) (a) and (c) and 17
<i>Article of the Optional Protocol:</i>	5 (2)

1. The authors of the communication are Annie Daboussi, born on 18 December 1946, and her children Samy Daboussi, born on 23 June 1970, and Sarah Daboussi, born on 4 June 1975, all French nationals. They claim that Jilani Daboussi, husband of Annie Daboussi and father of the other authors, born on 12 January 1947, of Tunisian and French nationality, died as a result of ill-treatment inflicted during 30 months of arbitrary detention, in violation by the State party of articles 6 (1), 7, 9 (1), 10 (1), 14 (1) and (3) (a) and (c) and 17 of the

\* 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, Bacre Waly Ndiaye, Hernán Quezada Cabrera, José Manuel Santos Pais, Soh Changrok, Tijana Šurlan, Kobauyah Tchamdja Kpatcha, Teraya Koji and Imeru Tamerat Yigezu. Pursuant to rule 108 of the Committee's rules of procedure, Hélène Tigroudja did not participate in the examination of the communication.



Covenant. The Optional Protocol entered into force for the State party on 29 September 2011. The authors are represented by counsel.

### The facts as submitted by the authors

2.1 Jilani Daboussi worked as a doctor in Tunisia and held various public positions. He was a member of parliament, rapporteur of the Finance Commission, secretary general of the doctors' union and mayor of the town of Tabarka. In 2011, he was accused of embezzlement, corruption and favouritism by the National Commission of Investigation on Corruption and Embezzlement. Following these accusations, Jilani Daboussi became the victim of a media frenzy.<sup>1</sup> Numerous articles, including some written by his opponents and declaring him guilty, were published by several Tunisian media outlets. These media accusations provoked waves of violence against him. On 9 April 2011, some 20 individuals attacked his clinic and another clinic that was under construction. The assailants set fire to the building, destroyed medical equipment and vandalized private property including his office, car and family apartment. They also attacked his son's hotel. Archives were also stolen.<sup>2</sup> Jilani Daboussi lodged a complaint, asking the authorities to carry out an investigation, but to no avail; no effective investigation was ever carried out.

2.2 Jilani Daboussi also lodged a complaint with the President of the National Authority for Information and Communication Reform concerning the media manipulation of which he had been the target. On 18 April 2011, the National Commission of Investigation on Corruption and Embezzlement requested that an investigation be launched into the acts of corruption he was alleged to have committed. On 7 October 2011, Jilani Daboussi was summoned by the Jendouba Court and arrested inside the courthouse. He was the subject of three successive criminal prosecutions, based solely on unsubstantiated and unfounded accusations of corruption, and was remanded in custody. In a decision of 6 June 2012, the Court of Cassation concluded that one of the charges was unfounded.

2.3 At the time of his detention, Jilani Daboussi was 65 years old and had no health problems other than diabetes. On 24 January 2012, he suffered a cardiac arrest. It took the prison authorities several hours to react and organize his transfer to hospital. Jilani Daboussi was resuscitated in extremis, but the after-effects were significant: he had to undergo a strong chemical treatment, which led to end-stage kidney failure. From that point onwards, Jilani Daboussi underwent intense treatment involving peritoneal dialysis for 8 to 10 hours a night, 6 days a week.

2.4 On 23 June 2012, Dr. M.O., a specialist in internal medicine, decided to disconnect the dialysis machine to which Jilani Daboussi had been attached at Charles Nicolle hospital in Tunis since his cardiac arrest,<sup>3</sup> in the presence of N.H., a doctor at Mornaguia prison, and with the consent of the Minister for Justice and the Minister for Health. That night, Jilani Daboussi was transferred from the hospital to the detention centre, where he had to undergo dialysis either in his cell in the presence of his eight fellow inmates or in a room reserved for the prison administration, in deplorable hygiene conditions and without sterile equipment. However, numerous medical certificates issued in 2012 and 2013<sup>4</sup> reiterated that it was vital for him to be treated in hospital, as the treatment he was undergoing was incompatible with the hygiene conditions in detention and with being handcuffed to his bed.<sup>5</sup> Jilani Daboussi was also denied access to any form of hygiene and was reportedly not allowed to shower for

<sup>1</sup> See *L'audace*, "Droit de réponse de Jilani Daboussi", 12–25 May, 2011.

<sup>2</sup> See *La Presse*, "Ce n'est pas une vindicte populaire", 15 April 2011, and *Observatoire média tunisien*, "Dr Daboussi : un débat TV qui lui coûte cher", 11 April 2011.

<sup>3</sup> According to the authors, this decision was taken after the doctor wrote a message on social media in which he described Jilani Daboussi as a "scammer, a forger and a trafficker".

<sup>4</sup> Medical certificates dated 18 February, 13 March, 15 March and 16 March 2012 and 23 February 2013. According to a medical certificate dated 23 February 2013, Jilani Daboussi was to have a specialist consultation every 15 days, including laboratory tests.

<sup>5</sup> The authors do not provide any explanation concerning the allegation that Jilani Daboussi was handcuffed to the bed.

the duration of his detention.<sup>6</sup> The risk of contracting a fatal infection while undergoing dialysis in such conditions was particularly high. It was his wife who brought the sterilizing instruments to the prison for him. As prison doctor, N.H. refused to have Jilani Daboussi transferred to Charles Nicolle hospital, to have a member of the hospital's medical staff come to the prison or to examine him herself. She also refused to help him with his dialysis, as she considered that he had learned to operate the dialysis machine himself. In these circumstances, Jilani Daboussi was frequently unable to carry out his daily dialysis sessions and sometimes went up to three days in a row without appropriate treatment or care.

2.5 An investigation was launched following repeated requests from the Human Rights League.<sup>7</sup> In this context, the Minister for Justice was obliged to request a medical opinion from the head of the nephrology department at the military hospital. The doctor concluded that Jilani Daboussi's state of health was incompatible with his continued pretrial detention.

2.6 On 29 December 2012, Jilani Daboussi contracted peritonitis, which necessitated his transfer to the intensive care unit at Charles Nicolle hospital. He was then transferred to Mornaguia prison, despite conditions of detention there that were clearly unsuited to his state of health.

2.7 His lawyer submitted 16 successive reasoned requests for Jilani Daboussi's early release or for his trial to be brought forward, so that he could benefit from the medical care he needed in view of his state of health and the imminent danger he faced. These requests were all rejected; in some cases no justification was given,<sup>8</sup> while in others no written decision was issued. Annie Daboussi repeatedly alerted the Tunisian authorities to the inhuman and degrading conditions in which her husband was being held and warned that, if no action was taken, he would undoubtedly die. Nonetheless, the Ministry of Justice issued a statement on 25 June 2012 affirming that Jilani Daboussi was subject to an ordinary and normal regime like all other accused persons and that he was receiving adequate care inside and outside the prison.

2.8 On 2 January 2013, Samy Daboussi filed a complaint, on behalf of his father, against Dr. M.O. for breach of medical ethics and criminal abuse. On 4 March 2013, Jilani Daboussi's lawyer also lodged a complaint with the public prosecutor at the Tunis Court of First Instance against Dr. M.O., in particular on the grounds that the prisoner's transfer to Mornaguia prison in conditions that were incompatible with his state of health posed a serious threat to his life and could lead to his death. Neither complaint was investigated. In September, October and December 2013 and January, March and April 2014, the authors filed applications for release on behalf of Jilani Daboussi. The Tunisian authorities failed to carry out an investigation or adopt any adequate protective measures.

2.9 On 16 April 2014, the Court of Cassation ruled that the indictment chamber had failed to give the reasons for its committal order and had not complied with the rules on fair investigation. It therefore overturned the indictment chamber's decision, but did not rule on Jilani Daboussi's pretrial detention. As he was ill and wished to appear before a trial court at the earliest opportunity, Jilani Daboussi had waived his right to lodge an appeal in cassation against these decisions.

2.10 On 5 May 2014, Annie Daboussi managed to meet with the Kef court judge, whom she alerted to her husband's deteriorating health. On 7 May 2014, the judge took the initiative of examining Jilani Daboussi's situation and requested that he be brought before the court; the prison management refused, as he was unable to travel. At that hearing, it was decided that he would be released at 8.30 p.m. However, Jilani Daboussi died during the night, after 30 months of detention in inhuman conditions.

2.11 On 10 December 2014, Samy Daboussi lodged a complaint against N.H. for gross negligence in the care of his father, repeated acts of mistreatment, insults in front of witnesses,

<sup>6</sup> To the best of the authors' knowledge, Jilani Daboussi was only able to shower once, upon his release from prison on 7 May 2014, a few hours before his death. He began a hunger strike in September 2012, which was met with general indifference.

<sup>7</sup> The date on which this investigation was opened is not specified.

<sup>8</sup> There are several interlocutory judgments in the file that mention only that the request has been denied.

and the planning and commission of acts of physical and psychological torture. No action was taken in follow-up to that complaint.

2.12 The authors then instructed three lawyers in France to take the necessary steps with the prosecutor's office of the Paris *tribunal de grande instance* (court of major jurisdiction) in order for an investigation to be launched under a mutual assistance procedure, with the cooperation of the Tunisian authorities. In a letter dated 12 September 2016, the public prosecutor at the Paris court confirmed that this request for mutual assistance had been received by the Tunisian authorities on 13 November 2015, that it was in the process of being executed and that the Paris prosecutor's office was still awaiting a response from its counterparts in Tunisia.

2.13 On 16 January 2017, Annie Daboussi filed a criminal complaint, with a civil claim, with the investigating judge of the Paris *tribunal de grande instance*, in accordance with article 85 of the French Code of Criminal Procedure, in respect of the violations suffered by her husband. However, to date, the authors have had no news on the progress of this procedure, due to the lack of cooperation from the Tunisian authorities.

### **The complaint**

3.1 The authors allege a violation by the State party of articles 6 (1), 7, 9 (1), 10 (1), 14 (1) and (3) (a) and (c) and 17 of the Covenant in respect of Jilani Daboussi, who was arrested and detained arbitrarily and unlawfully, in inhuman conditions, and who died in prison after being subjected to undignified treatment.

3.2 The authors recall the positive obligation of States to protect the lives of the persons they hold in detention, which includes providing them with appropriate care for their state of health.<sup>9</sup> In this connection, the delay by the prison authorities in transporting Jilani Daboussi to hospital after his heart attack on 24 January 2012, while he was in police custody, had serious medical consequences, as he developed kidney failure requiring him to undergo daily dialysis, while his conditions of detention did not allow him to receive the care necessary to treat it. The authors therefore consider that the State party failed to comply with its positive obligation to protect Jilani Daboussi's life, in violation of article 6 (1) of the Covenant, especially since the death in police custody of a person who was in good health at the time of his arrest is attributable to the State in the absence of convincing explanations to the contrary.<sup>10</sup> Although he was transferred to hospital several times during his detention, those transfers were always too late, as they were only ever authorized when Jilani Daboussi's state of health became critical. Each emergency transfer to hospital was thus a sign of his deteriorating health. In the authors' view, the causal link between Jilani Daboussi's continued detention in conditions that made it impossible for him to receive the necessary medical care for his health condition, and the deterioration of his health until his death, is therefore perfectly clear.

3.3 The authors also recall that Jilani Daboussi was not able to carry out his daily dialysis sessions or could only do so in conditions that were incompatible with the hygiene requirements for administering such treatment. The prison authorities thus deprived him of adequate medical care as required for his state of health. This situation constitutes treatment contrary to human dignity, in violation of article 10 (1) of the Covenant. In addition, Jilani Daboussi was deprived of adequate medical care from 23 June 2012 to 7 May 2014, during which time he was transferred several times to hospital when his condition became too critical. The denial of care and the resulting intense suffering endured by the victim for 23 months constitute inhuman treatment within the meaning of article 7 of the Covenant.

3.4 With regard to article 9 (1) of the Covenant, the authors argue that Jilani Daboussi was detained for 30 months between 11 October 2011 and 7 May 2014, during which time trial proceedings to hear the charges against him were not held. As soon as one charge was determined to be unfounded and the pretrial detention order was lifted, a new charge, accompanied by another detention order, was presented. In the case of the alleged corruption charges, 30 months' detention without trial does not seem proportionate to the seriousness of

---

<sup>9</sup> *Fabrikant v. Canada* (CCPR/C/79/D/970/2001), para. 9.3.

<sup>10</sup> *Sathasivani and Saraswathi v. Sri Lanka* (CCPR/C/93/D/1436/2005), para. 6.2.

the offence and the potential danger posed by the detainee. Moreover, Jilani Daboussi's detention was contrary to Tunisian legislation, which stipulates that the duration of pretrial detention may not exceed 6 months, renewable once for a maximum of 3 months in the case of an offence and twice for a maximum of 4 months each time in the case of a serious offence, i.e. a maximum of 9 months in the case of an offence and 14 months in the case of a serious offence.<sup>11</sup> In the authors' view, the arrest and detention of Jilani Daboussi were neither reasonable nor necessary and were, at least in part, punitive and arbitrary, in violation of article 9 (1) of the Covenant.

3.5 Furthermore, the authors claim that Jilani Daboussi was not informed in detail of the nature and cause of the charges against him and was not tried, in violation of article 14 (1) and (3) (a) and (c) of the Covenant. The fact that the detainee was suffering from an incurable terminal illness makes the duration of his detention without trial all the more unreasonable. The authors explain that his case was not actually investigated, but was stalled on the pretext that four of his co-defendants had lodged an appeal in cassation against the order of indictment and referral to the criminal chamber. Indeed, despite the fact that Jilani Daboussi had waived his right to appeal to the Court of Cassation against this order in order to obtain a faster final judgment, his detention was extended in 2013 and 2014, on the pretext that his case was closely linked to the cases of his four co-defendants, who, unlike him, had lodged an appeal before the Court of Cassation.

3.6 Finally, in breach of article 17 of the Covenant, the State party failed to protect Jilani Daboussi's right to privacy and family life. His home was vandalized by unidentified individuals, but the authorities did not open an investigation. The State party also damaged Jilani Daboussi's honour and reputation, since from the very first accusations he was portrayed as guilty in the Tunisian media and was arrested by surprise when he thought he was simply attending a hearing with the investigating judge. Furthermore, the State party failed to protect the physical and moral integrity of Jilani Daboussi and his family on the basis of the lack of access to the necessary medical care, the transfer from hospital to prison in the middle of the night and without prior notification, and the disconnection of the dialysis machine, all of which can also be examined from the angle of privacy, in accordance with the Committee's jurisprudence.<sup>12</sup>

3.7 The authors explain that because of Jilani Daboussi's continued detention in inhuman conditions attributable to the Tunisian authorities, an appeal to the domestic courts would have had no chance of success.

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

4.1 On 12 August 2020, the State party submitted its observations on admissibility, arguing that the present communication should be declared inadmissible on the grounds that it was unsubstantiated and constituted an abuse of the right of submission insofar as it was premature since domestic remedies had not been exhausted. No legal action in respect of the alleged violations detailed in the communication has been brought before the Tunisian courts or the competent administrative authorities. The State party notes that the authors have not set out in detail their reasons for considering that the general rule of exhaustion of domestic remedies should not apply to them. Furthermore, an undated and unsigned "letter" without confirmation of receipt or postage cannot prove that such a communication was sent to the President of the Republic, the prison authorities or the medical association. Such a letter cannot be considered an unresolved domestic remedy that would justify the direct submission of a complaint to the Committee.<sup>13</sup>

4.2 On 14 December 2020, the State party noted that the relevant health services had provided Jilani Daboussi with the necessary care throughout the legal proceedings against him. It should be recalled that, before his arrest and detention, Jilani Daboussi had suffered from chronic illnesses, having had two heart attacks, kidney failure and diabetes for over 20 years. During his detention, he received regular medical attention as required. To treat his

<sup>11</sup> Tunisia, Code of Criminal Procedure, art. 85.

<sup>12</sup> See *Morales Tornel et al. v. Spain* (CCPR/C/95/D/1473/2006).

<sup>13</sup> See *D.B.-B. v. Zaire* (CCPR/C/43/D/463/1991).

kidney failure, the health unit at the prison where he was being held organized automated peritoneal dialysis. The entire care team was made available to the detainee because of his fragile state of health. Whenever necessary, the detainee was transferred to the Charles Nicolle hospital or the Tunis military hospital. On 20 September 2012, his attending physician confirmed that Jilani Daboussi's kidney failure had reached the final stage, and thus required more frequent peritoneal dialysis sessions.

4.3 The State party maintains that, as a result, the prison management equipped the health unit for dialysis sessions. It trained two nurses in the peritoneal dialysis technique and also mobilized medical staff to monitor the detainee's haemodialysis. He underwent regular laboratory tests once a month and was regularly monitored by the prison health unit. In addition, he was provided with uninterrupted medication and prescribed a diet suited to his state of health. With regard to his heart problems, Jilani Daboussi underwent vascular haemodialysis sessions on time and whenever his state of health so required. He was monitored on a daily basis by both prison and public hospital doctors until the date of his release.

4.4 Contrary to the allegations made in the present communication, the State party maintains that the management of Mornaguia prison set up an equipped room for Jilani Daboussi's haemodialysis sessions, which required special hygiene conditions. This provision of care was based on the fundamental principle that detainees are the direct responsibility of the State and, as such, enjoy the right to treatment that preserves their human dignity and takes care of their health.

4.5 The State party explains that Jilani Daboussi was accused in several criminal cases and that two detention orders were issued against him. Those orders were issued by two investigating judges in charge of the cases. The accused was afforded all legal guarantees, such as the appointment of a lawyer and the right to appeal against decisions taken by the investigating judge. Jilani Daboussi was held in pretrial detention in accordance with the law and with respect for his dignity and physical integrity.

4.6 The State party contests the allegation of non-compliance with the time limit for pretrial detention established in article 85 of the Code of Criminal Procedure, as the detention lasted 30 months, since the period of pretrial detention ends when the indictment chamber refers the case to the criminal chamber. As a result of this decision, Jilani Daboussi was no longer in pretrial detention, but rather detained at the disposal of the criminal chamber to which his case had been referred, and this chamber ordered his provisional release on 29 March 2013. Contrary to what has been claimed by the authors, all phases of the accused's trial took place in conformity with Tunisian legal provisions. The ruling of the Court of Cassation of 6 June 2012, which overturned the indictment chamber's decision, was issued to enable the other defendants to benefit from their right of appeal and is proof of the proper running of proceedings in this case.

4.7 As for the authors' allegations that Jilani Daboussi was subjected to a campaign of media defamation and verbal abuse, and that his property was looted and set on fire and that the authorities failed to provide him with protection, the State party recalls that, during that period, Tunisia was experiencing severe social upheaval following the 2011 revolution. Jilani Daboussi was fully entitled to take legal action against the perpetrators of those offences. Many victims of similar attacks following the revolution have brought cases before the Tunisian courts.

4.8 Lastly, the State party notes that, contrary to the authors' claims, legal proceedings were brought against the criminals who looted his property on 9 April 2011. Five individuals were prosecuted by the Public Prosecution Service for theft committed during a fire, riot, revolt or other disturbance, and for deliberately setting fire directly or indirectly to premises inhabited or intended for habitation and deliberately causing damage to the real estate or private property of others. On 3 February 2020, the Jendouba criminal chamber handed down prison sentences of between 8 and 18 years to the defendants.

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

5.1 On 4 December 2020 and 14 April 2021, the authors submitted their comments on the State party's observations. They dispute the State party's argument concerning the failure to

exhaust domestic remedies and recall that after Annie Daboussi sent letters to the Tunisian authorities to alert them to her husband's inhuman conditions of detention, the Ministry of Justice's only response was a statement dated 25 June 2012 affirming that Jilani Daboussi was subject to an ordinary and normal regime of detention and that he was receiving adequate care inside and outside the prison. This official position of the Minister for Justice is a clear denial of the reality of Jilani Daboussi's detention conditions and the seriousness of his state of health. In these circumstances, even though the highest Tunisian authorities had been alerted, legal action would have had no prospect of success. The authors add that the Tunisian authorities refused to investigate the circumstances of Jilani Daboussi's death and never intended to follow up on the French authorities' request for mutual legal assistance transmitted on 13 November 2015.

5.2 On the merits, the authors note that the State party provides no medical reports or evidence to support the allegation that Jilani Daboussi was suffering from kidney failure prior to his detention. The authors refute this allegation. They recall that numerous medical certificates attested to the fact that Jilani Daboussi should not have been kept in detention in view of his state of health and to the dialysis sessions he was forced to conduct himself. Furthermore, despite medical certificates stipulating the need for laboratory tests every two weeks, Jilani Daboussi received them only once a month. Finally, the authors point out that the State party has provided no evidence to support its allegations that two nurses were trained and that a room equipped for dialysis was set up.

5.3 Contrary to the State party's assertion, the authors maintain that neither the Code of Criminal Procedure nor any other provision of Tunisian law refers to "detention at the disposal of the criminal chamber". In addition, Jilani Daboussi's pretrial detention was arbitrary, since there was no decision by a Tunisian court setting out the grounds for extending pretrial detention in accordance with the provisions of the Code of Criminal Procedure, and in particular as regards the existence of a risk of absconding, disturbing public order or hindering the proper conduct of the proceedings. The absence of such risks is mainly due to the fact that Jilani Daboussi was summoned to a free hearing on 7 October 2011, which he attended of his own accord, only to be notified that he was being placed in pretrial detention.

5.4 Lastly, the authors assert that the mere fact that convictions were handed down against five individuals in a judgment of 3 February 2020 (which has never been produced by the State party), i.e. almost nine years after the events in question, confirms the State party's failure to meet its obligation to carry out an effective investigation in good time.

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

### *Consideration of admissibility*

6.1 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.

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

6.3 The Committee notes that the State party contests the admissibility of the present communication on the grounds that it is an abuse of the right of submission, insofar as it is premature, having been submitted before the exhaustion of domestic remedies. The Committee does not consider it necessary in this case to address whether or not the communication constitutes an abuse of the right of submission, but instead the exhaustion of domestic remedies.

6.4 The Committee recalls, firstly, that the State party has a duty not only to carry out thorough investigations of alleged violations of human rights brought to the attention of its authorities, but also to prosecute, try and punish anyone held to be responsible for such

violations.<sup>14</sup> It also recalls its jurisprudence to the effect that, for the purpose of article 5 (2) (b) of the Optional Protocol, the author of a communication must make use of all administrative or judicial avenues that offer a reasonable prospect of redress.<sup>15</sup> The Committee takes note of the information and documentation provided by the authors concerning the complaints and requests filed on Jilani Daboussi's behalf with various authorities in the State party to challenge the actions of doctors in administering the treatment his terminal illness required, including a criminal complaint dated 4 March 2013 to the public prosecutor at the Tunis Court of First Instance, none of which led to an investigation. In addition, the Committee notes the numerous requests for Jilani Daboussi's early release or for his trial to be brought forward so that he could benefit from the necessary medical care, which were rejected without any justification whatsoever. Consequently, insofar as the State party has not demonstrated the existence of other domestic remedies which the authors should have exhausted, and given that the domestic remedies used were unreasonably prolonged and did not enable Jilani Daboussi to obtain a substantiated decision in respect of his claims – he was unable to invoke an effective violation of a right – the Committee considers that it is not precluded by article 5 (2) (b) of the Optional Protocol from considering the present communication.

6.5 The Committee notes the authors' claims under article 14 (1) and 3 (a) of the Covenant. However, in the absence of any further pertinent information on file, and due to the general nature of claims brought forward by the authors, the Committee considers that the authors have failed to sufficiently substantiate these allegations for the purposes of admissibility. Accordingly, it declares this part of the communication inadmissible under article 2 of the Optional Protocol.

6.6 The Committee notes the authors' complaints under article 17 of the Covenant concerning the lack of investigation into the interference by private persons in the family home, the press attack on Jilani Daboussi's honour and reputation and the lack of access to necessary medical care. The Committee first notes that the authors do not appear to have taken any steps before the domestic courts in relation to the allegations of attacks on Jilani Daboussi's reputation. Consequently, this part of the communication is inadmissible under article 5 (2) (b) of the Optional Protocol. Concerning the authors' remaining claims raised under article 17 of the Covenant, the Committee considers that they have been insufficiently substantiated for the purposes of admissibility and declares them inadmissible under article 2 of the Optional Protocol.

6.7 However, the Committee is of the view that the authors have sufficiently substantiated their other claims for the purposes of admissibility and proceeds to consider the merits of the claims made under articles 6 (1), 7, 9 (1), 10 (1) and 14 (3) (c) of the Covenant.

#### *Consideration of the merits*

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

7.2 The Committee takes note of the authors' claim under article 6 (1) of the Covenant that the State party failed to fulfil its positive obligation to protect the life of Jilani Daboussi. In this regard, the Committee refers to its general comment No. 36 (2018) on the right to life, in which it explained that States parties had a heightened duty of care to take any necessary measures to protect the lives of all individuals deprived of their liberty, and that this included providing them with the necessary medical care and appropriate regular monitoring of their health.<sup>16</sup> In this case, Jilani Daboussi was diagnosed with end-stage kidney failure and placed on peritoneal dialysis for 8 to 10 hours a night, 6 days a week, and suffered cardiac arrest while in detention due to the delay by the prison authorities in transporting him to hospital. The Committee notes the State party's assertion that Jilani Daboussi underwent laboratory testing once a month, whereas the medical certificate of 23 February 2013 had prescribed a specialized consultation every 15 days with laboratory tests. It also notes that no investigation

<sup>14</sup> *Boudjemai v. Algeria* (CCPR/C/107/D/1791/2008), para. 7.4.

<sup>15</sup> *Colamarco Patiño v. Panama* (CCPR/C/52/D/437/1990), para. 5.2.

<sup>16</sup> Human Rights Committee, general comment No. 36 (2018), para. 25.



was launched following complaints – including a criminal complaint – against the doctors who should have been administering the necessary treatment to Jilani Daboussi. The Committee further notes that the State party did not open an investigation to examine the complaints made about the way in which Jilani Daboussi’s essential treatment was being administered. In the absence of any information from the State party on the follow-up given to these complaints, the Committee concludes that the State party failed in its duty to protect the life of Jilani Daboussi, who was under the authority of the State, in violation of article 6 (1) of the Covenant.

7.3 The Committee takes note of the authors’ claims that the State party violated article 7 of the Covenant in respect of Jilani Daboussi, due to the incompatibility of his conditions of detention with the strict hygiene conditions required by the treatment he was to receive on a daily basis. The Committee notes the State party’s assertion that the prison management set up a room equipped for Jilani Daboussi’s haemodialysis sessions, which required special hygiene conditions. The authors dispute this assertion on the grounds that the State party has provided no evidence to support its claims that two nurses were trained and that a room equipped for dialysis was set up. In view of the gravity of the allegations and in the absence of any more specific evidence concerning the measures allegedly taken by the State party, the Committee considers that due weight must be given to the authors’ allegations, provided that they have been sufficiently substantiated, and concludes that the facts before it disclose a violation of Jilani Daboussi’s rights under article 7 of the Covenant.

7.4 In view of the foregoing, the Committee will not consider separately the claims relating to the violation of article 10 of the Covenant.

7.5 The authors claim that Jilani Daboussi’s pretrial detention, which was extended to 30 months without a judgment on the merits of the charges against him, was not proportionate to the seriousness of the offence and the possible danger he could present, and was also contrary to Tunisian law, in violation of article 9 (1) of the Covenant. They explain that, according to article 85 of the Tunisian Code of Criminal Procedure, pretrial detention can be ordered for a maximum of 9 months in the case of an offence and 14 months in the case of a serious offence. The State party contests the allegation that the detention was unlawful, arguing that it was in line with the Code of Criminal Procedure. The Committee recalls that deprivation of liberty is lawful only when it is applied on such grounds and in accordance with such procedure as are established by domestic law and when this is not arbitrary.<sup>17</sup> The notion of “arbitrariness” is not to be equated with “against the law”, but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law, as well as elements of reasonableness, necessity and proportionality.<sup>18</sup>

7.6 In the present case, the Committee notes that the State party has merely asserted that Jilani Daboussi’s 30-month pretrial detention was lawful, without explaining the inconsistency with the limits set out in article 85 of the Code of Criminal Procedure. In addition, the State party notes that for part of his detention, Jilani Daboussi was “in detention at the disposal of the criminal chamber,” without clarifying this notion or providing a legal basis for it. Furthermore, the judicial authorities repeatedly extended Jilani Daboussi’s pretrial detention without offering the slightest explanation to justify the need to keep him in custody, given that he was suffering from a terminal illness requiring special treatment. Lastly, the Committee notes that Jilani Daboussi was in pretrial detention for a period of 30 months, during which time, even though decisions were taken on procedural shortcomings raised by his co-defendants, no decision was taken on the merits of the charges against him. The Committee concludes that, in the circumstances of the case, Jilani Daboussi’s pretrial detention was arbitrary and therefore in violation of article 9 (1) of the Covenant.

7.7 Finally, the Committee notes the authors’ claim under article 14 (3) (c) of the Covenant and recalls that, under this article, everyone has the right to be tried without undue delay.<sup>19</sup> The Committee also recalls that the right of the accused to be tried without undue delay is not only designed to avoid keeping persons too long in a state of uncertainty about

<sup>17</sup> *Israil v. Kazakhstan* (CCPR/C/103/D/2024/2011), para. 9.2.

<sup>18</sup> Human Rights Committee, general comment No. 35 (2014), para. 12.

<sup>19</sup> See *Taright et al. v. Algeria* (CCPR/C/86/D/1085/2002), para. 8.5.

their fate and, if held in detention during the period of the trial, to ensure that such deprivation of liberty does not last longer than necessary in the circumstances of the specific case, but also to serve the interests of justice.<sup>20</sup> In addition, in cases where the accused are denied bail by the court, they must be tried as expeditiously as possible.<sup>21</sup> The Committee notes that Jilani Daboussi was arrested on 11 October 2011 and that no decision had been taken on the merits of the charges brought against him, even at first instance, until the end of his pretrial detention on 7 May 2014. Furthermore, no fewer than 16 successive requests for Jilani Daboussi's early release or for his trial hearing to be brought forward – on the grounds that his health was in imminent danger – were submitted to the judicial authorities, all of which were rejected without explanation or ignored. However, the State party has not given any particular reason to justify the denial of these requests for his release or the delay in obtaining a first-instance ruling on the charges against Jilani Daboussi. In this respect, the Committee recognizes that, as this was a corruption case involving persons other than Jilani Daboussi, who availed themselves of their procedural rights, the proceedings could take some time. It notes, however, that Jilani Daboussi did not initiate these procedural challenges himself and had even waived his right to appeal to the Court of Cassation in the hope of speeding up the proceedings in order to obtain a judgment on the merits. The Committee is of the opinion that the delay in trying him is aggravated by the fact that his pretrial detention was uninterrupted and that Jilani Daboussi suffered from serious health problems. In the light of the information submitted to it and in the absence of a satisfactory explanation by the State party, the Committee concludes that there has been a violation of article 14 (3) (c) of the Covenant.

8. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts before it disclose a violation of articles 6 (1), 7, 9 (1) and 14 (3) (c) of the Covenant in respect of Jilani Daboussi.

9. Pursuant to article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the authors with an effective remedy. This requires it to make full reparation to individuals whose Covenant rights have been violated. In the present case, the State party is under the obligation to provide adequate compensation to the authors for the violations that Jilani Daboussi suffered. The State party is also under an obligation to take steps to prevent similar violations in the future.

10. By becoming a party to the Optional Protocol the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not and, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy in case a violation has been established. In this respect, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the present Views. The State party is also requested to publish the present Views and to have them widely disseminated in the official language of the State party.

---

<sup>20</sup> Human Rights Committee, general comment No. 32 (2007), para. 35.

<sup>21</sup> *Ibid.*