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Communication No. 2071/2011

Views adopted by the Committee at its 111th session (7–25 July 2014)

<i>Submitted by:</i>	Roberto Antonio Emigdio D'Amore (represented by counsel, Carlos Varela Álvarez)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Argentina
<i>Date of communication:</i>	11 April 2011 (initial submission)
<i>Document reference:</i>	Special Rapporteur's rule 92/97 decision, transmitted to the State party on 5 July 2011 (not issued in document form)
<i>Date of decision:</i>	24 July 2014
<i>Subject matter:</i>	Irregularities in administrative procedures for the imposition of penalties
<i>Substantive issue:</i>	Right to obtain a decision within a reasonable time
<i>Procedural issues:</i>	Failure to exhaust domestic remedies; failure to substantiate allegations
<i>Articles of the Covenant:</i>	Articles 2 (para. 3), 14 (para. 1) and 26
<i>Article of the Optional Protocol:</i>	Article 5 (para. 2 (b))



Annex

Decision of the Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political Rights (111th session)

concerning

Communication No. 2071/2011*

<i>Submitted by:</i>	Roberto Antonio Emigdio D'Amore (represented by counsel, Carlos Varela Álvarez)
<i>Alleged victim:</i>	The author
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The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 24 July 2014,

Adopts the following:

Decision on admissibility

1. The author of the communication is Mr. Roberto Antonio Emigdio D'Amore, an adult Argentine national. He claims to be a victim of a violation by Argentina of his rights under articles 2, 14 (para. 1) and 26 of the Covenant. He is represented by counsel, Mr. Carlos Varela Álvarez. The Covenant and Optional Protocol entered into force in the State party on 8 November 1986.

Factual background

2.1 The author was a director and minority shareholder of the firms D'AMORE y Compañía Sociedad Anónima de Ahorro y Préstamo para la Vivienda (D'AMORE) and D'AMFIN Compañía Financiera Sociedad Anónima (D'AMFIN). In the early 1980s, the Central Bank of the Republic of Argentina ordered the conversion of all finance companies and housing savings and loans firms into commercial banks. As a result, D'AMORE and D'AMFIN requested authorization from the Central Bank to merge and reform as a commercial bank.

* The following members of the Committee participated in the consideration of this communication: Mr. Yadh Ben Achour, Mr. Lazhari Bouzid, Ms. Christine Chanet, Mr. Ahmad Amin Fathalla, Mr. Cornelis Flinterman, Mr. Yuji Iwasawa, Mr. Walter Kälin, Ms. Zonke Zanele Majodina, Mr. Gerald L. Neuman, Sir Nigel Rodley, Mr. Víctor Manuel Rodríguez-Rescia, Mr. Dheerujall B. Seetulsingh, Ms. Anja Seibert-Fohr, Mr. Yuval Shany, Mr. Konstantine Vardzelashvili, Ms. Margo Waterval and Mr. Andrei Paul Zlătescu. Pursuant to rule 90 of the Committee's rules of procedure, Committee member Mr. Fabián Omar Salvioli did not participate in the consideration of the communication.

2.2 Prior to granting authorization, the Central Bank carried out an inspection of the companies and ordered their seizure for breaches of the Financial Institutions Act (No. 21,526) of 1977. Between 1982 and 1984, it was found that certain financial activities conducted by both firms did not comply with the requirements of the Act.

2.3 According to the author, in 1984 the Central Bank ordered the closure or liquidation of D'AMORE and opened an investigation of its senior management, including the author, in order to determine to what extent their activities in the firm made them liable for prosecution. D'AMFIN was not shut down but ceased operations. The author alleges that, in the course of those proceedings, his assets were frozen, and that he was not allowed to leave the country or carry out any commercial activity.

2.4 On 2 April 1987, the Central Bank rescinded authorization for D'AMFIN to operate and ordered the firm's liquidation for several reasons, including its failure to comply with provisions regarding presumed bogus loans.

2.5 In parallel with that, as part of the procedure to determine the author's individual liability, on 5 August 1987 and 26 August 1988 respectively, the Central Bank launched administrative investigations into the activities of D'AMORE and D'AMFIN. The author alleges that, together with other persons, he was charged with failure to comply with a series of financial regulations.

2.6 On 30 July 1993, the inquiry into the author's activities in D'AMORE called for the submission of evidence. On 29 July 1994, the inquiry into the author's activities in D'AMFIN called for the submission of evidence. On 10 November 1998, the Central Bank notified the author that the period for submitting evidence in the D'AMORE case had come to a close. On 1 June 2000, the Central Bank stopped taking evidence in the D'AMFIN case.

2.7 On 14 February 2002, the Central Bank concluded its investigation of the activities of D'AMORE. It rejected the author's submission that examination of the case had exceeded the statute of limitations, considered the allegations, assessed the evidence, deemed that procedural requirements regarding the right to a defence had been complied with and found that the author and his co-defendants, as directors, were responsible for violations of the Financial Institutions Act. The Central Bank ordered the author to pay a fine of 204,600 pesos (Arg\$) within five days of receiving notification of the decision or face enforced payment proceedings. In its decision, the Central Bank stated that his relationship with the financial institutions concerned was subject to disciplinary law since the latter, by virtue of their role as financial institutions, were automatically subject to the Financial Institutions Act and to the penalties provided for under article 41 in the event of non-compliance with the regulations, and that the sanctions which could be imposed by the Central Bank were of a disciplinary nature and were not criminal penalties like the measures applicable under the Criminal Code.

2.8 On 24 June 2005, the Central Bank concluded its investigation of the D'AMFIN case. It rejected the author's submission that examination of the case had exceeded the statute of limitations, considered the allegations, assessed the evidence relating to the charges and found that the author and his co-defendants, as directors, were responsible for violations of the Financial Institutions Act. The Central Bank ordered the author to pay a fine of Arg\$ 539,100 or face enforced payment proceedings, and debarred him for four years. The Central Bank found that the statute of limitations claimed by the author on the basis of article 42 of the Financial Institutions Act did not apply because, although the acts for which charges had been brought had taken place prior to 29 February 1984, the launching of investigative proceedings on 26 August 1988 and subsequent actions had had the effect of interrupting the period of limitation. The Central Bank stated that the aim of the proceedings had been to establish whether administrative breaches in the form of violations of fiscal regulations, and not criminal offences, had been committed. It was of

the view that the investigation of illicit activities by D'AMFIN complied with the procedural requirements of due process and the right to a defence, and that the charges against him were not of a purely general nature: the Central Bank's report and decision to initiate proceedings described in detail the misdeeds of which the defendants were accused, indicated which provisions they might have violated, and set forth the material proof or evidence relevant to each case.

2.9 On 8 September 2005, the author appealed against the Central Bank's decision of 24 June 2005 before the Federal Administrative Appeal Court and requested the suspension of all procedures and effects of that decision while the Court studied his appeal. The author contested the Central Bank's assessment of the evidence and alleged that its proceedings had been excessively drawn out, thereby violating his rights to obtain a decision within a reasonable period and to the presumption of innocence. He pointed out that, in contrast with this delay, criminal cases launched on the basis of irregularities detected in the activities of both firms had been dismissed by the courts in a matter of a few months. He also asserted that article 42 of the Financial Institutions Act was unconstitutional, given that appeals did not lead to a suspension of the decision in question; that the case before the Central Bank was a criminal matter; that the broad principles of criminal law applied, meaning that he could not be punished for offences committed 22 years previously; that the period of limitation should be calculated from the moment that the offences were detected, or from the launching of investigative proceedings, in conformity with the regulations set forth under Act No. 25,990, which governs statutes of limitations in criminal matters; that the delay had hampered access to documentation that was relevant to his defence; and that it should be considered that he had in effect been punished before proceedings had come to an end, given that he had been debarred and forced out of business for two decades.

2.10 On 27 September 2006, the Central Bank presented a claim for enforcement of the Arg\$ 539,000 fine imposed on the author in connection with the illicit activities of D'AMFIN. The Central Bank also requested, as a preventive measure, the seizure of any funds or bank deposit held in the author's name. On 2 November 2006, Federal Administrative Court of First Instance No. 6 issued the author with a demand for full payment of the fine and Arg\$ 161,730 in interest and costs. On 5 March 2008, the court ordered the enforced payment of the fine, plus interest and costs.

2.11 On 4 December 2008, the Appeal Court turned down the author's appeal, ruling that the investigation was an administrative procedure without criminal implications; that it was sufficient to detect a violation of the regulations without establishing criminal intent; and that therefore company directors and trustees could not evade their liability by pleading ignorance. Since the proceedings were not of a criminal nature, it was not appropriate to apply the general principles of criminal law to penalties under administrative law, or the regulations regarding statutes of limitations in criminal cases under Act No. 25,990. The investigation had clearly been delayed, but the Court dismissed the author's allegations regarding the statute of limitations. As for the merits, it concluded that the appeal did not dispute the existence of the offences but merely refuted facts pertaining to them and questioned the reliability of the evidence, without providing a clear and concrete explanation of which aspects of the rulings and technical reports on which the charges were based contained manifest errors.

2.12 The author claims that he did not file an extraordinary federal appeal against the Appeal Court's judgement because its exceptional nature and the fact that it did not have a suspensive effect on sentences made it ineffective as a remedy. Moreover, he claims that the domestic remedies have been unreasonably lengthy — lasting 25 years — even though, under administrative law, the statute of limitations for financial investigations is 6 years. Filing an extraordinary federal appeal would have led to a much longer delay, given that the consideration of such appeals by the Supreme Court generally takes several years.

2.13 The author affirms that the Committee is competent to consider this communication. Although the matters investigated by the Central Bank and the steps it took began before the State party ratified the Optional Protocol, the investigation and court proceedings came to a conclusion several years after the Optional Protocol entered into force.

The complaint

3.1 The author claims that he is a victim of violations by the State party of his rights under articles 2, 14 (para. 1) and 26 of the Covenant.

3.2 Concerning article 2, the author alleges that the Financial Institutions Act (No. 21,526), in particular article 42, does not comply with the obligations set forth under the Covenant. Indeed, the lack of adequate regulation of administrative procedures means that they can be prolonged indefinitely. In his case, the Central Bank's investigation into his activities had been drawn out excessively, thereby infringing his rights to due process, access to justice and judicial protection. Proceedings before the Appeal Court also took too long. With regard to the delay, the Appeal Court went no further than to establish, in essence, that the Central Bank investigation was an administrative process that could not be likened to criminal proceedings and that the statute of limitations obtaining under criminal law was not applicable. Lastly, the author states that the delays in the Central Bank investigation and subsequently in the appeal process before the courts of the State party cannot be ascribed to his actions during the proceedings or justified by the complexity of the matter. He also states that he and the other persons investigated were also tried by federal criminal courts and swiftly acquitted or excused from the proceedings.

3.3 Concerning articles 14 (para. 1) and 26, the author contends that the Central Bank investigation is an administrative procedure with criminal overtones, and that the human rights standards set forth in the Covenant are therefore applicable. In such administrative procedures the person should be afforded the right to a fair hearing, access to justice and judicial protection, and, among other things, the right to obtain a decision within a reasonable period of time. The author also states that he was not treated fairly by the Central Bank and the courts of the State party, given that the investigation into his activities lasted more than 20 years. In spite of the delay, the judicial authorities failed to properly examine the regulations and the Central Bank's actions in order to ensure that he obtained a decision or sentence within a reasonable period of time, preferring simply to invoke national legislation.

3.4 The author states that the goal of his communication is not to call into question the technical or evidentiary aspects of the Central Bank investigation, but rather to establish that the period of time, more than 25 years, over which the proceedings were conducted, is incompatible with the rights enshrined in articles 14 (para. 1) and 26 of the Covenant. He also asserts that he was punished before a decision had been reached on the merits of the investigation, through interim measures including the seizure of his assets, debarment, the order not to leave the country and the impossibility of obtaining credit or engaging in business, all of which virtually amounted to "civil death".

3.5 The author requests that the Committee recommend that the State party, by way of reparations, drop all proceedings against him and fully restore all his rights, in particular allowing him to engage in business, exercise his profession and gain access to credit; that it repeal or amend the Financial Institutions Act; and that it provide full reparations, including measures of satisfaction, non-repetition and compensation.

State party's observations on admissibility

4.1 On 13 October 2011, the State party submitted its observations on the admissibility of the communication and requested that the Committee rule it inadmissible for failure to

exhaust domestic remedies, in accordance with article 5, paragraph 2 (b), of the Optional Protocol.

4.2 The State party states that the author himself admitted in his communication that he had not exhausted domestic remedies, given that he did not file an extraordinary federal appeal against the Appeal Court's judgement of 4 December 2008, and that his reasons for failing to do so were implausible.

4.3 Such an appeal would have given the Supreme Court the opportunity to examine the issues raised in this communication, given that the violation of rights provided for in an international treaty with constitutional rank is a federal matter warranting that Court's attention. Moreover, in his application to the Appeal Court on 8 September 2005, the author himself reserved the right to have his case examined at the federal level should his appeal fail.

4.4 It is the view of the State party that the length of proceedings and potential duration of a case brought before the Supreme Court are irrelevant to this case, since an exception may be made to the requirement to exhaust domestic remedies only when undue delay prevents the resolution of an appeal.

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

5.1 The author replied to the State party's observations on 28 November 2011. He asserts that the extraordinary federal appeal, as provided for under article 14 of Act No. 48 of 1863, is exceptional, optional and, in the case of arbitrary judgements, limited to the consideration of federal matters. It is an inadequate form of appeal for the purposes of obtaining protection from the kind of violations alleged. The Supreme Court may, at its discretion, dismiss an extraordinary federal appeal if it deems that it is not a matter for the federal jurisdiction or that the issues raised therein are insubstantial or lacking in importance. The author contends that he was therefore not obliged to exhaust that remedy for the purposes of the admissibility of the communication.

5.2 Moreover, and considering the period of time that had already elapsed since the matters considered by the Central Bank had occurred, filing an extraordinary federal appeal would have meant delaying still further the exhaustion of domestic remedies. In this regard, he states that the Supreme Court is not obliged by law to rule on extraordinary federal appeals within any given period.

5.3 The author maintains that the period of time over which the Central Bank conducted its investigations was unreasonable, and that the length of that period to all intents and purposes constitutes a violation of his right to a fair trial and the right to be heard. He reiterates that the rights enshrined in article 14 of the Covenant could not be ignored in administrative proceedings.

State party's observations on the merits

6.1 On 12 July 2012, the State party submitted its observations on the merits of the communication.

6.2 The State party reiterates its observations with regard to the failure to exhaust domestic remedies. With regard to article 2 of the Covenant, the State party contends that the author's allegations fail to take account of its system of justice or the case law of its courts. As stated by the Appeal Court, liability for violations of the law could be considered in criminal or administrative proceedings. In the latter case, the Central Bank verifies whether financial system regulations have been breached and applies administrative penalties. Although common principles could be applied to the imposition of penalties for administrative and criminal liability, the differences between them justified different

statutes of limitation. It adds that, as a rule, the principles of criminal law do not apply to the imposition of penalties under administrative law.

6.3 The administrative procedure for investigative proceedings regulated by the Financial Institutions Act provides for the active involvement of those under investigation, who are entitled to insist that their case proceed, and to request that the investigation concerning them be dealt with and concluded expeditiously. There is no indication, however, in the D'AMFIN administrative case file that the author attempted either to take proceedings forward with a view to obtaining a ruling from the Central Bank or to demand speedy dispatch of his case by the administrative bodies responsible for delays. Nor is there any indication that an application for *amparo* was filed under article 28 of Act No. 19,549 on Administrative Procedures in response to the administration's failure to proceed with the case in a timely fashion.¹ In the light of these omissions, the State party reiterates that the author did not exhaust all domestic remedies.

6.4 The State party maintains that the author's failure to take the initiative in the administrative proceedings was part of a legitimate strategy to allow time to elapse with the aim of requesting the application of the statute of limitations in line with his own interpretation of the law, whereby he considers that aspects of criminal law are applicable to administrative proceedings.

6.5 An adverse court decision, such as that handed down by the Appeal Court, cannot per se constitute a violation of article 2, paragraph 3, of the Covenant.

6.6 With regard to the author's claims of violations of articles 14 (para. 1) and 26, the State party contends that the author does not explain the link between the time limit for the administrative proceedings and a possible violation of his right to equality before the law. Nor are there any apparent differences between the treatment reserved for the author and that of other individuals or groups of persons by the Central Bank or the Appeal Court that could reasonably be said to amount to a violation of the principle of non-discrimination. It also points out that the author does not explain how his right to a public hearing was violated.

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

7.1 On 14 September 2012, the author submitted his comments on the State party's submission on the merits and reiterated his claims regarding the exhaustion of domestic remedies.

7.2 The author contends that there are similarities between administrative and criminal proceedings, since both are expressions of the State's power to impose penalties. Both types of proceedings must therefore have certain common principles, such as the principle of legality, the non-retroactivity of punitive provisions (*nullum crimen, nulla poena sine lege praevia*), due process, most favourable law, *in dubio pro reo*, and reasonableness and proportionality in decisions taken by the authorities. He points out that, under the law of the State party, violations of currency regulations are considered to be matters for administrative investigation by the Central Bank when, in fact, such proceedings are of a criminal nature. Investigations into the activities of financial institutions conducted under

¹ Article 28: Any person who is a party to administrative proceedings may file a judicial application for an order for speedy dispatch. This order shall be admissible if the administrative authority has allowed the time limits to expire, or, should there have been no such time limits, if it has taken a longer than reasonable time to issue either the report or the procedural or substantive decision requested by the party concerned. Once the application has been submitted, the judge shall rule on its admissibility, bearing in mind the circumstances of the case and, if he deems it appropriate, order the administrative authority involved to state the reasons for the alleged delay within the time limit set by him. The judge's decision shall be final.

the provisions of Act No. 21,526 can therefore be likened to criminal proceedings and be subject to regulation by the principles of criminal procedural law.

7.3 He asserts that the investigation conducted by the Central Bank and the appeal filed before the Appeal Court were discriminatory because they had an impact on an important part of his life, given that while they were under way his assets were frozen and he could neither engage in business nor obtain steady employment. He underlines that the toughest penalties provided for by the law of the State party are similar in length to the time he has spent under investigation by the Central Bank.

Issues and proceedings before the Committee

Consideration of admissibility

8.1 Before considering any claim contained in a communication, the Human Rights Committee must decide, in accordance with rule 93 of its rules of procedure, whether the communication is admissible under the Optional Protocol to the Covenant.

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

8.3 The Committee notes the State party's argument that the communication is inadmissible because the author did not exhaust domestic remedies, given that he did not file an extraordinary federal appeal with the Supreme Court against the Appeal Court's judgement of 4 December 2008. Moreover, there is nothing in the D'AMFIN case file to suggest that the author either attempted to take proceedings forward with a view to obtaining a ruling from the Central Bank or demanded speedy dispatch of the administrative proceedings under article 28 of Act No. 19,549 on Administrative Procedures. The Committee also notes the author's claim that the extraordinary federal appeal is ineffective, of an exceptional nature, optional and, in the case of arbitrary judgements, limited to the consideration of federal matters. In this respect, the Committee notes that the author appealed against the Central Bank's decision regarding his individual liability for financial activities conducted by D'AMFIN before the Federal Administrative Appeal Court, alleging, among other things, that the inquiry had been drawn out excessively. The State party does not give an adequate explanation of how the extraordinary federal appeal, whose applicability is governed by article 14 of Act No. 48 of 1863, could have been effective in the author's case. Consequently, the Committee considers that, in the circumstances of the case, there is no obstacle to its examining the present communication under article 5, paragraph 2 (b), of the Optional Protocol.

8.4 The Committee notes the author's claim that the Central Bank proceedings against him were conducted over an excessively long period, in violation of articles 14 (para. 1) and 26 of the Covenant. The Committee recalls that undue delays in criminal or civil proceedings that cannot be justified by the complexity of the case or the behaviour of the parties may constitute a violation of article 14 of the Covenant.² The Committee notes that the Central Bank proceedings against the author, during which the unreasonable delay allegedly occurred, were administrative in nature and designed, among other things, to establish the author's individual liability, as director of D'AMFIN and D'AMORE, for violations by these companies of the Financial Institutions Act, and to prescribe the appropriate administrative penalties. In this case, however, while the Committee notes that the proceedings against the author lasted around 17 years, the information contained in the file sheds no light on the reasons for the delay, the actions taken by either party to expedite

² See the Committee's general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial (CCPR/C/GC/32), para. 27.

proceedings or that prevented the author from taking an active part therein. The Committee also notes that the information contained in the file does not allow it to gauge properly the extent to which the lack of judicial activity during the alleged period caused harm to the author. The Committee therefore considers that the author has not substantiated his claims of violations of articles 14 (para. 1) and 26 of the Covenant and concludes that the communication is inadmissible under article 2 of the Optional Protocol.

9. The Human Rights Committee therefore decides:

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

(b) That this decision shall be transmitted to the author of the communication and, for information, to the State party.

[Adopted 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.]

Appendix

[Original: English]

Individual opinion of Mr. Yuval Shany (dissenting)

I am unable to join the majority on the Committee in finding the communication inadmissible for being insufficiently substantiated for the following reasons:

1. The administrative proceedings initiated against the author by the Central Bank of Argentina with relation to his own conduct as a director of the D'AMORE and D'AMFIN companies had lasted 17 years (the proceedings against the said two companies for a breach of the Financial Institutions Act had been pending for even a longer time than that). The majority accepted that the administrative proceedings were designed, among other things, to “establish the author’s individual liability” and to “prescribe the appropriate administrative penalties”.^a I am of the view that when administrative proceedings assess individual liability, impose serious penalties (including a significant fine and harsh interim measures such as seizure of assets and travel restrictions) and lead to criminal proceedings,^b the interest of the individual subject to such proceedings to be protected from an excessively long process, with all the uncertainty and inconvenience it entails, is similar to that of an individual subject to other legal proceedings, be they criminal or civil in nature.

2. Indeed, in general comment No. 32, the Committee took the position that the formal designation of the proceedings by the State party is not dispositive of the question whether they fall within the scope of coverage of article 14 of the Covenant. Thus, it stated that rights pertaining to individuals facing criminal charges for their acts “may also extend to acts that are criminal in nature with sanctions that, regardless of their qualification in domestic law, must be regarded as penal because of their purpose, character or severity”.^c In the same vein, it opined that the term “suit of law” (“*de caractère civil*”) in article 14, paragraph 1, of the Covenant, “encompasses (a) judicial procedures aimed at determining rights and obligations pertaining to the areas of contract, property and torts in the area of private law, as well as (b) *equivalent notions in the area of administrative law* such as the termination of employment of civil servants for other than disciplinary reasons, the determination of social security benefits or the pension rights of soldiers, or procedures regarding the use of public land or the taking of private property. In addition, it may (c) cover *other procedures* which, however, must be assessed on a case-by-case basis *in the light of the nature of the right in question*”.^d As a result, when evaluating whether or not the author had the right not to be subject to an excessively long legal process — a right which applies under article 14 to both criminal and civil proceedings^e — I believe that the Committee should have been looking at the real nature of the proceedings initiated against the author in light of their effect on the determination of his rights and obligations, and regardless of their formal designation by the State party.

3. I am concerned that by referring to the proceedings against the author only as “administrative in nature”,^f the majority may have created the impression that the

^a See Views of the Committee, para. 8.4.

^b According to factual record, “criminal cases launched on the basis of irregularities detected in the activities of both firms had been dismissed by the courts”. Ibid., at para. 2.9.

^c Human Rights Committee, general comment No. 32 (2007), at para. 15.

^d Ibid., at para. 16 (emphasis added).

^e Ibid., at para. 27.

^f Views of the Committee, para. 8.4.

proceedings were not covered by article 14 of the Covenant, since they were neither criminal nor civil in nature. If this was indeed the outcome intended by the majority, it is an outcome I find difficult to accept. At the very least, it appears to me that the proceedings against the author constituted a suit of law, which affected important rights and obligations, such as property rights, freedom of movement, right to conduct business and the duty to pay a significant fine. It would be very unfortunate if the Committee were to accept an interpretation that would leave individuals facing long and burdensome administrative proceedings, entailing consequences far more serious than those attendant to many civil proceedings and as serious as those attendant to certain criminal proceedings, bereft of any of the protections of article 14 of the Covenant.

4. I am also unable to agree with the majority's insinuation that the author bears the burden of showing that he took measures to expedite the proceedings against him or to take an active part therein, as well as to demonstrate "the extent to which the lack of judicial activity during the alleged period caused harm" to him.^g Like other human rights protected by the Covenant, the obligation to ensure that legal proceedings run their course without undue delay rests on the shoulders of the State party, and not on those of the author. Furthermore, I believe it is wholly inappropriate and unrealistic to expect an individual subject to legal proceedings that may result in a harsh penalty to attempt to expedite them or actively pursue them (and not allow, for example, limitation periods to lapse).^h Nor does the Committee normally expect victims of human rights violations to show that they were actually harmed by measures specifically directed against them, which violated their rights.ⁱ The question whether or not the author incurred specific harms, over and beyond the uncertainty and inconvenience inherent to the excessive length of the legal proceedings, may be relevant for determining the remedies due to him, not to the question of whether or not the undue delay resulted in a violation of his rights under the Covenant in the first place.

5. As a result, I am of the view that the author established that the State party has undertaken against him proceedings of a legal nature, and that these proceedings appear to fall short of the requirement that they run their course without undue delay.^j Under those circumstances, it is for the State party to justify the extraordinary length of the proceedings against the author by objective reasons such as exceptional complexity of the case or due to unjustifiable conduct attributable to the author.^k However, the record before us does not contain a plausible explanation for the 17-year duration of the legal process. Consequently, not only do I believe that the Committee should have found the communication to be admissible, but also that it should have held that the State failed to meet its obligations to show that the rights of the author under article 14 had not been violated.

^g Ibid.

^h See *Soering v. UK*, Judgement of the ECHR of 7 July 1989, at para. 106 ("just as some lapse of time between sentence and execution is inevitable if appeal safeguards are to be provided to the condemned person, so it is equally part of human nature that the person will cling to life by exploiting those safeguards to the full").

ⁱ See *Lubuto v. Zambia*, communication No. 390/1990, Views of the Human Rights Committee of 31 October 1995, at para. 7.3.

^j Human Rights Committee, general comment No. 32 (2007), at para. 27.

^k Ibid.: ("delays in civil proceedings that cannot be justified by the complexity of the case or the behaviour of the parties detract from the principle of a fair hearing enshrined in paragraph 1 of this provision").