



**International Covenant on
Civil and Political Rights**

Advance unedited version

Distr.: General
26 December 2017

Original: English

Human Rights Committee

**Views adopted by the Committee under the Optional
Protocol, concerning communication No. 2301/2013****

<i>Submitted by:</i>	X (not represented by counsel)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Lithuania
<i>Date of communication:</i>	18 March 2012 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 97 of the Committee's rules of procedure, transmitted to the State party on 11 November 2013 (not issued in a document form)
<i>Date of adoption of Views:</i>	9 November 2017
<i>Subject matter:</i>	Arbitrary arrest – detention; fair trial – lack of legal assistance; absence of impartial investigation; forced confession; presumption of innocence, unlawful sentence
<i>Procedural issue:</i>	Exhaustion of domestic remedies; non-substantiation of claims
<i>Substantive issues:</i>	Right to have a criminal conviction and sentence reviewed by a higher tribunal according to law.

* Adopted by the Committee at its 121st session (16 October – 10 November 2017).

** The following members of the Committee participated in the examination of the present communication: Yadh Ben Achour, Ilze Brands Kehris, Sarah Cleveland, Olivier de Frouville, Christof Heyns, Yuji Iwasawa, Ivana Jelic, Bamariam Koita, Marcia V.J. Kran, Mauro Politi, José Manuel Santos Pais, Anja Seibert-Fohr, Yuval Shany and Margo Waterval.

Articles of the Covenant: 9(1), 14(1), 14(2), 14(3)(b) and (g), and 14(5)
Articles of the Optional Protocol: 2 and 5 (2)(b)

Views under article 5 (4) of the Optional Protocol

1.1 The author of the communication, dated 18 March 2012, is Mr. X, a Lithuanian national born on 25 May 1985. Since his sentence was passed on 17 November 2004, the author has been serving a life sentence in Lukiškės Inquest Isolator Prison for double premeditated murder. He claims to be a victim of a violation by Lithuania of his rights under articles 9(1), 14(1), 14(2) and 14(3)(b) and (g) of the International Covenant on Civil and Political Rights (the Covenant). The Optional Protocol entered into force for Lithuania on 20 February 1992.¹ The author is not represented by counsel.

1.2 On 12 June 2012, a letter was sent to the author, referring to rule 96 (c) of the rules of procedure and requesting him to explain, by 12 June 2013, the delay in submitting his communication more than 3 years after the decision of the European Court of Human Rights. On 17 May 2013, the author replied that he had continued to pursue domestic remedies after the decision of the European court, and that he therefore had to wait until they would be fully exhausted before taking his case to the Human Rights Committee.

The facts as submitted by the author

2.1 On or about 25 June 2003, two young women were brutally killed in their flat in Šiauliai. Their bodies were discovered on 29 June 2003.

2.2 On 3 July 2003, at 06:30 a.m., the author was taken to the Šiauliai Police Headquarters and detained by the police on suspicion of having murdered those two women. At the time of detention, he was 18 years of age and his family was allegedly not informed of his arrest or detention, despite the requirement of article 128 of the Code of Criminal Procedure of the Republic of Lithuania. He reportedly had no real possibility to appoint a suitable attorney of his choice or have representation arranged by a family member. He also claims that from 06:15 to 09:15 a.m., his detention was not recorded by the prosecutor and that he underwent informal interrogation during this period. At 09:15 a.m., he was taken to the Šiauliai District Prosecutor's Office (SDPO) for further interrogation and before 17:00 p.m., the officers informally questioned and beat the author, subjecting him to "physical and psychological pressure" for 11 hours without a defence attorney present.

2.3 He claims that he was told that an attorney appointed by the State, Mr. A., would be assigned to him. However, the *ex officio* appointed attorney was reportedly not present during the initial period of 11 hours of questioning, and was only present after the author was informed that he was a suspect. The author also claims that his rights were not fully explained to him and that he did not know about his rights or the ensuing criminal process. The author also claims that his attorney at the time participated passively during the interrogation, provided inadequate legal aid and did not speak to the author about the strategy for his defence. The author was then relocated to Radviliškis District Police Headquarters and questioned by 3 to 4 police officers in the presence of a prosecutor, Ms. B., from the SDPO. The author alleges that Ms. B. intimidated the author, showed him photographs of the victims, discussed murder scenarios and prompted answers suggesting that a metal shank has been used as a murder weapon. At the time, the medical expert's report was not available, so the interrogation was carried out without taking into account all necessary information regarding the circumstances of the case. The author claims he was told that if he confessed to the murders he would get 8 years in prison, whereas if he did not, he would be taken to the prison

¹ The State party has not made a reservation under article 5, paragraph 2 (a), of the Optional Protocol to the Covenant.

to be raped by other prisoners and given a life sentence. He claims he was beaten with fists to the kidneys and liver, kicked and strangled, and had his neck twisted during the questioning; however, the forensic report from six days later stated that there was absence of any evidence of physical injury.

2.4 On the night between 3 to 4 July 2003, the author, in the absence of his attorney and in the presence of prosecutor Ms. B., wrote a note named "sincere confession", acknowledging that he had murdered the two women and had stolen two mobile phones belonging to one of them. The confession was an inculpatory admission of the murder of two victims on 25 June by means of beating with a flat metal bar and a knife to slit their wrists and cut one of the victims in the abdomen twice; and of the theft of two mobile phones taken from the crime scene. A defence attorney, who substituted the one who previously represented the author, was only called in the morning of 4 July 2003.² At 6 a.m., without having had the opportunity to sleep, the author was taken back to SDPO for official interrogation and to repeat the confession with his substitute defence attorney. Accordingly, he repeated his confession in the presence of the substitute defence attorney at the SDPO, and then before a judge of the Šiauliai District Court.³ The author submits that no reasons had been provided for the substitution, and that the substitute defence attorney did not represent him adequately: she did not give any legal advice, did not discuss the defence position, nor objected to the actions taking place. She limited herself to making a formal request to order house arrest for the author.

2.5 The author's attorney was replaced again on at least two other occasions. The statements made in the presence of his attorney and also in the presence of a judge in the Šiauliai District Court were consistent with the original written confession, but were made after 33 hours of sleep deprivation, and under fear of the threats made by the police officers.

2.6 The same day, on 4 July 2003, the officers involved in the pre-trial investigation announced in a press conference that the killer confessed to the murders, and that a metal shank had been used as the murder weapon. This statement was done in the absence of the conclusions of forensic specialists, and while the truthfulness of the confession had not been verified with objectively ascertainable evidence. News perpetrating a bias against the author, who was still a suspect rather than a convicted person, were published in all major newspapers in Lithuania and over the internet. The officers involved were also commended for quickly solving the crime.

2.7 On 11 July 2003, the author retracted his confession. He claimed that his earlier confession had been the result of psychological pressure, since he had allegedly been threatened with life imprisonment, and due to sleep deprivation. He also claimed that he had used information from the interrogation and hearsay to invent a course of action, but did not kill the women and did not know who killed them.

2.8 On 3 May 2004, the SDPO transmitted an indictment to the Šiauliai District Court, charging the author with double murder and theft. On 17 November 2004, the Šiauliai District Court found the author guilty as charged and sentenced him to life imprisonment. It relied on various pieces of evidence, including the author's fingerprints that had been found at the crime scene, the fact that one of the phones belonging to one of the killed women had been found in the author's flat, and that the other phone had been sold by the author to a third person.

2.9 On 16 December 2004, the author appealed the verdict to the Court of Appeals. On 22 February 2006, the Court did not change the classification of the crime by the first-instance

² The author does not specify if the substitution of defence attorney took place before or after he signed the note of confession.

³ According to the judgment of the Supreme Court of 29 December 2006, the author did not complain to the pre-trial judge that he had been ill-treated the night before.

court; however, it reduced the sentence to 20 years' imprisonment as the life-sentence had been found disproportionate to the gravity of the offence. It heard, among other witnesses, the prosecutor who had been present when the author had written his "sincere confession". She was questioned with regard to the circumstances which had led to the author's confession. She confirmed that she had told the author that, for such a murder, one could be sentenced to life imprisonment, but she stated that no pressure had been applied in order to obtain his confession.

2.10 Following the author's cassation appeal of 5 July 2006, with a request for thorough examination of evidence, a board of three judges of the Supreme Court transferred the case on 31 October 2006 to a board of seven judges of the Supreme Court for further investigation. On 29 December 2006, the board revoked the judgment made by the Court of Appeal by which the author's sentence was reduced to 20 years' imprisonment and upheld the original judgment of the Siauliai District Court by which he was sentenced to life imprisonment.

2.11 In January 2007, at the request of the author's mother, a medical expert, Professor G., made a forensic report regarding the injuries sustained by the victims. The report criticised, in particular, the fact that the environment temperature had not been measured at the crime scene, and that it was therefore impossible to determine the exact date of the victims' death. It further suggested that the lethal injuries had been inflicted by a hatchet, whereas the author's "sincere confession" and the court judgments mentioned a flat shank. The report further indicated that the victims had been killed by two persons, one right-handed and the other left-handed person, whereas the author's "sincere acknowledgment" and the court judgments only referred to the author. It concluded that some relevant questions remained unanswered. On the basis of that report, the author unsuccessfully applied to have his case re-opened on two occasions, claiming new evidence. On 7 March 2007, the author filed a petition to the Prosecutor General regarding the reopening of his criminal case, which was declined on 11 April 2007.

2.12 Between 2007 to 2010, the author unsuccessfully appealed to the Prosecutor General and the Vilnius District Court to have his case re-examined. After the Vilnius District Court dismissed his appeal on 26 February 2010, the author filed a complaint with the Court of Appeals on 5 March 2010, asking to overrule the rulings of Vilnius District Court of 9 May 2007 and 26 February 2010, and the Prosecutor General's procedural rulings of 11 April 2007 and 18 September 2008. On 24 March 2010, the Court of Appeals dismissed his complaint. It held that the medical report's findings were either irrelevant (with respect to the precise murder weapon) or speculative (whether one person only could have inflicted the lethal injuries). The author claims that the Code of Criminal Procedure did not provide for any possibility to file further complaints and that no other domestic remedies were therefore available.

2.13 On 21 October 2008, the European Court of Human Rights rejected the author's complaint of 20 June 2007 as inadmissible since it did not correspond to the requirements of articles 34 and 35 of the Convention. The court decided that the application did not sufficiently substantiate the alleged violations of rights and freedoms provided by the Convention or its protocols.

2.14 In his further submission of 15 May 2013, the author claims that he filed a complaint to the Prosecutor General on 4 January 2013, requesting the commencement of a pre-trial investigation concerning the illegitimacy of his incarceration following the sentence, which was rejected on 25 January 2013. On 5 March 2013, he appealed the prosecutor's decision to the Vilnius City Court. His appeal was rejected on 15 March 2013. On 25 March 2013, he appealed the negative decision to the superior court. The author submits that he has exhausted all domestic remedies concerning the unreasonable and unlawful conviction over the murder which he did not commit.

Factual background

2.15 From the judgment on file, it transpires that the Supreme Court found a violation of the principle of justice by the Court of Appeals, since it considered a reduced sentence of 20-year imprisonment as too light, without however thoroughly individualizing the sentence by evaluation of mitigating or aggravating circumstances.

The complaint

3.1 The author claims a violation of articles 9 (1) and 14 (3) (b) of the Covenant due to his unlawful detention under domestic law because his mother was not informed of his arrest, which she allegedly found out about from the press, and because his counsel was not present on the night between 3 to 4 July 2003 during which he wrote his confession titled as "sincere confession". In his further submission of 15 May 2013, he claims that he had been arrested for several hours (from 6:30 a.m. to 9:15 a.m. on 3 July 2003) before the protocol of temporary arrest warrant was drawn. Hence his detention during that time was not procedurally formalized, as the protocol on temporary arrest indicated that it commenced only at 9:15 a.m. The author further claims that during that period he was not informed of his right to a defence attorney, including the right to authorize other persons, such as family members, to select a legal counsel on his behalf. Accordingly, not all of his procedural rights were explained to him. He submits that his informal detention, the lack of adequate time to prepare his defence at the initial stage of the pre-trial investigation, the lack of opportunity to talk to an attorney of his choice, and the fact that during his confession he was not represented, violated his rights under articles 9 (1) and 14 (3) (b) of the Covenant. Consequently, his imprisonment upon conviction should be considered unlawful.⁴

3.2 Relying on article 14 (1) of the Covenant, the author claims that his right to a fair trial was violated to the extent that the national authorities dealing with his case were partial. He claims a lack of fairness of his criminal trial, submitting that the courts should have determined that the criminal charge against him was unfounded and based on evidence obtained by unlawful means. In essence, the author complains about being sentenced for an offence he did not commit, and about the domestic courts' incorrect evaluation of existing evidence and disregard of new evidence in the case.

3.3 The author further claims a violation of his rights under article 14 (2) of the Covenant as during the pre-trial investigation a press conference was held on 5 July 2003, at which a senior police officer, the Chief Prosecutor and the prosecutor dealing with his case made public the author's confession, in violation of the presumption of innocence.⁵

3.4 Moreover, he claims a violation of his rights under article 14 (3) (g) of the Covenant on account of psychological and physical⁶ pressure allegedly used against him by the prosecutor, Ms. B., on the night between 3 to 4 July 2003, leading to the extraction of an admission of guilt from him. In particular, he maintains that his confession should not have been taken into account and that there was sufficient evidence only for his conviction for theft, but not for murder.

3.5 Lastly, the author points to the urgency of his situation as he is being deprived of liberty on the basis of unlawful sentence and incarceration despite the new evidence presented by a forensic medical expert. He reiterates that the Supreme Court's judgement is

⁴ Claims of a violation of article 14 (5) are not raised by the author, but can be inferred from the submitted arguments.

⁵ It would appear from the case file that the author has failed to lodge an application for damages in the civil courts pursuant to article 6.271 of the Lithuanian Civil Code (that article provides for an action for damages against the State for any damage caused by an unlawful conduct of any public official).

⁶ The author provides no details in this regard. It should also be emphasised that according to a medical report of 9 July 2003, mentioned in the judgment of the Supreme Court of 29 December 2006, no traces of injuries had been found on the author's body.

not legally valid, and hence cannot be executed. He also claims that he faces harsh conditions of imprisonment.

State party's observations on the admissibility

4.1 On 13 January 2014, the State party submitted its observations on admissibility and requested the communication to be declared inadmissible under articles 2 and 5 (2) (b) of the Optional Protocol.

4.2 The State party notes that the author's application to the European Court of Human Rights was declared inadmissible and found to be manifestly ill-founded.

4.3 With regard to claims under article 9 (1) of the Covenant, the State party submits that the author did not exhaust domestic remedies in regard to his alleged unlawful arrest from 6:40 a.m. to 9:15 a.m. on 3 July 2003, either during the pre-trial investigation or at court proceedings,⁷ although he was at all times assisted by a defence attorney. He did not submit a civil claim for redress for damages for unlawful arrest under article 6.272 of the Civil Code.

4.4 The State party contests the author's allegation as to the unlawfulness of his life incarceration by the court of cassation. It submits that the court of cassation may overrule the judgment or decision of the court of appeal and uphold the judgment or decision of the court of first instance with or without modifications.⁸ In this regard, the Supreme Court noted that its decision did not impose a sentence, but by changing the judgment of the court of appeal, due to improper application of criminal law, it upheld the life sentence imposed upon the author by the judgment of the court of first instance. Addressing a question of stricter sentence, the Supreme Court stated that "...As it is provided under the law of criminal procedure, when examining a case in the cassation, the court can impose a stricter sentence, when the appeal is filed on this ground, if unjust sentence is related to improper application of criminal law. However, it has no right to impose a stricter sentence which would be life imprisonment.⁹ Therefore, there is no prohibition for the court of cassation in such cases to adopt a decision to uphold the life imprisonment sentence imposed by the court of first instance or the court of appeal. Accordingly, the State party considers that the said allegations of the author should be declared inadmissible as manifestly unsubstantiated.

4.5 The State party also rejects the author's allegations under article 14 (1) of the Covenant that the court hearings in his case were partial and arbitrary as they dismissed his statements about the unlawful way his "sincere confession" was obtained, and that they did not properly investigate the circumstances of the case. Additionally, the author alleged that since the national authorities had refused to reopen a criminal case based on what he considered as newly emerged circumstances, his right for the case to be examined under conditions of equality was violated. The author's complaints of the first instance court's partiality when assessing evidence were thoroughly examined by the appeal court, and they were rejected. The author failed to provide any evidence of violation of partiality, and did not avail himself of the opportunity to submit motions to remove any of the judges hearing his case, notwithstanding the fact that this right was explained to him in the court of first instance. Since the courts of the State party are in a better position to evaluate the facts and evidence in each specific case, the author's allegations of unfairness of the trial under article 14 (1) should be declared inadmissible due to non-substantiation.

4.6 As regards the author's request of 9 March 2007 requesting the Prosecutor General to reopen the case due to newly emerged circumstances (consultative conclusion of private medical expert Professor Garmus of 15 January 2007), those were thoroughly examined by the Prosecutor General's Office and two instances of the national courts which concluded

⁷ Articles 44 and 62 – 63 of the Code of Criminal Procedure.

⁸ Article 382 (1) (4) of the Code of Criminal Procedure.

⁹ Article 376 (3) of the Code of Criminal Procedure.

that no newly emerged circumstances had been submitted. In that connection, the State party submits that it was reasonably held that the crime was committed by the author. As regards the alleged discrepancies between the findings of the forensic medical experts and the private consultative conclusions in regard to the recorded injuries of the victims, it submits that the question of the crime tool by which these injuries were made is not of determinant importance as the injuries identified are defined as cuttings, and the charge brought against the convict would therefore remain the same. Since the finding of a private medical expert is only one consideration in establishing the probable circumstances of the crime, this part of the communication too should be declared inadmissible as insufficiently substantiated.

4.7 The State party submits that the author did not raise before the alleged violation of the right to presumption of innocence, due to a press conference on 5 July 2003 where it was allegedly stated that the author had confessed having committed the murder, and subsequent related press-publications during the pre-trial investigation or the court proceedings.¹⁰ The national authorities were hence precluded from addressing those allegations, which could constitute a ground to overrule the decisions of the court of first instance as well as the court of appeal.¹¹ The State party therefore considers that the author's claims under article 14 (2) should be declared inadmissible on the basis of article 5 (2) of the Optional Protocol, and also for lack of substantiation since nothing in the case suggests that the right to presumption of innocence was actually violated and that such a violation would have influenced the adopted conviction.

4.8 With regard to the alleged violation of article 14 (3) (b), the State party submits that the right to a defence attorney, including one of the author's choice, was explained to him on 3 July 2003, as reflected in the protocol of temporary arrest. Therein, the author signed that he agreed to be defended by a state assigned defence lawyer, thereby demonstrating that he was aware of his right to legal representation of his own choice from the first moment of his arrest. On 10 July 2003, the author exercised his right to have a defence lawyer of his choice and nothing prevented him to do so throughout the procedure. As the Supreme Court stated, the law on criminal procedure does not provide the arrested or the suspect with a right to meet their relatives to discuss the question of choosing a defence lawyer. However, as it may be seen from the correspondence and telephone conversations with his mother during the pre-trial investigation, the question of defence, including the choice of a defence lawyer, was discussed in detail. The law does not require the defence attorney to be present when the suspect (or accused) writes a "sincere confession" on his own initiative during official questioning. The State party notes that the author was an adult when the criminal act was committed; hence he did not need any additional guarantees when exercising his right to defence. He was accompanied by a defence lawyer during all the procedural acts of the pre-trial investigation. There is no evidence in the case file that the pre-trial investigation officers or the court have precluded the author's lawyers from exercising their functions, as set out in the law on criminal procedure, or that the author has submitted any kind of complaint alleging incompetent representation. The State party further submits that the pre-trial investigation officers or courts do not dispose of a right to assess the quality of the legal aid provided, except in the cases when it is obvious that the defence is incompetent.

4.9 The State party also notes that the protocol of temporary arrest demonstrates that the author's mother was informed about the author's detention by telephone on 3 July 2003. It holds that the author was not precluded from consulting his mother on the choice of a lawyer or from authorizing her to invite a defence lawyer of their choice, as his mother was present during the house search.

4.10 As regards the alleged violation of the author's right to defence caused by the fact that he was not represented at the time when he was writing his 'sincere confession', the State

¹⁰ Article 31 of the Constitution, and article 44 of the Code of Criminal Procedure.

¹¹ Article 320 (3) and 369 (1) (2) of the Code of the Criminal Procedure.

party's courts found such claims unsubstantiated. The Supreme Court noted that the author was not officially questioned at the time when he wrote his confession. During the procedural steps, which took place on 4 July 2003, including during additional questioning at the Prosecutor's Office and at the crime scene, and during the hearing before the pre-trial judge with regard to the detention on remand, the author was always represented.¹² Instead of complaining to a defence lawyer, or to the authorities before which he appeared that he was forced to write a confession, the author confirmed the details of the crime described therein. The State party submits that the author's claims under article 14 (3) (b) should be declared inadmissible for lack of substantiation.

4.11 The State party considers that the author's claims under article 14 (3) (g) are unsubstantiated and should be declared inadmissible because the author was not able to provide sufficient evidence that physical and/or psychological violence was used against him during his "sincere confession". The State party refers to the Committee's jurisprudence, claiming that the author's allegations were examined in detail by the Regional Court, the Court of Appeal and the Supreme Court, which assessed the author's complaints, but did not establish that there was any evidence of the alleged forced confessions. The State party relies on the forensic medical report of 9 July 2003, commissioned during pre-trial investigation, which did not establish any bodily injuries of the author. It also submits that the author did not raise any allegations of forced confession neither during the additional questioning or when the pre-trial judge ruled on the author's detention on remand on 4 July 2003, in the presence of his defence attorney. Instead of raising claims about the violence used to any of his defence lawyers or the authorities directly, the author confirmed his confession. The telephone conversations between the author and his mother, referred to by the Supreme Court, suggest that the author's mother urged him to say that he was beaten up by the police officers during his confession. The State party notes that the author changed his testimony and raised the use of violence to compel him to testify on 11 July 2003, after he had been visited by his mother on 7 July 2003. Since 11 July 2003, the author started denying having committed the murders.

4.12 The courts also accepted that the author's detailed description of the murder contained in the "sincere confession" of 4 July 2003 confirmed the objectivity of the author's testimony. Video material taken in this regard showed that the author testified without any pressure from the police and under his free will. The State party further refers to the judgment of the District Court in which it was noted that "after having seen the body injuries of the murdered it is impossible to be so precise about them as the author was. Moreover, the number and locations of the injuries indicated by the author were confirmed by the forensic medical expertise report. These circumstances deny the convict's allegations about the violence used against him, as a result of which he allegedly confessed having murdered the two girls. The author consecutively testified the sequence of his acts, the location of the bodies of the victims, specified how and what injuries were made. In the opinion of the panel of judges only the person who murdered the girls could have been so precise in indicating the circumstances of the murder."

4.13 Having examined the author's allegations with regard to articles 9 (1), 14 (1) and (2), and 14 (3) (b) and (g) of the Covenant, the State party holds that the communication should be declared inadmissible under articles 2 and 5(2) (b) of the Optional Protocol.

Author's comments on the State party's observations

5.1 On 1 March 2014, the author reiterated most of his previous allegations.

¹² As indicated in the Protocol of additional questioning of 4 July 2003.

5.2 In addition, he submits that the decision of the European Court of Human Rights has no relevance for the admissibility of his communication as the Court did not indicate the reasons for finding his application inadmissible.¹³

5.3 He points out that the State party agreed that he was indeed detained and interrogated from 6:40 to 9:15 a.m. on 3 July 2003, in the absence of a defence attorney, reiterating also his previous arguments regarding the lack of legitimacy of the life imprisonment upheld by the Supreme Court.

5.4 Regarding the failure to exhaust domestic remedies with respect to article 14 (1), the author submits that because the judge's arguments were provided in their final decisions, he has challenged the partiality of the courts in his appeals to superior instances. He holds that he has provided specific examples of denial of justice and the partiality of national courts, in particular as regards his request for the re-opening of his criminal case due to newly emerged circumstances. He alleges that the courts had a deliberate intention to suppress or distort aspects of the case material and the national laws, pointing out that the State party does not refute his arguments.

5.5 Regarding the presumption of innocence and the non-exhaustion of domestic remedies in this regard, the author claims that he did not think that raising those issues at the national level could have any importance for the judicial examination of his case. He stresses that this violation prevented the crime to be investigated fairly and influenced his conviction. He urges the Committee to find his claim under article 14 (2) admissible as the violation of presumption of innocence is a substantial violation of the criminal procedure.

5.6 The author reaffirms that the State party did not contest his claims that he was not properly informed of his right to authorize other persons to invite him a defence attorney, in violation of article 14 (3) (b). He adds that domestic legislation provides the right to discuss his defence with his family members, holding that his first testimonies were given in violation of his defence rights and emphasizing that the violation of this right during the early stages of the pre-trial investigation led to his unreasonable conviction. The author denies that his mother was informed of his detention.

5.7 He also claims that there are no terms as "official or unofficial interrogation" in the national legislation. A person cannot be interrogated "unofficially", but either legitimately or illegitimately. The State party's argument that the national legislation only requires the presence of a defence lawyer at an "official questioning" cannot lead to the conclusion that his overnight interrogation was merely "unofficial" and that his right to defence was not violated. He asserts that his forced confession occurred during his illegitimate interrogation and cannot be considered as separate event. He considers that the position of the State party constitutes a denial of justice. He reiterates that such an action was illegitimate and amounted to a clear violation of the law on criminal procedure.

5.8 As regards the allegations of his overnight interrogation, the author claims that the medical examination mentioned by the State party to deny the use of violence against him occurred only on 9 July 2003 - a week after the event. He submits that the fact that he talked to his mother on 7 July 2003 cannot be used as evidence that she urged him to change his testimony. The author affirms that meeting with his mother and the prospect of having an attorney of his choice encouraged him to come forward about the unlawful means used by the Police against him. Finally, he denies having provided an accurate description of the

¹³ Initially, the ECtHR indicated that the complaint was inadmissible under articles 34 and 35 of the European Convention. When the author requested a clarification of express reasons, the Court responded that the complaint was manifestly unfounded.

crime, alleging that he merely indicated what he had been told or seen in pictures presented by the Police, or at the crime scene during the theft.¹⁴

State party's observations on the merits

6.1 On 15 July 2014, the State party reiterated its previous observations, submitting that the author's allegations of a violation of articles 9 (1), 14 (1) and (2), 14 (3) (b) and (g) of the Covenant should be declared inadmissible pursuant to articles 2, 3 and 5 (2) (b) of the Optional Protocol. It further submits that some of the allegations were submitted to the Committee before all the related available and effective domestic remedies had been exhausted.

6.2 The State party argues that the author did not provide any evidence which could lead to consider his detention between 6:40 a.m. to 9:15 a.m. on 3 July 2003, after the authorized search of his home¹⁵ during which the searched items had been found,¹⁶ as unlawful under article 9 (1) of the Covenant. It reiterates that the author failed to submit any complaints in this regard before domestic courts; the national authorities were thus precluded from addressing the allegations of unlawful arrest of the author. The applicant was at the disposal of the officers when the search of his home was carried out at 6:40 a.m.; the only evidence that the applicant was arrested is a record of the author's temporary arrest which took place at 9:15 a.m., when the author was notified of the suspicion of premeditated dual murder. There is no evidence that any coercive measure was applied to the author from 6:40 to 9:15 a.m. in order to bring him to the SRPO. On 3 July 2003, the author was not questioned for 8 hours, but only for 1.5 hour. On 4 July 2003, he was brought before the pre-trial judge and was detained on remand. The State party therefore considers that these parts of the author's allegations are unsubstantiated, as he was not deprived of his liberty from 6:40 a.m. to 9:15 a.m.

6.3 Concerning the life sentence, the State party recalls that the panel of seven judges of the court of cassation held that its decision to change the judgment of the court of appeal was not an imposition of a penalty by the court of cassation, but was holding with regard to the improper application of domestic criminal law by the court of appeal which led to reinstatement of the judgment of the court of first instance. Thus, the panel of judges has adopted the decision without exceeding its authority for examining the cassation case. The State party concludes that the author's allegations of unlawful incarceration are entirely unsubstantiated, and that the author's rights under article 9 (1) of the Covenant were not violated.

6.4 Concerning the author's claims of a violation of article 14 (1) due to partiality of the courts since they did not accept the author's statements about the unlawful way his "sincere confession" was obtained, the State party submits that the courts, including the Supreme Court, objectively assessed all the facts and evidence, and rejected the author's claims for lack of substantiation. The State party claims that an unfavourable decision towards the author does not mean unfairness or partiality of the court, and that he did not submit any motions to remove any of those judges, although he had been informed about the right to submit such a motion by the court of first instance. The court of first instance stated that there are no grounds for the criminal case to be reopened as there were no other newly emerged circumstances which could not have been known or which would prove that the convict is

¹⁴ On 1 May 2014, the Committee has decided to examine the admissibility of the communication together with its merits.

¹⁵ The search was performed from 6:00 to 6:40 a.m. in the context of the pre-trial investigation, which had been initiated on 29 June 2003.

¹⁶ The author had been selling the items stolen from the murdered girls, while his mother disposed of several items too.

not guilty (paras. 4.5 - 4.6). Hence, the author's rights under article 14 (1) of the Covenant were not violated.

6.5 As to the author's allegations that his right to presumption of innocence was violated, the State party adds that no evidence was provided that the public statements of the authorities in charge of the author's case could have influenced his conviction.¹⁷ It notes that the newspapers referred to by the author are not state directed media, thus the public authorities could hardly be reproached for the announcements. As regards the "certificates of commendation" to the investigating officers, those were commendations granted by the city mayor to express gratitude for promptness in investigating a crime. This did not imply anything as to the author's guilt. The said commendations, or any other commendation, did not refer to the author in particular, but to the pre-trial investigation in general, covering many more pre-trial investigations related to many more persons, not only the author. The State party claims that since neither the publications in the mass media nor the acts of commendation implied any instruction to the law enforcement officers on how to investigate or solve the case. Hence, the author's right to be presumed innocent as guaranteed under article 14 (2) of the Covenant was not violated.

6.6 The State party further argues that, as the author's mother accompanied him to the SDPO, she could have presumed for herself the legal situation of the author, especially because she was a jurist. In any case, the author's mother was notified about his temporary arrest on 3 July 2003, as per the protocol of temporary arrest. Even though the author was granted the right to call his mother about his arrest, he instead called his girlfriend. On 10 July 2003, the author chose to have a defence lawyer of his choice. The change in defence lawyers at the preliminary stage of the investigation does not imply that the author's right to defence was violated before that, as attested by national courts. As indicated in the previous observations of the State party, the author's allegations in this regard were thoroughly examined by the three instances of national courts no violations were found. The State party adds that while the State's duty to guarantee a competent legal counsel is a limited one,¹⁸ the author was assigned qualified defence attorneys. In particular, the State party notes that the author decided to plead guilty without consulting the prosecutor or any of the attorneys he had already been assigned at that stage of the criminal procedure about his intentions to confess.

6.7 The State party claims that the alleged failure to be represented during the confession was raised in court and was found unsubstantiated. The Supreme Court noted, however, that the law on criminal procedure requires the defence lawyer to be present during the official questioning but not when a suspect (accused) is writing a confession on his own initiative. Contrary to his own statements, the author himself requested to call the prosecutor to come to his place of custody to talk to him. He was not questioned on that night, but he chose to confess his guilt. In view thereof, and reiterating the arguments submitted in its previous observations, the State party considers that the author's rights under article 14 (3) (b) and (g) of the Covenant were not violated.

6.8 As regards the author's claim of an alleged violation of article 14 (3) (g) due to the unlawful manner in which his confession of guilt was extracted, using psychological and physical violence, the State party submits that they were examined by all the three instances of the national courts which rejected them. The State party reiterates the findings by forensic medicine experts of 9 July 2003, attesting the absence of any bodily injuries. It should be reiterated that the author did not raise such issues on 4 July 2003 to his defence lawyers or the authorities directly, but instead confirmed what he had previously confessed. Moreover,

¹⁷ The State party argues, pointing out in this regard to the letter of the SRPO of 14 November 2003 to the author's mother, that neither the prosecutors, nor the press representative of the SRPO provided mass media with the data of the pre-trial investigation.

¹⁸ See communication no. 677/1996, *Teesdale v. Trinidad and Tobago*, para. 9.7.

the precise account of details of the crime by the author undermines the credibility of his allegations as to the circumstances in which he submitted his confession. The State party concludes that there is no evidence in the case-file to prove that any physical or psychological violence was used against the author when writing the confession. Consequently, it considers that the author's rights under article 14 (3) (g) were not violated.

Author's comments on the State party's observations

7.1 On 2 October 2014, the author submitted comments on the State party's observations on the merits of 15 July 2014, reiterating his initial claims, questioning the evaluation of facts and evidence, and claiming that the State party consistently misleads the Committee by distorting factual information of his criminal case.

7.2 The author submits that although he was informed during the pre-trial investigation about his right to choose a private defence attorney or to be defended by a state assigned attorney, he was not informed about his right to authorize other persons to invite him a defence attorney, in violation of article 14 (3) (b) of the Covenant. He also claims that the right to acquire a private defence attorney was not fully explained to him, and that this amounted to a violation of article 14 (3) (d). Consequently, he was not able to acquire his own defence attorney for the first two days of his detention from 3 to 4 July 2003. He claims that the assigned lawyer did not ensure effective representation as he simply listened to the author's confessions without being proactive. The author submits that this attitude enabled the pre-trial investigation officers to proceed while his right to defence was violated, including through the use of torture and other inhumane treatment.

7.3 The author also claims that the protocol on information of relatives about the detention has been fabricated, that he was not legally represented during the night of interrogation that lasted from 9:00 pm on 3 July 2013, to 4:00 a.m. on 4 July 2003. At the end of the first day (by midnight) of his temporary detention, he refused to confess to committing the murder, which was not duly reflected in the English translation of the protocol submitted by the State party. The author also denies that the overnight visit of the pre-trial investigation officers happened on his initiative.

Issues and proceedings before the Committee

Consideration of admissibility

8.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 93 of its rules of procedure, whether the communication is admissible under the Optional Protocol.

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

8.3 As regards the author's claim under article 9 (1) of the Covenant, that his detention from 6:40 a.m. to 9:15 a.m. was not procedurally formalized, that he was not informed of his right to a defence lawyer, including the right to authorize other persons to appoint him a legal counsel, and that his imprisonment upon conviction should consequently be considered unlawful, the Committee notes the State party's argument that the author failed to raise the issue of the alleged unlawful nature of his temporary arrest during the pre-trial investigation or at court proceedings. He did not submit a civil claim for redress either. The Committee notes that the author has not provided any information to the contrary and therefore considers this part of the communication as inadmissible for non-exhaustion of available domestic remedies, pursuant to article 5 (2) (b) of the Optional Protocol.

8.4 The Committee notes the author's claim under article 14 (1) that his right to a fair trial was violated because the national authorities dealing with his case were partial as they dismissed the author's statements about the unlawful way in which his confession would have been obtained; they did not properly investigate the circumstances of the case, and refused to reopen the criminal case based on newly emerged circumstances. In this regard, the Committee notes the State party's assertions that nothing in the case material implies that judges harboured any preconceptions or bias about this matter, that the author's claims in this regard were rejected by the three instances of the procedure for lack of evidence and that the author did not submit a motion to remove any judges of any court hearing in his case. It further notes the author's allegations that the forensic expertise related to the injuries of the victims and the crime tool should have been considered as new evidence, which should have led to the reopening of his case. However, it notes the State party's submission that the information provided in the report was known since the beginning of the proceedings and that it was duly considered by the local authorities which came to the conclusion that it does not exculpate the author. In light of these facts, the Committee considers the author's allegations of unfairness of the trial to be inadmissible for non-substantiation, under article 2 of the Optional Protocol.

8.5 Concerning the author's allegations under article 14 (2) of the Covenant that his right to be presumed innocent was violated by virtue of the publicity given to the case, the Committee notes the State party's argument that such publicity was not of a nature that could influence professional prosecutors and judges. It also notes that the author did not raise the alleged violation before the domestic authorities. Consequently, this part of the communication is inadmissible under articles 3 and 5 (2) (b) of the Optional Protocol.

8.6 The Committee notes the author's allegations under article 14 (3) (b) that his right to defence at the initial stage of the pre-trial investigation was violated, as not all the procedural rights of defence were explained to him. In this respect, the Committee notes the State party's response that the right to have a defence attorney of his choice, was explained to the author on 3 July 2003, as evidenced by the protocol wherein the author agreed to be defended by a state assigned attorney. The author exercised this right when he replaced the assigned attorney by the attorney of his choice on 10 July 2003. The Committee also notes the State party's position that nothing precluded the author from having an attorney of his choice from the first moment of his temporary arrest, that the author was an adult at the time of the offence, that he did not submit any complaints for allegedly incompetent legal representation, that his mother was informed about his arrest by telephone, and that the law does not require the attorney to be present when the suspect is writing a confession. The Committee therefore declares the author's claims in that regard inadmissible for lack of substantiation under article 2 of the Optional Protocol.

8.7 Regarding the author's allegations under article 14 (3) (g) in regard to being forced to write a confession, the Committee notes the State party's argument that such claims have been duly assessed by the national courts at three instances but were not supported by the case material on file, including by the forensic medical report of 9 July 2003. The Committee also notes the State party's claim that the author made his "sincere confession" at his free will. The Committee observes that the information provided by the author does not enable the Committee to reach a different finding. It therefore considers this part of the communication as inadmissible for lack of substantiation, under article 2 of the Optional Protocol.

8.8 The Committee considers that the author's assertion that the court of cassation could not lawfully uphold the life imprisonment sentence imposed by the court of first instance is *prima facie* substantiated for purposes of admissibility. It further considers that this part of

the communication raises in effect a violation of article 14(5),¹⁹ read alone and in conjunction with article 9 (1), since the nullification of the Court of Appeals decision in regard to sentencing might have left the sentence imposed by the court of first instance without substantive review on appeal. The Committee finds this part of the author's claim to be admissible, and turns to its consideration on the merits.

Consideration of the merits

9.1 The Committee has considered the present communication in light of all the information made available to it by the parties, as provided in article 5 (1) of the Optional Protocol.

9.2 The Committee notes the author's claim of a violation of article 14 (5), read alone and in conjunction with article 9(1) of the Covenant, questioning the lawfulness of the imposition on him of a life incarceration sentence by the court of cassation. In the author's view, the court of cassation unlawfully imposed a stricter sentence without a valid legal ground.

9.3 The Committee recalls that the right to have one's conviction and sentence reviewed by a higher tribunal established under article 14 (5) imposes on the State party a duty to review substantively, both on the basis of sufficiency of the evidence and of the law, the conviction and sentence, such that the procedure allows for due consideration of the nature of the case.²⁰

9.4 The Committee notes the State party's claims that the court of cassation may, *inter alia*, overrule the judgment or decision of the court of appeal, uphold the judgement or decision of the court of first instance, with or without modifications, and impose a stricter sentence. Concerning the life sentence, the State party recalls that the panel of seven judges of the court of cassation held that its decision did not impose a sentence on the author, but simply led to the nullification of the improper sentencing decision by the court of appeal and the reinstatement of the life sentence imposed by the court of first instance. The Committee further notes the State party's argument that there is no prohibition for the court of cassation to adopt a decision to uphold a life imprisonment sentence imposed by the court of first instance or the court of appeal.²¹ While recalling that the Committee is not a "fourth instance" court competent to re-evaluate findings of fact or to review the application of domestic legislation,²² the Committee considers it to be free to assess the observance of the right to a fair trial in the context of the present criminal case including, in particular, the author's right to have his conviction and sentence reviewed by a higher tribunal according to law in compliance with article 14 (5) of the Covenant.

9.5 In that connection, the Committee observes that on 22 February 2006, the Court of Appeals considered the sentence of life imprisonment for the author as too strict, since the sentence had not been properly individualized to the circumstances of the author by the court of first instance as no aggravating or mitigating circumstances of the crime committed by the author were established.²³ The Court of Appeals did not consider the sentence to be fair and

¹⁹ Claims of a violation of article 14 (5) are not expressly raised by the author, but can be inferred from the submitted arguments.

²⁰ See the General Comment No. 32, para. 48.

²¹ See article 376 of the Lithuanian Code of Criminal Procedure: "When examining the case in cassation proceedings...the court may apply a lighter or stricter sentence...The court can impose a stricter sentence if an unjust sentence is related to improper application of criminal law. The court can impose a stricter sentence when the appeal is filed on this ground once the decision of the Court of Appeals entered into force (article 369 of the CCP); however it has no right to impose a stricter sentence which would be life imprisonment."

²² See communication 215/86, *Van Meurs v. the Netherlands*.

²³ The author is the first time convict, he committed the crime at the age of 18 years old, and is positively characterized by school, as per the reasoning of the Court of Appeals.

found a violation of the author's right to a fair and just trial. The Committee further observes that the Court of Cassation, at the request of the Prosecutor General, then found a violation of the principle of justice by the Court of Appeals, as it had considered only mitigating factors and had not assessed whether there were any aggravating circumstances and decided to quash the sentencing part of the verdict of the Court of Appeals, thus reinstating the life imprisonment handed-down to the author by the court of first instance. The Court of Cassation specifically admitted that domestic criminal procedure law prohibits it to change improper sentencing of lower courts to life imprisonment. However, it found no restrictions that would prohibit the cassation court from reinstating the sentence of life imprisonment handed-down to the author by the court of first instance.

9.6 The Committee recalls that the notion "according to law" in article 14 (5) is not intended to leave the very existence of the right of review to the discretion of the States parties. In the present case, the Committee notes the State party's assertion that the first instance court judgment was subject to appeal, and that the cassation court confirmed the first instance judgment as to the conviction and sentence; hence the State party argues that it complied with the standards of adequate review by a higher tribunal according to law. The Committee also notes that according to the State party, the Court of Cassation adequately assessed the individual circumstances of the crime committed, including the personality of the perpetrator, and that the Court of Cassation found an improper application of the criminal law by the Court of Appeals. The Court of Cassation also held that the Court of Appeals did not set a balance between the interests of the perpetrator and the aggrieved persons. The Committee takes note of the State party's argument, based on the legal assessment by the Court of Cassation, that the latter is not barred from reinstating a life imprisonment sentence adopted by the court of first instance. In the view thereof, and while taking into account that the author disagrees with the decision of the Court of Cassation to uphold the life imprisonment sentence handed-down by the court of first instance, without substantiating why the sentence imposed on him was not subject to an adequate review in accordance with the law, the Committee cannot conclude that the author's rights under article 14(5), read alone and in conjunction with article 9 (1) of the Covenant have been violated.

10. The Committee, acting under article 5 (4) of the Optional Protocol to the Covenant, is of the view that the review of the author's sentence by the Court of Cassation has not amounted to a violation of his rights under article 14 (5), read alone and in conjunction with article 9 (1), of the Covenant.

