



# International Covenant on Civil and Political Rights

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## Human Rights Committee

### Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2818/2016\*\* , \*\*\* , \*\*\*\*

<i>Communication submitted by:</i>	X (not represented by counsel)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Iceland
<i>Date of communication:</i>	24 February 2016 (initial submission)
<i>Document reference:</i>	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 6 October 2016 (not issued in document form)
<i>Date of adoption of Views:</i>	22 October 2020
<i>Subject matter:</i>	Prosecution, conviction and imprisonment of the author for trafficking in persons
<i>Procedural issues:</i>	Admissibility – manifestly ill-founded; admissibility – exhaustion of domestic remedies; admissibility – <i>ratione materiae</i> ; admissibility – same matter
<i>Substantive issues:</i>	Arbitrary arrest/detention; defence – adequate time and facilities; discrimination; discrimination on the ground of nationality; fair trial; human dignity; presumption of innocence; right to appeal
<i>Articles of the Covenant:</i>	2, 7, 9, 10, 14 and 26
<i>Articles of the Optional Protocol:</i>	2, 3 and 5 (2) (a)–(b)

1. The author of the complaint is X, a national of Lithuania born in Lithuania in 1986. He claims that the State party has violated his rights under articles 2, 7, 9, 10, 14 and 26 of the Covenant when it detained, convicted and imprisoned him for human trafficking. The

\* Reissued for technical reasons on 6 August 2021.

\*\* Adopted by the Committee at its 130th session (12 October–6 November 2020).

\*\*\* The following members of the Committee participated in the examination of the communication: Yadh Ben Achour, Arif Bulkan, Ahmed Amin Fathalla, Christof Heyns, Duncan Laki Muhumuza, David Moore, Photini Pazartzis, Hernán Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Yuval Shany, Hélène Tigroudja, Andreas Zimmermann and Gentian Zyberi.

\*\*\*\* An individual opinion by Committee member José Manuel Santos Pais (partially dissenting) is annexed to the present Views.



Optional Protocol to the Covenant entered into force for the State party on 22 November 1979. The author is not represented by counsel.

### **Factual background**

2.1 In 2007, the author moved to Iceland, where his mother lived, to pursue his studies. While preparing for a university entrance exam, the author worked for different companies and paid annual income tax to the Government of Iceland. In 2009, he received an invitation to study at Bifröst University and planned to accept it after having improved his language skills.

2.2 The author maintains that, in Iceland, he made friends with other Lithuanians who seemed to be decent people. The author states that he was not aware of any criminal acts that they may have committed and did not himself commit any illegal acts. The author asserts that, on 9 October 2009, one of his Lithuanian friends introduced the friend's alleged girlfriend, Y, to the author. Y was 19 years old and she too was a national of Lithuania. The author states that he did not know anything about the circumstances of Y's arrival in Iceland. After Y was evicted from her apartment, one of the author's friends asked the author to help Y. The author maintains that he rented a room for Y for one night in a hotel, bought her some food, gave her some money and advised her to go to the police.

2.3 On 18 October 2009, the author saw a report in the media indicating that he was wanted by the police. He immediately turned himself in and was arrested on the same day for subjecting Y to human trafficking. On the same day, the author was brought before the Reykjanes District Court, which ordered the author to be detained in solitary confinement until 21 October 2009, at which point the solitary confinement order was extended until 28 October 2009 and then again until 4 November 2009. The police had argued that substantial evidence pointed to the author's involvement in human trafficking and that the author might try to remove evidence or influence accomplices or witnesses if he were released. On 3 November 2009, the Supreme Court rejected the author's appeal of that decision. On 4 November 2009, the Reykjanes District Court again extended the solitary confinement order until 11 November 2009. On 6 November 2009, the Supreme Court rejected the author's appeal of that decision. On 11 November 2009, the Reykjanes District Court once again extended the solitary confinement order to 2 December 2009. On 17 November 2009, the Supreme Court granted in part the author's appeal of that decision, finding that there was no legal basis for authorizing the author's continued detention in solitary confinement. Thus, on 17 November 2009, the author was detained with the general prison population. Thereafter, the author filed additional appeals against the orders of extended detention issued by the Reykjanes District Court. The Supreme Court rejected those appeals on 7 and 31 December 2009 and on 29 January, 26 February, 10 March and 9 April 2010.

2.4 The author states that, during the first two weeks of his solitary confinement in the Keflavik police station, he was held in inhumane conditions, as his cell did not have a toilet or water. After his transfer to the Litla Hraun prison (where he was placed in solitary confinement for a while), he was only allowed to speak with his defence counsel and law enforcement officers. During his solitary confinement, the author was also deprived of the right to receive the assistance of a psychologist. During the first three months of his detention, the author was not allowed to communicate or contact his relatives, including his mother.

2.5 During police interrogations conducted on 18 and 27 October and 3 November 2009, the author asked the interrogating officers to provide the official accusatory material against him, but his requests were ignored. The official human trafficking charges against him were announced on 29 December 2009, but the charging documents were not translated into the author's native language, Lithuanian, or into English, which he understands well.

2.6 On 8 March 2010, the Reykjanes District Court convicted the author and four other nationals of Lithuania of human trafficking. All five defendants were sentenced to five years of imprisonment. Another defendant, who was a national of Iceland and had arranged for Y's accommodation, was acquitted in the same decision. The author asserts that the media and society at large had essentially convicted him before the start of the trial, which involved the first case of human trafficking in the small country of Iceland. The case thus attracted significant media attention, which strongly influenced public opinion. The author maintains

that, from the first day of his detention and throughout the criminal proceedings, the media published stories in which they referred to “crimes of the century” and in which members of the Lithuanian mafia had allegedly engaged in human trafficking, racketeering, arson and swindling. The author claims that the media made hyperbolic statements, thereby instilling fear among the general public that the Lithuanian mafia had occupied the entire territory of Iceland. The author asserts that he was wrongly convicted.

2.7 On 5 May 2010, the author appealed the decision of the Reykjanes District Court to the Supreme Court. Despite the author’s numerous requests for information, the author’s counsel did not properly inform him about the appeal. The counsel alleged that the Reykjanes District Court had failed to properly evaluate the mens rea element required for the crime and that the author did not have the required intent since he had merely been assisting in the commission of a criminal act.

2.8 On 16 June 2010, the Supreme Court modified the decision against the author and three of the four other nationals of Lithuania who had been convicted at the same time. In the modified decision, the Supreme Court reduced the sentences of those four defendants to four years of imprisonment, on the basis of their relatively lighter roles in the crime compared with the fifth defendant. The author submitted several requests to receive a translation into Lithuanian of the decision of the Supreme Court. The translation was provided on 10 August 2010.

2.9 The author was released from prison after having served two years of his four-year sentence. In October 2011, the author was removed from Iceland and taken to Lithuania. He was not present during the removal proceedings and was merely shown a letter stating that he was prohibited from returning to Iceland for a period of 30 years. The author states that the painful experiences that he suffered in prison in Iceland left him with bad memories and psychological difficulties. As a result of the media attention given to his criminal case, he was forced to change his surname. It took the author time to financially prepare to submit the communication on the present case to the Committee because he had difficulty finding a job. The author has submitted an application concerning the same matter to the European Court of Human Rights, which declared the application inadmissible on 28 March 2013.

### **Complaint**

3.1 The author asserts that the State party violated his rights under articles 7, 9 and 10 of the Covenant in several respects. His detention was unduly prolonged. In addition, he was kept in solitary confinement for 32 days when the circumstances – namely, his lack of a criminal record and the fact that he had voluntarily turned himself in immediately – warranted only general confinement. Solitary confinement caused the author mental suffering and violated his human dignity. It also violated the Code of Criminal Procedure (Law No. 88/2008), which allows detention in solitary confinement for only four weeks (i.e., 28 days) for crimes punishable by less than 10 years of imprisonment. The unlawfulness of the author’s prolonged solitary confinement was confirmed in the decision of the Supreme Court. Moreover, the author was subjected to continuous unlawful mental pressure in order to obtain evidence favourable to the prosecution. Specifically, he was prohibited from seeing family members and a mental health professional. His inability to see a mental health professional caused him to suffer from groundless fears, lose his sense of safety and experience sleep disorders and adaptive challenges. In addition, detention officers lied to the author about his mother’s health, stating that her health had become much worse. Furthermore, during his detention, law enforcement officers said that they would “prepare the proper evidence” and that the author would only need to confirm it with his signature. Thus, in order to break him psychologically, the officers used active psychological violence against him. Finally, during the first two weeks of his detention in solitary confinement (i.e., before he was transferred from Keflavik police station to Litla Hraun prison), he was kept in inhumane and degrading conditions, as his cell did not have a toilet or water and he was not allowed to spend time in the open air. The author’s solitary confinement was not necessary; he behaved in an exemplary manner while detained and was not, as the police claimed, a well-known criminal.

3.2 The State party also violated the author’s rights under articles 2, 14 and 26 of the Covenant, in that he suffered prejudice during the criminal proceedings on account of his Lithuanian nationality. The author was deprived of his rights to the presumption of innocence,

a fair hearing and freedom from racial discrimination. The entire trial was based on rumors about Lithuanian gangs engaging in violence in Iceland and the notion that all nationals of Lithuania are criminals. The author was also subjected to direct discrimination because he was convicted while the Icelandic national who had performed analogous acts (assisting Y) was acquitted in the same court decision. In addition, in a risk assessment report relating to the safety of three witnesses in the case (attached to the author's case file on 4 November 2009), the director of the State police characterized all of the defendants as violent criminals with previous criminal records. The author reiterates that he does not have a criminal record and has never been prosecuted or involved in the activities of any criminal group in any jurisdiction. The report, which was misleading, strongly influenced the course of the pretrial investigation and was cited in the decision of the Reykjanes District Court.

3.3 The author was convicted on the basis of assumptions, thereby violating the presumption of innocence set out in article 14 of the Covenant. Human trafficking requires an act performed against a person's will by means of threat, use of force or other forms of coercion. This element was not met in the author's case, as he was not even aware that Y had been subjected to trafficking. Moreover, the Reykjanes District Court ignored evidence about the unreliability and inconsistency of the testimony given by Y, who was in an unstable mental condition. According to a medical report dated 5 January 2010, Y was in a mixed emotional state, her behaviour was confused and she was being treated with antipsychotic medication and sleeping pills. The author maintains that Y's testimony featured many material discrepancies and that the transcripts of her interviews with the police indicate that she was an unreliable witness who led an immoral and loose lifestyle and looked for adventure. The author claims that it is highly probable that Y provided misleading evidence and false accusations against him for the purpose of financial gain.

3.4 The author's rights under article 14 (3) of the Covenant were also violated, because he did not have adequate time or facilities to prepare his defence. He was not given, in a language that he understands, any document describing the nature and cause of the charges against him, nor was he given access to the case file until after the issuance of the decision of the Supreme Court. The author was therefore unable to effectively defend himself against the charges. Because he did not have money to hire a lawyer, his mother hired a defence lawyer for him. The author changed counsel several times, as all his lawyers exhibited a passive attitude and support for the prosecution. He received no effective defence from them. They only encouraged the author to plead guilty in order to receive a lighter sentence despite his insisting on his innocence. The counsel who prepared his appeal did not provide any reasoning in the appeal. As a result, the author's mother was forced to seek legal assistance in Lithuania to prepare supplementary explanations for the appeal. Thus, the author did not have the opportunity to prepare for his defence, which was also not ensured by his defence counsel. The author was forced to passively observe the criminal proceedings before a passive court that failed to comment on the groundless nature of the appeal submitted by the author's counsel.

3.5 The author's right not to be compelled to testify against himself, set out in article 14 (3) (g) of the Covenant, was violated during his initial interrogation at the police station on 18 October 2009. From the beginning, the author refused to provide evidence until he was given access to the document stating the charges against him and to the material in his file. Before and during the interrogations, however, he was subjected to active pressure to testify against himself and others in the case. The record of interrogation from 18 October 2009 demonstrates that the author refused to answer questions and that, despite his desire not to do so, the law enforcement officers disregarded this and continued to interrogate him. Article 14 (3) (g) of the Covenant includes protection against any physical or mental pressure to testify against oneself.

3.6 The State party also violated the author's right to an effective appeal under article 14 (5) of the Covenant. The Supreme Court merely copied the reasoning of the Reykjanes District Court and provided a cursory justification for its decision to uphold the author's conviction. The Supreme Court did not respond to the author's arguments; this demonstrates that the Court was biased against him.

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

4.1 In its observations dated 7 April 2017, the State party maintains that most of the author's factual allegations are unfounded. In its decision dated 16 June 2010, the Supreme Court sentenced the author and four other defendants to four years of imprisonment for committing human trafficking in violation of article 227 (a) (1) of the Penal Code. A period of detention that began the day of his arrest on 18 October 2009 was deducted from the sentence. The author was also required to compensate the victim and pay legal fees. The decisions of the Reykjanes District Court and the Supreme Court contain the facts of the case. The State party draws attention to the fact that, on 9 October 2009, police at the international airport in Keflavik were notified that Y, who was arriving in an aeroplane from Warsaw, was very upset and was threatening other passengers. Upon arrival in Iceland, Y was taken to a hospital. Customs officers at the airport noticed three men waiting for Y and instructed them to speak to the police when they asked whether Y had arrived.

4.2 On 10 October 2009, the police interrogated Y. She stated that she was willing to stay at the police station while the authorities secured a flight for her to return to Lithuania. She remained there for two nights but was moved on 12 October 2009 to accommodation provided by the social services in Reykjanesbær. On 13 October 2009, the police discovered that Y had left her accommodation. A witness stated that Y, not knowing her location, had asked the witness for assistance. Y handed the witness a mobile telephone and the witness spoke to a man on the other end of the line and described Y's location to him. The witness invited Y to wait at his house and, later that evening, he escorted her to a car that had come to collect her.

4.3 On 15 October 2009, the police announced in the media that it was searching for Y. The police was notified that Y had been at a hostel with a man who had rented a room under an alias matching the author's first name. Two days later, the police launched an official search for another defendant and a few other men who had appeared in a photograph that was in the possession of the police. The other defendant and the author reported to the police. The author was shown a still of himself taken from the security camera footage at the hostel. He confirmed that he had been at the hostel. He said that he had gone there to inquire about the price of accommodation and had left without renting a room. The author refused to answer questions about Y, who appeared in the photograph with him.

4.4 On 18 and 30 October 2009, Y gave statements to the police. She stated that the men who had come to collect her in Reykjanesbær had taken her to an apartment in Reykjavik. She had stayed in that apartment for three days and the author was her primary contact person during that time. The author drove her to the hostel where the police found her. Y stated that she believed she had been brought to Iceland to engage in sex work.

4.5 On 18 October 2009, the author was arrested. He was brought before a judge and was placed in detention on remand. On 29 December 2009, he was charged with subjecting Y to human trafficking, who had been unlawfully compelled and deprived of her freedom, including by the author, who had accepted, transported and housed Y for the purpose of sexually exploiting her.

4.6 During the trial before the Reykjanes District Court, the author claimed that he had never seen Y. He had not picked her up, nor had he transported her anywhere. He stated that he had never been in the apartment where Y was staying and that he had not been with a woman at the hostel. As the author stated, on 8 March 2010 the Reykjanes District Court sentenced him to five years of imprisonment and the Supreme Court reduced the sentence to four years in its decision of 16 June 2010. On 5 May 2010, the author submitted to the Supreme Court a letter addressed to his attorney, in which he stated many of the elements noted in paragraph 2.2 above.

4.7 The State party considers that the communication is inadmissible because it was not submitted within five years of the date on which the author had exhausted domestic remedies. The communication is also inadmissible because it is incompatible with the provisions of the Covenant. The author does not state the substance of his complaint clearly and merely refers, in general terms, to articles 2, 7, 9, 10, 14 and 26 of the Covenant, without demonstrating how those articles apply to his case.

4.8 On the merits, the State party disputes the author's claims that he suffered from discrimination on account of his Lithuanian nationality and that the State party violated the author's rights under articles 2 and 26 of the Covenant. Most fundamental human rights are protected in the Constitution of Iceland of 1944. In 1995, many new rights were added to the human rights section of the Constitution through Law No. 97/1995. This was done partly to ensure conformity with the international human rights obligations of Iceland, including those under the Covenant. Among the new provisions added to the Constitution was article 65, an often-cited influential provision that establishes equality before the law and equal enjoyment of human rights.

4.9 In the author's case, the decisions of the courts were not based on rumours of violent behaviour of Lithuanian gangs but instead described in detail the author's conduct as it related to the charge of human trafficking. The author was inconsistent in his statements and changed his testimony during the investigation and during the main hearing of the case in court. He initially asserted that he did not know Y, but later admitted that he did know her. A still from security camera footage showed the author with Y at a hostel and testimony from Y and others placed him in the midst of the events of the case. A national of Iceland facing a charge of human trafficking would have been treated in the same manner. Article 65 of the Constitution applies to everyone in Iceland, including foreigners, and must be respected by the courts, the authorities and the police.

4.10 The fact that the only national of Iceland to be charged in the case was acquitted does not demonstrate direct discrimination. The author's role in the relevant events was very different from that of the Icelandic defendant. As noted in the decision of the Reykjanes District Court, Y repeatedly stated that she had never seen the Icelandic defendant and there was no other evidence pointing to his guilt (i.e., telephone records or statements from the other defendants). On the other hand, the Reykjanes District Court considered the author's testimony to be wholly lacking in credibility and at times absurd. In addition to his erratic statements, many other forms of evidence pointed to his guilt (Y's statements, the other defendants' statements, telephone records and the security camera footage from the hostel). The decisions of the domestic courts were based on these elements, not on the author's nationality.

4.11 While the author repeatedly mentions the media coverage of the criminal case, the media in Iceland are independent and the State party has no authority to control them. Moreover, no court records or records from the police were made public during the period of investigation. None of the courts' decisions concerning the author's detention on remand were made public until months after the Supreme Court had issued its decision. Accordingly, the State party did not violate the author's rights under articles 2 or 26 of the Covenant.

4.12 The State party did not violate the author's rights under articles 7, 9 or 10 of the Covenant. The State party quotes the passages of the Constitution of Iceland, as amended by Law No. 97/1995, that were modelled on articles 7 and 9 of the Covenant and the relevant provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights). Under article 95 (1) of the Code of Criminal Procedure, a defendant may be detained on remand only if there is a reasonable suspicion that he or she has committed a crime punishable by imprisonment, and if at least one of the following conditions is met: (a) the defendant is likely to hinder the investigation by removing evidence or influencing other defendants or witnesses; (b) the defendant might leave the country; (c) the defendant is likely to continue criminal conduct; or (d) detention on remand is necessary to protect others from the defendant or the suspect from the attacks or influences of others. In addition, if the requirements set forth in article 95 (1) of the Code of Criminal Procedure are not fulfilled, a defendant may be detained on remand under article 95 (2) if there is a strong suspicion that the defendant has committed a crime that is punishable by 10 years of imprisonment. A judge may decide that a defendant may be placed in solitary confinement if either condition (a) or (d) of article 95 (1) is met.

4.13 The author was detained on remand out of necessity, in conformity with the conditions set out in article 95 (1) of the Code of Criminal Procedure. The author was suspected of human trafficking, which was punishable at the time by eight years of imprisonment. The author's statements were erratic and he was obviously in close contact with other defendants. These factors indicated that he might be likely to remove evidence or consult other defendants.

4.14 These factors also demonstrated the necessity of holding the author in solitary confinement for 30 days, until 17 November 2019. The fact that the author had turned himself into the police when he was declared wanted in the media did not indicate that he would cooperate to the extent that detention on remand would have been unnecessary. His behaviour during police questioning indicated that he would not be cooperative. The State party acknowledges that, under article 98 (2) of the Code of Criminal Procedure, a defendant may be held continuously in solitary confinement for a period of only four weeks, unless he is accused of a violation that may result in imprisonment of at least 10 years. In the author's case, however, the crime under investigation was very severe (it is now punishable by 12 years of imprisonment, although the punishment was eight years of imprisonment when the author was held in custody). The author's solitary confinement did not violate articles 7, 9 or 10 of the Covenant.

4.15 The State party rejects the author's allegation that the conditions of his detention were inadequate. In 2009, criminal defendants sometimes had to stay in cells at police stations for short periods of time. While this might not have been an appropriate arrangement, it did not violate any legal provisions or fundamental human rights. Although the author may not have had a toilet or water in his cell, he was not deprived of such basic needs. A new prison has been built and defendants no longer stay in cells at police stations.

4.16 The author was subjected to certain restrictions during his detention, in conformity with article 99 (1) of the Code of Criminal Procedure, which is compatible with the Covenant. For example, the author was unable to receive visitors or use the telephone or other means of communication. A judge determined that these restrictions were necessary in the author's case.

4.17 The State party rejects the author's allegations that the police officers insisted that he plead guilty and otherwise behaved in an inappropriate manner. There is no evidence of such behaviour.

4.18 The State party did not violate the author's right to the presumption of innocence under article 14 of the Covenant. The Constitution of Iceland and articles 53, 109, 111 and 145 of the Code of Criminal Procedure protect the right to a fair trial and the presumption of innocence, in conformity with article 14 of the Covenant. Although the author argues that his guilt was presumed, detainees are always brought before a judge, who must issue reasoned decisions within 24 hours to justify detention on remand. The decisions of both the Reykjanes District Court and the Supreme Court were thorough and carefully crafted. The courts clearly assessed all of the evidence and did not convict the author on the basis of an assumption.

4.19 The Committee's power to revise an assessment made by the domestic authorities is limited. Under the principle of subsidiarity, the domestic authorities are better placed than international courts to assess established facts and evidence. This is in part due to the Committee's temporal and spatial distance from the events of any particular case. The principle of subsidiarity should apply in the present case.

4.20 The author received an effective defence within the meaning of article 14 of the Covenant.<sup>1</sup> His statements concerning this issue are false and unsupported by evidence. Although he claims that the investigation and trial took place in a language that he did not understand, he had an interpreter by his side from the very first moment he was questioned by the police. The interpreter translated from Icelandic into Lithuanian and vice versa. These services were provided in conformity with article 12 of the Code of Criminal Procedure, which requires the appointment of an interpreter for a defendant who does not understand Icelandic. In conformity with article 28 (1) of the Code, the police immediately informed the author that he was under investigation for the crime of which he was ultimately accused. Thus, the author was aware of the reasons for his arrest from the beginning of the police procedure. The author changed counsel numerous times during the criminal procedure, but no evidence indicates that he received an ineffective defence. He claims that the domestic courts did not appoint him a new defence counsel. There are no records, however, indicating

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<sup>1</sup> In its decision, the Reykjanes District Court states that the author was informed of the claim on court document No. 1 and had objected to it. A Lithuanian interpreter provided interpretation for the author during this initial court appearance.

that the author complained about his defence. On the contrary, he received a proper defence during all stages of the case. While the author argues that his defence counsel drew up a formal appeal lacking any reasoning, this is standard procedure in Iceland when appeals are initiated. At later stages of the appeal, the defence counsel submits written observations to the court. The defence counsel also presents oral arguments at a hearing before the Supreme Court. The author was not coerced into pleading guilty. He might have repeatedly been asked about his conduct, but this does not mean that the police compelled him to enter a guilty plea.

4.21 Regarding the claim in respect of article 14 (5) of the Covenant, the State party asserts that the author benefited from an effective appeal. The author could have presented witnesses and given an oral statement before the Supreme Court, which could have invalidated the decision of the Reykjanes District Court and remanded the case for retrial. However, the evidence and arguments the author submitted did not change the Supreme Court's assessment.

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

5.1 In his comments dated 30 May 2017, the author asserts that the State party did not dispute his version of the facts with regard to the criminal proceedings against him. The State party's position was essentially based on the existence of domestic laws that allegedly guaranteed the author's rights as a criminal defendant, but the State party completely ignored the fact that these guarantees were violated in the author's case.

5.2 The State party incorrectly interpreted the Committee's rule of procedure pertaining to the time limit for submissions. The author submitted his communication within three years of the issuance of the decision of the European Court of Human Rights concerning the same matter.

5.3 The domestic laws on non-discrimination were not applied in the author's case. Moreover, although the State party maintains that the author changed his testimony on the issue of whether he knew Y, any contradiction in his testimony would not have given the domestic authorities the right to discriminate against him. The author concedes that, at the beginning of the criminal proceedings, his testimony was very contradictory. Nevertheless, it was the authorities' refusal to notify the author of the charges against him in a language he understood and the psychological violence they inflicted on him by forcing him to testify against himself that caused him to mistrust them and make the contradictory statements in question.

5.4 While the State party asserted that the author's role in the alleged crime was different from that of the defendant of Icelandic nationality, this is not correct. In its decision, the Supreme Court stated that the Icelandic defendant had called the police, provided Y with accommodation and called the author to ask him to take Y out. All of this demonstrates that the Icelandic defendant was significantly more involved in the alleged crime than the author. The author merely took Y to the hotel at the request of the Icelandic defendant. The differential treatment of the two defendants demonstrates that the author was subjected to discrimination. Moreover, the State party acknowledged that the media in Iceland is uncontrolled.

5.5 The author reiterates his arguments under articles 7, 9 and 10 of the Covenant and maintains that the State party did not deny his allegations but merely stated that the author's arrest was necessary. The State party did not specify the factors that led to this assumption.

5.6 The State party recognized that solitary confinement may only be ordered for a maximum of 28 days if the maximum penalty for the offence is 10 years. The State party demonstrated disregard for the author's rights by arguing that the punishment for human trafficking has now increased to 12 years (whereas it was eight years at the time of the author's trial). One of the essential rights under the Covenant is the principle of the non-retroactive effect of laws. The fact that the penalty for human trafficking increased after the author's arrest does not make his solitary confinement lawful.

5.7 The author substantiated his claims under article 14 of the Covenant and the State party did not contest the assertion that defamatory material was published in the media about him. While the State party cited domestic laws guaranteeing the right to a fair trial, it did not demonstrate that those guarantees were applied to the author. The author contests the State



party's statement that no articles about him appeared in the media until after the issuance of the decision of the Supreme Court. In fact, the author learned from the media that he was wanted by the police. A media campaign describing the author as a violent offender, a trafficker and an associate of Lithuanian organized crime groups was initiated on 16 October 2009. The statements in the media violated the author's right to the presumption of innocence. The author maintains that, while an interpreter did tell him, in Lithuanian, that he had been charged with human trafficking, he did not receive a formal notification specifying the accusations and explaining his rights as an accused.

5.8 Although the author was able to appeal the decision against him and was given the right to speak, the State party did not demonstrate that the appeal was an effective review procedure. The author's appeal and arguments were not analysed by the Supreme Court, which was biased against the author and merely reformulated the reasoning provided by the court of lower instance.

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

### *Consideration of admissibility*

6.1 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.

6.2 The Committee notes that, under article 5 (2) (a) of the Optional Protocol and the State party's reservation to that provision, the Committee is precluded from examining a matter that is being examined or has been examined under another procedure of international investigation or settlement. On 28 March 2013, the European Court of Human Rights declared the author's application inadmissible.<sup>2</sup> The Committee notes, however, that the decision of the Court does not set forth a specific justification for the finding of inadmissibility. It is therefore unclear whether the decision was based on procedural or substantive grounds. Accordingly, the Committee is unable to conclude that the same matter has been examined by the Court.<sup>3</sup> Thus, the Committee considers that it is not precluded by article 5 (2) (a) of the Optional Protocol from examining the communication.

6.3 The Committee notes that the State party has not contested the author's argument that he exhausted all available domestic remedies. It also notes that, when appealing his conviction to the Supreme Court, the author raised multiple issues regarding the fairness of his trial, the length of time in detention and his detention in solitary confinement. The Committee observes that the material before it does not, however, reveal that the author raised in his appeals the substance of his claims under articles 7 or 10 of the Covenant, apart from claims based on the fact of his solitary confinement; or his claims under article 26 regarding the publication of biased articles in the media. Accordingly, the Committee considers that article 5 (2) (b) of the Optional Protocol precludes it from examining those claims. The Committee considers that article 5 (2) (b) of the Optional Protocol does not preclude it from examining the author's remaining claims under articles 2, 7, 9, 10, 14 and 26 of the Covenant.

6.4 The Committee notes the State party's position that the communication is inadmissible because it was not submitted within five years of the date on which the author exhausted domestic remedies. The Committee recalls that, while there are no fixed time limits for the submission of communications under the Optional Protocol,<sup>4</sup> rule 99 (c) of the Committee's rules of procedure states that a communication may constitute an abuse of the right of submission when it is submitted five years after the exhaustion of domestic remedies by the author of the communication, or, where applicable, three years from the conclusion of

<sup>2</sup> The author provides a letter from the European Court of Human Rights dated 4 April 2013 concerning his application (No. 376/11) against Iceland. In the letter, the Court stated that, on 28 March 2013, it had decided to declare the application inadmissible, sitting in a single-judge formation. Furthermore, the Court stated that, in the light of all the material in its possession and insofar as the matters complained of are within its competence, the Court has found that the admissibility criteria set out in articles 34 and 35 of the Convention have not been met.

<sup>3</sup> See *X v. Norway* (CCPR/C/115/D/2474/2014), para. 6.2.

<sup>4</sup> *Gratzinger and Gratzinger v. Czech Republic* (CCPR/C/91/D/1463/2006), para. 6.3.

another procedure of international investigation or settlement, unless there are reasons justifying the delay, taking into account all the circumstances of the communication. In the author's case, the communication was submitted less than three years after the issuance of the decision of inadmissibility of the European Court of Human Rights on 28 March 2013. Accordingly, the Committee considers that the communication does not represent an abuse of the right of submission.

6.5 The Committee notes the author's claims under article 2 of the Covenant. The Committee recalls its jurisprudence according to which article 2 of the Covenant may be invoked by individuals only in conjunction with other articles of the Covenant and cannot, in and of itself, give rise to a claim under the Optional Protocol.<sup>5</sup> Accordingly, the Committee declares the author's claim under article 2 of the Covenant inadmissible under article 3 of the Optional Protocol.

6.6 The Committee notes the State party's argument that the communication is inadmissible because the arguments advanced by the author are of a general nature. The Committee takes note of the author's claims under articles 7 and 10 of the Covenant concerning the conditions of his solitary confinement and also notes the author's claims under article 14 (1)–(2), read in conjunction with article 26, of the Covenant, to the effect that his conviction was based on biased media articles and the prejudicial risk assessment report of the police, which indicated discriminatory attitudes towards him on account of his Lithuanian nationality. The Committee further notes the author's claims under articles 14 (3) (a)–(b) and (g) and 14 (5) of the Covenant, to the effect that he did not have adequate facilities to prepare his defence, did not have access to unspecified case materials during the criminal trial, was forced to testify against himself and did not have access to an effective appeal procedure. The Committee takes note, however, of the detailed submission of the State party according to which the author's conviction was based not on his nationality but on the evidence, which was comprehensively assessed by the Reykjanes District Court and the Supreme Court. Further, the Committee notes the explanations provided by the State party regarding the facilities afforded to the author and the fact that the author succeeded in part on appeal. In the light of these explanations, and in the absence of any further details from the author, the Committee considers that the author has not sufficiently substantiated these claims for the purpose of admissibility and therefore finds them inadmissible under article 2 of the Optional Protocol.

6.7 The Committee considers that the author has sufficiently substantiated the claims under article 9 of the Covenant for the purposes of admissibility. It therefore declares them admissible and proceeds with its consideration of the merits.

#### *Consideration of the merits*

7.1 The Committee has considered the communication in the light of all the information made available to it by the parties, in accordance with article 5 (1) of the Optional Protocol.

7.2 The Committee notes the author's claim that the State party violated his rights under article 9 of the Covenant by holding him in prolonged solitary confinement for 32 days during pretrial detention. The Committee observes that article 9 (1) of the Covenant prohibits both arbitrary and unlawful deprivations of liberty. The Committee recalls its general comment No. 35 (2014), in accordance with which deprivations of liberty include solitary confinement.<sup>6</sup> The Committee notes that the author was held in solitary confinement for 30 days, from 18 October to 17 November 2009. The Committee observes that, as recognized by the Supreme Court in its decision dated 17 November 2009, domestic law applicable at that time prohibited solitary confinement for more than four weeks (i.e., 28 days) for crimes punishable by less than 10 years of imprisonment, including human trafficking. The Committee also notes the severity of solitary confinement as a form of punishment and takes note of the absence of a detailed and specific explanation by the State party, beyond references to domestic law, as to why the author's solitary confinement was necessary. The

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<sup>5</sup> See, inter alia, *A.P. v. Ukraine* (CCPR/C/105/D/1834/2008), para. 8.5.

<sup>6</sup> General comment No. 35 (2014), para. 5.

Committee therefore considers that the author was unlawfully held in solitary confinement on 16 and 17 November 2009, in violation of his rights under article 9 (1) of the Covenant.

7.3 The Committee also notes that the Reykjanes District Court issued decisions on 18 and 21 October 2009 by which it ordered the author's pretrial detention in solitary confinement from 18 to 28 October 2009. The Committee notes that, in those decisions, the Reykjanes District Court provided no information about the claim against the author or the evidence gathered against him. In its reasoning, it merely cited article 99 (1) (b) of the Code of Criminal Procedure, without explaining how that provision justified the continued detention of the author. The Committee notes that article 99 (1) (b) of the Code of Criminal Procedure states that solitary confinement may only be ordered through a judge's ruling; it does not provide any basis for determining when it is appropriate. Thus, the Committee observes that it is not possible to discern from the decisions dated 18 and 21 October 2009 or from any other explanation of the State party of the precise reasons for which the author's prolonged detention of 30 days in solitary confinement was necessary, as the State party asserts. The Committee recalls that solitary confinement, as a further restriction on persons already detained, can also amount to a violation of article 9,<sup>7</sup> particularly where the treatment of the detainees does not relate to the purpose for which they are ostensibly being detained.<sup>8</sup> Accordingly, and in the light of the failure of the State party to provide any individualized justification for why the author was kept in solitary confinement, the Committee concludes that the author's solitary confinement from 18 October to 17 November 2009 was arbitrary, in violation of his rights under article 9 (1) of the Covenant.

8. In the light of its findings, the Committee does not deem it necessary to examine the author's separate claim under article 9 of the Covenant regarding the overall length of his pretrial detention.

9. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts before it disclose a violation of the author's rights under article 9 (1) of the Covenant.

10. 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 provide the author with adequate compensation for the violation suffered. The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future.

11. 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 or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective 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 disseminate them widely in the official language of the State party.

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<sup>7</sup> *Ibid.*, para. 5.

<sup>8</sup> *Ibid.*, para. 14.

## Annex

### **Individual opinion of José Manuel Santos Pais (partially dissenting)**

1. I concur with the conclusion reached in the Committee's Views that the State party held the author unlawfully in solitary confinement on 16 and 17 November 2009, exceeding by two days the limit defined in domestic law to that effect (28 days), therefore violating the author's rights under article 9 (1) of the Covenant (para. 7.2).<sup>1</sup> The Supreme Court of the State party, however, when noticing it, by its decision of 17 November 2009, immediately ordered the cessation of solitary confinement and placed the author in continued detention.

2. I do not agree, though, with the Committee's conclusion that, since the State party failed to provide an individualized justification for why the author was kept in solitary confinement, such confinement was, as a whole, arbitrary and therefore violated the author's rights under article 9 (1) of the Covenant (para. 7.3). In my view, this conclusion does not match the facts in the present case.

3. This is a case of trafficking in human beings, involving five co-defendants not nationals of the State party suspected of belonging to a criminal organization (there were also suspicions of racketeering, arson and swindling – para. 2.6). The criminal investigation and subsequent trial was concluded in scarcely five months, from 18 October to 29 December 2009, in spite of its complexity, the need for international cooperation and the non-cooperative attitude of the author, who alleged never to have met the victim Y. On 29 December 2009, charges were brought against the author (para. 4.5) and on 8 March 2010 the author was sentenced to five years of imprisonment (para. 2.6). The Supreme Court later reduced the sentence to four years of imprisonment (para. 2.8), of which the author served only two years before being removed from the State party's territory and taken to his country of origin in October 2011 (para. 2.9). In any criminal jurisdiction, this should be considered an example of due diligence by a criminal court and a remarkable achievement in itself in a case of trafficking in human beings.

4. The detention of the author was subjected to continuous judicial review, 17 decisions having been rendered in this regard by the domestic courts, eight of which by the Supreme Court, which normally just took between two and five days to issue its decisions. The standard of this Committee has always been that it is generally for the courts of a State party to the Covenant to review the facts and the evidence, or the application of domestic legislation, in a particular case, unless it can be shown that the evaluation or application in question was clearly arbitrary or amounted to a manifest error or to a denial of justice, or that the court otherwise violated its obligation of independence and impartiality. In my view, none of these circumstances apply in the present case.

5. The author, of Lithuanian nationality, was arrested on 18 October 2009 and immediately informed that he was suspected of human trafficking. He was brought that same day before the Reykjanes District Court, which ordered the author to be detained in solitary confinement until 21 October 2009, at which point the solitary confinement order was extended until 28 October 2009.

6. The pattern of the court decisions is identical: the author, in the presence of his defence counsel and an interpreter, was informed of the claim – he himself acknowledges, in page 17 of his complaint, that he was suspected of trafficking in human beings, making his allegations of a violation of article 14 (3) of the Covenant totally unsubstantiated (para. 4.20); the grounds for his detention were presented by the prosecution or the police; the defence counsel intervened afterwards; and the court then issued its decision, subjecting the author either to solitary confinement or, later, to continued confinement.

7. In its first decision, of 18 October 2009, the court determined that the accused should be subjected to solitary confinement, in accordance with article 99 (1) (b) of the Code of

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<sup>1</sup> Unless otherwise indicated, paragraph numbers in parentheses refer to the Committee's Views.

Criminal Procedure and the limitations set out in article 99 (1) (a)–(f). The accused declared that he accepted this decision.

8. The reasons for solitary confinement, by reference to the relevant domestic provisions, are therefore clearly indicated by the judge. In page 6 of his complaint, the author acknowledges having understood such grounds: the crime committed was punishable by imprisonment for a term of eight years and there was the possibility of influence of witnesses and destruction of evidence. The State party, in this respect, refers, as does the author, to two grounds: the defendant was likely to hinder the investigation by removing evidence or influencing other defendants or witnesses; and detention on remand was necessary to protect others from the defendant or to protect the suspect from attacks or the influence of others (para. 4.12). A judge may decide that a defendant may be placed in solitary confinement if either of these conditions is met. That is exactly what happened. The State party also asserts that the author's statements were erratic and that he was obviously in close contact with other defendants, which made it possible for him to remove evidence or consult his co-defendants (para. 4.13).

9. I therefore fail to see what other possible reasoning should be expected from the domestic court to substantiate its decision, at the outset of such a complex criminal investigation where most of the facts were still to be uncovered, evaluated and assessed, if not to refer to the possible two grounds for solitary confinement laid down in the relevant domestic provisions. The same applies to the second court decision, of 21 October 2009, to maintain the solitary confinement. The third court decision on solitary confinement, of 28 October 2009, issued scarcely 10 days after the arrest of the author, included a more substantial assessment of the facts, namely the detailed report of the Chief of Police in Suournes, who concluded:

The investigation of the alleged slave trade is quite complicated and [the] police believes that the accused may encumber the investigation of the case and influence accomplices and or witnesses, or even remove evidence, if he has freedom of movement. Seven people are now in detention because of the case and there are substantial discrepancies in their testimonies to the police.

10. Under the circumstances, in view of the complexity of the case, the attitude of non-cooperation of the author, the possible existence of a dangerous criminal organization operating in the territory of the State party, the need to keep the co-defendants apart from each other and the aim of ensuring an effective and thorough investigation free from undue interference by any of the defendants, to have kept the author in solitary confinement seems a reasonable decision. That conclusion was also reached by the Supreme Court, except for in its decision of 17 November 2009, when the limit of 28 days of solitary confinement had already been exceeded.

11. I thus fail to see how the domestic courts' decisions can be found to be clearly arbitrary or to amount to a manifest error or to a denial of justice and would therefore have concluded that the State party has not violated the author's rights under article 9 (1) of the Covenant for placing him in solitary confinement for 28 days or for keeping him in pretrial detention until his trial in March 2010.