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International Covenant on Civil and Political Rights

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Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2853/2016*, **

Communication submitted by:	Dragan Vasiljković (known as Daniel Snedden, or Captain Dragan) (represented by counsel, Sladana Čanković)[1]
Alleged victim:	The author
State Party:	Australia
Date of communication:	14 July 2016 (initial submission)
Document references:	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State Party on 14 December 2018 and 21 February 2022 (not issued in document form)
Date of adoption of Views:	10 July 2025
Subject matter:	Extradition preceded by extradition detention
Procedural issues:	Admissibility – compatibility with the provisions of the Covenant; substantiation of claims
Substantive issues:	Arbitrary detention; lack of effective remedy; ill-treatment; fair trial; non-discrimination
Articles of the Covenant:	2, 7, 9 (1) and (4), 10 (1), 14, 15 and 26
Articles of the Optional Protocol:	2, 3 and 5 (2) (b)

1.1 The author of the communication is Dragan Vasiljković (known as Daniel Snedden or Captain Dragan), a national of Australia and of Serbia born in Belgrade on 12 December 1954. He claims that Australia has violated his rights under articles 2, 7, 9 (1) and (4), 10 (1), 14, 15 and 26 of the Covenant. The Optional Protocol entered into force for the State Party on 25 December 1991. The author is represented by counsel.

* Adopted by the Committee at its 144th session (23 June–17 July 2025).

** The following members of the Committee participated in the examination of the communication: Wafaa Ashraf Moharram Bassim, Rodrigo A. Carazo, Yvonne Donders, Carlos Ramón Fernández Liesa, Laurence R. Helfer, Konstantin Korkelia, Dalia Leinarte, Bacre Waly Ndiaye, Hernán Quezada Cabrera, Akmal Saidov, Soh Changrok, Teraya Koji, Hélène Tigroudja and Imeru Tamerat Yigezu. Pursuant to rule 108 of the Committee's rules of procedure, Ivan Šimonović did not participate in the examination of the communication.

[1] On 25 February 2020, the author noted that he had revoked a power of attorney initially granted to his second counsel, Goran Cvetić.

1.2 On 16 November 2016, the Committee, acting through its Special Rapporteurs on new communications and interim measures, registered the case,[2] but did not grant the author's request for interim or protection measures by requesting his immediate unconditional or conditional release on bail by Croatia.

1.3 The Committee adopted an inadmissibility decision concerning the author's claims against Croatia on 6 April 2018.[3]

Facts as submitted by the author

2.1 In 1969, the author moved from Serbia, then part of the Socialist Federal Republic of Yugoslavia, to Australia, where he acquired Australian citizenship in 1975.[4] The author returned to the Socialist Federal Republic of Yugoslavia in 1990. According to the Croatian authorities, he took part in the armed conflict in the Western Balkan region as a commander of a special purpose unit of Serbian paramilitary troops that was involved in an armed conflict with the armed forces of Croatia in defence of the Serbian population living in the Krajina region in the territory of Croatia.[5]

2.2 On 28 November 2005, the Šibenik County Public Prosecutor's Office submitted a request for an investigation into the author for criminal offences, which was accepted by the Šibenik County Court on 12 December 2005. The author has been charged in Croatia for war crimes for the killing of Croatian prisoners of war and civilians that he allegedly committed as commander of Serbian paramilitary troops in the territory of Croatia in 1991 and 1993. The author submits that, when he moved back to Australia in 2004, he did not know of any intended criminal charges for the offences that he had reportedly committed in Croatia. In January 2006,[6] Croatia requested that Australia extradite the author to face prosecution in Croatia for charges of war crimes.[7] The extradition request reportedly did not contain the assurance that Croatia would not prosecute the author for offences other than those stated in the extradition request. On 19 January 2006, the author was arrested in Sydney, Australia, pursuant to a provisional arrest warrant issued under section 12 (1) of the Australian Extradition Act 1988, which applies when there is no extradition treaty concluded between the requesting and extraditing States. The author was remanded in custody in Australia on 20 January 2006,[8] in anticipation of his extradition. The author was extradited to Croatia for prosecution on 8 July 2015, after losing his thirteenth appeal in Australia. The author asserts that he was not formally indicted by Croatia for any allegedly committed acts until 8 January 2016, six months after his extradition to Croatia. At the time of submission of his initial communication, the author was in prison in Split, Croatia, to stand trial, which commenced on 20 September 2016 in Split County Court.

2.3 The author spent eight years, nine months and 10 days in extradition detention in Australian prisons, due to an extremely lengthy extradition procedure before the Australian courts. The author made three unsuccessful applications for bail, on 27 January and 3 March 2006 and 12 December 2007.

[2] The initial communication was submitted against both Australia and Croatia.

[3] CCPR/C/122/D/2859/2016.

[4] When assuming Australian citizenship, the author changed his name to Daniel Snedden.

[5] The author submits that the Republic of Serbian Krajina was unrecognized at that point.

[6] On 10 January 2006, the Šibenik County Court ordered that a warrant for the author's arrest be issued. The author was sought on the basis of an arrest warrant by the International Criminal Police Organization (INTERPOL).

[7] According to the author, Croatia alleges that, during June and July 1991 in Knin, in a region predominantly populated by Serbs at the time, the author did not prevent members of the paramilitary unit who were his subordinates from mistreating captured members of the Croatian army and police and that he mistreated one such person himself. It also alleges that, in February 1993, he ordered members of the unit to interrogate, and then execute, two Croatian prisoners of war (alleged contraventions of article 122 of the Basic Penal Code of Croatia). He is further said to have ordered members of a special purpose unit and a tank unit of the Yugoslav People's Army to fire on a church and a school (alleged contraventions of article 120 of the Code).

[8] The author was placed in extradition detention on the basis of a decision of the High Court of Australia.

2.4 On 12 April 2007, the Sydney Local Court ruled that the author was eligible for extradition to Croatia. On 3 February 2009, the Federal Court of Australia dismissed the author's appeal against his extradition to Croatia. The Federal Court also rejected the author's claim of bias against him in the earlier hearing and his claim that he would not enjoy a fair trial in Croatia. On 2 September 2009, a full bench of the Federal Court of Australia granted the author's appeal and reversed the extradition decision on the basis that he had established a substantial or real chance of facing prejudice if he were to be sent to Croatia to stand trial. The author was released on 4 September 2009, after over three years and seven months in detention. The Government of Croatia appealed the decision before the High Court of Australia. On 30 March 2010, the High Court again ruled that the author was to be extradited to Croatia.[9] On 12 May 2010, the author was again arrested by the Australian Federal Police. On 15 November 2012, the Government of Australia, through the Minister for Justice, decided to extradite the author to Croatia. The author lodged complaints about the unlawfulness of his extradition on various grounds before the Federal Court, the full bench of the Federal Court and the High Court of Australia, which were all rejected.[10] On 25 September 2013, the Government of Australia rejected the author's claim that he was a prisoner of war, entitled to special protection. On 15 November 2013, the Federal Court issued its appeal judgments, granting the author's claims of a lack of procedural fairness due to absence of access to correspondence between Australia and Croatia (regarding his complaints of a lack of fair trial in Croatia) and in part reversing the decision of the Government of Australia to extradite the author. However, the judge rejected the author's claim that the Government had delayed the proceedings excessively and had thus lost its powers to extradite. Both the Government and the author appealed the verdict. On 12 December 2014, the Federal Court admitted the appeal by the Minister for Justice that the author had experienced no procedural unfairness, while rejecting the author's appeal in which he claimed that there had been an excessive delay and thus it was no longer in the power of the Minister to extradite. On 2 January 2015, the Minister of Justice of Serbia sent a letter to the Minister for Justice of Australia requesting that Serbia be allowed to prosecute the author, referring to its right to prosecute its own citizens and questioning the Croatian judiciary's ability to ensure a fair trial of the author. That request was rejected by Australia.

2.5 Upon the author's extradition to Croatia on 8 July 2015, he was immediately placed in investigative detention for more than 12 months awaiting trial, on the basis of the decision by the Šibenik County Court of 12 December 2005. The author claims that all domestic remedies available under the Extradition Act were exhausted after the High Court of Australia refused the author's application for special leave to appeal on 15 May 2015. In this case, the Australian courts finally held that there was no reviewable error in the Minister's determination under section 22 of the Extradition Act 1988 that the author should be extradited.

Complaint

3.1 The author claims that Australia has violated his rights under articles 2, 7, 9 (1) and (4), 10 (1), 14, 15 and 26 of the Covenant, in the context of the author's detention in extradition custody from 2006 to 2015 and the lack of fair trial rights and equal treatment during the extradition proceedings. The author claims a continuous nature of violations of his rights by Australia.[11]

3.2 The author claims that article 2 of the Covenant has been violated because the Extradition Act 1988 is not in accordance with the international obligations of Australia, as the Government of Australia has been requested by the Committee to take steps to prevent

[9] On 25 February 2010, the High Court ordered the author to surrender all his travel documents to the Australian Federal Police. The author complied with the order.

[10] The author transmitted copies of the decisions to the Committee with his communication.

[11] The author has made claims of continuous violations by both Australia and Croatia, but the Committee considers in this case only the claims against Australia. See also footnote 2 above.

arbitrary detention in the context of extraditions by modifying the Extradition Act, which the State Party did not do.[12]

3.3 Regarding article 9 (1) and (4), the author alleges that his rights have been violated due to the unlawful, excessively long and therefore arbitrary detention in the State Party, which was also in breach of his right to presumption of innocence, given that he was denied the right to effectively challenge the legality of his detention, having not been tried until July 2016. He claims that his unlawful and arbitrary detention in Australia was a result of the extradition request,[13] to enable his prosecution in Croatia.

3.4 In addition, the author claims that Australia has also violated article 9 (1) by refusing to remand him on bail, despite the absence of evidence provided by Croatia of his involvement in the alleged crimes and a failure to identify a risk of him absconding.

3.5 Regarding articles 7 and 10 (1), the author claims that his excessive detention prior to extradition in Australia deprived him of dignity and amounted to inhuman and degrading treatment.

3.6 Regarding the claims of a violation of article 14 (1), (2) and (5), the author asserts that the examination of his detention was ill-founded in Australia, given that he was not notified about the correspondence between the requesting and extraditing States.

3.7 The author further claims that his extradition pursuant to the Extradition Act 1988 amounts to a violation of articles 2 and 26, in conjunction with article 14, as the no evidence[14] procedure in the absence of a prima facie case against the wanted person applies only to extradition to countries not bound by an extradition treaty with Australia and is therefore discriminatory for the wanted persons concerned.

State Party's observations on admissibility and the merits

4.1 On 22 May 2023, the State Party submitted its observations on admissibility and the merits, arguing that the author's claims should be found inadmissible or without merit.

4.2 The author's claims regarding his custody in Croatia are inadmissible *ratione loci* as relating to conduct outside the territory and jurisdiction of Australia. The State Party argues that the author's claims under articles 9 (3) and 14 (1), (2) and (5) of the Covenant are inadmissible *ratione materiae*, since those provisions apply only to persons arrested or detained on criminal charges and not to extradition, which is administrative in nature. In addition, the claims in relation to articles 2 (1) and (3), 7, 9 (1), (4) and (5), 10 (1), 15 and 26 have not been sufficiently substantiated and are hence inadmissible. Moreover, the author's claim under article 2 is inadmissible, as article 2 of the Covenant can be invoked only in conjunction with other articles of the Covenant. Since the author's claims as to the substantive provisions of the Covenant are inadmissible, any claim by the author as to a lack of effective remedy under article 2 is also inadmissible. Furthermore, as the author's claims with respect to article 9 (1), (3) and (4) are inadmissible, any claim by the author regarding an enforceable right to compensation is similarly inadmissible.

4.3 Alternatively, the author's claims should be dismissed for lack of merit. The author's submissions do not demonstrate that his detention met the requisite threshold for cruel, inhuman or degrading treatment or punishment under article 7, as he was not subjected to pain, suffering or debasement beyond a deprivation of liberty. As regards his claims under article 9,[15] the author's extradition detention was at all times consistent with the State Party's

[12] The author refers to *Griffiths v. Australia* (CCPR/C/112/D/1973/2010), para. 7.5. In that case, the author was held for over two years in extradition detention by Australia.

[13] The author emphasizes that he was extradited to Croatia on 8 July 2015, which was two years, seven months and 23 days from the date of the decision of 15 November 2012 of the Minister for Justice on his extradition. He deems it excessive and in violation of article 9 (1) and (4) of the Covenant.

[14] The author alleges that under the no evidence procedure, the requesting State is not obliged to submit supporting evidence, only the charges against the person sought from the extraditing State.

[15] The author claimed in essence that: (a) he was denied bail and the right to effectively challenge the legality of his detention, which became arbitrary; (b) the length of his detention was excessive and thus article 9 (1) and (4) was violated; (c) by not remanding him on bail, Australia has violated

law and not arbitrary. The author has not established that the administrative detention of persons subject to an extradition request is arbitrary per se or that his detention was improper or procedurally void. Instead, the author's detention was reasonable, necessary and proportionate given the circumstances, and reassessed as it was extended in time. Moreover, the author exercised numerous opportunities to have the legality of his detention under domestic law reviewed before a court (the Federal Court of Australia, the full court of the Federal Court and the High Court); the author applied for bail on four occasions but had not established the existence of special circumstances justifying such remand and his bail applications were rejected for that reason and because he presented a real risk of flight;[16] and the author was not entitled to compensation as neither his arrest nor his detention were unlawful. In addition, the author was treated with humanity and dignity while in detention, consistent with article 10 (1) of the Covenant. Such claims in relation to article 10 (1) have thus also not been substantiated.

4.4 In addition, article 14 does not apply to the author's domestic extradition proceedings because those proceedings: (a) were not a determination of the author's rights and obligations in a suit at law; (b) were not criminal procedures; and (c) had no punitive effect. As regards articles 2 (1) and 26, the no evidence extradition procedure is not discriminatory. In the absence of any violation of the Covenant, the author's request for a remedy pursuant to article 2 of the Covenant should be dismissed on the merits.

4.5 The State Party describes the interpretation and application of the Extradition Act 1988, including an executive decision by the Attorney General whether to surrender the person to the requesting State. It reiterates that a magistrate or eligible judge's functions under the Extradition Act are administrative, not judicial, and do not involve any determination of guilt or innocence in relation to the alleged extradition offences.[17] The Act provides for the issuance of a national warrant for arrest of an extraditable person or for a provisional arrest request to be made to Australia by a foreign State. The Act also provides for the remand of a person, either in custody or on bail. A person may be remanded on bail only where there are "special circumstances" justifying such a remand[18] owing to a high risk of absconding.

4.6 In *United Mexican States v. Cabal and Others*,[19] the High Court of Australia held that bail in extradition cases should be granted when two conditions are met: (a) when special circumstances exist justifying the granting of bail; and (b) where there is no real risk of flight. A magistrate or eligible judge exercises discretion as to whether to grant bail. A decision whether to surrender a person to the requesting State is made by the Attorney General. A surrender determination is an executive decision that is subject to judicial review. Pending such review, a person may apply to the court for release on bail. Surrender will generally occur within two months, although extradition detention beyond this time frame may be justified if the conditions in section 26 (6) of the Extradition Act are met. In such circumstances, a person may apply for release from extradition detention.

4.7 The State Party submits that, on 17 February 2006, Croatia presented a request to Australia for the extradition of the author to Croatia to face prosecution for three war crime offences under articles 120 (one count) and 122 (two counts) of the Basic Criminal Code of Croatia. The State Party considered extradition requests from Croatia pursuant to a no

article 9 (1) and (4); and (d) that the laws against which the arbitrariness of the author's detention were assessed are not consistent with the international obligations of Australia.

[16] Noting the risk of flight and significant interest in surrendering persons subject to extradition requests, the State Party held there was no less restrictive alternative available to the author's detention in extradition detention. It also pointed to the author's conduct between March and May 2010. Having been released in 2009, the author could not be located for 42 days following the decision of the High Court of Australia in March 2010 requiring him to return to custody. When located, the author was in possession of passports in other names (accompanied by his photo) and a credit card in another name, and was actively taking steps to depart Australia by yacht using a different name.

[17] High Court of Australia, *Vasiljković v. Commonwealth*, Order, 15 June 2016, paras. 33 and 58.

[18] Extradition Act, sects. 15 (2) and 15 (6).

[19] Judgment, 24 October 2001.

evidence extradition procedure. On 7 July 2006, the author submitted a habeas corpus application.

4.8 In December 2006, the author contested his eligibility for surrender to Croatia in a court of New South Wales. On 12 April 2007, the deputy chief magistrate determined that the author was eligible for surrender to Croatia and the author was remanded in custody. The author appealed to the Federal Court of Australia for review of that decision and applied for bail. On 12 December 2007, the Federal Court of Australia dismissed the bail application.[20] On 3 February 2009, a single judge of the Federal Court of Australia dismissed the author's application for review. The author appealed that decision before the full court of the Federal Court of Australia. On 2 September 2009, the full court issued a judgment, finding that the author had objected to his extradition on the grounds that he might be punished for his political opinions and directed that the author be released from custody. On 4 September 2009, the full court of the Federal Court of Australia made further orders directing a magistrate to order the release of the author. A magistrate ordered the author's release from extradition custody on the same day. On 12 February 2010, the High Court of Australia granted Croatia special leave to appeal the decision of the full court of the Federal Court of Australia. On 30 March 2010, the High Court overturned the 2 September 2009 decision of the full court of the Federal Court of Australia and confirmed the deputy chief magistrate's order of 12 April 2007, determining that the author was eligible for surrender to Croatia. As regards the extradition objection, the High Court of Australia found that to count war service as a mitigating factor was not uncommon and that its application by the courts of Croatia was not "by reason of" the author's political opinions. The author could not be located for some time (42 days) and was arrested again on 12 May 2010. On 13 May 2010, the author was remanded into extradition custody. On 14 September 2010, the author challenged the lawfulness of his further detention before the Federal Court of Australia. On 19 November 2010, the Federal Court dismissed the author's application.

4.9 As regards the proceedings on surrender determination, the author has described further litigation regarding the lawfulness of his detention. The author appealed, inter alia, the 19 November 2010 decision of the Federal Court of Australia. His appeal was dismissed by the full court of the Federal Court of Australia on 30 September 2011. In parallel, the Attorney General sought to secure a speciality assurance, provided by Croatia on 21 September 2011.[21] On 15 November 2012, the Minister for Justice determined that the author was to be surrendered to Croatia. The author challenged the warrant for surrender. On 22 November 2013, the Federal Court set aside the Minister for Justice's determination and surrender warrant for procedural unfairness, as the author should have been consulted on the material provided by Croatia. The author appealed that decision before the full court of the Federal Court and the Minister for Justice cross-appealed. In December 2013, pending the appeal proceedings, the author applied to the full court of the Federal Court for release on bail. The author withdrew the application prior to the determination on the merits. On 12 December 2014, the full court of the Federal Court dismissed the author's appeal, upholding the cross-appeal by the Minister for Justice because the material provided by Croatia had not been new or adverse to the author. The Court thus reinstated the surrender determination of the Minister for Justice.

4.10 On 2 January 2015, the Minister of Justice of Serbia requested that his counterpart in the State Party allow Serbia to prosecute the author. That request was rejected. The author applied for special leave to appeal the decision of the full court of the Federal Court of Australia to the High Court of Australia. After the High Court of Australia had refused special leave to appeal on 15 May 2015, the author had exhausted all domestic remedies available under the Extradition Act. The author was extradited to Croatia on 8 July 2015.

[20] The author submitted three bail applications, in 2006 and 2007.

[21] According to internal legal advice provided on 13 February 2012, international law did not require that the extradition request for the author be supported by prima facie evidence of the alleged conduct.

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

5.1 On 20 July 2023, the author submitted his comments on the State Party's observations, dated 22 May 2023, reiterating his claims originally set out in the complaint of 14 July 2016.

5.2 The author first objected to the State Party's claims that the extradition procedure was a procedure of an administrative nature, which thus circumvented its obligations under the Covenant. The State Party erroneously concluded that the guarantees of the Covenant were applicable only in cases where the rules of criminal procedure applied, which was in breach of article 9 (1) of the Covenant and the Committee's Views in *Griffiths v. Australia*, the conclusions of which the State Party had failed to implement. A cursory reading of the Extradition Act 1988, as updated on 1 September 2021,[22] shows that the legal provisions, which arguably breach articles 9 (1) and (4) of the Covenant, remain in force.[23] If those provisions were in breach of articles 9 (1) and (4) of the Covenant in the case of *Griffiths v. Australia*, they amount to the same breach in the present case.

5.3 The extradition process considers the legal requirement of "special circumstances", which the State Party interpreted in a narrow sense, while its judiciary cannot reflect on individual factors, such as: (a) the person's good behaviour or lack of previous criminal convictions; (b) that the person had not fled from the requesting State after the warrant had been issued; (c) the existence of assurances and a place of residence; and (d) the passage of time between the alleged offences and the extradition request, which, in the present case, was approximately 15 years. The determination of bail within the "special circumstances" thus creates an impermissibly high and arbitrary threshold for the granting of bail.

5.4 Furthermore, the extradition procedure always implies deprivation of liberty, until the final decision on extradition, during which the individuals should enjoy fundamental legal safeguards.[24] It is a bilateral arrangement of judicial cooperation governed by the rules of international criminal law, to which the domestic law also applies, with the Minister for Justice acting as the final decision maker in such cases. The fact that Australia qualifies the extradition procedure as an administrative procedure does not absolve it of responsibility to release a person who is in extradition custody, as soon as possible, or hand him or her over to a judicial authority, with a view to a trial being conducted. The author holds that the fact that his detention lasted for nine years does not meet the above-mentioned guarantees and violates numerous provisions of the Covenant.

5.5 The author recalls the facts of his investigation in Croatia at the request of the Šibenik County Court[25] on suspicion of the commission of war crimes in 1991 and 1993 in Knin, Glina and Benkovac, during the armed conflicts between Croatia and Serbia. The request for extradition of the author submitted by the Ministry of Justice of Croatia on 20 January 2006 confirmed the observance of the principle of specialty. The extradition request was addressed to the Attorney General of Australia.

5.6 The author reiterated the main facts of his arrest and extradition detention, recalling that the extradition procedure in Australia had lasted nine years and six months. After his extradition on 8 July 2015, he was indicted on 31 December 2015 by the County Attorney's Office in Split. On 26 September 2017, the author was found guilty of four criminal offences against humanity and international law and was sentenced to prison for 15 years. The time

[22] See http://www8.austlii.edu.au/cgi-bin/viewdb/au/legis/cth/consol_act/ea1988149/.

[23] Section 15 (3) ("If a person is remanded in custody after making an application for bail, the person cannot make another application for bail during that remand, unless there is evidence of a change of circumstances that might justify bail being granted"); and section 15 (6) ("A magistrate or eligible judge shall not remand a person on bail under this section unless there are special circumstances justifying such remand").

[24] The author argues that individuals facing extradition detention should enjoy all the safeguards under the Covenant, including notification of the accusation, trial within a reasonable time, application of deprivation of liberty (in the context of the right to freedom and security) for the shortest time necessary, the presumption of innocence, the right to an adequate legal remedy and the right not to be subjected to torture or other ill-treatment.

[25] Decision of 12 December 2005.

spent in extradition custody in Australia (from 20 January 2006 to 4 September 2009 and from 12 May 2010 to 8 July 2015) was to be deducted from the prison sentence.

5.7 Furthermore, the author refers to various aspects of the criminal proceedings against him after he was extradited to Croatia, on the basis of decision of Kio-86/05 of 12 December 2005 of the Šibenik County Court to investigate him for war crimes against prisoners of war and war crimes against the civilian population. The author could not be tried for other criminal offences except for those set out in the request for extradition. In his sentence, the author was found guilty on two counts of the four criminal offences against humanity and international law for which he had been indicted.

5.8 In the light of the above, the author asserts that Australia does not possess information that the guarantees provided for under the Extradition Act have been observed in practice, which implies that the principle of specialty was not respected upon the extradition of the author.

5.9 On the procedure initiated by Croatia requesting his extradition, the author reiterates that a person extradited can be prosecuted only for the criminal offence for which the extradition was approved, in accordance with the principle of specialty. The extradited person may not be sentenced for an offence other than that for which the decision on extradition was made by the extraditing State, unless the legal qualification of the offence is altered; however, the factual basis of the criminal offence cannot be changed.[26]

5.10 As regards his claims under article 9, the author noted that, in the proceedings before the authorities of Australia, the grounds for the reasonable suspicion that the author had committed the acts of war crimes were not stated, as the author's whereabouts during the period in question were not reliably established. He reiterates that the length of his extradition detention exceeded the reasonable duration of deprivation of liberty before trial. The right to personal liberty cannot be obstructed by the slowness of the criminal prosecution bodies and courts.

5.11 In conclusion, the author claims that he did not have access to legal remedies that would be effective or available to challenge the legality of his detention, although he formally had at his disposal the right to appeal against the decision determining or extending his detention. The author requested that the Attorney General of Australia review the legality of its decision on extradition and, in that context, request his file from the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, noting that the detailed investigation of the Tribunal had not found any relevant evidence that could lead to the suspicion that he had committed a war crime. The author thus pointed out that the State Party had granted the request for extradition by Croatia although it should have known that he had already been investigated and exonerated by the Tribunal for the same offences and that the Tribunal had reached a conclusion different to that of the courts of Croatia.

State Party's additional observations

6.1 On 16 September 2024, the State Party reiterated its observations submitted on 22 May 2023, arguing that the author's claims were inadmissible or without merit.

6.2 As to the admissibility, the State Party reiterates its original submission that the author's claims with respect to his unfair or discriminatory treatment in Croatia are inadmissible as incompatible with the provisions of the Covenant (art. 2 (1)). The alleged treatment did not occur under the jurisdiction of Australia (rule 99 (b) and (d) of the Committee's rules of procedure). Accordingly, the State Party has not further elaborated upon the author's claims regarding alleged violations of the Covenant arising from his treatment in Croatia.

6.3 The State Party reiterates that extradition procedures are of an administrative nature and that persons subject to extradition custody are detained for administrative reasons, pending a final determination in relation to their surrender. That view is consistent with the Committee's views in its general comment No. 35 (2014) that article 9 (3) of the Covenant

[26] European Convention on Extradition, art. 14 (3).

applies to persons arrested or detained on a criminal charge, and with the meaning of article 9 (3). The State Party invites the Committee to follow the approach in its general comment No. 35 (2014) and in *Griffiths v. Australia* (para. 6.8) by finding that the author's claims with respect to his administrative detention pending extradition are inadmissible *ratione materiae*, given that this provision of the Covenant does not apply in extradition proceedings.

6.4 As regards the claims that the State Party has failed to take the measures requested in *Griffiths v. Australia*, the State Party recalls that, since *Griffiths v. Australia*, the Extradition Act has been amended to enable a magistrate or eligible judge to order that a person may be released on bail to await a determination under section 22 of the Extradition Act on their surrender. Alternatively, a person may apply for bail during judicial review proceedings related to a surrender determination. The author in fact made an application for bail to the Federal Court of Australia during judicial review proceedings on 29 November 2013; however, the author withdrew his application prior to a determination on the merits.

6.5 Furthermore, the State Party argues that the author's claims of a violation of the principle of specialty, in the absence of information on applicable guarantees given to ensure that principle (see paras. 5.5, 5.7 and 5.8 above) should be considered inadmissible as not relating to a violation of any rights set forth in the Covenant (rule 99 (d) of the rules of procedure).

6.6 As to the merits, the State Party has addressed individual elements of the author's claims that the extradition process of Australia violates article 9 of the Covenant in several ways.

6.7 As regards the legal requirements of "special circumstances" and thresholds for granting bail, the State Party reiterates its arguments that, while the factors noted by the author in considering bail applications (such as the person's character; whether he or she had fled the requesting State; guarantees within Australia; and passage of time between the relevant conduct and the issuance of a warrant) are not required to be considered, magistrates and judges in Australia have the discretion to consider them when determining whether there is a real risk of flight (which is the second aspect of the test for when bail should be granted in extradition cases set out in *United Mexican States v. Cabal and Others*). The State Party adds that the threshold for "special circumstances" is appropriately high and not arbitrary. Australia has a very substantial interest in surrendering persons subject to an extradition request in accordance with its treaty obligations.

6.8 In relation to the author's claim that the State Party breached article 9 by detaining him for longer than the shortest necessary time and that his detention exceeded a reasonable duration, the State Party notes that the author's detention in Australia lasted only for the duration of the extradition proceedings and that he was afforded multiple opportunities to seek bail and challenge his detention. The author has not provided any evidence that Australia contributed to undue delay in his proceedings.

6.9 As to the claim of an absence of a reasonable suspicion that the author had committed the criminal acts for which he was charged, the State Party reiterates that, in accordance with the Extradition Act and Regulations, the State Party is able to consider extradition requests received from Croatia pursuant to a no evidence extradition procedure. It notes that the no evidence extradition procedure is consistent with the no evidence model adopted under the Model Treaty on Extradition (art. 5), which acknowledges that different countries have different evidentiary requirements and legal systems and that it is often not the role of the requested State's court to assess the strength of the evidence against a person in extradition proceedings.

6.10 In addition, in response to the author's claims that he lacked effective means to challenge the legality of his detention, the State Party reiterates that the author has failed to provide any evidence to suggest that Australia had violated his rights to review under article 9 (4) of the Covenant. Rather, following his arrest on 19 January 2006, the author made three applications for bail to various magistrates during 2006 and 2007 and a further application to the Federal Court of Australia when seeking review of a magistrate's decision that he was eligible for surrender. However, the application was withdrawn by the author before a determination on the merits. Each of those applications, along with multiple habeas

corpus applications challenging the legality of his detention, were properly considered and were unsuccessful.

6.11 The State Party notes the author's claims under article 2, including that the State Party knew or should have known that the author had already been investigated and exonerated by the International Criminal Tribunal for the Former Yugoslavia. Although such a claim was made under article 2 of the Covenant, the State Party argues that it is not clear what bearing such claim has on the rights set out in article 2. To the extent that such claims may be related to article 14 of the Covenant, the State Party reiterates that those claims are inadmissible.

Author's comments on the State Party's additional observations

7.1 On 4 November 2024, the author submitted his comments on the State Party's additional observations, reiterating the claims from his initial communication of 14 July 2016.

7.2 The author recalls his claims under articles 9 (1), (3) and (4), emphasizing that his long-term detention pending extradition, without charge or trial, amounted to arbitrary detention.

7.3 The author recalls the Committee's jurisprudence in *Kwok v. Australia*[27] and *Griffiths v. Australia*.

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

8.3 The Committee notes that the State Party has not objected to the claim by the author that all available effective domestic remedies have been exhausted. Accordingly, the Committee considers that it is not precluded from considering the author's claims by the requirements of article 5 (2) (b) of the Optional Protocol.

8.4 As regards the author's claims against Australia that it enabled violations of his rights by Croatia after his extradition there, the Committee notes the State Party's objection that such claims are incompatible with article 2 (1) of the Covenant and article 1 of the Optional Protocol and therefore inadmissible *ratione loci*. The Committee recalls its decision in relation to the author's claims against Croatia in which it found his claims inadmissible owing to the failure to exhaust domestic remedies and an abuse of submission.[28] It also recalls that the provisions of the Covenant apply to individuals in the State Party's territory or under its effective control (under its jurisdiction). However, if a State Party takes a decision relating to a person within its jurisdiction, and the necessary and foreseeable consequence is that that person's rights under the Covenant will be violated in another jurisdiction, the State Party itself may be in violation of the Covenant, such as when the individual extradited would be exposed to serious violations of the Covenant (e.g. torture or risk to life) in another jurisdiction.[29] After considering the facts and claims presented in the present case and the inadmissibility of the author's prior communication against Croatia, the Committee considers that article 2 (1) of the Covenant and article 1 of the Optional Protocol constitute an obstacle *ratione loci* to the admissibility of the author's claims against Australia regarding his treatment in Croatia, including the observance of the principle of specialty, and it declares such claims inadmissible as incompatible under article 3 of the Optional Protocol.

[27] CCPR/C/97/D/1442/2005.

[28] CCPR/C/122/D/2859/2016, para. 4.3.

[29] *Kindler v. Canada* (CCPR/C/48/D/470/1991), para. 6.2; and *Judge v. Canada* (CCPR/C/78/D/829/1998), paras. 7.6, 7.8 and 10.9. See also Human Rights Committee, general comment No. 31 (2004), para. 12.

8.5 As regards the author's claims of a violation of article 2 on the basis that the State Party has allegedly failed to take steps to prevent arbitrary detention in the context of extraditions by modifying the Extradition Act, the Committee recalls the State Party's argument that such claim in a general manner is inadmissible, based on the Committee's jurisprudence, which indicates that the provisions of article 2 of the Covenant lay down a general obligation for States Parties and that they do not give rise, when invoked separately, to a claim in a communication under the Optional Protocol.[30] The Committee also recalls that the provisions of article 2 can be invoked only in conjunction with other provisions of the Covenant when the failure by the State Party to observe its obligations under article 2 is the proximate cause of a distinct violation of the Covenant directly affecting the individual who claims to be a victim.[31] The Committee observes that the author has alleged a violation of his rights under article 9 of the Covenant resulting from application of the State Party's Extradition Act in his case. In that context, the Committee does not consider that an examination of the alleged violation of the general obligations by the State Party under article 2 of the Covenant, read in conjunction with article 9, would be different from the examination of a violation of the author's rights under article 9 of the Covenant. Accordingly, the Committee considers that the author's claims in that regard are incompatible with article 2 of the Covenant and inadmissible under article 3 of the Optional Protocol.

8.6 Furthermore, recalling its jurisprudence, the Committee considers that, although the Covenant does not require that extradition procedure be judicial in nature, extradition as such does not fall outside the protection of the Covenant. On the contrary, several provisions, including articles 6, 7, 9 and 13 of the Covenant, are applicable in relation to extradition.[32]

8.7 As regards the claims in relation to article 7, the Committee notes the State Party's argument that the author has not provided any explanation, facts or evidence as to how his detention affected his health or well-being or that the conditions of his detention would have amounted to a violation of article 7, and that such claims have not been sufficiently substantiated and should be considered inadmissible. The Committee considers that the author has not sufficiently explained how his detention affected his health or wellbeing. As regards article 10 (1), the State Party objected to the claim that the author's allegation that his excessive detention deprived him of human dignity as he did not furnish any supporting information or evidence, and considered that the claim had not been substantiated and should be dismissed as inadmissible. In that regard, the Committee considers that the author has not submitted sufficient information about the conditions of his detention. As regards article 15, the Committee considers that the author has not submitted any information to substantiate his claims of a violation of his rights under that article. The Committee notes the State Party's argument that the author has not sufficiently substantiated his claim that the domestic no evidence standard in extradition proceedings and the author's detention in extradition custody violated his right not to be discriminated against under articles 2 (1) and 26 of the Covenant. The Committee considers that the author has not provided sufficient information or evidence on the lack of a prima facie case against him, failing to establish how he specifically was affected or disadvantaged by the no evidence extradition procedure under the Extradition Act. In the light of the above information, the Committee finds that the author's claims under articles 2 (1), 7, 10 (1), 15, 26 and have not been sufficiently substantiated; such claims are hence declared inadmissible under article 2 of the Optional Protocol.

8.8 As to the author's claims under article 14, the Committee recalls that, even when decided by a court, the consideration of an extradition request does not amount to the determination of a criminal charge within the scope of article 14 of the Covenant. While article 14 (1) does not provide individuals subject to extradition with access to a court or tribunal,[33] in situations when domestic law mandates a judicial body with a judicial task, the first sentence of article 14 (1) generally applies, including the right to equality before courts

[30] *Poliakov* v. *Belarus* (CCPR/C/111/D/2030/2011), para. 7.4.

[31] Ibid., para. 7.4; and *Griffiths v. Australia*, para. 6.4.

[32] *Kim v. New Zealand* (CCPR/C/139/D/4170/2022), para. 7.13; *Griffiths v. Australia*, para. 6.5; *Everett v. Spain* (CCPR/C/81/D/961/2000), para. 6.4; and *Cox v. Canada* (CCPR/C/52/D/539/1993), para. 16.3. See also Human Rights Committee, general comment No. 32 (2007), paras. 7 and 17.

[33] See Human Rights Committee, general comment No. 32 (2007), para. 17. See also *Zundel v. Canada* (CCPR/C/89/D/1341/2005), para. 6.8; and *Esposito v. Spain* (CCPR/C/89/D/1359/2005), para. 7.6.

and tribunals; thus, the principles of impartiality, fairness and equality enshrined therein must be respected.[34]

8.9 As regards the additional claim under article 14 that the author was not afforded an opportunity to review and challenge evidence regarding his extradition, the Committee notes the State Party's argument that the extradition proceedings were conducted in accordance with the law, namely the Extradition Act, and that he was extradited after he had been found eligible for surrender by the domestic courts, findings that were confirmed by the final determination of the Minister for Justice. The Committee observes that the author has not argued that the domestic authorities acted in bad faith or abused their power in reaching the decision to extradite him. The Committee notes the State Party's arguments that the author was afforded the opportunity to submit and challenge evidence concerning his extradition and did not submit specific arguments to the contrary. In addition, the author used the available legal remedies to have his extradition case reviewed at several instances by the competent authorities, such as the Federal Court, the full court of the Federal Court, the High Court and the Minister for Justice, and had several eligibility and surrender decisions reversed on appeal and had been released from extradition detention in 2009. The Committee therefore considers that the author has not substantiated, for the purposes of admissibility, that part of the communication, which it declares inadmissible pursuant to article 2 of the Optional Protocol.[35]

8.10 As concerns the claims under article 9, the State Party first argued that the author's claims under article 9 (3) of the Covenant were inadmissible *ratione materiae*, as applicable in the criminal proceedings (see para. 6.3 above); and that any claims under article 9 (5) had not been substantiated by specific allegations; however, the Committee observes that the author has made claims primarily under article 9 (1) and (4) of the Covenant. The Committee considers that the author has sufficiently substantiated his claims under article 9 (1) and (4) of the Covenant in the context of extradition detention in Australia, owing to the length of his detention (over eight years and nine months) and the denial of four bail applications, and declares those claims admissible pursuant to article 2 of the Optional Protocol.

8.11 The Committee accordingly decides that the remaining claims, under article 9 (1) and (4) of the Covenant, are admissible and proceeds to examine them on the merits.

Consideration of the merits

9.1 The Committee has considered the communication in the light of all the information made available to it by the parties, in accordance with article 5 (1) of the Optional Protocol.

9.2 The Committee notes the author's claim that his detention was excessively long, unlawful and arbitrary in terms of article 9 (1) of the Covenant, as he was arrested on 19 January 2006 and placed in extradition detention on 20 January 2006, which extended for over eight years and nine months, until 8 July 2015 when he was extradited to Croatia. The author has also claimed that, by not remanding him on bail in such circumstances, Australia violated article 9 (1) and (4) of the Covenant.

9.3 The Committee also notes the State Party's arguments that the author's detention was not arbitrary, given that it was in compliance with the law and was reasonable, necessary and justified for the purpose of extradition. During his uninterrupted detention from 20 January 2006 to 4 September 2009 (three years and seven months) the author appealed the findings of the State and Federal Courts, according to which he was eligible for surrender from Australia to Croatia. The author was released from detention between 4 September 2009 and 12 May 2010. Thereafter, the author was detained in extradition detention for over five years and one month, from 12 May 2010 until 8 July 2015, repeatedly resorting to domestic remedies to challenge his extradition detention (see paras. 4.9 and 4.10 above). The Committee notes the State Party's observation that the length of the proceedings resulted from the author's exercise of his right to contest his extradition and detention, including the bail applications, and from the comprehensive nature of the reviews conducted by the State

[34] See Human Rights Committee, general comment No. 32 (2007), para. 7. See also *Everett v. Spain*, para. 6.4; and *Griffiths v. Australia*, para. 6.5.

[35] See, e.g., *Everett v. Spain*, para. 6.4.

Party's authorities. The Committee also notes that, because the State Party does not have a bilateral extradition treaty with Croatia, the proceedings were conducted under the Extradition Act 1988, as amended, which provides for a sequential decision-making process (a judicial eligibility decision, followed by a ministerial surrender decision, both allowing for several avenues to appeal).

9.4 Article 9 (1) of the Covenant provides that no one may be subjected to arbitrary arrest or detention. The Committee refers to its general comment No. 35 (2014), in which it stated that an arrest or detention may be authorized by domestic law and nonetheless be arbitrary (para. 12). The notion of "arbitrariness" is not to be equated with "against the law", but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law, as well as elements of reasonableness, necessity and proportionality.[36] The Committee considers that, in an overall assessment regarding arbitrariness in the duration of extradition proceedings, it is relevant to consider whether the State Party conducted the proceedings with due diligence, the causes of any delays and whether the detention has continued beyond the period for which the State Party can provide appropriate justification.[37]

9.5 The Committee notes that the decisions to detain the author were based on: (a) the seriousness of the crimes of which the author was accused (alleged war crimes); (b) the strength of the evidence as described in the extradition request; and (c) the real flight risk he posed, which was based on his possession of a foreign passport under a false identity and the fact that he could not be located for 42 days before he was detained for the second time, on 12 May 2010 (see para. 4.3 above). Such grounds of detention constitute adequate individual justification, in the view of the Committee.[38] The Committee observes that the author submitted four bail applications, three of which were rejected as he had presented insufficient evidence to establish special circumstances in order to apply alternatives to his extradition detention. The fourth bail application was withdrawn by the author before it was considered on its merits (see paras. 4.9 and 6.4 above).

9.6 Furthermore, the Committee notes that the State Party does not challenge the information given by the author that detention pending extradition is not limited in time under Australian law and that persons are to be held in custody whether or not their detention is necessary. In that connection, the Committee takes note of the author's argument that neither the domestic law nor the case law of the national courts provide for the duration of the eligibility determination or the extradition determination by the Minister for Justice, except for an indication that the latter is expected to take place as soon as reasonably practicable. While noting that the eligibility determination took over five years, given the number of appeals by the author, and that the surrender determination took over two years, from 12 November 2012 to 15 December 2014 (see paras. 4.8–4.10 above), following which the author applied for leave to appeal, which was rejected by the High Court of Australia on 15 May 2015 (see para. 4.10 above), the Committee considers that the State Party has demonstrated that the periods of the eligibility determination and surrender determination met the criteria of reasonably practicable, given the appeals submitted by the author and the Minister for Justice and that the author's continued detention was necessary and justified during those particular periods.

9.7 After reviewing the detailed timeline of events and the basis of the decisions that were provided, the Committee considers that the author's extradition detention was lawful and justified by the factors referred to above, as it was appropriate, reasonable, necessary and proportionate given the gravity of the offences with which the author was charged, the real risk of his absconding, the numerous appeals exercised by the author against the decisions on his extradition detention and the fact that the author had not established the existence of special circumstances for release on bail. The Committee also considers that nothing suggests that the State Party's authorities unnecessarily delayed the author's detention or otherwise acted without due diligence in advancing the extradition proceedings in conformity with

[36] *M.I. et al. v. Australia* (CCPR/C/142/D/2749/2016), para. 10.3; and *Cayzer v. Australia* (CCPR/C/135/D/2981/2017), para. 8.10.

[37] *C. v. Australia* (CCPR/C/76/D/900/1999), para. 8.2.

[38] *Griffiths v. Australia*, para. 7.3.

domestic law while the author was detained.[39] The Committee recalls that the author had several opportunities to contest his detention through processes that resulted in reasoned decisions by courts of various instances justifying his continued detention. Accordingly, the Committee finds that the periods of the author's detention were not arbitrary or unlawful and did not violate article 9 (1) of the Covenant.

9.8 The Committee notes the author's claim, under article 9 (4) of the Covenant, that there were no effective and available remedies for him to obtain a judicial review of his continuous detention, which had become arbitrary owing to its disproportionate length. It notes the information of the State Party on the availability of review proceedings and their use by the author through repeated bail applications, subsequent appeals against the detention orders and leaves for appeals.

9.9 Referring to the State Party's Extradition Act and the case law of the High Court, the Committee observes that release on bail can be granted by a court if the person concerned establishes the existence of special circumstances, which should be extraordinary and not factors applicable to all persons facing extradition, and that the person demonstrates strong prospects of success for the bail application. It notes the author's explanation that the length of detention as such does not amount to special circumstances. The Committee also notes the State Party's argument that, although a relatively high threshold was set for a successful bail application, there was no requirement under article 9 (4) of the Covenant for a court to be able to order a release on the basis of the duration of detention alone, provided that detention was justifiable under domestic law. It further notes that the State Party has not been disputed that persons facing extradition are generally held in custody; however, such individuals are not mandatorily held in prison, since the Extradition Act was amended to empower judges to order that a person may be released on bail to await a ministerial determination on surrender.[40]

9.10 The Committee recalls that a judicial review of the lawfulness of detention under article 9 (4) is not limited to mere compliance of the detention with domestic law, but must include the possibility to order a release if the detention is incompatible with the requirements of the Covenant, particularly those of article 9 (1) thereof.[41] What is decisive for the purposes of article 9 (4) is that such a review is, in its effects, real and not merely formal.[42] The Committee notes the State Party's arguments that the term "lawfulness" means lawful under domestic law; that the author repeatedly applied for habeas corpus; that the author exercised several opportunities to seek review of the legality of his detention under domestic law; that he was released from extradition detention in 2009; and that the author finally applied for bail before the Federal Court of Australia on 29 November 2013 (the application was subsequently withdrawn before its consideration on the merits).[43] The Committee also notes the State Party's argument that *Griffiths v. Australia* cited *Vasiljković v. Australia* only as a source for application of section 19 (5) of the Extradition Act, without admitting any violation. In the present case, the Committee observes that, although the author was detained pending extradition for almost nine years in total, he benefited from multiple avenues for obtaining substantive judicial review of the continued compatibility of his detention with the Covenant, and was released on that basis between 4 September 2009 and 12 May 2010. The Committee thus considers that the author had the opportunity to challenge the lawfulness of his detention throughout the proceedings, both in law and in practice, in accordance with article 9 (4) of the Covenant.

10. The Committee concludes that the author's extradition detention was not arbitrary or unlawful, and that the rejections of his bail applications were not arbitrary and did not violate article 9 (1) and (4) of the Covenant.

[39] *Kim v. New Zealand*, para. 8.20.

[40] The circumstances have changed since *Griffiths v. Australia*, as the amendments entered into force on 20 September 2012. However, according to the State Party's submission, the legislative amendment did not affect the author.

[41] *Baban et al. v. Australia* (CCPR/C/78/D/1014/2001), para. 7.2; and *Griffiths v. Australia*, para. 7.5.

[42] E.g., *A v. Australia* (CCPR/C/59/D/560/1993), para. 9.5.

[43] Based on the Extradition and Mutual Assistance in Criminal Matters Legislation Amendment Act 2012, section 49C of the Extradition Act, which extended availability of bail in the later stages of extradition process, during judicial review proceedings relating to a surrender determination.

11. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts before it do not disclose a violation of the author's rights by the State Party under article 9 (1) and (4) of the Covenant.