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International Covenant on Civil and Political Rights

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Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2670/2015*, **

Communication submitted by:	Gintaras Jagminas (represented by counsel, Tomas Stanislovas)
Alleged victim:	The author
State party:	Lithuania
Date of communication:	5 February 2015 (initial submission)
Document references:	Decision taken pursuant to rule 97 of the Committee's rules of procedure (now rule 92), transmitted to the State party on 6 November 2015 (not issued in document form)
Date of adoption of Views:	24 July 2019
Subject matter:	Arbitrary dismissal of civil servant
Procedural issues:	Inadmissibility as manifestly ill-founded; level of substantiation of claims; exhaustion of domestic remedies; *ratione materiae*
Substantive issues:	Right to fair trial; equality of arms; presumption of innocence; right to have access to public service
Articles of the Covenant:	14 (1) and (2) and 25 (c)
Articles of the Optional Protocol:	2, 3 and 5 (2) (b)

* Adopted by the Committee at its 126th session (1–26 July 2019).

** The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Yadh Ben Achour, Ilze Brands Kehris, Arif Bulkan, Ahmed Amin Fathalla, Schuichi Furuya, Bamariam Koita, Duncan Laki Muhumuza, Photini Pazartzis, Hernán Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Yuval Shany, Hélène Tigroudja, Andreas Zimmermann and Gentian Zyberi.

GE.19-14070(E)

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1.1 The author of the communication is Gintaras Jagminas, a national of Lithuania born on 21 April 1971. He claims that the State party has violated his rights under articles 14 (1) and (2) and 25 (c) of the Covenant. The Optional Protocol entered into force for the State party on 20 February 1992. The author is represented by counsel.

1.2 On 6 January 2016, the State party submitted observations on the admissibility of the communication separate from its merits. On 13 July 2016, the Committee, acting through its Special Rapporteur on new communications and interim measures, decided, in accordance with rule 97 (2) of its rules of procedure (now rule 92 (5)), to examine the admissibility of the communication together with its merits.

The facts as presented by the author

2.1 On 27 April 2006, the author was appointed as head of the Padvarionys cordon of the State Border Guard Service. This function requires authorization to work with secret information. On 18 October 2006, the Minister of the Interior withdrew such authorization by Order No. 1V-395. By Order No. TE-390, dated 20 October 2006, the head of the State Border Guard Service dismissed the author from his position due to his loss of authorization, as decided by the Minister of the Interior. Neither of the orders set out any reason for the author's loss of authorization and dismissal.

2.2 On 14 December 2006, the author lodged a complaint against the orders before the Vilnius Regional Administrative Court, asking to be reinstated and paid damages. By its decision dated 23 August 2007, the Vilnius Regional Administrative Court dismissed the author's claim. The author lodged an appeal against the decision and, on 7 November 2008, the Lithuanian Supreme Administrative Court found in favour of the author and quashed the decision of the court of first instance. The author alleges that the appeal court annulled both orders on the basis that no grounds had been adduced for the author's removal from his position[1] and remitted the case to the court of first instance for a determination of damages suffered by the author. On 9 June 2009, the Vilnius Regional Administrative Court awarded compensation of €34,304 and reinstated the author to his previous position. This decision was appealed to the Supreme Administrative Court.

2.3 In the course of the appeal proceedings, the State Border Guard Service, upon the request of the Supreme Administrative Court to declassify the documents relevant to the author's case, submitted additional documents to the Court on 29 June 2010. The documents disclosed the ground for the author's dismissal, namely that he had been subjected to operational surveillance on account of several criminal allegations (the smuggling of contraband and the illegal transfer of persons across the State border). The author asserts that the note of the Deputy Prosecutor General of Lithuania, dated 8 February 2007 and declassified only on 29 June 2010, was the first document from which he gained knowledge that he had been under operational surveillance pursuant to an order of the Vilnius Regional Administrative Court on account of several criminal allegations against him.

2.4 On 4 October 2010, the Supreme Administrative Court established that, as it appeared from the information revealed to it, there indeed had been lawful grounds for the revocation of the author's authorization to have access to confidential information and for his dismissal under the relevant provisions of the Law on State Secrets and Official Secrets. Therefore, the Supreme Administrative Court set aside the decision of the Vilnius Regional Administrative Court and dismissed the claims of the author.

2.5 The author notes that he was never suspected of having committed a criminal offence, and no pretrial investigation or any court proceedings were initiated against him as a result of the surveillance he had been subjected to.

[1] Article 16 (2) of the Law on State Secrets and Official Secrets, effective at the time of the dismissal of the author, contains the list of grounds on which authorization may be refused. Such grounds also serve as the basis for the revocation of such authorization in accordance with article 18 (1) (4) of the same Act.

The complaint

3.1 The author claims that his rights under articles 14 (1) and (2) and 25 (c) of the Covenant have been violated. The author considers that the State party has violated not only the principle of equality of arms (since a substantial part of the evidence was not disclosed to the author), but also the presumption of innocence, as part of the general principle of a fair trial in civil proceedings. Furthermore, he submits that the right of equal access to public service under article 25 (c) of the Covenant encompasses the right not to be arbitrarily dismissed from public service, thus he argues that his right under the said provision has also been violated.

3.2 As regards his claim under article 14 (1) of the Covenant, the author submits that neither of the orders dated 18 and 20 October 2016 set out any reason for his dismissal, thus depriving him of the opportunity to contest the allegations against him. The author asserts that the note of the Deputy Prosecutor General of Lithuania, dated 8 February 2007, was the first document from which he learned that he had been under operational surveillance, and that such surveillance served as a ground for his dismissal. He further argues that the content of the said document is too vague, including the absence of any facts in relation to the criminal offences. Therefore, it does not allow him to understand the exact nature of the criminal allegations against him and to contest such allegations in his defence. He submits that had he been given the opportunity to present his arguments, he would have shown that the claims used against him had been fabricated by persons who did not appreciate him for personal reasons. Accordingly, the Supreme Administrative Court's decision finding the withdrawal of the author's authorization and his subsequent dismissal lawful on the basis of classified data the author was not granted access to, as well as the Court overlooking the fact that the author was not aware of the nature of the information collected during the operational surveillance conducted against him and could thus not contest the allegations, violated the author's right to defence and the principle of equality of arms within the meaning of article 14 (1) of the Covenant.

3.3 As regards his claim under article 14 (2) of the Covenant, the author argues that, under the relevant laws of Lithuania, the withdrawal of the authorization to have access to secret information and the subsequent dismissal from a position requiring such authorization can occur merely on the ground that someone had been subjected to operational surveillance. However, as operational surveillance precedes the first phase of criminal proceedings, when someone is officially suspected of having committed a criminal offence,[2] the author notes that, as his case also shows, the mere belief, and not even an official suspicion, of committing a criminal offence constitutes a ground for the withdrawal of authorization to work with confidential information and for subsequent dismissal. Thus, ordering his dismissal as if he were guilty, despite the absence of any official charge or suspicion, any pretrial investigation or conviction, violates the principle of the presumption of innocence. He adds that, while acknowledging that article 14 (2) is not applicable to civil proceedings, the author claims that the protection afforded by the principle of the presumption of innocence can be understood as being part of the general right to a fair trial under article 14 (1) of the Covenant.

3.4 As regards his claim under article 25 (c) of the Covenant, the author argues that article 18 (1) (4), taken together with article 16 (2), of the Law on State Secrets and Official Secrets provides, in categorical terms, that the operational surveillance of a public servant shall result in his or her dismissal from office. The cited regulation leaves no room for discretion by the authorities, which is contrary to article 25 (c) of the Covenant. The author further notes that the Lithuanian Constitutional Court also examined this issue and, by its decision dated 7 July 2011, ruled that the dismissal of a civil servant only on the basis of operational surveillance as prescribed for by the impugned provision of the law, ran counter to the Constitution of Lithuania. The said decision, however, does not have retroactive effect.

[2] The objective of operational surveillance is to establish whether there would be sufficient evidence to serve a notice of suspicion and launch a pretrial investigation against the person concerned.

State party's observations on admissibility

4.1 By a note verbale dated 6 January 2016, the State party requests the Committee to declare the communication inadmissible for non-exhaustion of domestic remedies under article 5 (2) (b) and for non-substantiation under article 2 of the Optional Protocol.

As regards the author's claims under article 14 (1) of the Covenant

4.2 As regards the author's claims under article 14 (1) of the Covenant, the State party submits that, as indicated in the Supreme Administrative Court's decision dated 4 October 2010, the author was entitled to lodge a complaint before the administrative disputes commission or any other institution competent to carry out a preliminary extrajudicial examination of such a dispute. However, the author did not avail himself of this legal avenue and therefore his communication should be declared inadmissible for non-exhaustion of domestic remedies pursuant to article 5 (2) (b) of the Optional Protocol.

4.3 As regards the issue of non-substantiation under the same article, the State party first contests the author's statement according to which the Supreme Administrative Court found in favour of the author by its first decision dated 7 November 2008. The State party indicates that the Supreme Administrative Court considered it was necessary to collect additional evidence in order to allow the Court to adjudicate on the case and therefore remitted the case to the court of first instance. Furthermore, referring to the final judgment of the Supreme Administrative Court, the State party argues that, contrary to the author's allegation that the final decision was based solely on classified information the author had no access to, the Supreme Administrative Court relied not only on classified data but also on information that had been declassified and was available to the author. The declassified letter, dated 24 August 2006, of the State Border Guard Service specified the legal ground for the revocation of the author's authorization to have access to secret information since a reference was made to article 16 (2) (13) of the Law on State Secrets and Official Secrets. The extract of the declassified transcript of the hearing of the Central Special Experts Commission dated 7 September 2006 further indicates that "having evaluated the information received … that the operational units possess information about certain circumstances related to the [author], in accordance with article 16 (6) of the Law on State Secrets and Official Secrets … a repeated verification of the candidacy of the [author] was initiated". Besides, in its declassified letter of 8 February 2007, the Prosecutor General's Office points out that the operational surveillance was initiated after having received information that the author "possibly abuses his office, cooperates in the performance of contraband and illegal transportation of persons across the border". Therefore, the State party argues that, due to the declassification of these documents upon the request of the Supreme Administrative Court, the author became aware of the nature of the operational surveillance carried out against him. In that regard, the State party further highlights that the Supreme Administrative Court, referring to the jurisprudence of the European Court of Human Rights and the Constitutional Court of Lithuania, has held on many occasions that relying exclusively on classified data that are not accessible to one of the parties in court proceedings entails the unlawfulness of the contested court decision.[3] The Supreme Administrative Court also noted that, even if the confidentiality of certain information is at stake, a fair balance must be struck between the competing public and individuals interests. The State party notes that these principles have been consistently followed by the Supreme Administrative Court in numerous decisions.[4]

4.4 The State party also recalls the Committee's general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial (para. 26) establishing that it is generally for the courts of States parties to the Covenant to review facts and evidence, or

[3] The State party refers to the following judgments of the European Court of Human Rights, *Guliyev v. Lithuania* (application No. 10425/03), 16 December 2008; *Pocius v. Lithuania* (application No. 35601/04), 6 July 2010; and *Užukauskas v. Lithuania* (application No. 16965/04), 6 July 2010. See also the decision of the Constitutional Court of Lithuania on State secrets and official secrets in case No. 7/04-8/04 delivered on 15 May 2007.

[4] See the decisions of the Supreme Administrative Court Nos. A-469-741/2207, A-822-326/2209, A-143-266/2011, A-556-57/2011, A-662-2595/2012, A-520-2266/2012, A-1105-756/2015.

the application of domestic legislation, in a particular case, unless it can be shown that such 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. The State party argues that the author's claims relate mainly to the assessment of facts and evidence by the national courts, and recalls that the State party is in a better position to evaluate the facts and evidence in the present case. Moreover, the domestic courts conducted a thorough analysis of the author's complaint in two sets of proceedings, which were rejected. In addition, the author's repeated requests for the reopening of the administrative proceedings have also been duly examined by the Supreme Administrative Court. However, in the absence of any grounds allowing for retrial, these requests were also dismissed. The State party maintains that the Committee should not act as a "fourth instance court" and review the domestic courts' assessment. In addition, the State party argues that, while article 14 (1) of the Covenant may be interpreted as obliging courts to give reasons for their decisions, it cannot be interpreted as requiring a detailed answer to every argument advanced by the complainant. The State party notes in that regard that, as the case file testifies, there is no evidence to suggest that the author's allegations were not addressed by the Supreme Administrative Court.

4.5 The State party also notes that the author submitted applications to the European Court of Human Rights that were found inadmissible for being manifestly ill-founded. In spite of the limited reasoning provided by the Court, the State party argues that one may nevertheless presume that they found that the author's claims were not sufficiently substantiated and that he wished to use international tribunals as courts of fourth instance.

4.6 In the light of the above, the State party is of the view that the Supreme Administrative Court, by collecting additional evidence at its own initiative and by requesting the competent authorities to declassify them, remedied the omission of the first instance court and reached its final decision relying on the entirety of evidence containing both classified and non-classified information obtained in the case. Therefore, the State party concludes that the author's claims as regards the alleged unfairness of the trial, including his claims related to the alleged breach of the principle of equality of arms and the right to defence, are unsubstantiated and should be declared inadmissible pursuant to article 2 of the Optional Protocol.

As regards the author's claims under article 14 (2) of the Covenant

4.7 As regards the author's claims under article 14 (2) of the Covenant, the State party submits that the relevant laws of Lithuania safeguard the presumption of innocence.[5] However, the author failed to raise the issue of the alleged infringement of the presumption of innocence on any occasions before the domestic courts. Therefore, the author's claims under article 14 (2) should be declared inadmissible for non-exhaustion of domestic remedies pursuant to article 5 (2) (b) of the Optional Protocol.

4.8 As regards the issue of non-substantiation under article 14 (2) of the Covenant, the State party submits that article 16 (1) (4) of the Law on State Secrets and Official Secrets provides that an authorization to have access to secret information can be issued provided that no doubt arises as to the person's reliability or his loyalty to the State of Lithuania. As it appears from the decision dated 7 July 2011 of the Constitutional Court, it is not only a person's guilt of a criminal offence established in accordance with the procedure prescribed by law that may raise doubts as to his or her reliability and loyalty. Other factors, such as information on potential security threats, personal qualities, activities, dishonesty, disloyalty, unreliability or negligence, may also be relevant for the assessment. The absence of a final court judgment establishing the criminal liability of a given person does not mean that a person seeking to hold office requiring access to secret information necessarily enjoys the trust of the State. The State party argues that, having regard to these considerations, the operational surveillance carried out in respect of the author was in and of itself sufficient to question his reliability under the respective law. Therefore, the withdrawal of the author's authorization to have access to secret information and his subsequent dismissal from his position did not depend on the guilt of the author. In other

[5] See article 31 of the Constitution and article 44 of the Code of Criminal Procedure.

words, he was not presumed guilty in respect of the criminal allegations against him. Consequently, the domestic courts, when examining the lawfulness of the administrative decisions, did not have to deal with the question of his guilt or innocence either as this was not a prerequisite for the author's dismissal; the mere fact of his operational surveillance constituted sufficient ground for his dismissal, irrespective of whether such surveillance could eventually lead to establishing a suspicion or, later on, the criminal liability of the author in respect of the criminal allegations. Therefore, the State party concludes that the author's claim that he was arbitrarily dismissed from his position on the basis of a presumption of guilt and without carrying out an official pretrial investigation and court proceedings against him is not sufficiently substantiated and is inadmissible pursuant to article 2 of the Optional Protocol.

As regards the author's claims under article 25 (c) of the Covenant

4.9 As regards the author's claims under article 25 (c) of the Covenant, the State party recalls that article 25 (c) provides for the right of citizens to have access, on general terms of equality, to public service. However, article 25 (c) does not guarantee that every citizen can obtain or retain employment in public service. The State party argues that the author did not claim or dispute that the criteria for revoking his authorization and his subsequent dismissal were in any way discriminatory. The relevant provision applies to anyone in a similar situation. Thus, the State party concludes that the author has failed to substantiate his claims under article 25 (c), which should be rejected pursuant to article 2 of the Optional Protocol.

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

5.1 On 10 February 2016, the author submitted his comments on the State party's observations on admissibility. As regards the State party's statement concerning the non-exhaustion of domestic remedies, the author submits that the extrajudicial examination of disputes should not be deemed an effective remedy to substitute for the judicial avenue pursued by him. The author further disputes the State party's statement that he wishes to challenge the assessment of facts and evidence by the domestic courts. He explains that not having access to documents containing classified information used against him is a matter of procedural equality, which was violated in the course of domestic proceedings. He maintains that he did not have access to substantial data in connection with his operational surveillance, which constituted the basis for his dismissal, and therefore the principle of equality of arms as provided for in article 14 (1) has been infringed.

5.2 As regards the alleged breach of the presumption of innocence, he maintains that all doubts about his reliability should have been dispelled at a certain point as the criminal allegations brought against him could not be proved. Accordingly, he was punished for unproven allegations and, as a result, the presumption of innocence was violated.

5.3 The author submits that he primarily claims a violation of the principle of the presumption of innocence and he only alleges a violation of article 25 (c) as a subsidiary complaint for having been arbitrarily dismissed from his position, which he still maintains was the case.

Additional submissions

From the State party

6.1 In a subsequent note verbale dated 9 May 2016, the State party reiterates its arguments of 6 January 2016. In addition, the State party submits that the author's claims are incompatible with the provisions of the Covenant pursuant to article 3 of its Optional Protocol. The State party also submits that, should the Committee examine the merits of the complaint, it should consider the State party's observations dated 6 January 2016 in respect of both the admissibility and merits of the author's claims and establish that there has been no violation of articles 14 (1) and (2) and 25 (c) of the Covenant for the reasons set out therein.

6.2 Considering that the Committee decided to examine the admissibility of the complaint together with its merits, on 16 November 2016 the State party reiterated the inadmissibility of the communication and its arguments regarding the merits presented in its observations dated 6 January 2016.

From the author

6.3 On 26 January 2017, the author reiterated his previous arguments and also highlighted that the correct term to use was "operative observation" or "operational surveillance" instead of "operational investigation" as used by the State party. The aim of operational surveillance or surveillance is to gather proof to be able to serve a notice of suspicion to the person concerned and then launch a pretrial investigation. He adds that in his case the operational surveillance was "fruitless" as he had never been served with a notice of suspicion within the meaning of article 21 of the Code of Criminal Procedure.

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 article 97 of its rules of procedure, whether the communication is admissible under the Optional Protocol to the Covenant.

7.2 The Committee notes that the author has brought similar claims to the European Court of Human Rights, which declared them inadmissible on 25 September 2012 and 26 September 2013. It recalls that the concept of "the same matter" within the meaning of article 5 (2) (a) of the Optional Protocol has to be understood as including the same claim concerning the same individual before another international body, while the prohibition in this paragraph relates to the same matter being under concurrent examination. Even if the present communication has been submitted by the same individual to the European Court of Human Rights, it has already been determined by that body. Furthermore, the Committee notes that the State party has not entered a reservation to article 5 (2) (a) to preclude the Committee from examining communications that have been previously considered by another body. Accordingly, it has ascertained, as required under article 5 (2) (a) of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

7.3 As regards the author's claims under article 14 (1) that the State party has violated his right to equality before the courts and tribunals encompassing the principle of equality of arms, the Committee recalls that the right to a fair and public hearing by a competent, independent and impartial tribunal is guaranteed in cases regarding the determination of criminal charges against individuals or of their rights and obligations in a suit at law. The Committee has already established in cases concerning the dismissal of civil servants that, whenever a judicial body is entrusted with the task of deciding on the imposition of disciplinary measures, it must respect the guarantee of equality of all persons before the courts.[6] In the present case, the Committee notes that the orders dated 18 and 20 October 2016 on the revocation of the author's authorization and his dismissal, respectively, were not reached by a tribunal. It must be noted, however, that these decisions were challenged in administrative court proceedings which, since there were no criminal proceedings against the author, were the only set of proceedings adjudicating on the rights that were at stake for the author and hence were decisive for the determination of his rights and obligations. The Committee notes nevertheless that the author's arguments in relation to the alleged infringement of equality of arms are centred upon the question of guilt on criminal charges. In this respect, the Committee finds particularly relevant the State party's argument that the withdrawal of the author's authorization to have access to secret information and his subsequent dismissal from his position did not depend on the guilt of the author. As regards the arguments of the author that it was only after the declassification of some of the documents in June 2010 that he finally gained access to the evidence used against him, the Committee observes the State party's statement that the Supreme Court of Lithuania

[6] See, e.g., *Bandaranayake v. Sri Lanka* (CCPR/C/93/D/1376/2005), para. 7.1.

collected additional evidence on its own initiative by requesting the competent authorities to declassify it. Then, a full review was conducted by the Supreme Administrative Court that reached its final decision relying on the entirety of evidence. The Committee also takes note of the State party's argument that the Supreme Administrative Court's relying on both classified and declassified evidence complies also with the requirements of the European Court of Human Rights established in similar cases. In such circumstances, the Committee considers that the Supreme Administrative Court, by collecting additional evidence on its own initiative and by requesting the competent authorities to declassify it, remedied the omission of the court of first instance. In the light of these considerations, and in the absence of any other information of pertinence on file, the Committee considers that part of the communication to be inadmissible under articles 2 and 3 of the Optional Protocol.

7.4 As regards the author's claims under article 14 (2) of the Covenant, the Committee recalls that the presumption of innocence is guaranteed in cases regarding the determination of criminal charges against individuals. In the present case, the Committee notes that the outcome of the proceedings was not to charge the author with a "criminal offence" and to hold him "guilty of a criminal offence" within the meaning of article 14 (2) of the Covenant. Accordingly, the author's claim under article 14 (2) of the Covenant is incompatible *ratione materiae* with the provisions of the Covenant and is inadmissible under article 3 of the Optional Protocol.

7.5 The Committee notes the State party's challenge to admissibility on the grounds that the author's claims under article 25 (c) of the Covenant are unsubstantiated. However, the Committee considers that, for the purposes of admissibility, the author has adequately explained the reasons why his dismissal as a public servant would amount to a breach of the right to have access to public service contrary to article 25 (c) of the Covenant. Therefore, the Committee declares the communication admissible insofar as it raises issues under article 25 (c) and proceeds to its consideration of the merits.

Consideration of the merits

8.1 The Committee has considered the communication in the light of all the information submitted to it by the parties, in accordance with article 5 (1) of the Optional Protocol.

8.2 As regards the author's claims under article 25 (c) of the Covenant, the issue before the Committee is whether the author's dismissal on the ground that he was subjected to operational surveillance amounts to a violation of the Covenant in the light of the particular circumstances of the case. The Committee observes that article 25 (c) of the Covenant confers a right to have access, on general terms of equality, to public service, and recalls its jurisprudence according to which, in order to ensure access on general terms of equality, not only the criteria but also the procedures for appointment, promotion, suspension and dismissal must be objective and reasonable. A procedure is not objective or reasonable if it does not respect the requirements of basic procedural fairness. The Committee also considers that the right of equal access to public service includes the right not to be arbitrarily dismissed from public service.[7]

8.3 As to the issue of reasonableness under article 25 (c), the Committee is mindful of the author's argument that article 18 (1) (4) of the Law on State Secrets and Official Secrets provides in categorical terms that the operational surveillance of a public servant shall result in his or her dismissal from office. The contested regulation does not require the authorities to establish the criminal liability of the person concerned and, once the operational surveillance has been established, the law leaves no room for discretion by the authorities in terms of the measures to be applied. The Committee takes note of the State party's counterargument in this respect claiming that the absence of a final court judgment establishing the criminal liability of the given person does not mean that a person seeking a position that requires access to secret information necessarily enjoys the trust of the State and that the authorized institutions of the State are precluded from having doubts regarding the reliability or loyalty of that person to the State of Lithuania. The Committee observes that the State party also submits that an individual's loyalty may be questioned not only on

[7] Ibid.

the basis of a criminal conviction but as a result of acquiring information on the person's unreliability or negligence as regards potential security threats. As regards the issue of objectivity under article 25 (c), the Committee notes the State party's argument that article 18 (1) (4) of the Law on State Secrets and Official Secrets prescribing the withdrawal of the authorization to have access to secret information and subsequent dismissal on the ground of being subjected to operational surveillance is not discriminatory, nor has it been applied in a discriminative way in the present case. The contested provision would apply to anyone in a similar situation.

8.4 In its assessment, the Committee observes at the outset that, even if it did consider that article 18 (1) (4) of the Law on State Secrets and Official Secrets prescribing the contested interference on the ground of being subjected to operational surveillance was an objective criterion since it applies to any person in a similar situation without distinction, the real issue before the Committee is whether the said provision is reasonable and encompasses sufficient guarantees against arbitrary implementation. In this respect, the Committee deems that it is of the utmost importance that the contested provision allows for no discretion for the authorities to assess the significant circumstances of a particular case, such as the gravity of the offence or whether the allegations could be eventually proved in a court of law. In that respect, the Committee is mindful of the State party's argument that operational surveillance, without establishing criminal liability, may itself give rise to doubts as regards a person's reliability. Although the Committee does not contest this statement, it is concerned that the law does not allow the authorities to make an individual assessment of whether such doubts concerning the reliability of an individual are justified in a particular situation, namely it necessarily follows from the mere launching of operational surveillance. The Committee further notes that the contested provision does not permit any alternatives to dismissal in terms of the measures to be taken once it has been established that the concerned person is under operational surveillance and thus no individual assessment of the case is made. Besides, the law does not allow for any correction should the operational surveillance not disclose any irregularities or activities that could have indeed justified the surveillance of the person concerned. The Committee considers that, although the State party showed that the interference was prescribed by and in accordance with the provisions of the law, it failed to explain whether such interference was justified with special regard to the necessity and proportionality of the measure. At this juncture, the Committee notes that the Constitutional Court of Lithuania, by its decision dated 7 July 2011 and for the foregoing reasons, concluded that the law under scrutiny amounted to a disproportionate restriction on the right to have access to public service on an equal basis under the Constitution. There is, however, no information on file to suggest that, even if the relevant laws of Lithuania no longer allow for such restrictive measures, the author's grievances have been addressed as a result of this decision. The Committee further notes that the State party failed to demonstrate that there were any guarantees against the abuse of the impugned regulation that would preclude the possibility of launching secret surveillance of certain officials on an arbitrary basis and removing them from their positions without any reasonable justification.

8.5 For these reasons, the Committee finds that the author's dismissal, as prescribed by a law that lacked safeguards against arbitrariness combined with a procedure that could not have offered the author a realistic prospect to contest the ground for his dismissal, cannot be regarded as justified and thus reasonable in terms of the legitimate aim pursued and the requirement of proportionality. Therefore, the Committee considers that the State party failed to respect the author's right to have access, on general terms of equality, to public service. Consequently, there has been a violation of article 25 (c) of the Covenant.

9. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts before it disclose a violation by the State party of article 25 (c) of the Covenant.

10. Pursuant to article 2 (3) (a) of the Covenant, the State party is under an obligation to 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 take appropriate steps 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.

11. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant and to provide an effective remedy when it has been determined that a violation has occurred, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the present Views and to have them widely disseminated in the official language of the State party.