



International Covenant on Civil and Political Rights

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Human Rights Committee

Decision adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 3662/2019*, **

<i>Communication submitted by:</i>	G.A.P. (represented by counsel, Spyridon Flogaitis)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Romania
<i>Date of communication:</i>	18 April 2019 (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 10 October 2019 (not issued in document form)
<i>Date of adoption of decision:</i>	23 March 2023
<i>Subject matter:</i>	Right to privacy
<i>Procedural issues:</i>	Inadmissibility – the same matter has been considered by another procedure of international investigation or settlement; exhaustion of domestic remedies; lack of sufficient substantiation
<i>Substantive issues:</i>	Right to privacy and the private nature of correspondence
<i>Article of the Covenant:</i>	17
<i>Articles of the Optional Protocol:</i>	2, 3 and 5 (2) (a) and (b)

1.1 The author of the communication is G.A.P., a national of Romania born on 13 December 1959. He claims that, through the abusive use of covert surveillance against him, obtained on the basis of a collaboration agreement between the National Anti-Corruption Directorate and the Romanian Intelligence Service, the State party has violated his right to privacy and the private nature of correspondence under article 17 of the Covenant. The

* Adopted by the Committee at its 137th session (27 February–24 March 2023).

** The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Farid Ahmadov, Wafaa Ashraf Moharram Bassim, Rodrigo A. Carazo, Yvonne Donders, Mahjoub El Haiba, Carlos Gómez Martínez, Laurence R. Helfer, Marcia V.J. Kran, Bacre Waly Ndiaye, Hernán Quezada Cabrera, José Manuel Santos Pais, Soh Changrok, Tijana Šurlan, Kobauyah Tchamdja Kpatcha, Teraya Koji, Hélène Tigroudja and Imeru Tamerat Yigezu.



Optional Protocol entered into force for the State party on 16 October 1993.¹ The author is represented by counsel.

1.2 On 6 December 2019, the State party requested that the admissibility of the communication be examined separately from the merits.² On 27 April 2021, pursuant to rule 94 of its rules of procedure, the Committee, acting through its Special Rapporteurs on new communications and interim measures, decided not to grant that request and to examine the admissibility of the communication together with its merits.

Facts as submitted by the author

2.1 The author is a well-known individual and businessman in Romania. He acted as the Vice-Chair of the Board of Directors of Log Trans, an international company, between July 2002 and April 2006. Log Trans signed an unincorporated joint venture agreement with the University of Agronomic Sciences and Veterinary Medicine on 12 April 2000 for the use of 225 hectares of land in Bucharest, known as Baneasa Farm, which is owned by the University. On the same date, the University filed an application to the sector 1 local subcommission to issue the property title for the land located at 42–44, Bucharest-Ploiesti Road³ and to register that land with the Land Registry of Bucharest sector 1. On 3 August 2000, the joint venture between Log Trans and the University was incorporated. Log Trans changed its name to SC Baneasa Investments SA and the University became a 49.88 per cent shareholder in Baneasa Investments and contributed the right to use 175 hectares from Baneasa Farm for 49 years. International Business Trading Corp contributed 101,507,200,000 lei for a share of over 50 per cent.⁴ There were five board directors. On 8 October 2002, the University's title over Baneasa Farm⁵ was acknowledged by the court of sector 1 Bucharest, the relevant land book rectified and the property registered in the University's name.

2.2 On 9 February 2005 and 7 July 2005, another high-profile businessman, George Becali, filed a complaint to the General Prosecutor's Office of the High Court of Cassation and Justice against the author and Ioan Alecu, rector of the University and board member of Baneasa Investments. On 14 February 2008, the Prosecutor's Office refused to prosecute the author and Mr. Alecu because Mr. Becali's claims were not supported by substantive evidence and did not have legal ground, amounting to mere speculation.

2.3 On 20 March 2009, despite the General Prosecutor's refusal to prosecute the author, the National Anti-Corruption Directorate initiated a prosecution against the author and others for complicity in abuse of power. The author indicates that the Directorate operates as an autonomous organization under the Prosecutor's Office attached to the High Court of Cassation and Justice. The Directorate investigates and prosecutes corruption-related offence that cause damage to the State and its institutions. According to the author, many experts believe that it uses abusive prosecutorial tactics to obtain convictions at any price, in particular in high-profile cases, including the instigation of criminal investigations against judges, charging individuals with abuse of office or bribery and manipulating the media.⁶

2.4 On 24 March 2009, the author was arrested and detained by the National Anti-Corruption Directorate for 24 hours. The European Court of Human Rights later found that this amounted to a violation of article 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) and awarded the

¹ Romania has entered the following reservation: "Romania considers that, in accordance with article 5, paragraph 2 (a) of the Protocol, the Human Rights Committee shall not have competence to consider communications from an individual if the matter is being or has already been examined under another procedure of international investigation or settlement."

² In accordance with rule 93 (1) of the Committee's rules of procedure.

³ The property title was issued on 6 June 2001.

⁴ There were four other minority shareholders.

⁵ Located at 42–44, Bucharest-Ploiesti Road.

⁶ In his reports concerning the case of the author, Louis Freeh, former Director of the Federal Bureau of Investigation, details examples of Romanian courts ignoring or ruling out evidence presented in the author's defence and failing to apply the law correctly in their rulings against him. This is common in high-profile cases, particularly those brought by the National Anti-Corruption Directorate.

author reparation of non-pecuniary damages.⁷ On the same date, the Ministry of Finance wrote to one of the co-accused, confirming that Baneasa Farm was not in the public domain.⁸

2.5 On 4 June 2009, Mr. Becali refused to testify further in the National Anti-Corruption Directorate investigation following the complaint he had filed against the author. On 25 March 2009, a travel ban was issued against the author by the Bucharest Court of Appeal. On 9 June 2009, the High Court of Cassation and Justice refused to lift the travel ban on the author, finding that there were strong indications that the author had committed the offences in question.⁹

2.6 On 17 December 2012, the National Anti-Corruption Directorate indicted the author and 10 others, alleging that he had served as an accomplice in the abuse of power and active bribery.

2.7 On 20 May 2014, KPMG published a report that criticized the valuation methods employed by the experts of the National Anti-Corruption Directorate and their results. On 18 July 2014, the author applied to the Court of Appeal to rely on expert evidence relating to: (a) valuation of the land (the KPMG report); (b) legal title to the land; and (c) assumptions that covert surveillance evidence gathered by the Directorate against him had been tampered with.¹⁰ On 22 September 2015, Catalin Grigoras provided an expert report demonstrating that the covert surveillance recordings had been tampered with.¹¹ On 15 February 2016, Mr. Becali admitted that his complaint was based on gossip and that there was no evidence to support his allegation of impropriety relating to Baneasa Farm. On 18 February 2016, the National Anti-Corruption Directorate initiated a criminal prosecution against Mr. Becali for perjury. On 31 March 2016, before the Bucharest Court of Appeal, Mr. Becali withdrew his retraction under a threat of perjury charges. The perjury charges were subsequently dropped.

2.8 The author argues that, under Constitutional Court decision No. 51/2016, dated 16 February 2016, it was unconstitutional to rely on covert surveillance evidence secured with the assistance of the Romanian Intelligence Service. The most sensitive and controversial aspect of the work of the National Anti-Corruption Directorate is its close operational relationship with the Intelligence Service. The author asserted that a “parallel State” had been formed by the intelligence services, prosecutors and some politicians. A specific example of such abuse was the targeting of the author. A political journalist, Nicholas Kochan, stated that there was evidence of “specific political manipulation” in the present case, as business rivals had used their political connections, including close relationships with former President Basescu, to target the author.¹² On 1 April 2016, the Court of Appeal dismissed a defence application by the author to exclude the covert surveillance, based on the ruling of the Constitutional Court.

2.9 On 23 June 2016, the Bucharest Court of Appeal convicted the author of complicity in the abuse of power and active bribery¹³ and the author was sentenced to nine years’ imprisonment. The Court held that the author had acted with intent and knowledge to acquire Baneasa Farm through non-legitimate means, causing a significant loss of potential monetary gain to the State, as well as for active bribery and complicity in the abuse of power. The Court of Appeal dismissed the author’s motion to use the expert reports by Mr. Grigoras and former Director of the Federal Bureau of Investigation, Louis Freeh. The Court of Appeal held that the recordings were submitted pursuant to article 91 of the Code of Criminal Procedure and that using covert surveillance evidence was not prohibited under the Constitutional Court

⁷ See *Popoviciu v. Romania*, Application No. 52942/09, Judgment, 1 March 2016.

⁸ The evidence is attached to the communication.

⁹ On the basis of the supporting court documents, it seems that the travel ban was lifted on 18 June 2009.

¹⁰ The author’s requests were dismissed by the Court of Appeal in its final decision of 23 June 2016.

¹¹ The report suggested that the audio and audiovisual recordings that the Directorate was using against the author contained traces of technical interventions, including discrepancies in the time stamps of audio and visual material, traces of deliberate human intervention in duplicates of the evidence and duplicates which did not match the originals.

¹² The expert witness report is attached to the communication.

¹³ Decision No. 115/F of 23 June 2016.

decision. That decision was widely criticized.¹⁴ In its judgment, the Court of Appeal did not determine the alleged “prejudice” or whether the loss was “qualified” or “aggravated”, pursuant to article 309 of the Criminal Code, or the quantum of loss. The assessment of the alleged quantum of loss was determined only later, under decision No. 267 of 28 December 2018 of the Court of Appeal. The author appealed that decision to the High Court of Cassation and Justice, arguing that there had been several procedural errors which would require a new trial.

2.10 On 6 June 2017, the High Court of Cassation and Justice dismissed the author’s applications to use expert evidence and witnesses in his defence and to exclude prosecution evidence and witnesses, holding that it was unfounded under article 100 (4) of the Code of Criminal Procedure and that some of the evidence that the author wished to introduce was irrelevant. The Court also dismissed the author’s request to exclude certain evidence and witnesses put forward by the prosecution, stating that the author had not shown a change in circumstances from the court of first instance, where the witnesses and evidence had been used. The evidence used previously should therefore not be excluded. On 2 August 2017, the Court dismissed the author’s appeal, but reduced his sentence to seven years’ imprisonment by applying the provisions of article 5 of the Criminal Code. On 17 November 2017, the Court dismissed an application to reopen its proceedings due to the perceived lack of impartiality of one of the appeal judges.

2.11 On 20 November 2017, the author submitted an extraordinary application to the High Court of Cassation and Justice, arguing that his conviction in relation to the offence of abuse of office was unconstitutional as based on a breach of the University’s Charter rather than primary law; however, the Court dismissed the author’s application.

2.12 The author was facing extradition proceedings in the United Kingdom of Great Britain and Northern Ireland at the time of submission of his communication to the Committee. In August 2017, after his conviction became final, a European arrest warrant was issued by the Romanian authorities.¹⁵

2.13 On 2 February 2018, an application was submitted on behalf of the author to the European Court of Human Rights, arguing that the trial and conviction in the author’s case violated his right to a fair trial and the principle of no punishment without the law, due to arbitrariness and a fluid interpretation of domestic criminal law (articles 6 and 7 of the European Convention on Human Rights).¹⁶

2.14 The author also submits that on 29 March 2018, a secret protocol between the Intelligence Service, the General Prosecutor’s Office, and the High Court of Cassation and Justice, signed in 2009, was declassified and published. The protocol mandated cooperation between the Intelligence Service and the judiciary and prosecution (including the National Anti-Corruption Directorate) regarding the investigation and prosecution of crimes related to national security and other serious crimes, including by forming common operative teams. The cooperation included assistance from the Intelligence Service through its devices and software to the National Anti-Corruption Directorate in the form of intercepted telephone conversations, text messages and audiovisual files, obtained through surveillance of politicians, businessmen, journalists, judges and prosecutors, containing private and sensitive information about them. Representatives of 16 courts of appeal in Romania expressed their concern regarding the secret protocols as they might constitute an infringement of the Constitution and a violation of criminal procedural rules and of fundamental human rights. The two bodies concerned, integral to the fight against corruption, have developed a relationship which, instead of protecting democracy, results in abuse of the justice system through arbitrary and mass surveillance.

¹⁴ An independent review by Mr. Freeh of the author’s conviction is annexed to the communication.

¹⁵ On 21 February 2020, the International Criminal Police Organization (INTERPOL) certified that the author was not subject to a notice or to diffusion.

¹⁶ The author’s complaint remained pending before the European Court of Human Rights at the time of the Committee’s consideration of the present communication.

2.15 Lastly, the author submits that he has exhausted all available domestic remedies and that the same matter has not been and is not being examined by another instance of international investigation or settlement.

Complaint

3.1 The author claims that his right to privacy and the private nature of correspondence under article 17 of the Covenant has been violated through the use of covert surveillance evidence against him, which was obtained and stored by the Intelligence Service and later used by the Anti-Corruption Directorate, in line with a secret protocol.

3.2 In particular, the author is alleging that similar security protocols are not compatible with the rule of law and they do not meet the criteria of accessibility, clarity, precision and predictability. For instance, the protocols do not define the kind of information that may be recorded, the categories of people who can be the subjects of surveillance, the procedure to be followed and the length of time for which the information may be kept. The national system for gathering and archiving information does not provide any safeguards, such as effective supervision, and does not indicate with reasonable clarity the scope and manner of exercise of the relevant powers.¹⁷

3.3 The author submits that the violation of his rights under article 17 of the Covenant manifested in: (a) the non-existent and unlawful basis on which the Anti-Corruption Directorate decided to reopen the case against him, despite the General Prosecutor's rejection of the prosecution of the author; (b) the refusal by the courts (the Court of Appeal and the High Court of Cassation and Justice) of the author's requests to use expert evidence to prove the unlawfulness of covert surveillance; and (c) the mass covert surveillance of the author and other high-profile individuals by the Intelligence Service and the Anti-Corruption Directorate, in breach of the jurisprudence of both the European Court of Human Rights¹⁸ and the Committee.¹⁹ Both the storing of the information and its controversial use amount to interference, which is unlawful, arbitrary and disproportionate. Although intelligence services may legitimately exist in a democratic society, the secret surveillance of citizens is tolerable under the Covenant only when strictly necessary for safeguarding the democratic order and institutions.²⁰

3.4 As to the general background, the author submits that: (a) politicians, judges, prosecutors and businessmen are maliciously monitored, targeted and investigated by the Anti-Corruption Directorate and the Intelligence Service, infringing their right to privacy; and (b) the judiciary in Romania remains under the negative influence of the Anti-Corruption Directorate, the Intelligence Service and politicians by infiltrating the privacy of judges. An abusive cooperation between the two agencies is based on anti-constitutional protocols that empower them to conclude unsupervised and unlawful contracts with a large number of law enforcement, judicial and administrative agencies. These contracts give the two bodies excessive control over the judiciary and the lives of people in Romania. Many individuals have been targeted by secret agents, who have intercepted their telephone conversations and text messages, wiretapped their conversations and created audio and audiovisual files that have been used to provide anti-constitutional and controversial assistance to prosecutors in their investigations. That abuse under the cloak of justice can also be demonstrated by an unsupervised database of private information, which also violates the individuals' right to privacy.

¹⁷ See, for example, European Court of Human Rights, *Big Brother Watch and others v. the United Kingdom*, Applications Nos. 58170/13, 62322/14 and 24960/15, Judgment, 13 September 2018; *Rotaru v. Romania*, Application No. 28341/95, Judgment, 4 May 2000; and *Roman Zakharov v. Russia*, Application No. 47143/06, Judgment, 4 December 2015.

¹⁸ European Court of Human Rights, *Nakhmanovich v. Russia*, Application No. 55669/00, Judgment, 2 March 2006, para. 89; *Lehtinen v. Finland*, Application No. 34147/96, Judgment, 13 September 2005, para. 28; and *Stoianova and Nedelcu v. Romania*, Applications Nos. 77517/01 and 77722/01, Judgment, 4 August 2005, para. 23.

¹⁹ General comment No. 16 (1988), paras. 3, 4 and 8; and general comment No. 34 (2011), para. 18.

²⁰ European Court of Human Rights, *Klass and others v. Germany*, Application No. 5029/71, Judgment, 6 September 1978, para. 42.

State party's observations on admissibility

4.1 On 10 February 2020, the State party submitted its observations on admissibility, and reiterated its request that the Committee examine the admissibility of the communication separately from its merits.

4.2 The State party submits that the author has not established victim status and that his communication appears to be an *actio popularis*, that he has abused the right of submission, that some translations of the facts are missing and that he has not exhausted all available domestic remedies. The State party also questions whether the author's counsel has been duly authorized to submit the present communication. The State party argues that the same matter is being examined by another instance of international investigation or settlement, namely the European Court of Human Rights.

4.3 Furthermore, the State party submits that the records of the author's communications should not be considered as absolutely void because they were made between 2008 and 2009, prior to the amendments of the Code of Criminal Procedure, which came into force in 2014, and were declared unconstitutional through Constitutional Court decision No. 51/2016.²¹ The State party suggested that the decision by the Court of Appeal to dismiss the application based on the nullity of the records, a decision which was upheld by the High Court of Cassation and Justice upon appeal, was legal and did not therefore cause any damage to (have any negative consequence for) the author.

4.4 In the light of the above, the State party requested the Committee to consider the author's communication inadmissible, pursuant to articles 2, 3 and 5 (2) (a) and (b) of the Optional Protocol to the Covenant.

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

5.1 On 29 May 2020, the author submitted his comments on the State party's observations on admissibility.

5.2 First, the author objects to the State party's argument about the missing translations of some of the facts and its assertion that the Intelligence Service was not at all involved in the author's interception, as attested by further evidence. Second, the author has duly authorized his representative to submit the communication to the Committee. Third, the author argues he has substantiated his victim status and explains that the State party has violated his right to privacy and the private nature of correspondence, as set forth in the Covenant, since he was personally and directly affected. Fourth, the observations referring to the non-exhaustion of domestic remedies should be considered as void, since the decision rendered on 2 August 2017 was final and cannot be appealed. The above-mentioned comments are supported by the relevant jurisprudence of the Committee. Moreover, the initial communication was compatible with the right of submission.

5.3 Lastly, the same matter is not being examined before another international body of investigation or settlement. In effect, the matter differs as regards the facts and substantive rights that are the subject of the claims. The author contends that his claims before the European Court of Human Rights related to his right to a fair trial, whereas his claims before the Committee relate exclusively to his right to privacy.

State party's observations on the merits

6.1 On 28 September 2021, the State party submitted its observations on the merits, reiterating its earlier objections to the admissibility of the communication.

6.2 The State party submits that the author has not exhausted available domestic remedies since he initiated extraordinary appeal proceedings, which were pending at the time of submission of the present communication. In that regard, the State party submits that on 27 February 2020, the High Court of Cassation and Justice dismissed the appeal against criminal sentence No. 236/F of 10 December 2019 of the Bucharest Court of Appeal. The High Court

²¹ The concerned Constitutional Court decision, No. 51/2016, dealt with the amendments of criminal procedure adopted in 2014, so could not apply to the author's situation in 2008 or 2009.

of Cassation and Justice found that the circumstances relied on by the author, supported by three extrajudicial statements, were not unknown at the time of delivery of the initial criminal sentence, No. 2266 of 2 August 2017. On 3 November 2020, the High Court of Cassation and Justice dismissed the author's application for appeal against criminal sentence No. 180/F of 15 September 2020 of the Bucharest Court of Appeal. This request also concerned the revision of a judgment rendered in the criminal proceedings that had been completed with the conviction of the author of the communication, namely criminal sentence No. 116/F of 23 June 2016 of the Bucharest Court of Appeal. In parallel proceedings, on 11 June 2021 the High Court of the United Kingdom issued its decision in the appeal proceedings against the judgment of 12 July 2019 of Westminster Magistrates' Court, which had ordered the extradition of the author. The High Court held that the author's arguments were vague and unsubstantiated.²² Even if the appeal led to a rejection of the request for extradition, it did so for the reasons related to the equity of criminal procedure, without any relation to the subject of the present communication.

6.3 The State party also argues that the present case constitutes an *actio popularis* since the author has not established how his rights have been violated individually and specifically. It points to the vagueness of the author's claims and the absence of additional substantive arguments. The author has instead referred to the widespread use of interception by the National Anti-Corruption Directorate and the Intelligence Service of the communications of public officials, members of parliament and others, and has not substantiated the violation of his rights.

6.4 While the author asserts in his communication that his communications were wiretapped in the context of criminal investigations between 2008 and 2009, the State party objects, noting that the Constitutional Court judgment referred to (No. 405/2016), issued during the criminal investigation concerning the author, refers to criminal procedure since its amendment in 2014 and therefore does not apply to the circumstances of the author's case.

6.5 The author has raised the claims of a violation of article 17 of the Covenant before the Committee, disregarding the legal qualification of the facts in the present case. However, similar claims have not been raised in domestic appeal proceedings. The author has therefore not exhausted domestic remedies, pursuant to article 5 (2) (b) of the Optional Protocol.²³

6.6 The State party responds further to the author's substantive claims, requesting that the Committee dismiss them as unfounded, since no violations occurred in the administrative or criminal proceedings. The author's claims related to the use of the secret protocols and their indirect impact on the author is vague, not supported by evidence and appears to be an *actio popularis*. The arguments presented, including in regard to the list of telephone calls under surveillance, which did not include the author's telephone number, actually refer to the establishment of facts or assessment of evidence that are outside of the scope of the Committee's consideration. They are issues that fall within the competence of regular national courts, not that of international protection mechanisms.

6.7 The State party explains the reasons why the courts refused to use expert evidence to prove the unlawfulness of covert surveillance. In particular, it argues that judicially authorized interception is legally permissible, authorized by courts and therefore legitimate, and that the surveillance of the author was proportionate, necessary and time-bound. It adds that the author was aware of who authorized the surveillance in the context of the criminal

²² Based on publicly available information, the High Court of England and Wales has, however, accepted the author's appeal and reversed the decision of 12 July 2019 by Westminster Magistrates' Court to order the extradition of the author from the United Kingdom to Romania.

²³ The State party refers to the case of *V. H. v. Czech Republic* (CCPR/C/102/D/1546/2007), which was declared inadmissible: "The Committee notes the State party's contention that the author did not exhaust domestic remedies pursuant to article 5, paragraph 2 (b) of the Optional Protocol, as he never raised the issue of discrimination based on political opinion and social background or any other status as provided by article 26 before national authorities" (para. 7.3).

procedure and that he had not been subject to excessive or arbitrary surveillance by the Intelligence Service.²⁴

6.8 The State party reiterates that the author's claims under article 17 should be limited to possible interference in the right to respect for privacy and the private nature of correspondence, and justification of such interference. Those claims cannot extend to the role of interception as evidence in criminal proceedings and the fairness of those proceedings, in the absence of any grievance relating to the right to a fair trial.

6.9 On 24 June 2016, the author appealed against criminal judgment No. 115/F of 23 June 2016. In his appeal of 110 pages, no mention was made of the possible illegality or nullity of the recordings of his communications. He referred to the content of the recordings only in his pleadings on the non-existence of the criminal acts complained of. During the public hearing on 23 May 2017, the author's lawyer supported his request for supplementary evidence, requesting that the witnesses be heard again before the appeal body. The author did not make any claims as to the alleged illegality or nullity of the recordings of his communications during the criminal investigation, but did so in his appeal. The fact that a co-accused individual, S.I.C., has requested the exclusion of recordings from evidentiary material is not decisive; it does not automatically exempt the author from his obligation to invoke the alleged infringement of his right. Thus, S.I.C. was the only one to invoke before the High Court of Cassation and Justice criticism in relation to the recordings, as his lawyer requested the exclusion of the recordings from the evidentiary material. S.I.C. had alleged, both before the court of first instance and before the appeal body, that there had been alterations and modifications of the recordings (and their transcripts) of the conversations in question but not of all the conversations. In those circumstances, the State party considers that the author of the communication should have raised the claims he has submitted to the Committee before the domestic courts first.

6.10 In its criminal judgment of 2 August 2017, the High Court of Cassation and Justice indicated, among other things, that digital recordings retained their quality during multiplication and that the arguments made by the defence regarding their alteration, following or during transfer or multiplication, lacked relevance.

6.11 The State party requests the Committee to note the absence of any evidence to support the author's allegations of extensive and excessive surveillance. In addition to the recordings of his communications, authorized by the authorities and made between December 2008 and March 2009, he does not indicate any other element which could justify the allegation of excessive surveillance. The State party recalls that the preliminary judgments containing the authorizations of interception had been included in the criminal file; the author's lawyer had had the opportunity to examine them; he had obtained copies of the optical media containing the recordings; and he had been able to consult the criminal file in order to read and verify the transcripts of the recordings. However, he chose to declare before the appeal court that he was not challenging the evidence adduced at the court of first instance (including the recordings). The State party requests the Committee to take into account the specific offence of active corruption. In the present case, the corruption refers to offers of gifts, through a third party, to the police officer involved in the criminal investigation into the transfer of the land, so that this investigation could be closed by a dismissal, prompting the need to intercept the author's telephone and record his communications. In addition, the period authorized for the interception of his communications was a few months only.

6.12 The Committee should also note that, during the criminal proceedings and subsequently, the author received several clarifications regarding the alleged involvement of the Intelligence Service in the interception of his communications. Initially, at the public hearing on 31 March 2016, the National Anti-Corruption Directorate indicated that it was its technical service that had executed the interception warrants. More recently, in the proceedings before the British courts concerning the execution of the European arrest warrant

²⁴ In that regard, the State party refers to the three judgments of the Constitutional Court of 16 February 2016, 17 July 2017 and 16 January 2019, addressing the issues of the presumed material competence of the criminal authorities.

for the author of the present communication, the judge reiterated that the evidence adduced by the author was either not very credible or contrary to the author's arguments.

6.13 Lastly, the State party underscores the elements of legality that characterized the interception of the author's communications for a strictly fixed period. That assertion is corroborated by the attitude of the author who, in his request for evidence before the High Court of Cassation and Justice, expressly affirmed his choice not to challenge the evidence administered at the court of first instance, including the recordings. The State party therefore requests the Committee to conclude that adequate legal and procedural guarantees exist, and had characterized the issue of the interception of the author's conversations in the proceedings before the Romanian authorities.

6.14 In view of the above, the State party requests the Committee to find the author's claims unfounded and to state that his rights under article 17 have been guaranteed.

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

7.1 On 1 April 2022, the author submitted comments on the State party's observations on the merits, recalling also the arguments concerning admissibility. He asserts that he has exhausted domestic remedies and has established his victim status.

7.2 He reiterates that he has been a victim of an unlawful collaboration between the National Anti-Corruption Agency and the Intelligence Service. He explains that covert surveillance evidence was used against him during his criminal trial for bribery in Romania and that said evidence had been obtained with the assistance of the Intelligence Service (apparently mandated by one or more "secret protocols" detailing how the Intelligence Service assists Romanian prosecutors with criminal investigations, including by intercepting communications). The author states that his attempts to exclude the covert surveillance evidence against him were rejected by the trial judge, despite the fact that the Constitutional Court had made it clear that any evidence secured with the involvement of the Intelligence Service was null and void. That means that his conviction for bribery was based on unlawful and unconstitutional material, in breach of his privacy rights.

7.3 As to the exhaustion of domestic remedies, the decision of 2 August 2017 of the High Court of Cassation and Justice, which is the Supreme Court in Romania (reducing the total sentence to seven years' imprisonment), was final, irrevocable and not subject to any further judicial remedies. The author further analyses the unlawful, arbitrary and disproportionate interference with his private life and explains the legal status of the victim. He submits that his right to privacy and the private nature of correspondence has been violated by the State party in a way that has personally and directly affected him. He also substantiates the nullity of the recordings of his communications during the criminal investigation and the fact that these recordings were challenged as evidence before the High Court of Cassation and Justice.

7.4 The author further states that in June 2019, he submitted a complaint to the Commission for the Control of INTERPOL's files, challenging an INTERPOL red notice that had been issued against him on 9 August 2017 (following his conviction in Romania) and seeking the deletion of data concerning him. On 21 February 2020, the Commission concluded that the data he was challenging were not compliant with INTERPOL rules. The Commission acknowledged that the author's communications had been intercepted and recorded, considering that there were "strong doubts" about the proportionality of the breach of his right to privacy involved in the use of covert surveillance evidence against him. Based on the author's complaint against Judge T., with respect to an allegation that the judge had committed the offence of abuse of office in his handling of the civil proceedings, on 12 June 2020 the High Court of Cassation and Justice annulled Judge T's decision in the civil proceedings and remitted the case to the Bucharest Court of Appeal for rehearing. The author made another application to the Bucharest Court of Appeal for judicial review of his conviction, this time based on issues relating to the ownership of Baneasa Farm and on medical evidence concerning Judge T.'s fitness to practice. That application was rejected by the Bucharest Court of Appeal on 15 September 2020, a decision confirmed by the High Court of Cassation and Justice on 3 November 2020. On 11 June 2021, the High Court of England and Wales accepted the author's appeal against the judgment of 12 July 2019 of Westminster Magistrates' Court, which had ordered the extradition of the author. The High

Court held, *inter alia*, that there was a “real risk” for the author’s personal security, if extradited, since the author had suffered an “extreme example of judicial partiality” in Romania and that there could be “no question” as to the fairness of his criminal trial and the consequences.

7.5 The State party’s arguments are not substantiated regarding the lack of the author’s victim status in the matter of interceptions. His procedural expressions, namely his application for finding absolute nullity before the Court of Appeal, and the submission of his appeal to the High Court of Cassation and Justice have activated the obligation ignored by the national authorities. Any argument relating to the author not being affected negatively or not invoking the nullity of aggressive and unlawful interceptions is void. The author directly challenged the nullity of the interceptions, an argument that should have been seriously considered in the final stage by the High Court of Cassation and Justice as a matter of law and should have been accepted.

7.6 The author invites the Committee to reject the State party’s objections to admissibility and to conclude that the State party violated the author’s rights under article 17 of the Covenant.

Issues and proceedings before the Committee

Consideration of admissibility

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

8.2 The Committee notes the State party’s argument that the communication should be considered inadmissible, pursuant to article 5 (2) (a) of the Optional Protocol, since the same matter is being examined under another procedure of international investigation or settlement.²⁵ The Committee notes the author’s argument that he has invoked different substantive rights, namely the right to a fair trial and the principle of no punishment without the law (articles 6 and 7 of the European Convention on Human Rights), in his complaint to the European Court of Human Rights, which remains pending. Taking into account that the author’s claim submitted to the Committee concerns the right to privacy and the private nature of correspondence due to covert surveillance of his communications, which differs in substance from those presented to the European Court of Human Rights, the Committee considers that it is not precluded from examining the author’s claim under article 17 by the requirements of article 5 (2) (a) of the Optional Protocol.²⁶

8.3 The Committee recalls its jurisprudence to the effect that authors must avail themselves of all domestic remedies in order to fulfil the requirement of article 5 (2) (b) of the Optional Protocol, insofar as such remedies appear to be effective in the given case and are *de facto* available to the author.²⁷ The Committee notes the State party’s argument that domestic remedies have been exhausted in relation to the criminal conviction of the author by the judgment of 2 August 2017, but that he continued to resort to other available domestic remedies or appeals before the foreign courts and that the claims before the Committee have not been raised in substance before the Romanian domestic courts. In that regard, the Committee notes the author’s objection that his criminal conviction by the judgment of 2 August 2017, based on the evidence, including his intercepted communications, was final and was not subject to further appeals, and that the other remedies resorted to also invoked a violation of his right to privacy. In the present circumstances, the Committee considers that the author has exhausted available domestic remedies in the context of his criminal conviction, with the reservation that when contesting the evidence used before the Court of Appeal, the author did not invoke the use of intercepted communications against him as a

²⁵ The State party has entered a reservation to article 5 (2) (a) of the Optional Protocol.

²⁶ See *B.H. v. Austria* (CCPR/C/119/D/2088/2011), para. 8.5.

²⁷ See, for example, *Gilberg v. Germany* (CCPR/C/87/D/1403/2005), para. 6.5; *Warsame v. Canada* (CCPR/C/102/D/1959/2010), para. 7.4; *S.Y. v. Netherlands* (CCPR/C/123/D/2392/2014), para. 8.3; and *H.S. et al. v. Canada* (CCPR/C/125/D/2948/2017), para. 6.4. See also *B.P. and P.B. v. Netherlands* (CCPR/C/128/D/2974/2017), para. 9.3.

primary ground of appeal; nonetheless, he has requested that expert opinions be heard at various stages of the proceedings, in order to prove that the use of covert surveillance against him was unlawful. Accordingly, the Committee concludes that it is not precluded from examining the author's claim under article 17 by the requirements of article 5 (2) (b) of the Optional Protocol.

8.4 As regards the State party's argument that the author has not established his status as a victim, the Committee considers that the author was directly and personally affected by the interception of his communication by the National Anti-Corruption Agency, in cooperation with the Intelligence Service, between December 2008 and March 2009, which served in part as evidence, on the basis of which he was convicted to seven years' imprisonment. The Committee therefore considers that the requirements of article 1 of the Optional Protocol have been met.

8.5 The Committee takes note of the author's claims that the State party violated his rights under article 17 of the Covenant through the use of covert surveillance as evidence against him, which was gathered by the Intelligence Service and later used by the Anti-Corruption Agency, as required under a secret protocol. The author has alleged that these protocols are not compatible with the rule of law and that they do not meet the criteria of accessibility, clarity, precision and predictability. The Committee, in particular, notes the author's claim that the violation of his rights under article 17 manifested in: (a) the non-existent and unlawful basis on which the Anti-Corruption Agency decided to reopen the case, despite the General Prosecutor's refusal to prosecute the author; (b) the refusal by the courts to use expert evidence to prove the unlawfulness of covert surveillance; and (c) the mass covert surveillance of the author by the Intelligence Service and the Anti-Corruption Agency. The Committee notes that most of the author's claims relate essentially to the application of security protocols on gathering evidence, evaluation of the facts and the evidence and application of domestic law by the law enforcement organs and courts of the State party, with implications for the author's rights under article 17 of the Covenant. The Committee, however, recalls that it is not a final instance entity competent to re-evaluate findings of fact or the application of domestic legislation. It is generally for the courts of States parties to review facts and evidence, or the application of domestic legislation, in a particular case, unless it can be shown that such evaluation or application was clearly arbitrary or amounted to a manifest error or denial of justice, or that the court otherwise violated its obligation of independence and impartiality.²⁸ On the basis of the information before it, the Committee cannot conclude that the author sufficiently substantiated his assertion that the application of security protocols entailing his surveillance, which the State party submits was judicially authorized, legally permissible and proportionate, necessary and time-bound (see para. 6.7 above), deprived him of his right to privacy and the private nature of correspondence under article 17 of the Covenant. The Committee therefore cannot conclude, on the basis of the materials at its disposal, that in deciding the author's case the domestic courts acted in a clearly arbitrary or manifestly erroneous manner or that their decisions amounted to a denial of justice.²⁹

9. Accordingly, the Committee considers that the author's claims are insufficiently substantiated for the purposes of admissibility and declares them inadmissible under article 2 of the Optional Protocol.

10. The Committee therefore decides:

(a) That the communication is inadmissible under article 2 of the Optional Protocol;

²⁸ Human Rights Committee, general comment No. 32 (2007), para. 26; *Riedl-Riedenstein et al. v. Germany* (CCPR/C/82/D/1188/2003), para. 7.3; and *M.S. v. Netherlands* (CCPR/C/127/D/2739/2016), para. 6.6. See also *H.K. v. Norway* (CCPR/C/112/D/2004/2010), para. 8.6; *V.S. v. Lithuania* (CCPR/C/114/D/2437/2014), para. 6.3; *Lin v. Australia* (CCPR/C/107/D/1957/2010), para. 9.3; and *K.J. v. Lithuania* (CCPR/C/130/D/2674/2015), para. 6.8.

²⁹ *R.E.I. v. Netherlands* (CCPR/C/136/D/3015/2017), para. 6.7.

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