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Seventy-fourth session
18 March – 5 April 2002

VIEWS

Communication No. 802/1998

Submitted by:	Mr. Andrew Rogerson (represented by Mr. John McCormack, barrister and solicitor in Darwin, Australia)
Alleged victim:	The author
State party:	Australia
Date of communication:	20 April 1996 (initial submission)
Document references:	- Special Rapporteur's rule 91 decision, transmitted to the State party on 26 January 1998 (not issued in document form)
Date of adoption of Views:	3 April 2002

On 3 April 2002 the Human Rights Committee adopted its Views, under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 802/1998. The text of the Views is appended to the present document.

[ANNEX]

* Made public by decision of the Human Rights Committee.

ANNEX

VIEWS OF THE HUMAN RIGHTS COMMITTEE UNDER ARTICLE 5, PARAGRAPH 4, OF THE OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

Seventy-fourth session

concerning

Communication No. 802/1998**

Submitted by: Mr. Andrew Rogerson (represented by Mr. John McCormack, barrister and solicitor in Darwin, Australia)

Alleged victim: The author

State party: Australia

Date of communication: 20 April 1996 (initial submission)

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

Meeting on 3 April 2002,

Having concluded its consideration of communication No. 802/1998, submitted to the Human Rights Committee by Mr. Andrew Rogerson 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:

** The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Nisuke Ando, Mr. Prafullachandra Natwarlal Bhagwati, Mr. Maurice Glèlè Ahanhanzo, Mr. Ahmed Tawfik Khalil, Mr. Eckart Klein, Mr. Rajsoomer Lallah, Ms. Cecilia Medina Quiroga, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Martin Scheinin, Mr. Hipólito Solari Yrigoyen, Mr. Patrick Vella and Mr. Maxwell Yalden.

Under rule 84 of the Committee's rules of procedure, Mr. Ivan Shearer did not participate in the examination of the case.

Views under article 5, paragraph 4, of the Optional Protocol

1.1 The author of the communication is Mr. Andrew Rogerson, an Australian citizen, currently residing in Willerby, United Kingdom. He claims to be the victim of violations by Australia of articles 2, paragraph 3 (a), (b); 14, paragraphs 1, 3 (a), (b), (c), (g) and 5; 15, paragraph 1; 17, paragraph 1; and 26 of the International Covenant on Civil and Political Rights. He is represented by counsel.

1.2 The Covenant entered into force for the State party on 13 November 1980 and the Optional Protocol on 25 December 1991. The reservation entered by the State party upon its ratification of the Covenant has no relevance for the present case.

Facts as submitted by the author

2.1 The author was a barrister and solicitor of the Northern Territory Supreme Court and director of Lofta Pty. Ltd., a law firm, operating under the name of Loftus and Cameron. In July 1991, one Mr. Tchia, director of Tchia Nominees PTY Ltd. and Kykym PTY Ltd., instructed the author to assist him with certain aspects of development of land in Darwin. On 19 August 1992, Mr. Tchia cancelled the retainer and engaged other solicitors to do the same work. The author tried to resurrect the Loftus and Cameron retainer. On 24 August 1992, the author lodged a caveat on the land and threatened legal action for breach of contract. Over some weeks, the author had been attempting to meet with Mr. Tchia to discuss their relationship. The author, finally, succeeded to set up a meeting for 1 September 1992 at 5.00 p.m. On the same day at 11.34 a.m., the Northern Territory Supreme Court had heard an *ex-parte* application by Mr. Tchia and, finally, granted an injunction to restrain the author from contacting or seeking to contact Mr. Tchia or any of the two companies, except through particular solicitors named in the order.

2.2 On 1 September at 4.50 p.m., Mr. Tchia's solicitors tried to serve the author, inter alia, the injunction and other documents relating to the originating motion. The author did not read the documents and immediately sent them back to the solicitors. The author knew that the documents pertained to a dispute between himself and Mr. Tchia, whom he was due to meet. The author decided not to read the documents but await Mr. Tchia's arrival; Mr. Tchia did not keep the appointment. Later the same day, the author met with one Mr. Riley, a business associate of Loftus and Cameron, and set out a settlement proposal to convey to Mr. Tchia. On 2 September at 10.30 a.m., Mr. Tchia's solicitors attempted again to serve the author the injunction at his office. However, the main door into the reception area was locked upon order of the author to prevent service by Mr. Tchia's solicitors. A woman at the front door stated that the author was not available and that she could not allow entry into the office. At about the same time, Mr. Riley met with Mr. Tchia; the latter rejected the author's settlement proposal and mentioned the injunction. On 2 September at 11.13 a.m., Mr. Tchia's solicitors tried to send the documents to the author by facsimile transmission. During the transmission the facsimile stopped transmitting and connection was lost.

2.3 From 2 to 4 and on 9 September 1992, the Northern Territory Supreme Court heard an action for contempt of court against the author. Since 3 September, the author was represented by counsel. On 9 October 1992, the Court delivered its decision finding the author guilty of

contempt of court. The Court fined the author a sum of $ 5,000 and ordered him to pay the plaintiffs' costs on a solicitor and own client basis. Upon appeal of the author, heard from 22 to 24 March 1993, the Northern Territory Court of Appeals, on 17 March 1995, upheld the Supreme Court decision but quashed the fine and remitted this matter to the Supreme Court for reconsideration. On 22 June 1995, the High Court of Australia refused Special Leave to Appeal.

2.4 On 12 October 1992, the Law Society of the Northern Territory cancelled the author's practising certificate for an indefinite period.

2.5 On 6 May 1997, while the communication was already pending with the Committee, the Law Society of the Northern Territory commenced procedures to remove the author's name from the Roll of Legal Practitioners. The Supreme Court held hearings in the case on 4 December 1998 and 16 August 1999, and decided to strike the author off the Roll of Legal Practitioners. On 24 November 2000, the High Court of Australia refused the author's application for Special Leave to Appeal.

The complaint

3.1 The author claims that even though some of the violations of his rights had been ameliorated upon appeal, there still remains for him a destroyed career, broken health and de facto bankruptcy caused by an abuse of power by the judge of the Northern Territory Supreme Court in the action for contempt of court and the actions by the Law Society. The author submits that at the time of the trial he suffered from manic-depressive disorder and was unable to properly understand what was going on. The author submits that he was treated for this disease since November 1989.

3.2 With regard to the procedure at the Northern Territory Supreme Court hearing on contempt of court, the author contends that he was brought before the judge with less than one-hour notice, unrepresented. The author claims that the judge adopted an inquisitorial approach and assumed the role of prosecutor. The author claims that the judge violated articles 2, paragraph 2; 14, paragraphs 1 and 3 (a), (b), (g); 15, paragraph 1; 17; and 26 of the Covenant by his different actions during the trial. The author argues that the judge allowed the proceedings to continue, notwithstanding that they were in respect of an *ex-parte* injunction, the sealed copy of which did not contain the required warning of imprisonment for failing to comply; that the author did not have proper notice of the terms of the order; that the author had not been served with a copy of the order; that in respect of the alleged contempt, it had never been particularized in a summons; that the author's attendance at court had been effected by means of a misleading fax. The author submits further that, during the trial, the judge waived the requirement for affidavit evidence so that the author had no advance warning of what his accusers were to say against him; the judge refused to allow adjournments, to enable the author's case to be properly prepared and, later in the proceedings, allow his counsel to take notice of what evidence had been given the previous day; the judge proceeded at an unseemly speed to hear the matter and produce a rapid decision convicting the author without hearing argument on the penalty and costs, which is an impossibility in law, as the proceedings should have been regarded as merely a form of execution in a civil action; and the judge made gratuitous and unfounded remarks on his fitness to practise law. Finally, the author claims that the Supreme Court failed to give effect to the decision of the Court of Appeals to reconsider the fine.

3.3 As to the procedure at the Northern Territory Court of Appeals, the author claims violations of articles 2, paragraph 1; 14, paragraph 1, 3 (c) and 5; and 26 of the Covenant. The author submits that it took the Court almost 2 years to hand down a decision. The author further points out that the decision was delivered by a two to one majority and that one of the majority judges refused a request to recuse himself on the grounds of bias against the author. The author submits that this judge knew him well and had, in the past, indicated opinions adverse to the author's interests.

3.4 As to the procedure at the High Court of Australia, the author claims violations of articles 2, paragraph 2 and 3; 14, paragraph 1 and 5; and 26 of the Covenant. The author argues that the restrictive approach of the Court to the granting of Special Leave does not appear to provide him with an effective remedy against injustice, as required by Australia's obligations under the Covenant. The author submits that the Solicitor General of the Northern Territory initially intended to support the application of the author; he later decided not to appear at the hearing after he had spoken privately to the Chief Justice of the High Court. The author claims that he had been prejudiced by the possible connivance between the most senior judge in Australia and the most senior law officer in the Northern Territory. The author is concerned by a comment by the Court that he, as a lawyer aware of the proceedings, did not suffer the injustice that a layperson may have done. The author claims that he is entitled to expect a fair trial regardless of his profession.

3.5 As to the procedure at the Law Society, the author claims violations of articles 14, paragraph 1; and 17 of the Covenant. The author argues that the Law Society is exercising quasi-governmental and judicial functions and is, therefore, bound to operate with due regard to human rights. The author submits that the Society proceeded without giving him a proper opportunity to be heard and without making any independent investigation that would have revealed the author's serious illness, but accepting the findings of the Supreme Court. The author argues that it is significant that the members of the Committee of the Law Society sitting in the small town of Darwin are, in large part, business competitors of the author and government lawyers with whom he clashed in the past. Furthermore, the author submits that the Society was bound to stipulate a period of time for which the Practicing Certificate would be withdrawn. The author claims that the procedures to strike him off the Roll of Practitioners are tantamount to a further, separate violation.

State Party's observations on admissibility and merits

4.1 In a submission dated May 2000, the State party made its observations on the admissibility and merits of the communication. The State party submits that the author's claims are unsubstantiated for a variety of reasons summarized below.

4.2 With regard to the procedure before the Northern Territory Supreme Court, the State party argues that the author has not submitted evidence of partiality of the judge and has merely made generalised allegations concerning the conduct and result of the proceeding. The State party argues further that the fact that the author or his counsel did not raise the question of bias in the course of the proceedings is prima facie evidence that the conduct was acceptable in the circumstances. The State party contends that the author has failed to indicate the grounds on

which the court could make an alternative finding on the question of his alleged contempt. The State party submits that the exercise of judicial function by the judge in the hearing on the *ex parte* order did not go to the matters at issue in the later proceedings regarding the contempt of court. Finally, since the author has not applied for a rehearing after the decision of the Court of Appeals, the penalty remains set aside.

4.3 The State party accepts that the court proceedings subject to this communication relate to criminal contempt and fall within the purview of article 14, paragraph 3, of the Covenant. The State party submits that, in fact, the author was aware of the factual and legal basis of the charge against him and had sufficient information to be able to defend himself properly. At no time did the author appear to question the speed of the proceedings on the basis that he was unprepared and needed further time and facilities to prepare for the proceedings. The State party refers to the Committee's decision in *Karttunen v. Finland*[1] and submits that any deficiency of the first instance procedure was cured by the proceedings before the Appeals Court. With regard to the alleged violation of article 14, paragraph 3 (g), of the Covenant, the State party submits that the judge encouraged the author to provide an explanation for the events after the issuance of the *ex-parte* order, rather than to testify against himself. At all times, the author had the option to remain silent. With regard to article 15, paragraph 1, the State party submits that on the factual basis established by the Supreme Court, i.e. wilful disobedience of the court order, a conviction of criminal contempt was justified. At all relevant times, the offence of criminal contempt existed in the Northern Territory. With regard to article 17, paragraph 1, the State party submits that the author failed to substantiate sufficiently his claim that the Supreme Court judge unlawfully attacked his honour and reputation. With regard to the alleged discrimination of the author on the basis of his alleged disabling illness, the State party submits that there was no mention in any document or transcript that an illness meant he could not understand the proceedings and it was neither raised orally or by affidavit in any of the subsequent court proceedings. The author was, furthermore, in every aspect treated as any other person in his situation would have been treated.

4.4 With regard to the procedure before the Northern Territory Court of Appeals, the State party submits that the allegation of bias through previous personal and professional association cannot be accepted, given its general nature and complete lack of supporting evidence. The judge's written decision indicates that he fully considered the application of the author's counsel in relation to apprehension of bias. The State party submits further that the two years the Court took to deliver its judgement is not an unreasonable time. Since the appeal was based on law rather than facts and the Law Society has already withdrawn the author's practising certificate on the basis of the facts established by the Supreme Court, the delay did not affect the author's ability to practise law. Furthermore, the circumstances before the Court in the appeal warranted detailed and careful consideration so that two years was not unreasonable.

4.5 With regard to the procedure before the High Court of Australia, the State party submits that the mere fact that the result of the Special Leave application was not favourable to the author is not in itself evidence that supports his allegation the he was denied equal access to court. The State party argues that the author's application failed on the reasonable and legitimate grounds that it did not raise a matter of public or legal importance. The State party submits that the

[1] Case No. 387/1989, Views adopted on 23 October 1992, para. 7.3.

telephone conversation between the Northern Territory Solicitor General and the Chief Justice was a routine collegial discussion that raises no doubts as to the impartiality of the High Court. With regard to the alleged discrimination against the author by the High Court and the Court of Appeals on the basis of his occupation as a lawyer, the State party submits that neither of these courts nor the Supreme Court based a decision on the state of the author's knowledge solely because of his occupation.

4.6 With regard to the procedure before the Law Society of the Northern Territory, the State Party submits that the author has given no grounds for bias of any particular member of the Council, but only made a sweeping and unfounded generalisation. The State party submits further, that the exercise of the power of the Law Society to cancel the author's practising certificate is not a 'suit at law' within the meaning of article 14, paragraph 1, of the Covenant. In any case, the author must be considered to have waived his right to the oral hearing offered by the Law Society after he refused twice to attend. With regard to the alleged violation of article 17, paragraph 1, of the Covenant, the State party submits that the author has failed to address how the withdrawal of his practising certificate is an unlawful attack on honour and reputation within the terms of that provision. In any case, the decision of the Law Society was not unlawful at domestic law and did not constitute an attack.

Comments by the author

5.1 The author claims that the State party caused further prejudice to him by taking two years and five months to reply to the Committee. The author submits additional complaints with regard to developments that occurred while his communication was already pending with the Committee. (See paragraph 2.5)

5.2 The author submits additional details with regard to his previous claims. With regard to his mental illness, the author states that affidavits were placed before the court and the matter was raised before the High Court. Furthermore, the author claims that his deranged behaviour and disingenuous lying were indicative of his poor mental state at the time of the contempt action at the Supreme Court. As to the procedure at the Northern Territory Supreme Court, the author claims that the judge was not impartial. The author refers to a decision of the Court of Appeals, of 12 May 1997, finding that a trial judge in the case in which two jurors were accused of contempt should not have presided over the hearing against them for contempt. Therefore, the same judge granting the *ex-parte* order should not have presided over the trial in regard to its breach. With regard to the alleged delay of the Appeals Court to deliver its decision the author submits that because he could not get back his practice certificate unless the Court had ruled on his appeal, the speedy dispatch of the appeal was essential.

5.3 With regard to the procedure before the Supreme Court regarding his being struck off the Roll of Legal Practitioners, the author claims that he did not receive a fair hearing by an impartial tribunal under article 14, paragraph 1, of the Covenant. The author argues that the Chief Justice of the Court was partial, because he decided earlier on the appeal of the author against the contempt conviction. Furthermore, the author lists examples of the behaviour of the judge during the trial that should indicate that he was biased. The author claims further that he was denied proper opportunity of being present in person and present his case; that his counsel was incompetent and deceiving the court; that the evidence relied on was inadmissible; that the

proceedings were defective; and that domestic law was applied incorrectly. With regard to the procedure before the High Court of Australia regarding his being struck off the Roll of Legal Practitioners, the author claims that his right to appeal was violated as the wrongful decision was not removed, thus entailing a violation of article 14, paragraph 1, and article 2, paragraphs 2 and 3 (a), (b), of the Covenant. The author submits further that the High Court lacked impartiality and discriminated against him by virtue of his status as a former legal practitioner. As the appeal, therefore, failed to cure the violations of the first instance procedure, the violations continue.

Additional comments by the State party

6.1 In its submission dated September 2001, the State party comments on the new claims of the author arising from the court proceedings with regard to the author's removal from the Roll of Legal Practitioners. The State party submits that the author's claims are unsubstantiated for a variety of reasons summarized below.

6.2 With regard to the Northern Territory Supreme Court proceedings, the State party submits that the author had enough time to prepare for the hearing of 16 August 1999, as the proceedings commenced already on 6 May 1997 and had been adjourned on 4 December 1998; the date for the hearing on 16 August 1999 was set in April 1999. The State party claims that it cannot be held responsible for the failure of the author and his attorney to maintain proper contacts. In fact, an experienced lawyer, who was familiar with the case, represented the author in both hearings. Furthermore, it was not manifest to either the Supreme Court or the High Court of Australia that the behaviour of the author's attorney was incompatible with the interests of justice. The State party submits that the author has failed to demonstrate that the introduction as evidence of the Supreme Court's findings of contempt and the alleged deficient procedure lead to a breach of article 14, paragraph 1, of the Covenant, as this question concerns only the application of domestic law. This argument can also not be used as evidence of bias of the presiding judge.

6.3 With regard to the High Court proceedings, the State party submits that article 2 of the Covenant can only be invoked in relation with any other substantive provision of the Covenant. In the opinion of the State party, an avenue of appeal was available for the author and the ultimate dismissal of his submissions is no evidence of a breach of article 14, paragraph 1, of the Covenant. The State party submits that the author was not discriminated against, as the disciplinary procedures to which he was subject are justifiable on reasonable and objective criteria. Furthermore, the transcript of the proceeding does not offer any evidence that the High Court treated the author differently from any other legal practitioner appealing a decision of a disciplinary tribunal. The State party submits that article 14, paragraph 1, of the Covenant does not provide a right to an appeal. Finally, the State party submits that the author did not provide any evidence that would support a finding that the judge was biased.

Issues and proceedings before the Committee

Considerations of the admissibility

7.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 87 of its rules of procedure, decide whether or not the case is admissible under the Optional Protocol to the Covenant.

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

7.3 As to the author's claim that already at the time of the trial at the Northern Territory Supreme Court on contempt of court he suffered from manic-depressive disorder and was unable properly to understand what was going on (article 14, paragraph 1), the Committee recalls that pursuant to article 5, paragraph 2 (b), of the Optional Protocol, it shall not consider any communication from an individual unless it has ascertained that the individual has exhausted all available domestic remedies. The Committee notes that it does not appear from the information before it that the author claimed to be a person under a disability at any point during the contempt procedure. This part of the communication is, therefore, inadmissible under article 5, paragraph 2 (b), of the Optional Protocol.

7.4The Committee notes the author's allegations that the Northern Territory Supreme Court and the High Court of Australia lacked impartiality, as provided for in article 14, paragraph 1, when deciding on his conviction of contempt and, later, when deciding on his removal from the Role of Legal Practitioners. "Impartiality" of the court implies that judges must not harbour preconceptions about the matter before them, and they must not act in ways that promote the interests of one of the parties.[2] In the present case, the author has failed to substantiate, for the purposes of admissibility, that the judges were biased, when hearing his case. This part of the communication is accordingly inadmissible under article 2 of the Optional Protocol.

7.5 As to the author's allegations of violations of article 14, paragraph 5, of the Covenant by the Northern Territory Court of Appeals and the High Court of Australia when reviewing his appeal of the finding of contempt, the Committee notes that this provision guarantees a right to an appeal 'according to law'. The Committee recalls its previous jurisprudence that a system not allowing for automatic right to appeal may still be in conformity with article 14, paragraph 5, as long as the examination of an application for leave to appeal entails a full review of the conviction and sentences and as long as the procedure allows for due consideration of the nature of the case.[3] Thus, in the circumstances, the Committee finds that this claim is inadmissible under article 2 of the Optional Protocol.

7.6 The Committee notes the argument of the author that the Law Society of the Northern Territory violated his right to a fair trial as provided for in article 14, paragraph 1, of the

[2] *Karttunen v. Finland,* Case No. 387/1989, Views of 23 October 1992, para. 7.2.
[3] *Lumley v. Jamaica,* Case No. 662/1995, vies of 31 March 1999, para. 7.3.

Covenant when, in its procedures to cancel the practising license, it relied only on the previous finding of the Northern Territory Supreme Court, instead of carrying out its own investigation that would have revealed the author's alleged illness. The Committee recalls its previous jurisprudence that the regulation of the activities of professional bodies and the scrutiny of such relations by the courts may raise issues in particular under article 14 of the Covenant.[4] However, the binding effect of court decisions on the Law Society's considerations of the cancellation of a practising certificate is primarily a matter of application of domestic law that the Committee cannot review unless it is manifest that it was arbitrary or amounted to a denial of justice. Therefore, the Committee finds that the author has failed to substantiate this claim, for purposes of admissibility, and this claim is accordingly inadmissible under article 2 of the Optional Protocol.

7.7 As to the author's allegations of violations of article 17, paragraph 1, of the Covenant with regard to the procedure at the Northern Territory Supreme Court on contempt of court and with regard to the subsequent procedure at the Legal Society of the Northern Territory on the cancellation of the author's Practising Certificate, the Committee considers that the author has failed to substantiate, for purposes of admissibility, that the remarks by the judge and the procedure against him constituted an arbitrary or unlawful attack on his honour and reputation. (See paragraphs 3.2 and 3.5) In this respect, accordingly, the author has no claim within the meaning of article 2 of the Optional Protocol.[5]

7.8 In relation to the author's claim of discrimination against him by virtue of his status as a former legal practitioner in all court procedures in violation of article 26 of the Covenant, the Committee considers that the author has failed to substantiate, for the purposes of admissibility, that he was treated differently from other lawyers in a comparable situation. Therefore, the Committee finds that this claim is inadmissible under article 2 of the Optional Protocol.

7.9 The Committee notes the author's allegations of a violation of article 2, paragraph 2, of the Covenant with regard to the procedure of the Northern Territory Supreme Court on contempt of court, of article 2, paragraph 1, with regard to the procedure of the Court of Appeals on contempt of court and of article 2, paragraph 3, with regard to the procedure of the High Court on contempt of court and his removal from the Roll of Legal Practitioners. (See paragraphs 3.2 to 3.4 and 5.3) The Committee observes that the provisions of article 2 of the Covenant, which lay down general obligations for State parties, cannot, in isolation, give rise to a claim in a communication under the Optional Protocol.[6] The Committee considers that the author's contentions in this regard are inadmissible under article 2 of the Optional Protocol.

7.10 As to the author's allegations with regard to the procedure before the Northern Territory Supreme Court and the High Court of Australia on contempt of court and, later, on his strike-off the Roll of Legal Practitioners, the Committee notes that the author's claims with regard to the content and serving of the injunction order, the judge's conduct of procedures and their procedural decisions refer to the application of domestic law. (See paragraphs 3.2 and 5.3) The

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[4] See *J.L. v. Australia,* Case No. 491/1992, decision of 28 July 1992, para. 4.3.
[5] See *R.L.M. v. Trinidad and Tobago,* Case No. 380/1989, decision of 16 July 1993; *Simons v. Panama,* Case No. 460/1991, decision of 25 October 1994.
[6] *C.E.A. v. Finland,* Case No. 316/1988, decision of 10 July 1991, para. 6.2.

Committee refers to its established jurisprudence that interpretation of domestic legislation is essentially a matter for the courts and authorities of the State party.[7] Since it does not appear from the information before the Committee that the law in the present case was interpreted and applied arbitrarily or that its application amounted to a denial of justice, the Committee considers that the communication is inadmissible under article 3 of the Optional Protocol in this regard.

8. The Committee considers that the remainder of the communication may raise issues under articles 14, paragraphs 1 and 3; and 15, paragraph 1, of the Covenant. Consequently, the Committee declares this part of the communication admissible and proceeds to the examination of the merits.

Considerations of the merits

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

9.2 With respect to the alleged violations of article 14, paragraphs 3 (a), (b) and (g) by the Northern Territory Supreme Court in the procedure on contempt of court, the Committee observes that this provision applies only to criminal proceedings. The Committee notes that the State party submitted that the proceedings that are subject to the present communication relate to criminal contempt and accepted that they fall within the purview of article 14, paragraph 3, of the Covenant. However, the Committee notes that the author's claims in this regard had been subject to review by the Northern Territory Court of Appeal and the High Court of Australia and that the author does not raise the same claims with regard to the appellate procedures. The Committee recalls that it is possible for appellate instances to correct any irregularities of proceedings before lower court instances.[8] Therefore, the Committee is unable to conclude on the basis of the information before it that article 14, paragraphs 3 (a), (b) and (g) has been violated.

9.3 The Committee notes the author's claim that the procedure at the Northern Territory Court of Appeals on contempt of court violated his right to a fair hearing provided for in article 14, paragraph 3 (c), of the Covenant, because it delivered its decision with delay. The Committee notes that the Court heard the appeal of the author from 22 to 24 March 1993. The Committee notes further that the two puisne judges delivered their draft decisions on 28 April and 27 July 1993, respectively; on 17 March 1995, the Court dismissed the author's case. The State party has not explained what happened in the author's case between these dates, notwithstanding the existence of a case management system. The Committee finds that in the circumstances of the present case a delay of almost two years to deliver the final decision violates the right of the author to be tried without undue delay as provided for in article 14, paragraph 3 (c), of the Covenant.┤

[7] See, inter alia, *Maroufidou v. Sweden*, Case No. 58/1979, Views adopted on 9 April 1981, para. 10.1.
[8] *Karttunen v. Finland*, Case No. 387/1989, Views of 23 October 1992, para. 7.3.

9.4 With respect to the alleged violation of article 15, paragraph 1, of the Covenant by the Northern Territory Supreme Court in the procedures on contempt, the Committee considers that the term "criminal offence" has to be interpreted in conformity with the term "criminal charge" in article 14, paragraph 3, and, thus, finds that article 15, paragraph 1, is applicable in the present case.[9] The Committee notes that it appears from the submissions of both parties that, before the author was convicted, contempt of court for breach of an injunction order already constituted an offence under Australian law.[10] Therefore, the Committee finds that the facts of the case do not reveal a violation of article 15, paragraph 1, of the Covenant.

10. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts before it disclose violations of article 14, paragraph 3 (c), of the Covenant.

11. The Committee considers that its finding of a violation of the rights of the author under article 14, paragraph 3 (c), of the Covenant constitutes sufficient remedy.

12. On becoming a State party to the Optional Protocol, the State party recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not. Pursuant to article 2 of the Covenant, the State party has undertaken to ensure all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy in case a violation has been established. The Committee wishes to receive from the State Party, within ninety days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the Committee's Views.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

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[9] See the similar case of *J.L. v. Australia,* Case No. 491/1992, decision of 28 July 1992, para. 4.3.

[10] See *Westerman v. The Netherlands,* Case No. 682/1996, Views of 3 November 1999.