



# International Covenant on Civil and Political Rights

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## Human Rights Committee

### Decision adopted by the Committee under the Optional Protocol, concerning communication No. 2427/2014\*\*, \*\*\*

<i>Communication submitted by:</i>	M.R.
<i>Alleged victim:</i>	The author
<i>State party:</i>	Russian Federation
<i>Date of communication:</i>	27 January 2014 (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 18 June 2014 (not issued in document form)
<i>Date of adoption of decision:</i>	23 July 2020
<i>Subject matter:</i>	Failure to inform the author of his right to be represented by a defence lawyer during cassation proceedings, despite having been sentenced for serious crimes; right to a fair trial; retroactive application of criminal law providing for a lighter penalty
<i>Procedural issues:</i>	Abuse of the right of submission; undue delay in submission; lack of substantiation of claims
<i>Substantive issues:</i>	Right to a fair trial, in particular the principle of equality of arms, the right to legal assistance and right of the accused to be tried in his or her presence; retroactive application of criminal law providing for a lighter penalty; prohibition of discrimination
<i>Articles of the Covenant:</i>	2 (1) and (3) (a), 14 (1) and (3) (d), 15 (1) and 26
<i>Article of the Optional Protocol:</i>	3

\* Reissued for technical reasons on 6 April 2021.

\*\* Adopted by the Committee at its 129th session (29 June–24 July 2020).

\*\*\* The following members of the Committee participated in the examination of the communication:  
Tania María Abdo Rocholl, Yadh Ben Achour, Arif Bulkan, Ahmed Amin Fathalla, Furuya Shuichi, Bamariam Koita, Marcia V.J. Kran, Duncan Laki Muhumuza, Photini Pazartzis, Hernán Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Yuval Shany, Hélène Tigroudja, Andreas Zimmermann and Gentian Zyberi.



1. The author of the communication is M.R., a national of the Russian Federation born in 1967. He claims that the State party has violated his rights under articles 2 (1) and (3) (a), 14 (1) and (3) (d), 15 (1) and 26 of the Covenant. The Optional Protocol entered into force for the State party on 1 January 1992. The author is not represented by counsel.

### **Facts as presented by the author**

2.1 On 3 March 1992, the author was sentenced to death by Sverdlovsk Provincial Court for the murder of several persons and attempted escape with hostage-taking. On an unspecified date, the author filed an appeal against the sentence.<sup>1</sup> On 4 June 1992, the Supreme Court rejected his appeal.<sup>2</sup> The author was not present during the cassation proceedings, nor was he represented by a lawyer.

2.2 The author submits that according to articles 47, 48 and 49 of the Criminal Procedure Code of the Russian Soviet Federative Socialist Republic of 27 October 1960, which was in force at the time, the court should have provided him with a lawyer on appeal. In his opinion, this requirement is especially important since he had been sentenced to death.

2.3 On 4 May 1994, pursuant to a presidential pardon decree, the author's death sentence was commuted to life imprisonment.

2.4 On 9 August 2011, the author filed a supervisory appeal with the Supreme Court of the Russian Federation, claiming that his right to legal assistance had been violated.<sup>3</sup> On 20 September 2011, the Supreme Court rejected his appeal. The Supreme Court decided that the participation of the author and his lawyer had not been mandatory, according to the criminal procedure laws in effect at that time.

2.5 The author further claims that he filed an appeal with the Constitutional Court of the Russian Federation, but that his appeal was rejected on 24 October 2013.

2.6 The author submits that the delay in submitting his appeal to the Supreme Court is due to the fact that he was in a penitentiary institution, his parents had died, and he had no communication with the outside world.<sup>4</sup> Throughout that period, he had no paid work and received no pension or other social payments, and so was unable to hire a lawyer. He also submits that he was depressed and unaware of his rights. In 2010, he married, and, with the assistance of his wife, he started fighting for the protection of his rights at the national level. He further claims that he was ignorant of the existence of the Committee's individual communications procedure before 2013. The author submits that he has exhausted all available and effective domestic remedies.

### **Complaint**

3.1 The author claims that the State party has violated his rights under article 14 (1) of the Covenant, since the Supreme Court breached criminal procedure legislation by not taking into account the author's situation during his cassation appeal.

3.2 The author claims that the State party also violated his rights under article 14 (3) (d) of the Covenant, since he was unable to defend himself in person and with the assistance of a lawyer in the court of cassation.

### **State party's observations on admissibility and the merits**

4.1 In a note verbale dated 2 October 2014, the State party submitted its observations on admissibility and the merits, and invited the Committee to declare the communication inadmissible.

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<sup>1</sup> The cassation complaint was filed by the author and his counsel.

<sup>2</sup> Since this case involves capital punishment, the regional court was the first-instance court and the Supreme Court was the appellate court (second-instance court).

<sup>3</sup> The author does not submit copies of his cassation appeals.

<sup>4</sup> The secretariat asked the author to provide an explanation about the delay, and the author responded on 8 May 2014.

4.2 The State party submits that under article 246 of the Criminal Procedure Code of the Russian Soviet Federative Socialist Republic, the participation of the accused in the first-instance court is guaranteed. Consideration of a case without the participation of the accused is possible only in a limited number of cases, provided that it does not impede the administration of justice.

4.3 The State party submits that the author's case was considered with his participation and with the participation of his lawyer. However, the sentence was announced in the absence of the author since he had attempted to commit suicide just before the pronouncement. The author was transported to a medical facility and he was provided with a copy of the sentence later on the same day. He was duly informed about his right to appeal his sentence.

4.4 The State party submits that neither the author nor his lawyer complained about the fact that the sentence had been pronounced in the absence of the author, or claimed that his rights had thus been violated.

4.5 The State party submits that article 335 of the Criminal Procedure Code of the Russian Soviet Federative Socialist Republic envisaged the possibility of a lawyer participating in the cassation appeal. The participation of the accused was a subject for consideration by the court. In the present case, the author has provided no information or proof that he requested a lawyer and his request was ignored or rejected by the court. Thus, the court of cassation considered the author's complaint in the absence of the author and his lawyer.

4.6 The State party submits that, in the light of the above, there was no violation of the author's rights under article 14 (1) and (3) (d) of the Covenant.

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

5. In a submission dated 9 December 2014, the author argues that his right to be represented by a lawyer in the court of cassation was violated since the Supreme Court did not apply article 49 of the Criminal Procedure Code of the Russian Soviet Federative Socialist Republic, on the obligatory participation of a defence lawyer, despite the author having been sentenced to capital punishment. The author claims that the Supreme Court should have provided him with a lawyer even without his request.

#### **Additional submissions by the author**

6.1 On 24 November 2014, the author submitted additional claims. He recalls that on 4 May 1994, under a presidential pardon decree, his death sentence was commuted to life imprisonment. On 5 July 2011, the author appealed to the Supreme Court against the presidential decree, claiming that it had caused his situation to deteriorate by imposing on him a heavier penalty than that applicable when he had committed the criminal offence. The author stresses that at the time when he committed his crime, article 24 of the Criminal Code envisaged the replacement of capital punishment with a maximum of 20 years' imprisonment. However, the presidential decree applied a newer version of article 24 of the Criminal Code, which was enacted on 17 December 1992, nine months after his sentencing to capital punishment. On 28 August 2011, the Supreme Court rejected his appeal.

6.2 On 16 September 2011, the author filed a cassation appeal with the Supreme Court, which was rejected on 10 November 2011. On 8 December 2011, the author filed another appeal with the Supreme Court, to no avail. On 13 February 2012, he appealed to the President of the Supreme Court, with no success. The author also appealed to the Office of the Prosecutor General, the Office of the Ombudsman and the Constitutional Court, to no avail.

6.3 The author reiterates that the delay in submitting his appeal to the Supreme Court is due to the fact that he was in a penitentiary institution, his parents had died, and he had no communication with the outside world. Throughout that period, he had no paid work and received no pension or social payments, and so was unable to hire a lawyer. He claims that he was depressed and unaware of his rights. Only after his wedding in 2010 did he start fighting for his rights, helped by his wife.

6.4 The author states that in 2014, he submitted an application to the European Court of Human Rights, which the Court declared inadmissible on 19 June 2014.<sup>5</sup>

6.5 The author claims that his rights under article 2 (3) (a) of the Covenant were violated, since the authorities sent him only formal replies in response to his complaints.

6.6 The author claims that his rights under article 14 (1) and (3) (d) of the Covenant were violated, since, in spite of his specific request, the Supreme Court failed to ensure his participation in the proceedings and to provide him with a lawyer.

6.7 The author claims that his rights under article 15 (1) of the Covenant were violated since life imprisonment, to which his capital punishment sentence was commuted, is a heavier penalty than the one that was applicable at the time when he committed the criminal offences, namely up to 20 years' imprisonment.

6.8 Several complaints were filed at the national level. On 29 March 2013, he filed a supervisory complaint to the Supreme Court, which rejected the complaint on 25 April 2013. On 29 May 2013, the author applied again to the Supreme Court, to no avail.<sup>6</sup> The author further complained in vain to the Office of the Prosecutor General and the Constitutional Court. On 21 February 2014, the author filed complaints with Tverskoy District Court in Moscow against the illegal action, or inaction, of the Office of the Prosecutor General. His complaints were rejected on 2 June 2014 and 20 November 2014 respectively.

6.9 On 21 November 2013, the author complained to the Prosecutor General. His complaint was rejected on 19 December 2013. On 24 April 2014, the author requested the Office of the Prosecutor General to reconsider his case on the basis of newly discovered circumstances. His request was rejected on 30 May 2014. On 21 August 2014, he appealed against this decision to the Prosecutor General, but his appeal was rejected on 9 September 2014.

6.10 On 4 August 2014, the author filed a complaint with Tverskoy District Court in Moscow against the actions of the Office of the Prosecutor General. His appeal was rejected on 18 August 2014.

6.11 On 23 March 2015 and 18 January 2016, the author submitted an additional complaint to the Committee, claiming violations of his rights under articles 2 (3) (a) and 14 (1) and (3) (d) of the Covenant. On 10 February 2016, the author additionally alleged further violations of his rights, under articles 2 (1), 14 (1) and 26 of the Covenant. He reiterates that, on 3 March 1992, he was sentenced to death by Sverdlovsk Provincial Court for several crimes, including attempted escape with hostage-taking. This crime had been committed with three accomplices, but the author was the only one brought to justice.

6.12 The author claims that his rights under articles 2 (3) (a) and 14 (1) and (3) (d) of the Covenant have been violated, since the sentence was announced in his absence.

#### **State party's additional observations**

7.1 On 19 July 2016, the State party invited the Committee to declare the communication inadmissible for abuse of the right of submission and for lack of substantiation.

7.2 The State party emphasizes that the author has benefited from the provisions of a presidential pardon decree, and that his death sentence was commuted to life imprisonment. The author filed a complaint to the Committee after more than 20 years. He also appealed the presidential pardon decree more than 17 years after its issuance. The State party submits that the author provides no explanation to justify the delays in the submission of his complaint, and that the case should therefore be found inadmissible under article 3 of the Optional Protocol.

7.3 The State party submits that presidential pardon decrees do not impose a punishment, but merely substitute capital punishment for a lighter sanction, such as life imprisonment. Presidential pardon decrees are not part of the implementation of criminal justice, but rather

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<sup>5</sup> No copies of the corresponding documents have been provided.

<sup>6</sup> The date of this rejection has not been provided.

an act of mercy in the form of the constitutional right of the President. The State party recalls the Committee's Views in *Alekperov v. Russian Federation* (CCPR/C/109/D/1764/2008), in which the Committee noted that, in any event, life imprisonment could not be seen as constituting a heavier penalty than the death penalty (*ibid.*, para. 9.9).

7.4 The State party also submits that the courts lawfully decided to consider the author's complaint against the presidential pardon decree in his absence, since there was no need to hear him and the core of the claim was about the legal assessment. This approach corresponds with the jurisprudence of the European Court of Human Rights and the approach taken by the Committee.<sup>7</sup>

7.5 In relation to the claim that the author was refused legal assistance in the courts of first and second instance, the State party argues that, since the consideration of the author's complaint against the presidential pardon decree was not a determination of rights and obligations in a suit at law, the guarantees of article 14 of the Covenant are not applicable to the current case.

7.6 The State party claims that this part of the complaint is inadmissible under article 3 of the Optional Protocol for lack of substantiation, since there were no violations of articles 2 (3) (a), 14 (1) or (3) (d) or 15 (1) of the Covenant.

7.7 In relation to the author's submission of 23 March 2015, in which he claims a violation of his rights since his sentence of 3 March 1992 was announced in his absence, the State party notes that the author filed a supervisory appeal more than 17 years after the issuance on 4 May 1994 of the presidential pardon decree under which his death sentence was commuted to life imprisonment, and that he applied to the Committee after more than 20 years. The State party claims that there were no circumstances to justify those delays in submission.

7.8 The State party submits that accused persons may waive their right to be present during the pronouncement of the sentence.<sup>8</sup> the fact that the author stabbed himself in the heart with a knife just before the pronouncement of his sentence is considered a voluntary refusal of the right to present during the sentencing, as he understood the consequences of his actions. These claims should therefore be found inadmissible under article 3 of the Optional Protocol.

7.9 In relation to the author's claim that he had three accomplices in the attempted escape with hostage-taking, but they were not criminally prosecuted, the State party notes that neither article 14 nor any other provisions of the Covenant envisage the right to criminal prosecution of an accomplice.

7.10 The State party reiterates that the author filed a complaint more than 21 years after his criminal conviction, with no circumstances to justify the delay. The communication should therefore be declared inadmissible under article 3 of the Optional Protocol.

## 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 it is admissible under the Optional Protocol.

8.2 The Committee notes that the author applied with similar facts to the European Court of Human Rights, but his application was declared inadmissible on 19 June 2014. The Committee observes that the matter is no longer being examined under another procedure of international investigation or settlement, and that the Russian Federation has not entered a

<sup>7</sup> European Court of Human Rights, *Case of Roman Karasev v. Russia*, Application No. 30251/03, Judgment, 25 November 2010, para. 59; and Human Rights Committee, general comment No. 32 (2007), paras. 8, 12 and 13.

<sup>8</sup> European Court of Human Rights, *Case of Pishchalnikov v. Russia*, Application No. 7025/04, Judgment, 24 September 2009, para. 77; and Human Rights Committee, general comment No. 32 (2007), para. 36.

reservation to article 5 (2) (a) of the Optional Protocol. The Committee therefore considers that it is not precluded by virtue of article 5 (2) (a) of the Optional Protocol from considering the present communication.

8.3 The Committee also notes the author's claim that he has exhausted all available and effective domestic remedies. In the absence of any objection by the State party in this connection, the Committee considers that the requirements of article 5 (2) (b) of the Optional Protocol have been met.

8.4 The Committee notes the State party's position that the author's communication dated 27 January 2014 is inadmissible because there was no violation of the author's rights under article 14 (1) and (3) (d) of the Covenant. The Committee further notes the State party's position that, because of the delay in submission of the author's communications dated 24 November 2014, 23 March 2015 and 18 January 2016, the Committee should consider them inadmissible for abuse of the right of submission under article 3 of the Optional Protocol. The State party has also claimed that the author filed a complaint to the Committee about his criminal prosecution, under the Optional Protocol to the Covenant, approximately 20 years after his death sentence was commuted to life imprisonment.

8.5 The Committee notes in this regard that there are no fixed time limits for the submission of communications under the Optional Protocol and that mere delay in submission does not of itself involve abuse of the right to submit a communication.<sup>9</sup> However, in certain circumstances, the Committee expects a reasonable explanation justifying a delay.<sup>10</sup> In addition, according to rule 99 (c) of the Committee's rules of procedure (CCPR/C/3/Rev.11), a communication may constitute an abuse of the right of submission when it is submitted five years after the exhaustion of domestic remedies by the author of the communication, or, where applicable, three years from the conclusion of another procedure of international investigation or settlement, unless there are reasons justifying the delay, taking into account all the circumstances of the communication.<sup>11</sup>

8.6 At the same time, the Committee notes that, especially where time is of the essence in resolving a case, the author generally bears the burden in ensuring that his or her claims are raised with the necessary expedition to ensure that they may be properly and fairly resolved. The Committee also notes that it is best for an author if his or her claims are filed with the national authorities for consideration as soon as possible, so as to enable the authorities to respond in a timely manner to any alleged human rights violations. While it is essential for the efficacy of the protection system under the Covenant that a State party meet its international legal obligations in good faith, demonstration by authors of due diligence and initiative in the protection of their rights generally contributes to avoiding excessive or unexplained delays in the administration of justice and the enforcement of the rights protected under the Covenant.

8.7 In the present case, the Committee observes that there is nothing in the submissions to suggest that the author demonstrated due diligence and initiative in pursuing his claims regarding the protection of his human rights. He submitted his initial communication to the Committee with a notable delay, more than 21 years after his sentence became executable pursuant to the decision of the Supreme Court of 4 June 1992, and almost 20 years after his death sentence was commuted to life imprisonment pursuant to the presidential pardon decree of 4 May 1994. The Committee observes that the author provides no persuasive explanations as to why he was unable to bring his claims before the domestic authorities during this period. His claims about his legal illiteracy and lack of awareness of his rights remain vague and general in nature. In this connection, the Committee observes that notwithstanding his claims, the author was indeed able to prepare a cassation appeal, separate from the one submitted by his lawyer. The Committee thus considers that the author has failed to provide reasons justifying the delay in submission, taking into account all the circumstances of the communication. In the absence of any other information or explanation of pertinence on file, the Committee considers that submitting the communication after such a long lapse of time

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<sup>9</sup> *Polacková and Polacek v. Czech Republic* (CCPR/C/90/D/1445/2006), para. 6.3; and *D.S. v. Russian Federation* (CCPR/C/120/D/2705/2015), para. 6.4.

<sup>10</sup> *Gobin v. Mauritius* (CCPR/C/72/D/787/1997), para. 6.3.

<sup>11</sup> This rule applies to communications received by the Committee as from 1 January 2012.

constitutes an abuse of the right of submission. Accordingly, the communication is inadmissible under article 3 of the Optional Protocol and rule 99 (c) of the Committee's rules of procedure.

8.8 Having reached this conclusion, the Committee decides not to examine any other admissibility grounds.

9. The Committee therefore decides:

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