Distr.: General
31 October 2023

Original: English

Advance unedited version

Human Rights Committee

Decision adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 3314/2019*,**

Communication submitted by:	A G. represented initially by Stanislovas Tomas and then by Arūnas Kazlauskas
Alleged victim:	The author
State party:	Lithuania
Date of communication:	22 July 2016 (initial submission)
Document references:	
Date of adoption of Decision:	31 October 2023
Subject matter:	Fair trial
Procedural issues:	Lack of substantiation
Substantive issues:	Right to cross-examine witnesses, witnesses 'declaration obtained under duress
Articles of the Covenant:	7, 14 (1) (3) (b)(c) (d) and (e)
Articles of the Optional Protocol:	1,5 (2) (b)

1. The author of the communication dated 22 July 2016 is Mr. A. G., national of Lithuania, born on 29 August 1974. The author claims the State party violated his rights under articles 7, 14(1) and 14(3) a)b)c)d)e). The author is represented by counsel.

The facts as presented by the author

2.1 The author was an elder of the choir of the Marijampole Basilica and a local leader of the Lithuanian political party "Order and Justice". On 19 April 1994, the author, along with other 5 men (G. S., G. M., G. J., R. A. and Z. V.), went by car outside the town to recover 14,000 USD supposedly stolen from his mother's home since December 1993. At first, the author did not know who had stolen the money but later he suspected Mr Z. V. and his friend Mr R. A. of having stolen the money. Since the 19 April 1994, Mr. R.A. and Mr. Z.V. have been missing.

* Adopted by the Committee at its 139th session (9 October-3 November 2023)

** The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Farid Ahmadov, Wafaa Ashraf Moharram Bassim, Rodrigo A. Carazo, Yvonne Donders, Mahjoub El Haiba, Laurence R. Helfer, Teraya Koji, Carlos Gómez Martínez, Bacre Waly Ndiaye, Marcia V.J. Kran, Hernán Quezada Cabrera, José Manuel Santos Pais, Soh Changrok, Tijana Šurlan, Kobauyah Tchamdja Kpatcha, Hélène Tigroudja and Imeru Tamerat Yigezu.

2.2 On 29 April 1994, the pre-trial investigation for the disappearance of R.A.s and Z.V. started, and on 26 October 1994, the author, G.S, G.M.and and G.J. were detained on suspicion of killing R.A. and Z.V. The author informs that the pre-trial investigation was discontinued until 2004, and that the investigation was interrupted on various occasions.

2.3 On 16 June 2005, the Vilnius City District Court no. 1 ordered a supervision measure of detention for three months of G.M. and G.S.. Before finishing these three months, on 30 August 2005, both were released and the pre-trial investigation in their respect was discontinued.[1]

2.4 On 27 and 30 June 2005, G.S. was interrogated by the pre-trial investigation judge as a suspect. [2] The author indicates that, according to minutes of both interrogations, which are identical, G.S. accused the author of killing R.A. and Z.V..[3]

2.5 In March and April 2006, the author had been interrogated several times by a police officer without his lawyer.[4] On 22 March 2006, the same officer explained the author that his family was in a difficult economic situation. The author indicates that he understood that the officer was requesting a bribe; however, the author did not give any money to the officer. On 24 March 2006, the officer made a unilateral declaration, accusing the author of bribing him during one of these conversations.

2.6 On 20 April 2006, the author made a declaration addressed to the Trakai region Police commissariat refusing to communicate with the officers investigating his case, including the one who allegedly requested a bribe without the participation of his lawyer. On 21 April 2006, the author submitted a complaint to the prosecutor, because the officersvisited him every day and used psychological pressure in order to force him to plead guilty. He asked the prosecutor to ensure that his lawyer was present during the interrogations.[5]

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

2.8 On an undetermined date, the pre-trial investigation ended, and the Kaunas Regional Court started to review the case. In 2008, the first hearing before the Kaunas Regional Court took place[7].

2.9 On 27 May 2008, G.S. was interrogated as a witness before the Kaunas Regional Court. He changed his previous declaration and stated that on the evening of the disappearance of the two individuals, a conflict arose between them and the author, but he clarified that he and the author went away. He also declared that during the pre-trial investigation he was subjected to psychological violence by police officers which led him to lie. He also indicated that the officers proposed to release him immediately if he declared against the author.[8]

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

---

[1] This was established in the translation of the Order of the Lithuanian Court of Appeal dated 15 December 2010, provided by the author.

[2] The author informs that, according to the State party's procedural laws, suspects have the right to lie and that the pre-trial proceedings are not contradictory and not public.

[3] The author does not provide the minutes. However, he provides a translation of the Order of the Lithuanian Appellate Court dated 15 December 2010, according to which the 3 co-suspects were interrogated. G.S. was the only one to declare that the author was guilty of killing R.A and Z.V.

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

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

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

[7] The author does not provide further information on this matter.

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

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

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

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

2.13 On 25 June 2013, the Supreme Court upheld the Judgement of the Lithuanian Appellate Court of 27 November 2012,[13] as it considered that the Appellate Court had assessed the evidence correctly.

2.14 The author informs that on an unspecified date, he requested asylum in Russia. The asylum was granted, and at the time of submission of the complaint he was leaving there.[14]

The complaint

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

3.2 The author also claims that the State party violated his rights under article 14 (1) (3) (b) and (d) of the Covenant, as during the proceedings, he was not allowed to meet with his lawyer, and that he was forced to hold interrogatories with police officers in the absence of his lawyer.[15]

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

3.4 Finally, he claims that the duration of the proceedings- 19 years - violated his right to be tried without undue delay established by article 14(3) (c) of the Covenant. He submits that since the start of the pre-trial investigation on 29 August 1994 and the decision of the Supreme Court of 25 June 2013, he was under "continuous emotional stress".

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

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

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

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

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

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

[15] The author informs that the decision of the Appellate Court convicting him for bribe was only based on the declaration of officer G.

[16] At the time of drafting, the author is in detention, however at the time of submission of the communication the author was in Russia.

State party's observations on admissibility and merits

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

4.2 The State party does not deny that circumstances of the present case fall into the scope of application of article 14 since that article encompasses the right to a fair hearing by a competent, independent, and impartial tribunal established by law. The State party recalls that it is generally for the courts of States parties to the Covenant to review facts and evidence, or the application of domestic legislation, in a particular case, unless it can be shown that such an evaluation or application was clearly arbitrary or amounted to a manifest error or denial of justice, or that the Court otherwise violated its obligation of independence and impartiality.[18]

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

4.4 As regards the author's complaints under article 14 (1) and (3) e, the State party would like to draw the Committee's attention to its views in *Van Meurs v. The Netherlands* (N215/1986) quoted by the author and would like to state that the case in reference is irrelevant to the situation of the author because it concerned the publicity of the hearing. The State party observes that the hearings in the author's case were aways public. The State party notes that the author was able to provide the domestic courts with his own version of events and point out any incoherence in M. [G.S.] statements or inconsistencies with the statements of the other witnesses heard at the trial. The testimony given during the pre-trial investigation by the witness was not the sole evidence on which the author's conviction was based. This testimony was corroborated by G.M. and other witnesses, also, contrary to the author's claims about his cross-examination of G.S. The State party confirms that the author was able to cross-examine G.S. in the presence of his lawyer. The mere fact that G.S. refused to answer some of the author's questions does not allow to conclude the testimony was obtained unlawfully.

4.5 In addition, the State party states that the author mentioned the presence of a secret agreement between the officers and G.S., however such an agreement was never confirmed. G.S. was released from detention on 30 August 2005, and other restrictive measures, taking of documents, obligation to register at a police station and written obligation not to leave his place of residence, were imposed on him. His release was based on the fact that all immediate investigative actions had been performed with him. Moreover, even after his release, he continued to give testimony incriminating the author, thus it cannot be stated that he gave his testimony solely because he wanted to be released from the pre-trial detention. The State party also notes that the author claims that under domestic law suspects have a right to lie, which is not true. A suspect has a right to testify, to remain silent or to refuse to give testimony

[17] The State party re-submitted their observations on A&M on 9 October 2019 as the Secretariat never received it.

[18] General Comments N32.

[19] Raihman v Latvia (N 1621/2007).

about his own criminal act, to provide important documents and items as per the Criminal code of conduct. Even though it is established that a witness has to give veracious testimony and responsibility for false testimony is established in the Criminal code, it does not mean that a suspect has a right to lie. The State party also emphasizes that G.S. was questioned both as a suspect and as a witness where he confirmed that it was the author who had shot and stabbed R.A. and Z.V .

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

4.7 While the protection of the confidentiality of communication is important, there is also a need for State parties to take effective measures for the prevention and investigation of criminal offences.[20] Thus, no absolute right to confer at any time with one's counsel without any restriction exists and it is important to assess whether the trial as a whole in a specific situation was fair.

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

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

4.10 The State party also notes the author's lawyer complaint to the Lukiskes Remand prison where it was stated that the lawyer could not complain to the Police Department because the officers of Lukiskes Remand prison did not participate in his meetings with the author. The State party notes that the author's lawyer did not properly submit such complaint. In that connection, the State party would like to note that there is a possibility to submit a claim for damages before the administrative courts under article 6.271 or 6.272 of the Civil Code. Also, the administrative Court can oblige an authority or an officer to act in case of omission or delays in carrying out the actions. The case-law of administrative courts shows that these kinds of complaint are examined by administrative courts. If the author or his lawyer thought that the replies were unsatisfactory or inconclusive or that there was no reply at all, they could have complained about that. They only complained to a Prosecutor in charge of the case, to Lukiskes Remand Prison and to the Police Office of the Trakai Region. No complaint was submitted to the administrative courts, which could have resulted in the obligation for the authorities to act in a certain manner or in compensation of damages. The State party therefore considers that this complain is inadmissible because of non-exhaustion of domestic remedies.

4.11 Moreover, the author's lawyer only asked to add the complaints of his client and himself about the lack of privacy of their communication to the case during the fresh examination of the case at the Court of appeal, not before. The Court of appeal decided to add these documents to the case material and did not find that the evidence was acquired

[20] Van Hulst v. The Netherlands 903/2000.

unlawfully or that the author's right to fair trial as a whole, including his right to defence as one of the aspects of the right to fair trial, was breached.

4.12 The State party recalls also the Committee's decision *G.J. v. Lithuania* (1894/2009) where the author was also suspected of murder and alleged that he was interrogated in the absence of his lawyer and that the investigation officer attempted to force him to confess his guilt. In that case, which is similar to the present one, the Committee held that the author actually never confessed guilt and thus his claim was insufficiently substantiated. The State party is of the opinion that a similar position should be taken for the present case given the similarities.

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

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

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

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

4.17 The State party notes that there is an effective domestic remedy in case of excessively long proceedings in Lithuania. The damage caused by the lengthy proceedings has to be compensated for under articles 6.272 of the Civil Code and the possibility to claim damages for the unreasonable length of proceedings has been and continues to be developed in the case-law of both the general and administrative courts. The European Court of Human Rights has acknowledged that as of 6 February 2007, claims for damages under article 6.272 of the Civil Code have become an effective domestic remedy in the cases concerning the length of proceedings.[21] In that connection, the author could have applied to the domestic courts

[21] See Savickas and Others v. Lithuania N 66365/09 and 5 others, 15 October 2013.

claiming excessive length of proceedings and asked for compensation, which would have been an effective remedy in his situation.

4.18 Thus, it is the State party's view that the author has failed to duly exhaust all domestic remedies and therefore the national authorities were precluded from a possibility to assess the author's allegations in this regard and award him compensation. The Committee has already found a similar complaint against Lithuania inadmissible because the person at issue had failed to pursue a civil claim for the length of proceedings.[22] Thus, this part of the communication should be declared inadmissible for non-exhaustion of domestic remedies under article 5(2) (b) of the Optional Protocol to the Covenant.

4.19 Should the Committee consider this claim admissible, the State party would like to emphasize that the determination of undue delay of the proceedings depends on the circumstances and complexity of the case.[23] The State party also considers that it is reasonable to assess in the circumstances of each case, the complexity of the case, the conduct of the accused and the manner in which the matter was dealt with by the administrative and judicial authorities[24]. The European Court for Human Rights also held that the applicants' conduct constitutes an objective fact which cannot be attributed to the respondent State and must be taken into account in determining whether or not the length of the proceedings exceeds what is reasonable[25]. Also, the Court held that when an accused person flees from a State which adheres to the principle of the rule of law, it may be presumed that he is not entitled to complain of the unreasonable duration of proceedings after he has fled, unless he can provide sufficient reasons to rebut this presumption.[26]

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

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

4.22 Although it was ordered by the Court to arrest the author on 30 June 2005, he was only arrested on 17 March 2006 and only because he absconded and could not be found. In

[22] T.J. v. Lithuania 1911/2009.

[23] General Comments N° 32 and Committee's view in Wolf v Panama (289/88, Stephens v Jamaica 273/89.

[24] General comments N°32 and ECtHR Pelissier and Sassi v. France N25444/94 §67, 25 March 1999, Pedersen and Baadsgaard v. Denmark N 49017/99 §45, 17 December 2004.

[25] Sociedad de Construcçôes Martins & Viera, Lda. And others v. Portugal N° 56637/10 and 4 others 48, 30 Ocotber 2017.

[26] Vayiç v. Turkey n18078/02 §44, 20 June 2006.

that connection, the State party maintains that a person cannot rely on a period spent as fugitive, during which he sought to avoid being brought to justice in his own country and claim that the length of certain proceedings was excessive. Thus, it can be stated that the author's conduct had protracted the investigation and, as he fled abroad, international legal assistance had to be sought.

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

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

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

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

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

4.28 It should also be noted that before the final judgement of the Supreme Court was adopted, the author absconded, and it took the authorities until 2019 to return him to Lithuania for the purpose of serving his sentence. Indeed, on 6 December 2012, the Kaunas Regional Court sent the judgement convicting the author to the Marijampole police, so that it could be executed. However, on 11 December 2012, the Police established that the author had absconded to avoid serving his sentence. The same day, a national and international search was announced. On 26 February 2013, the Lithuanian authorities issued a European Arrest Warrant in respect of the author. On 20 February 2019, he was transferred to Lithuania and is currently serving his sentence in Vilnius Correctional Facility.

4.29 Finally, the State party would like to draw the attention of the Committee to the case of the ECtHR Akeliene v. Lithuania (N 54917/13), 16 October 2018, which concerned the complaint of R.A's mother that the criminal proceedings relating to her son's murder had been too lengthy and ineffective. In that case, the Court did not find a procedural violation of article 2 of the Convention (right to life) and it decided that the process in the murder case had not been excessively lengthy.

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

Author's comments on the State party's observations

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

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

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

5.4 Referring to the Committee's decision in the case *G.J. v Lithuania* (N 1894/2009)[27] mentioned by the State party, the author considers that this case is not relevant to the circumstances of his own case as facts and proceedings were different.

5.5 On the attempt to bribe the investigator, the author draws the Committee's attention to the transcript of the conversation of 22 March 2006 in which the author admitted he bribed the police officer. The author considers that this transcript should not be taken into account as it was a conversation between detainees. Conversations between inmates in a prison environment cannot be taken literally as they are taking place in a specific context outside of real world and reality. In addition, the transcript of the conversation provided by the State party is just an erratic idea from the whole conversation that has been taken out of context.

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

5.7 The author explains that in case of premeditated murder charges, the statute of limitation was of 10 years since the day of the crime. Therefore, the timeline for his prosecution expired on 19 April 2004. In that regard, the pre-trial investigation needed a new event that would potentially solve the issue of the time limit and thus would facilitate both the extension of the time for a pre-trial investigation and the author's time of custody.

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

[27] Para 4.15.

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

5.10 The author also raised additional point in his comments related to the judgement of the Court of Cassation and the independence of the judge. According to the author, the speaker in the Chamber of judges of the Supreme Court of Lithuania that passed the order on 5 July was the same judge from the Supreme Court who was the chairman of the impeachment procedure against Rolandas Paksas, President of Lithuania,[28] as a result of which Rolandas Paksas was removed from the office by the decision of the Seimas (Parliament) of 6 April 2004. The author indicates that he was an active member of the same political party as the President of Lithuania, who was removed from office by way of impeachment. Such coincidence of circumstances, poses additional reasonable doubts in judicial impartiality, objectivity and fairness.

5.11 Regarding the pre-trial investigation, the author indicates that one of the investigators has been removed from the office of the head of Kaunas Regional General Police Headquarter and was the object of internal and pre-trial investigations.[29] Such coincidences increase his doubts about impartiality of the investigators, and the fairness and objectivity of the pre-trial investigation.

State party's additional observations

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

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

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

6.4 The State party would also like to note that the overview of the relevant factual circumstances in its observations was presented according to the circumstances established by the domestic authorities within the course of the investigation and examination of the criminal case at issue. It was not disputed by the author that namely those circumstances were established and assessed in the entirety of the evidence material by the courts, however, aiming to challenge the fairness of the proceedings that resulted in his conviction he extensively submitted his own assessment and interpretation of factual circumstances presenting subjective considerations claiming that investigative authorities were seeking to "destroy" him and that the domestic courts ultimately misjudged the evidence.

6.5 In this regard, the State party recalls that the Committee is not the appellate Court, and it is beyond its competence to review findings of fact made by national tribunals or to determine whether national tribunals properly evaluated evidence submitted on appeal.[30] Therefore, the State party states that the majority of the comments submitted by the author should have been properly raised within the course of the domestic proceedings instead of

[28] Hearing took place on 5 and 6 April 2004.

[29] Inter alia, in regard to commitment of the criminal offence provided for in article 225 of the Criminal Code "bribing".

[30] See JK v Canada N 174/84 decision of 26 October 1984.

submitting them before the international body having no jurisdiction to overrule the imposed criminal liability.

Issues and proceedings before the Committee

Consideration of admissibility

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

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

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

7.4 The author also complained that during the proceedings the State party violated his rights under articles 14(1), (3) b and d of the Covenant, as he was not allowed to meet his lawyer and that he was forced to hold conversations with police officers in the absence of his lawyer. The Committee took notes of the State party's observations that from the moment he was informed about his status as a suspect, the right to have a lawyer was fully disclosed to the author and his lawyer only complained about the alleged lack of confidentiality during meetings with his client at the beginning of the author's pre-trial detention. Moreover, there was no exhaustion of domestic remedies, as required by article 5 (2) (b) of the Optional Protocol. The Committee recalls its jurisprudence in which it stated that although there is no obligation to exhaust domestic remedies if they have no chance of success, authors of communications must exercise due diligence in the pursuit of available remedies and that mere doubts or assumptions about their effectiveness do not absolve the authors from exhausting them.[31] The Committee notes the information provided by the State party listing available and effective domestic remedies in accordance with national legislation as well as relevant Committee's jurisprudence for similar cases. Therefore, the Committee considers it is precluded from examining the author's claims under articles 14 (1), (3) b and d for lack of exhaustion of domestic remedies, as required by article 5 (2) (b) of the Optional Protocol.

7.5 Relying on article 14(3) (c) of the Covenant, the author complained about the length of criminal proceedings against him and considers that his right to be tried without undue delay was violated by the State party. The Committee notes the observations provided by the State party on the reasons why the proceedings took 19 years, in particular the fact that the author tried to obstruct justice on several occasions and absconded twice the country as well

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

as observation that the author has failed to duly exhaust all domestic remedies and that the national authorities were precluded from a possibility to assess the author's allegations in this regard and award him compensation. The Committee has already found similar complaints against Lithuania inadmissible because the person at issue had failed to pursue a civil claim for the length of proceedings.[32] Thus, the Committee considers this part of the communication inadmissible for non-exhaustion of domestic remedies under article 5(2) (b) of the Optional Protocol to the Covenant.

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

7.7 Finally, the Committee notes the author's claim that his trial was not fair due to his political opinions (para 5.12). It considers that this claim is not sufficiently substantiated and declares it inadmissible.

8. The Committee therefore decides that:

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

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

---

[32] T.J. v. Lithuania 1911/2009, CCPR/C/107/D/1911/2009 para. 6.3.