



# 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. 2517/2014\*, \*\*

<i>Communication submitted by:</i>	A.T. (not represented by counsel)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Russian Federation
<i>Dates of communication:</i>	4 August 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 23 December 2014 (not issued in document form)
<i>Date of adoption of decision:</i>	6 November 2020
<i>Subject matter:</i>	Right to legal counsel; discrimination
<i>Procedural issue:</i>	Abuse of the right of submission
<i>Substantive issues:</i>	Legal assistance; discrimination
<i>Articles of the Covenant:</i>	2, 3, 5, 7, 14 (1) and (3) (d), 15 and 26
<i>Article of the Optional Protocol:</i>	3

1. The author of the communication is A.T., a citizen of the Russian Federation, born in 1980. He claims that the State party has violated of his rights under articles 2, 3, 5, 7, 14 (1) and (3) (d), 15 and 26 of the Covenant. The Optional Protocol entered into force for the State party on 1 January 1992. The author is not represented by counsel.

#### Facts as submitted by the author

2.1 On 15 December 2003, the author was sentenced to life imprisonment by the Supreme Court of the Republic of North Ossetia-Alania,<sup>1</sup> for having committed acts of terrorism.<sup>2</sup> On 15 December 2004, the Supreme Court of the Russian Federation, acting as court of cassation,

\* Adopted by the Committee at its 130th session (12 October–6 November 2020).

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

<sup>1</sup> The Republic of North Ossetia-Alania forms part of the Russian Federation.

<sup>2</sup> The author was represented by a lawyer during his trial.



upheld the decision of the trial court. The author was not represented by a lawyer, although the domestic law required that he should be assigned one.<sup>3</sup>

2.2 In 2007, the Constitutional Court ruled that cassation courts must provide defendants with legal counsel unless they expressly refuse legal assistance. On 8 August 2013, the author applied to the Constitutional Court regarding his right to defence in the cassation court. On 21 November 2013, the Constitutional Court rejected his complaint, stating that its 2007 decision on the obligation of courts to provide a defendant with an attorney at cassation proceedings did not have a retroactive effect and could not be applied in the author's case.

2.3 On 9 December 2013, the author submitted an appeal to the Supreme Court of the Russian Federation for a supervisory review of the decision of 15 December 2003. On 30 December 2013, the Supreme Court, in a single-judge formation, denied the author's appeal and held that the Constitutional Court's 2007 decision did not retroactively apply to the cassation decision in the author's case. On 17 February 2014, the author appealed the decision to the Chairperson of the Supreme Court. On 11 March 2014, the Supreme Court refused to consider the author's appeal, since it was submitted after 1 January 2014, a deadline set by the federal law for sentences rendered before 1 January 2013.

2.4 On 17 May 2013, the author also applied to the Constitutional Court claiming that the provisions of article 57 (2) of the Criminal Code were discriminatory on the basis of sex and age.<sup>4</sup> He argued that article 57 (2) of the Criminal Code was discriminatory against men between the ages of 18 and 65 years, like himself. In its decision of 24 September 2013, the Constitutional Court rejected the author's claim. The Court held that article 57 (2) of the Criminal Code was not discriminatory, because the restrictions on imposing life imprisonment provided for a distinction based on the principle of humanity. According to the Court, the restrictions did not affect sentences of persons not mentioned in article 57 (2) of the Criminal Code, which were imposed in accordance with the nature, public danger and circumstances of the crimes committed.

### **Complaint**

3.1 The author claims that the State party has violated his rights under article 14 (3) (d) of the Covenant, because the Supreme Court did not provide him with legal counsel during the cassation hearing.

3.2 The author also claims that by applying article 57 (2) of the Criminal Code in his case, the State party discriminated against him on account of his age and sex, and violated his rights under articles 2, 3, 5, 7, 14 (1), 15 and 26 of the Covenant. He submits that such discrimination is aimed at degrading human dignity, and by including such distinction in the law, the legislative branch has interfered with the administration of justice by the judicial branch.

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

4.1 In a note verbale dated 10 March 2015, the State party submitted its observations on the admissibility of the communication. It notes that the author's communication was submitted almost 10 years after his cassation appeal was rejected by the Supreme Court of the Russian Federation, on 15 December 2004. The State party notes that the author has not provided a reasonable explanation for the delay in question. The State party argues that submitting the communication after such a long lapse of time constitutes an abuse of the right of submission under rule 96 (c) of the Committee's rules of procedure in effect at the time (CCPR/C/3/Rev.10; now rule 99 (c)), and requests the Committee to find the communication inadmissible.

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<sup>3</sup> The author refers to articles 15, 16, 47 (4) (8), 51 (1) (5), 51 (3), 248 (2), 364 (3) (4) and 381(2) (4) of the Criminal Procedure Code and articles 2, 17 (1), 18, 19 (1), 45, 48, 55 (3), 56 (3) and 123 (3) of the Constitution.

<sup>4</sup> Under article 57 (2) of the Criminal Code, life imprisonment cannot be imposed on women, on persons who committed crimes when they were under 18 years old, or on men who are 65 years old or older at the time when they are sentenced.

4.2 In a note verbale dated 12 March 2015, the State party submitted its observations on the merits of the communication. It notes that the author has been found guilty of criminal offences under several articles of the Criminal Code. His acts led to the death of 56 persons and caused injuries to a large number of people. Pursuant to article 69 (3) of the Criminal Code, the author was sentenced to life imprisonment with confiscation of property.

4.3 The State party notes that on 16 July 2004, the Supreme Court granted the author's motion to personally attend the cassation hearing. On 23 November 2004, the Supreme Court notified the author's lawyer, K., who represented him during the trial, about the date and time of the cassation hearing. On 15 December 2004, the Supreme Court upheld the author's life sentence. According to the State party, the author participated in the cassation hearing by way of a videoconference.

4.4 The State party submits that the author provided oral testimony during the cassation hearing. However, he did not request to be represented by a lawyer. The State party notes that in accordance with article 51 (1) (5) of the Criminal Procedure Code, legal counsel must be present if a defendant is charged with a crime that carries a sentence of more than 15 years' imprisonment, life imprisonment or the death penalty. In 2003, the Constitutional Court ruled that there was nothing in that provision to suggest that it did not apply to the cassation procedure. In 2007, it further clarified that the relevant articles of the Criminal Procedure Code requiring provision of legal counsel to defendants must be observed by cassation courts.

4.5 The State party reiterates that the Supreme Court recognizes a violation of the right to legal defence in cases in which the participation of legal counsel was required under article 51 of the Criminal Procedure Code but was not provided for, and the defendant did not waive his or her right to legal counsel. Decisions of the Supreme Court may be appealed by way of an appeal to the Presidium of the Supreme Court for a supervisory review. On 30 December 2013, the Supreme Court, in a single-judge formation, denied the author's appeal for a supervisory review of his sentence. The State party notes that at that time, an appeal for a supervisory review could be submitted only within one year of the sentence entering into force. On 31 December 2014, the new federal law abolished the one-year requirement for the submission of appeals to the Supreme Court for a supervisory review. According to the State party, the author therefore has the right to appeal the decision of the Supreme Court judge of 30 December 2013 before the Chairperson of the Supreme Court or his deputy.

4.6 Lastly, the State party notes that while claiming a violation under article 14 (3) (d), the author is not asking that the ruling of the Supreme Court dated 15 December 2004 be quashed and a new cassation hearing conducted.

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

5.1 On 13 May 2014, the author submitted his comments to the State party observations. He notes that under rule 96 (c) of the Committee's rules of procedure (now rule 99 (c)), a communication may constitute an abuse of the right of submission if it is submitted more than five years after the exhaustion of domestic remedies. Since his communication was submitted only seven months after his appeal for a supervisory review was denied by the Supreme Court, it cannot be considered to be in violation of the Committee's rules of procedure.

5.2 The author submits that he is of Ingush ethnicity and did not learn the Russian language until 2005, when he was in prison. His studies in secondary school were interrupted by the Ossetian-Ingush war and he managed to finish only nine years of school. He is also legally illiterate. His cellmates in prison helped him to study Russian and to write his appeals for a supervisory review and the present communication.

5.3 With regard to his lawyer, K., who represented him during his trial, the author submits that the lawyer was not retained by his relatives because they could not afford to pay his fees or his travel costs from Vladikavkaz to Moscow for the cassation hearing. The author reiterates that legal counsel must be present if a defendant is charged with a crime that carries a sentence of more than 15 years' imprisonment, life imprisonment or the death penalty. He notes that since 1996, the Constitutional Court has consistently ruled that the right to legal defence should be provided at all stages of a criminal case. According to the author, in a number of cases between 2004 and 2008, the Supreme Court has quashed decisions of

cassation courts and returned the cases for new hearings owing to the failure of the cassation courts to provide defendants with legal assistance. However, he considers that because he was charged with terrorism and the killing of 56 people, the judges were afraid to take a stance in his case and to quash the ruling of the cassation court.

5.4 The author considers that the presence of a lawyer would have helped him to convince the cassation court that his confessions had been obtained under torture and following threats to have his relatives hurt. He submits a copy of a medical report dated 10 September 2002 by the doctor of the jail in which he was held, in which the doctor states that the author complained of pain in his right arm. The doctor noted hyperaemia and swelling in the shoulder and its limited motion due to pain.

5.5 Lastly, the author notes that he will appeal the decision of the Supreme Court decision of 30 December 2013 before the Chairperson of the Supreme Court.

5.6 On 13 July 2017, the author informed the Committee that, on 16 March 2015, he had appealed the Supreme Court's decision of 30 December 2013 before the Chairperson of the Supreme Court, as suggested by the State party. However, his appeal was denied by the Deputy Chairperson of the Supreme Court on 7 April 2015. In his decision, the Deputy Chairperson states that he agrees with the decision of the cassation court and does not see grounds for a judicial review. The decision also states that no further appeals to the Chairperson of the Supreme Court are allowed.

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

6.1 In a note verbale dated 21 December 2015, the State party submitted further observations. It notes that under article 412 of the Criminal Procedure Code, when appeals for a supervisory review are submitted to the Supreme Court, they are first reviewed by a single judge. On 28 March and 30 December 2013, such single-judge decisions were issued in the author's case.

6.2 The State party further notes that the Chairperson of the Supreme Court and his deputy can overrule a decision by a Supreme Court judge and send the case for review by the Presidium of the Supreme Court. On 16 March 2015, the author submitted an appeal to the Chairperson of the Supreme Court, requesting a supervisory review of his case. In his appeal, he argued that his right to legal defence had been violated because he had not been notified of the appeals submitted by his co-defendants. On 7 April 2015, the Deputy Chairperson of the Supreme Court denied the author's appeal, stating that he agreed with the prior single-judge decisions of 28 March and 30 December 2013.

6.3 The State party submits that the author's appeals for a supervisory review that have been submitted to the Supreme Court since 7 April 2015 have all been returned to the author without review because the legislation does not allow for the repeated submission of appeals for a supervisory review on the same grounds.

#### **Additional comments from the author**

7.1 On 2 March 2016, the author submitted his additional comments. He reiterates the information regarding his appeals to the Supreme Court and to the Constitutional Court (paras. 2.2–2.4 above). He notes that in his appeal dated 16 March 2015, he raised issues that had not been raised in his previous appeals, namely that he had not been notified of the appeals submitted by his co-defendants, which violated his right to legal defence. However, on 7 April 2015, the Deputy Chairperson of the Supreme Court simply agreed with the prior single-judge decisions of 28 March and 30 December 2013, notwithstanding that his appeal was on different grounds and did not concern the previous single-judge decisions.

7.2 The author reiterates that the Supreme Court has previously found a violation of the right to legal defence in other similar cases and that, by denying him his right to legal counsel during the cassation hearing, the State party violated his rights under article 14 (3) (d) of the Covenant.

7.3 On 10 August 2017, the author submitted further observations. He notes that his case file is missing some documents, and that he has not been able to obtain them from the Supreme Court of the Republic of North Ossetia-Alania. According to the author, the missing

documents include the record of his oral motion to provide him with a lawyer, which he presented to the Supreme Court during the cassation hearing, and a written motion, which he gave to the prison guard for transmittal to the cassation court by fax.

7.4 On 13 August 2018, the author clarified that, in his view, the State party is obliged to have his conviction reviewed by the Presidium of the Supreme Court, to quash his sentence of life imprisonment, to ensure that the new sentence is not based on any discriminatory or humiliating provisions of law, and to conduct a new trial with the participation of an appointed lawyer.

### **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 notes the State party's observations that the author's communication was submitted almost 10 years after his cassation appeal was rejected by the Supreme Court of the Russian Federation, and that submitting the communication after such a long lapse of time constitutes an abuse of the right of submission under the Committee's rules of procedure. The Committee also notes the author's assertion that he is legally illiterate and did not learn the Russian language until 2005, and his argument that since his communication was submitted only seven months after his appeal for a supervisory review was denied by the Supreme Court, it cannot be considered to be in violation of the Committee's rules of procedure.

8.4 The Committee notes that there are no fixed time limits for the submission of communications under the Optional Protocol and that mere delay in submission does not of itself involve abuse of the right of to submit a communication.<sup>5</sup> However, in certain circumstances, the Committee expects a reasonable explanation justifying a delay.<sup>6</sup> The Committee observes that there is nothing in the submissions to suggest that the author tried further to appeal his conviction of 2003 – which had been upheld on cassation review in 2004 – or to submit an appeal to the Constitutional Court until 2013. The Committee notes that the author's alleged legal illiteracy and lack of knowledge about his rights did not prevent him from defending himself in person during the cassation proceedings or from submitting successive appeals, to both domestic and international bodies. The Committee thus considers that the author has failed to provide a convincing explanation for the delay in submission. In the absence of such an explanation, the Committee considers that submitting the communication after such a long lapse of time constitutes an abuse of the right of submission. Accordingly, the Committee finds the communication inadmissible under article 3 of the Optional Protocol and rule 99 (c) of the Committee's rules of procedure.

9. The Committee therefore decides:

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

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<sup>5</sup> *Polacková and Polacek v. Czech Republic* (CCPR/C/90/D/1445/2006), para. 6.3; and *D.S. v. Russian Federation* (CCPR/C/120/D/2705/2015), para. 6.4.

<sup>6</sup> *D.S. v. Russian Federation*, para. 6.4.