

2021

The United Nations Human Rights Committee: **A YEAR IN REVIEW**



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© The United Nations Human Rights Committee: A Year in Review 2021

Centre for Civil and Political Rights (CCPR Centre)

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Foreword



The Centre for Civil and Political Rights is delighted to introduce this analysis of the 2021 findings of the United Nations Human Rights Committee.

This research has systematically been carried out since 2014 and considers the latest developments of the Committee's jurisprudence.

During the year 2021, the Human Rights Committee held the 131st, 132nd and 133rd sessions. In these sessions, the Committee enlarged its jurisprudence by issuing a total of 93 individual communications. As it was the case in previous years, the Human Rights Committee receives the greatest number of communications out of all the United Nations treaty bodies, and the backlog of submissions continues to be a major issue of concern during 2021.

This research has been carried out in collaboration with the Law Clinic of the LL.M. in International Law of the Graduate Institute of Geneva. The students prepared the related research materials and produced the articles included in this yearbook under the supervision of the Head of the Law Clinic, Prof. Yuval Shany and the Centre.

I would like to thank the students who participated in the project, namely Laura Cestaro, Aakrishti Kumar, Anne-Luse Bloch, Falah Sayed, and Sugandha Sawhney. Additional research was carried out by Irene Aparicio, the intern at the Centre.

The purpose of this research is to make the jurisprudence of the Human Rights Committee become more visible and accessible to all individuals involved in the promotion and protection of civil and political rights. I am confident that this publication will be useful to litigators and human rights defenders.

Patrick Mutzenberg

Director

Centre for Civil and Political Rights

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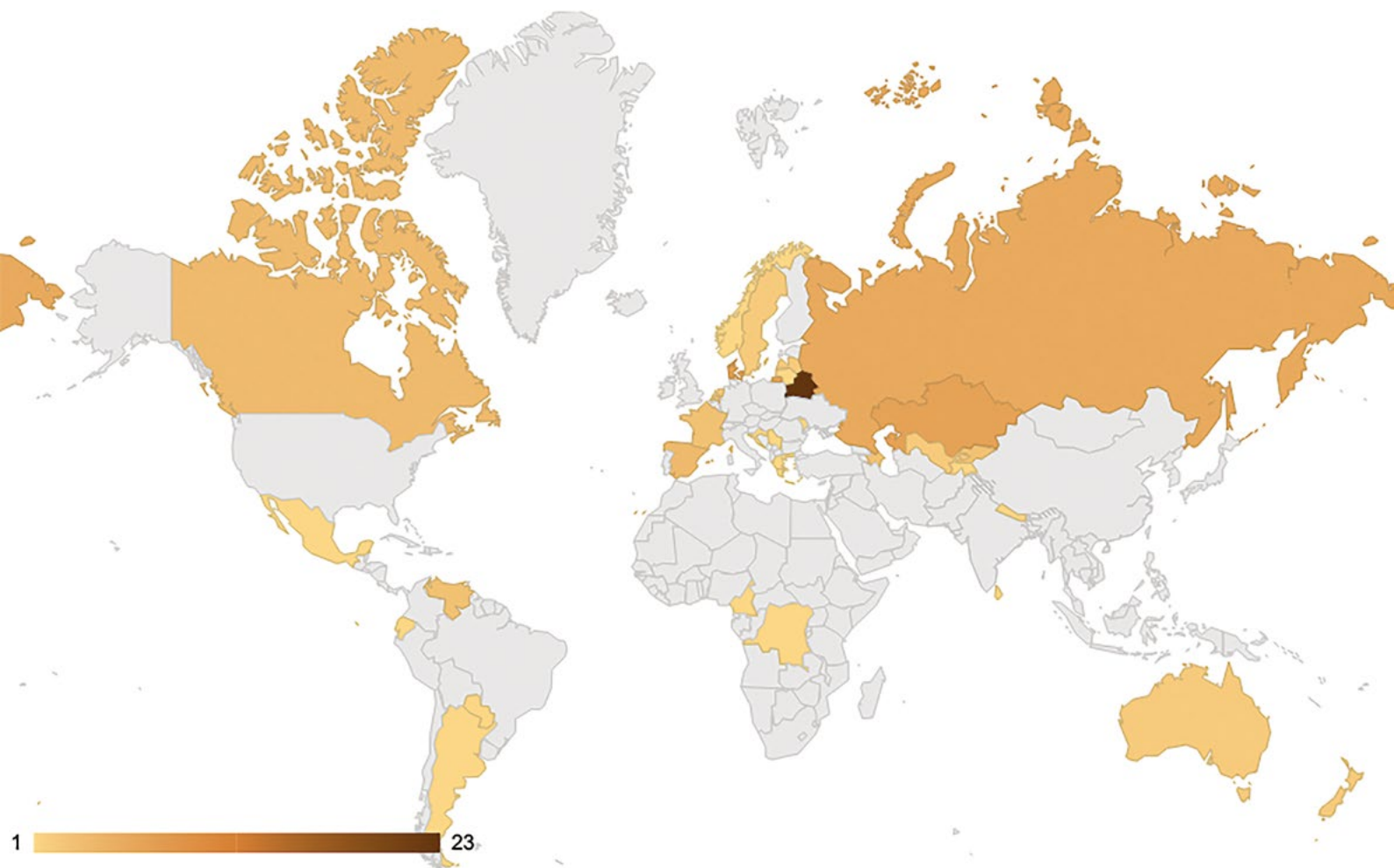
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Overview of the Jurisprudence of the Human Rights Committee

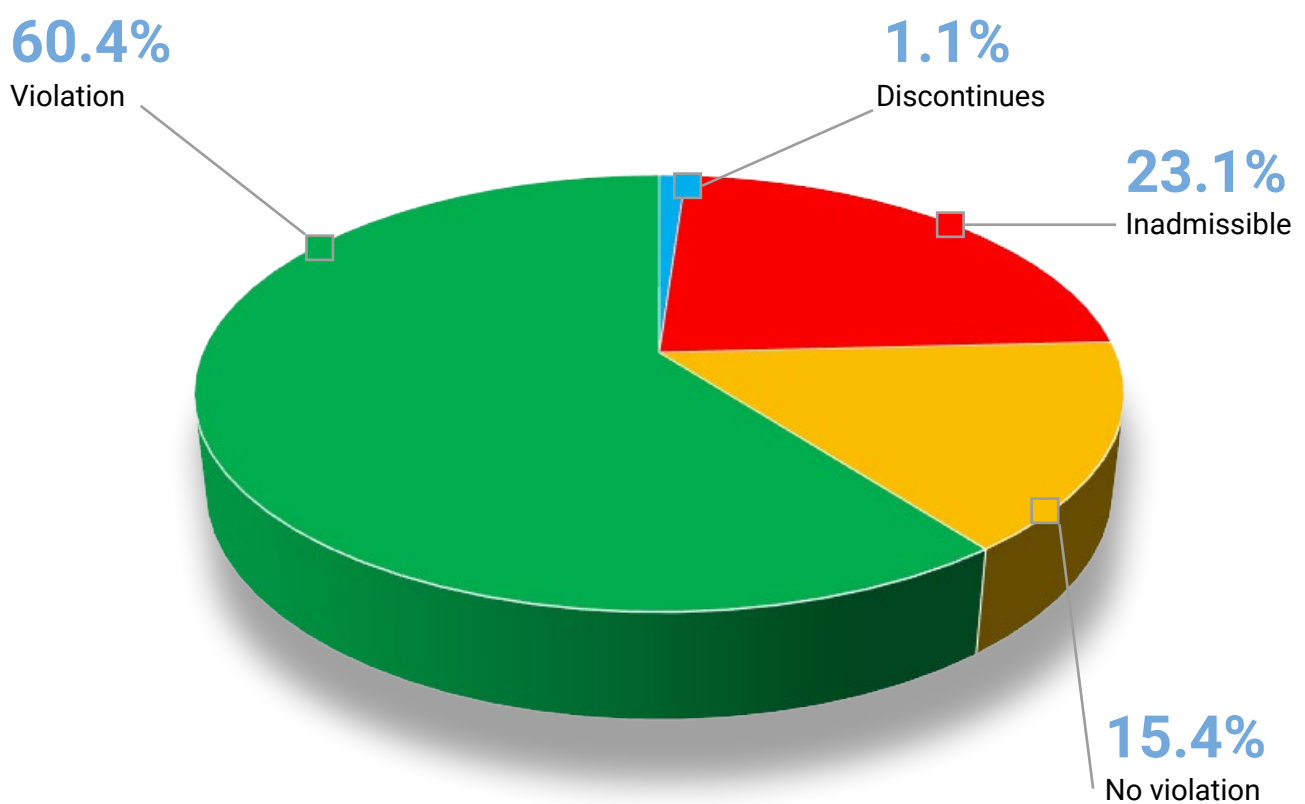
In 2021 (131st, 132nd and 133rd Sessions), the Human Rights Committee adopted views on 93 **individual communications**, although this research only takes into account the communications that are available on the Human Rights Committee website, those being 91.

The Geographical Trends



- The geographical spread of the Human Rights Committee's communications shows that Belarus (23) had the greatest number of views, followed by Kazakhstan (7), Denmark (7), and the Russian Federation (6).
- There is a stark difference in the number of views adopted for other countries. For instance, for 28 countries the Committee adopted less than 5 views.
- Further, there is a disparity between the country with the maximum number of views (Belarus with 23) and the countries that had the second and third greatest number of views, as both Denmark and Kazakhstan stand at 7 views.

Outcomes of the Communications



- Of the 91 communications adopted by the Committee in 2021, 55 contained violations of the Covenant, 60%.
- Of the remainder, 21 communications were declared inadmissible according to the criteria stated under the Optional Protocol, 23%.
- 14 communications revealed no violations of the Covenant, 15%.

Thematic Trends within the Violations

Qualitative thematic breakdown of trends identified in the individual communication views

Note: For this research, the taglines under 'Substantive Issues' of communications in which violations were found were considered. Individual communications may contain more than one theme and up to 9, and this research takes into account the number of times each tagline was mentioned in the communications. Moreover, some themes were merged under one category for simplification, like 'Torture' and 'Cruel and human or degrading treatment'.

Theme	Number of Cases
Freedom of opinion and expression	29
Fair trial	22
Torture/ill-treatment	18
Effective remedy	18
Freedom of assembly	16
Non-discrimination	12
Arbitrary detention/arrest	10
Liberty and security of the person	7
Freedom of thought, conscience and religion	7
Right to privacy	6
Rights of minorities	5
Right to a family	5
Right to life	5
Deportation	5
Rights of the child	3
Freedom of association	2
Electoral rights	2
Rights of persons with disabilities	1
LGBTQI+	1
Legal personality	1
Imprisonment for non-fulfilment of a contractual obligation	1
Equal rights of men and women	1

Themes of Communications

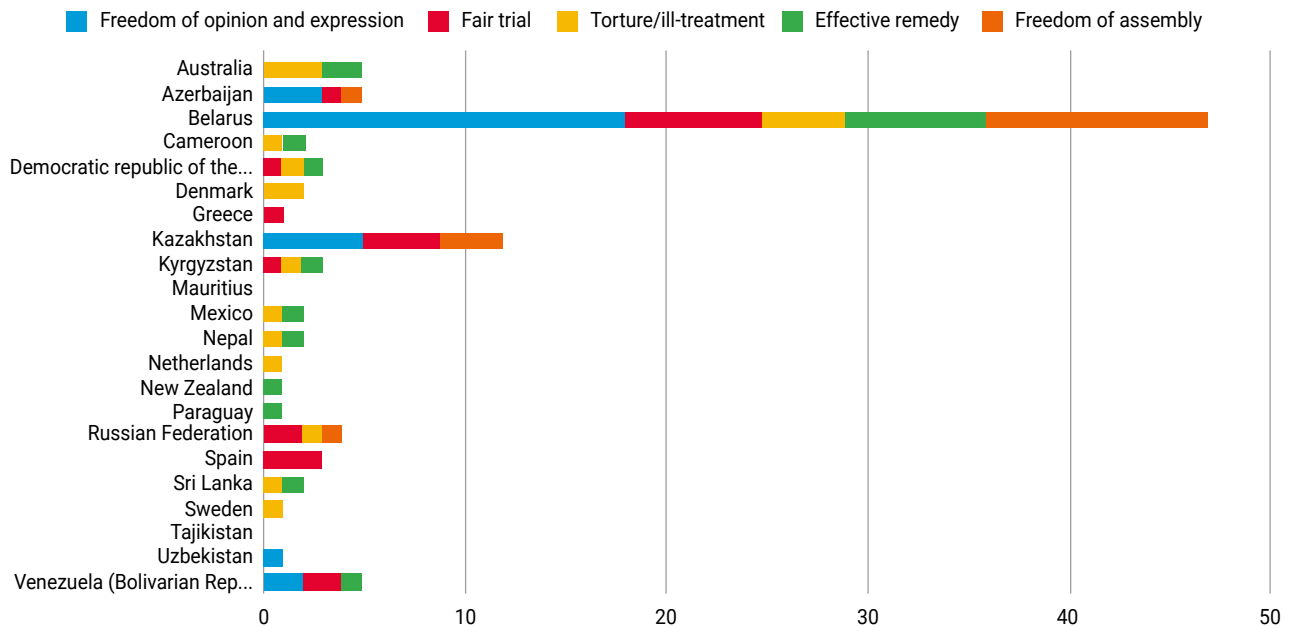
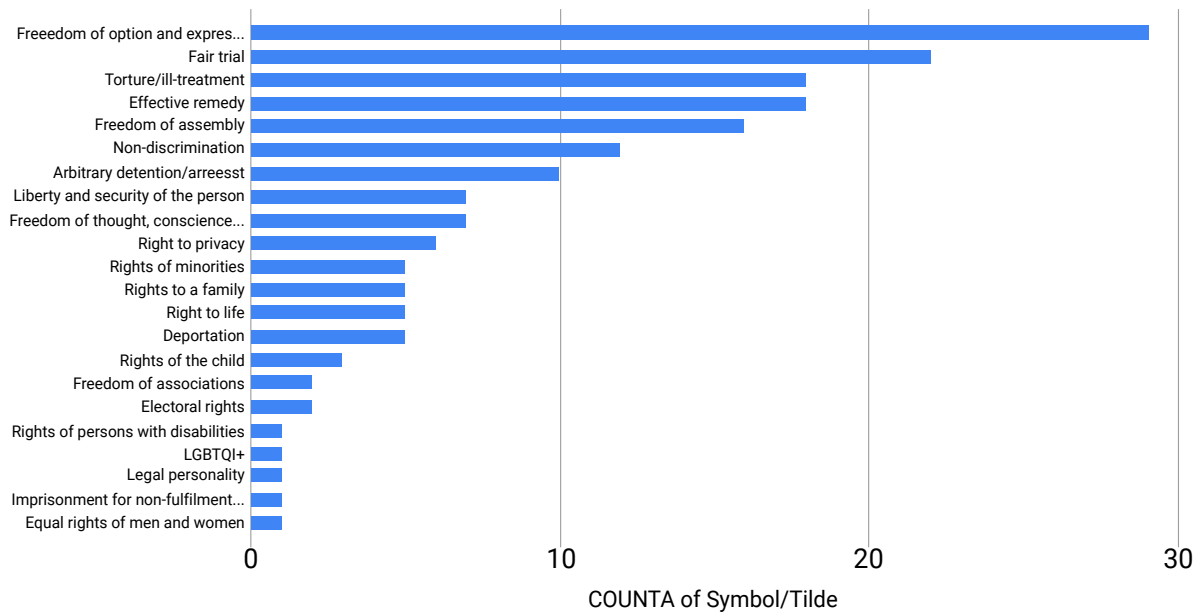


Chart done considering only the 5 most salient themes

Freedom of Opinion and Expression, Fair Trial, and Torture in Belarus

Out of the 55 individual communications that had violations, more than half, 29 of them, involved freedom of opinion and expression as enshrined under article 19 of the Covenant. Most of them, 72%, concern Belarus, since out of the 21 communications on Belarus with violations, 18 include freedom of opinion and expression. Moreover, there is a stark difference between the countries that follow, those being Kazakhstan (5), and Azerbaijan (3).

As for the second most salient theme, fair trial, it concerned 40% of the cases, those being 22. The majority of the cases also involved Belarus (7), followed by Kazakhstan (4), and Spain (3).

The third most important issue, torture/ill-treatment, concerns 33% of the cases, 18 cases, the majority also involving Belarus (4), followed by Australia (3) and Denmark (2).

Freedom of Thought, Conscience and Religion

Out of the 55 individual communications with violations, 7 were found to involve the freedom of religion, conscience and thought as enshrined under article 18 of the Covenant. In 2021, such violations were seen in communications brought against Azerbaijan (3), Belarus (1), Kazakhstan (1), Kyrgyzstan (1), and Tajikistan (1). All of them are post-Soviet countries.

Right to Freedom Against Detention

Importantly, the Committee stated that detention was arbitrary in cases where it was unreasonably prolonged, provision of inadequate conditions, or when a prevalence of less intrusive measures existed.

The Committee tackled two communications dealing with the detention of a mentally impaired person. In one of the cases, *A.P. v. Kazakhstan*, the ill-treatment and unsafe conditions faced by the victim in a psychiatric ward led to his death. The second case is *A.S. v. Australia*, concerning an indigenous Australian who committed several crimes (murder, robbery and attempted rape) and was found not guilty because of his mental impairment (not guilty on the grounds of insanity). Nonetheless, his being held in a maximum-security facility was a violation of his freedom as the centre did not have appropriate conditions.

In another case of continued detention after serving punitive sanctions, the Committee found that there was no violation as he was offered various rehabilitative programs.

Deportation and the Principle of Nonrefoulement

Out of all the communications, including those in which violations were found and those in which there were not, there are 11 cases in which the principle of nonrefoulement was raised. The Human Rights Committee found a violation in less than half of them. The principle by which States party to the Covenant cannot transfer anyone to a place where there is a real risk of irreparable harm such as that contemplated by articles 6 and 7 of the Covenant.

Under the Committee's jurisprudence, the principle of nonrefoulement was notably claimed in relation to the best interest of the child at *A.M.F. and A.M. v Denmark* (CCPR/C/132/D/2651/2015) and at *J.O. Zabayo v The Netherlands* (CCPR/C/133/D/2796/2016). It was also notably claimed in relation to freedom of religion at *Tierri Amedzro v. Tajikistan* (CCPR/C/133/D/3258/2018) and at *M.N. v. Denmark* (CCPR/C/132/D/3188/2018).

Jurisprudence of the Human Rights Committee in 2021



Argentina

[CCPR/C/132/D/3238/2018](#)

F.F.J.H. v. Argentina

Indigenous community leader claims illegal extradition to Chile

Substantive issues: Prohibition of torture, prohibition of inhuman and degrading treatment, right to freedom and to security of the person, procedural guarantees, protection of minorities.

Facts: The author is an Argentinian national, a member of the Mapuche indigenous community, and a *Lonko*, a political and philosophical traditional authority. Due to a lack of medical personnel that practice traditional Mapuche medicine in Argentina, the author went to Chile. During a medical session, the Chilean gendarmerie entered and detained the author along with others for having started a fire, owning firearms and munitions, and entering Chile illegally. He was detained for some time and while awaiting trial in house arrest, he returned to Argentina through a traditional Mapuche faith walk. In the meantime, the Mapuche doctor was found guilty of the charges above described and the others were absolved. An extradition request was filed by Chile after a tortured informant disclosed the author's position.

The author claimed that if the State party were to extradite him, he would risk being subjected to torture. Further, his right not to be subjected to arbitrary detention was violated as the State parties did not consider alternative forms of detention that, as an indigenous person, would fit his cultural role better and not take away from his community. The author also claims that the extradition process is illegal as it has been based on information obtained under torture. Finally, he claims he was deprived of his community's right to enjoy their indigenous culture as, being a leadership figure, his absence had grave consequences on his community. Hence, he claimed the State party violated his rights under articles 7, 9, 14, and 27 of the Covenant.

Admissibility: The Committee found that the justice process in Argentina was thorough, all facts and evidence were considered, and hence there was no reason to establish that the State party acted arbitrarily in their consideration of the evidence or interpretation of national legislation. Hence, the author's claims under articles 7, 9, and 14 are inadmissible. Further, the alleged violation of article 27 was devoid of sufficient argumentation and deemed inadmissible as the author only referred to the collective cultural damage of his community without actually explaining what the consequences of his absence were.

Separate opinion: Committee member Hélène Tigroudja issued a partially dissenting opinion. According to her, by producing an inadmissibility decision, the Committee did not address strongly enough the legal consequences of Argentina's non-compliance to interim measures granted by the Committee. Interim measures must be followed as they produce international responsibility and, otherwise, it would constitute a breach of Article 1 of the Optional Protocol.



Australia

[CCPR/C/132/D/2365/2014](#)

A.K. et al. v. Australia

Unaccompanied children detained and denied access to mental and physical health facilities

Substantive issues: Cruel, inhuman or degrading treatment, punishment and security of person, human dignity, children's right, and right to an effective remedy

Facts: The authors are nationals of Afghanistan, Pakistan, and Iraq. In November 2013, the authors arrived in Australia as unaccompanied minors and were placed in a detention centre on Christmas Island for illegal migrants and asylum seekers, pursuant to domestic law, i.e., the Australian Migrants Act. Subsequently, five authors were granted a Safe Haven Enterprise. One of the author's requests to be taken care of by his brother was refused. The authors claim the State party has violated their rights under article 2 (3), 7, 9 (1), (4), 10, 17, 23 and 24 of the Covenant.

Admissibility: The communication is admissible insofar as it appears to raise issues about detention under articles 9 (1) and (4) and 24 of the Covenant with respect to all authors and under articles 17, 23 and 24 of the Covenant with respect to the last author.

Merits: Taking into consideration the author's claim to be taken care of by his brother, the Committee looked into the rights of the child and noted that (a) the State party took all possible measures to establish and maintain contact between the author and his brother and, (b) the author failed to present sufficient evidence. Hence, there was no violation of duties under articles 17, 23 and 24 of the Covenant. With regards to the allegations that their detention was arbitrary, unreasonably prolonged and conditions were inadequate, the Committee noted that the State party failed to justify the period of detention, the prevalence of less intrusive measures and the inability to quickly transfer the authors to a community centre tailored for their needs. Hence, placing the authors, as unaccompanied minors, in immigration detention violated articles 9 (1) (4) and 24 of the Covenant. Regarding the claim that the authors did not have any domestic remedy to challenge the legality of their detention, the Committee notes that the State party has again failed on two counts. First, to demonstrate legal precedents showing effectiveness, and second, to show that the national courts have authority to make individualized rulings on the justification for each author's detention. Hence, there is a violation of article 9 (4) of the Covenant.

Recommendations: The State party is under an obligation to:

- (a) provide the author 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 provide authors with adequate compensation and take all necessary steps to prevent similar violations in the future.

[CCPR/C/132/D/2900/2016](#)

A.S. v. Australia

Deprivation of liberty of a person with a mental disability for an indefinite term and in the absence of regular mandatory reviews

Substantive issues: Cruel, inhuman or degrading treatment or punishment; arbitrary detention; conditions of detention; rehabilitation; family rights; minorities; discrimination on the ground of disability

Facts: The author is an indigenous Australian men arrested for murder, robbery, and attempted rape in 1995. He was found not guilty on the ground of insanity because he is suffering from several mental disorders and substance abuse. He is nevertheless ordered to be held in custody for an indefinite period in the Alice Springs Correctional Centre, a maximum-security facility. His incarceration was mandatory and upheld without regular reviews of the conditions of his detention. His needs required by his mental disability were not accommodated properly. He was faced with inappropriate conditions of detention, a namely extended period of isolation and disproportionate punishment, which were acknowledged by the NT Supreme Court and the Australian Human Rights Commission. The author claims that his continued detention is arbitrary and disproportionate in breach of article 9 of the Covenant and that the conditions of his detention amount to torture or cruel, inhuman and degrading treatment, and deprive him of the right to be treated with dignity according to articles 7 and 10 (1) of the Covenant. He also claims that the State has failed to provide him with rehabilitative services pursuant to articles 2 (1) and 26 of the Covenant, and that his transfer to another maximum correctional facility resulted in an arbitrary interference with his family life according to article 17 (1) in conjunction with article 23 because his family could not visit him anymore. Finally, as a result of this transfer, the State has allegedly failed to respect his right to enjoy his own culture pursuant to article 27 in conjunction with article 10 (1).

Admissibility: The Committee considers that the administrative remedies that should have allegedly been pursued by the author cannot be considered effective in terms of the Optional Protocol. More importantly, the Committee finds that the author's case has no reasonable prospect for success before the High Court of Australia - a fact that has not been contested by the State party. The Committee, therefore, concludes that the author has exhausted all domestic remedies and his communication can be examined. As for the conditions of admissibility *ratione materiae*, the Committee considers that article 10 (3) of the Covenant applies not only to those who were found guilty by a criminal jurisdiction, but also to inmates suffering from mental impairments such as the author. Finally, the Committee considers that the claim under article 27 of the Covenant (minority rights) is not sufficiently substantiated. In sum, the claim is admissible for allegations made under articles 7, 9, 10 (1) and (3), 17 (1), and 23 (1) of the Covenant.

Merits: The Committee recalls that the deprivation of liberty outside of criminal charges presents severe risks of arbitrary detention. Only a direct and imperative threat proved by the State may justify the detention (no alternative measure to detention), which must not be longer than necessary. The Committee notes that domestic courts have correctly assessed the author's mental impairment and that his case indeed falls within the scope of the NT Criminal Code, on which the initial period of the author's deprivation of liberty was based. However, the Committee finds several deficiencies regarding the obligation of domestic courts to conduct regular reviews of the author's custodial

supervision order as well as a lack of important habeas corpus guarantees under article 9 (4) of the Covenant.

As the place of the author's detention, a maximum-security prison, the Committee considers that the resources available in this facility are not appropriate for the custody and care of the author and that the improvement of the conditions of detention put forward by the State party cannot account for the unlawfulness of the excessively long periods spent in a maximum-security environment. It, therefore, considers that the State party has failed to demonstrate that the legitimate aims of the author's custodial supervision could not be achieved by lesser means, particularly since the State party had a continuing obligation under article 10 (3) to adopt reformation measures over 20 years. The author's terms of detention are therefore arbitrary and violate article 9 (1) of the Covenant and article 10 (3) of the Covenant.

Concerning the allegations of ill-treatment, the Committee considers that, taken cumulatively, the inappropriate conditions of the author's detention, its indefinite duration, and the absence of mandatory reviews amount to a violation of article 7 of the Covenant.

Concerning the claims made under articles 17 (1) and 23 of the Covenant, the Committee finds that there is no sufficient information to conclude that the State party violated these provisions by transferring the author to a new facility. The Committee's reasoning is therefore limited to the author's detention in the Alice Springs detention facility where it has been found that, from 1995 to 2013, no measure was taken to facilitate the author's contact with his family. During this time-lapse, the State party violated the Covenant.

Recommendations: The State party must:

- (a) provide the author with an effective remedy,
- (b) make full reparations,
- (c) provide adequate compensation and appropriate measures of satisfaction.

It must also take measures to prevent similar violations in the future.

[CCPR/C/133/D/3212/2018](#)

T. Gnaneswaran v. Australia

Deportation of a husband and father to Sri Lanka

Substantive issues: Torture; cruel, inhuman or degrading treatment or punishment; family rights; separation of children from parents

Facts: The author is a national of Sri Lanka claiming a violation of articles 7 and 17 in conjunction with article 23 of the Covenant. The Malaysian authorities tortured and interrogated the applicant on several occasions between 2008 and 2012 because of his perceived political affiliation. He arrived in Australia in June 2012 and asked for a protection visa. His application was rejected, and the rejection was confirmed by all domestic courts. He asked for ministerial intervention in November 2017 and July 2018, which were both denied. Instead, he was issued a deportation notice for 16 July 2018, although his wife and child were issued a haven enterprise. He claims that the deportation amounts to a violation of article 7 of the Covenant because there is a risk of torture, and that there is a violation of article 17 in conjunction with article 23 (1) because the expulsion would amount to the separation from his family.

Admissibility: The communication is admissible as regards articles 17 and 23 (1). The claim under article 7 was withdrawn.

Merits: The Committee considers that separating the author from his wife and child amounts to an interference with the rights under article 17. The Committee has also to determine whether the interference is arbitrary or unlawful and whether insufficient protection has been afforded to his family by the State under article 23 (1) of the Covenant. The Committee considers that the author's removal pursued a legitimate objective, which is the enforcement of the State's immigration law. However, the Committee notes that there were some important changes in the author's life, namely his marriage, the birth of his daughter and the granting of a Safe Haven Enterprise. Such new circumstances could have only been brought through ministerial intervention. The Committee considers that the decision to refuse ministerial intervention was not based on an individual assessment of the author's claim, in particular regarding the reasonableness, necessity and proportionality of the measure of the author's removal. There is also no specific reason for the decision not to refer the application to the Minister, there is a lack of reasoning, and there is only general reference to the claim that the interference was lawful and non-arbitrary. The Committee considers that the order of expulsion generated excessive hardship with no prospect of reunification in Sri Lanka and constitutes a disproportionate interference with the author's family life.

Recommendations: The State party must:

- (a) provide the author with an effective remedy and
- (b) make full reparations (i.e, return to Australia, adequate compensation, review of the author's case).

The State party must also prevent similar violations in the future.



Azerbaijan

[CCPR/C/131/D/2805/2016](#)

Aziz Aliyev et al. v Azerbaijan

Jehovah's Witnesses arrested, detained, and fined for possessing religious literature unapproved by domestic law

Substantive issues: Arbitrary arrest and detention; discrimination; freedom of assembly; freedom of association; freedom of expression; freedom of religion; right to enjoy one's own culture

Facts: The authors are nationals of Azerbaijan who claim that the State party violated their rights under articles 9 (1), 18 (1) and (3), 19 (2) and (3), 21, 22 (1), 26, and 27 of the Covenant. The authors are Jehovah's Witnesses, a Christian denomination whose members are known for their preaching activities. Jehovah's Witnesses are a religious minority in Azerbaijan, where the population is predominantly Muslim and, although the authors belong to the aforementioned faith, they are not officially registered with the Government.

On 18 September 2018, the police, after initiating investigations at the author's residence, interrogated and charged them under domestic law for possessing religious literature that had not been approved by the State Committee for Work with Religious Associations and for carrying out a religious activity outside of a registered address. The District Court initiated the trial and ultimately fined each author. The authors filed appeals before the Administrative-Economic Board, the Shaki Court, and the Supreme Court, which have been dismissed.

The authors claim a violation of article 9 (1) of the Covenant as they were arrested for peacefully manifesting their religious beliefs and exercising the right to religious association. They claim that, by conducting a police raid and violating the sanctity of the author's private home, their rights under articles 18 (1) and (3) were violated. By interfering with their right to collectively engage in teaching and religious discourse, the authors claim a violation of articles 19 (2) and (3). Further, for unlawfully searching and seizing property and prosecuting, convicting and fining the authors for assembling for religious worship, the authors claim a violation of their rights under articles 21 and 22 of the Covenant. Finally, they claim a violation of their rights under articles 26 and 27 of the Covenant, since they were subjected to discrimination based on their religious minority beliefs.

Admissibility: Since the authors did not raise claims under article 22 (1) of the Covenant before the domestic courts, accordingly, this part of the communication is inadmissible. Further, claims under articles 26 and 27 are insufficiently substantiated for the purposes of admissibility under article 2 of the Optional Protocol. In absence of the State party contesting admissibility, the Committee considers that the authors have substantiated their claims under articles 9 (1), 18 (1) and (3), 19 (2) and (3) and 21 of the Covenant.

Merits: In relation to the authors' claims under the freedom of religion, the Committee stated that the State party failed to invoke any specific grounds to support the proportionality of the restrictions imposed on the authors as identified under article 18 (3) of the Covenant. Further, the Committee concluded that, by arresting, detaining, convicting, and fining the authors for possessing religious literature and holding a peaceful religious service in a private home, the State party violated their rights under article 18 (1) of the Covenant. The Committee noted that, under the Covenant, detention does not require a minimum duration in order to be arbitrary or unlawful nor a formal arrest (as defined under domestic law), as claimed by the authors. Accordingly, the

authors were arrested and detained within the meaning of article 9 of the Covenant. Under the right to liberty and security, the Committee observed that the police officers of the State party lacked appropriateness, predictability and regard for due process guarantees by threatening to imprison, criticize and not inform the authors of the potential harm caused by their religious acts. Hence, it concluded that the State party violated their rights under article 9 (1) of the Covenant. Finally, the Committee does not deem it necessary to examine violations under articles 19 or 21 of the Covenant.

Recommendations: The State party is under an obligation to:

- (a) provide the author 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 provide authors with adequate compensation, including reimbursement for the fines imposed and for the court fees related to questions of law, to prevent similar violations from occurring in the future.

[CCPR/C/133/D/3061/2017](#)

Jaarey Suleymanova and Gulnaz Israfilova v. Azerbaijan

State-imposed restrictions on the religious activities of Jehovah's Witnesses in violation of their rights to freedom of expression and to freedom of religion

Substantive issues: Criminal charges; defence – preparation of; discrimination; discrimination on the ground of religion; fair trial; fair trial – legal assistance; freedom of expression; freedom of religion; freedom of thought, conscience or religion; minorities – right to enjoy one's own culture; presumption of innocence

Facts: The authors are nationals of Azerbaijan. They claimed that, by charging, convicting, and fining them for operating a religious association outside of a registered legal address, the State party violated their rights under articles 14 (1), (2), (3) (a), (b), (d), (e) and (g), 18 (1), 19 (1) and (2), 26, and 27 of the Covenant. The authors are Jehovah's Witnesses, a Christian denomination whose members are known for their preaching activities. Jehovah's Witnesses are a religious minority in Azerbaijan, where the population is predominantly Muslim. Although the authors belong to the Jehovah's Witnesses faith, they are not members of the Religious Community of Jehovah's Witnesses, a religious organization that is officially registered with the Government and whose legal address is in Baku. The authors were held and questioned by the police officers for multiple hours without an explanation. On 17 November 2016, they were taken to court under the charges of operating a religious association outside of a registered legal address and were ordered to pay a fine, after the court found them guilty of violating the Code of Administrative Offences. The authors filed an appeal against the decision, which was rejected by the court.

Admissibility: The Committee considered that it was not precluded by article 5 (2) (b) of the Optional Protocol from examining those claims. It found the authors' claims under article 14 (3) (b), (d), (e), and (g) of the Covenant inadmissible as the claims related to these provisions were not raised before the domestic courts or were not sufficiently substantiated. However, it considered that the authors have sufficiently substantiated their remaining claims under articles 14 (1), (2) and (3) (a), 18 (1), 19 (1) and (2), 26, and 27 of the Covenant for the purpose of admissibility.

Merits: The Committee noted that the State party violated the rights of the authors under article 14 (3) (a) of the Covenant as the State failed to issue notice or frame charges before directly taking them from the police station to the courtroom on 17 November 2016. The Committee also gave due weight to the authors' allegations, to the extent that they are properly substantiated, in the absence of contrary evidence from the State party and considered that the facts before it indicated that the District Court judge did not act impartially. In light of the aforementioned circumstances, the Committee considered that the State party violated the authors' rights to be heard by a fair and impartial tribunal under article 14 (1) of the Covenant.

Regarding article 18, the Committee observed that the State party failed to refer to any specific circumstances where the authors' actions could have created or exacerbated serious inter-religious tensions or an atmosphere of hostility and hatred between religious communities in Azerbaijan. Those actions could have represented a threat to public safety, order, health, or morals within the meaning of article 18 (3) of the Covenant, relying on General Comment No. 22 (1993), so the Committee concluded that the State party had violated the authors' rights under article 18 (1) of the Covenant. In the light of its findings, the Committee did not deem it necessary to

examine whether the same facts constitute a violation of articles 14 (2), 19 (1), 19 (2), 26 or 27 of the Covenant.

Recommendations: The State party is under an obligation:

- (a) to provide the authors with an effective remedy and is required
- (b) to make full reparation to individuals whose Covenant rights have been violated, in the form of adequate compensation, including reimbursement for the fines imposed and for court fees.

The State party is under an obligation to take all steps necessary to prevent similar violations from occurring in the future, including by reviewing its domestic legislation, regulations and/or practices to ensure that the rights under the Covenant may be fully enjoyed in the State party.

[CCPR/C/131/D/2952/2017](#)

M. B. Gizi Gurbanova and S. B. Gizi Muradhasilova v. Azerbaijan

Arrest, detention, and fine for participation in religious activity of Jehovah's witness in Azerbaijan

Substantive issues: Arbitrary arrest and detention; discrimination; freedom of expression; freedom of religion; minorities – right to enjoy one's own culture

Facts: The authors are sisters living in Azerbaijan and are not members of any formal religious community, including Jehovah's Witnesses. They have been arrested and detained several times after they had briefly expressed their religious beliefs to a stranger in the street. They have later been charged and fined for carrying out religious activities outside of a registered address. The authorities considered that they had violated the law simply by expressing their views on religion with this conversation, which amounts to religious activity.

The authors claim a violation of article 9 (1) of the Covenant because they have been arrested and detained several times and for long periods based on a domestic law that is defective, with the intention of punishing them for expressing their religious opinions. They claim a violation of article 18 (1) because the state authorities acted with a clear intention of intimidating them, namely by subjecting them to adopt the Islamic faith during detention and arresting them for merely expressing their beliefs. The law requiring them to be registered in a religious association for this purpose must be examined in light of the consequences for the authors. This requirement by the law is also a violation of freedom of expression in articles 19 (1) and (2). Finally, they allege a violation of their right to profess and practise their religion, which is a violation of articles 26 and 27 of the Covenant.

Admissibility: The Committee considers the case admissible as regards articles 9 (1), 18 (1), 19 (1) and (2). It considers that the claim under articles 26 and 27 is insufficiently substantiated.

Merits: The Committee considers that there is insufficient evidence to prove that the author's peaceful manifestation disturbed public order within the meaning of article 18 (3). Moreover, the conviction and fine were not even a proportionate response to preserving public safety and would have considerably limited their religious beliefs. The arrest, detention, and fining are therefore a violation of article 18 (1) of the Covenant. The Committee considers that the authors were coerced into accompanying the police to the station because there was no information given by them as to why they were being arrested, they were held for 4 hours, they were asked to come back several times and they could not leave freely without facing adverse consequences. The Committee considers that there was uncertainty as to the legal justification for the authors' arrest and detention. The action of the police lacks appropriateness, predictability and regard for due process guarantees. The Committee finds a violation of article 9 (1) because the arrest and detention are considered arbitrary. The Committee did not deem it necessary to examine whether the same facts constitute a violation of article 19.

Recommendations: The State party is obligated, inter alia:

- (a) to provide the authors with adequate compensation, including reimbursement for the portion of the fine paid by Ms Gurbanova, cancellation of the fines for both authors, and reimbursement for court fees related to the cases in question.

The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future, including by reviewing its domestic legislation, regulations and/or practices.

Separate opinions:

Committee members Photini Pazartzis, José Manuel Santos Pais, and Gentian Zyberi issued a partially dissenting joint opinion. They had a concurring opinion with the violation of article 18 (1) of the Covenant but dissented concerning the violation of article 9 (1). According to them, it has not been sufficiently demonstrated that investigative actions of the police imposed undue restriction on the authors' rights or were reasonably unnecessary. The sanctions were therefore not arbitrary.



Belarus

[CCPR/C/132/D/2711/2015](#)

Pichugina v. Belarus

Conditions of detention amounting to torture, cruel, inhuman or degrading treatment

Substantive issues: Torture; cruel, inhuman or degrading treatment or punishment; conditions of detention

Facts: The author alleged that the conditions of her detention in Belarus, which caused her physical and mental suffering, amounted to a violation of her rights under articles 7 and 10 (1) of the Covenant. These conditions included poor sanitation and hygiene (including improper latrine, rodents and spiders, lack of ventilation, stale air), a hostile sleep environment (lack of mattress, pillow, or blanket, poor lighting which disrupted sleep), solitary confinement (in a space too small to sit in), and cold temperatures. She further alleged that, by detaining her in a facility guarded only by male guards, the State party violated her rights under articles 2, 3, and 26 of the Covenant. Lastly, she claimed that, by dismissing her complaint, the State party violated her article 14 (1) rights.

Admissibility: The Committee found the communication partially admissible on the following grounds: (i) despite not being a national of Belarus, the author was subject to the State party's jurisdiction and thus fell under the ambit of article 1 of the Optional Protocol; and (ii) she had sufficiently substantiated her allegations under articles 7 and 10 (1) of the Covenant. As to the alleged violation of the author's rights under articles 2, 3, 14 (1), and 26 of the Covenant, the Committee found the claims to have been insufficiently substantiated for the purposes of admissibility.

Merits: The Committee found that the conditions of the author's detention did amount to a violation of articles 7 and 10 (1) of the Covenant. It found that the conditions described by the author were not contested by the State party and were consistent with the findings of the Committee against Torture.

Recommendations: The Committee noted that the merits of the case warranted the State:

- (a) to make full and sufficient reparation to the author.

The State also must take all steps necessary to prevent similar violations from occurring in the future.

[CCPR/C/133/D/2899/2016](#)

Lutskovich v. Belarus

Violation of freedom of expression in case of a single-person picket concerning election results

Substantive issues: Freedom of expression

Facts: The author is a Belarussian national. She engaged in a single-person picket expressing her opinion concerning election results, which she believes to be rigged. No advance notice of the protest was granted to Belarussian authorities. The author was arrested and subsequently fined for having engaged in an unauthorised mass protest event. Belarussian courts ignored the applicant's assertions of the Belarussian constitutional right to protest and relied on police reports in upholding her conviction. The author alleges violations of articles 2 (2) and (3), and article 19 of the Convention.

Admissibility: A portion of the communication was deemed to be admissible. The State party emphasised that the author did not exhaust all domestic remedies by not having filed a complaint with the Prosecutor's Office for review, following the passage of the judgement. The Committee has found, however, that such a procedure is ineffective, and that the author's having exhausted her right of appeal before domestic courts are sufficient for purposes of admissibility under article 5 (2) (b) of the Optional Protocol. All other requirements of article 5 (2) were fulfilled. The author further contended that article 2 (2) of the Convention was violated in conjunction with article 19. The Committee emphasised that a violation of article 2 (2) in conjunction with another Convention provision would be redundant and found this portion of the communication to be inadmissible. Nonetheless, the Committee found the alleged violation of article 19 itself to be admissible.

Merits: The Committee found that the State party failed to invoke any grounds under which they were authorised to restrict the freedom of expression, as required by article 19 (3). Further, the State party failed to demonstrate that the restrictions were proportionate and the minimum restrictions required to achieve a permitted objective. As such, a violation of the author's rights under article 19 (2) occurred.

Recommendations: The Committee has advised the State party of its obligation:

- (a) to return the cost of the fine to the author, including any legal costs incurred by her.
- (b) to review and remedy its national legislation to bring it into compliance with articles 2 (2) and 19 of the Convention.

The State party is to communicate with the Committee within 180 days concerning the measures it has taken following the Committee's decision.

[CCPR/C/132/D/2862/2016](#)

Aheyev v. Belarus

Violation of the freedom of expression of a Belarusian attorney who criticised State authorities

Substantive issues: Freedom of expression; fair trial guarantees

Facts: The author is a Belarussian national and an attorney. The author represented a former presidential candidate and was accused by the State party of disseminating incorrect information concerning events of mass disorder which occurred within the State party's territory. The author was further accused of publicly misrepresenting the work of State agencies concerning the events. The license of the author to practice law was annulled by the State party due to alleged violations of professional ethics. The author contended that his rights under articles 14 (1), (2), (3) (a), (b) and (d), and article 19 were infringed upon.

Admissibility: A portion of the communication was deemed to be admissible. The State party emphasised that the author did not exhaust all domestic remedies by not having filed a complaint with the Prosecutor's Office for review, following the passage of the judgement. The Committee has found, however, that such a procedure is ineffective and that the author having exhausted his right of appeal before domestic courts are sufficient for purposes of admissibility under article 5 (2) (b) of the Optional Protocol. All other requirements of article 5 (2) were fulfilled. The author's communication concerning articles 14 (2) and (3) was deemed inadmissible as the provisions pertain to criminal sanctions and not the annulment of a license to practice law. However, the portion of the communication concerning articles 14 (1) and 19 was found to be admissible, having fulfilled the necessary criteria.

Merits: The Committee found that the State party acted arbitrarily in annulling the license of the author without notifying him of the pending charges or providing him with the opportunity to defend himself. This resulted in the lack of access to a fair and impartial tribunal, in violation of article 14 (1). Further, the authorities acted to restrict the author's free expression to the media, without justifying as required under article 19 (3). As such, the author's article 19 (2) right was violated.

Recommendations: The Committee has advised the State party of its obligation:

- (a) to provide the author with adequate compensation, including any legal costs incurred by him, and the restoration of his license to practice law.
- (b) to review and remedy its national legislation to bring it into compliance with article 19 of the Convention.

The State party is to communicate with the Committee within 180 days concerning the measures it has taken following the Committee's decision.

Separate opinion:

Committee member José Manuel Santos Pais issued a partially dissenting opinion by additionally finding a violation of articles 14 (2) and (3) on the basis that the purpose or effect of the penalty imposed was effectively criminal in nature.

[CCPR/C/131/D/2960/2017](#)

N.U. v. Belarus

A Belarusian politician complains that his political message was not aired on State TV alleging an infringement of his freedom of expression

Substantive issues: Access to court; freedom of expression; voting and elections; discrimination based on political or other opinion

Facts: The author is a Belarussian national and a member of an opposition political party. During parliamentary elections, he submitted a campaign message which criticised allegedly unfair elections to Belarussian State media. Per the Belarussian Electoral Code, all parties ought to have equal media access. Nonetheless, the State media channels declined to circulate the author's message. Belarussian courts refused to hear the author's case on grounds that they lacked jurisdiction. The author contended violations of his rights under articles 14 (1), 19, 25, and 26 of the Convention.

Admissibility: The communication was deemed inadmissible in its entirety. Article 14 (1) applies to a "suit at law", which is intended to encompass private and administrative law matters. It does not pertain to election law, and as such, the portion of the communication on article 14 (1) is inadmissible. The State party emphasised that the author did not exhaust all domestic remedies by not having filed a complaint with the Prosecutor's Office for review, following the passage of the judgement. The Committee has found, however, that such a procedure is ineffective, and that the author's having exhausted his right of appeal before domestic courts are sufficient for purposes of passing scrutiny under article 5 (2) (b) of the Optional Protocol. However, the Committee found that the author's remaining claims were inadmissible under article 2 of the Optional Protocol for being too general and without sufficient substantiation, in light of the general legality of the newspaper's decision not to circulate the message.

[CCPR/C/133/D/2709/2015](#)

V.B. et al v. Belarus

A human rights association alleged a violation of their freedom of expression following their denial of registration due to formal defects with their application

Substantive issues: Freedom of association

Facts: The authors are Belarusian nationals and members of a human rights association in support of the fulfilment of the Covenant decisions within Belarus. They filed to register as an association with the Ministry of Justice. This request was denied on technical grounds, including the lack of provision for a membership list. Belarusian courts upheld this decision, and authorities subsequently advised the parties of their right to resubmit their application with the formalistic defects in their application remedied. The authors complain of a violation of articles 22 (2) in conjunction with article 2 (2).

Admissibility: The communication was deemed inadmissible in its entirety. The Committee found that article 22 does not preclude the State party from rejecting applications which contain clear formal defects and that the authors would not face an insurmountable burden by needing to correct and resubmit their application. As such, the communication is inadmissible.

[CCPR/C/132/D/2397/2014](#)

Sazonov v. Belarus

A man's freedom of expression was violated following his display of posters in public as a form of protest

Substantive issues: Freedom of expression; fair trial; discrimination

Facts: The author is a Belarussian national. On the 64th anniversary of the Universal Declaration of Human Rights, he and others displayed portraits of Ales Belyatsky in the city of Grodno. Photos of the author and others holding the portraits were uploaded online. The author was arrested and convicted of organising an unlicensed public event. No witnesses other than the police were called at the trial, when the police did not witness the events. The author complains of violations of articles 2 (1) and (3), 14 (1), 19, and 26 of the Convention.

Admissibility: The Committee recognised that the author failed to substantiate claims under articles 14 (1) in conjunction with articles 2 (1) and (3), and article 26. This portion of the communication was thus deemed inadmissible. Nonetheless, the Committee deemed the claim under article 19 to be substantiated, and thus admissible.

Merits: The Committee found that the State party failed to invoke any grounds under which they were authorised to restrict the freedom of expression, as required by article 19 (3). Further, the State party failed to demonstrate that the restrictions were proportionate, and the minimum restrictions required to achieve a permitted objective. As such, a violation of the author's rights under article 19 was found.

Recommendations: The State party is obligated, inter alia:

- (a) to provide the author with adequate compensation, including to reimburse the fine and any legal costs incurred by the author in relation to the domestic proceedings.

The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future, in particular by reviewing its national legislation on public events and the implementation thereof to make it compatible with its obligations under article 2 (2) to adopt measures able to give effect to the rights recognised by article 19.

The State party is to communicate with the Committee within 180 days concerning the measures it has taken following the Committee's decision.

[CCPR/C/133/D/2708/2015](#)

Berlinov v. Belarus

A journalist's freedom of expression was violated when he was detained for having participated in a public human rights event

Substantive issues: Freedom of expression, Freedom of association

Facts: The author is a Belarussian national and a member of the Association of Journalists in Belarus. Photos of him online at a gathering to show solidarity with journalism emerged. The author claims that he did not partake in the event, but merely approached acquaintances in attendance. He was detained for three days and fined for having held an unlawful public event. The courts dismissed his complaints without assessing whether the three-day detention was justified. The author complains that his rights under the Convention were breached, pursuant to articles 9 (1) and (3), 14 (1), 19 (1) and (2), and 21.

Admissibility: The Committee recognised that the author failed to substantiate claims under articles 14 (1) regarding the courts having treated him arbitrarily. This portion of the communication was thus deemed inadmissible. Nonetheless, the Committee deemed the detention to be analogous to criminal law despite formally being administrative, and thus admissible under article 9 (3). The Committee further deemed claims under articles 9 (1), 19, and 21 of the Covenant to be sufficiently substantiated and admissible.

Merits: The Committee found that the State party failed to invoke any grounds under which it was authorised to restrict the freedom of expression, as required by article 19 (3). Further, the State party failed to demonstrate that the restrictions were proportionate, and the minimum restrictions required to achieve a permitted objective. As such, a violation of the author's rights under article 19 (2) occurred. Further, the administrative detention was arbitrary and solely to impose a chilling effect, and thus in itself a violation of article 9 (1). Additionally, a violation of article 9 (3) also occurred, given that the detention was not authorised by a judge and was held for an extended and unnecessary duration of time before a hearing for a minor offence. Finally, the restrictions were not so as to be necessary in a democratic society, in the interests of national security or public safety, and as such a breach of article 21 further occurred.

Recommendations: The State party is obligated, inter alia:

- (a) to provide the author with adequate compensation, including to reimburse any legal costs incurred by the author.

The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future, in particular by reviewing its national legislation on public events and the implementation thereof in order to make it compatible with its obligations under article 2 (2) to adopt measures able to give effect to the rights recognised by articles 19 and 21. The State party is to communicate with the Committee within 180 days concerning the measures it has taken following the Committee's decision.

[CCPR/C/132/D/3126/2018](#)

Krasulina v. Belarus

A Russian woman's freedom of expression was violated as a result of having been punished for standing with posters as a form of protest

Substantive issues: Freedom of assembly; freedom of opinion and expression

Facts: The author is a Russian national. She participated in a protest holding a poster and she was arrested for having organised an unauthorised public event. She was fined by the courts, and her appeals were denied. She complains that her rights under articles 2 (2) and (3), 19, and 21 of the Convention have been violated.

Admissibility: The author contended that article 2 (2) of the Convention was violated in conjunction with article 19. The Committee emphasised that a violation of article 2 (2) in conjunction with another Convention provision would be redundant and found this portion of the communication to be inadmissible under article 3 of the Optional Protocol. Further, the Committee found the author's claims under articles 19 and 21 read in conjunction with article 2 (3) of the Covenant to be unsubstantiated and thus also inadmissible. Nonetheless, the claims under articles 19 and 21 of the Covenant were deemed sufficiently substantiated and admissible.

Merits: The Committee found that the State party failed to invoke any grounds under which they were authorised to restrict the freedom of expression, as required by article 19 (3). Further, the State party failed to demonstrate that the restrictions were proportionate, and the minimum restrictions required to achieve a permitted objective. As such, a violation of the author's rights under article 19 (2) occurred. Further, the restrictions were not so as to be necessary in a democratic society in the interests of national security, public safety, or public order, and as such a breach of article 21 further occurred.

Recommendations: The State party is obligated, inter alia:

- (a) to provide the author with adequate compensation, including to reimburse the fine and any legal costs incurred by the author in relation to the domestic proceedings.

The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future, in particular by reviewing its national legislation on public events and the implementation thereof in order to make it compatible with its obligations under article 2 (2) to adopt measures able to give effect to the rights recognised by articles 19 and 21.

[CCPR/C/132/D/2865/2016](#)

Zavadskaya et al v. Belarus

A violation of freedom of expression occurred following the repeated denial by State authorities of permission to picket

Substantive issues: Freedom of assembly; freedom of expression; fair trial; effective remedy

Facts: The authors are Belarusian nationals. They sought permission from local authorities to hold a picket, but these requests were repeatedly denied on technicalities and on the basis that they would interfere with the activities of the public, and the Belarusian courts dismissed their complaint. The authors contend that their rights under articles 2, 14 (1), 19 (2) and 21 of the Covenant were violated.

Admissibility: The Committee found that the alleged violation of article 14 (1) concerning judicial bias was insufficiently substantiated and, thus, inadmissible. The claims under articles 19 and 21, read in conjunction with article 2 of the Covenant, were found inadmissible on the same basis. Nonetheless, the Committee found the claims under articles 19 (2) and 21 of the Covenant to be sufficiently substantiated and, thus, admissible.

Merits: The Committee found that the State party failed to invoke any grounds under which they were authorised to restrict the freedom of expression, as required by article 19 (3). Further, the State party failed to demonstrate that the restrictions were proportionate, and the minimum restrictions required to achieve a permitted objective. As such, there was a violation of the author's rights under article 19 (2). Further, the restrictions were not so as to be necessary in a democratic society, in the interests of national security, public safety, or public order, and as such a breach of article 21 further occurred.

Recommendations: The State party is under an obligation to provide the author with an effective remedy. This requires it:

- (a) to make full reparation to individuals whose Covenant rights have been violated.
- (b) to provide the author with adequate compensation, including to reimburse the fine and any legal costs incurred by the author in relation to the domestic proceedings.

The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future, in particular by reviewing its national legislation on public events and the implementation thereof in order to make it compatible with its obligations under article 2 (2) to adopt measures able to give effect to the rights recognised by articles 19 and 21.

[CCPR/C/132/D/2702/2015](#)

Abramovich v. Belarus

A violation of freedom of expression occurred after State authorities punished picketers following the refusal to issue a permission to picket

Substantive issues: Freedom of assembly; freedom of opinion and expression

Facts: The author is a Belarusian national. He sought permission from local authorities to hold a picket, but this request was denied. The author received notice that he had received a registered parcel but did not collect it. He proceeded to hold the picket, which was dispersed and resulted in his being issued with a fine. The Belarusian courts dismissed the author's complaints, and the author contended that his rights under 19 and 21 of the Covenant were violated.

Admissibility: The Committee found the claims under articles 19 and 21 to be substantiated, and thus found them to be admissible.

Merits: The Committee found that the State party failed to invoke any grounds under which they were authorised to restrict the freedom of expression, as required by article 19 (3). Further, the State party failed to demonstrate that the restrictions were proportionate, and the minimum restrictions required to achieve a permitted objective. As such, a violation of the author's rights under article 19 occurred. Further, the restrictions were not so as to be necessary in a democratic society, in the interests of national security, public safety, or public order, and as such a breach of article 21 further occurred.

Recommendations: The State party is obligated, inter alia:

- (a) to provide the author with adequate compensation, including to reimburse the fine and any legal costs incurred by the author in relation to the domestic proceedings.

The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future, in particular by reviewing its national legislation on public events and the implementation thereof in order to make it compatible with its obligations under article 2 (2) to adopt measures able to give effect to the rights recognised by articles 19 and 21.

[CCPR/C/132/D/2691/2015](#)

Sudalenko et al v. Belarus

A violation of freedom of expression occurred following the unjustified denial by State authorities of permission to picket

Substantive issues: Freedom of assembly; freedom of expression; effective remedy

Facts: The authors are Belarusian nationals. They sought permission from local authorities to hold a picket, but this request was denied as local city law requires contracts with emergency medical services and road maintenance services. The Belarusian courts dismissed the authors' protests, and the authors contend that their rights under articles 2 (2) and (3), 19 and 21 of the Covenant were violated.

Admissibility: The authors contended that article 2 (2) of the Convention was violated in conjunction with articles 19 and 21. The Committee emphasised that a violation of article 2 (2) in conjunction with another Convention provision would be redundant and found this portion of the communication to be inadmissible. Further, the Committee found the alleged violations of articles 19 and 21, read in conjunction with article 2 (3), to be inadmissible due to a lack of substantiation. Nonetheless, the Committee found the alleged violations of articles 19 (2) and 21 themselves to be substantiated and, thus, admissible.

Merits: The Committee found that the State party failed to invoke any grounds under which they were authorised to restrict the freedom of expression, as required by article 19 (3). Further, the State party failed to demonstrate that the restrictions were proportionate, and the minimum restrictions required to achieve a permitted objective. As such, a violation of the author's rights under article 19 occurred. Further, the restrictions were not so as to be necessary in a democratic society, in the interests of national security, public safety, or public order, and as such a breach of article 21 occurred. The Committee additionally noted that requirements to contract with emergency services and such to hold protests are generally incompatible with article 21.

Recommendations: The State party is obligated, inter alia:

- (a) to provide the authors with adequate compensation.

The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future. In that connection, the Committee notes that the State party should revise its normative framework on public events, consistent with its obligation under article 2 (2), with a view to ensuring that the rights under articles 19 and 21 of the Covenant may be fully enjoyed in the State party. The State party must communicate to the Committee within 180 days about the measures taken concerning the Committee's decision.

[CCPR/C/131/D/2692/2015](#)

Aleksandr Burakov v. Belarus

Freelance journalist who worked in a German international broadcast company's website was fined for publishing an article

Substantive issues: Freedom of expression

Facts: The author is a national of Belarus who claims that the State party has violated his rights under articles 19, 2 (2) and 2 (3) of the Covenant. The author published an article on a German international broadcast company website titled "Path of a smuggler: do Russian sanctions apply at the border region?". Within the following two months, a police report against him was drawn up and he was found guilty of unlawful production and distribution of mass media products, as he was not accredited by the Ministry of Foreign Affairs. He was fined 6 million Belarusian roubles (\$560). All of the author's appeals were rejected. The author claims that the Belarusian courts failed to justify their denial of the author's freedom of expression. This claim is to be read in conjunction with articles 2 (2) and 2 (3) of the Covenant as the judicial system did not present an effective remedy.

Admissibility: The Committee finds the author's claim for article 2 in conjunction with article 19 inadmissible, as the claim to breach obligations under article 2 is not the cause of a distinct violation. The Committee finds sufficiently substantiated the claims under article 19 (2).

Merits: The Committee observed that the State party failed to invoke any specific grounds of article 19 (3) to support the necessity or proportionality of the restrictions imposed on the author, as well as his administrative fine. The Committee reiterated that freedom of expression and of opinion is the foundation for every free and democratic society. Further, it noted that proportionality must be respected at all levels of the judicial and enforcement processes, by everyone applying the law.

In the absence of any justification by the State party, the Committee concluded that the author's rights under article 19 (2) were violated.

Recommendations: The State party is obligated, inter alia:

- (a) to provide him with adequate compensation and to take appropriate steps to reimburse any expenses incurred by the author, including reimbursement for the fine imposed and for court fees related to the case in question.

The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future, in particular by reviewing its national legislation and the implementation thereof, in order to make it compatible with its obligations to adopt measures able to give effect to the rights recognised by article 19.

[CCPR/C/132/D/2561/2015](#)

Voronezhsev et al v. Belarus

Violation of freedom of expression following the repeated denial by State authorities of permission to picket

Substantive issues: Freedom of expression; freedom of assembly; effective remedy

Facts: The authors are Belarusian nationals. They sought permission from local authorities to hold a picket, but the request was denied as local city law requires contracts with emergency medical services and road maintenance services. The Belarusian courts dismissed authors' protests, and the authors contend that their rights under articles 19 and 21 of the Covenant, read in conjunction with articles 2 (2) and (3), were violated.

Admissibility: The communication was deemed to be admissible. The author contended that article 2 (2) of the Convention was violated in conjunction with articles 19 and 21, and the Committee emphasised that a violation of article 2 (2) in conjunction with another provision of the Convention would be redundant, so they found this portion of the communication to be inadmissible. Further, the Committee found the alleged violation of articles 19 and 21 read in conjunction with article 2 (3) to be inadmissible due to a lack of substantiation. Nonetheless, the Committee found the alleged violations of articles 19 and 21 themselves to be substantiated and ultimately admissible.

Merits: The Committee found that the State party failed to invoke any grounds under which they were authorised to restrict the freedom of expression, as required by article 19 (3). Further, the State party failed to demonstrate that the restrictions were proportionate, and the minimum restrictions required to achieve a permitted objective. As such, a violation of the author's rights under article 19 occurred. Further, the restrictions were not so as to be necessary in a democratic society, in the interests of national security, public safety, or public order, and as such a breach of article 21 further occurred.

Recommendations: The State party is obligated, inter alia:

- (a) to provide the authors with adequate compensation.

The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future. To that end, the State party should revise its normative framework on public events, in accordance with its obligation under article 2 (2), with a view to ensuring that the rights under articles 19 and 21 of the Covenant may be fully enjoyed in the State party.

[CCPR/C/131/D/2695/2015](#)

Valentin Borovik v. Belarus

Christian community leader fined for holding Sunday service at his home

Substantive issues: Freedom of religion

Facts: The author is a national of Belarus. The author claims that the State party violated his right to freedom of thought, conscience, and religion as well as the right to manifest one's beliefs under articles 18 (1) and (3) of the Covenant. The author was holding a small Sunday service at his home when several State authorities entered and asked whether his practice was registered as a legal entity under the Law on Freedom of Conscience and Religious Organizations. The access to such legal registration is only possible when more than 20 people are members, and the author's community was much below the minimum. He was fined 315.000 Belarusian roubles (100€).

Admissibility: All claims of admissibility are sufficiently sustained despite claims by the State party that he did not exhaust domestic remedies, as all the author's attempts had been unsuccessful.

Merits: The Committee reminded that it is not possible to restrict the freedom of any person in the community, in public or private, to manifest his or her religion or belief. Instead, the author's religious practice should have been protected by the State. The law limiting such freedom to a maximum of 20 people in a given group was, therefore, found unlawful. The Committee deplored the practice of 10 years prior to the case, where criminal legal sanctions applied to unregistered religious organisations. The freedom to manifest one's belief may be restricted in situations where it takes precedence to protect public safety, order, health, or morals or the fundamental rights and freedoms of others. However, the required strict interpretation sees no justification for an administrative fine to effectively fulfil any of the situations and, hence, to be instated for a legitimate purpose. The Committee concluded that the author's rights to freedom of religion and to express that religion under articles 18 (1) and (3) had been violated.

Recommendations in extenso: Accordingly, the State party is obligated:

- (a) to provide the author with adequate compensation, including reimbursement for the fines imposed and for court fees related to the cases in question.

The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future, including by reviewing its domestic legislation, regulations and/or practices with a view to ensuring that the rights under article 18 of the Covenant may be fully enjoyed in the State party.

[CCPR/C/131/D/2867/2016](#)

Vladmir Katsora et al v. Belarus

Activists denied authorization to hold a peaceful protest against the destruction of banknotes

Substantive issues: Freedom of assembly; freedom of expression

Facts: The authors are nationals of Belarus and claimed that the State party had violated their rights under articles 19 and 21, read alone and in conjunction with article 2 (2) and (3). On 8 December 2015, the authorization sought by the authors to hold a picket protesting the destruction of old bank notes after the currency redenomination planned for 2016, was rejected by the Gomel City Executive Committee. The reasons given were that the location was not among those specified for such conduct and the failure to submit contracts with the city service providers to ensure medical service and cleaning of the event. Subsequently, the Central District Court rejected the appeal of the authors stating that the decision complied with the domestic law of Belarus. A cassation appeal and further appeals under the supervisory review proceedings were also rejected.

Admissibility: Since the State party was unable to show that requests for supervisory review constitute an effective remedy in the present circumstances, the Committee is not precluded from examining this communication. Regarding claims under articles 19 and 21 read with article 2 (2), the Committee stated that the authors had already alleged a violation of their rights under articles 19 and 21. Hence, this part is inadmissible. Due to lack of substantiation, claims under articles 19 and 21, read with article 2 (3) are also inadmissible. The Committee pronounces that the authors' claims under articles 19 and 21 are sufficiently substantiated and this part of the communication is admissible.

Merits: The Committee considered whether restrictions imposed were justified under article 21 of the Covenant. It noted that neither the Executive Committee nor the domestic courts have justified how the authors' protest violates interests of national security or public safety, public order, protection of health or morals, or the protection of the rights and freedoms of others. Hence, the State party violated article 21. Further, the Committee determined whether the prohibition imposed on the authors for holding peaceful assemblies amounts to a violation of article 19 of the Covenant. It concluded that holding a rally at certain predetermined locations does not meet the standards of necessity and proportionality. Conclusively, the rights of the authors under article 19 were violated.

Recommendations: The State party is under an obligation:

- (a) to provide the authors with an effective remedy, including full reparation to the individuals whose Covenant rights have been violated.

The State party is obligated to provide the authors adequate compensation, take necessary steps to prevent similar violations from occurring in the future and revise its normative framework on public events, consistent with its obligation under article 2 (2), with a view to ensuring that the rights under articles 19 and 21 of the Covenant may be fully enjoyed in the State party.

[CCPR/C/131/D/2891/2016](#)

Galina Belova et al v. Belarus

Activists denied authorization to hold a peaceful rally supporting political prisoners

Substantive issues: Freedom of assembly; freedom of expression; effective remedy

Facts: The authors are nationals of Belarus who claim that the State party violated their rights under articles 19 and 21, read in conjunction with articles 2 (2) and (3) of the Covenant. On 4 December 2014, the authors' application seeking authorization from the Gomel City Executive Committee to hold a peaceful gathering on Human Rights Day, expressing support for political prisoners, was rejected. The reasons given were, first, that using the location was prohibited based on the Public Events Act of 1997, and second, that there was a failure to submit the contracts with the city service providers to ensure medical service and cleaning. The cassation appeal and further appeals under the supervisory review proceedings were also rejected.

Admissibility: Since the State party was unable to show that requests for supervisory review constitute an effective remedy in the present circumstances, the Committee was not precluded from examining this communication. Regarding claims under articles 19 and 21 read together with article 2 (2), the Committee stated that the authors already alleged a violation of their rights under articles 19 and 21. Hence, this part was inadmissible. The claims under articles 19 and 21, read with article 2 (3), were unsubstantiated. The claims under articles 19 (2) and 21 were admissible owing to sufficient evidence.

Merits: The Committee determined whether the prohibition imposed on the authors for holding peaceful assemblies amounts to a violation of article 19 of the Covenant and concluded that the prohibition did not meet the standards of necessity and proportionality. Conclusively, the rights of the authors under article 19 were violated. Further, the Committee considered whether the restrictions imposed justified the requirements of legality, necessity, and proportionality under article 21. It noted that the State party failed to present sufficient evidence. Hence, the State party violated article 21.

Recommendations: The State party is under an obligation:

- (a) to provide the authors with an effective remedy, including full reparation to the individuals whose Covenant rights have been violated.

The State party is obligated to provide the authors adequate compensation, take necessary steps to prevent similar violations from occurring in the future, and revise its normative framework on public events, consistent with its obligation under article 2 (2), with a view to ensuring that the rights under articles 19 and 21 of the Covenant may be fully enjoyed in the State party.

[CCPR/C/132/D/2857/2016](#)

Ekaterina Tolchina et al. v. Belarus

Activists were denied authorization to hold a peaceful rally expressing solidarity with Ukraine

Substantive issues: Freedom of assembly; freedom of expression

Facts: The authors of the communication are Belarusian nationals, who claim that the State party has violated their Covenant rights under articles 19 and 21 in conjunction with articles 2 (2) and (3). On 17 July 2014, the authors' application to the Gomel City Executive Committee for authorization to hold peaceful rallies was rejected. The reasons were, first, that the location of the pickets was not among those specified for such conduct, and second, that there was a failure to submit the contracts with the city service providers to ensure medical service and cleaning of the event. Subsequently, the Court rejected the appeal of the authors arguing that the decision complied with the Law on Mass Public Events Act. The cassation appeal and further appeals under the supervisory review proceedings were also rejected.

Admissibility: Since the State party was unable to show that requests for supervisory review constitute an effective remedy in the present circumstances, the Committee is not precluded from examining this communication. Regarding claims under articles 19 and 21 read with article 2 (2), the Committee stated that the authors had already alleged a violation of their rights under articles 19 and 21. Hence, this part is inadmissible. Under articles 19 and 21 read with article 2 (2) and (3), the claims were unsubstantiated, and hence inadmissible. The Committee pronounced the authors' claims under articles 19 (2) and 21 as having been sufficiently substantiated, and this part of the communication was admissible.

Merits: The Committee stated that the justifications did not reach the threshold of national security or public safety, public order, protection of health or morals or the protection of the rights and freedoms of others. Hence, the State party violated article 21 of the Covenant. Further, the Committee held that the prohibition imposed on the authors for holding peaceful assemblies did not meet the standards of legality, necessity, and proportionality. Conclusively, the rights of the authors under article 19 were violated.

Recommendations: The State party is under an obligation:

- (a) to provide the authors with an effective remedy, including full reparation to the individuals whose Covenant rights have been violated.

The State party is obligated to provide the authors adequate compensation, take necessary steps to prevent similar violations from occurring in the future, revise its normative framework on public events.

[CCPR/C/132/D/3105/2018](#)

Andrei Mikhalev v. Belarus

Imposition of death sentence after an unfair trial in Belarus after no respect of provisional measures requested by the Committee

Substantive issues: Right to life; torture; inhumane treatment; liberty and security of person

Facts: The author and his son, both nationals of Belarus, claim that the State party has violated the son's rights under articles 6 (1) and (2), 7, 9 (1-4), 14 (1), (2), and (3) (a-g) of the Covenant. On 17 March 2017, the author's son was sentenced to death by the Gomel Regional Court for the murder of two people. The son appealed to the Supreme Court, which rejected and upheld the decision of the trial court. The author submitted an appeal for supervisory review to the first Deputy Chair of the Supreme Court. In this regard, the author notes that the same Deputy Chair of the Supreme Court was a member of the appellate court that rejected his appeal. On 16 August 2017, the author's son submitted another appeal and this time, a different Deputy Chair referred to the decision and denied the appeal as well. The author now claims that his son's rights were violated because he was sentenced to death as a result of an unfair trial.

The author applied for a presidential pardon, which was pending at the time of submission of communication. The Committee requested the State party not to carry out the death sentence, however, on 17 July 2018, the author's son was executed.

Admissibility: With regard to the supervisory review procedures and the presidential pardon, the Committee finds that article 5 (2) (b) of the Optional Protocol does not preclude it from considering the communication. With regards to claims under articles 7 and 14 (1) and (3) (g), the author failed to substantiate his claim and, thus, this part of the communication is inadmissible. The Committee is precluded from considering claims under articles 9 (1), (2) and (4), and 14 (3) (a), (b), and (d) of the Covenant, as it is unable to establish if the domestic remedies regarding these claims have been exhausted. The remaining issues under articles 6 (1) and (2), 9 (3), and 14 (2) and (3) (e) of the Covenant have been sufficiently substantiated for the purposes of admissibility.

Merits: Under article 9 (3) of the Covenant, anyone arrested or detained on a criminal charge must be brought promptly before a judge or other officer authorized by law to exercise judicial power. The Committee noted that, first, by apprehending the author's son on 5 March 2016 but not bringing him before a judge until 8 February 2017, a delay longer than 48 hours was not justified by the State party authorities. Second, since the son was not brought before authorized personnel, the public prosecutor could not be considered an officer authorized to exercise judicial power under the aforementioned article. This, according to the Committee, reveals a violation of article 9 (3) of the Covenant.

Further, it noted that the principle of presumption of innocence was not respected since the author's son was handcuffed, kept in a cage during court hearings, and wore special clothing for death row inmates before the sentence had entered into force. Hence, his right to be presumed innocent, as guaranteed under article 14 (2) of the Covenant, was violated. Additionally, the son's right to call, obtain the attendance of, the examining, and the cross-examining witnesses was violated since forensic experts were not called to or questioned in court in violation of article 14 (3) (e). The son's right to life, protected under article 6 of the Covenant, was violated since he was

sentenced to death after an unfair trial. Additionally, by not respecting the interim measures, the State party violated obligations under article 1 of the Optional Protocol.

Recommendations: The State party is under the obligation:

- (a) to provide adequate compensation to the author for the violations suffered by his son.

The State party is also obligated, inter alia, to take all steps necessary to prevent similar violations from occurring in the future.

Separate opinion: Committee members Yadh Ben Achour and Hélène Tigroudja issued a concurring joint opinion. They claimed that considering the grave and irreversible consequences of the breach of interim measures in cases involving the death penalty, the authors consider that such an issue should have been included in a specific paragraph in the section of the Views on issues and proceedings, as well as in part of the remedies. The Committee should have clearly spelt out the consequences for the State violating this particular obligation under the Optional Protocol.

[CCPR/C/131/D/2863/2016](#)

Andrei Andreev v. Belarus

A member of a political party was fined for distributing political leaflets that were spreading information

Substantive issues: Freedom of expression; freedom to seek, receive and impart information.

Facts: The author is a national of Belarus who claims that the State party has violated his rights under article 19 of the Covenant. The author was distributing political leaflets in an apartment building. On the same day, the police arrested the author for having committed a violation of the legislation on the illegal distribution of foreign mass media materials of a political nature. On 5 September 2013, the author was found guilty and sentenced to a fine of 2 million roubles (approximately \$220). The author claims that, by sentencing him to a fine, the State party violated his right to freedom of expression under article 19 of the Covenant. He maintains that the leaflets contained no information that could limit the rights of others, be of offence, or disrespect the professional reputation of public officials.

Admissibility: All claims of admissibility are sufficiently sustained despite the State party arguing that the author did not exhaust domestic remedies. This is because the Committee finds that further prospects of justice in Belarus would not constitute an effective remedy.

Merits: The Committee observed that the State party had failed to invoke any specific article 19 (3) grounds to support the necessity or proportionality of the restrictions imposed on the author, as well as his apprehension and the administrative fine. The Committee found that the actions of the State party could not be justified and concluded that the author's rights under article 19 (2) had been violated.

Recommendations: The State party is obligated:

- (a) to take appropriate steps to provide the author with adequate compensation, including to reimburse the fine and any legal costs incurred by the author in relation to the domestic proceedings.

The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future.

[CCPR/C/131/D/2679/2015](#)

Yuriy Rubtsov v. Belarus

Administrative detention for author's failure to comply with police orders

Substantive issues: Freedom of expression

Facts: The author is a national of Belarus. He took part in a street rally traditionally held to commemorate deceased relatives. On this day, opposition parties in Belarus usually organise separate rallies to commemorate victims of mass killings in the town of Kurapaty. At the event, the author wore a t-shirt that presented a political slogan. Police approached him and asked him to take off his t-shirt several times, but he refused to comply. He was later apprehended, detained, and had a police report filed against him for failure to comply with a lawful order. The Court of First Instance found the author guilty of an administrative offence and charged him with three days of detention. He later applied for an appeal due to the Court's failure to consider the violation of his right to freedom of expression.

The author claimed that his right to freedom of expression when he was wearing the t-shirt and the failure of the courts to establish the lawfulness of the police order breached his rights under article 19 read alone and in conjunction with articles 2 (2) and (3) of the Covenant.

Admissibility: The Committee reminded the author that article 2 cannot be invoked if the focal issue of the case is not one covered by the provision. Further, the Committee considered that an examination of articles 2 (2) and (3) in conjunction with article 19 would not differ from the consideration of article 19 alone. Hence, the communication was found admissible for the examination of breaches of article 19 (2).

Merits: The Committee observed that any restriction on the exercise of the rights provided for in article 19 (2) must be necessary and proportionate to the threat caused by the expression. The State party must have demonstrated in a specific fashion the precise nature of the threat to any of the grounds listed in article 19 (3) that caused it to restrict freedom of expression. Despite accepting that the arrest may have been legal and pursuing a legitimate aim, the Committee found that nothing in the police order and their response was proportionate or necessary. Hence, they concluded that the author's freedom of expression protected by article 19 (2) of the Covenant was violated.

Recommendations: The State party is under an obligation:

- (a) to provide the author with an effective remedy
- (b) to take appropriate steps to provide Mr Rubtsov with adequate compensation, including for incurred legal costs.

The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future.

[CCPR/C/133/D/2619/2015](#)

M. Adamovich v. Belarus

Violation of Belarus opposition leader Mikalai Statkevich's rights following his detention, torture, and trial after the 2010 elections

Substantive issues: Torture; cruel, inhuman or degrading treatment or punishment; arbitrary detention; right to be brought promptly before a judge; right to a fair hearing by an impartial tribunal; right to be presumed innocent; right to adequate time and facilities for the preparation of defence; right to communicate with counsel of one's own choosing; right to examine witnesses; right not to be compelled to testify against oneself or to confess guilt; right to privacy; freedom of expression; right of peaceful assembly; equality before the law and equal protection of the law; effective remedy

Facts: The author is a national of Belarus who claims that her husband, also a national of Belarus, is a victim of violation by the State party of his rights under articles 2, 7, 9, 10, 14 (1), (2), (3) (b), (d), (e) and (g) and (5), 17, 19 (1) and (2), 21, 22, and 25 of the Covenant. The victim, Mikalai Statkevich, is the Chairman of the Belarusian Social Democratic Party, a former presidential candidate in Belarus, and the founder of the Belarusian Union of Military Officers. Mr Statkevich's daughter filed a petition with the Working Group on Arbitrary Detention, which concluded that Belarus had breached Mr Statkevich's rights, but the State party did not release him.

Mr Statkevich was the candidate for the Social Democratic Party's opposition party in the 2010 presidential election. Throughout his campaign, he was harassed by the security forces, which seized his campaign materials and recorded his telephone conversations. On the day of the elections, supporters of the opposition gathered in Minsk to denounce massive irregularities. Towards the end of the demonstration, a small group of protesters started breaking the windows of the House of Government and law enforcement agents attacked the peaceful demonstrators. Mr Statkevich was apprehended and beaten by unknown persons and transferred to an unknown location. He was not informed of the charges against him, and neither was his case brought before a judge to assess whether he should remain in custody. During his pretrial detention, Mr Statkevich was subjected to torture and cruel, inhuman, and degrading treatment. In 2011, during Mr Statkevich's trial in Minsk, he and his co-defendants were kept handcuffed in a cage at all times. The evidence he presented was disregarded and the credibility of his arguments and explanations was consistently questioned and rejected by the court. The court found Mr Statkevich guilty of having organized a mass riot involving violence and destruction of property and sentenced him to six years of imprisonment. Mr Statkevich appealed his conviction in cassation proceedings, through the supervisory review procedure, and to the penitentiary authorities, but all were rejected.

Admissibility: The Committee considers that the author has sufficiently substantiated the claims under articles 7, 9, 10, 14 (1), (2) and (3) (b), (d), (e) and (g), 17, 19 (1) and (2), 21 and 25 of the Covenant for the purposes of admissibility.

As for article 2, the Committee recalls its jurisprudence, which indicates that the provisions of article 2 set forth a general obligation for States parties and cannot give rise, when invoked separately, to a claim in a communication under the Optional Protocol. Accordingly, it concludes that this part of the communication is inadmissible. On the author's claim under article 14 (5), which concerns that the appeal court did not provide any explanation of the reasons why it rejected the appeal and did not examine the substantive deficiencies in Mr Statkevich's conviction, the Committee finds

the author's claims insufficiently substantiated for the purposes of admissibility. Lastly, regarding article 22 of the Covenant and the arrest of the author when he was exercising his right to freedom of association, the Committee considers that the author has failed to sufficiently substantiate these claims for the purposes of admissibility.

Merits: The Committee considered that the author provided a detailed description of the methods of torture used, such as emotional and physical abuse using harassment and threats and found a violation of article 7. Moreover, the Committee noted that the State party did not demonstrate that Mr Statkevich's arrest was reasonable and necessary and that his pretrial detention was unlawful as it was not justified, so it concludes that there has been a violation of article 9 (1). Also, the Committee is not satisfied that the prosecutor in question could be regarded as having the institutional objectivity and impartiality necessary to be considered an officer authorized by law to exercise judicial power within the meaning of article 9 (3), and therefore concludes that there has been a violation of that provision. Regarding the author's claims that Mr Statkevich was denied a fair hearing by an independent and impartial tribunal and that the State party's courts did not offer him the minimum guarantees, the Committee found a violation of article 14 (1), (2), (3) (b), (d), (e) and (g). Additionally, the State party violated article 17 as its authorities unlawfully tapped Mr. Statkevich's telephone, recording calls he made during the presidential campaign in 2010 and thereafter publishing the transcripts.

The Committee considered that the restrictions imposed by the State party on the exercise of those rights were not provided by law and were not necessary for the protection of national security or of public order or of public health, and so found a violation of Mr Statkevich's rights to hold opinions without interference and to freedom of expression enshrined in article 19 (2). The Committee also found that the State party disproportionately interfered in the exercise of the author's right of peaceful assembly under article 21 by sentencing him to six years imprisonment for organizing an unauthorized but public gathering. The Committee did not consider it necessary to examine separately the author's claims under articles 10 and 25 of the Convention.

Recommendations: The State party is obligated:

- (a) to provide Mikalai Statkevich with adequate compensation,
- (b) to expunge his conviction from his criminal record and
- (c) to carry out a prompt, impartial, effective, and thorough investigation into the allegations of torture and ill-treatment and initiate criminal proceedings against those responsible.

The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future.

[CCPR/C/133/D/2708/2016](#)

Berlinov v. Belarus

A journalist's freedom of expression was violated when he was detained for having participated in a public human rights event

Substantive issues: Unlawful detention; right to a fair trial; freedom of opinion and expression; freedom of assembly

Facts: The author is a Belarussian national and a member of the Association of Journalists in Belarus. Photos of him online at a gathering to support solidarity with journalism emerged. The author claims he did not partake in the event, but merely approached acquaintances in attendance. He was detained for three days and fined for having held an unlawful public event. The courts dismissed his complaints without assessing whether the three-day detention was justified, and the author complains that his rights under the Convention were breached pursuant to articles 9 (1) and (3), 14 (1), 19 (1) and (2), and 21.

Admissibility: The Committee recognised that the author failed to substantiate claims under articles 14 (1) regarding the courts having treated him arbitrarily. This portion of the communication was thus deemed inadmissible. Nonetheless, the Committee deemed the detention to be analogous to criminal law despite formally being administrative, and thus admissible under article 9 (3). The Committee further deemed claims under articles 9 (1), 19, and 21 of the Covenant to be substantiated and admissible.

Merits: The Committee found that the State party failed to invoke any grounds under which they were authorised to restrict the freedom of expression as required by article 19 (3). Further, the State party failed to demonstrate that the restrictions were proportionate, and the minimum restrictions required to achieve a permitted objective. As such, a violation of the author's rights under article 19 (2) occurred. Further, the administrative detention was arbitrary and solely to impose a chilling effect, and thus a violation of article 9 (1). A violation of article 9 (3) also occurred given that the detention was not authorised by a judge and was held for an extended and unnecessary duration of time before a hearing for a minor offence. Finally, the restrictions were not so as to be necessary in a democratic society, in the interests of national security or public safety, and as such a breach of article 21 further occurred.

Recommendation: The State party is obligated, inter alia,

- (a) to provide the author with adequate compensation, including to reimburse any legal costs incurred by the author.

The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future, in particular by reviewing its national legislation on public events and the implementation thereof in order to make it compatible with its obligations under article 2 (2) to adopt measures able to give effect to the rights recognised by articles 19 and 21. The State party is to communicate with the Committee within 180 days concerning the measures it has taken following the Committee's decision.

[CCPR/C/132/D/2361/2014](#)

Igor Postnov v. Belarus

Unlawful involuntary medical confinement of a vocal Belarusian doctor

Substantive issues: Torture; cruel, inhuman or degrading treatment or punishment; liberty and security of person; fair and public hearing; privacy; freedom of expression; discrimination

Facts: The author of the communication is Igor Postnov, a medical doctor who used to work at a regional clinic of psychiatry and drug abuse treatment in Belarus. He claims that, after he published several articles and videos online in which he complained about medical health services and asked the Prosecutor's Office to investigate crimes committed by the management of the Vitebsk Clinic, he started facing problems with the authorities. By an order of the Vitebsk District Court, a civil court, he was detained in a psychiatric ward in August 2013 despite claiming to be in good health, while the prosecutor claimed that his behaviour was "inadequate, with signs of long-lasting psychiatric disorder". The decision to commit him was adopted in a closed hearing.

The author submits that, by placing him in indefinite detention and psychiatric treatment, the State party violated his rights under articles 7 and 10 (1) of the Covenant. The author also submits that, by subjecting him to involuntary confinement and by denying him and his lawyers the right to be present during the court hearings, the State party violated his rights under articles 9 (1) and 14 (1) of the Covenant. By punishing him and placing him in psychiatric detention, and by not letting him use a telephone or correspond with the outside world, the State party violated his rights under article 19 of the Covenant. The author also claims that the State party violated his rights under articles 2 (1) and (3), 15 (2), 17, and 26 of the Covenant.

Admissibility: Regarding the author's claims under articles 2 (1) and (3), 10 (1), 15 (2), 17 and 26 of the Covenant, in the absence of any further pertinent information on file, the Committee considers that the author has failed to sufficiently substantiate these allegations for the purposes of admissibility. As for the claims under articles 7, 9 (1), 14 (1) and 19 of the Covenant, they have been sufficiently substantiated for the purposes of admissibility.

Merits: Regarding article 7 of the Covenant, the Committee is of the view that the author's involuntary hospitalization and subjection to medical treatment against his will amounted to inhuman and degrading treatment or punishment.

The Committee recalls that commitment to and treatment in a psychiatric institution against the will of a patient constitutes a form of deprivation of liberty that falls under the terms of article 9 of the Covenant. The Committee's jurisprudence setting the principle is *A. v. New Zealand* (CCPR/C/66/D/754/1997), para. 7.2; and *Fijalkowska v. Poland* (CCPR/C/84/D/1061/2002), para. 8.2. In this sense, the Committee considers that involuntary hospitalization can only be applied, if at all, as a measure of last resort and for the shortest appropriate period of time and must be accompanied by adequate procedural and substantive safeguards established by law. The procedures should ensure respect for the views of the individual and should ensure that any representative genuinely represents and defends the wishes and interests of the individual. Thus, the Committee notes that the author was not informed about the time and location of the hearings, nor able to be present during the trial hearings or appeal procedures; he was not allowed to be examined by other medical professionals during the proceedings; and the order of involuntary confinement was unlimited in time and not subject to periodic review. Hence, the Committee considers that his rights under article 9 were violated.

Concerning article 14 (1), the Committee considers that, based on the purpose, character and severity of the author's involuntary hospitalization, the guarantees of article 14 (1) of the Covenant apply in this case. Even though the article generally applies to criminal cases and suits at law, some detention regimes that result in confinement, as in the present case, attempt to bypass the controls imposed by the rules of criminal procedure. Accordingly, the facts as presented by the author amount to a violation of the author's rights under article 14 (1). Lastly, the Committee finds that the State party has failed to justify that the restriction of the author's right to impart information and ideas by his involuntary confinement was necessary and proportionate to the legitimate aim pursued, as set out in article 19 (3) of the Covenant.

Recommendations: The State party is obligated, inter alia,

- (a) to provide the author with adequate compensation, including reimbursement for any legal costs incurred by him.

The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future.

More information on the case:

- [Amnesty International](#) - Belarus: Outspoken psychiatrist forcibly detained: Igor Postnov
- [Amnesty International](#) - Belarus: Further information: Outspoken psychiatrist released: Igor Postnov
- [Amnesty International](#) - PSYCHIATRIST IN COMPULSORY TREATMENT
- [Radio Free Europe/Radio Liberty](#) - [Belarusian physician forced into psychiatric clinic starts hunger strike](#)

[CCPR/C/132/D/2856/2016](#)

Roman Yurgel v. Belarus

Freedom of expression of a Belarusian fined for posting photos of the Belarus People's Republic flag

Substantive issues: Freedom of assembly; freedom of expression; effective remedy, fair trial, discrimination on political grounds

Facts: The author of the communication is Roman Yurgel, a Belarusian national. On the anniversary of the day of the establishment of the Belarus People's Republic (BPR), the author along with two persons took photos holding the BPR's flag and the national flag of Ukraine in three different locations of the city of Grodno. The photos were posted online, and a police record was drawn against the author, charging him with participating in an unauthorized mass event. The Court of Lenin District in Grodno found the author guilty of participating in an unauthorized picket and fined him. The Court concluded that, by doing this, the author tried to attract the attention of citizens to the event.

The author claims that the State party has violated his rights under article 14 (1) in conjunction with articles 2 (1) and (3) of the Covenant, as in his view, he was not afforded a fair and impartial hearing. He also claims that the court proceedings were in violation of article 26 of the Covenant as he was discriminated against on the basis of his political opinion and that no legal protection in the State party exists against discrimination on the grounds of political views. Lastly, the author claims that his rights under article 19 (2), in conjunction with articles 2 (1) and (3) of the Covenant, were violated by the State party since he was prevented from freely expressing his views.

Admissibility: Regarding the alleged violation of article 14 (1), read in conjunction with articles 2 (1) and (3), and 26 of the Covenant, the Committee considers that the claim that the author was denied the right to a fair hearing because of his political stance is insufficiently substantiated for purposes of admissibility. As for the claims under article 19 (2), read in conjunction with articles 2 (1) and (3), of the Covenant, in the absence of any further pertinent information on file, the Committee considers that the author has failed to sufficiently substantiate them for the purposes of admissibility as well. Lastly, the Committee considers the author's remaining claims under article 19 (2) of the Covenant sufficiently substantiated for the purposes of admissibility.

Merits: The Committee recalls that it is for the State party to demonstrate that the restrictions on the author's rights under article 19 of the Covenant were necessary and proportionate. Neither the State party nor the domestic courts have provided any explanation as to how the restrictions in question were justified for the purposes as set out in article 19 (3) of the Covenant, and whether the penalty imposed was necessary, proportionate, and in compliance with any of the legitimate purposes listed in this provision. The Committee concludes that the rights of the author under article 19 (2) have been violated.

Recommendations: The State party is obligated, inter alia,

- (a) to provide him with adequate compensation and
- (b) to take appropriate steps to reimburse any expenses incurred by the author, including reimbursement for the fine imposed and for court fees related to the case in question.

The State party is also under an obligation to take all steps necessary to prevent similar violations in the future, in particular by reviewing its national legislation and the implementation thereof in order to make it compatible with its obligations to adopt measures able to give effect to the rights recognised by article 19.



Cameroon

[CCPR/C/132/D/2609/2015](#)

C. D. Bengono v. Cameroon

Pretrial detention for over five years for misappropriation of public funds

Substantive issues: Right to an effective remedy; cruel, inhuman or degrading treatment or punishment; arbitrary detention; imprisonment for non-fulfilment of a contractual obligation; arbitrary interference with family life

Facts: The author is a national of Cameroon who was arrested in 2010 and placed in pretrial detention on suspicion of misappropriation of public funds and money laundering to the detriment of the Aeroports du Cameroun. Over the following years, the author challenged his detention before domestic courts, which ruled against him and kept him in detention. In 2015, he was acquitted of the charges against him, but he was kept in pretrial detention. After challenging these orders, he was finally released in 2015. The author has requested the Director of the Aeroports du Cameroun to lift the suspension of his employment contract, which was rejected. The author's state of health has required him to have several surgeries in Cameroon and France, and he continued to receive hospital treatment in detention.

The author alleges that the State party has not fulfilled its obligation to ensure that persons have an effective remedy aimed at repairing the harm suffered and are able to have their right to such a remedy determined by a competent authority, in accordance with article 2 (3) of the Covenant. He claims that article 7 was also violated because, since the arrest, all the requests for medical evacuation submitted by doctors were rejected or ignored and the State has not covered any of his medical expenses. He also claims that articles 9 (1–3) and 14 (3) (c) of the Covenant have been violated because he was taken into police custody without being notified of the reasons; detained for five months without having been questioned; tried for offences that had not been the subject of a judicial investigation; his procedural objections were dismissed without any real reason; and the pretrial detention was extended exceeding the legal maximum. As a pretrial detainee, he was held in the same cell as convicted persons in particularly harsh conditions, in violation of articles 10 (1) and (2) (a) of the Covenant. He alleges a violation of article 11 on the grounds that he received a detention order linked to the payment of costs following the judgment of 18 June 2015 and had to pay those costs in order to avoid imprisonment. He adds that the State party violated articles 14 (1) and (3) (a), (b) and (e) of the Covenant and that his right to be presumed innocent under article 14 (2) of the Covenant was violated because his personal property was confiscated without a judgment. The author alleges a violation of article 15 (1) of the Covenant without providing further details, and of article 17, claiming there was arbitrary interference with his privacy.

Admissibility: Regarding the claims under articles 2 (3) and 9 (5) of the Covenant, through which the author seeks to obtain reparation, the Committee notes that he has not raised the issue of reparation before domestic courts and declared inadmissible under article 5 (2) (b) of the Optional Protocol this part of the claim.

Also, the Committee considers the author's claim that he has been deprived of an effective remedy, in violation of article 2 of the Covenant, to be inadmissible because it was not invoked in relation to another provision. The claims made under articles 7 and 10 (1) were declared inadmissible because they were not raised before domestic courts and are insufficiently substantiated. The claim made under article 11 is inadmissible because it falls within the scope of criminal law and it is therefore incompatible with the Covenant. All the claims made under articles 14 (1) and (3) (a), (b) and (e) are declared inadmissible because they relate to the application of domestic law

by courts of the State party, which is only reviewed if it was made clear that such application was arbitrary or amounted to a manifest error or denial of justice.

Moreover, he did not specify the nature of the evidence or the procedural documents to which he was denied access to, nor which witness he was not able to confront. As for his right to be presumed innocent in violation of article 14 (2) and the excessive length of detention in violation of article 15 (1), both claims are insufficiently substantiated. Regarding article 17 of the Covenant, the exhaustion of domestic remedies is insufficiently substantiated, so the claim is inadmissible under article 2 of the Optional Protocol. The only violations declared admissible are those of articles 9 (1-3) and 14 (3) (c) of the Covenant for the lawfulness of his detention and irregularities in the proceedings and arrest.

Merits: The Committee finds a violation of articles 9 (1-3) of the Covenant because, the fact that the author had been held in pretrial detention for over five years, having been acquitted the last two months, constitutes an abuse of pretrial detention. Moreover, the Committee finds a violation of article 14 (3) (c) because the proceedings were unduly delayed. The delay is considered all the more serious as the author had been in pretrial detention continuously since his arrest on 7 January 2010.

Recommendations: The State party is required:

- (a) to make full reparations and take appropriate steps to provide the author with compensation and measures of satisfaction.



Canada

[CCPR/C/133/D/2623/2015](#)

S.K. v. Canada

No violation found in a deportation to Iran for failure to prove the real and personal risk of persecution

Substantive issues: Deportation; non-refoulment; right to life; torture/ill-treatment; liberty of the person; right to defence; right to freedom of thought, conscience, and religion; right to an effective remedy

Facts: The author is an Iranian national whose application for asylum was denied. He is a Sufi and a pro-monarchist man who fled Iran in 2012 following his arrest by Iranian authorities. He claims the State party's denial amounts to a violation of his rights under articles 2 (3), 6, 7, 10, 14 (3) (b), and 18 of the Covenant. Specifically, he claims that the State party failed to conduct a risk assessment of his claims, that he would be at risk of being subjected to ill-treatment on the basis of his faith, and that he was subjected to threats and intimidation by Canadian immigration officials while in detention.

Admissibility: The Committee found the author's claims partly admissible under articles 6 and 7, on the following grounds: (i) the State party failed to show that the author was duly notified of his abandonment hearing, and, since other options available to him would not have a suspensive effect, the Committee was not precluded under article 5 (2) (a) of the Optional Protocol from being seized of the matter; and (ii) that he had sufficiently substantiated his allegations under articles 6 and 7 of the Covenant. The author's claims under articles 2 (3), 10, 14 (3) (b), and 18 were rejected. The Committee found that the author had failed to substantiate his claims under articles 10 and 14 (3) (b); further, it found that the author's claim under article 18 was inextricably linked to his claims under articles 6 and 7 and decided to consider the issues raised under this claim insofar as they pertain to the author's claims under articles 6 and 7. As for his claim under article 2 (3), the Committee, in accordance with its jurisprudence, recalled that article 2 of the Convention cannot be invoked separately so as to give rise to a claim under the Optional Protocol.

Merits: The Committee found that the author's removal to Iran had not violate articles 6 and 7 of the Covenant because the author failed to show that the State party's decision was clearly arbitrary or amounted to a manifest error or denial of justice. Rather, the Committee was satisfied that the State party considered all relevant claims and elements when making its decision. Conversely, the Committee found that the information provided to it by the author did not sufficiently indicate that he suffered a real and personal risk of being subjected to treatment contrary to articles 6 and 7 of the Covenant upon his removal to Iran.

[CCPR/C/131/D/2838/2016](#)

A.F. v. Canada

Removal from Canada to Lebanon of stateless Palestinian does not lead to art. 6 and 7 violations

Substantive issues: Right to life; torture, cruel, inhuman or degrading treatment or punishment; nonrefoulement; effective remedy; family rights; children's rights

Facts: The author is a stateless Palestinian man who was involved in spying activities for the FBI, mainly working in counter-terrorism operations against Hizbullah. After his identity was revealed, his family in Lebanon received threats and his residency status in the United States was revoked. He left the United States for Canada and applied for asylum, but his application was rejected, as well as his application for permanent residence in Canada on humanitarian and compassionate grounds. The author submits that the decision to deport him to Lebanon violates articles 6 and 7 of the Covenant because he claims that Hizbullah is targeting him in Lebanon, so the country is unsafe due to the dangerous general situation for Palestinians since the events in Syria, including the activities of the ISIL. He also claims a breach of articles 2 and 6 of the Covenant because the Canadian authorities refused to stop his deportation, although he filed an application for pre-removal assessment including new evidence of risk to his life.

Admissibility: The Committee considers that the claim made under articles 2 and 6 of the Covenant is insufficiently substantiated because his allegations contain no specific reason capable of showing a breach of his right to an effective remedy. The Committee will only examine the claim made under articles 6 and 7 of the Covenant.

Merits: The Committee considers that the facts and circumstances of the case do not provide substantial grounds for establishing a real risk of irreparable harm for the author upon return to Lebanon. In addition, the Committee has not been given concrete reasons as to whether there is an actual threat to his life and his family in Lebanon. Moreover, he has not sufficiently substantiated a personal risk in his life stemming from the general situation of Palestinians in Lebanon of the impact of the Syrian civil war in the country. The Committee cannot conclude that there is a violation of the alleged rights.

[CCPR/C/132/D/2810/2016](#)

Mozibor Rahaman v. Canada

Politician deported to Bangladesh owing to unsubstantiated claim

Substantive issues: Non-refoulement; right to life; torture; cruel, inhuman or degrading treatment; liberty and security of person

Facts: The author of the communication is a national of Bangladesh who claims that his deportation would violate his rights under articles 6 (1), 7, and 9 (1) of the Covenant. The author is a member of the opposition Bangladesh National Party, who became an organizing secretary in the party. He claims to be repeatedly attacked, beaten, and extorted for money by goons of the Awami League, the party in power. In March 2014, goons from the league attempted to extort one million takas from him, and the police arrested him on accusations of anti-government activities due to his involvement in the Bangladesh National Party. In June 2014, the police and a rapid action battalion started looking for him under the Special Powers Act on the ground that he was instigating people against the government. Fearing persecution, the author entered Canada on a temporary visa and filed an application for asylum. However, his application was rejected since the author did not prove his organizing secretary position in the Party. The Refugee Appeal Division of the Immigration and Refugee Board reaffirmed the decision despite new evidence of an attack on his family and the rape of his wife. In 2016, the Federal Court denied the author his leave request for judicial review. At the time of the submission, he was not eligible for a pre-removal risk assessment.

Admissibility: Since the Committee fails to see sufficient concrete reasons to assume that a subsequent pre-removal risk assessment would have constituted an effective remedy for the author. Hence, it considers that the author exhausted all available remedies in compliance with the Protocol. The Committee considers the author's claims under articles 6 and 7 of the Covenant to be inadmissible due to insufficient substantiation, pursuant to article 3 of the Optional Protocol. His claims are admissible under articles 6 (1) and 7 of the Covenant.

Merits: The Committee notes the State party's position, according to which letters signed by lawyers stating that the author is wanted under the Special Powers Act without court/police case number lacks credibility coupled with the author's later statement denying any such charge. Further, the author has failed to substantiate that the alleged rape of his wife was carried out by goons of the Awami League as a reprisal against him. The Committee considers that the author's arguments on the scrutiny of his case by the State authorities that identified inconsistencies in his account and documentation submitted, and their alleged disregard of the provenance of evidence, are not such as to allow for the conclusion that their assessment of the alleged interest of the authorities in him was arbitrary or amounted to a denial of justice. Additionally, the State party noted that there is an internal flight alternative for the author in Bangladesh, where his wife and son relocated to face no further incident. The Committee, again, cannot conclude that the State party's assessment of an internal flight alternative was arbitrary or amounted to a denial of justice. Considering the circumstances, the author has failed to show that he would face a personal and real risk of treatment if he were to be removed to Bangladesh. Hence, the Committee concluded that his rights under articles 6 (1) and 7 would not be violated.

[CCPR/C/132/D/3016/2017](#)

G.P. and G.P. v. Canada

Inadmissible communication on family deportation to India owing to lack of credibility

Substantive issues: Torture/ill-treatment; arbitrary detention; right to an effective remedy; right to a fair trial; right to liberty; arbitrary interference with family

Facts: The authors are Indian nationals who, despite belonging to two different social castes, married against their parents' wishes. They submit the communication on their behalf and on behalf of their children, claiming that their removal from Canada to India following the State party's rejection of their refugee application, violates their rights under articles 6, 7, 9, 17, 23, 24, and 26 of the Covenant. They claim that, because of their marriage, they were subjected to persecution, as the authors were of a different social class – including, *inter alia*, being warned by a doctor that he had been told to terminate the wife's pregnancy and kill her. They fear being the victims of an honour crime if returned to India. The State party found the authors' claim for refugee status lacked credibility.

Admissibility: The Committee found the authors' claims inadmissible, as (i) the authors had failed to substantiate their claims of a violation under articles 9, 17, 23, 24, and 26 of the Covenant, and (ii) the authors failed to show that the State party's findings on credibility were clearly arbitrary or amounted to a manifest error or denial of justice. The Committee found that the State party had considered all possible elements of the authors' claims and, conversely, that the authors had failed to sufficiently substantiate their credibility in their documents and statements to Canadian authorities. Consequently, the Committee considered that the communication was inadmissible under article 2 of the Optional Protocol.



Croatia

[CCPR/C/122/D/2859/2016](#)

D.V. v. Croatia

Case pending for a decision on merits of charges for war crimes

Substantive issues: Arbitrary detention; fair trial; ill-treatment and non-discrimination

Facts: The author, a citizen of the Republic of Serbia and Australia, claims that the State party has violated his rights under articles 2, 7, 9 (1) and (4), 10 (1), 14, 15 and 26 of the Covenant.

According to the Croatian authorities, the author was a commander of the Special Purpose Unit of the Serbian Paramilitary Troops, which were involved in an armed conflict with Croatia in defence of the Serbian population living in Croatia. Subsequently, Croatia issued a request to Australia for the author's extradition to face prosecution in Croatia following charges of war crimes. Hence, pursuant to a warrant issued under the Australian Extradition Act, he was arrested. The author spent eight years and nine months in extradition detention and his subsequent bail applications were unsuccessful. On 12 April 2007, the Sydney Local Court ruled that he was eligible to surrender to Croatia. The Australian Federal Court granted the author's appeal and reversed the decision, thus releasing the author after three years in prison. The Croatian government again appealed the decision before the Australian High Court and the Court again ruled that the author was to be extradited and, hence, he was arrested. Upon his extradition to Croatia, he was placed in investigative detention for more than 12 months, awaiting trial, on the basis of the Decision by the Sibenik County Court of 2005. All his appeals were rejected ultimately by the Constitutional Court of Croatia in 2016 and his indictment was confirmed. The author claims that all his domestic remedies were exhausted in Australia and in Croatia. The author alleges his rights under articles 9 (1) and (4) have been violated due to unlawful and excessively long arbitrations both in Australia and Croatia, also in breach of his right to presumption of innocence, as he was denied bail and right to effectively challenge detention.

Admissibility: The Committee notes that, the author's allegations under articles 2 (3), 7, 9 (1) and (4), 10 (1), 14, 15, and 26 of the Covenant, mainly concern the impossibility of his pre-trial detention due to the risk of absconding and the gravity of the criminal charges for war crimes; the absence of release on bail, and the alleged discrimination in placing him in detention as a foreigner. The Committee, however, considers that it is not in a position to review the current grounds for the author's detention in Croatia while his case remains pending on the merits of a criminal charge against him. Hence the Committee finds that the claims are inadmissible for failure to exhaust domestic remedies. Also, the claims are inadmissible under article 3 of the Optional Protocol since the author's appeals against the investigative detention were examined by the State party's courts, and nothing on file suggests that the decisions were arbitrary or amounted to a denial of justice.



Democratic Republic of the Congo

[CCPR/C/131/D/2772/2016](#)

Émile Bisimwa Muhirhi v. Democratic Republic of the Congo

Arbitrary arrest, torture, denial of an effective remedy, and interference with family, home, and privacy found in the case of a Congolese national

Substantive issues: Right to an effective remedy; cruel, inhuman or degrading treatment or punishment; fair trial; right to liberty; arbitrary interference with family life

Facts: The author is a Congolese national who lives in Bukavu, in the province of Sud-Kivu, and who was arrested by members of the National Intelligence Agency on 17 December 2014. During his detention, he was subjected to deplorable conditions by, *inter alia*, being held in solitary confinement in a cell the size of a cupboard, where he could neither sit nor lie down, by not immediately being informed of the reason for his arrest, by being beaten by authorities during questioning, by not being given the chance to defend himself, and by being forced to sign a written confession without being able to read it first. He remained in detention until 6 June 2016, although the complaint against him has not been dropped and the author still faces threats (including several attempts to intimidate or directly attack the author and his family in the street, at the police station, and in his home). He claims a violation by the State party of articles 7, 9, and 10 read in conjunction with article 2 (3), and articles 14 (3) (b) and (g), 17, and 23 of the Covenant.

Admissibility: The Committee found the author's communication admissible on the following grounds: (i) given that none of the multiple requests and complaints the author filed led to an investigation or redress, and that the Working Group on Arbitrary Detention had rendered its opinion on the author's case in September 2013, the Committee was not precluded under article 5 (2) of being seized of the matter; and (ii) that the author had sufficiently substantiated his claims for the purposes of admissibility under articles 7, 9, and 10, read alone and in conjunction with article 2 (3), and articles 14 (3) (b) and (g), 17, and 23 of the Covenant.

Merits: The Committee found that the State party had violated the author's rights under articles 7 and 9, read alone and in conjunction with article 2 (3), and articles 14 (3) (b) and (g), and 17, read alone and in conjunction with article 23 of the Covenant.

Regarding the article 7 claim, the Committee found that the author's allegation of torture, in violation of article 7 of the Covenant, was credible and substantiated by various signs of torture (including a fracture to the right forearm), and that the State party had not provided any information to refute these claims. As for the article 9 claim, the Committee found that the author's claims of being arbitrarily arrested and detained (including being arrested without a warrant, not being immediately informed of the reason for his arrest, not being brought before a judge or competent authority as soon as possible, not being able to make his defence before a court, and not being able to obtain redress) were credible absent any attempt by the State party to refute these allegations. In the consideration of the claims of articles 7 and 9 in conjunction with 2 (3), the Committee found that the State party had violated the author's rights by failing to promptly investigate the author's allegations and provide the author with an effective remedy.

As for the article 14 (3) (b) claim, the Committee found that the State party's denial of a lawyer for the author for the duration of his detention, during his questioning, and during his initial hearing,

as well as its failure to provide the author with full access to the documents necessary for him to mount an effective defence to the charges against him, constituted a violation of article 14 (3) (b). Regarding the article 14 (3) (g) claim, the Committee found that the State party had violated the author's rights when an officer tortured him and forced him to sign confessions which were later used as a basis for arbitrarily depriving him of his liberty.

Lastly, as for the article 17 claim, alone and in conjunction with article 23, the Committee found that, because of his arrest and subsequent attempts to intimidate him and his family, the author was forced to change his residence. It held this a violation of article 17 of the Covenant, read alone and in conjunction with article 23, as it constitutes arbitrary and unlawful interference with the author's privacy, home, and family.

Recommendations: The Committee noted the State party's obligation:

- (a) to provide the author with an effective remedy and make full reparations. This includes:
 - (i) pursuing a prompt, effective, exhaustive, independent, impartial and transparent investigation and prosecution of the author's claims,
 - (ii) prosecuting, trying, and punishing those responsible for the violations in line with the gravity of the offences,
 - (iii) providing the author with detailed results of this investigation,
 - (iv) ensuring that the author is provided with any necessary and adequate physical and psychological rehabilitation and medical treatment free of charge, and
 - (v) by providing the author with adequate compensation and appropriate measures of satisfaction.

The State party is also under an obligation to prevent future violations from occurring.

Separate opinion: Committee member Gentian Zyberi issued a separate opinion partially dissenting from the Committee's findings and held that the claim of a violation of article 23 should have been deemed inadmissible for the author's failures to exhaust domestic remedies.



Denmark

[CCPR/C/132/D/2651/2015](#)

A.M.F. and A.M. v. Denmark

Deportation of author and her child to Ethiopia in violation of her rights to life and prohibition of torture and ill-treatment

Substantive issues: Non-refoulement; torture; right to life

Facts: The author is an Ethiopian national whose asylum application in Denmark was rejected by the Danish Immigration Service and, subsequently, by the Refugee Appeals Board, on the grounds that she would not be exposed to a real and individual risk of persecution in Ethiopia. The author contends that her and her son's removal to Ethiopia would constitute a violation of article 6 of the Covenant. She further contends that their removal to Italy (where she initially sought asylum prior to her arrival in Denmark) would constitute a violation of articles 7 and 24 of the Covenant, as she experienced both homelessness, illness, and sexual violence during her stay.

Admissibility: The Committee found her communication admissible on the following grounds: (i) she had exhausted local remedies and as such, the Committee was not precluded under article 5 (2) (b) of the Optional Protocol from being seized of the complaint; and (ii) because the author had sufficiently substantiated her allegations under articles 6 and 7 of the Covenant.

Merits: The Committee held that the State party had failed to demonstrate that it had conducted an individualized assessment of the author's case sufficient to determine the existence of a real risk of irreparable harm. It found that, in absence of such a proper assessment, the author and her son's deportation to Ethiopia would violate articles 6 and 7 of the Covenant.

Recommendations: The Committee noted the State party's obligation:

- (a) to review the author's asylum case and requested that the State refrain from deporting the author until her request for asylum had been properly considered.

Separate opinion: Three Committee members (Shuichi Furuya, Photini Pazartzis, and Vasilka Sancin) issued a joint dissenting opinion since they were unable to concur with the Committee's view that the author's deportation to Ethiopia would violate articles 6 and 7. They found that the author had not sufficiently demonstrated that the State party's assessment was clearly arbitrary or amounted to a manifest error or denial of justice; consequently, the Committee should not have departed from the State party's assessment of the risks associated with the author's deportation.

[CCPR/C/132/D/2787/2016](#)

J.R.R. et al v. Denmark

Deportation of a family to Bulgaria would not violate rights of the child or prohibition on torture/ill-treatment

Substantive issues: Deportation; non-refoulement; non-exhaustion of domestic remedies; failure to substantiate claim

Facts: The authors are Syrian nationals whose application for asylum protection (submitted on their behalf and on behalf of their two minor children) was denied by the Danish Immigration Service on the grounds that they had previously been granted protection and residence permits in Bulgaria. They contend that their deportation to Bulgaria would constitute a violation of their rights under articles 7 and 24 of the Covenant, as it would expose them and their children to homelessness, destitution, lack of food and access to health care, and risk to personal safety owing to a fear of being targeted by the traffickers who smuggled them from Turkey to Bulgaria.

Admissibility: The Committee found the communication partly admissible on the following grounds: (i) there were no available domestic remedies which would suspend the authors' deportation as the appeal filed did not have a suspensive effect; and (ii) while the authors failed to substantiate their claim under article 24 (1) for the purposes of admissibility, they (iii) had sufficiently substantiated their concerns of a violation of 7 of the Covenant.

Merits: The Committee held that the authors' deportation to Bulgaria would not violate article 7 of the Covenant because they failed to provide sufficient evidence to substantiate the claim that they would face a real and personal risk of inhuman or degrading treatment if returned to Bulgaria. It found that the possibility that the authors might face difficulties in Bulgaria did not in itself mean that they would be in a special situation of vulnerability. Further, the Committee noted that the authors failed to show that the State party's decision was manifestly erroneous, clearly arbitrary, or amounted to a denial of justice.

Separate opinion: Three Committee members (José Santos Pais, Hélène Tigroudja, and Duncan Muhumuza) issued a joint dissenting opinion since they were unable to concur with the Committee's view, instead finding that the authors faced a credible risk of irreparable harm if returned, based on cumulative risk factors including: (i) the expiry of their Bulgarian residence permits, (ii) their ineligibility to reside in reception centres, (iii) the lack of effective refugee integration programs in place in Bulgaria, (iv) the potential exposure to hate speech, discrimination, and racially motivated violence, and (v) the potential of further threats and harassment by the traffickers.

[CCPR/C/133/D/2510/2014](#)

M. R. v. Denmark

Deportation to Iran did not violate the prohibition on refoulment for failure to establish a real and personal risk of harm

Substantive issues: Torture/ill-treatment; deportation; non-refoulment

Facts: The author, a national of Iran, claims that his removal from Denmark to Iran would violate his rights under articles 7, 18, and 19 of the Covenant, as he feared conflict with the Basij militia following their discovery of his production and selling of alcohol.

Admissibility: The Committee found the communication admissible on the following grounds: (i) the Committee was not precluded under article 5 (2) (b) of the Optional Protocol from being seized of the complaint, and (ii) the author had sufficiently substantiated his claim under article 7 of the Covenant. As for the claims under articles 18 and 19 of the Covenant, the Committee considered that the author had insufficiently substantiated them for the purposes of admissibility.

Merits: The Committee found that the author's expulsion to Iran would not constitute a violation of his rights under article 7 of the Covenant because the author failed to show that the Danish Immigration Service and Refugee Appeals Board's decisions were arbitrary or manifestly erroneous, or that they amounted to a denial of justice. Further, the Committee found that the author had failed to sufficiently evidence a real and personal risk of being subjected to treatment contrary to article 7 of the Covenant if deported.

[CCPR/C/133/D/2458/2014](#)

M.N. v. Denmark

Unsubstantiated claims on the principle of non-refoulment leads to the communication being declared inadmissible

Substantive issues: Risk to life and of torture and other cruel, inhuman or degrading treatment; right to a fair trial; freedom of religion; non-discrimination

Facts: The author, a national of Afghanistan, claims that by deporting him, the State party would violate his rights under articles 2, 6, 7, 13, 14, 18, and 26 of the Covenant. The author, fearing persecution for distributing Bibles in Afghanistan, fled to Denmark, where he was arrested by the police on 1 November 2013 because his travel documents were invalid. He applied for asylum in Denmark, which the Refugee Appeals Board rejected. The author requested interim measures from the Committee to halt his deportation as it would violate his rights under articles 2, 6, 7, 13, 14, 18, and 26 of the Covenant. On 24 October 2014, the Committee registered his communication but did not grant interim measures.

Admissibility: The Committee considers that the author's claims of a violation of his right to a fair trial in the context of article 13, and of discrimination, including on the basis of his status as an asylum seeker, under articles 2 and 26, read in conjunction with article 14 of the Covenant are insufficiently substantiated for the purposes of admissibility. Recalling the Committee's jurisprudence, it considers claims under article 14 to be inadmissible *ratione materiae*. The Committee observes that the State party's authorities considered the author's reasons for fleeing Afghanistan and the related asylum motives to be unsubstantiated, considering the inconsistencies in his arguments and submissions and lack of credibility as first his letters were fraudulent. Second, his employer could not confirm that he worked at Combined Team Uruzgan. The author failed to establish that he would risk facing circumstances contrary to article 6 or 7 of the Covenant because of his alleged conversion to Christianity if returned to Afghanistan. Accordingly, owing to the lack of substantiation, this part of the communication is inadmissible.

[CCPR/C/133/D/3325/2019](#)

N.E. v. Denmark

Inadmissibility of a case concerning the violation of the right to family of a Moroccan women trying to reunify with her mother in Denmark

Substantive issues: Children rights; family rights

Facts: The author, a national of Morocco claims that the State party violated her rights under articles 23 and 24 of the Covenant.

The author's parents separated shortly after she was born, so the author lived with her father's family until his death. Then, she lived with her paternal aunt and did not have contact with her mother until the summer of 2013. In 2013, the author's mother moved to Morocco to have the author's passport issued and submitted the visa application to enter Denmark on 18 November 2014. On 5 December 2014, an application for family reunification was submitted to the Danish Immigration Service which was rejected because no special grounds to grant a residence permit could be established under the Aliens Act, the denial of residence did not violate the respect of unity of the family, there was no special relationship between the mother and the daughter, and finally because they had family in Morocco that could take care of the daughter. On 21 December 2015, the Immigration Appeals Board upheld the decision of the Immigration Appeal. The author requested that her case be reconsidered due to procedural irregularities, and, in its decision, the Board held that the author failed to demonstrate new information needed to change the decision.

Admissibility: The Committee notes that the author only exhausted administrative procedures and did not institute proceedings before a Court to challenge the Immigration Appeals Board Decision. Further, it notes that the author's claim could not secure legal aid to submit her complaint to the courts. In this regard, due to lack of substantiation, the communication is inadmissible on the grounds that the domestic remedies have not been exhausted.

[CCPR/C/132/D/3188/2018](#)

M.N. v. Denmark

Deportation from Denmark to Iran would constitute a violation of articles 6 and 7 of the Covenant

Substantive issues: Risk to life; risk of torture; risk of cruel, inhuman or degrading treatment or punishment; nonrefoulement

Facts: The author is an Iranian national who fled his country after he converted to Christianity, because his mother and girlfriend had been arrested following his conversion and because he had received threats from officials, including his girlfriend's husband. He arrived in Denmark and applied for asylum, and his application was based on the claim that he converted to Christianity and was involved with a married woman. The application was rejected because his conversion was not sufficiently substantiated, although he had subsequently publicly informed his surroundings that he became Christian, mainly through Facebook, had been baptised in Denmark, attended church services, has several tattoos of Christian iconography, and has been photographed at anti-regime protests.

The author claims a violation of articles 6 and 7 of the Covenant. He fears for his life because apostasy and adultery carry the death penalty under Sharia Law enforceable in Iran. He also fears he will be questioned by Iranian authorities upon his arrival and persecuted for apostasy, which could amount to torture and inhumane treatment

Admissibility: The Committee considers that the author has sufficiently substantiated his claim and will proceed to consider the issues raised under articles 6 and 7 of the Covenant.

Merits: The Committee considers that the State party's reasoning for the refusal to hear the testimony was sufficient to discharge its procedural obligations under the Covenant and will therefore not interfere with the State party's findings in that regard. Regardless, however, State parties have an obligation to assess whether the behaviour and activities of the author prior to his arrival could have serious consequences if he is returned to Iran. In that regard, the Committee notes that the author has provided sufficient information to substantiate the contention that he had openly converted to Christianity and partook in anti-regime protests and activities. The Committee notes that no further assessment was undertaken by the State party except to confirm whether it appeared from his Facebook posts that he was a Christian. The Committee also notes that the State party has not carried out an assessment of the risk to the author's life regarding the fact that he left the country unlawfully and has not performed mandatory military service. The Committee, therefore, finds that the State party has failed to demonstrate that the authorities have conducted an individualised assessment of the author's case to determine whether there is a real risk of irreparable harm. It concludes that the author's removal to Iran would constitute a violation of articles 6 and 7 of the Covenant.

Recommendations: The State party is under an obligation to:

- (a) proceed to a review of the author's case taking into account the State party's obligations under the Covenant and the Committee's present Views.

The State party is also requested to refrain from expelling the author until his request for asylum is properly considered.

[CCPR/C/133/D/2816/2016](#)

A. F. v. Denmark

Inadmissibility of a case concerning a Somali ex-Member of Parliament whose deportation from Denmark could amount to death or torture

Substantive issues: Right to life; torture; cruel, inhuman or degrading treatment or punishment, right to family

Facts: The author of the communication is a national of Somalia whose application for asylum has been rejected. He claims that his deportation to Somalia would amount to a violation of his rights under articles 6 and 7 of the Covenant. The author was granted residence in the State party on 6 April 2004 on the basis of family reunification. In 2013, the Danish Immigration Service decided that the author's residence permit should be deemed to have lapsed. The author has a wife and children in Denmark, and another wife and children who live in Somalia. As the situation for his family in Somalia worsened, the author was granted a residence permit in Sweden and applied for family reunification for his wife and children in Somalia, as it would not be possible to apply for asylum in Denmark because he already had a family residing there. However, in 2012 the Swedish authorities discovered that the author already had a residence permit in Denmark and his Swedish residence permit was withdrawn. In 2014, the author once again applied for family reunification in the State party. His applications for family reunification and for asylum in Denmark were rejected by the Immigration Service.

The author claims that, as a former Member of Parliament in Somalia, he would be at risk of persecution on return to Somalia and claims that he may be killed or subjected to torture or inhumane treatment on return to his hometown, which is controlled by al-Shabaab. The Refugee Appeals Board examined the question as to whether the author could be required to take up residence in Mogadishu as an internal flight alternative, but the author claims that he is at risk of persecution also there, where al-Shabaab is targeting Members of Parliament and journalists. The author claims that his son was killed by al-Shabaab in 2015. He claims that, as he is no longer a Member of Parliament, he is no longer entitled to the protection of AMISOM or to the right to stay in the secure zone in Mogadishu, as was the case during his previous visits to Mogadishu. Nevertheless, the Board found that the author had not substantiated that his public role in Somalia had been so prominent that he would be at risk of persecution upon return to Mogadishu, given that it had been several years since he had ceased his activities as a Member of Parliament. The Board also noted that the author's brothers lived in Mogadishu without problems.

Admissibility: The Committee rejected the author's request for interim measures, which consisted of a request that the State party refrain from deporting the author to Somalia while his case was under consideration by the Committee, and it also rejected the request of the State party to discontinue the communication. The Committee recalls its jurisprudence that an author carries the burden of proof to support the allegations of personal and real risk of irreparable harm if deported. In the present case and as it concerns the author's claims that he would be at risk of persecution upon return to Somalia due to his previous role as a Member of Parliament in Somalia, it notes that the author withdrew from this position 10 years ago, in 2011, and that he provided conflicting information on his role in during the domestic proceedings. The Committee concludes that the author has failed to substantiate, for purposes of admissibility, his claims under articles 6 and 7 of the Covenant and declares the communication inadmissible under article 2 of the Optional Protocol.



Ecuador

[CCPR/C/131/D/3141/2018](#)

H.M.T (J.M.T.C) v. Ecuador

Author's son was killed by a police officer and police investigation and justice system were delayed in dealing with the case

Substantive issues: Right to investigation of a homicide; right to life

Facts: The author is a national of Ecuador acting on behalf of their deceased son, also a national of Ecuador. The author claims that the State party has violated their son's rights under articles 6 and 14 of the Convention. The author's son was in a park with his cousin when fight broke out between them and a police officer who was off duty. The author's son was killed during the fight by the police officer with his service gun. The author reported the event to the police and the police began an investigation. However, the process was extremely slow and convoluted. The police never found the police officer's gun and, when they conducted different tests, there was never evidence to convict the policeman. The author claims that by protecting their colleague, providing bogus evidence, and avoiding the conclusion of the case if it were not at the author's repetitive request, the State party violated their son's right to justice and equality before the courts as well as the right to life under articles 14 and 6 of the Covenant. The author maintains that other available domestic remedies would not have brought a reasonable prospect of justice as they are employed only in extraordinary cases and as these remedies would only revise the sentence which is not the aim of the case at hand.

Admissibility: The Committee reminds the author that having doubts about the effectiveness of further domestic remedies does not constitute sufficient ground to consider domestic remedies exhausted. The remedies of 'extraordinary protection' before the Constitutional Court over the substantiated criminal proceeding, a contentious administrative appeal against the State, and an action for damages against officials of the Administration of Justice were all available remedies. Following satisfactory justification by the State party that the further available domestic remedies would create a valid prospect for justice in their balanced approach to both parties and proven ability to overturn judgements and/or sentences, the Committee finds the communication inadmissible in virtue of article 5 (2) (b) of the Optional Protocol.



France

[CCPR/C/131/D/2944/2017](#)

J.Y. v. France

Israeli-French woman banned from leaving Israel with her child despite husband being at the hospital

Substantive issues: Right not to be subjected to arbitrary or unlawful interference with the family; right of children to protection; protection of the family

Facts: The author is an Israeli French national who married a British Israeli national and had a child who acquired French nationality. Her husband had a health accident and was being treated in Tel Aviv. While on a brief trip to France with her son, the author found out that her husband had obtained an order from an Israeli court banning her from leaving Israel with her child until the child had reached the age of majority. He had filed an application with the central authority of Israel for the return of the child under the Convention on the Civil Aspects of International Child Abduction (CCAICA) mainly because her four-day trip was extended to ten days. The author stayed in France and referred the matter to the authorities in France, which rejected her challenges. She finally lodged an application with the European Court of Human Rights (ECtHR), which was declared inadmissible.

The author complains of a violation of articles 17, 23 (1) and 24 (1) of the Covenant claiming that the non-return of her child to Israel after the initial four day-trip is not wrongful under the CCAICA because, not only did the husband not exercise custody rights while incapacitated in the hospital, but the extension of her stay was based on justifiable grounds, namely her state of generalized fatigue which deteriorated. Moreover, she holds that the exceptions under article 13 (b) of the CCAICA were not properly examined, which results in a breach of child rights protection.

Admissibility: The Committee considers that it is not able to determine with certainty that the case has been subject to an examination on the merits by the ECtHR, mainly because of the brevity of the letter addressed which does not put forward any argument to indicate that the inadmissibility decision was based on the merits. The author has sufficiently substantiated her claims and the case is therefore admissible before the Committee.

Merits: The Committee observes that the author has not demonstrated how the national courts failed to take into account the rights protected by articles 17 and 23 (1) of the Convention in their application of the CCAICA. The author has neither demonstrated how, in ordering the return of the child to Israel in the application of the CCAICA, the national authorities took decisions that were at variance with the provisions of the Covenant. With regard to the claims relating to her health, the Committee recalls that it is up to domestic courts to evaluate the facts of the case on this matter, and that the Committee will only review the facts if it can be ascertained that the proceedings were arbitrary or amounted to a denial of justice. The author has not sufficiently demonstrated this point. The Committee finally observes that the decisions were not taken without considering the best interest of the child. This is mainly because the French courts sought guarantees from the author's husband in order to protect the child's interest. There is, therefore, no violation of the Covenant's rights by the State party.

[CCPR/C/131/D/2988/2017](#)

Philippe Rudyard Bessis v. France

French dental surgeon struck from the National Association of Dental Surgeons after filing a complaint

Substantive issues: Right to a fair trial; right not to be subjected to arbitrary or unlawful interference with the family; right to freedom of expression

Facts: The author of the communication is Philippe Rudyard Bessis, a national of France born in Tunisia who was a dental surgeon at the time of the events. After he was struck from the register of the National Association of Dental Surgeons for life, he practised law. He was also a freelance journalist for *Indépendantaire*, a trade journal for dentists for which he wrote a column entitled "Justice-Injustice".

In relation to article 19, the author asserts that he was struck from the register because he had filed a complaint against the Council of State judges and members of the professional disciplinary tribunals and had publicly criticized the tribunals. The author argues that, under article 19 (3) of the Covenant, the penalty imposed on him infringes on his freedom of expression. He also claims that the State party's failure to protect him from unlawful interference with his freedom of expression and his right to a fair trial amount to a violation of article 2 (3) of the Covenant. The rights guaranteed to him under article 14 of the Covenant were not respected during the proceedings and the hearing at first instance, which resulted in his being struck off the register for life, had not been public. Moreover, the author registered an additional submission to the Committee presenting new claims. He argues that the State party has violated his rights under article 17 of the Covenant, read together with article 2 (3), as the prohibition on the simultaneous practice of law and dentistry constitutes arbitrary interference in his private life. The author also claims that article 25 of the Covenant, read together with article 2 (3), was violated and argues that he could not exercise the legal profession, which falls under public service as that term is used in article 25.

Admissibility: The Committee finds that the author's claims under articles 17, 19 and 25 of the Covenant are inadmissible for failure to exhaust domestic remedies. The claims under articles 17 and 25 of the Covenant in his additional submission of July 2017 are inadmissible for not having been submitted in a timely manner. However, the author has sufficiently substantiated his claims under article 14 (1) of the Covenant and the Committee declares the communication admissible with respect to the claims raised under this article, read alone and together with article 2 (3) of the Covenant.

Merits: The Committee notes that, while the author has raised systemic issues relating to the functioning of professional disciplinary tribunals in France, he has not submitted sufficient evidence to demonstrate how, in this particular case, his rights have been violated under article 14 (1) of the Covenant. The author has not sufficiently demonstrated how the decision to strike him off the dental surgeons' register was not commensurate with the charges against him, and no interference by the authorities has been demonstrated in the case at hand and that, at the time of the events, judges on professional disciplinary tribunals were in fact elected. Thus, the Committee is of the view that the author has not demonstrated how the various hearings that led to the judgment against him involved a violation of article 14 (1) of the Covenant, read alone and together with article 2 (3).

More info on the case:

- [Lyon Capitale](#) - Le combat sans fin du docteur Bessis
- [Dental Truths](#)

[CCPR/C/133/D/3215/2018](#)

Philippe Rudyard Bessis v. France

French dental surgeon sued for defamation after denouncing the abuse of power of National Association of Dental Surgeons

Substantive issues: Right to a fair trial; right to freedom of expression; right to freedom of association

Facts: The author is a national of France who was a dental surgeon at the time of the events. He published a blog post on the Union of United Self-Employed Dentists in his capacity as President of the Union. In his article, he accuses certain members of the Nations Council of the National Association of Dental Surgeons of abusing their power. He was later sued for defamation in French courts. The Higher Courts decided against the author, and the European Court of Human Rights (ECtHR) declared his application inadmissible. The author claims that the higher domestic judgment is arbitrary within the meaning of article 14 of the Covenant, because the Court did not take into account or sanction the procedural error committed by the plaintiffs. He also claims a violation of article 19 of the Covenant because his freedom of expression was unjustly restricted. In addition, he claims a violation of freedom of expression in the context of trade-union activity under article 22 of the Covenant.

Admissibility: The Committee considers that the submission made to the ECtHR does not constitute an obstacle to the admissibility of the case before the Committee because it is not able to determine if the case presented by the author has already been the subject of consideration on merits. The Committee considers the claim under article 14 inadmissible because it was not raised before the Court of Cassation, and all remedies were therefore not exhausted. The claims under articles 19 and 22 of the Covenant are admissible.

Merits: The Committee must decide whether the restriction imposed on the author's freedom of expression is allowed under article 19 of the Covenant. In the present case, the Committee notes that the author has not demonstrated how the civil judgment was not aimed at protecting the rights and reputation of the plaintiffs. Concerning article 22, the Committee considers that the author has failed to demonstrate a violation of this provision by the State party and that the alleged restrictions related to freedom of expression under article 19 rather than freedom of association as such. The Committee does not consider that the judgment was handed down to the author by reason of his membership in the Union of United Self-Employed Dentists. He also failed to show that the restrictions imposed by the State undermined his exercise of the right to freedom of association in violation of articles 19 and 22. The Committee, therefore, does not find any violation of these provisions.



Greece

[CCPR/C/132/D/3065/2017](#)

Lazaros Petromelidis v. Greece

Conscientious objector to compulsory military service was charged and detained

Substantive issues: Right to liberty; freedom of movement; right to a fair trial; right to not be tried or punished for the same offence (*ne bis in idem principle*); freedom of thought, conscience and religion; discrimination

Facts: The author is a national of Greece who is a conscientious objector to compulsory Greek military service. He repeatedly objected to his periodical drafting, and he was punished each time. The first time, he performed a series of discriminatory work through the civil service alternative, and the following times he was detained, tried, and imprisoned for his stance. The events unfolded over a period of 14 years during which the military courts criminally charged him repeatedly, despite new laws on the status of conscientious objectors to military service being enacted at the time.

The author claims that his rights under article 9 (1) of the Covenant have been repeatedly violated because he was arbitrarily detained for having legitimately exercised his right of conscientious objection to military service. He also claims that the State party has violated his rights under article 12 (2) of the Covenant because a travel ban was imposed on him in 1992, which prohibited him from leaving the territory of Greece. Regarding article 14 (1) of the Covenant, the author claims that his cases were tried by military courts, which are not competent to try cases of civilians since they do not act independently or impartially in cases relating to the evasion of the draft for military service. Besides, his second and third convictions constitute repeated prosecutions for the same offence in breach of article 14 (7). As such, the author claims that his right to conscientious objection to compulsory military service under article 18 (1) of the Covenant has been violated. In particular, the author complains about the substantive difference between the respective periods of military service and the alternative civilian service. Also, he claims that the penalties imposed on him for his second and third convictions violate his rights under article 18 (2) of the Covenant.

Admissibility: The State argued that the communication constituted an abuse of the right to submit a communication because the author submitted it at least six years after domestic remedies had been exhausted. The Committee considered that no exceptionally long period elapsed between the events and the submission. The State party also challenged the admissibility based on *ratione temporis*, since several of the calls for enlistment were issued prior to the entry into force of the Optional Protocol. The Committee concludes that it is not precluded *ratione temporis* from considering the communication because the result of the national procedures was directly connected with the initial facts, actions, or omissions that gave rise to the violation

Moreover, the State argued that the author failed to exhaust domestic remedies because, in the third set of proceedings, he did not appeal the decision of the Military Appeal Court. The Committee considers that such additional resort to this remedy would be futile, and thus find admissible the claims under articles 9, 12 (2), 14 (7) and 18 (1) and (2) of the Covenant. The Committee does not consider the author's claim under article 14 (1) admissible because of a lack of exhaustion of domestic remedies, as the author never claimed a lack of a fair trial in Greece. Lastly, the Committee further considers that the author's claims concerning his alleged discrimination also appear to raise issues under article 26 of the Covenant.

Merits: The Committee recalled that, although the Covenant does not explicitly refer to a right of conscientious objection, such a right derives from article 18 (1), since the obligation to be involved in the use of lethal force may seriously conflict with freedom of conscience. As such, repression for the refusal to be drafted for compulsory military service exercised against persons whose conscience or religion prohibits the use of arms is incompatible with article 18 (1) of the Covenant. Additionally, the Committee agrees that the alternative civil service was not a real alternative, as the application of extensive working hours and lack of adequate compensation for conscientious objectors is clearly a disincentivizing practice.

The author's detention and imprisonment were also violations of his right to be free from arbitrary detention, enshrined in article 9 (1), as it was inappropriate, unjust, unpredictable, and lacked a due process of law, as well as being carried out for the purpose of contrasting his freedom of thought. The author's freedom of movement was also violated, as the unduly delay of the judicial processes forced him to be unable to leave Greece for a period of 14 years, which cannot be justified. Further, the Committee found that the repeated detentions of the author, each as a result of the same offence of refusal to be drafted, were in violation with the author's right not to be repeatedly tried for the same offence. The Committee concludes that Greece violated the author's rights under articles 9 (1), 12 (2), 14 (7) and 18 (1) of the Covenant.

Recommendations: The State party is obligated, inter alia:

- (a) to expunge the author's criminal record, to reimburse all sums paid as fines and to provide adequate compensation.

The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future. In this connection, the Committee reiterates that the State party should review its legislation with a view to ensuring the effective guarantee of the right to conscientious objection under article 18 (1) of the Covenant, for instance by providing for the possibility of undertaking alternative civilian service that is not punitive and discriminatory in nature.

Separate opinions: According to Committee member José Santos Pais, the communication reveals an abuse of the right of submission, since there was a delay of more than six years between the most recent court decision (2009) and the submission of the author's complaint (2015), so the complaint should have been declared inadmissible under article 3 of the Optional Protocol. The communication should also have been declared inadmissible for non-exhaustion of domestic remedies, pursuant to article 5 (2) (b) of the Optional Protocol. Regarding the calls for enlistment in 1992 and 1993, the Covenant only entered into force for Greece in May 1997, and so those facts should have excluded *ratione temporis* from being dealt with.

According to Committee member Hélène Tigroudja, the Committee highlights the discriminatory nature of Greek legislation and mainly bases its finding of a violation of article 18 on this element. She considered that instead of deeming it necessary not to decide on a breach of article 26, which is at the heart of the whole case, the majority should have concluded at the end of paragraph 9.6 that for similar reasons, the facts also disclose a violation of article 26 of the Covenant.



Kazakhstan

[CCPR/C/131/D/2688/2015](#)

B. Toregozhina v. Kazakhstan

NGO leader arrested for peacefully commemorating victims of ammunition violence

Substantive issues: Right to a fair trial; right to freedom of expression

Facts: The author is a national of Kazakhstan who claims that the State party violated her rights under articles 14 (1), (2) and (3) (e), and 19 of the Covenant. On 13 December 2012, the author's request to organize a commemoration to place flowers was reviewed, and the author was informed that there would be additional security measures in place to avoid violations of public order. On the day of the event, the author was detained and convicted of an administrative violation under the State party's domestic law, and thereafter, sentenced to 15 days of administrative arrest. She claims that the State party violated her rights under 14 (1), (2) and (3) (e), and 19 of the Covenant. The author's appeal before the Almaty City Court was rejected.

Admissibility: The Committee noted that the author's petitions for supervisory review to the Prosecutor General were dismissed, and the State party failed to demonstrate that further appeals would have been an effective remedy. Accordingly, this part of the communication is admissible. The author failed to bring her claims under articles 14 (1), (2), and (3) (e) in her appeal before the Almaty City Court and, therefore, these claims are inadmissible. The author sufficiently substantiated her claim of violation under article 19 of the Covenant. It declares this part admissible.

Merits: The Committee notes that, while claiming in a general manner that the restrictions on the freedom of expression authorized by its law are consistent with the wording of article 19, and that sanctions were imposed by national law, the State party has failed to substantiate the compatibility of the legal provisions. These served as a basis for restricting the author's freedom of expression as stipulated in the third line of article 19. The Committee finds that the State party failed to justify how the author's 15-day administrative detention was necessary and proportional to the legitimate aim pursued, as set out in article 19 (3) of the Covenant. Hence, the author's rights under article 19 of the Covenant have been violated.

Recommendations: The State party is obligated, inter alia:

- (a) to provide the author with adequate compensation, including reimbursement for any legal costs incurred by her.

The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future.

[CCPR/C/131/D/2452/2014](#)

Kanat Ibragimov v. Kazakhstan

Activist sentenced to administrative detention for his participation in peaceful protests

Substantive issues: Freedom of expression; freedom of assembly

Facts: The author is a painter and an activist who participated in a peaceful rally on 24 March 2012. Shortly after, the author was detained by police officers and, that very day, was presented before the Specialized Inter-District Administrative Court of Almaty, which pronounced him guilty under the Code of Administrative Offences and sentenced him to 15 days of administrative detention. The author began a hunger strike to protest the violation of his rights, causing significant damage to his health.

The author brought multiple lawsuits under civil proceedings before the Bostandyk District Court in Almaty between May 2012 and July 2012, against his arbitrary detention, which was rejected by the Court. On 28 April 2012, he attended another peaceful rally despite his ill-health, and was later forcibly detained by police officers. He was presented before the Specialized Inter-District Administrative Court of Almaty against his will and was later subjected to bodily harm by the officers.

The Court found the author guilty of violating the procedure for the organization of a peaceful meeting, and he was again sentenced to 15 days of administrative detention. The author was denied access to legal counsel, and, on 3 May 2012, he submitted an appeal against the decision. His appeal was rejected by the Court on 4 May 2012, and, on 18 May 2012, the author submitted a request to the Office of the Prosecutor General to review the decision. On 15 August 2012, the author was informed that his request required additional verification, and on 27 August 2012 the author's request was transmitted to the Prosecutor's Office of Almaty for that purpose. On 25 September 2012, the author was informed by the Prosecutor's Office that there were no grounds for initiating a review.

Admissibility: The Committee found that the author had sufficiently substantiated, for the purposes of admissibility, his claims under articles 19 (2) and 21 of the Covenant and declared the communication admissible.

Merits: The Committee recalled that article 21 of the Covenant provides that any restrictions must be necessary and proportionate in the context of a society based on democracy, the rule of law, political pluralism, and human rights, as opposed to being merely reasonable or expedient. The Committee concluded that the State party had failed to justify the restriction of the author's right to peaceful assembly and thus violated article 21 of the Covenant.

The Committee also noted that sanctioning the author for expressing his views through participation in public events interfered with his right to impart information and ideas of any kind, as protected under article 19 (2) of the Covenant. Relying on General Comment No. 34 (2011), the Committee stated that restrictions on the exercise of those freedoms under article 19 (3) must conform to the strict tests of necessity and proportionality. In the absence of any pertinent information from the State party explaining how the restriction was in line with the provisions of article 19 (3) of the Covenant, the Committee concluded that the author's rights under article 19 (2) of the Covenant have been violated.

Recommendations: The State party is obligated, inter alia:

- (a) to take appropriate steps to provide the author with adequate compensation and reimbursement of any legal costs incurred by him.

The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future. In this connection, the Committee reiterates that pursuant to its obligations under article 2 (2) of the Covenant, the State party should review its legislation with a view to ensuring that the rights under articles 19 (2) and 21 of the Covenant, including organizing and conducting peaceful assemblies, meetings, processions, pickets, and demonstrations, may be fully enjoyed in the State party.

[CCPR/C/132/D/2509/2014](#)

Sharip Kurakbaev and Raikhan Sabdikenova v. Kazakhstan

Restrictions and sanctions imposed on the Editor-in-Chief of a newspaper in violation of his right to freedom of expression

Substantive issues: Right to a fair hearing by an independent and impartial tribunal; freedom of expression; right to the equal protection of the law without any discrimination

Facts: The author was the Editor-in-Chief of the newspaper *Pravda Kazakhstan*, which obtained its registration number from the Ministry of Culture and Information of Kazakhstan on 8 February 2007. An application for a new registration number was duly submitted to the Ministry on 25 August 2007, subsequent to which the author was appointed as the Editor-in-Chief of the newspaper. In the absence of any response from the Ministry to its application for a new registration, the newspaper continued to operate on its last known registration number. The author was found guilty by a Specialized Inter-District Administrative Court of Almaty for the use of an old registration number on 9 August 2013 and 26 September 2013 and was ordered to pay a fine. The author appealed against the Court's decision; however, his appeal was rejected by the Appeals Board on Civil and Administrative Cases of the Almaty City Court on 24 October 2013. The author also submitted a similar appeal to the Office of Prosecutor, which was rejected on 21 February 2014.

Admissibility: The Committee found that it is not precluded by article 5 (2) (b) of the Optional Protocol from examining the present communication. It also found that the author failed to demonstrate or provide evidence to corroborate his claim that the conduct of the proceedings was arbitrary or amounted to a manifest error or denial of justice and found his claim under article 14 to be inadmissible. It also noted that the author failed to provide detailed information, explanations, or evidence in support of the violation of his claim under article 26 of the Covenant, and therefore found his claim under article 26 to be inadmissible. The Committee, however, found the author's claims under article 19 of the Covenant to be admissible and proceeded with its consideration of the merits.

Merits: The Committee recalled 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. This implies a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion. The public also has a corresponding right to receive media output. States parties should ensure that the legislative and administrative frameworks for the regulation of the mass media are consistent with the provisions of article 19 (3) of the Covenant. The Committee found that the State party had failed to justify the multiple and severe sanctions imposed on the author and on *Pravda Kazakhstan* as being necessary and proportionate to the legitimate aim pursued, as set out in article 19 (3) of the Covenant. The Committee concluded that the author's rights under article 19 (2) of the Covenant had been violated.

Recommendations: The State party is obligated, inter alia:

- (a) to provide Ms Sabdikenova with adequate compensation, including reimbursement for any legal costs and administrative fines incurred by Mr Kurakbaev.

The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future. In this connection, the Committee reiterates that pursuant to its obligations under article 2 (2) of the Covenant, the State party should review its legislation with a view to ensuring that the rights under article 19 (2) of the Covenant, including the right to impart information and ideas in print, may be fully enjoyed in the State party.

[CCPR/C/131/D/2676/2015](#)

Andrey Tsukanov v. Kazakhstan

Journalist subjected to an unfair trial and sentenced to administrative detention for reporting on a peaceful protest

Substantive issues: Freedom of expression; freedom of assembly, guarantee to fair trial

Facts: The author is Andrey Tsukanov, a national of Kazakhstan who went to cover the protest on behalf of a local television channel on 7 July 2014. Soon after, several police vehicles arrived at the scene and police officers started detaining participants and taking their identification documents. While covering the protests, he was approached by several police officers who demanded that he show his ID and deleted the video recording. As the author refused, the officers took away his camera, damaging it in the process, twisted his arms behind his back and escorted him along with several protesters to a police station. He was later charged with an administrative offence under the Code of Administrative Offences, and on 11 July 2014, the Specialized Inter-District Administrative Court of Almaty found the author guilty of refusal to obey lawful orders of the police and sentenced him to 15 days of administrative arrest. The author appealed the decision, which was rejected by both the Court and the Office of Prosecutor on 17 July 2014. He claims that the State party has violated his rights under articles 14 (3) (d) and (e), 19 and 21 of the Covenant.

Admissibility: The Committee noted that the author failed to sufficiently substantiate the allegations of violation of his rights under article 14 (3) (d) of the Covenant. However, the Committee further stated that the author had sufficiently substantiated his remaining claims under articles 14 (3) (e), 19, and 21 of the Covenant for the purposes of admissibility, and so declared the communication admissible and proceeded with its consideration of the merits.

Merits: The Committee noted that the protest in question was held spontaneously at around 10 p.m., and so it did not seem unreasonable for police officers to request the author to show his ID card in the context of maintaining public safety and order, and for purposes of ascertaining his status as a journalist. In this respect, a request by police officers to the author to show his ID may be deemed necessary. On the other hand, the State party failed to explain why the confiscation of his camera, the deletion of video recordings and, above all, the 15 days of the administrative arrest of the author were necessary for the maintenance of public safety and order. The Committee considered that, in the circumstances of the case, the limitations on the author, although imposed on the basis of domestic law, were not shown to be neither necessary nor proportionate pursuant to the conditions set out in article 19 (3) of the Covenant. It, therefore, concluded that the author's rights under article 19 (2) of the Covenant had been violated.

The Committee also noted that, in the present case, the State party had not provided the Committee with any information to support the claim that the author's actions created a risk to the life or safety of persons or to property, except to submit that he was obstructing passing traffic. The Committee found that the State party did not meet the onus to justify the restrictions on the author's rights under article 21, and it concluded that the author's rights under article 21 of the Covenant had been violated. Lastly, the Committee found that the author's rights under article 14 (3) (e) of the Covenant had been violated, as he was unable to call any witnesses in his defence, contrary to article 14 (3) (e) of the Covenant.

Recommendation: The State party is obligated, inter alia:

- (a) to provide the author with adequate compensation.

The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future, in particular by reviewing its national legislation and the implementation thereof in order to make it compatible with its obligations to adopt measures able to give effect to the rights recognised by articles 19 and 21 of the Covenant.

Separate opinion: Committee member Gentian Zyberi issued an individual dissenting opinion. The Committee member stated that the author had failed to demonstrate that the alleged “bias” or “lack of equality of arms” reached the threshold for arbitrariness in the evaluation of the evidence or amounted to a denial of justice. He stated that the Committee should have found the claim under article 14 (3) (e) as not sufficiently substantiated, or alternatively that there was no violation of article 14 (3) (e).

[CCPR/C/133/D/2726/2016](#)

A.P. v. Kazakhstan

Author's son was subjected to ill-treatment and unsafe conditions under detention at a psychiatric ward resulting in his death

Substantive issues: Cruel, inhuman or degrading treatment or punishment

Facts: The author is a Kazakh national born in 1964, mother of S.P. (deceased). She claims that the State party violated her son's rights by ill-treating him following his arrest and did not provide him with safe conditions of detention while in the psychiatric ward, in violation of his rights under articles 6 (1) and 7, read alone and in conjunction with articles 2 (3), 9, 10 (1), 14 (1) and (2), and article 26 of the Covenant.

The author's son (S.P.) was arrested by police officers on 25 April 2004, and on the same day, he was admitted to an emergency ward in a hospital by the police officers. He was examined at the hospital and diagnosed with "head trauma, haematomas on the forehead". The author's son was charged with "causing great bodily harm" under article 103 (1) of the Criminal Code of Kazakhstan after he had submitted a complaint of being tortured after his detention with the police and the Prosecutor's Office of the Almalinsky District. The counsel of the author filed multiple complaints of ill-treatment and torture following his arrest. His court-mandated examination revealed that he suffered from schizophrenia and was ordered to transfer to a psychiatric ward for mandatory treatment. He died at the premises of the psychiatric ward on 24 September 2007. The author requested the hospital to provide her with her son's medical history prior to his death, as well as the results of the autopsy, but her request was denied. On 31 July 2009, at the author's request, the District Court ordered Mr S.P.'s body to be exhumed, but his body was not exhumed until 15 January 2013.

Admissibility: The Committee noted that the subsequent examinations of the author's son's remains were unable to provide any new reliable information because of the amount of time that had elapsed since his death. On the basis of the information contained in the file, the Committee is unable, within the specific circumstances of the present case, to conclude that the alleged violations gave rise to a continuing obligation for the State party to investigate after its ratification of the Optional Protocol. The Committee, therefore, concluded that the alleged violation of articles 14 (1) and (2) and article 26 of the Covenant concerning the criminal proceedings against the author's son occurred prior to 30 September 2009, when the Optional Protocol entered into force for the State party. It further noted that those domestic proceedings were finalized before the entry into force of the Optional Protocol for the State party, and therefore finds these claims inadmissible *ratione temporis* under article 1 of the Optional Protocol.

The Committee further noted the author's claims under articles 6 (1), 7, 9 and 10 (1) of the Covenant concerning her son's ill-treatment following his arrest, and the inadequate conditions of detention and medical care in the psychiatric ward, which resulted in his death. The Committee noted the State party's submission that the acts occurred prior to the entry into force of the Optional Protocol for the State party and therefore fall outside the Committee's competence *ratione temporis*. Accordingly, the Committee considered that the allegations presented by the author are inadmissible *ratione temporis* under article 1 of the Optional Protocol.

Separate opinion: Committee members Arif Bulkan, Marcia V.J. Kran and Hélène Tigroudja issued a dissenting opinion. According to them, given all these facts, the State party did not fulfil its obligation to carry out an investigation in the present case. Since that obligation persisted (and was acknowledged) after the critical date, the Committee is not barred *ratione temporis* and does have jurisdiction to consider this communication. They further stated that the facts as submitted and considered in the light of the Committee's jurisprudence, and in the absence of relevant explanations from the State party, would amount to a violation of the author's son's rights under article 6 (1), read alone and in conjunction with article 2 (3).

[CCPR/C/133/D/2904-2907/2016](#)*Ermek Narymbaev v. Kazakhstan***Activist sentenced to administrative detention for participating in a peaceful protest****Substantive issues:** Fair trial; freedom of assembly; freedom of expression

Facts: The author, a well-known public activist in Kazakhstan, applied to the Almaty City administration for authorization to hold a peaceful meeting on 19 June 2015 to protest the government's inaction on the environmental consequences of launching rockets. After having received no reply from the city authorities, the author, together with around twenty other persons, participated in a ceremony of laying flowers at the Independence Monument in Almaty. The police filed a case against the author under the Code of Administrative Offence on 3 July 2015 and he was questioned in the presence of a lawyer. On 4 July 2015, the Almaty City Specialized Interregional Administrative Court found him guilty and sentenced him to 15 days of administrative arrest. The author appealed against that decision on the ground that the ceremony of laying flowers required no permission from the City authorities and that his freedom of expression and peaceful assembly is protected by articles 32 and 20 of the Constitution of Kazakhstan, and articles 19 and 21 of the Covenant. The Court rejected his appeal on 13 July 2015. His cassation complaint with the Almaty City Court and appeal for a supervisory review to the Prosecutor General were dismissed on 25 October 2015 and 29 March 2016, respectively.

In a separate communication (No. 2709/2016), the author stated that he was arrested by the police officers for a post he made on his Facebook page about planning to hold a picket in front of the Independence Monument on 20 August 2015. An administrative record was filed against him for violating the procedure for holding peaceful assemblies, meetings, processions, pickets, and demonstrations as foreseen under article 488 (3) of the Code of Administrative Offence of the Republic of Kazakhstan. On 21 August 2015, the Almaty City Specialized Interregional Administrative Court established that the author posted an invitation on his Facebook page inviting others to join, and found him in violation of the Code, sentencing him to 15 days of administrative arrest. The author appealed against the decision of his administrative detention, which was dismissed. The author then filed a cassation appeal, requesting the Court to restore his right to freedom of expression and fair trial, which was also dismissed. Furthermore, the author's appeal for a supervisory review to the Office of the Prosecutor General was also dismissed.

Admissibility: The Committee found that the author's claim regarding articles 14 (1) and 14 (3) (d) were insufficiently substantiated and inadmissible. The Committee further noted that the author had sufficiently substantiated his claims under articles 19 and 21 of the Covenant, for the purposes of admissibility of both communications, and proceeded with their consideration on the merits.

Merits: The Committee considered that, in the circumstances of the case, the restrictions imposed on the author, although based on domestic law, were not necessary and proportionate, and were not justified pursuant to the conditions set out in article 19 (3) of the Covenant. The State party failed to invoke any specific grounds to support the necessity of the restrictions imposed and, therefore, the Committee concluded that the author's rights under article 19 of the Covenant had been violated. It also noted that the State party failed to demonstrate that the sanction in the form of administrative arrest imposed on the author for participating in or trying to attend a peaceful unauthorized assembly was necessary and proportionate under article 21

of the Covenant. The Committee, therefore, concluded that the State party had violated article 21 of the Covenant.

Recommendations: The State party is obligated, inter alia:

- (a) to provide the author with adequate compensation, including to reimburse the fine and any legal costs incurred by the author.

The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future, in particular by reviewing its national legislation on public events and the implementation thereof in order to make it compatible with its obligations under article 2 (2) to adopt measures able to give effect to the rights recognised by articles 19 and 21.

[CCPR/C/132/D/2675/2015](#)

D.V.K. v. Kazakhstan

Procedural irregularities in the trial of a Kazakh man convicted for the violent murder of his mother

Substantive issues: Effective remedy; torture and other cruel, inhuman or degrading treatment; right to a fair trial

Facts: The author of the communication is a national of Kazakhstan who was convicted for the violent murder of his mother and sentenced to 10 years of imprisonment in 2013. The author claims that the courts violated a number of procedural norms during his trial and contests some of the evidence and facts on which the verdict was based. The author claims that the State party has violated his rights under articles 2, 7, and 14 (1), (2) and (3) (b), (e), and (g) of the Covenant. In respect of article 14 (3) (g) specifically, he claims that the courts treated him as a person who had breached the law, disregarding the fact that he could not enjoy his right to be represented by counsel. He adds that he was beaten into confessing to the murder of his mother, that he did not enjoy equality of treatment before the courts, that he was subjected to an unfair trial as he was perceived as a perpetrator, that due regard was not given to the evidence in his favour, and that the witness testimonies and expert opinions were interpreted against his interests.

Admissibility: Regarding the author's claims under article 2, the State party argues that the author enjoyed equality before the courts and all procedural safeguards during the determination of the criminal charges against him. The Committee recalled its jurisprudence, according to which the provisions of article 2 of the Covenant lay down general obligations for State parties and cannot, by themselves, give rise to a separate claim under the Optional Protocol as they can be invoked only in conjunction with other substantive articles of the Covenant. Thus, the Committee declared this part of the communication inadmissible.

As for the claims under article 7, the Committee recalls the medical report of May 2013 – following an examination of the author for signs of the sequelae of torture – that did not establish any injuries to the author's body. This part of the communication was also declared inadmissible for lack of substantiation. Lastly, as regards the author's claims under articles 14 (1), (2), and (3) (b), (d), (e), and (g) of the Covenant, and article 14 (3) (g) in particular, while noting that the fair trial issues remain disputed by both parties, with alleged inconsistencies in interpretation of most of the evidence by the author, the Committee considers that the author has not sufficiently substantiated his claims for purposes of admissibility.



Kyrgyzstan

[CCPR/C/132/D/2814/2016](#)

Farkhad Kakharzhanov v. Kyrgyzstan

Unsubstantiated torture claim

Substantive issues: Cruel, inhuman or degrading treatment

Facts: The author is a national of Kyrgyzstan whose vehicle was halted on the road, and he was forcefully removed and hit several times by police officers. The injured author saw a family doctor and the diagnosis mentioned bruises on the chest. Hence, he filed a formal complaint about ill-treatment and bribe solicitation against the police officer of Uzgen city. A forensic examination was done which concluded that the author had no signs of injuries. The expert also examined the diagnosis of the family doctor and stated it was not credible. They ordered disciplinary charges against the police officer. The author appealed this decision, and the case was remitted for an additional investigation. Upon the author's request, the forensic evidence was re-examined and again showed no signs of injuries. The author claimed that personal photos showing bruises were not taken into account. The author appealed to the District Court, and this was dismissed as unsubstantiated. Subsequent appeals to the District Court and the Supreme Court were dismissed. Later, the author was diagnosed with cardio neurosis and, according to the family doctor, it stems from the day of the incident in the car.

The author now alleges that the State party violated article 7 of the Covenant during the investigation and judicial proceedings in his case as he was ill-treated and humiliated by a law enforcement officer and national authorities failed to investigate this incident.

Admissibility: The Committee notes that the author has exhausted all effective remedies available, hence it is not precluded from examining this communication. It finds that the author has sufficiently provided information for claims under article 7, hence the Communication is admissible.

Merits: The Committee notes the author's claim that his right under article 7 of the Covenant has been violated as he was physically and verbally attacked by the traffic police officer and no effective investigation followed. In this regard, the author failed not only in substantiating the discrepancy between the family doctor's report and the forensic expert's report, but also in presenting additional facts. Consequently, it was not possible to conclude unequivocally that the photos were indeed taken after the police brutality incident. Further, it is not possible to establish whether the cardio neurosis alleged by the author was because of police brutality or not. Regarding the author's argument that by holding the police officer liable, domestic authorities confirmed ill-treatment, the Committee held that the officer was sanctioned for failure to observe internal law.

With respect to the State party's obligation to properly investigate the claims of ill-treatment, it cannot be concluded that the investigators had any personal bias on any ground. Lastly, the Committee takes into consideration the author's argument that national authorities failed to question all witnesses and commissioned additional expert reports. It stated that the authorities took statements from the mother, the author, and several civilians. The author failed to substantiate his claims regarding who the authorities should have questioned and what information could have been provided. The author did not indicate that his doctors' testimonies would differ from their written diagnosis which was examined in the course of the criminal proceeding, and he did not claim that the medical expert reports were falsified at the national level or before the Committee. Hence, the Committee is of the view that the facts before it does not disclose a violation of article 7 of the Covenant.

[CCPR/C/131/D/2700/2015](#)

Mayrambek Topozov v. Kyrgyzstan

Allegation of arbitrary detention and torture of a Kyrgyz man during a terrorist counter-operation

Substantive issues: Torture; lack of effective investigation; arbitrary detention; presumption of innocence

Facts: The author is a national of Kyrgyzstan who was arrested, detained, and tortured by the police in the context of a terrorist counter-operation, after which he had to seek medical attention and was diagnosed with severe injuries. However, since the medical experts could not conclude when these injuries could have been caused and in what time-lapse, the Prosecutor refused to open a criminal case. The decision was appealed and rejected by domestic courts. The author claims a violation of his rights under article 7 as he was beaten and tortured and the State party did not investigate further, and article 9 (1) and (2) on the basis that he was detained without any procedural guarantees. He also claims a violation of article 14 (3) (g) because he was tortured to force him to confess.

Admissibility: The Committee considers that the allegations made under article 14 (3) (g) were not sufficiently substantiated and this claim is therefore inadmissible. Nevertheless, the case is admissible for the claims made under articles 7 read alone and in conjunction with articles 2 (3), 9 (1) and (2) of the Covenant.

Merits: The Committee could not conclude that the facts before it disclosed a violation of the author's rights under the articles claimed. This is because of the lapse of time before the author submitted himself to medical attention (35 days after the alleged events), the fact that neither the medical experts nor the authorities could conclude that the injuries were caused by torture, and the witnesses could not testify that they had seen any beatings. The Committee concludes that the facts, as presented to it, do not reveal a breach of any provision of the Covenant.

Separate opinion: Committee member Shuichi Furuya issued a dissenting opinion. He reiterates the Committee's jurisprudence that, in cases of alleged torture, the burden of proof does not rest with the author of the communication alone. The author was, in fact, injured, which was attested by a medical expert, and no one testified that the injury happened before he was arrested. The burden of proof must therefore rest on the State party to prove that such injuries were not caused by torture. The Committee member gives more weight to the author's allegations because the State party has not provided any relevant information about the arrest, nor did it provide counterarguments and evidence to contradict the author's allegations. He, therefore, finds a violation of article 7. He also finds a violation of article 9 (2) because the State party has not provided any argument to counter the author's claim that he was not informed of the reasons for his arrest and was not registered in any official document.

Committee member Hernán Quezada did not agree with the majority of the Committee members when they concluded that the facts under examination did not disclose a violation of articles 9 (1) and (2) of the Covenant. The State party did not provide any elements to determine whether the author's detention was carried out on the basis of any cause established by law and in accordance with the procedure laid down therein. In addition, according to the author, he was not informed of the reasons for his deprivation of liberty, a claim which was not refuted by the State party.

[CCPR/C/133/D/2850/2016](#)*E.S. v. Kyrgyzstan***Author was subjected to cruel and degrading treatment at a pretrial detention facility**

Substantive issues: Torture or cruel, inhuman or degrading treatment or punishment; conditions of detention.

Facts: The author is a national of Kyrgyzstan. He claimed that the State party had violated his rights under articles 7 and 10 (1) of the Covenant by subjecting him to beatings in the Issyk-Ata pre-trial detention facility. On 14 September 2011, a group of detainees from Cell No. 6 attacked the police officials. The author was being held in Cell No. 5 of the pretrial detention facility when he was woken up in the middle of the night by prison officials with a strong blow to his back. The author was beaten on the head, including with a set of heavy keys, and one of the officers jumped on his head. He sustained multiple blows from boots, police batons and wooden sticks all over his body. On 16 September 2011, a monitoring group consisting of representatives of the Ombudsman's Office and of two human rights non-governmental organizations (NGOs) visited the facility, interviewed the detainees, and took pictures confirming the bodily injuries that they had sustained. The author and other detainees filed a formal complaint with the Issyk-Ata District Prosecutor's Office. On 27 September 2011, the Prosecutor's Office issued a decision refusing to open any criminal proceedings.

On 9 January 2012, the Prosecutor General's Office revoked the Issyk-Ata District Prosecutor's decision and ordered an additional investigation to be carried out by the Bishkek city Prosecutor's Office, which refused to open criminal proceedings in the case. Further, multiple criminal investigations were opened into these allegations, which were ultimately closed. The author filed an appeal against the decision of the court, but the author's motion was rejected on the grounds that all the witnesses had been questioned. On 27 May 2013, the Issyk-Ata District Prosecutor's Office issued yet another decision not to open a criminal investigation. The author appealed against this decision, which was rejected on the grounds that several of the detainees had retracted their complaints. On 18 December 2013, the author appealed before the Chu Regional Court. His appeal was rejected on 14 February 2014. The author submitted a supervisory review appeal to the Supreme Court, which rejected his appeal on 23 April 2014.

Admissibility: The Committee noted that, regarding the author's claims of a violation of articles 7 and 10 (1) of the Covenant on account of poor conditions of detention in the Issyk-Ata pretrial detention facility, the author had not raised these claims before the competent domestic authorities. Accordingly, it declared this part of the communication inadmissible. However, the Committee considered that the author had sufficiently substantiated for the purposes of admissibility the claims under articles 7 and 10 (1), read alone and in conjunction with article 2 (3) of the Covenant concerning the beating by the detention facility officers and the lack of effective investigation. It, therefore, declared this part of the communication admissible.

Merits: The Committee noted that, while referring to the fact that the unrest in the detention facility was caused by detainees from Cell No. 6, the State party does not provide any explanation as to why the author was also taken outside by the police officers and beaten. The Committee considered that the facts before it reveals that the beating of the author by the police officers on 14 September 2011 amounted to cruel and degrading treatment in violation of article 7 of the Covenant. In this context, the Committee referred to its General Comment No. 20 (1992), in which it notes that the scope of article 7 of the Covenant extends to the prohibition of corporal punishment, including excessive chastisement ordered as punishment for a crime or as a disciplinary measure.

Further, the Committee concluded that no effective investigation had been conducted into the author's allegations of ill-treatment, in violation of article 7 read in conjunction with article 2 (3) of the Covenant. Having concluded that, in the present case, there has been a violation of article 7, read alone and in conjunction with article 2 (3) of the Covenant, the Committee decided not to examine separately the author's claims under article 10 (1) of the Covenant.

Recommendations: The State party is obligated, inter alia:

- (a) to take appropriate steps to conduct a prompt and effective investigation into the beating of the author and, if confirmed, to prosecute, try and punish those responsible;
- (b) to provide the author with adequate compensation for the violations of his rights.

The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future.

[CCPR/C/132/D/2659/2015](#)

Alymbek Bekmanov, Azamat Kerimbaev, Urmatbek Kobogonov and Erkinbek Mukambetov v. Kyrgyzstan

Discriminatory State policy targeting the authors' religious faith and practice

Substantive issues: Freedom of religion; fair trial; freedom of association; discrimination; effective remedy

Facts: The authors are all nationals of Kyrgyzstan. They claim that the State party's refusal to register the three local religious organizations of Jehovah's Witnesses in the regions of Jalal-Abad, Naryn and Osh has violated article 2(3) (a) (b), read in conjunction with articles 14(1), 18(1) and (3), 22(1) and (2), and article 26, read in conjunction with articles 18 and 22 of the Covenant. The "Religious Centre of Jehovah's Witnesses in the Kyrgyz Republic" (RCJW), a national religious organization of Jehovah's Witnesses in Kyrgyzstan, was registered on 30 April 1998 with the State Commission on Religious Affairs (SCRA). In 2008, the rules regarding the registration of religious organizations were amended, so to protect Jehovah's Witnesses from harassment, the authors established a local RCJW in each of the regions and prepared all legal documents required to register the organizations.

The authors' applications for the approval of lists by the city councils of Naryn, Osh and Jalal-Abad were rejected on 22 September 2010, 18 October 2010, and 7 December 2010 respectively, on the grounds that there was no government order in place prescribing the criteria and process to be followed. On 20 and 22 December 2010, the authors applied to the SCRA, but on 16 February 2011 the SCRA refused to register the three religious organizations (Decision No. 02-16/24). It held that, without the approval of the list of founding members by the local council, it was not possible to proceed with the registration. The authors filed a complaint with the court, but it ruled that it had no competence to order the SCRA to register their organization. They appealed this decision before the Supreme Court, which ruled against them.

Admissibility: The Committee found that the authors had sufficiently substantiated the claims under articles 2 (3) (a) and (b), read in conjunction with article 14 (1), articles 18 (1) and (3), articles 22 (1) and (2) and article 26, read in conjunction with articles 18 and 22, of the Covenant, for the purposes of admissibility.

Merits: The Committee noted that, by refusing to register the authors' religious organization, the State party denied their rights to jointly manifest their religious beliefs, including the right to conduct religious meetings and assemblies, to own or use the property for religious purposes, to produce and import religious literature, to receive donations, to carry out charitable activities, and to invite foreign citizens to participate in religious events. Consistent with its General Comment No. 22, the Committee considered that these activities form part of the authors' right to manifest their beliefs.

The Committee concluded that the refusal to register the authors' religious organizations amounts to a limitation of the authors' right to manifest their religion under article 18 (1). The Committee, therefore, concluded that the authors' rights under article 18 (1) of the Covenant have been violated. The Committee noted the authors' claim that the process for obtaining registration under the law on freedom of religion and religious organizations was not applied equally, citing official statistics indicating that, within the same period, 135 Islamic and 3 Russian Orthodox organizations were

registered. The State party has provided no reasonable and objective grounds for distinguishing the authors' religious organization from other registered organizations. It found that the State party discriminated against the authors on the basis of their religious belief, in violation of their rights under article 26 of the Covenant, by providing no reasonable and objective grounds for refusing the authors' registration application and distinguishing the authors' religious organization from other registered organizations. Furthermore, the Committee decided not to examine separately the authors' claims under article 2 (3) (a) and (b), read in conjunction with article 14 (1), and article 22 (1) and (2) of the Covenant.

Recommendation: The State party is obligated, inter alia:

- (a) to review the refusal by the SCRA of the registration application by the local religious organizations of Jehovah's Witnesses of the Jala-Abab, Naryn and Osh regions,
- (b) to provide the authors with adequate compensation.

The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future.

Latvia

[CCPR/C/133/D/3021/2017](#)

Ivans Baranovs v. Latvia

Latvian language proficiency requirement for participating in local elections was a hindrance to ensuring participation and functioning of local government

Substantive issues: Access to public services; discrimination on the ground of ethnic origin; voting and elections

Facts: The author of the communication, a national of Latvia of Russian origin, claimed that the State party has violated his rights under article 25, read in conjunction with articles 2 (1) and 26, and article 14 of the Covenant, by statutorily mandating the Latvian language proficiency requirement for participating in local elections. The author, whose mother tongue is Russian, was elected as a deputy to the Balvi Municipal Council in 2013. He was interviewed by the Latvian State Language Centre to verify his language skills at the level required by the Law on the Status of Members of City Councils and Municipal Councils. It was established that the author's language knowledge failed to meet the statutory requirement, and he was given six months to obtain the required language proficiency in Latvian, for which financial resources were provided by the municipality. Since the author failed to pass the required language proficiency examination, the State Language Centre submitted a request to the Latgale Regional Court for the revocation of his deputy mandate. The author further submitted that he had been discriminated against and that the interference was not prescribed by law, as the required level of language proficiency for deputies is set out only in a regulation.

On 23 March 2016, the Latgale Regional Court affirmed the decision of the Balvi District Court. The author filed a cassation appeal before the Collegium for Civil Cases of the Supreme Court of Latvia, which was denied. On 18 January 2017, the author applied to the Constitutional Court to declare unconstitutional the relevant parts of article 4 of the Law on the Status of Members of City Councils and Municipal Councils. The Constitutional Court refused to admit the complaint on the grounds of insufficient legal substantiation. The author then submitted a new complaint to the Constitutional Court, which again refused to examine the complaint on 10 May 2017. The author again won the elections to the Balvi Municipal Council on 3 June 2017. However, due to prior commitments, he was unable to attend his language proficiency examination on 14 August 2017 and expected a rescheduling of his examination at the time of filing his complaint.

Admissibility: The Committee considered that the author's claim concerning the Constitutional Court's justification does not rise to the sufficient level of substantiation in view of the fact. Therefore, the author's claims under article 14 (1) should be declared inadmissible.

The Committee declared the communication admissible insofar as it concerned the author's claims under article 25, read in conjunction with articles 2 (1) and 26 of the Covenant, in particular those related to the mandate that he gained in 2013 and was deprived of by the decisions of the Balvi District Court of 11 November 2015 and of the Latgale Regional Court of 23 March 2016.

Merits: The Committee noted that the obligation in domestic law for members of the Municipal Council to have an adequate command of the official language pursued a legitimate aim. Every State has a legitimate interest in ensuring that its institutional system functions properly. The

Committee, while being mindful of the author's argument regarding the alleged non-justifiability of the circumstance that the impugned requirement applies to elected members only, and not to candidates, noted that the grace period of six months benefited the mandate holders concerned and justified the differentiation.

However, the Committee also noted that the author was able to repeatedly stand for election, conclude his first two terms and as regards his mandate under review, was given the opportunity to improve his language skills for which funding was allocated by the municipality. In view of these circumstances, the Committee could not conclude that the procedure for the revocation of the author's mandate was not based on objective and reasonable criteria and concluded that violation of article 25, read in conjunction with articles 2 (1) and 26, of the Covenant, could not be established.

Separate opinion: Committee member Shuichi Furuya issued a dissenting opinion. According to him, the State party argued that the language requirement applies to all members of the Municipal Council and is equally binding to all citizens of Latvia, in the light of the author's claim under article 26 of the Covenant. According to the Committee's jurisprudence, however, the violations of article 26 may result from the discriminatory effect of a rule or measure that is neutral at face value or without intent to discriminate, and such "indirect discrimination" breaches article 26 when a rule or measure disproportionately affects certain persons to the extent that it is not justifiable on objective and reasonable grounds. Therefore, requiring the author, whose mother tongue is Russian, to possess a certain level of proficiency in Latvian, in order to maintain his position as a deputy of the Municipal Council constitutes a violation of his rights under article 26 of the Covenant.

The Committee member also made note of the crucial fact that the author had been elected four times and continued to hold the office of deputy since 2005, which clearly demonstrated that a certain amount of the local population had recognized and supported the author as a representative of the local community. The author's removal admittedly disregarded the will of those voters supporting him. In addition, the State party did not provide any specific and concrete example to demonstrate that the author's insufficient proficiency in Latvian caused any problems or difficulties in carrying out his mandate as a deputy of the Municipal Council for more than 10 years. The Committee member, therefore, concluded that the removal of the author from the Municipal Council, owing solely to his insufficient language proficiency, was not based on objective and reasonable grounds, and was in violation of article 25 of the Covenant.

[CCPR/C/133/D/3124/2018](#)*G.B. v. Latvia***An allegation of a violation of right to fair trial and presumption of innocence in Latvia found inadmissible**

Substantive issues: Fair trial; presumption of innocence

Facts: The author, a national of Latvia, claimed that the State party has violated his rights under articles 14 (1), (2), and (6) of the Covenant. The author was contacted by undercover police officers who were pretending that he was a drug dealer, as part of a special investigative experiment against the author named “Operation Rebus”. The undercover officer incited the author to procure drugs for him and the author committed the offence on 3 November 2004. The Riga Regional Court convicted the author on 21 October 2005 for the aggravated, unauthorized acquisition and possession of narcotic substances with the intent to sell and sentenced him to 10 years of imprisonment and the confiscation of funds. The Chamber of Criminal Cases of the Supreme Court and the Senate of the Supreme Court dismissed the author’s appeal and cassation complaint on 15 September 2006 and 19 March 2007, respectively.

On 12 June 2007, the author submitted an application to the European Court of Human Rights (ECtHR). The Court found a violation of article 6 (1) of the European Convention on Human Rights noting that, in the criminal proceedings against the author, the domestic courts had not properly addressed his allegation of incitement and had failed to examine the relevant decisions authorizing the special investigative measure. It also awarded 5,000€ in compensation for non-pecuniary damages. On 20 June 2013, the Head Prosecutor of the Specialized Prosecution Office for Organized Crime and other branches reopened the criminal proceedings on the basis of newly discovered facts. And on 1 October 2013, the Senate of the Supreme Court overturned its previous decision and reopened the proceedings. It transferred the case to the Chamber of Criminal Cases for de novo adjudication in order to examine the finding of the ECtHR that the author’s human rights had been violated. The Chamber dismissed the author’s allegations concerning the lawfulness of the special investigative measures against him. The author filed an appeal against the decision, which was dismissed. Further, on 1 December 2016, the author filed another complaint to the ECtHR regarding its judgment in *Baltiņš v. Latvia*, which was dismissed by the Court.

Admissibility: The Committee found that the author had failed to sufficiently substantiate his claim under articles 14 (1) and 14 (2) and declared it inadmissible under article 2 of the Optional Protocol. As to the author’s allegations under article 14 (6) of the Covenant, the Committee observed that, in the present case, the author’s conviction has never been reversed by any later judicial decision and that the author has never been pardoned and concluded that article 14 (6) does not apply in the present case and that the author’s claim is inadmissible *ratione materiae* under article 3 of the Optional Covenant.



Lithuania

[CCPR/C/132/D/3313/2019](#)

S.R v. Lithuania

Company head convicted of swindling on the basis of retroactive application of law

Substantive issues: Fair trial; undue delay; retroactive application of criminal law

Facts: The author, a Lithuanian national, claims that the State party violated his rights under articles 14, 15 and 26 of the Covenant. On 19 April 2004, the Office of the Prosecutor General began a pre-trial investigation due to suspicion that companies influenced by the author had not paid the Value Added Tax (VAT). On 30 December 2009, the prosecutor charged the author with several offences including swindling under the Criminal Code. However, on 23 December 2011, the author was acquitted by a decision of the Vilnius City Second District Court. The prosecutor in 2012 modified the indictment twice and so the author claimed to have lost the possibility of an appeal on certain issues. The Constitutional Court held that an indictment may be varied even though the charged person loses the right to appeal on modified issues. On 27 February 2014, the Vilnius Regional Court granted two modifications of the indictment upon the request of the prosecutor, which increased the unpaid VAT amount. In 2016, the Lithuanian Supreme Court upheld the Regional Court's decision.

Admissibility: In the present case, the Committee notes that the letter from the European Court of Human Rights, provided to it by the State party, only confirms to the State party that the applications of the author were declared inadmissible, without providing the grounds of the decision. Hence the Committee is not precluded from examining the present communication.

The Committee notes that the author chose not to use an effective domestic remedy in the form of a civil suit for damages and instead turned to the Committee for monetary compensation. Hence, he failed to exhaust domestic remedies and so his claim under article 14 (3) (c) is inadmissible under article 5 (2) (b) of the Optional Protocol. The Committee notes the claims under article 14 (1) of the Covenant concerning the termination of the pre-trial investigation against the author and the use of the respective prosecutor's decision in proceedings against him. Claims under articles 14 (1) and 14 (3) (e) are insufficiently substantiated and inadmissible under article 2 of the Optional Protocol. It finds the claims under articles 14 (5) and 15 of the Covenant to be of general nature and insufficiently substantiated. The author has failed to substantiate why his claims under articles 14 (2) and 26 of the Covenant were not raised in his initial submission. Thus, this part of the communication is inadmissible under article 3 of the Optional Protocol.



Mauritius

[CCPR/C/131/D/3163/2018](#)

Maharajah Madhewoh v. Mauritius

Retention and compulsory use of sensitive personal data sanctioned by domestic law

Substantive issues: Right to privacy

Facts: The author, a national of Mauritius claims that the State party violated his rights under article 17 of the Covenant. An identity card scheme was introduced in Mauritius by the National Identity Card Act, under which a registrar was required to keep a record of all Mauritian citizens under the authority of the minister responsible for civil status. The Finance (Miscellaneous Provisions) Act of 2009 expanded upon the information required on an application of an identity card to include fingerprints and other biometric information, and the information on the card itself to include full names and “other such information as may be prescribed.”

A number of amendments followed, pursuant to the relevant Minister’s mandate to make regulations, stipulating that a person empowered by law to ascertain the identity of a person could request the sight of one’s identity card and require the production thereof. Further, a section was added to make the collection and processing of biometric information subject to the Data Protection Act of 2004. Moreover, it required the information gathered to be recorded on the register. The author challenged the constitutionality of the implementation of the new biometric identity card as stipulated under the amended Act, claiming, inter alia, a breach of article 9 of the Constitution of Mauritius, on the basis that it violated his right to privacy.

On 29 May 2015, the Supreme Court held that the indefinite storage and retention of biometric data under the Data Protection Act was disproportionate to the aim pursued (ending identity theft). It was also not reasonably justified in a democratic society and, therefore, the level of protection provided by the Act was insufficient and it was unlawful for the State party to store biometric data beyond the purposes of the issuance of the identity card. In response, the authorities omitted the criterion of logging full biometric information on the register and the scheme was changed to shift the retention from the authorities’ system to the individual, by requiring the data to be included on the identity card itself instead of abandoning the collection or rectifying the shortcomings as identified by the Court. According to the author, the modification renders ineffective the aim of the Act and it exacerbates the shortcomings, given that now citizens compulsorily retain sensitive data in a vulnerable form for the State party’s authorities, hence, violating his right to privacy.

The 2015 Regulations amended its predecessor to add a no objection clause stating that fingerprint minutiae can be recorded for producing an identity card and will be erased once the card is printed. The author claims that this addition is inappropriate, given that non-application is a criminal offence, therefore one does not have a choice to object without incurring criminal sanctions. The Judicial Committee of the Privy Council dismissed the author’s appeal on 31 October 2016. The author claims that the amendment of the domestic Act violates his right under article 17 of the Covenant, given its involvement in the compulsory use and retention of sensitive data, whose production to the State officials can be required. He submits that the Act fails to meet the requirements of legality, proportionality, and necessity. Further changes have been made,

under which, the prescription of data to be included on the identity card remains a power of the executive. The author claims that this delegation is arbitrary and far too open-ended and uncertain to comply with article 17 of the Covenant.

Admissibility: The author has sufficiently substantiated his claims under article 17 of the Covenant and so, the communication is admissible.

Merits: According to the Committee's General Comment No. 16, interference authorized by States can only take place on the basis of law, which itself must comply with the provisions, aims and objectives of the Covenant. Hence, gathering and holding personal information must be regulated by law. Moreover, that 'an interference is not "unlawful" under article 17 of the Covenant if it complies with the relevant domestic law' was previously held by the Committee in Van Hulst v. Netherlands (para 7.5). The Committee takes note of the author's claim that the amended National Identity Card Act violates his right under article 17 of the Covenant because it is unlawful and arbitrary. However, it states that the interference in the present complaint in the form of processing and recording of fingerprints is provided by the domestic law of Mauritius, and even the Supreme Court reiterated this legal basis. Hence, the Committee cannot conclude that the interference with the author's privacy is unlawful.

Paragraph 4 of the General Comment No. 16 states that the concept of arbitrariness is intended to guarantee that even interference governed by law "must comply with the provisions, aims and objectives of the Covenant and should be reasonable in the particular circumstances.

Previously, in Toonen v. Australia (para 8.3) and Vandom v. Republic of Korea (para 8.8), the Committee's finding that any interference with family life must be proportionate to the legitimate end sought and necessary in the circumstances of any given case has been reiterated in the present case. In this regard, the Committee takes note of the State party's observation of the need to balance the protection of personal data with the pressing social need of preventing data theft. It also notes the proactiveness by which the State party authorities have shifted the retention of fingerprint data from the authorities' system to individual cardholders by requiring such data to be included on the card itself after the Supreme Court's finding that indefinite storage and retention of fingerprint data in a central database was unconstitutional. The author and the Judicial Committee of the Privy Council have remarked that the change renders the previously submitted biometric data ineffective and thus affects the State's ability to prevent fraud. The Committee states that the State party has failed to respond to the author's counter that such retention of fingerprint data on individual cards exacerbates the security lacunae identified by the Supreme Court.

In S. and Marper v. The United Kingdom (para 7.5), the Court's view that it is essential to have clear, detailed rules governing the scope and application of measures as well as providing minimum guarantees against the risk of abuse and arbitrariness was reiterated in the present case. However, the aforementioned case was in the context of telephone tapping, secret surveillance and covert intelligence gathering, which is in contrast with the present case that deals with the retention and storage of fingerprint data. For the case at hand, the Committee stated that (a) given the lack of information by the State party concerning the implementation of measures to protect biometric data stored on identity cards, and (b) the nature and scale of interference arising out of mandatory processing and recording fingerprints cannot conclude that there are sufficient guarantees against the risk of abuse and arbitrariness of the interference with the right to privacy following from the potential access to such data on identity cards. Hence, the storage and retention of the author's fingerprint data, as prescribed by domestic law, would constitute arbitrary interference with the right to privacy, contrary to article 17 of the Covenant.

Recommendations: The State party is obligated:

- (a) to provide sufficient guarantees against the risk of arbitrariness and abuse of the author's fingerprint data as may arise from the issuance of an identity card to him and to review the grounds for storing and retaining fingerprint data on identity cards, in the light of the present Views.

In addition, the State party is under the obligation to take steps to avoid similar violations in the future.

Separate opinions: Committee member Shuichi Furuya issued a dissenting opinion. He claims that the author's rights under the Covenant have not yet been impaired, given that the author has not had his fingerprints taken or been accused of noncompliance with the relevant legislation. The author has not demonstrated that he belongs to a defined category of persons whose activities are regarded contrary to law, nor has he made every effort to demonstrate the specific consequence of the legislation for him or its personal effect on him. Without fulfilling this prerequisite, granting victim status merely because of his Mauritian nationality is tantamount to accepting *actio popularis*, which deviates from the jurisprudence of the Committee. Conclusively, the author does not have victim status for the purposes of admissibility and the communication is rendered inadmissible under article 1 of the Optional Protocol.

Committee member Gentian Zyberi also issued a dissenting opinion. He argues that the simple storage and retention of the author's fingerprint data on an identity card, as prescribed by the domestic law, would constitute arbitrary interference with article 17 of the Covenant, yet the Committee has interpreted the article in an overbroad manner. The complaint is seemingly moot given that the author was not forced to give his fingerprints. Several aspects of the case had been decided at the domestic level by the Supreme Court and the Judicial Committee of the Privy Council and identified shortcomings were addressed by the State authority. Moreover, there remains ambiguity if certain aspects of the case have not been exhausted at the domestic level or not. Hence, the better course for the Committee would have been to find no violation of article 17 of the Covenant.



Mexico

[CCPR/C/131/D/3259/2018](#)

Irma Leticia Hidalgo Rea v. Mexico

Author's son subjected to enforced disappearance by local police officers

Substantive issues: Right to an effective remedy; right to life; prohibition of torture and cruel and inhuman treatment; right to liberty and security of person; recognition as a person before the law; right not to be subjected to arbitrary or unlawful interference with one's privacy

Facts: The author is a national of Mexico and so is her son, Mr Hidalgo, for whom she filed the communication in the tutelage of his rights. Within a context of serious human rights violations and enforced disappearances due to police involvement with organised crime groups, a group of officers displaying uniforms of the local police unit entered the author's home while she and her son were present. They took her son with them and stole some possessions from the house. Despite reporting the event to the police promptly, after 10 years the author has not received any substantial information on the whereabouts of her son. The author claims that the State party has violated her and her son's rights under articles 2 (3), 6, 7, 9, 16 and 17 of the Covenant.

Admissibility: All claims of admissibility are sufficiently sustained as any claims to the non-exhaustion of domestic remedies by the State party are unjustified; particularly as the case's processing has been unreasonably prolonged for 10 years given the urgent circumstances on the whereabouts of the author's son.

Merits: The Committee was of the view that the circumstantial evidence of the involvement of State agents was sufficient to reverse the burden of proof on the State party to prove the lack of involvement with the disappearance. The Committee recalled that, while the Covenant does not explicitly use the term "enforced disappearance", such is in violation of many rights. The State has failed to take the necessary steps to preserve Mr Hidalgo's life under article 6. The State has subjected the author to inhuman treatment under article 7 due to the anguish and suffering caused by the disappearance and lack of investigations, as well as the author's discovery that the State was in possession of a body since 2013 that could have been Mr Hidalgo's, under article 7 read in conjunction with article 2(3). The State's act also deprived Mr Hidalgo of his recognition as a person before the law under article 16. The State also arbitrarily detained Mr Hidalgo under the article and interfered with the author's privacy by entering her home and stealing. Due to the slow and ineffective investigation and progress of justice, the State also violated the author and Mr Hidalgo's right to an effective remedy.

The Committee concluded that the State party was in violation of articles 6 (1), 7, 9 and 16 of the Covenant, article 2 (3) read in conjunction with 6, 7, 9 and 16, in respect of Mr Hidalgo; and articles 7, 17, and 2 (3) read in conjunction with 7 and 17, in respect of the author of the communication.

Recommendations: The State party is under an obligation

- (a) to provide the author with an effective remedy
- (b) to take appropriate steps to provide Ms Hidalgo Rea with:
 - (i) a prompt, effective, thorough, independent, impartial and transparent investigation
 - (ii) ensure the release of Mr Rivera Hidalgo if he is still alive;

- (iii) if Mr Rivera Hidalgo is deceased, hand over his remains to his family investigate and punish any type of action that might have hindered the effectiveness of the search process;
- (iv) provide the author with detailed information on the outcome of the investigation;
- (v) prosecute and punish the persons found responsible for the violations committed and make the results of those proceedings public;
- (vi) grant the author, as well as Mr Rivera Hidalgo if he is still alive, full reparation, including adequate compensation for the violations suffered and medical and psychological support.

The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future. Deadline to provide follow-up information on implementation: 180 days.



Moldova

[CCPR/C/133/D/3278/2018](#)

Șeremet et al v. Moldova

Moldovan nationals complained of violations arising from limitations on their ability to vote from abroad

Substantive issues: Suffrage; discrimination; equality before the courts

Facts: The authors are Moldovan nationals permanently residing in Italy and the United Kingdom. Moldovan law permits non-resident citizens to vote but limits the number of ballots at foreign polling stations and grants authorities leeway in determining the number of foreign polling stations on the basis of voter registrations and past election data. Following the mobilisation of foreign-resident voters in the 2016 Moldovan elections, authors found themselves unable to vote due to an insufficient quantity of ballots and long lines, despite prior warnings made to Moldovan authorities. Moldovan courts ultimately dismissed the authors' actions on procedural grounds concerning the appropriate body to address the issue. Authors contend violations of articles 2 (1), 14 (1) and 25 (b) of the Convention.

Admissibility: The Committee found the majority of the authors' communication admissible on the following grounds: (i) authors had exhausted local remedies and the Committee was thus not precluded by article 5 (2) (b) of the Optional Protocol from entertaining the complaint; and (ii) because the authors had sufficiently substantiated their allegations. However, the Committee found the portion of the communication concerning disputes as to the facts presented before Moldovan courts (second sentence of art. 14 (1)) to be inadmissible, for the authors did not provide substantiation that the Moldovan courts acted arbitrarily.

Merits: The Committee found no violation of article 25, given that Moldovan authorities' estimates on the basis of previous elections were reasonable and because the ballot shortage occurred only at a minority of polling stations, where alternative voting locations were offered. Further, given that the actions of Moldovan authorities were not unreasonable, no violation of article 25 read in conjunction with article 2 (1) occurred either. Finally, given that the authors were able to have their complaint heard before Moldovan courts, no violation of article 14 (1) (first sentence) occurred either.

Separate Opinion: Committee Member Shuichi Furuya dissented and found a violation of article 25 on the basis that the Moldovan authorities acted without due diligence in light of the changes in polling data and the issue having been brought to the authorities' attention in advance.

The Netherlands

[CCPR/C/133/D/2796/2016](#)

J.O. Zabayo v. The Netherlands

Deportation of author and child to Nigeria with a real and personal risk of exposure to FGM

Substantive issues: Deportation to Nigeria

Facts: The author submits this communication on behalf of herself and her minor daughter (2 years old). She claims that the State party's decision to deport her to Nigeria would be a violation of her rights under articles 7 and 24 (1) of the Covenant since it would put her and her daughter at risk of female genital mutilation (FGM). She claims that the Dutch Immigration and Naturalisation Services (IND) failed to properly assess the real and personal risks faced by the author and her daughter, as it: (i) provided insufficient reasons for finding her alleged marriage incredible, and (ii) did not properly consider the risk of FGM (either the personal risk of the mother or daughter being subjected to FGM, the general situation in Nigeria as it pertains to FGM, and the possibility for the author and her daughter to find an alternative place of residence in Nigeria).

Admissibility: The Committee found the communication admissible on the following grounds: (i) the Committee was not precluded under article 5 (2) (b) of the Optional Protocol from being seized of the complaint, and (ii) the author had sufficiently substantiated her claim under article 7 alone, and in conjunction with article 24 (1) of the Covenant.

Merits: The Committee held that the author and her daughter's removal to Nigeria, absent a proper assessment of the real and personal risk they would face, would violate their rights under article 7, read alone, and article 7 in conjunction with article 24 (1) of the Covenant. It stated that there is no question that subjecting a woman or child to FGM would violate article 7 of the Covenant. The Committee found that the State party had not properly assessed the author's claims regarding the personal risk she and her daughter faced upon deportation, amounting to a manifest error or denial of justice.

Recommendations: The Committee noted the State party's obligation:

to review the author's case and requested it to refrain from deporting the author and her daughter until a proper assessment has been conducted.

Separate opinion: Three Committee members (Shuichi Furuya, Marcia V. J. Kran, and Gentian Zyberi) issued a joint dissenting opinion since they were unable to concur with the Committee's view. They found that the author had failed to demonstrate that the State party's assessment was clearly arbitrary or amounted to a manifest error or denial of justice. They found that the State party had conducted an individualized assessment of the personal risks faced by the author and her daughter and that the author failed to meet the legal threshold necessary to rebut the State party's findings.

[CCPR/C/133/D/3004/2017](#)*H. J. T. v. The Netherlands***Author alleged that the State violated his right to an effective remedy and right to appeal**

Substantive issues: Effective remedy; right to appeal

Facts: The author, a national of the Netherlands, claimed that the State party violated his rights under articles 2 (3) and 14 (5) of the Covenant by restricting his right to appeal in a meaningful way. The author also cited the Committee's jurisprudence in *Mennen v. Netherlands* and *Timmer v. Netherlands*, which dealt with violations of article 14 (5) of the Covenant. The author was summoned to appear before the District Court of Arnhem on 28 August 2007, on a suspicion of assaulting an on-duty police officer or obstructing legitimate actions carried out by a police officer, along with failing to comply with an order to identify himself. Under the State party's laws, assaulting an on-duty police officer is an indictable offence, while failing to comply with an order to identify oneself is a misdemeanour. The author's hearing was delayed to 10 October 2017 in order to allow him the opportunity to read the case file. The author represented himself during the hearings.

On 10 October 2007, the police judge of the District Court convicted the author of assaulting an on-duty police officer and failing to comply with an order to identify himself. The author was ordered to pay fines of 170€ and 50€ for the respective offences. In the oral judgment, the judge provided no evidentiary reasons for the author's conviction. The author requested leave to appeal the decision of the police judge of the District Court. The parliamentary history of the process of drafting section 410 (a) of the Code of Criminal Procedure expressly states that in cases such as the author's, the first instance decision will not be supplemented with evidence or a trial transcript, either at the time the judgment is pronounced or after an appeal is filed. The President denied the author's request for leave to appeal and based his decision on the court documents and on section 410 (a) of the Code of Criminal Procedure. On 19 March 2013, the author submitted an extraordinary request to the Supreme Court to revise the lower court decision, which was rejected by the Court.

Admissibility: The Committee noted that the author submitted the communication more than five years after the date on which he exhausted domestic remedies, and more than three years after the issuance of the decision of the European Court of Human Rights and has not provided an explanation for the delay in submission. Thus, the Committee considered that the communication constituted an abuse of the right to submission and declared the communication inadmissible.



Nepal

[CCPR/C/132/D/2615/2015](#)

Devi Maya Nepal v. Nepal

Gang rape of an indigenous woman by members of armed forces found to be a war crime

Substantive issues: Cruel, inhuman and degrading treatment or punishment; discrimination; discrimination against women; effective remedy; family life; privacy; torture; unlawful attacks on honour or reputation

Facts: The author, a national of Nepal, claims that the State party has violated her rights under article 7, read alone and in conjunction with articles 2 (1-3), 3, and 26 of the Covenant. Also, she claims that her rights under articles 17 and 23, each read alone and in conjunction with articles 2 (1), 2 (3), 3, and 26 of the Covenant, have been violated. She is a member of an indigenous community that filed a writ of mandamus before the Supreme Court of Nepal, claiming the lower courts refused to register her complaint of rape and related offences. The authorities have since not replied. Thus, she claims to have no effective remedies available.

Admissibility: Since the remedies in the criminal justice system were both ineffective and unavailable to the author, the communication is admissible. Further, since the author already alleged a violation under article 7, the Committee considers claims under article 7 read with 2 (2) of the Covenant as inadmissible *ratione materiae*. Lastly, the author has sufficiently substantiated her claims under articles 7, 2 (1) and (3), 3, and 26 of the Covenant, and articles 17 and 23 read with articles 2 (1), 2 (3), 3 and 26 of the Covenant. This part of the communication is admissible.

Merits: Regarding the author's right not to be subjected to torture, the Committee notes that rape and other acts of sexual violence to which she was subjected had a discriminatory effect, as demonstrated by the generalized use of rape against women during the Nepalese conflict, owing to the particularly serious discriminatory consequences, shame, and stigma for women victims of rape in society in Nepal and, in particular, in the indigenous community to which the author belongs. Hence the Committee states that the rape, other acts of sexual violence and torture inflicted by the Nepalese Army and Police Forces upon the author, who is a member of the indigenous community, violated the author's right under article 7, 2 (1), 3, 23 and 26 of the Covenant.

The State party's failure to investigate the author's allegations and inability to provide remedies after the rape amounts to a violation of article 7 in conjunction with articles 2 (3) and 17 of the Covenant. Regarding her right to privacy, the Committee stated that, first, the act of State agents raping the author constitutes arbitrary interference with her sexual autonomy and, second, marginalization and stigmatization faced by the author not only by her spouse, but by fellow community members on account of her status as a rape victim are grounds for concluding that the State party violated the author's right under article 17 of the Covenant. Further, the fact that the author was raped in front of her daughter, gave birth to a child after being forcibly impregnated, was bedridden, suffered and continues to suffer psychological harm, amounts to disruption of her family life and marriage. Thus, the State violated her rights under article 23 (1) of the Covenant.

Recommendations: The State party is obligated:

- (a) to conduct a thorough and effective investigation into the facts surrounding the rape of the author and other forms of sexual violence and ill-treatment to which she was subjected,
- (b) prosecute, try and punish those responsible for the violations committed,
- (c) provide the author with detailed information about the results of the investigation,
- (d) ensure that any necessary and adequate psychological rehabilitation and medical treatment is provided to the author free of cost,
- (e) provide adequate compensation and appropriate measures of satisfaction, including an official apology.

The State party is also under an obligation to take steps to prevent the occurrence of similar violations in the future. In particular, the State party should ensure that its legislation:

- (a) criminalizes torture and provides for appropriate sanctions and remedies commensurate with the gravity of the crime;
- (b) adapts the definition of rape and other forms of sexual violence in accordance with international standards;
- (c) guarantees that cases of rape, other forms of sexual violence and torture give rise to a prompt, impartial and effective investigation;
- (d) allows for criminal prosecution of those responsible for such crimes; and
- (e) removes obstacles that hinder the filing of complaints and effective access to justice and compensation for victims of rape and other forms of sexual violence against women and girls, namely in the context of the armed conflict in Nepal, as forms of torture, including by significantly increasing the statute of limitations commensurate with the gravity of such crimes.



New Zealand

[CCPR/C/132/D/2976/2017](#)

Garri Maui Isherwood v. New Zealand

Continued detention and no social rehabilitation after serving punitive sanctions in New Zealand

Substantive issues: Arbitrary detention; conditions of imprisonment; social rehabilitation aim of imprisonment

Facts: The author is a national of New Zealand who has committed several crimes (namely, sexual violence on minors, drug offences, kidnapping). He was sentenced twice, to eight and to ten years in prison. The author has appealed against his convictions but not the sentences imposed, which were all rejected in domestic courts and by the Working Group on Arbitrary Detention. He claims that he has been detained arbitrarily. He submits a violation of articles 2 (2) and (3) of the Covenant because he claims there is no effective remedy for violations of the Covenant since it is not incorporated in domestic law. He also submits a violation of articles 9 (4) and 14 (1) of the Covenant because he claims that the Parole Board that denied him parole is not independent nor impartial. He also claims that the State party did not offer him sufficient rehabilitative opportunities, thereby violating articles 9 (1) and 10 (3) of the Covenant. He also claims a violation of article 14 (1) of the Covenant.

Admissibility: The Committee considers that the author's claims under articles 9 and 14 are incompatible with article 2 of the Covenant and thus inadmissible. The Committee considers that the author has failed to sufficiently substantiate the claims made under article 2 (3) and article 14 (1) of the Covenant and declares these claims inadmissible. Concerning the claimed violations under articles 9 (4) and 14 (1), the Committee considers that the author has not fulfilled his obligation to exhaust remedies because he did not challenge the independence of the Board before domestic courts. The case is admissible as regards the alleged violations of articles 9 (1) and 10 (3) of the Covenant.

Merits: The Committee does not consider that there is a violation of articles 9 (1) and 10 (3) as regards the claim that the State party failed to provide him with sufficient rehabilitation. This is because the author was offered the possibility to follow a number of rehabilitating programmes and a chance of release by participating in treatment. Moreover, the Committee considers that the State party has sufficiently demonstrated that the author's conditions, nature and length of his detention, and the risk he posed as a sexual offender, were duly assessed and respected the principles of proportionality, reasonableness, necessity, and continued justification. Finally, the Committee cannot find that the State party has not demonstrated that the author's preventive detention was sufficiently distinct from the punitive sentence.

Separate opinion: Committee member Gentian Zyberi issued a dissenting opinion. The Committee member disagrees with the finding that the State party has sufficiently demonstrated that the author's preventive detention was distinct from the punitive sentence. He considers that, since the length of the detention increased, the State party has an increasingly heavy burden to justify the detention, which it did not sufficiently do. Most importantly it did not demonstrate that detention was used as a means of last resort.

Committee member Arif Bulkan also issued a dissenting opinion. The Committee member considers that the cumulative period of incarceration, which amounts to 16 years, and the two attempts at rehabilitation are not enough to meet the standard of article 10 (3) of the Covenant. Moreover, the Committee member finds that the author was detained in the same conditions under preventive detention and punitive detention because it does not seem that the latter was aimed at rehabilitation, and he did not receive specialised treatment as a Maori. The Committee member gives due consideration to the author's personal circumstances of the author who was abused and regularly drugged as a child and finds that the detention was not adequate and tailored to his needs.

[CCPR/C/132/D/3162/2018](#)

Camille Iriana Thompson v. New Zealand

Obligation of compensation for wrongful arrest and detention after a short detention still applies

Substantive issues: Arbitrary detention; effective remedy

Facts: The author is a national of New Zealand who was sentenced to community work for an unspecified offence, which was later cancelled by the District Court of Wellington's judge upon completion. However, due to a clerical error, the community work sentence was not cancelled in either the Court's record sheets or its electronic case system. The author was unduly arrested for the same charges and released after 15 hours and 22 minutes. The author sought compensation for her arrest and detention, but domestic courts denied her request for compensation. The author alleges a violation of article 9 (1) alone and read in conjunction with article 2 (3) of the Covenant for failing to provide her with a remedy for her arbitrary and unlawful detention and article 9 (5) for failure to compensate.

Admissibility: The Committee considers the case admissible for all the claims made by the author.

Merits: The Committee interprets article 9 (5) in the sense that it does not require that a single procedure for compensation be established, but a "legal framework" that provides compensation in all the cases of article 9 (5) must exist. Simply releasing an individual from unlawful detention does not suffice. Therefore, in the present case, the Committee considers that the obligation to compensate still applies. The purpose of such compensation is not to undermine the independence of the judiciary, but rather to provide redress for harm suffered. The Committee is therefore of the view that the fact before it discloses a violation of the author's rights under articles 9 (1) and 9 (5) of the Covenant.

Recommendations: The State party is obligated, inter alia:

- (a) to provide the author with adequate compensation.

The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future, including by reviewing its domestic legislation, regulations and/or practices to ensure that individuals who have been unlawfully arrested or detained as a result of judicial acts or omissions may apply to receive adequate compensation, in accordance with the obligation set forth under the Covenant.



Norway

[CCPR/C/132/D/2854/2016](#)

Islan Johar v. Norway

Delay did not violate the author's right to be promptly brought before a judge as it was neither excessive nor arbitrary

Substantive issues: Arbitrary detention; liberty and security of the person; exhaustion of domestic remedies

Facts: The author is a Norwegian national who was arrested, charged, convicted, and sentenced of a drug-related crime. After his initial arrest, the author claims he was not brought before a judge within 48 hours, in violation of his rights under article 9 (3) of the Covenant. He claims that the State party provided no reasons for not bringing him before a judge earlier. The author was brought to the courthouse 48 hours and 35 minutes after his arrest and was presented to a judge 52 hours and 15 minutes after being apprehended.

Admissibility: The Committee found the communication admissible on the following grounds: (i) the Committee was not precluded under article 5 (2) (a) or (b) of the Optional Protocol from being seized of the complaint, and (ii) the author had sufficiently substantiated his claim under article 9 (3) for the purposes of admissibility.

Merits: The Committee found no violation by the State party of article 9 (3) of the Covenant. It relied on previous jurisprudence, which held that the meaning of the term "promptly" in article 9 (3) must be determined on a case-by-case basis. The Committee found that the delay of four hours was due to logistics and court scheduling and was neither excessive nor arbitrary. Further, for those four hours, the author was in the courthouse and had access to his lawyer. Consequently, the Committee considered that this delay was absolutely exceptional and justified by the circumstances, contrary to the author's claims.



Paraguay

[CCPR/C/132/D/2552/2015](#)

Benito Oliveira Pereira and Lucio Guillermo Sosa Benega (et al) v. Paraguay

Failure to prevent and control the toxic contamination of traditional lands due to the intensive use of pesticides

Substantive issues: Right to an effective remedy; right not to be subjected to arbitrary or unlawful interference with privacy, family, home; protection of minorities

Facts: The authors are leaders of the indigenous community of Campo Agua'ẽ, constitutionally recognised as existing prior to the creation of the State party. Their lands are surrounded by two large commercial farms of genetics which use fumigation with legal and banned agrochemicals without complying with national legislation. The pesticides have polluted the environment, affecting daily the subsistence of the community in their crops, use of water, farming, animals, etcetera. In addition, after each fumigation, the members of the community suffer clear symptoms of intoxication. The authors brought both a criminal and an administrative claim, however, undue delay and lack of responses resulted in their filing a communication to the Committee. The authors claim that by not monitoring the activities of the commercial farms the State party violated their rights to private and family life, the right to enjoy their own culture, and the right to an effective remedy.

Admissibility: The communication was deemed admissible in its entirety. The Committee stated that, according to domestic law, the criminal claim was adequate to resolve the situation, but the undue delay in the claim makes applicable the exception to the rule of exhaustion of domestic remedies. Regarding competence *ratione materiae*, the Committee clarified that the authors are contesting the violation of rights protected by the Covenant, and not the right to their environment. The Committee also determined that the communication concerns all the members of the indigenous community, represented by the two authors.

Merits: The Committee found that the members of the indigenous community have a special relationship with their territory. This relationship is protected by their right to private life. The Committee observed that the State party did not adequately control the unlawful use of pesticides, even though it was known by the State party and the consequences of their use were foreseeable. This omission in the State's duty to protect allowed the unlawful fumigation to continue for many years, causing health problems for the members of the communities, polluting their watercourses, destroying their crops, and killing their animals. Considering the seriousness of the effects of the pollution, the Committee found that the State party violated the right to private and family life. Additionally, the Committee stated that article 27 protects the right of indigenous peoples to enjoy their territories and natural resources that they have traditionally used for their subsistence, food, and cultural life. Therefore, the lack of control over the pesticide used and their effect on traditional lands violated the community's right to cultural life.

Further, the State party did not provide the authors with an effective judicial process, as the criminal investigation started in 2009 was never concluded, the necessary scientific evidence was never collected, and the damage of the pollution has not been resolved. The Committee concluded that, through their lack of control and policing of the agricultural firms' activities, the State party violated the authors' rights under articles 17 and 27 of the Covenant, read alone and in conjunction with article 2 (3).

Recommendations: The State party is under an obligation to provide the author with an effective remedy. The State party is obligated:

- (a) to investigate the facts, keeping the authors duly informed;
- (b) To proceed with the criminal and administrative claims cases against the commercial farms. And if culpability is established, to subscribe to an appropriate penalty;
- (c) to adequately compensate the authors and all members of the community for everything lost, including for incurred legal costs; and
- (d) to take all the necessary steps to repair the environmental harm in consultation with the community.

The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future. Deadline to provide follow-up information on implementation: 180 days.

Separate opinions: Committee members Hélène Tigroudja, Arif Bulkan and Vasilka Sancin brought up concerns about the lack of claim by the authors on their right to life and the failure of the Committee to address it *proprio mutuo*. The right to life includes the right to a dignified life and the authors were deprived of it. The task of the Committee should have been to assess whether the State authorities worsened the difficulties of access to a decent life for the members of the community and whether the State took appropriate positive measures to fulfil that obligation, taking into account the especially vulnerable situation in which they were placed, given their different manner of life. The members find that, if considered, article 6 would have been violated too.

Committee members Photini Pazartsis and Gentian Zyberi claimed that, due to a lack of information, it was unclear whether domestic remedies were exhausted and whether the authors' article 27 claims were sufficiently substantiated. The Committee was not in a position to decide on article 27.



Russia

[CCPR/C/131/D/2433/2014](#)

V.S. v. Russia

A Russian man complains of abuse by criminal investigators allegedly leading to his conviction

Substantive issues: Fair trial guarantees; confession under duress

Facts: The author is a Russian national and former landlord. The author rented a flat to tenants who accused him of rape, and he alleges that the tenants and the prosecutor conspired to avoid rental payment and to allow a forced sale of the flat. The author alleges he was poked with a paperclip whilst detained, forced to confess, beaten in prison, and forced to sign a document transferring ownership of the property. The author was convicted of rape and sent to prison. Russian authorities repeatedly refused to initiate criminal investigations against the investigator. The author was convicted in 2008 and was denied a hearing for the appeal. He resubmitted an appeal request in 2013 but raised no new grounds and the appeal was again dismissed. An ongoing complaint concerning the investigator was pending at the time of the author's complaint to the Committee. The author complained of violations of articles 7, 9 (1), 10, and 14 (1) and (3) (a), (d), (e), and (g).

Admissibility: The communication was deemed inadmissible in its entirety. The author waited over five years since his last substantive complaint and provides no justification for this delay. As such, his communication is an abuse of the right of submission and is inadmissible under article 3 of the Optional Protocol.

[CCPR/C/131/D/2635/2015](#)

Vladimir Ivanov v. Russia

Violation of the right to peaceful assembly for banning the Gay Pride Parade in Moscow and Sevastopol

Substantive issues: Unjustified restrictions on the right of peaceful assembly; discrimination against lesbian, gay, bisexual and transgender persons

Facts: The author is a Russian national whose request to organize peaceful assemblies on lesbian, gay, bisexual, and transgender rights (Gay Pride Parade) in Moscow was denied for nine consecutive years, and it was also denied in Sevastopol in 2014. He claims that the authorities interfered with his right to peaceful assembly by refusing permission to hold the parade, amounting to a violation of his rights under article 21 of the Covenant. He also claims a violation of article 26 in conjunction with article 21, owing to the discriminatory grounds for the interference.

Admissibility: The Committee found the communication admissible on the following grounds: (i) the Committee was not precluded under article 5 (2) (b) of the Optional Protocol from being seized of the complaint, because the cassation procedure under the Russian Civil Procedure Code did not constitute a remedy that the author was required to exhaust; and (ii) the author had sufficiently substantiated his claim under articles 21 and 26 of the Covenant.

Merits: The Committee held that the State party violated article 21 and 26 of the Covenant because it failed to show that the restrictions imposed on the author's rights were necessary for a democratic society and because it failed to demonstrate that this infringement, which drew a distinction on the basis of sexual orientation and gender identity, was based on reasonable and objective criteria in pursuance of a legitimate aim under the Covenant.

Recommendations: The State party is under an obligation:

- (a) to provide the author with an effective remedy. This requires it to make full reparation to individuals whose Covenant rights have been violated, including adequate compensation.

The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future e.g., review its legislation and practice with a view to ensuring that the rights under article 21 of the Covenant, including organizing and conducting peaceful assemblies, and article 26 may be fully enjoyed in the State party.

Separate opinions: Committee member Gentian Zyberi concurred with the Committee's findings, but further added a recommendation that the Committee, when dealing with individual complaints arising from Crimea, should provide, under "considerations of admissibility", a short explanation stating that the case arises in respect of "the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine, temporarily occupied by the Russian Federation".

[CCPR/C/132/D/3038/2017](#)

A.L. v. Russian Federation

Inadmissibility of a case on fair trial and torture of a man allegedly beaten to extract a false confession

Substantive issues: Unlawful arrest and torture of the author; unfair trial

Facts: The author is a citizen of the Russian Federation who has been arrested by the police and kept in temporary detention when he was charged with murder. He alleges that he was kicked and threatened to force him to confess having committed a crime and make him sign a false confession. The author appealed his detention in front of domestic courts, but he claims that the trial court was unlawful since it retained as evidence the forced confession, he had signed to avoid beatings. The author claims a violation of article 9 (1-5) of the Covenant for his detention without any reason and his arrest. He also claims a violation of article 14 (1) because the trial was held in an accusatory manner. He finally claims a violation of article 14 (3) (e) in conjunction with article 7 of the Covenant for failure to compensate him after the unlawful detention.

Admissibility: The author has not appealed against the decision to put him in custody and has failed to exhaust the available domestic remedies regarding the use of beatings (torture) or psychological pressure. The author has not refuted such allegations made by the State party and has not provided any information in reply. The Committee, therefore, considers that this part of the communication is inadmissible (articles 7 and 9 (1-5)). Concerning the claim made under article 14 (1), the Committee considers that it has not been sufficiently substantiated and is therefore also inadmissible.

[CCPR/C/131/D/2578/2015](#)

O.D. v. Russian Federation

Inadmissibility of a case on right to a fair trial during a cassation hearing of a Russian man

Substantive issues: Torture; cruel, inhuman or degrading treatment or punishment; conditions of detention; fair trial; fair trial – legal assistance; fair trial – appeal; non-discrimination

Facts: The author is a national of the Russian Federation who was convicted of participation in an organised criminal group and commission of other crimes and was sentenced to life imprisonment. During the cassation hearings, the author's defence counsel did not show up for unknown reasons. He refused the services of the court-appointed legal counsel. The Court of Cassation upheld the guilty verdict. The author appealed this decision claiming a violation of article 51 (5) of the Criminal Code, which requires mandatory legal representation when the accused faces charges of life imprisonment. His appeal was rejected by all domestic courts. The author is claiming a violation of his right to self-defence during the cassation hearings pursuant to articles 14 (1), 14 (3) (d) and 14 (5) in conjunction with article 26 of the Covenant because he was unable to defend himself fully without the assistance of counsel, and he was deprived of the rights to have his verdict reviewed by a higher court.

Admissibility: The author's application to the European Court of Human Rights (ECtHR) was declared inadmissible and the State has not introduced a reservation excluding the competence of the Committee for cases that have already been examined under another procedure international investigation. The Committee can therefore examine the author's communication. The Committee, however, considers the case inadmissible under article 3 of the Optional Protocol because the application was made with an unjustifiable delay. Most importantly, the Committee does not consider the pursuit of extraordinary review proceedings, such as the ones lodged by the author with the Constitutional Court, to be a convincing justification for the delay given that the author's sentence was already final and executable. The case is inadmissible under article 3 of the Optional Protocol.

[CCPR/C/133/D/2759/2016](#)

A. Salikhov v. Russian Federation

Torture and subsequent lack of investigation following a questioning on murder and drug trade

Substantive issues: Torture; lack of investigation

Facts: The author is a national of the Russian Federation who was summoned by the police to give information about the drug trade in the area where he lived and about a murder case. The author assured multiple times that he had no knowledge about these issues, but he was still held at the police station, beaten several times, tortured, and demanded to confess to the murder. The author was coerced into signing a letter of confession to the murder. The author told the doctor at the detention centre and his defence lawyer that he had been beaten, who in turn documented the bruises on his body. He was charged with murder and his claims relating to torture were dismissed.

The author claims that, by failing to effectively investigate his torture claims, the State party failed to fulfil its obligations under article 7, read in conjunction with article 2 (3), of the Covenant. The author also claims that, in violation of his rights under article 14 (3) (g) of the Covenant, the State party used the author's forced confession as the basis for his conviction.

Admissibility: Concerning the exhaustion of remedies, the Committee considers that a supervisory review, which could be filed against a judgment having the force of *res judicata* and which depends on the discretionary power of the judge, does not constitute an effective remedy under article 5 (2) (b) of the Optional Protocol. The State has not shown that such a request would provide an effective remedy for this purpose; the Committee is not precluded from examining the communication. Concerning the delay, the Committee recalls that communication may constitute abuse when it is submitted five years after the exhaustion of remedies. In the present case, the communication was submitted less than three years after the author's application was rejected by the European Court of Human Rights. This timeframe does not preclude the Committee from examining the communication. The claims under articles 2 (3) and 14 (3) (g) are sufficiently substantiated and therefore admissible.

Merits: The Committee notes that a criminal investigation into the author's allegations of torture was launched on 6 December 2005. However, it considers that the material on file does not allow it to conclude that the investigation into the allegations of torture was carried out effectively. This is mainly because the statement of several witnesses, who testified that there was no visible injury prior to the author's arrest, and detailed medical records contradict the State's allegations that he was injured before he was apprehended. The Committee also notes that the State invoked the confession in finding the author guilty despite the fact that he alleged acts of torture during the trial hearings. The Committee, therefore, considers that there is a violation of article 2 (3) and article 14 (3) (g) of the Covenant.

Recommendation: The State party has:

- (a) to provide the author with an effective remedy, namely, make full reparation,
- (b) to take appropriate steps to conduct a thorough, prompt and impartial investigation of the author's allegations and
- (c) provide the author with adequate compensation.

The State party has to take steps to prevent similar violations from occurring in the future.

[CCPR/C/133/D/2916/2016](#)*E. Pirogov v. Russian Federation***Violation of a Russian human rights defender's right to minimum procedural guarantees**

Substantive issues: Arbitrary detention; fair trial – impartial tribunal; fair trial – legal assistance; fair trial – witnesses

Facts: The author is Evgeny Pirogov, a citizen of the Russian Federation who claims that the State party violated his rights under articles 9 (1) and (5), 14 (1), (3) (d) and (e), and 15 (1) of the Covenant. The author alleges that he is a human rights defender and frequently organizes protests and demonstrations to criticize the actions of the Government, for which he has been prosecuted and physically attacked in the past. In 2015, an investigation was opened against the author for inciting hatred based on race, ethnicity, or origin after he was accused of posting 12 pictures on a social media site with antisemitic comments and comments directed against ethnic groups from Central Asia and the Caucasus. After the Yoshkar-Ola City Court considered that the author violated the requirements of proper conduct while under investigation, it ordered his detention, and he was placed in a pretrial detention facility. After the author appealed the decision, in 2016 the Supreme Court of Mari-El Republic quashed the trial court's ruling and ordered the author's release. In 2016, the author was sentenced to two years of imprisonment and the Supreme Court upheld the author's sentence.

The author claims that his pretrial detention was arbitrary, since the Yoshkar-Ola City Court did not have the legal grounds to order it, and so violated his rights under articles 9 (1) and (5). He states that, even though the ruling of Yoshkar-Ola City Court was later quashed, he continues to be a victim of this violation because the 13 days that he spent in detention were included in his final sentence. He also claims that, by having him pay the costs of his two court-appointed lawyers and the forensic linguistic examination, despite his indigent status, the State party violated his rights under article 14 (3) (d). Moreover, he claims that the court proceedings against him were not conducted by an impartial tribunal, in violation of article 14 (1), and that the Court violated his rights under article 14 (3) (e) because it did not allow the defence to call and cross-examine the experts who had carried out the forensic examinations. Lastly, the author claims that, by charging him under a provision that was introduced after he posted the pictures and comments on the Internet, the State party violated his rights under article 15 (1).

Admissibility: In the absence of any other information or explanation of pertinence on file, the Committee considers that the author has not exhausted all available domestic remedies concerning his claims under article 9 (1) and (5) of the Covenant, and that the author has failed to sufficiently substantiate, for the purposes of admissibility, how the trial court's decision to hold him in contempt of the court violates his rights under article 14 (1). With regard to the author's claim under article 14 (3) (d) and article 15 (1) of the Covenant, the Committee considers that this claim has been insufficiently substantiated and considers it inadmissible. In the Committee's view, however, the author has sufficiently substantiated, for the purposes of admissibility, his claims of the violation of his rights under article 14 (3) (e) of the Covenant. The Committee, therefore, declares them admissible and proceeds with its consideration of the merits.

Merits: The Committee found a violation by the State party of the author's rights under article 14 (3) (e) of the Covenant. It notes that the Yoshkar-Ola City Court's refusal to order expert testimony constitutes a violation of article 14 (3) (e) since the author was not able to fully exercise his

right to call, obtain the attendance of and examine witnesses under the same conditions as the prosecutor, the results of which were the prosecution's main evidence against him. In this regard, the purpose of the experts in the procedure may be assimilable by analogy to that of the witnesses expressly mentioned in article 14 (3) (e) in the sense that may both be required to testify to provide relevant information on the facts.

Recommendations: The State party is under an obligation:

- (a) to provide the author with an effective remedy. That requires it to make full reparation to individuals whose Covenant rights have been violated.
- (b) to provide adequate compensation to the author for the violations suffered.

The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future.

Separate opinion: Committee member Gentian Zyberi does not agree with the finding of the Committee which concluded that there was a violation of article 14 (3) (e) of the Covenant. He states that the author did not demonstrate why the court's refusal to call the experts to testify during the court hearing amounted to a manifest error or denial of justice. He did not provide a plausible explanation to the Committee as to why these experts were incompetent, or why their expert reports were incorrect or invalid. The Committee should have given due consideration to the assessment by the domestic authorities and found that the complaint was not substantiated.



Serbia

[CCPR/C/131/D/2869/2016](#)

D.M. v. Serbia

Alleged discrimination and denial of access to justice of a man fired from the Belgrade City Library

Substantive issues: Access to court; discrimination; fair trial

Facts: The author is a national of the Republic of Serbia who claimed that the State violated his right under article 14 (1), read alone and in conjunction with article 26 of the Covenant, by denying him access to justice and subjected to indirect discrimination.

He was dismissed from his employment at the Belgrade City Library in 2001. He later filed a civil complaint against the Library before the Belgrade First Municipal Court, requesting the annulment of the decision of his termination and the Court ruled in his favour. However, the Belgrade District Court subsequently granted the library's appeal of that decision and ordered a retrial. In the retrial, the Court ruled in favour of the library and ordered the author to pay court costs in the amount of 173,500 dinars (equivalent to approximately 2,000€ at the time.) The author's appeal against this decision was rejected by the District Court on 31 July 2009. Domestic law allowed for filing a cassation appeal in labour law disputes. The Supreme Court declared the author's cassation appeal inadmissible because it had been submitted and signed by the author himself, not by his legal representative. The author then filed a complaint to the Constitutional Court which was again dismissed.

Admissibility: The Committee noted that, in the author's appeal of the decision of the Supreme Court of Cassation before the Constitutional Court, he raised the substance of his allegations under article 14 (1), read alone and in conjunction with article 26 of the Covenant.

The Committee noted that the communication concerned a civil labour matter and observed that article 14 (3) (d) of the Covenant, which provides for a limited right to defend oneself, applies to criminal defendants and not to civil litigants. It also recalled its General Comment No. 32, which states that the right of equal access to a court, embodied in article 14 (1) of the Covenant, concerns access to first-instance procedures and does not address the issue of the right to appeal or other remedies. Therefore, the Committee concluded that the author's claim regarding denial of access to the Supreme Court of Cassation lies outside the scope of the protection of article 14 of the Covenant and is therefore inadmissible *ratione materiae* under article 3 of the Optional Protocol.



Spain

[CCPR/C/132/D/2996/2017](#)

José Antonio Sainz de la Maza y del Castillo v. Spain

Spanish laws did not allow for revision of sentences and appeals mechanisms for the author's case

Substantive issues: Right to review; right to due process; right to a hearing by a competent, independent and impartial tribunal

Facts: The author is a national of Spain who claims that the State party violated his rights under article 14 of the Covenant. He worked as a councillor of a merchant society which allegedly failed to present different tax declarations. As a result, the author was accused of different crimes against the treasury and was brought to trial three times since there was not enough evidence. The first two times, the decision was deemed invalid by a higher court due to a lack of reasoning. After the third decision to absolve the author was appealed, the court referred the case to a court of higher instance which found the author guilty of four fiscal offences, imposed a fine, and sentenced him to prison for 24 months. He was unable to further appeal the decision. The author claims that, by refusing to provide an appeal or sentence revision mechanism, the State party violated his right to a fair trial.

Admissibility: The communication was brought to the European Court of Human Rights (ECtHR), under which it was deemed inadmissible. As Spain has excluded the jurisdiction of the Committee on matters under consideration by the ECtHR, the State party noted that the case should be deemed inadmissible. However, as the ECtHR did not examine the merits, the Committee found the case admissible.

The State party also claims that domestic remedies have not been exhausted. The Committee found that the domestic legislation was cleared on the lack of possibility to revise the decision taken against the author. Therefore, the author exhausted local remedies related to article 14. However, the Committee determined that the claims regarding the examination of facts and evidence carried out by domestic courts were inadmissible since they were not sufficiently substantiated.

Merits: The Committee recalled that the right to have the conviction and sentence imposed revised by a higher court is also violated when the conviction is done by an appeal's court. The Committee reiterated that the fact that the judicial mechanisms are prescribed by law does not make the mechanisms in accordance with international human rights law. Hence, the State party may well have regulations establishing a trial to be carried out directly by a court of higher instance, but that cannot mean that the claimant has no right to appeal.

Since the author had no right to a remedy to effectively appeal his conviction, the Committee concluded that Spain violated the author's right to a real prospect of justice by denying appeal as prescribed in article 14 (5) of the Covenant.

Recommendations: The State party is under an obligation:

- (a) to provide the author with an effective remedy.

The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future.

[CCPR/C/131/D/2558/2015](#)

M.I.A.P. v. Spain

Former military officer does not receive pension

Substantive issues: Right to a fair trial; right to receive justified decisions, right to equality, prevention from discrimination.

Facts: The author is a Spanish national. She was a soldier who, 8 years after her entry in the Spanish military, was given sick leave for clinical depression. She argued that her medical condition was caused by harassment suffered at work, but the tests carried out by the State never attributed the author's disorders to her work conditions. Therefore, she was not able to claim an indemnity or pension for her disability. She presented an administrative claim arguing that tests undergone after her leaving the military certified that her disorders were caused by her working conditions. Afterwards, she brought an administrative complaint, and it was found that there was not enough evidence to support that her disorders were caused by her role. Her request for appeal was found inadmissible.

The author claims that, by not paying her pension and not motivating the judicial decisions, the State party violated her right to receive a justification for a legal decision, to be considered equal before the law, and not to be discriminated against and the right to judicial guarantees under articles 14 (1) and 26 of the Covenant.

Admissibility: The communication was brought to the European Court of Human Rights (ECtHR), under which it was deemed inadmissible. As Spain has excluded the jurisdiction of the Committee on matters under consideration by the ECtHR or other international bodies, the State party noted that the case should be deemed inadmissible. However, the Committee stated that since the ECtHR did not analyze the merits of the matter, the Committee could proceed with its examination of the case. Nonetheless, the Committee noted that the author did not demonstrate that the actions of the domestic judicial authorities were arbitrary or constituted a denial of justice. Consequently, the Committee concluded that the communication was inadmissible.

[CCPR/C/132/D/2844/2016](#)

Baltasar Garzón v. Spain

Former judge unfairly tried and sentenced for his involvement in political cases revealed several violations of the Covenant

Substantive issues: Due process/fair trial; presumption of innocence; right to review of conviction and sentence; nullum crime; illegal interference; discrimination

Facts: The author is a national of Spain who was a judge and magistrate for a long period during which he investigated and decided upon cases of a particular political significance. One is the Francoism case, related to crimes committed during the dictatorship of Francisco Franco, and the other is the Gürtel case regarding corruption in the Spanish political party Partido Popular. The author claimed that he was a victim of persecution and repercussions as a result of his investigations, which led certain affected individuals to bring legal claims against him.

The author claims that his rights under article 14 of the Covenant were violated because the tribunals that tried him, as a result, lacked impartiality (article 14 (1)); he was never presumed innocent (article 14 (2)); he was not permitted to present very relevant evidence to his defence (article 14 (3)); and that he had no opportunity to appeal (article 14 (5)). The author adds that his rights under article 15 were also violated because he was tried under an interpretation of the crime of prevarication that severely deviates from the Spanish Supreme Court's jurisprudential precedent. Moreover, he claims that the criminal trial against him, his subsequent suspension as a judge, and the fact that he was sentenced in the Gürtel case violated his rights to a fair trial (articles 17, 19 and 26 respectively). Lastly, he states that he was not provided with an effective remedy, in violation of article 2 (3) of the Covenant, as the lack of available appeal made him unable to remedy the violations alleged against him and to discontinue the proceedings against him.

Thus, the author claims that the State party has violated his rights under articles 14 (1), (2), (3), (5), 15, 17, 19, and 26 of the Covenant with regard to the cases brought against him, and his right to an effective remedy enshrined in article 2 (3).

Admissibility: In 2018, the Special Rapporteur on new communications decided in the name of the Committee to consider the admissibility separated from the merits. Then, in 2019, the Committee considered that the author had sufficiently substantiated, for the purpose of admissibility, the complaints under article 14 (1), regarding the lack of impartiality of the trials, article 14 (5), regarding the lack of an opportunity to appeal, and article 15 on the unforeseeable interpretation of the criminal offence of prevarication.

Merits: With reference to the claims under article 14 (1), the Committee was asked to assess whether the court that tried the author for the offences of prevarication provided sufficient guarantees to be considered an independent tribunal, and the arbitrariness of the criminal proceedings against him in the Francoism and the Gürtel cases. The Committee, citing its General Comment No. 32, sustained that the principle of judicial independence requires that the judge, as well as the prosecutor, should be able to interpret and apply the law and to evaluate facts and evidence freely without being subject to intimidation, obstruction, or interference in the exercise of their function. A judge should not be subject to criminal or disciplinary action based on the content

of his or her decisions, except in cases of serious crime, corruption, misconduct, or incompetence rendering their unfit for office, and in accordance with procedures that respect fair trial guarantees. Miscarriages of justice should be corrected by a review of the decision by a higher court.

In light of the Francoism case, the Committee noted that the undisputed facts relating to the author's reasoned decisions do not warrant his acquittal as decided in the Supreme Court judgement 101/2012 of 27 February 2012, as his decision was at least a plausible interpretation of the law. Turning on the Gürtel case, the author's conviction for the offence of prevarication based on the author having requested the interception of communications, even if erroneous, did not constitute serious misconduct or incompetence that could justify his criminal conviction, but rather a possible interpretation of the applicable law. This was concluded with reference to the endorsement of the author's decision by the other judges and the Public Prosecutor's Office and support of case law that followed the decision against the author.

Regarding the author's claim of impartiality of the Spanish courts that tried him, the Committee noted that the author challenged the impartiality of two judges that tried him in the Gürtel case and that both cases were heard and decided almost simultaneously, resulting in similar outcomes. Particularly in the Francoism case, the Committee observed that the Chief Investigating Judge was allegedly impartial by repeatedly assisting the complainants in amending their indictments against the author. Hence, by reference to *Lagunas Castedo v. Spain*, para. 9.8, the Committee concluded that the author's doubts about the impartiality of the sentencing courts were objectively justified. Accordingly, the author's rights under article 14 (1) of the Covenant were violated.

Turning to the allegations of article 14 (5), relating to the author's conviction by the Supreme Court in the Gürtel case without the possibility of appeal, the Committee recalled that the expression 'as prescribed by law' in the Covenant is not intended to leave the existence of the right to review to the discretion of States parties as previously decided in *Jesús Terrón v. Spain*, para. 7.4, General Comment No. 32, paras. 25-47, and *Alberto Velásquez Echeverri v. Colombia*, para. 9.4. Hence, citing *Scarano Spiso v. Venezuela*, para. 7.11, the fact that the author was tried by the highest court of the country is incompatible with article 14 (5) unless the State party had entered a reservation to the latter. The Committee concludes that the author's right under article 14 (5) of the Covenant was violated.

Finally, the Committee had to determine whether the author's conviction in the Gürtel case, based on an allegedly unforeseeable interpretation of the criminal offence of prevarication, constituted a violation of article 15 (1). The Committee found that the author's conviction was arbitrary and unforeseeable as it was not based on sufficiently explicit, clear, and precise provisions precisely defining the prohibited conduct, referring to *Baumgarten v. Germany*, para. 9.3 and the General Comment No. 29 on the state of emergency (article 4), para. 7. This is because Article 446 of the Spanish Criminal Code applied in the litigation does not define the scope of 'unjust' in consideration of a judgement or decision. Further, the author's decision could not have been unjust, as the Public Prosecutor's Office did not dispute the author's interpretation and the judge that succeeded him in the Gürtel case extended and even expanded the interception of the defendants' communications. The Committee noted that Article 118 (4) of the Spanish Criminal Procedure Act 2015 confirmed the author's position by allowing exceptions to the confidentiality of communications "where there is objective evidence of the lawyer's participation in the criminal act under investigation or of his or her involvement with the defendant or accused in the commission of another criminal offence".

The Committee concluded that the State party violated the author's rights to equality before the courts, to have his criminal sentence reviewed by a court of higher instance, and to not be punished for a criminal offence that did not exist at the time of being committed under articles 14 (1), (5), and 15 of the Covenant.

Recommendations: The State party is under an obligation:

- (a) to provide the author with an effective remedy. The State party is obligated to take appropriate steps to provide Mr Garzón with
 - (i) declaring his trial null, nullifying also his pre-trial detention;
 - (ii) in case another case be brought against the author, ensuring that this will take place with all the fairness guarantees under article 14 and with access to an effective remedy under article 2 (3) of the Covenant; and
 - (iii) condemn the author with an adequate indemnity.

The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future.

Separate opinion: Committee members Gentian Zyberi and Hernán Quezada Cabrera issued a concurring opinion, in which they stated that the remedy should have included full restitution of the author to his office.

Committee member José Santos Pais also issued a concurring opinion and stated that the Committee's remedies were appropriate, and no additional remedy should be necessary.

Committee member Vasilka Sancin issued a partially concurring and partially dissenting opinion. She argued that, in order to comply with the principle of legality under article 15 (1), the text of the Spanish law should be read with the Supreme Court's interpretation. Hence, at the alleged commission of the offence by the author, he knew of the Supreme Court's interpretation, not making their decision manifestly unfair, etcetera. Hence, the interpretation of the criminal offence by the Spanish courts is not in violation of article 15 (1).

[CCPR/C/131/D/3160/2018](#)

X v. Spain

Right to political participation in elections of the Catalan Parliament discontinued

Substantive issues: Right to political participation in elections of the Catalan Parliament

Admissibility: The Committee decided to discontinue the consideration of communication No. 3160/2018 because the author has decided to withdraw his complaint. In light of the withdrawal of the communication by the author, the State party agreed to the discontinuance.



Sri Lanka

[CCPR/C/132/D/2508/2014](#)

Dodanpegamage Asantha Aravinda v. Sri Lanka

Ill-treatment suffered during arrest and detention violates the prohibition on torture/ill-treatment and arbitrary detention

Substantive issues: Cruel, inhuman or degrading treatment or punishment; arbitrary detention; discrimination on the ground of other status; effective remedy

Facts: The author is a national of Sri Lanka who claims that the State party violated his rights under articles 7, 9, and 26, read alone and in conjunction with article 2 (3) of the Covenant. The author and a friend were arrested and detained following a collision between their motorbike and a truck, and the author alleges that, during his arrest, the police subjected him to treatment contrary to article 7 of the Covenant (including being beaten and having acid poured on his face by the driver of the truck, as well as being denied prompt and adequate medical care). He further contends that his arrest and subsequent detention were arbitrary, as he was deprived of his right to have the lawfulness of his detention reviewed by a court, contrary to article 9 (4) of the Covenant and was not immediately informed of the reasons for his arrest, contrary to article 9 (1) and (2) of the Covenant. Further, the author claims that his ill-treatment while in police custody amounted to unlawfully differential treatment in violation of article 26 of the Covenant, based on discriminatory grounds (his prisoner status). Lastly, the author claims that the State party failed to provide him with a prompt, independent, and impartial investigation of his allegations of torture, in violation of his article 2 (3) rights, read in conjunction with articles 7, 9, and 26 of the Covenant. The State party failed to cooperate with the Committee.

Admissibility: The Committee found the communication partially admissible on the following grounds: (i) the Committee was not precluded under article 5 (2) (a) or (b) of the Optional Protocol from being seized of the complaint, and (ii) the author had sufficiently substantiated his claim under articles 7 and 9, taken alone and in conjunction with article 2 (3) of the Covenant. The author's claim under article 26 was found to be inadmissible for failure to properly substantiate it.

Merits: The Committee found a violation of the author's rights under articles 7 and 9, read alone and in conjunction with article 2 (3) of the Covenant. It found that the author's claims regarding the treatment he suffered at the hands of police officers were credible, in the absence of any evidence to the contrary being submitted by the State party. Further, in the absence of clarification from the State party as to the grounds for the author's detention, the Committee found that the author's arrest and detention violated article 9 of the Covenant. Lastly, the Committee held that the State party's failure to ensure the author's right to an effective remedy under article 2 (3) had been violated, as in the 13 years since the initial incident no one had been brought to justice for the author's ill-treatment.

Recommendations: The State party is obliged:

- (a) to provide the author with an effective remedy, including by conducting a thorough, impartial, independent and effective investigation;
- (b) to prosecute, try, and punish those responsible;
- (c) to provide adequate compensation and measures of satisfaction to the author for violations suffered.

The State party is also obliged to take steps to prevent similar violations from occurring in the future.



Sweden

[CCPR/C/131/D/3069/2017](#)

B.B. v. Sweden

Deportation to Afghanistan violates prohibition on torture/ill-treatment owing to the real and personal risk of harm

Substantive issues: Right to life; risk of torture and other cruel, inhuman or degrading treatment or punishment upon return to country of origin; prohibition of refoulement

Facts: The author claims that his deportation from Sweden to Afghanistan would constitute a violation of his rights under articles 6 and 7 of the Covenant as he faces a risk of persecution by his father, the Afghan authorities, and the general population in Afghanistan. This is because (i) he has no linguistic and social ties to Afghanistan (being born in Iran), (ii) he is of Hazara ethnic origin, (iii) he converted to Christianity in 2017, (iv) he has reason to fear retaliation from his parents for reporting them to the Swedish authorities for abuse, and (v) owing to this fear, it will be difficult for him to request the identity documents necessary for life in Afghanistan.

Admissibility: The Committee found the communication admissible on the following grounds: (i) the Committee was not precluded under article 5 (2) (b) of the Optional Protocol from being seized of the complaint, and (ii) the author had sufficiently substantiated his claim under articles 6 and 7 of the Covenant for the purposes of admissibility.

Merits: The Committee held that the author's removal to Afghanistan would violate his rights under articles 6 and 7 of the Covenant, as it considered that the author could face the real and personal risk of irreparable harm upon deportation to Afghanistan. The Committee found that the State party had failed to give due consideration to the author's personal situation, particularly as it concerns the author's father's alleged threats of revenge and the author's trauma stemming from parental abuse.

Recommendations: The State party is under an obligation:

- (a) to proceed to a review of the author's case taking into account the State party's obligations under the Covenant and the present Views of the Committee.

The State party is also requested to refrain from expelling the author while his request for asylum is being reconsidered.

Separate opinions: Committee members Vasilka Sancin and Photini Pazartzis issued a dissenting opinion. They were unable to agree with the Committee's finding since they could not conclude that the State party's decision to refuse the author's asylum request was clearly arbitrary or amounted to a manifest error or denial of justice. In their view, the author had failed to show that the Swedish authorities had not duly considered the risk posed by the author's father.

In an individual opinion, Shuichi Furuya partially dissented from the Committee's view: he held that the State party had failed to conduct an individualized assessment of the risk that the author would be subject to persecution or ill-treatment as the result of his conversion to Christianity.

[CCPR/C/132/D/3266/2018](#)

H.G. v. Sweden

Communication on deportation to Afghanistan found inadmissible for failures to exhaust domestic remedies and to substantiate claims

Substantive issues: Deportation; torture/ill-treatment; right to family life; exhaustion of domestic remedies

Facts: The author is an Afghani national who claims that his deportation from Sweden to Afghanistan would violate his rights under articles 7 and 17 of the Covenant. The author claims he would face a real and personal risk of persecution based on his sexual orientation and conversion to Christianity. The State party found that the author failed to show that he faced a real and personal risk upon his return to Afghanistan.

Admissibility: The Committee found the author's claims inadmissible under articles 2 and 5 (2) (b) of the Optional Protocol. First, it held that the author had failed to exhaust domestic remedies in relation to his claim under article 17, as he had not made any attempt to raise this claim before domestic authorities. Second, the Committee found that the author failed to show that the decision of the domestic authorities was clearly arbitrary or amounted to a manifest error or denial of justice.



Tajikistan

[CCPR/C/133/D/3258/2018](#)

Tierri Amedzro v. Tajikistan

Curtail of religious freedom, detention, and arrest leading to deportation

Substantive issues: Arbitrary arrest and detention; non-refoulement; liberty of movement; freedom of religion; discrimination

Facts: The author is a national of the Russian Federation and a practising Jehovah's Witness (JW) who was residing in the city of Dushanbe, in Tajikistan, on a valid residence permit since July 2017. The Ministry of Culture of Tajikistan unilaterally terminated the activities of the national legal entity of the JW in Tajikistan (a religious minority in the country) and were therefore forced to meet in secret to practise their faith. On 4 October 2018, the author and 17 other members of the JW met in private to peacefully worship. Shortly after, a group of officers from the State Committee for National Security arrested 10 of the worshippers, including the author, and took them for interrogation the same day. During the investigation, the author was told that his religious activities were banned and was threatened with deportation to the Russian Federation, where he would be charged with religious extremism. Later, the officers carried out a search of the author's apartment and confiscated his passport while the author was detained.

On 15 October 2018, the author was charged with committing an offence under article 499 (1) of the Code of Administrative Violations for violating the rules of residence for foreign citizens, which the author claims were not part of the allegations made against him during the investigation. Despite the testimony of witnesses in support of the author, he was convicted by the District Court and sentenced to pay a fine of 80 times the monthly calculation index (4,000 somonis), along with a deportation order to the Russian Federation. The author appealed the decision, which was rejected by the court. The author was then deported from Tajikistan to Kazakhstan on 30 October 2018. The author's application for supervisory review to the Presidium of the Dushanbe City Court, a discretionary remedy under domestic law, was also rejected by the Court.

The author, thus, claims that the State of Tajikistan violated his rights under articles 9 (1), 13, read alone and in conjunction with articles 12, 18 (1) and (3), 26, and 27 of the Covenant, by subjecting him to detention, arrest, administrative conviction, monetary fine, and deportation.

Admissibility: The author had sufficiently substantiated his claims concerning his arrest, detention, conviction, and deportation based on his religious beliefs under articles 9 (1), 13, read in conjunction with articles 12, 18 (1) and (3), 26, and 27 of the Covenant, for the purposes of admissibility.

Merits: The Committee recalled its General Comment No. 35 (2014) on liberty and security of person, in which it refers to the prohibitions on arbitrary and unlawful deprivation of liberty. The Committee further recalled that, in order for an arrest to be in compliance with article 9 (1), it must not only be lawful, but also reasonable and necessary taking into account all the circumstances. The Committee considered that the State party had failed to show why it was necessary to detain the author. In view of the circumstances as described, the Committee concluded that the State party violated the author's rights under article 9 (1) of the Covenant.

The Committee also recalled that article 18 (3) is to be interpreted strictly and that limitation may be applied only for those purposes for which they were prescribed and must be directly related to and proportionate to the specific need on which they are predicated. Consistent with its

General Comment No. 22 (1993), the Committee noted the author's right to manifest his beliefs and that the conviction and sentence to a fine and deportation constituted limitations of that right. The Committee, therefore, concluded that such limitation does not meet the requirements of article 18 (3) and that the author's rights under article 18 (1) of the Covenant have been violated. Lastly, in the light of its finding that there has been a violation of article 18 of the Covenant, the Committee decided not to examine separately the author's claims under article 13, read alone and in conjunction with article 12, and articles 26 and 27 of the Covenant.

Recommendations: The State party is obligated:

- (a) to not prevent the author's return to the State party should he so wish,
- (b) to return to him the fine that he was ordered to pay under Article 499 (1) of the Code of Administrative Violations; and
- (c) to provide him with adequate compensation for the moral damages suffered as a result of his detention, arrest, conviction and deportation, as well as compensation for the legal expenses and fees incurred in the domestic courts and the proceedings before the Committee.

The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future.

Separate opinion: Committee members Imeru Tamerat Yigezu and Gentian Zyberi issued a joint partially dissenting opinion. The dissent concerned only part of the remedies, where the members felt that the Committee had gone beyond what it could indicate as a remedy, in the absence of a finding of a violation under the Covenant. In paragraph 9, the Committee had indicated that "the State party is obligated, inter alia, not to prevent the author's return to the State party should he so wish". This does not follow from the previous finding of the Committee, given that in paragraph 8 the Committee found that the facts before it disclosed a violation by the State party of articles 9 (1) and 18 of the Covenant. No violation of article 13 was found in the case. The issue of the remedies and reparations has been addressed by the Committee in its guidelines on measures of reparation. According to this, the form of reparation is closely linked to the violation by the State of its obligations under international law and aimed at adequately remedying a finding of violation by the adjudicatory mechanism before which a complaint has been brought. Therefore, having decided not to address article 13, which concerns the right to lawful stay of an alien in the territory of a State party to the Covenant, it is not possible for the Committee to indicate that the State party should not prevent the author's return to its territory, should he wish to return. Such a right to freely return to the territory of a State party to the Covenant cannot be inferred as falling under article 18, without more information.

Committee member Vasilka Sancin issued a partially dissenting opinion. The partial dissent relates to the determination of the specific part of the remedy paragraph, namely the decision of the majority in paragraph 9 to indicate that "the State party is obligated, inter alia, not to prevent the author's return to the State party should he so wish." Despite the fact that the Committee decided not to examine separately the author's claims under article 13, read alone and in conjunction with article 12 (para. 7.10), the Committee member was convinced that, even if the Committee had found such a violation, the remedy of restitution of an alien to the State party's territory (emanating from the obligation as indicated not to prevent the author's return) would go beyond the scope of the obligations deriving from the articles of the Covenant and that such a remedy, in fact, contradicts the long-established rules of international law.



Uzbekistan

[CCPR/C/131/D/2574/2015](#)

Ulugbek Ersaliev v. Uzbekistan

Violation of the right to freedom of expression following the restriction of an individual picket

Substantive issues: Unjustified restriction on the right to freedom of expression

Facts: The author, a national of Uzbekistan born in 1964, applied for permission to hold a two-hour-long demonstration (individual picket) on 26 February 2013 in front of the Department of Bailiffs in Tashkent. According to national legislation, permission to hold a demonstration should be issued by the Office of the Mayor, not by the police. The author claimed that the transfer of his request was to threaten him to withdraw his request of holding a picket. He was later informed over the telephone that his request had been rejected and was provided with no written decision by the municipal department.

The author appealed against the response to the Tashkent City Court, which transmitted his appeal to the head of the Mirzo-Ulugbeksk Inter-District Court, which in turn rejected the appeal. The author then appealed the decision of the Inter-District Court, which was again rejected by the Court. His next appeal under the supervisory review procedure was also rejected. The author ultimately filed an appeal with the Supreme Court, which also dismissed his appeal. The author claimed that the State party had violated his rights to freedom of peaceful assembly under article 21 of the Covenant. Although the author does not specifically invoke article 19 of the Covenant, the communication appeared to raise issues under that article as well.

Admissibility: The Committee noted the author's allegations of violation of his right to freedom of assembly under article 21 lacked sufficient elements under an "assembly" within the meaning of the article, for the purposes of admissibility, and declared this part of the communication inadmissible under article 2 of the Optional Protocol. However, the Committee concluded that the issues raised by the author issues under article 19 of the Covenant had been sufficiently substantiated for the purposes of admissibility.

Merits: The Committee observed that the State party had failed to provide any concrete information as to why the restrictions imposed on the author were necessary for maintaining security, as required under article 19 (3) of the Covenant. Furthermore, the State party failed to demonstrate that the measures selected were the least intrusive in nature or proportionate to the interest that it sought to protect. The Committee considered that, in the circumstances of the present case, the limitations imposed on the author were not justified pursuant to the conditions set out in article 19 (3) of the Covenant. It, therefore, concluded that the author's rights under article 19 (2) of the Covenant have been violated.

Recommendations: The State party is obligated:

- (a) to provide the author with adequate compensation.

The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future.

[CCPR/C/131/D/2479/2014](#)

H.R. v. Uzbekistan

Arbitrary detention and torture of a man involved in the Andijan events of 2005

Substantive issues: Torture; cruel, inhuman and degrading treatment; arbitrary detention; right to life; expulsion from one's own country; effective remedy

Facts: The author of the communication is an Uzbek national who was a businessman in Andijan. Since 2013, he was periodically detained, interrogated, beaten, and threatened by the National Security Service and the police Criminal Investigations Department to coerce him into providing false evidence against prominent businessmen. He fled the country after participating in a demonstration in 2005.

The author claims that, between 2003 and 2004, he was periodically unlawfully and arbitrarily detained by the National Security Service and the Criminal Investigations Department, in violation of article 9 (1) of the Covenant. He also claims that, during these periods of detention, he was seriously beaten and subjected to psychological abuse, in violation of article 7 of the Covenant. Moreover, the State party failed to implement adequate safeguards to prevent his torture, violating article 7 of the Covenant, read in conjunction with article 2 (2). The author maintains that the State party repeatedly disregarded his complaints about unlawful detention and torture and that, by failing to investigate those violations and provide the author with access to effective remedies, the State party violated articles 7 and 9, read in conjunction with article 2 (3), of the Covenant. He adds that, by using indiscriminate lethal force against the demonstrators in Andijan, the State party put his life at serious risk in violation of article 6 (1), and his right to security of the person under article 9 (1) of the Covenant. By creating conditions where he was required to flee his home to avoid being killed, the State party violated article 12 (1) and (4), of the Covenant. Lastly, the author maintains that the State party failed to carry out an effective investigation into the violations of his rights to life, to the security of the person, and to freedom of movement, and did not provide him with effective remedies in violation of articles 6, 9 and 12, read in conjunction with article 2 (3), of the Covenant.

Admissibility: The communication was submitted eight years after the author's alleged arbitrary detention and torture, and seven years after the events in Andijan. According to rule 99 (c) of the Committee's rules of procedure, a communication may constitute an abuse of the right of submission when it is submitted five years after the exhaustion of domestic remedies by the author of the communication, or, where applicable, three years from the conclusion of another procedure of international investigation or settlement, unless there are reasons justifying the delay, taking into account all the circumstances of the communication in force after 2012. The author states that the submission was delayed because of the severe psychological trauma caused by the alleged violations, the persecution of his co-representative, and fear for his relatives who have remained in Uzbekistan. Nevertheless, the Committee considers that the author has failed to provide a convincing explanation for the delay in the submission, that the author did not offer any explanations as to the fear of his or his family's prosecution in the following years and considers that submitting the communication after such a long lapse of time constitutes an abuse of the right of submission, declaring the communication inadmissible.

Dissenting Opinions: Committee members Hélène Tigroudja and Arif Bulkan submitted a joint opinion stating their disagreement with the way in which the majority of the Committee calculated

the passage of time and assessed the explanation provided by the author regarding the delayed submission of his communication. The Committee relied on the dates of the facts at the basis of the claims and the date of the “initial submission” to the Committee, whereas rule 99 (c) refers rather to the exhaustion of domestic remedies (or international proceedings if applicable). In that regard, the author explained that there were no formal domestic remedies to exhaust in relation to his claims and in view of the chain of events that unfolded after the events. Moreover, from the moment he fled Uzbekistan until his application before the Committee, the author did not remain inactive. The Committee members are of the opinion that the Committee should have declared the communication admissible, and, on the merits, the facts amount to a violation of articles 6, 7, 9 and 12 of the Covenant, read alone and in conjunction with the lack of remedies and investigation under article 2 (3).

More information on the case:

- [Open Society Justice Initiative](#) - [H.R. v. Republic of Uzbekistan](#)
- [Human Rights Watch](#) - [The Andijan Massacre](#)
- [OHCHR Press](#) - [UN EXPERTS DEPLORE RESPONSE OF UZBEKISTAN TO ANDIJAN EVENTS](#)



Venezuela

[CCPR/C/131/D/2652/2015](#)

Carlos José Correa Barros et al v. Venezuela (Bolivarian Republic of)

NGO leaders never received information on State actions to address the population's access to medicine

Substantive issues: Right to search for, receive and spread information; right to participate in public affairs; right to an effective remedy

Facts: The authors are Venezuelan nationals and leaders of several NGOs. Following a State report showing a severe mismanagement of medication in the State party, which had severe health effects on the entire population, the NGO leaders asked the Ministry of Health for updates on the measures taken by the State party to improve the situation. The Ministry never replied, and so the authors brought a domestic legal complaint of *amparo* for lack of access to information. The Supreme Constitutional Tribunal declared the claim inadmissible on the ground that other remedies were not exhausted and that the violations of the authors' rights did not interfere with their fundamental rights. This decision could not be appealed. The authors later continued to pressure State institutions for information, but nothing was shared.

The authors claim that their rights to access information under article 19 (2) are read in conjunction with article 2 (1). Further, their right to participate in public affairs was violated under article 25, read with articles 19 and 2 (1), as well as their right to receive an effective remedy under article 14 read with article 2 (3). Lastly, it was claimed that the judiciary violated its obligation to make decisions or find solutions that would protect the authors' rights under article 2 (2) of the Covenant.

Admissibility: The Committee deemed the authors' article 2 (2) allegation inadmissible as no right to public information is expressed in the Venezuelan Constitution. Similarly, the Committee found the claims under articles 14 and 2 (3) inadmissible as the judicial process was clearly not arbitrary. The Committee found the claims under articles 19 (2) and 25 of the Covenant sufficiently sustained and deems them admissible.

Merits: The Committee reminded the State party that the right to access information on the work of State institutions is part of the right to freedom of expression and that there should be no necessity to prove sufficient interest in the matter; information of relevance such as this should be public. The State party did not justify their decision to limit access to this information. The Committee, therefore, concluded that the State party violated the authors' rights to freedom of expression and access to information under article 19 (2) of the Covenant. As a result, the Committee did not find the need to analyse article 25 violations.

Recommendations: The State party is under an obligation:

- (a) to provide the author with an effective remedy
- (b) to take appropriate steps to provide the authors with the answers they have been seeking as well as adequate compensation for incurred legal costs.

The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future.

[CCPR/C/132/D/2833/2016](#)

José Luis Pichardo Salazar v. Venezuela (Bolivarian Republic of)

Criminal proceedings and an arrest warrant against a businessman who could not be tried as he was not present in person

Substantive issues: Right to a fair trial; right to legal assistance; right to a defence; right to be heard

Facts: The author is a national of Venezuela. Within the context of various fraud accusations, the author went to the United States fearing his assets would be frozen. A case was later brought against him, but for him to be properly represented and for the trial to proceed, the law provided that he must have appeared in person. While he was absent, an extradition process was initiated, and the Bolivian National Intelligence Service went to the author's home and searched his property without a warrant. The author maintains that, when he left the State party's territory from an International Airport, he passed through immigration without difficulty, denying he was evading justice. Further, INTERPOL's Files unanimously stated that he had been subjected to political persecution by the State party.

The author claims to be a victim of violations of his rights to an effective remedy, liberty, and security of person, and right to a fair trial under articles 2, 9 and 14 (1), (2) and (3) (a), (b), ©, and (d) of the Covenant.

Admissibility: The Committee considered that the exhaustion of domestic remedies is unimportant, as the issue in question is intimately linked to the substantive issues. The author's claim of a violation of article 14 (1) and his generic invocation of articles 2, 9, and 14 (2), (3) (b), and (c) were not sufficiently substantiated and hence were inadmissible. Nonetheless, the author's claim concerning his rights to be informed of the charges brought against him and to be tried in his presence and be defended under article 14 (3) (a) and (d) were found admissible.

Merits: The Committee found that the author was not informed in a clear, precise, and detailed manner of the charges against him; that he was not summoned before the decision was taken to issue a warrant for his arrest; and that he was not permitted to appoint counsel.

The Committee noted that the author was not requesting that he be tried *in absentia*, but that the courts accept the appointment of his counsel so that he could access the case file containing the evidence against him that gave rise to both the arrest warrant and the extradition request addressed to the United States. The Committee concluded that the State party violated the author's right to a defence under article 14 (3) (d) of the Covenant. In light of this conclusion, the Committee decided not to examine separately the author's remaining claims under article 14 (3) (a) of the Covenant.

Recommendations: The State is required:

- (a) to make full reparation to the author for the violation of his Covenant rights, including by allowing him to:
- (b) appoint counsel and consequently access his case file;
- (c) to put forward, through counsel, the available defences during the preliminary investigation prior to the preliminary hearing.

The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future.

[CCPR/C/133/D/3003/2017](#)

Allan Brewer-Carías v. Venezuela (Bolivarian Republic of)

Lawyer charged for having participated in the drafting of a document declaring a *coup d'état* faced a biased justice process

Substantive issues: Right to a fair trial; right to legal assistance; right to a defence; right to be heard; equality before the courts and tribunals; freedom of expression; unlawful attacks on honour or reputation; deprivation of liberty

Facts: The author is a national of Venezuela. He was a constitutional lawyer who was called by Pedro Carmona Estanga (one of the opposition leaders who supported Chavez) to provide his legal opinion on the drafting of the Carmona Decree on the day of the resignation of then-President Chavez. The Decree essentially stated the intention of Carmona to take executive power in an anti-constitutional way. The author sustained that he was not involved in the drafting and was simply asked to provide a legal opinion on an already drafted document. Further, his reaction was one of “absolute rejection” of the Decree. When media outlets began to attribute the authorship of the document to the author, he promptly denied it. The Special Parliamentary Commission to Investigate the Events of April 2002 reported the author’s proven participation and co-drafting in the report without having previously summoned the author. Some years later, the author was found guilty of the crime of “conspiracy to violently change the Constitution”.

Followingly, a prohibition of departure from Venezuela was issued to the author. This prohibition was later revoked for lack of motivation and instated again after a change in the judiciary. Some months later, the author legally left the territory of Venezuela due to academic commitments and remained abroad since. Following the publishing of a book by the Venezuelan Attorney General stating that the author was involved in the drafting of the Decree, the author filed an appeal for annulment, claiming his right to defence, the presumption of innocence and due process had been violated. The Venezuelan Prosecutor then called for the author’s preventative detention, which he requested to annul following inadmissibility. The issue was not resolved at the date of the communication. A few years later, all penal claims related to the drafting and signing of the Carmona Decree were extinguished. The author’s appeal of his previous charge, however, was denied.

The author claims that, by accusing him of the above and through the mentioned justice process, the State party violated his rights to an effective remedy, liberty and security of the person, freedom of movement, equality before the law, presumption of innocence, prepare a defence, examine witnesses, privacy, freedom of thought and expression, and not to be discriminated against under articles 2 (3), 9, 12, 14 (1), (2), (3) (b) and (e), 17, 19, and 26 of the Covenant.

Admissibility: The communication is admissible as a decision by the Inter-American Court of Human Rights (IACtHR) does not preclude the examination by the Committee. The allegations that domestic remedies had not been extinguished are unsupported, as many available remedies had already been extinguished and prove the others’ lack of suitability and effectiveness. However, as the author did not present claims domestically on article 17 violations and did not sufficiently substantiate his articles 9, 12, 19, and 26 allegations, only his articles 14 (1), (2), (3) (b) and (e), and article 2(3), read in conjunction with article 14 (1), were examined on the merits.

Merits: The Committee reminded the State party that the provisional appointment of judges should be exceptional and limited in time, and that the judges must be independent and appear as such. In the absence of information from the State party proving the independence of provisional judges, the State party was found in violation of article 14 (1).

The Committee noted that the presumption of innocence extends to all authorities and found all statements of the author's involvement in the drafting made by public officials in violation of article 14 (2). The Committee did not believe that the facts as submitted by the author allowed for the determination of the potential State party violations of articles 14 (3) (b) and (e), as any "obstacles" to the author's presentation of defence were at most a disproportionate burden.

On the facts, the Committee noted a well-founded fear of the author of being subjected to arbitrary criminal proceedings and of the severe violation of his rights should he be placed in preventative detention. Hence, the Committee found a violation of his right to an effective remedy with respect to his right to due process, in particular, access to an independent tribunal, contained in article 2 (3) read in conjunction with article 14 (1).

The State party is in violation of the author's article 14 (1), (2) and 2 (3) rights read in conjunction with article 14 (1) of the Covenant.

Recommendations: The State party is under an obligation to provide the author with an effective remedy. The State party is obligated:

- (a) to declare the nullity of the proceedings against the author, annulling the preventive detention order against him
- (b) if a new trial is initiated against the author, ensure that the author complies with all due process guarantees and access to effective remedies
- (c) grant the author adequate compensation

The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future.

Separate opinions Committee members Arif Bulkan, Hélène Tigroudja, Vasilka Sancin, and José Santos Pais issued a partially dissenting opinion. According to them, at an investigation stage, the right to access evidence is paramount, as suggested in the Committee's General Comment No. 32 and the IACtHR jurisprudence. The burden of proof of the author is merely a description of the lack of access to information. Hence, a breach of article 14 (3) (b) should have been found.

Moreover, there is an obligation on the State party to disclose all material that the prosecution plans to offer in court, and when the author demonstrated that the State party substantially limited his access to such material (as he did in the case), a violation of article 14 (3) (b) should have been found. Lastly, several Views of the Committee, unlike the position adopted in the present case, seem to require that the author provides evidence of the impact a particular public statement had on the outcome of their trial. Hence, a violation of article 14 (2) should not have been found.



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