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Views

Communication No. 1887/2009

Submitted by:	Juan Peirano Basso (represented by counsels Carlos Varela Alvarez and Carlos de Casas)
Alleged victim:	The author
State party:	Uruguay
Date of communication:	5 May 2009 (initial submission)
Document reference:	Special Rapporteur's rule 97 decision, transmitted to the State party on 20 July 2009 (not issued in document form)
Date of adoption of Views:	19 October 2010
Subject matter:	Procedural irregularities in the case brought against the author
Procedural issues:	Failure to exhaust domestic remedies; insufficient substantiation
Substantive issues:	Refusal of bail; undue delay in proceedings
Articles of the Covenant:	9, paragraph 3; 14, paragraph 3 (c)
Articles of the Optional Protocol:	2; 5, paragraph 2 (b)

On 19 October 2010, the Human Rights Committee adopted the annexed text as the Committee's Views, under article 5, paragraph 4, of the Optional Protocol, in respect of communication No. 1887/2009.

[Annex]

* Made public by decision of the Human Rights Committee.

Annex

Views of the Human Rights Committee under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights (100th session)

concerning

Communication No. 1887/2009**

Submitted by:	Juan Peirano Basso (represented by counsels Carlos Varela Alvarez and Carlos de Casas)
Alleged victim:	The author
State party:	Uruguay
Date of communication:	5 May 2009 (initial submission)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 19 October 2010,

Having concluded its consideration of communication No. 1887/2009, submitted by Juan Peirano Basso under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication and the State party,

Adopts the following:

Views under article 5, paragraph 4, of the Optional Protocol

1. The author of the communication, dated 5 May 2009, is Juan Peirano Basso, a Uruguayan citizen born on 4 November 1949, who claims to be the victim of violations by Uruguay of article 2, paragraphs 1, 2 and 3 (a); article 9, paragraph 3; article 7; article 10; article 14, paragraphs 1, 2 and 3 (a), (b) and (c); and article 26 of the Covenant. The Optional Protocol entered into force for the State party on 23 March 1976. The author is represented by counsel.

The facts as submitted by the author

2.1 The author's family formerly owned a number of businesses, including Banco de Montevideo. In 2002, at the behest of the Central Bank of Uruguay, the criminal judge

** The following members of the Committee participated in the consideration of the present communication: Mr. Abdelfattah Amor, Mr. Prafullachandra Natwarlal Bhagwati, Mr. Lazhari Bouzid, Ms. Christine Chanet, Mr. Mahjoub El Haiba, Ms. Hellen Keller, Mr. Rajsoomer Lallah, Ms. Zonke Zanele Majodina, Mr. Michael O'Flaherty, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Fabián Omar Salvioli and Mr. Krister Thelin.

presiding at Montevideo Court No. 8 initiated an investigation that, on 7 August 2002, resulted in the arrest of the author's father, Jorge Peirano Facio[1] and his sons Jorge, Dante and José Peirano Basso. They were accused of offences under article 76[2] of Act No. 2,230, concerning the responsibilities of directors and administrators of limited companies.

2.2 On 25 June 2002, the author left Uruguay for São Paulo, Brazil, from where he flew to the United States the next day. He applied for United States residency in March 2003 and was granted a permanent resident card ("green card") on 29 May 2005. In the intervening period, the judicial authorities in Uruguay issued an international warrant for the author's arrest on the grounds that he had fled the country. As a result, the author was detained in the United States on 19 May 2006 and extradited to Uruguay on 10 September 2008. On 11 September he was brought before the Court of First Instance for the Seventh Circuit on charges of bankruptcy fraud, an offence carrying a prison term of between 12 months and 10 years.

2.3 The author asserts that, since his extradition, he has been refused bail. Bail was initially refused by a court decision dated 15 October 2008 on the following grounds: "Although, because of the appeals that he himself initiated before the United States authorities, the accused has already spent more than 28 months in detention, the trial relating to the prima facie offences of which he is charged is just beginning, and there are evidentiary proceedings pending, as ordered by the Court in the initiating order, which could be obstructed or hindered if the accused were to be released on bail. In addition (…) although the accused (…) was aware that he was sought for the purpose of standing trial, he chose to leave the country and not to return, steadfastly refusing to submit to Uruguayan justice."

2.4 This decision was confirmed by the Court of Criminal Appeal for the Third Circuit, which, in a ruling issued on 27 February 2009, affirmed that: "The administrative detention ordered in connection with the extradition proceedings cannot be considered pretrial detention, since at that time the accused had not yet been arraigned by the Uruguayan authorities; this occurred only once the initiating order was issued. The question of whether the period of administrative detention can be deducted from the sentence imposed, once a verdict is reached, is a different matter altogether."

2.5 The author subsequently applied to the Supreme Court for a release ex gratia.[3] This application was refused on 25 March 2009. No reason was given for the decision, which contravenes the provisions of the domestic legal system which stipulate that such decisions must be explained. On 11 December 2008, the author applied for "temporary leave", as provided for in procedural law, so that he could spend Christmas and New Year with his family. This application was refused by a decision dated 22 December 2008. In this decision the Court recognized that the author had already spent more than two years in prison, including, as is proper, the period of his administrative detention in the United States while the extradition request was being processed. The judge attributed her refusal to "the accused's efforts to avoid appearing before the Uruguayan courts, which resulted in

[1] The father died in prison in 2003 at age 82.

[2] Article 76 stipulates that: "Directors and administrators of limited companies who commit fraud, deception or contravene statutes or any public order law of any kind shall be subject to the penalties established in articles 272 and 274 of the Criminal Code concerning fraudulent bankruptcy." This provision was repealed by Act No. 18,411 of 14 November 2008.

[3] "Release *ex gratia*" is a concept defined in article 17 of Act No. 17,726, pursuant to which "At any stage in the proceedings, on the written application of defence counsel, the Supreme Court may grant the defendant a provisional release if he or she has already been held in pretrial detention for a period of time or the trial proceedings have become excessively lengthy, subject to a favourable prior report from the Institute of Forensic Science."

lengthy proceedings in the United States to secure his extradition. This being so, and with the trial proceedings currently in the early stages, it cannot in any way be argued that the pretrial detention of the author does not serve the purpose for which it is intended, i.e., to prevent him from absconding or obstructing the course of justice. These same risks would apply were the accused's request for leave under affidavit to be granted". Appeals against the decision are not permitted and at least 90 days must elapse before any further application for temporary leave may be submitted.

2.6 The author states that the judge in charge of the pretrial proceedings who refused his requests for bail and temporary leave had held that his time in detention or prison should be calculated from the date on which he was taken into custody in the United States on the request of the State party, while the Appeal Court had held that it should be calculated only from the date on which he first appeared in court, i.e., two years later, following completion of the extradition proceedings.

2.7 The author contends that, under the Uruguayan justice system, if the judge hearing the case refuses to grant bail, the only available remedy is a request for review. This request is lodged with the judge who issued the ruling, who then refers it to the Appeal Court. There is no predetermined timetable for this part of the review process. Appeals in cassation, which are considered by the Supreme Court, can be lodged only against final judgements issued by a second-instance court (Appeal Court) or against second-instance decisions that put an end to criminal proceedings or make their continuation impossible. This means that, since the question of bail is incidental to the main proceedings, such applications do not result in decisions that may be considered final judgements. Accordingly, these decisions cannot be challenged through appeals on cassation and the applicant does not have access to the Supreme Court. On this basis, the author maintains that he has exhausted all domestic remedies.

2.8 The author filed a request for review of the initiating order and the committal order in which he alleged due process violations. By a decision dated 12 November 2008, the judge ruled that there was sufficient evidence to begin the pretrial stage of the criminal proceedings, that the accused had had the opportunity to appear before the court but had declined by a choice made of his own free will in the presence of his counsel, that he had not been granted more than 48 hours because the court had sufficient evidence on which to proceed, and that the author was aware of the offences with which he was to be charged, since they were detailed in the extradition warrant issued to the United States authorities. The decision also stated that, when the author was brought before the court, the judge's first action was to inform him of the charges and ask him to appoint counsel. While being questioned in the presence of his counsel, the author was asked if he would like the hearing to be postponed in order to give him time to prepare his defence more fully, but he had declined that offer. When the prosecutor issued the request for an initiating order, the author was given time to examine the application, together with his counsel. The evidence submitted, on which the judicial decision was based, was specifically identified in the order.[4]

2.9 The author states that, when he was detained, the criminal case instituted against his father and brothers in 2002 was under way. His brothers remained in prison for more than 5 years, a period in excess of the maximum sentence established by law for the offence for which they were prosecuted. Their case had been referred to the Inter-American Commission on Human Rights, which, in its decision of 1 May 2007,[5] concluded that the State of Uruguay was guilty of having unreasonably extended the pretrial detention of

[4] As set forth in the decision, a copy of which was provided by the author.

[5] Report No. 35/07, Case No. 12,553.

Jorge, José and Dante Peirano Basso. Consequently, the State was guilty of violating their right to personal liberty, guarantees of due process and its commitment to guarantee that, in decisions concerning rights, the competent authority should enforce such rights, together with the State's obligation to honour and guarantee that such rights are exercised. The Commission recommended that the State should take all necessary measures to release Jorge, José, and Dante Peirano Basso while a sentence was pending, without prejudice to the continuation of proceedings. It also recommended that the State should amend its legal or other provisions in order to make them fully compatible with the rules of the American Convention that ensure the right to personal liberty. The author states that his father died in prison in 2003 at the age of 82 and that his brothers were released on bail in 2007. However, the judicial authorities have yet to pass judgement in the case.

2.10 The author also mentions that a request for his extradition has been issued by Paraguay. On 22 December 2008, in the proceedings associated with this extradition request, the Criminal Court of the Eighth Circuit ordered that he should be placed in pretrial detention; that order would enter into effect immediately upon his release from detention in respect of the case currently pending against him before the Criminal Court of the Seventh Circuit.

The complaint

3.1 The author states that the Uruguayan Code of Criminal Procedure, in which no major amendments have been made since 1980, during the military dictatorship, provides for a written, inquisitorial system. Under this system, the judge who hears and investigates the case is also the one who passes sentence. The principle of immediacy is not observed, as the judge rarely sees the accused, whose freedom of action, as well as that of his or her defence counsel, is strictly limited. Nor is a habeas corpus procedure available. In 1997, a new procedural code was adopted, but a series of laws suspending its application have been enacted and, consequently, it has yet to enter into force.

3.2 The author asserts that his detention and the subsequent proceedings are arbitrary and illegal because the domestic legal system does not meet the minimum standards with regard to impartiality, the right to a fair trial, the second hearing principle, the presumption of innocence or due process of law. It therefore fails to comply with international obligations assumed by the State party upon ratification of the Covenant. This fact, in and of itself, constitutes a violation of article 2, paragraphs 1, 2 and 3 (a), of the Covenant.

3.3 The author further asserts that he is the victim of a violation of articles 9, paragraph 3; 14, paragraphs 1, 2 and 3; and 26 of the Covenant. At the time that the communication was submitted to the Committee, he had been held in custody for three years, had no possibility of being granted bail, was being tried for an offence for which the minimum sentence was 12 months' imprisonment and had no criminal record. The court's ruling of 11 September 2008 had been under appeal before the Appeal Court for seven months. These circumstances constitute a violation of the right to a fair trial and to due process within a reasonable time frame and run counter to the principle that pretrial detention should be ordered only as an exceptional measure and to the principle of the presumption of innocence, both of which are set forth in the Convention.

3.4 The author contends that, three years after having been arrested, the Office of the Public Prosecutor has still not issued an indictment. In his appeal, he also argues that he was not informed of the charges against him during his plea hearing. This is a breach of domestic law, which establishes that a clear explanation of the charges must be given to the accused within 24 hours after being brought into custody, and of article 14, paragraph 3, of the Covenant. Nor did he have adequate time to prepare his defence, since his arrest and prosecution began the day after his arrival in the country on 10 September 2006.

3.5 The failure to inform him of the charges and evidence against him and the refusal to provide him with adequate time to prepare to enter a plea and to prepare his defence also constitute a breach of article 26 of the Covenant because they place him in a position of inequality. If the author had presented himself to the authorities along with his father and brothers on 7 August 2002, he would have been charged with the offence defined in article 76 of Act No. 2,230, which has since been repealed and which provided for a lesser sentence. The author, however, is being charged with corporate bankruptcy fraud under article 5[6] of Act No. 14,095, but on the basis of the same events and evidence. The judge has said that new evidence has come to light, such as the evidence provided in the reports of the liquidators of one of the banks concerned, but does not explain how that evidence would result in a change in the legal classification of the acts in question.

3.6 The author also claims to be the victim of violations of articles 7 and 10 of the Covenant. On 15 September 2008, he was attacked verbally and physically by a group of inmates who attempted to extort money from him and who stabbed him when he refused. This prompted the opening of an investigation. The COMCAR prison, where he is being held, is the most overcrowded prison facility in the country, and the living conditions and the high rate of inter-prisoner violence are alarming, as noted by the United Nations Special Rapporteur on torture in his report on his mission to the country.

3.7 The author claims to be the victim of a violation of article 9, paragraph 3, of the Covenant. His application for provisional release has been denied because the nearly two years that he spent in detention during the extradition proceedings were not counted as time spent in pretrial detention on the grounds that he had not been arraigned by the State party and that it should therefore be considered as administrative detention rather than pretrial detention. The author contends that this prolonged period of pretrial detention actually constitutes the imposition of a portion of the possible sentence before the fact. He states that he did not flee the country, since, when he left Uruguay on 25 June 2002, he did not conceal his identity. He asserts that the State has the means at its command to ensure and monitor his appearance in court in the country if he is released on bail. Furthermore, none of the evidence is at risk, since the expert evidence is in the possession of the Court.

3.8 The author also claims that his right to be tried without undue delay, as set forth in article 14, paragraph 3 (c), of the Covenant, has been violated. He cites the case law of the European Court of Human Rights, according to which the starting point for measuring any such delay is the moment that formal charges are made; this may include the period starting with the commencement of any interlocutory measures against the presumed accused. It ends at the time that the accused is notified of the sentence or the order that definitively closes the case. The author recalls that the European Court has rejected the arguments that have been advanced by certain States that such delays are attributable to the time required to gather expert evidence or to judicial bodies' backlogs. He also cites the Committee's jurisprudence on the issue. He states that article 136 of the Code of Criminal Procedure establishes that the pretrial phase of the proceedings should not take longer than 120 days and that, if that period is exceeded, the examining magistrate must inform the Supreme Court, in writing, of the reasons for that situation. This notification must be repeated every 60 days after the conclusion of that time period.

[6] This provision states that: "Anyone who conceals, disguises or causes to disappear, either totally or partially, the assets of an enterprise for purposes of unfair gain, for him or herself or for another, and who, in doing so, does harm to a third party, shall be punished by a term of imprisonment of from 12 months to 10 years."

State party's observations on admissibility

4.1 By means of a note verbale dated 16 September 2009, the State party challenged the admissibility of the communication. It asserts that the author has been on trial and in prison since 11 September 2008 and is charged with the offence of corporate bankruptcy fraud under article 5 of Act No. 14,095.

4.2 The author had been a fugitive from justice since 8 August 2002. He fled the country following the fraudulent bankruptcy of a number of his banks and, concurrently, the prosecution and arrest of his father, his brothers and other partners, all of whom were members of the same corporate group. The acts for which the author is to be prosecuted are the same ones that led to the prosecution of his family members and partners; these acts concern activities and manoeuvres of the corporate group known as the "Velox Group".

4.3 Between 1993 and August 2002, the Velox Group owned and controlled a number of financial institutions, including the Banco de Montevideo S.A., BM Fondos, Indumex S.A., Banco Velox (Argentina), Velox Investment Company (Argentina), Banco Alemán Paraguayo (Paraguay), Financiera Guaraní (Paraguay), Trade and Commerce Bank (Cayman Islands) and the agent for Trade and Commerce Bank in Uruguay, LATINUR S.A. The Group's modus operandi involved giving a member of the Peirano family control over the finances of these companies. The author headed up the Group and took the most important financial decisions. In late 2001, the economic crisis that broke out in Argentina and then spread to the rest of the region did serious harm to the Group's interests in Uruguay, where clients began to withdraw large sums from the banks in question. In view of these circumstances, the Group took decisions designed to save its assets. In 2002, the Central Bank of Uruguay became aware that the Banco de Montevideo's capital assets were declining, as it had begun to provide assistance to the Group's financial institutions in an irregular manner and to extend personal loans to the author. These operations, which were unlawful, led to the closure of the Banco de Montevideo and to the Group's appropriation of its savers' funds, thereby triggering a financial crisis that endangered the country's entire financial system.

4.4 In view of the author's individual responsibility for these events, the judiciary issued an international arrest warrant on 8 August 2002. While he was a fugitive from justice, the author concealed his identity by using the names John P. Basso, or John P. Vasso or John P. Vazzo. On the day of his arrival in the State party, on 10 September 2008, a hearing was held as required by law and, on 11 September 2008, an initiating order was issued. The Constitution does not permit a person to be tried in absentia, and a person must therefore be physically present in order for a criminal case to be brought against him or her under the laws in force. This was done following the author's transfer from the United States. The author lodged an application for reconsideration, a petition for annulment and an appeal against the committal order, which were denied. The Court of Criminal Appeal for the Third Circuit upheld this decision on 20 July 2009.

4.5 The author applied for provisional release on two occasions. These applications were denied by the judge presiding over the case and by the Appeal Court. His application for release ex gratia was denied by the Supreme Court. He was also denied temporary leave.

4.6 The case against the author is in the pretrial investigation stage, and evidence is being gathered. Consequently, one of the basic requirements for the submission of a communication, i.e., exhaustion of domestic remedies, has not been met. None of the judicial remedies provided for under domestic law has been undertaken or exhausted, since no final judgement has been handed down that attributes criminal responsibility to the author for the acts with which he is charged.

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

5.1 In comments dated 3 December 2009, the author refers to the State party's description of him as being a fugitive from justice. He affirms that he left Uruguay on 25 June 2002 in a flight headed to São Paulo without at any time concealing his identity. From there, he took a flight to New York, where he arrived on 26 June 2002. He did not conceal his identity at that time either. In November of that year, he applied for and obtained a driving licence (an official identity document in the United States) in the State of Tennessee in the name of Juan Peirano Basso. In March 2003, he began the official application procedure for legal residency in the United States and established his domicile at his place of residence (Clarksville, Tennessee). In April 2003, he applied to the tax authorities for a Taxpayer Identification Number. In 2004, he applied for a temporary work permit. The Social Security Service issued a temporary certificate to him in the name of Juan Peirano Basso. On 29 May 2005, he received his permanent residency permit in the same name. When the United States authorities received the extradition request, they looked into his personal situation thoroughly. If he had been deemed to be a "fugitive from justice", the extradition proceedings would not have been undertaken and he would have been handed over immediately.

5.2 The statement that he and his brothers were in the same situation is inaccurate, since his family members were arrested in August 2002, when he was not in the country. The acts for which it was decided that he should be prosecuted are not the same as those for which his family members are being tried either. Whereas his family members are being tried for an offence defined in Act No. 2,230 of 1893, article 76 of which was repealed on 28 November 2008, the author is being prosecuted for the offence of corporate bankruptcy fraud. In addition, in its response, the State adduces circumstances by which it purports to prove the author's guilt, while forgetting that, until such time as a final judgement is handed down, he should be presumed innocent.

5.3 The author reiterates that the minimum penalty for the offence with which he is charged is one year and that he therefore has been in pretrial detention for a period equal to nearly half of the maximum possible penalty. His pretrial detention therefore constitutes the imposition of a portion of the possible sentence before the fact and a serious violation of the principle of presumption of innocence. Furthermore, the State party has not explained why the proceedings have not been completed or what evidence the defence has sought or what steps it has taken that have delayed the trial unreasonably. His situation is like that of his brothers in the sense that, although they have now been released on bail, they are still on trial, and have been so for over seven years, under a law that has been repealed and without a judgement being rendered.

5.4 The author reiterates that there has been a flagrant violation of the right to a fair trial within a reasonable time period as determined on the basis of the type of trial involved. As stated in the extradition papers, the extradition order was issued on the understanding that guarantees of due process under the national laws of Uruguay would be upheld and that international obligations, including observance of the right to be tried without undue delay as provided for in the International Covenant on Civil and Political Rights, of which Uruguay is a party, would be honoured.

5.5 As far as the exhaustion of domestic remedies is concerned, the author used all possible means at his disposal to secure his provisional release. The rights which he claims have been violated (including the right to be tried within a reasonable amount of time or to be placed at liberty and the right to be free of bodily harm) are not conditional upon, and can continue to be enjoyed, whether or not the criminal proceedings continue. The exhaustion of domestic remedies does not refer to the conclusion of criminal proceedings but rather to the exhaustion of all means of remedying the situation. If there are no further means of applying for release during the trial, then that avenue has been exhausted; it is not

necessary to await the completion of the criminal proceedings. What is more, no time limit is established by Uruguayan law for any of the stages in the proceedings, and it is therefore highly likely that the proceedings will take as much time as the maximum term of imprisonment provided for.

State party's observations on the merits

6.1 On 11 January 2010, the State party noted that a number of the allegations contained in the communication are directly or indirectly related to the criminal proceedings in question. It would therefore be improper for the State to comment on those points, since this would run counter to the principle of subsidiarity as it applies to the international system and would entail the prejudgement of a trial in which the corresponding judicial authorities have not yet rendered a verdict, as well as, potentially, being prejudicial to the presumption of innocence. The State party therefore confines its observations to two issues: the denial of provisional release and the aggression that occurred in the author's place of detention.

6.2 The author left the country in 2002 and remained a fugitive from justice until 2006, during which time he concealed his identity in the United States by using the names John P. Basso or John Vasso or John P. Vazzo. In the opinion of the judge who is hearing the case, there are consequently substantial grounds for preventing the occurrence of similar behaviour in the future.

6.3 The author is being held in the Santiago Vázquez Prison Complex. A great deal of public attention has been focused on him because of the impact that his and his family's conduct had on large sectors of the Uruguayan population when, in 2002, they lost their bank savings. This gave rise to public alarm and upheaval and may have motivated the attack upon him. The staff of the prison system immediately came to the author's assistance and took him to the hospital for treatment. When he was released from the hospital, he was placed in a wing in a cell of his own as an additional measure to ensure his physical safety. In September 2009, he was transferred to the recently opened Juan Soler prison facility. The transfer was the result of a unilateral decision by the State rather than in response to any request by the author's defence counsel. Its purpose was to provide greater protection in order to ensure his physical safety.

Author's comments on the State party's submission on the merits

7.1 On 5 March 2010, the author submitted his comments on the State party's observations concerning the merits of the communication. He states that none of the judges who denied his applications for provisional release explained why they thought or suspected that the author might flee or obstruct the investigation. According to the jurisprudence of the Inter-American Commission on Human Rights, the judge must demonstrate that a risk of flight exists. If there is no clear declaration of such a risk, imprisonment is unjustified. In addition, if the only ground is a danger of flight, then the release should be granted and measures taken to ensure the defendant's appearance in court. The finding of such risk should also be based on objective circumstances. A mere allegation, without consideration of the specific case in question, does not meet this requirement.

7.2 The use of pretrial detention as a general rule and the establishment of the limit of its duration as the maximum sentence that would apply is an abuse and contravenes the rules of due process. In the author's case, it is also discriminatory because it is being employed by reason of his social status or economic position.

7.3 The decision to transfer the author to a maximum security facility located 100 kilometres away from Montevideo was taken without consulting the presiding judge, even though she is responsible for upholding the detained person's rights and guarantees.

7.4 The author refers to the report of the United Nations Special Rapporteur on torture, who went on mission to the State party in March 2009. The Rapporteur describes the deplorable conditions existing in the prison system, the slowness of the judicial system and the extensive recourse to pretrial detention, which he considers to be contrary to the principle of the presumption of innocence and the use of deprivation of liberty as a last resort.

Additional comments by the author

8. On 1 September 2010, the author stated that on 22 July 2010 his application for temporary leave had again been refused. He also referred to the ruling of 28 September 2009 convicting the two prisoners of having caused him bodily harm at the beginning of his imprisonment.

Issues and proceedings before the Committee

Consideration of admissibility

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

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

9.3 The Committee takes note of the State party's observations that the author has not exhausted all available domestic remedies because no final judgement has yet been handed down in his case. The Committee considers that the situations which are the subject of the author's complaint primarily have to do with the way in which the case against him is being handled and are independent of the final outcome of that case. Consequently, it concludes that the State party's argument is not germane to the question of admissibility of the various complaints lodged by the author.

9.4 The Committee takes note of the author's claim that his detention and the proceedings against him are arbitrary and illegal because the procedural law in force runs counter to the Covenant and constitutes a violation of article 2, paragraphs 1, 2 and 3 (a), of the Covenant. The Committee recalls its jurisprudence in this connection, which indicates that the provisions of article 2 of the Covenant, which lay down general obligations for States parties, cannot, in and of themselves, give rise to a claim in a communication under the Optional Protocol. The Committee therefore considers that the author's contentions in this regard are inadmissible under article 2 of the Optional Protocol.[7]

9.5 With regard to the author's claims that, upon his arrival in Uruguay on 10 September 2006, he was not promptly informed of the charges against him and that he did not have adequate time to prepare his defence, the Committee takes note of the decision dated 12 November 2008, by which the judge ruled against the author's request for review of the initiating order and the committal order and in which the above-mentioned claims are

[7] See, for example, communication No. 802/1998, *Rogerson v. Australia*, Views of 3 April 2002, paragraph 7.9.

addressed. The ruling specifically states that the author was aware of the offences with which he was to be charged, since they were detailed in the extradition warrant issued to the United States authorities. It also states that, when the author was being questioned by the court in the presence of his counsel, he was asked if he would like the hearing to be postponed in order to give him time to prepare his defence more fully. In the light of this ruling, the Committee finds that the author's claims in this respect have not been sufficiently substantiated to establish their admissibility and decides that they are inadmissible under article 2 of the Optional Protocol.

9.6 The author claims to be a victim of a violation of article 26 of the Covenant because he is being tried for an offence under a different law than the one under which his father and brothers were brought to trial in 2002 but on the basis of the same facts and evidence. The Committee is of the view that each case on which it is called upon to rule must be considered on the basis of its specific characteristics and that this claim is therefore devoid of substantiation. The Committee therefore finds that this portion of the communication is inadmissible under article 2 of the Optional Protocol.[8]

9.7 The author claims to have been the victim of a violation of articles 7 and 10 of the Covenant because of the conditions of detention in the COMCAR prison and particularly because of the fact that, on 15 September 2008, he was attacked by other prisoners and had to be hospitalized. The Committee observes that, according to the author, these events gave rise to an investigation, as a result of which the inmates responsible had been tried and convicted. The Committee further takes note of the information supplied by the State regarding the steps taken to ensure prison safety. The Committee therefore finds that this claim is inadmissible on the ground that it was ill-founded under article 2 of the Optional Protocol.

9.8 The author claims that he has been denied provisional release, in violation of article 5, paragraph 3, of the Covenant and that his right to be presumed innocent, under article 15, paragraph 2, was not respected, nor, he also claims, was his right, under article 14, paragraph 3 (c), to be tried without undue delay. The Committee is of the view that those claims have been sufficiently substantiated to be considered admissible and that domestic remedies have been exhausted. There being no other obstacles to admissibility, it finds this part of the communication admissible and proceeds with its consideration on the merits.

Consideration of the merits

10.1 The Human Rights Committee has considered the present communication in the light of the information made available to it by the parties, as required under article 5, paragraph 1, of the Optional Protocol.

10.2 The Committee takes note of the author's claim regarding the judicial authorities' refusal to grant him provisional release. It observes that the author was taken into custody in the United States on 19 May 2006 and extradited to the State party. Since his arrival in Uruguay on 10 September 2008, he has remained in detention, and his requests to be released from detention while his case is prosecuted have been denied. The Committee recalls its jurisprudence regarding article 9, paragraph 3, to the effect that pretrial detention should be the exception and that bail should be granted, except in situations where the likelihood exists that the accused would abscond or destroy evidence, influence witnesses or flee from the jurisdiction of the State party.[9] The Committee takes note of the State party's argument that the accused was a fugitive from Uruguayan justice and that there

[8] See communication No. 526/1993, *Hill v. Spain*, Views of 2 April 1997, paragraph 12.3.

[9] Ibid., paragraph 12.4.

were therefore substantial grounds for thinking that he might behave in a similar manner in the future. The Committee underscores the nature of the charges against the author, that he left the country on 25 June 2002, that an international warrant for his arrest was issued on 8 August 2002 and that his return to the State party was not voluntary but the result of an extradition process. Consequently, the Committee is of the view that refusal of the State party's authorities to grant him provisional release is not a violation of article 9, paragraph 3, of the Covenant. Having arrived at this conclusion, the Committee does not consider it necessary to reach a decision regarding a possible violation of article 14, paragraph 2, of the Covenant.

10.3 The Committee observes that, after the author had been extradited, an initiating order for the case against him was issued on 11 September 2008. The proceedings have been in the pretrial stage since that time despite the fact that, under article 136 of the Code of Criminal Procedure, that stage may not exceed 120 days in length without an explanation. The State party has not provided an explanation of the reasons for this stage's duration,[10] nor is there any indication of the date on which the proceedings are expected to be completed. Under these circumstances, the Committee is of the view that there has been a violation of the author's right, under article 14, paragraph 3 (c), to be tried without undue delay.

11. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the information before it discloses a violation by the State party of article 14, paragraph 3 (c), of the Covenant.

12. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author with an effective remedy. The State party should also take steps to speed up the author's trial. The State party is also under an obligation to prevent similar violations in the future.

13. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant, the Committee wishes to receive information from the State party within 180 days about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the Committee's Views.

[Adopted in English, French and Spanish, the Spanish text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

[10] The text in square brackets in paragraphs 10 and 11 is relevant only if the Committee decides in favour of option 1 for paragraph 9.2.