



# International Covenant on Civil and Political Rights

Distr.: General  
18 May 2017

Original: English

## Human Rights Committee

### Decision adopted by the Committee under the Optional Protocol, concerning communication No. 2145/2012\*\*, \*\*\*

<i>Communication submitted by:</i>	M.Z.
<i>Alleged victim:</i>	The author
<i>State party:</i>	Kazakhstan
<i>Date of communication:</i>	28 March 2011 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 97 of the Committee's rules of procedure, transmitted to the State party on 3 April 2012 (not issued in document form)
<i>Date of adoption of decision:</i>	28 March 2017
<i>Subject matters:</i>	Facts and evidence; civil and criminal proceedings; abduction of a child
<i>Procedural issues:</i>	Failure to substantiate claims; compatibility <i>ratione temporis</i>
<i>Substantive issues:</i>	Right to a fair trial; right not to have private life subjected to interference; equality of rights and responsibilities of spouses; right of the child to protection by the State; right to freedom from discrimination
<i>Articles of the Covenant:</i>	2 (1), 14, 17, 23, 24 and 26
<i>Articles of the Optional Protocol:</i>	1 and 2

1. The author of the communication is M.Z., a national of Kazakhstan born in 1965. He claims to be a victim of a violation by Kazakhstan of his rights under articles 14, 17, 23 and 24, as well as article 26, in conjunction with article 2 (1), of the Covenant. The Optional Protocol entered into force for Kazakhstan on 30 September 2009. The author is not represented by counsel.

\* Reissued for technical reasons on 7 June 2017.

\*\* Adopted by the Committee at its 119th session (6-29 March 2017).

\*\*\* The following members of the Committee participated in the examination of the present communication: Tania Abdo Rocholl, Yadh Ben Achour, Ilze Brands Kehris, Sarah Cleveland, Amin Ahmed Fathalla, Olivier de Frouville, Christof Heyns, Yuji Iwasawa, Bamarian Koita, Marcia V.J. Kran, Duncan Laki Muhumuza, Photini Pazartzis, Mauro Politi, José Manuel Santos Pais, Anja Seibert-Fohr, Yuval Shany and Margo Waterval.



**Factual background<sup>1</sup>**

2.1 The author married in 1987 and his son was born in 1988. In 1994, the author bought an apartment for US\$ 12,000 in Almaty where he resided with his wife and son. According to article 219 of the Civil Code, real property acquired in a marriage is considered the common property of the spouses. On 17 February 1997, the spouses divorced by mutual consent and decided on the division of property. The author kept the car while his wife took custody of their son and renounced claiming alimony. It was also agreed that she would keep the apartment in exchange for payment, in instalments, of her share of the apartment, which amounted to US\$ 6,000. The author did not need the apartment as he wished to go abroad.

2.2 In September 1997, the author's former wife started studying in France, while the author resided in the apartment in Almaty with their son. In May 1998, the author married another woman.

2.3 In July 1998, the author's former wife returned to Almaty with her new husband. The couple and the author's son lived in the apartment, while the author resided elsewhere with his new wife. The author and his former wife agreed that he would keep the family savings of US\$ 20,000 to cover the expenses of their son's upbringing while his mother was studying abroad.

2.4 On 23 September 1998, the author's former wife paid him US\$ 200 as part of the payment for her share in the apartment. He issued a receipt for this amount. On 20 August 1998, the author and his former wife had signed a contract that was certified by a notary stating that the author's former wife would pay him US\$ 6,000 for her share of the apartment by 31 December 1998. On 29 November 1998, the author's former wife paid him US\$ 5,800 and he issued a receipt to that effect. On 12 March 1999, the transaction was registered by the Real Estate Office. The author's former wife resided in the apartment until August 1999.

2.5 At some time in 1999, the author went abroad. In September 1999, his former wife went to France with their son and her new husband. She rented out the apartment in Almaty, Kazakhstan.

2.6 In 2001, the author's former wife visited Kazakhstan and met with the author during her stay. He asked her to re-establish their relationship, but she refused.

2.7 On 29 March 2002, the author was arrested on fraud-related charges. On 31 July 2002, the Almalinskiy District Court in Almaty sentenced him to four years' imprisonment in that connection. On 10 September 2002, the Almaty City Court upheld the sentence, on appeal.

2.8 In 2003, the author's former wife asked her sister to sell the apartment as she had decided not to return to live in Kazakhstan. In addition, as she continued to pay utility bills, the apartment was a financial burden on her. She provided her sister with written authorization to act on her behalf. In 2003, the sister of the author's former wife sold the apartment. Then, in 2005, the new owner sold the apartment.

2.9 In March 2006, the author was released from prison. When he could not access the apartment, he went to the Property Inventory Office and was provided with a copy of the contract regarding the sale of the apartment to his former wife in 1998. The author claims that he then realized that his signature on the contract had been forged. Also, he claims that it was only upon his release from prison that he realized that his former wife had taken away their son.

2.10 The author initiated civil and criminal proceedings in relation to the sale of the apartment and the alleged theft of a diary. He also initiated criminal proceedings in relation to the alleged abduction of his son.

2.11 On 29 March 2006, the author initiated legal action against his former wife, her sister, the new owner of the apartment and notaries, seeking annulment of the sale of the

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<sup>1</sup> Reconstructed based on the author's submissions and supporting documents.

apartment. He acknowledged that he had issued receipts for payments received from his former wife towards her share of the apartment. However, he claimed that they were not related to the sale of the apartment. He claimed that the receipts had been stolen from him and fraudulently used by his former wife.

2.12 On an unspecified date, the Almalinskiy District Court in Almaty requested the sister of the author's former wife to provide documents signed or written by the author in order to conduct a graphological examination. The documents were apparently stored in the apartment of the author's former wife's new mother-in law. The sister brought the documents, including the diary, which contained notes written by both the author and his former wife. On 20 August 2007, the Almalinskiy District Court sent the diary for expert examination.

2.13 On 24 October 2007, the Almalinskiy District Court rejected the author's claims in the civil proceedings, based on the conclusions of the graphological examination of the diary, witness statements and other evidence. The court noted that the author's identity documents and the sales contract relating to his purchase of the apartment in 1994 had been presented at the signing of the contract in 1998 and nothing demonstrated that those documents had been stolen. The court also noted that the author had failed to provide five or six additional samples of his signature, despite specific requests to that effect by the court, therefore the experts examined only the samples already available to them. The court rejected the author's argument that, until 2006 when he was released from prison, he was unaware of the sale of the apartment to his former wife in 1998, as he failed to provide evidence that he was not in Almaty during the period from 1998 to March 2002. The court established that the author's former wife had sold the apartment in accordance with the law and that, in fact, the author was disputing the transaction because its price had increased.

2.14 On 13 December 2007, the Almaty City Court upheld the decision of 24 October 2007, on appeal. The author's applications for supervisory review were subsequently dismissed.

2.15 On 21 January 2008, the Almalinskiy District Court endorsed a friendly settlement between the author and his former wife, in which the author withdrew his claims in exchange for the return of the diary. The diary was returned on the same day. On 18 November 2009, the Prosecutor's Office refused to initiate criminal proceedings concerning the theft of the diary, in the absence of *corpus delicti*.

2.16 On 7 August and on 14 and 19 September 2006, the author informed the police and the Prosecutor's Office about the sale of his apartment by his former wife. On 19 October 2006, the author requested the Medeu District Police Department in Almaty to bring criminal proceedings against his former wife and her sister for having fraudulently sold his apartment. The author claims that the investigator refused to take action on his complaint. However, it transpires from the material on file that, on 21 October 2006, the investigator requested the author's assistance to collect information relating to the whereabouts of his former wife. The author claims that, on an unspecified date, an official requested a bribe to ensure the proper investigation of his case. He filed a complaint with the Committee of National Security, which had still not responded.

2.17 On 18 March 2007, the Medeu District Police Department initiated criminal proceedings against the author's former wife for fraud, based on expert evidence that the author's signature on the sales and purchase contract of 1998 had been forged. However, that evidence was later nullified by subsequent examinations of the author's handwriting. The experts found that the first expert's examination was based on a single sample of the author's signature, which did not allow to establish with certainty the authenticity of his handwriting. The investigation also established that the sale of the apartment by the author to his former wife was confirmed by the receipts signed by him to the effect that he had received US\$ 6,000 equivalent to half of the price paid for the apartment, from his former wife, as well as by witness statements and other evidence.

2.18 On 12 February 2010, the Almaty City Police Department closed the criminal proceedings owing to the absence of *corpus delicti*. Although the author was informed of the reasons for the closing of the criminal case in March 2010, he claims that he only received a copy of the 12 February 2010 decision in October 2011, despite his repeated

requests. Thus, he claims that he could not challenge the decision. However, it transpires that, on 15 July, 2 August and 10 September 2010, the Prosecutor General's Office considered that there were no grounds on which to review the decision of 12 February 2010. The Prosecutor General stated that the investigation had taken all necessary measures to ensure a thorough investigation. The author's arguments regarding his allegedly forged signature on the contract of 1998 and the receipts for US\$ 6,000 received from his former wife were dismissed as unsubstantiated, based on the results of the expert examinations of his signature.

2.19 The author claims that he requested access to the criminal case file relating to the sale of the apartment on several occasions. However, he was granted access to the case file on 30 March 2011 only. On studying the file, he noticed that many documents had been removed.

2.20 On 10 September 2011, the Prosecutor General's Office responded to the author's enquiry that he had been notified of every decision taken in the case and that he, himself, had studied the case file on 30 March 2011, as confirmed by his signature. He was invited to study the case file again. The Prosecutor General's Office terminated correspondence with the author on the case and informed him that any further complaints would be rejected without inquiry if they did not contain any new arguments.

2.21 The author filed a number of complaints against the investigator, alleging procedural violations in the investigation and requesting that the decision of 12 February 2010 be rendered null and void in order to close the case. On 25 November 2011, the Almalinskiy District Court in Almaty cancelled the investigator's decision of 28 December 2010 to archive all physical evidence in the case, including the author's diary. On 31 March 2011, the Medeu District Court in Almaty ordered another investigation in relation to an expert, but criminal proceedings against the expert were subsequently terminated in the absence of *corpus delicti*. However, the decision of 12 February 2010 has not been quashed.

2.22 The author appended to the present communication copies of several of his complaints to the domestic authorities in relation to the sale of the apartment, as well as copies of articles dated 26 February 2009 and 24 November 2011 that were published in the newspaper *Svoboda Slova*, in which he criticized the police investigation into the alleged fraud and the outcome of the civil proceedings and questioned the competence of judges in Kazakhstan. He claims that the publications as well as his conviction contributed to the negative outcome of the criminal proceedings and the investigators had told him that he would never win the case. The author also claims that the head of the investigation department at the Almaty City Police Department had threatened him and his family in connection with his complaints against the investigator. The author claims that he filed several complaints with the police and the Prosecutor's Office to "prevent illegal actions by the police," all of which have remained without response.

2.23 On 1 December 2009, the author requested the police to initiate criminal proceedings in relation to the abduction of his son by his former wife with the help of a notary who had forged his signature on the consent form. He did not specify that, further to their agreement, his former wife had custody of their son and he had agreed that their son would reside with her. The Medeu District Police Department opened an investigation on that same day. Since the investigation was suspended on several occasions, the author complained to the City Prosecutor, which informed him that the investigation was ongoing. He complained about the Prosecutor's inaction to the Medeu District Court, which granted his claims on 2 November 2011 and 16 January 2012. The author claims that the police ignored the court decisions and that he was not granted access to the case file.

2.24 It follows from the material on file that the police refused on a number of occasions to initiate criminal proceedings in relation to the abduction of the author's son owing to the absence of *corpus delicti* in relation to the actions of the author's former wife. The refusal decisions were quashed by the prosecuting authorities owing to incomplete investigation.

2.25 The last refusal to initiate criminal proceedings was handed down by the Medeu District Police Department on 4 November 2012 owing to absence of *corpus delicti*. That decision was upheld by the City Prosecutor's Office. It was established that the author's son

had left Kazakhstan in 1999 with the author's former wife to live in France. The son was married and had become a French citizen.

2.26 The author claims that he has exhausted all available domestic remedies.

### **The complaint**

3.1 The author claims a violation of his rights under articles 14, 17, 23, 24 and article 26, in conjunction with article 2 (1) of the Covenant.

3.2 Under article 14 of the Covenant, he challenges the outcome of the civil and criminal proceedings and claims that they were unfair, based on inadmissible evidence and handed down by an incompetent and biased court. He complains about the delay in granting him access to the criminal case file regarding the sale of his apartment, which prevented him from appealing the decision of 12 February 2010 and to have the criminal proceedings terminated.

3.3 The author claims that his rights to privacy and personal life under article 17 were violated when the court accepted his diary so as to have a sample of his handwriting, although it was stolen from him by his former wife.

3.4 The author also claims that the domestic authorities failed to investigate his complaint about the abduction of his son by his former wife, in violation of article 23 (4) of the Covenant. He claims that the rights of his son under article 24 of the Covenant were violated as he may have suffered improper treatment from his former wife and her new husband and that he may need protection by the State party.

3.5 The author further claims a violation of article 26, in conjunction with article 2 (1) of the Covenant because the police did not properly investigate his allegations of fraud owing to his criminal record and no action was taken on his complaints about discrimination and threats by law enforcement officers.

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

4.1 On 14 June 2012, the State party submitted its observations on the admissibility of the communication and observed that the author had failed to exhaust all available domestic remedies. It considered that the complaint should be declared inadmissible under article 5 (2) (b) of the Optional Protocol.

4.2 In particular, the criminal proceedings in relation to the abduction of the author's son were ongoing. Several refusals to initiate criminal proceedings were reversed by the prosecuting authorities owing to incomplete investigations. On 11 May 2012, the City Prosecutor's Office reversed the refusal to initiate criminal proceedings of 9 April 2012 and referred the case for further investigation to the City Department of the Ministry of Internal Affairs.

4.3 The proceedings relating to the notary who had certified the authorization in which the author's former wife authorized her sister to sell the apartment on her behalf were also awaiting further investigation, which was pending.

4.4 Concerning the alleged theft of the author's diary on 21 January 2008, the Almalinskiy District Court in Almaty endorsed a friendly settlement between the author and his former wife, in which the author withdrew his claims in exchange for the return of his diary, which had been made available to the experts to analyse his handwriting, and the diary was returned to the author. On 18 November 2009, the Prosecutor's Office refused to initiate criminal proceedings in relation to the theft of the diary in the absence of corpus delicti and also owing to the fact that the diary had been created and used by the spouses as common property. The author did not challenge the prosecutor's decision before a higher level prosecutor or any court.

4.5 The State party clarified that access to case materials upon the termination of criminal proceedings was regulated by article 270 of the Code of Criminal Procedure, according to which the victim would be notified in writing about the decision and the avenues of appeal and a copy of the decision would be served on the victim upon request. On 12 and 13 February 2010, notification about the 12 February 2010 decision was mailed

to the author. On 15 February 2010, the author requested access to the case file. On the same date, the author was notified by mail that he could access the case file at the City Prosecutor's Office. On 10 December 2010, further to the author's request, the City Prosecutor's Office requested the City Department of the Ministry of Internal Affairs to provide him access to the case file. On 4, 6 and 9 January 2011, the City Department of the Ministry of Internal Affairs granted the author permission, by mail, to study the case file. His neighbours at the address provided by the author for correspondence testified that he no longer resided there. On 17 and 24 March 2011, notifications were sent to the author's current address and the author presented himself to study the case file. The delay in the author's access to the case file can be explained by his failure to inform the prosecuting authorities of his change of address.

4.6 The author's allegations of threats, including by telephone, were investigated, but were not confirmed. In particular, the transcript of telephone calls showed that he did not receive any telephone calls during the period in question.

4.7 The State party observed that the author was challenging property rights, despite the fact that he had received compensation from his former wife for her share of the apartment in 1998, because property prices had increased substantially since 1998.

4.8 The State party considered the author's claims inadmissible for non-exhaustion of domestic remedies and lack of substantiation.

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

5.1 On 11 August 2012, the author submitted his comments on the State party's observations and reiterated his initial claims.

5.2 His last complaint about the abduction of his son was submitted to the Almaty City Prosecutor's Office on 7 August 2012.

5.3 Criminal proceedings relating to the notary were terminated on 15 December 2011, in the absence of *corpus delicti*.

5.4 He has exhausted all available remedies with regard to the theft of his diary; he challenges the State party's submission that the diary was the common property of both spouses; and he was not provided with a copy of the refusal to initiate criminal proceedings of 18 November 2009. On 20 August 2007, the Almalinskiy District Court sent his diary for expert examination; an acquaintance of his former wife sent the diary to the court and on 19 December 2007, the sister of his former wife asked the court to return the diary.

5.5 The author finds that the State party discriminated against him in submitting that his attempts to restore his property rights were motivated by the increase in property prices. He states that the apartment was purchased during the marriage and that, after the divorce, he was the sole owner of the apartment.

5.6 He claims a violation of his rights under article 14 of the Covenant because the authorities refused to initiate criminal proceedings relating to the disappearance of materials from the criminal case file relating to the sale of the apartment. He states that he was not provided with a copy of the relevant decision.

5.7 The author appends a decision of the Almalinskiy District Court of 5 August 2011 rejecting his request for a new deadline to appeal the decision of 12 February 2010, which was rejected by the court on 22 July 2011. Under article 109 of the Code of Criminal Procedure, the deadline for appealing a decision is set at three days after the pronouncement of the decision. The author was informed that the decision would be pronounced on 22 July 2011, but he did not attend the hearing. The court considered that he had missed the deadline without valid justification.

5.8 The author submits that he changed residence twice and his new addresses were indicated in all his submissions to the authorities.

5.9 On 16 October 2012, the author transmitted the refusal of the Supreme Court to the Committee to have the district court's decision of 24 October 2007 reviewed owing to newly discovered evidence.

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

6.1 On 5 November 2012, the State party submitted its observations on the merits of the communication. It recalled the facts of the case and reiterated that the author's claims were groundless. It also provided copies of decisions pertaining to the case.

6.2 The State party referred to the written submission by the author's former wife to the court stating that the apartment was bought during the marriage. In February 1997, their marital relationship stopped. In September 1997, she left Kazakhstan to study in France, while the author continued to live in the apartment with their son. When she left, she and the author had US\$ 20,000 in savings and a car as common property. In July 1998, she returned to Almaty with a new husband. She, her new husband and her son lived in the apartment, while the author lived in his new partner's apartment. The author kept the family savings of US\$ 20,000 to cover the expenses of taking care of their son in her absence. They agreed that their son would live with her, she would not claim alimony and she would live in the apartment, after buying out her share, while the author would keep the car and move to live in his new partner's apartment. The author later suggested buying out his share of the apartment and took care of the administrative formalities.

6.3 The police refused several times to initiate criminal proceedings in relation to the abduction of the author's son in the absence of corpus delicti relating to the actions of the author's former wife. The refusals were quashed by the prosecuting authorities owing to incomplete investigation. The last refusal to initiate criminal proceedings was issued by the Medeu District Police Department on 1 August 2012 and upheld by the City Prosecutor's Office. It was established that the author's former wife had left Kazakhstan for Saint Petersburg, Russian Federation, in 2006 and has not returned to Kazakhstan since. At the request of the Ministry of Internal Affairs of Kazakhstan dated 26 May 2009, the author's former wife submitted a statement to the French police on 8 December 2009, in which she stated that the division of property caused conflicts in their relationship. It took place between 1998 and 1999, two years after their divorce. The divorce was based on mutual agreement and they also decided on the division of property. According to their agreement, the author would keep the car and she would keep the apartment in exchange for payment of her share in the apartment. At the time, the author wished to go to Turkey and did not need the apartment. They also agreed that she would have custody of their son.

6.4 Regarding the author's claim about the delay in obtaining access to the case file, the State party submits that the delay was related to his change of residence and his failure to properly inform the authorities of his new address and his failure to appear when convoked by the investigator. According to the information on file of 11 August 2010, the author refused to study the case file as he did not agree with the decision of 12 February 2010 and requested that it be rendered null and void. Nevertheless, the author was given permission to study the case file in the archives.

6.5 The diary was handed over to the author on 21 January 2008, the same day that the friendly settlement was reached by the parties in Almalinskiy District Court.

6.6 The State party transmitted a copy of the author's conviction for fraud in 2002 and submitted that it "fully reflects his personality".

6.7 In a note verbale of 28 January 2013, the State party reiterated its previous submissions, emphasizing that the author's claims should be declared inadmissible.

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

7.1 On 1 February 2013, the author challenged the State party's observations on the merits and reiterated his claims in full.

7.2 The author claims that the State party's observations and reference to his conviction in 2002 violate his rights under article 26, in conjunction with article 2 (1) of the Covenant. He states that he had fully served the sentence and that his criminal record was considered as nullified three years after the sentence was served, that is, since 2009.

7.3 The Medeu District Police Department refused to enforce the decision of 4 October 2012 handed down by the Medeu District Court concerning the abduction of the author's

son, in which the decision refusing to initiate criminal proceedings of 1 August 2012 was quashed and the case was referred for further investigation. The court found that the initial investigation had failed to establish the whereabouts of the author's son, when and how he had left Kazakhstan and to request data from the civil registration service. The author states that he had submitted several complaints about the lack of information on the progress of the investigation.

7.4 The author appends a decision dated 31 May 2012 from the Amalinskiy District Court in Almaty, quashing the refusal of 15 December 2011 to initiate criminal proceedings relating to the notary and referring the case for further investigation.

#### **Further submission by the State party**

8.1 On 21 May 2013, the State party reiterated its previous submissions and added that the reference to the author's previous conviction was not intended to trigger any legal consequences for him, but was made to illustrate his personality, and that it was in compliance with domestic law.

8.2 Concerning the criminal proceedings relating to the apartment, a number of notifications were sent to the author's address. As per his statement of 15 February 2010 to the District Department of the Ministry of Internal Affairs, he did not wish to study the case file.

8.3 On 4 November 2012, the Medeu District Police Department decided to refuse to initiate criminal proceedings in relation to the abduction of the author's son in the absence of corpus delicti; that decision was upheld by the City Prosecutor's Office. The sister of the author's former wife testified that she had left Kazakhstan with her son to live in France. The son had married and had become a French citizen. In the decision, it is stated that the author's son resided with him in Almaty while his former wife was residing in France from September 1997 to fall 1998. In May 1998, the author married and subsequently left Kazakhstan with his new wife, while his son lived in Almaty with his mother, the author's former wife, and her new husband. In September 2001, the author met his former wife and asked her to see their son, but she refused. Thus, he has not seen his son since 1999.

8.4 Both spouses wrote in the diary and it was considered the common property of both.

8.5 On 27 September 2012, the police refused to initiate criminal proceedings in relation to the notary in the absence of corpus delicti. The author was informed thereof.

8.6 On 29 May 2013, the State party submitted copies of a number of decisions handed down by the domestic authorities in relation to the case.

#### **Further submission by the author**

9.1 On 9 September 2013, the author reiterated his claims and challenged the assessment of facts and evidence by the domestic authorities.

9.2 The author submits that the State party did not specify the law in compliance with which reference to his previous conviction was made. He reiterates his claim under article 26 of the Covenant.

9.3 He adds that the diary was first presented in courts as his personal diary. It contained his personal information and could not be considered as common property under the law.

9.4 The author claims that he still has not had access to all the materials of the terminated criminal investigation relating to the sale of the apartment and has therefore been deprived of his right to appeal.

9.5 He contends that the State party has not addressed his claim about the threats made by the head of the investigation department of the Almaty City Police Department.

#### **Further submission by the State party**

10.1 On 27 November 2013, the State party reiterated its previous submissions.



10.2 It added that the decision of 4 November 2012 refusing to initiate criminal proceedings in relation to the alleged abduction of the author's son by his former wife was taken in accordance with the law because voluntary movement of a person does not constitute a crime under article 125 (abduction) of the Criminal Code. Simply taking a child against the will of the other parent or relative who was involved in his/her upbringing does not constitute abduction either.

10.3 The State party submitted that the author's communication should be declared inadmissible and unsubstantiated.

### **Issues and proceedings before the Committee**

#### *Consideration of admissibility*

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

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

11.3 The Committee notes that the alleged violation of article 14 of the Covenant concerning the civil proceedings in relation to the sale of the apartment by the author's former wife in 2007, occurred prior to 30 September 2009, when the Optional Protocol entered into force for the State party. The Committee observes that it is precluded, *ratione temporis*, from examining alleged violations of the Covenant which occurred prior to the entry into force of the Optional Protocol for a State party, unless the violations continued after that date or continued to have effects which, in themselves, constitute a violation of the Covenant,<sup>2</sup> or an affirmation of a prior violation.<sup>3</sup> In that light, the Committee notes the author's claims under article 14 of the Covenant that the civil proceedings concerning the sale of the apartment were unfair, based on inadmissible evidence and were dealt with by an incompetent and biased court. However, the Committee also notes that the said domestic proceedings were finalized before the entry into force of the Optional Protocol for the State party and therefore finds them inadmissible, *ratione temporis*, under article 1 of the Optional Protocol.

11.4 The Committee notes the State party's argument that the author's remaining claims under articles 14, 17, 23, 24, 26 and 2 (1) of the Covenant should be declared inadmissible owing to the author's failure to exhaust domestic remedies and lack of substantiation.

11.5 The Committee notes the author's claims under article 14 of the Covenant concerning the refusal on 12 February 2010 to initiate criminal proceedings in relation to the sale of the apartment by his former wife and the material missing from the case file. The Committee also notes the author's claim regarding the delay in granting him permission to access the case file which prevented him from appealing the decision of 12 February 2010. The Committee recalls, first of all, that it is generally up to the courts in States parties to evaluate facts and evidence in a particular case. The Committee may only intervene if it can be ascertained that the evaluation was clearly arbitrary or amounted to a denial of justice, or that the court failed in its duty of independence and impartiality. In the light of the information available on file, the Committee considers that, in the present case, the author has failed to demonstrate that, in handing down the multiple decisions, the courts and authorities of the State party evaluated the evidence before them in an arbitrary manner or that their decisions amounted to a denial of justice. Secondly, the Committee considers that the author has failed to substantiate his allegation, which the State party denies, that the

<sup>2</sup> See, inter alia, communications No. 1367/2005, *Anderson v. Australia*, decision of inadmissibility adopted on 31 October 2006, para. 7.3; No. 1633/2007, *Avadanov and Avadanova v. Azerbaijan*, Views adopted on 25 October 2010, para. 6.2; No. 2027/2011, *Kushherbaev v. Kazakhstan*, Views adopted on 25 March 2013, para. 8.2.

<sup>3</sup> See communication No. 2027/2011, *Kushherbaev v. Kazakhstan*, Views adopted on 25 March 2013, para. 8.2.

State authorities prevented him from accessing the case file in a timely manner and appealing the decision of 12 February 2010. The Committee therefore concludes that the author's claims under article 14 have not been sufficiently substantiated and are therefore inadmissible under article 2 of the Optional Protocol.

11.6 The Committee notes the author's claim under article 17 of the Covenant regarding the use of his diary by the court in order to obtain a sample of his handwriting in the civil proceedings involving him and his former wife. The Committee takes note of the State party's argument that the author has not exhausted all available domestic remedies as he has not challenged the prosecutor's refusal of 18 November 2009 to open criminal proceedings in relation to the theft of the diary. It also notes the author's contention that he did not challenge the decision because he was not provided with a copy of the decision. The Committee notes, however, that the author does not argue that he was not informed of the content of the decision in a timely manner, which would have allowed him to submit a complaint to the competent authorities, if he so wished. Furthermore, the Committee observes that, pursuant to the terms of the friendly settlement reached in court by the author and his former wife on 21 January 2008, the author withdrew his claims in relation to the diary and it was returned to him on that same day. The Committee further notes that, although the author disputes that the diary was the common property of the spouses, he does not deny that both his former wife and himself entered notes in it and that the diary did not exclusively contain his own private information. Moreover, the diary was one of the documents sent for expert examination by the court to establish the authenticity of the author's signature and there is no indication in the case file that the information was used for any other purposes that would interfere in the author's private life. Therefore, the Committee considers that the author's claim under article 17 of the Covenant is insufficiently substantiated for purposes of admissibility and is therefore inadmissible under article 2 of the Optional Protocol.

11.7 The Committee notes the author's claim about the alleged abduction of his son, born in 1988, by his former wife, in violation of articles 23 (2) and 24 of the Covenant. The Committee notes, first of all, that the author informed the police about the alleged abduction of his son, who was born in 1988, in 2006 at the earliest, that is, when his son had already reached the age of majority, and asked to bring criminal proceedings in that connection in 2009 only. The Committee also notes the author's submission that he was not aware that his son had left Kazakhstan until his release from prison in 2006. The Committee also notes that the author has not specified whether and how often he maintained contact with his son after his former wife returned from France in 1998. The material on file indicates that the author has not seen his son since 1999 and that he had only sought contact with his son in 2001, and his former wife had refused to allow him to meet with his son. The Committee further notes that the author has not claimed that he was not aware of his former wife's departure for France with her new husband in 1999 nor has he explained why he did not consider the possibility that his son had accompanied her.

11.8 The Committee notes that the author did not challenge the terms of the agreement concluded with his former wife after their divorce by mutual consent in 1997, according to which she would have custody of their son, who would reside with her in the apartment, and, in return, she would not claim alimony, and the author would keep the car. The Committee also notes the decision of 4 November 2012 by the Medeu District Police Department, in which it refused to bring criminal proceedings in relation to the alleged abduction of the author's son owing to the absence of *corpus delicti*. The reasoning behind the decision was that the author's son had left Kazakhstan with his mother and had subsequently married and acquired French citizenship. The Committee further notes that the decision was upheld by the Prosecutor's Office and has not been challenged by the author. It notes that nothing in the material before it indicates that the author's son was taken away by his mother against his free will and interest or that he needed protection by the State party's authorities or that his father adequately represented his interests in the matter. In the circumstances and based on the material on file, the Committee considers that the author's claims under articles 23 (2) and 24 of the Covenant are not sufficiently substantiated for purposes of admissibility and are therefore inadmissible under article 2 of the Optional Protocol.

11.9 Finally, the Committee notes the author's claims under article 26, in conjunction with article 2 (1) of the Covenant, that he was the victim of discrimination by the police who failed to properly investigate his allegations of fraud because of his criminal record. The Committee also notes the author's complaints about the alleged threats by the head of the investigation department, which the author considered discriminatory. The Committee further notes the author's claim about the State party's reference to his conviction in its observations in the context of the present communication. In the absence of any other information or explanations on file, the Committee considers that those claims are not sufficiently substantiated for purposes of admissibility and declares them inadmissible under article 2 of the Optional Protocol.

12. The Committee therefore decides:

- (a) That the communication is inadmissible under articles 1 and 2 of the Optional Protocol;
  - (b) That the present decision shall be transmitted to the State party and to the author.
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