United Nations CCPR/C/134/D/3327/2019*

International Covenant on Civil and Political Rights

Distr.: General
22 August 2022

Original: English

Human Rights Committee

Decision adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 3327/2019**, ***

Communication submitted by:	D.Č. (represented by Stanislovas Tomas)
Alleged victim:	The author
State party:	Lithuania
Date of communication:	12 September 2018 (initial submission)
Document reference:	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 26 March 2019 (not issued in document form)
Date of adoption of decision:	24 March 2022
Subject matter:	Restrictive measures imposed during a pretrial criminal investigation
Procedural issues:	Abuse of the right of submission; exhaustion of domestic remedies; level of substantiation of claims; admissibility *ratione materiae*
Substantive issues:	Effective remedy; fair trial; freedom of movement; presumption of innocence
Articles of the Covenant:	2 (2), read alone and in conjunction with articles 12, 14 (1) and 14 (2); and 12, 14 (1) and 14 (2), each read alone.
Articles of the Optional Protocol:	2, 3 and 5 (2) (b)

1. The author of the communication is D.Č., a national of Lithuania born in 1974. He claims that the State party has violated his rights under article 2 (2), read alone and in conjunction with articles 12, 14 (1) and 14 (2) of the Covenant. He also alleges violations by the State party of articles 12, 14 (1) and 14 (2) read alone. The Optional Protocol to the Covenant entered into force for the State party on 20 February 1992. The author is represented by counsel.

* Reissued for technical reasons on 27 September 2022.

** Adopted by the Committee at its 134th session (28 February–25 March 2022).

*** The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Wafaa Ashraf Moharram Bassim, Yadh Ben Achour, Arif Bulkan, Mahjoub El Haiba, Furuya Shuichi, Carlos Gómez Martínez, Marcia V.J. Kran, Duncan Laki Muhumuza, Photini Pazartzis, Hernán Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Soh Changrok, Kobauyah Tchamdja Kpatcha, Hélène Tigroudja, Imeru Tamerat Yigezu and Gentian Zyberi.

Facts as submitted by the author

2.1 The author asserts that when he was a minor, he was raped several times by a priest of the Roman Catholic Church in Lithuania.[1] The priest disputes the allegation. When the author became an adult, he sent a series of emails to the priest during the period from June to December 2007, in September 2009 and in May 2010. In those emails, the author asked the priest for compensation for the acts of rape.

2.2 On 31 March 2010, the priest lodged a criminal complaint against the author for harassment. During the criminal pretrial investigation, the author was served with a notice of suspicion on 12 August 2010.[2]

2.3 During the pretrial investigation, the Office of the Šiauliai District Prosecutor subjected the author to travel restriction measures and prohibited him from leaving the country from 8 September 2010 to 7 January 2011. Every Tuesday and Friday, the author was required to register his presence at a police station. The travel restriction measures thwarted the author's plans to study at a university in Denmark. Subsequently, from 7 January 2011 to 7 June 2011, the author was subject to bail, which restricted his freedom of movement. Failure to appear before an investigator would have caused the author to lose part or all of his bail.[3]

2.4 On 7 June 2011, the Office of the Šiauliai District Prosecutor discontinued the investigation due to the absence of a crime. Subsequently, the author filed a claim for the damages caused by the supervisory measures that had restricted his freedom of movement. On 23 January 2017, the Vilnius District Court dismissed the author's claim for damages.[4] On 5 April 2018, the Vilnius Regional Court denied the author's appeal against the decision of the District Court.[5] Subsequently, the author filed a cassation appeal against the decision of the Regional Court. On 4 July 2018, the Supreme Court declared the appeal inadmissible.

2.5 The author states that he has not submitted the matter for consideration to another international mechanism of investigation or settlement.

Complaint

3.1 The author asserts that the State party has violated his rights under articles 2 (2), 12 and 14 (2) of the Covenant.[6] With respect to article 12 of the Covenant, the State party prohibited the author from leaving Lithuania, and required him to appear before police twice a week for a period of four months. The subsequent imposition of bail for a period of five months also restricted the author's freedom of movement, because the author would have lost a portion or all of the bail had he failed to report to law enforcement as required. In addition, even though the pretrial investigation of the author was later discontinued, the State party failed to compensate the author for the restriction on his freedom of movement.

3.2 The author asserts that by failing to presume the author's innocence, the State party violated his rights under article 14 (2) of the Covenant, since he "remained innocent after the

[1] The author does not provide further details on the incidents of sexual violence, does not state when they occurred, nor does he provide copies of the emails.

[2] The author does not provide further details about the notice.

[3] The author does not state how often or when he was required to report to an investigator during the period for which bail was imposed. As mentioned in para. 4.7, according to the State party, the amount of bail was €1,448.

[4] The author provided a short, translated excerpt of the decision of the District Court of Vilnius City. According to the excerpt, the District Court found that "illegal acts or inaction of law enforcement institutions" had not been proven. The Court also stated: "It shall be noted that when the claimant produced respective documents, his supervision measure was altered into a new one, which did not restrain his studies in Denmark."

[5] The author provided a short, translated excerpt of the decision of the Vilnius Regional Court. According to the excerpt, the Regional Court stated that there was "no data that any illegal acts of officers would be established in respect of the claimant" to warrant the payment of damages under article 6.272 (1) of the Civil Code.

[6] In later submissions (see paras. 5.5 and 7.2 below), the author also raised a claim under article 14 (1), and claims under article 2 (2), read in conjunction with articles 12, 14 (1) and 14 (2) of the Covenant.

discontinuation of the pretrial investigation, but he also remained partially punished by the restriction of his freedom of movement".

3.3 The author argues that, in violation of his right to an effective remedy under article 2 (2) of the Covenant, the State party never compensated him for the damages caused by the supervisory measures, despite the fact that he was found innocent. The State party never pays damages to criminal suspects who are eventually found to be innocent for the imposition of supervisory measures restricting freedom of movement.

3.4 As remedies, the author requests the State party to: (a) either pay damages in the amount of €30,000 or reopen his case; (b) reimburse costs in the amount of €10,000; (c) educate public servants and judges about the Covenant and its binding nature; (d) dismiss public servants who deny the binding nature of the Covenant, Views and concluding observations of the Committee; (e) ensure that breaches of the Covenant are promptly, thoroughly and impartially investigated and that perpetrators are held accountable for their acts; and (f) prevent similar violations of the Covenant in the future.

State party's observations on admissibility and the merits

4.1 In its submission dated 18 September 2019, the State party considers that all of the author's claims are inadmissible because they are insufficiently substantiated and because the author failed to exhaust domestic remedies. In addition, the author's claims under articles 2 (2) and 12 of the Covenant are inadmissible *ratione materiae*. The author's claims are also without merit.

Factual background

4.2 According to the State party, in 2004 and 2008, the author asked a bishop to investigate acts allegedly committed against him by a priest. In December 2007, the author asked a prosecutor to open a pretrial investigation against the priest and claimed that the priest had attempted to sexually assault him on two occasions in the early 1990s. Specifically, the author alleged that the priest had attempted to insert his tongue into the author's mouth and had forced him to open his mouth. In January 2008, the prosecutor denied the author's request to open a pretrial investigation against the priest. The prosecutor based that decision on the expiration of the 10-year statutory period for reporting a criminal act (the alleged crime had been committed 14–17 years before the author reported it) and on the author's refusal to provide to the prosecutor all of the correspondence he had sent to the bishop.

4.3 In April 2010, the accused priest asked the prosecutor to initiate a pretrial investigation against the author for extortion and false information about an alleged criminal act. The priest stated that on several occasions, in 2007, 2009 and 2010, the author had sent several emails to a bishop requesting his suspension from the priesthood and requesting compensation for suffering in the amount of 6,000,000 litas (approximately €1,737,720). The author also threatened to submit compromising information about the priest to the media and, on one occasion, to use physical violence against the priest, who would then have required urgent medical services on Christmas morning. In his emails, the author called the priest various inappropriate names and stated that the priest had sexually harassed him. The author also threatened to initiate civil proceedings and included some news articles on castration. The author also mentioned an incident that had reportedly occurred a few years before, in which an individual in Lithuania had attacked a Catholic priest. The author also stated that the latter individual could have been the priest that the author was accusing, because the priest involved in the prior incident reminded him of a "paedophile, Mr. [name of the priest accused by the author]". The author also sent some text messages directly to the accused priest, asking him to leave the priesthood and pay him compensation.

4.4 On 8 September 2010, the author was served with a notice of suspicion and, on the same day, law enforcement officers questioned him. He refused to make a statement until he received the case file relating to the investigation performed by the church regarding his allegations against the priest. Also on the same day, the author was subjected to restrictive measures. Specifically, he was ordered not to leave his mother's apartment without the permission of the authorities; his documents (passport and identity card) were confiscated; and he was ordered to present himself at a police station on Tuesday and Friday every week.

4.5 On 9 September 2010, the author's lawyer requested the prosecutor, inter alia, to modify the restrictive measures imposed on his client and to impose bail instead, because the author had been studying and living in Denmark. On 13 October 2010, the Office of the Šiauliai Regional Prosecutor denied that request on the grounds that the author had failed to submit any information indicating that he studied and lived abroad, namely in Denmark. The author did not contest that aspect of the decision.

4.6 On 29 October 2010, the prosecutor noted that since the documents submitted by the author were copies instead of originals, were in English of poor quality and had not been approved by the relevant authorities, it was not possible to assess their substance or authenticity. Nevertheless, the prosecutor decided to allow the author to travel to Denmark and spend three weeks there to collect the documents that he needed to prove that he had been studying there.

4.7 On 31 December 2010, the author's lawyer requested annulment of the restrictive measures. On 7 January 2011, the travel restriction measures were lifted, taking into account the information that the author provided regarding his residence permit and studies in Denmark, and the author was instead subjected to bail in the amount of €1,448. The author did not appeal the decision to change the travel restriction measures to bail.

4.8 On 7 June 2011, the pretrial investigation was terminated because no criminal act had been committed, and the amount that the author had paid as bail was returned to him.

4.9 On 9 June 2011, the complaint submitted by the author's lawyer regarding the length of the pretrial investigation against him was dismissed, and the author did not appeal against that decision.

4.10 In 2012, at the author's request, VIA University College in Denmark removed him from its list of students.

4.11 On 18 June 2014, the author filed a civil claim before the District Court of Vilnius City, requesting non-pecuniary damages of €621,453 and costs and expenses of €36,822.46 for unlawful and incompetent actions by the Office of the Prosecutor. In May 2015, the author submitted additional specific information regarding his claim, asserting that the church had no right to transfer his emails to the prosecutor because they constituted a confidential confession and that the prosecutor had planned to carry out a search and other procedural actions in May 2010, demonstrating that he had prior negative views about the author. The author also claimed that because of the restrictive measures imposed, he lost his source of income because he had been living and working in Denmark. He also maintained that he could not continue his studies in Denmark and that his arrest would have been a better option than the restrictive measures imposed.

4.12 On 23 January 2017, the District Court of Vilnius City dismissed the author's civil claim, stating that the civil responsibility of the State required the existence of three conditions: unlawful actions of the authorities (or failure to act); damages caused by the unlawful actions (or failure to act); and a causal link between the unlawful actions (or failure to act) and damages. The criterion of unlawful actions would be established where pretrial investigation officers, prosecutors or a court made a mistake that had a major impact on the breach of the claimant's rights in criminal proceedings. The District Court noted that according to the jurisprudence of the Supreme Court, a judgment of acquittal or the termination of a pretrial investigation did not necessarily signify that all of the actions related to the prosecution were unlawful. That is to say, the acquittal of an individual in criminal proceedings did not signify that the application of civil restrictive measures was unlawful ab initio. The District Court also invoked the jurisprudence of the European Court of Human Rights, according to which the acquittal of an individual does not in and of itself signify that the prosecution of the individual was illegal or otherwise tainted in the first place.[7]

4.13 The District Court of Vilnius City further observed that the following factors were relevant in determining the civil responsibility of the State: whether the prosecution initially possessed sufficient information to indicate that the suspect had committed a criminal act;

[7] The State party cites European Court of Human Rights, *Case of Lavrechov v. the Czech Republic*, application No. 57404/08, Judgment, 20 June 2013, para. 50.

the reason for termination of the pretrial investigation; and the lawfulness of the actions taken during the pretrial investigation. In the author's case, the elements of the crimes set forth under articles 181 and 294 of the Criminal Code were present. The prosecution had terminated the pretrial investigation against the author because his emails to the church did not constitute an unlawful publication of information and no undisputable proof of his guilt of a crime had been received. However, that did not mean that the initiation of the pretrial investigation was unlawful. The prosecutorial officers decided to terminate the investigation only after having taken various procedural actions, including questioning the author. The District Court also held that the pretrial investigation was not excessively lengthy. With respect to the restrictive measures, the District Court disagreed with the author's view that more lenient measures could have been applied and considered that the most lenient measures had been applied. Furthermore, it was the author and his lawyer who had protracted the process of modifying the restrictive measures. When the author requested to go to Denmark to collect documents, the prosecutor allowed him to do so for three weeks. The District Court also found that the author had failed to prove that the investigative actions carried out during the pretrial investigation indicated a negative disposition by the investigative authorities towards him. With respect to non-pecuniary damages, the District Court found that the author had failed to provide any evidence to substantiate the amount of the compensation requested. The District Court also held that the author's behaviour had influenced the length of the pretrial investigation. As soon as the author provided the relevant documents to the prosecutor, the prosecution changed the restrictive measures to bail. The District Court dismissed the author's claim on the grounds that there was no evidence of unlawful actions by the authorities and because the statutory limitations period for filing a claim for damages under article 1.125 (8) of the Civil Code had been exceeded. On 7 June 2011, the prosecutor issued the decision to terminate the pretrial investigation against the author, and on 9 June 2011, the Šiauliai District Court dismissed the author's complaint regarding the pretrial investigation. Thus, the three-year statute of limitations period to apply for damages relating to the pretrial investigation began to run on 9 June 2011. The author submitted his claim for damages after that date, on 18 June 2014.

4.14 On 5 April 2018, the Vilnius Regional Court dismissed the author's appeal on the basis of the fact that the District Court had already thoroughly assessed the same arguments that the author presented at appeal. On 4 July 2018, the Supreme Court rejected the author's appeal on points of law owing to the absence of grounds for cassation.

Response to author's claims

4.15 The author's claims under articles 2 (2), 12 and 14 (2) of the Covenant are each inadmissible because the author did not exhaust domestic remedies. Specifically, he did not file a civil claim for damages within the period allowed for by law. Under article 1.125 (8) of the Civil Code, a three-year statutory limitations period applies to claims for damages, and, as explained in paragraph 4.13 above, the author submitted his claim after the expiration of that period, on 18 June 2014.[8] The limitation period begins to run from the date on which the right to bring an action accrues. Individuals have the right to bring an action as of the date on which they become aware, or should have become aware, of a breach of their rights.[9]

4.16 In addition, the author's claim under article 2 (2) of the Covenant is inadmissible *ratione materiae* under article 3 of the Optional Protocol. According to the Committee's jurisprudence, the provisions of article 2 of the Covenant cannot give rise, when invoked separately, to a claim in a communication under the Optional Protocol. With respect to the merits of the author's claim under article 2 (2), the State party cites numerous examples of domestic jurisprudence to demonstrate that its courts do award compensation for non-pecuniary damages when individuals have been acquitted, when restrictive measures have been applied without reasonable grounds or when their duration is excessive. Thus, an effective remedy indeed exists under the laws of the State party. The mere fact that the pretrial investigation against the author was terminated does not mean that it was opened without any

[8] The State party provides the text of article 1.125, para. 8, of the Civil Code, which states that: "Abridged three-year prescription shall be applied with respect to claims for the compensation of damage, including claims for the compensation of damage caused by defective production."

[9] Article 1.127, para. 1, of the Civil Code.

reasonable grounds. The effectiveness of a remedy does not depend on the certainty of a favourable outcome for the author and mere doubts about the effectiveness of a remedy do not absolve the author from the obligation to attempt to exhaust that remedy.[10] Finally, the author's claim under article 2 (2) of the Covenant is overbroad, abstract, general and insufficiently substantiated.

4.17 The author's claim under article 12 (2) is also inadmissible because it is insufficiently substantiated.[11] The rights under article 12 (2) of the Covenant are not absolute, as permissible restrictions may be applied under article 12 (3) of the Covenant. Under the jurisprudence of the Committee, pending judicial proceedings may justify restrictions on the right of individuals to leave their country. In the present case, restrictive measures were imposed on 8 September 2010 in the context of criminal proceedings against the author. Those measures were lawful, as they conformed to the Code of Criminal Procedure.[12] They served the legitimate aim of protecting public order and the rights and freedoms of others by ensuring the author's availability for the pretrial investigation. The restrictive measures were also proportional, given that the author was suspected of having committed two criminal offences punishable by imprisonment. Indeed, according to the jurisprudence of the European Court of Human Rights, a State party may apply various preventive measures that restrict the liberty of an accused in order to ensure the efficient conduct of a criminal prosecution.[13]

4.18 The restrictive measures were imposed by a prosecutor. When the author initially asked to change the restrictive measures to bail, his request was denied by a higher prosecutor on 13 October 2010 because the author had failed to provide documentation demonstrating that he had been living and studying abroad, in Denmark. The author did not appeal that decision. The higher prosecutor noted that the rejection of the request did not prevent the author from submitting a later request for bail with the aforementioned documentation. On 29 October 2010, despite the absence of that documentation, the prosecutor permitted the author to travel to Denmark for three weeks. On 31 December 2010, the author's lawyer again requested an annulment of the restrictive measures. Those measures were changed to bail on 7 January 2011. In his decision, the prosecutor noted that the author had a residence permit and had studied at a university in Denmark. Thus, the restrictive measures were promptly modified after the author submitted the required documentation. Those measures did not disproportionately limit the author's freedom of movement and were reasonable, given that they were imposed in the context of criminal proceedings on suspicion that the author had committed two criminal offences.

4.19 The State party does not agree that the restrictive measures prevented the author from finishing his studies in Denmark, because the pretrial investigation was terminated in June 2011 and the author was allowed to finish his studies before January 2013. However, the author informed the university that he was withdrawing from enrolment in 2012. The decisions of the domestic courts not to award the author compensation for the application of the restriction measures were lawful and reasonable. Thus, the communication is unsubstantiated. The State party reiterates that the author's complaint regarding compensation for non-pecuniary damages was found to have been submitted after the end of the three-year statutory limitations period.

[10] The State party cites, for example, *L.O.P. v. Spain* (CCPR/C/103/D/1802/2008).

[11] In his complaint, the author invoked article 12, but not specifically article 12 (2) of the Covenant. In his later comments dated 19 November 2019, he again referred to a violation of article 12, and also alleged that the State party's violation of article 2 (2) of the Covenant was "a consequence of breach of articles 12 (1), 12 (2), 14 (1) and 14 (2)".

[12] The State party provides the text of article 119 of the Code of Criminal Procedure, which states that: "Restrictive measures can be imposed in order to ensure the participation of a suspect, accused or sentenced person in the proceedings, unimpeded pre-trial investigation, examination of a case at the court and execution of judgment, as well as to prevent new criminal acts from being committed". The State party also cites article 121 of the same code as stating the following: "[…]. 2. Restrictive measures can be imposed only when there is enough information to believe that a suspect had committed a criminal act. 3. More than one restrictive measure that is more lenient than arrest can be imposed".

[13] The State party cites European Court of Human Rights, *Fedorov and Fedorova v. Russia*, application No. 31008/02, Judgment of 13 October 2005, para. 41.

4.20 The author's claim under article 14 (2) is inadmissible *ratione materiae*, because the guarantee of the presumption of innocence applies to the determination of criminal charges against individuals, whereas in the present case, the author was not charged with a criminal offence.[14]

4.21 Furthermore, the claim under article 14 (2) is inadmissible because it is unsubstantiated. During the civil proceedings, the domestic courts never expressed any views intimating the author's guilt. It was not unreasonable for the domestic courts to find that there was prima facie evidence permitting the State to initiate a criminal investigation against the author. The termination of the investigation was based on the circumstances mentioned above and did not mean that the author was exempted from the obligation of having to prove his claim for damages. The domestic courts were required, and therefore entitled, to decide whether the author had properly discharged his burden of proof. Furthermore, the fact that the civil domestic courts refused to award the author compensation for non-pecuniary damages cannot be construed as indicating that the courts had prejudged the matter of the author's guilt on any criminal charge. The domestic courts in the civil proceedings did not opine on the matter of the author's guilt.

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

5.1 In his comments dated 19 November 2019, the author notes, in response to the State party's assertion that he missed the three-year statutory period for filing a claim for damages, that the merits of his claims were assessed by the domestic authorities. Furthermore, there was no period of inaction, because the author attempted to sue the State party in the courts of Denmark before resorting to the State party's courts.

5.2 The State party should consider itself a neutral public authority with a positive obligation to provide compensation for any wrong, including wrongs caused by the State party.

5.3 The author argues he discontinued his university studies after the end of the pretrial investigation as he had to work in order to pay the legal costs that resulted from the investigation. Thus, the State party is also responsible for the author's lost opportunity to study and inability to graduate from university. Had his studies been uninterrupted, he might have developed the ability to secure a better-paying job in the future.

5.4 The author raises a new claim under article 14 (1) of the Covenant, and argues that in accordance with the principle of equality before the courts, the State party should pay the legal costs that he incurred during the pretrial investigation, since the losing party to civil proceedings must pay the costs of the winning party. Furthermore, the investigation was excessively long, given that it ended in September 2010.

5.5 Reiterating his claim under article 14 (2) of the Covenant, the author asserts that the State party misunderstood his argument. Article 14 (2) of the Covenant requires the State party to compensate the author for the restrictive measures, which caused him to lose his job in Denmark and incur expenses for psychiatric treatment and legal services. The author provides a detailed accounting of the expenses that he incurred because of the investigation, and claims that the State party must reimburse those costs with interest (including costs relating to the present communication). The author revises his request for damages as follows: pecuniary damages of €109,908.55; non-pecuniary damages amounting to "at least 60 average Danish gross salaries at the level of 2020"; and costs of €12,566.

5.6 With respect to article 2 (2) of the Covenant, the author asserts that the State party misunderstood his argument. The State party's violation of article 2 (2) of the Covenant is "a consequence of [a] breach of articles 12 (1), 12 (2), 14 (1) and 14 (2)".[15] The State party has never accepted liability for damages caused by restrictive measures such as a prohibition on leaving the country or bail.

[14] The State party cites, for example, *Jagminas v. Lithuania* (CCPR/C/126/D/2670/2015 and CCPR/C/126/D/2670/2015/Corr.1).

[15] The author does not expand on this point.

State party's additional observations

6.1 In its further observations dated 11 February 2020, the State party reiterates its various arguments and raises a procedural objection. The author's new claim under article 14 (1) of the Covenant was not raised in any form in his initial submission, and thus the Committee should not examine it.

6.2 Contrary to the author's assertion, the State party does pay damages for unlawful restrictive measures. There is well-established case law regarding civil claims for damages for similar restrictive measures. The State party reiterates that its laws provide for responsibility for damages caused by unlawful actions of pretrial investigation officers, prosecutors, judges and the courts. However, illegal or unreasonable detention represents a much more severe measure than the measures applied to the author, which were the most lenient restrictive measures available under domestic law and were lawful, which is why the State party did not award damages to the author.

6.3 With respect to article 12 (2) of the Covenant, the State party gives no credence to the author's argument that he tried to sue the State party in Denmark. Complaints and claims regarding actions or omissions by the State party's authorities should be filed in Lithuania, not in Denmark. The State party disputes the author's allegations on various issues. In accordance with domestic law, the State party has an obligation to open a pretrial investigation when a complaint, a request or a notice about a criminal act is received. In the present case, the pretrial investigation was opened at the request of the priest.

6.4 With respect to article 14 (2) of the Covenant, the restrictive measures did not constitute a punishment, but were applied in order to ensure the author's availability for effective pretrial investigation. The State party should not be required to compensate the author for his legal costs or for the psychiatric evaluation, which was performed exclusively at the author's initiative and was not required by the State party's authorities. The author also chose to be represented by a specific lawyer and the termination of the investigation does not mean that the State party is liable for his legal costs.

Additional comments from the author

7.1 In his submission dated 27 February 2020, the author refers to the Committee's procedure regarding the time frame for submitting a communication. Because the author's submissions to the Committee have been presented within five years of the date on which he exhausted domestic remedies, he may raise new claims under the Covenant until the end of that five-year period. Specifically, because the author exhausted domestic remedies on 4 July 2018, he may raise new claims under the Covenant until 4 July 2023. Alternatively, he could submit an entirely new communication, but he has chosen to submit new claims within the context of the present communication for the sake of economy. Even after the conclusion of the five-year period, the author would have the right to submit additional claims, because all of the relevant circumstances would need to be taken into account in assessing the reasons for the delay in submission. The State party's argument that the author's new claims are inadmissible because they were not mentioned in the initial communication does not serve the interests of justice and constitutes an abuse of procedure.

7.2 The author claims a violation of his rights under article 2 (2), read in conjunction with articles 12, 14 (1) and 14 (2) of the Covenant. He states that his claim under article 2 (2) of the Covenant relates to the State party's failure to pay compensation for the restrictions on his freedom of movement for the violation of his rights under articles 14 (1) and 14 (2) of the Covenant. In its observations, the State party deliberately misinterpreted the author's claim under article 2 (2) of the Covenant.

7.3 The author missed two semesters of university studies owing to his inability to travel to Denmark. He was required to pay for bail and the services of a defence lawyer. He had to terminate his university studies in order to work so that he could cover his legal costs and was unable to pay for two semesters of study at his university. Thus, the restrictive measures resulted in serious harm to the author.

7.4 Regarding the costs for the examination of the author by a psychiatrist, the author was examined by a psychiatrist in Denmark. On that basis, the Lithuania Forensic Psychiatry Service determined that there was no need to examine the author again.

7.5 The author requests that the Committee establish a mathematical and universal formula for the evaluation of damages. Such a formula should be linked to the average national salary rather than to a minimum salary. Thus, taking into account the fact that the author was a resident of Denmark, he requests non-pecuniary damages in the amount of 60 times the average salary in Denmark in 2020. The author reiterates his request for pecuniary damages of €109,908.55, and interest at a rate of 6 per cent, compounded annually as of 19 November 2019. While successful claimants may obtain €1,500 for non-pecuniary damages and €2,900 for pecuniary damages under the State party's legislation, those amounts are inadequate. The Committee should also request the State party to compensate the author for the new legal costs that he incurred when submitting his additional comments on the State party's further observations.

Issues and proceedings before the Committee

Consideration of admissibility

8.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 97 of its rules of procedure, whether the communication is admissible under the Optional Protocol.

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

8.3 The Committee notes the State party's position that the author has not exhausted domestic remedies, as required by article 5 (2) (b) of the Optional Protocol. The Committee recalls its jurisprudence in which it stated that although there is no obligation to exhaust domestic remedies if they have no chance of success, authors of communications must exercise due diligence in the pursuit of available remedies and that mere doubts or assumptions about their effectiveness do not absolve the authors from exhausting them.[16] Regarding the author's claim that the imposition of bail constituted a violation of article 12 of the Covenant, the Committee observes that while the author filed a claim for compensation and related appeals after the conclusion of the pretrial investigation, he did not oppose the imposition of bail before the domestic courts.[17] The Committee notes that the author himself requested that the authorities change the travel restriction measures to bail and that the request was granted shortly after he provided the requested documentation to establish that he was studying abroad. The Committee notes that the author has not responded to the State party's assertion that he did not contest the decision of the Prosecutor to impose bail. The Committee notes that while the author argued, when specifying his claim for compensation after the conclusion of the investigation, that he would have preferred to have been detained rather than be subjected to bail,[18] he does not allege to have raised that claim before any authority during the pretrial investigation. Thus, the Committee finds that the author's claim that the imposition of bail violated his rights under article 12 of the Covenant is inadmissible because the author did not exhaust domestic remedies, as required by article 5 (2) (b) of the Optional Protocol.

8.4 The Committee notes that in his comments dated 19 November 2019, the author raised claims that he did not invoke in his initial communication, under article 14 (1), read alone and in conjunction with article 2 (2) of the Covenant. The Committee recalls its jurisprudence in which it stated that authors must raise all of their claims in their initial submission, before the State party is asked to provide its observations on admissibility and the merits of the communication, unless the authors can demonstrate why they were unable to raise all of their claims simultaneously. In the present case, because the author has not indicated why he could

[16] See, for example, *X et al. v. Greece* (CCPR/C/126/D/2701/2015), para 8.5; and *Vargay v. Canada* (CCPR/C/96/D/1639/2007), para. 7.3.

[17] See para. 4.7 above.

[18] See para. 4.11 above.

not have raised his claims under article 14 (1), read alone and in conjunction with article 2 (2) of the Covenant, in his initial submission, the Committee considers that the latter claims constitute an abuse of the right of submission and are therefore inadmissible under article 3 of the Optional Protocol.

8.5 The Committee notes the State party's argument that the author's claim under article 2 (2) of the Covenant is inadmissible *ratione materiae*. The Committee recalls its jurisprudence stating that the provisions of article 2 of the Covenant lay down general obligations for States parties and cannot give rise, when invoked separately, to a claim in a communication under the Optional Protocol.[19] For that reason, to the extent that the author is invoking article 2 (2) of the Covenant, read alone, the Committee finds that claim inadmissible *ratione materiae* under article 3 of the Optional Protocol.

8.6 With respect to the State party's argument that the author's claim under article 14 (2) of the Covenant is inadmissible *ratione materiae*, the Committee notes that article 14 (2) applies to individuals charged with a criminal offence.[20] The Committee further recalls that the notion of a criminal charge may extend to sanctions that, regardless of their qualification under domestic law, must be regarded as penal in nature because of their purpose, character or severity.[21] With respect to the set of facts presented to the Committee, it notes that the author was never charged with or found guilty of a criminal or other offence. Thus, the Committee considers that the author's claim falls outside of the scope of the protection of article 14 (2) of the Covenant and finds that the author's claims under article 14 (2), read alone and in conjunction with article 2 (2) of the Covenant, are incompatible *ratione materiae* with the provisions of the Covenant and are therefore inadmissible under article 3 of the Optional Protocol.

8.7 The Committee notes the author's argument that the travel restriction measures violated his right to freedom of movement under article 12 of the Covenant because they prevented him from continuing his studies in Denmark and required him to report to the police twice a week for four months. The Committee also notes the author's claim that he did not receive an effective remedy for that violation, in breach of his rights under article 2 (2), read in conjunction with article 12 of the Covenant (see footnote 7 above). The Committee also notes the State party's position that those claims are unsubstantiated and thus inadmissible. The Committee recalls that the rights under article 12 of the Covenant are not absolute[22] and that, pending judicial proceedings, individuals may be restricted in their right to leave their country.[23] Under article 12 (3) of the Covenant, restrictions are permissible when they are provided by law, are necessary to protect national security, public order, public health or morals, or the rights and freedoms of others and are consistent with the other rights recognized in the Covenant. The Committee notes that the State party argues that the travel restriction measures were imposed in the context of criminal proceedings against the author and therefore lawful under the Code of Criminal Procedure, legitimate for protecting public order and the rights and freedoms of others by ensuring the author's availability for the pretrial investigation and proportional. The Committee further observes that the author has not attempted: to explain why he believes that the circumstances set forth under article 12 (3) of the Covenant do not apply in his case; has not responded to the State party's statement that he had made written threats to the priest, including threats of imminent and serious bodily harm and a request for a large payment from the priest in exchange for his agreement to refrain from accusing the priest in the media, for which he was suspected of having committed two serious crimes punishable by imprisonment; and has not provided specific arguments alleging that the travel restriction measures and reporting requirements were unlawful, unnecessary, or disproportionate under those particular circumstances. Furthermore, the Committee recalls that, at the author's request, the authorities lifted the

[19] See *S.R. v. Lithuania* (CCPR/C/132/D/3313/2019, para. 8.8; *Ch.H.O. v. Canada* (CCPR/C/118/D/2195/2012), para. 9.4; and *X v. Czech Republic* (CCPR/C/113/D/1961/2010), para. 6.6.

[20] General comment No. 32 (2007), para. 3; and *Jagminas v. Lithuania*, para. 7.4.

[21] *J. Suleymanova and G. Israfilova v. Azerbaijan* (CCPR/C/133/D/3061/2017), para. 6.5; and *E. Sadykov v. Kazakhstan* (CCPR/C/129/D/2456/2014), para. 6.6.

[22] See, for example, *Zoolfia v. Uzbekistan* (CCPR/C/96/DR/1585/2007), para. 8.3.

[23] *Petromelidis v. Greece* (CCPR/C/132/DR/3065/2017), para. 9.

travel restriction measures and imposed bail instead, shortly after the author provided the requested documentation. Accordingly, the Committee considers that the author has failed to sufficiently substantiate his arguments concerning the alleged violation of the State party through imposition of the travel restriction measures and reporting requirements under article 12, read alone and in conjunction with article 2 (2) of the Covenant, and accordingly considers those claims inadmissible under article 2 of the Optional Protocol.

9. The Committee therefore decides:

(a) That the communication is inadmissible under articles 2, 3 and 5 (2) (b) of the Optional Protocol;

(b) That the present decision shall be communicated to the State party and to the author.