



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. 3254/2018*’**

<i>Communication submitted by:</i>	X (not represented by counsel)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Latvia
<i>Date of communication:</i>	2 May 2017 (initial submission)
<i>Document reference:</i>	Decision taken pursuant to rule 97 of the Committee’s rules of procedure, transmitted to the State party on 10 October 2018 (not issued in document form)
<i>Date of adoption of decision:</i>	4 November 2022
<i>Subject matter:</i>	Fairness of civil proceedings relating to non-payment of property-related service expenses
<i>Procedural issues:</i>	Admissibility – manifestly ill-founded; admissibility – <i>ratione materiae</i>
<i>Substantive issues:</i>	Cruel, inhuman or degrading treatment or punishment; discrimination; fair trial; housing rights; right to life; torture
<i>Articles of the Covenant:</i>	3, 6 (1), 7, 14 (1) and 26
<i>Articles of the Optional Protocol:</i>	2 and 3

1.1 The author of the communication is X, a national of Latvia born in 1970. He claims that the State party has violated his rights under articles 3, 6 (1), 7, 14 (1) and 26 of the Covenant. The Optional Protocol entered into force for the State party on 22 September 1994. The author is not represented by counsel.

* Adopted by the Committee at its 136th session (10 October – 4 November 2022).

** The following members of the Committee participated in the examination of the communication: Wafaa Ashraf Moharram Bassim, Yadh Ben Achour, Arif Bulkan, Mahjoub El Haiba, Shuichi Furuya, Carlos Gomez Martinez, Marcia V.J. Kran, Duncan Laki Muhumuza, Photini Pazartzis, Hernan Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Chongrok Soh, Kobaujah Tchamdja Kpatcha, Héléne Tigroudja, Imeru Tamerat Yigezu and Gentian Zyberi.

1.2 On 10 October 2018, the Committee, acting through its Special Rapporteurs on new communications and interim measures, denied the author's request for interim measures to suspend his eviction.

Factual background

2.1 The author owns an apartment in a property that is located in Jelgavas, Latvia. The jointly owned property is serviced by Jelgava Real Estate Authority (hereinafter, "the management company"), a limited liability entity that is wholly owned by the municipality of Jelgava. On 11 October 2004, the author and the management company signed a service agreement in relation to the author's apartment. The agreement covered maintenance, utility and other services provided by the management company, namely, provision of cold water, waste removal, and overall management of the apartment block. On 1 October 2011, the management company signed a similar service agreement with the owners of other apartments in the property. Although the author refused to sign the 2011 agreement, the management company claimed that he should pay for its services as of 1 October 2011, in accordance with that agreement.

2.2 In the meantime, the author lost his job and was unemployed from December 2008 through January 2009. From 6 April 2009 to 31 October 2012, he was officially recognized by the State party as a person living in poverty. He has also been officially recognized by the State party as a person with a disability.

2.3 On an unspecified date, the management company brought a civil action against the author to recover unpaid expenses for outstanding service bills, amounting to the equivalent of €46.14 from 11 October 2004 to 1 October 2011, plus the equivalent of €441.08 from 1 October 2011 until 1 March 2012. On 26 April 2012, the Jelgava Court of First Instance opened a small claims case against the author. During a hearing before the court, the author asserted that he owed only the first portion of the debt (€46.14). Concerning the remaining amount, the author claimed that the management company had not provided any evidence to confirm the provision of services to his apartment. He also claimed that the management company had changed the price of its services over time, without duly notifying him or obtaining his consent in advance. He also claimed that the drinking water had become unsafe over time, and that because the management company was publicly owned, it should have acted in compliance with human rights standards. The author further argued that the status of the labour market was a *force majeure* that had caused his unemployment and prevented him from rendering payment.

2.4 On 13 March 2013, the Jelgava Court of First Instance ruled in favour of the management company. The court held that the author could not withdraw from the agreement made in 2004, because he had not complied with the conditions set forth under article 1589 of the Civil Code. The latter provision allows unilateral withdrawal from an agreement if it is justified by the nature of the agreement, or under certain circumstances provided for by law, or if there is a specific clause in the agreement itself. The court found that the agreement of 2011 was in force as a contract, and rejected the author's argument about the change in price of the management company's services. The court considered that the company's prices were aligned with prices established by public institutions, in compliance with domestic law. The court considered that the author had not substantiated his argument that the water was unsafe to drink. The court also considered that the management company was a private entity and was not bound by the same international human rights standards as the State. The court also considered that the notion of *force majeure* was not recognised under domestic law, and that in any case, there had not been a *force majeure*. The court also observed that the author could have sought alternative employment or engaged in small business activity to make money.

2.5 The author submits that he was prevented from appealing against the decision of the Jelgava Court of First Instance, because at that time, domestic law did not permit appeals relating to small claims disputes for amounts less than 1500 Latvian Lat (equivalent to approximately €2134.) Nevertheless, the author filed an appeal against the decision of the Jelgava Court of First Instance to the Supreme Court. While his case was pending before the Supreme Court, the Civil Procedure Code was amended to allow for appeals in small claims disputes. The amendments entered into force on 11 April 2014. However, on 5 December

2014, the Supreme Court rejected the author's appeal and confirmed the decision of the Jelgava Court of First Instance, which then became final. The Supreme Court rejected the author's argument that he had been denied access to an appellate court because his claim involved a small monetary amount. The Supreme Court did not consider whether the author's rights under articles 14 (1) and 26 of the Covenant had been breached.

2.6 The author also filed two complaints to the Constitutional Court, which rejected both. In its decision of 15 November 2012 (when the civil action against the author was pending before the Jelgava Court of First Instance), the Constitutional Court considered that the complaint was premature, because the author's rights had not been violated. In its decision of 12 September 2013, the Constitutional Court considered that the Universal Declaration of Human Rights had no legal force in Latvia.

2.7 On 17 December 2014, a writ was issued to enforce the court decisions of 13 March 2013 and 5 December 2014. According to the writ, the author was required to pay service expenses of €615.63 and court expenses of €101.96. According to the author, an eviction order against him was also issued on 17 December 2014. At the time the communication was submitted to the Committee, the eviction order had not been enforced, but according to the author, it could be enforced at any time.

2.8 On an unspecified date, the management company brought another civil action against the author, in connection with unpaid service bills (civil proceedings no. C15290415.) On 15 December 2015, the Jelgava Court of First Instance opened a second small claims case against the author. The author maintained during proceedings that there was no evidence to confirm the provision of cold water and waste removal services, and that the calculation of the price of the company's services was not transparent. The court scheduled a hearing for 13 September 2016. However, on 9 September 2016, the author requested to postpone the court hearing until 3 February 2017, owing to illness. Specifically, he asserted that emotional distress at the hearing might cause him to have a myocardial infarction, as he was vulnerable to such an incident, and would also risk experiencing serious fatigue during the court hearing. He provided to the court a medical certificate in which it was stated that he was unable to work and was under treatment for an unspecified illness until 17 January 2017. On 13 September 2016, during the hearing, the court rejected the author's request for postponement on the ground that he had appeared in court on that day and could therefore participate in the hearing. The court also ruled in favour of the management company.

2.9 On 28 October 2016, the author filed an appeal to the Court of Appeal, asserting that the hearing before the Jelgava Court of First Instance should have been postponed because of illness. On 21 November 2016, the Court of Appeal rejected the appeal.

2.10 The author claims that he has exhausted all available domestic remedies. He states that he has not submitted the same matter for consideration to another international body of dispute settlement.

Complaint

3.1 The author submits that by evicting him from or selling his apartment, the State party would violate his rights under article 6 (1) of the Covenant. At the sub-zero winter temperatures experienced in the area where he resides, individuals can die outdoors within two hours. The author was unemployed from December 2008 to January 2009 because he could not find a job that corresponded to his level of education and work experience. He also has a disability and lives in poverty. The right to housing is not guaranteed in Latvia, even for persons with disabilities.¹

3.2 If the author loses his apartment, he will cease to receive social welfare payments that he uses to purchase food. His situation would therefore amount to torture and inhuman and degrading treatment. Thus, in this regard, the author tacitly alleges a violation of article 7 of the Covenant. Enforcement of the eviction order despite the author's disability and poverty status would violate his right to equal treatment under articles 3 and 14 (1) of the Covenant.

¹ The author also claims a violation of his right to an adequate standard of living under article 11 (1) of the International Covenant on Economic, Social and Cultural Rights.

3.3 In violation of the author's rights under article 14 of the Covenant, the domestic proceedings in 2012 and 2013 were unfair, as the courts were not impartial. The Jelgava Court of First Instance disregarded article 15 of the Law on Social Security, according to which private agreements that worsen the situation of a person who is entitled to social benefits are void. Under that provision, because the author was entitled to social benefits during the relevant time, the management company was not permitted to bring civil actions against him for unpaid service expenses. The Court of First Instance reasoned that the author should have sought other employment opportunities, regardless of his profession. Such a finding violates the author's right, under article 106 of the Constitution of Latvia, to freely choose his employment and workplace according to his abilities and qualifications. Furthermore, the Supreme Court did not evaluate the facts and evidence or consider the author's claims under the Constitution or articles 14 (1) and 26 of the Covenant.

3.4 In violation of his rights under articles 14 (1) and 26 of the Covenant, the author was denied access to an appellate court. Under the former Civil Procedure Code, decisions on small claims disputes were not subject to appeal. Although amendments allowing appeals regarding such claims had entered into force before the Supreme Court issued a decision on the author's case, the Supreme Court disregarded those amendments and did not remand the author's case for consideration to the appellate court. This constituted discrimination based on the author's social status. The author's rights under article 14 (1) of the Covenant were also denied when he was refused access to the Constitutional Court.

3.5 Impliedly invoking article 7 of the Covenant, the author also claims that the rejection by the Court of First Instance of his request to postpone the hearing on the basis of illness constituted torture and cruel, inhuman or degrading treatment or punishment. The author was forced to appear in court despite his illness, which was more serious than an ordinary cold or flu.² He risked dying from a myocardial infarction because of the emotional stress of the hearing.

State party's observations on admissibility and merits

4.1 In its submission of 30 April 2019, the State party maintains that on 23 September 2004, the author purchased an apartment in Jelgava. On 11 October 2004, he entered into an agreement with the management company of the property. The agreement related to the management and maintenance of the author's share of the joint property, which was a residential house. Subsequently, on 1 October 2011, the management company entered into an agreement with the apartment owners at the property. That agreement stipulated that the previous agreement dated 11 October 2004 was null and void from the date of entry into force of the agreement dated 1 October 2011. The author did not sign the latter agreement; however, he continued to pay for the services provided by the management company, and did not challenge the agreement dated 1 October 2011. Based on both agreements, the author was required to pay each month for residential property management and maintenance services provided by the company.

4.2 In December 2008, the author stopped paying for the services provided by the management company. The State party provides extensive factual information about the sets of civil proceedings brought against the author by the management company. Up until the date of the State party's submission, the bailiff has not proceeded with the enforcement proceedings for the recovery of debt against the author's property, and no auction of the author's apartment as a part of enforcement proceedings has taken place.

4.3 The author's claims under article 14 (1) of the Covenant are inadmissible because they are not substantiated. The author has not explained how the courts' rulings were manifestly unjust or arbitrary, or how specific and material norms of domestic and international law were not assessed and infringed his right to a fair trial. The domestic courts correctly applied the relevant domestic laws, in particular, the Civil Law and the Law on Residential Properties, which regulate the contractual rights and obligations of apartment owners.

² The author also claims a violation of his rights under articles 1 (1), 2 (1), 15 and 16 (1) of the Convention against Torture.

4.4 The author's claim that the decisions of the Constitutional Court were unfair is also unsubstantiated. During the proceedings for case no. C15217912, the author twice submitted a complaint to the Constitutional Court. In both complaints, he alleged that article 250 (1) of the Civil Procedure Law was not aligned with the Constitution, the Covenant, the Universal Declaration of Human Rights or the Convention for the Protection of Human Rights and Fundamental Freedoms. The Constitutional Court, in its decision of 15 November 2012, noted that case no. C15217912 had not been decided on the merits, and concluded that the author had not exhausted available domestic remedies. The Constitutional Court also considered that the author had not substantiated his complaint. In its decision of 12 September 2013, the Constitutional Court concluded that the author had not substantiated his complaint and had not exhausted available domestic remedies, because the Supreme Court had not yet examined case no. C15217912.

4.5 While the author claims that he was not permitted to submit an appeal to an appellate court that could evaluate the evidence of the case, article 14 (1) of the Covenant does not guarantee the right to appeal any decision. Nonetheless, the author did have access to an appeal through the cassation complaint procedure before the Supreme Court, which could have evaluated whether the Court of First Instance had wrongly applied substantive norms of national law, breached procedural norms, or exceeded the limits of its competence.

4.6 The State party rejects the author's claim that the Court of First Instance was partial. The author has not specified how the court acted in a biased or partial manner.

4.7 The author's claim under article 26 of the Covenant is unclear, and he has not explained how he was treated unequally in comparison to comparable categories of persons.

4.8 The communication is also inadmissible under article 3 of the Optional Protocol because it constitutes an abuse of the right of submission. The author has submitted false, distorted, incomplete and unclear information regarding civil case No. C15217912; has predicted a hypothetical situation that he will lose his apartment and that his life will be threatened; and has not presented to the Committee essential facts that are required for an objective assessment of his case.

4.9 The author incorrectly states that the Constitutional Court simply did not accept his claim. In both cases, the Constitutional Court concluded that the author's complaint was inadmissible in accordance with the Law on the Constitutional Court because the author, among other things, had not exhausted available domestic remedies.

4.10 The communication includes summaries that represent the author's subjective interpretation of relevant documents. He also provided a limited number of pages of certain documents, including the court judgments. The author also wrongly quoted the Court of First Instance regarding the evaluation of evidence, and wrongly alleged that the domestic courts did not analyse article 15 of the Law on Social Security. Thus, the author intentionally misrepresented the facts of the case.

4.11 The author has not exhausted domestic remedies with respect to his claim under article 14 (1) of the Covenant, as noted by the Constitutional Court in its two decisions. The author should have applied to the Constitutional Court a third time if he believed that his rights under article 14 (1) had been infringed. The author should have raised before the Constitutional Court the alleged incompatibility of article 250 (1) of the Civil Procedure Law with article 92 of the Constitution. The author would have had reasonable prospects of success had he resubmitted his constitutional complaint.

4.12 Similarly, the author did not exhaust domestic remedies with respect to article 26 of the Covenant. He did not allege that he had suffered unequal or discriminatory treatment during the civil proceedings. Moreover, the author has not explained why he failed to raise before the Supreme Court the violation of procedural norms by the Court of First Instance. He had the right to do so under article 452 of the Civil Procedure Law.

4.13 Furthermore, the author never contested the agreements between the management company and himself. He did not submit a counterclaim to raise that issue during domestic proceedings, even though the Court of First Instance informed him of that right on several occasions. He has not explained why he failed to use that remedy, which has been used in the past to raise claims of discrimination.

4.14 The author lacks victim status with respect to his claim under article 6 (1) of the Covenant, because his assertions concern a purely hypothetical situation.³ He has not substantiated his allegation that his life is or will imminently be threatened. No auction of his apartment has taken place, nor has he claimed that he currently has no place of residence. Moreover, he has not provided evidence to indicate that after the enforcement of the judgment of the Court of First Instance of 13 March 2013, he would lose his means of subsistence. He would have to pay a total of €990.16 to the bailiff (representing his debt, court fees and the fee for the services of the sworn bailiff.) The author has provided no information about the value of his apartment that could indicate that if his apartment were sold at auction, and after the satisfaction of creditor claims, the remaining amount of sale proceeds would be insufficient to provide for his continued subsistence.

4.15 In addition, the author receives social benefits from both the federal Government and the Jelgava City Council, and will continue to receive them as a person living in poverty and as a person with disabilities.

4.16 The author's claim under article 6 (1) is inadmissible *ratione materiae*. That claim relates to social welfare benefits provided to the author by the State party. The author's living conditions do not present a direct threat to his life, nor has he shown that he has been prevented from enjoying his right to life with dignity.

4.17 Article 6 (1) of the Covenant does not impose an obligation on States parties to provide specific social guarantees. However, the federal Government and the Jelgava City Council have taken all necessary measures to provide the author with social guarantees to guarantee his enjoyment of the right to life. The author was granted poverty status on 1 April 2009, and since then, the City Council has provided several benefits and allowances to him. From April 2009 to February 2017, the author received monthly benefits totalling €4,975.58 to ensure a minimum income level. The author stopped receiving those benefits when his income level exceeded the applicable threshold. Furthermore, at the court hearing of 25 February 2013, the author did not deny that he had stopped paying for public utilities and other services provided by the management company. In fact, from May 2010 until 30 April 2019 (the date of the State party's submission to the Committee), those services and public utilities have been paid by the City Council directly to the management company. The author receives monthly housing benefits that have totalled €4,142.26. He could have used those benefits to pay his utility expenses.

4.18 From 2008 until 30 April 2019, the author has received from the City Council a total of €631.73 in allowances for medical treatment, medication, dental treatment, and optical eyewear. In addition, since March 2017, he has received a total of €585 from the City Council in the form of a food allowance based on disability status.

4.19 Regarding social guarantees provided by the federal Government, since 2008, the author has been receiving a disability pension from the State Social Insurance Agency. Specifically, he received the following amounts: from 19 December 2016 to 30 September 2017, €89.64 per month; from 1 October 2017 to 30 September 2018, €93.58 per month; and from 1 October 2018, €99.10 per month. The State Social Insurance Agency has granted the author the status of a person with disabilities, from 19 December 2016 until 18 December 2023.

4.20 The author's claim under article 26 is also inadmissible *ratione materiae* because it is based on an interpretation that is inconsistent with the language and intent of that provision. The author has not shown that his access to an appeal procedure was denied in a discriminatory manner, or that he was denied equal protection by the law.

4.21 The author's claim under article 14 (1) of the Covenant is without merit, for the reasons mentioned above, and for the following reasons. During domestic proceedings, the author did not deny that he had not paid the required management and maintenance expenses, and did not challenge the amount of debt. Instead, he invoked the argument of *force majeure*, and questioned the fairness of the agreement of 11 October 2004 and the validity of both agreements, as well as the implementation of those agreements by the management company.

³ The State party cites *E.W. et al. v. the Netherlands* (CCPR/C/47/D/429/1990).

The Court of First Instance addressed the author's evidence and arguments, and concluded that many of the author's allegations had no legal significance in the case. In the State party's legal system, civil courts are strictly bound by the scope of the claim and exercise a passive role in the proceedings. In the present case, the Court of First Instance could not adjudicate any issues other than those that the management company had raised. Specifically, the court could not evaluate the validity or fairness of the agreements because the author had not filed a counterclaim. On several occasions, the court explained to the author the subject matter of the civil proceedings, and informed the author of his right to file a counterclaim, but the author refused to do so.

4.22 In the communication, the author invoked at least 60 norms of domestic and international law. The Court of First Instance based its judgment on norms applicable to civil proceedings (the Civil Law and the Law on Residential Properties, which regulate civil law relations, in particular, contractual rights and obligations, as well as obligations and responsibilities of apartment owners).

4.23 The author asserts that the domestic courts did not evaluate his argument relating to article 15 of the Law on Social Security. However, the Court of First Instance stated in its decision, "The defendant considers that the agreement does not provide for main conditions of defendant's social security." The court concluded, "Evaluating all of the above, the court recognizes that a legally concluded contract that has not been annulled or invalidated has to be honoured; there is no evidence and grounds in the present case for the defendant to be released from his contractual obligations of the management and maintenance agreement of 11 October 2004."

4.24 The State party emphasizes that its courts accepted and evaluated all of the evidence submitted by the author, except the evidence that the author had submitted after statutory deadlines. In particular, the Court of First Instance did not accept the evidence submitted by the author at the hearing of 25 February 2012, because the author had missed the deadline for submitting new evidence under article 93 of the Civil Procedure Law. According to the latter provision, new evidence must be submitted to the court no later than 14 days before a court hearing. When deciding to reject the aforementioned evidence, the court considered that the author had no exculpatory reasons for submitting the evidence late, and further considered the fact that the new evidence did not concern the subject matter of the civil proceedings in question. The court addressed all of the author's evidence-based allegations in its judgment, namely, the quality of the water provided to the property, *force majeure* owing to the author's unemployment, and the legal status of the management company.

4.25 The author misquoted the conclusions of the Court of First Instance regarding the evaluation of evidence. The court in fact stated, "The respondent had failed to bring an action before a court or a counterclaim in this proceeding on invalidation or annulment of a norm or entire contract, despite the fact that the court had explained to the defendant his right to defend his rights if he considers that he has been harmed. Indication of various arguments in the observations has no legal effect in the examination of [the] particular claim, since only the court or parties themselves according to article 1588 and 1589 of the Civil Law can annul or declare a bilateral contract invalid. Consequently, the court does not assess the documents submitted and arguments put forward in the respondent's case regarding the validity of the concluded contract as they do not affect the merits of the action brought."

4.26 The domestic courts examined the respective civil proceedings in two instances. After the Jelgava Court of First Instance issued its judgment on 25 April 2013, the author submitted a cassation complaint. On 5 December 2014, the Supreme Court dismissed the complaint, stating, *inter alia*, that the judgment of the lower court was lawful. The right of equal access to a court under article 14 (1) of the Covenant concerns access to first instance procedures and does not include a right to appeal or other remedies.

4.27 The civil proceedings in case no. C15217912 were conducted through the simplified procedure set forth in Section 30 of the Civil Procedure Law. Limits on access to appellate proceedings within the simplified procedure are necessary to achieve procedural economy and avoid overburdening domestic courts, and to ensure effective and speedy proceedings in relatively simple cases. The aim of expediting and simplifying the examination of specific

categories of cases would not be achieved without reducing the number of instances in which those types of cases are examined.

4.28 The absence of appellate proceedings in the author's case did not infringe his right to a fair hearing. Two hearings took place before the Court of First Instance, and the author was heard during both of them. He made full use of his right to submit evidence before the court, contested all the arguments and evidence adduced by the management company, and enjoyed other procedural rights stipulated in article 74 of the Civil Procedure Law (for example, the rights to provide written or oral explanations to the court; submit requests; participate in examination of the evidence; raise objections against requests, arguments and considerations of other participants in the case, etc.) Indeed, the author availed himself of most of those procedural rights. Moreover, the author had access to an appeal in the cassation instance, where the Supreme Court could evaluate whether the Court of First Instance had wrongly applied or interpreted substantive norms of national law or breached procedural norms or whether it had exceeded the limits of its competence. Thus, the State party did not violate the author's rights under article 14 (1) of the Covenant.

Author's comments on the State party's observations on admissibility and the merits

5.1 In comments dated 22 May and 12 June 2019, the author reiterates his arguments and disputes the various contentions of the State party. The management company did not provide the services that were the subject of the agreements (cold water provision, waste removal, and apartment management). Those services were in fact provided by a third party. Moreover, the basis of the prices for the services that the management company was supposed to provide was not explained. The courts did not examine whether the management company had provided the services that it claimed.

5.2 The author could not have filed an appeal against the decision of the Court of Appeal of 21 November 2016 to the Supreme Court because the amount in controversy was below €2100. The fact that he could not file an appeal represented discriminatory treatment and a violation of his right to a fair hearing. On 30 December 2016 and 8 February 2017, the Constitutional Court unfairly dismissed the author's appeals relating to the civil proceedings.

5.3 The author reiterates that he exhausted domestic remedies. He was not able to appeal against the decision of the Jelgava Court of First Instance, which did not evaluate his arguments under the Constitution, consumer law, or social law. The court considered that the management company was governed by private law, and that the court could not examine the compliance of the agreement with the rights of the author as a consumer. However, the management company is a municipal entity. It is the responsibility of the municipality to provide social assistance to everyone in need. In its judgment of 27 March 2016, the court copied and pasted text that it had included in its previous judgment dated 13 March 2013. The proceedings were thus unfair.

5.4 The Constitutional Court erroneously considered that the author's applications had not complied with the Law on the Constitutional Court. In fact, the author substantiated his claims to the Constitutional Court and explained the legal basis for the claims; they should therefore have been admitted.

5.5 The author maintains that the State party provided misleading information in various respects. For example, while the State party claims that the Constitutional Court rejected the author's applications because he had not exhausted domestic remedies, in fact, he was unable to submit an appeal to an appellate court under Civil Procedure Law 250, according to which judgments in small claims cases may not be appealed.

5.6 Hearings only took place before the Court of First Instance, which was not impartial; the author was not able to appeal to an appellate court that could have evaluated evidence. The Supreme Court could not have evaluated evidence.

5.7 Regarding exhaustion of domestic remedies, the author could not have lodged a third complaint to the Constitutional Court, owing to the filing time limit. The author did substantiate his second claim to the Constitutional Court.

5.8 The author receives poverty and disability benefits of €178-184 per month, which is less than half of the minimum wage of €430 per month. He cannot pay housing rent. In a

three-week period in 2015, 15 people froze to death in Latvia because they could not pay rent. The author's claim of discrimination is based on social status.

State party's further observations on admissibility and the merits

6.1 In further observations of 7 August 2020, the State party reiterates and expands upon its arguments concerning admissibility, and maintains that the author has repeatedly falsely accused the State party of providing misleading or false information. The State party clarifies several factual issues. For example, the State party directly quotes the judgment of the Jelgava Court of First Instance of 13 March 2013 as stating that the author "does not deny that dry waste is taken away, he has cold water in his apartment, some management works are done, only the respondent does not know who does them."

6.2 Under article 192 (4) of the Law on the Constitutional Court, a constitutional complaint may be submitted to the Constitutional Court within six months from the entry into force of the most recent decision. In the author's case, that six-month period began on 5 December 2014, the date of entry into force of the decision in which the Supreme Court dismissed the author's cassation complaint in the first set of civil proceedings. The author could have submitted a constitutional complaint within six months from that date. With respect to the author's claims under article 26 of the Covenant, small claims may be brought by or against any person, regardless of their social status.

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 rule 97 of its rules of procedure, whether the communication is admissible under the Optional Protocol.

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

7.3 The Committee notes the State party's assertion that the author's claims are inadmissible because they are not sufficiently substantiated. The Committee notes that the author's claims under articles 3, 6 (1), 7, 14 (1) and 26 arise from domestic civil proceedings that were brought against the author by a municipally owned property management company, to recover unpaid debt for services relating to the maintenance and management of a jointly owned property in which the author owns and occupies an apartment. The Committee notes that while the author maintains that he is unable to pay in full the debt relating to the service expenses and associated administrative fees, he has not provided sufficient information to indicate that as a result of that inability, he faces homelessness or another situation of severe precarity or hardship that would represent an imminent risk of a threat to his life or of exposure to cruel, inhuman or degrading treatment or punishment under articles 6 (1) or 7 of the Covenant. The Committee notes the information provided by the State party in 2019 according to which the Jelgava City Council, since May 2010, had been paying the management company directly for the public utilities and other services that it had provided to the author, who had ceased to pay for those services. The Committee also takes note of the State party's information in its observations of 2019 that the author owed a total of €990.16, representing his debt, court fees and the fee for the services of a bailiff. The Committee considers that the author, who receives a monthly housing allowance from the State, has not provided sufficient information concerning the value of his financial assets or his own inability to obtain employment, social assistance or alternative accommodation to avoid homelessness should he no longer be permitted to remain in his apartment owing to his failure to pay the amount owed. The Committee further considers that the author has not provided sufficient medical documentation to substantiate his claim that the failure of the Jelgava Court of First Instance to postpone a hearing on his case during civil proceedings no. C15290415 constituted a violation of article 7 of the Covenant because it created a risk that he would suffer a myocardial infarction or other serious health problems that could qualify as torture or cruel, inhuman or degrading treatment or punishment. The Committee therefore

considers that the author's claims under articles 6 (1) and 7 are inadmissible under article 2 of the Optional Protocol.

7.4 The Committee takes note of the author's claim that because he did not have access to a review of the evidence of his case before an appellate body, he was denied the right of appeal under article 14 (1), a violation which also constituted discrimination based on social status under article 26 of the Covenant. The Committee recalls its general comment No. 32 (2007), in which it stated that the right of equal access to a court, embodied in article 14 (1) of the Covenant, concerns access to first instance procedures and does not address the issue of the right to appeal or other remedies.⁴ The Committee further recalls that the right to review by a higher tribunal under article 14 (5) of the Covenant does not apply to procedures determining rights and obligations in a suit at law, or any other procedure that is not part of a criminal appeal process.⁵ Accordingly, the Committee considers that the author's claim regarding a denial of the right to have the facts of his case reviewed by a higher authority lies outside the scope of the protection of article 14 of the Covenant and is therefore inadmissible *ratione materiae* under article 3 of the Optional Protocol. The Committee also considers that the author's related claim under article 26 of the Covenant is insufficiently substantiated and is therefore inadmissible under article 2 of the Optional Protocol.

7.5 The Committee notes the author's claim under article 14 (1) of the Covenant that his right to a fair hearing was denied during the civil proceedings initiated by the management company. The Committee notes in particular the author's claims that the domestic courts did not evaluate norms of national and international law that the author considered to be important, and exhibited partiality by rejecting some of the author's evidence. The Committee considers that those allegations relate essentially to the evaluation of the facts and evidence conducted by the domestic courts and the application of domestic legislation. The Committee recalls its constant case law that it is not a final instance competent to re-evaluate findings of fact or the application of domestic legislation, unless it can be ascertained that the proceedings before the domestic courts were arbitrary or amounted to a denial of justice, or that the court failed in its duty to maintain independence and impartiality. The Committee notes that during civil proceedings no. C15217912, the author was heard during two oral hearings, and the Court of First Instance examined the author's claim that the management company had not provided services and noted in its decision that the author had acknowledged the provision of those services, even though he did not know who was providing them. In response to the author's argument that the Law on Social Security was incompatible with his contract with the management company, the Court of First Instance explained to the author that it was not competent to examine the validity of the contract during the proceedings, and that in order to have that issue examined, the author could file a counterclaim; which he refused to do. The Committee notes that the author has not provided specific information to contest the finding of the court that he had not substantiated his claim that the water provided by the management company was unsafe. The Committee also observes that according to the State party, the domestic courts accepted, evaluated and addressed all of the evidence submitted by the author, except for the evidence submitted after the expiration of the deadlines set forth in domestic law. The Committee further notes that the Court of First Instance examined the author's arguments regarding *force majeure* owing to unemployment, and the legal status of the management company. The Committee notes that the author has not provided specific arguments or information to demonstrate that the Court of First Instance unfairly excluded evidence or disregarded arguments that he presented in such a way as to prejudice the outcome of the domestic proceedings. The Committee further observes that the Zemgale Regional Court dismissed the author's three applications for a re-examination of his case, on the ground that he had not met the conditions set forth in article 479 of the Civil Procedure Law for submitting newly discovered evidence. In view of the information in the case file and the information described above in paras. 4.1-4.28, the Committee considers that the author has failed to sufficiently substantiate for the purpose of admissibility that the conduct of the domestic courts amounted to arbitrariness or a denial of justice. Accordingly, the Committee declares the author's claim under article 14 (1) of the

⁴ General comment No. 32 (2007), para. 12, citing communication No. 450/1991, *I.P. v. Finland* (CCPR/C/48/D/450/1991), para. 6.2.

⁵ General comment No. 32 (2007), para. 46; *D.M. v. Serbia* (CCPR/C/131/DR/2869/2016), para. 6.5.

Covenant – insofar as it relates to the fairness of the civil proceedings – inadmissible under article 2 of the Optional Protocol.

7.6 In view of the foregoing, the Committee also considers that the author's remaining claims under articles 3 and 26 of the Covenant, relating to unequal treatment by the courts, including on the basis of poverty and disability, and relating to the loss of housing owing to poverty and disability, are unsubstantiated and are thus inadmissible under article 2 of the Optional Protocol.

7.7 In the light of its findings, the Committee does not deem it necessary to examine other grounds of admissibility.

8. The Human Rights Committee therefore decides:

- (a) That the communication is inadmissible under articles 2 and 3 of the Optional Protocol;
 - (b) That this decision shall be communicated to the State party and to the author.
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