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International Covenant on Civil and Political Rights

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Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 3806/2020*, **, ***

Communication submitted by:	Mathias Tsarsi, Mahamat Seid Abdelkadre, Service Alladoum and Peter Ambe Akoso (represented by counsel, Anne-Marie Koffi)
Alleged victims:	The authors
State party:	Chad
Date of communication:	30 March 2018 (initial submission)
Document references:	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 19 August 2020 (not issued in document form)
Date of adoption of Views:	15 March 2024
Subject matter:	Arbitrary arrest and detention
Procedural issues:	None
Substantive issues:	Arbitrary detention
Articles of the Covenant:	9
Articles of the Optional Protocol:	2 and 5 (2)

1. The authors of the communication are Mathias Tsarsi, born in 1972, Mahamat Seid Abdelkadre, born in 1965, and Service Alladoum, born in 1970, all of whom are nationals of Chad, and Peter Ambe Akoso, born in 1962, who is a national of Cameroon. They claim that the State party has violated their rights under article 9 of the Covenant. The Optional Protocol entered into force for the State party on 9 September 1995. The authors are represented by counsel.

Factual background

2.1 Mathias Tsarsi is the President and Chief Executive Officer of Air Inter 1, an airline based in N'Djamena. Mahamat Seid Abdelkadre is an airworthiness inspector for civil

* Adopted by the Committee at its 140th session (4–28 March 2024).

** The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, 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.

*** An individual opinion by Committee member Carlos Gómez Martínez (dissenting) is annexed to the present Views.

aircraft in Chad and the former Director of Aviation Safety of the Chadian Civil Aviation Authority. Service Alladoum is the Deputy Director-General of the Chadian Civil Aviation Authority and an operations inspector for civil aircraft in Chad. Peter Ambe Akoso is an aeronautical engineer and has worked as an airworthiness expert for the Civil Aviation Authority in N'Djamena since the end of 2013.

2.2 On 29 September 2017, the criminal investigation police arrested the authors, without a warrant, in connection with a case involving the international trafficking of aircraft and military weapons. The authors were placed in custody at the N'Djamena Central Police Station as part of an investigation into the registration in Chad of an aircraft allegedly used in a prohibited area of the Syrian Arab Republic. Mahamat Seid Abdelkadre, Service Alladoum and Peter Ambe Akoso are accused of involvement in the false registration of the aircraft on behalf of the company owned by Mathias Tsarsi.

2.3 At the time of their arrest, the authors were not informed of the charges brought against them. Mahamat Seid Abdelkadre, Service Alladoum and Peter Ambe Akoso were simply summoned and taken to the premises of the criminal investigation police, where they were prohibited from having any contact or communication with each other. On 30 September 2017, Mathias Tsarsi was interviewed by the Public Prosecutor and the Chief of the criminal investigation police without the assistance of a lawyer. The other authors were interviewed on 2 October 2017 without having been informed of the charges against them and without having had access to a lawyer.

2.4 After 67 days in detention, on 4 December 2017, the authors were transferred to the Amsinéné remand prison in N'Djamena. On the same day, they were brought before the District Prosecutor's Office, and then before the Public Prosecutor's Office and the Supreme Court, where they were informed of the charges brought against them and placed under a detention order despite the procedural irregularities highlighted by their lawyers.[1] The charges against them gradually expanded from "fraudulent registration" to "forgery and use of forged documents" and finally to "money-laundering, mercenary activities, financing of terrorism, and unlawful action against civil aviation".[2]

2.5 The authors' lawyers have made several requests to the Chadian authorities for access to the authors' case files, in particular to obtain details of the grounds for their arrest and the charges brought against them. The lawyers' repeated requests have gone unanswered. When the lawyers met with the investigating judge in February 2018, he told them that he had not received any case files concerning the authors.

2.6 In the interim, the health and financial situation of the authors deteriorated dramatically. Already in poor health, they were held in unsanitary conditions in a cell occupied by 50 prisoners. They were also subjected to humiliation and psychological torture, as they were forbidden to leave their cells, receive visitors or consult a doctor. They were also subjected to intimidation by prison officers in order to extract information from them. In addition, they were frequently interviewed without their lawyers.

2.7 On 17 July 2018, the Working Group on Arbitrary Detention transmitted a communication concerning the authors to the Government of Chad but received no response. On 20 November 2018, the Working Group issued an opinion in which it found in favour of the authors and considered that their arrest and detention were arbitrary,[3] insofar as no arrest warrant had been issued and none of the authors had been informed of the reasons for their arrest. The Working Group also noted that the authors had been held in extended pretrial detention for 67 days before being brought before a judge, in violation of articles 9 (3) and 14 (3) (c) of the Covenant. Lastly, the Working Group found that the authors had not been afforded the right to an effective remedy as set out in article 9 (4) of the Covenant, as the authorities had failed to schedule a hearing at which to rule on their cases, despite the fact that they remained in detention. In its conclusions, the Working Group urged the State party

[1] A/HRC/WGAD/2018/71, par. 23.

[2] Ibid., para. 26.

[3] Ibid., para. 46, where it is stated that the authors' deprivation of liberty is arbitrary in that it is contrary to articles 3, 8 and 9 of the Universal Declaration of Human Rights and articles 9, 10 and 14 of the Covenant.

to release the authors without delay, to grant them an enforceable right to compensation and other reparations, in accordance with international law, and to conduct a full and independent investigation of the circumstances surrounding their arbitrary deprivation of liberty.[4]

Complaint

3.1 The authors claim a violation by the State party of article 9 of the Covenant on account of their arbitrary and unlawful detention since their arrest on 29 September 2017. They maintain that they have been held in pretrial detention without being informed of the grounds and charges on which they were arrested and without their detention having been extended in accordance with the procedure set out in the Code of Criminal Procedure. They also state that no hearing has been scheduled to try their case, in violation of the reasonable time limit for pretrial detention.

3.2 According to the authors, their detention is contrary to article 221 of the Code of Criminal Procedure. This article stipulates that a person may be held in police custody only for a period of 48 hours, which may be extended once for a further 48 hours. Their arrest and placement in police custody therefore do not meet the conditions set out in this article. They should have been released, at the earliest, on 30 September 2017 or, at the latest, on 2 October 2017, but they remain in detention. Consequently, their detention is not provided for in any legislation and is therefore arbitrary and unlawful.

State party's observations on admissibility and the merits

4.1 On 21 November 2022, the State party submitted its observations. Without providing further details, it refers to the letter of 26 March 2018, in which the Collectif des associations de défense des droits de l'homme (Collective of Human Rights Associations) reported the authors' arbitrary arrest and detention to the Working Group on Arbitrary Detention.

4.2 The State party goes on to explain that because the case involved a former member of the Government, it was referred to the Supreme Court in accordance with the provisions of the Code of Criminal Procedure. The State party indicates that an investigating judge has been appointed to handle the case, which is still under investigation. The proceedings are therefore still pending before the country's highest court. In addition, the State party asserts that the authors are no longer in detention.

Authors' comments on the State party's observations

5.1 On 21 December 2022, the authors submitted their comments on the State party's observations. They confirm that they are no longer in detention due to health problems, without specifying when they were released. However, they point out that their fate remains uncertain, since neither their detention nor their release was based on any judicial proceedings. They fear that they might be detained again at any time. The authors therefore deplore the fact that, to date, no full and independent investigation has been conducted into the circumstances of their detention, and that no judicial decision has been taken since their arrest.

5.2 The authors point out that article 313 of the Code of Criminal Procedure provides for the imposition of pretrial detention for an initial period of 6 or 12 months and a maximum period of 12 or 24 months, depending on the seriousness of the charges. Pretrial detention can be extended only on the basis of a reasoned decision by the investigating judge and the Public Prosecutor. In order to ensure the proper administration of justice, the investigating judge must, without delay, either dismiss the proceedings or refer the case to a criminal court, a court of summary jurisdiction or the indictment division, as appropriate. The authors note that, in the present case, the State party fails to explain why, more than five years after the events, no reasoned order has been issued to decide their fate, and why the provisions of the Code of Criminal Procedure have not been respected.

5.3 The authors assert that, as a result of his detention, Peter Ambe Akoso, who has children to support, was unable to renew his contract with the Civil Aviation Authority and has yet to find a job in his home country. The airline owned by Mathias Tsarsi has ceased

[4] Ibid. paras. 39, 43 and 47.

operations and its aircraft remain grounded, the company having lost all of its local and international partners and clients. In this regard, the authors refer to the opinion of the Working Group on Arbitrary Detention, in which the Group recognized the arbitrary nature of the proceedings brought against them and urged the State party to grant them an enforceable right to compensation and other reparations, in accordance with international law.[5] However, the State party has not provided the authors with compensation.

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.

6.2 The Committee must ascertain, 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. It notes that the authors' case has been examined by the Working Group on Arbitrary Detention, which rendered an opinion thereon on 20 November 2018. The Committee recalls that, although it is required under article 5 (2) (a) of the Optional Protocol to ascertain that the matter is not being examined under another procedure of international investigation or settlement, nothing precludes it from considering communications on cases previously dealt with by another international investigation or settlement body,[6] even when the body has adopted a decision on the merits,[7] unless the State party has made a reservation explicitly prohibiting successive appeals,[8] which is not the case here. As the Working Group had completed its examination of the case before the present communication was considered by the Committee, the Committee considers that there are no obstacles to the admissibility of the present communication under that provision.

6.3 The Committee notes that, while the authors claim to have exhausted all available and effective domestic remedies, and given that they were unable to gain access to the case file so as to ascertain the reason for their arrest and the charges brought against them in order to contest them, the State party indicates that the proceedings against the authors are still pending, which falls within the scope of article 14 of the Covenant, which was not invoked in the present case. In the absence of any objection by the State party in relation to the exhaustion of all available and effective domestic remedies under the terms of article 9 of the Covenant, the Committee considers that the requirements of article 5 (2) (b) of the Optional Protocol have been met.

6.4 The Committee is of the opinion that the authors have sufficiently substantiated their claims regarding article 9 of the Covenant and that there is no obstacle to their admissibility. Accordingly, it proceeds to its consideration of the merits with regard to the alleged violations of that article.

Consideration of the merits

7.1 The Committee has considered the present 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 notes that the State party has not responded to the authors' allegations concerning the merits of the case and recalls its jurisprudence, according to which the burden of proof should not rest solely on the author of a communication, especially given that the author and the State party do not always have the same degree of access to evidence and that

[5] Ibid., para. 48.
[6] Human Rights Committee, *L.E.S.K. v. Netherlands*, communication No. 381/1989, para. 5.2.
[7] Human Rights Committee, *Wright v. Jamaica*, communication No. 349/1989, para. 7.2.
[8] *Wade v. Senegal* (CCPR/C/124/D/2783/2016), para. 11.2.

often only the State party is in possession of the necessary information.[9] In conformity with article 4 (2) of the Optional Protocol, the State party has the duty to investigate in good faith all allegations of violations of the Covenant made against it and its representatives and to provide the Committee with whatever information is available to it.[10] In the absence of any explanations from the State party in this respect, due weight must be given to the authors' allegations, provided they have been sufficiently substantiated.

7.3 The Committee takes note of the authors' claims under article 9 of the Covenant that: (a) they were not informed of the reasons for their arrest or of the charges against them; (b) that their pretrial detention is unjustified and therefore unlawful; (c) that the extension of their detention was not carried out in accordance with the procedure set out in the Code of Criminal Procedure and is excessive; (d) that there has been no investigation into the circumstances of their detention; and (e) that they have not been granted reparations for their arbitrary detention, as recommended by the Working Group on Arbitrary Detention.

7.4 The Committee observes, firstly, that the authors were arrested without a warrant and without being informed of the reasons for their arrest. The State party has not demonstrated that the arrest of the authors was reasonable and necessary or that the authorities decided without delay on the lawfulness of the detention. The Committee also notes that the authors were first brought before a Supreme Court judge on 4 December 2017, more than two months after their arrest. Only then were they informed of the charges against them. Despite attempts by their lawyers to gain access to the file in order to challenge the grounds and charges on which they were arrested, no action has been taken by the State party's authorities. Furthermore, the investigating judge told the authors' lawyers that he had not received any files concerning them. The Committee notes that, although it appears that the authors are no longer in detention, no court has ruled on the circumstances of their arrest and detention, or on the extension of their detention, and that, five years after they were placed in pretrial detention and following their release, no domestic court has ruled on their detention. Lastly, the Committee takes note of the opinion of the Working Group on Arbitrary Detention concerning the arrest and detention of the authors and their right to be granted reparations.

7.5 In the light of the foregoing, and in the absence of any explanation or information provided by the State party, the Committee concludes that there has been a violation of article 9 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 by the State party of article 9 of the Covenant.

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. Accordingly, the State party is obligated, inter alia, to take appropriate steps to provide the authors with adequate compensation and appropriate measures of satisfaction. The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future.

10. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy when it has been determined that a violation has occurred, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the present Views. The State party is also requested to publish the present Views and to have them widely disseminated in the official languages of the State party.

[9] See, inter alia, *Ammari v. Algeria* (CCPR/C/112/D/2098/2011), para. 8.3; *Mezine v. Algeria* (CCPR/C/106/D/1779/2008/Rev.1), para. 8.3; *Berzig v. Algeria* (CCPR/C/103/D/1781/2008), para. 8.3; and *El Abani v. Libyan Arab Jamahiriya* (CCPR/C/99/D/1640/2007), para. 7.4.

[10] *Mezine v. Algeria*, para. 8.3; and *Medjnoune v. Algeria* (CCPR/C/87/D/1297/2004), para. 8.3.

Annex

[Original: Spanish]

Individual opinion of Committee member Carlos Gómez Martínez (dissenting)

1. My disagreeing with the opinion held by the majority of the Committee is centred around a procedural issue, namely the admissibility of a communication identical to another communication that is submitted simultaneously, or within a short interval, to another body established under a human rights treaty, in this case the Working Group on Arbitrary Detention, and the application to such cases of the lis pendens exception set forth in article 5 (2) (a) of the Optional Protocol.

2. In the present case, the proceedings brought about by the communication submitted to the Working Group on Arbitrary Detention were so swift that, by the time the Human Rights Committee came to examine the communication to decide on its admissibility, the Working Group on Arbitrary Detention had already long settled the case, having issued its opinion thereon on 20 November 2018 (see para. 2.7).

3. Article 5 (2) (a) of the Optional Protocol has been interpreted by this Committee as providing for the exception of lis pendens, but not that of res judicata, and it is this jurisprudence that is reflected in paragraph 6.2 of the present Views.

4. However, article 5 (2) (a) of the Optional Protocol is not easy to interpret. It is common knowledge that the wording of the Spanish version of this provision differs from that of the English and French versions in terms of the verb tense used. Indeed, in the Spanish version, the Committee, in order to be able to examine the matter, must verify that *no ha sido sometido ya a otro procedimiento de examen o arreglo internacionales* (it has not already been submitted under another procedure of international investigation or settlement), whereas, in the English and French versions, it must ascertain that the matter "is not being examined" and *n'est pas déjà en cours d'examen* (is not already being examined), respectively.

5. In addition, lis pendens is a guardian institution of res judicata, an instrument aimed at safeguarding its authority. The main difference between the two concepts is the status of the proceedings involved, since lis pendens presupposes that the two sets of proceedings involved must both be under way, whereas, in the case of res judicata, one set of proceedings must have been brought to an end by a final decision.

6. Therefore, due to the instrumental nature of one concept vis-à-vis the other, it makes no sense to allow the exception of lis pendens and not that of res judicata, since one exists as a function of the other – in other words, the purpose of the former is to make the latter operational. The effect of both is the same – that is, to prevent a second decision from being taken on a matter identical to that already settled in a previous decision. Consequently, if there are proceedings pending (lis pendens), a fortiori the matter should be considered settled (res judicata), especially when the lack of effect of lis pendens at an earlier stage of the proceedings is attributable to belated action by one of the human rights treaty bodies.

7. The interpretation made by the Committee in the contested Views is the same as that which, over time, has become part of its jurisprudence in general but which has been applied to the present case, in which the specific situation involving the almost simultaneous submission of two communications with identical content by the same authors to different treaty bodies occurred. This interpretation may lead to the issuance of contradictory decisions, which undermines the credibility of the system and, moreover, constitutes an abuse of scarce resources, since the capacity of bodies tasked with protecting the rights of victims of human rights violations is limited and, therefore, any duplication of work must be avoided.

8. Article 31 of the Vienna Convention on the Law of Treaties provides that a treaty is to be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.

9. The criteria of systematic and teleological interpretation established in this provision make it possible to go beyond the wording of article 5 (2) (a) of the Optional Protocol and to understand that, in cases such as this one, where, at the time of considering admissibility, the previous communication is not only being examined but has already been decided, the Committee is barred from examining the second petition which, for that very reason, must be found to be inadmissible.

10. This interpretation is the most in keeping with the purpose of the provision – to avoid contradictory decisions by bodies belonging to the same United Nations human rights protection system – and with the principle of good faith – since it is an abuse of the right to submit communications to lodge the same communication almost simultaneously and thus waste scarce resources – which is why the communication should have been declared inadmissible.

11. Moreover, it is my understanding that, regardless of the interpretation given to article 5 (2) (b) of the Optional Protocol, in cases such as the present one, the Committee should find the second communication, namely the one that is being examined the latest – which is the one that concerns us now – to be inadmissible for abuse of the right provided for in article 3 of the Optional Protocol to the Covenant.

12. Consequently, for one reason or another, the Committee should have adopted a decision of inadmissibility.