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. 2578/2015*, **

Communication submitted by:	O.D. (not represented by counsel)
Alleged victims:	The author
State party:	Russian Federation
Date of communication:	4 December 2014 (initial submission)
Document reference:	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 4 March 2015 (not issued in document form)
Date of adoption of decision:	25 March 2021
Subject matter:	Fair trial, including lack of legal representation during the appeal hearings, torture and cruel, inhuman or degrading treatment or punishment
Procedural issues:	Admissibility – examination of the same matter by another procedure of international settlement; admissibility – abuse of the right of submission; admissibility – exhaustion of domestic remedies; admissibility – insufficient substantiation of claims
Substantive issues:	Torture; cruel, inhuman or degrading treatment or punishment; conditions of detention; fair trial; fair trial – legal assistance; fair trial – appeal; non-discrimination
Articles of the Covenant:	7, 14 (1), (3) (d) and (5) and 26
Article of the Optional Protocol:	2, 3 and 5 (2) (a) and (b)

1.1 The author of the communication is O.D., a national of the Russian Federation born in 1969. He claims that the State party has violated his rights under articles 7, 14 (1), (3) (d) and (5) and 26 of the Covenant. The Optional Protocol entered into force for the Russian Federation on 1 January 1992. The author is not represented by counsel.

* Adopted by the Committee at its 131st session (1–26 March 2021).

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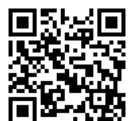

1.2 On 30 July 2015, the Committee, acting through its Special Rapporteur on new communications and interim measures, rejected the State party's request of 19 May 2015 to examine the admissibility of the communication separately from its merits.

Factual background

2.1 On 27 August 2007, the Supreme Court of the Republic of Tatarstan, Russian Federation, convicted the author and his co-defendants of participation in an organized criminal group and commission of a number of other crimes, and sentenced him to life imprisonment.

2.2 On 19 March 2009, the Judicial Chamber for Criminal Cases of the Supreme Court of the Russian Federation, acting as a cassation court, upheld the guilty verdict and the sentence of life imprisonment.[1]

2.3 The cassation hearings were conducted in the absence of a defence counsel. Ms. N., the author's counsel who should have represented him, did not appear at the cassation hearings for unknown reasons. The author refused the services of the defence counsel appointed for him by the judicial authorities, on the grounds that Ms. N. had been his defence counsel since the preliminary investigation stage and had been fully familiar with the case file, whereas the appointed counsel would in the author's opinion not have been able to study the large case file in such a short time and defend him effectively.

2.4. The author submits that by virtue of article 51 (1) (5) of the Code of Criminal Procedure, legal representation is mandatory when the accused faces charges carrying a term of imprisonment exceeding 15 years, life imprisonment or the death penalty; he therefore claims that the cassation court was under an obligation to secure the participation of a defence counsel at the cassation hearings.[2] On 4 December 2012, approximately three years and eight and a half months after the decision of the cassation court, the author submitted a request to the Supreme Court of the Russian Federation for a supervisory review of both the verdict of 27 August 2007 and the cassation decision of 19 March 2009, claiming inter alia that his right to defence had been violated by the cassation court considering his appeal in the absence of defence counsel. The Supreme Court rejected the request on 13 March 2013, referring to article 51 (1) (1) of the Code of Criminal Procedure[3] and to the author's written refusal of the services of the defence counsel proposed, finding no grounds for considering that the author's right to defence had been violated.

2.5 On 6 May 2013, the author applied to the Constitutional Court, claiming a violation of his right to defence by the cassation court and requesting that the Court recognize article 51 (1) (5) of the Code of Criminal Procedure as not conforming to a number of constitutional provisions. The petition was dismissed on 17 June 2013,[4] but the author claims that the Court

[1] The decision of the Supreme Court suggests that the court considered the cassation appeal submitted by the author and his counsel, Ms. N. The cassation appeal and the court records were not submitted to the Committee.

[2] Reference is also made to articles 19 (equality before the law and courts) and 48 (right to qualified legal assistance) of the Constitution of the Russian Federation, as well as to para. 17 of resolution No. 8 of the Presidium of the Supreme Court of 31 October 1995 (which, according to the author, provides that participation of a defence counsel is mandatory when the accused himself refuses the assistance of a lawyer or of any other defender).

[3] According to article 51 (1) of the Code of Criminal Procedure, legal representation in criminal cases is mandatory when the suspect or accused has not renounced his or her right to legal assistance pursuant to the procedure established in article 52 of the Code. Pursuant to article 52, a suspect or an accused person may waive his or her right to legal representation at any stage of the criminal proceedings. Such a waiver may only be accepted if initiated by the suspect or the accused person. The waiver must be made in writing. If a refusal to have a defence counsel is made during an investigative action, an annotation to that effect shall be entered in the official record of such investigative action. The refusal of legal representation does not deprive the suspect or the accused person of the right to ask to be assisted by counsel at further stages of the criminal proceedings.

[4] The Constitutional Court stated that the author did not correlate the violation of his right to defence to the content of the challenged norm of article 51 (1) (5) of the Code of Criminal Procedure but to the alleged erroneous enforcement of it. He was de facto inviting the Court to verify the correctness of norms to be applied, and their interpretation, taking into account the specific circumstances of his

nonetheless recognized de facto his legal entitlement to mandatory participation of a defence counsel during cassation proceedings and the violation of his right to a defence, without however making any determination as to which official or authority should correct the established violation.[5]

2.6 On 23 September 2014 the author filed an appeal with the Chair of the Supreme Court for reconsideration of his conviction on account of newly discovered circumstances, requesting that his life sentence be commuted to a fixed term of imprisonment. The appeal was rejected on 16 October 2014 on the grounds of absence of new circumstances, within the meaning of article 413 (4) of the Code of Criminal Procedure, in the rulings of the Constitutional Court that had been invoked.

2.7 In a further submission to the Committee, dated 31 May 2015, the author stated that his subsequent applications to the Constitutional Court, dated 24 September and 20 November 2014, were rejected on 30 October and 26 December 2014, respectively. In a further application on 2 February 2015, he requested the Court to rectify the omission in the ruling of 17 June 2013 of a reference to the need for a mandatory review of court decisions adopted in his criminal case, as such an omission prevented him from restoring his right to legal assistance. By a final ruling of 24 March 2015, the Constitutional Court found no reasons to change its previous decisions, indicating that its decisions were not subject to appeal, and discontinued any exchange of correspondence with the author.

Complaint

3.1 The author claims that he was deprived of his right to defence counsel during the cassation hearings, in violation of his rights under articles 14 (1), 14 (3) (d), 14 (5) and 26 of the Covenant. The court of cassation was under an obligation to secure the participation of defence counsel at the cassation hearings pursuant to article 51 (1) (5) of the Code of Criminal Procedure providing that legal representation is mandatory when the accused faces charges carrying a term of imprisonment exceeding 15 years, life imprisonment or the death penalty.

3.2 The author argues that he was put in an unequal position vis-à-vis professional jurists during the hearings and was unable to defend himself fully without the assistance of counsel owing to his lack of legal training, and could not object to the prosecution on questions of law. The failure of the cassation court to ensure the participation of defence counsel at the cassation hearings when the interests of justice so required[6] therefore constitutes a violation of his rights to legal assistance, to a fair hearing by a competent, independent and impartial tribunal, and to equal protection of the law without discrimination under articles 14 (1), 14 (3) (d) and 26 of the Covenant.

3.3 The author further claims that the Supreme Court, by rejecting his requests for review of the decisions of the trial and cassation courts (see paras. 2.4 and 2.6 above), deprived him of the right to have his verdict reviewed by a higher court, in violation of article 14 (5) of the Covenant.

3.4 The author requests that the State party acknowledge the violation of his right to legal representation and to a fair trial, that his verdict be reviewed and that the life sentence is replaced by 25 years' imprisonment.

case, which is not within the competence of the Court. The petition was dismissed for non-compliance with the requirements of admissibility.

[5] The author's reasoning is based on the fact that the Court stated in its ruling that legal representation was mandatory under article 51 (1) (5) of the Code of Criminal Procedure when the accused person faced charges carrying a term of imprisonment exceeding 15 years, life imprisonment or the death penalty, while in fact the Court was simply citing the legal norms challenged by the author.

[6] This is a reference to article 51 (1) (5) of the Code of Criminal Procedure and to the judgments of the European Court of Human Rights in the cases of *Artico v. Italy* and *Pakelli v. Germany*, in which the European Court found that non-provision of legal assistance where the interests of justice required it constituted a violation of the right to defence.

State party's observations on admissibility

4.1 In a note verbale dated 19 May 2015, the State party challenged the admissibility of the communication, arguing that it constituted an abuse of the right of submission pursuant to rule 99 (c) of the Committee's rules of procedure. The author claims a violation of his right to defence under article 14 (3) (d) owing to the absence of counsel at the cassation appeal hearings. The State party recalls that the Judicial Chamber for Criminal Cases of the Supreme Court took a decision on the author's cassation appeal on 19 March 2009, whereas the author submitted his communication to the Committee only on 4 December 2014, more than five years after the consideration of his criminal case under the cassation procedure. The author provided no information on any circumstances justifying such a delay in submitting his communication to the Committee.

4.2 Pursuant to article 52 of the Code of Criminal Procedure, a suspect or an accused person may waive his or her right to legal representation at any stage of the criminal proceedings and such a waiver may only be accepted if initiated by the suspect or the accused person and made in writing. When considering the author's request for supervisory review, the Supreme Court established that the author had renounced in writing the services of defence counsel at the cassation hearings and that such a refusal had not been made because of a lack of means, as confirmed by his statement dated 4 March 2009.[7]

4.3 The State party also recalls that the cassation court considered the cassation appeals filed by the author and his counsel, Ms. N.

4.4 Based on the considerations set out above, the State party argues that the author's communication constitutes an abuse of the right of submission and therefore his claim under article 14 (3) (d) should be declared inadmissible under article 3 of the Optional Protocol.

4.5 As to the author's allegation that he was deprived of his right to a fair hearing by a competent, independent and impartial tribunal, the State party submits that the author's communication lacks any information about the alleged violation of that right. As it transpires from the decision of the cassation court of 19 March 2009, neither the author nor his counsel, Ms. N, complained about a violation of the right to a fair trial by the court of first instance; they challenged the evaluation of facts by the court. The State party therefore submits that the author has not exhausted all domestic remedies with regard to his claim under article 14 (1), that the claim is clearly unfounded and that it should be declared inadmissible under article 2 of the Optional Protocol.

4.6 With regard to the alleged violation of article 14 (5) of the Covenant,[8] the State party recalls that the verdict of 27 August 2007 was reviewed upon appeal by the Judicial Chamber for Criminal Cases of the Supreme Court on 19 March 2009. The author's claim is therefore unsubstantiated and inadmissible under article 2 of the Optional Protocol.

4.7 As to the alleged violation of article 26 of the Covenant, and with reference to the definition of discrimination,[9] the State party argues that the author has not demonstrated how not providing him with counsel during cassation hearings, whose services he refused voluntarily, amounts to discrimination. It therefore deems this claim inadmissible under article 2 of the Optional Protocol.

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

5.1 On 29 June 2015, the author provided 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 constantly lodged complaints with the courts in order to obtain redress, including a request for a supervisory review to the Supreme Court in 2012 and petitions to the Constitutional Court. The most recent ruling of the Constitutional Court was issued on 24 March 2015, therefore the State party's argument relating to the delay in submitting the communication is unfounded.

[7] This is a reference to the decision of the Supreme Court of 13 March 2013.

[8] The State party refers to the Committee's jurisprudence under article 14 (5), namely *T.L.N. v. Norway* (CCPR/C/111/D/1942/2010), para. 9.2.

[9] Reference is made, as an example, to *H.M. v. Sweden* (CRPD/C/7/D/3/2011), para. 8.3.

5.2 The author confirms that he indeed refused the services of the appointed lawyer and reiterates the reasons for his refusal (see para. 2.3 above). He argues that the participation of defence counsel is mandatory when the accused himself refuses the assistance of a lawyer or other defender.[10] The cassation court should have secured a defence counsel for him anyway, pursuant to article 51 (1) (5) of the Code of Criminal Procedure. According to article 381 (2) (4) of the Code, the consideration of a criminal case in the absence of defence counsel when his or her participation is mandatory constitutes one of the grounds for overturning or altering a judicial decision by the court of cassation.

5.3 The author rejects the argument that his communication lacks information about the alleged violation of article 14 (1) of the Covenant, arguing that the absence of defence counsel, when his or her participation was mandatory, and the failure to overturn or alter the court decision pursuant to article 381 (2) (4) of the Code of Criminal Procedure constitute violations of his right to a fair hearing by a competent, independent and impartial tribunal, equality before the courts and equality of arms.

5.4 As to the State party's argument that he has not demonstrated how not providing him with counsel amounts to discrimination, the author reiterates his unequal position vis-à-vis the prosecution and the judge during the hearings and his inability to defend himself fully without the assistance of a counsel owing to his lack of legal training (see para. 3.2 above).

5.5 The author recalls the wording of article 14 (3) (d) of the Covenant and reiterates the reference to the judgments of the European Court of Human Rights in the cases of *Artico v. Italy* and *Pakelli v. Germany* (see para. 3.2 above).

Author's further submission

6.1 On 24 June 2015, the author supplemented his initial communication of 4 December 2014 with new claims, namely that his objections to parts (3), (4) and (5) of the trial records were not considered by the trial judge and were forwarded to the Supreme Court of the Russian Federation without examination, in violation of article 260 (2) and (3) of the Code of Criminal Procedure.[11]

6.2 The author claims that the Judicial Chamber for Criminal Cases of the Supreme Court of the Russian Federation, acting as a cassation court, ignored this violation of his right to a fair trial, indicating in its decision of 19 March 2009 that part of the objections to the trial records was not considered due to its receipt after the deadline provided for in article 260 of the Code of Criminal Procedure. The author argues that he respected the deadline of 18 February 2008 set by the court for all convicts to familiarize themselves with the trial records and submitted his objections to the third part of the trial records in advance on 11 February 2008. He also submits that the judge of the Supreme Court of the Republic of Tatarstan, who should have examined his objections resigned effective 17 January 2008.

6.3 On 9 July 2012, the author petitioned the Constitutional Court alleging a violation of article 260 (2) and (3) of the Code of Criminal Procedure. On 24 September 2012, the Court declined to consider the petition, but the author claims that the Court nonetheless confirmed the above-mentioned legal norm and his right to a fair trial, without however determining which official or authority was obliged to correct those violations.[12]

[10] This is a reference to resolution No. 8 of the Presidium of the Supreme Court of the Russian Federation of 31 October 1995.

[11] Article 260 (objections to [the content of] the trial records) of the Code of Criminal Procedure provides that: (1) The parties may submit their objections to [the content of] the trial records within three days of receiving these records; (2) The objections are to be considered by the presiding judge without delay. If the presiding judge considers it necessary, he or she may summon the persons submitting the objections in order to clarify their content; and (3) Having considered the objection the presiding judge adopts a decision either certifying the correctness of the objections or dismissing them. The objections and the decision of the presiding judge shall be attached to the trial records.

[12] The petition was dismissed for non-compliance with the requirements of admissibility and the ruling is final and not subject to appeal.

6.4 The author's request for a supervisory review, dated 4 December 2012 (see also para. 2.4 above), referring inter alia to a violation of article 260 (2) and (3) of the Code of Criminal Procedure, was rejected by the Supreme Court of the Russian Federation on 13 March 2013.

6.5 On 25 April 2013, the author filed a complaint with the Office of the Prosecutor General, which was dismissed on 1 July 2013. His subsequent appeals (one on a date not specified, 28 August 2013, 22 April 2014 and 18 August 2014) were also dismissed on 3 September 2013, 21 October 2013, 21 July 2014 and 10 October 2014, respectively.

6.6 Relying on the decision of the Constitutional Court of 24 September 2012, the author lodged a petition on 13 August 2014 with the Presidium of the Supreme Court for reconsideration of his case on account of newly discovered circumstances. On 2 September 2014, the Supreme Court rejected the petition.

6.7 The author's subsequent petitions to the Constitutional Court, dated 8 October 2014 and 27 January 2015, were rejected on 19 November 2014 and 24 March 2015, respectively.

6.8 On 12 January 2015, the author submitted an application (registered as No. 59375/14) to the European Court of Human Rights,[13] which was declared inadmissible on 12 March 2015 for non-compliance with the requirements of articles 34 and 35 of the European Convention on Human Rights.

6.9 The author claims that the failure to consider his objections to the trial records amounts to a violation of article 14 (1) of the Covenant.

6.10 He further claims that the failure to consider his objections is a violation of the criminal procedural law (art. 260 (2) and (3)) and that, pursuant to article 379 (1) (2) of the Code of Criminal Procedure, violations of criminal procedure constitute a ground for revoking or amending the verdict during cassation proceedings. The courts however refused to review his verdict, in violation of article 14 (5) of the Covenant.

6.11 Finally, the author claims a violation of his right to equal protection of the law without discrimination under article 26 of the Covenant owing to the failure of the judiciary to consider his objections to the trial records and its subsequent refusal to correct the said miscarriage of justice.

State party's observations on the merits of the author's further submission

7.1 In a note verbale dated 21 December 2015, the State party submits that courts are required to keep a record of their proceedings, in accordance with article 259 of the Code of Criminal Procedure. The records may be prepared in parts and, as with the records in their entirety, shall be signed by the presiding judge and the secretary. Upon request by parties, they may be granted an opportunity to familiarize themselves with parts of the record as soon as these are ready.

7.2 The time period for familiarization with the record of a court session shall be set by the presiding judge, taking into account the size of the said record, but cannot be less than five days. In exceptional cases this period may be extended, upon request. If a participant in court proceedings clearly delays his or her familiarization with the records, the judge can decide to set a specific period for that purpose.

7.3 According to article 260 of the Code of Criminal Procedure, once parties have familiarized themselves with the record, they may submit comments on that record within three days.

7.4 The record of the court proceedings in the author's case consists of 1,023 pages. The record was sent in parts (five in total) to the author and other participants who requested familiarization with its content. Part 3 of the record (pages 360 (a) to 612) was sent to the author on 31 May 2007, for familiarization within seven days of the date of receipt. According to the acknowledgment form signed by the author, he familiarized himself with part 3 on 27 November 2007. However, he submitted his objections to it only on 11 February

[13] According to the author, he complained about the violation of his rights under article 260 (2) and (3) of the Code of Criminal Procedure (objections to [the content of] the trial records).

2008 (after more than two months) and then additionally on 7 July 2008. In its cassation decision of 19 March 2019, the Judicial Chamber for Criminal Cases of the Supreme Court of the Russian Federation therefore clarified that part of his objections to the trial records had been received after the expiration of the deadline for their submission. The author's objections were added to the case file without being considered by the trial court.

7.5 The author's claim that the deadline set by the court for submitting comments to the trial records was 18 February 2008, and therefore that he did not miss the deadline for submitting objections to part 3, is contradicted by the materials in his case file. As mentioned above, the trial record consisted of five parts, which were provided to the parties to the proceedings for familiarization as soon as they became ready. The court thus set separate deadlines for submitting comments on each of the parts. The court set the deadline of 18 February 2008 for comments on part 4 of the trial record (pages 613 to 758).

7.6 In the light of the foregoing, there has been no violation of the author's right to familiarize himself with the trial record and to submit objections to it.

Authors' comments on the State party's observations

8.1 In comments dated 9 February 2016, the author contests the State party's argument that he familiarized himself with part 3 of the trial records on 27 November 2007, claiming that on this date he only received part 3 for familiarization, in accordance with the receipt form that he signed.

8.2 He also refutes the argument that the court set separate deadlines for submitting comments on each of the five parts of the trial records (see para. 7.5 above) and claims, with reference to the resolution of the judge of the Supreme Court of the Republic of Tatarstan of 21 May 2008, that the court set 18 February 2008 as the deadline for each convict to familiarize himself or herself with the trial records (namely with the entire record, not with any part of it).

8.3 The author submits that his objections to parts 1 and 2 of the trial records were considered by the judge on 15 January 2008. The judge then retired, effective 17 January 2008. He submitted objections to part 3 of the trial records on 11 February 2008, in advance of the deadline of 18 February 2008. He received part 4 on 11 February and part 5 on 15 May 2008, although the court already knew that objections to these parts would not be considered due to the retirement of the presiding judge. He was informed only on 18 November 2008 that his objections to the trial records had been sent to the Supreme Court without consideration.

8.4 The author recalls that objections to the trial records are to be considered by the judge without delay, who shall then adopt a resolution either certifying their correctness or dismissing them,[14] and that such objections should be subject to thorough and objective consideration.[15] He maintains that: (a) his objections to part 3 of the trial records were not considered despite their submission seven days in advance of the deadline of 18 February 2008; (b) no specific deadlines were set for familiarization with each of the five parts of the trial records; (c) parts 4 and 5 of the records were provided for familiarization, with the expectation that any objections thereto would in any event not be considered by the court due to the retirement of the judge; and (d) the failure to consider his objections to the trial records is attributable to a miscarriage of justice. The author therefore argues that the State party's observations on the violation of his rights under articles 14 (1) and (5) and 26 of the Covenant are unlawful and groundless.

8.5 In a submission dated 15 February 2016, the author stated that the Constitutional Court had dismissed his petition of 3 April 2015 on 21 May 2015 and that the courts had ignored the procedure for criminal court proceedings during the consideration of his case.

[14] This is a reference to article 260 (1) and (2) of the Code of Criminal Procedure.

[15] This is a reference to the resolutions of the Presidium of the Supreme Court of the Russian Federation of 16 June 1976 (No. 5, para. 19) and of 3 December 1976 (No. 15, para. 12).

Further submission by the author

9.1 On 19 June 2016, the author supplemented his initial communication of 4 December 2014 with a new complaint, alleging a violation of his rights during the preliminary investigation from 27 September 2003 to 14 June 2006. The author claims that between 27 September 2003 and 1 March 2004 he was detained in the temporary detention ward in Naberezhnye Chelny city for 116 days, whereas article 13 of Federal Law FZ-103 of 15 July 1995 (Pretrial Detention Act) states that detention in temporary detention wards cannot exceed 10 days within a month.

9.2 The author further complains about inhuman conditions of detention in the temporary detention ward, including overcrowding in stuffy, non- or poorly ventilated cells; that they were poorly lit and lacking daylight; were full of bedbugs, cockroaches and mice; that there was a lack of outdoor walks; insufficient food (one meal per day); and occasional deprivation of parcels from relatives. On 23 May 2005, the author and his cellmates complained about the conditions of detention to the Prosecutor's Office of Kazan city and a similar complaint was lodged with the Naberezhnye Chelny city court on 14 July 2005 (no information on the outcome is provided).

9.3 The author further claims that during his detention in the temporary detention ward, investigators obtained from him statements in violation of his rights guaranteed by the Constitution, by article 13 of the Pretrial Detention Act and by the rules governing the gathering and use of evidence. Despite the inadmissibility of evidence obtained in violation of the federal law prescribed in article 50 (2) of the Constitution, the Supreme Court of the Republic of Tatarstan used against him evidence unlawfully procured from his accomplices and in violation of article 13 of the Pretrial Detention Act. The court also unreasonably rejected his request for certified copies from the entry and exit registers of detainees at the temporary detention ward in Naberezhnye Chelny city that could have confirmed violation of the said article. The Supreme Court of the Russian Federation (cassation court) also ignored similar requests made on 7 November 2008 and 12 January 2009 and did not reflect them in its final decision of 19 March 2009. The author was thus compelled to collect evidence regarding the violation of article 13 of the Pretrial Detention Act himself and obtained such evidence in 2008.

9.4 On 21 October 2013, the author filed an appeal with the Office of the General Prosecutor, alleging the violation of article 13 of the Pretrial Detention Act during the collection of evidence at the preliminary investigation stage, the use of evidence obtained in violation of the federal law against himself and the inhuman conditions of detention in the temporary detention ward in Naberezhnye Chelny city. The appeal was dismissed on 11 December 2013 and a subsequent appeal of 15 January 2014 was rejected on 18 March 2014, with reference to previous replies provided to the author.

9.5 The author lodged similar appeals with the Prosecutor's Office of Kazan city, of the Republic of Tatarstan and of Naberezhnye Chelny city on 17 January, 26 March and 26 May 2014 respectively. In their replies of 7 March, 7 May and 9 July 2014, the Prosecutor's Offices confirmed that the building of the temporary detention ward did not comply with the sanitary and epidemiological requirements established by law at the time of the author's detention there but found the other allegations groundless, owing to their proper consideration by the courts. The author challenged these replies in court, although unsuccessfully. His petitions to the Ombudsman's Office dated 8 May 2014 and 15 February 2016 remained unanswered.

9.6 The author claims that during his detention in the temporary detention ward he suffered moral and mental pain as a result of his detention in inhuman conditions for the purpose of obtaining from him incriminating statements that were subsequently used in court. He therefore alleges a violation of article 7 of the Covenant.

Issues and proceedings before the Committee

Consideration of admissibility

10.1 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.

10.2 The Committee has ascertained, as required under article 5, paragraph 2 (a), of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement. It notes that the two applications submitted by the author to the European Court of Human Rights on 21 July 2006 (No. 36025/06) and 12 January 2015 (No. 59375/14) were declared inadmissible on 23 February 2012 and 12 March 2015, respectively, for non-compliance with the requirements of articles 34 and 35 of the European Convention on Human Rights. The Committee recalls that, in ratifying the Optional Protocol, the State party did not introduce a reservation excluding the competence of the Committee in relation to cases that have been examined under another procedure of international investigation or settlement. Accordingly, the Committee concludes that it is not precluded by article 5 (2) (a) of the Optional Protocol from examining the present communication.

10.3 The Committee takes note of the State party's observations (see paras. 4.1–4.4 above) that the author's communication relating to the absence of legal representation during the cassation proceedings was only submitted to the Committee more than five years after the conclusion of the cassation proceedings, without any justification for such a delay being provided, and that the author renounced in writing the services of the defence counsel at the cassation hearings, and that therefore the communication constitutes an abuse of the right of submission pursuant to rule 99 (c) of the Committee's rules of procedure and to article 3 of the Optional Protocol.

10.4 The Committee notes that, in the present case, the author was convicted and sentenced to life imprisonment by the Supreme Court of the Republic of Tatarstan on 27 August 2007. The decision was upheld by the Supreme Court of the Russian Federation, acting as a court of cassation, on 19 March 2009. The author's communication to the Committee was submitted on 4 December 2014, supplemented on 24 June 2015 and further supplemented on 19 June 2016. While noting that the author justifies such delays with reference to his requests for supervisory review and petitions lodged with the Constitutional Court as of 2012 in order to obtain redress (see paras. 2.4–2.7 and 5.1 above), the Committee does not consider the pursuit of such extraordinary review proceedings to be in itself a convincing justification for the delay in submitting the communication, given that the author's sentence became final and executable on 19 March 2009 and that, additionally, the Constitutional Court had no competence to review that sentence or any other court decisions adopted in his criminal case.

10.5 In the specific circumstances of the case and in the absence of any other pertinent explanation for the delay in presenting all those claims, the Committee considers that the communication constitutes an abuse of the right of submission under article 3 of the Optional Protocol and rule 99 (c) of the Committee's rules of procedure.

10.6 The Committee therefore decides that:

(a) The communication is inadmissible under article 3 of the Optional Protocol;

(b) The present decision shall be transmitted to the State party and to the author of the communication.