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International Covenant on Civil and Political Rights

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Human Rights Committee

Decision adopted by the Committee under the Optional Protocol, concerning communication No. 3124/2018*,**

Communication submitted by:	G.B. (not represented by counsel)
Alleged victim:	The author
State party:	Latvia
Date of communication:	12 October 2017 (initial submission)
Document references:	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 14 February 2018 (not issued in document form)
Date of adoption of Views:	5 November 2021
Subject matter:	Disclosure of classified files to the defence;
Procedural issue:	Admissibility
Substantive issues:	Fair trial, presumption of innocence
Articles of the Covenant:	14(1), (2) and (6)
Articles of the Optional Protocol:	2, 3, and 5(2)(b)

* Adopted by the Committee at its 133rd session (11 October – 5 November 2021).

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

1. The author of the communication is G.B., a Latvian national. He claims that the State party has violated his rights under articles 14(1),(2),(6) of the International Covenant on Civil and Political Rights. The Optional Protocol entered into force for Latvia on 22 September 1994. The author is not represented.

The facts as submitted by the author

2.1 In October and November 2004, the police carried out a special investigative experiment against the author,[1] when an undercover police officer Mr. I., pretending to be a drug dealer, contacted the author and persuaded him to become an intermediary in drug trafficking. The author submits that Mr. I., who was always dressed in civilian clothes during their meetings, did not interfere in already ongoing criminal activity but actually initiated it himself by sending text messages to the author and prompting a supposedly accidental meeting thus repeatedly encouraging the author to supply him with drugs. The author notes that the undercover police agent did not act in a passive manner but rather incited the author to commit the offence, which took place on 3 November 2004, when Mr. I purchase drugs from the author.

2.2 On 21 October 2005, the Riga Regional Court convicted the author of aggravated unauthorised acquisition and possession of narcotic substances with the intent to sell and sentenced him to 10 years imprisonment, with confiscation of funds. The Chamber of the Criminal case of the Supreme Court and the Senate of the Supreme Court dismissed the author's appeal and cassational complaint on 15 September 2006 and 19 March 2007, respectively.

2.3 On 12 June 2007, the author submitted an application to the European Court of Human Rights (hereinafter – the ECHR). On 8 January 2013, the ECHR stated, inter alia, that where it falls to the prosecution to prove that there was no incitement, the domestic courts' powers to guarantee a fair trial would be undermined if, in assessing an incitement plea, they reached their conclusions by relying on unverified information which was in the exclusive possession of the prosecution. It found a violation of article 6 (1) of the Convention noting that, in the criminal proceedings against the author, the domestic courts had not properly addressed his incitement complaint, and had failed to examine the relevant decisions authorising the special investigative measures. The ECHR considered that the most appropriate form of redress would be the retrial of author's case. It also awarded EUR 5,000 in compensation for non-pecuniary damage.

2.4 On 20 June 2013, the Chief Prosecutor of the Organised Crime and Other Branches Specialised Prosecutor Office re-opened the criminal proceeding on-the basis of newly discovered facts.

2.5 On 1 October 2013, the Senate of the Supreme Court quashed the decisions of the Senate of the Supreme Court of 19 March 2007 and the Chamber of the Criminal Cases of the Supreme Court of 15 September 2006 and re-opened the criminal proceedings. The case was transferred to the Chamber of the Criminal Cases of the Supreme Court for *de novo* adjudication in order to exclude the violation of the author's human rights found in earlier ECHR ruling.

2.6 On 26 September 2014, the Chamber of the Criminal Cases of the Supreme Court adjudicated *de novo* the merits of the criminal proceedings addressed the author's complaint concerning alleged incitement to commit a crime and examined the classified information. The Chamber of the Criminal Cases of the Supreme Court dismissed the author's allegations concerning the lawfulness of special investigative measures against him. The domestic court establish that the actions of the law-enforcement authorities did not amount to police incitement. The author submits that the Court of Appeal examined the two special investigative files pertaining to police operation "Rebus" but failed to include them into the materials of the case. It also failed to quote the police operation "Rebus" directly in its decision on the basis that the information obtained via special investigating measures remains classified. While the author believes that the Court of Appeal examined these two files, he expresses concerns that the information contained in these files was not verified at the court

[1] As per aarticles 4 (2) and 15 (1) of the Law on Special Investigative Measures of Latvia.

hearing. The author casts doubt over the reliability of information contained in these files, stating that quite often special investigative information consists of pure speculation, assumptions and guesses.

2.7 On 20 February 2015, the Supreme Court, acting as a cassational instance, dismissed the author's appeals. It considered that the necessary safeguards had been provided, as the Court of Appeal duly acquainted itself with the contents of the disputed case files before ruling out the disclosure to the defence and thus was in the position to adopt a well-informed decision.

2.8 The author submits that the Cassation Court addressed his claims regarding the denial of access to the special investigative files and quoted the case-law of the ECHR,[2] which confirmed that the right for disclosure to the defence is not absolute and in certain circumstances must be balanced against the public interest and necessity to protect the third parties. The author submits that the Court of Appeal and the Cassation Court argued that the restriction of the right for disclosure of the two special investigative files pertaining to the police operation "Rebus" to the defence is based on articles 8, (3) and 24 (1) of the Law on Special Investigative Measures according to which information contained in special investigative files is a state secret. The Cassation Court also declared that such a restriction was particularly necessary in order to protect both the fundamental rights of third parties and the public interest and that, by restricting the right for disclosure of the two special investigative files pertaining to the police operation "Rebus" to the defence, the Court of Appeal has ensured a reasonable balance between the public interest and the interest of the accused.

2.9 The author challenges the Cassation Court's argument by noting that the legal basis for the restriction of the right for disclosure to the defence should not be based on the Law on Special Investigative Measures but on article 6 (1) of the Convention and that the Court failed to explain why it was strictly necessary to restrict the right for disclosure to the defence. The author also believes that the ECHR jurisprudence quoted by the Court was irrelevant. The author argues that the Court of Appeal did not use all the legal options laid down in the Criminal Procedure Law which would have allowed the defence to use its right to a full extent. As for the Cassation Court's position on restriction aimed at protecting the public interest, the author notes that it is unclear what public interest would have been offended if he got acquainted with the information which was considered to be a very important evidence. He was accused of committing a crime which did not endanger state security nor was it violent. The crime which he was accused of committing did not offend the public interest in such a grave manner that it was necessary to restrict his fundamental right to defend himself to such a significant extent. Therefore, the author concludes, the Court did not ensure a reasonable balance between the public interest and the interest of the accused.

2.10 On 1 December 2016, the author's complaint regarding the execution of judgement *B v. Latvia* to ECHR was dismissed in a single judge formation and declared inadmissible on the basis that "the admissibility criteria set out in arts. 34 and 35 of the Convention have not been met".

The complaint

3.1 The author claims that the State party has violated his rights under article 14 (1) because neither the Court of Appeal nor the Cassation Court verified the information contained in two special investigative files pertaining to the police operation "Rebus" at the court hearing, which should not have been considered as evidence but instead should have been subject to exclusionary rule. The restriction of the right for disclosure of the police operation "Rebus" to the defense resulted in a trial which was neither transparent nor impartial.

3.2 The author alleges that his right to be presumed innocent until proven guilty, as per article 14(2) of the Covenant was violated because the domestic courts were not able to prove

[2] ECHR, *Jasper v. the United Kingdom*, Application No. 27052/95.

that he would have committed the crime without having been incited. The courts have found him guilty by having failed to interpret the doubts in his favour.

3.3 The author requests the Committee to recommend that Latvia reverses his conviction and pay him compensation in accordance with article 14 (6) of the Covenant.

State party's observations on admissibility

4.1 By note verbale of 12 April 2018, the State party submitted its observations and informed that in February 2004, the Drug Combating Division of the Organised Crime Combating Department of the State Police (hereinafter – the Drug Combating Division) received information from the police informants, which indicated the author's alleged involvement in drug related offences. Accordingly, the officials of the Drug Combating Division initiated the special investigative examination proceedings no.7004204.

4.2 On 27 October 2004, the Drug Combating Division commenced the next stage of special investigative activities, opening the case file no.7019304, as well as informing the Prosecutor General Office about the content and scope of the special investigative activities undertaken.

4.3 From 2 November to 1 December 2004, the Prosecutor General Office sanctioned several special investigative experiments (controlled purchases) against the author during which he met with the undercover police officer Mr. I., supplying him with methamphetamine and discussing the possibility of regular drug supplies. All conversations between the author and Mr. I. including phone conversations, were recorded. The meetings between the author and Mr. I. ceased on 1 December 2004, when the author called him and complained that money which he had received from Mr. I. as a payment for drugs had been chemically marked.

4.4 On 1 December 2004, the Drug Combating Division initiated criminal proceedings against the author on the fact of aggravated unauthorised acquisition and possession of narcotic substances with intent to sale.

4.5 On December 6, 2004, the author was apprehended by the officials of the Drug Combating Division. The police officials searched his domicile and seized several items as the evidence. The forensic examination confirmed that the seized items contained chemical traces of methamphetamine and cocaine.

4.6 On 4 January 2005, the author was charged with committing unauthorised acquisition and possession of narcotic substances with intent to sale. On 21 October 2005, the Riga Regional Court found the author guilty of aggravated unauthorised acquisition and possession of narcotic substances with intent to sale, and sentenced him to ten years of deprivation of liberty with confiscation of property and three years of police control.

4.7 On 15 September 2006, the Chamber of the Criminal Cases of the Supreme Court, acting as the appellate instance, upheld the judgment of the Riga Regional Court. The author lodged cassation complaint with the Senate of the Supreme Court, alleging that he had been subjected to the police incitement in breach of provisions of *the Law on Special Investigative Techniques.*

4.8 On 1 March 2007, the Senate of the Supreme Court requested the Prosecutor General Office to provide information concerning the allegations made in the author's cassation complaint.

4.9 On 13 March 2007, the Prosecutor General Office informed the Senate of the Supreme Court about the course of special investigating activities against the author, and maintained that the actions of the undercover police officer I.I. did not amount to incitement to commit a criminal offence; instead, the police officials joined and thwarted already ongoing criminal activities.

4.10 On 19 March 2007, the Senate of the Supreme Court rejected the author's cassation complaint, noting that the author had not been subjected to the police incitement, since the authorities had at their disposal information, which allowed them to suspect his involvement in illegal drug supply chain.

4.11 On 12 June 2007, the author lodged an application with the ECHR complaining that he had been subjected to police incitement and that he did not have a fair hearing in the determination of the criminal charges against him.

4.12 On 8 January 2013, the ECHR found a violation of Article 6, paragraph 1 of the Convention. Contrary to the author's allegations raised in the present communication before the Committee, the ECHR did not find that the author had been subjected to police incitement. Instead, the ECHR held that during the course of the criminal proceedings against the author the domestic courts had failed to examine the relevant decisions authorising the special investigative measures against the author and thus had not properly addressed his incitement complaint. The ECHR also considered that the most appropriate form of redress would be the retrial of the criminal proceedings should the author request so. The ECHR judgment became final on 8 April 2013.

4.13 On 26 September 2014, the Chamber of the Criminal Cases of the Supreme Court adjudicated *de novo* the merits of the criminal proceedings. In the light of the findings of the ECHR, the Chamber of the Criminal Cases of the Supreme Court particularly addressed the author's complaint concerning alleged incitement to commit a crime. The domestic court obtained from the law-enforcement authorities special investigative files no.7004204 and no.7019304 pertaining to the special police operation "Rebus" and examined the classified information contained therein.

4.14 The State party observes that given that the information obtained via special investigating measures remained classified, the Chamber of the Criminal Cases of the Supreme Court did not refer to the findings contained in the confidential case files directly, but instead established that having acquainted itself with the classified case files, the Chamber of the Criminal Cases of the Supreme Court commenced by dismissing the author's allegations concerning the lawfulness of special investigative measures against him. In particular, the domestic court ascertained that all disputed measures, including the special investigative experiment, had been authorised by the competent prosecutor of the Prosecutor General Office pursuant to relevant provisions of *the Law on Special Investigative Measures*. The domestic court particularly ascertained that the initial information that was at the disposal of the State Police was more than sufficient to warrant the initiation of the special investigative proceedings against the author.

4.15 The State party also observes that the domestic court further proceeded with the analysis of the evidence against the author. It conducted the analysis of the witnesses' testimonies and examined them against the framework of the special investigative experiment, which was authorised by the Prosecutor General Office, establishing the strict rules and boundaries for the actions allowed to the undercover officials. The domestic court found no deviations from the sanctioned framework, as the undercover officials had acted strictly within the boundaries of *the Law on Special Investigative Measures*. Accordingly, having acquainted itself with the content of the classified case files, the Chamber of the Criminal Cases of the Supreme Court was able to establish that the actions of the law-enforcement authorities did not amount to police incitement. The domestic court then proceeded with acquitting the author on one account of charges and finding him guilty on the rest of the charges against him.

4.16 The State party further observes that in his cassation to the Supreme Court, among other issues, the author also complained that during the appellate proceedings he was not granted access to the confidential case files, as only the judges of the Chamber of the Criminal Cases of the Supreme Court acquainted themselves with their contents.

4.17 On 20 February 2015, the Supreme Court, acting as a cassation instance, examined and dismissed the author's cassation complaint. The Supreme Court explicitly underlined that the Chamber of the Criminal Cases of the Supreme Court acquainted itself with the relevant classified case files and ascertained in its judgment of 26 September 2014, that the disputed special investigative experiment had been conducted pursuant to the prior prosecutorial authorisation. The Supreme Court also addressed the author's complaint regarding the right for disclosure to the defence and referred to the relevant case-law of the ECHR stating that the right for disclosure to the defence was not an absolute right and must be balanced against the public interest and necessity to protect the third parties. In the opinion

of the Supreme Court, the author's case involved exactly the same challenge where the judiciary had to restrict the right for disclosure. The Supreme Court also considered that despite the necessity for restriction of the right for disclosure, the appellate court had provided the necessary safeguards, as it being an independent and impartial tribunal duly acquainted itself with the contents of the disputed case files before ruling out the disclosure to the defence and thus was in the position to adopt a well-informed decision.

4.18 On 6 September 2016, the Committee of Ministers of the Council of Europe concluded that all the measures required for the execution of the Court's judgment had been implemented, and decided to close the examination of the case *Baltiņš v. Latvia.*[3]

4.19 The State party observes that the author's continuous allegations about having been incited to commit a criminal offence are incompatible with the Covenant, as the author has failed to substantiate the alleged violation of Article 14 (1). The State party recalls that according to its well-established jurisprudence, the Committee cannot act as a "fourth instance" to re-assess the findings made by competent and impartial domestic judicial instances,[4] and it is generally for the courts of States parties to the Covenant to review facts and evidence, or the application of domestic legislation. In this context, the State party asserts that neither the exception of arbitrariness, nor a denial of justice is applicable to the author's case.

4.20 Referring to the author statement that the undercover police agent did not join an actually ongoing criminal activity but initiated it himself by sending him text messages and bringing about a supposedly accidental meeting thus repeatedly encouraging him to supply him drugs, and that the undercover agent did not act in a passive manner but rather incited him to commit the offence, the State party observes that by doing this the author is seeking to have facts and evidence underpinning his conviction re-examined, notwithstanding the fact that his criminal case was *de novo* adjudicated by two levels of national judiciary.

4.21 The State party stresses that the judgment of 26 September 2014 by the Chamber of the Criminal Cases of the Supreme Court was extensively based on the information that the domestic court obtained from the classified special investigative files (no.7004204 and no.7019304) pertaining to the special police operation "Rebus". Namely, it had fully assessed the classified information contained with both case files, which allowed the domestic court to reach the decision that the actions of the law-enforcement authorities did not amount to police incitement and that the undercover police officials merely thwarted already ongoing criminal activities.

4.22 The Supreme Court confirmed that the Chamber of the Criminal Cases of the Supreme Court had duly acquainted itself with the relevant classified case files, which allowed the latter to conclude that the initial information at the disposal of the law-enforcement authorities was more than sufficient to warrant the opening of the special investigative proceedings against the author and to conduct the special investigative experiment. Thus, the Supreme Court ascertained that there had been no police incitement and that the undercover police officials had merely thwarted ongoing criminal activities. As a result, the Supreme Court ruled that the author's allegations were completely unfounded.

4.23 In this connection the State party recalls that in accordance with the Committee's jurisprudence[5] in the circumstances when the author's allegations have been presented, duly examined and recognised as unfounded by the national courts, the author's claim must be considered unsubstantiated for purposes of admissibility before the Committee. The State party believes that the domestic judicial proceedings, within which the allegations on police incitement had been examined, as a whole do not disclose any fact that would give grounds for assertion that they were manifestly tainted by arbitrariness or amounted to a denial of justice. Thus, the State party observes that the author had failed to substantiate his claim alleging the police incitement, for purposes of admissibility, and this part of the

[3] The State party provided a copy of the decision.

[4] The reference is made to *G. A. van Meurs v. the Netherlands*, Communication no.215/1986, the Committee's decision on admissibility adopted on 11 April 1990.

[5] The reference is made to *Gridin v. Russian Federation*, Communication no.770/1997, the Committee's final views adopted on18 July 2000, paragraphs 6.4.-6.5.

communication must be declared as incompatible with the provisions of the Covenant and therefore inadmissible under Article 3 of the Optional Protocol.

4.24 Referring to the fairness of the trial, the State party observes that the author failed to substantiate his claims under article 14 (1). In this context, the State party notes the Committee's well-established jurisprudence that "the requirement of impartiality has two aspects. First, judges must not allow their judgement to be influenced by personal bias or prejudice, nor harbour preconceptions about the particular case before them, nor act in ways that improperly promote the interests of one of the parties to the detriment of the other. Second, the tribunal must also appear to a reasonable observer to be impartial".[6]

4.25 The State party takes note that the author has failed to indicate a single instance during the course of *de novo* adjudication of the criminal proceedings against him whereby the domestic tribunals had acted in a manner which would indicate personal bias or prejudice against the author, or acted in a manner which would not appear impartial to a reasonable observer. Instead, the author's complaint is based on his dissatisfaction with the fact that the Chamber of the Criminal Cases of the Supreme Court, under art. 500 (4) of *the Criminal Procedure Law*, denied to the author access to the confidential case files.

4.26 In this context, the State party submits that, although article 14 of the Covenant protects the right to a fair trial and the right of the accused to have adequate facilities to prepare his defence remains an essential element of the right to a fair trial, it does not contain an explicit right of an accused to have direct access to all documents used in the trial against him.[7] The question which must be answered in such situation is whether the use of such material has violated the fairness of the proceedings as a whole and whether there were adequate safeguards in place.

4.27 State party recalls that the issue of the safeguards had been already addressed by the Supreme Court, which considered that the Chamber of the Criminal Cases of the Supreme Court, being an independent and impartial tribunal, was able to ensure the necessary safeguards. Namely, the decision to rule out the disclosure was not adopted in an arbitrary manner. Instead, the domestic court duly acquainted itself with the contents of the disputed confidential case files prior to ruling out the disclosure to the defence and thus, in the opinion of the Supreme Court, the Chamber of the Criminal Cases of the Supreme Court was in the position to adopt a well-informed decision on the subject matter.

4.28 The state party further observes that the author had failed to substantiate his complaint alleging the violation of the presumption of innocence, for purposes of admissibility, and this part of the communication must be declared as incompatible with the provisions of the Covenant and therefore inadmissible under Article 2 of the Optional Protocol. Referring to the author's submission, the State party is of a firm view that the author has not put forward any single fact or provided any information on any specific incident that would lead to the conclusion that the conduct of the domestic judicial proceedings had adversely affected the author's right under Article 14, paragraph 2, of the Covenant, to be presumed innocent until proved guilty according to law.

4.29 The State party invites the Committee to declare the author's complaint inadmissible pursuant to Articles 3 and Article 5, paragraph (2)(a), of the OP as same matter has been examined under another procedure of international settlement. The State party recalls Committee's jurisprudence[8] where it concluded that it would be reluctant to examine a case already considered by the ECHR insofar as the provisions of the Covenant and those of the Convention invoked by the alleged victim converge.

4.30 Finally, the State party draws the Committee's attention that the author lodged his communication with the Committee two years and eight months after the adoption of the final decision by the cassation instance, and one year after the adoption of the single judge

[6] General Comment no.32 on article 14, right to equality before courts and tribunals and to fair.

[7] Reference is made to *Harward v. Norway*, Communication No. 451/1991, the Committee's final views adopted on 16 August 1994, para. 9.4.

[8] The reference is made to *Kollar v. Austria*, Communication no.989/2001, the Committee's final views adopted on 30 July 2003, paragraph 8.6.

decision by the ECHR. The State party is of the opinion that in the absence of an explanation, the Committee may consider that submitting the communication after a long delay amounts to an abuse of the right of submission and find the communication inadmissible under Article 3 of the Optional Protocol.

Author's comments to the State party's observations

5.1 On 19 July 2018, the author submits that he is aware of the competences of the ECHR and of the Committee, neither of which can act as a "fourth instance" and re-assess the findings made by domestic courts. The author notes that the ECHR concluded that the most appropriate form of redress would be the retrial since the domestic courts failed to address his incitement complaint and did not acquaint themselves with classified special investigative files pertaining to the special police operation "Rebus". This was done only during the retrial.

5.2 The author proposes two possible options for solving his claims: the Committee could get acquainted with the two classified special investigative files pertaining to "Rebus" operation in order to see if the domestic courts actions have amounted to a manifest error or denial of justice, or conclude that the most appropriate form of redress would be a third retrial.

5.3 The author reiterates his request to the Committee to recommend that Latvia reverses his conviction and pay him compensation in accordance with article 14 (6) of the Covenant.

5.4 Commenting on State party's observations regarding the lack of substantiation of complaints, the author explains that domestic courts breached his fundamental rights during the re-trial. The author maintains that he was a victim of incitement by the undercover police who did not act in a passive manner but rather incited him to commit an offence, and that the evidence obtained as a result of police incitement was the only one to demonstrate his guilt. He explains that he mentioned the incitement in the present communication in order for the Committee to understand how important it was for him to get acquainted with the two classified special investigative files. He was denied access to these classified files without a detailed explanation as to the reasons why it was strictly necessary to deny the right to disclosure to the defence.

5.5 Referring to State party's observations about the admissibility of claims under article 14(2), the author underlines that the prosecution and the courts did not present any direct evidence of his guilt, yet all doubts were not interpreted in favour of the accused author. He submits that domestic courts failed to use all legal options under the Criminal Procedural Law which would have allowed the author to get acquainted with the two classified files and use his fundamental rights to defence to full extent, which led to violation of his right to presumption of innocence. He explains that throughout the retrial proceeding he felt that the courts acted in biased manner with prejudice against him, portraying his guilty *ab initio* and giving him signs of pre-determined judgement of his guilt. The author also mentions that he is a particularly sensitive person to other people's attitude towards him.

5.6 Referring to State party's argument that the same matter has been examined under another procedure of international settlements, the author submits that the communication before the Committee is related to the retrial proceedings that lead to the violation of his rights to fair trial, following the ECHR ruling in 2013. The author further asserts that he has submitted his communication within a reasonable time.

State party's observations on merits

6.1 By note verbale of 13 August 2018, the State party submitted further observations and, regarding author's claims on police incitement, observes that the ECHR judgment refers to two distinct obligations of States in cases related to the allegations of police incitement, both of which relate to the concept of fairness of trial.

6.2 The first obligation, arising out of the substantive limb of the right to fair trial, implies that the investigative activities of the law-enforcement authorities must not go beyond that of undercover agents, in other words, it needs to be established whether the offence would

have been committed without the authorities' intervention.[9] With regard to the said substantive obligation, the State party must emphasise that contrary to the author's allegations raised in the present communication, the ECHR never concluded that the actions of the domestic law-enforcement authorities had in fact went beyond that of undercover agents thus subjecting the author to the police incitement.

6.3 Whereas the conclusions of the ECHR referred to an entirely different obligation, namely, the procedural aspect of the right to fair trial, whereby a plea of incitement has to be determined by the domestic courts, to ensure that the rights of the defence were adequately protected. In other words, where an arguable plea of incitement has been raised during the criminal proceedings, the domestic courts have to take the necessary steps to establish that no police incitement had taken place.[10]

6.4 The State party observes that it was the procedural aspect of the right to fair trial that was at stake during the *de novo* adjudication of the criminal proceedings against the author. The State party underlines that the outcome of *de novo* adjudication, in turn, forms the essence of the author's current complaint before the Committee.

6.5 The State party recalls that the judgment of the ECHR of 8 January 2013, identified several deficiencies with regard to the initial set of the author's trial, in particular, the lack of in-depth review and assessment of the actions of the undercover police officials by the competent domestic courts, which resulted in the violation of the procedural aspect of the right to fair trial and subsequent re-trial of the domestic criminal proceedings.

6.6 In this regard, it must be emphasised that the competent domestic courts have done their utmost to thoroughly address and remedy the issues identified in the ECHR judgment of 8 January 2013, and to fulfil the obligation arising out of the procedural aspect of the right to fair trial, and during the course of re-trial of the author's criminal proceedings fully dismissed the author's allegations concerning police incitement with well-reasoned and motivated rulings.

6.7 Regarding author's allegations that *de novo* adjudication of criminal proceedings lacked impartiality and transparency due to the restrictions imposed by the domestic tribunal to the disclosure to the defence, the State party is convinced that the author has failed to indicate a single instance whereby the domestic tribunals had acted in a manner which would indicate "personal bias or prejudice" against the author, or "acted in a manner which would not appear impartial to a reasonable observer". The State party reiterates that article 14 of the Covenant does not contain an explicit right of an accused to have direct access to all documents used in the trial against him.

6.8 The State party recalls that both the Chamber of the Criminal Cases of the Supreme Court and the Supreme Court, acting as a cassational instance, had already emphasised the right for disclosure is not an absolute right and must be balanced against the public interest and necessity to protect the third parties. In this regard, the State party wishes to underline that the interpretation provided by the domestic judiciary was fully consistent with the approach taken in the jurisprudence of the Committee. The Supreme Court also indicated that the nature of the specific special investigative activities warranted the exclusion as it was necessary to protect the persons who were cooperating with the law-enforcement agencies.

6.9 The State party further recalls that the issue of the safeguards had been already addressed by the Supreme Court, which considered that the decision to rule out the disclosure was not adopted in an arbitrary manner. The domestic court duly acquainted itself with the contents of the disputed confidential case files prior to ruling out the disclosure to the defence and thus, in the opinion of the Supreme Court, the Chamber of the Criminal Cases of the Supreme Court was in the position to adopt a well-informed decision on the subject matter.

6.10 Concerning the right to presumption of innocent, the State party recalls that the Committee does not accept allegations concerning the breach of presumption of innocence

[9] ECHR, *Baltiņš v. Latvia*, (application no.25282/07), judgment of 8 January 2013, paragraph 56.

[10] Ibid, paragraph 57.

that are couched in general terms without mentioning any specific incidents.[11] The State party maintains that the mere fact that the domestic courts disagreed with the author's interpretation of the events at issue cannot in itself substantiate and constitute a violation of Article 14 of the Covenant.[12] In this context, the reasoning used by the domestic courts and the final ruling on the author's conviction *per se* cannot be seen as amounting to him being denied the benefit of doubt. The State party concludes that the domestic courts examined the criminal case in depth, both on the basis of the evidence and of the law, in order to exclude any reasonable doubt about the author's guilt.

Author's comments to the State party's observations

7. On 25 October 2018, the author maintained that he was not able to get acquainted with classified files, that these files were not verified by domestic courts who failed to use other legal options which would have allowed the author to use his right to defend himself.

Issues and proceedings before the Committee

Consideration of admissibility

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

8.2 The Committee takes note of the State party's submission that the complaint should be declared inadmissible as the same matter has been examined under another procedure of international settlement, namely the ECHR. It notes also that when acceding to the Optional Protocol, the State party has not made a declaration, inter alia, to the effect that "the Committee shall not consider any communications unless it has been ascertained that the same matter is not being examined under another procedure of international investigation or settlement". The Committee observes, however, that the European Court found the author's second complaint inadmissible in December 2016. Since currently the same matter is not being examined under another procedure of international investigation or settlement, the Committee is not precluded from consideration of the author's complaint under article 5, paragraph 2 (a), of the Optional Protocol.

8.3 The Committee takes note of the State party's argument that the author abused the right of submission with the Committee since he lodged his communication after a long delay, that is, after the adoption of the final decision by the cassation instance and after the adoption of the single judge decision by the ECHR, without a valid explanation. However, the Committee notes that the communication was submitted two and a half years after exhaustion of domestic remedies, and one year after the adoption of the decision by the ECHR. The Committee notes that these timeframes are well within the five-year timeframe from the exhaustion of domestic remedies and the three-year timeframe from the ECHR decision established by rule 99(c) of its rules of procedure. The Committee therefore concludes that the delays in the present case cannot constitute an abuse of the right of submission, and considers that it is not precluded by article 3 of the Optional Protocol from examining the present communication

8.4 The Committee takes note of the author's claims under article 14 (1) of the Covenant that the domestic proceedings were neither transparent nor impartial since the Court of Appeal and the Cassation Court failed to verify the information contained in two special investigative files pertaining to the police operation "Rebus" during the court hearing and that the author was denied access to these classified files without a detailed explanations as to the reasons why it was strictly necessary to deny the right to disclosure of this information to the defence. The Committee notes, however, that the competent domestic courts appear to have done their utmost to thoroughly address and remedy the procedural issues identified in

[11] *Schweizer v. Uruguay*, Communication no.66/1980, the Committee's final views adopted on 12 October 1982, paragraph 17.5.

[12] *Bertelli Gálvez v. Spain*, Communication no.1389/2005, the Committee's decision on admissibility of 25 July 2006, paragraph 4.5.

the ECHR judgment of 8 January 2013, and that the appellate court had provided the necessary safeguards and duly acquainted itself with the contents of the two disputed classified files before ruling out their disclosure to the defence. In this respect, the Committee finds particularly relevant the State party's argument that such a restriction was particularly necessary in order to protect both the fundamental rights of the third parties, namely the persons who were cooperating with law-enforcement agencies, and the public interest, therefore ensuring a reasonable balance between the public interest and the interest of the accused. In such circumstances, the Committee considers that the domestic court had assessed whether it was necessary to deny disclosure. In the light of these considerations, and in the absence of any other information of pertinence on file, the Committee considers that the author has failed to sufficiently substantiate this claim and declaires it inadmissible under article 2 of the Optional Protocol.

8.5 The Committee notes the author's claims under articles 14 (2) of the Covenant. In the absence of any further pertinent information or explanations on file, the Committee considers, however, that the author has failed to sufficiently substantiate, for the purposes of admissibility, this allegation. Accordingly, it declares this part of the communication inadmissible under article 2 of the Optional Protocol.

8.6 As regards the author's allegations under article 14 (6) of the Covenant, the Committee observes that, in the present case, the author's conviction has never been set aside by any later judicial decision, and that the author has never been pardoned. Accordingly, the Committee considers that article 14 (6) does not apply in the present case, and the author's claim is inadmissible ratione materiae under article 3 of the Optional Covenant.

9. The Committee therefore decides:

(a) That the communication is inadmissible under articles 2 and 3 of the Optional Protocol;

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