United Nations CCPR/C/112/D/2004/2010

International Covenant on Civil and Political Rights

Distr.: General
17 November 2014

Original: English

Human Rights Committee

Communication No. 2004/2010

Views adopted by the Committee at its 112th session (7–31 October 2014)

Submitted by:	H. K. (represented by counsel, Christian B. Hjort and later by John Chr. Elden and Anders Brosveet)
Alleged victim:	The author
State party:	Norway
Date of communication:	9 March 2010 (initial submission)
Document references:	Special Rapporteur's rule 97 decision, transmitted to the State party on 18 November 2010 (not issued in document form)
Date of adoption of Views:	16 October 2014
Subject matter:	Decision to deny leave to appeal insufficiently reasoned
Substantive issues:	Right to have one's criminal conviction and sentence reviewed by a higher tribunal
Procedural issues:	Substantiation of claim; reservation of the State party regarding article 14, paragraph 5
Articles of the Covenant:	14, paragraph 5
Articles of the Optional Protocol:	None

GE.14-22168 (E)
1422168

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 (112th session)

concerning

Communication No. 2004/2010*

Submitted by:	H. K. (represented by counsel, Christian B. Hjort, followed by John Chr. Elden and Anders Brosveet)
Alleged victim:	The author
State party:	Norway
Date of communication:	9 March 2010 (initial submission)

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

Meeting on 16 October 2014,

Having concluded its consideration of communication No. 2004/2010, submitted to the Human Rights Committee by H. 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. The author of the communication is H. K., a national of Canada born on 15 April 1950 in Sweden. He claims to be the victim of a violation by Norway of article 14, paragraph 5, of the Covenant.[1] The author was initially represented by counsel, Christian B. Hjort, and then, as of 31 July 2011, by John Chr. Elden and Anders Brosveet.

* The following members of the Committee participated in the examination of the present communication: Yadh Ben Achour, Christine Chanet, Ahmad Amin Fathalla, Cornelis Flinterman, Yuji Iwasawa, Zonke Zanele Majodina, Gerald L. Neuman, Víctor Manuel Rodríguez Rescia, Fabian Omar Salvioli, Dheerujlall Seetulsingh, Anja Seibert-Fohr, Yuval Shany, Konstantine Vardzelashvili, Margo Waterval and Andrei Paul Zlătescu.

[1] The Optional Protocol entered into force for the State party on 13 December 1972. The State party has made the following declaration with respect to article 14, para. 5 of the Covenant: "The Government of Norway declares that with the entry into force of an amendment to the Criminal Procedure Act, which introduces the right to have a conviction reviewed by a higher court in all cases, the reservation made by the Kingdom of Norway with respect to article 14, paragraph 5 of the Covenant shall continue to apply only in the following exceptional circumstances: …

The facts as submitted by the author

2.1 The author is the Chair and majority shareholder of Olympia Holding AS. On 5 March 2007, he was indicted by the National Authority for Investigation and Prosecution of Economic and Environmental Crime for alleged crimes committed in violation of sections 275 and 276 of the Criminal Code (counts I (a), I (b) and I (c)); section 19.1 (1) of the Limited Liability Companies Act (counts II (a), II (b) and II (c)); sections 12.1 no. 1 and 12.2 of the Tax Administration Act (count III); and section 8.5 of the Accounting Act (count IV).

2.2 On 25 February 2009, the author was convicted by the Oslo District Court on all counts, except counts I (b), I (c) and II (b), on which he was acquitted. He was sentenced to three years and six months' imprisonment and had NKr. 10,000,000 confiscated.

2.3 On 5 March 2009 and 29 April 2009, the author lodged appeals on grounds of incorrect assessment of the facts and incorrect application of the law, requesting his acquittal on all counts and, in case of a conviction, that the sentence be reduced and the confiscation order removed. On 23 September 2009, the Borgarting Court of Appeal granted leave to appeal on all counts, except for count II (c). Count II (c) pertained to the violation of the Limited Liability Companies Act for the wrongful distribution of an NKr. 40 million dividend to shareholders of Olympia Holding AS, which did not include deductions resulting from a loan to the company Varna AS. The Court of Appeal denied leave to appeal, considering that the appeal against the conviction on count II (c) would not succeed. It stated that the court of first instance had given a thorough and sound assessment of the evidence in the case. It also stated that the findings of the Oslo District Court were correct and sound when holding that the author, in his capacity as Chair of the board, had acted negligently in connection with the distribution of dividends, since negligence was sufficient to reach a conviction.

2.4 On 6 and 13 October 2009, the author appealed the decision of the Court of Appeal before the Appeals Committee of the Supreme Court on the basis of a procedural error, arguing that the Court of Appeal had not provided sufficient grounds for its decision to deny leave to appeal and consequently had failed to fulfil the requirements of article 14, paragraph 5, of the Covenant. By court order dated 9 November 2009, the Appeals Committee of the Supreme Court dismissed the author's appeal, by unanimously finding that it was clear that the appeal could not succeed.[2]

The complaint

3.1 The author claims that article 14, paragraph 5, of the Covenant was violated by Norway, as the Court of Appeal did not provide sufficient reasoning in its decision denying him leave to appeal against his conviction and sentence on count II (c).

3.2 The author claims that the short written reasoning provided by the Court of Appeal did not allow him to ascertain whether the Court had looked in detail at the allegations that were presented against him and whether it had considered the evidence submitted at trial and the submissions which he had made in appeal. He also submits that the Court of Appeal

2. *Conviction by an appellate court*
In cases where the defendant has been acquitted in the first instance, but convicted by an appellate court, the conviction may not be appealed on grounds of error in the assessment of evidence in relation to the issue of guilt. If the appellate court convicting the defendant is the Supreme Court, the conviction may not be appealed whatsoever."

[2] The Appeals Committee stated that "the Committee unanimously finds that it is clear that the appeal cannot succeed".

merely provided a superficial summary of the judgement of the Oslo District Court and repeated its findings, without having made its own independent assessment. The author states further that the Court of Appeal failed to address some of his submissions in appeal. The author challenged the finding of the District Court that he had acted negligently for having failed to establish adequate measures to ensure that loans to close associates were taken into account. In particular, he had alleged that the District Court had established his criminal liability on negligence, without specifying why it considered the measures to be insufficient. The author submits that the Court of Appeal merely referred to the District Court judgement, without having addressed his argument in appeal. Therefore, it cannot be considered that his conviction on count II (c) has been adequately reviewed by a higher tribunal, according to the law, and that a substantive examination of his appeal was undertaken in accordance with the requirements of article 14, paragraph 5, of the Covenant.[3]

3.3 The author further submits that count II (c) was connected to the other counts under which the author was convicted and for which leave to appeal was granted. He also argues that it would not have prolonged the appeal proceedings held on 20 April 2010 if count II (c) had been included. In those circumstances, the reasons for not granting leave to appeal regarding count II (c) should have appeared in the decision of the Court of Appeal.

3.4 The author submits that he has exhausted all available domestic remedies, as a decision of the Supreme Court was rendered in his case, which cannot be appealed.

State party's observations on admissibility and merits

4.1 The State party submitted its observations on admissibility and merits on 18 May 2011.

4.2 The State party reports that on 20 April 2010, the Borgarting Court of Appeal held a new trial regarding all of the remaining counts for which it had granted leave to appeal. In a judgement dated 31 May 2010, it found the author guilty on all charges. The Court of Appeal sentenced him to four years in prison, of which two years and six months were suspended, and ordered that an amount of NKr. 15,000,000 be confiscated and costs of NKr. 100,000 be paid. The author appealed his conviction to the Supreme Court based on procedural grounds, the application of the law and as regards his sentence. The Appeals Committee of the Supreme Court granted him leave to appeal only in relation to counts I (b) and I (c) on the basis of procedural errors and in relation to the sentence. On 17 February 2011, the Supreme Court set aside the conviction on count I (b), but confirmed the one on count I (c). It therefore reduced the sentence issued by the Court of Appeal to three years and six months but ordered an amount of NKr. 30,000,000 to be confiscated.

4.3 The State party submits firstly that the communication lacks sufficient substantiation and is therefore inadmissible under article 2 of the Optional Protocol. In this regard, it refers to its observations on the merits.

4.4 On the merits, the State party submits that the leave of appeal proceedings before the Court of Appeal constituted a full independent review within the meaning of article 14, paragraph 5, and that the author has had access to duly reasoned written judgements. The State party recalls that the Court of Appeal refused to grant the appeal regarding count II (c)

[3] The author refers to communication No. 1542/2007, *Aboushanif* v. *Norway*, Views adopted on 17 July 2008, para. 7.2; and to the Committee's general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial. He also refers to a judgement by the Norwegian Supreme Court Grand Chamber (Rt. 2008 s. 1764, 19 December 2008, para. 105), which sets out the criteria required to fulfil the guarantees of article 14, paragraph 5.

based on section 321 of the Criminal Procedure Act, which states that "an appeal to the Court of Appeal may be disallowed if the Court finds it obvious that the appeal will not succeed" and that "a decision to refuse consent or to disallow an appeal must be unanimous". The State party also refers to section 387a of the Criminal Procedure Act, which provides that if the Interlocutory Appeals Committee unanimously finds it clear that an interlocutory appeal to the Appeals Committee of the Supreme Court cannot succeed, it may summarily dismiss or reject such appeal without giving any grounds other than a reference to this provision.

4.5 The State party explains that, following the *Aboushanif* case, where a violation of article 14, paragraph 5, of the Covenant was found by the Committee due to the absence of any substantive reason in the contested decision,[4] the Supreme Court provided guidance regarding the application of section 321 of the Criminal Procedure Act in a judgement issued on 19 December 2008 to ensure its compliance with the requirements of article 14, paragraph 5.[5] It held that all decisions by the Court of Appeal denying leave to appeal had to provide the grounds on which it found that the appeal would not succeed.[6] The State party further explains that, subsequent to the aforementioned judgement of the Supreme Court, section 321 of the Criminal Procedure Act was amended, with a provision requiring that reasons should be provided for decisions not to grant an appeal pursuant to section 321, paragraph 2. That amendment entered into force on 10 December 2010.

4.6 The State party concedes that, in the present case, there was an obligation on the Court of Appeal to provide reasons for its decision not to grant the appeal with regard to count II (c), pursuant to Norwegian law and article 14, paragraph 5, of the Covenant.

4.7 The State party considers, however, that when the reason not to grant an appeal is based on the fact that it is obvious that the appeal will not succeed, it will often be possible to formulate such reasons in a concise form. In this regard, it refers to the *Aboushanif* case, where the Committee held that it was "the lack of a duly reasoned judgment, even if in brief form", which raised doubts about whether there had been a substantial review of the appeal.[7] The State party proceeds to compare the present case with the *Aboushanif* case, in which, it submits, the appeal was more comprehensive. It pertained to the assessment of the evidence regarding the extent of VAT evasion and tax fraud, the application of the law regarding the question of guilt, the application of rules of procedures and the determination of the sentence, whereas the author's appeal was limited in scope and his submissions were brief. In his appeal, the author only alleged that the District Court had made an incorrect assessment of the facts, but he did not specify of what the erroneous assessments consisted. The State party submits that the author only argued that the District Court had erred in finding that he had acted negligently. It considers that, due to the limited scope of the author's appeal, the briefness of his submissions and the clear findings of the District Court, the Court of Appeal did not have to provide comprehensive reasons in order to deny leave to appeal regarding count II (c). In those circumstances, the State party considers that it was

[4] See *Aboushanif* v. *Norway* (note 3 above), para. 7.

[5] Rt. 2008 s. 1764, paras. 104-109.

[6] The Supreme Court made a distinction according to the nature of the case and the matters raised in appeal. In cases where the appeal concerns a specific question of interpretation of the law of a substantive or procedural nature and where the Court of Appeal finds the grounds provided by the District Court to be satisfactory, the Court of Appeal must be able to concur with the interpretation of the law by the District Court by providing brief additional remarks, if appropriate. In large and complex cases, where a number of matters of varying nature are raised in appeal, it is difficult to provide grounds in a brief form and the main points of the overall assessment must be stated, for example by emphasizing the factors to which particular importance has been attached.

[7] See *Aboushanif* v. *Norway* (note 3 above), para. 7.2.

sufficient that the Court of Appeal found that the District Court had made a sound assessment of the evidence and that it concurred with its application of law.

4.8 The State party finally recalls that the author was granted leave to appeal for the remaining part of his appeal pertaining to other counts than II (c). That shows that the Court of Appeal had conducted a substantial review in order to establish that this part of the appeal would not succeed. The State party submits that the facts do not disclose any violation of the author's rights under article 14, paragraph 5, of the Covenant.

Author's comments on the State party's observations

5.1 On 31 July 2011, the author submitted comments on the State party's observations.

5.2 The author refers to the State party's description of the facts regarding the case history of the other counts on which he was convicted.

5.3 The author agrees that a Court of Appeal may not need to state the reasons behind its decision at length, as long as the main reasons are set out. He further considers that the obligations under article 14, paragraph 5, of the Covenant require the decision to be duly reasoned and therefore argues that the brief reasoning provided by the Court of Appeal cannot be considered as providing a substantial review. The author disagrees with the contention of the State party that the scope of his appeal was limited and that his submissions in appeal were brief.

5.4 In particular, as regards the contention of the State party that the author did not specify the erroneous assessments of the District Court in his appeal, the author recalls that he had submitted that (a) the District Court did not indicate what the improved measures should have consisted of, when it found that the author, as Chair of the board, had failed to establish measures to ensure that loans to close associates were taken into account, and that (b) there was no actual evidence to support the conclusion that the author had acted negligently.

5.5 Regarding the application of the law, the author considers that his ground of appeal was clear, as the reasons provided by the District Court did not show whether it had used a standard of negligence or whether it had based its finding of guilt on objective grounds. The author further asserts that the appeal arguments also included the failure of the District Court to establish a convincing prima facie case against the author and the fact that it shifted the burden of proof from the prosecution to the defence. According to the author, the decision of the Court of Appeal does not show that it has considered his main arguments submitted in appeal, whereas it could have briefly provided reasons to refute his arguments and that the jurisprudence of the Committee in the *Aboushanif* case questions the existence of a substantial review in the present case.

5.6 The author adds that the State party cannot consider the length of the submissions as relevant in order to assess whether the reasoning of the Court of Appeal was sufficient. He argues that only the substantial and specific questions raised within the appeal are relevant and should therefore have been reflected in the decision of the Court of Appeal in order to fulfil the requirements of article 14, paragraph 5, of the Covenant. The author reiterates that the reasoning was not sufficient to show that the Court of Appeal had undertaken a real and effective review of the appeal and refers to the jurisprudence of the Committee and of the European Court of Human Rights with regard to the application of article 14, paragraph 5, in systems which, as in the State party, do not allow for an automatic right to appeal.[8]

[8] See communication 662/1995, *Lumley* v. *Jamaica*, Views adopted on 30 April 1999, para. 7.3; and general comment No. 32. The author also refers to *Taxquet* v. *Belgium*, application No. 926/05 at the

5.7 The author further claims that the leave to appeal which was granted by the Court in respect of the other counts cannot be seen as a sufficient indicator of the quality of the review conducted by the Court of Appeal. The author considers that argument to be problematic since the Court did not provide reasons as to why it had granted leave to appeal on those counts.

5.8 In addition, the author asserts that it is not possible from the judgements of the District Court, the Court of Appeal or the Supreme Court to understand on which grounds he was found to have acted negligently. In its decision, the Court of Appeal failed to substantiate its conclusion, according to which it was obvious that the appeal would not succeed. The author thus reiterates that his right to have his conviction reviewed was violated, in breach of article 14, paragraph 5, of the Covenant.

Additional submission by the author

6.1 On 31 July 2011, the author made a further submission, claiming an additional violation of article 14, paragraph 5, of the Covenant and requesting the Committee to examine it together with the present communication.

6.2 The author recalled that the Oslo District Court had acquitted him on counts I (b), I (c) and II (b). He further recalled that, on 31 May 2010, the Court of Appeal had found him guilty on the counts for which leave to appeal had been granted, namely all counts except II (c), and that the Supreme Court had quashed his conviction on count I (b).

6.3 The author adds that in his appeal to the Supreme Court on 20 August 2010, he argued that the Borgarting Court of Appeal made a procedural error in not showing in its written reasoning that it had given the author an independent substantial review. However, on 23 September 2010, the Appeals Committee of the Supreme Court refused to grant leave to appeal regarding this ground of appeal. On 17 January 2011, the author filed an application requesting the Appeals Committee to reverse its decision, which was refused on 26 January 2011.

6.4 The author submits that his rights under article 14, paragraph 5, have been violated, because the reasoning provided by the Borgarting Court of Appeal, which conducted the new trial, did not show that an independent and substantial review of the conviction handed down by the District Court had been conducted. The author claims that the reasoning of the Court of Appeal is almost a copy of the reasoning given by the District Court and that the texts of both judgements match to an excessive degree, contrary to the jurisprudence of the Committee, which requires a duly reasoned judgement.[9] According to the author, a comparison of the texts shows that some changes were made only to hide the copying technique and that even spelling mistakes were copied. He argues that, despite the fact that the Court of Appeal did provide a comprehensive written judgement, when a court, on appeal, bases its reasons to such an extent on the judgement in first instance which is to be reviewed, it raises questions about the existence of a substantial review.

6.5 The author adds that the lack of a substantial review pertains to all the counts on which he was convicted, but that it is especially evident for count I (a). He also considers that the assessment of the evidence conducted by the Court of Appeal is not sufficient to be

European Court of Human Rights, which he considers relevant to his case, as it stresses the importance of affording sufficient safeguards to enable the accused to understand why he or she has been found guilty.

[9] The author refers to general comment No. 32, para. 49; communication No. 355/1989, *Reid* v. *Jamaica*, Views adopted on 8 July 1994, para. 14.3; communication No. 662/1995, *Lumley* v. *Jamaica*, Views adopted on 30 April 1999, para. 7.3; and*Aboushanif* v. *Norway* (note 3 above).

characterized as a substantial review. For example, he claims that the Court of Appeal failed to reflect in its reasoning new evidence submitted to it regarding the amount received by Olympia for the sale of shares (NKr. 63.9 million instead of NKr. 104 million), which was not disputed by the prosecution. The author claims that, consequently, it is not possible to determine that sufficient consideration was given by the Court of Appeal to the evidence submitted during the trial and whether the Court of Appeal found on its own merits that there was sufficient incriminating evidence against the author to justify a finding of guilt.

Additional observations from the State party

7.1 The State party submitted additional observations on 2 November 2011 without providing any comment on the additional claims made by the author regarding the judgement of the Court of Appeal of 31 May 2010.[10]

7.2 As regards count II (c), the State party stresses that the author's appeal to the Supreme Court has no relevance to whether the Court of Appeal proceedings provided the author with a review in substance of the District Court decision.

7.3 The State party clarified its observation regarding the argument made by the author in his appeal, alleging that the District Court had made an incorrect assessment of the facts. It first recalled all the factual findings upon which the District Court had relied to establish the author's negligence. Notably, the State party refers to the findings of the District Court, according to which it was uncertain what measures Olympia and the auditor had put in place in connection with the exchange of information concerning loans to close associates. The State party considers that the author's appeal argument, requiring the Court to explain why those measures were inadequate was irrelevant, given that the District Court had already found that such measures had not ensured that loans to close associates were taken into account in the distribution of dividends. The State party further held that neither in the appeal to the Court of Appeal, nor in the appeal to the Supreme Court, did the author specify why the assessment of the facts of the case was wrong.

7.4 With regard to the application of the law, the State party explains that, even if it stated that the author's submissions in appeal were brief on this particular point, it did not mean that the appeal was lacking in detail as to why the application of the law by the District Court was wrong. The State party submits that in cases where the Court of Appeal agrees with the application of the law by the District Court, it must be sufficient for it to merely concur with the assessment of the District Court. Further, the State party stresses the finding of the District Court, according to which the defendant acted negligently. It recalls that it is not for the Committee to review the application of the law by the Court of Appeal, namely whether the author acted negligently. The task of the Committee is limited to examining whether the proceedings before the Court of Appeal gave the author access to a substantial review.

7.5 The State party further considers that the cases referred to by the author are not relevant to the case at hand: the *Aboushanif* case did not concern a violation of the Limited Liability Companies Act and the *Taxquet* case is different insofar as it did not concern the right to a substantial review, but whether grounds had to be given under article 6, paragraph 1, of the European Convention on Human Rights with regard to the verdict of a jury.

[10] The author did not provide any comments on the additional observations of the State party.

Issues and proceedings before the Committee

Consideration of admissibility

8.1 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 case is admissible under the Optional Protocol to the Covenant.

8.2 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.

8.3 The Committee notes that the author's claims under article 14, paragraph 5, of the Covenant relate to the decision of the Court of Appeal of 23 September 2009, denying leave to appeal as regards count II (c), and to the judgement of the Court of Appeal of 31 May 2010 convicting the author on all the other counts.[11]

8.4 The Committee notes that the State party challenges the admissibility of the author's claim that the higher tribunal did not provide sufficient reasoning when reviewing his conviction on count II (c), in violation of article 14, paragraph 5, of the Covenant, and that this claim should be declared inadmissible for lack of sufficient substantiation. However, the Committee considers that the author's allegations regarding the decision of the Court of Appeal of 23 September 2009 denying leave to appeal as regards count II (c) have been sufficiently substantiated, for purposes of admissibility. It therefore decides to proceed to the examination of the author's claim on the merits in this regard, insofar as it appears to raise issues under article 14, paragraph 5, of the Covenant.

8.5 As regards the other counts on which the author was convicted by the Court of Appeal, the Committee notes the author's allegations claiming a violation of article 14, paragraph 5, of the Covenant because the judgement of the Court of Appeal of 31 May 2010 was almost a literal copy of the judgement issued in first instance by the Oslo District Court. The Committee also notes the author's contention that the similarity in the reasoning of both judgements brings into question the existence of a substantial review, despite his acknowledgment that a full retrial took place before the Court of Appeal and that its judgement was comprehensive. The Committee further notes that the State party has made a reservation to article 14, paragraph 5, the relevant part of which provides that "where the defendant has been acquitted in the first instance, but convicted by an appellate court, the conviction may not be appealed on grounds of error in the assessment of evidence in relation to the issue of guilt". The Committee recalls that the author was convicted on counts I (b), I (c) and II (b) by the Court of Appeal, whereas he had been acquitted by the Oslo District Court in first instance. The Committee also notes that the author's claim does not relate to the lack of access to an appeal to challenge his conviction by the Court of Appeal, but that it is limited to the lack of a duly reasoned judgement. The Committee considers that the author's claim relates to the lack of a substantial and independent review by the Court of Appeal, but not by the Supreme Court. The Committee is therefore satisfied that it is not precluded from considering the author's claim under article 14, paragraph 5, of the Covenant, insofar as the author's claim does not fall within the reservation made by the State party with regard to article 14, paragraph 5.

8.6 The Committee further considers that the information provided does not sufficiently substantiate the position of the author that, under the particular circumstances, his right under article 14, paragraph 5, of the Covenant was violated due to the alleged lack of an

[11] Counts I (a), II (a), III and IV, as well as those on which he was acquitted in the first instance, namely counts I (b), I (c) and II (b).

independent and substantial review by the Court of Appeal of his convictions on counts I (a), II (a), III and IV, as well as I (b), I (c) and II (b). The Committee observes that the author's allegations against the judgement of the Court of Appeal relate primarily to the application of Norwegian domestic legislation and to the assessment of the facts of the case. In that respect, the Committee recalls its jurisprudence, according to which it is incumbent on the courts of States parties to evaluate the facts and evidence in a specific case, or the application of domestic legislation, unless it can be ascertained that such evaluation or application was clearly arbitrary or amounted to a manifest error or denial of justice.[12] On the basis of the information provided by the author, the Committee is unable to conclude that the Court of Appeal acted arbitrarily or that its judgement entailed a manifest error or denial of justice. The Committee considers, therefore, that the author's claims under article 14, paragraph 5, of the Covenant, in respect of the judgement of the Court of Appeal of 31 May 2010, have not been sufficiently substantiated for the purposes of admissibility. Accordingly, the Committee declares those claims inadmissible under article 2 of the Optional Protocol.

Consideration of the merits

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

9.2 The Committee notes the author's claim that his rights under article 14, paragraph 5, of the Covenant to have his conviction reviewed by a higher tribunal were violated, because the decision of the Court of Appeal of 23 September 2009 did not sufficiently disclose the reasons for denying leave to appeal against the District Court judgement.

9.3 The Committee recalls that the right to have one's conviction and sentence reviewed by a higher tribunal imposes on the State party a duty to review substantively, both on the basis of sufficiency of the evidence and of the law, the conviction and sentence, such that the procedure allows for due consideration of the nature of the case.[13] The Committee also recalls that, while States parties are free to determine the modalities of appeal, under article 14, paragraph 5, of the Covenant they are under an obligation to review substantially the conviction and sentence.[14] The Committee further recalls that it has previously accepted a system of leave to appeal, notably taking into account that three judges had reviewed the judgement.[15] In addition, according to the jurisprudence of the Committee, article 14, paragraph 5, of the Covenant does not require a full retrial or a "hearing", as long as the tribunal carrying out the review can look at the factual dimensions of the case.[16]

9.4 The Committee notes that in the present case, the decision of the Court of Appeal was based on section 321 of the Criminal Procedure Act, a provision on which the Supreme

[12] See communications No. 1612/2007. *F.B.L* v. *Costa Rica*, decision adopted on 28 October 2013, para. 4.2; No. 1616/2007, *Manzano et al.* v. *Colombia*, decision adopted on 19 March 2010, para. 6.4; and No. 1622/2007, *L.D.L.P.* v. *Spain*, decision adopted on 26 July 2011, para. 6.3.

[13] See general comment No. 32, para. 48, and, inter alia, communications No. 1942/2010, *T.L.N* v. *Norway*, decision adopted on 16 July 2014, para. 9.2; and *Aboushanif* v. *Norway* (note 3 above), para. 7.2.

[14] See general comment No. 32, para. 45; *Aboushanif* v. *Norway* (note 3 above), para. 7.2; and communication No. 355/1989, *Reid* v. *Jamaica*, Views adopted on 8 July 1994, para. 14.3.

[15] See communications No. 789/1997, *Bryhn* v. *Norway*, Views adopted on 2 November 1999, para. 7.2; and *Aboushanif* v. *Norway* (note 3 above), para. 7.2.

[16] See communications No. 536/1993, *Perera* v. *Australia*, decision on inadmissibility adopted on 28 March 1995, para. 6.4; and No. 1110/2002, *Rolando* v. *Philippines*, Views adopted on 3 November 2004, para. 4.5.

Court specifically provided guidance to ensure its application by domestic courts in compliance with article 14, paragraph 5, of the Covenant. The Committee further recalls that the decision to deny leave to appeal was taken unanimously by three professional judges and was later appealed on the basis that it did not include sufficient grounds in its reasoning. It therefore observes that this particular question was subjected to the examination of the Appeals Committee of the Supreme Court, which in turn also unanimously concluded that the appeal would not succeed.

9.5 The Committee notes that the Court of Appeal indicated in its decision that the District Court had provided "a thorough and sound assessment of the evidence in the case" and found that it made "a sound and correct decision when it concluded that the defendant, as Chair of the board, acted negligently in connection with the distribution of dividends. Such negligence is a sufficient ground for conviction." In view of that statement, the Committee considers that the Court of Appeal relied on the interpretation of the evidence and the facts by the lower court in first instance. The Committee also notes that the Court of Appeal referred to the findings of fact established by the District Court that it considered particularly relevant in order to support its conclusion that it concurred with the conviction by the District Court of the author for having acted negligently. The Committee considers that, in the circumstances of the case, the Court of Appeal indicated concisely and with sufficient clarity that there was sufficient incriminating evidence to rule out any chance of success of the author's appeal against his conviction on count II (c) and that it did set out the main reasons why it could not grant such appeal.

9.6 Based on the circumstances above, the Committee cannot accept the author's argument that, due to the insufficiently reasoned decision of the Court of Appeal, he was deprived of the effective exercise of his right to have his conviction and sentence reviewed by a higher tribunal, as required by article 14, paragraph 5, of the Covenant.

10. The Committee therefore concludes that the facts before it do not show a violation of article 14, paragraph 5, of the Covenant.

11. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts before it do not reveal a breach of any provision of the Covenant.