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International Covenant on Civil and Political Rights

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Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2424/2014*, **

Communication submitted by:	Cosme Ignacio Marino Demonte
Alleged victim:	The author
State party:	Argentina
Date of communication:	5 August 2013 (initial submission)
Document references:	Decision taken pursuant to rule 97 of the Committee's rules of procedure, transmitted to the State party on 16 June 2014 (not issued in document form)
Date of adoption of Views:	25 July 2018
Subject matter:	Excessive use of pretrial detention
Procedural issues:	-
Substantive issues:	Liberty of person; presumption of innocence
Articles of the Covenant:	9 (3) and 14 (2)
Articles of the Optional Protocol:	2, 3, and 5 (2) (a) and (b)

1.1 The author of the communication is Cosme Ignacio Marino Demonte, a national of Argentina born on 28 February 1952 in Paraná, Argentina. He claims that the State party has violated his rights under articles 9 (3) and 14 (2) of the Covenant. The author is not represented by counsel. The Covenant and the Optional Protocol entered into force for the State party on 23 March 1976.

1.2 On 17 November 2014, the Special Rapporteur on new communications and interim measures, acting on behalf of the Committee, denied the State party's request to consider the admissibility of the communication separately from the merits.

* Adopted by the Committee at its 123rd session (2–27 July 2018).

** The following members of the Committee participated in the examination of the communication: Yadh Ben Achour, Ilze Brands Kehris, Sarah Cleveland, Ahmed Amin Fathalla, Olivier de Frouville, Christof Heyns, Marcia V.J. Kran, Duncan Laki Muhumuza, Photini Pazartzis, Mauro Politi, José Manuel Santos Pais, Yuval Shany and Margo Waterval.

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Factual background

2.1 Between 1976 and 1977, the author served as a junior officer at the local police headquarters of Paraná. He submits that he had no functional autonomy or decision-making power, and that he did not participate in any criminal activity as a member of the police.

2.2 On 19 April 2010, the author was informed by his wife by telephone that a delegation of the Gendarmería Nacional Argentina had come to their home in the morning. He then left his job and reported to the authorities of his own accord, whereupon he was charged with the criminal offence of unlawful deprivation of liberty, under the aggravating circumstance of abuse of position, as a public official, through the use of violence, threats, ill-treatment and unlawful coercion (subparagraphs 1, 2 and 3, together with the last paragraph, of article 144 bis of Act No. 14.616, amending the Criminal Code), and with murder, which in this case also qualified as a crime of enforced disappearance, under article 80 (2), (6) and (9) of Act No. 21.338, at the time that he was serving as a police officer. Six others were also charged in these proceedings.

2.3 On the same date, the author was placed in pretrial detention in Correctional Facility No. 1 of Paraná, in the Entre Ríos prison system. On 18 May 2010, an order for the author's pretrial detention was issued.

2.4 On 23 November 2012, Federal Court No. 1 of Paraná decided to extend the author's detention for a period of one year, on the basis that the facts under investigation were related to crimes against humanity and that the nature of such crimes, the number of defendants and the types of charges brought against them, and the scope and complexity of the case justified the use of the "seven criteria" approach, according to which the extension of pretrial detention of the accused in the case under review was deemed reasonable.[1] The Court asserted that the right of the accused to undergo the proceedings without being deprived of his liberty must be reconciled with the right of society to defend itself and to ensure that no crime goes unpunished. It also ruled that the type of charges brought against the accused was reason enough — in theory and in the case at hand — to presume that the accused might attempt to circumvent justice. Lastly, it noted that the maximum three-year period of pretrial detention permitted under Act No. 24.390,[2] article 1, had not been automatically applied and was in fact reasonable.

2.5 On 14 March 2013, the author and the other defendants filed an appeal against the court decision of 23 November 2012. The author submitted that the decision had not taken into consideration the conditions required by the law and that it did not meet the criteria of reasonableness or proportionality. He further submitted that Act No. 24.390, article 1, established a legal limit on the period of pretrial detention, a period which could be extended for an additional year, and that in his case the maximum period allowed was set to expire on 19 April 2013. He stated that he presented no flight risk, since he had never fled from or hidden from the authorities.

2.6 On 28 May 2013, the Federal Appeal Court of Paraná dismissed the appeal, ruling that the extreme seriousness of the offences with which the accused had been charged in the case, as well as the sentence that might eventually be handed down against them, the nature of the offences and the social impact of the case, were, in principle, a serious impediment to release on bail. It also highlighted the importance of not underestimating those establishments to which the accused might easily turn, should their release be granted, and which were liable to act with total disregard for the law. It also noted that the time limits referred to in article 1 of Acts Nos. 24.390 and 25.430 were not fixed legal time limits and that the law could allow for the extension of such time limits for investigations into the

[1] Federal Court No. 1 of Paraná, file No. 5-18006-23757-2012, 23 November 2012, p. 5.

[2] Act No. 24.390, art. 1, states that "Pretrial detention may not exceed a period of two years. Nevertheless, should the number of charges against the accused or the sheer complexity of the case have prevented sentence from being passed within the time indicated, that period may be extended for one additional year, by a reasoned decision that must be immediately communicated to and duly reviewed by the competent higher court."

most serious and complex crimes, which the State had a duty to bring before a court in a reasonable time.[3]

2.7 On 20 November 2013, the precautionary measure of pretrial detention was extended for an additional year.

2.8 On 14 March 2014, the author and the other defendants requested their release, on the grounds that the legal term of their pretrial detention under Acts Nos. 24.390 and 25.430 had been exceeded, and with a view to the expiration of the initial extension of the detention ordered on 20 November 2013. That request was denied.

2.9 Subsequently, the author filed an extraordinary appeal with the Supreme Court, which rejected it on 8 April 2014, stating simply that rulings in other cases[4] applied to the present case and that, consequently, the appeal was inadmissible.

2.10 On 19 December 2014, the Federal Court of Paraná again extended the period of pretrial detention for the author and other defendants for one year as from the decision. The Court stated that articles 3 and 4 of Act No. 24.390 (as amended by Act No. 25.430) provide that any delays attributable to the accused[5] may be taken by the Public Legal Service as a sufficient basis for opposing the accused's release. This applied in the present case, in which the proceedings were delayed by the various appeals filed by the author. The Court also stated that extending the pretrial detention period was reasonable, in view of the nature, substance and large number of the acts attributed to the accused persons, as well as the complexity of the case and the procedural code which governed the proceedings involving the accused persons. It added that at the current stage, prior to judgment, it was possible that the accused, should they be released, might attempt to withhold evidence, intimidate witnesses or circumvent justice by absconding.

2.11 On 13 May 2015, the author filed a complaint, claiming that he had been detained since 19 April 2010 on the premises of Correctional Facility No. 1 in breach of the maximum three-year legal period established under Act No. 24.390, and that despite the fact that over five months had passed since his appeal against the decision that had extended his pretrial detention, the trial judge had not referred the appeal to the competent judge.

2.12 On 16 June 2015, the judge in the case ruled that the complaint proceedings had become moot, since the appeal had been referred to the relevant court on 12 June 2015; the judge further noted that the referral of the complaint had been greatly and unacceptably delayed and that the judge in charge must ensure that such delays did not occur in future.

The complaint

3.1 The author claims that the State party has violated his rights under articles 9 (3) and 14 (2) of the Covenant.

3.2 The author claims that his right to liberty of person, as enshrined in article 9 (3) of the Covenant, was violated through the use of extended pretrial detention, which did not

[3] See Federal Court No. 1 of Paraná, file No. 5-18006-23757-2012, 23 November 2012, pp. 12, 15 and 16.

[4] The Supreme Court's decision referred to case No. 330:582 *Guerrieri, Pascual Oscar*, in which it had noted that periods of detention should not be renewed automatically under Act No. 24.390, article 1, but that the reasonableness of the period of pretrial detention should be determined taking into account the guidelines set out in articles 380 and 319 of the Code of Criminal Procedure.

[5] Article 3 of Act No. 24.390 (as amended by Act No. 25.430) establishes that the Public Legal Service may oppose the release of the accused on the basis of the particular gravity of the crime he or she is charged with, or if it considers that any of the circumstances provided for in article 319 of the Code of Criminal Procedure apply to the case or that delay tactics are clearly being used by the defence. Article 4 of the same Act provides that if release is denied based on the use of delay tactics by the defence, the delays caused by filing appeals will not be counted as part of the detention period. If no opposition is expressed or if such opposition is disregarded, the court may release the defendant on bail, with the bail bond that it deems appropriate. A decision must be taken within five days and any appeals against the release of the accused shall have suspensive effect, in the context of the application of this Act.

serve the purposes of the proceedings in question, and despite the fact that no flight risk had been manifest. The author highlights the fact that under Argentine law, only the risk of flight or hindrance of an investigation are acceptable grounds for pretrial detention, and that such risk was non-existent in his case, given that he had reported to the authorities voluntarily upon finding out that they had come looking for him in his home. He further submits that given that he is currently serving as a minister for the International Association of Jehovah's Witnesses and has strong family ties, the claim that he might abscond suggests an absurd, arbitrary assessment of his social and family situation. The author also states that there is no risk of his hindering the investigation because the facts date back to 1976 and 1977; therefore, time has rendered investigation of the offences with which he has been charged without effect. He further submits that the domestic courts have not observed the maximum time limits for pretrial detention as established in Acts Nos. 24.390 and 25.430. He states that the extension of his pretrial detention has been unreasonable and disproportionate. The author adds that the national authorities should not be able to interpret the exercise of his right of defence as "delay tactics" and that the State's appeals in seeking to deny his release should also be taken into account in this context.

3.3 With regard to the violation of the presumption of innocence, as enshrined in article 14 (2) of the Covenant, the author asserts that the misuse of pretrial detention, insofar as it did not serve the purposes of the proceedings in question and did not take into account his personal circumstances, violated his right to the presumption of innocence.

State party's observations on admissibility

4.1 On 18 August 2014, the State party submitted its observations on the admissibility of the communication. The State party maintains that the communication is inadmissible and that the alleged arbitrariness referred to by the author merely reflects a difference in approach regarding the interpretation and application by the courts of the standards on pretrial detention, and does not constitute a violation of the Covenant. It also notes that the author refers very broadly to a violation of articles 9 (3) and 14 (2) of the Covenant.

4.2 The State party submits that the pretrial detention period was extended based on the nature and complexity of the proceedings: in the present case, the author has been accused of crimes against humanity; there are a number of defendants; and the case has considerable scope and complexity. In particular, it notes that the complexity of the case can be ascribed to: (a) the quantity of material that needed to be examined; (b) the secrecy in which the offences under investigation were carried out (illegal deprivation of liberty in illegal places of detention, torture); (c) the attempts made to conceal the identities of the perpetrators; (d) the large volume of evidence; (e) the large number of persons involved in the proceedings, including individuals and legal persons who joined the proceedings as plaintiffs; (f) the length of time since the offences occurred; and (g) the number of entities that were seized of the parties' different complaints. It states that it would be inappropriate to mechanically apply the legal criteria on the use of pretrial detention in ordinary offences to crimes against humanity and serious human rights violations. It notes that, in the case of crimes against humanity, the risk that such instances of abuse of power might go unpunished requires that special considerations and assessments be taken regarding the precautionary measures that restrict the liberty of accused persons. The State party requests the Committee to consider the communication within the framework of the truth and justice process being pursued in Argentina. It further notes that the case law of the courts that try crimes against humanity should be referred to in determining the parameters of reasonableness of pretrial detention in cases involving such crimes.[6]

4.3 The State party notes that, in the case of the author, the particular characteristics of the crimes of which he was accused, the "compelling" suspicions regarding his responsibility in those crimes, the expectation of a heavy sentence, and the risk that the

[6] The State party refers to rule 65 (B) of the rules of procedure and evidence of the International Criminal Tribunal for Rwanda and the cases of *Casimir Bizimungu*, *Joseph Kanyabashi* and *Nahimana* of that Tribunal, all of which found that pretrial detention for more than three years is not unreasonable, and that there is a need to balance the right of the accused to be tried while at liberty and the need to establish the truth about the serious crimes with which the accused has been charged.

author might attempt to hinder the proceedings by withholding evidence or by failing to appear for trial, led the judges to decide, in the light of the principles of exceptionality and proportionality, to extend the pretrial detention period. The State party indicates that the nature of the charges and the advanced stage of the proceedings were objective parameters used to avoid the risk that the accused might abscond if released.

4.4 The State party concludes that the author was able to fully exercise his right of access to competent, independent and impartial courts; that the case brought against him has been processed within a reasonable time frame and in full observance of his legal guarantees; and that the author's allegations merely reflect a difference in the criteria used to interpret the law in domestic decisions. The State party considers that, given the subsidiary role of the Committee, the communication should be declared inadmissible.

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

5.1 On 7 October 2014, the author replied to the State party's observations on the admissibility of the communication. He submits that the observations in question rely on dogmatic formulas to justify the use of pretrial detention in his case, despite its having been clear from the start that his participation in the proceedings while at liberty was warranted by his personal, moral, ethical and religious circumstances. Moreover, there has never been anything specific to suggest that he should be kept in pretrial detention. He states that the proceedings are currently at the investigation stage and that substantial evidence was obtained while he was at liberty; thus, there has never been anything to suggest that he might seek to hinder the investigation.

5.2 The author submits that the maximum three-year period of pretrial detention provided for in Acts Nos. 24.390 and 25.430 has been exceeded and that there is no provision for further extensions. He argues that what the State party refers to as a "reasonable time period" of pretrial detention is in fact limitless imprisonment or preventive detention for life.[7] He contends that the State party has created a "dual system" regarding the right to a reasonable period of pretrial detention, in which those persons accused of ordinary crimes benefit from the three-year legal limit on pretrial detention, whereas those under investigation for crimes against humanity benefit from no limit whatsoever, and any extension of pretrial detention is decided at the Court's discretion.

5.3 The author submits that it is not, as the State party states, merely a difference in approach to the assessment and implementation by the courts of the standards on pretrial detention, but a violation of his fundamental rights by the judicial authorities, who have issued politically motivated decisions.

5.4 The author refers to the Committee's case law, according to which pretrial detention should be the exception and bail should be granted, except in situations where the likelihood exists that the accused might abscond or destroy evidence, influence witnesses or evade justice.[8] The author recalls that, under the Constitution, the only grounds for pretrial detention are the danger of flight and the risk of impeding the investigation.[9]

[7] The author cites the judgment of 30 October 2008 of the Inter-American Court of Human Rights in *Bayarri v. Argentina*, para. 74: "Law No. 24,390 established a maximum period of three years after which it was not possible to continue depriving the accused of his liberty. Consequently, it is clear that Mr. Bayarri's detention could not exceed this time frame."

[8] See *Hill v. Spain* (CCPR/C/59/D/526/1993) para. 12.3.

[9] Article 18 of the Constitution provides that "no inhabitant of Argentina may be sentenced without a trial that is based on legislation enacted prior to the act being prosecuted; nor may an inhabitant of Argentina be tried by special commissions or by any judges other than those appointed by law prior to the act being tried. No one may be compelled to testify against oneself; or be arrested except by virtue of a written order from a competent authority. The right to a fair trial and due process is inviolable. The home is inviolable, as are mail correspondence and private documents; the law shall determine in what cases and on what evidence they may be entered and searched. The death penalty on political grounds, all kinds of torture and whipping are hereby abolished. The country's prisons should be hygienic and clean, designed to provide security and not to punish the prisoners detained within them, and any measure that, on the pretext of a precautionary action, results in the unnecessary humiliation of prisoners, shall engage the responsibility of the judge who authorized it."

State party's observations on the merits

6.1 On 23 January and 26 February 2015, the State party submitted its observations on the merits of the communication. In its observations, the State party reiterates the arguments it developed in its observations on admissibility, since it considers that the author's comments provided no new information.[10]

6.2 The State party states that the author's pretrial detention was formally extended by one year on 13 November 2012, and further extended on 20 November 2013. It states that the reasons for extending the author's pretrial detention were the complexity of the case, as it is an investigation into numerous human rights violations involving 52 victims, 4 enforced disappearances and 1 murder.

6.3 The State party adds that the delay in the proceedings relates to the clearly inappropriate actions taken by the complainant. Specifically, on 7 May 2014, the Federal Appeal Court of Paraná, in rejecting the appeal filed by the author, indicated that "as has been repeatedly pointed out by the judge of this Court, the complexity of the case, given the nature and number of acts under investigation, the individuals involved, the destruction or concealment of evidence, as well as the continual appeals filed by defendant Demonte and his co-defendants, and the use of delay tactics — especially the challenging of the authority of the judges in the main proceedings and other related matters — which impeded the normal development of the proceedings and generated additional expenses in the course of the proceedings, are sufficient grounds for the extension of pretrial detention, as provided for under Act No. 24.390, as amended by Act No. 25.430".

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

7. On 2 March 2015, the author submitted his comments on the observations of the State party. In his comments, he notes that the State party itself recognizes the delay in the detention orders issued against him, but does not attempt to justify its responsibility, stating that the delay is attributable to the litigation strategy of the defence. He reiterates that the State party cannot attribute delays in the judicial proceedings to him when he was simply engaging in the legitimate exercise of the right of defence; he further asserts that to punish the defendant for such action is problematic from the point of view of the rule of law. He requests the Committee to recommend that the State party discontinue his detention until the merits of the case have been decided.

State party's additional observations

8. On 6 July and 28 September 2015, the State party submitted additional information. It contends that the author did not submit any new arguments, either in fact or in law; therefore, it maintains its previous observations on admissibility and merits. It also explains that, in the context of the proceedings against the author and other persons, the defendants filed appeals against decisions handed down by the judge which rejected certain pieces of evidence provided by the accused, and that a decision on those appeals remains pending.

Additional information from the author

9.1 On 26 April, 13 May and 21 July 2014, 21 January, 28 April and 20 June 2015 and 4 August 2016, the author submitted additional information.

9.2 With reference to the exhaustion of domestic remedies, the author submits that all available domestic remedies have been exhausted and that the last decision to be taken into consideration is the Supreme Court's judgment of 8 April 2014, in which his extraordinary appeal was declared inadmissible (para. 2.9).

9.3 With reference to the State party's decision to keep him in detention, despite the fact that the legal requirements in that respect have not been met, the author submits that he has no criminal history, is a Jehovah's Witness minister, has been married for 40 years, has resided since 2001 in the same city as the court hearing the proceedings, has a family that is

[10] The State party attached the observations of Federal Court No. 1 of Paraná and the unit for the prosecution of crimes against humanity of the Attorney General's Office.

dependent on his pension, and has demonstrated excellent conduct during his detention. He states that, despite all this, the period of his detention has been extended on three occasions, the most recent being on 19 December 2014, by decision of the Federal Court of Paraná. He states that he filed an appeal against that decision, an appeal which is now pending before the Federal Appeal Court of Paraná.

9.4 He states that persons convicted of ordinary crimes are allowed to leave the prison on a daily basis to attend classes or take part in study programmes, but that he has not been allowed by the State party to serve as minister in leading the two-hour Jehovah's Witnesses religious service held on Wednesdays in another detention facility, on the ground that he already enjoys freedom of worship because he receives a weekly visit from a fellow Jehovah's Witness.[11]

9.5 Lastly, the author reiterates his request that, in the light of the principle of pretrial detention as a last resort, alternatives to detention should be ordered in his case, for example: a prohibition on leaving the country; release on bail or personal recognizance; electronic monitoring; and house arrest.

Issues and proceedings before the Committee

Consideration of admissibility

10.1 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 to the Covenant.

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

10.3 The Committee takes note of the author's claim that he has exhausted all domestic remedies available to him to challenge his pretrial detention. In the absence of any objection by the State party in this connection, the Committee considers that the requirements of article 5 (2) (b) of the Optional Protocol have been met (para. 9.2).

10.4 The Committee takes note of the author's allegation that there was a violation of article 14 (2) of the Covenant, owing to the improper use of pretrial detention without a trial being envisaged and without account being taken of his personal situation. The Committee also takes note of the State party's argument that the author's allegations in this regard are generic, that he fully enjoyed the right to have access to the courts to challenge his pretrial detention and that his case was at all times processed in accordance with the law and with full respect for legal safeguards. The Committee notes that the author presents his allegations in general terms and does not provide any specific evidence to show that his right to the presumption of innocence has been infringed. Consequently, it considers that the allegations concerning article 14 (2) of the Covenant are not sufficiently substantiated for them to be admissible, and it concludes that they are inadmissible under article 2 of the Optional Protocol.

10.5 The Committee also takes note of the State party's argument that the author's claims regarding the alleged arbitrariness of his preventive detention simply reflect a difference in approach regarding the interpretation and application of the standards on pretrial detention in Argentina and do not point to a violation of the Covenant. It further notes the State party's submission regarding the applicable legal provisions and the criteria used by the judicial authorities in deciding on three occasions to extend the author's pretrial detention. The Committee also takes note of the State party's position that the author continually filed appeals, including by continually challenging the authority of the judges in the main proceedings and in other related matters (see paras. 4.1–4.3, 6.2 and 6.3), which had an

[11] As part of the case file, the author includes a series of requests for permission to attend the Jehovah's Witnesses religious service held on Wednesdays in the Los Pinos congregation room located in another detention facility. His requests were denied, on the ground that the author receives a weekly visit from a fellow Jehovah's Witness, which, according to the authorities, ensures his right to enjoy freedom of worship.

impact on the procedural time limits and prevented the judicial authorities from carrying out their work more expeditiously.

10.6 The Committee also notes that, according to the author, his allegations do not merely reflect a difference regarding the assessment and application of the applicable standards by the courts, but rather point to a violation of his fundamental rights by the judicial authorities, which have issued politically motivated decisions (para. 5.3).

10.7 The Committee notes that the author's claims under article 9 (3) are sufficiently substantiated for the purposes of admissibility. The Committee therefore declares the claims admissible and proceeds with their examination on the merits.

Consideration of the merits

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

11.2 The Committee takes note of the author's claim that his pretrial detention, which started on 19 April 2010 and lasted more than five years, violated his right to liberty of person, by virtue of the fact that Acts Nos. 24.390 and 25.430 establish a maximum period of pretrial detention of three years, and that the three extensions of his detention were decided without taking into account that there was no risk of absconding or obstruction of justice (see paras. 3.2 and 5.2). The Committee also notes the author's arguments that his personal circumstances, such as his strong family ties and religious beliefs, and the fact that he had voluntarily reported to the judicial authorities upon learning that they had come looking for him at his home and that he had not opposed the collection of evidence when he was free, demonstrated that there was no risk of absconding or of hindering the investigation, but that this was not taken into account by the domestic courts (see paras. 2.2, 2.5, 3.2 and 9.3).

11.3 The Committee also takes note of the State party's submissions that the author's detention and the extensions thereof were ordered on the basis of the applicable legal provisions and objective criteria such as the gravity of crimes against humanity with which the author had been charged (crimes against humanity with 52 victims, 4 enforced disappearances and 1 murder); the considerable scope and complexity of the proceedings, which involved a number of defendants and parties, including individuals and legal persons that joined the proceedings as plaintiffs; the large volume of evidence submitted to the courts; the attempts made to conceal the identities of the perpetrators; the length of time since the offences were committed and the secrecy in which those offences were committed (para. 4.2). The Committee also takes note of the State party's contention that the decisions on pretrial detention and the extensions, all taken by the competent judicial authorities, took account of factors such as the "compelling" suspicions regarding the author's responsibility in the crimes and the risk that the author, if released, might hinder the proceedings by withholding evidence or failing to appear for trial, as well as the fact that the legal challenges brought by the author extended the procedural time limits (see paras 2.4, 2.6, 2.10, 4.2, 4.3, 6.2, 6.3 and 10.4). According to the State party, the legal criteria on the use of pretrial detention for ordinary offences should not be applied mechanically in cases of crimes against humanity, where the main goal is to establish the truth and make sure that justice is served (see paras. 2.6, 4.2 and 6.3).

11.4 In its general comment No. 35 (2014) on liberty and security of person, the Committee stated that pretrial detention should be the exception, rather than the rule. Detention pending trial must be lawful and based on an individualized determination that it is reasonable and necessary taking into account all the circumstances, for such purposes as to prevent flight, interference with evidence or the recurrence of crime.[12] Similarly, the Committee recalls that the seriousness of the alleged acts cannot in itself justify the extension of pretrial detention; that the relevant factors should be specified in law and should not include vague and expansive standards such as "public security"; and that after

[12] Para. 38; see also *Smantser v. Belarus* (CCPR/C/94/D/1178/2003), para. 10.3; *Marinich v. Belarus* (CCPR/C/99/D/1502/2006), para. 10.4; *Cedeño v. Bolivarian Republic of Venezuela*, (CCPR/C/106/D/1940/2010), para. 7.10; *Hill v. Spain*, para. 12.3.

an initial determination has been made that pretrial detention is necessary, there should be periodic re-examination of whether it continues to be reasonable and necessary in the light of possible alternatives.[13]

11.5 In the present case, the author's pretrial detention began on 19 April 2010 and was extended by one year on three occasions: 23 November 2012, 20 November 2013 and 19 December 2014. The Committee notes that, on those three occasions, the decisions on the extensions were taken in accordance with Acts Nos. 25.430 and 24.390 and article 319 of the Code of Criminal Procedure and that, in each instance, the court assessed the specific circumstances of the case. In doing so, it took into account the large number of offences investigated; the nature of those offences and the secrecy in which they were carried out (illegal deprivation of liberty in illegal places of detention, torture, enforced disappearances); the attempts made to conceal the identities of the perpetrators; the large volume of evidence; the large number of persons involved in the proceedings; the length of time since the offences occurred; the severity of the applicable penalties; the social impact of the case; the number of entities that were seized of the parties' different complaints and the extension of the procedural time limits that resulted from the legal challenges brought by the author in exercise of his right of defence. Thus, the assessment undertaken by the national courts was not confined to a consideration of the seriousness of the offences under investigation. Rather, the Committee considers that the State party's authorities made an individualized determination and found that various aspects of the case, viewed together, meant that the extension of the pretrial detention was reasonable and necessary in the author's case in order to prevent any impunity for the offences under investigation that might have resulted from the author's absconding, from interference with or concealment of evidence or from the possible intimidation of witnesses or victims.

11.6 In light of the above and taking account of the fact that the author has not provided information that would refute the State party's arguments concerning the risks to the investigation and trial that could result from his being released on bail, the Committee is of the view that the extension of the author's pretrial detention can, in the present case, be regarded as reasonable and necessary. Consequently, the Committee concludes that the State party did not violate the author's rights under article 9 (3) of the Covenant.

12. The Committee, acting under article 5 (4) of the Optional Protocol, finds that the extension of the author's pretrial detention over five years in the particular circumstances of the case does not disclose a violation by the State party of the author's rights under article 9 (3) of the Covenant.

[13] *Taright v. Algeria* (CCPR/C/86/D/1085/2002), paras. 8.3 and 8.4.