



# 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. 3168/2018\*, \*\*, \*\*\*

<i>Communication submitted by:</i>	Gevorg Ghazaryan (represented by counsel, Arayik Ghazaryan and Meri Baghdasaryan)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Armenia
<i>Date of communication:</i>	15 November 2017 (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 27 March 2018 (not issued in document form)
<i>Date of adoption of Views:</i>	9 July 2024
<i>Subject matter:</i>	Police violence against journalist covering demonstration
<i>Procedural issues:</i>	Exhaustion of domestic remedies; level of substantiation of claims
<i>Substantive issues:</i>	Freedom of expression; right to an effective remedy; discrimination based on profession
<i>Articles of the Covenant:</i>	2 (3), 19 and 26
<i>Articles of the Optional Protocol:</i>	2 and 5 (2) (b)

1. The author of the communication is Gevorg Ghazaryan, a national of Armenia, born in 1989. He claims to be a victim of a violation by the State party of his rights under articles 2 (3), 19 and 26 of the Covenant. The Optional Protocol entered into force for the State party on 23 September 1993. The author is represented by counsel.

\* Adopted by the Committee at its 141st session (1–23 July 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, Teraya Koji, Hélène Tigroudja and Imeru Tamerat Yigezu.

\*\*\* A joint opinion by Committee members Yvonne Donders and Laurence R. Helfer (concurring) and individual opinions by Committee members Teraya Koji (concurring) and Hélène Tigroudja (dissenting) are annexed to the present Views.



**Facts as submitted by the author**

2.1 The author is a freelance journalist who covers mostly political and public interest events for international and regional news agencies. On 17 July 2016, an armed attack occurred at the Patrol-Guard Service Regiment building in Yerevan, Armenia. Several police officers were taken hostage and one police officer was wounded; the officer later died. The group that attacked the police regiment advanced political demands, including the resignation of the President and the Government.

2.2 Shortly after the attack, supporters of the armed group started to organize peaceful protest actions, public gatherings and rallies. There were occasional confrontations with the police, during which, according to the author, the actions of the police amounted to violations of the demonstrators' right to freedom of peaceful assembly and right to personal liberty. There were also reports of the use of torture and degrading treatment by the police during arrests.

2.3 On 29 July 2016, there was a demonstration at Freedom Square in Yerevan in support of the armed group. The organizers called on the protesters to march towards the occupied Patrol-Guard Service Regiment building in a rally. The rally split into two groups that took different routes towards the building.

2.4 On the evening of 29 July 2016, the author learned that events in Yerevan were escalating and went to cover the events in the Sarit'agh district, wearing his press badge. At one point, a police officer asked journalists to move to a safer spot. The author moved to a small park nearby, together with around 20 other journalists. From there he took photos and filmed the protest with a still camera and a video camera. Suddenly a flash-bang grenade was thrown in his direction, which injured some of the other journalists in the park. Another explosive caused damage to a house. When the residents came out to complain to the police, they were beaten by plain-clothes police officers. The author filmed that event. His filming was noticed by the police, and he was approached by three or four police officers, who threatened and beat him. One of them took his video camera and the camera fell to the ground and broke. The author tried to retrieve the camera's memory card but was prevented from doing so by the police. His still camera was also taken by the police. When the author tried to confront the police officer who took the camera, he was threatened by the officer. The author noticed that other journalists were also being physically harassed by the police, so he decided to leave the area.

2.5 On 30 July 2016, the Prosecutor General instituted criminal case No. 61205016 relating to violence against journalists under article 164 of the Criminal Code "for obstructing the lawful professional work of journalists by exerting violence posing danger to the health of the journalists and by other means". The Office of the Prosecutor General forwarded the case to the Special Investigative Service for pretrial investigation. On 3 August 2016, the Special Investigative Service initiated a second criminal case, No. 62220515, relating to the events of 29 July 2016 under article 308, "abuse of official authority", and article 309, "exceeding official authority", under the Criminal Code. The two cases were joined on 3 October 2016. In the course of the investigation, the author was interviewed and granted victim status. A medical examination and an examination of his camera were initiated but the author states that he was not informed of the results. He further states that no other investigative action had been taken in the case at the time of his submission of the complaint to the Committee on 15 November 2017.

2.6 The author submits that there is no effective domestic remedy within the framework of the criminal proceedings to challenge the inaction in the investigative process. Under article 290 of the Criminal Procedure Code, an individual can challenge "decisions" and "actions" of investigative bodies before the courts. The failure to conduct an investigation, however, is not expressly stipulated among the grounds on which such a challenge can be brought. As such, the author claims that he is being prevented from challenging the inaction and failure of the Special Investigative Service to conduct a proper investigation within a reasonable amount of time. In addition, he notes that the Criminal Procedure Code does not specify a time limit for conducting criminal investigations, which he claims enhances the uncertainty that victims face regarding the length of a criminal investigation. The author

therefore argues that there is no effective remedy in the State party in respect of the violation of his rights.

### **Complaint**

3.1 The author claims that he was beaten by police officers and that one of his cameras was smashed, while another camera was seized by the police, due to his activities as a journalist. The police knew he was a journalist and they were acting deliberately to hinder his work and prevent him from informing the public about the events occurring during the demonstration on 29 July 2016, in violation of his rights under article 19 of the Covenant.

3.2 The author also claims a violation of his rights under article 26, read in conjunction with article 19 of the Covenant. He claims that he was targeted and discriminated against as a journalist covering an event of public interest. He also claims that the reason that no investigative measures have been taken in his case is due to his being a journalist.

3.3 The author further claims a violation of his rights under article 2 (3), read in conjunction with article 19 of the Covenant. He claims that his allegations against the police were not effectively investigated and that the authorities have failed to take steps to investigate, identify and punish the perpetrators.

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

4.1 On 27 December 2018, the State party submitted its observations on the admissibility and merits of the communication. It submits that the author's claims should be found inadmissible for failure to exhaust domestic remedies and as insufficiently substantiated.

4.2 The State party notes that two criminal investigations, which were later joined, were initiated by the Special Investigative Service on 30 July 2016, under article 164 of the Criminal Code, for the offence of hindering the professional activities of journalists, and on 3 August 2016, under articles 308 and 309 of the Criminal Code, for abuse of official authority and exceeding official authority by police officers. During the preliminary investigation, 106 civilians and 24 journalists who had allegedly been affected were identified. Sixty of the civilians and 21 of the journalists were granted victim status, with the remaining identified persons heard as witnesses together with 60 police officers. No person who requested victim status was denied that status, thus enabling them to participate actively in the proceedings. The investigator conducted various investigative actions and ordered operative search activities to be carried out by bodies of inquiry to verify the lawfulness of the actions of the police and the proportionality of the use of "special means" during the events of 29 July 2016. On 18 September 2018, the investigator decided to suspend the preliminary investigation in the author's case on the grounds that "an accused had not been identified". As a result of other parts of the investigation, however, eight persons were subjected to criminal liability, while court proceedings against one other accused person were still pending at the time of the State party's observations. In addition, two sets of disciplinary proceedings were initiated by the head of police in respect of the events of 17–28 July 2016 and 29 and 30 July 2016. As a result of the internal disciplinary investigation, 13 police officers were subject to disciplinary liability for improper performance of duties, improper deployment of force and failure to take sufficient measures to prevent the use of force against journalists and the infliction of damage to their equipment.

4.3 The State party submits that the author has failed to exhaust domestic remedies. It notes that, under article 290 of the Code of Criminal Procedure, a victim of a crime can challenge the decisions and actions of investigative bodies to the supervising prosecutor and, if unsuccessful, to the courts. According to established jurisprudence of the Constitutional Court, that right also includes the right to challenge alleged inactivity in the investigation.<sup>1</sup> In addition, it is a requirement in the State party that its laws not be in contradiction with decisions of the Constitutional Court. The State party notes that, while the author, in his submission to the Committee, claimed that he could not challenge inaction by the investigative authorities during the proceedings, that statement is contradicted by his subsequent appeal regarding the decision to suspend the criminal proceedings. Furthermore,

<sup>1</sup> The State party refers to Constitutional Court of Armenia, Decision DCC-844, 7 December 2009.

the State party reports that administrative remedies are also available in the State party regarding alleged unlawful actions of police officers. Article 69 of the Code of Administrative Procedure stipulates that a claimant has the right to request that an administrative act be declared unlawful. The State party concedes that the author is currently not in position to submit such a claim as, according to the jurisprudence of the Administrative Court, it is not possible to lodge a claim via an administrative procedure while the same matter is being considered in a criminal procedure but only once the criminal procedure has been finalized. The State party notes that, in the present case, the ongoing criminal proceedings thus prevent the author from filing an administrative claim. It argues, however, that he will be able to submit such a claim in the future, once the criminal proceedings are finalized. Taking the above into account, the State party submits that the author has thus failed to exhaust domestic remedies.

4.4 Regarding the author's claims under articles 19 and 26 of the Covenant, the State party argues that, in accordance with the jurisprudence of international human rights bodies, the effectiveness of an investigation should not be estimated by its result but by the investigative measures and means deployed during the process. In the present case, the State party argues that, during the investigation, all possible investigative and operative search measures were conducted to identify the alleged perpetrators. Numerous interrogations were held, forensic examinations were ordered and carried out and the victims were informed of the results of the investigative steps and provided the opportunity to comment thereon. All video recordings of the events were duly examined to identify the perpetrators. Those measures, however, did not provide sufficient basis, in compliance with the evidentiary standard of "beyond reasonable doubt", for bringing charges in the author's case.

4.5 The State party notes that the author did not file a motion with the authorities during the investigative proceedings. It notes, however, that the author did file an appeal of the investigator's decision of 18 September 2018 to suspend the criminal proceedings, which, at the time of the State party's submission, was pending at first instance. In his appeal, the author failed to identify any specific measure that should have been taken during the investigation, apart from an examination of a video recording that had already been examined. The State party notes the author's claim that the reason the investigation was ineffective was due to his being a journalist, and it argues that that claim is unsubstantiated, considering the fact that eight people, including police officers, were held criminally liable as a result of the investigation.

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

5.1 On 6 May 2019, the author submitted his comments on the State party's observations. He maintains that the communication is admissible.

5.2 The author notes the State party's information that eight persons were subject to criminal liability and that a proceeding against one defendant was pending at the time of the State party's observations. He argues, however, that the State party has not specified whether any of those defendants were charged with attacks on a journalist nor the role of the defendants. The events of 29 July 2016 were widely videotaped and livestreamed, so it should not have been difficult to identify the perpetrators. In addition, the author notes that, in his police interview, he stated that he might be able to identify the perpetrators who attacked him but was not provided with an opportunity to do so.

5.3 The author notes the State party's submission that he has failed to exhaust domestic remedies. The author argues that the decision of the Constitutional Court referred to by the State party did not define the notion of "inactivity" or "inaction" but left that matter to be defined by the legislature. To date, however, Parliament has not amended article 290 of the Criminal Procedure Code to add the concept of "inaction". He thus argues that the provision lacks legal certainty. The author also reiterates his argument that the Criminal Procedure Code does not specify a time limit for conducting a criminal investigation. Under article 197 of the Criminal Procedure Code, an investigation shall normally be conducted in two months. That time limit can be extended, however, and there is no limit as to how many extensions can be granted. In his case, the author argues that, given the length of the pretrial investigation, domestic remedies have proven to be ineffective, as the proceedings have been unduly prolonged. The author further argues that there is no contradiction in his submission on the

issue of exhaustion of domestic remedies as, once he had obtained the decision by the investigator to suspend the criminal proceeding in his case, he appealed that decision on the grounds that the investigators did not properly analyse the video footage and did not carry out any identification procedure. During the proceedings of first instance, the investigative authority claimed that, as there were more than 1,000 police officers deployed during the event, it would be impossible to provide the author with photographs of all the officers to make an identification. The author argues that the investigative authority could have started by providing him with photographs of the 13 police officers subject to disciplinary proceedings to investigate if one of them was involved in his case. Regarding the issue of disciplinary proceedings, the author further argues that such measures cannot substitute for criminal liability.

5.4 On 4 April 2019, the court of first instance rejected the author's appeal of the suspension order, stating that, as the investigation was simply suspended, it was up to the investigative authority to decide upon the investigative measures to be conducted, which the court had found to be under the investigative authority's sole discretion. The author argues that the court's decision, again, demonstrates that domestic remedies are ineffective, as the court did not assess the effectiveness of the investigation before it was suspended. The author argues that it is thus clear that the investigative authorities failed to conduct a comprehensive, prompt and thorough investigation during the two years of investigation. Regarding the State party's argument that the author could bring an administrative claim, the author submits that an administrative claim is not an adequate avenue for a criminal matter. In addition, he notes that the State party itself concedes that he would not be able to bring such a claim until the criminal proceedings are finalized.

5.5 On 5 June 2020, the author submitted further information on the domestic proceedings. He notes that he appealed the decision of the court of first instance on the suspension of the criminal investigation. On 6 August 2019, the investigative authority relaunched the criminal investigation. On 23 August 2019, the criminal appellate court rejected the author's appeal. On 6 May 2020, the author's counsel sent an inquiry to the investigative authority asking it to provide information on the status of the investigation and the steps taken to identify the perpetrators. On 8 May 2020, the investigative body replied, noting that the investigation had been relaunched and that, if there were any motions, the investigative body would examine them.

#### **State party's additional observations**

6.1 On 23 January 2023, the State party provided additional observations on the communication. It notes the author's claim that the available video recordings were not properly analysed in order to identify the perpetrators who had allegedly attacked the author. It reports that the available video recordings did not record the alleged attack against the author and could therefore not be used to identify the perpetrators in his case. It argues that the suspension of criminal proceedings does not imply that the proceedings have been discontinued and that they are, in fact, continuing, including as concerns the author's claims.

6.2 The State party reiterates its argument that all measures prescribed under the Criminal Procedure Code have been taken in the author's case and it argues that a comprehensive, complete and objective investigation of the circumstances of the case has been conducted. It was not possible, however, based on the evidence collected, to identify the perpetrator or perpetrators in the author's case and, under those circumstances, the proceedings were suspended. It notes the author's claim that he was not informed of the results of the investigative steps in the case. It notes, however, that the author was notified that he should appear before the Special Investigative Service on 16 September 2016 in order to be informed of the steps taken in the case and the conclusions reached. The author complied with the notice and was informed of the outcome of the steps taken, while stating that "he did not have any motions or objections". Notices to the author to appear before the Special Investigative Service were also sent on several other dates to inform him of the steps taken in the investigation, namely on 22 August, 29 August and 18 November 2016 and 28 February and 7 April 2017. The author did not appear, however, before the Special Investigative Service in relation to those notices.

6.3 The State party notes that suspending the proceedings of a criminal case does not entail the termination of the criminal proceedings. By suspending the proceeding of the criminal case, the authority conducting the proceeding aims to prevent the unnecessary expiration of criminal procedure deadlines. The State party further notes that, under article 483 (4) of the Criminal Procedure Code, adopted on 30 June 2021, criminal cases suspended before 1 July 2022 are to be resumed within a year of the decision of the investigator or a court and should be investigated in the manner prescribed by the Criminal Code. In the author's case, the State party reports that, on 5 April 2022, a decision was taken to suspend the proceedings of Criminal Case No. 61205016 on the grounds that "the person(s) to be involved as accused was unknown". In January 2023, the investigation was again resumed on the basis of article 483 of the Criminal Procedure Code. The State party submits that, as a final decision in the author's case has not yet been rendered, domestic remedies have not been exhausted.

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

7.3 The Committee notes the State party's submission that the author has failed to exhaust domestic remedies, as he did not challenge the alleged inaction of the investigative authorities under article 290 of the Criminal Procedure Code and established jurisprudence of the Constitutional Court before the supervising prosecutor, a negative decision which can be appealed in court proceedings. It also notes the State party's information that the suspended investigation was subsequently resumed on the basis of article 483 of the Criminal Procedure Code and its submission that, as a final decision in the author's case has not yet been rendered, domestic remedies have not been exhausted. The Committee notes the author's argument that article 290 of the Criminal Procedure Code lacks legal certainty and does not allow him to challenge the alleged inactivity of the investigative authority. It also notes his submission that, given the length of the pretrial investigation, the proceedings have been unduly prolonged.

7.4 The Committee recalls that, pursuant to article 5 (2) (b) of the Optional Protocol, it is precluded from considering any communication unless it has been ascertained that all available domestic remedies have been exhausted; this rule does not, however, apply if it is established that the application of domestic remedies has been or would be unreasonably prolonged or would be unlikely to bring effective relief to the presumed victim.<sup>2</sup> The Committee recalls its jurisprudence in *G.G. v. Armenia*,<sup>3</sup> in which it found that, in order for an author to exhaust domestic remedies regarding a claim of alleged ineffectiveness of a pretrial criminal investigation, the author is under the obligation to bring a claim under article 290 of the Criminal Procedure Code. The Committee notes, however, that in the present case the investigation was initiated in July 2016 and has since been suspended and reopened several times. It also notes the State party's information that the investigation was again reopened in January 2023 and that a final decision in the author's case has not yet been rendered. The Committee considers that, given the period of seven years elapsed by the time of the State party's observations without a pretrial investigation having been concluded, the proceedings have been unduly prolonged. Regarding the State party's submission on the possibility of filing an administrative claim, the Committee notes the author's submission that an administrative decision is not an effective remedy in a criminal matter, as well as the State party's information that, in addition, the author is unable to file such a claim while the criminal investigation is pending. Taking the above into account, the Committee finds that it

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<sup>2</sup> See, for example, *Amirov v. Russian Federation* (CCPR/C/95/D/1447/2006), para. 10.3.

<sup>3</sup> *G.G. v. Armenia* (CCPR/C/124/D/3075/2017), paras. 4.6 and 6.4.

is not precluded by article 5 (2) (b) of the Optional Protocol from examining the communication.

7.5 The Committee notes the State party's submission that the author has failed to substantiate his claims under article 19 read in conjunction with articles 2 (3) and 26 of the Covenant. The Committee also notes the author's claim under article 26 of the Covenant of being targeted due to his profession as a journalist and that his profession is also the alleged reason for the alleged ineffectiveness of the investigation. As regards that the author's claim under article 26, read in conjunction with article 19 of the Covenant, the Committee notes that the author has failed to provide sufficient information in support of this claim for the purposes of admissibility. Accordingly, it declares this part of the communication inadmissible under article 2 of the Optional Protocol.

7.6 The Committee notes the author's claim that he was attacked by police officers and that one of his cameras was seized by the police and another camera destroyed and that those actions were linked to his exercising his profession as a journalist, in violation of his rights under article 19 of the Covenant. The Committee notes, however, that the author has not provided sufficient substantiation regarding that claim and therefore decides to consider his claim under article 19 in conjunction with article 2 (3) of the Covenant. Accordingly, the Committee declares the communication admissible as concerns the author's claims under article 19, read in conjunction with article 2 (3) of the Covenant, and proceeds to its examination on the merits.

#### *Consideration of the merits*

8.1 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.

8.2 The Committee recalls paragraph 2 of its general comment No. 34 (2011) on the freedoms of opinion and expression, in which it stated that freedom of expression was essential for any society and constituted a foundation stone for every free and democratic society. The Committee also recalls that a free, uncensored and unhindered press or other media is essential in any society to ensure freedom of opinion and expression and the enjoyment of other Covenant rights and constitutes one of the cornerstones of a democratic society.<sup>4</sup> The Committee further recalls that States parties should put in place effective measures to protect against attacks aimed at silencing those exercising their right to freedom of expression and that, under no circumstances, can an attack on a person because of the exercise of his or her freedom of opinion or expression be compatible with article 19 of the Covenant.<sup>5</sup> It recalls that journalists are frequently subjected to such threats, intimidation and attacks because of their activities and that all such attacks should be vigorously investigated in a timely fashion, and the perpetrators should be prosecuted, and the victims be in receipt of appropriate forms of redress.<sup>6</sup> In that connection, the Committee recalls paragraph 15 of its general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, in which it noted that States parties are required to give effect to the general obligation to investigate allegations of violations promptly, thoroughly and effectively through independent and impartial bodies.

8.3 In the present case, the Committee notes the author's claim that he was attacked by police while wearing a press badge and that his still camera and video camera were destroyed and seized by the police. It also notes his claim that he was targeted due to his activity as a journalist in covering a police response to a public demonstration. It further notes his claim that the investigation into the event was ineffective and suffered from numerous delays. The Committee notes the State party's claims that all possible investigative and operative search measures were conducted during the investigation to identify the alleged perpetrators. The Committee also notes the State party's information that, following the event, eight persons, including police officers, were held criminally liable as a result of the investigation, while 13 police officers were subject to disciplinary liability for the improper performance of their

<sup>4</sup> General comment No. 34 (2011), para. 13.

<sup>5</sup> *Ibid.*, para. 23.

<sup>6</sup> *Ibid.*

duties, the improper deployment of force and the failure to take sufficient measures to prevent the use of force against journalists and the infliction of damage to their equipment. In that connection, the Committee notes the author's argument that the State party has not provided any specific information regarding the prosecutions and disciplinary proceedings and his argument that he informed the investigators in his case that he might be able to identify the perpetrators who attacked him, but that he was not provided an opportunity to do so.

8.4 The Committee notes the State party's argument that, in accordance with the jurisprudence of international human rights bodies, the effectiveness of an investigation should not be estimated by its result but by the investigative measures and means deployed during the investigative process. It also notes the State party's submission that all possible investigative and operative search measures were conducted during the investigation to identify the alleged perpetrators in the author's case. The Committee further notes the State party's information that numerous interrogations were held, forensic examinations were ordered and carried out and the victims, including the author, were informed of the results of the investigative steps taken and provided with the opportunity to comment thereon. It also notes the State party's information that all of the video recordings of the events were examined to identify the perpetrators but that those measures did not provide a sufficient basis in the author's case on which to identify any alleged perpetrator.

8.5 The Committee notes the State party's submission that the author did not file a motion with the investigative authorities during the investigative proceedings to complain about the alleged ineffectiveness of the investigation or any specific investigative step that the investigative authority allegedly failed to conduct. It also notes the State party's submission that, in his appeal against the investigator's decision of 18 September 2018 to suspend the criminal proceedings, the author failed to identify any specific measure that should have been taken during the investigation, apart from the examination of a video recording, which had already been examined. The Committee considers that taking into account the State party's information on the investigative measures that it has conducted and its argument that all possible investigative and operative search measures have been carried out, as well as the lack of any specific argument from the author as to which investigative steps the State party authorities failed to conduct, it cannot conclude that the facts before it reveal a violation of the author's rights under article 19 (2) read in conjunction with article 2 (3) of the Covenant.

9. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the author's claims do not reveal a violation by the State party of article 19 (2), read in conjunction with article 2 (3) of the Covenant.



## Annex I

### Joint opinion by Committee members Yvonne Donders and Laurence R. Helfer (concurring)

1. We agree with the Committee that the State party did not violate the right to freedom of expression in the present case, either alone or due to the manner in which it investigated such a violation. We write separately to address two issues that are not sufficiently developed in the Committee's case law: (a) the chilling effect created by law enforcement officers who confiscate, destroy or damage mobile phones, cameras, video recorders or similar devices that journalists use to report on public protests and demonstrations; and (b) a State party's obligation to investigate complaints by journalists alleging such misconduct by law enforcement officers.

#### *Chilling effect of confiscating or damaging devices used by journalists*

2. The author, who had identified himself as a journalist, was threatened and beaten by the police, who confiscated his cameras, damaged one of them and prohibited him from retrieving the memory card from one camera (para. 2.4). The author was not, however, arrested, fined or detained. The State party conducted investigations into the events relating to the demonstration, including the mistreatment of the author, and prosecuted and punished several police officers (para. 8.3).

3. We are not aware of any international or regional human rights jurisprudence that deals *exclusively* with the seizure or destruction of media equipment as a possible violation of the right to freedom of expression. In the existing case law of the Committee and regional courts, the confiscation of such equipment has been combined with other measures, such as arrest, detention, fines or the closure of media outlets, that were assessed against the limitation clauses of the right to freedom of expression.<sup>1</sup>

4. Media coverage to inform the public about events of public interest, including demonstrations, without censorship or restraint, is an inherent aspect of press freedom.<sup>2</sup> Journalists play a vital role in monitoring protests, not merely as observers, but also to actively gather, verify and disseminate information about the authorities' response to demonstrations and potential human rights violations. The presence of journalists at such events promotes transparency and accountability and may thereby deter such violations. The confiscation, seizure or destruction of journalists' equipment restricts these important functions and could have a chilling effect on press freedom, for example by discouraging journalists from covering events of public interest. States parties are obligated to facilitate such media coverage and to protect journalists from attacks and from unjustified seizure or

<sup>1</sup> See, for example, *Tsukanov v. Kazakhstan* (CCPR/C/131/D/2676/2015), paras. 2.1 and 10.4; *Abdurakhmanov v. Uzbekistan* (CCPR/C/125/D/2295/2013), paras. 2.4 and 7.6; and Inter-American Court of Human Rights, *Ríos et al. v. Venezuela*, Judgment, 28 January 2009. See also European Court of Human Rights, *Butkevich v. Russian Federation*, Application No. 5865/07, Judgment, 13 February 2018; *Selmani et al. v. the former Yugoslav Republic of Macedonia*, Application No. 67259/14, Judgment, 9 February 2017; and *Pentikäinen v. Finland*, Application No. 11882/10, Judgment, 20 October 2015. Article 13 (3) of the American Convention on Human Rights explicitly refers to equipment in relation to freedom of expression: "The right of expression may not be restricted by indirect methods or means, such as the abuse of government ... over ... equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions." The Inter-American Court of Human Rights has interpreted that provision as protecting the communication, diffusion and circulation of ideas and opinions. See *Ríos et al. v. Venezuela*, para. 340.

<sup>2</sup> General comment No. 34 (2011) on the freedoms of opinion and expression, paras. 13 and 20; and general comment No. 25 (1996) on participation in public affairs and the right to vote, para. 25.

destruction of their equipment.<sup>3</sup> They are also under an obligation to duly investigate such events after they have occurred.<sup>4</sup>

*Obligation to investigate complaints*

5. In its general comment No. 31 (2004), the Human Rights Committee interpreted article 2 (3) as imposing an independent obligation to investigate allegations of violations of the Covenant. Once a State party's authorities are aware of such allegations, they must investigate them promptly, thoroughly and effectively through independent and impartial bodies. The failure to conduct such an investigation could in and of itself give rise to a separate breach of the Covenant, even if the victim's rights have not, in fact, been violated.<sup>5</sup>

6. The Committee most often applies those principles to grave or gross breaches of the Covenant, such as extrajudicial killing, torture, enforced disappearance, arbitrary detention, violations of security of person and harsh prison conditions. In such contexts, the Committee regularly concludes that States parties have violated substantive provisions of the Covenant in conjunction with article 2 (3). Such findings are often premised on the absence of any domestic institution to investigate complaints, the failure of the relevant agencies or officials to open an investigation or the conduct of an investigation that is manifestly insufficient or inadequate.<sup>6</sup>

7. The Committee's jurisprudence provides limited guidance on two issues raised in the present case, however: (a) whether the obligation to investigate applies to less severe violations of the Covenant, including of provisions that contain limitation clauses, such as the right to freedom of expression;<sup>7</sup> and (b) the nature and scope of the investigation that a State party must conduct in response to complaints alleging such violations.

8. As to the first issue, the duty to investigate should, in principle, apply to violations of any provision of the Covenant. The obligations described in general comment No. 31 (2004) are expressed in general terms and are not limited to a subset of Covenant articles or to particular types of violations. With regard to freedom of expression, in particular, the

<sup>3</sup> Regional declarations and guidelines and non-binding standards adopted by non-governmental organizations emphasize the importance of allowing journalists to use cameras, video recorders and other devices. See, for example, Office for Democratic Institutions and Human Rights, *Venice Commission Guidelines on Freedom of Peaceful Assembly*, 2nd ed. (Venice, 2010), para. 169: “[p]hotographing or video recording the policing operation by participants and other third parties should not be prevented, and any requirement to surrender film or digitally recorded images or footage to the law enforcement agencies should be subject to prior judicial scrutiny”; and Declaration of Principles on Freedom of Expression in Africa, adopted on 23 October 2002 by the African Commission on Human and Peoples' Rights at its thirty-second ordinary session, art. XI (1): “the material destruction of communications facilities undermines independent journalism, freedom of expression and the free flow of information to the public”. See also Article 19, “International standards: regulation of media workers”, available at <https://www.article19.org/resources/international-standards-regulation-media-workers>; and European Centre for Press and Media Freedom, “Press freedom police codex” (2020), available at [https://policecodex.eu/wp-content/uploads/2020/09/Police-Codex\\_mail.pdf](https://policecodex.eu/wp-content/uploads/2020/09/Police-Codex_mail.pdf).

<sup>4</sup> *Butkevich v. Russian Federation*, para. 123; *Selmani et al. v. the former Yugoslav Republic of Macedonia*, para. 75; *Pentikäinen v. Finland*, paras. 89 and 107; and Declaration of Principles on Freedom of Expression in Africa, art. XI (2). See also Office of the United Nations High Commissioner for Human Rights, “Briefing on human rights in the context of protests for journalists”, p. 2.

<sup>5</sup> General comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, para. 15.

<sup>6</sup> See, for example, *Mechani v. Algeria* (CCPR/C/107/D/1807/2008), para. 8.10; *Bahadur Maharjan v. Nepal* (CCPR/C/105/D/1863/2009), para. 8.8; and *Traoré v. Côte d'Ivoire* (CCPR/C/103/D/1759/2008), para. 7.6. See also general comment No. 20 (1992) on the prohibition of torture or other cruel, inhuman or degrading treatment or punishment, para. 14 (complaints alleging a violation of article 7 “must be investigated promptly and impartially by competent authorities”).

<sup>7</sup> Article 19 provides that the right to freedom of expression may “be subject to certain restrictions [that] are provided by law and are necessary: (a) for respect of the rights or reputations of others; [or] (b) for the protection of national security or of public order (ordre public), or of public health or morals.”

Committee has previously found violations of article 19 in conjunction with article 2 (3) in cases involving violence, harassment, criminal prosecution or financial penalties.<sup>8</sup> Similarly, in its general comment No. 34 (2011), the Committee urged States parties to vigorously investigate in a timely fashion all “attacks” against journalists and human rights defenders, and it defines attacks as including arbitrary arrest, torture, threats to life and killing.<sup>9</sup>

9. The facts as presented by the author in the present case do not involve an “attack” in this narrow sense and, as mentioned above, the author was not arrested, criminally prosecuted or fined for reporting on the demonstration. Nevertheless, we believe that the State party was required to open an investigation to satisfy its obligations under article 19, read together with article 2 (3), as the domestic authorities did in the present case.

10. Turning to the second issue – the nature and scope of investigations of less severe violations of the Covenant – paragraph 15 of general comment No. 31 (2004) provides that inquiries must be prompt, thorough, effective and carried out by independent and impartial bodies. The Committee’s decisions and the case law of other international human rights bodies provide additional guidance. The domestic authorities are under an overarching duty to investigate in good faith.<sup>10</sup> Their decision as to whether to open an investigation should consider all relevant sources, including information provided by the complainant.<sup>11</sup> Once an investigation is under way, it should be carried out expeditiously and the victim and witnesses must be given a meaningful opportunity to participate in the proceedings.<sup>12</sup> Although a decision to discontinue an investigation or close a criminal proceeding does not in itself violate the Covenant, the domestic authorities must provide a plausible explanation for such a decision.<sup>13</sup> Lastly, there must be appropriate public scrutiny of the investigation and its results to ensure secure accountability.<sup>14</sup>

11. In our view, the domestic authorities of Armenia adequately complied with these principles and the Committee properly rejects the specific shortcomings alleged by the author regarding the conduct of the investigation (paras. 8.4 and 8.5). We nevertheless believe that it is important to underscore the chilling effect of police seizures or the destruction of devices used by journalists and to provide guidance to States parties regarding the nature and scope of the obligation to investigate such misconduct.

<sup>8</sup> See, for example, *Njaru v. Cameroon* (CCPR/C/89/D/1353/2005), paras. 6.1–6.4 (journalist assaulted, tortured and arrested for publishing news articles denouncing corruption and violence of security forces); *Kouider Kerrouche v. Algeria* (CCPR/C/118/D/2128/2012), para. 8.9 (civil servant whistle-blower, who reported embezzlement and corruption within a State-owned corporation, sentenced to 18 months’ imprisonment and fined for insulting a public official); and *Pérez Barriga et al. v. Ecuador* (CCPR/C/136/D/3267/2018), para. 9.6 (owners and directors of newspaper and media companies subjected to disproportionate restrictions enforced by administrative penalties and fines).

<sup>9</sup> General comment No. 34 (2011), para. 23.

<sup>10</sup> *Croes v. the Netherlands*, communication No. 164/1984, para. 10.

<sup>11</sup> *Kalamiotis v. Greece* (CCPR/C/93/D/1486/2006), para. 7.3.

<sup>12</sup> *Ibid.*, para. 7.2. See also Inter-American Court of Human Rights, *Cantoral Huamani and García Santa Cruz v. Peru*, Judgment, 10 July 2007, para. 190.

<sup>13</sup> Kresimir Kamber, *Prosecuting Human Rights Offences: Rethinking the Sword Function of Human Rights Law* (Brill-Nijhoff, 2017), p. 130; and *Benítez Gamarra v. Paraguay* (CCPR/C/104/D/1829/2008), para. 7.5.

<sup>14</sup> European Court of Human Rights, *Jordan v. United Kingdom of Great Britain and Northern Ireland*, Application No. 24746/94, Judgment, 4 August 2001, para. 109.

## Annex II

### **Individual opinion by Committee member Teraya Koji (concurring)**

1. In my assessment, I concur with both the conclusions and the primary rationale provided by the Committee. Nonetheless, akin to the joint opinion by Ms. Donders and Mr. Helfer, I contend that the State party's obligation to investigate requires further supplementation.

2. States parties to the Covenant are obligated to conduct investigations, as referenced by the Committee in paragraph 15 of its general comment No. 31 (2004) and paragraph 23 of its general comment No. 34 (2011) (para. 8.2). That obligation should be interpreted broadly, extending beyond the specific elements outlined in those general comments, and can be directly inferred from article 2 (3) by necessary implication. The obligations under the Covenant, including those under article 19, are assured through judicial and administrative mechanisms (general comment No. 31 (2011), para. 15) which naturally involve criminal procedures accompanied by criminal proceedings. In other words, States parties are required to exercise their police powers appropriately, which inherently includes conducting investigations when there are allegations of police misconduct, regardless of the severity of the offence. That stance, combined with the significance of freedom of expression and the crucial role of journalists, implies that States parties must undertake a higher degree and broader scope of investigative obligations.

3. One of the reasons that the Committee found no violation by the State party was the lack of any specific argument from the author as to which investigative steps the State party authorities failed to conduct (para. 8.5). It is crucial to recognize, however, that the author lacks the investigative tools available to the police. In addition, the situation is further complicated by the confiscation of the author's camera, a vital tool for a journalist, which was used against him. The author's request for the identification of perpetrators and clarification of the division of roles (para. 5.2) is significant in guarantees of non-repetition (general comment No. 31 (2011), para. 16), which is a component of effective remedy. It is noteworthy that the perpetrators could not be identified beyond a reasonable doubt from the video (paras. 4.4 and 8.4), which would rather make it more convenient for the authorities to prepare only an incomplete videotape record in the future. While the fact that eight individuals, including police officers, were held criminally liable suggests that the State party may have taken effective measures or did "investigate in good faith" (joint opinion by Ms. Donders and Mr. Helfer, para. 10), it is challenging to ascertain whether that level of accountability is sufficient to demonstrate that the State party fulfilled its obligation to investigate, especially considering the complainant's allegation that more than 1,000 police officers were deployed (para. 5.3).

4. In other words, the State party's obligation may not have been fully met or, at the very least, there is the potential for the State party to enhance its compliance. Given that the State party itself asserts that domestic remedies have not been exhausted, it is anticipated that further domestic decisions may be forthcoming, including those addressing the obligation to investigate.

## Annex III

### Individual opinion by Committee member H el ene Tigroudja (dissenting)

1. I am unable to follow the reasoning of the Committee in the present case dealing with the lack of safety of a journalist covering public events. On the other hand, I share the conclusion regarding the absence of the State’s failure regarding the domestic investigation. The line of reasoning is minimalist and is at odds with the international standards on the protection of the safety of journalists. That minimalist approach is alarming and must be read in conjunction with the dissent I expressed on the Views adopted in communication No. 3039/2017, where I also considered that the Committee fell short in protecting press freedom.<sup>1</sup>
2. In the present case, the facts – not contested – reveal several elements critical for the consideration of the State’s obligations regarding press freedom: (a) the author is a journalist dealing with issues of public interest (para. 2.1); (b) when the confrontation with the police officials occurred, the author was exercising his profession and covering the protests (para. 2.4); (c) the author was clearly identified as a journalist with a press badge (para. 2.4); (d) the author filmed the protests and the ill-treatment inflicted by the police on the residents (para. 2.4); and (e) the author was approached by police officers, threatened and beaten and his camera was eventually confiscated (para. 2.4). The author decided to leave the area (para. 2.4).
3. Before the Committee, the author raised several violations of the Covenant, including a violation of article 19 read alone. In para. 7.6, however, the Committee reached the conclusion that that part of the complaint was not admissible, the author having “not provided sufficient substantiation”. The Committee does not indicate what additional elements could have substantiated the claim.
4. I disagree with the conclusion for three main reasons. First, the Committee treats the facts only under their procedural dimension, namely, addressing only the claim of the lack of an investigation, and leaves aside the violent targeting of a group of journalists identified as such while exercising their activities. The facts are clearly spelled out in several parts of the decision (paras. 2.4 and 8.3) but not considered. I do not wish to overinterpret the choice made to focus on the procedural dimensions of the case. Based on the precedent of the European Court of Human Rights, however, and its tendency to consider only the procedural dimensions of a human rights violation, which triggers a major deference to States,<sup>2</sup> this appears to be an alarming signal.
5. Second, the minimalist approach is at odds with the Committee’s own standards, as developed in its general comments No. 34 (2011) and No. 37 (2020). As stressed by the Committee in paragraph 13 of its general comment No. 34 (2011), indeed a free, uncensored and unhindered press or other media is essential in any society to ensure freedom of opinion and expression and the enjoyment of other Covenant rights. It constitutes one of the cornerstones of a democratic society. More explicitly, the Committee affirmed in its general comment No. 37 (2020) that “[Journalists] may not be prohibited from, or unduly limited in, exercising these functions, including with respect to monitoring the actions of law enforcement officials. They must not face reprisals or other harassment, and their equipment must not be confiscated or damaged.”<sup>3</sup> The present complaint is a clear textbook case of an identified journalist covering a protest, filming or recording police officers’ behaviour and being targeted and harassed because of those actions. It should have been analysed by the Committee as such, namely, as a violation by the State of its obligation not to prohibit a

<sup>1</sup> See *N.S. v. Kazakhstan* (CCPR/C/140/D/3039/2017).

<sup>2</sup> See O.M. Arnardottir, “The ‘procedural turn’ under the European Convention on Human Rights and presumptions of Convention compliance”, *International Journal of Constitutional Law*, vol. 15, No. 1, 1 January 2017.

<sup>3</sup> General comment No. 37 (2020), para. 30 (emphasis added and original footnote omitted).

journalist from performing his duties and its obligation not to prohibit the circulation of public interest information.

6. Third, the minimalist approach is not only at odds with the Committee's own standards, it is also at odds with international standards applicable to the protection of freedom of expression, in general, and the protection of the safety of journalists, in particular. It is clear, indeed, that the harassment of journalists while they are covering a protest – physical or verbal harassment, threats, seizure of their materials – not only triggers a chilling effect on press freedom but constitutes a clear breach of States' obligation not to impede the free exercise of journalistic activities and to preserve them from undue attacks by the police. There is no ambiguity in the regional bodies' jurisprudence and the practice of the United Nations Scientific, Educational and Cultural Organization on the protection of the safety of journalists.<sup>4</sup> As clearly summarized by the Inter-American Court of Human Rights in *Bedoya v. Colombia*, "[...] for the media to be able to carry out its role of providing journalistic oversight, it must not only be free to impart information and ideas of public interest, but also be free to gather, collect, and evaluate such information and ideas. In his 2012 report [...], the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression referred to the fact that people who engage in journalism 'observe and describe events, document and analyse events, statements, policies, and any propositions that can affect society, with the purpose of systematizing such information and gathering of facts and analyses to inform sectors of society or society as a whole.' This means that any measure that interferes with the journalistic activities of people playing this role will inevitably obstruct the right to freedom of expression in its individual and collective dimensions."<sup>5</sup> This echoes what the European Court of Human Rights affirmed in *Najafli v. Azerbaijan*, for instance, where it was highlighted that public measures preventing journalists from doing their work may raise issues under article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights).<sup>6</sup>

7. Against this international legal background and the undisputed facts of the present case, I cannot share the approach and the conclusion of the Committee. The claim under article 19 is sufficiently substantiated and triggers a violation of the provision read alone.

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<sup>4</sup> See United Nations Plan of Action on the Safety of Journalists and the Issue of Impunity, available at <https://www.unesco.org/en/safety-journalists/un-plan-action>.

<sup>5</sup> Inter-American Court of Human Rights, *Bedoya Lima et al. v. Colombia*, Judgment, 26 August 2021, para. 107 (emphasis added and original footnote omitted). See also Declaration of Principles on Freedom of Expression and Access to Information in Africa, adopted in 2019 by the African Commission on Human and Peoples' Rights (principle 20).

<sup>6</sup> European Court of Human Rights, *Najafli v. Azerbaijan*, Application No. 2594/07, Judgment, 2 October 2012, para. 68; see also, especially, paras. 64–70.