



International Covenant on Civil and Political Rights

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Human Rights Committee

Views adopted by the Committee under the Optional Protocol, concerning communication No. 3720/2020**, ***, ****

<i>Communication submitted by:</i>	G.T.V.B. (represented by counsel, Johannes Jeremias Weldam)
<i>Alleged victim:</i>	The author
<i>State Party:</i>	Kingdom of the Netherlands
<i>Date of communication:</i>	11 November 2019 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State Party on 12 March 2020 (not issued in document form)
<i>Date of adoption of Views:</i>	11 March 2026
<i>Subject matter:</i>	Compulsory DNA profiling of child in conflict with the law
<i>Procedural issue:</i>	Admissibility – lack of substantiation
<i>Substantive issues:</i>	Right to a fair trial for a juvenile person; right to privacy
<i>Articles of the Covenant:</i>	14 (4) and 17
<i>Article of the Optional Protocol:</i>	2

1. The author of the communication is G.T.V.B.,¹ a national of the Kingdom of the Netherlands, born in Utrecht on 13 August 2003. He claims to be a victim of the violations by the Kingdom of the Netherlands of his rights under articles 14 (4) and 17 of the Covenant, as a minor convicted of criminal offences, as he was subjected to mandatory collection of tissue samples for the determination and processing of his DNA profile. The Optional Protocol entered into force for the State Party on 11 March 1979. The author is represented by counsel.

* Reissued for technical reasons on 5 June 2026.

** Adopted by the Committee at its 145th session (2–19 March 2026).

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

**** An individual opinion by Committee member Hernán Quezada Cabrera (concurring) is annexed to the present Views.

¹ Since the author was a minor at the time of submission, his identity has been anonymized.



Facts as submitted by the author

2.1 On 4 April 2018, the author, who was 14 years old at the time, was convicted of theft on two counts by the juvenile court judge of the Central Netherlands District Court in Utrecht. He was ordered to carry out 40 hours of community service, of which 20 hours were suspended for a probation period of two years.

2.2 On 12 July 2018, the public prosecutor issued an order to collect cellular (biological) material from the author, based on the DNA Testing (Convicted Persons) Act. This order was executed on 16 August 2018 by police in Utrecht, who took a tissue sample from the author.

2.3 On 17 August 2018, the author filed an objection (appeal) against the determination and processing of his DNA profile in the DNA database. On 22 October 2018, the juvenile district court issued a decision dismissing the author's objection as unfounded. The court ruled that the author's case did not fall under article 2 (1) (b) of the DNA Testing (Convicted Persons) Act, which provides for exceptions from the DNA collection procedure if it can be reasonably assumed that keeping a DNA profile of the individual would not be of any significance in the prevention, investigation, prosecution and trial of criminal offences committed by the convicted person, taking into account the nature of the crime and the circumstances of its perpetration.

2.4 On 20 December 2018, the author filed a claim for compensation through a letter addressed to the Minister of Justice and Security. The author's compensation claim was examined on the substance, but was rejected on 30 July 2019, as the Minister found no reason to acknowledge liability. The Minister claimed that there was a legislative proposal to amend the DNA Testing (Convicted Persons) Act to exclude from its scope minors who had been sentenced to less than 40 hours of community service. Based on the legislative proposal, in cases where individuals were sentenced to 40 hours of community service or more, thus indicating that the cases involved more serious offences, the collection of cellular material would remain permissible and proportionate to the pursued aims. The author noted that as he had been sentenced to 40 hours of community service, he would not fall under the exempted category even under the proposed legislative amendment. The Minister disregarded the author's argument in that regard, claiming that only 20 hours of his community service was enforceable, whereas the rest had been suspended for a probation period. For those reasons, the Minister could not conclude that there had been a wrongful act on the part of the authorities that could have served as a basis for compensation.

2.5 The author claims that he has exhausted all available domestic remedies; no appeal against the decision of the district court of 22 October 2018 is permissible. The same matter has not been submitted to another procedure of international investigation or settlement.

Complaint

3.1 The author claims a violation of his rights under articles 14 (4) and 17 of the Covenant. He asserts that article 2 of the DNA (Convicted Persons) Testing Act, as stipulated at the time of the submission of the complaint, leaves no discretion to the public prosecutor to decide whether it is necessary to collect cellular material from an individual once the legal preconditions are met. The public prosecutor is obliged to take cellular material, without any room for balancing interests by taking into account, for example, the age of the convicted person. The law is thus not in compliance with the Committee's Views in *N.K. v. Netherlands*.² In those Views, the Committee held that the State must indeed distinguish between adults and minors, in view of the psychological development and emotional and educational needs of the minors. This distinction was not observed in the present case.

3.2 The author adds that given his young age, the limited seriousness of the offences committed and the light sentence that was imposed – as half of the community service was suspended – it was not necessary to collect cellular material from him for the purpose of determining and processing his DNA profile. Even though there is a legislative amendment

² CCPR/C/120/D/2326/2013/Rev.1.

proposed by the State Party to comply with the Committee's Views,³ it is not known when the amendment is going to take effect. In that respect, the author underlines that should he reach the age of majority by that time, his cellular material and DNA profile would not be stored "only" for 10 to 15 years, as envisioned in the legislative amendment,⁴ but for 20 to 30 years, based on the preceding regulations, which exacerbates the violation of his rights. The pending legislative amendment should have also led the district court to declare the author's objection to the mandatory DNA testing as well-founded, considering the author's age. The interests of the author as a minor should have been the first consideration for the juvenile court judge.

3.3 The author further claims that the interference in his private life, in violation of article 17 of the Covenant, was not proportionate to the purpose of DNA collection, that is, the prevention and investigation of serious criminal offences. As a remedy, the author requests the restoration of his rights, including adequate compensation.

State Party's observations on admissibility and the merits

4.1 On 11 December 2020, the State Party submitted its observations on admissibility and the merits. It argued that the communication should be considered inadmissible or without merit.

4.2 The State Party recalls the facts and indicates that the juvenile court judge at the Central Netherlands District Court (Utrecht) had convicted the author, in the judgment of 4 April 2018, of burglary and theft. The author was sentenced to 40 hours of community service (or 20 days in a youth detention facility), of which 20 hours (or 10 days of detention) were suspended with a probation period of two years. The author did not lodge an appeal against the judgment.

4.3 As a result of the judgment of 4 April 2018, the Public Prosecution Service, on 12 July 2018, ordered the author to provide cellular material.⁵ On 16 August 2018, cellular material was obtained by the police from the author, by means of a buccal swab, to determine his DNA profile and process it in the DNA database.

4.4 On 17 August 2018, the author filed an objection with the district court⁶ against the determining and processing of his DNA profile. The author's counsel argued that the collection of cellular material from the author and the determining of his DNA profile, and its inclusion in the DNA database, were not proportionate to the legitimate aim of the prevention and investigation of serious crimes. He referred to the Committee's Views in *N.K. v. Netherlands*⁷ and *S.L. v. Netherlands*⁸ and claimed that the collection of cellular material was not necessary given his age, the offences committed and the sentence imposed.

4.5 The State Party further submits that the public prosecutor informed the authorities that, in the light of the developments regarding the collection of DNA from convicted minors, the Public Prosecution Service had drawn up guidelines, setting out that no DNA should be

³ The author makes reference to a letter dated 3 April 2018 from the Minister of Justice and Security addressed to the parliament, from which it appears that the Views in *N.K. v. Netherlands* (CCPR/C/120/D/2326/2013/Rev.1) and *S.L. v. Netherlands* (CCPR/C/120/D/2362/2014) provided the Government with the reason to amend the Act. The author also alleged that the Government no longer supported the compulsory collection of cellular material from minors who have been sentenced to 40 hours (rather than up to 40 hours) of community work. While the author was sentenced to 40 hours of community work, with a half of the sentence conditionally suspended, the unconditional part of the community service was only 20 hours.

⁴ As articulated by the Minister of Justice and Security in a letter to the author dated 30 July 2019 (see para. 4.8 of the present document) in the context of the intended legislative amendment, in which the Minister stated that the new halved retention period would also apply to convicts whose cellular material and DNA profile were already stored in the DNA database, but who were still minors at the time the amendment entered into force.

⁵ Under article 2 (1) of the DNA Testing (Convicted Persons) Act.

⁶ Pursuant to article 7 of the DNA Testing (Convicted Persons) Act.

⁷ CCPR/C/120/D/2326/2013/Rev.1

⁸ CCPR/C/120/D/2362/2014.

collected from minors sentenced to an alternative sanction of 40 hours or less.⁹ This applies only in case of first-time offenders. The public prosecutor argued that in the case concerned, however, there had been recidivism, as the author had been sentenced for two separate offences: burglary and theft. Furthermore, he had been ordered to perform community service previously, pursuant to penalty orders, on 6 September 2016 and 4 January 2017, for multiple violations of articles 310 and 311 of the Criminal Code. The public prosecutor then argued that the author's objection to the DNA testing order should be declared unfounded.

4.6 On 22 October 2018, the district court declared the author's objection unfounded, finding that the aim of the DNA Testing (Convicted Persons) Act was to enable the efficient investigation of any criminal offence that a convicted person had committed or might commit in the future. The court held that the basic principle was that cellular material should be collected from every convicted person, as stipulated in article 2 (1) of the Act. The public prosecutor is obliged to issue an order to that end unless one of the exceptions listed in article 2 (1) applies. The district court held that there is no place in the Act for a further weighing of interests.

4.7 The district court nevertheless took into consideration the counsel's argument that taking cellular material and determining the author's DNA profile was not proportionate, given the author's young age. However, the district court saw no reason to rule that the collection of DNA was not justified, attaching importance to the fact that the author was not a first-time offender. The conviction of 4 April 2018 related to two offences, and the author had committed two similar property offences in 2016 and 2017. The court found that that underlined the necessity of protecting the public interest. No appeal against the district court's judgment was possible.

4.8 As concerns the claim for compensation for unlawful government action, which was submitted by the author on 20 December 2018,¹⁰ the Minister of Justice and Security informed the author, in a letter dated 30 July 2019, that he saw no reason to acknowledge responsibility or award compensation. In the Minister's view, the mere collection of DNA material based on the Act was not unlawful. Furthermore, the interference with the author's privacy was proportionate to the legitimate purpose of the prevention of criminal offences and the investigation, prosecution and trial of suspects. The Minister noted that the author had been sentenced to an alternative sanction of 40 hours of community service and that his case would therefore not be among those in which cellular material would no longer be collected under the amended legislation. Finally, the Minister noted that the new, halved retention period would also apply to convicted persons whose cellular material and DNA profile had already been stored in the database, but who would still be minors when the amendment entered into force.

4.9 The State Party also elaborated on the applicable law and policy. The legislative basis for the collection of cellular material for the purpose of determining and processing DNA profiles of persons convicted of certain offences is the DNA Testing (Convicted Persons) Act, the DNA (Criminal Cases) Tests Decree and the DNA (Criminal Cases) Tests Order. In the judgment of 4 April 2018, the author was convicted for offences that carry a penalty of four years' imprisonment or more; however, he was sentenced to 40 hours of community service. Section 2 (1) of the Act provides the legislative basis for the public prosecutor to order the collection of cellular material. Section 2 (6) of the Act states that DNA profiles may be processed only in the interest of the prevention, investigation, prosecution and trial of criminal offences.¹¹

⁹ The guidelines referred to were not developed until after the Supreme Court's judgment of 7 April 2020; in the present case, the applicable range of the number of hours of the alternative sanction was up to and including 39 hours, not 40 or less as stated by the State Party.

¹⁰ The author's claim was addressed to the Ministry of Foreign Affairs, which forwarded it to the Ministry of Justice and Security.

¹¹ Further rules on the processing of DNA profiles and cellular material are laid down in the DNA (Criminal Cases) Tests Decree, including the possibility for the convicted person to raise an objection to the collection of tissue samples. The Decree also contains rules on the destruction of cellular material and DNA profiles. Article 18 of the Decree sets the time limits for the destruction of DNA profiles of suspects and convicted persons. The retention periods at the time were 20, 30 and 80 years.

4.10 In addition, the State Party referred to the announced amendments to legislation. The Committee's Views in *N.K. v. Netherlands* prompted the Government to reassess the rules. In a letter to the parliament dated 3 April 2018, the Minister of Justice and Security informed the House of Representatives of two planned changes concerning the mandatory collection of cellular material from convicted minors for DNA testing and the processing of their DNA profiles. First, the material would no longer be taken from minors sentenced to an alternative sanction of up to and including 39 hours. A minor might be sentenced to an alternative sanction of 40 hours or more for serious offences. In those circumstances, it was proportionate for cellular material to be collected from minors and for the resulting DNA profile to be stored in the DNA database, regardless of whether all or part of the community service order was suspended. The Minister's letter announced that the question of whether the amended legislation should distinguish between first-time offenders and habitual offenders would be examined. Second, the retention periods for biometric, judicial and criminal case data of minors would be halved. As indicated by the Minister, that would fulfil the purpose of storing the data, that is, it would help in solving any cases involving future or past offences committed by these minors and would help to change their behaviour by deterring them from committing further crimes. The proposed amendments would consider the special position of minors and make the applicable legislation more proportionate.

4.11 The State Party also provided examples of national case law, including a judgment issued by the Supreme Court, dated 13 May 2008, on the collection of DNA from convicted minors under the DNA Testing (Convicted Persons) Act, referring to the Convention on the Rights of the Child. On 7 April 2020, the Supreme Court issued a cassation judgment on the collection of DNA from convicted minors under the Act, in the interest of uniform application of the law.¹² The Supreme Court cited and upheld the judgment of 13 May 2008. It held that, while the Act did not distinguish between adults and minors, the fact that a convicted person was a minor should be considered when assessing whether special circumstances existed. Other relevant factors could also be taken into account, such as whether the determining and processing of the DNA profile was evidently disproportionate given the offender's status as a minor at the time the offence was committed; whether the risk of recidivism was small; the age of the convicted person at the time of committing the offence; and the existence of previously committed relevant offences. The Supreme Court also upheld that the young age of the convicted person concerned and the fact that he was a first-time offender did not in themselves warrant the conclusion that DNA testing was not justified in that case, and that the findings had not erred in law; in that regard, the appeal failed.

4.12 In response to the Supreme Court's judgment of 7 April 2020, the Public Prosecution Service established an internal assessment framework for its forensic officers who assess whether to issue an order to collect cellular material on the grounds of the Act. Accordingly, the forensic officers, in assessing the special circumstances applicable to minors, always take account of the minors' age. The assessment is conducted in two steps. The first step involves determining whether an order pursuant to the Act is evidently disproportionate; if it is deemed to be evidently disproportionate, no such order is issued. In principle, this is the case if the community service order or training order that is imposed involves service or training of less

Pursuant to articles 16 and 17 of the Decree, the Netherlands Forensic Institute must destroy the DNA profile of a person who can no longer be regarded as a suspect in relation to an offence as defined in article 67 (1) of the Code of Criminal Procedure. The Institute must also destroy the tissue sample from which the DNA profile was obtained and the copy of the report.

¹² See <https://uitspraken.rechtspraak.nl/details?id=ECLI:NL:HR:2020:626> (in Dutch). The Advocate General stated two reasons for filing an appeal in cassation. First, the case law on notices of objection against the determination and processing of the DNA profile of convicted minors remained strongly divided. Second, the Views of the Committee in two cases, adopted after the judgment of the Supreme Court of 13 May 2008, had raised the question of whether the judgment of the Supreme Court should be re-examined, prompting the appeal. In essence, the appeal in cassation raised the issue of whether the convicted person's status as a minor at the time of the commission of a criminal offence should be considered in assessing whether an exception stipulated in article 2 (1) (b) of the Act applied, that is, whether it could reasonably be supposed that the determination and processing of the DNA profile, given the special circumstances in which the offence was committed, could not be relevant to the prevention, investigation, prosecution and trial of criminal offences committed by the convicted person.

than 40 hours (up to 39 hours, regardless of whether all or part of the sentence is suspended). Exceptions can be made. The second step involves assessing the risk of recidivism in conjunction with other circumstances, such as the type of sentence and its severity, the type of offence and the convicted person's age. If the risk of recidivism is small, the forensic officer may decide not to issue a DNA-testing order.

4.13 As regards the admissibility, the State Party argues that the communication is inadmissible because it is manifestly ill-founded. Regarding the author's claims under article 17 of the Covenant, the State Party submits that the provision does not guarantee absolute protection of everyone's rights to privacy, honour and reputation from arbitrary or unlawful interference and attacks. Although collecting and storing cellular material and determining and processing DNA profiles both constitute interference with the exercise of the right to privacy,¹³ as also stipulated in the Committee's jurisprudence,¹⁴ such interferences are permitted if they are provided for by or pursuant to the law, serve a legitimate aim and are necessary and proportionate.¹⁵

4.14 The State Party submits that the interference was provided for by law,¹⁶ namely the Act, which forms the statutory basis for an interference with physical integrity and privacy. The author does not dispute the lawfulness of such interference. The author was sentenced to 40 hours of community service; hence the interference would still have been lawful under domestic law, including under the new rules. In the case concerned, the Public Prosecution Service and the district court had considered the risk of recidivism and the previously committed relevant offences, in accordance with the judgment of the Supreme Court of 7 April 2020. The interference also served a legitimate aim, as the objective of the Act is to assist in the prevention, investigation, prosecution and trial of criminal offences committed by convicted persons.¹⁷ DNA records have made substantial contributions to the investigation of criminal offences in recent years, as acknowledged in the case law of the European Court of Human Rights,¹⁸ and such records also serve to protect the rights and freedoms of others, such as the victims of serious violent and sexual offences. The collection of DNA material under the Act serves a legitimate aim and is an appropriate measure for achieving this aim. The author does not dispute this. The State Party also submits that the European Court of Human Rights and the Committee had different interpretations of the respective international frameworks regarding the collection of DNA from convicted minors on the grounds of the Act,¹⁹ and concludes that the interference in the case concerned was necessary and proportionate.

4.15 As regards safeguarding necessity and proportionality in domestic law and policy, the State Party recalls that in response to the Views, the Minister of Justice and Security announced an amendment to legislation to revise the domestic law on the mandatory collection of cellular material for DNA testing to ensure that it was more proportionate in regard to minors and to reflect the findings of the Committee. The Views also informed the development of the case law of the Supreme Court, based on which the district courts must,

¹³ See European Court of Human Rights, *Van der Velden v. the Netherlands*, Application No. 29514/05, Decision, 7 December 2006, and *S. and Marper v. the United Kingdom*, Application Nos. 30562/04 and 30566/04, Judgment, 4 December 2008.

¹⁴ See *S.L. v. Netherlands* and *N.K. v. Netherlands*, para. 9.3, Views in which the Committee refers to *Van der Velden v. the Netherlands* and *S. and Marper v. the United Kingdom*.

¹⁵ See *S.L. v. Netherlands* and *N.K. v. Netherlands*.

¹⁶ See Human Rights Committee, general comment No. 16 (1988) on the right to privacy.

¹⁷ Article 2 (6) of the Act.

¹⁸ *S. and Marper v. the United Kingdom*, para. 48.

¹⁹ The European Court of Human Rights, in *Van der Velden v. the Netherlands*, ruled in general that the legislation of the Kingdom of the Netherlands on testing the DNA of convicted persons met the requirements set out in article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights). In 2009, in *W. v. the Netherlands* (Application No. 20689/08), the Court declared inadmissible the application of a minor who had objected to the processing of his cellular material; the applicant had invoked, inter alia, article 8 of the European Convention on Human Rights. On the other hand, the Human Rights Committee, in its Views in *S.L. v. Netherlands* and *N.K. v. Netherlands*, came to a different conclusion. The Committee found that, although lawful under domestic law, the interference in the authors' privacy was not proportionate to the legitimate aim of prevention and investigation of serious crimes.

where a convicted person was a minor at the time of committing an offence, take that circumstance into account. In the Supreme Court's view, a relevant factor in this regard may be whether the determination and processing of the DNA profile is evidently disproportionate. Moreover, following the cassation judgment of the Supreme Court, taking minority status into account as part of the decision is in fact now a requirement. However, minority status is not a decisive factor in all cases. As in the present case, other considerations may be decisive in the assessment of whether a DNA testing order is justified.

4.16 The State Party further asserts that the interests of the author were sufficiently taken into consideration. DNA collection involves a very minor interference with personal integrity. Cells are obtained from the inside of the cheek, through the use of a buccal swab. This measure is useful and effective in the investigation of criminal offences and the individuals concerned suffer no adverse consequences from the method used as long as they have not committed and do not commit any other criminal offences. Moreover, both the cellular material and the DNA profile are codified and stored anonymously. Such interference was therefore necessary and proportionate, bearing in mind the relevant safeguards enjoyed by the author. The State Party concludes that there was no violation of article 17 of the Covenant.

4.17 As regards the author's claims under article 14 (4), the Covenant requires that in the case of "juvenile persons" procedures should take account of their age and the desirability of promoting their rehabilitation. As stated by the Committee, "juveniles need special protection" and States should take measures to establish "an appropriate juvenile criminal justice system", to ensure that "juveniles are treated in a manner commensurate with their age".²⁰ In regard to article 14 (4), the author claims that the State Party did not comply with its obligation to distinguish between adults and minors in view of the psychological development and emotional and educational needs of minors.

4.18 The State Party points out that the DNA Testing (Convicted Persons) Act does not make a general distinction between juveniles and adults. The State Party submits that it would not be in the interests of children to make an exception in the Act for minors, and that no such exception can be derived from the Convention on the Rights of the Child.²¹ Nevertheless, the legislation provides for the public prosecutor to weigh the interests involved before ordering cellular material to be collected for DNA testing. In the present case, the author's young age was addressed in the domestic proceedings, but this circumstance was not found to be decisive by the court; appropriate weight was attached to the circumstance that the author was not a first-time offender and had previously committed similar offences. The State Party holds that sufficient consideration was given to the interests of the author and there is no reason to conclude that article 14 (4) of the Covenant was violated.

Author's comments on the State Party's observations

5.1 On 26 March 2021, the author submitted his comments on the State Party's observations.

5.2 The author alleges that the so-called assessment framework applied by the Public Prosecution Service, to determine which minors are subjected to the collection of cellular material for establishing and processing a DNA profile, has not been made publicly available. As the author is not aware of these guidelines, he cannot comment on their content. He suggests the Committee could request the State Party to make the guidelines available for the author to respond to them.

5.3 As for the legislative amendments mentioned in the letter dated 30 July 2019 from the Minister of Justice and Security, the State Party fails to acknowledge that it will take years for the new act to take effect. Three years have passed since the announcement, on 3 April 2018, of the Minister's intended legislative change and there is still no prospect of the new

²⁰ Human Rights Committee, general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, paras. 42 and 43.

²¹ See also Supreme Court of the Kingdom of the Netherlands, Judgment LJN BC8231, 13 May 2008. Available at <https://uitspraken.rechtspraak.nl/details?id=ECLI:NL:HR:2008:BC8231>.

act entering into force. The author will be an adult by the time the new act eventually enters into force. The retention period of his DNA profile that is stored in the DNA database will therefore not be halved.

5.4 The author further contests that he was sentenced to community service of 40 hours because he was convicted for a serious offence. The relevant guidelines used by the Public Prosecution Service and the juvenile court show that the number of hours of community service cannot automatically be used to distinguish sentences for serious punishable acts from sentences for less serious acts, as demonstrated by a comparison of the range of hours of community service that can be handed down for individual crimes. Additionally, the difference between a community service order of 39 hours and one of 40 hours can also reflect the practice of rounding off the number of hours of community service. In that context, the author questions whether after the intended legislative amendment the limit of 40 hours will be used to demarcate more serious offences from the minor offences. The author also notes the disparity between minors and adults, since minors are more likely to receive an order for community service for educational considerations (re-education, resocialization and reintegration) than a fine. When a fine is imposed, the court does not impose in parallel an order for the collection of cellular material. This implies that minors are more likely than adults to be subjected to the collection of cellular material.²²

5.5 Referring again to the assessment framework by the Public Prosecution Service, the author claims that, with respect to the 40-hour community service threshold, regardless of whether some of the hours are imposed as a suspended sentence, the Minister, in his letter of 3 April 2018, did not mention anything about suspended sentences. The creation of the 40-hour threshold establishes a predetermined criterion that applies automatically. This means that the Committee's Views in the cases of *N.K. v. Netherlands* and *S.L. v. Netherlands* are being insufficiently observed and implemented. Based on the guidelines, there is no individual balancing of interests in decisions to collect cellular material from minors.²³ The State also fails to admit that when a court imposes a community service order of over 40 hours on a minor, an order to collect cellular material from the minor cannot be evaluated, considering all circumstances of the specific case, to determine whether the order is proportionate. In such cases, an order will follow automatically when applying the current Public Prosecution Service guidelines.

5.6 The author also objects to the stated purpose and benefit of determining and processing DNA profiles for inclusion in the DNA database, and to the statements that such processes do not entail negative consequences for sentenced persons if they refrain from committing new offences and as the cellular material and the DNA profile are stored anonymously. The author claims that the work of collecting cellular material and of establishing and processing a DNA profile is done by individuals who can make mistakes. When tissue samples are collected, the cellular material can inadvertently be mixed with other cellular material, be stored under a wrong reference and even result in a false positive match. He referred to the mistakes made by the Netherlands Forensic Institute between 1997 and 2010, which were examined under an independent investigation launched by the Minister of Justice and Security in 2011. In 2010, mistakes were made in 1.3 per cent of the cases. In addition, the State disregards that, once included in the DNA database, minors are labelled as potential recidivists of serious crimes, which may have a negative effect on their development, contrary to the educational nature of child criminal justice. Furthermore, an investigation has revealed that encountering the criminal justice system, and the way in which this takes place, influences a minor's future conduct. It could be a criminogenic factor that may lead to recidivism. The same applies to the storing of minors' DNA profiles. Collecting DNA profiles of minors does not have a deterrent or rehabilitative effect, but rather encourages recidivism and has a negative effect on a minor's future.²⁴

5.7 The author submits that it is not possible to object to the collection of cellular material under the current legislation and regulations. It is only possible to file a notice of objection

²² The author refers to an application to the Supreme Court for cassation (ECLI:NL:PHR:2020:162), para. 5.9.2. Available at <https://uitspraken.rechtspraak.nl/details?id=ECLI:NL:PHR:2020:162>.

²³ *Ibid.*, para. 11.3.

²⁴ *Ibid.*, paras. 7.2. ff.

against the determination and processing of a DNA profile in the DNA database. Consequently, the decision by the juvenile court judge as to whether the interference in the privacy of the minor was lawful is issued after the interference – through the collection of cellular material – has already taken place. This is contrary to article 17 of the Covenant. In the author's view, in order to ensure the legal protection of minors, the objection procedure must be changed. The author also submits that a public prosecutor must first determine, based on a weighing of the interests in a particular case, whether an order to collect cellular material should be issued. If the weighing of interests leads to the conclusion that cellular material must be collected, the minor and his or her parents or legal guardians should receive a copy of the decision from the public prosecutor. The minor should then have the option to file a notice of objection with the juvenile court judge of the district court, as a key procedural safeguard. The juvenile court judge would then decide if establishing and processing the DNA profile and its storing in the DNA database were justified. If the notice of objection were declared as unfounded, or if the sentenced minor did not file a notice of objection within the stipulated time, the minor and his or her parents or legal guardians would receive an order for the collection of cellular material, informing them of the date, time and place for reporting for the collection of cellular material. The author is of the opinion that a juvenile court judge must first consider the case before any cellular material is collected.

5.8 In conclusion, the author submits that the interference in his privacy was not proportionate, given the purpose of the law, and that insufficient attention was paid to his interests as a minor, specifically with regard to considering his age, the nature and severity of the offences for which he was convicted, the sentence imposed by the juvenile court judge, his judicial records and the risk of recidivism.

5.9 The author lastly refers to elements he submits should be part of a remedy, including financial compensation for the fact that his interests as a minor were not the first concern for the State Party. His interests as a child were not sufficiently taken into account and his DNA profile has been recorded in the database for a long time. He requests that his DNA profile be removed from the DNA database, and that the State pledge to ensure that its authorities will not issue any orders to collect cellular material in relation to any other matters for which the author may possibly be sentenced in the meantime. In addition, the author requests compensation for the costs of his legal assistance.²⁵ While the Optional Protocol does not provide for a compulsory inquiry about an amicable settlement, the author suggests that he is in principle willing to come to an agreement about such a settlement, and expects the State Party to make a corresponding proposal to him.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 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.

6.2 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.

6.3 The Committee notes the State Party's argument that the author has not sufficiently substantiated his claims under articles 14 (4) and 17. In view of the information provided by the author, the Committee considers that the author has sufficiently substantiated his claims for the purposes of admissibility. It therefore declares the claims under articles 14 (4) and 17 of the Covenant admissible and proceeds to their consideration on the merits.

²⁵ Although the author's legal assistance in the present case is financed by the State, he had to contribute 196 euro for the assignment of a lawyer.

Consideration of the merits

7.1 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.

7.2 The Committee notes the author's claim that the fact he was subjected as a convicted minor to mandatory determination and processing of his DNA profile, including the storage of the information in the DNA database for an extensive period, constituted arbitrary interference in his private life, in violation of his rights under article 17 of the Covenant. He claims, in particular, that neither his age (he was 14 at the time of the offence) nor the nature of the crimes for which he was convicted were adequately taken into account by the public prosecutor when ordering DNA testing; that orders for DNA testing are issued automatically, without an assessment of the individual circumstances of a convicted person (see paras. 3.1, 3.2 and 5.5 above); and that the scope for filing an objection against the order to the district court does not include the actual collection of the cellular material, but only the determination and processing of a DNA profile (see para. 5.7 above). The Committee also notes the author's claims that the collection of cellular material from him for DNA testing was not necessary and proportionate; that the juvenile court did not adequately consider his interests as a child; and that the legislative amendments proposed by the State Party to comply with the Committee's Views in *N.K. v. Netherlands* and *S.L. v. Netherlands* have not entered into force and thus do not have a positive impact on the author's situation, that is, the excessive period for storing his DNA profile would not be halved as provided for in the legislative amendments.

7.3 The Committee considers that the collection of cellular material for DNA testing for the purpose of analysing and storing the collected material in a database that could be used in the future for the purposes of criminal investigation is sufficiently intrusive as to constitute "interference" with the author's privacy under article 17 of the Covenant.²⁶ The issue that arises is whether such interference was arbitrary or unlawful under article 17 of the Covenant.

7.4 The Committee notes the State Party's argument that taking cellular material for DNA determination, processing and storing as regulated by the DNA Testing (Convicted Persons) Act serves a legitimate purpose, namely, the investigation, prosecution and trial of serious criminal offences and the protection of the rights of others, including potential victims of violent or sexual crimes. The State Party submits that such testing is lawful, necessary and proportional, given that it ensures minimal interference as the tissue sample is taken in the least invasive way; the sample is stored anonymously for a limited period of time; the procedure is limited to persons convicted for crimes of a certain gravity; and it is necessary in a democratic society, given the absence of another equally effective tool in preventing future crimes and investigating crimes already committed. The State Party adds that the Minister of Justice and Security announced, on 3 April 2018, legislative amendments to the Act, which have been pending. The purpose of the amendments are: to exempt minors convicted of criminal offences from DNA testing when the imposed penalty consists of up to 39 hours of community service; and to halve the retention period of DNA profiles in the DNA database, envisioned to apply even to juvenile offenders convicted prior to the adoption of the legislative amendments (see para. 4.8 above).²⁷

7.5 The Committee recalls that even interference provided for by law should be in accordance with the provisions, aims and objectives of the Covenant and reasonable in the particular circumstances.²⁸ The notion of arbitrariness includes elements of inappropriateness,

²⁶ See *N.K. v. Netherlands*, para. 9.3, wherein the Committee concurred with the analysis set out by the European Court of Human Rights in paragraphs 72 and 73 of the Court's judgment in the case of *S. and Marper v. the United Kingdom*.

²⁷ No information has been made available as to the current status of the legislative amendments, including on whether they have been adopted. See, for example, *CRC/C/NLD/CO/5-6*, paras. 40 (g) and 41 (h).

²⁸ General comment No. 16 (1988), para. 4; *Tran v. Australia* (CCPR/C/143/D/3665/2019), para. 10.10, *Kisileva v. Sweden* (CCPR/C/140/D/3245/2018), para. 7.3; and *N.K. v. Netherlands*, para. 9.5. See also *S. and Marper v. the United Kingdom*, para. 107, in which the European Court of Human Rights stated that "the core principles of data protection require the retention of data to be proportionate in relation to the purpose of collection and insist on limited periods of storage".

injustice, and lack of predictability and due process of the law,²⁹ as well as elements of reasonableness, necessity and proportionality.³⁰ Even though, in society, the protection of privacy is necessarily relative, the competent public authorities should only be able to obtain information relating to an individual's private life if such information is essential in the interest of society, as understood under the Covenant.³¹ Even with regard to interference that is in conformity with the Covenant, relevant legislation must specify in detail the precise circumstances in which such interference may be permitted. A decision to make use of such authorized interference must be made only by the authority designated under the law and on a case-by-case basis.³²

7.6 In the present case, the Committee notes that, on 4 April 2018, the author was sentenced, as a minor aged 14 years, to 40 hours of community service for the acts of burglary and theft, and that half of the community service (20 hours) was conditionally suspended. On 12 July 2018, the public prosecutor ordered that the author be subjected to mandatory collection of cellular material and the tissue sample was taken by the police on 16 August 2018 (see paras. 2.2 and 4.3 above). While the State Party has provided explanations as to the content and general application of the DNA (Convicted Persons) Testing Act, it has also indicated that both the public prosecutor and the juvenile district court considered the collection to be necessary and proportionate in the light of the State Party's stated legitimate aim, namely to prevent criminal offences and to investigate, try and punish the criminal offenders. The Committee notes in particular the State Party's argument that the author's young age was properly assessed during the domestic proceedings, but that this circumstance was not found to be decisive by the court; that appropriate weight had been attached to the circumstance that the author was not a first-time offender and had previously committed similar offences (perceived recidivism); and that sufficient consideration had been given to the interests of the author as a minor (see para. 4.18 above).

7.7 The Committee notes the author's statement that, under the DNA (Convicted Persons) Testing Act, DNA testing orders are issued automatically for persons who have been given a custodial sentence, juvenile detention order or alternative sanction of community service of 40 hours or more. The State Party has admitted that the Act only provides for limited weighing of interests by the public prosecutor before the issuance of the order for tissue sample collection. The Committee also notes that, even though exceptions to DNA testing do exist under article 2 (1) (a) and (b) of the Act, they are very narrowly construed and do not include, for instance, consideration of the age of the offender, as acknowledged by the State Party. The State Party also admits that the Act does not distinguish between adults and minors, and that article 2 (1) (b) of the Act applies only in exceptional cases.³³

7.8 The Committee further observes that the author filed, on 17 August 2018, a notice of objection against the prosecutor's order, which was rejected by the district court on 22 October 2018. The court ruled that the order for mandatory testing was lawful and necessary, taking into account the legitimate aim, while admitting that taking cellular material and determining the author's DNA profile was partly disproportionate, given the author's young age (see para. 4.7 above). In that regard, the Committee notes that the Act does not envision a remedy against the collection of tissue samples, only against the determination and processing of a person's DNA profile. The author therefore argues that a juvenile court judge must first consider the case before any cellular material is collected (see para. 5.7 above). In addition, the State Party acknowledges that the author's compensation claim challenging the collection of the tissue sample on the grounds that, by obtaining a sample for

²⁹ See, among others, Human Rights Committee, general comment No. 35 (2014) on liberty and security of person, para. 12; *N.K. v. Netherlands*, para. 9.5; *Ilyasov v. Kazakhstan* (CCPR/C/111/D/2009/2010), para. 7.4; and *D.T. and A.A. v. Canada* (CCPR/C/117/D/2081/2011), para. 7.6.

³⁰ See *S.L. v. Netherlands* (CCPR/C/120/D/2362/2014); and *D.T. and A.A. v. Canada*, para. 7.6.

³¹ General comment No. 16 (1988), para. 7. See also *N.K. v. Netherlands*, para. 9.5; and *S.L. v. Netherlands*.

³² General comment No. 16 (1988), para. 8. See also *N.K. v. Netherlands*, para. 9.5; and *S.L. v. Netherlands*.

³³ For instance in cases where it is actually impossible for the person to reoffend (such as owing to bodily injury).

the purpose of DNA testing the State was committing an unlawful act, was rejected by the Minister of Justice and Security on 30 July 2019 (see paras. 2.4 and 4.8 above). The Committee considers, in the circumstances of the present case, that such remedy has not been effective, taking into account that the collection of tissue sample is “lawful” under domestic law. The Committee also notes that a court decision rejecting the objection to the processing of a person’s DNA profile cannot be appealed.

7.9 In addition, the Committee notes the State Party’s position that the tissue sample collection involves very minor interference with a person’s privacy because both the tissue sample and the DNA profile are codified and stored anonymously. However, the Committee also notes that the tissue sample and the profile are kept for 30 years in cases of serious offences, and 20 years in the case of less serious offences. The Committee observes that the State Party argues that the author has been convicted for serious offences, which the author contests.

7.10 Finally, the Committee notes the State Party’s argument that the Act does not distinguish between children and adults because there is no reason to make a legal distinction between them for the purpose of preventing, investigating and prosecuting criminal offences and that the Act is not contrary to the best interests of the child. The Committee, however, considers that children differ from adults in their physical and psychological development, and their emotional and educational needs.³⁴ As provided for in, for example, articles 24 and 14 (4) of the Covenant, States Parties have the obligation to take special measures of protection.³⁵ In particular, in all decisions taken within the context of the administration of juvenile justice, the best interests of the child should be a primary consideration.³⁶ Specific attention should be given to the need for the protection of children’s privacy at criminal trials.³⁷ As explained by the author, his age was not properly considered by the domestic authorities as the Act at that time did not consider young age as a special circumstance.

7.11 Accordingly, the Committee finds that, although lawful under domestic law, the interference with the author’s privacy, despite his perceived recidivism, was not proportionate to the legitimate aim of the prevention and investigation of serious crimes, considering his very young age at the time of the commission of the criminal offences and the excessive period for storing his DNA profile, applied owing to the perceived serious nature of the offences committed. Therefore, the Committee concludes that such interference was arbitrary and in violation of article 17 of the Covenant.

7.12 Having concluded that, in the present case, there has been a violation of article 17 of the Covenant, the Committee decides not to separately examine the author’s claims under article 14 (4) of the Covenant, since the allegations made under article 14 (4) have been covered by the finding of a violation of article 17 of the Covenant.

8. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts before it disclose a violation by the State Party of the author’s rights under article 17 of the Covenant.

9. Pursuant to article 2 (3) (a) of the Covenant, the State Party is under an obligation to provide the author with an effective remedy. This requires it to make full reparation to individuals whose Covenant rights have been violated. Accordingly, the State Party is obligated to provide the author with adequate compensation for the moral and material harm

³⁴ Committee on the Rights of the Child, general comment No. 10 (2007) on children’s rights in juvenile justice, para. 10; see also Committee on the Rights of the Child, general comment No. 24 (2019) on children’s rights in the child justice system (which superseded general comment No. 10 (2007)). See further [CRC/C/NLD/CO/4](#), paras. 58 and 59, in which the Committee expressed concern about DNA testing of children in conflict with the law and recommended that the State Party eliminate the practice of DNA testing of children in conflict with the law and erase the criminal record of children who had been acquitted or had completed their sentence.

³⁵ See Human Rights Committee, general comment No. 17 (1989) on the rights of the child; *N.K. v. Netherlands*, para. 9.10; and *S.L. v. Netherlands*, para. 10.10. See also *Berezhnoy v. Russian Federation* (CCPR/C/118/D/2107/2011), para. 9.7.

³⁶ Committee on the Rights of the Child, general comment No. 10 (2007), para. 10 (superseded by Committee on the Rights of the Child, general comment No. 24 (2019)).

³⁷ *S. and Marper v. the United Kingdom*, para. 124.

suffered, including reimbursement of any court fees and legal expenses he has incurred, and ensure the removal of the author's DNA profile and related data from the national DNA database. The State Party is also under an obligation to take all steps necessary, including legislative and practical measures, to prevent similar violations from occurring in the future.

10. Bearing in mind that, by becoming a party to the Optional Protocol, the State Party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State Party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy when it has been determined that a violation has occurred, the Committee wishes to receive from the State Party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State Party is also requested to publish the present Views and to have them widely disseminated in the language of the State Party.

Annex

[Original: Spanish]

Individual opinion of Committee member Hernán Quezada Cabrera (concurring)

1. I fully agree with the Committee's conclusion that the facts presented in this case disclose a violation by the State Party of the author's rights under article 17 of the Covenant because the interference with his privacy was not proportionate to the legitimate aim of the prevention and investigation of serious crimes, considering his very young age at the time of the commission of the criminal offences and the excessive period for storing his DNA profile.

2. However, as some Committee members noted during the examination of the communication, inadequate justification has been provided for the decision contained in paragraph 7.12 of the Views, as the paragraph simply states that, having concluded that there has been a violation of article 17 of the Covenant, the Committee decides not to separately examine the author's claims under article 14 (4) of the Covenant, since the allegations made under article 14 (4) have been covered, in the present case, by the finding of a violation of article 17 of the Covenant. The mere assertion that the allegations made under article 14 (4) are "covered" by the finding of a violation of article 17 might be understood as a basis for the decision but is not sufficient to fully explain the decision.

3. From this decision, according to one possible interpretation, it could be understood that the facts amounting to a violation of article 14 (4) of the Covenant are subsumed under the violation of article 17, or that the first provision of which the Committee has found a violation is *lex specialis* compared to the provision whose possible violation is not being examined.³⁸ That is mere speculation, however, and it cannot take the place of the reasoning that the Committee should have provided when deciding not to consider separately the author's claims under article 14 (4) of the Covenant.

4. It is this lack of thorough justification that has led me to draft this individual opinion, particularly in view of the importance of article 14 (4) of the Covenant, which states that, in the case of juvenile persons, the procedure shall be such as will take account of their age. The Committee specifically addresses this issue in paragraph 7.10 of its Views, emphasizing that States Parties have an obligation to ensure that the best interests of the child are a primary consideration in "decisions taken within the context of the administration of juvenile justice". However, this reasoning does not lead to any particular conclusion regarding article 14 (4) of the Covenant, and the question of whether it has been violated is simply not examined.

³⁸ In this regard, it is worth noting the Committee's Views in the case of *Benhadj v. Algeria* (CCPR/C/90/D/1173/2003), para. 8.5. Although those Views concern provisions of the Covenant other than those examined in the present case, it should be noted that the Committee explicitly based its decision not to examine separately the alleged violation of article 7 on the fact that it had found a violation of article 10, thereby implicitly applying the principle of *lex specialis*.