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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. 3232/2018*, **, ***

Communication submitted by:	M.O. (represented by counsel, Frank Selbmann, Alexander H.E. Morawa and Chang Wang)
Alleged victim:	The author
State party:	Germany
Date of communication:	5 July 2018 (initial submission)
Document references:	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 17 December 2018 (not issued in document form), and the decision on admissibility (CCPR/C/127/D/3232/2018) taken on 24 October 2019
Date of adoption of decision:	13 March 2024
Subject matter:	Discrimination on the basis of nationality in access to education
Procedural issues:	Exhaustion of domestic remedies
Substantive issues:	Discrimination on the grounds of nationality
Articles of the Covenant:	2 (1) and (3) and 26
Article of the Optional Protocol:	2 and 5 (2) (b)

1.1 The author of the communication is M.O., a national of Afghanistan born in 1994. He claims that the State party has violated his rights under article 26, read in conjunction with article 2 (1) and (3), of the Covenant. The Optional Protocol entered into force for the State party on 25 November 1993. The author is represented by counsel.

1.2 On 19 July 2019, pursuant to rule 93 of its rules of procedure, the Committee, acting through its Special Rapporteurs on new communications and interim measures, decided to

* Adopted by the Committee at its 140th session (4–28 March 2024).

** The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Wafaa Ashraf Moharram Bassim, Rodrigo A. Carazo, Yvonne Donders, Mahjoub El Haiba, Carlos Gómez Martínez, Laurence R. Helfer, Bacre Waly Ndiaye, Hernán Quezada Cabrera, José Manuel Santos Pais, Soh Changrok, Tijana Šurlan, Kobauyah Tchamdja Kpatcha, Teraya Koji, Hélène Tigroudja and Imeru Tamerat Yigezu. Pursuant to rule 108 of the Committee's rules of procedure, Marcia V.J. Kran did not participate in the examination of the communication.

*** A joint opinion by Committee members Laurence R. Helfer and Imeru Tamerat Yigezu (concurring) is annexed to the present decision.

grant the State party's request for the admissibility of the communication to be examined separately from the merits.

1.3 On 24 October 2019, the Committee, acting under article 4 (2) of the Optional Protocol and rule 101 (2) of its rules of procedure, concluded that it was not precluded by the State party's reservation to the Optional Protocol from considering the communication. It considered that the author had sufficiently substantiated his claims under article 26, read in conjunction with article 2 (3), of the Covenant for the purposes of admissibility and requested the parties to submit information on the merits of those claims. For further information on the parties' observations and comments on admissibility and the Committee's decision thereon, please refer to *M.O. v. Germany*.[1]

Facts as submitted by the author

2.1 The author has a residence permit in Germany. He notes that he fulfils all the requirements for admission to a public university in the State party, as he has an authenticated high school graduation diploma issued by the competent educational authorities in Afghanistan, and has passed an admission examination at the University of Leipzig, which qualifies him for admission to courses of study at all universities and colleges in the State party in the fields of medicine and biological sciences.

2.2 The author notes that decisions on admission to state universities and colleges in his home state of Lower Saxony, as well as in the State party in general, are made in a two-step process. The first step is a regular admission procedure, for "within capacity" study places,[2] which involves a formal application for admission to a course of study at one or more universities that the university or college lists as available. Applicants who are not German nationals or nationals of another European Union member State, and a narrow category of other non-nationals who have obtained a university admissions certificate from a German institution of higher education abroad, can only obtain admission at this stage by applying for a place within a limited "quota for foreigners". An applicant who fails to secure admission at this stage may apply for admission at the second stage of the procedure. The second stage is for "extra capacity" student places,[3] which involves places that were not listed as available during the first stage. During the first stage of the admission procedure, selection is based on academic qualifications. However, the selection criteria in the second stage vary among the different jurisdictions in the State party, since different states impose different formal requirements for applications: in some, selection is based on academic merit, while in others, admission is decided by drawing lots. The author notes that what is crucial is that an "extra capacity" admission is regularly only achieved by litigation in the state administrative courts. The courts, pursuant to federal law, have discretion to grant remedies that provide for an effective allocation of the places available, including the linking of the selection with criteria applied in the regular admission procedure, or a lottery system.

2.3 The author notes that the majority of courts in the State party, including the Administrative Court of Appeals of Lower Saxony, which decided on his application, have held that irrespective of the criteria applied in the "extra capacity" admissions process, non-nationals applying for admission at this second stage are not entitled to equal access and treatment with respect to the distribution and allocation of study places as nationals of the State party.

2.4 The author applied for admission to the University of Medicine of Hannover, initially for admission within the quota reserved for foreign nationals, as part of the regular or "within capacity" allotment of placements. He was denied admission on 22 September 2017. The author then applied for admission at the second stage of the admission procedure and petitioned the Hannover Administrative Court for an order granting him access to the "extra capacity" admission procedure. On 5 December 2017, the court rejected his application, stating that only nationals of the State party, nationals of other European Union member States and applicants considered as equivalent to nationals of the State party pursuant to the

[1] CCPR/C/127/D/3232/2018.

[2] Innerkapazitäre Studienplätze.

[3] Ausserkapazitäre Studienplätze.

"Placement Decree" were entitled to admission outside the fixed capacities. The author appealed the decision to the Administrative Court of Appeals of Lower Saxony. On 14 December 2017, the court dismissed the appeal. It held that the author was in principle qualified to study at Hannover School of Medicine, and thus could apply for admission under the regular procedure within the limits of the quota for foreigners. However, the court ruled that the author was not entitled to be considered under the "extra capacity" procedure, as this right was reserved for German nationals, and that neither federal nor state law granted any rights to foreign nationals to seek "extra capacity" admission to studies.[4] The author notes that no appeal of the decision of the Administrative Court of Appeals is possible.

Complaint

3. The author claims that the State party has violated his rights to non-discrimination and equality before the law, and to equal protection by the law, including an effective remedy, in violation of his rights under article 26, read in conjunction with article 2 (1) and (3), of the Covenant. He notes that, as a non-national of the State party, he was placed in a similar position in the first or "within capacity" stage of the university admissions process as nationals of the State party, nationals of other European Union member States, and applicants who were non-nationals of the State party but had obtained a university admissions certificate from a German institution of higher education abroad. He notes, however, that in the second "extra capacity" stage of the admissions process, applicants who are not nationals of the State party, or considered equivalent to nationals of the State party, are excluded from applying for admission to state universities and colleges. They are also excluded from seeking a judicial remedy for denial of places at this stage. The author argues that this exclusion of non-nationals, and equivalent applicants, at the second-stage admissions process constitutes discrimination on the basis of nationality, which is not based on compelling, reasonable or proportionate grounds. He argues that the authorities of the State party have not advanced any criteria that would render him a less qualified candidate for admission during the second stage of the admission procedure, such as, for example, academic shortcomings or a linguistic ineptitude, and argues that the courts did not take any of his specific personal circumstances into consideration in their decisions. The author submits that the absence of any consideration of his specific personal circumstances, coupled with the generally accepted practice of excluding non-nationals from being considered in substance, or from being granted a judicial remedy against denials of admission, serves as further evidence that there is no justifiable objective or reasonable ground for differentiating between the author as a non-national and the other applicants for university admission who are nationals or are considered equal to nationals.

State party's observations on the merits and further observations on admissibility

4.1 On 27 February 2020, the State party submitted its observations on the merits as well as further observations on admissibility. It notes the Committee's decision on admissibility of 24 October 2019 and argues that the question of competence had to be clarified as a preliminary question, and that subsequent to this preliminary question having been clarified, it is submitting its further observations on admissibility and on the merits.

4.2 The State party submits that the communication should be found inadmissible under article 5 (2) (b) of the Optional Protocol for failure to exhaust domestic remedies. It submits that the author could have submitted a complaint before the Federal Constitutional Court

[4] The author notes that similar rulings have been issued by other state and federal courts referring to decisions of: the Administrative Court of Appeals of the State of Thüringen, 20 December 2012, file No. 1 N 260/12; the Federal Administrative Court, 22 July 2013, file No. 6 BN 2.13, juris MN 7; the Administrative Court of Appeals of the State of Nordrhein-Westfalen, 8 October 2013, file No. 13 B 981/13; and the Administrative Court of Appeals of the State of Sachsen-Anhalt, 24 March 2014, file No. 3 M 66/14. The author further notes, however, that the Administrative Court of Appeals of Hamburg, in one of its decisions, stated in an obiter dictum (the matter was resolved amicably) that in a case submitted by a non-national in a situation comparable to that of the author, it would have examined in substance whether that applicant would have been entitled to admission in the "extra capacity" stage of proceedings, thus implying that non-nationals had a right to judicial review of "extra capacity" admissions in the State of Hamburg.

regarding the claims raised in the complaint, that is, the denial of admission in the "extra capacity" proceedings. It argues that no such legal action – neither summary proceedings nor main proceedings – were pursued by the author.

4.3 Regarding the merits of the communication, the State party submits that access to university and the allocation of study places are two different aspects. It argues that the "university access law", that is, the question of who is entitled to study in Germany with regard to school qualifications, is not discriminatory and is not an issue in the present case. The author had the chance to have his school education recognized and is entitled to study at a German university. It notes that the allocation of study places is at the centre of the complaint, and it submits that the author's description of the two-stage admission process is misleading. It notes that the second-stage or "extra capacity" process is not supposed to occur, and that it is only in the unlikely event that the existing capacity has been miscalculated by a university and some capacity remains unused that applicants can take legal action to be allocated a place beyond the initially calculated capacity. The main allocation of university places thus takes place within the calculated capacity, that it, within the regular allocation procedure.

4.4 The State party argues that neither the Covenant nor other international regulations set out rules for the allocation of study places. The State is therefore free to decide on such criteria.[5] The allocation of study places is regulated in a non-discriminatory manner. In the present case, the applicable legislation is sections 6 and 23 of the Vergabeverordnung Stiftung,[6] which regulates the allocation of study places in the federal state of Lower Saxony. A "pre-quota" of 5 per cent of the study places is reserved for non-nationals of the State party. The allocation of the reserved places in the pre-quota is primarily based on the level of qualification, mainly the average grade in the university entrance qualification, and in some cases, the results of a study ability test. Special circumstances can be taken into account, for example if the applicant has been granted refugee status in the State party, originates from a developing country where there are no educational establishments for the course of study in question, or belongs to a German-speaking minority abroad. The State party argues that this system of allocation of study places is aimed at finding a balance between limited public funds and public and individual interests. It notes in this regard that in most of the states in the State party, there are no tuition fees for a first-degree student at a public university, including for medical studies which are particularly cost-intensive, and public universities are funded through public funds, with the aim being to provide access to university education regardless of social background. Public funds are, however, limited and do not allow for unlimited access for applicants coming from countries where university fees exist, most of whom will return to their country of origin on completion of their studies.

4.5 The State party notes that in the present case, the author did not succeed in the "within capacity" allocation process for a study place for medicine. He did not challenge the regular selection process before the domestic authorities. The State party notes that the communication concerns the rare situation in which universities have miscalculated their capacity and where an applicant submits that the capacity exceeds the initial calculation of the available study places. The State party notes that at the time of submission of the communication, there was no legislation in place regulating this second-stage admission process, as universities were assumed to accurately calculate their capacity and a second so-called "extra capacity" admission should therefore not be needed. The State party notes that, in the author's case, the competent courts ruled that the "extra capacity" process was only available to nationals of the State party. It notes that a new regulation was enacted on 1 December 2019, which provides for the allocation of "extra capacity" admissions for universities in Lower Saxony. If admissions are to be awarded outside of estimated capacity, the allocation must be based on the award criteria of the regular admissions process. This ensures that the criteria for allocation of "extra capacity" places corresponds to the criteria for the regular admissions process. However, the privilege of pre-quotas cannot be claimed in the context of allocation of "extra capacity" admissions. The State party submits that the

[5] The State party refers to *Q. v. Denmark* (CCPR/C/113/D/2001/2010), para. 7.3.

[6] Ordinance on the central allocation of study places by the Foundation for Higher Education Admissions, *Niedersächsischen Gesetzes- und Verordnungsblatt* (21 May 2008).

selection criteria are not discriminatory and are based on reasonable and objective grounds in pursuit of a legitimate aim. The procedure is aimed at providing overall fairness in the admissions process. The restriction of the "extra capacity" admission places to nationals of the State party ensures that the limited capacities of universities are used to provide the labour market in the State party with the necessary skilled personnel. This is especially true for medical studies, as the health system is dependent upon employing health professionals who will practise in the State party, and it is thus in the interests of public health. The State party further submits that in the author's case, the administrative courts based their rulings on reasonable and objective grounds. The allocation of study places that are proven to exist beyond the estimated capacity must be regarded as a continuation of the regular allocation process. Pre-quotas that were deducted before the allocation of these capacities do not form a part of the allocation process and are therefore not applied in context of the allocation of "extra capacity" study places. The State party reiterates its submission that as the limited study places are provided by public funds and without tuition fees, it is reasonable that access to the very few "extra capacity" places may be restricted to nationals of the State party.

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

5.1 On 25 August 2022, the author submitted his comments on the State party's observations on the merits and further observations on admissibility. He maintains that the communication is admissible. He notes that in its initial observations on admissibility, the State party did not raise any other admissibility ground than its reservation to the Optional Protocol and he argues that it is now seeking to relitigate the issue of admissibility. He submits that the State party is estopped from doing so.

5.2 The author further notes that in its observations on the merits, the State party describes the first, "within capacity" process of admissions to university studies. However, he notes that the present communication explicitly alleges discrimination based on nationality in the second "extra capacity" stage of the admissions process. He notes the State party's assertion that the "extra capacity" admissions process is rare and only takes place in the event that the existing capacity has been miscalculated by the university concerned and that capacity remains unused. He submits that the inaccuracy of this statement can be ascertained by statistical evidence: according to the records of the competent administrative tribunal of Hannover in charge of deciding "extra capacity" petitions, the numbers of such petitions concerning solely the programme of medical studies at Hannover School of Medicine, to which the author applied, have ranged from 90 petitions per year to 863 petitions per year between 2003 and 2019. While there are identifiable fluctuations throughout the years, caused for example by variations in the programmes of study and changes in the jurisprudence of the competent courts, the number of petitions concerning just one faculty degree course (i.e. medicine, not including dentistry and other related programmes) at one university show conclusively that significant numbers of potential students had to pursue the second, "extra capacity" process. In the year when the author applied for admission – in the autumn of 2017 – he was one of 439 individuals pursuing that avenue. The administrative court identified 11 additional places of study in the fifth semester, four places of study in the third semester and 17 places of study in the first semester, which were distributed by lot. The author was the only person who was excluded from the proceedings, and only because of his citizenship.

5.3 The author further notes that it is not the courts alone that restrict access to places of study solely on the basis of nationality. Article 12 (1) of the country's Basic Law[7] stipulates that "all Germans have the right to freely choose their profession, place or work, and place of education". The Federal Constitutional Court determined in 1988 that article 12 (1) was an explicit choice of the constitutional lawmaker to limit the right to equal access to education to nationals of the State party, and that other constitutional provisions, such as the right to "develop one's personality" under article 2 (1) of the Basic Law, could not be utilized to

[7] Grundgesetz.

extend the right to non-nationals.[8] The author reiterates his submission that his exclusion from the second, "extra capacity" admissions procedure and its corresponding legal remedies was based solely on his nationality. No reasonable, let alone compelling reasons have been adduced by the State party as to why foreign (non-European Union) nationals can be excluded from the second step of a two-step admissions process that concerns the same matter, namely the allocation of a place in a university class.

State party's further observations

6.1 On 4 August 2023, the State party submitted further observations on the admissibility and merits of the communication. It reiterates its submission that the communication should be found inadmissible for failure to exhaust domestic remedies. It argues that, contrary to the author's view, it should not be stopped from challenging admissibility on grounds that – in good cause and in good faith – were not raised in its initial observations on admissibility. The said observations were deliberately limited to the preliminary question of the Committee's competence with a view to the State party's reservation to the Optional Protocol. The State party notes that it was not aware that it was already obliged to raise further grounds of admissibility at this early stage of the proceedings when – at least from its perspective – only the question of competence was at issue. It further notes that the author has not opposed its argument that he could have submitted a complaint before the Federal Constitutional Court regarding the subject matter of his complaint before the Committee. It argues that the fact that such a complaint could have been submitted must therefore be regarded as uncontested.

6.2 The State party notes the statistics presented by the author on the number of petitions regarding the programme of medical studies at Hannover School of Medicine. It notes that the said statistics do not, however, provide any information about the actual number of "extra capacity" places. It reiterates its assertion that "extra capacity" admissions are not supposed to occur and that the high number of requests for legal protection concerning admission for the study of medicine at Hannover School of Medicine is largely due to the fact that this course of study is unique in the State party. It is a so-called model course of study, which requires that special parameters be set for determining patient-related capacities. It notes that the legality of the parameters used by the university has repeatedly been the subject of legal disputes. In this context, the competent national courts have reviewed whether the capacity calculation of Hannover School of Medicine was lawful and whether the respective plaintiffs were entitled to admission. Thus, there is no second "extra capacity" admissions procedure to study medicine; rather, the judiciary has reviewed the legality of the actions of Hannover School of Medicine in each individual legal proceeding. The State party argues that the statistics provided by the author regarding the number of requests for legal protection are misleading in this regard, as they do not allow any conclusion to be drawn as to the extent to which students were admitted above the capacity limit stated by the university.

6.3 The State party further argues that the availability of study places in a state-funded system for nationals of other countries must necessarily take into account the paramount need to educate the required number of academics for the system that funds the universities.[9] Regarding the author's reference to the decision of the Federal Constitutional Court of 10 May 1988 on the interpretation of article 12 of the Basic Law, the State party notes that the said decision did not deal with the right of access to higher education, nor ban the admission of non-nationals as health professionals.

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.

[8] Decision of the Federal Constitutional Court of 10 May 1988, 1 BvR 482/84 and 1166/85, *Entscheidungen des Bundesverfassungsgerichts*.

[9] The State party refers to the European Court of Human Rights, *Ponomaryovi v. Bulgaria*, application No. 5335/05, judgment of 21 June 2011, para. 55.

7.2 The Committee recalls its decision of 24 October 2019, in which it concluded that it was not precluded on the basis of paragraph (c) of the State party's reservation to the Optional Protocol from considering the present communication and in which it considered that the author had sufficiently substantiated his claims under article 26, read in conjunction with article 2 (3), of the Covenant for the purposes of admissibility. The Committee notes the State party's subsequent submission that the author's claims should be found inadmissible under article 5 (2) (b) of the Optional Protocol for failure to exhaust domestic remedies, as he did not file an individual complaint regarding the subject matter of his compliant before the Federal Constitutional Court. The Committee notes the author's argument that as the State party did not raise this argument in its initial observations on admissibility, it is estopped from doing so after the Committee's decision of 24 October 2019.

7.3 The Committee notes the State party's submission that it did not initially raise the issue of exhaustion of domestic remedies as it considered the question of competence to first need to be clarified by decision of the Committee. The Committee recalls that under rule 101 (5) of its rules of procedure, on consideration of the merits, the Committee may review, in whole or in part, a decision that a communication is admissible in the light of any explanations or statements submitted by the State party under rule 101.[10]

7.4 The Committee recalls its jurisprudence that although there is no obligation to exhaust domestic remedies if they objectively have no prospect of success, authors of communications must exercise due diligence in the pursuit of available remedies. Mere doubts or assumptions about the effectiveness of domestic remedies do not absolve authors from exhausting them.[11] The Committee also recalls that there is no obligation to exhaust domestic remedies for example where under applicable domestic laws the claim would inevitably be dismissed, or where established jurisprudence of the highest domestic tribunals would preclude a positive result.[12]

7.5 In the present case, the Committee notes the State party's undisputed argument that the author could have submitted a complaint before the Federal Constitutional Court claiming discrimination in access to education on the basis of nationality. The Committee notes that while the author has referred to a decision by the Federal Constitutional Court issued in 1988 on the interpretation of the provisions of article 12 (1) of the Basic Law, he has not provided any specific information or argumentation on how the said decision is applicable to his claims raised in the present communication. In this connection, the Committee also notes the State party's argument that the Federal Constitutional Court decision of 1988 did not concern the right to access to higher education for non-nationals and is not applicable to the claims raised by the author in his complaint before the Committee. The Committee notes that the author has also not provided any specific argumentation claiming that he would not have access to the complaint procedure before the Constitutional Court, or that the said procedure would be ineffective.

7.6 The Committee further notes the author's claim that he has been subjected to discrimination based on nationality in access to education. However, the Committee notes the State party's information that the allocation of study places in higher education in the State party is regulated in a non-discriminatory manner, and that in accordance with domestic regulations, there is quota of study places in higher education reserved for non-nationals of the State party, in order to ensure that the system of allocation of study places finds a balance between limited public funds and public and individual interests. The Committee further observes that the author has not, in his submission subsequent to its initial admissibility decision, further substantiated his claim that the State party has violated his rights under article 26, read in conjunction with article 2 (1) and (3), of the Covenant. Taking the above into account, the Committee finds the author's claims under article 26, read alone and in

[10] *Gauthier v. Canada* (CCPR/C/65/D/633/1995), para. 13.2; and *García Pons v. Spain* (CCPR/C/55/D/454/1991), para. 9.2.

[11] See, for example, *V.S. v. New Zealand* (CCPR/C/115/D/2072/2011), para. 6.3; *García Perea v. Spain* (CCPR/C/95/D/1511/2006), para. 6.2; and *Vargay v. Canada* (CCPR/C/96/D/1639/2007), para. 7.3.

[12] See, for example, *Länsman et al. v. Finland* (CCPR/C/49/D/511/1992), para. 6.3; *S.A. et al. v. Greece* (CCPR/C/121/D/2868/2016), para. 6.4; and *Gomaríz Valera v. Spain* (CCPR/C/84/D/1095/2002), para. 6.4.

conjunction with article 2 (1) and (3), of the Covenant, to be inadmissible for failure to exhaust domestic remedies in accordance with article 5 (2) (b) of the Optional Protocol and for failure to substantiate the claims for the purpose of admissibility.

8. The Committee therefore decides:

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

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

Annex

Joint opinion by Committee members Laurence R. Helfer and Imeru Tamerat Yigezu (concurring)

1. We agree with the Committee's conclusion that the author's communication should be declared inadmissible for failure to exhaust domestic remedies (paras. 7.5 and 7.6). We further agree that the Committee has the competence, under rule 101 (5) of its rules of procedure, to make this determination (para. 7.3) even though it previously found the author's claims to be sufficiently substantiated for the purposes of admissibility after concluding that the State party's reservation to the Optional Protocol did not prevent consideration of the communication.[1]

2. We write separately to emphasize that States parties should, in future cases, raise all potential grounds of inadmissibility at the earliest possible opportunity rather than raising different grounds sequentially – as the State party did in this case. Where a State party challenges the admissibility of a communication at the merits stage of the proceedings on a ground of inadmissibility that could have been raised earlier, the Committee should, in general, exercise its discretion under rule 101 (5) not to review its previous "decision that a communication is admissible in the light of any explanations submitted by the State party …".

3. In this case, Germany initially argued that the author's communication was inadmissible *ratione materiae* on the basis of its reservation to the first Optional Protocol.[2] The Committee rejected that argument and further noted that "the State party has not challenged the admissibility of any of the author's claims on any other ground than its reservation".[3]

4. When Germany submitted its observations on the merits, it asserted that the author had failed to exhaust domestic remedies. The State party explained that it had not previously raised this issue because the Committee's "competence had to be clarified as a preliminary question, and that subsequent to this preliminary question having been clarified, it is submitting its further observations on admissibility" (para. 4.1).

5. The author objected, contending that Germany "is now seeking to relitigate the issue of admissibility" and should be "estopped from doing so" (para. 5.1).

6. In response, Germany argued that it should not be precluded from raising the non-exhaustion issue because it had, "in good cause and in good faith", limited its earlier observations "to the preliminary question of the Committee's competence" in the light of its reservation to the Optional Protocol (para. 6.1). The State party further noted that "it was not aware that it was already obliged to raise further grounds of admissibility at this early stage of the proceedings when – at least from its perspective – only the question of competence was at issue" (para. 6.1).

7. Whatever the justification for the sequencing of jurisdictional arguments before national courts, the splitting of inadmissibility grounds in proceedings under the Optional Protocol should be discouraged. The Committee receives numerous individual communications against many of the 116 States parties to the Optional Protocol. It lacks the resources needed to consider these cases expeditiously. Had Germany raised the failure to

[1] *M.O. v. Germany* (CCPR/C/127/D/3232/2018), adopted on 24 October 2019, paras. 6.4 and 6.5.

[2] The reservation provided that the Committee's competence "shall not apply to communications …. (c) by means of which a violation of article 26 of the [Covenant] is reprimanded, if and insofar as the reprimanded violation refers to rights other than those guaranteed under the aforementioned Covenant". The Committee found this reservation to be contrary to the object and purpose of the first Optional Protocol. On 31 October 2023, Germany withdrew the reservation. See https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-5&chapter=4&clang=_en#EndDec.

[3] *M.O. v. Germany*, para. 6.5.

exhaust domestic remedies in 2019 when it initially challenged the Committee's competence, the author's communication could have been declared inadmissible nearly five years ago.

8. In sum, reasons of efficiency and procedural economy strongly favour considering all bases of inadmissibility at the earliest possible opportunity. Absent a change of circumstances or the discovery of new information, the Committee should not consider inadmissibility grounds that States parties could have raised earlier in the proceedings.