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International Covenant on Civil and Political Rights

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Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2715/2016*, **, ***

Communication submitted by:	Oleg Vanteev (not represented by counsel)
Alleged victim:	The author
State party:	Russian Federation
Date of communication:	2 December 2010 (initial submission)
Document references:	Decision taken pursuant to rule 97 of the Committee's rules of procedure, transmitted to the State party on 8 January 2016 (not issued in document form)
Date of adoption of Views:	4 April 2018
Subject matters:	Unlawful detention and torture; violation of fair trial rights
Procedural issues:	Non-substantiation of claims; non-exhaustion of domestic remedies; abuse of right of submission
Substantive issues:	Arbitrary arrest and detention; conditions of detention; torture; fair trial; fair trial – legal assistance; fair trial – undue delay; fair trial – witnesses; family rights; discrimination
Articles of the Covenant:	2 (2)–(3), 7, 9 (1), 10 (1), 14 (1) and (3) (c), (e) and (g), 23 and 26
Articles of the Optional Protocol:	2–3 and 5 (2) (b)

1. The author of the communication is Oleg Vanteev, a national of the Russian Federation born on 29 April 1966. He claims that the State party has violated his rights under articles 2 (2)–(3), 7, 9 (1), 10 (1), 14 (1) and (3) (c), (e) and (g), 23 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.

* Adopted by the Committee at its 122nd session (12 March–6 April 2018).

** The following members of the Committee participated in the examination of the communication: Yadh Ben Achour, Ilze Brands Kehris, Sarah Cleveland, Ahmed Amin Fathalla, Olivier de Frouville, Christof Heyns, Ivana Jelić, Bamariam Koita, Dunkan Laki Muhumuza, Photini Pazartzis, Mauro Politi, José Manuel Santos Pais, Yuval Shany and Margo Waterval.

*** An individual opinion by Committee member José Manuel Santos Pais (dissenting) is annexed to the present Views.

Factual background

2.1 On 26 May 1999, the author was shot and suffered a serious injury, for which surgery was carried out in the intensive care unit of a hospital. During his stay in hospital, the author could not move freely as he was handcuffed to his bed. A police officer was on duty to guard him day and night. The author was systematically subjected by investigators to psychological pressure and physical ill-treatment in order to force him to sign statements indicating that he refused legal assistance. The author submits, for example, that, despite his poor state of health, the police officers refused to take off his handcuffs or even to loosen them. He was also pressured into signing protocols and other documents, as well as into confessing that he had committed a number of crimes.

2.2 The author was forced to sign the statement indicating that he refused legal assistance because, during his stay in hospital, the authorities arrested and detained his wife on fabricated charges. His wife was arrested in the hospital when she was visiting the author, who was at the time undergoing surgery. The author claims that the doctors and the surgeon can prove that she was in the hospital. She was charged and sentenced to an administrative arrest for cursing in public.

2.3 On 3 June 1999, the author was officially arrested at the hospital on suspicion of having committed, together with others, thefts and robberies, among other crimes. On 8 June 1999, despite his poor state of health, the author was taken to a pretrial detention facility in the city of Cheremkhovo. The author could not move without help and his wounds had not completely healed. In the pretrial detention facility, he was held in inhuman and degrading conditions, as the facility was an overpopulated "unsanitary environment" with bed bugs and other insects and without daylight, warm clothes or bedclothes. The author was also constantly denied any medical assistance.

2.4 On an unspecified date, the author was taken to pretrial detention facility No. 1 in the city of Irkutsk. While detained there, the author was transferred from one prison cell to another more than 15 times, which aggravated his state of health. He started to vomit blood and needed emergency treatment. As a result, he was hospitalized for a brief period, but then transferred back to the pretrial detention facility. In addition, the conditions in the detention cells were similar to the ones in the Cheremkhovo pretrial detention facility. As a consequence, the author developed a skin fungal infection.

2.5 On an unspecified date, the author was transferred to a pretrial detention facility in the village of Kutulik as part of the investigation. For several days, he was subjected to physical ill-treatment. He was severely beaten and suffocated with a plastic bag placed over his head to force him to confess guilt. Consequently, he admitted to having committed the crimes that he had been charged with. The author submits that, although he was treated for the injuries caused by the ill-treatment, all the medical documentation has disappeared from his criminal case file.

2.6 On 10 December 2002, the Irkutsk Regional Court found the author guilty of having committed crimes under articles 158 (2) (repeated theft committed in a group of persons), 162 (3) (robbery with violence committed by an organized group), 209 (1) (establishing an armed group with the aim of assaulting individuals or organizations), 222 (1) (illegal acquisition, transfer, sale, storage, transportation or bearing of firearms, ammunition or explosives) and 317 (endangerment of a law enforcement officer's life) of the Criminal Code, and sentenced him to 25 years of imprisonment and the confiscation of property. The Irkutsk Regional Court was sitting in a single-judge and two-lay-assessors formation, in violation, according to the author, of the national legislation in force at the time.

2.7 On an unspecified date, the author appealed the judgment of the Irkutsk Regional Court to the chamber dealing with criminal cases of the Supreme Court. On 22 January 2004, the Supreme Court decided to quash the lower court's decision, ruling on its own motion that the lower court should have, inter alia, provided reasons as to why the author was not sentenced to life imprisonment. The Supreme Court ordered the Irkutsk Regional Court to adjudicate the case again.

2.8 On 18 September 2004, the Irkutsk Regional Court, sitting in a single-judge formation, reconsidered the case and sentenced the author to life imprisonment for violating articles 158 (2), 162 (3), 209 (1), 222 (1) and 317 of the Criminal Code on account of the total combination of sentences. The author claims that the Court's composition was again in breach of the national legislation.

2.9 On an unspecified date, the author again appealed to the chamber dealing with criminal cases of the Supreme Court. On 10 March 2005, the Supreme Court upheld the lower court's judgment in part (it changed the lower court's reference concerning cumulative offences from article 69 (3)–(5) of the Criminal Code). The judgments of the Supreme Court of 22 January 2004 and 10 March 2005 were delivered by the same judges, which, according to the author, was in violation of national law.

2.10 On 15 May 2006, 9 March 2011, 5 May 2011 and 28 February 2012, the author appealed the decision of 10 March 2005 under the supervisory review procedure to the President of the Supreme Court but all his appeals were rejected.

2.11 The author is currently being held in correctional facility No. 18 in Kharp settlement, Yamalo-Nenetskiy Region. The author and his family have made numerous requests to have the author transferred from that correctional facility to a correctional facility in Irkutsk, as it is difficult and too expensive for the family members to make the long trip from Irkutsk to Kharp to visit the author. For example, on 14 August 2012, the author submitted such a request to the District Court of Zamoskvoretsk, which rejected the request on 27 November 2012. The District Court stated that the possibility to see family members did not depend on the location of the correctional facility.

2.12 On 27 May 2013, the author appealed to the Moscow City Court but his appeal remained unanswered despite his subsequent complaints to the Supreme Court. Eventually, on 8 August 2014, the author received a decision of the District Court of Zamoskvoretsk dated 28 March 2014 informing him that his appeal had been rejected. The author notes that, as an individual sentenced to life imprisonment, he has the right to make telephone calls after 10 years of imprisonment if he is transferred from a strict regime correctional facility to a general regime correctional facility. Despite the fact that he has already served 16 years of his sentence, however, he remains in a strict regime correctional facility and continues to be deprived of his right to make telephone calls.

2.13 The author also notes that, during the hearing before the chamber dealing with criminal cases of the Supreme Court of 22 January 2004, he was denied legal representation. On 12 December 2011, the author filed a complaint to the Supreme Court claiming that its decision of 22 January 2004 should be quashed due to the violation of his right to be represented by a lawyer during that hearing. On 28 February 2012, the Supreme Court rejected the author's complaint, stating that a defendant should request such legal representation before the hearing. On 7 October 2013, the author again appealed the decision of the Supreme Court but his appeal was rejected. The author also complained to the Office of the Prosecutor General; that complaint was rejected on 14 October 2013 on the grounds that the Constitutional Court should examine the substance of his claim. Consequently, on 24 September 2013, the author submitted his complaint to the Constitutional Court, claiming that his constitutional right to a defence had been breached during the proceedings before the chamber dealing with criminal cases of the Supreme Court of 22 January 2004. On 21 November 2013, the Constitutional Court rejected the author's complaint stating that his verdict and sentence had been delivered before 8 February 2007.[1]

2.14 The author claims to have exhausted all available domestic remedies. He also submits that complaining to any administrative or judicial body is futile and ineffective.

[1] The Constitutional Court explained in its ruling that the provisions of its ruling dated 8 February 2007, which regulate the participation of a lawyer during the cassation appeal, are not applicable to the author's case since this ruling was adopted after the author's cassations hearings.

Complaint

3.1 The author claims violations of his rights under article 2 (2)–(3) of the Covenant because he lacked legal representation during the cassation proceedings. These same claims also raise issues under article 14 (3) (d).

3.2 The author also claims that the State party has violated his rights under articles 7 and 10 (1) of the Covenant based on the fact that, despite the poor state of his health and the complex surgery he underwent, he was subjected to psychological pressure and physical ill-treatment by police officers at the hospital in 1999. Furthermore, while in the pretrial detention facilities in Cheremkhovo, Irkutsk and Kutulik, the author was held in inhuman and degrading conditions. Moreover, he was denied medical treatment by the administration of the Cheremkhovo detention facility.

3.3 The author further claims that his rights under article 9 (1) of the Covenant have been violated. He claims that on 26 May 1999 he was unlawfully detained at the hospital as the police officers neither presented an arrest warrant nor informed him of the duration of his detention. During his stay at the hospital, he was handcuffed to his bed and permanently guarded by police officers who forced him to sign important procedural documents and protocols and to renounce his right to legal assistance.

3.4 With reference to article 14 (1) and (3) (c), (e) and (g) of the Covenant, the author claims that the investigation was unjustifiably prolonged and that he was brought to trial three years after the day of his arrest. All hearings were conducted with procedural violations (the same panel of judges sat during the proceedings before the courts of first and seconds instance and the compositions of the courts during the hearings were unlawful). The investigator in his criminal case, E.V., was a close relative of one of the victims. All the author's motions and requests before all instances were unjustifiably rejected and his requests for an expert forensic examination and the summoning of particular witnesses were dismissed. For example, a forensic expertise examination concerning his injury from a bullet could have excluded charges under article 317 of the Criminal Code. Furthermore, the author submits that, during the chase, he did not know that he was being shot at by police officers, since the vehicles were not marked as police vehicles, and that the court should therefore have excluded charges under article 317 of the Criminal Code.

3.5 The author also submits that the State party has violated his rights under article 23 of the Covenant based on the fact that he has been deprived of making telephone calls and seeing his family members, which has caused them suffering and pain as a result of the separation.

3.6 The author claims that he was discriminated against on the basis of his sex and age, in violation of article 26 of the Covenant, as, for example, women, minors and persons older than 65 years have a number of privileges in relation to criminal sentences, among them the prohibition of the imposition of life imprisonment.

3.7 Finally, the author asks the Committee to request the State party to annul the "unlawful court decisions" against him and to compensate him in the amount of 3 million United States dollars for having caused him moral damage.

State party's observations on admissibility and the merits

4.1 On 6 May 2016, the State party challenged the admissibility of the communication. The State party submits that, according to rule 96 (c) of the Committee's rules of procedure, the Committee must ascertain that the communication does not constitute an abuse of the right of submission. 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.

4.2 The State party notes that the author claims that when he was held in pretrial detention facilities the conditions of his detention violated his rights under articles 7 and 10 (1) of the Covenant. The author, however, filed a complaint with the Committee in

December 2010, six years after the events indicated in the complaint, regarding the conditions of detention. The communication does not contain any explanations from the author regarding this delay. The author's complaint therefore must be considered as an abuse of the right of submission regarding his claims under articles 7 and 10 (1) of the Covenant.

4.3 Furthermore, according to article 2 of the Optional Protocol, the Committee must also ascertain that the author has exhausted all domestic remedies available to him. The author complains that the State party violated his right to a hearing by a tribunal established by law under article 14 of the Covenant (court verdict issued on 10 December 2002). That claim, however, is not included in the author's cassation appeal. The author has therefore failed to exhaust domestic remedies. Regarding the court verdict of 18 September 2004, the author also complains of violations of his right to a hearing by a tribunal established by law. But, as it appears from the decision of the cassation court issued on 10 March 2005, the author failed to mention this in his cassation appeal.

4.4 As to the claims about the unlawful composition of courts, the State party similarly notes that the author's communication to the Committee was filed eight years after the 2002 verdict and six years after the 2004 verdict, without him explaining the delay. The author's claims that the State party violated his rights to a hearing by a tribunal established by law should be considered inadmissible.

4.5 Article 14 (7) of the Covenant prohibits the trial or punishment of a person twice for the same crime. This principle applies, for example, when a case is considered by a civil court; the same case cannot be then considered by a military court or a special court. Article 14 (7) does not, however, prohibit the conduct of a new trial when the person in question has been convicted in absentia or when he or she has requested the conduct of a new trial. The Committee too, in paragraph 56 of its general comment No. 32 (2007), considers that article 14 (7) is not applicable when a court annuls a verdict and decides to conduct a new trial.

4.6 On 22 January 2004, the chamber dealing with criminal cases of the Supreme Court decided to annul part of the Irkutsk Regional Court's decision. The case was sent to the same court but was to be considered by a panel of different judges. On 18 September 2004, the Irkutsk Regional Court found the author guilty and sentenced him to life imprisonment. The author's claims under article 14 (7) are therefore unsubstantiated and should be declared inadmissible.

4.7 Article 14 further guarantees the rights to procedural equality and a fair trial. As a general rule, the courts of States make appropriate assessments of the facts and the evidence, or of the proper application of national legislation, unless it can be proven that such assessments are clearly arbitrary or have resulted in the denial of justice or in a manifest error or that the courts have otherwise violated their obligations to remain independent and impartial. The European Court of Human Rights has stated, in its judgment in *Mostipan v. the Russian Federation*, that it could not assess whether the evidence in question was obtained in violation of procedural rules and whether it should have been admitted in a court of law. According to the State party, the European Court of Human Rights must only answer the question of whether the trial was, in general terms, conducted in a fair manner.[2]

4.8 Nothing in the communication indicates that the evaluation of evidence was arbitrary or that the courts committed a manifest error or that the trial was unfair. The communication must therefore be declared inadmissible under article 2 of the Optional Protocol.

4.9 On 11 July 2016, the State party also presented its observations on the merits of the communication. The State party submits that, during the cassation appeal and supervisory review appeal procedures, the courts carefully examined the evidence and application of the provisions of the Code of Criminal Procedure and found no violations.

[2] The State party refers to the European Court of Human Rights, *Mostipan v. the Russian Federation*, Application No. 12042/09, Judgment, 16 October 2014.

The author complains in his communication that the investigator in charge of the case, E.V., was a relative of one of the victims, O.R. It was ascertained that E.V. was indeed O.R.'s second cousin but it was discovered only later that E.V. did not investigate O.R.'s case.

4.10 Records reveal that the author was detained on 3 June 1999 on suspicion of being involved in the attempted murder of three police officers: A.B., D.G. and O.R. The author was informed of his rights as a person in temporary detention, as confirmed by his signature. The verdict of the court dated 10 December 2002 confirms that there had not been any substantial violations of the author's rights during the interrogations. The author was informed, for example, of his right to a defence. The author signed a waiver refusing the assistance of a defence lawyer. According to the provisions of the Code of Criminal Procedure in force at the time, the participation of a defence lawyer was not mandatory.

4.11 As confirmed by the chamber dealing with criminal cases of the Supreme Court on 22 January 2004, the panel of judges had made a proper assessment of the testimonies of witnesses and defendants. The Supreme Court came to the conclusion that those testimonies should be admitted, since the interrogations had been carried out in accordance with the provisions of the Code of Criminal Procedure and a series of investigative actions had been carried out in the presence of lawyers. There had been no violations that would lead to an annulment of the verdict, the court decided.

4.12 The author complains that his wife was detained to put pressure on the author and that that is why he countersigned the records of the investigation. In its verdict dated 10 December 2002, however, the court disagreed with the author's statement that he had been pressured physically or otherwise and that he had confessed because the authorities had detained his wife, G.A.V., and he was afraid for her health and well-being. G.A.V. was sentenced to an administrative arrest, which she served from 27 to 31 May 1999, while the author was arrested only on 3 June 1999 and was questioned the same day, i.e., after his wife had been released.

4.13 Furthermore, the chamber dealing with criminal cases of the Supreme Court further confirmed, on 10 March 2005, the findings of the lower court of 18 September 2004.

4.14 Regarding the conditions of detention, as reflected in the court verdict dated 10 December 2002, the panel of judges disagreed that the defendants had been physically pressured. Several investigators testified that the defendants had not been pressured during the investigation and had responded to all questions voluntarily. The court also reviewed the registration records of the Cheremkhovo detention facility and had found no records of any complaints from the author. The court, in its verdict of 18 September 2004, found that the claims from the author and his co-defendants that some evidence should have been ruled inadmissible were baseless. This was also confirmed on 15 May 2006 by the court responding to the appeal made by the author under the supervisory review procedure.

4.15 Regarding the author's claims that the formation of the panel of judges in his trial was unlawful, the State party submits that the author's case was heard by a professional judge and two lay assessors, as stipulated in article 15 of the Code of Criminal Procedure in force at the time. As it is evident from the review of the author's case, the hearings for Oleg Vanteev and his co-defendants started on 18 June 2001 and 26 June 2002. Article 15 of the Code of Criminal Procedure envisaged that those charged with crimes carrying a potential maximum sentence of 15 years or more, or life imprisonment, or the death penalty, must be heard by a panel of three professional judges. In accordance with the federal law dated 9 July 1998, that specific provision of the Code of Criminal Procedure on the composition of courts was suspended and was not enforced.

4.16 The author's case was therefore correctly heard by a professional judge and two lay assessors. The lay assessors participated in the hearings based on the order of the President of the Russian Federation dated 25 January 2001 on the extension of the terms of office for lay assessors of the federal courts of general jurisdiction in the Russian Federation. Moreover, the Supreme Court, when reviewing the case on 22 January 2004, did not find any violations of the provisions of the Code of Criminal Procedure.

4.17 The State party further submits that the author's guilt was proven in a court of law despite the author's claims to the contrary. The author's alibi was examined and was shown to have been without validity. These conclusions were further corroborated by testimonies from victims and witnesses. The author claims that the police cars that chased them were not marked as such and that the author and his co-defendants could not therefore know that they were dealing with law enforcement officers. The witness statements and other evidence shows clearly that the author was aware that the group had been stopped by road police officers and that he had shot at them, in violation of article 317 of the Criminal Code.

4.18 The court also concluded that the law enforcement officers correctly used their service weapons as they were chasing an armed gang and the police officers were concerned for their security during the chase. During the investigation, the author and his co-defendants testified that they were planning to steal cattle and had therefore taken some weapons with them. The author heard someone's weapon loading and, concerned about being shot, fired two shots towards the officers. The next morning, several officers were requested to go to the site of the accident, where they found bodies and the police car with its police lights on.

4.19 In accordance with article 378 of the Code of Criminal Procedure, the chamber dealing with criminal cases of the Supreme Court decided, on 22 January 2004, to annul the verdict dated 10 December 2002 and to send the case back to the Irkutsk Regional Court, which was to consider the case anew, with a new panel of judges. That decision only concerned the author's verdict related to article 317 of the Criminal Code. It is wrong to state that the partial annulment of the verdict constituted a new criminal prosecution against the author.

4.20 On 5 May 2004, the Irkutsk Regional Court held a preliminary hearing to decide on certain procedural issues, including, for example, on whether the defendants required a professional judge and two lay assessors to consider their case or just a single judge. As it is clear from the records, the author and his co-defendants, after consulting their lawyers, decided to opt for the single-judge option, as prescribed by article 30 of the Code of Criminal Procedure. Further complaints regarding that specific claim were rejected during the cassation appeal on 10 May 2005 and during the appeal made under the supervisory review procedure on 15 May 2006, 7 April 2011 and 28 February 2012.

4.21 The author also complains that his verdict and sentence on 18 September 2004 worsened his position in comparison to his verdict and sentence on 10 December 2002. Indeed, the verdict of 18 September 2004 contains references to the verdict of 10 December 2002 in that the author had already been found guilty under articles 162 (3) (robbery) and 209 (1) (banditry, being member of a gang) of the Criminal Code, and other crimes, for which he was sentenced to a period of imprisonment. When considering the charges under article 317 of the Criminal Code, the court considered that the death of three law enforcement officers was an aggravating circumstance and sentenced the author to life imprisonment.

4.22 Regarding the author's claims to the Committee regarding the conditions of his detention during the investigation and when he started serving his sentence, the State party submits that articles 45–46 and 52 of the Constitution of the Russian Federation protect the rights and freedoms of detained persons. The author could have complained under the provisions of Law No. 103-FZ dated 15 July 1995 but failed to do so. The author also had a right to complain to a court. These claims are missing from his complaints of the verdicts dated 10 December 2002 and 18 September 2004. The State party therefore concludes that there have been no violations of the author's rights under the Covenant.

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

5.1 The author, responding to the State party's observations, submitted comments on 10 July, 9 August and 12 September 2016 and on 24 May 2017. Regarding the delay in submission of the communication, the author explains that the final court decision was

adopted in his case on 10 March 2005. That same year, the author filed a complaint with the European Court of Human Rights but it took that Court three years to inform the author that his complaint was inadmissible. After that, it took the author more than a year to collect additional documents to submit the communication that is the subject of the present Views.

5.2 The author submits that the authorities made every effort to prevent him from obtaining copies of documents he needed for his complaint. He therefore had difficulties providing additional documents to the Committee, for example, a copy of the court decision dated 28 August 2014.

5.3 The State party submits that the author did not raise his claims of a violation of his right, protected under article 14 of the Covenant, to be heard by an independent and impartial tribunal established by law in his cassation appeal. The author responds by claiming that he is not a lawyer and that he was not aware of these violations until later, once he had had a chance to study the Code of Criminal Procedure. Additionally, the author claims that the Supreme Court, which heard his case in cassation appeal, should have provided him with a lawyer, in accordance with articles 50–52 of the Code of Criminal Procedure. A lawyer, the author argues, would have advised him on the illegal composition of the court. The participation of a lawyer in such cases is obligatory. The Supreme Court, however, failed to provide legal assistance.

5.4 The chamber dealing with criminal cases of the Supreme Court, which was well aware that the lower court had violated the law, did not take any measures to rectify the situation. Therefore, neither the verdict of 10 December 2002 nor that of 18 September 2004 were adopted by a court established by law as required by the first sentence of article 14 (1) of the Covenant. The Supreme Court failed to consider these violations, which is why any further appeal would have been ineffective. The law in that regard is clear – the author's case should have been considered by a panel of three professional judges, by one judge or by a panel of 12 jurors. Therefore, a panel consisting of one professional judge and two lay assessors was unlawful.

5.5 Furthermore, both the verdicts of 10 December 2002 and 18 September 2004 concern the same criminal case, in violation of the author's rights under article 14 (7) of the Covenant. According to the first verdict, of 10 December 2002, the author was not a previously convicted person; according to the second verdict, of 18 September 2004, the author was a previously convicted person, providing a basis for an increase in sentence. The author considers this to be a violation of the prohibition against double punishment for the same crime. The first appeal resulted in the annulment of only part of the verdict and confirmed the author's sentence to 25 years of imprisonment. For the second appeal, the same evidence was considered and the author was found to have been "previously convicted" and was sentenced to life imprisonment. Both appeals were considered by the same panel of judges, which is prohibited by article 63 (2) of the Code of Criminal Procedure.

5.6 The author reiterates that he is not guilty of the crimes he was charged with. To prove this, he has asked for his employment records to show that he was working at the time of the commission of the crime.[3] The author further submits that there is evidence that the police car involved in the incident did not have its flash lights on.

5.7 The author claims that the authorities, including the courts, failed to prevent a conflict of interest during the investigation, since the case investigator, E.V., was a relative of one of the victims.

5.8 As indicated in the initial submission, the author claims that he was de facto detained on 26 May 1999, since he was handcuffed to his bed and had a police officer on guard at all times. The author states that his wife was detained when she came to visit him in the hospital, to pressure the author to confess guilt. The author complained about this

[3] The author claims that he was not able to obtain these records as he was informed that they had been destroyed.

fact during the court hearings but the court ignored his claims. Because of this physical and psychological pressure, the author refused legal assistance.

5.9 The author repeats his claims that he was tortured while in detention. He complained about this during the court hearings in 2002 and requested that his cellmates testify about the bruises and other bodily injuries they witnessed, but his requests were rejected.

5.10 The State party invokes non-exhaustion of remedies since the author did not complain about his conditions of detention and incarceration. The author contends that such complaints would not have been effective.

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 93 of its rules of procedure, whether it 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 takes note of the State party's argument that the author failed to exhaust all available domestic remedies regarding his claims of alleged violations of his rights to an independent and impartial tribunal established by law by failing to raise these claims during the cassation appeal. The Committee recalls that article 5 (2) (b) of the Covenant precludes it from considering a communication unless all available domestic remedies have been exhausted, unless the application of the remedies is unreasonably prolonged. In this regard, the Committee takes note of the author's claims that he was not represented during the cassation hearings and that the remedies would have been ineffective, as he has shown by submitting several complaints to the Supreme Court and the Constitutional Court on these specific issues at a later date. Given the circumstances, the Committee considers that it is not precluded by article 5 (2) (b) of the Optional Protocol from examining the communication.

6.4 The State party also claims that the author failed to exhaust all domestic remedies regarding his conditions of detention, including the conditions of his imprisonment, in violation of article 10 (1) of the Covenant, as he claims that he lacked appropriate medical care, the prison conditions were poor and he has been denied the right to make telephone calls to his family members. The Committee notes that the author simply asserts that making such complaints would have been ineffective. The Committee recalls its jurisprudence that mere doubts about the effectiveness of the domestic remedies do not absolve the author from the requirement to exhaust them.[4] In the circumstances as described, the Committee finds that the author failed to exhaust domestic remedies regarding the conditions of detention and imprisonment, as required by article 5 (2) (b), and finds these claims inadmissible.

6.5 The Committee notes the State party's argument that the present submission should constitute an abuse of the right of submission under the provisions of the rules of procedure of the Committee. The Committee recalls that 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. The Committee notes the author's position that he first submitted his claim to the European Court of Human Rights, which issued its decision on 16 November 2007 and only subsequently to the Committee. Furthermore, the Committees notes that the author filed several complaints, which resulted in the Supreme Court decision of 28

[4] *S.H.B. v. Canada* (CCPR/C/29/D/192/1985).

February 2012 and the Constitutional Court decision of 21 November 2013, considering the complaints on the merits but denying relief. Taking into account all the circumstances of the communication and considering that rule 96 (c) of the rules of procedure should apply to communications received by the Committee on and after 1 January 2012, and that the communication was initially received in 2010, the Committee concludes that it is not precluded from considering the communication under article 3 of the Optional Protocol.

6.6 The Committee has noted the author's claims under articles 2 (2)–(3), 7, 14 (3) (c)–(e) and (g), 23 and 26 of the Covenant. In the absence of any further pertinent information on file, however, the Committee considers that the author has failed to sufficiently substantiate these allegations for the purposes of admissibility. Furthermore, the Committee considers that the author failed to substantiate, for the purposes of admissibility, his claims under article 14 (1) regarding the composition of the courts, the participation of lay assessors in the court hearings and the composition of cassation appeal panels. Accordingly, it declares this part of the communication inadmissible under article 2 of the Optional Protocol.

6.7 In the Committee's view, the author has sufficiently substantiated, for the purposes of admissibility, his remaining claims under articles 9 (1) and 14 (1) and (7), declares them admissible and proceeds with its consideration of the merits.

Consideration of the merits

7.1 The Committee has considered the present communication in the light of all the information submitted by the parties, in accordance with article 5 (1) of the Optional Protocol.

7.2 The Committee takes note of the author's claims under article 9 (1) that he was arbitrarily detained from 29 May to 3 June 1999, when he was officially detained as a suspect. The Committee notes the author's claims that he was handcuffed to his bed and that there was a police officer on guard at all times. The Committee recalls that arrest within the meaning of article 9 need not involve a formal arrest as defined under domestic law.[5] Under the provisions of article 9 of the Covenant, no one shall be deprived of liberty except on such grounds and in accordance with such procedure as are established by law. The State party has not responded to these allegations. Considering the description of his detention in the hospital provided by the author, bearing in mind the fact that his movement was constrained within the hospital and he was not free to leave, and in the absence of any pertinent explanation from the State party, the Committee concludes that the author's rights under article 9 (1) of the Covenant were violated.

7.3 The Committee takes note of the author's claim that the second court hearing resulting in a verdict dated 18 September 2004 significantly increased his sentence compared to the initial court verdict and sentence dated 10 December 2002. The Committee notes that it is generally for the courts of States parties to the Covenant to review facts and evidence, or the application of domestic legislation to individual cases.[6] In the present case, the Committee observes that, on 22 January 2004, the Supreme Court decided to annul part of the author's verdict and sentence and to send the case for another consideration, noting that the lower court had failed to consider life imprisonment as a possible sentence. The Committee notes the State party's argument that the author's sentence was increased because the court had found the death of three police officers to be an aggravating circumstance (see para. 4.21 above). The Committee considers that these procedures were based on domestic legislation, which envisages the possibility for review of a court's decisions by a higher court. The Committee therefore decides that the facts as presented by the author do not reveal violations of his rights under article 14 (1) and (7) in respect to the increase of his sentence.

[5] General comment No. 35 (2014), para. 13.

[6] General comment No. 32 (2007), para. 26.

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 article 9 (1) 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, inter alia, to provide the author with an adequate compensation for the violations. The State party is also under an obligation to take all steps necessary 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 or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective 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 disseminate them widely in the official languages of the State party.

Annex

Individual opinion of Committee member José Manuel Santos Pais (dissenting)

1. I regret not being able to share the reasoning of the Committee that the State party violated the author's rights under article 9 (1) of the Covenant.

2. The Committee based its conclusion mainly on the author's claims that he was arbitrarily detained from 29 May to 3 June 1999, when he was officially detained as a suspect, that he was handcuffed to his bed and there was a police officer on guard at all times. Therefore, the author's movement was constrained within the hospital and he was not free to leave (para. 7.2).[1] Finally, the Committee considered that the State party did not respond to these allegations.

3. The author is not represented by counsel before the Committee. Most of his allegations have been found inadmissible, either due to the failure to exhaust domestic remedies regarding conditions of detention and imprisonment (para. 6.4) or due to the failure to substantiate his claims regarding violations of articles 2 (2)–(3), 7, 14 (1) and (3) (c)–(e) and (g), 23 and 26 of the Covenant (para. 6.5). Furthermore, the author's claims under article 14 (1) and (7) of the Covenant, regarding the increase of his sentence dated 18 September 2004, were not deemed by the Committee to violate his rights (para. 7.3). So, the question is whether the author's allegations under article 9 (1) are credible. Although the Committee thought so, I do not share such a conclusion.

4. The author was convicted by the Irkutsk Regional Court in its verdicts of 10 December 2002 and 18 September 2004 for having committed serious crimes under articles 158 (2) (repeated theft committed in a group of persons), 162 (3) (robbery with violence committed by an organized group), 209 (1) (establishing an armed group with the aim of assaulting individuals or organizations), 222 (1) (illegal acquisition, transfer, sale, storage, transportation or bearing of firearms, ammunition or explosives) and 317 (endangerment of a law enforcement officer's life) of the Criminal Code of the Russian Federation (paras. 2.6 and 2.8) and sentenced to life imprisonment (para. 4.21). The Supreme Court upheld the lower court's judgment on 10 March 2005 (paras. 2.9 and 4.13).

5. The author's guilt was proven in a court of law, despite his claims to the contrary, and his alibi claims were duly examined and were shown to be "without validity". These conclusions were further corroborated by testimonies from victims and witnesses. Witness statements and other evidence show clearly that the author was aware of the fact that he was being chased by a police car duly identified as such (its police lights were still on the morning after the shooting), was stopped by road police officers and so shot at them in full knowledge of what he was doing (paras. 4.17–4.18).

6. According to the author's allegations, he was arbitrarily detained in the hospital from 26 May to 3 June 1999. However, he had just been shot and suffered a serious injury, for which surgery was carried out in an intensive care unit of the hospital (para. 2.1). He was therefore not formally detained by law enforcement officers at the time, but simply kept in the hospital for medical reasons, under police surveillance, due to the seriousness of the alleged offences he was suspected of having committed. Furthermore, his health condition, due to the delicate surgery he had undergone, prevented him from moving freely within the hospital. The author himself acknowledges that, on 8 June 1999, when he was taken to a pretrial detention facility in the city of Cheremkhovo, he still suffered from a poor state of health (para. 2.3).

7. Therefore, the author was officially arrested only on 3 June 1999, when his health conditions allowed for the detention to be formally carried out. And the State party seems to consider this reasoning as the implied basis of the observations on the merits regarding this

[1] Unless otherwise indicated, paragraph numbers in parentheses refer to the Committee's Views.

issue (see particularly paras. 4.10 and 4.12), always referring to the author's arrest having taken place on 3 June 1999, not before, when the author was still held, as a patient, in the hospital.

8. The only reference we have to the fact that the author was handcuffed to his bed is made by the author himself and that statement has to be taken with caution, since the author was, as already outlined, recovering from a delicate surgery due to a serious injury (he had just been shot) and therefore subject to permanent medical examination. In this regard, the State party has, time and again, referred to the findings of national courts, always confirming there was no violation of the author's rights or of due process guarantees (paras. 4.8–4.14). The State party has also noted that the author's claims regarding the conditions of his detention were missing from his complaints in both the verdicts dated 10 December 2002 and 18 September 2004 (para. 4.22).

9. Therefore, it seems that the author could not have been arbitrarily detained from 29 May to 3 June 1999, since he was still held as a patient in the hospital where he had undergone surgery and where he was still not under formal control of law enforcement officers, but only kept under their surveillance. The official arrest happened on 3 June 1999, as acknowledged by the State party. I would thus have concluded that the author's rights under article 9 (1) of the Covenant had not been violated.