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International Covenant on Civil and Political Rights

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Human Rights Committee

Decision adopted by the Committee under the Optional Protocol, concerning communication No. 3249/2018*, **

Communication submitted by:	B.M. (not represented by counsel)
Alleged victim:	The author
State party:	Belgium
Date of communication:	25 February 2018 (initial submission)
Document references:	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 5 October 2018 (not issued in document form)
Date of adoption of decision:	24 March 2022
Subject matter:	Fair trial
Procedural issue:	Right to a fair trial
Substantive issues:	Principle of equality of arms; examination by another procedure of international investigation or settlement; lack of substantiation
Article of the Covenant:	14
Articles of the Optional Protocol:	2 and 5 (2) (a)

1.1 The author of the communication is B.M.,[1] a national of Belgium. The author, who was domiciled in Switzerland at the time of her communication, claims that the State party has violated her rights under article 14 of the Covenant. The Optional Protocol entered into force for the State party on 17 August 1994. The author is not represented by counsel.

1.2 On 5 March 2018, pursuant to rule 94 of its rules of procedure, the Committee, acting through its Special Rapporteur on new communications and interim measures, decided not to issue a request for the interim measures asked for by the author.

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

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

[1] The author wanted her identity not to be revealed and for all personal identifiers concerning her to be removed from the Committee's final decision.

Facts as submitted by the author

2.1 In 2012, the author filed a petition in Switzerland for divorce from her then spouse. On 13 March 2014, a Swiss court delivered a judgment, which acquired the force of res judicata in favour of the author. However, the author's former spouse brought new divorce proceedings against her at the Brussels Court of First Instance, even though the first divorce petition in Switzerland was pending. In its judgment of 6 November 2013, the Court of First Instance of Brussels pronounced the parties divorced. On 29 January 2014, the author, considering that the judgment raised the issue of international lis alibi pendens, appealed against this decision to the Court of Appeal of Brussels. The Court of Appeal delivered its judgment on 2 October 2014 dismissing the author's claim. The author appealed against this judgment to the Belgian Court of Cassation, which, on 3 November 2016, overturned the judgment of 2 October 2014 and referred the case back to the Court of Appeal of Liège. In its judgment, the Court of Cassation considered that the judgment of the Court of Appeal of Brussels had violated the Convention between Switzerland and Belgium on the Recognition and Enforcement of Judicial Decisions and Arbitral Awards of 29 April 1959. At the time when the present communication was submitted to the Committee, the appeal lodged by the author was pending before the First Chamber of the Court of Appeal of Liège where, on 25 April 2017, the pretrial hearing took place in the presence of the author's lawyer. A hearing was scheduled for 23 March 2018, despite a request by the author to move the date for the hearing forward to no later than September 2017. The author considered the length of this trial, which had been ongoing for about six years, to be excessive.

2.2 On 14 May 2017, the lawyer of the author's former spouse complained to the President of the French Section of the Brussels Bar about a matter of ethics involving the possible violation of legal professional privilege with respect to three items of correspondence exchanged between the author and her former counsel. The author indicates that one of the items in question had been in the case file since 2014 and accessible to the parties without any objection being raised and that the other two are records of hearings at which the other party was present.

2.3 On 29 June 2017, the President of the French Section of the Brussels Bar informed the author and her lawyer of his decision to prohibit the submission of the above-mentioned three exhibits at the trial. According to the author, that decision is contrary to the unbroken line of precedents that do not prevent the presentation of correspondence between clients and their former lawyers. The President explained, however, that the prohibition applied only to the lawyer and not to the author, who was free to present the exhibits in question herself.[2]

2.4 On 30 June 2017, the author informed the Court of Appeal of Liège about the incident concerning the decision of the President of the Bar and claimed that her right to a fair trial had been violated considering that the decision had the effect of depriving her of a lawyer during proceedings. The author asked the Court to allow her lawyer to file pleadings and represent her at the hearing scheduled for 23 March 2018. She also asked the Court to suspend the deadlines until a decision had been handed down allowing her counsel to represent her once again in the ongoing proceedings.

2.5 In a letter of 20 July 2017, the President of the Bar informed the author's lawyer and her former spouse's lawyer of the new deadlines for the parties to file their pleadings on the incident concerning the presentation of the disputed exhibits. The deadline set for the author was 15 August 2017.

2.6 On 8 August 2017, the author's lawyer informed the Court of Appeal of Liège that, given that he had been prohibited from producing three items of evidence that the author intended to rely on in the current proceedings, it was impossible for him to continue defending his client's interests.

2.7 On 16 August 2017,[3] the author was forced to file her pleadings without the assistance of a lawyer, not having received a response from the Court of Appeal of Liège to her request to suspend the filing deadlines.

[2] These are exhibits 13 bis, 39 and 40 of the file.

[3] 15 August was a public holiday.

2.8 On 21 August 2017, the author asked the Court of Appeal of Liège to take interlocutory measures to provisionally settle the parties' situation.[4]

2.9 On 2 October 2017, the author received a letter dated 22 September 2017 from the Court of Appeal of Liège summoning her to appear at a hearing scheduled for 18 October 2017, at 11 a.m.

2.10 In a letter of 5 October 2017, the author informed the Court of Appeal of Liège that it was impossible for her to attend the hearing of 18 October in person, as she was not able to cancel long-standing professional commitments with two weeks' notice. In the same letter, she indicated that, because her lawyer had withdrawn from representing her,[5] he could not attend the hearing on her behalf. The author also asked the Court, if it was absolutely necessary to hold the hearing, to schedule it for the following week, on 23 October 2017, to allow her to make the necessary professional and personal arrangements.

2.11 Not having received a reply to her letter requesting the adjournment of the hearing and interlocutory measures, the author sent a follow-up letter on 9 January 2018. In response to this letter, the Liège Court of Appeal, in a letter dated 26 January 2018 and received on 12 February 2018, informed her that a judgment had been handed down on 15 November 2017, unknown to her and in her absence. In this judgment, while indicating that it was not bound by the assessment of the President of the Bar regarding the admissibility of the disputed exhibits, the Court found that it could not allow the author's former lawyer, who had withdrawn from the case, to file pleadings and represent her at the hearing of 23 March 2018 in violation of the President's instructions. The author stresses that this decision of the Court ran counter to the case law established by the European Court of Human Rights in the case of *Bono v. France*,[6] which recognizes the possibility for judicial authorities to overturn the decisions of professional authorities. The hearing that resulted in the judgment of the Court of Appeal of Liège of 15 November 2017 took place and the author did not receive a record of this hearing or any pleading by the other party.

2.12 Regarding the exhaustion of domestic remedies, the author considers that, in line with article 1077 of the Judicial Code, a cassation appeal against a decision (in this case a judgment) is possible only after the final judgment.[7] There is therefore no remedy against this decision.

Complaint

3.1 The author submits that her right to a fair trial under article 14 (1) of the Covenant has been violated. She considers that the decision of the President of the French Section of the Brussels Bar dated 29 June 2017 and the judgment of the Court of Appeal of Liège of 15 November 2017 deprived her of the assistance of counsel, as she was forced to file her pleadings herself on 16 August 2017. The author indicates that the Court could have overturned the President's decision and allowed her to be assisted by counsel. She adds that her right to a hearing was violated in view of the short time frame between her receipt of the summons on 2 October 2017 and the date of the hearing on 18 October 2017 and also in view of the fact that the hearing took place despite her letter of 5 October 2017 requesting its adjournment. The author further notes that she did not receive a record of this hearing or any written pleading from the other party. She was therefore unable to familiarize herself with the arguments put forward by her ex-spouse's lawyer.

3.2 The author submits that the prohibition against representing her placed on her lawyer could force her to conduct her own case once again at the hearing scheduled for 23 March 2018, in violation of the guarantee of equality of arms, putting her at a disadvantage

[4] See the third paragraph of article 19 of the Judicial Code, which provides: "The judge may, at any stage of proceedings, order an interlocutory measure for the purpose of facilitating examination of the application, settling an incident related to such a measure or provisionally settling the parties' situation."

[5] See the letter from the author's lawyer dated 8 August 2017.

[6] European Court of Human Rights, *Bono v. France*, application No. 29024/11, judgment, 15 March 2016.

[7] Belgium, Judicial Code, art. 1077 ("Cassation appeals against interlocutory judgments are available only after the final judgment; but the execution, even voluntary, of such a judgment may not, in any case, be opposed as a ground for dismissal").

compared to the other party, and that in the present case only the assistance of a lawyer can ensure that she has a fair trial,[8] which could cause her irreparable harm. Accordingly, the author sought interim measures from the Committee to enable her to argue her case at the hearing scheduled for 23 March 2018, assisted by her lawyer.

Additional submission from the author

4.1 In her additional submission of 11 March 2019, the author points out that she filed an application with the European Court of Human Rights. On 19 April 2018, the Court, sitting in a single-judge formation, found the application inadmissible, deeming its claims manifestly ill-founded.

4.2 The author claims that, faced with pressure from the presiding judge of the Court of Appeal of Liège to be able to adjudicate on the other party's pleadings, she was obliged to conduct her own case at the hearing of 23 March 2018, which put her at a disadvantage compared to the other party, in violation of the principle of equality of arms. The author considers that the Belgian courts had a duty to ensure that the proceedings before them were fair, including by ensuring that she had access to her lawyer and could produce any evidence relevant to her case. The author also submits that, according to the case law of the European Court of Human Rights, one of the requirements of a fair trial is equality of arms, which implies the obligation to afford each party a reasonable opportunity to present his or her case under conditions that do not place him or her at a substantial disadvantage vis-à-vis the other party.[9]

4.3 The author considers that the alleged violation has caused her irreparable harm. She claims to have sustained material damage of €4,000 from her travel to Liège and the costs of the flight, hotel, car rental, childcare and leave and of producing and sending the documents related to the proceedings. The author also claims to have sustained non-material damage equivalent to €10,000. She says that she was obliged to spend countless hours in the evenings, after work and at weekends to draft the 44-page pleadings of 14 August 2017, which deprived her of a lot of time with her children, whom she is bringing up alone.

4.4 The author emphasizes that she unsuccessfully requested the court registrar to include this incident in the record of the hearing of 23 March 2018, which was never sent to her. She also emphasizes that her pleadings of 14 August 2017 show that the hearing related to highly specific legal issues, which clearly required the assistance of an experienced legal professional. These included the consideration at fourth instance of a defence of international lis alibi pendens[10] legitimately invoked by the author and deduced from divorce proceedings previously filed in Switzerland. They also included consideration of the request for damages made by the author owing to the abuse of law and process by the other party.

4.5 The author notes that it was only in a judgment of 4 May 2018 that the Court of Appeal of Liège, acting as a court of fourth instance, eventually found the defence of international lis alibi pendens, which she had raised in her pleadings of 15 May 2013, to be admissible and well founded, after five years of proceedings and following referral back by the Court of Cassation. However, she notes that her request for damages and her request to order the other party to pay costs were rejected.

State party's observations on admissibility and the merits

5.1 On 5 June 2019, the State party submitted its observations on the admissibility and merits of the communication. The State party considers that the Committee should find the communication inadmissible on the grounds that the author's claims are not substantiated. The State party argues that, in the present case, the author's claims have been considered by the Court of Appeal of Liège which, in its judgment of 15 November 2017, while indicating

[8] Judgment of the Court of Cassation of 3 November 2016.

[9] See, inter alia, European Court of Human Rights, *De Haes and Gijsels v. Belgium*, application No. 19983/92, judgment, 24 February 1997, para. 53.

[10] By a judgment of 13 March 2014, the Swiss authorities ruled definitively that the divorce proceedings filed in Switzerland were the earlier proceedings. According to the author, this implies that the pending divorce proceedings in Belgium were bound to fail.

that it was not bound by the assessment of the President of the French Section of the Brussels Bar regarding the admissibility of the disputed correspondence, nonetheless found that it could not allow the author's former lawyer to file pleadings and represent her despite the President's instructions. The State party recalls that, according to the Committee's jurisprudence, it is the responsibility of the appeal courts in States parties, not the Committee, to review the findings of facts in a case unless it is possible to prove that the decisions of the national courts were clearly arbitrary.[11]

5.2 The State party notes that the author claims that the principle of equality of arms has been violated owing to the decision of 29 June 2017 by the President of the French Section of the Brussels Bar to instruct her counsel to withdraw the correspondence the author had exchanged with her former counsel or step down from the case. However, the State party observes that the author herself admits that, when clients decide to reveal information covered by legal professional privilege and use it in court, they are only exercising their right to a defence and may therefore decide to waive legal professional privilege for their own benefit, including by instructing their lawyers to reveal information or present correspondence covered by that privilege.

5.3 The State party emphasizes that the Court of Appeal of Liège could not allow the author's counsel to ignore the President's instructions regarding the presentation of that correspondence. According to the State party, the President would not have deprived the author of a lawyer during proceedings or forced her to file her pleadings herself on 16 August 2017 if she had taken the opportunity to file in her own name the pleadings previously drafted by her lawyer.

5.4 The State party observes that, although the author is claiming that she was forced to conduct her own case on 23 March 2018, she had ample time to obtain the assistance of another lawyer during the nine-month period available to her. It also observes that the author has not been assisted by only one lawyer in this case. The State party considers that the author should simply have avoided the harm by respecting the decision of the President of the Bar of 29 June 2017 and organizing her defence prudently and with foresight; while, on the contrary, the author's lawyer tried everything possible to achieve the revocation of the President's decision instructing him to withdraw from the case. The author cannot impute to the Belgian courts her responsibility to ask her lawyer to allow her to file the pleadings prepared by him in her own name or that of another lawyer and to transfer the case to another lawyer by the hearing of 23 March 2018, which was nine months later.

5.5 The State party considers the author's claims to be completely and utterly unfounded and her communication to contain no specific argument in any way capable of substantiating her statements and calling into question the findings of the national court. By way of evidence, the State party recalls that the European Court of Human Rights, in a single-judge formation and without further examination, found the author's application inadmissible in a final decision of 19 April 2018.

5.6 The State party also argues that the author has not substantiated her claims with respect to the material and non-material damage she allegedly sustained by being forced to travel from Geneva to Brussels to attend the hearing of 23 March 2018 in person. The State party considers that, on the one hand, there is no evidence that the author would not have accompanied her lawyer to the hearing in any event; and, on the other hand, her lawyer was under no obligation to insist on trying to achieve the revocation of the decision of the President of the Bar of 29 June 2017. Lastly, the State party considers that there is also no evidence that the author was required to spend countless hours in the evenings and at weekends to draft the pleadings of 14 August 2017 when she could very well have used her lawyer's work in her own name. Accordingly, the State party argues that the author has not substantiated her claims and urges the Committee to find the communication inadmissible or at least unfounded.

[11] *Torregrosa Lafuente et al. v. Spain* (CCPR/C/72/D/866/1999) para. 6.2; and *Hart v. Australia* (CCPR/C/70/D/947/2000), para. 4.3.

Author's comments on the State party's observations

6.1 On 1 December 2019, the author provided the Committee with her comments on the State party's observations on the admissibility and merits of the communication. She states that the State party, by repeating in its observations of 5 June 2019 the argument taken from her communication regarding the possibility for a client to "reveal information covered by legal professional privilege and use it in court" as exercising the client's right to a defence, is corroborating her claim that the decision of the President of the French Section of the Brussels Bar of 29 June 2017 was illegal. She also claims that the Court of Appeal of Liège recognized in its judgment of 4 May 2018 that she had been deprived of her lawyer illegally and that "article 458 of the Criminal Code does not prohibit the client, who is the person protected by this article, from producing correspondence exchanged with his or her lawyer to defend himself or herself in court".[12]

6.2 The author emphasizes that the State party, through its observations, has recognized that the Court of Appeal of Liège was not bound by the President's decision. She reiterates that it was the duty of the Court to overturn the illegal instructions of the President, as is made clear by the case of *Bono v. France*.[13]

6.3 The author argues that the State party's position of considering that she should have filed in her own name the pleadings previously drafted by her lawyer is incompatible with the President's instructions, which clearly ordered her lawyer to withdraw the disputed exhibits or step down from the case. The author considers that this instruction from the President of the Bar means that her lawyer was prohibited from drafting pleadings on behalf of his client.

6.4 The author reiterates that a lawyer's services were essential in view of the complexity of her case. Her case involved the consideration of highly technical legal matters, such as the application of the Convention on jurisdiction and the enforcement of judgments in civil and commercial matters (Lugano Convention), which implies that Belgian courts are prohibited from retrying a matter already definitively decided by the Swiss courts, and the obligation to recognize that decisions handed down in Switzerland constitute res judicata. The author reiterates that, contrary to the claims of the State party, she was not permitted to obtain the assistance of another lawyer given that the instructions of the President of the Bar of 29 June 2017 were absolutely clear. She also considers that, regardless of the lawyer she chose, that lawyer would have been prohibited from assisting her at the trial and she would have had to defend herself if she wanted to present the disputed exhibits. The author submits that, even if she had obtained the assistance of another lawyer, that lawyer would have had to familiarize himself or herself with a case at the fourth level of proceedings following referral by the Court of Cassation, which had been open for over five years; this would have resulted in a new round of exorbitant fees for the author. The author further requests that the financial compensation, initially calculated in a letter of 11 March 2019 at €10,000 (plus any sum due in taxes), be raised to €18,000 (plus any sum due in taxes).

6.5 Regarding the State party's argument taken from the European Court of Human Rights decision of 19 April 2018 that the alleged facts reveal no apparent violation of her rights, the author submits that the Committee is not bound by the decision of the European Court of Human Rights. She considers that, if her communication was registered by the Committee and transmitted to the State party for observations, it must have been found prima facie admissible.

[12] Belgium, Court of Cassation, judgment, 12 November 1997.

[13] European Court of Human Rights, *Bono v. France*, application No. 29024/11, judgment, 15 March 2016.

Issues and proceedings before the Committee

Consideration of admissibility

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

7.2 The Committee has ascertained, as required under article 5 (2) (a) of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement. The Committee observes that, on 19 April 2018, an application against Belgium concerning the same case was rejected by the European Court of Human Rights, sitting in a single-judge formation, and thus is not currently being examined. In the absence of a reservation of the State party excluding the Committee's competence to consider communications which have already been examined by another procedure of international investigation or settlement, the Committee finds that there is no obstacle to the admissibility of the communication under article 5 (2) (a) of the Optional Protocol.[14]

7.3 The Committee recalls that article 14 of the Covenant aims, generally speaking, at ensuring the proper administration of justice.[15] It takes note of the author's claim that the State party violated her rights under article 14 (1) of the Covenant because she was the victim of a decision by the President of the French Section of the Brussels Bar who, in a decision of 29 June 2017, instructed her lawyer either not to produce three exhibits in the case file or to step down from the case. The Committee also takes note of the author's argument that a violation of article 14 occurred because, despite the fact that the Court of Appeal of Liège recognized that the President's decision was arbitrary, it did not quash the decision, thereby preventing the author from defending herself with the assistance of her lawyer.

7.4 The Committee takes note of the author's argument that the prohibition issued by the President of the Bar deprived her of the assistance of her lawyer at the hearing of 23 March 2018, forcing her to conduct her own case, which put her at a disadvantage, in violation of the principle of equality of arms. The Committee also takes note of the author's argument that the State party should have ensured that the proceedings were fair by giving her access to her lawyer and allowing her to present all the exhibits required for her defence. The Committee further takes note of the State party's argument that, in the present case, the author's complaints were examined by the Court of Appeal of Liège, which, in its judgment of 15 November 2017, while indicating that it was not bound by the assessment of the President of the Bar of the admissibility of the disputed correspondence, nevertheless took the view that it could not authorize the author's former lawyer to plead and to represent her at the hearing, notwithstanding the President's instructions. The Committee notes that, according to the State party, the author herself admitted that, when a client decides to reveal information covered by professional secrecy and to use it in court, the client is only exercising his or her right to a defence and that the client may therefore decide to break the professional secrecy for his or her benefit.

7.5 The Committee takes note of the author's argument that it was legitimate for her to use correspondence covered by legal professional privilege to present her case. The Committee also notes that the State party has not denied that the author has this possibility.[16]

7.6 The Committee takes note of the author's argument that the assistance of a lawyer was essential in view of the complexity of the case and that the issues under discussion were highly technical from a legal point of view, relating to international lis alibi pendens. It notes the author's argument that it was impossible for her to hire another lawyer in view of the President's instructions of 29 June 2017, which left her no choice, that, regardless of the lawyer appointed, he or she would not have been able to present the disputed exhibits and that she had to defend herself because it would have taken a new lawyer a lot of time to familiarize himself or herself with a five-year-old case, which would have led to exorbitant fees, putting her at a greater disadvantage. The Committee also takes note of the State party's

[14] See, for example, *Van Marcke v. Belgium* (CCPR/C/81/D/904/2000), para. 6.2.
[15] Human Rights Committee, general comment No. 32 (2007), para. 2.
[16] See the judgment of the Court of Appeal of Liège of 4 May 2018.

argument that, to avoid any harm, the author should have complied with the President's instructions, especially as she had ample time between 29 June 2017, the date of the President's decision, and 23 March 2018, the date of the hearing before the Court of Appeal of Liège, to choose another lawyer given that she had more than one at her service. It further notes that the State party is of the view that she should have asked her lawyer to allow her to file his pleadings in her own name. The Committee observes that the author was able to attend court and take part in the hearing of 23 March 2018. It also observes that, by a judgment of 4 May 2018, the Liège Court of Appeal, after referral by the Court of Cassation, found the defence of international lis alibi pendens raised by the author in her pleadings of 15 May 2013 to be admissible and well founded.

7.7 The Committee notes that the author considers that she sustained material and non-material damage in this case, since she was obliged to spend many hours of work drafting the pleadings of 14 August 2017, reducing the time spent with her children, whom she is bringing up alone, and that she was forced to travel from Geneva to Brussels to attend the hearing of 23 March 2018 in person. The Committee also notes that the State party considers that, even if she had been assisted by a lawyer, the author might have had to accompany her lawyer to the hearing, that there was no justification for the insistence of the author's lawyer on trying to achieve revocation of the President's decision and that the author, instead of spending many hours drafting her pleadings, could very well have used her lawyer's work in her own name. The Committee further notes that the State party has also emphasized that it cannot be held responsible for the fact that the author did not ask her lawyer to allow her to file, in her own name or that of another lawyer, the previously prepared pleadings and to transfer the case to another lawyer by the hearing of 23 March 2018. The Committee notes that the author stressed that she was unable to obtain the damages and costs requested from the other party.

7.8 The Committee observes that the author has not shown how the decision of the professional authority of 29 June 2017 prevented her from enjoying her right to a fair trial, given that she could have either filed pleadings herself or instructed another lawyer. It also observes that, in any case, she could have been obliged to travel to Brussels to present her defence, such that she would have incurred the expenses for which she is seeking compensation.

7.9 The Committee recalls that it is not its role to review the findings of facts in a case, unless it can be proved that the national courts' decisions were clearly arbitrary,[17] and that in the present case it is not for the Committee to force an appeal court to overturn the decision of a professional authority. The Committee notes that the Court of Appeal of Liège, while recognizing the inadvisability of the measure taken by the President of the Bar, nonetheless decided fairly on the dispute and the defence of international lis alibi pendens raised by the author, since the author was able to present her case at the hearing of 23 March 2018. The Committee notes that the author voluntarily chose to defend herself, knowingly waiving her right to be represented by a lawyer. In view of the foregoing, the Committee concludes that the author has not sufficiently substantiated her claims for the purposes of admissibility and declares them inadmissible under article 2 of the Optional Protocol.

7.10 The Committee concludes that the author has failed to substantiate, for the purposes of admissibility, her claims under article 14 (1) of the Covenant and declares the communication inadmissible under article 2 of the Optional Protocol.

8. The Committee therefore decides:

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

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

[17] *Torregrosa Lafuente et al. v. Spain*, para. 6.2; and *Hart v. Australia*, para. 4.3.