



International Covenant on Civil and Political Rights

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Human Rights Committee

Views adopted by the Committee under the Optional Protocol, concerning communication No. 3065/2017*, **, ***

<i>Communication submitted by:</i>	Lazaros Petromelidis (represented by counsel, Georgios Karatzas)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Greece
<i>Date of communication:</i>	31 December 2015 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 8 December 2017 (not issued in document form)
<i>Date of adoption of Views:</i>	2 July 2021
<i>Subject matter:</i>	Conscientious objection to compulsory military service; punitive alternative civilian service
<i>Procedural issues:</i>	Non-exhaustion of domestic remedies; victim status; abuse of the right of submission; incompatibility <i>ratione temporis</i>
<i>Substantive issues:</i>	Right to liberty; freedom of movement; right to a fair trial; right to not be tried or punished for the same offence (<i>ne bis in idem</i> principle); freedom of thought, conscience and religion; discrimination
<i>Articles of the Covenant:</i>	9 (1), 12 (2), 14 (1) and (7) and 18 (1) and (2)
<i>Articles of the Optional Protocol:</i>	1, 3 and 5 (2) (b)

1.1 The author is Lazaros Petromelidis, a national of Greece born in 1963. He claims that the State party has violated his rights under articles 9 (1), 12 (2), 14 (1) and (7) and 18 (1) and (2) of the Covenant. The Optional Protocol entered into force for Greece on 5 May 1997. The author is represented by counsel.

* Adopted by the Committee at its 132nd session (28 June–23 July 2021).

** The following members of the Committee participated in the examination of the communication: Tania Abdo Rocholl, Yadh Ben Achour, Arif Bulkan, Wafaa Ashraf Moharram, Mahjoub El Haiba, Furuya Shuichi, Duncan Laki Muhumuza, Carlos Gómez Martínez, Hernán Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Soh Changrok, Kobauyah Tchamdja Kpatcha, Hélène Tigroudja and Imeru Tamerat Yigezu. Pursuant to rule 108 (1) (a) of the Committee's rules of procedure, Photini Pazartzis, did not participate in the examination of the communication.

*** Individual opinions by Committee members José Manuel Santos Pais and Hélène Tigroudja, (dissenting) are annexed to the present Views.



1.2 On 15 March 2018, the State party submitted its observations on admissibility and asked the Committee to consider the admissibility of the communication separately from its merits. Considering that the State party had submitted its observations on the merits of the case prior to the Committee's decision on the State party's request to examine the admissibility of the communication separately from its merits, the Committee's decision on the State party's request became redundant.

Facts as submitted by the author

2.1 The author is a conscientious objector who has been called up by the State party to perform his compulsory military service on numerous occasions beginning on 17 March 1992.¹ The right of conscientious objection was not recognized by the State party until new laws were enacted on 1 January 1998. Consequently, prior to 1998, no exemption from compulsory military service could be granted, nor was an alternative to compulsory military service available for conscientious objectors.

2.2 On the ground of the author's refusal to perform compulsory military service, criminal proceedings were launched against him and on 20 July 1992, a travel ban was imposed on him. On 6 February 1997, a warrant was issued for his arrest. On 27 May 1998, he was placed in pretrial detention but was released on 2 June 1998 owing to his request to perform alternative civilian service.

2.3 On 23 November 1998, following the adoption of Law No. 2510/1997 on conscription, the author was recognized as a conscientious objector and was ordered to perform alternative civilian service for a period of 39 months at a health centre in Kilkis, which is approximately 550 km from his home in Athens.² Since the author failed to appear for the civilian service, his conscientious objector status was withdrawn on 10 February 1999. On 14 February 1999, the author appealed to the Council of State, complaining about the punitive nature of the alternative civilian service on the grounds of its excessive length. On 2 March 1999, he filed another appeal with the Council of State challenging the withdrawal of his conscientious objector status. Both appeals were dismissed in April 2002.

2.4 On 15 April 1999, the author was convicted for "insubordination during a time of general mobilization" on account of his failure to enlist from 18 March 1992 to 17 May 1998 (first conviction). He was sentenced to four years' imprisonment. He began serving his sentence on 15 April 1999 and remained in prison for a period of 75 days.

2.5 On 17 September 2002, the author was arrested and detained for insubordination on account of his failure to perform alternative civilian service from 17 January 1999 to 15 April 1999. The author was placed in pretrial detention on 17 September 2002 and released on 19 September 2002. On 19 September 2002, the Naval Court of Piraeus held that it did not have jurisdiction in cases related to alternative civilian service, referred the case to the Naval Court of Thessaloniki and ordered the author's conditional release. He had to post bail in the amount of 1,000 euros and report to the local police station on the 1st and 15th of every month. On 19 February 2004, the Naval Court of Thessaloniki held that it did not have jurisdiction, referred the case to the Civil Prosecutor of Misdemeanours of Kilkis and lifted the restrictions still in place. In the end, the author was not brought to trial on this charge.

2.6 On 12 June 2003, the Military Court of Appeals upheld the author's conviction of 15 April 1999 for insubordination but reduced his sentence to 20 months' imprisonment, suspended for three years. This was partially due to the fact that the period of general mobilization period had come to an end. On 2 December 2003, the author appealed this decision to the Court of Cassation, which dismissed the appeal on 7 December 2004.

2.7 Subsequently, the author received several more call-up papers to serve in the military and was repeatedly charged with insubordination because of his refusal to enlist. On 16 December 2004, he was sentenced to two years and six months' imprisonment, convertible into a fine, on two charges of insubordination: from 27 July 1999 to 12 June 2003 and from

¹ Further calls for enlistment were issued in 1993, 1999, 2002, 2003, 2004 and 2005.

² The author submits that in 2001, the law was amended, which would have allowed him to serve only 28 months. In 2004, this period could have been further reduced to 17 months of alternative service on the grounds of his family status.

4 July 2003 to 13 November 2003 (second conviction). On 4 May 2006, the Military Court of Appeals of Athens reduced the author's sentence to five months' imprisonment in respect of each insubordination charge. The author's subsequent appeal to the Court of Cassation was dismissed on 31 May 2007.

2.8 On 1 January 2008, the author's obligation to perform mandatory military service ceased to exist on the grounds of his age. Nevertheless, since new charges had already been brought against him in 2006, in a decision of 20 May 2008 the author was sentenced to three years' imprisonment by the Naval Court of Piraeus on two charges of insubordination: from 23 January 2004 to 19 February 2004 and from 8 October 2004 to 1 January 2008 (third conviction). On 31 March 2009, the Military Court of Appeals of Athens upheld the author's conviction but reduced his sentence to 18 months' imprisonment. The author did not file an appeal to the Court of Cassation because of the cost and length of such procedures and the lack of prospect for success, which was demonstrated by the outcome of his previous appeals. On 20 June 2013, the author was arrested so that he could serve his sentence but he was released the next day as his prison sentence was converted into a fine of 5,431 euros, which he paid.

2.9 On 21 May 2014, there was yet another attempt to arrest the author in order to serve the prison sentence imposed on him on 4 May 2006. That was also converted into a fine of 1,386 euros and also paid.

Complaint

3.1 The author claims that his right to conscientious objection to compulsory military service under article 18 (1) of the Covenant has been violated. On the one hand, he submits that his first conviction was largely based on his refusal to perform military service during a period when the State party had not yet recognized conscientious objectors.³ In that respect, the author refers to the Committee's jurisprudence, in which it has indicated that the right to conscientious objection "entitles any individual to an exemption from compulsory military service if such service cannot be reconciled with that individual's religion or beliefs. The right must not be impaired by coercion".⁴ In addition, and although the author was given the possibility of performing civilian service as a conscientious objector, there are substantial differences between the regimes, which puts any person performing the civilian service at a disadvantage, in breach of article 18 of the Covenant. In particular, the author complains about the substantive difference in the respective periods of service, namely 39 months for civilian service compared to 21 months for military service in his case. Although the applicable laws governing the length of both civilian and military service have changed from time to time in the relevant period, the difference in the duration of the two services remains substantial. Furthermore, the author argues that until 2001, there was no legal basis for the authorities to consider his family status when establishing the length of his civilian service, in contrast to the laws governing military service. Additionally, he claims that the majority of conscientious objectors were only required to serve 36 months on the grounds that they were supposed to serve in the army as compared to him, who was supposed to serve in the navy.⁵ Lastly, the author claims that the penalties imposed on him for his second and third conviction and the fines he had to pay violate his rights under article 18 (2) of the Covenant.

3.2 The author claims that his rights under article 9 (1) of the Covenant have been repeatedly violated by the State party, because he was arbitrarily detained for having legitimately exercised his right of conscientious objection to military service.⁶ The author submits that he was arbitrarily arrested on four occasions and detained for 87 days in total.⁷

3.3 The author claims that his rights under article 14 (1) of the Covenant have also been violated because his cases were tried by military courts. He submits that military courts are

³ From 17 March 1992 to 31 December 1997.

⁴ *Young-kwan Kim et al. v. Republic of Korea* (CCPR/C/112/D/2179/2012), para. 7.3.

⁵ In his comments, the author later submits that in similar cases, the Committee has found a violation of article 26 of the Covenant on account of the discriminatory nature of the alternative civilian service.

⁶ The author refers to *Young-kwan Kim et al. v. Republic of Korea*.

⁷ Between 27 May 1998 and 2 June 1998, between 15 April 1999 and 28 June 1999, between 17 September 2002 and 19 September 2002, and between 20 June 2013 and 21 June 2013.

not competent to try cases of civilians since they do not act independently or impartially in cases relating to the evasion of draft for military service.⁸ Furthermore, the author claims that his second and third convictions constitute repeated prosecutions for the same offence in breach of article 14 (7) of the Covenant.⁹

3.4 In addition, the author claims that the State party has violated his rights under article 12 (2) of the Covenant because a travel ban was imposed on him on 20 July 1992, which prohibited him from leaving the territory of Greece.

State party's observations on admissibility

4.1 In a note verbale dated 15 March 2018, the State party requested the Committee to declare the communication inadmissible for lack of victim status, for abuse of the right to submission and for non-exhaustion of domestic remedies under articles 1, 3 and 5 (2) (b) of the Optional Protocol.

4.2 The State party argues that the author has lost his victim status because he was recognized as a conscientious objector on 23 November 1998 and invited to perform an alternative to military service. It submits that he nonetheless failed to enlist for alternative civilian service within the time limit specified for this purpose, that is before 16 January 1999. Considering that the author had been offered an alternative way to perform his duties and subsequent proceedings were launched against him only because he decided not to avail himself of this opportunity, the State party considers that he has lost his victim status in accordance with article 1 of the Optional Protocol.

4.3 The State party further states that the most recent court decision at the domestic level was delivered on 31 March 2009 and that the author submitted his complaint only on 31 December 2015. According to the State party, this constitutes a substantial delay in the light of the relevant jurisprudence of the Committee and the author failed to adduce any arguments to provide justification in this respect.

4.4 Lastly, the State party notes that the author failed to appeal the decision of the Military Appeal Court of Athens of 31 March 2009 to the Court of Cassation. In that respect, the State party disputes the excessive nature of the cost and length of the proceedings. In addition, the fact that his appeals to the Court of Cassation have been unsuccessful in previous sets of proceedings is insufficient to argue that there is no prospect of success for any future cases. The State party therefore invites the Committee to declare the communication inadmissible for non-exhaustion of domestic remedies pursuant to article 5 (2) (b) of the Optional Protocol.

State party's observations on the merits

5.1 In a separate note verbale dated 7 June 2018, the State party submitted its observations on the merits of the case. Regarding the alleged violation of article 9 (1) of the Covenant, the State party notes that the author's arrests and periods of detention were not arbitrary but in accordance with a procedure prescribed by law. The State party contends that he was arrested further to an arrest warrant and was informed of the reasons for his arrest, and he was held in detention for 75 uninterrupted days and 87 days in total, which does not exceed the maximum duration of 18 months of detention as established by law. Furthermore, the author was able to challenge the lawfulness of his detention and was not prevented from having access to his lawyer or his family members. In such circumstances, the State party considers that there has been no violation of article 9 of the Covenant.

5.2 Regarding the alleged violation of article 12 (2) of the Covenant, the State party recalls that the right to freedom of movement is not an absolute right. In cases where an arrest warrant remains pending, pursuant to article 12 (3) of the Covenant, the right to leave any country may be restricted, primarily on grounds of national security and public order. The State party refers to the jurisprudence of the Committee establishing that the freedom of movement of some individuals, such as convicted criminals and individuals performing

⁸ The author refers to the judgment of the European Court of Human Rights in the case of *Ercep v. Turkey* (application no. 43965/04), judgment of 22 November 2011.

⁹ The author refers to the Committee's general comment No. 32 (2007), paras. 54–55.

military service, may be legitimately subjected to restrictions.¹⁰ The State party takes the position that the impugned measure was based on legitimate grounds, since it was imposed in the interests of public order and national security and also in line with the requirement of equal burden-sharing among all Greek persons. It further notes that no other, less intrusive measures were available. In such circumstances, the State party considers that the restrictions imposed on the author's right to leave his home country were justified under article 12 (3) of the Covenant.

5.3 Regarding the alleged violation of article 14 (1) of the Covenant, the State party emphasizes that article 14 (1) applies to all courts and tribunals, irrespective of whether these are ordinary or specialized courts. According to the State party, trying civilians before military courts and tribunals does not per se infringe the article in question and further, that in the present case, the author was not tried as a civilian. He was tried for insubordination in relation to his refusal to enlist in compulsory military service, in the context of a legal relationship that falls within the scope of military legislation. Furthermore, all military courts in Greece are set up under the Constitution and constitute a part of the judicial power of the State, which is separate and independent from both the executive and legislative powers. All basic judicial guarantees, including the right to a fair trial and the right to a fair and public hearing by a competent, independent and impartial tribunal, apply in military court procedures. The State party thus invites the Committee to find that there has been no violation of article 14 (1) of the Covenant.

5.4 Regarding the alleged violation of article 14 (7) of the Covenant, the State party submits that the author was not convicted for the same offences, since his first conviction was based on his refusal to perform compulsory military service, while his subsequent convictions were based on his non-enlistment for alternative civilian service. It states that the author's convictions after the adoption of Law No. 2510/1997 do not constitute an interference with his rights under the Covenant because he willingly disregarded his obligations stemming from national laws that were brought into harmony with Greece's international human rights obligations. The State party submits that there has therefore been no violation of article 14 (7) of the Covenant.

5.5 Regarding the alleged violation of article 18 of the Covenant, the State party recalls the Committee's jurisprudence, according to which the Covenant protects, as a form of demonstration of religious or ideological beliefs, the objection to the fulfilment of military service; however, that protection does not imply an automatic right to refuse the fulfilment of the obligation by invoking his or her conscience.¹¹ As regards the allegedly punitive nature of the alternative civilian service on account of its length, the State party notes that compulsory military service cannot be compared to an alternative civilian service. Notably, 24-hour shifts in military service are very different from the 8-hour shifts of civilian service performed in an office environment with daily home leave. The State party further contests the discriminatory nature of the alternative civilian service in question and emphasizes that it is the constitutional obligation of all Greek citizens to contribute to the defence of their homeland. Should the Committee consider that the obligation of alternative civilian service constitutes an interference with the author's right to freedom of thought, conscience and religion, the State party asserts that it is a necessary limitation on the individual's rights, in pursuit of the protection of national order and public safety.

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

6.1 On 10 August 2018, the author submitted his comments on the State party's observations on admissibility. The author contests the State party's argument that he has lost his victim status. He stresses that he was never offered alternative civilian service that was not punitive in nature. In any event, he maintains that the State party's arguments disputing his victim status are limited to the period that followed his recognition as a conscientious objector on 23 November 1998. Furthermore, he contests the State party's assertion that all proceedings against him after 23 November 1998 are attributable to his failure to undertake

¹⁰ The State party refers to *Vuolanne v. Finland*, communication No. 265/1987.

¹¹ The State party refers to *Abdullayev v. Turkmenistan* (CCPR/C/113/D/2218/2012) and *Young-kwan Kim et al. v. Republic of Korea*.

alternative civilian service. In that respect, the author reiterates that he was not even brought to trial for the charges concerning his denial of civilian service. Most of his indictments, even after 23 November 1998, were based on his failure to perform military service and were tried by military courts. It follows that he has been a victim of violation by the State party of his rights under article 14 (7) of the Covenant.

6.2 The author contests the State party's allegation that he has failed to exhaust domestic remedies. He submits that the State party's arguments are limited to the third set of proceedings, namely his decision not to appeal the judgment of the Military Court of Appeals of Athens, dated 31 March 2009, to the Court of Cassation. He recalls, however, the Committee's jurisprudence, which establishes that when the highest domestic court has ruled on the matter in dispute in a manner eliminating any prospect that a remedy before domestic courts may succeed, authors are not obliged to exhaust domestic remedies for the purposes of the Optional Protocol.¹² He reiterates that the Court of Cassation had already ruled twice on the same subject matter, including the allegedly punitive and discriminatory nature of the alternative civilian service imposed on him, the only difference being that those decisions concerned different periods. In addition, he maintains that the costs of such proceedings are prohibitive. He notes that by 2009, he found himself in a difficult financial situation because of the procedures against him entailing the payment of bail, fines and legal costs, which has been further exacerbated by his struggle to find employment as an insubordinate person.

6.3 Regarding the State party's argument that the author submitted his complaint with significant delay, the author notes that the Committee's concluding observations on the second periodic report of Greece, for which he waited, was adopted with a significant delay owing to the State party's failure to comply with its reporting obligation in a timely manner.¹³ In any event, he submits that the Optional Protocol does not establish any time limit for the submission of a communication. The five-year rule was set up only in 2012 in the Committee's jurisprudence. The author could not therefore possibly foresee the application of this admissibility criterion in 2009, at the time of the delivery of the last court decision. Furthermore, while the author was convicted in 2007 and 2009, those sentences were only enforced in June 2013 and May 2014. The submission of his communication in 2015 therefore occurred only two years after the enforcement of his fourth and fifth convictions in 2013 and one year after the enforcement of his second and third convictions in 2014. The author further submits that he was concerned that his communication would attract the attention of the domestic authorities and result in the immediate execution of the prison sentences not enforced at the time.

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

7.1 In a separate submission of 10 August 2018, the author submitted his comments on the State party's observations on the merits. He recalls the Committee's concluding observations published in 2005 and 2015, in which it expressed concerns with regard to the State party's relevant laws and practices.¹⁴ The author further contends that it is not the alternative civilian service per se but its excessive length that renders it punitive and discriminatory. He reiterates that he was required to serve 39 months (or later, at least 30 months as the father of a minor) of civilian service compared to 4 months of military service.¹⁵ In that regard, he notes that the State party's statements referring to an 8-hour office working day is misleading because, as corroborated by the annual reports of the Greek Ombudsman, there have been numerous irregularities identified in the Greek system on account of an existing practice followed by some institutions requiring conscientious objectors to work seven days a week, including weekends and holidays, and beyond the usual working hours. He therefore maintains that the State party's laws and practices violate his rights under article 18 of the Covenant. Furthermore, referring to the Committee's jurisprudence, he submits that an alternative civilian service of excessive length may also give rise to a violation of his rights

¹² See, for example, *B.G.V. v. Spain* (CCPR/C/84/D/1095/2002/Rev.1), para. 6.4.

¹³ See [CCPR/CO/83/GRC](#).

¹⁴ *Ibid.* and [CCPR/C/GRC/CO/2](#).

¹⁵ It is submitted that even if his conscientious objector status had been reinstated and taking into account the subsequent developments of the relevant laws, he would have been required to serve at least 17 months compared to 1 month of actual military service.

under article 26 of the Covenant.¹⁶ He notes in this respect that he was discriminated against for the following reasons: (a) he was initially required to perform an alternative civilian service of 39 months instead of 36 months, merely because he was originally called up to serve in the navy and not in the army; (b) the length of his alternative service, even if reduced on the basis of his family status, was not proportionate to that of military service; (c) compared to those individuals performing military service, he was never granted the opportunity to serve only a short portion of his service and buy off the rest; (d) those performing military service can return to their previous position, however there is no such protective measure in place for conscientious objectors.

7.2 He further argues that it is not only its length but other conditions too which render alternative civilian service punitive. In that context, he makes reference to the requirement to perform such services outside places of permanent residence, the low salaries, which are below the subsistence level for those who are assigned to work in social organizations, and the restrictions on freedom of movement for the persons concerned. The author points out that he was requested to serve in Kilkis, approximately 550 km from his place of residence. Furthermore, conscientious objectors in Greece are entitled to a salary only if the institution where they perform their alternative civilian service cannot provide them with food and housing. As the author would have been assigned to carry out his duties in an infirmary for chronic diseases, he would not have received any financial allowance during his 39-month service.

7.3 Regarding article 14 (7) of the Covenant, the author reiterates that all of his convictions result from his refusal to enlist in the military and are based on the same criminal offence.

7.4 Regarding his claim under article 14 (1) of the Covenant, the author reiterates his arguments as to the lack of impartiality of the courts and notes that the prosecutor in the case concerning his first period of insubordination later became the president of the Military Court of Appeals in his trial concerning the second or third periods of insubordination. In any event, the author submits that the State party failed to demonstrate the need to have his case tried by the military courts, which deprived him of important guarantees.

7.5 Regarding his claim under article 9 (1) of the Covenant, the author notes that in fact he spent 75 days in prison uninterruptedly and 87 days in total and that the number of the respective days as presented by the State party fail to include the days of his release. Furthermore, the State party's arguments regarding the length of the author's pretrial detention are not even relevant, on the one hand because some of his periods of detention were based on a final judgment and on the other hand because he has never claimed that his detention was unlawful on the grounds of its length but rather because he was arrested for having exercised his rights under article 18 of the Covenant.

7.6 Regarding his claim under article 12 (2) of the Covenant, the author notes that he was prohibited from leaving Greece, at least during the periods of his insubordination, which amounted to almost 14 years in total. He refers to the case of *González del Río v. Peru* in which the Committee found a violation of article 12 (2) because the victim was prohibited from leaving his country on the grounds of a pending arrest warrant.¹⁷ He recalls that any restrictions under article 12 (2) should be consistent with all the other rights recognized under the Covenant. Considering that the impugned restrictions are closely linked to the violation of his rights under article 18, as well as articles 9 and 14 (1) and (7) of the Covenant, he submits that the interference with his rights under article 12 of the Covenant cannot be justified.

7.7 The author requests that his criminal record be expunged and that the State party provide him with adequate compensation and take the necessary measures to avoid similar violations of the Covenant in the future.

¹⁶ The author refers, inter alia, to the Committee's concluding observations on the fifth periodic report of Austria (CCPR/C/AUT/CO/5), paras. 33–34, and *Foin v. France* (CCPR/C/67/D/666/1995).

¹⁷ See *González del Río v. Peru*, communication No. 263/1987.

Issues and proceedings before the Committee

Considerations 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 case 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 being examined under another procedure of international investigation or settlement.

8.3 The Committee notes the State party's argument that the author failed to exhaust domestic remedies because, in the third set of proceedings, he did not appeal the decision of the Military Appeal Court of Athens of 31 March 2009 to the Court of Cassation. On the other hand, the Committee is mindful of the author's submission that he decided not to appeal to the Court of Cassation for a third time owing to the cost, the length of the procedure and the lack of prospects for success. The Committee recalls that it is only remedies that are both available and effective in a State party that must be exhausted. In that regard, the Committee reiterates that when the highest domestic court has ruled on the matter in dispute, thereby eliminating any prospect that a remedy before domestic courts may succeed, the author is not obliged to exhaust domestic remedies, which are in fact fruitless, for the purposes of the Optional Protocol.¹⁸ The Committee observes that the previous rulings of the Court of Cassation that were delivered in the author's case tend to confirm that an additional resort to this remedy would be futile. The Committee therefore concludes that since the author's claims under articles 12 (2), 9, 14 (7) and 18 (1) and (2) of the Covenant appear to have been raised in the domestic proceedings, which was not contested by the State party, it does not find itself precluded from examining these claims under article 5 (2) (b) of the Optional Protocol.

8.4 With regard to the author's claim under article 14 (1), the Committee observes that from the information available on file it does not appear that the author brought this claim before the domestic courts, nor did he advance any reasons as to why he might have been unable to do so, or why such remedies would not have been effective in his case. In such circumstances, the Committee concludes that the author has failed to exhaust the available domestic remedies with respect to the alleged violation of article 14 (1) of the Covenant. This part of the complaint must therefore be declared inadmissible under article 5 (2) (b) of the Optional Protocol.

8.5 The Committee notes the State party's argument that the author was provided with the opportunity to perform an alternative to military service and that subsequent proceedings were launched against him only because he decided not to make use of that opportunity. The State party submits that he has therefore lost his victim status under article 1 of the Optional Protocol. On the other hand, the Committee notes the author's contention that given the punitive and discriminatory nature of the alternative civilian service, he had no free and real choice. Furthermore, even though his rights have been violated since 1992, the State party's arguments disputing his victim status refer only to the period that followed his recognition as a conscientious objector on 23 November 1998. In the light of the fact that the right of conscientious objection was not recognized in the State party until 1 January 1998, the Committee considers it evident that the author has victim status for the alleged violations that took place during the period from 17 March 1992 to 23 November 1998. As to the period after 23 November 1998, the Committee notes the fact that the author has consistently raised the punitive and discriminatory nature of alternative civil service during the period to explain why he could not make use of it and then was repeatedly charged for failing to enlist in the military service. The Committee therefore considers that the author retained his victim status even after 23 November 1998, for the purposes of article 1 of the Optional Protocol.

8.6 Lastly, the Committee takes note of the State party's argument that the communication constitutes an abuse of the right to submit a communication under article 3 of the Optional Protocol because the author submitted the communication to the Committee at least six years

¹⁸ *B.G.V. v. Spain* (CCPR/C/84/D/1095/2002/Rev.1), para. 6.4.

after domestic remedies had been exhausted. The Committee notes that the author contests this argument on several grounds. The Committee recalls that, although there is no explicit deadline for the submission of communications under the Optional Protocol, rule 99 (c) of its rules of procedure states: “An abuse of the right of submission is not, in principle, a basis of a decision of inadmissibility *ratione temporis* on grounds of delay in submission. However, a communication may constitute an abuse of the right of submission, when it is submitted after five years from the exhaustion of domestic remedies by the author of the communication, or, where applicable, after three years from the conclusion of another procedure of international investigation or settlement, unless there are reasons justifying the delay taking into account all the circumstances of the communication.”¹⁹ The Committee also recalls its jurisprudence, according to which the right of submission is considered to have been abused when an exceptionally long period of time has elapsed, without sufficient justification, between the relevant events in the case, or the exhaustion of domestic remedies and the submission of the communication in question.²⁰ The Committee notes that while in the present case there have been four distinct sets of proceedings ending on different dates, they all are connected as they were all in relation to one obligation placed on the author to perform a compulsory service and his objection thereto on the grounds of his inner conviction. Although the first set of proceedings and the procedure relating to his refusal to perform civilian service came to an end in 2004, additional procedures commenced thereafter. Bearing also in mind the additional justifications provided by the author regarding the delay in submitting his complaint, including his argument that he could not possibly foresee the application of the five-year rule at the time of the delivery of his final conviction in 2009, the delayed adoption of the Committee’s concluding observations on Greece that contained some very relevant considerations for his case, as well as his fear of reprisals because of the pending enforcement of his prison sentences, the Committee considers that no exceptionally long period elapsed between the events that give rise to the author’s claims, in particular the last court decision dated 31 March 2009, and the submission of the communication in question, so that it is therefore not precluded by article 3 of the Optional Protocol from considering the communication.

8.7 Although the State party has not argued that the communication is inadmissible *ratione temporis*, the Committee notes that several calls for enlistment that served as a basis for the author’s first conviction were issued prior to the entry into force of the Optional Protocol. The Committee refers to its prior jurisprudence and reiterates that it is precluded from considering a communication if the alleged violations occurred before the entry into force of the Optional Protocol, unless the alleged violations continue or have continuing effects that in themselves constitute a violation of the Covenant.²¹ Furthermore, the Committee concurs with the position of other committees that judicial decisions of national authorities are to be considered as part of the facts of the case when they are the result of procedures directly connected with the initial facts, actions or omissions that gave rise to the violation, provided they are capable of remedying the alleged violation. If such decisions are adopted after the entry into force of the Optional Protocol for the State party concerned, the criterion provided for in article 3 of the Optional Protocol will not affect the admissibility of the communication, since, when those remedies are exercised, the national courts have the possibility of considering the complaints, putting an end to the alleged violations and potentially providing redress.²² The Committee notes that in the present case the relevant decisions of the domestic courts were handed down on 15 April 1999, 12 June 2003 and 7 December 2004. In the circumstances, the Committee concludes that it is not precluded *ratione temporis* from considering the communication.

¹⁹ This rule applies to communications received by the Committee after 1 January 2012.

²⁰ *J.B. v. Australia* (CCPR/C/120/D/2798/2016), para. 7.7, and *C.L.C.D., V.F.C. and A.F.C. v. Colombia* (CCPR/C/116/D/2399/2014), para. 6.5.

²¹ *Kouidis v. Greece* (CCPR/C/86/D/1070/2002), para 6.3, and *Singarasa v. Sri Lanka* (CCPR/C/81/D/1033/2001), para. 6.3.

²² See, for example, decisions of the Committee on Economic, Social and Cultural Rights in *M.L.B. v. Luxembourg* (E/C.12/66/D/20/2017), para 7.2; the Committee on the Rights of Persons with Disabilities in *Jungelin v. Sweden* (CRPD/C/12/D/5/2011), para. 7.6; and the Committee on the Elimination of Racial Discrimination in *Zapescu v. Republic of Moldova* (CERD/C/103/D/60/2016), para. 7.3.

8.8 The Committee therefore considers that the communication is admissible insofar as it raises issues under articles 9, 12 (2), 14 (7) and 18 (1) of the Covenant. The Committee further considers that the author's claims concerning his alleged discrimination as set out in his comments in response to the State party's observations also appear to raise issues under article 26 of the Covenant. Accordingly, the Committee declares all these claims admissible and proceeds to their examination on the merits.

Consideration of the merits

9.1 The Committee has considered the communication in the light of all the information submitted to it by the parties, as provided under article 5 (1) of the Optional Protocol.

9.2 The Committee notes the author's claim that his rights under article 18 (1) of the Covenant have been violated owing to the absence in the State party of a real, non-punitive alternative to compulsory military service. As a result, his refusal to perform military service for reasons of conscience and his refusal to perform an allegedly punitive alternative civilian service led to his repeated criminal prosecutions and subsequent convictions. The Committee takes note of the State party's submission that the provision of alternative service, per se, does not interfere with the objector's rights under article 18 of the Covenant. The Committee is mindful of the State party's argument contesting the punitive and discriminatory nature of the alternative civilian service on the grounds that the difference in the length of such services is justifiable on the basis of the differences in the very nature of the services. Furthermore, the constitutional obligation to contribute to the defence of the homeland applies equally to all Greek citizens.

9.3 The Committee recalls its general comment No. 22 (1993), in which it considered that the fundamental character of the freedoms enshrined in article 18 (1) was reflected in the fact that that provision could not be derogated from, even in times of public emergency, as stated in article 4 (2) of the Covenant. The Committee recalls its prior jurisprudence that, although the Covenant does not explicitly refer to a right of conscientious objection, such a right derives from article 18, inasmuch as the obligation to be involved in the use of lethal force may seriously conflict with freedom of conscience.²³ The right to conscientious objection to military service is inherent in the right to freedom of thought, conscience and religion. It entitles any individual to an exemption from compulsory military service if such service cannot be reconciled with that individual's religion or beliefs. That right must not be impaired by coercion.²⁴

9.4 In the present case, the Committee notes the complexity of the case, encompassing a substantial period of time with an evolving legislative background, which kept having an impact on the author's situation. While all the periods of insubordination are intertwined to an extent, as they all relate to one instance of conscientious objection, expressed as early as 1996, the Committee emphasizes that these distinct periods led to separate convictions. In that context, the Committee points out that the author's first conviction was based on a period (from 18 March 1992 to 17 May 1998) for most of which the State party did not recognize the right to conscientious objection and provided for no alternative. The Committee further notes that the author's refusal to be drafted for compulsory military service derived from his conscientious belief, which, it is uncontested, was genuinely held and that the State party did not advance any reason for the author's criminal prosecution in relation to this same period. In that context, the Committee recalls that repression of the refusal to be drafted for compulsory military service, exercised against persons whose conscience or religion

²³ See, for example, *Yoon and Choi v. Republic of Korea* (CCPR/C/88/D/1321-1322/2004), para. 8.3; *Jong-nam Kim et al. v. Republic of Korea*, (CCPR/C/106/D/1786/2008), para. 7.3; *Atasoy and Sarkut v. Turkey* (CCPR/C/104/D/1853-1854/2008), paras. 10.4–10.5; and *Young-kwan Kim et al. v. Republic of Korea* (CCPR/C/112/D/2179/2012), para. 7.4.

²⁴ See, for example, *Jeong et al. v. Republic of Korea* (CCPR/C/101/D/1642-1741/2007), para. 7.3; *Jong-nam Kim et al. v. Republic of Korea*, para. 7.4; *Abdullayev v. Turkmenistan*, para. 7.7; *Mahmud Hudaybergenov v. Turkmenistan* (CCPR/C/115/D/2221/2012), para. 7.5; *Ahmet Hudaybergenov v. Turkmenistan* (CCPR/C/115/D/2222/2012), para. 7.5; and *Japparow v. Turkmenistan* (CCPR/C/115/D/2223/2012), para. 7.6.

prohibits the use of arms, is incompatible with article 18 (1) of the Covenant²⁵ and it considers that no reason was brought before it to find otherwise in the present case.

9.5 Furthermore, the Committee is mindful of the fact that in 1998, the State party reformed its laws to allow an alternative to military service, that the author was recognized as a conscientious objector and that his ensuing convictions are attributable to his own choice to evade being drafted for both civilian and military service. Consequently, one of the issues for the Committee to consider is whether the civilian service the author was supposed to undertake was a real alternative to military service in the circumstances of the author's case. In that regard, the Committee recalls its jurisprudence establishing that a State may, if it wishes, compel an objector to undertake a civilian alternative to military service, outside the military sphere and not under military command. The alternative service must not be of a punitive nature. It must be a real service to the community and compatible with respect for human rights.²⁶ The Committee is also mindful of its early case law, in which the specific conditions under which alternative service had to be performed were found to have been discriminatory. In that regard, the Committee reiterates that "the law and practice may establish differences between military and national alternative service and that such differences may, in a particular case, justify a longer period of service, provided that the differentiation is based on reasonable and objective criteria, such as the nature of the specific service concerned or the need for special training in order to accomplish that service".²⁷

9.6 In the present case, the Committee considers that the arguments put forward by the State party regarding the impugned specificities of the alternative civilian service are of a general nature and do not make specific reference to the author's case, even though the author has demonstrated that the distance from his home of his assigned place of duty, the lack of adequate compensation throughout the relevant period and the excessive working hours systematically applied in the case of conscientious objectors raise doubts as to whether such a service, in the circumstances of the present case, presented him with a real alternative to military service. In addition, the Committee notes that the author's non-enlistment for civilian service eventually resulted in the withdrawal of his conscientious objector status and that he was again expected to be drafted into the military, entailing new call-ups and subsequent convictions. The Committee considers that the consequences the author had to endure put him back in a position similar to the era when the right to conscientious objection did not even exist in the legislation of the State party. In such circumstances, the Committee finds that the author's convictions for his refusal to perform compulsory military service as a conscientious objector, taken together with the State party's failure to provide him with an alternative service that is not punitive or discriminatory, amount to a violation of his rights under article 18 (1) of the Covenant.

9.7 In view of the fact that the Committee has found a violation of the author's rights under article 18 on account of his criminal prosecutions and imprisonment for his failure to enlist either in civilian or military service, it does not consider it necessary to decide whether such an interference also amounted to discrimination in breach of article 26 of the Covenant.

9.8 The Committee further notes the author's claim that his pretrial detention and post-conviction imprisonment as punishment for refusing military service amount to arbitrary detention under article 9 of the Covenant. The Committee observes that article 9 (1) of the Covenant provides that no one may be subjected to arbitrary arrest or detention. The Committee recalls that the notion of "arbitrariness" is not to be equated with "against the law", but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law.²⁸ It further recalls that just as detention as punishment for the legitimate exercise of the right to freedom of expression, as guaranteed by article 19 of the Covenant, is arbitrary, so too is detention as punishment for the legitimate

²⁵ Ibid.

²⁶ *Jong-nam Kim et al. v. Republic of Korea*, para. 7.3.

²⁷ *Foin v. France*, para 10.3. See also *Venier and Nicolas v. France* (CCPR/C/69/D/690/1996), para. 10.4, and CCPR/C/GRC/CO/2, paras. 37–38.

²⁸ See, inter alia, *Gorji-Dinka v. Cameroon* (CCPR/C/83/D/1134/2002), para. 5.1; *Van Alphen v. The Netherlands* (CCPR/C/39/D/305/1988), para. 5.8.

exercise of freedom of religion and conscience, as guaranteed by article 18 of the Covenant.²⁹ Consequently, the Committee finds that the author's right under article 9 (1) of the Covenant has been violated.

9.9 As regards the alleged violation of article 12 (2) of the Covenant, the Committee recalls the author's claim that his freedom of movement has been restricted for a disproportionately long period of time, owing either to the criminal procedures pending against him or the final judgments sentencing him to imprisonment. The Committee observes the author's assertion that as a result, he was prohibited from leaving the territory of Greece. The Committee also observes that the author's factual allegations, in particular the length of the period during which such restrictive measures were applied to him, have not been disputed by the State party. At the same time, the Committee is mindful of the State party's argument that pursuant to article 12 (3), the right to leave any country may be restricted, primarily on grounds of national security and public order. The Committee further notes that pending judicial proceedings may indeed account for restrictions on an individual's right to leave his country. Nonetheless, where the judicial proceedings are unduly delayed, a constraint upon the right to leave the country is thus not justified.³⁰ In the present case, the restriction on the author's freedom to leave Greece has been in force for 14 years on account of the repeated call-ups, warrants for his arrest and convictions. Bearing in mind not only the excessive duration of the impugned interference, but also the fact that it was imposed on the author for having legitimately exercised his right to freedom of conscience, the Committee considers that this situation violates the author's rights under article 12 (2) of the Covenant.

9.10 The Committee further notes the author's claim under article 14 (7) of the Covenant that he has been repeatedly convicted and punished for his objection to performing compulsory military service. In that respect, the Committee observes that on 12 June 2003, the Military Court of Appeals upheld the author's conviction for refusing to perform compulsory military service, handing down a 20-month conditional prison sentence. On 4 May 2006, he was again convicted on two charges of insubordination by the same court and sentenced to 5 months of imprisonment in respect of each charge. The Committee further observes that on 31 March 2009, he was again convicted on two charges of insubordination and sentenced to 18 months of imprisonment. The Committee further notes the author's submission that the relevant laws of the State party permitted repeated call-ups for military service, irrespective of his convictions. The Committee is mindful of the State party's arguments in this respect, in which it alleges that the author has not been sentenced for the same offence, since his first conviction was based on his resistance to performing compulsory military service, while his subsequent convictions were based on his failure to enlist for alternative civilian service. Nonetheless, the Committee observes that it appears from the information available on file that the author's convictions, which followed his refusal to perform civilian service, were again based on his refusal to be drafted into the military. The Committee notes that the author's comments on the State party's observations in this respect have not been refuted by the State party.

9.11 The Committee recalls its general comment No. 32 (2007), in which it stated, *inter alia*, that article 14 (7) of the Covenant provides that no one shall be liable to be tried or punished again for an offence of which they have already been finally convicted in accordance with the law and penal procedure of each country. Furthermore, repeated punishment of conscientious objectors for not obeying a renewed order to serve in the military may amount to punishment for the same crime if subsequent refusals are based on the same constant resolve grounded in reasons of conscience.³¹ In the present case, the Committee observes that the author has been tried and punished by the same military court three times in respect of five charges of insubordination, on account of his refusal to perform compulsory military service at different times. The Committee considers that the author's refusal to serve was, on each occasion, based on the same reasons of conscience and that he was convicted for the same offence comprising the same *actus reus*, irrespective of the fact that his convictions concerned the commission of the same offence at different points in time.

²⁹ *Young-kwan Kim et al. v. Republic of Korea*, para. 7.5.

³⁰ *González del Río v. Peru*, para. 5.3.

³¹ General comment No. 32 (2007), paras. 54–55. See also *Abdullayev v. Turkmenistan*, paras. 7.4–7.5.

In the circumstances of the present case, and in the absence of contrary information from the State party, the Committee concludes that the author's rights under article 14 (7) of the Covenant have been violated.

10. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts before it disclose a violation by the State party of the author's rights under articles 9 (1), 12 (2), 14 (7) and 18 (1) of the Covenant.

11. Pursuant to article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the author with an effective remedy. This requires it to make full reparation to individuals whose Covenant rights have been violated. Accordingly, the State party is obligated, *inter alia*, to expunge the author's criminal record, to reimburse all sums paid as fines and to provide adequate compensation. The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future. In this connection, the Committee reiterates that, in accordance with its obligation under article 2 (2) of the Covenant, the State party should review its legislation with a view to ensuring the effective guarantee of the right to conscientious objection under article 18 (1) of the Covenant, for instance by providing for the possibility of undertaking alternative civilian service that is not punitive and discriminatory in nature.

12. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy when it has been determined that a violation has occurred, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the present Views and to have them widely disseminated in the official language of the State party.

Annex I

Individual opinion of Committee member José Manuel Santos Pais (dissenting)

1. I regret not being able to concur with the Committee's decision of finding several violations of the author's rights in the present communication.
2. The communication reveals an abuse of the right of submission, since there was a delay of more than six years between the most recent court decision (March 2009) and the submission of the author's complaint (December 2015). The author's explanations to justify the delay are simply not convincing (para. 6.3). The complaint should therefore have been declared inadmissible under article 3 of the Optional Protocol.
3. The author failed to appeal the decision of the Military Appeal Court of Athens of March 2009 to the Court of Cassation (para. 2.8) and we may only conjecture what the outcome would have been. The communication should have been declared inadmissible for non-exhaustion of domestic remedies, pursuant to article 5 (2) (b) of the Optional Protocol. Furthermore, it is doubtful whether the author's claims under articles 12 (2), 9, 14 (7) and 18 (1) and (2) of the Covenant were indeed raised in the domestic proceedings (see the ambiguous wording in paragraph 8.3).
4. The author received a number of calls for enlistment (para. 2.1, footnote 1). For the first two in 1992 and 1993, the law at the time did not foresee the possibility of an alternative to military service. However, the Covenant only entered into force for Greece in May 1997 and so those facts should have been excluded *ratione temporis* from being dealt with in the present Views.
5. Under law No. 2510/1997, adopted in 1998, the author applied to perform alternative service and was recognized as a conscientious objector in November 1998. However, he failed to appear for civilian service and his conscientious objector status was therefore withdrawn in February 1999. The subsequent convictions of the author for failing to perform military service are a direct consequence of the author having lost his status as a conscientious objector (paras. 2.2–2.3). By failing to perform both military service and alternative service, the author lost his victim status (para. 4.2).
6. The domestic courts proved to be very lenient with the author by consistently reducing his prison sentence on appeal (paras. 2.6–2.8), suspending it (para. 2.6), or allowing him to pay a fine instead (paras. 2.8–2.9). He was therefore detained for 87 days in total, 75 of which refer to convictions in 1992 and 1993, before the Covenant was in force in Greece.
7. As regards the violation of article 9, the arrests of the author were not arbitrary but always determined in accordance with a procedure prescribed by law (para. 5.1), he was informed of the reasons for his arrest and could challenge such decisions. He himself acknowledges his detentions were lawful, some of them based on a final judgment (para. 7.5).
8. Regarding the violation of article 12, in cases where an arrest warrant remains pending, pursuant to article 12 (3) of the Covenant, the right to leave one's country may be legitimately restricted on grounds of national security and public order (para. 5.2). According to the State party, no other less intrusive measures were available and the author himself acknowledges that he avoided leaving the country until 2015 for fear of apprehension under pending arrest warrants (para. 6.5).
9. Regarding the violation of article 14 (7), the author was not convicted for the same offence, since some convictions were based on his refusal to perform compulsory military service (para. 2.4), while others were based on his failure to perform alternative civilian service, for which he had applied of his own free will (para. 2.5). He was therefore tried for insubordination in different proceedings, by different courts and each time sentenced for a separate crime. As the State party notes, had the author taken up civilian service, prosecutions for insubordination would have been barred and sentences already imposed would have been annulled. The Committee itself acknowledges the existence of separate convictions (para. 9.4).

in different criminal proceedings, but concludes that it was for the commission of the same offence at different points in time (para. 9.11). I would rather say we are dealing with several convictions by different courts, on different counts for insubordination, not for one offence but for several offences of the same kind. The author was a repeated offender and so a recidivist.

10. Regarding the violation of article 18, the provision of alternative civilian service does not interfere, per se, with the objector's rights (para. 5.5). Further, as regards the alleged punitive nature of alternative civilian service on account of its length, military service cannot necessarily be compared to alternative civilian service, due to the different constraints of both services (para. 9.5) and besides, the difference in length is not excessive. The author himself acknowledges the initial period of 39 months foreseen for alternative service was significantly reduced in Greece to 28 months in 2001 and to just 17 months in 2004.

11. The author's arguments concerning the punitive aspects of civilian service are mostly speculative (para. 7.1), since he never performed it. The length of the civilian service was significantly reduced in the State party and the so-called existing practices referred to by the author, namely to work seven days a week, including weekends and holidays, beyond the usual working hours and for a low salary, are never substantiated (paras. 7.1–7.2). As for the author being asked to perform his service away from his residence, that is not in itself different from what would apply to any public servant appointed to serve away from home across the territory of the State party.

While fully recognizing the rights of a conscientious objector, I would therefore have concluded for the inadmissibility of the present communication or, if declared admissible, that the author's rights were not violated.

Annex II

Individual opinion of Committee member H el ene Tigroudja (partly dissenting)

1. While I fully concur with the conclusion reached by the majority of the Committee in paragraph 10 of the current Views, I do not agree with the opinion expressed in paragraph 9.7, in which the Committee stated that it was not necessary to decide whether there had been a breach of article 26 of the Covenant.

2. This conclusion is at odds both with the previous case law of the Committee and the statements made in the present Views. In similar cases settled in the past, the Committee has focused its analysis on the discriminatory nature of the difference between the length of the civil and the military services. In *Foin v. France*, it stressed that: "In this context, the Committee recognizes that the law and practice may establish differences between military and national alternative service and that such differences may, in a particular case, justify a longer period of service, provided that the differentiation is based on reasonable and objective criteria, such as the nature of the specific service concerned or the need for a special training in order to accomplish that service. In the present case, however, the reasons forwarded by the State party do not refer to such criteria or refer to criteria in general terms without specific reference to the author's case and are rather based on the argument that doubling the length of service was the only way to test the sincerity of an individual's convictions."¹ France was condemned for a violation of article 26.

3. In addition, in the current Views, the Committee highlights the discriminatory nature of Greek legislation and mainly bases its finding of a violation of article 18 on this element (paras. 9.5–9.6 of the current Views).

4. It is true that in the time between the case of *Foin v. France* and the present, the position of the Committee regarding conscientious objection has changed and the right has been included in the material scope of article 18 of the Covenant, which is an important and positive step. However, it is hard to understand how the Committee could conclude that there was a violation of the right to freedom of conscience and religion (article 18) due to the "State party's failure to provide him with an alternative service that is not punitive or discriminatory" (para. 9.6) and then affirm in the subsequent paragraph that "it does not consider it necessary to decide whether such an interference also amounted to discrimination in breach of article 26 of the Covenant" (para. 9.7).

5. As rightly stressed by scholars, the jurisprudence of the Committee is rather inconsistent on the equality clause,² having been "the single dominant theme of the Covenant that shines through its formidable legacy of 50 years"³

6. The *infra petita* strategy of the Committee is unfortunate and does not help to clarify the obligation of States regarding equality and non-discrimination. I therefore consider that instead of deeming it necessary not to decide on a breach of article 26, which is at the heart of the whole case, the majority should have concluded at the end of paragraph 9.6 that for similar reasons, the facts also disclose a violation of article 26 of the Covenant.

¹ CCPR/C/67/D/666/1995, para. 10.3.

² See, for example, Niels Petersen, "The implicit taxonomy of the equality jurisprudence of the UN Human Rights Committee" (2020).

³ Shreya Atrey, "Fifty years on: the curious case of intersectional discrimination in the ICCPR," *Nordic Journal of Human Rights*, vol. 35, No. 3 (2017).