



# 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. 2977/2017\*, \*\*, \*\*\*

<i>Communication submitted by:</i>	Ramil Kaliyev (not represented by counsel)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Russian Federation
<i>Date of communication:</i>	8 April 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 5 May 2017 (not issued in document form)
<i>Date of adoption of Views:</i>	8 November 2019
<i>Subject matter:</i>	Failure to inform the author of his right to be represented by a defence lawyer during cassation proceedings, despite being sentenced for serious crimes
<i>Procedural issues:</i>	Examination of the same matter by another procedure of international settlement; abuse of the right of submission; insufficient substantiation of claims
<i>Substantive issues:</i>	Fair trial – legal assistance; fair trial – right to obtain the attendance of witnesses and to examine them
<i>Article of the Covenant:</i>	14 (3) (d) and (e)
<i>Articles of the Optional Protocol:</i>	2, 3 and 5 (2) (a)

\* Adopted by the Committee at its 127th session (14 October–8 November 2019).

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

\*\*\* An individual opinion by Committee member Yuval Shany (dissenting) and a joint opinion of Committee members Ahmed Amin Fathalla, José Manuel Santos Pais and Héléne Tigroudja (dissenting) are annexed to the present Views.



1.1 The author of the communication is Ramil Kaliyev, a national of the Russian Federation, born in 1963. He claims that the State party has violated his rights under article 14 (3) (d) and (e) of the Covenant. The Optional Protocol entered into force for the Russian Federation on 1 January 1992. The author is not represented by counsel.

1.2 On 15 May 2018, the Committee, acting through its Special Rapporteur on new communications and interim measures, rejected the State party's request of 6 July 2017 to examine the admissibility of the communication separately from its merits.

### **The facts as submitted by the author**

2.1 On 10 April 2003, the author was found guilty of hooliganism<sup>1</sup> and intentionally inflicting serious bodily injury,<sup>2</sup> and sentenced to 16 years' imprisonment by Verkhneufaleysk City Court in Chelyabinsk Region. In its decision, the court referred to witness statements, forensic reports and extensive material evidence. After the hearing, an ex officio lawyer, S., informed the author that he would not be available to represent him during the cassation procedure and advised him to find another lawyer. However, the lawyer did not explain how to file an application for legal assistance with the court of cassation. Hence, the author prepared and submitted his cassation appeal without any legal assistance. In particular, he complained about the evaluation of facts and evidence by the court of first instance, the qualification of his actions as hooliganism, the court's conclusion that he had committed the crimes under the influence of alcohol and its rejection of his motion to obtain the attendance and examination of witnesses (a minor, V.L., and three policemen who were present at the crime scene and effectively witnessed the events).<sup>3</sup> The author also argued that his actions should rather have been qualified by Verkhneufaleysk City Court as exceeding the limits of justifiable defence,<sup>4</sup> since one of the victims who had subsequently died of the injuries inflicted by the author had initiated the fight, attacking the author with a hammer.

2.2 On 21 July 2003, Chelyabinsk Regional Court, acting as court of cassation, confirmed the decision of Verkhneufaleysk City Court and the latter became executable (see also para. 6.5 below).<sup>5</sup> The author was present at the hearing. Chelyabinsk Regional Court did not enquire why the author was not legally represented and whether he wished to have legal assistance assigned to him.<sup>6</sup> Neither did Chelyabinsk Regional Court verify why the ex officio lawyer, S., who represented the author in the court of first instance had refused to represent him on appeal and to file the cassation appeal on his behalf.<sup>7</sup> The court hearing lasted 10 minutes at most.

2.3 On an unspecified date, the author submitted a request to the Presidium of Chelyabinsk Regional Court for a supervisory review of the decision of Chelyabinsk Regional Court. The request was rejected on 21 August 2003. The author's further appeal to the Chair of Chelyabinsk Regional Court was rejected on 4 September 2003.

2.4 On 20 August 2004, Kopeysk City Court in Chelyabinsk Region reduced the author's sentence to 15 years and 6 months' imprisonment, on the basis of a procedural motion filed by the author (see also para. 6.5 below).

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<sup>1</sup> Article 213 (2) (a) of the Criminal Code.

<sup>2</sup> Article 111 (3) (a)–(c) and (4) of the Criminal Code.

<sup>3</sup> The author did not keep a copy of his cassation appeal.

<sup>4</sup> Reference is made to article 114 of the Criminal Code, which establishes criminal responsibility for the infliction of serious or moderate bodily injury when the limits of justifiable defence are exceeded or when the measures necessary to detain the person who committed the crime are exceeded. The maximum penalty that can be imposed for this offence is up to two years' imprisonment.

<sup>5</sup> Article 373 of the Code of Criminal Procedure provides that the cassation court examines appeals with a view to verifying the lawfulness, validity and fairness of arguments. Under article 377 (4) and (5) of the Code, it may directly examine evidence, including additional material submitted by parties. The decision of Chelyabinsk Regional Court suggests that the court indeed considered the materials of the case and arguments presented in the cassation appeal, maintained by the author at the court hearing. The record of the hearing was not submitted to the Committee.

<sup>6</sup> Reference is made to article 272 of the Code of Criminal Procedure.

<sup>7</sup> Reference is made to articles 16 (2) and 262 of the Code of Criminal Procedure.

2.5 In the following years, the author filed several requests for a supervisory review of his conviction. On 23 January 2008, the Supreme Court of the Russian Federation rejected the author's request for supervisory review of the decisions of Verkhneufaleysk City Court and Chelyabinsk Regional Court. The author's subsequent request to the Supreme Court for a supervisory review of his conviction was returned without examination on 18 March 2008, with reference to the earlier decisions on that matter.

2.6 On 13 May 2011, Metallurgichesky District Court of Chelyabinsk City further reduced the author's sentence to 15 years and 3 months' imprisonment, on the basis of another procedural motion filed by the author.

2.7 On 22 August 2013, in reply to the author's appeal to the Office of the Prosecutor General,<sup>8</sup> the Prosecutor's Office of Chelyabinsk Region responded that the author's defence rights had not been breached by the court of cassation, since: (a) he and his lawyer had been duly informed of the date of the cassation hearing; (b) the author had been present at the hearing; (c) he had not requested legal assistance in the court of cassation; and (d) the presence of a defence lawyer was not mandatory under article 51 (1) (5) of the Code of Criminal Procedure.<sup>9</sup> On 15 October 2013, the Office of the Prosecutor General responded along the same lines, adding that the author had requested to be present at the cassation hearing, without asking to be legally represented, and that the practice of applying the Code of Criminal Procedure at that time did not provide for the mandatory participation of a defence lawyer during the cassation proceedings. With reference to the clarifications provided by the Constitutional Court in the past, the Office of the Prosecutor General explained that courts of general jurisdiction could retroactively apply the Constitutional Court's decisions (in the present case, the decision of the Constitutional Court of 8 February 2007 (see also para. 3.2 below)) to judgments that had not become final and to final judgments not yet executed or executed in part. The Office of the Prosecutor General found that the decision of Chelyabinsk Regional Court of 21 July 2003 should be considered as executed.

2.8 In a document dated 19 November 2013 and entitled "cassation appeal", the author requested the Judicial Chamber for Criminal Cases of the Supreme Court to review the decision of Chelyabinsk Regional Court, since the latter had not ensured the participation of a defence attorney in the cassation instance, as was mandatory in accordance with article 48 (1) of the Constitution of the Russian Federation and article 51 (1) (5) of the Code of Criminal Procedure, since his sentence exceeded 15 years' imprisonment. On 12 December 2013, the Judge of the Supreme Court rejected the author's appeal, qualifying it as a request for a supervisory review of the decision of Chelyabinsk Regional Court.

2.9 The author's subsequent requests to the Supreme Court of the Russian Federation for a supervisory review and for reconsideration of his conviction due to newly established circumstances, dated 30 May 2014 and 17 March 2015, were returned without examination on 9 July 2014 and 1 April 2015, respectively, with reference to the earlier decisions on that matter.

2.10 At the international level, in November 2003, the author submitted an application to the European Court of Human Rights, complaining about the evaluation of the facts and evidence in his case and the rejection of his motions to obtain the attendance and examination of witnesses by the court. It was registered as application No. 2216/04. In his application to the European Court of Human Rights, the author invoked a violation of article 6 (3) (d) of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights). While the author did not complain about the absence of a defence lawyer during the cassation proceedings, he did refer to his legal illiteracy and the lack of awareness about his rights. On 12 April 2006, the European

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<sup>8</sup> As transpires from the documents available on file, the first complaint about the absence of legal assistance during the cassation proceedings was made by the author in 2013.

<sup>9</sup> Article 51 of the Code of Criminal Procedure (in force from 1 July 2002) provides for mandatory legal representation if the accused faces serious charges carrying a term of imprisonment exceeding 15 years, life imprisonment or the death penalty. Unless counsel is retained by the accused, it is the responsibility of the investigator, prosecutor or the court to appoint an ex officio lawyer.

Court of Human Rights rejected his application as not meeting the admissibility requirements under articles 34 and 35 of the European Convention on Human Rights.

2.11 In his further submission to the Committee of 16 June 2017, the author submits that, while serving his sentence pursuant to the unlawful conviction by Verkhneufaleysk City Court, he was subjected to reprisals and persecution by the penitentiary personnel due to his active civic engagement, which was interpreted by the penitentiary administration as a systematic violation of the penitentiary's internal rules and regulations. In particular, over a period of 10 years he was subjected to a total of 91 unlawful penalties by the administration of penitentiary institutions, which subsequently made him ineligible for early conditional release.<sup>10</sup> The author submitted a copy of the decision of Chelyabinsk Regional Court dated 29 April 2013, according to which an officer serving in penitentiary colony No. 2 in Chelyabinsk Region had been sentenced to four years and six months' imprisonment, *inter alia*, for having ill-treated him on 1 and 2 June 2010, by making him stand naked for 31 hours in an unequipped and unventilated "storage" cell with 5 cm of chlorinated water covering the floor and with tear gas being sprayed into the cell, as a way of forcing the author to "unquestioningly obey" the orders of the penitentiary administration. On 16 April 2014, Chelyabinsk Central District Court awarded the author 25,000 roubles for moral damages.

2.12 The author also states in his further submission that, on 8 December 2016, the European Court of Human Rights delivered a judgment on his application No. 46902/11 concerning inadequate conditions of detention.<sup>11, 12</sup> Having established a violation of article 3 of the European Convention on Human Rights, the European Court awarded the author 14,000 euros for pecuniary and non-pecuniary damage, as well as legal costs and expenses.

### **The complaint**

3.1 The author claims a violation of his rights under article 14 (3) (d) of the Covenant, as he was not assisted by a defence lawyer during the cassation proceedings. He submits that the Office of the Prosecutor General, the Prosecutor's Office of Chelyabinsk Region and the Supreme Court disregarded the jurisprudence of the Russian Constitutional Court and the Supreme Court of the Russian Federation, as described below.

3.2 The author refers to the Grand Chamber judgment of the European Court of Human Rights in the case of *Sakhnovskiy v. Russia*,<sup>13</sup> examining the position of the Constitutional Court and the Supreme Court of the Russian Federation in cases falling within the scope of article 51 of the Code of Criminal Procedure. In particular, the European Court noted that, by decision No. 497-O of 18 December 2003, the Constitutional Court of the Russian Federation had ruled that:

Article 51 (1) of the Code of Criminal Procedure, which describes the circumstances in which the participation of defence counsel is mandatory, does not contain any indication that its requirements are not applicable in the cassation proceedings or that the convict's right to legal assistance in such proceedings may be restricted.<sup>14</sup>

The European Court also noted that the Constitutional Court had subsequently confirmed and developed that position in seven decisions delivered on 8 February 2007. The Constitutional Court had found that free legal assistance for the purpose of cassation

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<sup>10</sup> According to the decision of Ordzhonikidze District Court in Magnitogorsk city of 6 April 2017, the author's request for early conditional release was rejected, since he was subjected to 91 penalties for the violation of the penitentiary's internal rules and regulations in addition to being rewarded by the penitentiary administration on six occasions.

<sup>11</sup> Low temperature in the cell in winter time, no partition between the lavatory and the living room, poor ventilation, stench, constant cigarette smoke and poor quality of food.

<sup>12</sup> European Court of Human Rights, *Kolbasov and Others v. Russia*, applications Nos. 37198/09, 27269/10, 29657/10, 35655/11, 46902/11, 63660/12, 14181/15 and 39024/15, judgment of 8 December 2016.

<sup>13</sup> Application No. 21272/03, judgment of 2 November 2010, paras. 36–39. The European Court uses the terms "appeal proceedings", "appellate proceedings" and "court of appeal" to designate what the Committee refers to as "cassation proceedings" and "cassation court".

<sup>14</sup> *Sakhnovskiy v. Russia*, quoting the Constitutional Court of the Russian Federation, para. 36.

proceedings should be provided in the same conditions as for earlier stages in the proceedings and that it was mandatory in the situations listed in article 51. It had further underlined the obligation of courts to secure participation of defence counsel in cassation proceedings.<sup>15</sup> In its ruling of 18 December 2003, the Constitutional Court of the Russian Federation had held, inter alia, that article 51 of the Code of Criminal Procedure, which defined situations where participation of a defence lawyer in the criminal proceedings was mandatory, also applied to the cassation proceedings. In a number of cases, the Presidium of the Supreme Court of the Russian Federation had quashed decisions of courts of cassation and had remitted cases for fresh consideration on the grounds that the courts had failed to secure the presence of a defence lawyer in the cassation proceedings, although it was obligatory for the accused to be legally represented. That approach had also been confirmed by the Presidium of the Supreme Court in its report concerning cases adopted in the third quarter of 2005 and by the Decree of the Plenary of the Supreme Court of 23 December 2008, as amended on 30 June 2009. In the later document, the Supreme Court had emphasized that the accused could renounce his or her right to legal assistance only in writing, and that the court was not bound by that waiver.

3.3 The author also claims that the rejection of his motions to obtain the attendance and examination of witnesses, such as the minor, V.L., and three policemen who were present at the crime scene and effectively witnessed the events, by the court, amounts to a violation of his rights under article 14 (3) (e) of the Covenant. These witnesses could have confirmed that the victim, Z., and the witness, Y.L., had given false testimony against him. He refers to the judgment of the European Court of Human Rights in the case of *Kononenko v. Russia*,<sup>16</sup> in which the European Court reiterated that:

The authorities should make “every reasonable effort” to secure the appearance of a witness for direct examination before the trial court. With respect to statements of witnesses who have proved to be unavailable for questioning in the presence of the defendant or his counsel, the Court would emphasize that “paragraph 1 of article 6 taken together with paragraph 3 requires the Contracting States to take positive steps, in particular to enable the accused to examine or have examined witnesses against him. Such measures form part of the diligence which the Contracting States must exercise in order to ensure that the rights guaranteed by article 6 are enjoyed in an effective manner.”

3.4 The author also claims that, in violation of fair trial guarantees, the court of first instance has erred in the assessment of evidence. He does not invoke any specific provisions of the Covenant with regard to this claim.

#### **State party’s observations on admissibility**

4.1 In a note verbale dated 6 July 2017, the State party challenged the admissibility of the communication. The State party argues that it constitutes an abuse of the right of submission pursuant to rule 99 (c) of the Committee’s rules of procedure.

4.2 The State party recalls that the author was sentenced by Verkhneufaleysk City Court on 10 April 2003. On 21 July 2003, Chelyabinsk Regional Court heard the author’s cassation appeal. On 21 August 2003, the author’s request for a supervisory review was rejected by Chelyabinsk Regional Court. On 4 September 2003, the author was informed by the Chair of Chelyabinsk Regional Court that there were no grounds to quash the decision of Chelyabinsk Regional Court dated 21 August 2003. On 23 January 2008, the Supreme Court of the Russian Federation rejected the author’s request for a supervisory review. On 18 March 2008, the Deputy Chair of the Supreme Court informed the author that there were no grounds to quash the decision of the Supreme Court dated 23 January 2008.

4.3 The State party further recalls that the author submitted his communication to the Committee, alleging a violation of his rights under article 14 of the Covenant, only on 8

<sup>15</sup> The general practice of the courts under article 51 of the Code of Criminal Procedure before the Constitutional Court’s decision of 2007 was not to provide a defence attorney unless expressly requested by a defendant.

<sup>16</sup> Application No. 33780/04, judgment of 17 February 2011, para. 64.

April 2014, that is, more than 10 years and 8 months since his sentence became executable pursuant to the decision of Chelyabinsk Regional Court of 21 July 2003, and more than 5 years since his request for a supervisory review was rejected by the Deputy Chair of the Supreme Court of the Russian Federation on 18 March 2008. The State party submits, therefore, that in the absence of any circumstances justifying such a delay by the author in submitting his communication to the Committee, it should be declared inadmissible under article 3 of the Optional Protocol, as constituting an abuse of the right of submission.

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

5.1 On 29 August 2017, the author submitted his comments on the State party's observations on admissibility. As to the lapse of time before submitting his communication to the Committee, the author argues that he submitted additional appeals to the Office of the Prosecutor General in 2012 and 2013,<sup>17</sup> to the Chair of the Supreme Court of the Russian Federation in 2013 and 2014,<sup>18</sup> to the Office of the President of the Russian Federation in 2013 and to the office of the human rights ombudsperson in 2014. The author submits, therefore, that the time as of which domestic remedies were exhausted in his case should be considered as 25 February 2014, when he received a response from the office of the human rights ombudsperson.

5.2 In his further submission of 17 January 2018, the author submits that, according to the decision of Verkhneufaleysk City Court of 10 April 2003, he sustained only light bodily injury as a result of the attack on his head with a hammer by one of the victims (see para. 2.1 above). However, according to the medical examination of the author after he had served his sentence of imprisonment in full, that is 15 years and 3 months after he received the head injury in question, it should have been qualified as a serious bodily injury. The author argues, therefore, that the decision of Verkhneufaleysk City Court of 10 April 2003 was based, from the very beginning, on the erroneous conclusions of a medical expert and that the latest results of his medical examination should constitute "newly revealed circumstances" for the purposes of article 413 of the Code of Criminal Procedure.

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

6.1 In a note verbale dated 15 February 2018, the State party provided observations on the merits. The State party submits that a criminal case in relation to the author and another person was initiated on 4 August 2002 and that the author was detained on the same day. On 5 August 2002, he was interrogated as a suspect in the presence of a lawyer, S. In the course of the interrogation the author explained that a spontaneous conflictual situation between him and Z. had escalated into a fist fight. Although at some point the fight ended, he was determined to settle the dispute with Z. and, to that end, decided to visit him at home. Once the author and his brother arrived at the home of Z., the fight between him and Z. started again. At some point, the author realized that he had received a hammer blow on his head from Z.'s father. The author then grabbed the hammer and struck Z.'s father on his head a few times and Z. only once. The author accepted that he might have hit and pushed away other members of Z.'s family as well. He, however, blamed the victims for the conflict, since they were under the influence of alcohol.

6.2 On 6 August 2002, the author was placed in custody pursuant to the decision of Verkhneufaleysk City Court. On the same day, the author was interrogated as an accused in the presence of his lawyer, S., but he refused to testify, invoking his right under article 51 of the Constitution of the Russian Federation. According to the forensic medical examination of the author carried out on 6 August 2002, he had sustained a light bodily injury. On 27 September 2002, the author was interrogated as an accused in the presence of his lawyer, L. (see also para. 6.3 below), but he again refused to testify, invoking his right under article 51 of the Constitution. Between 30 September and 2 October 2002, the author and his lawyer, L., complied with the requirements of article 217 of the Code of Criminal

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<sup>17</sup> Reference is made to the decisions of 22 August and 15 October 2013.

<sup>18</sup> Reference is made to the decisions of 12 December 2013 and 21 February 2014.

Procedure.<sup>19</sup> In particular, the author filed motions requesting examination of an unidentified woman who had witnessed the initial conflict between him and Z., as well as of a minor, because of whom the conflict had apparently started in the first place. The author also requested an additional medical examination to establish the degree of bodily injuries sustained by him. These motions were rejected by the Deputy Prosecutor of Verkhneufaleysk City on 2 October 2002, since the testimony of the witnesses requested by the author were unrelated to the crimes imputed to him and the degree of bodily injuries sustained by him had already been determined on the basis of the forensic medical examination conducted earlier.

6.3 On 4 October 2002 the author's criminal case was transmitted to Verkhneufaleysk City Court for examination. On 22 October 2002, Verkhneufaleysk City Court determined that the court hearing of the author's criminal case would start on 28 October 2002 and also extended his remand in custody. The author was initially represented in the first instance court by his ex officio lawyer, L.<sup>20</sup> On an unspecified date, the author informed Verkhneufaleysk City Court that he no longer wished to be represented by L., since they had different views concerning his defence strategy. On 12 March 2003, Verkhneufaleysk City Court rejected the author's motion not to be represented by L., since at that time the author has not yet signed a representation agreement with another lawyer. On 3 April 2003, Verkhneufaleysk City Court accepted the author's motion and from that time until the delivery of the sentence in his case he was represented by a new lawyer, S.<sup>21</sup> The State party submits that, as transpires from the statements of the lawyer, S., during the court proceedings in the first instance court, he and the author were in agreement concerning the defence strategy. Throughout the court proceedings, the author regularly consulted his case file materials and transcripts of the court hearings.

6.4 On 1 November 2002, the author filed a motion requesting his forensic psychiatric evaluation, which was accepted by Verkhneufaleysk City Court. The evaluation, which was carried out on 27 December 2002, established that the author presented signs of an epileptoid hysterical personality disorder that, however, did not deprive him of the capacity to understand the dangerous nature of his actions for others or to control them. The results of the forensic psychiatric evaluation were presented at the court hearing of 12 March 2003.

6.5 The State party recalls that, on 10 April 2003, the author was sentenced by Verkhneufaleysk City Court to 16 years of imprisonment and that he appealed the sentence to the court of cassation. It submits that the author did not request legal assistance in the court of cassation. On 21 July 2003, Chelyabinsk Regional Court confirmed the decision of Verkhneufaleysk City Court, downgrading the qualifications of the author's actions under article 213 (2) (a) of the Criminal Code from "dangerous recidivism" to "recidivism". On 20 August 2004, Kopeysk City Court in Chelyabinsk Region brought the author's sentence into compliance with the changes made to the Criminal Code by the Federal Law of 8 December 2003.

6.6 The State party further submits that the author's request for a supervisory review that was rejected by Chelyabinsk Regional Court on 21 August 2003 did not contain any claims concerning a violation of his right to defence. It adds that, on 4 September 2003, the Chair of Chelyabinsk Regional Court explained in his decision what other avenues were available to the author in order to challenge his conviction and sentence.

6.7 As to the author's claims under article 14 (3) (e) of the Covenant, the State party submits, with reference to the materials of his criminal case, that the author has repeatedly requested the examination of an unidentified woman who witnessed the initial conflict between him and Z., as well as of a minor because of whom that conflict had apparently started in the first place. These motions were rejected by the court due to the author's failure to provide the personal data that would allow the witnesses to be identified. At the same time, it was explained to the author that he had the right to renew his request for the examinations of witnesses once their identity was established. Once the identity of the

<sup>19</sup> Article 217 provides for procedures for the accused and his counsel to become acquainted with the criminal case files.

<sup>20</sup> Pursuant to the warrant of attorney dated 26 September 2002.

<sup>21</sup> Pursuant to the warrant of attorney dated 3 April 2003.

minor was established as V.L., the author requested his attendance and examination as a witness in order to confirm that the animosity and initial conflict between him and Z. had started in the courtyard of their residential building. The author's renewed motion was also rejected by the court, since the victim, Z., did not deny that the initial conflict between him and the author had started in the courtyard of their building. Furthermore, the minor, V.L., was not present at the crime scene and did not witness the events that took place in Z.'s home. The State party adds that the identity of the unidentified woman has never been established by the author.

6.8 The State party further submits that the author has also requested the examination of the policemen who detained him and the medical personnel that were present at the crime scene, in order to establish discrepancies in the witness statements of Y.L., one of Z.'s neighbours. This motion was rejected by Verkhneufaleysk City Court on 3 April 2003, which held that, since such a motion had not been filed by the author at the pretrial investigation stage, the individuals were not present in the courtroom to give their testimony and that, at any rate, their testimony would have had little significance for the case. The author's repeated request to examine the above-mentioned witnesses was also rejected by the court, due to the absence of discrepancies in the witness statements of Y.L., contrary to the author's claims.

6.9 The State party recalls that the forensic psychiatric evaluation of the author was carried out pursuant to his own request and that he was declared competent. The author's assertions that he was in a state of extreme emotional disturbance caused by the unexpected attack on him by Z.'s father, and therefore acted automatically and could not control his actions, were not confirmed by the forensic psychiatric evaluation. The author's assertions are thus mere hypotheses, formulated with the aim of obtaining a review of the evaluation and qualification of his actions. The author received a copy of the results of the forensic psychiatric evaluation on 11 March 2003. Throughout the court proceedings, he behaved coherently and did not claim that he was suffering from a mental disorder. The author was not seeing a psychiatrist. Since his sanity was never questioned either at the pretrial investigation stage or during the court hearing, the results of the forensic psychiatric evaluation have not been examined by Verkhneufaleysk City Court as evidence and the first instance court did not base its sentence on the result of this evaluation.

6.10 The State party submits that the court of cassation examined the lawfulness, validity and fairness of the author's sentence and concluded that the first instance court had duly taken into account all the factual circumstances of the case and details regarding the identity of each of the convicted persons.

6.11 As to the author's claims under article 14 (3) (d) of the Covenant, the State party submits that he did not request legal assistance in the court of cassation. Therefore, Chelyabinsk Regional Court did not engage a lawyer to participate in the cassation proceedings. At the same time, the author's request to be present at the hearing of his cassation appeal was granted by Chelyabinsk Regional Court and the author was able to defend himself in person. The State party recalls that, according to article 51 (1) of the Code of Criminal Procedure (in force from 18 December 2001 and valid at the time when the author's sentence was handed down), legal representation in criminal cases was mandatory when: (1) the suspect or accused had not renounced his or her right to legal assistance pursuant to the procedure established in article 52 of the Code of Criminal Procedure; (2) the suspect or accused was a minor; (3) the suspect or accused was unable to independently exercise his or her right to defence owing to physical or mental disabilities; (4) the suspect or accused could not understand the language in which the proceedings were conducted; (5) the accused faced charges carrying a term of imprisonment exceeding 15 years, life imprisonment or the death penalty; (6) the criminal case was to be considered in a trial by jury; and (7) the accused had requested the consideration of his or her criminal case under the special procedure pursuant to chapter 40 of the Code of Criminal Procedure.

6.12 With regard to the author's claim that his lawyer, S., did not file a cassation appeal on his behalf, the State party submits that the court cannot oblige a lawyer to write and submit any appeal, as this issue needs to be agreed upon by the lawyer and his or her client.

6.13 In light of the foregoing, the State party concludes that there was no violation of the author's rights guaranteed under the Covenant.

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

7. On 20 December 2018 and 15 March 2019, the author submitted his comments on the State party's observations on the merits. He reiterates his earlier submissions of 16 June 2017, 29 August 2017 and 17 January 2018, and argues that the State party has failed to provide clear explanations as to why he was not given the possibility to be assisted by a defence lawyer during the cassation proceedings, in violation of article 51 (1) (5) of the Code of Criminal Procedure and article 14 of the Covenant.

#### **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 Pursuant to article 5 (2) (a) of the Optional Protocol, the Committee is required to ascertain that the same matter is not being examined under another procedure of international investigation or settlement. It notes in this context that, when acceding to the Optional Protocol, the State party made a declaration in which it clarified that "the Committee shall not consider any communications unless it has been ascertained that the same matter is not being examined under another procedure of international investigation or settlement". The Committee further notes that the author lodged a similar complaint with the European Court of Human Rights in November 2003 (application No. 2216/04) concerning the evaluation of the facts and evidence in his case and the rejection of his motions to obtain the attendance and examination of witnesses by the court. On 12 April 2006, the European Court of Human Rights declared his application inadmissible for non-compliance with the requirements of articles 34 and 35 of the European Convention on Human Rights.<sup>22</sup> Since the matter is not currently being examined under another procedure of international investigation or settlement, the Committee considers that it is not precluded from considering the author's communication under article 5 (2) (a) of the Optional Protocol.

8.3 The Committee takes note of the author's claim that he has exhausted all effective remedies available to him. 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 further notes the State party's position that, due to the delay in submission of the present communication, the Committee should consider it inadmissible as constituting an abuse of the right of submission under article 3 of the Optional Protocol.

8.5 The Committee notes that there are no fixed time limits for the submission of communications under the Optional Protocol and that mere delay in bringing a communication to the Committee does not of itself involve abuse of the right of submission. However, in certain circumstances, the Committee expects a reasonable explanation justifying a delay.<sup>23</sup> In addition, according to rule 99 (c) of the Committee's rules of procedure, 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

<sup>22</sup> The judgment of 8 December 2016 of the European Court of Human Rights on the author's application No. 46902/11, which concerned inadequate conditions of detention, establishing a violation of article 3 of the European Convention on Human Rights and awarding him monetary compensation for pecuniary and non-pecuniary damage, as well as legal costs and expenses, does not concern the author's claims in the proceedings before the Committee.

<sup>23</sup> *Gobin v. Mauritius* (CCPR/C/72/D/787/1997), para. 6.3.

of international investigation or settlement, unless there are reasons justifying the delay, taking into account all the circumstances of the communication.<sup>24</sup>

8.6 The Committee notes that, in the present case, the author was convicted and sentenced to 16 years' imprisonment by Verkhneufaleysk City Court on 10 April 2003. On 21 July 2003, Chelyabinsk Regional Court, acting as a court of cassation, confirmed the decision of Verkhneufaleysk City Court. Although the author's communication to the Committee was submitted only on 8 April 2014, that is, more than 10 years and 8 months since his sentence became executable pursuant to the decision of Chelyabinsk Regional Court, the Committee considers that the author remained active up until 2015 in attempting to obtain redress, inter alia, through the supervisory review procedure before the Supreme Court of the Russian Federation in 2008, 2013 and 2014 and the Office of the Prosecutor General in 2013. The Prosecutor's Office of Chelyabinsk Region, when examining the author's appeal to the Office of the Prosecutor General, issued a determination on the merits on 22 August 2013, concluding that the relevant law at the time did not provide for the mandatory participation of a defence lawyer during the cassation proceedings. The Committee also notes that, as a result of the author's appeals, his prison sentence was reduced twice after 2003, namely, by Kopeysk City Court in Chelyabinsk Region on 20 August 2004 and by Metallurgicheskoy District Court of Chelyabinsk City on 13 May 2011.

8.7 The Committee further notes that article 51 (1) (5) of the Code of Criminal Procedure provided for mandatory legal representation when the accused, as was the case in the present communication, faced serious charges carrying a term of imprisonment exceeding 15 years, life imprisonment or the death penalty, and that it is uncontested that the author did not renounce his right to legal assistance in the cassation proceedings, pursuant to the procedure established in article 52 of the Code of Criminal Procedure (see para. 6.11 above). The Committee notes in this respect the State party's argument that the author had not requested legal assistance in the court of cassation and that, therefore, Chelyabinsk Regional Court did not engage a lawyer to participate in the cassation proceedings (see paras. 6.5 and 6.11 above). The Committee observes, however, that the author was only able to benefit from the legal assistance of the ex officio lawyer until his sentencing by the court of first instance, after which the ex officio lawyer informed the author that he would not be available to represent the author during the cassation proceedings, without, however, explaining to the author how to file an application for legal assistance with the court of cassation. The Committee also takes into account the author's explicit reference to his legal illiteracy and lack of knowledge about his rights (see para. 2.10 above). The Committee reiterates its approach that, in determining what constitutes an excessive delay in the submission of the communication, each case must be decided on its own facts.<sup>25</sup> In light of the above considerations and in the particular circumstances of the present communication, the Committee considers that the delay in the submission of the present communication does not constitute an abuse of the right of submission pursuant to rule 99 (c) of the Committee's rules of procedure.

8.8 As for the author's claims under article 14 (3) (e) of the Covenant in relation to the rejection of his motions to obtain the attendance and examination of witnesses, such as the minor, V.L., and the policemen who were present at the crime scene and effectively witnessed the events leading to his conviction and sentencing, the Committee recalls that it is generally for the States parties' courts to evaluate facts and evidence in a particular case, unless it can be ascertained that the evaluation was clearly arbitrary or amounted to a denial of justice, or that the court failed in its duty of independence and impartiality.<sup>26</sup> The Committee notes the State party's argument, left unaddressed by the author, that his repeated motions to examine V.L. as a witness were rejected by the court because the victim Z. did not deny that the initial conflict between him and the author had started in the courtyard of their residential building. Furthermore, the minor, V.L., was not present at the crime scene and did not witness the events that took place in the home of Z. The Committee also takes note of the State party's argument that the author's requests to examine the

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<sup>24</sup> This rule applies to communications received by the Committee after 1 January 2012.

<sup>25</sup> *Klain and Klain v. Czech Republic* (CCPR/C/103/D/1847/2008), para. 7.5.

<sup>26</sup> *G.J. v. Lithuania* (CCPR/C/110/D/1894/2009), para. 8.10.

policemen who had detained him, as well as medical personnel present at the crime scene, in order to establish discrepancies in the witness statements of Y.L., were rejected by the court due to the absence of discrepancies in the witness statements of Y.L., contrary to the author's claim. The Committee notes that the above arguments were left unaddressed by the author. In light of the information available on file, the Committee considers that, in the present case, the author has failed to demonstrate that the evaluation of facts and evidence in the court proceedings was arbitrary or amounted to a denial of justice. The Committee concludes, therefore, that the author's claims under article 14 (3) (e) of the Covenant are insufficiently substantiated for purposes of admissibility. Accordingly, the Committee declares this part of the communication inadmissible under article 2 of the Optional Protocol.

8.9 The Committee considers that the author's claim under article 14 (3) (d) of the Covenant relating to a violation of his right to defence during the cassation proceedings has been sufficiently substantiated for the purposes of admissibility. Accordingly, it declares this claim admissible and proceeds to its consideration on the merits.

#### *Consideration of the merits*

9.1 The Committee has considered the communication in light of all the information submitted 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 he was not assisted by a defence lawyer during the cassation proceedings. The Committee finds that article 14 (3) (d) of the Covenant applies to the present case, as Chelyabinsk Regional Court examined the author's criminal case as to the facts and the law and made a new assessment of the issue of guilt or innocence.<sup>27</sup> It notes the State party's argument that the author did not request legal assistance in the court of cassation or complain about the absence of a defence lawyer and that, therefore, Chelyabinsk Regional Court did not engage a lawyer to participate in the cassation proceedings. The Committee also notes the State party's submission that the author did request to be present at the hearing of his cassation appeal, that this request was granted by Chelyabinsk Regional Court and that the author was able to defend himself in person (see para. 6.11 above).

9.3 The Committee recalls that article 14 (3) (d) of the Covenant contains three distinct guarantees vis-à-vis persons accused of a criminal charge: (a) to be present during their trial; (b) to defend themselves in person or through legal counsel of their own choosing and to be informed of this right, if they do not have legal assistance; and (c) to have legal assistance assigned to accused persons whenever the interests of justice so require, and without payment by them in any such case if they do not have sufficient means to pay for it.<sup>28</sup> The Committee considers, therefore, that it is up to the State party to demonstrate that the author, who was sentenced by Verkhneufaleysk City Court to 16 years' imprisonment and who did not have legal assistance after his sentencing by the court of first instance, was duly informed of his right, pursuant to article 14 (3) (d) of the Covenant, to have a defence lawyer during the cassation proceedings. Furthermore, the Committee notes the State party's acknowledgment that, according to article 51 (1) (5) of the Code of Criminal Procedure (in force from 18 December 2001 and valid at the time when the author's sentence was handed down), legal representation in criminal cases was mandatory when the accused faced charges carrying a term of imprisonment exceeding 15 years, life imprisonment or the death penalty (see para. 6.11 above). The Committee also notes that it is uncontested that the author did not renounce his right to legal assistance in the cassation proceedings, pursuant to the procedure established in article 52 of the Code of Criminal Procedure (see para. 6.11 above), and that in order for someone to renounce the exercise of a particular right, he or she should be aware of the existence of the right in question in the first place. The Committee further notes that, in this particular case, Chelyabinsk Regional Court considered the materials of the author's criminal case and arguments presented in his

<sup>27</sup> *Dorofeev v. Russian Federation* (CCPR/C/111/D/2041/2011), para. 10.6; and *Y.M. v. Russian Federation* (CCPR/C/116/D/2059/2011), para. 9.6.

<sup>28</sup> See also Committee's general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, paras. 36–38.

cassation appeal in order to reach its conclusion. In such circumstances, Chelyabinsk Regional Court was under the obligation to inform the author about his right to request the presence of a defence lawyer during the cassation proceedings. The Committee also observes that lawyer S., who was allegedly informed about the date of the cassation hearing but chose not to be present (see para. 2.7 above), cannot be considered as the lawyer of the author's own choosing. It cannot be assumed either that the author renounced his right to be represented by a defence lawyer during the cassation appeal only on the basis of the fact that he did not explicitly request legal assistance. Furthermore, the Committee observes that the author had to prepare and submit his cassation appeal without any legal assistance. In these circumstances, the Committee considers that the State party has failed to demonstrate that it has taken the necessary steps to inform the author of his right to be represented by a defence lawyer in the cassation court and that, therefore, the facts as presented reveal a violation of the author's right under article 14 (3) (d) of the Covenant.

10. 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 right under article 14 (3) (d) of the Covenant.

11. 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, *inter alia*, to take appropriate steps to provide the author with adequate compensation. The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring again in the future.

12. 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 official language of the State party.

## Annex I

### Individual opinion of Committee member Yuval Shany (dissenting)

1. I regret not being able to join the majority of members on the Committee in finding the communication admissible and in finding a violation of the Covenant. I am of the view that the delay in submission of the present communication should have been regarded, in light of rule 99 (c) of the Committee's rules of procedure, as an abuse by the author of the right to submit a communication.

2. The Committee found the author's claim under article 14 (3) (d) of the Covenant, relating to a violation of his right to defence during the cassation proceedings, admissible, although the cassation proceedings took place in 2003, 14 years before the communication was submitted to the Committee, and the cassation decision was conclusively affirmed in a supervisory review in 2008, 9 years before the communication was submitted. It should also be noted that the author's application to the European Court of Human Rights, alleging a number of due process violations in the course of the legal proceedings against him, was rejected in 2005 (he did not, however, explicitly raise the claims relating to his legal representation at the cassation proceedings).

3. According to rule 99 (c), 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.

4. In explanation of the delay, the author argues that he submitted additional appeals to the Office of the Prosecutor General in 2012 and 2013, to the Chair of the Supreme Court of the Russian Federation in 2013 and 2014, to the Office of the President of the Russian Federation in 2013 and to the office of the human rights ombudsperson in 2014 (see para. 5.1 above). All of these motions, however, constitute extraordinary proceedings launched long after the judgment against the author became final.

5. Although Russian law does not temporally restrict the ability of convicts to request a new review of their conviction or sentence (in a manner comparable to requests for retrial in other countries), it would defeat the object and purpose of rule 99 (c) were authors able to circumvent the time limits set out therein by simply manufacturing, at will, a new extraordinary review process at the domestic level. Accepting such a litigation strategy could result in considerable uncertainty about the timeline for submission of communications to the Committee, generate review before the Committee of events and incidents that took place many years ago for which only scarce evidence exists, and put responding States parties trying to establish the factual record of what actually happened at a serious disadvantage. Consequently, an author should also be expected to explain the reasons for significant delays between the time in which domestic judgments became final and the time of submission of the communication, even if he or she resorted in the interim to extraordinary review proceedings at the domestic level.

6. A comparable approach has been taken by the European Court of Human Rights, when calculating the application of its six-month rule to applications from the Russian Federation. According to the European Court, the decisive date for calculating the start of the six-month period is the date of the last decision issued in the "normal chain of domestic remedies".<sup>1</sup>

7. The majority on the Committee was not oblivious to the need to justify the delay by the author. It noted that he remained active until 2015 (see para. 8.6), that he was legally illiterate and lacked knowledge about his rights (see para. 8.7) and that the court of

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<sup>1</sup> *Abramyan and Others v. Russia*, applications No. 38951/13 and No. 59611/13, decision of 12 May 2015, para. 104; and *Martynets v. Russia*, application No. 29612/09, decision of 5 November 2009.

cassation failed to ensure the author's right of legal representation (*ibid.*). Arguably, this last consideration implies that the State failed to notify the author in due course about his right and thus bears some responsibility for the delay.

8. I find all of these justifications – which are not made explicitly by the author, but reconstructed by the majority from his claims – unpersuasive. While the author remained active and launched a large number of proceedings before national and international courts, such extensive legal activity should not alter the timeline for raising his claims under article 14 (3) (d) of the Covenant for the reasons provided above. The claim about legal illiteracy (that is, not being a lawyer) and a lack of awareness of his rights, including the right to legal representation, is too general in nature, and appears to sit uncomfortably with the author's exceptional level of legal activity and with the uncontested fact that the author's first instance lawyer advised him to obtain legal representation for the cassation proceedings. Under such conditions, the author bears the burden of showing that he did not know and could not have reasonably known of his right to legal representation before the court of cassation in real time, during the first set of review proceedings or shortly thereafter.

9. In fact, the author did not clearly claim before the Committee that he was unaware of his right to legal representation, but rather he claimed that such legal representation was mandatory (see para. 3.2), and that he was not informed of how to obtain legal assistance (see para. 2.1). However, article 14 (3) (d) of the Covenant does not provide for mandatory legal representation, but instead for a right to defend oneself "in person or through legal assistance of his own choosing". Lack of awareness of the right to mandatory legal representation under domestic law is thus legally irrelevant as it is incompatible with the rights set out in the Covenant. The author also did not explain why he was unable to obtain information about access to legal assistance from his first instance lawyer or any other official or unofficial source of information. This claim appears implausible since the author had already obtained a State-appointed lawyer for trial at the first instance. Nor did the author explain what prevented him from raising the claim about access to legal aid for many years after the conclusion of the legal proceedings against him.

10. I am therefore of the view that in the particular circumstances of the present case, the author failed to justify the delay in submitting the communication, and that it should have been found inadmissible as an abuse of the right of submission.

## Annex II

### **Joint opinion of Committee members Ahmed Amin Fathalla, José Manuel Santos Pais and H el ene Tigroudja (dissenting)**

1. We regret not being able to join the majority of the Committee in finding this communication admissible, as well as in finding a violation of the author's rights under article 14 (3) (d) of the Covenant.
2. On 10 April 2003, the author was found guilty of hooliganism and intentionally inflicting serious bodily injury and sentenced to 16 years' imprisonment by Verkhneufaleysk City Court in Chelyabinsk Region. He was represented during the trial by an ex officio lawyer (see paras. 6.1–6.3 above) who, after the hearing, informed the author that he would not be available to represent him during the cassation procedure and advised him to find another lawyer (see para. 2.1). The author later appealed the sentence but did not request legal assistance in the court of cassation (see para. 6.5).
3. On 21 July 2003, Chelyabinsk Regional Court, acting as court of cassation, confirmed the decision of Verkhneufaleysk City Court and the latter became executable. The author requested to be present at this hearing and was therefore able to defend himself in person (see paras. 2.2, 4.2, 6.5 and 6.11), in accordance with article 14 (3) (d) of the Covenant.
4. The author submitted a request for a supervisory review of the decision of Chelyabinsk Regional Court to the Presidium of Chelyabinsk Regional Court, which was rejected on 21 August 2003. The author's further appeal to the Chair of Chelyabinsk Regional Court was rejected on 4 September 2003 (see paras. 2.3 and 4.2). In the following years, the author filed several requests for a supervisory review of his conviction. On 23 January 2008, the Supreme Court of the Russian Federation rejected the author's request. The author's subsequent request to the Supreme Court of the Russian Federation was returned without examination on 18 March 2008, with reference to earlier decisions (see paras. 2.5 and 4.2).
5. The first complaint about the absence of legal assistance during the cassation proceedings was made by the author only in 2013, that is, 10 years after his conviction became final (see para. 2.7, footnote 8).
6. In November 2013, the author requested the Supreme Court to review the decision of Chelyabinsk Regional Court, since the latter did not ensure the participation of a defence attorney in the cassation instance. In December 2013, the Supreme Court rejected the author's appeal, qualifying it as a request for a supervisory review of the decision of Chelyabinsk Regional Court (see para 2.8). The author's subsequent requests to the Supreme Court of the Russian Federation for a supervisory review, dated May 2014 and March 2015, were returned without examination on July 2014 and April 2015, respectively, with reference to earlier decisions (see paras. 2.9 and 5.1).
7. As early as August 2013, the Prosecutor's Office of Chelyabinsk Region responded that the author's defence rights had not been breached by the court of cassation, since: (a) he and his lawyer had been duly informed of the date of the cassation hearing; (b) the author was present at the hearing; (c) he had not requested legal assistance in the court of cassation; and (d) the presence of a defence lawyer was not mandatory under article 51 (1) (5) of the Code of Criminal Procedure. In October 2013, the Office of the Prosecutor General responded along the same lines, adding that the author had requested the court to ensure his own presence at the cassation hearing, without asking to be legally represented, and that the practice of applying the Code of Criminal Procedure at that time did not provide for the mandatory participation of a defence lawyer during the cassation proceedings (see para. 2.7).
8. In November 2003, the author submitted an application to the European Court of Human Rights but did not complain about the absence of a defence lawyer during the

cassation proceedings. On 12 April 2006, the European Court of Human Rights rejected his application as not meeting admissibility requirements (see para. 2.10).

9. So, when the author submitted his communication to the Committee, on 8 April 2014, more than 10 years and 8 months had elapsed since his sentence had become final pursuant to the decision of Chelyabinsk Regional Court of July 2003, and more than 5 years since his request for a supervisory review had been rejected by the Supreme Court of the Russian Federation on 18 March 2008 (see para. 4.3). Moreover, eight years had elapsed since the European Court of Human Rights had rejected his application (see para. 8.2).

10. We therefore agree with Mr. Shany's dissenting opinion, in considering that the delay in submission of the present communication should have been regarded, in light of rule 99 (c) of the Committee's rules of procedure, as an abuse by the author of the right to submit a communication. In fact, the author's communication was submitted more than five years after the exhaustion of domestic remedies and more than three years from the conclusion of another procedure of international investigation or settlement.

11. The majority of the Committee held, in this regard, that the author remained active up until 2015 (see para. 8.6). We dispute, however, that such activity had any legal relevance, since most of his supervisory reviews, up to 2013, had nothing to do with his claim before the Committee. Indeed, his conviction entered into force (*res judicata*) in 2003 and whatever legal activity he undertook could not lead to a change in that decision, once it became final.

12. The majority also held as uncontested that the author did not renounce his right to legal assistance in the cassation proceedings, referring further to his legal illiteracy and lack of knowledge about his rights (see para. 8.7). We dispute, however, such findings, since the author was represented in the first instance and his lawyer informed him in due time he would not be available to represent him during the cassation procedure and advised him to find another lawyer (see para. 2.1). As to the alleged legal illiteracy of the author and the lack of knowledge about his rights, this did not prevent him from defending himself in person during the cassation procedure or from submitting successive appeals, both to domestic and international bodies.

13. We therefore conclude that the author failed to provide a convincing explanation for the delay in submitting the present communication, and that the communication should have been found inadmissible as an abuse of the right of submission, as, in fact, the Committee rightly decided in another communication also concerning the Russian Federation decided at the same session.<sup>1</sup>

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<sup>1</sup> *A.N. v. Russian Federation* (CCPR/C/127/D/2518/2014), para. 8.3.