



**International Covenant on  
Civil and Political Rights**

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**Human Rights Committee**

**Communication No. 1935/2010**

**Decision adopted by the Committee at its 110th session  
(10-28 March 2014)**

<i>Submitted by:</i>	O.K. (represented by counsel Barrister Tony Ellis)
<i>Alleged victims:</i>	The author and the author's son, N.K. (deceased)
<i>State party:</i>	Latvia
<i>Date of communication:</i>	13 November 2009 (initial submission)
<i>Document references:</i>	Special Rapporteur's rule 97 decision, transmitted to the State party on 1 April 2010 (not issued in document form)
<i>Date of adoption of decision:</i>	19 March 2014
<i>Subject matter:</i>	Investigation of the circumstances of the death of the son of the author
<i>Substantive issues:</i>	Right to life, effective investigation; torture
<i>Procedural issues:</i>	Rationae materie, non-exhaustion, abuse of submission
<i>Articles of the Covenant:</i>	6 and 7
<i>Article of the Optional Protocol:</i>	1, 3, 5 paragraph 2 (b) [Annex]

## Annex

### **Decision of the Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political Rights (110<sup>th</sup> session)**

concerning

#### **Communication No. 1935/2010\***

*Submitted by:* O.K. (represented by counsel Barrister Tony Ellis)

*Alleged victims:* The author and the author's son, N.K. (deceased)

*State party:* Latvia

*Date of communication:* 13 November 2009 (initial submission)

*The Human Rights Committee*, established under article 28 of the International Covenant on Civil and Political Rights,

*Meeting on* 19 March 2014,

*Adopts the following:*

#### **Views pursuant to article 5, paragraph 4 of the Optional Protocol**

1. The author of the communication is O.K., a former permanent resident of Latvia, currently residing in New Zealand, acting on her own behalf and on behalf of her son, N. K. (the victim), deceased in 1994 at the age of 15. The author alleges that her son died as a result of a beating by a gang of teenagers believed to be of Russian nationality. She claims that the failure of the Latvian authorities to investigate her son's death and prior ill-treatment constitute a breach by Latvia of the victim's rights under article 6, and of her rights under article 7 of the International Covenant on Civil and Political Rights.<sup>1</sup> She is represented by counsel, Barrister Tony Ellis.

#### **The facts as presented by the author**

2.1 The author, O.K., a former USSR citizen and permanent resident of Latvia, submits that until 1996 she lived in Riga, the capital city of Latvia, where she was a teacher of Russian language. Her son N.K., a "college" student studying art, lived with the author and his grandmother. On the evening before his death, he went out, around 18:00. By 20:00, he had not returned home, and the author was unable to locate him. Around 23:00, some local

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\* The following members of the Committee participated in the examination of the present communication: Mr. Yadh Ben Achour, Mr. Lazhari Bouzid, Ms. Christine Chanet, Mr. Ahmad Amin Fathalla, Mr. Cornelis Flinterman, Mr. Yuji Iwasawa, Mr. Walter Kaelin, Ms. Zonke Zanele Majodina, Mr. Gerald L. Neuman, Sir Nigel Rodley, Mr. Victor Manuel Rodríguez-Rescia, Mr. Fabian Omar Salvioli, Ms. Anja Seibert-Fohr, Mr. Yuval Shany, Mr. Konstantine Vardzelashvili, Ms. Margo Waterval and Mr. Andrei Paul Zlatescu.

<sup>1</sup> The Optional Protocol entered into force for Latvia on 22 September 1994.

boys advised the author that her son had been taken to Hospital N°1 in Riga, since four Russian boys had attacked him, and he was severely bleeding. The author immediately went to the hospital, which was one hour travel-time away. On her arrival, she was advised that her son was unconscious and attached to a respirator, and that she could not see him. She was not allowed to see her son before he died at approximately 1:00 the next day from “massive head trauma”. During his funeral, the author observed that he was badly bruised about the head.

2.2 While waiting in the hospital, the author was informed by the hospital registrar that the four Russian boys, whom she was told had beaten her son, had been drinking at a cheap local hotel. At an unspecified time the author went to the closest Police station to report the incident, and provide the information she had collected on the circumstances thereof. A police officer took her details, and they went to the said hotel, but the suspects were not there. The author submits that the police failed to check the hotel register to ascertain the four Russian boys’ names, or to make any attempt at a proper investigation. The author returned to the Police station, made another statement, and was told to go home.

2.3 A post mortem examination of the victim’s body was carried out on 2 January 1995. The cause of death of the author’s son was described as “Massive head trauma; Epidural hematoma caused by a fracture to the base of the skull; Blunt head trauma”. After the funeral, the author took the death certificate to the police to assist their investigation. The Russian detective she dealt with, however, was unable to read the certificate. A year later, she was advised by phone by a detective from another police station that her son had died of asthma. The victim, however, did not suffer from asthma. The author maintains that the police officers investigating her son’s death had been bribed, an endemic problem in Latvia at the time.<sup>2</sup> Therefore, despite her complaint to the local police immediately after her son’s death, no prompt and impartial investigation had been carried out. The author submits that she continues to suffer from post-traumatic stress disorder, and is seeking some form of finality into the improperly investigated cause of her son’s death, and the failure to bring any prosecution as a result of his beating.

2.4 The author submits that she had lost her husband in a train crash three months before her son’s death. She also submits that her mother had a stroke shortly thereafter and the author had to take care of her until her death in May 1996. The author alleges that due to this unfortunate set of tragic events she had a nervous breakdown and developed severe psychiatric problems, from which she continues to suffer.<sup>3</sup> Regarding the exhaustion of domestic remedies, she therefore claims that she lacked the capacity to further push the authorities in that regard. She adds that being a USSR citizen at the time, and only possessing a residence permit in Latvia, she was unable to pursue the matter. After she attempted to obtain answers from the State party’s authorities on the circumstances of her son’s death in 1995, the author was allegedly “visited at home”, and received death threats against herself and her daughter.

2.5 The author further contends that as a result of her remarriage and 1997 emigration to New Zealand, and her deteriorated mental health condition, she has been both mentally and physically unable to further follow-up on the investigation of the death of her son. Considering the time which elapsed since the event, she considered it superfluous to

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<sup>2</sup> In support of her allegations, the author annexed to her second petition of 11 March 2010 a press article (the Independent) of 8 November 1999 on a former Latvian secret agent who was seeking asylum in the UK as he allegedly uncovered corrupt links between senior figures of the Latvian government and mafia figures.

<sup>3</sup> The author submits medical records from 1999, 200, 2001, 2002, 2004 and 2006 testifying that she is suffering from psychotic disorders, Post- Traumatic Stress disorder, depressed moods.

follow-up on the investigation with the Latvian authorities at the time of the submission to the Committee. Even though she has not exhausted domestic remedies, the author contends that her intentions to do so were clear and genuine in that regard,<sup>4</sup> that special circumstances prevented her from taking additional steps thereof, and that it would be absurd to allow the State party to benefit from its failure to investigate, as her son's death was a serious contributing factor to her trauma and ensuing inability to pursue the investigations.

### **The complaint**

3.1 The author claims that the failure of the State party's authorities to investigate the circumstances of her son's violent death was in breach of their positive duty to protect life under article 6 of the Covenant, including through preventing, investigating and punishing killings by private individuals.<sup>5</sup> She further contends that she believed that the lack of investigation into her son's death was motivated by ethnic factors, since both the gang of suspects who beat her son, and the police officers in charge of the investigation were ethnic Russians, not Latvian. She believes that the investigation was insufficient, and/or a cover-up and that corruption was also involved.

3.2 Insofar as she has been deprived of the "right to know" the circumstances into which her son died, which is tantamount to inhuman or degrading treatment, the author also alleges a violation of article 7 on her own behalf.<sup>6</sup>

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

4.1 On 4 October 2010, the State party presents a summary of the facts as established by the competent authorities shortly after the events concerned. The State party submits that around mid-day on 25 December 1994, the author's son together with acquaintances went to the centre of Riga to purchase food and beverages for a party, when he slipped on the ice and fell. In the evening of the same day, the author's son went to the hotel where the party was taking place and consumed about 200 ml. of vodka. He then felt nausea, vomited and went to sleep around 9 pm. Around 11 pm his acquaintances noticed that saliva with blood was coming out of his mouth and that his heart was beating unevenly. They tried to revive him, called an ambulance and informed his mother that he was taken to a hospital. The author's son was admitted to the hospital around 1:30 am on the 26 December 1994. In the hospital it was discovered that he had a head trauma, which led to massive bleeding inside the brainpan and at 5 am a trepanation was made.

4.2 The State party submits that on the same day the author wrote a complaint to the police, requesting them to search for the perpetrators, since her son was in a severe condition in the rehabilitation ward. She was questioned as a witness and on the same day the police interviewed the boys who were with the author's son the day before and at the party. The boys were also repeatedly interrogated during the following days.

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<sup>4</sup> The author refers to Communication N° 138/1983 *Ngalula Mpandanjila et al. v. Zaire* (Views adopted on 26 March 1986), and CAT communication n° 6/1990, *Parot v. Spain*, Views adopted on 2 May 1995, para. 6.1.

<sup>5</sup> The author makes reference to the Committee's General Comment No 6, to Communication N°859/1999, *Vaca v. Colombia* (2002), para. 7.3; to *Yildirim v. Turkey*, European Court of Human Rights (Application n°40074/99) (19 July 2007), paras 74-75; and to *Yasa v. Turkey*, European Court of Human Rights (Application n° 63/1997/847/1054) (2 September 1998), para. 100.

<sup>6</sup> The author makes reference to the Committee's jurisprudence in case *Quinteros v. Uruguay*, communication No 107/1981, Views of 21 July 1983.

4.3 The author's son died on 28 December 1994 in the hospital. On 30 December 1994, an autopsy was conducted. It concluded that the cause of death was head trauma originating a few days before the death of the victim. On 2 January 1995, a decision was taken to open a criminal investigation under article 105, paragraph 2 (intentional infliction of serious bodily injuries). On 6 January 1995, the responsible officer requested the author's son's medical records, which were received on 16 January 1995 and indicated that he had already suffered from a head trauma in 1993. On 15 January 1995, the hotel's personnel who worked during the night of the incident were questioned by the police. They testified that they had not witnessed a conflict between the individuals present in the hotel room, nor were there any signs of disturbance indicating that a fight had taken place. On 22 and 27 October 1997, the author's son's acquaintances that were with him on 25 December 1994 were questioned again. They indicated witnessing him slipping on the ice and falling backwards. On 16 March 2001, the criminal case was forwarded to another police precinct in accordance with article 129 of the Criminal Procedure Code for further pre-trial investigation. On 30 December 2004, the criminal investigation was closed because the statute of limitations for the alleged crime had expired.

4.4 The State party submits the text of the domestic legislation provisions in force at the time that it deems relevant to the case: Article 220 of the Criminal Procedure Code<sup>7</sup>, Articles 27, 38, 39 of the Law "On Police"<sup>8</sup>.

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<sup>7</sup> Article 220 reads:

"Procedure for lodging complaints against the acts of a preliminary investigator

A suspect, accused and their representatives and legal representatives, witnesses, experts (...) may submit a complaint to a prosecutor against acts of a preliminary investigator. The complaints shall be submitted directly to a prosecutor or with assistance of a person, against whom the complaint is being submitted. Complaints may be both written and oral. In the latter case a prosecutor or a preliminary investigator shall record these complaints in the minutes, which shall be signed by the complainant. A complaint submitted to a preliminary investigator shall be forwarded together with his/her to a prosecutor within twenty- four hours.

The submission of a complaint does not suspend the performance of the activities complained about unless such suspension is considered necessary by the preliminary investigator or prosecutor."

(Translation provided by the State party)

<sup>8</sup> The above articles read :

"Section 27. Liability of Police Officers

A police officer shall be liable for an unlawful action in accordance with the procedures specified in regulatory enactments. If a police officer has violated person's rights and lawful interests, police institution shall take measures to redress violated rights and interests and compensate the damage caused.

[...]

Complaints concerning the actions of subordinate police officers reviews and decides the head of the police institution (subordinate unit) the decision by the head of the police institution (subordinate unit) is subject to appeal within the period of one month to a higher level institution of the police, prosecutor's office or court.

Section 38. Control of Police Operations

[...]

The Chief of the Police department, his or her deputies and heads of department subordinate units may revoke decisions by their subordinate police institutions, made within (...) criminal procedures (...), if these decisions are not in compliance with law.

Section 39. Supervision Regarding Observance of the Law in Police Operations

The Prosecutor General of the Republic of Latvia and prosecutors subordinate to him or her shall carry out supervision of the observance of the law in police operations." (Translation provided by the State party)

4.5 The State party further submits that the communication is inadmissible because it falls outside the scope of article 6 of the Covenant. It maintains that contrary to the author's claims that her son was murdered, the State party firmly believes that his death was not a result of a criminal act, but resulted from a combination of unfortunate events- previous head trauma, weather conditions, slipping and falling on the ice. The State party concludes that the communication is inadmissible under article 1 of the Optional Protocol as it falls outside the scope of article 6 of the Covenant.

4.6 The State party further submits that the author failed to exhaust the available domestic remedies before submitting the communication to the Committee. It submits that the author could have submitted a complaint for the inaction of the police under article 27 of the Law "On Police", but she never did so. The State party further submits that the author as a witness in the criminal case had also an opportunity to complain about police actions to the Prosecutor's office in accordance with article 220 of the Criminal Procedure Code, but she did not use this right. The State party further notes that the author's lack of citizenship did not affect her right to complain, since that right was not dependent on the citizenship but was determined by her status in the criminal proceeding (i.e. witness). The State party finally submits that even if the author's mental state did not allow her to follow the investigation actively she could have asked for legal assistance or for the help of someone she trusted, for example her daughter. Further, thirteen years after the author's emigration to another country, the State party's authorities did not have information regarding her address, where official correspondence could be sent. Accordingly, the State party submits that the author did not express in a sufficiently clear manner her intention to follow the investigation actively by using her right to complain about actions of police officers to different institutions and therefore has not exhausted the domestic remedies before submitting her communication to the Committee.

4.7 With regard to the author's allegation of a violation of article 6 of the Covenant, the State party submits that in accordance with the Committee's jurisprudence "a criminal investigation and consequential prosecution are necessary remedies for violations of human rights such as those protected by article 6."<sup>9</sup> The State party maintains that the investigation in the present case has established the cause of the death of the author's son and its circumstances, and that no crime had been committed. It acknowledges that the investigation did not end with a judicial decision; but maintains that nevertheless the acquired evidence sufficiently indicated that the author's son's death was a tragic accident. Accordingly, the State party submits that no violation of article 6 of the Covenant has occurred.

4.8 With regard to the author's allegation of a violation of article 7 of the Covenant, the State party submits that in the Committee's jurisprudence, violations of article 7 with regard to mental suffering and distress to indirect victims were found due to State authorities' failure to provide victims with sufficient information, i. e. violations of the victims' "right to know", thus subjecting them to anguish, stress and mental sufferings.<sup>10</sup> The State party maintains that the present case may not be compared to such cases, since the death of her son was not caused by a criminal activity; the state authorities that were involved in the investigation "may not be blamed" for his death; the author failed to complain regarding the quality of the investigation to the prosecutor's office; and she did not inform the state authorities of her change of residence. The State party concludes that no violation of article 7 of the Covenant had occurred in the present case.

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<sup>9</sup> The State party refers to Communication No 1447/2006, *Amirov. v. Russian Federation*, Views of 2 April 2009, para 11.2.

<sup>10</sup> The State party refers to Communications No 107/1981, *Quinteros v. Uruguay*, Views adopted on 21 July 1983, para 14, No 886/1999, *Schedko v. Belarus*, Views adopted on 3 April 2003, para 10.2.

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

5.1 On 9 March 2011, the author submits that the State party has provided no explanation why the criminal investigation, opened on 2 January 1995, which was still being investigated in 1997, than stalled until 16 March 2001, when it was transferred to another police precinct. Neither does it provide any details or explanations what happened between 16 March 2001 and 30 December 2004 when it was decided to dismiss the case. She maintains that the only reasonable explanation is that there was no prompt and thorough investigation of the death of her son and a breach of article 6 should be found.

5.2 Regarding the admissibility of the case, the author submits that, not having promptly investigated whether a crime (murder or other unlawful death) had occurred, the State party then proceeded to state that the communication was inadmissible as the death was not a result of criminal acts. She maintains that the State party's belief that no murder was committed was based on a flawed investigation; that there has been no judicial finding of the cause of death and that when her complaint was finally dismissed, ten years after the start of the investigation, no attempt was made to notify her of that dismissal.

5.3 Regarding the issue of non-exhaustion, the author maintains that she has made a genuine complaint in order to exhaust the domestic remedies. She reiterates that she had serious mental health problems, following the tragic death of her husband, the death of her son and the serious illness and death of her own mother, and that at the time she was unable to exercise her rights.

5.4 The author notes that the State party has not made any observations regarding her allegations of widespread corruption in the police, prevalent at the time of the death of her son, nor regarding the death threats that she received against her-self and her daughter which also served as a deterrent to submit any complaints to the authorities.

5.5 The author further submits that, on 3 October 1997, she informed the State party's authorities that she has moved to New Zealand and that in 2007 she sought advice whether she can receive a pension from Latvia and again advised that she is living in New Zealand. She further submits that at that time she had a Russian passport and that the Russian authorities had her address in New Zealand. She maintains that the State party's authorities were aware of that and if they had wanted to contact her, they could have passed correspondence to the Russian Embassy in Latvia to be forwarded to her. She maintains that they never attempted to contact her in order to inform her of the development or the discontinuation of the investigation into her son's death.

5.6 The author underlines that according to the State party's submission no judicial decision concluded the investigation and that the investigation of a relatively simple assault case took ten years. She maintains that a reasonable time to conclude the investigation would have been at most a year and that it is clear from the State party's submission that there had been years of inactivity during the investigation. She reiterates that there had been no prompt and through investigation of her son's death.<sup>11</sup>

5.7 The author further submits that she had the right to know not only the real cause of her son's death, but also what the State party claims had happened to her son within a year of his death. She should not have had to wait ten years (if she had been informed in 2004, which she was not) or sixteen years as actually happened. The author maintains that complaints relating to death need to be determined expeditiously, otherwise the failure to do so effectively may determine the merits of the communication and refers by analogy to

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<sup>11</sup> The author again refers to *Yasa v. Turkey*, European Court of Human Rights (Application n° 63/1997/847/1054) (2 September 1998), para. 100.

the Committee's jurisprudence in child custody cases.<sup>12</sup> She maintains that the State taking so long to investigate and failing to inform her of the outcome of the investigation caused her to suffer continuing mental health difficulties, which amount to a breach of article 7 of the Covenant.

#### State party's further observations

6.1 On 4 November 2011, the State party submits that it has provided the Committee with all materials that was possible to acquire after such a long period of time that has passed since the events in question. With regard to the transfer of the investigation into the author's son's death to another police precinct in 2001, the State party clarifies that that was done due to a reorganisation process in the State Police. The State party expresses regret that the author had not used the right to complain to the responsible authorities earlier, which is why there are no additional materials concerning efficiency of the investigation into her son's death. The State party reiterates that even if the author was allegedly afraid of threats from the State police, she could have made a request to the prosecutor's office, thus turning attention of the supervising institutions to the possible deficiencies of investigation. The State party also submits that it is difficult to imagine how the alleged threats could have possibly reached her in New Zealand. Therefore the State party fails to see a reasonable explanation for the author's inactivity that lasted for 15 years before finally deciding to submit a complaint to the Committee. It further refers to the Committee's practice that a reasonable explanation needs to be provided in order to submit a communication to the Committee with a considerable delay.<sup>13</sup> The State party maintains that while the author has presented as an explanation for the delay her mental health condition, the medical documentation she presents shows that she "is suffering from mental health problems only periodically (i.e. not full time)". The fact that the author decided to complain not in 1997, when she moved to New Zealand, but in 2010, leads the State party "to doubt the sincerity of the Author's wish to know the obstacles of her son's death".

6.2 The State party points out that the author had approached different state institutions on different questions and contacted her relatives abroad and concludes that nothing prevented her from applying to and pursuing her communication before the Committee earlier. In addition the State party maintains that the fact that she retained a counsel to represent her before the Committee "clearly indicates her ability to acknowledge consequences of her acts, her ability to formulate thoughts and opinion with a sufficient degree of clarity and consistency, notwithstanding her periodic health problems".

6.3 The State party submits that the author's allegation of bribery are only supported by a newspaper "spy-story" and that it will not comment further on these allegations.

6.4 The State party submits that the author's allegations that she had contacted the Latvian authorities shortly after moving to New Zealand are not supported by documentary evidence. It further refers to articles 3 and 15 of the Population Registry Law<sup>14</sup>, and

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<sup>12</sup> The author refers to the Committee's jurisprudence in communication No 1368/2005, *E.B. v New Zealand*, Views of 16 March 2007, at para 9.3: "The Committee refers to its constant jurisprudence that "the very nature of custody proceedings or proceedings concerning access of a divorced parent to [the parent's] children requires that the issues complained of be adjudicated expeditiously".[...] The failure to so ensure may readily itself dispose of the merits of application, [...] and irreparably harm the interests of a non-custodial parent."

<sup>13</sup> The State party refers to communications No 787/1997, *Gobin v. Mauritius*, Views adopted on 16 July 2001, at para 6.3 and 1434/2005, *Fillacier v. France*, Views adopted on 27 March 2006, para 4.3.

<sup>14</sup> The respective articles read:  
"Section 3.



maintains that the author had the duty to inform the Office of Citizenship and Migration of her place of residence and address if she wanted the State authorities to be able to reach her (i.e. to inform her of the results of the investigation into her son's death).

6.5 The State party further submits that if the author's allegation on her citizenship of Russia is true, than she "misleads the Committee and the Government as regards her nationality". The State party also states that "the facts of the present case disclose that the author has previously abused the rights to receive state benefits from Latvia", because information provided by the State Social Security Insurance Agency indicates that for almost three years after her son's death she was receiving "state benefit granted for her minor son".<sup>15</sup> The State party submits that the above facts "raise serious doubts as to her true intentions when submitting the present communication to the Committee" and maintains that it should be declared inadmissible pursuant to article 3 of the Optional Protocol (abuse of rights).

6.6 The State party concludes that the communication should be declared inadmissible pursuant to articles 1 - 3 of the Optional Protocol or invites the Committee to conclude that no violations had occurred.

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

#### *Consideration of admissibility*

7.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 93 of its rules of procedure, decide whether or not the case is admissible under the Optional Protocol to the Covenant.

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

7.3 The Committee takes note of the State party's submission that the communication is inadmissible under article 1 of the Optional Protocol as it falls outside the scope of article 6 of the Covenant, because the State party believes that the author's son's death was not a

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The main task of the Register shall be to ensure the records of Latvian citizens, Latvian non-citizens, as well as of aliens, stateless persons and refugees who have received residence permits in Latvia in accordance with the procedures specified in the Law, by including and updating information in the Register regarding such persons."

and

"Section 15.

(1) The duty of the persons referred to in Section 3 of this Law shall be to provide the Office with information regarding the person for inclusion in the Register. The legal representatives of the relevant persons shall provide information regarding persons who are under the age of 16 or subject to guardianship or trusteeship to the Office.

(2) If a person who has Latvian nationality resides outside Latvia for a period exceeding six months, the person has a duty to notify the Office of the address of the place of residence thereof in the foreign country, as well as of other changes in the information included in the Register regarding himself or herself, his or her children who are under the age of 16 and regarding persons who are subject to the guardianship or trusteeship thereof (through the diplomatic or consular representation of Latvia), if these changes have been made in foreign institutions. "

Available at:

[www.vvc.gov.lv/export/sites/default/docs/LRTA/Likumi/Population\\_Register\\_Law\\_.doc](http://www.vvc.gov.lv/export/sites/default/docs/LRTA/Likumi/Population_Register_Law_.doc), link provided by the State party.

<sup>15</sup> The State party refers to Annex 1 to its submission, which is submitted to the Committee in Latvian without translation.

result of a criminal act, but resulted from an accident. The Committee, however observes that the above conclusion is not based on the official conclusion of the investigation, conducted by the State party's authorities, since the criminal investigation initiated by the State party was under article 105, paragraph 2 of the Criminal Code (intentional infliction of serious bodily injuries) and the investigation was discontinued after the statute of limitation ran out, thus leaving open the possibility that the death of the victim resulted from a crime. In the circumstances, the Committee considers that it is not precluded, by the requirements of article 1 of the Optional Protocol, from examining the present communication.

7.4 With regard to the requirement laid down in article 5, paragraph 2 (b), of the Optional Protocol, the Committee takes note of the State party's argument that the author has not exhausted the available domestic remedies, namely by submitting a complaint for the inaction of the police under article 27 of the Law "On Police", or a complaint about the lack of police actions to the Prosecutor's office in accordance with article 220 of the Criminal Procedure Code. The Committee notes that the author has acknowledged that she failed to exhaust domestic remedies but that she has argued in turn that due to her mental health problems, she was unable to exercise her rights; that the widespread corruption in the police, prevalent at the time of the death of her son, and the death threats that she received against herself and her daughter served as a deterrent to submit any complaints to the authorities. The Committee, however, observes that other than her initial complaint to the police the author did not make any other attempt to contest the alleged ineffectiveness of the investigation apart from oral inquiries, the latest of which she made a year after the death of her son. The Committee also observes that she has failed to substantiate any concrete instance of corruption, associated with the investigation into the death of her son and that she did not provide any information on the alleged death threats. In these circumstances, the Committee considers that the author has not argued that the domestic remedies available to her were ineffective nor that she was otherwise exempt from availing herself of these remedies. The Committee therefore concludes that the communication is inadmissible under article 5, paragraph 2 (b), of the Optional Protocol.

7.5 Having come to this conclusion the Committee decides not to examine the State party's claim that the author had abused her right to submission.

8. The Committee therefore decides:

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

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

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

## Appendix

### **Joint opinion of Committee members Mr. Fabián Salvioli and Mr. Víctor Rodríguez Rescia**

1. We regret that we cannot concur with the decision of the Human Rights Committee concerning communication No. 1935/2010, which concluded in paragraph 8 “[t]hat the communication is inadmissible under article 5, paragraph 2 (b) of the Optional Protocol”. We do not agree with the Committee’s reasoning for a finding of inadmissibility on the grounds that the author “has not argued that the domestic remedies available to her were ineffective nor that she was otherwise exempt from availing herself of these remedies”.
2. Rather, we are of the opinion that, inasmuch as it was a question of pursuing criminal proceedings, the author took such steps as were necessary in order for an investigation into her son’s death to be opened *ex officio*, as it to be expected once a publicly actionable offence is reported. Accordingly, it was the State’s responsibility to conduct the entire criminal investigation process with due diligence. However, it did not do so in this particular case, which, after a decade had gone by, with no court ruling on the merits, was eventually closed under the statute of limitations.
3. The facts set out in the communication relate to the failure to investigate the death of the author’s son, which was reportedly the result of a beating by a gang of teenagers believed to be of Russian nationality. The case file indicates that the author lodged a complaint within a few hours of the incident at the closest police station, where her statement was taken (para. 2.2). She also took steps to assist the police with the investigation, such as taking the death certificate to the police station. The author continued to follow the case until, around a year after the incident, a detective from another police station informed her that her son had died of asthma, even though the victim had never suffered from that condition and the report on the initial post-mortem examination had described the cause of death as “massive head trauma; epidural hematoma caused by a fracture to the base of the skull; blunt head trauma”.
4. According to the State, the author did not exhaust the available domestic remedies before submitting the communication to the Committee because she failed to submit a complaint regarding the inaction of the police under article 27 of the Police Act and she failed to file a complaint about police inaction with the Prosecutor’s Office in accordance with article 220 of the Code of Criminal Procedure. The State party did not deny that the author’s mental state did not allow her to follow the investigation actively, but claimed that she could nonetheless have asked for legal assistance or for the help of someone she trusted, for example her daughter.
5. For the authors of this joint opinion, the police investigation initiated on 2 January 1995 and closed on 30 December 2004 under the statute of limitations was the *ex officio* responsibility of the State, given the fact that it was a criminal investigation (as it related to a publicly actionable offence). Criminal proceedings, unlike, for example, civil proceedings, do not require an application by the party concerned in order for them to go forward and be resolved by a court ruling, irrespective of the outcome. The criminal complaint filed by the author — the victim’s mother — and the results of the forensic medical examination were sufficient grounds for initiating an in-depth investigation into the facts of the case. During the 10 years that it took for the case to expire under the statute of limitations, there was a failure to investigate with due diligence and, for long periods of time, no substantive proceedings of any sort were pursued.

6. The investigation was not swift, thorough or prompt, which resulted in an unreasonable prolongation of the proceedings. Under article 5, paragraph 2 (b), of the Optional Protocol, that is precisely one of the grounds which exempts a person from the obligation to exhaust domestic remedies. Given the criminal nature of the proceedings, and the State's obligation to initiate such proceedings ex officio, we do not consider it necessary to determine whether or not the author and complainant had mental health problems as a result of the tragic death of her husband, the death of her son and the serious illness and death of her mother.

7. The Committee should have, at least, declared the case admissible so that it could have been examined on the merits; the outcome of such an examination is not prejudged in any way by the authors of this opinion.

[Done in English, French and Spanish, the Spanish text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

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