



International Covenant on Civil and Political Rights

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Human Rights Committee

Communication No. 1558/2007

Views adopted by the Committee at its 105th session (9-27 July 2012)

<i>Submitted by:</i>	Nikolaos Katsaris (represented by World Organisation Against Torture and Greek Helsinki Monitor)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Greece
<i>Date of communication:</i>	6 October 2006 (initial submission)
<i>Document references:</i>	Special Rapporteur's rule 97 decision, transmitted to the State party on 4 May 2007 (not issued in document form) CCPR/C/101/D/1558/2007 – decision of admissibility, adopted on 9 March 2011
<i>Date of adoption of the Views:</i>	18 July 2012
<i>Subject matter:</i>	Failure to thoroughly investigate police violence and ill-treatment against ethnic Romani.
<i>Procedural issue:</i>	Exhaustion of domestic remedies
<i>Substantive issues:</i>	Right to a remedy; right not to be subjected to torture; right to equality before the law
<i>Articles of the Covenant:</i>	2, para. 3, alone and read in conjunction with 7; 2, para. 1, and 26
<i>Articles of the Optional Protocol:</i>	5, para. 2 (b)



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 (105th session)

concerning

Communication No. 1558/2007*

Submitted by: Nikolaos Katsaris (represented by World Organisation Against Torture and Greek Helsinki Monitor)

Alleged victim: The author

State party: Greece

Date of communication: 6 October 2006 (initial submission)

Date of Admissibility decision: 9 March 2011

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

Meeting on 18 July 2012,

Having concluded its consideration of communication No. 1558/2007, submitted to the Human Rights Committee by Mr. Nikolaos Katsaris 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 6 October 2006, is Nikolaos Katsaris, a Greek national of Romani ethnic origin, born on 20 November 1975. At the time of the initial submission, he resided at the Romani settlement of Halandri. He claims to be a victim of violations by Greece¹ of article 2, paragraph 3, alone and read in conjunction with

* The following members of the Committee participated in the examination of the present communication: Mr. Yadh Ben Achour, Mr. Lazhari Bouzid, Ms. Christine Chanet, Mr. Ahmad Amin Fathalla, Mr. Cornelis Flinterman, Mr. Yuji Iwasawa, Mr. Walter Kälin, Ms. Zonke Zanele Majodina, Ms. Iulia Antoanella Motoc, Mr. Gerald L. Neuman, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Fabián Omar Salvioli, Mr. Marat Sarsembayev, Mr. Krister Thelin and Ms. Margo Waterval.

In accordance with rule 91, of the Committee's rules of procedure, Mr. Michael O'Flaherty did not participate in the examination of the present communication.

¹ The Covenant and the Optional Protocol entered into force for Greece on 5 May 1997.

article 7; and articles 2, paragraph 1, and 26 of the Covenant. The author is represented by counsel, World Organization Against Torture and Greek Helsinki Monitor.

1.2 On 9 March 2011, the Committee decided that the communication was admissible insofar as it raised issues with respect to article 2, paragraph 3, alone and read in conjunction with article 7; and articles 2, paragraph 1 and 26 of the Covenant.

The facts as presented by the author

2.1 On 12 September 1999, the author, his father, Yannis Katsaris, his brother, Loukas Katsaris and his cousin, Panayiotis Mitrou drove from Athens to Nafplio (Peleponese) to search for a cheap professional car at the open-air car markets there. When leaving the third car market, the author's car was stopped by three police officers in uniform. They pointed their firearms at the author and his family members and ordered them to get out of the car and hold their hands up. The police proceeded to search them and their car. When the author tried to explain the aim of their visit, one of the police officers shouted an insult at him. After some time, the author was asked to explain the reasons for their visit to the car markets. He offered to show the police officer the notes he had taken on the models and prices of cars he was interested in, but the police officer ignored the notes.

2.2 When the author's cousin asked if he could lower his hands, the author was violently kicked by police officer D., presumably because the officers thought that it was the author who had spoken without prior authorization. When the author's cousin confessed that he was the one who had spoken, he was led away from the car, kicked, punched and verbally abused. The author witnessed the abuse. The author noticed that the cadet, who was pointing his gun at him, was shaking and he feared the gun might go off accidentally. When the author's father tried to inquire what the police officers wanted, he was pulled by the hair and punched repeatedly in the side.

2.3 The police officers accused the author and his family of being at the car markets to steal a car and accused them of having jumped over a fence at one of the car markets. The author and his family members were handcuffed, except the author's father who was ordered to follow the police car driving the author's vehicle.

2.4 Upon arrival at the police station, the police noted that police warrants had been issued against all concerned except the author's brother. The author and his family were placed in holding cells, which were already overcrowded. After about an hour, the author heard someone yelling "Bring up the 'Gyftoi'!", a racially motivated insult against persons of Romani origin. The author's cousin and brother were released when it was ascertained that they did not have any outstanding warrants against them.

2.5 The author and his father, however, were returned to separate holding cells because of the outstanding police warrants against them. The author managed to use the telephone in the corridor of the holding pen and called counsel. When counsel called the police station to complain against the ill-treatment of and the racism against the author and his father, the police officer replied that "these things happen sometimes". On 13 September 1999, the author was released and subsequently contacted a lawyer who managed to have the author's father released on the same day. At no point during their time in police custody, the author and his family were notified of their rights to have access to a lawyer, notify their family of their detention or to be examined by a doctor.

2.6 On 27 October 1999, the author filed a criminal complaint with the Misdemeanour Prosecutor of Nafplio against the police officers of Nafplio Police Department who were involved in his ill-treatment, including police officer D., whom he could identify by his first name. He accused the police officers of subjecting him to racially motivated humiliation and physical and psychological ill-treatment. He further submitted that the arrest and ill-treatment he had suffered were based on his Romani ethnic origin. Despite his allegations

of physical ill-treatment, no forensic medical examination was ordered. In November and December 2000, three police officers, G.K., G.P., D.T. were questioned before the Magistrate of Nafplio. The head of the police department G.K. confirmed that on 12 September 1999, three officers G.P., D.T. and N.L. (N.L. was never questioned) were involved in an incident with Roma individuals at an open-air car market. Nevertheless, D.T., in his separate testimony, denied any contact with the author and his family. On 14 January 2002, a police officer, A.D., on duty at the security police department testified before the Magistrate that he had verified the identity of the author and his family, while the police officer, C.K., in charge of detainees stated that he did not know the author, as he had not been in charge of arrestees.

2.7 After the statements of the police officers, the prosecution, in breach of the normal procedure, which should first seek the applicant and his witnesses' statements, summoned the author (the applicant) and his witnesses to testify before an Athens magistrate. In March 2002, the author's cousin and brother were summoned to testify. However, the summonses were not delivered to the witnesses' places of residence nor did they contain a signature that they had been served. On 20 March 2002, the two witnesses were subpoenaed; however the police noted that they could not find them as "they were wandering around the country". On 12 September 2002, the Magistrate summoned the author and the police stated that the summons had been delivered to the author's mother, wrongly identified as his co-tenant; however no signature of her receipt is shown on the summons. The author had never received the summons and therefore did not attend the procedure.² On 23 January 2003, the Misdemeanour Prosecutor of First Instance found that the author's complaint was unfounded and noted that the author and his witnesses did not appear to testify because "they were wandering around the country". On 19 February 2003, the Prosecutor's ruling was served to the author's wife.

2.8 On 2 June 2000, an ex officio second investigation, prompted by a letter of complaint about the author's ill-treatment to the Minister of Justice by a member of the non-governmental organization (NGO) Amnesty International, was opened. The second investigation commenced by taking depositions from the author and his witnesses on 3 November 2000 and 10 and 12 April 2001. The author and his witnesses were unaware and not informed that they had testified in different proceedings than the ones initiated by the author on 27 October 1999. Unlike in the first proceedings, depositions from the author and his witnesses and the police officers were not taken by Magistrates at the Nafplio court but by fellow police officers stationed at the same police station.

2.9 On 25 May 2001, A.D, K.K. and P.P. testified that they had been the arresting officers in plain clothes, that no resistance had been offered by the author or his family members and that there had been no abuse inflicted on them. P.P. qualified the author's allegations as lies. None of the three officers, G.P., D.T. and N.L., who in their depositions collected in the course of the first investigation, claimed that they were the arresting officers, testified or were mentioned in the second investigation. Furthermore, the author underlines that, on 25 May 2001, in the second investigation, police officer A.D. testified that he was one of the arresting officers, while in the first investigation, he testified on 14 January 2002, that he only verified the author's and his family's identity.

2.10 On 10 October 2001, the Nafplio Prosecutor of First Instance emitted three rulings dismissing the complaints submitted by the author, his father and his cousin. In the rulings,

² The author claims that in violation of articles 155 and 156 of the Code of Criminal Procedure, the summonses in the author's and his family's absence were not posted on their doors or in a prominent public place if the address was unknown. He further notes that contrary to article 161 of the Code of Criminal Procedure, the report on the serving of summons does not contain any signature.

the Prosecutor stated that all three police officers had testified that the author and his family did not raise any complaints upon departure from the police station and that the author had offered no explanation why he failed to report the incident. The Prosecutor ignored the author's complaint of 27 October 1999. It further refutes any acts of ill-treatment and adds that, even assuming that the allegations of the author were true, the punishable acts would have been those of causing bodily harm, which can only be prosecuted following a complaint within three months.³ In a letter dated 15 October 2001, the First Instance Prosecutor submitted the rulings with the case file to the Appeal Prosecutor's Office for his approval.

2.11 On 16 December 1999, after receipt of the author's complaint of 3 December 1999, the Greek Ombudsman sent a letter to the police directorate asking them to undertake an immediate and thorough investigation into the allegations. On 2 June 2000, the police communicated to a member of Amnesty International the results of the "thorough administrative inquiry" conducted into the allegations by the author. Contrary to the ruling of the Nafplio Prosecutor of First Instance of 10 October 2001 (the second investigation), but in line with the ruling of the Nafplio Prosecutor of First Instance of 23 January 2003, the administrative inquiry found that D.T., G.P. and N.L. were the arresting officers. Additionally, the findings include claims that were not made by any of the police officers in their depositions during the two investigations, for example that two Roma tried to escape and were caught by the officers who drew their weapons, that this was then followed by "mass reaction and protests by the author and his family", and that the arrest was only possible by a second police patrol car. The findings further point out that the officer whom the author could identify by first name is D.T., however claims of any misbehaviour were dismissed. The original report, identical to the one sent to Amnesty International, was dated 24 January 2000 and sent to the Ombudsman on 21 April 2000; however the Ombudsman never informed the author about this report.

2.12 With regard to the exhaustion of domestic remedies, the author submits that he exhausted all available remedies by filing a complaint to the Prosecutor of First Instance, on 27 October 1999, which was dismissed by the Prosecutor of First Instance after three and a half years of preliminary investigation. The second ex officio preliminary investigation was dismissed on 10 October 2001. On 3 December 1999, the author filed a complaint to the Ombudsman requesting a sworn administrative investigation against the accused police officers. On 16 December 1999, the Ombudsman sent a letter to the Hellenic Police urging an immediate and thorough investigation. The administrative inquiry concluded that the police's actions had been lawful. The Ombudsman decided not to request a sworn administrative investigation⁴ in view of the alleged need to use the Nafplio police station to quell anti-Roma unrest in the area in May 2000.

2.13 The author submits that the complaints he filed did not offer him an effective remedy. The Prosecutor of First Instance failed in his/her duty to order an immediate forensic examination, the two preliminary criminal investigations were not connected to each other and no effort was made to explain the mutually exclusive facts and inconsistencies. The ruling of the Nafplio Prosecutor of First Instance does not constitute a judicial decision and there are considerable doubts as to the independence and impartiality of the investigations and the ruling. Additionally, the author submits that the disciplinary proceedings do not offer guarantees of impartiality, as the oral administrative inquiry is an internal investigation conducted by fellow police officers and evidence and testimonies

³ The author had complained after one and a half months.

⁴ Sworn administrative investigations are generally carried out by special units (administrative investigation sub-directorates) which are administratively independent from the departments to which the police officers in question belong.

remain inaccessible for the complainant. Furthermore, the administrative inquiry lacked thoroughness, as the date on which the author filed his complaint was mistaken and it did not attempt to explain or reconcile the conflicting information collected from the police officers in the two preliminary investigations. It further inserted new facts, such as the author and his family offering resistance serious enough for the police to draw their weapons, while no deposition by any police officer corroborated this. According to the author, there are no available remedies for Romani victims of police violence, due to patterns of anti-Romani sentiment among police officers and public authorities and the failure by authorities to ensure impartiality and transparency of investigations, safeguard detainee's rights during police custody and ensure prompt access to forensic medical examination.⁵

2.14 The author recalls the Committee's jurisprudence, according to which the obligation to provide effective remedies entails: (a) investigating the acts constituting a violation, (b) bringing to justice any person found to be responsible for the ill-treatment, (c) granting compensation for any injury and/or damages suffered, and (d) ensuring that similar violations do not occur in the future. According to the Committee's general comment No. 20, the first element of the remedy in particular in regard to cases of torture and ill-treatment is a prompt and impartial investigation by competent authorities.⁶ Upon arrest and police custody, the author was denied his rights as a detainee to notify his family, have access to a lawyer, request a medical examination and be informed of his rights. While acknowledging the Prosecutor's freedom to institute criminal proceedings or not, the author submits that there was valid and sufficient cause to open criminal proceedings, as the prosecutors were confronted with allegations by Roma individuals of police brutality. The author further submits that in his case only two preliminary investigations were carried out and they did not lead to a review by the judicial council and to being heard before a court. The case has therefore not been adjudicated by an independent judicial authority, violating the author's right to a legal remedy.

The complaint

3.1 The author claims that, besides the incoherencies and deficiencies of the preliminary investigations, those investigations were unreasonably prolonged. The author filed his complaint on 27 October 1999 and a ruling by the Prosecutor of First Instance was only issued on 11 February 2003. The author recalls the Committee's jurisprudence, according to which a delay of over three years for the adjudication of a case at first instance is unreasonably prolonged.⁷ He further explains that according to article 31 of the Code of Criminal procedure, a preliminary inquiry cannot last for more than four months. He therefore submits that he is a victim of a violation by the State party of article 2, paragraph 3, alone and read in conjunction with article 7.

3.2 The author submits that the physical acts of violence against him were disproportionate to the particular situation. He did not pose any danger or offer any resistance, as confirmed by the depositions of the police officers in both preliminary

⁵ The author quotes in this respect, inter alia, the Committee's concluding observations on Greece, the concluding observations of the Committee against Torture, the report of the European Committee on the Prevention of Torture on its visit to Greece, CPT/Inf (2002) 31, paras. 41–45, and the European Court of Human Rights case *Bekos and Koutropoulos v. Greece*, No. 15250/02, para. 16 .

⁶ See general comment No. 20 (1992) on the prohibition of torture or cruel, inhuman or degrading treatment or punishment, *Official Records of the General Assembly, Forty-seventh Session, Supplement No. 40 (A/47/40)*, annex VI, sect. A, para. 14.

⁷ See communication No. 336/1988, *Fillastre and Bizouarn v. Bolivia*, Views adopted on 6 November 1990, para. 5.3.

investigations. The author submits that he suffered physical pain when he was kicked without reason by a police officer, he also suffered great psychological distress when he unexpectedly had a gun pointed at him, in particular by an inexperienced and nervous cadet. He had to witness his relatives being beaten and having guns pointed at them. The author was further subjected to degrading treatment with the object to debase and humiliate him when he was insulted. The nature of these acts is further aggravated by the fact that they were racially motivated. The use of “Athinganoi” (derogatory term used in the past by police to refer to Roma in Greece) in the deposition of G.K., “Gyftoi” (see para. 2.4), and “wandering around the country” in the ruling of the Prosecutor make apparent the discriminatory intent and racial hostility aimed at humiliating Roma individuals. The facts therefore constitute a breach of article 7.

3.3 The author further submits that he is a victim of a violation of articles 2, paragraph 1, and 26, as he was subject to discrimination on the basis of his ethnic Roma origins, which manifested itself by the ill-treatment inflicted on him by the police. The lack of an effective investigation into the incident reveals discrimination before the law. The police officers acted against the author in a degrading manner using racist language and referring to his ethnic origin in a pejorative fashion. This attitude needs to be situated in a broader context of systematic racism and hostility by the State party’s law enforcement bodies against Roma.⁸ Despite wide dissemination of the author’s case by NGOs and the plausible information available on file, neither the investigations, nor the administrative inquiry verified whether the police officers had inflicted racial verbal abuse on the author or whether the accused police officers had previously been involved in similar incidents demonstrating anti-Romani sentiment. The State party therefore failed to take steps to investigate whether or not discrimination may have played a role in the events.

State party’s observations on admissibility

4.1 On 3 July 2007, the State party submits its observations on admissibility. With regard to the facts, the State party submits that on 12 September 1999, the Police Directorate of Argolida was informed that certain individuals riding a car jumped over a fence and trespassed on the site of two open-air car exhibitions. The car was then spotted by a Nafplion police station patrol car carrying sergeants D.T., G.P. and trainee sergeant N.L. When the police officers asked the author and his family to stop the car, three of the four passengers tried to escape. As it was late at night, the police officers had to perform control procedures with their weapons at hand. However, as the suspects failed to obey, a second patrol car arrived to help with the arrest. At the Security Department of Nafplion an official identity check showed that the author and his father had already been convicted of other criminal offences without having served their sentences; therefore they were detained to serve their sentences. The other two were released after identification. On 13 September 1999, the author and his father were also released. On 27 October 1999, 1 month and 15 days after the incident, the author filed a complaint before the Public Prosecutor of the Misdemeanors’ Court of Nafplion. A preliminary investigation was ordered and D.T. testified that he had not had contact with the arrested individuals. A.D. and G.P. testified that they had not noticed any injury or insult. The author as plaintiff and his father, brother

⁸ The author refers to the European Commission against Racism and Intolerance, third report on Greece, CRI (2004) 24, 5 December 2003; Amnesty International, “Out of the Spotlight: The rights of foreigners and minorities are still a grey area”, EUR 25/016/2005; European Roma Rights Centre and Greek Helsinki Monitor, “Cleaning Operations: Excluding Roma in Greece”, Country Report Series, No. 12 (2003); International Helsinki Federation for Human Rights, *International Helsinki Federation Annual Report on Human Rights Violations (2005): Greece* (2005); and World Organisation Against Torture and other NGOs submission to the Committee against Torture, 2004.

and cousin as witnesses did not appear to testify despite being subpoenaed at their residence addresses given to the Prosecutor. On 19 February 2003, the complaint was dismissed as ill-founded.

4.2 On 30 January 2000, a representative of Amnesty International filed a report with the Minister of Justice about the incident of 12 September 1999 and requested the conduct of an independent and objective investigation. At the same time, the author, his father and his cousin submitted their complaints on 3 November 2000 and 10 and 12 April 2001. These complaints were submitted in the context of the preliminary investigation following the transmission of the letter by a representative of Amnesty International. On 10 October 2001, the Public Prosecutor of the Nafplion Court of First Instance issued a decree stating that the testimonies of the author's family did not clarify whether the author had suffered any injury or harm and that no medical certificate had been produced. It further noted inaccuracies between the author and his family's statements with regard to insults to his father and cousin. On 3 November 2001, the decree of 10 October 2001 was served to the author's mother. In addition to that, an administrative inquiry was conducted, in which passers-by confirmed that the author and his family had refused to be submitted to an identity check. Furthermore, the alleged ill-treatment at the police station was not proven as no evidence was produced and the complaints were not submitted promptly, therefore no forensic examination was carried out.

4.3 Referring to article 48 of the Code of Criminal Procedure (CPC),⁹ the State party submits that the author could have made use of an effective special remedy in form of an appeal within 15 days of service to the Public Prosecutor of the Court of Appeal. According to the CPC, the Public Prosecutor of the Court of Appeal has the right to carry out a preliminary investigation, if he considers that the one conducted by the Public Prosecutor of the Misdemeanours' Court was inadequate. He also has the right to order the continuation of the preliminary examination or compulsory criminal investigation. The prosecutorial order of 21 January 2003, which was served to the author's wife and co-tenant, could have been appealed, within 15 days, before the Prosecutor of the Court of Appeal. If successful, the appeal would have resulted in the initiation of criminal proceedings and further preliminary investigation. The State party also submits that the author failed to appeal the prosecutorial decree of 10 October 2001. This decree was served to his mother who did not live with him. Even if it is accepted that this service was null and void, the author could have relied on the nullity of service and lodged an appeal, even if the deadline had lapsed. The author has therefore failed to exhaust domestic remedies under article 5, paragraph 2 (b), of the Optional Protocol.

Author's comments

5.1 On 29 January 2008, the author submits his comments and underlines that the State party's account of the facts is not only contrary to the account by the author but also contradicted by its annexes.

5.2 The author challenges the State party's claim that the police had been informed that the author and his family members "jumped over a fence and trespassed on the site of two open-air car exhibitions". He argues that if that were to be true, they should have been charged with an offence and taken to court, instead of being released the following day.

⁹ Article 48 of the code of Criminal Procedure: "The complainant may, within 15 days from service of the public prosecutor's decree referred to in paras. 1 and 2 of the preceding article, appeal to the competent public prosecutor of the court of appeal against the decree of the public prosecutor of the misdemeanours' court. ... If the public prosecutor of the court of appeal grants the appeal, he shall order the public prosecutor of the misdemeanours' court to institute criminal proceedings."

While the author acknowledges that such a statement had been made by two police officers in the framework of the first investigation, he notes that none of the police officers in the second investigation maintained this statement. The author maintains that they remained outside of the fence taking notes of car licence plates.

5.3 The author underlines the contradiction in the State party's statement, according to which "the police officers in the patrol car were sergeants D.T., G.P. and trainee sergeant N.L.". Indeed, during the first investigation, these were the names reported by the police, however, in the second investigation the names of the police officers were A.D., K.K. and P.P. The author and his family were never asked to identify any police officers; therefore, they cannot know which three out of the six police officers were the arresting officers.

5.4 With regard to the State party's assertion that "when the police officers asked them to stop for an identity check, three of the four passengers of the vehicle opened the doors and started to run in order to escape. However, they were quickly intercepted by the police officers, who prevented their escape", the author argues that none of the five questioned police officers reportedly to have been in the patrol car (the sixth never testified) testified of any attempted escape and if it were true, the author and his family should have been charged with this offence.

5.5 The author further challenges the State party's claim that the police control took place "late at night". He cites the police chief commander who testified that he dispatched the patrol car in the afternoon hours and the three officers' testimony in the second investigation, which states that the check was done at 6 p.m.. The author argues that with this false claim the State party tries to explain why the police officers performed the check "with weapons at hand" and submits that this confirms the author's claim of abusive behaviour.

5.6 With regard to the State party's claim that "the suspects would not obey the police officers' orders, so a second patrol car arrived to help arrest and lead the suspects to the police station of Nafplio for identification", the author underlines that he considers this to be the most serious false claim, as none of the police officers made such a statement, on the contrary, they all reported that the author and his family were taken to the police station in one patrol car and their own car. He also submits that this claim is defamatory and in violation of the presumption of innocence. If it were true, they should have been charged with an offence.

5.7 Moreover, the author notes that the State party has not explained the contradiction of naming D.T. among the patrolling officers and citing his own statement, which holds that he denies all charges and testifies that he had no contact with the author and his family.

5.8 The author further challenges the State party's statement that the witnesses proposed by the author were subpoenaed "in a timely manner", without, however, mentioning any dates. The author notes that the State party does not offer any arguments to counter his documented claim that neither he nor his witnesses were ever summoned at the dates claimed.

5.9 With regard to the State party's statement that the police carried out a thorough administrative investigation, the author maintains that it was an informal investigation, as neither he nor his family was ever asked to testify. The report does not mention on whose testimonies it relies.

5.10 The author notes that the State party fails to describe what happened at the police station, where most of the abuse against the author and his family had occurred.

5.11 The author reiterates that, even if the “appeal” as defined in article 48 of the CPC was actually possible, it would not have been effective, as it would have been unreasonably prolonged.¹⁰ The preliminary investigation had lasted for about three and a half years, in contravention with article 31 of the CPC, which holds that a preliminary investigation cannot last for more than four months. Furthermore, the author underlines the importance of a prompt investigation into allegations of ill-treatment due to human memory being frail and suspicion of police collusion.

5.12 Recalling the Committee’s jurisprudence, the author submits that the alleged remedy would have been futile, due to the absence of procedural guarantees for a fair and public hearing by a competent, independent and impartial tribunal. The author underlines that in 2003, three and a half years after the incident, he was served the prosecutor’s decree which mentions that he or his witnesses never testified as “they were wandering around the country”, yet the author has a fixed address, and he and his witnesses testified in November 2000 and April 2001. In July 2006, counsel sought access to the case file and it was only at that moment that it became apparent that two sets of proceedings had been instituted.

5.13 The author further submits that the alleged appeal is not an effective remedy but an extraordinary one that need not be exhausted. The author argues that the procedure defined in article 48 of the CPC is inaccurately translated into English and is not an appeal (“efessi”) but an application for review (“prosfygi”). The review procedure leads to a review of the decree issued by the Prosecutor of First Instance by the Appeals Court Prosecutor, without it being a public hearing by a tribunal. The result of such an application, reviewed without party testimonies, is that the Appeals Prosecutor may return the case file to the Prosecutor of First Instance with a request for additional preliminary inquiry. Moreover, according to domestic law, preliminary investigations are secret and the author could not have accessed the case file to prepare his application under article 48 of the CPC.

5.14 Finally, on 15 October 2001, the Prosecutor of First Instance submitted the file of the second ex officio investigation to the Appeals Prosecutor for review and approval of her dismissal. The Appeals Prosecutor endorsed the dismissal, therefore, in view of this decision by the Appeals Prosecutor, an application for review filed two years later on the same case would have been futile.

Decision of the Committee on admissibility

6.1 The Committee examined the admissibility at its 101st session on 9 March 2011.

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

6.3 Regarding the State party’s contention under article 5, paragraph 2 (b), of the Optional Protocol, according to which the author has failed to exhaust domestic remedies, the Committee noted the State party’s argument that the author could have filed a special remedy in the form of an appeal to the Prosecutor of the Court of Appeal under article 48, of the Criminal Procedure Code (CPC).

6.4 The Committee also noted the author’s argument that the remedy as defined in article 48 of the CPC, was not an effective remedy, as it is extraordinary and as the review is carried out by the Prosecutor of the Court of Appeal without party testimonies.

¹⁰ The author cites in this respect communication No. 336/1988, *Fillastre and Bizouarn v. Bolivia*, see note 10.

Furthermore, the Committee noted the author's claim that the remedy would have been unreasonably prolonged as the preliminary investigation already lasted for about three and a half years.

6.5 The Committee recalled that article 5, paragraph 2 (b), of the Optional Protocol, by referring to "all available domestic remedies", refers in the first place to judicial remedies.¹¹ It also recalled that under article 5, paragraph 2 (b), of the Optional Protocol, the author must make use of all judicial or administrative avenues that offer him a reasonable prospect of redress.¹² The Committee noted that two separate preliminary investigations were carried out into the author's allegations of ill-treatment, the first one was triggered by the author's complaint of 27 October 1999 and was dismissed by the Prosecutor of First Instance on 23 January 2003, three years and three months later, and the second one was initiated ex officio on 2 June 2000 and was dismissed on 10 October 2001, one year and four months later. The Committee observed that the remedy based on article 48 of the CPC could lead to preliminary investigations by the Appeals Prosecutor or to further preliminary investigations or criminal investigations by the Prosecutor of First Instance. The Committee considered that in the light of the length of both preliminary proceedings of three years and three months and one year and four months respectively and the possible outcome of such an appeal leading to further preliminary or criminal investigations, the remedy under article 48 of the CPC did not offer the author a reasonable prospect for redress. The Committee recalled that the effectiveness of a remedy also depends on the nature of the alleged violation.¹³ In the case before it, the author alleges ill-treatment by the police together with discrimination on the basis of his ethnic Romani origin, which, according to the Committee, would have warranted a thorough investigation with the possibility to bring to the case before a competent, independent and impartial tribunal. Furthermore, the Committee considered that a delay of three years and three months and one year and four months respectively for preliminary investigations justified the conclusion that the pursuit of domestic remedies was unreasonably prolonged within the meaning of article 5, paragraph 2 (b), of the Optional Protocol. In the light of the absence of effectiveness and the prolonged delay, the Committee considered that, for purposes of admissibility, the author was not required to avail himself of the alternative to appeal to the Prosecutor, under article 48 of the CPC and, therefore, declared the communication admissible.

6.6 The Committee therefore decided that the communication was admissible insofar as it raised issues with respect to article 2, paragraph 3, alone and read in conjunction with article 7; and articles 2, paragraph 1 and 26, of the Covenant.

State party's observations on the admissibility and merits

7.1 On 6 October 2011, the State party submits its observations on the merits and provides further observations on admissibility. The State party recalls that article 5, paragraph 2 (b), of the Optional Protocol relates to the time required for the conclusion of the procedure concerning the remedy and the availability of that remedy cannot be undermined by considerations of the time required for previous proceedings, such as

¹¹ See communication No. 262/1987, *R.T. v. France*, decision of inadmissibility of 30 March 1989; and communication No. 1515/2006, *Schmidl v. Czech Republic*, decision of inadmissibility of 1 April 2008.

¹² See communication No. 437/1990, *Pereira v. Panama*, Inadmissibility decision adopted on 21 October 1994, paragraph 5.2.

¹³ See communication No. 612/1995, *Chaparro et al. v. Colombia*, Views adopted on 14 March 1996, para. 5.2; communication No. 322/1988, *Rodríguez v. Uruguay*, Views adopted on 19 July 1994, para. 6.2; communication No. 540/1993, *Celis Laureano v. Peru*, Views adopted on 25 March 1996, para. 7.2.

preliminary criminal investigations. It submits that the effectiveness of the appeal to the Appeals Prosecutor under article 48 of the Criminal Procedure Code (CPC) should not depend on the conduct of preliminary investigations. It notes that a speedy conclusion of the appeal under article 48 of the CPC cannot be excluded. It also notes that if the Appeals Prosecutor declares the appeal under article 48 of the CPC admissible, he can ask for the commencement of proceedings in order to press charges and have the criminal case heard before the competent tribunal.

7.2 The State party submits that if the Committee insists on the ineffectiveness of the domestic remedy under article 48 of the CPC, the amendment of 2010 concerning the expedition of penal procedures to eliminate an unreasonably prolonged time for the conclusion of the preliminary investigation should be noted. Thus, the preliminary proceedings cannot exceed the period of three months and the Prosecutor needs to submit his proposal within two months. The State party reiterates that the remedy under article 48 of the CPC is considered effective by the vast majority of the domestic tribunals and prosecution authorities¹⁴ and it is established that the remedy consists of second instance judicial competence of the Appeals Prosecutor. It also notes that an order of the Appeals Prosecutor rejecting an appeal is not considered *res judicata* and therefore re-examination is permissible if new evidence or information is adduced. It submits that the problem of delays in proceedings of preliminary investigations in penal cases cannot render the remedy under article 48 of the CPC ineffective.

7.3 On the merits, the State party recalls the Committee's jurisprudence, according to which a State party is responsible for the security of any person it deprives of liberty and, where an individual deprived of liberty receives injuries in detention, it is incumbent to the State party to provide a plausible explanation of how these injuries occurred and to produce evidence refuting these allegations.¹⁵ It also recalls that the burden of proof cannot rest alone on the author of the communication, especially considering that the author and the State party do not always have equal access to the evidence and that frequently the State party alone has access to the relevant information.¹⁶ It further notes that it is implicit in article 4, paragraph 2, of the Optional Protocol that the State party has the duty to investigate in good faith all allegations of violations of the Covenant made against it and its authorities, and to furnish to the Committee the information available to it. It notes that the Committee has concluded that, where the State party does not deny the use of force and the investigations have failed to identify those responsible while the victim of force has not been afforded an effective remedy in the form of proper investigations into his ill-treatment, this amounts to a violation of article 7 read together with article 2.¹⁷

7.4 The State party notes that the author's claims of ill-treatment before and during police detention have not been verified. It notes that, according to the affidavit of 10 April 2001 by the author's brother, the police did not hit the brother. The same inquiry also noted that unexecuted criminal judgments were pending against the author and his father. The

¹⁴ The State party cites orders Nos. 24/2009 and 19/2009 of the District Attorney of Corfu court of Appeal, orders Nos. 97/2007 and 79/2007 of the District Attorney of Larissa Court of Appeal, judgment No. 38/2010 of the Supreme Court (in Board), and orders Nos. 61/2008 and 1177/2007 of the District Attorney of the Athens and Lamia Court of First Instance.

¹⁵ See communication No. 907/2000, *Siragev v. Uzbekistan*, Views adopted on 1 November 2005, para. 6.2.

¹⁶ See communication No. 30/1978, *Bleier v. Uruguay*, Views adopted on 24 March 1980, para. 13.3; communication No. 84/1981, *Barbato and Barbato v. Uruguay*, Views adopted on 21 October 1982, para. 9.6.

¹⁷ See communication No. 889/1999, *Zheikov v. Russian Federation*, Views adopted on 17 March 2006, para. 7.2.

State party maintains that it was for this reason that the author's car had been stopped. The author and his family wanted to avoid the police check and two out of four passengers tried to escape. The State party notes that the informal administrative inquiry confirmed this incident and noted that it was seen by passers-by who assisted the police in holding the author and his family. The inquiry did not establish any acts of force and the State party notes that the incident occurred on a public road and in daylight and passers-by offered assistance to the police, which make the use of force improbable. The State party notes that, apart from affidavits of 2001, in which the author and his cousin mentioned that they were each kicked once, the author or his family members never reported any injury to the prosecutor or the police and they did not ask to be examined by a doctor when they left the police station. The State party submits that the author and his family members did not make any complaint to the competent authorities on 12 September 2001¹⁸ or shortly thereafter.

7.5 The State party further submits that no act of force took place while the author and his family members were detained at the police station. The State party refers to the statements of 3 November 2000, 10 April 2001 and 12 April 2001 by the author and his family, which do not mention that they have been subjected to any form of police force during their detention. It concludes that since the author and his family were not injured upon arrest or detention, the State party should be relieved of the burden to provide a plausible explanation of how these injuries occurred and to produce evidence refuting these allegations.

7.6 With regard to the author's allegations of verbal abuse by racist comments, the State party notes that neither he nor his relatives made any complaints; it also notes that the author did not inform the Greek Helsinki Monitor or his lawyer of his allegations of racial discrimination while he was being detained.

7.7 In accordance with the ruling of the Nafplio Prosecutor of First Instance of 10 October 2001, the author's affidavit of 3 November 2000 does not clarify whether he suffered any bodily harm or damage to his health and no relevant medical certificate was produced. It is also noted that the author did not explain why he did not report the alleged ill-treatment until 3 November 2000, the date of the affidavit, which he rendered in the context of an ex officio investigation triggered by a complaint by a member of Amnesty International.

7.8 Nonetheless, the State party submits that all the author's complaints were investigated in good faith and that, on 10 October 2001, the Nafplio Prosecutor of First Instance issued a ruling dismissing his complaints. Subsequently, the Nafplio Prosecutor of First Instance issued a ruling of 23 January 2003 dismissing the complaints, as the author and his family members, despite having been lawfully summoned, did not testify before the Prosecutor. Additional statements were taken on 10 September 2007 in the framework of the administrative inquiry and police officers A.G and G.P. noted that the author and his family members had not requested any medical examination during their detention. The administrative inquiry came to similar conclusions as the criminal investigation, revealing no inappropriate behaviour by the police during the car check and the police detention. The State party therefore submits that the communication should be declared inadmissible and, in any event, unfounded on the merits.

The author's comments on admissibility and the merits

8.1 On 12 December 2011, the author submits his comments and notes that the Committee's decision on admissibility should be considered final, as the State party has not

¹⁸ The State party refers to the 12 September 2001 as the day of the incident.

offered any new information that would merit reconsideration. The author submits that, in particular, he does not see, how amendments to the CPC introduced in 2010 relate to his case. In any event, according to the amendments, the preliminary investigation cannot exceed three months, instead of four months. He recalls that the two investigations in his case lasted for one year and four months and three years and three months. He also stresses that the legal provisions introducing a time limit do not provide for nullity and that there are no consequences for investigations that exceed the time limit.

8.2 On the merits, the author notes his brother's statement of 10 April 2001, relied on by the State party to refute his claims and argues that the whole statement should be considered. He recalls that his brother noted that his father stopped the car immediately when he heard a police siren, that the police officers were pointing guns at them while they were searching their car. He stated that the author was kicked and his cousin and father were punched by a police officer. He further explained that, with the exception of his father, who was asked to follow the police car to the station, they were handcuffed and at the station locked in a cell. Three hours later, he and his cousin were freed. He noted that he was not hurt by any police officer.

8.3 The author further submits that the alleged attempt to avoid police check is refuted in the sworn statements by police officers G.P., A.D., K.K. and P.P. of 7 December 2000 and 25 May 2001, respectively. All the police officers note that the author and his family, some police officers refer to them as "athiganoi"¹⁹, were investigated in the vicinity of an open-air car market and were thereafter led to the police department because they could not produce their identity cards. The author further notes the conclusions by the Prosecutor of First Instance dated 10 October 2001, who observed that the police requested the author and his family to identify themselves and as they did not carry their documents with them, they were hand-searched by police officer A.D. and then requested to come to the police station to confirm their identity data and to check if there were any outstanding convictions against them. The author further observes that neither the cited police statements nor the ruling by the Prosecutor of First Instance mentions that the incident was seen by passers-by who assisted the police officers to hold the author and his family. Moreover, the author argues that, had they offered any resistance to the police, they would not have been asked to follow to the police station driving their own car.

8.4 With regard to the ill-treatment upon arrest, the author refutes the State party's observations and observes that the statement by his brother cited by the State party and thus considered credible, notes that the author and Panagiotis Mitrou were kicked once, his father was punched and guns were pointed at them. The author reiterates that he described in detail the ill-treatment in his complaint of 27 October 1999.

8.5 With regard to the State party's statement that the author or his family did not report any injuries to the prosecutor or police and did not ask to be examined by a doctor, the author recalls his initial submission, in which he had noted that counsel had spoken to the police while he was still in detention raising the issue of ill-treatment and racism, that, on 27 October 1999, the author filed a complaint and, on 1 December 1999, Amnesty International published a press release on the basis of the information provided by him. Finally, on 3 December 1999, he filed a complaint to the Ombudsman.

8.6 The author confirms that he did not claim any acts of force in the police station; however, he reiterates his claim that there was verbally racially abusive behaviour and threats of use of force.

¹⁹ According to the author, this is a way of calling a person of Roma origin has racial connotations.

8.7 The author notes that the State party's observations contain arguments that are refuted by its own agents or by documents on file. He considers the State party's argument of the alleged resistance by the author and his father defamatory.

8.8 With regard to the State party's argument that the author and his family did not testify before the Prosecutor, the author recalls his initial submission and reiterates that they were not lawfully summoned in one investigation and that they testified in detail about the ill-treatment and the racial abuse in the second investigation, which the State party ignores in its observations.

8.9 The author reiterates his arguments, which were not addressed by the State party's observations, such as that the Prosecutor's Office did not order a forensic medical examination, the contradictions with regard to the arresting police officers in the first and second investigation and the claims by each of the six police officers to be the arresting officers. Moreover, the State party argued that the author's second complaint was dismissed due to the delay, however the author reiterates that he filed his complaint one month after the incident. The State party failed to comment on the actions by the Ombudsman who after asking for a thorough investigation, decided to stop the investigation due to unrest against Roma near Nafplio in May and June 2000.

8.10 Finally, the author claims that his case should be considered against the background of denial of justice to the Roma by the State party. He refers to the concluding observations by the Committee on the Elimination of Racial Discrimination, which recommend that the State party take vigorous measures to combat the discrimination faced by Roma in various areas, including the justice system.²⁰

Issues and proceedings before the Committee

Review of the decision on admissibility

9.1 The Committee takes note of the State party's request to reconsider its decision of 9 March 2011 regarding admissibility under article 99, paragraph 4, of its rules of procedure due to the author's failure to exhaust domestic remedies.

9.2 The Committee takes note of the State party's argument that the effectiveness of the remedy under article 48 of the Criminal Procedure Code (CPC) cannot depend on the length of the preliminary proceedings and that the Appeals Prosecutor has judicial competence. It also notes the author's comments that, irrespective of the 2010 amendments to the CPC providing for time limits of the preliminary investigation, the two investigations in his case lasted for one year and four months and three years and three months. It also notes the author's argument that he would not be heard before the Appeals Prosecutor.

9.3 The Committee reiterates its findings of 9 March 2011 (see paras. 6.1–6.6). Despite the legislative amendments of 2010, the State party has not shown how these amendments are applicable to the proceedings in the case before it. The Committee further observes that the remedy under article 48 of the CPC²¹ only becomes available after the serving of the decree of the Prosecutor of First Instance pursuant to article 47 of the CPC.²² In the instant

²⁰ See Committee on the Elimination of Racial Discrimination general comment No. 19 (1995) on racial segregation and apartheid, *Official Records of the General Assembly, Fiftieth Session, Supplement No. 18 (A/50/18)*, annex VII.

²¹ See supra note 7.

²² Article 47 of the Criminal Procedure Code (translation provided by the State party in its observations on admissibility dated 3 July 2007): "1. The public prosecutor shall examine the complaint and, if he considers that it is not grounded on the law or is insusceptible of judicial evaluation, shall dismiss it

case, despite the then prevailing time limit of four months for preliminary investigations, the decrees of the Prosecutor of First Instance dismissing the complaints were issued after one year and four months and three years and three months respectively. The Committee reiterates its findings that the remedy under article 48 CPC did not offer the author a reasonable prospect of redress, in particular as the nature of the author's allegations would have warranted a thorough investigation with the possibility to bring an to the case before a competent, independent and impartial tribunal. It further observes that, despite a possible speedy outcome of an application under article 48 of the CPC, it considers the delays of the preliminary investigations unreasonably prolonged and the consideration of the time needed to exhaust domestic remedies includes the time that elapsed before the author could access the remedy at all. Accordingly, the Committee sees no reason to reconsider its admissibility decision and proceeds to consider the merits of the case.

Consideration of the merits

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

10.2 The Committee notes the author's allegations that, on 12 September 1999 when he was arrested by the police, he suffered physical pain because he was kicked and psychological distress when he had a gun pointed at him and when he witnessed his relatives being beaten and having a gun pointed at them. It further notes the author's claim that he was subjected to degrading treatment and discrimination by racially motivated insults. It further notes the author's claim of the incoherencies and deficiencies of the preliminary investigations, such as that his statement was taken by fellow police officers in the second preliminary investigation and that the administrative inquiry was not sworn but informal without giving him the possibility to testify. It also notes the author's argument that the preliminary investigations were unreasonably prolonged. The Committee takes note of the State party's argument that the author's allegations of ill-treatment before and during police detention are not verified, as he did not report any injury to the prosecutor or the police. It also notes that the State party maintains that the author failed to make any complaint about the verbal abuse by racist comments he was allegedly subjected to. Finally, it notes the State party's assertion that the author's complaints were investigated in good faith.

10.3 The Committee observes that the parties have given different accounts of the incident of 12 September 1999, especially as regards the circumstances of the identity check and the alleged ill-treatment of the author. The Committee observes that, despite the length of the preliminary investigations, discrepancies between the conclusions of the three investigations have not been explained. The Committee notes the discrepancies on essential facts such as the arresting officers, in particular D.T. who was identified as the arresting officer in two of the preliminary investigations but who denied having had any contact with the author and his family, the date of the author's first complaint and the issue if police search and identity check were resisted. The State party has not explained these discrepancies and the additional administrative inquiry of 10 September 2007 did not shed any light thereon.

by a decree, which shall be served upon the complainant. 2. The public prosecutor shall have the right to carry out a preliminary investigation, either by himself or through one of the investigating officers referred to in article 33, paras. 1 and 2 and article 34. If following the examination, he is convinced that the complaint is manifestly false on the merits, he shall dismiss it according to the provision of the first paragraph of this article [...].”

10.4 The Committee recalls its jurisprudence that the burden of proof cannot rest alone on the author of the communication, especially considering that the author and the State party do not always have equal access to the evidence and that frequently the State party alone has access to the relevant information.²³ It further observes that it is implicit in article 4, paragraph 2, of the Optional Protocol that the State party has the duty to investigate in good faith all allegations of violations of the Covenant made against it and its authorities, and to furnish to the Committee the information available to it. The Committee recalls its general comment No. 20 (1992) on the prohibition of torture or cruel, inhuman or degrading treatment or punishment²⁴ and general comment No. 31 (2004) on the subject of the general legal obligation on states parties to the covenant,²⁵ as well as its constant jurisprudence,²⁶ according to which complaints alleging a violation of article 7 must be investigated promptly, thoroughly and impartially by competent authorities and appropriate action must be taken against those found guilty. This applies to all elements of article 7 of the Covenant.

10.5 The Committee also recalls its general comment No. 18 (1989) on non-discrimination²⁷ according to which non-discrimination, together with equality before the law and equal protection of the law without any discrimination constitute a basic and general principle relating to the protection of human rights. Thus, article 2, paragraph 1, of the International Covenant on Civil and Political Rights obligates each State party to respect and ensure to all persons within its territory and subject to its jurisdiction the rights recognized in the Covenant without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Article 26 not only entitles all persons to equality before the law as well as equal protection of the law but also prohibits any discrimination under the law and guarantees to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

10.6 The Committee notes that the author's counsel complained orally to the police during the author's detention on 12 September 1999.²⁸ The Committee notes the author's complaint to the Misdemeanour Prosecutor of Nafplio of 27 October 1999 containing detailed allegations of ill-treatment and discrimination. On 3 December 1999, the author lodged a complaint to the Ombudsman. The Committee therefore considers that the author has made timely and reasonable attempts to complain about the alleged ill-treatment and discrimination. It also observes that the author's allegation of discrimination has not been

²³ See communication No. 30/1978, *Bleier v. Uruguay*, para. 13.3; communication No. 84/1981, *Barbato and Barbato v. Uruguay*, para. 9.6.

²⁴ *Official Records of the General Assembly, Forty-seventh Session, Supplement No. 40 (A/47/40)*, annex VI, sect. A, para. 14.

²⁵ General comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 40*, vol. I (A/59/40 (Vol. I)), annex III, para. 18.

²⁶ See for example communication No. 1436/2005, *Sathasivam and Saraswathi v. Sri Lanka*, Views adopted on 8 July 2008, para. 6.4; communication No. 1589/2007, *Gapirjanov v. Uzbekistan*, Views adopted on 18 March 2010, para. 8.3; communication No. 1096/2002, *Kurbanov v. Tajikistan*, Views adopted on 6 November 2003, para. 7.4; communication No. 322/1988, *Rodríguez v. Uruguay*, para. 12.3.

²⁷ General comment No. 18 (1989) on non-discrimination, *Official Records of the General Assembly, Forty-fifth Session, Supplement No. 40*, vol. I (A/45/40 (Vol. I)), annex VI, sect. A, para. 1.

²⁸ This information comes from the author's deposition of 3 November 2000, made in the context of the second preliminary investigation.

the object of the preliminary investigations and the State party has merely refuted it by claiming that the author has failed to mention it to his counsel while in custody.

10.7 In the light of the multiple, unexplained and serious shortcomings of the preliminary investigations, including (a) the fact that the author's complaint of 27 October 1999 was ignored by the Prosecutor of First Instance in her ruling of 10 October 2001 of the second investigation, the same instance which was investigating that very complaint; (b) the absence of any forensic medical examination; (c) the discrepancies with regard to the arresting officers which cast doubts on the thoroughness and impartiality of the investigations; (d) the alleged use of discriminatory language by investigating authorities to refer to the author or his way of life; and (e) the length of the preliminary investigations, the Committee concludes that the State party has failed in its duty to promptly, thoroughly and impartially investigate the author's claims and therefore finds a violation of the State party's obligations under article 2, paragraph 3, read in conjunction with article 7; and articles 2, paragraph 1, and 26 of the Covenant.

10.8 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 facts before it disclose a violation of the rights of Nikolaos Katsaris under article 2, paragraph 3, read in conjunction with article 7; and articles 2, paragraph 1, and 26, of the Covenant.

11. 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, including adequate compensation. The State party is also under an obligation to prevent similar violations in the future.

12. In becoming a State party to the Optional Protocol, the State party recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not. 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 and to provide an effective and enforceable remedy in case a violation has been established. The Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the present Views and to have them widely disseminated in the official language of the State party.

[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.]
