Distr.: General
7 August 2023

Original: English

Advance unedited version

Human Rights Committee

Decision adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communications No. 3198/2018*,**

Communication submitted by:	V. V. (represented by Mr. Stanislovas Tomas)
Alleged victim:	The author
State party:	Lithuania
Date of communication:	7 January 2017 (initial submission)
Document references:	Decision taken pursuant to rule 92 of the Committee's rules of procedure
Date of adoption of Views:	19 July 2023
Subject matter:	Fair trial
Procedural issues:	Abuse of right of submission; non-exhaustion of domestic remedies; lack of substantiation; rule 95 of the Committee's rules of procedure
Substantive issues:	Right to a fair trial
Articles of the Covenant:	7, 10(1), 14 (1) (3) d, e and g and 17 (1)
Articles of the Optional Protocol:	2, 3 and 5 (2) (b)

1.1 The author of the communication, dated 7 January 2017 (initial submission), is Mr. V. V., a Lithuanian citizen born in 1967. He claims that his rights under articles 7, 10(1), 14(1), 14(3)(d), 14(3)(e), 14(3)(g) and 17(1) of the International Covenant on Civil and Political Rights ("the Covenant") have been violated. Lithuania has signed and ratified the Optional Protocol No. 1 to the Covenant in 1991. The author is represented by counsel.

1.2 On 2 January 2021, the counsel requested protection measures under Rule 95 which were denied as non-substantiated.

Facts as submitted by the author

2.1 The author is the director of a company named UAB Tauvita. The authorities suspected the company of buying stolen cars. On 15 June 2012, the District Court of Klaipeda

* Adopted by the Committee at its 138th session (26 June-26 July 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, Carlos Gómez Martínez, Bacre Waly Ndiaye, Marcia V.J. Kran, Hernán Quezada Cabrera, José Manuel Santos Pais, Soh Changrok, Tijana Šurlan, Kobauyah Tchamdja Kpatcha, Koji Teraya, Hélène Tigroudja and Imeru Tamerat Yigezu.

City authorised the police to search the premises of the company, as well as some of the author's property, with the aim to recover a stolen car.[1]

2.2 On 15 June 2012, the search was carried out. However, the police officers mistakenly extended the search to premises not covered by the District Court order. Specifically, the outside kitchen was searched, and this was separate from the rest of the author's property according to the State registry records. Police officers seized a computer belonging to the author in this latter building that was not included in the search warrant.

2.3 The author was detained from 18 October 2012 to 31 October 2012. From 18 October 2012 to 22 October 2012 and on 30 October 2012, the author was detained at the Chief Police Commissariat of the Klaipeda District in a cell of 15.96 square metres, which he shared with three other inmates.[2] From 25 October 2012 to 29 October 2012, the author was detained at the Siauliai Remand Prison in a cell of 18.66 square metres, which he shared with eight other inmates.[3] The cell also had a table, 9 chairs, a food shelf, a wardrobe, a scrap-heap, a washstand, and open toilet which inmates were forced to use in front of each other. The cell walls were covered with fungus, the beds were full of parasitic insects, and there were rats of the "size of a cat". On 29 October 2012, the author was detained in a different cell in the Chief Police Commissariat of the Klaipeda District with a size of 14.15 square metres with two other inmates.[4] The cell included beds, a toilet, a table, and chairs. The author claims he was not allowed to receive conjugal visits.

2.4 On 22 October 2012, the author refused legal representation during an interrogation after the investigator put pressure on him to do so. He took this decision under duress due to degrading treatment and the constant pressure from the prosecution officers to confess. After refusing legal representation, the author provided self-accusatory evidence – namely, the password to his email address and laptop that was seized on 15 June 2012.

2.5 The Prosecution found a file containing a list of details for Audi A3, A4, and A6s, along with their prices. They then used this as evidence supporting the allegation that the author had sold these cars, resulting in a duty to pay 18,798.83 euros in VAT, calculated at a rate of 24.73%.[5]

2.6 During pre-trial investigation, three co-accused, employees of the company, made statements to investigation officers that a number of persons several times sold car details without VIN (Vehicule identification number) numbers to the company of the author. After giving those statements, the co-accused were released from detention and their procedural status varied from co-accused to witnesses.

2.7 On 2 April 2015, the District Court of Taurage acquitted the author and set aside all the charges against him.[6] According to the author, he was acquitted because the witnesses (formerly co-accused) retracted their initial statements while they were in detention.

2.8 The Prosecution appealed the acquittal, and, on 8 October 2015, the Klaipeda Regional Court reversed the District Court's judgement, and the author was convicted and found guilty of buying a stolen car and selling the details of Audi cars without entering the profit into the official records of UAB Tauvita to avoid paying 18,798.83 euros in VAT, under articles 220(1) and 222(1) of the *Criminal Code*. He was fined 7,000 euros. According to the author, the Klaipeda Regional Court based its decision on the statements given by the two witnesses (formerly co-accused) while they were in detention and disregarded their statements provided during the oral hearings.

[1] Case No. 30-1-00211-12. The search was in relation to the production building and completion building of the company, and the arc stock building, stock building, and apartment of the author.

[2] An average of 3.99 metres squared per inmate.

[3] An average of 2.07 metres squared per inmate.

[4] An average of 4.72 metres squared per inmate.

[5] The author claims that from 1 January 2008 to 31 December 2008, the VAT was 18%; from 1 January 2009 to 1 July 2012, the VAT was 19%; from 1 September 2009 to 1 July 2012, the VAT was 21%.

[6] No further details provided by the author, nor the decision in question.

2.9 The author filed a cassation appeal to the Lithuanian Supreme Court and on 16 November 2015, the Supreme Court found it inadmissible. The author filed a second cassation appeal that was declared inadmissible by the same Court on 15 January 2016.

Complaint

3.1 The author claims that his rights under articles 7, 10(1), 14(1), 14(3)(d), (e) and (g) and 17(1) of the Covenant have been violated.

3.2 The author claims that articles 7 and 10(1) of the Covenant have been violated by the inhuman conditions of his detention between 18 October and 31 October 2012. He states that the limited space and conditions in the cells, and the inability to receive conjugal visits constitute degrading treatment that does not respect the dignity of prisoners. The author did not complain about this situation since there was no practical way for Lithuanian courts to improve it: prisons in Lithuania face a general problem of overcrowding, and conjugal visits are not allowed under Lithuanian law.

3.3 He claims a violation of articles 14(1) and 17(1) of the Covenant since the search warrant issued by the District Court of Klaipeda City on 15 June 2012 did not extend to the outside kitchen where his laptop was found and that this constitutes a breach of his right to fair trial. The author claims that his request to call as witnesses, five other police officers who had participated in the search, was unreasonably denied. As the outside kitchen was part of the author's property, he claims this constituted an unlawful interference with his home.

3.4 The author claims that article 14(3)(d) of the Covenant was breached when he was forced to refuse legal representation on 22 October 2012 in so far as: i) the refusal was signed while he was subject to degrading treatment in the detention facility, ii) a lawyer was not present at the time of refusal, iii) the investigator initiated the refusal, and iv) his refusal was not diligently motivated.

3.5 The author considers that the refusal to hear the five additional witnesses, police officers present during the search, constitutes a violation of article 14(3)(e) of the Covenant. He further claims that, because the statements given by the two employees of the company while they were in detention were taken into account instead of the statements given by them during the oral hearings, this has precluded him from being able to cross-examine them. The author notes that when they made their first statements, the employees were co-accused and in detention whilst during the oral hearing, they were witnesses, and that, under the applicable law, "accused persons enjoy the right to lie to defend themselves but witnesses are obliged to tell the truth".

3.6 The author claims that article 14(3)(g) of the Covenant was violated when he was lured into providing self-accusatory evidence on 22 October 2012 after refusing legal representation. He submits that this evidence was given following the proposal of the investigator and that immediately after providing such information, the author was released.

State party's observations on admissibility and merits

4.1 By note verbale dated 7 January 2019, the State party submitted its observations on the admissibility and merits of the communication.

4.2 The State party contends that the author's claims under articles 7 and 10(1) of the Covenant must be declared inadmissible pursuant to articles 2 and 5§2 (b) of the Optional protocol to the ICCPR as the author failed to exhaust domestic remedies. Moreover, the author's allegations are non-substantiated as the author has not provided sufficiently factual and legal argumentation to substantiate his allegations that the conditions of his detention gave rise to the appearance of a violation under articles 7 and 10(1) of the Covenant. The author has never raised his claims about his conditions of detention with the Police or Prison department nor any other institution, nor has he brought them before domestic courts.

4.3 The State party indicates that the author failed to file a claim against the State in respect of the allegedly inhuman conditions of detention, in accordance with Article 30 of the Constitution as well as the Civil Code of the Republic of Lithuania valid from 1 July 2001 which provides for the right to get the redress for damages caused by the unlawful actions of institutions of public authority in accordance with article 6.271.

4.4 As far back as in 2008, a number of court decisions were issued in favour of prisoners, which recognised civil liability for damage caused by unlawful acts of state institutions, and which ordered to pay moral damages caused by violation of human rights. The Supreme Administrative Court of Lithuania has consistently held that the State must ensure that the conditions of detention are compatible with respect of human dignity, that the manner and method of execution of the measure do not subject him or her to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonments, his or her health and well-being are adequately secured.[7]

4.5 As regards the allegedly inadequate detention conditions, the State party notes that the Committee considers and applies the same criteria as the European Court of Human Rights. The Lithuanian administrative Court[8] in principle follows the criteria as those developed in the jurisprudence of the European Court of Human Rights in similar cases.

4.6 Furthermore, domestic courts do not apply the rule *affirmanti incumbit probati*[9]*o* in a very strict way but order the prison authorities to provide supplementary evidence[10] or interpret the existing evidence in the applicant's favour.[11]

4.7 The State party noted that the author was detained in Klaipeda Police Station for 10 non-consecutive days and in Siauliai remand Prison for four days. Following the Rules on the Inner Procedure of the Territorial Police Stations approved by the order of the Minister of the Interior N° 5-V-356 and the Lithuanian Hygiene Norm HN 76:2010, the author was supplied with food three times a day, adequate bedding, clothing, and hygiene facilities. The bed linen was changed once a week. Adequate shower installations were provided so that he could have a shower at least once a week, the cells were cleaned every day by the inmates with the provided cleaners and cleaning inventory. Once in a quarter the detention facilities organized the preventive disinfection, disinsectization, and disinfestation of the premises. At the facilities, the sanitary installations were adequate, clean and decent. The author had at least one hour of suitable exercise in the open air daily. Thus, the conditions of the author's detention met the requirements of the treatment of prisoners as set out in the United Nations Standards Minimum Rules for Treatment of Prisoners and did not give rise to the appearance of a violation under articles 7 and 10(1) of the Covenant.

4.8 As to family visits, the author has never addressed the administration of any detention facility regarding long-term visits, nor did he specifically request such visits. He just hypothetically stated that he had no right to long-term visits. In view the ECtHR case law, and the facts at stake, the author could not claim to be a victim of a violation of article 8 of the ECHR[12]. The State party further noted that under the domestic law, the prison administration does not have the obligation to organize ex officio long-term visits to the persons whose liberty is restricted. Such visits are only possible at the request of the person whose liberty is restricted and provided they are justified.

4.9 The State party also invokes the author's failure to claim compensation for damage before the administrative court due to the alleged difference in treatment on the ground of his status as a pre-trial detainee regarding the right to long-term visits which in the State party's view, proves that the applicant could have obtained relief at a national level for the alleged violations with no need to resort to international mechanisms.

[7] For example Cases N°A-556-345/2013, A-492-375/2013.

[8] For example Case A-146-320/2012 in connection with Kudla v. Poland N° 30210/96.

[9] The burden of proof is usually on the person who brings a claim in a dispute

[10] E.g. Vilnius Regional Administrative Court (case n°I-4753-580/2015) postponed the proceedings in order for the administration of the facility to provide additional information on the number of sleeping bends in the cell.

[11] E.g. Supreme Administrative Court (case N° A-188-442/2015) noted that the administration of the facility failed to provide the exact date on the number of inmates in the cells, thus, the chamber of judges interpreted the uncertainties in the applicant's favour acknowledging a violation of his rights under the domestic legislation on account of overcrowding for the whole period.

[12] Oskirko v: Lithuania N° 14411/16, 25 September 2018 §53-55.

4.10 In 2013, the European Court of Human Rights (ECtHR) adopted the judgment in case Varnas V. Lithuania[13] in which the Court found that by having restricted the applicant from receiving conjugal visits when detained on remand, the authorities failed to provide a reasonable and objective justification for the difference in treatment and thus acted in a discriminatory manner and, thus there has been a violation of article 14, in conjunction with article 8 of the ECHR. The State party acknowledges that in case of collision with domestic law, the provisions of the ECHR prevail over domestic legislation[14] and the domestic courts have established an effective compensatory domestic remedy in this regard.

4.11 Therefore, having regard to the case-law of domestic courts, the State party holds a position that the author had an opportunity to avail himself of an effective domestic remedy offering reasonable prospects of success compatibly with the practice of the Committee.[15] The existence of mere doubts as to the prospects of success of a particular remedy which is not absolutely futile, is not a valid reason for failing to exhaust the domestic remedies and this part of the complaint should be declared inadmissible due to non-exhaustion of effective domestic remedies under article 2(b) of the Optional Protocol to the Covenant.

4.12 With regard to his claims under art 14(1) and 17(1), the State party draws attention to the fact that the author had never complained before the domestic authorities during the pre-trial investigation and afterwards before the domestic criminal courts during the judicial proceedings about the alleged unlawfulness of the search of 15 June 2012 as a result of the building in which it was conducted.

4.13 The State party is also of the firm view that this part of the present communication is non-substantiated for the following reasons. Arbitrary or unlawful interference with the individual's home is prohibited under the Covenant. Under the jurisprudence of the Committee, the term "unlawful" means that no interference can take place except in cases envisaged by the law. The expression "arbitrary interference" is also relevant to the protection of the right provided for in article 14 of the Covenant. In the Committee's views, the expression can also extend to interference provided for under the law. The introduction of the concept of arbitrariness is intended to guarantee that even interference provided by law should be in accordance with the provisions, aims and objectives of the Covenant and should be, in any event, reasonable in the circumstances particular in which such interferences may be permitted. Searches of a person's home should be restricted to a search for necessary evidence and should not be allowed to amount to harassment.[16]

4.14 The search in issue was conducted in line with domestic law requirements[17] and well-established case-law of the domestic courts and it was sought to gather relevant evidence in order to establish whether the criminal act had been committed and who was guilty of it. The accused person was in fact using the building as an auxiliary building in respect of the main building, the limits of the search as established in the decision of the pre-trial investigation judge are not trespassed and such the search is lawful. Assessing whether the search carried out in the auxiliary building was lawful, the domestic courts have assessed the following criteria: whether the representative (the person who has connection with the place wherein the search is carried out) was participating during the search also in the auxiliary building in issue, whether the representative before the search was familiarised with the decision of the pre-trial investigation judge; whether the representative signing the minutes of the search had any complaint with regards to the search; whether the representative or the accused himself ever complained about the search; whether the accused submitted any complaints during his/her familiarisation with the materials of the pre-trial investigation; whether the things relevant for the investigation that were found and seized during the search appertained to the accused; whether the representative or the accused possessed the keys of the building door. According to the search minutes, the search was conducted, inter alia, in presence of the manager of the company -who was aware of his right to participate in all the acts of the officer, to see all the things and the documents being seized as well as to appeal with regards

[13] Application N° 42615/06.
[14] See the decision of the Supreme Administrative Court of 18 April 2008 A-248-58/08.
[15] E.g. Lukyanchik v Belarus Communication N° 1392/2005, 3 December 2009 §7.4.
[16] General comment N°16: article 17.
[17] Article 145 of the Criminal Code of procedure (CCP).

to these acts. The manager was also familiarized with the decision of the pre-trial investigation judge, and he also signed the minutes of the search and the confirmation that he received a copy of the minutes. As it transpired from the material of the case, neither the manager of the company, nor the employees ever submitted any complaints or requests about the allegedly improper location of the search as of 15 June 2012. Therefore, domestic courts find that the grounds for the search and the procedure within which the search was conducted as established under article 145 of the CCP were not breached.

4.15 Referring to the complaint of the author who states that the laptop was found in the building registry number 7796-4001-7129, the State party wishes to note that the search minutes did not mention that registration number and thus the State party is unable to agree with the author that the search was carried out in building registry number 7796-4001-7129. However, what can be seen from the search minutes as of 15 June 2012 is that the search was carried out in the auxiliary building to the main building that belonged to the company "Tauvita". In any case, the State party wishes to specify that both buildings N°7796-4001-7029 and the building N° 7796-4001-7129 were situated on the territory of the company "Tauvita".

4.16 As the author himself indicated during his additional questioning of 24 October 2012,[18] the laptop found in the auxiliary building belonged to the company (and he was using it)[19], therefore that auxiliary building was used for the purposes of the company by the director of the company. Finally, the fact that the auxiliary building was used for the purposes of the company is also demonstrated by the fact that an employee certificate of V. S. was found and seized in that building.

4.17 In the view of the State party, the author's allegations about the call of five[20] witnesses should be rejected as non-substantiated. The State party recalls that as in his reply to the prosecutor's appeal, the author contested the fact that he was aware that the cars had been stolen and stated that not all the car documents had been seized by the officials during the search on 15 June 2012 and the "things were thrown, broken, it was not searched for the things that were necessary to search". During the hearing of the Klaipeda Regional Court on 10 September 2015, the prosecutor asked the Court to question the witness who had been participating in the search and who could provide clarification as regards to documents seized. On the basis of the aforementioned court hearing of 10 September 2015, one may make the conclusion that the author misleads the Committee by mischaracterizing the facts.

4.18 The State party recalls that under the jurisprudence of the Committee, article 14§3 (e) guarantees the right of accused persons to examine the witnesses against them and to obtain the attendance and examination of witnesses on their behalf under the same conditions as witnesses against them. However, the Committee recognizes that the accused does not have an unlimited right to obtain the attendance of any witness requested by him/her or his/her counsel, the accused has only a right to have witnesses admitted that are relevant for the defence, and to be given a proper opportunity to question and challenge witnesses against them at some stage of the proceedings. It is primarily for the domestic legislature of States parties to determine the admissibility of evidence and how their courts assess it.[21] In this connection, the State party wishes to specify that the panel of the Klaipeda Regional Court decided to dismiss the request of the author's defence lawyer to question the other witnesses (the three employees of the author) as they had already been questioned both during the pre-trial investigation and the court hearing in the district court and both the author and his advocate were participating in that court hearing. In addition, one of the employees, stated in the court hearing that he had been drunk during the search and does not remember anything. Accordingly, the State party notes that his testimony would be of no help to the author.

[18] He was represented by Lawyer M. Kepenis.

[19] The author admitted that the program "Management-Storehouse: Shop" in this computer was used only by him. The purpose of the program is to know what the prices of the parts of the cars in the market are, for how much the author could buy and sell and could print out the barcodes of the parts of the motor vehicles.

[20] The number of witnesses was actually three and the author made a mistake in the initial complaint.

[21] General Comment N°32 Article 14: Right to equality before courts and tribunals and to a fair trial. Adopted from 9 to 27 July 2007, Ninetieth session, para 39.

Therefore, one may conclude that the refusal of the Regional Court to call three employees of the author was reasonable having regard to the necessity to gather information from different sources, namely, the three employees of the author were already questioned as regards the circumstances, inter alia related to the search of 15 June 2012 and it was only the testimony of the officers who carried out the search that was needed for the comprehensive assessment of the relevant issues contested before the court.

4.19 The State party recalls that the Supreme Court analysed the author's complaint as regards the refusal of the Regional Court to call the employees to witness repeatedly. The Supreme Court upheld the position of the Regional Court finding that the appellate Court had renewed the examination of evidence, assessed the witness statements given both during the pre-trial investigation and before the first-instance court and made respective conclusions.

4.20 Under domestic law, the Supreme Court checks whether while assessing the evidence and establishing the circumstances relevant for the case, the lower domestic courts did not breach criminal procedure law, whether the domestic courts on the basis of the established circumstances of the case properly applied the criminal law.[22] Therefore, by dismissing the cassation appeal of the defence lawyer of the author, the Supreme Court explicitly found no fundamental violations of the criminal law.

4.21 Last, as it was stressed in the decision of the Supreme Court, the author contests the courts' assessment of evidence, has his own interpretation of the testimony of the witnesses and reaches different conclusions. The State party notes 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 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. In the present case, no arbitrariness or denial of justice on the part of the domestic courts can be found.

4.22 Therefore, the State party is of the view that the present complaint should be dismissed as manifestly unsubstantiated pursuant to article 2 of the Optional Protocol of the Covenant.

4.23 As regards the allegations under Articles 14(1) and 14 (3) (e) of the Covenant, the assessment of the testimony of the witnesses while being the suspects in the other pre-trial investigation, the author complains that during the pre-trial investigation, three witnesses gave statements to a pre-trial investigation officer accusing the author of knowingly buying details of stolen cars when they were co-accused and changed their testimonies later. The Court relied on the initial statements. Contrary to the statement of the author, the three witnesses were never suspected of being the author's accomplices and were therefore never under any coercion. The State party is thus of the view that the present complaint should be dismissed as manifestly unsubstantiated pursuant to article 2 of the optional protocol of the ICCPR.

4.24 As regards the allegations that the author's refusal to be assisted by a defence lawyer during the criminal interrogation on 22 October 2012, breached article 14 (3) (d), the State party states that the author has not exhausted the domestic remedies as he never complained before the domestic authorities about any procedural violations done while waiving the right to be defended by the lawyer, nor he even complained about any unlawfulness of the evidence received during his questioning in issue.[23]

4.25 The State party recalls the Jurisprudence of the Committee, in its General observation N°32, para 37 and indicates that similarly, part 6 of article 31 of the Constitution[24] and Case law state that" the right to defence is inter alia guaranteed by providing the suspect with the right to defend oneself in person without a defence lawyer, or by guaranteeing the right to be

[22] Decision of the Supreme Court of Lithuania of 3 May 2018 in criminal case N° 2K-152-699/2018 http://liteko.teismai.lt/viesasprendimupaieska/tekstas.aspx?id=35cd90f7-72aa-4934-a7c7-11df1b3385da.

[23] The State party refers to examples of case-law of the domestic courts which examined the waiver of the suspect of his right to be defended, see the review of the Supreme Court on application of the norms of the CCP regulating the rights of a suspect and accused : https://www.lat.lt/lat-praktika/teismu-praktikos-apzvalgos/baudziamuju-bylu-apzvalgos/->.

[24] http://www.lrkt.lt/en/about-the-court/legal-information/the-constitution/192.

defended by a lawyer" (…) which relates to the right of the person to waive his right to be defended by a defence lawyer and to defend oneself without a defence lawyer.[25]

4.26 The author never claimed any pressure or abuse on the part of the officials to waive of his right to be defended by a defence lawyer. There were no circumstances proving that the author could not defend himself without the assistance of the defendant. On the contrary it is recalled in the decision of the Regional Court in part examining the accuse of the author of the criminal act under part 1 of article 189 of the CC, "during the hearing of the district court V. Vasiliauskas asked to rely on his testimony given during the pre-trial investigation.".

4.27 There was no ground to believe that the author's waiver was not voluntary. The author has no disability, was middle-aged, was the director of the company and what is of utmost importance is the fact that he already had legal consultations within the relevant proceedings, thus the competent authorities could have reasonably accepted his waiver.

4.28 The State party cannot agree with the statement of the author that the purpose of the author detention on remand from 18 to 31 October 2012 was inhuman treatment in order to extract self-accusation and that due to the degrading treatment and the permanent proposal of the prosecution officers to make a self-accusation, on 22 October 2012 the author agreed to proposal of the investigator to refuse to be represented by a lawyer during the questioning. The State party note that there is a protocol whereby the author confirmed that the waiver was on his own initiative, and he never complained about his detention conditions before the domestic institutions.

4.29 In any case, it was for the author to decide whether to provide the information regarding the emails and the email passwords or not. Under the domestic law (article 21 of the CCP) the author being a suspect could have refused to give that testimony. Indeed, the questioning of 22 October 2012 was just very short and of a technical nature. One cannot state that the author gave evidence against himself and according to the materials of the case possessed by the State party, the data stated by the author during the questioning in issue were not used in the criminal case of the author.

4.30 As regards the testimony given by the author during the questioning in issue and its impact on the further investigation in the author's criminal case, the State party is of the firm view that this part of the complaint should be dismissed not only for the reasons of the non-exhaustion of domestic remedies, but also for the reason of an abuse of the right of submission.

4.31 Article 14 (3) (g) guarantees the right not to be compelled to testify against oneself or to confess guilt. This safeguard must be understood in terms of the absence of any direct or indirect physical or undue psychological pressure from the investigating authorities on the accused, with a view to obtaining a confession of guilt.[26]. The State party is of the firm view that during the questioning in issue, the author was not compelled to testify against himself or to confess guilt and indeed did not give any information that was used against him afterwards. The State party wishes to specify that the author misleads the Committee stating that both email and laptop passwords were given by the author. Indeed, it was just email password disclosed that was not relevant for having access to the laptop and accordingly was not relevant for finding the information about the cars sold by the author. In addition, as per the author's own admission other employees of the company had access to the email and authorities could have also obtained the relevant information from other persons than the author.

4.32 The State party concludes that this part the communication is unsubstantiated, besides the domestic remedies were not exhausted and due to the submission of incorrect data, the author could be considered as abusing his right of submission.

[25] The review of the Supreme Court on application of the nomrs of the Code of Criminal Procedure regulating the rights of a suspect and accused https://www.lat.lt/lat-praktika/teismu-praktikos-apzvalgos/baudziamuju-bylu-apzvalgos/68.

[26] General comment N° 32. Para 41.

Author's comments on the State party's observations

5.1 In his submission of 6 December 2019, the author claims the State party violated his right to fair trial under article 14(5). According to the case Gomariz v Spain 1095/2002, since the author was convicted for the first time by the appellate instance, he should have been able to get his sentence reviewed by another appellate Court. However, the Lithuanian Supreme Court declared his cassation appeals inadmissible as confirmed by the State party observations. Article 369 of the Lithuanian Criminal procedure Code does not provide that the Lithuanian Supreme Court has a duty to review the conviction that first appeared at the level of appellate instance after acquittal by the first instance, which in itself is contrary to article 14(5).

5.2 The author reiterates his claim that the State party violated his right under article 14(1) and his right to privacy under article 17(1) and considers the arguments of the State party manifestly unreasonable.

5.3 With regard to the location of the laptop, the author challenges the statement of the State party that the building N° 7796-4001-7129 "belonged to the company "Tauvita" as incorrect and contradicted by the certificate of ownership.

5.4 In addition, as it is confirmed by the State party in its observations, the author was neither present nor represented during the search in his building. In doing so, the State party denied him a separate personality from the company and violated his rights under article 16 of the Covenant.

5.5 By exclusively relying on the statements the witnesses gave while they were suspected and detained in inhuman conditions over the statements given in a public and contradictory manner before the tribunal, the State party misunderstands the nature of the proceedings before the Committee in its observations. A communication is not a complaint about a particular conviction under the Lithuanian Criminal Code but a complaint about breaches of human rights during internal judicial proceedings taken as a whole. Even if one of the international articles was not named, the Committee was provided with a description of the breach of human rights that is related to that unnamed internal legal provision.

5.6 The author is of the view that inhuman or degrading detention conditions shall be by default taken into consideration while applying a sentence, since inhuman and degrading conditions in themselves punish a suspect. The compensations paid by the State party for inhuman and degrading detention conditions are insignificant, and in any event freedom or a lower fine is more important for the author (and in fact for most of degraded people) than those insignificant amounts of money. By failing to take the degrading conditions into account by default, the State party's courts fail to observe articles 7 and 10 of the Covenant.

5.7 As far as the right to physical contacts meetings with family members are concerned, the ECtHR has explained in the case Varnas v Lithuania, that there is no effective remedy in a case when a detainee wants actual physical contact meetings instead of money and accepted that application without requiring an exhaustion of domestic remedies. The author's situation is the same. He does not need money for the breach of his right to physical contact meetings with members of his family, but he wants to achieve a regime change in the State party.

5.8 Contrary to the State party's observations, the author indicates[27] that his detention conditions did not meet the requirements of the treatment of prisoners as set out in the United Nations Standards Minimum Rules for Treatment of Prisoners.

[27] The author indicates that he was not provided with sufficient food and suffered from hunger, the bedding was full of insects, and there were no hygiene facilities. The author was allowed to use shower only once, and he was not provided with a shampoo. The cells were equipped with a hole in the ground that was not adequately separated from the living area in order to humiliate the author by exposing him to inmates while using toilets. There was no toilet paper. There was never an hour of open-air detention.

5.9 Contrary to the State party's observation, the senior investigator of the Klaipeda Regional Chief Police Office did not inform the author about his interest to be represented by a lawyer. On the contrary, he abused confidence and lack of legal education of the author and convinced him that a defence lawyer would disturb him.

5.10 The author considers that the State party has to pay pecuniary damages in the amount of lost incomes due to breaches of the Covenant, and non-pecuniary damages in the amount of 30 average monthly gross salaries in the state party, as well as legal costs.

State party's additional observations on admissibility and the merits

6.1 On 18 February 2020, the State party maintains its position that the author's claims concerning the alleged violation of Articles 7 and 10 (1) of the Covenant with regards to the detention conditions and the lack of conjugal visit must be declared inadmissible pursuant articles 2 and 5§2 (b) of the Optional Protocol as these allegations raised were lodged with the Committee before the available and effective domestic remedies had been exhausted at the national level.

6.2 The State party also maintains its position that the claim concerning the alleged violation of articles 14(1) and 17(1) of the Covenant with regard to the search which allegedly was conducted in the building not provided by the decision of the domestic court must be declared inadmissible pursuant articles 2 and 5§2 (b) of the Optional Protocol as these allegation raised in the communication were lodged with the Committee before the available and effective domestic remedies had been exhausted at the national level, moreover, the author's allegation are non-substantiated.

6.3 In his two cassation appeals the author admits that the computer "had been found and seized from the company Tauvita during the search". The location of the computer seized during the search was mentioned in those cassation appeals just for the specification, but not for the purpose of contesting the lawfulness of the search itself.

6.4 As regards the author's statement that the first-instance court did not take into consideration the laptop as an evidence proving his guilt and acquitted him, thus there was no sense for the author to complain about the search before he was convicted by the appellate court, the State party notes that this argument of the author once again proves that it was not an alleged violation of his right to home due to the location wherein the search was conducted, but the appellate court's interpretation of the purpose of use of the data in the laptop that was contested by the author before the domestic authorities.

6.5 As regards the author's complaint that neither the author nor his representative participated in the search, the State party recalls that pursuant to Article 145 § 4 of the Code of Criminal Code, in case the search is carried out in the company, the search shall be carried out in the presence of the *representative of that company*. As in the author's case the search was carried out in presence of the company's representative who had access to the auxiliary building, accompanied the officials and had no complaints as regards the unlawfulness of the search due to the concrete buildings being searched and / or a violation of the author's right to home. Under the law there is no requirement for the lawyer to be present in the search in the company. In this regard it should also be added that one more employee, the author's cohabiting partner, was also present during the search of 15 June 2012. Neither the author's cohabiting partner nor the author ever complained about the buildings in which the search had been carried out.

6.6 The State party also upholds its position that the complaint of the author invoking articles 14(3) (d) and (g) of the Covenant about the waiver of the right to be defended by a defence lawyer and giving self-accusatory testimony must be declared inadmissible pursuant to articles 2 and 5§2 (b) of the Optional Protocol as the allegations raised in the communication were lodged with the Committee before the available and effective domestic remedies had been exhausted at the national level, moreover, the author abuses of his submission right.

6.7 The State party also notes that the author before the Committee does not provide any description of an alleged pressure inflicted upon him by the authorities to waive his right to be defended by a defence lawyer.

6.8 As regards the new issues raised by the author in his comments to the State party's observations, such as under article 14(5) regarding the alleged denial of the right to review after conviction and regarding the alleged breach of article 16, a "denial of recognition as a person for the author". These issues have not been in any form raised in the author's initial communication. Thus, they should not be considered by the Committee.

6.9 Finally, the State party notes that the author asks the Committee to pay him "pecuniary damages in the amount of lost incomes" and "non pecuniary damages in the amount of 30 average monthly gross salaries in the State party". The author does not substantiate this amount and does not provide reason why he is asking for 30 averages monthly gross salaries. The State party noted that the alleged "lost income" is not related to the complaints in the present case. The State party submits that since in its firm view the communication is to be considered unsubstantiated, the author's claims for compensation should accordingly be rejected.

Additional comments from the author

7.1 Following the approval of the Committee, in line with rule 92 (7) and (8) of the Committee's rules of procedure, the author submitted additional comments to the State party's observations on 7 July 2020.

7.2 Regarding the State party's observation that the new claims raised by the author under articles 14 (5) and 16 of the Covenant should be considered inadmissible because they were not raised in his initial communication, the author submits that claims before the Committee can be brought within five years after the exhaustion of domestic remedies. He can therefore raise any new claims he wishes until these five years expire. He could also lodge a new communication but did not do so in order not to burden the procedure.

7.3 The author continues to contest the State party's account about the property where the laptop was found.

Observations of the State party to the author's additional comments

8.1 On 9 September 2020, the State party submitted its observations on the author's additional comments.

8.2 The State party draws particular attention of the Committee to the falsification of the official document (the plan of the buildings) provided and invoked by the author's representative in his additional comments to the Committee. This fact is particularly striking, and the State party hold such a conduct of the author as outrageous deceit of the Committee which constitutes an abuse of the right of submission.

8.3 The State party maintains its position that the search was carried out on the territory of the company, in the buildings of the company and the auxiliary building to them -in other words, in the buildings covered by the court decision. Therefore, the lawfulness of the search raised no doubts in the case in issue.

Issues and proceedings before the Committee

Consideration of admissibility

9.1 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.

9.2 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.

9.3 The author claims that his rights under articles 7 and 10(1) of the Covenant have been violated by the inhuman and degrading conditions of his detention between 18 October 2012 and 31 October 2012 and the lack of conjugal visits during this period. The Committee notes the author's claims that he did not complain about this situation claiming there was no practical possibility for Lithuanian courts to improve his situation. The Committee notes the

State party's position that the author has not exhausted 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.[28] The Committee notes the extensive information provided by the State party listing available domestic remedies in accordance with national legislation as well as relevant Committee's jurisprudence for similar cases. It also notes that the author neither raised the conditions of detention with national authorities, nor did he request any conjugal visit. Therefore, the Committee considers it is precluded from examining the author's claims under articles 7 and 10(1) for lack of exhaustion of domestic remedies, as required by article 5 (2) (b) of the Optional Protocol.

9.4 The author claims that the search on 15 June 2012 violated his rights under articles 14(1) and 17(1) of the Covenant, arguing that the search warrant issued by the District Court of Klaipeda City did not extend to the outside kitchen where his laptop was found and that this constitutes a breach of his right to fair trial and that, as the outside kitchen was part of the author's property, he alleges that this constituted an unlawful interference with his home. The Committee notes the State party observations that the search was conducted fully in line with the domestic law requirements and the well-established case-law of the domestic courts and that the author did not complain about the location of the search before the domestic court. The Committee considers that the author has failed to explain how, in view of the information submitted by the State party which demonstrates, the State party acted unreasonably and arbitrarily. The State party provided sufficient evidence that the search was conducted lawfully and that domestic remedies were available and effective at the national level. The Committee considers the claims under article 14(1) and 17(1) non-substantiated and inadmissible.

9.5 The author claims that article 14(3)(d) of the Covenant was breached when he was forced to refuse legal representation on 22 October 2012 as the refusal was signed while he was subject to degrading treatment in the detention facility, a lawyer was not present at the time of refusal, the investigator initiated the refusal, and his refusal was not diligently motivated. The Committee took note of the State party's observations that the author never complained before the domestic authorities about any procedural violations done while waiving the right to be defended by a lawyer and about the detailed explanation on the domestic case law and available remedies at national level. The Committee recalls its jurisprudence under article 14(3)(d) which refers to two types of defence which are not mutually exclusive. Persons assisted by a lawyer have the right to instruct their lawyer on the conduct of their case and to testify on their own behalf. The Covenant provides for a defence to be conducted in person "or" with legal assistance of one's own choosing, thus providing the possibility for the accused to reject being assisted by any counsel. The Committee considers that in case the author was of the view that his rights had been violated during the questioning when the defendant was not participating, he could have complained about it before the domestic authorities. There were no circumstances proving that the author could not defend himself without the assistance of counsel nor that the officers put pressure on him to reject the presence of his lawyer. In addition, the Committee notes the author's claim that the purpose of his inhuman detention was to extract self-accusation however, as the State party notes, there is a protocol whereby the author confirmed that the waiver was of his own initiative (para. 4.28) and he never complained about his detention conditions at the domestic level. Therefore, the Committee considers the claims raised by the author under article 14 (3) (d) inadmissible pursuant articles 2 and 5§2(b) of the Optional Protocol to the ICCPR for non-exhaustion of domestic remedies.

9.6 The author considers that the refusal to hear the five additional witnesses, police officers present during the search, constitutes a violation of article 14(3)(e) of the Covenant and further claims that, because the statements given by the two employees of the company while in detention were taken into account instead of the statements given by them during

[28] 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.

the oral hearings, this has precluded him from being able to examine those witnesses. The author notes that when they made their first statements, the employees were co-accused and in detention whilst during the oral hearing, they were witnesses, and that, under the applicable law, accused persons enjoy the right to lie to defend themselves but witnesses are obliged to tell the truth. The Committee notes that these claims concern evaluation of the facts and the evidence by domestic courts, which the Committee does not review, unless it can be ascertained that the evaluation was clearly arbitrary or amounted to a denial of justice, or that the court failed in its duty to maintain independence and impartiality. The State party has explained at length the reasons behind the decisions of domestic authorities and these authorities have specifically addressed the arguments of the author on this issue (see paras 4.17-4.23). The Committee declares therefore that the author's claims under article 14 (3)(e) are inadmissible as non-substantiated.

9.7 The author claims that article 14(3)(g) of the Covenant was violated when he provided self-accusatory evidence, giving his email password on 22 October 2012 after refusing legal representation. The Committee notes the author's claim that providing his email password led to his conviction. The Committee took note of the State party observations that the author provided misleading information to the Committee stating that the information available in the laptop and the email account could only be accessible after the author provided the password. The Committee considers that according to the domestic legislation of the State party, the author was not obliged to provide the password and considers, in views of the documents submitted by both parties, including the fact that other persons had access to the laptop, that this claim is unsubstantiated and that the author did not exhaust domestic remedies. In view of the submission of incorrect data, the Committee considers based on documents available and shared by both parties, that the author provided misleading information, considers it as an abuse of the right of submission and declares these claims inadmissible pursuant articles 2, 3 and 5(2)(b) of the Optional Protocol.

9.8 On the additional claims under article 14(5) due to the denial of the right to review after conviction and article 16 of the Covenant due to the refusal by the State party to recognise the author as a separate person from the company raised in the author's comments, the Committee also notes the author's interpretation of a five-year limitation rule in his additional comments dated 13 January 2020 that at any point before expiration of the five-year period from exhaustion of domestic remedies, the author can submit additional claims in his communication or even a new communication. The Committee notes that in this respect that indeed, under rule 99 (c) of its Rules of procedure, a communication should be submitted within five years after the exhaustion of domestic remedies.[29] However, the Committee recalls its jurisprudence that all claims must be raised by the author in his initial submission, before the State party is asked to provide its observations on admissibility and the merits of the communication, unless the author can demonstrate why he could not raise all the claims at the same time.[30] Since the author has not demonstrated why his new claims could not have been raised at an earlier stage of the pleadings, it would be an abuse of process for the new claims to be addressed by the Committee. The Committee thus finds the authors claims under articles 14 (5) and 16 inadmissible under article 3 of the Optional Protocol.

10. The Committee therefore decides that:

(a) The communication is inadmissible under articles 2, 3 and 5 (2) (b) of the Optional Protocol;

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

[29] CCPR/C/3/Rev.11.

[30] Jazairi v. Canada (CCPR/C/82/D/958/2000), para. 7.2.