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International Covenant on Civil and Political Rights

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Human Rights Committee

Decision adopted by the Committee under the Optional Protocol, concerning communication No. 3314/2019*, **

Communication submitted by:	A.G. (represented by counsel, Stanislovas Tomas, and, subsequently, Arūnas Kazlauskas)
Alleged victim:	The author
State party:	Lithuania
Date of communication:	22 July 2016 (initial submission)
Document references:	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 31 October 2023 (not issued in document form)
Date of adoption of Decision:	31 October 2023
Subject matter:	Fair trial
Procedural issues:	Lack of substantiation
Substantive issues:	Right to cross-examine witnesses; witness's declaration obtained under duress
Articles of the Covenant:	7 and 14 (1) and (3) (b),(c), (d) and (e)
Articles of the Optional Protocol:	1 and 5 (2) (b)

1. The author of the communication is A.G., a national of Lithuania, born on 29 August 1974. The author claims that the State party has violated his rights under article 7 and article 14 (1) and (3) (a) through (e). The author is represented by counsel.

Facts as submitted by the author

2.1 The author was an elder in the choir of the Basilica of Saint Michael in Marijampole, Lithuania, and a local leader of the Lithuanian political party "Order and Justice". On 19 April 1994, the author, along with five other men (G.S., G.M., G.J., R.A. and Z.V.), travelled by car outside Marijampole to recover $14,000, supposedly stolen from his mother's home in December 1993. Initially, the author did not know who had stolen the money but he later suspected Z.V. and his friend R.A. of having stolen it. Since 19 April 1994, R.A. and Z.V. have been listed as missing.

* Adopted by the Committee at its 139th session (9 October–3 November 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.

2.2 On 29 April 1994, the pretrial investigation into the disappearance of R.A. and Z.V. began, and on 26 October 1994, the author and three others, G.S., G.M. and G.J., were detained on suspicion of killing R.A. and Z.V. The author indicates that the pretrial investigation was discontinued until 2004 and that it was interrupted on various occasions.

2.3 On 16 June 2005, Vilnius City District Court No. 1 ordered a supervision measure of detention of G.M. and G.S. for a period of three months. On 27 and 30 June 2005, G.S. was interrogated by the pretrial investigation judge as a suspect.[1] The author indicates that, according to minutes of both interrogations, which are identical, G.S. accused the author of killing R.A. and Z.V.[2]

2.4 Before finishing the three-month period of detention, on 30 August 2005, both G.M. and G.S. were released and the pretrial investigation into their involvement in the disappearance was discontinued.[3]

2.5 In March and April 2006, the author was interrogated several times by a police officer without the presence of his lawyer.[4] On 22 March 2006, the same officer told the author that his family was in a difficult economic situation. The author indicates that he understood that the officer was requesting a bribe, which the author did not provide. On 24 March 2006, the officer made a unilateral declaration, accusing the author of bribing him during one of their interrogation sessions.

2.6 On 20 April 2006, the author made a declaration, addressed to the Police Commissariat of the Trakai Region, in which he refused to communicate with the police officers investigating his case, including the one who allegedly requested a bribe from him during his interrogation without the presence of his lawyer. On 21 April 2006, the author submitted a complaint to the prosecutor, claiming that the officers visited him every day and used psychological pressure in order to force him to plead guilty. He asked the prosecutor to ensure that his lawyer was present during interrogations.[5]

2.7 On 25 July 2007, the author lodged a complaint alleging that the pretrial investigation was too long.[6] On 27 August 2007, the Vilnius City Second District Court ordered that the pretrial investigation should end by 12 October 2007.

2.8 On an undetermined date, the pretrial investigation ended and the Kaunas Regional Court initiated its review of the case. In 2008, the first hearing before the Kaunas Regional Court took place.[7]

2.9 On 27 May 2008, G.S. was interrogated as a witness before the Kaunas Regional Court. During his interrogation, G.S. changed his previous declaration and stated that on the evening of the disappearance of the two individuals, a conflict arose between the two of them and the author, but clarified that he and the author walked away from the argument. He also declared that during the pretrial investigation he was subjected to psychological violence by police officers, which compelled him to give false testimony. He also indicated that the officers proposed to release him immediately if he made a declaration against the author.[8]

[1] The author indicates that, according to the State party's procedural laws, suspects have the right to lie and that pretrial proceedings are not contradictory and not public.

[2] The author does not provide the minutes of the interrogations. However, he submits the translation provided in the order of the Lithuanian Court of Appeal dated 15 December 2010, according to which the three co-suspects were interrogated. G.S. was the only one to declare that the author was guilty of killing R.A and Z.V.

[3] The discontinuation of the pretrial investigation was established in the translation provided in the order of the Lithuanian Court of Appeal dated 15 December 2010, submitted by the author.

[4] The author indicates that he asked to be accompanied by his lawyer on several occasions. The author provided copies of those requests.

[5] The author submits a copy of those documents in Lithuanian and a non-official English translation.

[6] The communication contains a copy in Lithuanian and a non-official English translation.

[7] The author does not provide further information on the hearing.

[8] The author provides a copy of the declaration in Lithuanian and a non-official English translation supporting these allegations.

2.10 On 2 February 2009, the Kaunas Regional Court absolved the author of both charges, murder and bribery.[9]

2.11 On 15 December 2010, the Lithuanian Appellate Court upheld the judgment of the Kaunas Regional Court. The Court considered that the author should be acquitted, as none of the objective facts of the criminal act were proven.[10]

2.12 On 5 July 2011, the Supreme Court found that the statement by the police officer accusing the author of bribery was sufficient to demonstrate the author's culpability. The Court also found that the author's interrogation by the officer in the absence of his lawyer complied with the law. Therefore, the Supreme Court decided to discard the decision by the Lithuanian Appellate Court of 15 December 2010 and sent the case back to that Court.[11] On 27 November 2012, the Appellate Court convicted the author of both charges and sentenced him to 14 years in prison.[12]

2.13 On 25 June 2013, the Supreme Court upheld the judgment of the Lithuanian Appellate Court of 27 November 2012.[13]

2.14 The author indicates that on an unspecified date, he requested asylum in the Russian Federation, which was granted. At the time of submission of the complaint he was living in the Russian Federation.[14]

Complaint

3.1 The author claims that the decision of the Appellate Court of 27 November 2012 violated his right to a fair trial under article 14 of the Covenant. He also claims that his right to an effective public cross-examination of witnesses, as protected under article 7 and article 14 (3) (e) of the Covenant, was violated as his conviction was based on a non-contradictory and non-public statement of a co-suspect, G.S., who confessed under police pressure, the threat of blackmail and ill-treatment. According to the author, G.S. changed the declaration he gave in the pretrial investigation, explaining that he was kept in a cold, damp, overcrowded, unventilated and fungus-ridden cell, in unsanitary conditions, surrounded by insects and rats. He also claims that G.S. was threatened with being kept in a cell with homosexuals and with being imprisoned for life.

3.2 The author also claims that the State party violated his rights under article 14 (1) and (3) (b) and (d) of the Covenant as he was not allowed to meet with his lawyer during the proceedings and was forced to undergo interrogation by police officers without the presence of his lawyer.[15]

3.3 The author also indicates that the decision of the Supreme Court revoking the previous decisions of the lower courts that acquitted the author of bribing the officer was based on the declaration of only one police officer.

3.4 Lastly, he claims that the duration of the proceedings, 19 years, violated his right to be tried without undue delay, as established under article 14 (3) (c) of the Covenant. He

[9] The author provides copy of the decision in Lithuanian and a non-official English translation of the main paragraphs, according to which the main reasoning of the Court was that there was not enough evidence against him, in particular because the declarations of the witnesses were contradictory.

[10] The author provides a copy of the decision in Lithuanian and a non-official English translation of the main paragraphs.

[11] The author does not provide further information about the reasoning of this decision and does not provide a copy of the decision in his communication.

[12] The author does not provide any details on the reasoning of this decision and does not provide a copy of it.

[13] The author provides a copy of the decision in Lithuanian and a non-official English translation of the main paragraphs.

[14] At the time of the examination of the communication by the Committee, the author is serving his sentence in Lithuania.

[15] The author informs that the decision of the Appellate Court convicting him of bribery was based solely on the declaration of an officer identified as G.

submits that since the start of the pretrial investigation on 29 August 1994 and the decision of the Supreme Court of 25 June 2013, he was under "continuous emotional stress".

3.5 The author requests the Committee to order the State party to reopen the author's case and to pay the damages and costs incurred.[16]

State party's observations on admissibility and the merits

4.1 By a note verbale dated 5 September 2019,[17] the State party submitted its observations on admissibility and the merits of the communication.

4.2 The State party does not deny that the circumstances of the present case fall under the scope of the application of article 14 since that article encompasses the right to a fair hearing by a competent, independent and impartial tribunal established by law. The State party recalls 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 an 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.[18]

4.3 The State party highlights that the author's claims under article 7 relate to the alleged violation of the rights of a person other than the author himself. The State party contends that individuals may not claim to be victims within the meaning of article 1 of the Optional Protocol unless their rights have actually been violated.[19] In the present situation, the author complains about the alleged violation of another person's rights and thus cannot claim to be a victim of that violation. In addition, the person in question never initiated administrative proceedings complaining about inhuman and degrading conditions when he was detained. The description of an alleged pressure inflicted upon G.S. by the authorities is also missing. Further, G.S. only raised this issue before the court of first instance. If he thought that police officers were pressuring him, he should have complained about it to the relevant authorities. However, no complaints about such alleged pressure were submitted. Moreover, G.S. never started administrative proceedings for compensation in respect of non-pecuniary damage for his detention in degrading conditions during his pretrial detention. The author's claim under article 7 of the Covenant should be declared inadmissible as incompatible *ratione personae*. In that connection, the State party provided a list of decisions in which the Lithuanian courts awarded compensations for overcrowded cells and other inhuman conditions, which demonstrates that effective domestic remedies are available.

4.4 As regards the author's complaints under article 14 (1) and (3) (e), the State party would like to draw the Committee's attention to its views in a case cited by the author,[20] noting that the referenced case is irrelevant to the situation of the author because it concerned the lack of a public hearing. The State party observes that the hearings in the author's case were aways public. The State party notes that the author was able to provide the domestic courts with his own version of events and to point out any incoherence in the statements of G.S. or inconsistencies with the statements of the other witnesses heard at the trial. The testimony given during the pretrial investigation by the witness was not the sole evidence on which the author's conviction was based. That testimony was also corroborated by G.M. and other witnesses, contrary to the author's claims about his cross-examination of G.S. The State party confirms that the author was able to cross-examine G.S. in the presence of his lawyer. The mere fact that G.S. refused to answer some of the author's questions does not necessarily lead to the conclusion that the testimony was obtained unlawfully.

4.5 In addition, the State party states that the author mentioned the presence of a secret agreement between the officers and G.S., although such an agreement was never confirmed.

[16] At the time of drafting, the author is in detention. However, at the time of submission of the communication, the author was in the Russian Federation.

[17] The State party resubmitted its observations on admissibility and the merits on 9 October 2019 as the Secretariat never received it.

[18] See Human Rights Committee, general comment No. 32 (2007).

[19] See *Leonid Raihman v Latvia* (CCPR/C/100/D/1621/2007).

[20] See *G.A. Van Meurs v. The Netherlands* (CCPR/C/39/D/215/1986).

While G.S. was released from detention on 30 August 2005, other restrictive measures, including the appropriation of documents, the obligation to register at a police station and a written obligation not to leave his place of residence, were imposed on him. His release was based on the fact that all immediate investigative actions had been carried out. Moreover, even after his release, G.S. continued to give testimony incriminating the author, and thus it cannot be stated that he gave his testimony solely because he wanted to be released from pretrial detention. The State party also notes that the author claims that suspects have a right to lie under domestic law, which is not true. A suspect has a right to testify, to remain silent or to refuse to give testimony about his own criminal actions and to provide important documents and items in line with the Criminal Code of Conduct. Even though the obligation of witnesses to give accurate testimony and to claim responsibility for false testimony is established in the Criminal Code, it does not mean that a suspect has a right to lie. The State party also emphasizes that G.S., who was questioned both as a suspect and as a witness, confirmed that it was the author who had shot and stabbed R.A. and Z.V.

4.6 With regard to allegations under article 14 (1) and (3) (b) and (d) of the Covenant, the author complained that he was not allowed to meet his lawyer without the supervision of police officers and that during his detention on remand he was invited to talk to police officers without his lawyer, as a result of which he had been pressured into offering a bribe to investigator G.

4.7 While the protection of the confidentiality of communication is important, there is also a need for States parties to take effective measures for the prevention and investigation of criminal offences.[21] Thus, no absolute right to confer at any time with one's counsel without any restriction exists, and it is important to assess whether the trial as a whole in a specific situation was fair.

4.8 The State party would like to note that, prior to his detention, the author was questioned as a witness on 1 March 2005. The author's right to have a lawyer was explained to him as soon as he was served with a note on suspicion and his interrogation as a suspect during his detention was carried out, with the participation of his lawyer, on 17 March, 3 April and 16 May 2006. Thus, from the moment he was informed about his status as a suspect, his right to have a lawyer was fully disclosed to him. Further, after the author's release from detention and after he was served with a final note on suspicion, he was questioned as a suspect in the presence of his lawyer on 5 September 2007. The author's lawyer participated during the formal interactions between him and other persons, actively exercising his right to ask questions. The author did not allege that any of his requests to speak with or write to his lawyer were not granted.

4.9 The State party notes that the complaint lodged by the author's lawyer about the alleged lack of confidentiality during meetings with his client were isolated episodes and that he only complained about that matter at the beginning of the author's pretrial detention. All of the above interactions, including processes relevant to procedural decisions, during which evidence was collected and invoked, were carried out in his lawyer's presence, which means that he had an opportunity to make remarks to the investigative officers or to ask questions.

4.10 The State party also notes the complaint of the author's lawyer to the Lukiskes Remand Prison, in which he stated that he could not complain to the police department because the officers of the prison did not participate in his meetings with the author. The State party notes that the author's lawyer did not properly submit such a complaint. In that connection, the State party notes that it is possible to submit a claim for damages before the administrative courts under articles 6.271 and 6.272 of the Civil Code of Lithuania. In addition, the administrative court can oblige an authority or an officer to act in case of any omission or delay in following up on such claims. The case law of administrative courts shows that they are responsible for the examination of those kinds of complaints. If the author or his lawyer thought that the replies were unsatisfactory or inconclusive, or that there was no reply at all, they could have complained about that. They only complained to a prosecutor in charge of the case, to the Lukiskes Remand Prison and to the Police Office of the Trakai Region. No complaint was submitted to the administrative courts, which would have obliged

[21] *Antonius Cornelis Van Huslt v. The Netherlands* (CCPR/C/82/D/903/1999).

the authorities to act in a certain manner or to take action with regard to compensation for damages. The State party therefore considers that this complaint is inadmissible because of non-exhaustion of domestic remedies.

4.11 Moreover, the author's lawyer only asked to add the complaints of his client and himself about the lack of privacy of their communication to the case during the fresh examination of the case at the Court of Appeal. The Court of Appeal decided to add those documents to the case material and did not find that the evidence was acquired unlawfully or that the author's right to fair trial as a whole, including his right to defence as one of the aspects of the right to fair trial, was breached.

4.12 The State party also recalls the Committee's decision in the case of *G.J. v. Lithuania*,[22] in which the author was also suspected of murder and alleged that he was interrogated in the absence of his lawyer and that the investigation officer attempted to force him to confess his guilt. In that case, which is similar to the present one, the Committee held that the author actually never confessed guilt and thus his claim was insufficiently substantiated. The State party is of the opinion that, given the similarities, a similar position should be taken for the present case.

4.13 The State party also observes that the author was detained between 17 March and 22 November 2006 and that the pretrial investigation ended on 11 October 2007. Thus, the author could have formulated his defence strategy together with his lawyer in full confidentiality. The State party considers that the author failed to indicate in his complaint how the alleged lack of those meetings had influenced his ability to fully defend himself from the murder charges.

4.14 With regard to the attempt to bribe the investigator, the State party notes that the author's claim that the only evidence about this incident is the investigator's report is not correct. There was also a recording of the conversation between the author and his cellmates, during which the author confirmed that he offered a bribe to an officer. The secret surveillance of the author was authorized by the court on 20 March 2006 and thus could have been used as the evidence in the case in order to find the author guilty of attempted bribery. It does not appear from the casefile that the author asked to be assisted by his lawyer during the attempt to bribe the investigator or that he asked for his lawyer prior to that conversation. It appears from the casefile that the author was already considered a suspect and that he initiated the conversation with the officer, asking him whether it was really necessary to continue the pretrial investigation and offering to terminate it in exchange of money.

4.15 The State party further notes that the author's transfer between the police stations was reasonable in order to ensure that he did not influence the other parties to the proceedings. There was some information in the casefile that the author might pressure the other participants to the proceedings. The State party notes that: false testimony was already given before in the author's case; the author's brother considered finding a woman who could testify that she had seen R.A. and Z.V alive so that the author could be released from detention; and the author tried to give a letter to his family through a person he was detained with. Thus, it was reasonable to believe that the author could try to influence other persons and to obstruct the investigation. The State party is of the opinion that the context of the confidential meetings between the author and his lawyer should not be examined in an abstract and isolated manner and the fairness of the proceedings as a whole should be assessed. The State party maintains that proceedings as a whole of the author's case were fair and his complaint should be considered as unsubstantiated.

4.16 As regards allegations under article 14 (3) (c), the author complained about the length of the pretrial investigation and the criminal proceedings against him. He claimed that the pretrial investigation was opened on 29 August 1994 and that the final judgment of the Supreme Court was adopted on 25 June 2013. He also contended that between 17 March and 22 November 2006 and 22 November 2006 and 25 July 2007, no procedural actions were taken.

[22] *G.J. v. Lithuania*, communication No. 1894/2009.

4.17 The State party notes that there is an effective domestic remedy in case of excessively long proceedings in Lithuania. Damage caused by lengthy proceedings must be compensated for under articles 6.272 of the Civil Code of Lithuania and the possibility of claiming damages for unreasonably long legal proceedings has been and continues to be developed in the case law of both the general and administrative courts. The European Court of Human Rights has acknowledged that, as of 6 February 2007, claims for damages under article 6.272 of the Civil Code have become an effective domestic remedy in the cases concerning the length of proceedings.[23] In that connection, the author could have applied to the domestic courts, claiming excessive length of proceedings, and asked for compensation, which would have been an effective remedy in his situation.

4.18 Thus, it is the State party's view that the author has failed to duly exhaust all domestic remedies and therefore the national authorities were unable to assess the author's allegations in this regard and to award him compensation. The Committee has already found a similar complaint against Lithuania inadmissible because the person at issue had failed to pursue a civil claim for the undue length of proceedings.[24] Thus, this part of the communication should be declared inadmissible for non-exhaustion of domestic remedies under article 5 (2) (b) of the Optional Protocol to the Covenant.

4.19 Should the Committee consider this claim admissible, the State party emphasizes that the determination of undue delay of the proceedings depends on the circumstances and complexity of the case.[25] The State party also considers that it is reasonable to assess the circumstances of each case, the complexity of the case, the conduct of the accused and the manner in which the matter was dealt with by the administrative and judicial authorities.[26] The European Court for Human Rights also held that the applicants' conduct constitutes an objective fact which cannot be attributed to the respondent State and must be taken into account in determining whether or not the length of the proceedings exceeds what is reasonable.[27] In addition, the Court held that when accused persons flee from a State which adheres to the principle of the rule of law, it may be presumed that they are not entitled to complain of the unreasonable duration of proceedings after they have fled, unless they can provide sufficient reasons to rebut that presumption.[28]

4.20 The State party notes that the pretrial investigation was indeed opened on 29 August 1994 and suspended on 29 November 1994. This procedural decision was taken on account of false testimony given by witnesses at that time, namely that they had seen R.A. and Z.V alive. At that time, the author was suspected of unlawful deprivation of liberty. The author only had a status of a suspect for a short period of time (26 October–4 November 1994) when he was detained. The author was on remand custody only for 10 days and it cannot be said that he had to bear an excessive burden at that time. The pretrial investigation ended on 29 November 1994 and no further investigative action was carried out in respect of the author until 2004. Thus, the period between 1994 and 2004 should not be calculated when deciding whether the length of the proceedings as a whole was reasonable. The pretrial investigation was reopened in 2004 with regard to the murder of R.A. and Z.V. The pretrial investigation concerned not only the events that happened in 1994 and was also characterized by conflicting testimony of witnesses, which rendered it difficult to gather and present evidence of the alleged crimes.

[23] European Court of Human Rights, *Rimantas Savickas and 5 others v. Lithuania*, Application No. 66365/09, 15 October 2013.

[24] *T.J. v. Lithuania* (CCPR/C/107/D/1911/2009).

[25] Human Rights Committee, general comment No. 32 (2007); see also the views of the Committee's in *Wolf v. Panama*, communication No. 289/1988 and *Stephens v. Jamaica* (CCPR/C/55/D/373/1989).

[26] General comment No. 32 (2007); see also European Court of Human Rights, *Pelissier and Sassi v. France*, Application No. 25444/94, para. 67, *Pedersen and Baadsgaard v. Denmark*, Application No. 49017/99, para. 45.

[27] European Court of Human Rights, *Case of Sociedade de Construçôes Martins & Viera, Lda and Others v. Portugal*, Applications No. 56637/10, 59856/10, 72525/10, 7646/11 and 12592/11, Judgment of 30 October 2017.

[28] European Court of Human Rights, *Case of Vayiç v. Turkey*, Application No. 18078/02, Judgment of 20 June 2006, para. 44.

4.21 Moreover, the case involved the examination of a number of witnesses. Over 60 persons who might have had information relevant to the investigation were identified and questioned; two anonymous witnesses submitted essential information for the investigation; suspects were questioned several times; verification of testimony at the crime scene was concluded; several interrogations were carried out; the crime scene was investigated several times; a gun was found at the crime scene, an audio recording was submitted by R.A's sister; identity documents of the victims and several letters were analysed; several forensic reports were obtained; samples of handwriting of several witnesses were obtained and examined; information from the authorities was requested; secret surveillance measures were ordered; international legal assistance was sought; a psychiatric evaluation of the author was performed; and other relevant information was gathered.

4.22 Although the Court ordered the arrest of the author on 30 June 2005, he was only arrested on 17 March 2006 and only because he absconded and could not be found. In that connection, the State party maintains that a person cannot rely on a period spent as a fugitive, during which time he sought to avoid being brought to justice in his own country, and yet claim that the length of certain proceedings was excessive. Thus, it can be stated that the author's conduct protracted the investigation and, since he had fled abroad, international legal assistance had to be sought.

4.23 Between 17 March 2006, the time of his arrest, and 22 November 2006, when he was released from detention, more than 200 procedural actions requested by the author were executed and, between 22 November 2006 and 25 July 2007, another 88 procedural actions took place. Therefore, the claim is unsubstantiated.

4.24 In addition, the author claims that he had lodged a complaint about the length of the pretrial investigation and that the Court ordered the relevant authorities to end the investigation before 12 October 2007. While the author's submissions as to the Court's decision are correct, he failed to mention that the Court did not state that the pretrial investigation was taking too long, but only stated that, since 22 November 2006, many investigative actions had been performed and that six weeks should be enough for the remaining investigating actions.

4.25 The author's case was referred to trial on 19 November 2007, the first instance judgment was adopted on 2 February 2009, the Court of Appeal adopted its judgment on 15 December 2010 and the case was remitted back to it for fresh examination by the Supreme Court on 5 July 2011. Subsequently, the Court of Appeal adopted the judgement convicting the author on 27 November 2012 and the appeal on points of law submitted by R.A's sister and the author was dismissed by the Supreme Court on 25 June 2013. Thus, the first instance judgment was adopted within 16 months from the transfer of the act of indictment to the trial court, the appellate court's judgement was adopted within 22 months, the Supreme Court remitted the case back to appellate court I within six months, the Court of Appeal adopted its remitted judgement within 16 months and the final judgment of the Supreme Court was adopted within six months.

4.26 During the examination of the criminal case before the courts, the hearings were adjourned on 31 March 2008, 30 April 2009 and 28 September 2011 because of the author's illness. In that connection, the State party notes that a State party cannot bear the responsibility for the illness of the suspect.

4.27 Nevertheless, the State party notes that the Court of Appeal took the length of the criminal proceedings into account when imposing the sentence on the author. The author was facing life imprisonment, or imprisonment between 8 and 15 years under the 1961 Criminal Code of Lithuania, which provided for a more lenient sentence for murder, and imprisonment for up to 4 years for attempted bribery. The final sentence imposed was 14 years, which was lower than the average for such crimes, in particular taking into account the fact that the author was also found guilty for both the aggravated murder and attempted bribery. It thus cannot be stated that the length of the court proceedings was excessive.

4.28 It should also be noted that before the adoption of the final judgement of the Supreme Court, the author absconded and it took the authorities until 2019 to return him to Lithuania for the purpose of serving his sentence. On 6 December 2012, the Kaunas Regional Court sent the judgment convicting the author to the Marijampole police for execution. On

11 December 2012, the police established that the author had absconded to avoid serving his sentence. On the same day, a national and international search was announced. On 26 February 2013, the Lithuanian authorities issued a European arrest warrant in respect of the author. On 20 February 2019, he was transferred to Lithuania and is currently serving his sentence in the Vilnius Correctional Facility.

4.29 Finally, the State party would like to draw the attention of the Committee to a case adjudicated by the European Court of Human Rights,[29] which concerned the complaint of R.A's mother that the criminal proceedings relating to her son's murder had been too lengthy and ineffective. In that case, the Court did not find a procedural violation of article 2 of the Convention (right to life) and decided that the process in the murder case had not been excessively lengthy.

4.30 In the light of the above, the author's claim that the State party should reopen his case and pay damages and costs should be rejected as unsubstantiated, in particular taking into account the absence of any supporting documents concerning claims for compensation.

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

5.1 In his submission of 9 March 2020, the author expressed disagreement with the response of the State party, which do not provide compelling arguments to counter his claims.

5.2 The author states that during the proceedings, G.S. mentioned cases of the exertion of influence on him and his inhuman conditions of detention. The matter was not further pursued, however; that statement during the proceedings did not lead to any reaction or follow-up from the authorities. The author argues, however, that the statement made by G.S. before the Court should be construed as his own attempt to use all available domestic remedies.

5.3 With regard to the claim raised under article 14 (1) and 3 (b) and (d) regarding the confidential meetings with the lawyer, the author confirms that his lawyer raised the matter with the authorities, including through a request to the Public Prosecutor's Office on 29 June 2006. The request for private meetings without police supervision was denied on 13 July 2006.

5.4 Referring to the Committee's decision in a case referenced by the State party,[30] the author considers that the case is not relevant to the circumstances of his own case as the facts and proceedings were different.

5.5 With regard to the attempt to bribe the investigator, the author draws the Committee's attention to the transcript of a conversation of 22 March 2006, in which the author admitted that he bribed the police officer. The author considers that the transcript should not be taken into account as it was a conversation between detainees. Conversations between inmates in a prison environment cannot be taken literally as they take place in a specific context, outside the normal boundaries of civil society. In addition, the transcript of the conversation provided by the State party is an erratic abstract of the conversation, taken out of context.

5.6 Further, on 11 June 2005, a group of police officers came to the author's house to threaten and force him to help them locate the bodies of R.A. and Z.V. The officers warned him that if he did not cooperate, he would face a charge of premeditated murder and would be sentenced to prison for life. The author explains in his submission that he left for London on 13 June 2005 because he feared a crackdown and that on 15 June 2005 a note of suspicion was drawn up on him. On 30 June 2005, a warrant of arrest was issued against the author, but he was not present at the relevant hearing. On 16 August 2005, a European arrest warrant was issued for the author. Expecting an objective investigation, he returned to Lithuania on 16 March 2006 and appeared the following day at the Prosecutor's Office. During interviews, pretrial investigators did not take any of his arguments into account and forced him to admit the murder of R.A. and Z.V.

[29] European Court of Human Rights, *Akelienė v. Lithuania*, Application No. 54917/13, Judgment of 16 October 2018.

[30] *G.J. v. Lithuania* (CCPR/C/110/D/1894/2009), para. 4.15.

5.7 The author explains that, in cases of premeditated murder, the statute of limitations is 10 years beyond the date of the crime and that the timeline for his prosecution had expired on 19 April 2004. In that regard, the pretrial investigation needed a new event that would potentially solve the issue of the expiration of the statute and thus would facilitate both the extension of the time for a pretrial investigation and the matter of the author's time in custody.

5.8 With regard to the length of the proceedings, the author notes that the documentation of the entire criminal case does not exceed 20 volumes, that one volume contains a maximum of up to 200 pages and that the average length is 150 pages. While complexity is more or less a subject of subjective assessment, from the fact that only one person was sentenced for two criminal offences when the number of suspects was four and the number of witnesses was less than 60, his case could not be considered to be of such complexity as to justify the delay in the procedure.

5.9 Finally, the author considers that since the State party also provided comments on the merits of the communication, it means that it is not convinced by the strength of its arguments, which highlights the probable acceptability of the author's claims.

5.10 The author also raised additional point in his comments related to the judgment of the Court of Cassation and the independence of the judge. According to the author, the speaker of the Chamber of Judges of the Supreme Court of Lithuania that passed the order on 5 July 2011 was the same judge who was the chair of the impeachment proceedings against Rolandas Paksas, the then President of Lithuania,[31] as a result of which he was removed from office by a decision of the Seimas (parliament) of 6 April 2004. The author indicates that he was an active member of the same political party as the President of Lithuania, who was removed from office by way of impeachment. Such a coincidence of circumstances poses additional reasonable doubt as to judicial impartiality, objectivity and fairness.

5.11 Regarding the pretrial investigation, the author indicates that one of the investigators has been removed from the office of the head of Kaunas Regional Police Headquarters and was the object of internal and pretrial investigations.[32] The removal and investigation of the investigator increases his doubts about the impartiality of the investigators and the fairness and objectivity of the pretrial investigation.

State party's additional observations

6.1 In its observations of 28 March 2022, the State party contends that domestic criminal proceedings in the author's case were fair on the whole and were in compliance with the requirements of the Covenant.

6.2 The State party maintains its view that the communication must be declared inadmissible under article 1 of the Optional Protocol to the Covenant as incompatible *ratione personae* with respect to the author's complaint under article 7. The rest of the complaints under article 14 are inadmissible owing to insufficient substantiation pursuant to article 2 of the Optional Protocol. Further, the complaints concerning the length of the proceedings and the right to meet with his lawyer confidentially are also inadmissible owing to non-exhaustion of domestic remedies under article 5 (2) (b) of the Optional Protocol.

6.3 The State party also indicates that it has no obligation to submit the translation of the relevant documents in their entirety. Because of the variety and the number of documents at the domestic level, the State party chose not to translate every single procedural document and every decision of the domestic courts but to describe them comprehensively, which is usual practice in the proceedings before the Committee. If, in the author's view, more information was needed, he was not precluded from submitting full translations of the documents he refers to.

6.4 The State party also notes that the overview of the relevant factual circumstances in its observations was presented according to the circumstances established by the domestic authorities within the course of the investigation and the examination of the criminal case at

[31] The hearing took place on 5 and 6 April 2004.

[32] In regard, inter alia, to commitment of the criminal offence provided for in article 225 of the Criminal Code of Lithuania, "bribing".

issue. It was not disputed by the author that those circumstances were established and assessed along with the entirety of the material evidence by the courts. However, aiming to challenge the fairness of the proceedings that resulted in his conviction, the author submitted an extensive assessment and interpretation of factual circumstances, presenting subjective considerations and claiming that investigative authorities were seeking to "destroy" him and that the domestic courts ultimately misjudged the evidence.

6.5 In that regard, the State party recalls that the Committee is not the appellate Court and that it is beyond its competence to review findings of fact made by national tribunals or to determine whether national tribunals have properly evaluated evidence submitted on appeal.[33] Therefore, the State party considers that the majority of the comments submitted by the author should have been properly raised within the course of the domestic proceedings rather than submitted before an international body having no jurisdiction to overrule the imposed criminal liability.

Issues and proceedings before the Committee

Consideration of admissibility

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

7.2 In accordance with article 5 (2) (a) of the Optional Protocol, the Committee shall not consider any communication from an individual unless it has ascertained that the same matter is not being examined under another procedure of international investigation or settlement.

7.3 The author claims a violation of article 7 of the Covenant owing to the fact that the Court of Appeal found him guilty of aggravated murder on the basis of the testimony given by one witness during the pretrial investigation, which was obtained after the witness had been kept in inhuman detention conditions and pressured into accusing the author. The author claims that the Court did not take into consideration the fact that during the subsequent trial hearing, the witness denied the testimony he had given previously during the pretrial investigation and stated that he had been pressured by the officers. The Committee notes the author's argument that the witness complained, during the proceedings, of his conditions of detention and the exertion of influence he was subjected to, to no avail. The Committee notes the State party's position that the complaint under article 7 should be considered as inadmissible as incompatible *ratione personae* as the witness is not party to the present communication and did not raise any claim before national authorities in relation to the complaint of the author. The Committee notes that the witness did not raise the conditions of detention with national authorities nor did he formally raise a complaint on the exertion of influence on him. In addition, the witness is not party to the present communication. Therefore, the Committee considers that it is precluded from examining the author's claims under article 7 for lack of competence *ratione personae*, since the alleged victim is not party to the present communication, and under article 5 (2) (b), since the alleged victim did not raise any related claim before national authorities.

7.4 The author also complained that the State party violated his rights under article 14 (1) and (3) (b) and (d) of the Covenant, as he was not allowed to meet his lawyer and was forced to hold conversations with police officers in the absence of his lawyer during the proceedings. The Committee took note of the State party's observations that, from the moment the author was informed of his status as a suspect, the right to have a lawyer was fully disclosed to him and to his lawyer, and that the lawyer only complained about the alleged lack of confidentiality during meetings with his client at the beginning of the author's pretrial detention. Moreover, there was no exhaustion of domestic remedies, as required under article 5 (2) (b) of the Optional Protocol. The Committee recalls its jurisprudence in which it stated that although there is no obligation to exhaust domestic remedies if authors of communications have no chance of success, they must exercise due diligence in the pursuit of available remedies and that mere doubts or assumptions about their effectiveness do not

[33] See *J.K. v. Canada* (CAT/C/56/D/562/2013).

absolve the authors from exhausting them.[34] The Committee notes the information provided by the State party listing available and effective domestic remedies in accordance with national legislation as well as relevant jurisprudence of the Committee in similar cases. Therefore, the Committee considers it is precluded from examining the author's claims under article 14 (1) and (3) (b) and (d) for lack of exhaustion of domestic remedies, as required by article 5 (2) (b) of the Optional Protocol.

7.5 Relying on article 14 (3) (c) of the Covenant, the author complains about the length of criminal proceedings against him and considers that his right to be tried without undue delay was violated by the State party. The Committee notes the observations provided by the State party on the reasons why the proceedings took 19 years, in particular the fact that the author tried to obstruct justice on several occasions and absconded from the country twice, as well as its observation that the author failed to duly exhaust all domestic remedies and that it was thus not possible for the national authorities to assess the author's allegations in this regard and to award him compensation. The Committee has already found a similar complaint against Lithuania to be inadmissible because the person at issue failed to pursue a civil claim for the length of criminal proceedings against him.[35] Thus, the Committee considers this aspect of the communication inadmissible for non-exhaustion of domestic remedies under article 5 (2) (b) of the Optional Protocol to the Covenant.

7.6 The Committee notes the author's claim that the State party violated his rights under article 14 (1) and (3) (e) of the Covenant as he could not effectively and publicly cross-examine witnesses. The Committee notes that the author does not provide more information on this claim. Therefore, the Committee considers that this claim is not sufficiently substantiated and declares it inadmissible.

7.7 Finally, the Committee notes the author's claim that his trial was not fair due to his political opinions (see para. 5.10 above). It considers that this claim is not sufficiently substantiated and declares it inadmissible.

8. The Committee therefore decides:

(a) That the communication is inadmissible under articles 1 and 5 (2) (b) of the Optional Protocol;

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

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

[35] *T.J. v. Lithuania*, para. 6.3.