



Human Rights Committee

Communication No. 1801/2008

**Views adopted by the Committee at its 104th session,
12–30 March 2012**

<i>Submitted by:</i>	G. K. (represented by Böhler Franken Koppe Wijngaarden Avocaten)
<i>Alleged victim:</i>	The author
<i>State party:</i>	The Netherlands
<i>Date of communication:</i>	30 July 2008 (initial submission)
<i>Document references:</i>	Special Rapporteur's rule 97 decision, transmitted to the State party on 5 August 2008 (not issued in document form)
<i>Date of adoption of Views:</i>	22 March 2012
<i>Subject matter:</i>	Expulsion to Armenia
<i>Substantive issues:</i>	Risk of being detained and tortured if returned to Armenia; lack of adequate remedy
<i>Procedural issue:</i>	None
<i>Articles of the Covenant:</i>	7 and 2, paragraph 3, read in conjunction with 7
<i>Articles of the Optional Protocol:</i>	None

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 (104th session)

concerning

Communication No. 1801/2008*

Submitted by: G. K. (represented by Böhler Franken Koppe Wijngaarden Avocaten)

Alleged victim: The author

State party: The Netherlands

Date of communication: 30 July 2008 (initial submission)

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

Meeting on 22 March 2012,

Having concluded its consideration of communication No. 1801/2008, submitted to the Human Rights Committee by G. K., 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

1.1 The author of the communication, dated 30 July 2008, is G. K., an Armenian national born on 19 September 1967. He claims that the Netherlands would violate his rights under articles 7 and 2, paragraph 3, read in conjunction with article 7 of the International Covenant on Civil and Political Rights, if he were to be deported to Armenia. He is represented by counsel, Böhler Franken Koppe Wijngaarden Avocaten.¹

1.2 On 5 August 2008, pursuant to rule 92 of the Committee's rules of procedure, the Committee, acting through its Special Rapporteur on New Communications and Interim

* The following members of the Committee participated in the examination of the present communication: Mr. Lazhari Bouzid, Ms. Christine Chanet, Mr. Ahmad Amin Fathalla, Mr. Yuji Iwasawa, Mr. Walter Kaelin, Ms. Zonke Zanele Majodina, Mr. Gerald L. Neuman, Mr. Michael O'Flaherty, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Fabian Omar Salvioli, Mr. Marat Sarsembayev, Mr. Krister Thelin and Ms. Margo Waterval.

Pursuant to rule 90 of the Committee's rules of procedure, Committee member, Mr. Cornelis Flinterman, did not participate in the adoption of the present decision.

¹ The Optional Protocol entered into force for the State party on 11 December 1978.

Measures, requested the State party not to deport the author while his case is under consideration by the Committee.

The facts as submitted by the author

2.1 The author was an overt supporter of the Armenian opposition leader, Ter-Petrosian, who openly expressed himself against the Government of President Sarkisian. He worked as a police officer at the Yerevan police district from 1994 until he left Armenia on 15 June 2008. As a police officer at Yerevan police station, his main task was to secure banks and maintain public order during public events. The police apparatus functions directly under the responsibility of the Government. Dissent is not tolerated within the police force. The author never hid his political ideas and on three occasions, he refused to obey orders to suppress demonstrations held against President Sarkisian, around and after the 2008 elections.² Although the use of violence by the police during these demonstrations was encouraged, the author refused to use such methods against demonstrators. On 24 April 2008, during a major demonstration, the author refused to use force, even though he was promised a bonus for doing so. His superiors discovered it. They threatened him and physically ill-treated him. Intimidation by his superiors continued over time.

2.2 Before the elections, the district mayor and several of his employees were offering the population money in exchange for their votes for President Sarkisian. In this context, they came several times to the author's house in the Yerevan suburb. The author consistently refused the money offered. The municipality therefore became aware of the author's political opinions.

2.3 The author's wife was also threatened because of her support for Ter-Petrosian. She used to work at the parliament buildings, where she was threatened by colleagues. They tried to convince her to vote for President Sarkisian, but she refused. This refusal resulted in threats and intimidation. Between 19 and 25 March 2008, the authorities tried to break her resistance. The authorities inflicted a treatment on her that the author was unable to reveal during the first stage of his asylum procedure in the Netherlands. Following these events, the author's wife fled to Russia on 4 April 2008.

2.4 The author stayed in Armenia and tried to keep a low profile. He continued his work until the intimidation became too frequent and too serious. His superiors beat him at his work on 24 April 2008. On 10 May 2008, the author requested holiday leave, which was refused. His second request was refused as well. However, when he promised to work during his holiday leave if necessary, he was granted leave from 19 May until 19 June 2008. He was asked to be present at his work several times during this period. On 19 May 2008, he was again beaten by his superiors. From this day on, they called him on a daily basis threatening him. Between 5 and 15 June 2008, he went into hiding and slept for several nights at his mother-in-law's house and at a friend's house. Meanwhile, he prepared his escape: he had already made his first request for a visa in April 2008 at the Embassy of the United States of America, which was rejected on 6 May 2008. His second visa request made at the Egyptian Embassy was granted on 2 June 2008. With this visa, his valid passport and a flight ticket, he left Armenia on 15 June 2008.

2.5 Colleagues of the author were also arrested, detained and ill-treated because of their political opinions. The police started harassing and intimidating the author's family (mother, brother Artak and sister-in-law Nelly) and mother-in-law for the first time on 22 June 2008, after the author had left the country. They asked about the whereabouts of the

² President Serge Sarkisian was inaugurated on 9 April 2008, having defeated several other candidates, including Levon Ter-Petrosian (President, 1991-1998) who finished in second place, in elections held on 19 February 2008.

author, threatening them and intimidating them with their weapons. On 17 July 2008, the author's brother Artak was arrested and subjected to inhuman treatment by officers of a special department, in order to obtain information concerning the author's whereabouts.

2.6 When the author left Armenia on 15 June 2008, he flew to the Netherlands, arriving there on the same day. He immediately lodged an asylum request. On 16 June 2008, he had his first interview, during which he was asked questions regarding his identity, nationality and itinerary. On 18 June 2008, he had his second interview during which he exposed the reasons for his asylum request.

2.7 On 19 June 2008, written notification was given of the Government's intention to dismiss the author's asylum request. Although it deemed the author's account credible, it considered him not to be an important political opponent, who could fear persecution. The report considered that the author's continuous working activity during his holiday, his stay with his mother-in-law and a friend for a while (in the State party's view an obvious hiding place for the authorities to look for him) and his flight from Armenia with his own passport, were evidence that the author did not fear persecution or ran the risk of being inhumanely treated upon return to Armenia. The author was given the possibility to give his written viewpoint on the intention within 3 hours, which he did.

2.8 The author submitted his written viewpoint, as well as corrections and additions to the second interview the same day at 6:00 p.m., three hours after receiving the report of the second interview and the Government's intention. In his additional points, the author stated that following his refusal to obey police orders, he was threatened and beaten by three of his superiors on 19 May 2008. The only reason for such treatment was his political opinions. At this stage, the author also mentioned that prior to her flight to Russia, his wife had not only been threatened but also raped by persons linked to the district mayor and persons working at the parliament building. The author also submitted reports from Human Rights Watch, the International Crisis Group and Amnesty International, as well as articles from Radio Free Europe, to substantiate his claims. These reports confirm that no free elections were held, and that the opposition was intimidated, threatened and violently attacked by security forces (army and police). They further state that security forces are a powerful apparatus that can operate without hindrance or punishment, and that civil servants were forced by their superiors to vote for President Sarkisian and attend pro-Sarkisian rallies. The author emphasized the ill-treatment and threats that he and his wife were subjected to, and the fact that he had not returned to work after the expiration of his holiday leave, which drew negative attention to his political stand.

2.9 The author's asylum request was rejected on 20 June 2008 on the ground that he was never persecuted, arrested, detained or sentenced in Armenia; that during the second interview, the author did not mention the ill-treatment that he and his wife were subjected to; that the threats from superiors would not be sufficient reasons to fear persecution upon return; and that the documents provided after the second interview were of a broad nature and not directly related to the author's specific case. The author appealed to the Hague District Court in Haarlem substantiating his claim to the threats against his mother and one of his colleagues. He also submitted the contracts of his property in Yerevan to demonstrate that he did not leave Armenia for economic reasons. The appeal was rejected on 8 July 2008. The author then appealed to the Administrative Law Division of the Council of State, bringing additional information that the police came to the house of his mother and mother-in-law to inquire about him on 22 June, 3 and 10 July 2008.

2.10 On 18 December 2008, the author informed the Committee that all his documents, such as his passport, marriage certificate, police membership card and air ticket had been sent by the State party authorities to the Armenian Embassy. The Armenian authorities were therefore informed of the author's presence in the Netherlands, which increased his risk of persecution upon return.

The complaint

3.1 The author considers that the State party's decision to expel him to Armenia would violate his rights under article 7 of the Covenant. The author further argues that the accelerated asylum procedure he was submitted to violates article 2, paragraph 3 of the Covenant, in conjunction with article 7.

3.2 As a political dissident within the police apparatus, the author argues that he faces a real risk of being persecuted upon return to Armenia. The police are under the strong influence and control of President Sarkisian. As a police officer, the author is not allowed to be officially politically active or to be a member of a political party. In the past, he and his wife were intimidated, threatened and ill-treated. These allegations were supported by letters from witnesses to such ill-treatment, including the author's mother, who confirms that the author was beaten, and a colleague's mother, who alleged similar treatment of her own son. The author further alleges that since his departure from Armenia, his family has been subjected to intimidation and threats by the police, using weapons. On 17 July 2008, the author's brother Artak was arrested and subjected to inhuman treatment by officers of a special department in order to obtain information about the author's whereabouts.

3.3 Human Rights Watch, the International Crisis Group, Amnesty International, as well as articles from Radio Free Europe confirm the violence in 2008. Some reports mention that physical abuse and ill-treatment of detainees during apprehension and on the way to the police department were documented. In some cases, abuses continued in custody.³ The reports also state that violence continued after the election period. The author notes that the reports do not make any distinction between prominent opponents and ordinary political opponents. Given the treatment reserved for political opponents, as demonstrated by the reports submitted, the State party would be in violation of article 7 of the Covenant should he be expelled to Armenia.

3.4 The author's rights under article 2, paragraph 3, in conjunction with article 7, have also been violated as his asylum request was considered in the framework of the accelerated asylum procedure, which is limited in time (48 procedural hours) and therefore leaves almost no time for preparation by the asylum seeker and his/her representative. A Human Rights Watch report states that the accelerated procedure often deprives the applicants of their fundamental right to a full and fair consideration of their claims; and that applicants have little opportunity to document their need for protection. The rigid framework of deadlines also fails to allow meaningful access to legal counsel and raises serious risks of refoulement. As a result of this criticism, on 24 June 2008, the Minister of Justice announced plans to revise the accelerated procedure and to prolong it from 48 hours to 8 days.

3.5 The author considers that he should have been referred to the long-term asylum procedure, since his asylum account was deemed credible by the authorities. The long-term procedure would have enabled them to conduct a more extensive examination of the author's claim of violations of the 1951 Convention on the Status of Refugees and of article 3 of the European Convention on Human Rights. In order for State party authorities to obtain more credible information, more time should be granted to asylum seekers to enable them to gather information and evidence to support their claims. The author also criticizes the refusal of the State party authorities to consider the testimonies of the author's family as relevant pieces of evidence. Moreover, not enough scrutiny was applied at the appeal level before the District Court in Haarlem and the Council of State. The burden of proof should

³ See Human Rights Watch, "Armenia after the Election," written statement, 17 April 2008.

not lie solely on the applicant, especially since the author and the State party do not always have equal access to evidence.

The State party's observations on admissibility and merits

4.1 On 5 February 2009, the State party submitted its observations on admissibility and merits. It starts by recounting the author's asylum procedure, specifying that after the first interview on 16 June 2008, the author prepared for the second interview on 17 June 2008 with the assistance of a legal adviser. The legal adviser may discuss with the asylum seeker the report of the first interview and the results of the investigations on his identity, nationality and travel route, and spend a maximum of two hours helping him to prepare for the second interview.⁴ During the second interview, the author was given an opportunity to elaborate on his asylum application. Reports were drawn up of both interviews, which took place in Armenian with the help of an interpreter. On 19 June 2008, written notification was given of the intent to dismiss the author's asylum application. The report of the second interview was appended to that notification.

4.2 The author was given the opportunity to make substantive changes and/or additions to the report of the second interview, in writing. He was then given the opportunity to express his opinion about the notification of intent to reject his asylum application, which he did by letter of 19 June 2008. A large number of public documents were appended to the notification. On 20 June 2008, the asylum application was rejected within the application centre procedure (accelerated procedure),⁵ because it was possible to determine, without a time-consuming investigation, that the author was not eligible for residence in the Netherlands on one of the grounds referred to in section 29 of the Aliens Act 2000.⁶ On the same day the author filed an application for judicial review. The author also applied for an injunction to suspend his expulsion. Both applications were considered on 1 July 2008 by the Hague District Court in Haarlem. By judgement of 8 July 2008, the district court rejected the author's application. The author lodged an appeal on 15 July 2008 with the Administrative Jurisdiction Division of the Council of State, which the Division declared manifestly ill-founded by decision of 25 July 2008.⁷

4.3 In his second interview, as grounds for his asylum application, the author mentioned his position as police officer, his unwillingness to vote for President Sarkisian, despite pressures from his superiors, and his non-affiliation to any political party. The author explained that starting 20 February 2008, after President Sarkisian's electoral victory, a

⁴ This time frame can be extended to three hours, upon request.

⁵ According to the State party, the application centre procedure is an accelerated procedure in which a decision is taken within 48 hours if it is determined that the application can be either rejected on the grounds of sections 30 or 31 of the Aliens Act 2000 or section 4:6 of the General Administrative Law Act (this includes futile cases and Dublin claim cases), or granted without a time-consuming investigation during the application centre procedure on the grounds of section 29 of the Aliens Act 2000.

⁶ See section 29 of the Aliens Act 2000 which provides for a temporary asylum residence permit to be issued to an alien: who is a refugee within the meaning of the 1951 Convention on the Status of Refugees; who makes a plausible case that he has reasonable grounds to believe he will run a real risk of being subjected to torture or to inhuman or degrading treatment or punishment; who cannot, for compelling reasons of humanitarian nature connected with the reasons for his departure from the country of origin, reasonably be expected, in the opinion of the State Secretary of Justice, to return to his country of origin; for whom return to the country of origin would, in the opinion of the State Secretary, constitute an exceptional hardship in connection with the overall situation.

⁷ Pursuant to section 91, subsection 2, of the Aliens Act 2000, when issuing its judgement, the Division may, as in the case at hand, confine itself to stating its opinion that the appeal is manifestly unfounded.

number of peaceful demonstrations took place, at which the author was present to maintain order. From 1 March 2008 onwards, the demonstrations became violent. Because he was on leave on 1 March 2008, the author was not present during the first violent demonstration. However, the author was present at the demonstrations of 21 March, 23 March and 9 April 2008, in his capacity as police officer. Because he was positioned at the end of the ranks, he did not have to use force against demonstrators. During the asylum procedure, the author reported that the district mayor was a member of the Government party and knew that the author and his wife had refused to take money in exchange for votes in favour of President Sarkisian. At the end of March 2008, the district mayor and a number of other men attempted to abduct and rape the author's wife. He suspects that his superiors were also involved. The author's wife was able to escape and decided to flee to Russia on 4 April 2008, against her husband's will. At the end of April 2008, the author decided to leave Armenia as well.

4.4 In this interview, the author further mentioned that he had started sympathizing with the demonstrators and therefore did not agree with the way they were treated by police forces. Consequently, he invented an excuse to avoid having to be present during the demonstration that took place on 24 April 2008. He did go to work that day to guard a bank. The author submitted requests for leave on 10 and 19 May 2008. Both requests were denied initially. However, in order to avoid having to serve during demonstrations, the author made an agreement with his superiors that if they approved his leave request in writing, he would show up to work to guard banks only. The author stopped going to work on 19 May 2008. His phone rang every day from that moment on, but he did not answer. On 1 June 2008, his commanding officer called to inform him that if he did not show up to work, measures would be taken. His commanding officer also said that he knew who the author had voted for. He added that if the author did not show up to work, he would disappear. The author, who in the meantime had arranged for a flight ticket and a visa to Egypt, reported for work at the police station on 2 June 2008, and was instructed to guard the bank every other day. On 3 June 2008, the author received his visa for Egypt. From 3 to 14 June 2008 he continued receiving phone calls, and during that time, he spent most of his time with his parents-in-law or a friend. On 15 June 2008, he flew to Egypt, then proceeded to the Netherlands.

4.5 Recalling the asylum application process and the possibility of resorting to the accelerated application centre procedure, the State party explains that the author's asylum application was evaluated on the basis of information from the Ministry of Foreign Affairs country report of March 2008 and various reports compiled by Radio Free Europe, Radio Liberty, Amnesty International, Human Rights Watch and the International Crisis Group, which the author submitted during the procedure. When the decision was made, the policy on asylum seekers from Armenia was based on the country report dated March 2008. The State party emphasizes that the situation in Armenia is not such that every asylum seeker from Armenia should automatically be designated a refugee within the meaning of the 1951 Convention on the Status of Refugees, nor can it be concluded that returning to Armenia would, in itself, expose a person to the risk of torture or cruel, inhuman or degrading treatment or punishment within the meaning of article 7 of the Covenant.

4.6 At the time of the decision on the author's asylum request, the State party considered that specific groups required special attention. One such group included members of opposition political parties. The information relied upon by the State party was that opposition parties were impeded by the Armenian authorities as of March 2008. There were reports of raids, arrests, a bomb attack and arson. Deadly force was sometimes used and some arrests and convictions were political. The country report was issued in March 2008 and pertains to the period from October 2006 until January 2008 and therefore does not cover the presidential elections in Armenia on 19 February 2008, and the alarming situation that developed in the wake of the elections, particularly in the run-up to the author's

departure. However, in evaluating the author's asylum application, the State party made use of information from other public documents, namely those submitted by the author in the national procedure.

4.7 Regarding the author's claim under article 7 of the Covenant, the State party first acknowledges the consistency of the author's account with the political situation in Armenia following the presidential elections of 19 February 2008. The State party specifically refers to inter-governmental and non-governmental reports, stating that many Armenian State employees reported being coerced by their superiors to vote for Sarkisian or to attend his rallies.⁸ A large number of arrests were made as a result of the demonstration of 1 March 2008, from which a large majority of the persons detained have been found guilty and sentenced.⁹ The State party therefore does not refute the author's assertions at the second interview that he and his wife were offered money to vote for Sarkisian and that they refused it, that the author tried to avoid working at demonstrations and that his wife was a victim of attempted rape.

4.8 The State party considers, however, that this version of the author's account provides insufficient reason to conclude a well-founded fear of treatment in breach of article 7 of the Covenant. The author never carried out political activities against the authorities of his country, nor was he politically active. The author was merely sympathetic to the opposition and voted for the President's opponent. In contrast to the author's claim in his communication to the Committee, it cannot be concluded from the report of the second interview that the author made his political convictions known to the Armenian authorities. The interview report indicates that the author suspects that his superiors knew about his political sympathies when he refused to take money to vote for Sarkisian. However, there is no evidence to suggest that the author ever made his political preferences explicitly known. The State party refers to the report of the second interview, in which the author said that he had justified his refusal to work during the demonstration of 24 April 2008, by claiming that he had not yet been paid. The State party therefore understands such behaviour as a means used to conceal his political preferences from his superiors.

4.9 Furthermore, the reports mentioned by the author refer to political activists. Based on the author's statements, he cannot be considered as belonging to any of those groups, nor can it be concluded that the authorities would attribute such oppositional activities to him. In addition, according to the report issued by the Commissioner for Human Rights of the Council of Europe dated 29 September 2008, even active members of the opposition and participants in the violent protests that took place on 1 and 2 March 2008 were only given prison sentences in the worst cases, and most were subjected to non-custodial measures. It cannot be concluded that the authorities have a special interest in the author because he and his wife refused to take money in exchange for voting for Sarkisian and because he refrained from doing certain police work. According to the report of the second interview, the objective of the conversations between the author and his superiors, which he described as threatening, was to induce him to return to work so that he could carry out his duties. References in those conversations to the author's support for presidential candidate Ter-Petrosian are not sufficient evidence to disclose a violation of article 7 of the Covenant. The author's fear that he would suffer harsh treatment in the future is based on unsubstantiated suspicions, which the State party, given its knowledge of Armenia, considers implausible.

⁸ See OSCE/ODIRH Election Observation Mission Report dated 30 May 2008 on the presidential election in Armenia on 19 February 2008; and the International Crisis Group report, "Armenia: Picking-up the Pieces," dated 8 April 2008.

⁹ See report of the Commissioner for Human Rights of the Council of Europe dated 29 September 2008, "Special Mission to Armenia, Summary of Findings, Yerevan, 13-15 July 2008."

4.10 Moreover, the conversations held with his superiors did not prompt the author to leave the country immediately. Even the attempted rape of his wife at the end of March 2008 did not induce him to leave, since he only left the country on 15 June 2008. In addition, the author failed to substantiate his assertion that the Armenian authorities could be held partly responsible for the rape attempt, which is based on mere suspicions. The author did not report these events to the police nor did he substantiate his assertion that reporting them would have been futile. The documents provided by the author did not further support his claims.

4.11 The author did not seem to have suffered adverse consequences when he went to work at the police station on 2 June 2008, as ordered by his superiors. If the authorities had viewed him as an object of suspicion because of his political sympathies, they would have been justified in taking disciplinary action against him. Furthermore, the author left the country with his national passport and a visa without encountering any problems. The author's chosen method of leaving the country suggests that he did not anticipate any trouble with the authorities.

4.12 The State party's conclusion is not altered by the author's later allegations that on 24 April 2008 and 19 May 2008 he was maltreated by his superiors and his wife was raped, which he did not mention until after the interviews. It is the asylum seeker's responsibility to mention any relevant fact necessary for a decision to be made regarding the asylum procedure. In the present case, the author was assisted by a lawyer who was in charge of advising him to disclose all information relevant for the procedure, even the ones that could be sensitive or difficult to reveal. Despite such advice, the author failed to mention some aspects which he only revealed later. The State party is all the more puzzled by such behaviour since the second interview report states that when asked explicitly whether he had been maltreated, the author said he had not been. He was also asked at that interview whether it was true that his wife had managed to escape from her attackers, and had not been harmed, and he answered in the affirmative. Moreover, in his letter of 19 June 2008, which contained corrections and additions to the report of the second interview, the author mentioned only an assault that allegedly took place on 19 May 2008. Subsequently, he has claimed that he was also maltreated on 24 April 2008. The author keeps changing his story.

4.13 The State party does not give much credit to the testimonies gathered later from his relatives, as they cannot be considered objective sources. Even if the content of the letters were to be taken into account, it could well be that the Armenian authorities were merely trying to determine why the author had not shown up for work or where he was residing.

4.14 Regarding the author's contention, referred to in his letter dated 18 December 2008, that the Armenian authorities are now aware that he is residing in the Netherlands because his passport, marriage certificate, police membership card and air ticket were sent to the Armenian representation to the Netherlands, the State party replies that the standard practice is that all documents left behind at the Royal Military Constabulary are returned to the representation of the alien's country of origin if the alien or his representative does not claim them within two months. In the present case, the author's representative requested those documents three months after the release of the author. The State party insists that it does not reveal any information regarding the existence of an asylum procedure to the alien's diplomatic representation.

4.15 As for the author's allegations under article 2, paragraph 3, of the Covenant, the State party notes that all procedural guarantees were observed during the author's asylum procedure. He was legally represented and twice took the opportunity of appeal, first before the district court, and then before the Division. The mere fact that judicial proceedings did not play out in his favour is not sufficient to show that he did not have access to judicial remedies. The State party therefore considers this part of the communication unfounded.

The authors' comments to the State party's observations

5.1 On 29 April 2009, the author commented on the State party's observations. He claims that his asylum request was too complicated and extensive to be dealt with in the application centre procedure, which is meant to be an exception to the normal procedure. According to the Dutch Aliens Circular, cases can be considered under the application centre procedure if it is possible to decide without time-consuming investigations that the application should be rejected. The author could not sustain his initial claim within 48 procedural hours, especially since he had to obtain information from Armenia and from a physician or a psychiatrist.

5.2 The author refers to a report requested by Amnesty International, dated 7 March 2009, providing a psychiatrist's assessment of the author's condition based on his claim of maltreatment by his superiors. In the report, the psychiatrist substantiates that the applicant was mentally incapable of mentioning the ill-treatment and the attempted rape on his wife during the interview. The psychiatrist also confirms the plausibility of the author's mental and physical symptoms being the result of ill-treatment. The psychiatrist concludes that the author's chronic symptoms and hypertension could indicate a long increased emotional tension which could plausibly be the result of the alleged torture. The report therefore supports the author's allegation related to the occurrence of traumatic events in Armenia before his flight. Under these circumstances, it could not be expected that the author would have mentioned in an earlier phase of the asylum procedure the ill-treatment of his wife and himself.

5.3 In its jurisprudence, the European Court of Human Rights has stated with regard to another State, that "the automatic and mechanical application of [the timeframe requirement] for submitting an asylum application must be considered at variance with the protection of the fundamental value embodied in article 3 of the Convention."¹⁰ As mentioned by the State party itself, the author's asylum application was evaluated based on information contained in the Ministry of Foreign Affairs' country report of March 2008, which does not cover the events alleged, and on reports submitted by the author. The State party has therefore only used materials submitted by the author and did not make any investigations itself.

5.4 Regarding the allegations submitted during the asylum application process, the State party did not carefully consider his statements. It has not disputed that the author refused on three occasions to obey orders to suppress demonstrations held against Sarkisian and that he received oral threats from his superiors because of his known support for presidential candidate Ter-Petrosian. The author already explained that his political convictions were known both within the police apparatus and to the district mayor and his employees, as they came several times to his house to offer the author and his wife money in exchange for votes. The author was politically active insofar as his political convictions had become clear to the authorities. As a police officer, he was not allowed to become a member of a political party. His disobeying orders three times, his flight from Armenia and the continuous intimidation of his relatives after his flight would place him in breach of the loyalties demanded by his State employer. The State party's reference to the report of the Commissioner for Human Rights of the Council of Europe support his claim, as both fines and prison sentences reflect the suppression of political activism in Armenia. The report further underlines the lack of fair trial, and considers that it is unacceptable to continue to hold in detention or to convict anyone, solely on the basis of their political beliefs or non-violent activities.

¹⁰ See ECHR, *Jabari v. Turkey*, judgement of 11 July 2001 (No. 40035/98).

5.5 The author further claims that his wife's rape was not merely attempted, but indeed took place. Concerning the author's alleged failure to report his wife's rape to the police, he points out that his wife fled the country immediately after her rape. He cites an expert report dated 11 December 2008, written by Robert Chenciner, a Senior Associate Member of St. Anthony's College of Oxford and Honorary Member of the Russian Academy of Science, Dagestan Science Centre. This report states that rape is sociologically a terrible crime in Armenia, especially of a policeman's wife, and that in the climate of violence against women prevailing in Armenia, rape should be taken seriously as a means of punishment. The author therefore contends that complaining about his wife's rape to the authorities would not have supported him, especially since he was seen as a political opponent.

5.6 With regard to the letters written by his relatives, the author contends that in one of the letters, his mother mentioned that his brother had been subjected to inhuman treatment by officers of a special department over two days in order to find out about the author's whereabouts. Moreover, his mother-in-law stated that she and her family had been harassed and intimidated for the same reason. These cannot be considered normal behavior by authorities to obtain information on the author's whereabouts. The Dutch Administrative Law applies the theory of free evidence. This implies that any type of evidence is admissible during the asylum application process. The author also refers to the United Nations High Commissioner for Refugees (UNHCR) Handbook which states that "the requirement of evidence should [...] not be too strictly applied in view of the difficulty of proof inherent in the special situation in which an applicant for refugee status finds himself." UNHCR further states that "it will, in any event, be necessary to lighten the burden of proof normally incumbent upon the applicant, and information that cannot easily be obtained from the applicant may have to be sought elsewhere, e.g. from friends, relatives and other persons closely acquainted with the applicant."¹¹ The author also asserts that the European Court of Human Rights has given considerable weight to letters from relatives.¹² Thus, while the burden of proof, in principle, rests on the author, the duty to ascertain and evaluate all relevant facts is shared between the author and the State party, which the latter failed to do in the present case.

5.7 The author considers that the State party failed to substantiate its contention that the author did not fear any trouble with the authorities by leaving the country with his own passport. The State party does not take into account the fact that the author was granted official holiday leave, which is the only condition for a police officer to be able to leave the country.

5.8 As for the State party's sending the author's original personal documents to the Armenian diplomatic representation, it has breached the absolute rule that a State should never contact or approach the authorities of the country of origin of the asylum seeker during an asylum procedure. Contact with the diplomatic representation can only take place with the explicit approval of the asylum seeker and after consultation with the Immigration Service. The State party has therefore knowingly put the author at risk especially since these documents were sent to the diplomatic representation after the author's submission of his communication to the Committee and the granting of interim measures by the Special Rapporteur.

¹¹ See UNHCR, Handbook on procedures and criteria for determining refugee status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees (HCR/IP/4/Eng/REV.1), paras. 197 and 210.

¹² See ECHR, *Ammari v. Sweden*, judgement of 22 October 2002 (No. 60959/00)

Further information provided by the State party

6.1 On 23 June 2010, the State party responded that in his comments, the author considerably broadened the scope of his original communication by raising in a general sense the issue of the asylum application centre procedure. The State party insists that the purpose of the individual communications procedure before the Committee is not to challenge, in the abstract, national legislation or practices which seem to be contrary to the Covenant.¹³ Furthermore, the issue that is central to the author's claim under article 7 is whether expelling him to his country of origin would expose him to a real risk of treatment contrary to the Covenant.

6.2 Regarding the application centre procedure,¹⁴ cases are evaluated at several points of the procedure to determine whether they can be processed properly in that context or if further investigation is required. The first evaluation is made after the first interview when the applicant's legal adviser has the opportunity to inform the Immigration and Naturalization Service (IND) of his opinion that the case requires considerably more research. The IND then determines whether to continue with the accelerated procedure or send the application to a handling officer for further consideration and refer the asylum seeker to a reception centre. In the present case, the legal adviser did not make use of this option. At the end of the second interview, a decision is again made as to whether the case is suited for further processing at the application centre. The final decision is made after the asylum seeker has expressed his views on the intended decision. The views expressed by the author on 19 June 2008 did not constitute grounds for discontinuing the consideration of his case at the application centre. Enough safeguards are set in place to ensure an accurate and proper assessment of the risk. The first safeguard is the existence of multiple interviews, where the applicant is assisted by a legal adviser and the second is the existence of multiple points at which a decision is taken as to whether it is appropriate to continue processing the case at the application centre. This decision is subject to appeal before domestic courts, of which the author availed himself. The domestic courts did not consider that it was impossible to assess the risk of treatment contrary to article 7 of the Covenant within the application centre procedure.

6.3 The State party further rejects the author's claim that he was given too little time to prepare his application. Asylum seekers are not expected to prove what happened in their country of origin but rather to establish the plausibility of their account. The State party considered the statements made by the author during his second interview to be plausible. The documents submitted by the author were also thoroughly assessed within the application centre procedure and by the courts. However, they were insufficient to establish the plausibility of the author's claim that if returned to Armenia he would suffer a treatment contrary to article 7 of the Covenant. Given that the author did not leave the country until 15 June 2008, he would have had enough time to obtain documents in support of his account.

6.4 The author submitted a new asylum application on 16 April 2009, supporting his claim with the Amnesty International report and other documents reporting on his medical condition. These documents prompted the State party to have the Medical Assessment Section (Bureau Medische Advisering (BMA)) examine the author's medical condition and respond to the report issued on 7 March 2009 by Amnesty International's medical examination group. The BMA examined him and reported its findings to the State party on 6 November 2009 and 12 August 2009. The author's new asylum application was rejected

¹³ See the Committee's communication No. 35/1978, *Aumeeruddy-Cziffra et al. v. Mauritius*, Views adopted on 9 April 1981, para. 9.2

¹⁴ See C12/3 and C13/2 of the Aliens Act Implementation Guidelines 2000.

on 14 January 2010. The author subsequently submitted an application for judicial review of this decision, which was still pending at the time of the State party's further information.¹⁵

6.5 Prior to the second interview, the author was asked whether there were any medical reasons that could prevent him from being interviewed. He replied that he was fit to be interviewed. In his new asylum application dated 16 April 2009, the author submitted the Amnesty International report to demonstrate that during the second interview he was not fit to reveal that he had been maltreated by his superiors and that his mental and psychological problems were related to the inhuman treatment he had been subjected to in Armenia. In the State party's opinion, the report is too inconclusive to satisfactorily establish such claim. While the author's physical injuries, such as the persistent localized pain that he is experiencing in his upper abdomen, the 3-mm scar on his shinbone, and the missing back teeth, could all be consequences of torture, they could also be the result of injuries sustained under other circumstances.

6.6 The Amnesty International report states that the author's account contains evidence that he suffers from post-traumatic stress disorder (PTSD). However, the report states that they can best be classified as an adjustment disorder. The report also states that the current uncertainty of the person's living circumstances also play a role in the severity and development of his symptoms. The report concludes, however, that although the uncertainty of his living circumstances might be a factor, the author's disorder appears to be the result of torture/ill-treatment. In his report dated 12 August 2009, the BMA physician expressed doubts regarding the method used by the Amnesty International expert to reach such a conclusion, given the preliminary assessment of an adjustment disorder.

6.7 In its judgement of 8 July 2008, the District Court in Haarlem found that in the report of the second interview, the author made a detailed statement when asked to recount his story and he did not seem to have been interrupted or hindered on that occasion. When asked for further clarifications, the author was able to reply satisfactorily. The Court also found that there were no indications as to why the author could not have stated in the second interview that he had been assaulted. After the interview, when consulted on this issue, the author replied that he was satisfied with the way the interview had been carried out. The State party therefore doubts the veracity of the author's subsequent allegations related to his assault and his wife's rape.

6.8 The State party finally notes that the poor human rights situation in Armenia, and particularly the events linked to the Presidential elections and the consequences on political rights were taken into account during the entire asylum process. However, the situation has since changed; according to the United States State Department 2009 Human Rights Report, a general amnesty was declared on 19 June 2009. Subsequently, approximately 30 of the 44 opposition supporters still being held in connection with the Presidential elections in February 2008 were released. The State party maintains that the author is not at risk of any treatment contrary to article 7 of the Covenant upon return to Armenia. Since the author has always kept his political convictions unknown by his superiors and he would not be in danger merely because he refused to take money in exchange for votes in the context of the 2008 Presidential elections, or because he avoided certain tasks as a policeman. Moreover, by 2010, two years has elapsed since the elections.

¹⁵ By letter dated 2 September 2010, the State party informed the Committee that the Hague District Court, sitting in Amsterdam, had declared the author's application for review unfounded. The author lodged an appeal against this judgement with the Administrative Jurisdiction Division of the Council of State on 12 August 2010. By letter dated 18 January 2011, the author informed the Committee that his appeal had been rejected on 14 January 2011, thus closing once again domestic remedies.

Further comments by the author

7.1 On 1 October 2010, the author gives detailed arguments in support of his claim that the accelerated procedure as applied to him did not meet minimum requirements enabling a risk assessment. Since 1 July 2010, the accelerated asylum procedure has been replaced by the general asylum procedure, whose length has been extended to 8 days. The replacement of the accelerated procedure by a general asylum procedure is a sign that the previous process did not guarantee asylum seekers' rights. This new procedure allows for a rest and preparation time of at least six days before the process starts. In the accelerated asylum procedure which was in force until 1 July 2010, there was no rest and preparation time, no meeting at the lawyer's office and there were different lawyers at every stage of the procedure. Hence, the lawyer who assisted the author, after the first interview, to prepare the second interview was not the same lawyer who met with the author after the second interview. These circumstances did not contribute to an environment in which the applicant felt sufficiently safe to state all his reasons for asylum right at the beginning.

7.2 In the corrections and additions that he submitted with the views on the intention to reject his asylum request, the author claimed that he had been threatened, beaten and physically ill-treated by his superiors because of his political support for Ter-Petrosian, and that his wife had been raped by persons linked to the district mayor. These corrections should have prompted the State party to decide that the author's request could not be handled in the accelerated procedure. The State party simply stated that it did not deem these corrections and additions credible. Moreover, the letters written by his relatives were not considered by the State party as they were only submitted at the appeal stage. As to the State party's contention that the author had enough time to gather evidence in support of his account before leaving the country, the author replies that if he brought such documents with him he would have risked having them discovered at the airport before his flight. On the other hand, the letters from his relatives were written after his departure and could therefore not be gathered in the first phase of the proceedings.

7.3 During the proceedings for the author's second asylum application, the contents of the documents submitted were not considered by the State party, which latter applied strict procedural rules, stating that the documents were not authentic and/or not from objective sources or just general documents and that they did not concern the author personally. The District Court in Amsterdam rejected the author's application for review on 15 July 2010 considering that documents such as Amnesty International's report on the author's medical condition, the report of Armenia expert Robert Chenciner and the fact that the State party authorities sent original documents concerning the author to the Armenian diplomatic representation were not new facts within the meaning of section 4:6 of the General Administrative Law Act, which in the author's opinion, did not ensure the author the procedural guarantees necessary for an adequate risk assessment.

7.4 The author mentions a report from the Dutch National Ombudsman which concludes that the State party has violated the law by sending the author's original documents to the Armenian diplomatic representation while the asylum procedure was ongoing. The Ombudsman further stated that it could not exclude that by receiving these documents, the Armenian authorities became aware of the author's asylum request in the State party.

7.5 Regarding the Amnesty International report, the author refutes the State party's contention that it is unclear and inconclusive. The psychiatrist who is the author of the report states that the psychological disorder seems to be the result of torture/ill-treatment. He concludes that the psychiatric symptoms, the scar on the author's left leg and the author's loss of back teeth are consistent with the torture/ill-treatment alleged. In response to the report, the State party's medical adviser pointed out in a report dated 12 August 2009 that it was not clear why the psychiatrist concluded that torture/ill-treatment had more effect on the psychiatric symptoms than the current living conditions. On the other hand,

the medical adviser did not doubt the conclusion that the psychiatric symptoms could be classified as consistent with the allegation of torture/ill-treatment. Furthermore, he did not cast any doubt on the conclusions in the report concerning the consistency of the scar and the missing teeth with the torture/ill-treatment.

7.6 The author refers to jurisprudence of the European Court of Human Rights where the Court considered that “although the certificate was not written by an expert specializing in the assessment of torture injuries, [...] it nevertheless gave a rather strong indication to the authorities that the applicant’s scars and injuries may have been caused by ill-treatment or torture. In such circumstances it was for the [State authorities] to dispel any doubts that might have persisted as to the cause of such scarring. [The State authorities] ought to have directed that an expert opinion be obtained as to the probable cause of the applicant’s scars in circumstances where he had made out a prima facie case as to their origin. It did not do so and neither did the appellate courts. [...] The State has a duty to ascertain all relevant facts, particularly in circumstances where there is a strong indication that an applicant’s injuries may have been caused by torture.”¹⁶ In the above-mentioned jurisprudence, the report had been produced by a non-expert, whereas in the author’s case, a psychiatrist from Amnesty International wrote the report. Therefore the author rejects the State party’s contention that he should have mentioned all facts relevant to his case from the beginning of the asylum procedure. On the contrary, the State party should have brought medical evidence which could challenge Amnesty International’s medical report regarding the author’s inability to mention his torture early in the asylum procedure.

7.7 After recalling his earlier arguments regarding the risk of suffering treatment contrary to article 7 of the Covenant, the author refers back to the jurisprudence of the European Court of Human Rights, more specifically, *R.C. v. Sweden*, where the Court held that “having regard to its finding that the applicant [...] discharged the burden of proving that he [had] already been tortured, the Court [considered] that the onus [rested] with the State to dispel any doubts about the risk of his being subjected again to treatment contrary to article 3 in the event that his expulsion proceeds.”¹⁷

7.8 The author refers to recent reports on the human rights situation in Armenia, stating that following investigations on the events related to the 2008 Presidential election, the Armenian Parliamentary Committee concluded that no mistakes had been made by the police and security forces in suppressing the disturbances; that since the amnesty of June 2009, people continue to be imprisoned due to these events;¹⁸ that more than half of the prisoners interviewed alleged having been tortured during the police investigations before they were transferred to prison; and that torture and ill-treatment in custody is widely reported by local civil society groups in Armenia.¹⁹ The author therefore contends that torture and ill-treatment are still widespread in Armenia and that the State party has violated his rights under article 2, paragraph 3 read in conjunction with article 7 and would violate article 7 alone should he be returned to Armenia.

Additional observations by the State party and further comments by the author

8.1 On 29 July 2011, the State party submitted that the replacement of the application centre procedure with a general asylum procedure was motivated, in part, by a desire for

¹⁶ See ECHR, *R.C. v. Sweden*, judgement of 9 March 2010 (No. 41827/07), para. 53.

¹⁷ *Ibid.*, para. 55.

¹⁸ See Dutch Minister of Foreign Affairs, Country report on Armenia, 27 August 2010.

¹⁹ See Human Rights Watch submission to the Universal Periodic Review on Armenia on “Torture and ill-treatment,” November 2009.

qualitative improvements in the handling of asylum applications, which does not imply that decisions made in the previous procedure were made without the required due care.

8.2 The author's allegations according to which he did not have the assistance of a legal adviser to prepare for his first interview does not mean that the first asylum procedure was conducted without due care. An asylum seeker's reasons for seeking asylum are not discussed in this first interview but in the second interview. The author was assisted by a legal adviser in preparing for the second interview, and he was explicitly informed, at the second interview, of the importance of mentioning all facts and circumstances relating to his account. There seems to be no reason why the author could not have mentioned that his wife had been raped and that he had been subjected to inhuman treatment in his country of origin, at that stage. The State party notes that the District Court in Haarlem, in its judgement of 8 July 2008, discussed at length the question of whether the second interview was conducted with due care, and concluded that it was.

8.3 Regarding the second application, the State party contends that the authorities did take account of his medical condition in their assessment. At the request of the author's legal representative, the author was examined by a doctor on 15 April 2009. This doctor concluded that the author's medical condition did not permit a lengthy interview but that it was possible to hear him briefly concerning any facts or altered circumstances. The interview was held the following day and took account of his medical state. The Immigration and Naturalization Service (IND) also asked the Medical Assessment Section (Bureau Medische Advisering (BMA)) to respond to the report of the Amnesty International medical examination group and to give advice on the author's medical problems. Following BMA's findings of 12 August 2009 and 6 November 2009, an agreement was made with the author's representative to present a number of questions in writing so that no additional interview would be needed. Both the subsequent notification of intent of 11 December 2009 and the decision of 14 January 2010 considered whether the author's medical condition justified the conclusion that his return to his country of origin would lead to treatment in violation of article 7 of the Covenant.

8.4 The new application procedure under section 4:6 of the General Administrative Law Act allows asylum seekers to request a reconsideration of an earlier decision dismissing the asylum application, if new facts or altered circumstances arise. Under section 4:6, subsection 2, of the Act, the Minister for Immigration and Asylum Policy may, at his/her discretion, dismiss the new application by referring to the earlier decision that dismissed the previous application. However, the Ministry did not resort to the latter provision in the present case. Instead, the Ministry substantially assessed the new application, focused on all the documents submitted by the author, and then stated the reasons for dismissing the application. On its review of the dismissal, the district court considered whether the author had submitted new facts or evidence that he had not submitted earlier, and also whether the items adduced would affect the position taken in the original decision. In its judgement of 15 July 2010, the court decided that the Amnesty International report was not conclusive; that the reports (including that of Mr. Chenciner) and articles submitted on the general situation in Armenia did not affect the evaluation of the author's individual situation; that the newspaper articles dated 11 April 2008 and 28 June 2008 were copies whose authenticity could not be confirmed and they did not concern the author's situation; that letters from the author's friends and relatives were written at his request and were not corroborated by any objective sources. The Administrative Jurisdiction Division of the Council of State confirmed the district court's judgement on 14 January 2011.

8.5 The author had the right to apply to the district court for a review of the decisions of 20 June 2008 and 14 January 2010 and did so. After a full assessment and judgement by the district court, the author appealed to the Administrative Division against the judgement, but the judgement was upheld. Therefore, effective legal remedies as referred to in article 2,

paragraph 3, of the Covenant do exist against the dismissal of an original or new application for asylum.

8.6 The report of the Amnesty International medical examination group states that the author's symptoms do not satisfy the standard criteria given in the Diagnostic and Statistical Manual of Mental Disorders (DSM-IV-TR) for post-traumatic stress disorder (PTSD), nor can his condition be characterized as depression in the psychiatric sense, or brain damage, as a result of the alleged torture/assault a likely explanation of his current symptoms. Based on the DSM-IV-TR classification, his symptoms can best be attributed to an adjustment disorder. As the BMA notes in its report of 12 August 2009, it is not clear what exactly the basis is for the medical examination group investigator's conclusion that this disorder was caused by the alleged torture/assault. The report and examination give no reason as to why the alleged torture/assault should have had so much (more) influence on the author's current psychiatric symptoms, than the current uncertainty and other events in his life have had. The investigator's use of the words "consistent with" does not rule out the possibility that the author's symptoms might have some other cause. The State party quotes the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment (the Istanbul Protocol) which, in paragraph 187 (b) states that "consistent with" generally means that the "lesion could have been caused by the trauma described, but it is non-specific and there are many other possible causes." With respect to the missing molars, it can only be said of one of them that its absence is consistent with the alleged torture/assault, as the other molar was pulled by a dentist. In view of the formulations used, there are other possible causes for both the missing molar and the 3-mm scar on the author's shinbone. Accordingly, the report cannot be considered as substantiating the claim that the author was in fact assaulted or tortured, nor can it be viewed as justifying the conclusion that the author was incapable of making consistent statements at the time of the second interview.

8.7 Finally, the State party considers that the general situation in Armenia does not justify the assumption that now, over three years after the Presidential elections, the author has reason to fear treatment in violation of article 7 of the Covenant.

9. On 9 September 2011, the author reiterates his previous arguments on the inadequacy of the accelerated procedure to his complex case; the lack of due care given to documents such as the report of the Amnesty International medical examination group; and the risk he would still face if returned to Armenia. The conclusion of the medical report leaves little room for other causes for his PTSD than the torture and ill-treatment he suffered in Armenia, this conclusion being based on a detailed and thorough investigation. The author also refers to recent reports issued by the United States Department of State of April 2011, Human Rights Watch of January 2011, and the Commissioner for Human Rights of the Council of Europe of May 2011, which report arrests of political opponents; continuous detention since the 2008 elections; and acts of torture inflicted during interrogation.

Issues and proceedings before the Committee

Consideration of admissibility

10.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 93 of its Rules of Procedure, decide whether or not the communication is admissible under the Optional Protocol to the Covenant.

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

10.3 The Committee notes that the State party has not contested the admissibility of the communication. It considers that there are no obstacles to admissibility and that the author has sufficiently substantiated his claims under article 2, paragraph 3, and article 7 of the Covenant. It therefore declares the communication admissible and proceeds to its examination on the merits.

Consideration of merits

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

11.2 The Committee considers it necessary to bear in mind the State party's obligation under article 2 of the Covenant to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant, including in the application of its processes for expulsion of non-citizens.²⁰ The Committee recalls that it is generally for the instances of the States parties to the Covenant to evaluate facts in such cases.²¹

11.3 The Committee has to assess whether in the present case, the author's asylum request asserting that he was at risk upon return to Armenia was adequately evaluated by the State party authorities and whether he would indeed face a real risk of being subjected to torture or ill-treatment upon return to his country of origin. In that respect the Committee recalls its general comment No. 31 in which it refers to the obligation of States parties "not to extradite, deport, expel or otherwise remove a person from their territory, where there are substantial grounds for believing that there is a real risk of irreparable harm" (para. 12).

11.4 With regard to the author's claim that if the State party deported him to Armenia, it would violate his rights under article 7 of the Covenant, the Committee notes the author's allegation that at the time of the Presidential elections in 2008, he and his wife refused to take money in exchange for voting in favour of candidate Sarkisian, which raised suspicion among the district mayor's team. The Committee notes that this part of the claim has not been refuted by the State party. The Committee also notes that the author is a police officer who sought to avoid repressing political protesters during the post-election demonstrations, thus revealing his political convictions to his superiors. The Committee notes that this aspect of the claim is partly refuted by the State party, which states that during the asylum procedure at the national level, the author simply stated that in order not to work at a demonstration on 24 April 2008, he said he had not yet been paid, and that this version is more plausible, given that the author has never received disciplinary sanctions for allegedly disobeying orders. The Committee also notes the State party's assertion that although political opponents were violently suppressed during this period, the author cannot be considered to be a political activist in the eyes of the Armenian authorities, simply because he refused to take money to vote for Sarkisian; and that the author has therefore not substantiated that he would be of special interest to the authorities for this reason.

11.5 The Committee further notes the author's allegations that he was beaten twice by his superiors on 24 April and 19 May 2008; that his wife was raped by persons connected to the district mayor; and that she then fled to Russia. The Committee notes that the State party refutes these allegations on the basis that they lack credibility because the author has repeatedly revised his account in a manner that contradicts his statements at the second interview. Regarding the rape or attempted rape of the author's wife, the Committee observes that the author offered an explanation of why he would have been reluctant to

²⁰ See the Committee's general comments Nos. 6 and 20.

²¹ See the Committee's communication No. 1763/2008, *Pillai v. Canada*, Views adopted on 25 March 2011, para. 11.2.

confirm at the second interview that the attempt was successful; but the Committee also observes that the author has described this attack as retaliation for her own political opinion rather than directed at him. The author has not, however, adequately explained the inconsistencies regarding the claims that he was beaten on one or more occasions. The Committee finds that it was not unreasonable for the State party's authorities to consider these inconsistencies as seriously undermining the credibility of his allegations.

11.6 The Committee further notes the author's claim that by applying the accelerated procedure to his case and not giving due weight to the documents that he presented, the State party has violated article 2, paragraph 3, read in conjunction with article 7 of the Covenant. Although the Committee has expressed concern about the limited timeframe of the application centre procedure,²² it observes that the author received multiple opportunities to supplement his application, and that none of the evidence he provided was sufficient to overcome the contradictions among his differing accounts of the events preceding his departure from Armenia. Under these circumstances, it cannot be said that the State party's consideration of his claims suffered from procedural irregularities or denied him an effective remedy.

11.7 With regard to the version of the author's allegations that the State party did find credible, the question remains whether he would face a real risk of torture or ill-treatment in Armenia in the future. The Committee notes its concern over the fact that the author's documents were erroneously sent to the Armenian Embassy. Still, given that the author was never politically active, given that he is no longer a police officer, and given the passage of time since the disputed 2008 election, the Committee cannot conclude that the author would face a real risk of treatment contrary to article 7 of the Covenant if he were returned to Armenia.

12. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, considers that the author's deportation to Armenia would not violate any of the rights under the Covenant.

[Adopted in English, French and Spanish, the English 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.]

²² See the Committee's concluding observations (CCPR/C/NLD/CO/4), 28 July 2009, para. 9.