



# International Covenant on Civil and Political Rights

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## Human Rights Committee

### Communication No. 2358/2014

#### Decision adopted by the Committee at its 115th session (19 October-6 November 2015)

<i>Submitted by:</i>	G.C.A.A. (represented by Mr. Pedro Montano)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Uruguay
<i>Date of communication:</i>	16 March 2012 (initial submission)
<i>Document references:</i>	Special Rapporteur's rule 92 and rule 97 decision, transmitted to the State party on 18 March 2014 (not issued in document form)
<i>Date of adoption of the decision:</i>	2 November 2015
<i>Subject matter:</i>	Conduct of the trial in a criminal case
<i>Procedural issues:</i>	Incompatibility with the provisions of the Covenant; failure to substantiate allegations
<i>Substantive issues:</i>	Right to life; arbitrary detention; unfair trial; <i>non bis in idem</i> ; non-discrimination and equality before the law
<i>Articles of the Covenant:</i>	2, 6, 7, 9, 14, 15 and 26
<i>Article of the Optional Protocol:</i>	2



## Annex

### **Decision of the Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political Rights (115th session)**

concerning

#### **Communication No. 2358/2014\***

*Submitted by:* G.C.A.A. (represented by Mr. Pedro Montano)  
*Alleged victim:* The author  
*State party:* Uruguay  
*Date of communication:* 16 March 2012 (initial submission)

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

*Meeting on 2 November 2015,*

*Having concluded* its consideration of communication No. 2358/2014 submitted to the Committee by G.C.A.A. 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:

#### **Decision on admissibility**

1. The author of the communication is G.C.A.A., a Uruguayan national born in 1928. The author claims to be a victim of violations by the State party of his rights under articles 2, 6, 7, 9, 14, 15 and 26 of the Covenant.<sup>1</sup> The author is represented by counsel.

#### **The facts as submitted by the author**

2.1 The author claims that on 27 June 1973, in the context of an internal conflict, the President of the State party dissolved parliament with the support of the Armed Forces and instituted a civilian-military regime that governed until 28 February 1985. In November 1975 various States in the region, including the State party, adopted a common defence strategy called “Operation Condor” to combat, according to the author, guerrilla and terrorist movements. The author, as a lieutenant general, was

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\* The following members of the Committee participated in the consideration of the present communication: Mr. Yadh Ben Achour, Mr. Lazhari Bouzid, Ms. Sarah Cleveland, Mr. Ahmed Amin Fathalla, Mr. Olivier de Frouville, Mr. Yuji Iwasawa, Ms. Ivana Jelić, Mr. Duncan Laki Muhumuza, Ms. Photini Pazartzis, Mr. Mauro Politi, Sir Nigel Rodley, Mr. Víctor Manuel Rodríguez-Rescia, Mr. Fabián Omar Salvioli, Mr. Dheerujall Seetulsingh, Ms. Anja Seibert-Fohr, Mr. Yuval Shany, Mr. Konstantine Vardzelashvili and Ms. Margo Waterval.

<sup>1</sup> The Optional Protocol entered into force for the State party on 23 March 1976.

Commander-in-Chief of the Army in 1978 and 1979. In addition, from 1 September 1981 to 1 January 1985 he served as de facto President of the State party.

2.2 In 1984, with a view to establishing a democratic regime, the Armed Forces, the political parties and the Tupamaros National Liberation Movement reached an agreement, known as the Club Naval Pact, which provided for the adoption of legal measures that were subsequently put in place with the adoption of the Amnesty Act (No. 15737) and the Expiry of the Punitive Powers of the State Act (No. 15848), on 8 March 1985 and 22 December 1986, respectively.

2.3 Act No. 15737 decreed “amnesty for all political offences, and ordinary and military offences related thereto, committed from 1 January 1962”. In addition, Act No. 15848 established that “the exercise of the punitive powers of the State in respect of crimes committed prior to 1 March 1985 by military and police personnel, for political reasons or in the performance of their duties or on orders from commanding officers who served during the period of de facto Government, [had] expired”. Act No. 15848 made the Executive competent to decide if a case fell within the scope of the Act and provided that, if it did, the judge was to close the case.

2.4 The author claims that both laws were implemented between 1985 and 2005 and that the Supreme Court of Justice repeatedly upheld the constitutionality of Act No. 15848. Moreover, in two referendums concerning the Act held in 1986 and 2009 a majority voted against its repeal and annulment, respectively.

2.5 The author claims that since 2005 the Executive has been controlled by a political party composed of members of the groups that the regime in power from 1973 to 1985 had fought against. He further maintains that, since 2005, Government authorities have used the powers conferred upon them by law to investigate and prosecute offences committed by members of the Armed Forces and the police between 1973 and 1985, pointing out that these offences were not covered by Act No. 15848. The author highlights that the State party’s authorities have also applied Act No. 15737, which, in his opinion, favours members of the groups that fought against the civilian-military regime.

2.6 On 25 September 2006, Act No. 18026, on cooperation with the International Criminal Court in combating genocide, war crimes and crimes against humanity, was promulgated, establishing the non-applicability of the statute of limitations to the crime of enforced disappearance, among other offences. It defined the crime of genocide, war crimes and crimes against humanity, as well as the crime of enforced disappearance, among others.

2.7 On 16 May 2007, relatives of disappeared persons filed a complaint against a number of officials of the civilian-military Government, alleging that members of their families were victims of enforced disappearances which occurred during transfers carried out clandestinely by members of the Armed Forces in 1977 and 1978. Against this backdrop, criminal proceedings were brought against the author before the Nineteenth Rota Criminal Court of First Instance (Court No. 19). On 17 December 2007, Court No. 19 ruled that the author, together with one other person, should be placed in pretrial detention and prosecuted on the charge of enforced disappearance. The Court’s decision to order the author’s pretrial detention was guided by the nature and seriousness of the alleged acts and their social repercussions. At trial, the Public Prosecution Service sought the author’s conviction for multiple offences of enforced disappearance allegedly committed in Argentina in 1977 and 1978, as part of Operation Condor. In his statements, the author affirmed, among other things, that he was not aware of any Uruguayan citizens being detained in clandestine detention centres in Uruguay or other countries or of Uruguayan military personnel being involved in operations in Argentina and that, in any case, none of the military

personnel under his command had travelled to Argentina. Court No. 19 nonetheless concluded that, at the time of the alleged acts, there was an organized power structure composed of members of the civilian-military administration and that the author could not have been unaware that such events were taking place since, in 1978, he was Commander-in-Chief of the Army and as such was a member of the Junta of Commanders.

2.8 On 21 October 2009, Court No. 19 sentenced the author to 25 years' imprisonment for the crime of homicide, in especially aggravated circumstances, in repeated offences, against 37 persons. The Court found that the failure to locate the bodies of the victims and the fact that the details could not be accurately established were no impediment to a finding that the victims had been murdered and were dead. On the other hand, the charge of enforced disappearance of persons brought by the Public Prosecution Service could not succeed as this offence was defined under article 21 of Act No. 18026, and that Act could not be applied to events that had occurred prior to its entry into force, pursuant to the principle of non-retroactivity of criminal law. However, the Court also noted that offences "committed during the *de facto* Government in a context of State terrorism, in a systematic, planned fashion and on a massive scale, such as enforced disappearance, killings ... include practices considered under international law to be crimes against humanity, which are not subject to the statute of limitations and the prosecution of which is mandatory for all States"; that under international law provisions on limitation intended to prevent the investigation, prosecution and punishment of those responsible for serious violations of human rights were inadmissible; and, therefore, that the State could not invoke those provisions in order to evade its obligation to prosecute and punish those responsible. Moreover, even on the basis of the State party's criminal law, the statute of limitations did not apply to the offences being prosecuted as the period of limitation should have started to run on 1 March 1985, given that, when the regime in power between 1973 and 1985 was in place, legal action of any kind in this connection was impossible. Furthermore, the limitation period should be extended by one third, in accordance with article 123 of the Criminal Code, owing to the dangerousness of the author and given the seriousness of the events under investigation and the nature of the motives pursued.

2.9 With regard to the appraisal of the evidence, the Court considered that, in the light of the evidence presented during the trial, the role that the author played as a member of the Junta of Generals and the Junta of Commanders-in-Chief in 1977 and 1978, and information in the public domain at the time the events forming the subject matter of the trial occurred, it had to be concluded that the author was aware of the actions carried out by members of the Armed Forces during the so-called war against subversion and that he was clearly involved in them at all times, given the powers conferred upon him by virtue of his office. Moreover, the author had issued Order No. 7438 of 8 March 1978, which prohibited the compartmentalization of information in the context of the actions of the Armed Forces, and Order No. 7777, of 3 July of the same year, in which he assumed responsibility for all acts of his subordinates associated with the so-called war against subversion. Lastly, the Court concluded that there was sufficient evidence to establish the author's criminal liability.

2.10 The Public Prosecution Service appealed against the judgement insofar as it categorized the facts as a crime of homicide and not of enforced disappearance. The author also appealed against the judgement before the Second Rota Criminal Appeal Court (the Appeal Court). The author reiterated his claims arguing, among other things, that his involvement in the victims' deaths through physical acts had not been proven; that the events could be attributed to him only through a charge of negligence — an issue that had not been addressed in the judgement under appeal; that he was unaware of the acts ascribed to him, since they had begun before he became

Commander-in-Chief of the Army in 1978; and that the offence of homicide was time-barred given that it was not considered a crime against humanity. The author further argued that he could not be held responsible for the events on the basis of the notion of “indirect commission”, since this notion requires there to have been deliberation prior to the offence being committed and that no such deliberation could be deduced from the evidence submitted.

2.11 On 26 August 2010, the Appeal Court took detailed note of the evidence adduced in the trial and confirmed the author’s criminal liability for the crime of homicide under especially aggravated circumstances in repeated offences. However, it revoked the first-instance ruling regarding the extent of the author’s involvement and instead found him guilty of being a co-perpetrator of the offences tried. As to the calculation of the period of limitation for the crime of homicide, the Court concluded that, as a general rule, the extension of the period of limitation by one third was applicable under article 123 of the Criminal Code.

2.12 The author filed an appeal in cassation with the Supreme Court and repeated his claims. On 22 August 2011, the Supreme Court dismissed the appeal in cassation. The author submits that domestic remedies have thereby been exhausted.

### **The complaint**

3.1 The author claims to be the victim of violations by the State party of articles 2, 6, 7, 9, 14, 15 and 26 of the Covenant.

3.2 The author refers to Act No. 15848, which stipulates that “the exercise of punitive power has expired”. He maintains that the Supreme Court has upheld the Act’s constitutionality in various rulings and that the electorate has ratified its validity twice in referendums. However, by administrative act the author was denied the application of the law to his case. Furthermore, the judicial proceedings brought by the courts of the State party against members of the Armed Forces failed to observe the basic principles of criminal law, such as the applicability of the statute of limitations to criminal offences, the non-retroactivity of criminal law and the notions of *res judicata* and *non bis in idem*. In his case the evidence submitted at trial was inconsistent and his sentence was based on testimony from biased witnesses and information from one-sided newspaper research and biased publications, in violation of due process and the right to an impartial tribunal. The evidence was collected with no regard for judicial guarantees, no oversight by his counsel and no certainty as to its authenticity or provenance. He claims that at every hearing the same witnesses appeared — all of them persons previously detained by the Armed Forces. The author adds that the burden of proof was reversed and he was allowed neither to submit evidence nor to examine the file before being deprived of his liberty. Order No. 7777, which was a public pronouncement intended to maintain the cohesion of the army command, was treated as if it were a confession. The author also maintains that the courts failed to take account of the provision of article 10 of the Criminal Code governing the principle of territoriality, which excludes the application of Uruguayan law to offences committed in other countries. Major errors were also made with regard to the author’s functions and military rank at the time of the events. The author also asserts that, in the majority of proceedings against military and police officers, the prosecutor in charge of the case had openly expressed views opposed to the Armed Forces and was not able to exercise her functions independently and impartially.

3.3 The author claims that the cases brought against him are time-barred under articles 117 and 119 of the Criminal Code, and that the judge should have declined to hear them and the prosecutor should have sought their dismissal. However, the State party’s courts arbitrarily determined that the period of limitation should begin to run from 1 March 1985, despite the fact that there was no legal provision to that effect.

Contrary to the findings of Court No. 19, the author submits that before that date the courts were free to try any case within the State party's legal order. He adds that even taking 1 March 1985 as the start date, the offence of homicide for which he was tried became time-barred in 2005. However, in his case the courts applied the concept of dangerousness, established under article 123 of the Criminal Code, to extend the period of limitation for that offence. In view of his age and the fact that he has never evaded justice, the author considers that the application of this article to his case is unlawful and arbitrary.

3.4 The author emphasizes that the non-applicability of the statute of limitations to war crimes and crimes against humanity is regulated by Act No. 18026, which entered into force on 25 September 2006. The Act cannot, therefore, be applied to events that occurred before that date. The author argues that the State party's Constitution enshrines the principle of non-retroactivity of criminal law, and that Act No. 18026, of 25 September 2006, could not therefore be applied to his case as the acts for which he is being tried occurred some 30 years earlier. The author maintains that the procedure provided for in that Act was applied retroactively in his case, placing him at a disadvantage vis-à-vis the plaintiffs and the Public Prosecution Service.

3.5 The author submits that the principles of *res judicata* and *non bis in idem* were not respected, because the proceedings brought against him, which resulted in his conviction in 2009, did not take into account other earlier proceedings, in which the same facts and the same persons had been tried, and in which the courts had concluded that the cases should be shelved in application of Act No. 15848. In this connection, the author refers to a case brought before the First Rota Criminal Court of First Instance (case No. 87-10103/2002), when he had been tried on charges of homicide but the case had subsequently been shelved.

3.6 The author refers to the denial of his request to serve his prison sentence under house arrest. Articles 127 and 131 of the Code of Criminal Procedure (Bail and Parole, adopted by Act No. 17897 of 14 November 2005) give judges the possibility of ordering house arrest for offenders aged over 70. However, pursuant to article 9.1 of Act No. 17897, this possibility is not available to persons who have been convicted of homicide in cases, like the author's, in which the aggravating circumstances defined in articles 311-312 of the Criminal Code apply. The author submits that this provision was enacted specifically with the aim of excluding the possibility of house arrest in his case. He points out that, because of his age, the sentence of 25 years' imprisonment is equivalent in practice to life imprisonment.

3.7 Lastly, the author claims that Act No. 15737 and Act No. 15848 are not applied in the same manner by the State party. Unlike Act No. 15737, which is applied without exception, Act No. 15848 requires the Executive to rule on whether or not a matter under investigation falls within the scope of the Act. Since 2005, the application of the latter Act to in-service and retired military officers, particularly by the judiciary, has been influenced by exceptional criteria and regulatory interpretations that are not applied to other citizens — a situation constituting a violation of various constitutional provisions.

#### **State party's observations on admissibility**

4.1 On 22 May 2014, the State party submitted its observations on the admissibility of the communication. The State party maintains that the communication should be found inadmissible because it is manifestly unfounded and an abuse of the right to submit a communication *ratione materiae*.

4.2 The State party asserts that the author was given a criminal trial in accordance with due process, by independent and impartial civil courts, within the framework of the rule of law.

4.3 The author was deprived of his liberty under a court order issued by a competent judge, in accordance with the law; he had access to counsel of his choice with all necessary guarantees in order to prepare and conduct his defence, submit evidence and review the evidence submitted by the prosecution. He also had the opportunity to exercise all the remedies available under the State party's legislation.

4.4 The State party refers to all the various positions the author had held in the Armed Forces since 1971. It stresses that he was a member of the civilian-military Government and was responsible for the most serious and systematic human rights violations, including enforced disappearances, torture, extrajudicial killings, and arbitrary and unlawful detentions committed in the State party under a civilian-military dictatorship between 1973 and 1985.

4.5 The State party notes that it implemented special measures to protect the life and physical integrity of the author on every occasion he was brought before the competent courts, and also when he was ordered to serve his sentence in prison. In the interests of his personal safety, the Ministry of the Interior decided that he should serve his sentence in a special prison facility.

4.6 The State party argues that the author is not a political prisoner and that he was convicted of homicide under especially aggravated circumstances in repeated offences committed against 37 persons.

#### **Author's comments on the State party's observations on admissibility**

5.1 On 16 June 2014, the author replied to the State party's observations on the admissibility of the communication. The author states that the communication meets the admissibility criteria, reiterates his allegations and submits that these are not refuted by the State party in its observations.

5.2 The author claims that the State party is holding him responsible for all human rights violations committed in Uruguay during the civilian-military administration and that this attests to the political nature of his prosecution and conviction. Furthermore, the events were not brought to trial during the 20 years of democracy that lasted until 2007, when a Government took office that was composed principally of members of the movements opposed to the regime that had governed the State party in the 1970s.

5.3 The author claims that he has been held responsible for the homicide of 37 persons, even though most of those persons were detained in Buenos Aires in 1977 and 1978 by persons who were not under his command. In this connection, the author submits that the judicial authorities did not take account of the rules of military administration and discipline and the responsibilities corresponding to each rank.

5.4 The author maintains that the principles of due process were not respected. The prosecutor assigned to his case was not impartial because she had had ties with the movements opposed to the regime that had governed the State party in the 1970s and obstructed the efforts of his defence team, leading his lawyers to resign in December 2007. The author also emphasizes that the offences for which he was tried had become time-barred and that the provisions of criminal law were applied to his case retroactively. During his trial, members of the Executive celebrated the author's prosecution and issued statements accusing him of having primary responsibility for the worst human rights violations committed by the State party.

5.5 The author is of the view that his communication does not constitute an abuse of the right of submission, since he has exhausted domestic remedies and meets the

admissibility criteria established in the Optional Protocol and the Committee's rules of procedure.

#### **State party's observations on the merits**

6.1 On 15 January 2015, the State party submitted its observations on the merits and reiterated its view that the communication should be declared inadmissible because it presented arguments in a general manner, without linking them to any specific provision of the Covenant or providing even the slightest substantiation of the allegations. The State party submits that these arguments merely reflect the author's disagreement with the judicial decisions taken in the criminal proceedings against him.

6.2 The State party indicates that the criminal proceedings against the author were not politically motivated and that they were conducted in accordance with ordinary criminal law, notably the Criminal Code, the Code of Criminal Procedure and other legislation applicable to the case, as well as the State party's Constitution, the American Convention on Human Rights and the Covenant.

6.3 The author was legitimately sentenced to 25 years' imprisonment, in accordance with the legislation in force and with international standards, and in a manner proportionate to the seriousness of the crime and the harm caused. The author always had the possibility of appointing counsel of his choice and, when he so requested, was provided with public defence counsel paid for by the State party.

6.4 During the trial, the author was treated in the same way as any other defendant. All guarantees of due process were respected, including the defence team's right to obtain access to effective remedies. However, many of the claims made by the author in his communication, such as the alleged impossibility to submit evidence or the lack of independence or impartiality of the representative of the Attorney-General's Office, were never raised with the judicial authorities of the State party, for example by submitting an application to declare the proceedings null and void or to disqualify the prosecutor.

6.5 The courts of the State party determined the author's criminal liability on the basis of documentary, witness and other evidence provided for in articles 137 and 147 of the Code of Criminal Procedure which were presented during the trial.

#### **Author's comments on the State party's observations on the merits**

7.1 By letter of 4 March 2015 the author submitted comments on the merits of the communication and reiterated his previous pleadings.

7.2 The author reiterates that his prosecution was clearly politically motivated and that he was convicted of acts that were committed in Argentina by persons who were not under his command. He claims that he did not take part in Operation Condor; that there is no evidence against him; and that his prosecution was motivated by a spirit of revenge. In 1972 there were two attempts on the author's life. However, the assailants mistakenly killed his brother and his personal assistant.

7.3 The author adds that the prosecutor in the trial expressed her opinion about the trial in various media and that no disciplinary action was taken against her. The author maintains that the other judges involved in his prosecution were given important government posts following his indictment.



## Issues and proceedings before the Committee

### *Consideration of admissibility*

8.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 93 of its rules of procedure, whether or not the case is admissible under the Optional Protocol to the Covenant.

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

8.3 The Committee notes that the author's criminal trial was conducted in Court No. 19, that the sentence of that Court was appealed in the Court of Appeal, and that, subsequently, on 22 August 2011, the Supreme Court dismissed the author's appeal in cassation. The Committee also notes that the State party has not submitted any objections regarding the exhaustion of domestic remedies. In the circumstances, the Committee finds that it is not precluded from considering the communication under article 5, paragraph 2 (b), of the Optional Protocol.

8.4 The Committee takes note of the author's claims under article 2 of the Covenant, to the effect that the criminal proceedings against him, including the way in which the criminal law was applied, and the adoption of new legislation by the State party, such as Act No. 17897, were motivated by political considerations. The Committee recalls its case law, which indicates that the provisions of article 2 of the Covenant, which lay down general obligations for States parties, cannot in and of themselves give rise to a claim in a communication under the Optional Protocol. The Committee therefore considers that the author's contentions in this regard are inadmissible under article 2 of the Optional Protocol.<sup>2</sup>

8.5 The Committee observes that the author invoked articles 6 and 7 of the Covenant and takes note of his allegations that, even though he is over 86 years old, the authorities refused his request to serve his sentence under house arrest, and that, because of his age, the sentence of 25 years' imprisonment is equivalent, in his case, to life imprisonment. The Committee notes, however, that the courts determined the author's sentence in accordance with the law and in proportion to the seriousness of the crimes committed and the harm caused; and that Act No. 17897, on bail and parole, allows the court to order house arrest or other precautionary measures for persons accused or convicted, for health reasons. Furthermore, the Committee notes that the author has not explained to the Committee why he believes that serving his sentence in a prison facility could entail a risk to his life or treatment in violation of the obligations contained in article 7 of the Covenant. The Committee considers, therefore, that the author has not sufficiently substantiated his claims for the purposes of admissibility, and concludes that this part of the communication is inadmissible under article 2 of the Optional Protocol.

8.6 The Committee also observes that the author invoked article 9 of the Covenant and takes note of his allegations that his detention was illegal and that Court No. 19 arbitrarily decided not to apply Act No. 15848. The Committee also notes the State party's arguments that the author was deprived of his liberty under a court order issued by a competent judge, in accordance with the law, and that he benefited from all necessary guarantees and had the opportunity to avail himself of all remedies provided by law. The Committee notes that the author was placed in pretrial detention on 17 December 2007 by order of Court No. 19 and that, in his communication, he has

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<sup>2</sup> See communication No. 1887/2009, *Peirano Basso v. Uruguay*, Views adopted on 19 October 2010, para. 9.4, and communication No. 802/1998, *Rogerson v. Australia*, Views adopted on 3 April 2002, para. 7.9.

merely made allegations of a general nature. The Committee therefore finds that this complaint is not sufficiently substantiated for the purposes of article 2 of the Optional Protocol, and that this part of the communication must therefore be declared inadmissible under that article.

8.7 With reference to article 14, paragraph 1, of the Covenant, the Committee notes the author's claims that the judicial authorities were not impartial since his conviction and sentence were based on testimony from biased witnesses; that the burden of proof was reversed; and that he was convicted in the absence of any evidence that might attest to his involvement in the offences attributed to him. In addition, the courts failed to find that the crime of homicide for which he was tried under articles 117 and 119 of the Criminal Code was time-barred, but arbitrarily ruled that the limitation period started to run from 1 March 1985 and that the concept of dangerousness, established in article 123 of the Criminal Code, was applicable to the author's case, so as to be able to extend the term of limitation for the offence by one third. The Committee also takes note of the State party's arguments that the author was given a criminal trial in accordance with all judicial guarantees and by independent and impartial courts; that some of his allegations, such as the lack of independence and impartiality of the prosecutor in the trial, were never raised by him before national jurisdictions through effective remedies, such as a request for disqualification; and that the courts found him criminally liable after examining and weighing all the evidence attesting to his guilt.

8.8 The Committee notes that at this point in the communication the author's claims basically refer to the evaluation of the facts and the evidence, and the application of domestic legislation by the courts of the State party. The Committee recalls its case law, according to which it is for the courts of States parties to evaluate the facts and the evidence in each case, or the application of domestic legislation, unless it can be shown that such evaluation or application was clearly arbitrary or amounted to a manifest error or denial of justice.<sup>3</sup> The Committee has examined the materials submitted by the author, including the decisions of Court No. 19, the Appeal Court and the Supreme Court, dated 21 October 2009, 26 August 2010 and 22 August 2011, and considers that these materials do not show that the proceedings against the author suffered from such defects. The Committee also considers that the decision to take 1 March 1985 as the starting date for calculating the period of limitation was not arbitrary, as it took into account the fact that that was the date when democracy was restored in the State party and that before that date the judicial authorities had not in practice enjoyed full guarantees and freedom to bring criminal proceedings. It also reflected the seriousness of the acts being tried, given that they might constitute serious violations of human rights under the Covenant and other international treaties. The Committee considers, therefore, that the author has failed to provide sufficient substantiation of his claim of a violation of article 14, paragraph 1, of the Covenant, and that the communication is therefore inadmissible under article 2 of the Optional Protocol.

8.9 The Committee takes note of the author's claims that he was unable to mount a defence as the evidence used against him was gathered with no regard for due process, no oversight by the defence and no certainty as to its authenticity or provenance. The Committee notes that the author has not explained to the Committee in what way his right to a defence was restricted in the course of the criminal proceedings, and his claims are not supported by any documentation that might lead to the conclusion that his right to a defence was in fact impaired by the State party's authorities. The

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<sup>3</sup> See communication No. 1616/2007, *Manzano et al. v. Colombia*, decision adopted on 19 March 2010, para. 6.4; and communication No. 1622/2007, *L.D.L.P. v. Spain*, decision adopted on 26 July 2011, para. 6.3.

Committee therefore considers that the author has not sufficiently substantiated this claim for the purposes of admissibility and concludes that it is inadmissible under article 2 of the Optional Protocol.

8.10 The Committee takes note of the author's claim under article 14, paragraph 7, of the Covenant, to the effect that the proceedings brought against him, which resulted in his conviction in 2009, did not take into account other earlier proceedings in which the same facts and the same persons had been tried and in which the courts had concluded that the cases should be shelved in application of the Expiry of the Punitive Powers of the State Act (Act No. 15848). The Committee notes, however, that in the light of the information contained in the case file, there is nothing to indicate that the author was twice tried for the same facts and the same offence against the 37 persons identified as victims in the trial in Court No. 19. Indeed, even if both proceedings had been shown to involve the same persons and the same facts, the earlier proceedings did not conclude with either an acquittal or a conviction. Consequently the Committee considers that the author has not sufficiently substantiated this complaint for the purposes of admissibility, and concludes that this part of the communication is inadmissible under article 2 of the Optional Protocol.

8.11 The Committee takes note of the author's claims under article 15 of the Covenant that the non-applicability of the statute of limitations to war crimes or crimes against humanity in the State party is regulated by Act No. 18026, which entered into force on 25 September 2006, and that the procedure provided for in that Act was applied retroactively in his case. The Committee notes that Court No. 19 convicted the author of homicide under especially aggravated circumstances and that this conviction was upheld by the higher courts. In this regard, the author has not claimed that he was held guilty of acts or omissions which did not constitute criminal offences at the time they were committed, nor has he claimed that a heavier penalty was imposed than the one that was applicable at the time when the offence was committed, or that a law enacted subsequent to the commission of the offence provided for a lighter penalty. The Committee therefore considers that the author has not sufficiently substantiated his claims for the purposes of admissibility, and concludes that this part of the communication is inadmissible under article 2 of the Optional Protocol.

8.12 The Committee notes that the author invoked article 26 of the Covenant, and takes note of his allegation that Act No. 15737 and Act No. 15848 were applied differently in that, unlike the Amnesty Act (No. 15737), Act No. 15848 required the Executive to pronounce on whether or not facts under investigation fell within the scope of the Act. The Committee notes that Acts Nos. 15737 and 15848 are different in nature and scope and that the author did not demonstrate that he suffered discrimination under the law by comparison with other persons in situations similar to his. Consequently, the Committee considers that the author has not sufficiently substantiated these claims for the purposes of admissibility, and finds this part of the communication inadmissible under article 2 of the Optional Protocol.

9. The Committee therefore decides:

- (a) That the communication is inadmissible under article 2 of the Optional Protocol;
- (b) That this decision shall be transmitted to the State party and to the author.