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Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning Communication No. 2670/2015*,**

Communication submitted by:	Gintaras Jagminas (represented by Mr. Tomas Stanislovas)
Alleged victim:	The author
State party:	Lithuania
Date of communication:	5 February 2015 (initial submission)
Document references:	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 6 November 2015 (not issued in document form)
Date of adoption of Views:	24 July 2019
Subject matter:	Arbitrary dismissal of civil servant
Procedural issues:	Inadmissibility as manifestly ill-founded; level of substantiation of claims; exhaustion of domestic remedies; ratione materiae
Substantive issues:	Right to fair trial; equality of arms; presumption of innocence; right to have access to public service
Articles of the Covenant:	14(1) (2), 25(c)
Article of the Optional Protocol:	2, 3, 5 (2) b

* Adopted by the Committee at its 126th session (1-26 July 2019).

** The following members of the Committee participated in the examination of the communication: Tania Maria Abdo Rocholl, Ilze Brands Kehris , Arif Bulkan, Ahmed Amin Fathalla, Schuichi Furuya, Christof Heyns, Bamariam Koita, Marvia V. Kran, Photini Pazartzis, Hernán Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Yuval Shany, Hélène Tigroudja, Andreas Zimmermann and Gentian Zyberi.

1.1 The author of the communication, dated 5 February 2015, is Mr. Gintaras Jagminas, a national of Lithuania, born on 21 April 1971. The author claims to be a victim of a violation by Lithuania of article 14, paragraphs 1 and 2 and article 25, subparagraph (c) of the Covenant. He is represented by counsel, Mr. Stanislovas Tomas.

1.2 On 6 January 2016 the State party submitted observations on the admissibility of the communication separate from its merits. On 13 July 2016, the Committee, acting through its Special Rapporteur on New communications and Interim Measures, decided, in accordance with rule 92, paragraph 5 of its Rules of Procedure, to examine the admissibility of the communication together with its merits.

The facts as presented by the author

2.1 On 27 April 2006, the author was appointed as head of Padvarionys cordon of the State Border Protection Service. This function requires authorization to work with secret information. On 18 October 2006, the Minister of Interior withdrew the authorization by Order No. 1V-395. By Order No. TE-390, dated 20 October 2006, the head of the State Border Protection Service dismissed the author from his position due to the loss of authorization decided by the Minister (hereinafter: the Orders). None of the Orders set out any reason for the author's dismissal.

2.2 On 14 December 2006, the author lodged a complaint against the Orders before the Vilnius Regional Administration Court, asking to reinstate him to his position and pay him damages. By its decision dated 23 August 2007, the Vilnius Regional Administrative Court dismissed the author's claim. The author lodged an appeal against the decision, and on 7 November 2008, the Lithuanian Supreme Administrative Court found in favor of the author and quashed the decision of the first instance. The author alleges that the appeal court annulled both Orders for the absence of any stated ground for the author's removal from his position[1] and remitted the case to the first instance court for the determination of damages suffered by the author. On 9 June 2009, the Vilnius Regional Administrative Court awarded a compensation of 34 304 euros and reinstated the author to his position. This decision was appealed to the Supreme Administrative Court.

2.3 In the course of the appeal proceedings, the State Border Protection Service, upon the request of the Supreme Administrative Court to declassify the documents relevant for the author's case, submitted additional documents to the Supreme Administrative Court on 29 June 2010. The documents disclosed the ground for the author's dismissal i.e. that he had been subjected to operational surveillance on account of several criminal allegations (contraband and illegal transfer of persons through the State border). The author asserts that the note of the Deputy Prosecutor General of Lithuania, dated 8 February 2007 and declassified only on 29 June 2010, was the first document from which he gained knowledge that he had been under operative surveillance pursuant to the order of the Vilnius Regional Court on account of several criminal allegationsagainst him.

2.4 On 4 October 2010, the Lithuanian Supreme Administrative Court established that, as it appeared from the information revealed before the Supreme Administrative Court, there indeed had been lawful grounds for the revocation of the author's authorization to have access to confidential information as well as for his dismissal under the relevant provisions of the State Secrets and Official Secrets Act. Therefore, the Supreme Administrative Court set aside the decision of the Vilnius Regional Administrative Court and dismissed the claims of the author.

2.5 The author notes that he was never suspected of having committed a criminal offence, no pre-trial investigation or court proceedings were initiated against him as a result of the operative observation he had been subjected to.

[1] Article 16(2) of the State Secrets and Official Secrets Act of the Republic of Lithuania, effective at the time of the dismissal of the author, contained the list of grounds in categorical terms that serve for the withdrawal of an authorization to have access to confidential information and subsequent dismissal as per Article 18 (1) point 4) of the same Act.

The complaint

3.1 The author claims that his rights under article 14, paragraphs 1 and 2 and article 25 (c) of the Covenant have been violated. The author considers that the State party has violated not only the principle of equality of arms (substantial part of the evidence was not disclosed to the author), but also the presumption of innocence as part of the general principle of fair trial in civil proceedings. Furthermore, he submits that the right of equal access to public service under article 25 (c) of the Covenant encompasses the right not to be arbitrarily dismissed from public service, thus he argues that his right under the said provision has also been violated.

3.2 As to his claim under article 14, paragraph 1 of the Covenant, the author submits that none of the Orders dated 18 and 20 October 2016 set out any reason for his dismissal depriving him of the opportunity to contest the allegations brought up against him. The author asserts that the note of the Deputy Prosecutor General of Lithuania, dated 8 February 2007 and declassified only on 29 June 2010, was the first document from which he learnt that he had been under operative surveillance, and that the surveillance served as a ground for his dismissal. He further argues that the content of the said document is too vague without including any facts in relation to the criminal offences and therefore does not allow him to understand the exact nature of the criminal allegations against him and to contest these allegations in his defense. He submits that had he been given the opportunity to present his arguments, he would have shown that the claims used against him were fabricated by persons who did not appreciate him for personal reasons. Accordingly, the Supreme Administrative Court's decision finding the withdrawal of the author's authorization and his subsequent dismissal lawful on the basis of classified data the author was not granted access to as well as the Court's overlooking the circumstance that the author was not aware of the nature of the information collected during his operational observation and thus could not contest these allegations violated the author's right to defense and the principle of equality of arms within the meaning of article 14, paragraph 1 of the Covenant.

3.3 As to his claim under article 14, paragraph 2 of the Covenant, the author argues that under the relevant laws of Lithuania the withdrawal of the authorization to have access to secret information and a subsequent dismissal from positions requiring such authorization can occur merely on the ground that someone is subjected to operative observation. However, as an operative observation precedes the phase of criminal proceedings when someone is officially suspected of having committed a criminal offence[2], the author notes that, as his case also shows, the mere belief, and not even an official suspicion, of committing a criminal offence constitutes a ground for the withdrawal of authorization to work with confidential information and for a subsequent dismissal. Thus, ordering his dismissal as if he was guilty despite the absence of any official charge or suspicion, any pre-trial investigation or conviction violates the principle of the presumption of innocence. He adds that while this provision cannot apply to civil proceedings but considering that the author's dismissal is based on criminal allegations which were never proven, the protection afforded by the principle of presumption of innocence can be understood as being part of the general right to fair trial under article 14, paragraph 1 of the Covenant.

3.4 As to his claim under article 25 (c) of the Covenant, the author argues that Article 18 (1) point 4) taken together with Article 16 (2) of the Lithuanian Act on State and Service Secret provides in categorical terms that the operative observation of a public servant shall result in a dismissal from office. The cited regulation leaves no room for discretion by the authorities, which is contrary to article 25 (c) of the Covenant. The author further notes that the Lithuanian Constitutional Court also examined this issue and by its decision dated 7 July 2011 ruled that the dismissal of a civil servant only on the basis of an operative observation as prescribed for by the impugned provision of the law runs counter to the Constitution of Lithuania. The said decision, however, does not have retroactive effect.

[2] Operational surveillance has the objective to establish whether there would be sufficient evidence to serve the notice of suspicion and launch pre-trial investigation against the concerned person.

State party's observations on admissibility

4.1 By note verbale dated 6 January 2016, the State party requests the Committee to declare the communication inadmissible for non-exhaustion of domestic remedies under article 5, paragraph 2(b) and for non-substantiation under article 2 of the Optional Protocol to the Covenant.

[As regards the author's claims under Article 14, paragraph 1 of the Covenant]

4.2 As regards the author's claims under Article 14, paragraph 1 of the Covenant, the State party submits that, as indicated in the Supreme Administrative Court's decision dated 4 October 2010, the author was entitled to lodge a complaint before the administrative disputes commission or any other institution for preliminary extrajudicial examination of disputes. However, the author did not avail himself of this legal avenue and therefore his communication shall be declared inadmissible for non-exhaustion of domestic remedies pursuant to article 5, paragraph 2(b) of the Optional Protocol to the Covenant.

4.3 As regards the issue of non-substantiation under the same article, the State party first contests the author's statement according to which the Supreme Administrative Court found in favor of the author by its first decision dated 7 November 2008. The State party indicates that the Supreme Administrative Court considered it was necessary to collect additional evidence in order to allow the court to adjudicate on the case and therefore remitted the case to the first instance. Furthermore, referring to the final judgment of the Supreme Administrative Court of Lithuania, the State party argues that, contrary to the author's allegation that the final decision was based solely on classified information the author had no access to, the Supreme Administrative Court relied not only on classified data but also on information that had been declassified and were available to the author. The declassified letter, dated 24 August 2006, of the State Boarder Guard Service specified the legal ground for the revocation of the author's authorization to have access to secret information since a reference was made to Article 16 § 2 (13) of the State Secrets and Official Secrets Act. The extract of the declassified transcript of the hearing of the Central Special Experts Commission dated 7 September 2006 further indicates that "*having evaluated the information received <…> that the operational units possess information about certain circumstances related to the <author>, in accordance with Article 16 § 6 of the Act on State Secrets and Official Secrets <…> a repeated verification of the candidacy of the <author> was initiated"*. Besides, the declassified letter of the Prosecutor General's Office, dated 8 February 2007, further points out that the operational surveillance was initiated after having received information that the author "*possibly abuses his office, cooperates in the performance of contraband and illegal transportation of persons across the border*". Therefore, the State party argues that due to the declassification of these documents upon the request of the Supreme Administrative Court of Lithuania, the author became aware of the nature of the operational observation carried out against him. In that regard, the State party further highlights that the Supreme Administrative Court of Lithuania, referring to the jurisprudence of the European Court of Human Rights and the Constitutional Court of Lithuania, has held on many occasions that relying exclusively on classified data that is not accessible to one of the parties in the court proceedings entails the unlawfulness of the contested court decision.[3] The Supreme Administrative Court also noted that even if the confidentiality of certain information are at stake, a fair balance must be struck between the competing public and individuals interests. The State party notes that these principles have been consistently followed by the Supreme Administrative Court in numerous decisions.[4]

4.4 The State party also recalls General Comment no. 32 of the Committee (paragraph 26) establishing that "It is generally for the courts of States parties to the Covenant to review facts and evidence, or the application of domestic legislation, in a particular case, unless it

[3] The state party refers to the decisions of the European Court of Human Rights, Gulijev v. Lithuania (application no. 10425/03), 16 December 2008; Pocius v. Lithuania (application no. 35601/04), 6 July 2010; Uzukauskas v. Lithuania (application no. 16965/04), 6 July 2010. See also the decision of the Constitutional Court of Lithuania on state secrets and official secrets in case no. 7/04-8/04 delivered on 15 May 2007.

[4] See the decisions of the Supreme Administrative Court of Lithuania nos. A-469-741/2207, A-822-326/2209, A-143-266/2011, A-556-57/2011, A-662-2595/2012, -520-2266/2012, A-1105-756/2015.

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.". The State party argues that the author's claims relate mainly to the assessment of facts and evidence by the national courts, and recalls that the State party is in a better position to evaluate the facts and evidence in the particular case. Moreover, the domestic courts conducted a thorough analysis of the author's complaint in two sets of proceedings, which were rejected. In addition, the author's repeated requests for the re-opening of the administrative proceedings have also been duly examined by the Supreme Administrative Court of Lithuania, however, in the absence of any grounds allowing for retrial, these requests were also dismissed. The State party maintains that the Committee should not act as a "fourth instance court" and review the domestic courts' assessment. In addition, the State party argues that while article 14, paragraph 1 of the Covenant may be interpreted as obliging courts to give reasons for their decisions, it cannot be interpreted as requiring a detailed answer to every argument advanced by the complainant. The State party notes in that regard that as it appears from the case-file there is no evidence to suggest that the author's allegations were not addressed by the Supreme Administrative Court of Lithuania.

4.5 The State party also notes that the author had submitted applications to the European Court of Human Rights that were found inadmissible for being manifestly ill-founded. In spite of the limited reasoning of the Court, the State party argues that one may nevertheless presume the lack of substantiation of the author's claims and that he wishes to use international tribunals as courts of fourth-instance.

4.6 In light of the above, the State party is of the view that the Supreme Administrative Court of Lithuania by collecting additional evidence at its own initiative and by requesting the competent authorities to declassify them, remedied the omission of the first instance court and reached its final decision relying on the entirety of evidence containing both classified and non-classified information obtained in the case. Therefore, the State party concludes that the author's claims as regards the alleged unfairness of the trial, including his claims related to the alleged breach of the principle of equality of arms and the right to defense, are unsubstantiated and shall be declared inadmissible pursuant to article 2 of the Optional Protocol to the Covenant.

[As regards the author's claims under Article 14, paragraph 2 of the Covenant]

4.7 As regards the author's claims under Article 14, paragraph 2 of the Covenant, the State party submits that the relevant laws of Lithuania safeguard the presumption of innocence. [5] However, the author failed to raise the issue of the alleged impairment of the presumption of innocence on any instances before the domestic courts. Therefore, the author's claims under Article 14, paragraph 2 shall be declared inadmissible for non-exhaustion of domestic remedies pursuant to article 5, paragraph 2(b) of the Optional Protocol to the Covenant.

4.8 As regards the issue of non-substantiation under Article 14, paragraph 2 of the Covenant, the State party submits that Article 16 § 1 (4) of the State Secrets and Official Secrets Act provides that an authorization to have access to secret information can be issued provided that no doubt arises as to the person's reliability or his loyalty to the State of Lithuania. As it appears from the decision, dated 7 July 2011, of the Constitutional Court of Lithuania not only a person's guilt of a criminal offence established in accordance with the procedure prescribed by law may raise doubts as to his/her reliability and loyalty. Other factors such as information on potential security threats, personal qualities, activities, information on dishonesty, disloyalty, unreliability or negligence may also be relevant for the assessment. The absence of a final court judgment establishing the criminal liability of the given person does not yet mean that a person seeking to hold office requiring access to secret information necessarily enjoys the trust of the State of Lithuania. The State party argues that having regard to these considerations, the operational surveillance carried out in respect of the author per se was sufficient to question his reliability under the respective law.

[5] See Article 31 of the Constitution of the Republic of Lithuania and Article 44 of the Criminal Procedural Code of Lithuania.

Therefore, the withdrawal of the author's authorization to access secret information and his subsequent dismissal from his position did not depend on the guilt of the author. In other words, he was not presumed guilty in respect of the criminal allegations against him. Consequently, the domestic courts when examining the lawfulness of the administrative decisions did not have to deal with the question of his guilt or innocence either as this was not a prerequisite for the author's dismissal; the mere fact of his operative surveillance constituted sufficient ground for his dismissal irrespective of the fact whether such surveillance eventually could lead to establishing a suspicion or, later on, the criminal liability of the author in respect of the criminal allegations. Therefore, the State party concludes that the author's claim that he was arbitrarily dismissed from his position by presuming his guilt and without carrying out an official pre-trial investigation and court proceedings against him are not sufficiently substantiated and they are inadmissible pursuant to article 2 of the Optional Protocol to the Covenant.

[As regards the author's claims under article 25 (c) of the Covenant]

4.9 As regards the author's claims under article 25 (c) of the Covenant, the State party recalls that article 25 (c) of the Covenant provides for the right of citizens to have access, on general terms of equality, to public service. However, article 25 (c) does not guarantee for every citizen to obtain or retain employment in public service. The State party argues that the author did not claim or dispute that the criteria for withdrawal of the authorization to have access to secret information and his subsequent dismissal from his position were in any way discriminatory. The said provision is to be applied to anyone in similar situation. Thus, the State party concludes that the author has failed to substantiate his claims under article 25 (c) and thus shall be rejected pursuant to article 2 of the Optional Protocol to the Covenant.

Author's comments on the State party's observations

5.1 On 10 February 2016, the author submitted comments on the State party's observations. As regards the State party's statement concerning the non-exhaustion of domestic remedies, the author submits that the extrajudicial examination of disputes shall not be deemed as an effective remedy that could substitute the judicial avenue pursued by him. The author further disputes the State party's statement that he wishes to challenge the assessment of facts and evidence by the domestic courts. He explains that not having access to documents containing classified information that were used against him, is a matter of procedural equality that had been violated in the course of domestic proceedings. He maintains that he did not have access to substantial data in connection with his operative surveillance constituting the basis for his dismissal, therefore the principle of equality of arms as provided for under article 14, paragraph 1 has been infringed.

5.2 As regards the alleged breach of the presumption of innocence, he maintains that all doubts as to his reliability should have been dispelled at certain point as the criminal allegations brought up against him could not be proved. Accordingly, he was punished for unproven allegations and as a result, the presumption of innocence has been violated.

5.3 The author submits that he primarily claims the violation of the principle of the presumption of innocence and he only alleges the violation of article 25 (c) as a subsidiary complaint for having been arbitrarily dismissed from his position, which claim he maintains.

Additional submissions by the parties

State party

6.1 In a subsequent note verbale dated 9 May 2016, the State party reiterates its arguments of 6 January 2016. In addition, the State party submits that the author's claims are incompatible with the provisions of the Covenant pursuant to article 3 of the Optional Protocol to the Covenant. The State party also submits that should the Committee examine the merits of the complaint, it should consider the State party's observations dated 6 January 2016 in respect of both the admissibility and merits of the author's claims and establish that there has been no violation of articles 14 (1)(2) and 25 (c) of the Covenant for the reasons set out therein.

6.2 Considering that the Committee decided to examine the admissibility of the complaint together with its merits, on 16 November 2016 the State party reiterates the inadmissibility of the communication and also reiterates its arguments regarding the merits presented in its observations dated 6 January 2016.

Author

6.3 On 26 January 2017, the author reiterates his previous arguments and also highlights that the correct term to use is "operative observation" or "operational surveillance" instead of "operational investigation" as used by the State party. The aim of operative observation or surveillance is to gather proof to be able to serve a notice of suspicion to the concerned person and then launch pre-trial investigation. He adds that in his case, the operative surveillance was "fruitless" as he had never been served a notice of suspicion within the meaning of Article 21 of the Criminal Procedural Code of Lithuania.

Issues and proceedings before the Committee

Consideration of admissibility

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

7.2 The Committee notes that the author has brought similar claims to the European Court of Human Rights, which declared them inadmissible on 25 September 2012 and 26 September 2013. It recalls that the concept of 'the same matter' within the meaning of article 5, paragraph 2(a), has to be understood as including the same claim concerning the same individual before the other international body, while the prohibition in this paragraph relates to the same matter being under concurrent examination. Even if the present communication has been submitted by the same individual to the European Court of Human Rights, it has already been determined by that body. Further, the Committee notes that the State party has not entered a reservation to article 5, paragraph 2(a), to preclude the Committee from examining communications that have been previously been considered by another body. Accordingly, it has ascertained that the same matter is not being examined under another procedure of international investigation or settlement for the purposes of article 5, paragraph 2(a) of the Optional Protocol.

7.3 As regards the author's claims under article 14, paragraphs 1 that the State party has violated his right to equality before courts and tribunals encompassing the principle of equality of arms, the Committee recalls that the right to a fair and public hearing by a competent, independent and impartial tribunal is guaranteed in cases regarding the determination of criminal charges against individuals or of their rights and obligations in a suit at law. The Committee has already established in cases concerning the dismissal of civil servants, that whenever a judicial body is entrusted with the task of deciding on the imposition of disciplinary measures, it must respect the guarantee of equality of all persons before the courts.[6] In the present case, the Committee notes that the Orders dated 18 October 2016 and 20 October 2016 on the revocation of the author's authorization and his dismissal were not reached by a tribunal. It must be noted, however, that these decisions were challenged in administrative court proceedings which, since there were no criminal proceedings against the author, were the only set of proceedings adjudicating on the rights that were at stake for the author and hence were decisive for the determination of his rights and obligations. The Committee notes nevertheless that the author's arguments in relation to the alleged infringement of equality of arms are centered upon the question of guilt of criminal charges. In this respect, the Committee finds particularly relevant the State party's argument that the withdrawal of the author's authorization to access secret information and his subsequent dismissal from his position did not depend on the guilt of the author. As to the arguments of the author that it was only after the declassification of some of the documents in June 2010 when he finally gained access to evidence used against him, the Committee observes the State party's statement that the Supreme Court of Lithuania collected

[6] See e.g. Bandaranayake v. Sri Lanka (CCPR/C/93/D/1376/2005), 24 July 2008, para 7.1.

additional evidence on its own initiative by requesting the competent authorities to declassify it. Then, a full review was conducted by the Supreme Administrative Court that reached its final decision relying on the entirety of evidence. The Committee also takes note of the State party's argument that the Supreme Administrative Court's relying on both classified and declassified evidence complies also with the requirements of the European Court of Human Rights established in similar cases. In such circumstances, the Committee considers that the Supreme Administrative Court of Lithuania, by collecting additional evidence on its own initiative and by requesting the competent authorities to declassify it, remedied the omission of the first instance court. In light of these considerations, and in the absence of any other information of pertinence on file, the Committee considers that part of the communication to be inadmissible under article 2 and 3 of the Optional Protocol to the Covenant.

7.4 As regards the author's claims under article 14, paragraph 2 of the Covenant, the Committee recalls that the presumption of innocence is guaranteed in cases regarding the determination of criminal charges against individuals. In the present case, the Committee notes that the outcome of the proceedings was not to charge the author with a "criminal offence" and to hold him "guilty of a criminal offence" within the meaning of article 14 (2) of the Covenant. Accordingly, the author's claim under article 14, paragraph 2 of the Covenant is incompatible ratione materiae with the provisions of the Covenant and are inadmissible under article 3 of the Optional Protocol.

7.5 The Committee notes the State party's challenge to admissibility on the grounds that the author's claims under article 25 (c) of the Covenant are unsubstantiated. However, the Committee considers that, for the purposes of admissibility, the author has adequately explained the reasons why his dismissal as a public servant would amount to a breach of the right to access to public service contrary to article 25 (c) of the Covenant. Therefore, the Committee declares the communication admissible insofar as it raises issues under article 25 (c) and proceeds to its consideration of the merits.

Consideration of the merits

8.1 The Human Rights Committee has considered the communication in the light of all the information made available to it by the parties, as provided for under article 5, paragraph 1, of the Optional Protocol.

8.2 As regards the author's claims under article 25, paragraph c) of the Covenant, the issue before the Committee is whether the author's dismissal on the ground that he was subjected to operative surveillance amounts to a violation of the Covenant in light of the particular circumstances of the case. The Committee observes that article 25 (c) of the Covenant confers a right to access, on general terms of equality, to public service, and recalls its jurisprudence that, to ensure access on general terms of equality, not only the criteria but also the "procedures for appointment, promotion, suspension and dismissal must be objective and reasonable". A procedure is not objective or reasonable if it does not respect the requirements of basic procedural fairness. The Committee also considers that the right of equal access to public service includes the right not to be arbitrarily dismissed from public service.[7]

8.3 As to the issue of reasonableness under article 25 (c), the Committee is mindful of the author's argument that Article 18(1)(4) of the Lithuanian Act on State and Service Secret provides in categorical terms that the operative observation of a public servant shall result in his/her dismissal from office. The contested regulation does not require the authorities to establish the criminal liability of the concerned person, and once the operative observation has been established, the law leaves no room for discretion by the authorities in terms of the measures to be applied. The Committee takes note of the State party's counter-argument in this respect claiming that the absence of a final court judgment establishing the criminal liability of the given person does not yet mean that a person seeking to hold office requiring access to secret information necessarily enjoys the trust of the state and the authorized institutions of the state can have no doubts as to the reliability or loyalty of that person to the state of Lithuania. The Committee observes that the State party also submits that an individual's loyalty may be questioned not only on the basis of a criminal conviction but as

[7] *Bandaranayake v. Sri Lanka* (CCPR/C/93/D/1376/2005), 24 July 2008, para 7.1.

a result of acquiring information on potential security threats providing evidence on the person's unreliability or negligence. As to the issue of objectivity under article 25 (c), the Committee notes the State party's argument that Article 18(1)(4) of State Secrets and Official Secrets Act prescribing the withdrawal of the authorization to have access to secret information and subsequent dismissal on the ground of being subjected to operational surveillance is not discriminatory, nor has it been applied in a discriminative way in the particular case. The contested provision would apply to anyone in a similar situation.

8.4 In its assessment, the Committee observes at the outset that even if it would consider that Article 18(1)(4) of the State Secrets and Official Secrets Act prescribing the contested interference on the ground of being subjected to operational surveillance is an objective criterion given that it applies to any person in similar situation without distinctions, the real issue before the Committee is whether the said provision is reasonable and encompasses sufficient guarantees against arbitrary implementation. In this respect, the Committee deems that it is of utmost importance that the contested provision allows for no discretion for the authorities to assess the significant circumstances of a particular case, such as the gravity of the offence or if the allegations could be eventually proved in a court of law. In that respect, the Committee is mindful of the State party's argument that operational surveillance, without establishing criminal liability, may raise in itself doubts as to the concerned person's reliability. Although the Committee does not contest this statement, it is concerned that the law does not allow the authorities to make an individual assessment whether doubts as to the reliability of an individual are justified in a concrete situation but it necessarily follows from the mere launching of operative surveillance. The Committee further notes that the contested provision does not permit any alternatives to dismissal in terms of the measures to be taken once it has been established that the concerned person is under operative surveillance and thus no individual assessment of the case is made. Besides, the law does not allow for any correction should the operational surveillance not disclose any irregularities or activities of the surveilled person that could have indeed justified the observation of the person entailing his dismissal. The Committee considers that the State party has only shown that the interference was prescribed by and in accordance with the provisions of the law, but it failed to explain whether such interference was justified with special regard to the necessity and proportionality of the measure. At this juncture, the Committee notes that the Constitutional Court of Lithuania by its decision dated 7 July 2011, for the foregoing reasons, concluded that the law under scrutiny amounted to a disproportionate restriction on the right to access to public service on an equal basis under the Constitution of Lithuania. There is, however, no information on file to suggest that even if the relevant laws of Lithuania no longer allow for such restrictive measures the author's grievances have been addressed as a result of this decision. The Committee further notes that the State party failed to demonstrate that there were any guarantees against the abuse of the impugned regulation that would preclude the possibility of launching secret observations of certain officials on an arbitrary basis and removing them from their position without any reasonable justification.

8.5 For these reasons, the Committee finds that the author's dismissal prescribed by law that lacked safeguards against arbitrariness, together with the procedure that could not offer a realistic prospect for the author to contest the ground for his dismissal cannot be regarded as justified and thus reasonable in terms of the legitimate aim pursued and the requirement of proportionality. Therefore, the Committee considers that the State party failed to respect the author's right of access, on general terms of equality, to public service. Consequently, there has been a violation of article 25 (c) of the Covenant.

9. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol, is of the view that the State party has violated the author's rights under article 25 (c) of the Covenant.

10. In accordance with article 2(3)(a) of the Covenant, the State party is under an obligation to provide the author with an effective remedy. That requires it to make full reparation to individuals whose Covenant rights have been violated. In the present case, the State party is under an obligation, inter alia, to provide adequate compensation to the author for the violations suffered. The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future.

11. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective remedy when it has been determined that a violation has occurred, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the present Views and disseminate them widely in the official languages of the State party.