



# International Covenant on Civil and Political Rights

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## Human Rights Committee

### Decision adopted by the Committee under the Optional Protocol, concerning communication No. 3049/2017<sup>\*,\*\*</sup>

<i>Communication submitted by:</i>	A.T. (not represented by counsel)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Russian Federation
<i>Date of communication:</i>	20 April 2015 (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 15 November 2017 (not issued in document form)
<i>Date of adoption of decision:</i>	23 July 2021
<i>Subject matter:</i>	Right to attend cassation hearing
<i>Procedural issues:</i>	Abuse of the right of submission; undue delay in submission; substantiation of claims
<i>Substantive issues:</i>	Fair trial – right to be tried in one's presence; fair trial – legal assistance; right to appeal criminal conviction and sentence
<i>Articles of the Covenant:</i>	2 (3) (a); 10 (1); 14 (1), (3) (b) and (d) and (5); and 16
<i>Articles of the Optional Protocol:</i>	2 and 3

1. The author of the communication is A.T., a citizen of the Russian Federation born in 1969. He claims that the State party has violated his rights under articles 2 (3) (a); 10 (1); 14 (1), (3) (b) and (d) and (5); and 16 of the Covenant. The Optional Protocol entered into force for the State party on 1 January 1992. The author is not represented by counsel.

#### Facts as submitted by the author

2.1 The author is currently imprisoned in the Russian Federation. On 20 February 1997, he was sentenced by the Krasnoyarsk Regional Court to 15 years in prison on charges of murder, hooliganism and other acts of violence. On 7 August 1997, the Supreme Court, acting as a cassation court, upheld the decision of the court of first instance. The author was not represented by a lawyer and did not participate in person in the cassation hearing because

\* Adopted by the Committee at its 132nd session (28 June–23 July 2021).

\*\* The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Wafaa Ashraf Moharram Bassim, Yadh Ben Achour, Arif Bulkan, Mahjoub El Haiba, Furuya Shuichi, Carlos Gómez Martínez, Duncan Laki Muhumuza, Hernán Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Kobauyah Kpatcha Tchamdja, Hélène Tigroudja, Imeru Tamerat Yigezu and Gentian Zyberi.



neither the trial court nor the cassation court had explained him his rights. On 6 February 2007, the author was released on probation after serving 10.5 years of his prison sentence (four years, six months and 10 days early).

2.2 On 5 August 2009, the author was sentenced to 12 years in prison for committing another crime. A portion of his previous unserved sentence was added to the new sentence and the author was cumulatively sentenced to 15 years in prison.

2.3 On 2 August 2013, the author filed a request for supervisory review to the Supreme Court arguing that he had not been represented by a lawyer at his 1997 cassation hearing. On 26 August 2013, the Supreme Court denied the request on the grounds that, at the time of the cassation hearing, the Code of Criminal Procedure provided for the mandatory participation of a lawyer only for suspects and accused persons.

2.4 On 22 November 2013, the author filed a complaint to the Chair of the Supreme Court arguing that the 26 August 2013 ruling of the Supreme Court was unlawful and asking that his request for supervisory review be granted on the grounds that, at the time of his cassation hearing, the Code of Criminal Procedure provided for the mandatory participation of a lawyer in death penalty cases and that his crime carried a possible death sentence. On 16 January 2014, the Deputy Chair of the Supreme Court denied the author's request for lack of grounds for reversal.

2.5 On 2 February 2015, the author filed another appeal to the Chair of the Supreme Court, which was denied on 20 February 2015.

2.6 Between September 2013 and January 2015, the author filed six additional complaints to the Office of the Prosecutor General requesting the supervisory review of the 26 August 2013 ruling of the Supreme Court. All complaints were denied.

### **Complaint**

3.1 The author's claims pertain to his cassation appeal of the first crime committed, in 1997. He claims that his rights under article 14 (3) (b) and (d) of the Covenant were violated because the Supreme Court did not appoint him a counsel for his cassation hearing and did not ensure his in person participation, which put him at a disadvantage since he could not orally substantiate his appeal, answer questions or address the court on an equal footing as the prosecution.

3.2 The author also claims that his rights under articles 2 (3) (a), 10 (1), 14 (1) and (5), and 16 of the Covenant were violated because the Supreme Court and the Office of the Prosecutor General failed to provide him with an effective remedy for his violated rights, to treat him with respect and dignity, to ensure his right to a fair trial, to have his conviction reviewed by a higher court and to recognize him as a person before the law.

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

4.1 In a note verbale dated 22 June 2018, the State party submitted its observations on admissibility and the merits of the communication. The State party submits that the author has failed to sufficiently substantiate his claims under articles 10 and 16 of the Covenant and that his claims should be found inadmissible under article 2 of the Optional Protocol. The State party also submits that the author's claim under article 14 (5) is also inadmissible under article 2 of the Optional Protocol because his conviction and sentence dated 20 February 1997 were reviewed on appeal by the Supreme Court on 7 August 1997.

4.2 With regard to the author's claims under article 14 (3) (b) and (d), the State party notes that the author submitted these claims to the Committee almost 18 years after the Supreme Court had examined his cassation appeal on 7 August 1997. It also notes that the author's request for supervisory review to the Supreme Court was submitted 16 years after the ruling of the cassation court, while nothing had prevented him from submitting it earlier. Therefore, the State party argues that the author's claims under article 14 (3) (b) and (d) constitute an abuse of the right of submission and are inadmissible under article 3 of the Optional Protocol.

4.3 The State party submits that, according to the minutes of the sentencing hearing, the author's right to appeal the verdict was explained to him on 20 February 1997 and that he

later exercised that right. The author did not ask the court to allow him to participate in person in his cassation hearing or to appoint a lawyer to represent him during his cassation appeal. The domestic law at that time required courts of appeal to inform the parties of the date and time of appeal hearings only upon their request. According to the State party, in 2007, the Constitutional Court had ruled that, in certain cases, courts of appeal were required to ensure that defendants were represented by lawyers, however the ruling could not be applied retroactively in the author's case. Therefore, the State party considers that the author's right to a defence, as set out in the law at that time, was not violated.

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

5.1 On 14 September 2018, the author submitted his comments on the State party's observations on admissibility and the merits. He rejects the State party's argument that his claims constitute an abuse of the right of submission. He notes that his two requests for supervisory review of the decision of the cassation court were dismissed by the Supreme Court on 26 August 2013 and 16 January 2014, while he had submitted his complaint to the Committee in April 2015. Therefore, there was no delay in the submission of his complaint after the exhaustion of domestic remedies.

5.2 The author also notes that, even before the 2007 ruling, the Constitutional Court had rendered a decision, in 1996, according to which the right to a lawyer had to be ensured during cassation proceedings. He argues that his right to a defence continues to be violated because he is still serving his prison sentence from 2009, to which an additional prison time was unlawfully added from his 1997 conviction. The author submits that the State party has committed the same violation of his right to a defence during the cassation appeal of his second conviction in 2009. According to the author, the repeated violations of his right to a defence attest to the fact that he was denied the protection of the law and constitute a refusal to recognize him as a person before the law, in violation of article 16 of the Covenant.

#### **Author's additional comments**

6.1 On 14 May 2020, the author submitted additional comments on the State party's observations. He refers to the decision of the Supreme Court dated 23 September 2019, which resulted in the author still serving his sentence from 1997 because the remainder of that sentence was added to his sentence from 2009. Thus, there cannot be an abuse of the right of submission owing the continuing nature of the violation of his rights under article 14 (3) (d) of the Covenant.

6.2 The author reiterates that, when he was sentenced in 1997, the court never explained to him that he had to separately petition the court for in-person appearance at his cassation hearing, which amounts to a violation of article 14 (3) (d) of the Covenant.

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

7. In a note verbale dated 24 August 2020, the State party reiterates its position that the author's claims under article 14 constitute an abuse of the right of submission. With regard to the author's argument that the alleged violation of his rights under article 14 (3) (d) is continuing because he is still serving his 1997 sentence, the State party notes that the author has misinterpreted the law. According to the State party, any expungement of a criminal conviction when there is a cumulative sentence, as in the author's case, can only take place after such cumulative sentence has been fully served.

#### **Issues and proceedings before the Committee**

##### *Consideration of admissibility*

8.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 97 of its rules of procedure, whether the communication is admissible under the Optional Protocol.

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

8.3 The Committee takes note of the State party's position that, owing to a delay in the submission of the communication, the Committee should consider the author's claims inadmissible as constituting an abuse of the right of submission under article 3 of the Optional Protocol. 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 before the Committee does not in itself involve an abuse of the right of submission. However, in certain circumstances, the Committee expects a reasonable explanation justifying a delay.<sup>1</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 of international investigation or settlement, unless there are reasons justifying the delay, taking into account all the circumstances of the communication.

8.4 In the present case, the communication was submitted to the Committee with a delay of about 18 years after the author's sentence entered into force pursuant to the decision of the Supreme Court on 7 August 1997. The Committee observes that the author did not submit a request for supervisory review of his sentence until 2 August 2013, i.e., more than 16 years after the cassation hearing in question, despite having been released from prison on 6 February 2007. The Committee takes note of the author's argument that the delay in submission is irrelevant in his case because he continues to serve his 1997 conviction, a position contested by the State party, which alleges that an expungement of a criminal conviction when there is a cumulative sentence, as in the author's case, can only take place after such cumulative sentence has been fully served. However, the Committee considers that this argument does not explain why the author did not submit his request for supervisory review at an earlier time, especially since he had benefited from early release in 2007. In addition, the author does not indicate when he became aware of the alleged violation of his rights in the domestic proceedings that he invokes in the present communication.

8.5 The Committee thus considers that the author has failed to provide an explanation for the delay in submitting his communication. In the absence of any other information or explanation of pertinence on file, the Committee regards the delay to be unreasonable and excessive enough to amount to an abuse of the right of submission, which renders the communication inadmissible under article 3 of the Optional Protocol.

8.6 Having reached this conclusion, the Committee decides not to examine the remainder of the State party's claims concerning the admissibility of the communication.

9. The Committee therefore decides:

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

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<sup>1</sup> See, for example, *M.R. v. Russian Federation* (CCPR/C/129/D/2427/2014), para. 8.5; and *D.S. v. Russian Federation* (CCPR/C/120/D/2705/2015), para. 6.4.