



# International Covenant on Civil and Political Rights

Distr.: General  
2 March 2022

Original: English

## Human Rights Committee

### Decision adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 3038/2017\*, \*\*

<i>Communication submitted by:</i>	A.L. (represented by counsel, Lyudmila Romanenko)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Russian Federation
<i>Date of communication:</i>	14 February 2017 (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 10 November 2017 (not issued in document form)
<i>Date of adoption of decision:</i>	23 July 2021
<i>Subject matter:</i>	Unlawful arrest and torture of the author; unfair trial
<i>Procedural issue:</i>	Exhaustion of domestic remedies
<i>Substantive issues:</i>	Arbitrary arrest and detention; torture; cruel, inhuman or degrading treatment or punishment; right to a fair trial; fair trial – witnesses
<i>Articles of the Covenant:</i>	7, 9 (1–5) and 14 (1) and (3) (e)
<i>Articles of the Optional Protocol:</i>	2 and 5 (2) (b)

1. The author of the communication is A.L., a national of the Russian Federation born in 1971. He claims that the State party has violated his rights under articles 7, 9 (1–5) and 14 (1) and (3) (e) of the Covenant. The Optional Protocol entered into force for the State party on 1 January 1992. The author is represented by counsel.

#### Facts as submitted by the author

2.1 The author submits that he was arrested by the police on 12 December 2013 and kept in a temporary detention centre until 20 December 2013, when he was charged with murder. During this period, he was subjected to psychological and physical pressure to make him

\* 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, Photini Pazartzis, Hernán Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Soh Changrok, Kobuyah Tchamdja Kpatcha, Hélène Tigroudja and Gentian Zyberi.



confess to having committed a crime. He explains that he was afraid and that the interrogations were accompanied by threats and kicks to his head and body. He was unable to inform his relatives or anyone else of the unlawful acts committed by the police. The police officers warned him that they would kill him if he refused to sign his confession and that, in any event, nobody was aware of his whereabouts. The author signed his confession under duress, knowing the text to be untrue, to avoid further beatings. In court, he explained this, but the presiding judge of the Amursk Regional Court led the trial in an accusatory manner and fully supported the prosecution's position.

2.2 The author also submits that, on 22 December 2013, the Tynda City Court placed him in pretrial detention. On 5 May 2015, the Amursk Regional Court found him guilty of murdering four people and sentenced him to life imprisonment in a special regime correctional facility. The court retained 17 December 2013 as the date of his arrest. The author appealed to the Supreme Court on 13 May and 18 June 2015, claiming that the trial court decision was unlawful, in particular as the court had retained as evidence his confession obtained under duress while he was detained unlawfully by the police. On 11 August 2015, the Supreme Court rejected the appeal. In doing so, the court noted that the author had signed his confession in the presence of a lawyer, that he had made no complaints against the police during the investigation and that the fact that he had been detained as of 17 December 2013 was taken into account when calculating his sentence.

2.3 The author submitted a cassation appeal to the Supreme Court on 28 July 2016, which was rejected on 26 October 2016. On 23 November 2016, he submitted a request for a supervisory review to the Supreme Court, which was rejected on 9 December 2016.

2.4 On 25 November 2016, the author filed an appeal with the Amursk Regional Court, pointing out that his actual detention had started on 12 December 2013, not on 17 December 2013, and thus his sentence had to be reviewed. In reply, on an unspecified date, the court explained that nothing on file could confirm the author's claims about the date of his arrest.

2.5 The author further submits that, on 17 February 2016, he filed a civil claim with the Tynda City Court, seeking damages for his unlawful detention and the poor conditions of detention in the temporary detention centre. On 24 May 2016, the Tynda City Court heard the case in the absence of the parties. It rejected the appeal, noting that the author had failed to present evidence in support of his claims, while nothing on file supported his allegations about unlawful detention. On 8 August 2016, the author filed a further appeal with the Amursk Regional Court, which was rejected as time-barred on 21 September 2016.

2.6 The author claims that he has exhausted all available domestic remedies. He asks the Committee to conclude that there has been a violation of his rights and to determine adequate compensation for the damages he suffered.

### **Complaint**

3.1 The author claims that, in violation of article 9 (1–5) of the Covenant, he was detained by the police on 12 December 2013 at the Tynda temporary detention facility,<sup>1</sup> with no reasons or grounds, his arrest was not recorded and he was presented with no charges. In fact, the record of his arrest was only drawn up on 20 December 2013. On 22 December 2013, the Tynda City Court ordered the author's placement in custody. The author claims that, during the trial, the court determined that he had actually been apprehended on 17 December and that that served as a starting point for the calculation of his conviction. Thus, his arrest was unlawful, he did not receive an explanation of the reasons for it, he was not charged and he was not brought promptly before a judge to decide on his detention.

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<sup>1</sup> A temporary detention facility must be differentiated from a pretrial detention centre. Detained persons are normally kept in temporary detention facilities for hours only, rarely days, before they are brought before a judge. After the detained person is brought before a judge, he or she is subsequently moved to a pretrial detention centre (or released, which does not happen often). Temporary detention facilities are therefore not intended for long stays; unlike pretrial detention centres, temporary detention facilities lack facilities to provide basic needs. For example, there are no proper beds, food, medical assistance, etc. Pretrial detention centres, on the other hand, provide basic services to detainees and the conditions resemble those of a normal prison.

3.2 The author further claims that the trial was held in an accusatory manner, in violation of article 14 (1) of the Covenant. In court, he claimed in vain that his arrest had been unlawful and that he had been forced under duress and psychological pressure to confess to a very serious crime. According to the author, the judgment of 5 May 2015 is unlawful and the trial was unfair, in particular given that the court retained 17 December as the date of his apprehension.

3.3 The author also claims a violation of his rights under article 14 (3) (e), read together with article 7, of the Covenant. He asked the Tynda City Court to compensate him for the damages he suffered in connection with his unlawful arrest, the impossibility of seeing his relatives, the fact that the cell was not equipped with a chair or table, had insufficient light and ventilation and that there were no partitions between the toilets. He also asked the court to examine his claim in his presence. However, on 24 May 2016, in his absence, the court rejected his appeal. The author claims that this decision was unlawful. Without further substantiation, the author claims that, in addition, the court failed to interrogate direct witnesses who would have been able to confirm the violation of the author's procedural rights, contrary to article 14 (3) (e) of the Covenant.

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

4.1 The State party submitted its observations on admissibility and the merits on 27 August 2018. Regarding the alleged violation of article 9 of the Covenant, the State party notes that the author claims that he was detained unlawfully from 12 to 20 December 2013, no reasons for the arrest were given to him and he was not charged, he was not brought promptly before a judge to verify the reason for his detention and he was unable to appeal against his placement in detention or to obtain compensation.

4.2 The State party submits that, under article 108 (11) of the Criminal Procedure Code, court rulings on restraint measures (custody) can be appealed within three days of the decision being adopted. The court must decide within three days after receiving the appeal. A decision to annul a restraint measure enters into force immediately. Decisions on restraint measures are subject to cassation appeals under article 47 of the Criminal Procedure Code. The material on file shows that the author did not file an appeal or a cassation appeal against the decision to have him placed in custody. Thus, the author has failed to exhaust the available domestic remedies and his claims under article 9 of the Covenant should be deemed inadmissible.

4.3 Regarding the allegations under article 14 (1) of the Covenant, the State party notes that the author claims that his trial was unfair as he had been physically apprehended on 12 December 2013, a record of his arrest was prepared only on 20 December 2013, but the sentence mentions 17 December as the date of actual arrest. In the author's opinion, the incorrect calculation of the time of arrest shows that the trial was carried out in an accusatory manner and that it was unfair.

4.4 The State party notes that, under article 3 of the Optional Protocol, the Committee may declare that a communication is incompatible with the provisions of the Covenant and refers to the Committee's general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial.<sup>2</sup>

4.5 The European Court of Human Rights has repeatedly affirmed that respect for the requirements of a fair trial must be assessed in each case, taking into account the developments of a trial in its entirety, and not by focusing on a single aspect or episode. However, at the same time, a single episode may have such importance that it could allow for the fairness of the trial to be evaluated at the early stages of the procedure. This principle is not only fair for the application of the concept of a fair trial as such, as prescribed under article 6 (1) of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights), but also for the application of the particular guarantees under article 6 (3) of that Convention.

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<sup>2</sup> The State party also refers to *V.K. v. Russian Federation* (CCPR/C/126/D/2306/2013).

4.6 The State party believes that the author's allegations about the calculation of the date of his arrest may raise issues under article 9 of the Covenant but not under article 14. In addition, an incorrect calculation of the time that the author spent in pretrial detention does not necessarily reveal any accusatory manner in the examination of the author's criminal case. Thus, the author's claims under article 14 (1) are not substantiated and should be declared inadmissible.

4.7 The State party notes that the author also claims that his trial was unfair, in the light of the use of unlawful methods of investigation against him (acts of violence by the police, with the resulting self-incrimination). The State party emphasizes that authors must exhaust the available domestic remedies prior to complaining to the Committee. From the judgment of the Amursk Regional Court dated 5 May 2015, it transpires that the author admitted his guilt in committing the crime under article 105 of the Criminal Code (murder). In court, he partially confirmed his deposition given during the preliminary investigation, clarifying that when he started committing the crime, he first caused bodily injuries to A.M. In addition, he affirmed that he took the axe – the murder weapon – near the entrance and not near the stove. The author also confirmed his initial confession in court. Thus, it transpires from the judgment that, in the first instance, the author did not complain of unlawful pressure on him during the preliminary investigation; on the contrary, he admitted his guilt in the crime.

4.8 According to the documents on file, the author complained of alleged violence for the first time in his appeal complaint. It should be noted that those claims were contained not in his main appeal but instead in a supplementary appeal. Those allegations were given adequate assessment by the Supreme Court (appeal ruling of 11 August 2015).

4.9 It should also be emphasized that, in his cassation appeal dated 28 July 2016, the author invoked no acts of violence whatsoever by the police. Thus, the State party considers that the author has not exhausted the available domestic remedies regarding his allegations of an unfair trial and regarding the acts of violence allegedly inflicted by the police to coerce him to confess. Accordingly, that part of the communication should be declared inadmissible.

4.10 Under article 3 of the Optional Protocol, the Committee may declare inadmissible a communication that constitutes an abuse of the right of submission. The author initially admitted guilt and confirmed it before the first instance court; he then invoked allegations of police violence in his appellate claim but, ultimately, did not invoke those claims at all at the stage of the cassation appeal. All this shows, in the State party's opinion, that the author's case constitutes an abuse of the right of submission, and that the communication should be declared inadmissible under article 3 of the Optional Protocol.

4.11 Regarding the allegations under article 14 (3) (e) of the Covenant, the State party notes that the author claims a violation of article 14 (1) and (3) (e), as he did not participate in the adjudication of his claim for moral damages on the basis of his unlawful arrest and poor conditions of detention. The State party notes that the guarantees under article 14 (3) (e) apply to those charged under criminal law. In the present case, however, the author tries to apply this provision in the context of an application for moral damages, i.e. in the context of a suit at law within civil proceedings. Thus, the author's claims under article 14 (3) (e) seem to be incompatible with the provisions of the Covenant and should be declared inadmissible under article 3 of the Optional Protocol.

4.12 Under article 376 (1) of the Code of Civil Proceedings, court decisions that have acquired the force of *res judicata*, with the exception of decisions of the Supreme Court, can be appealed under the cassation procedure by the parties of a trial or other people whose rights and lawful interest have been affected by the court decision.

4.13 Under article 377 (2) of the Code of Civil Proceedings, rulings of supreme courts of the republics, krai or regional courts, the courts of the cities of federal importance, the courts of the autonomous regions and the courts of the autonomous districts, and also appeals against decisions and rulings of district courts as a first instance that have become executory, are subject to appeal before the presidium of the respective supreme court of the republics, krai or regional court, court of the city of federal importance, court of the autonomous region, court of the autonomous district or the collegium on civil cases of the Supreme Court. However, as at 12 February 2018, the author had not submitted to the collegium on civil cases of the Supreme Court a cassation appeal against the decision of the Tynda District Court of

the Amur region of 24 May 2016, nor had he appealed against the appeal ruling of the Amursk Regional Court of 28 April 2017. Thus, the author has failed to exhaust the available domestic remedies regarding his claims under article 14 (1) of the Covenant in connection with the examination of his claims for moral damages related to his unlawful arrest and the poor conditions of detention.

4.14 The State party provides statistical data to demonstrate that the remedies it invokes are effective. In 2017, the Supreme Court examined a total of 1,679 cases under cassation proceedings. In 935 cases (55.7 per cent), the court issued rulings for the examination by the collegium on civil cases. In 52 of those cases, the court ordered the case to be examined by the collegium of the deputy Chairs of the Supreme Court. In 874 of those cases (98.3 per cent), the cassation claims were successful. In particular, 314 decisions of lower courts were annulled (35.9 per cent) and 471 (53.9 per cent) appellate rulings were annulled without a modification of the first instance decision. In 44 cases, the decision of the court of lower instance was confirmed, 426 cases were transmitted for a new adjudication and, in 1 case, a new decision was issued directly.

4.15 On the merits, the State party notes that the author was brought to the Tynda police station as he had committed an offence, namely he had failed to comply with a lawful requirement by a police official in the course of duty.<sup>3</sup> The author's arrest was recorded on 17 December 2013. The author recognized his responsibility. On the same day, 17 December 2013, the Tynda District Court of the Amursk region ordered a 10-day administrative arrest and detention of the author under article 19 (3) (1) of the Code on Administrative Proceedings. The author was placed in a temporary detention centre, as confirmed by the detention centre's registry and the registration of those placed in administrative arrest and detention. The ruling on his placement in arrest and detention was not appealed by the author.

4.16 The State party adds that a record under articles 91 and 92 of the Criminal Procedure Code on the author's arrest as a suspect of a crime was established on 20 December 2013. No remarks were formulated by the author or by his lawyer, E.N. On 22 December 2013, the Tynda District Court of Amursk region placed the author in custody. Neither the author nor his lawyer appealed against the ruling. The decision to have him placed in custody was renewed on several occasions. When determining the author's prison term, the court calculated the time period as starting from 17 December 2013.

4.17 The author did not deny his guilt in the murders during the preliminary investigation, and confirmed it in court. He made no claims whatsoever regarding any limitation of his rights. The defence was not prevented from questioning witnesses in court.

4.18 The author's allegations about the use of physical violence and psychological pressure against him to make him confess guilt could not be confirmed. The author presented no specific information about any unlawful acts by the police when he confessed guilt and when his deposition was recorded, at either the pretrial or the trial stage. He has also not adduced such elements in his communication to the Committee. No procedural verification has been carried out, given the lack of grounds therefor.

4.19 The State party submits that a witness, U., confirmed in court that the author had confessed his guilt in the murder while under administrative arrest. Another witness, P., testified during the pretrial investigation that he had been detained together with the author and that, on 20 December 2013, during a conversation with police officers, the latter confessed guilt in the murder of four people. The author did not complain about having been forced to confess guilt or placed under pressure. The witness saw no bodily injuries on the author's body and the author did not complain about unlawful methods of investigation.

4.20 In his confessions of 20 December 2013, the author confirmed that he had murdered four people. The confessions also contain his declaration that they were not made under pressure from the police. The author confirmed, before the Amursk Regional Court, the testimonies of the witness P. and also his own confessions of 20 December 2013. He also confirmed having murdered four people and, while he refused to testify under article 51 of the Constitution, he confirmed his depositions made during the preliminary investigation as

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<sup>3</sup> This administrative case is different to the murder charges, which came later (see para. 4.24 below).

an accused on 16 October 2014, when he explained the circumstances under which he had committed the crimes. He gave additional information on the circumstances of the murders during the verification at the crime scene, on 22 December 2013 and 27 May 2014.

4.21 When assessing the author's guilt, the court examined his deposition as a suspect on 16 October 2014 and the verification of the deposition at the crime scene, and recognized them as admissible evidence of his guilt under article 105 of the Criminal Code as they had been received in accordance with the law, including with the explanation that the author had the right not to testify against himself, and had been given in the presence of a lawyer. No complaints regarding unlawful pressure were received. The court also gave an assessment of the author's confessions and noted that they had been corroborated by the additional expert's examination No. 211 and the data contained in the record regarding the examination of the crime scene on 8 December 2013.

4.22 When calculating the author's penalty, the court took into consideration his arrest from 17 December 2013. When appealing his conviction of 5 May 2015 by the Amursk Regional Court, the author affirmed having been arrested on 17 December 2013 and he complained that the record on his arrest had only been prepared on 20 December 2013; he also claimed that his confessions had been made under psychological and physical pressure by the police.

4.23 On 11 August 2015, the collegium on criminal cases of the Supreme Court examined the claims of the appellant and concluded that the guilt of the author was confirmed by the multitude of the evidence examined during the trial, which had been given adequate assessment in the sentencing. The author's responses that were given when he was interrogated during the investigation were considered truthful, when he gave a detailed description of the way in which he had murdered four persons. The author confirmed his deposition during a verification at the crime scene but also in court, when he clarified the sequence of the murder and the place where he had collected the axe.

4.24 The court also correctly retained as evidence the deposition of the witness P., who confirmed that the author – his cellmate during his administrative arrest – had described to him how he had murdered four people and that he had informed the police of that. The author had not complained to him of having been coerced to do so. In court, the author confirmed the deposition of P. Another witness, D., confirmed that when P. asked the author who had committed the murder of four people, the author replied that it had been him.

4.25 The author's allegations about his forced confessions were duly examined by the court, but were rejected as groundless. The court took note in particular of the fact that the confessions had been made in the presence of a lawyer, after the author had been informed of his procedural rights, including the right not to testify against himself, he had not complained about the police during the investigation and, from the witnesses' depositions, it transpired that he had confessed guilt voluntarily. From the sentence, it transpired that the author's guilt was confirmed not only by his depositions, but also by a multitude of other corroborating evidence, permitting a well-founded conclusion of his guilt. In his appeals against the Amursk Regional Court of 5 May 2015 and the ruling of the Supreme Court of 11 August 2015, the author claimed that he had been arrested on 12 December and not on 17 December 2013, but made no claim of unlawful methods of investigation or forced confessions.

4.26 The author has also complained to the court about the Ministry of Finance and the temporary detention centre of the Ministry of Internal Affairs, claiming moral damages for his unlawful detention. In support, he claimed that, on 12 December 2013, he had been placed unlawfully in the temporary detention centre, as no record of his arrest as a suspect was prepared. In addition, he was not informed of his procedural rights and was given no opportunity to conclude a representation agreement with a lawyer. The conditions of detention did not meet sanitary and other standards. Those circumstances led to physical and moral suffering by the author. The author asked the court to conclude on the unlawfulness of his detention and to order compensation equal to 10,000,000 roubles.

4.27 The State party submits that, on 9 March 2016, the Tynda District Court accepted the case and determined 12 April 2016 as the date of adjudication; the author was informed accordingly. Later, the trial was postponed to 24 May 2016 and the author was duly informed

of the change.<sup>4</sup> The case was examined on 24 May 2016. The author was not present, he did not send his representative and he made no requests or complaints. The court, acting under article 167 of the Code of Civil Proceedings, decided to proceed in the absence of the plaintiff, who had been duly notified of the trial. The court examined the arguments by the author on the circumstances of his detention, in conjunction with the rest of the evidence on file, and established that, on 20 December 2013, the author had been detained as a suspect of a crime proscribed under article 105 (2) of the Criminal Code. The author had been notified of the arrest and he had accepted it, as confirmed by a handwritten, signed statement. Under article 46 of the Criminal Procedure Code, the author's procedural rights as a suspect had been explained to him, as confirmed by his signature. The record also showed that the author's brother had been informed of the arrest. Thus, the court found that the author's arrest record as a suspect was lawful, as it had been prepared by a duly authorized person, in the presence of the author's lawyer, N. On 22 December 2013, the Tynda District Court ordered the author's placement in custody.

4.28 In addition, during the trial, the court verified the circumstances of the author's detention in the temporary detention facility as a suspect and an accused. The court established that, during his detention in custody, the author had made no claims regarding unlawful detention and that the acts of the police were not recognized as unlawful. The court, acting under articles 151, 1068, 1071 and 1100 of the Criminal Procedure Code, concluded that the evidence did not corroborate the author's claims, and rejected them. The author was sent the court's decision.

4.29 On 29 August 2016, the author filed an appeal against the decision of 24 May 2016, together with a request to extend the deadline for appeal. On 21 September 2016, the Tynda District Court rejected the author's request to extend that deadline. On appeal, on 30 January 2017, the Amursk Regional Court annulled the decision of 21 September 2016 and extended the deadline for appeal.

4.30 Meanwhile, on 21 March 2016, the author's appeal against the Ministry of Finance and the temporary detention facility reached the Amursk Regional Court. The court set 28 April 2017 as the date for the trial and the author was informed accordingly. The author sent no clarification on his appeal and made no request to participate in the trial by means of videoconference. Thus, on 28 April 2017, the court decided to proceed in the author's absence.

4.31 In his appeal, the author asked to have the court decision annulled, given that it had been examined in his absence. He also noted that the court had not assessed the circumstances of his detention between 12 and 20 December 2013 and claimed that the court had not requested a number of documents from the temporary detention centre. He claimed that the obligation to provide evidence regarding the conditions of detention lay with the Ministry of Internal Affairs. The appeal ruling of 28 April 2017 of the Amursk Regional Court and the decision of the Tynda District Court of 24 May 2016 were left without change and the author's appeal was rejected. The court rejected the author's arguments regarding the failure of the appeal court to assess the circumstances of his arrest between 12 and 20 December 2013 as groundless and confirmed the court's conclusions. The author's claim about the adoption of the decision in his absence was similarly rejected as groundless. The court noted that the law obliged it to notify only the parties to the trial and that that had been done regarding the author, as attested by the relevant notifications. The author could have sent a representative, but he failed to do so and he also did not request a videoconference to be organized. In addition, the court noted that the law did provide for prisoners serving a sentence to participate in civil cases.

4.32 On 28 July 2017, the author appealed to the Amursk Regional Court against the previous court's decision regarding the trial in his absence as adopted in breach of material law. He also noted the absence of an assessment of the circumstances of his detention from 12 to 20 December 2013 and complained about the failure of the court to request a number of documents from the temporary detention facility. On 28 August 2017, the Amursk Regional Court examined the appeal against the Tynda District Court's decision of 24 May

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<sup>4</sup> The case file contains copies of the notifications provided to the author.

2016 and the Amursk Regional Court's decision of 28 April 2017. It refused to order an examination of the appeal by the presidium of the Amursk Regional Court. Under article 387 of the Code of Civil Proceedings, court decisions can be annulled or modified on the basis of significant violations of the norms of material or procedural law that have affected the outcome of a case, if no other avenues exist to ensure respect for the violated rights and freedoms and if public concerns so require. The Amursk Regional Court revealed no such breaches by the first instance and appeal courts. The court noted that the author's arguments had already been examined by the appeal court and were correctly rejected; thus, there was no need for further verification.

4.33 The disagreement of the author concerning the conclusions of the court and the establishment of the circumstances for the purposes of article 387 of the Code of Civil Proceedings cannot serve as a basis for the re-examination of a court decision that has acquired the force of *res judicata* because annulment or reformation within a cassation proceeding is allowed only in the case of a serious breach of norms of material or procedural law taking place in the context of the previous adjudication and affecting the outcome of the case. Under article 327 of the Code of Civil Proceedings, on appeal, the appeal court can assess the evidence on file and any additional evidence, but the cassation court is not allowed to assess elements of evidence or to establish new circumstances. A copy of the refusal of the Amursk Regional Court of 28 August 2017 to order the examination of the cassation appeal was sent to the author on 20 September 2017.

4.34 The State party adds that, in the context of its monitoring prerogatives, in 2016, the Tynda City Prosecutor's Office established that the temporary detention facility could accommodate 18 detainees. The cells are equipped with chairs, benches and shelves, a water pipe, radio receptors to broadcast the all-State channels, illumination and ventilation. Plates and cutlery are provided. The cells are equipped with toilets, assuring respect for privacy. Walls are plastered and painted and the floors are wooden. Detainees can visit the room that is provided for meetings with relatives and can take walks in the yard. The prosecutor's office revealed a breach in the regulations regarding daylight and, on 29 March 2016, requested the Tynda District Court to recognize the acts of the Office of the Ministry of Internal Affairs of the Amursk Krai and the temporary detention facility as constituting unlawful inaction resulting in the non-respect for legislation regarding daylight in the cells and the service premises of the detention centre. As a result, the Amursk department of the Ministry of Internal Affairs and the temporary detention facility were obliged to carry out reconstruction works or, alternatively, to build a new detention centre.

4.35 In addition, in the light of the requirements of the federal law on custody for suspects or accused persons, suspects and accused persons can be transferred from pretrial detention centres to temporary detention centres when required for the conduct of investigation activities or for the examination of court cases outside the locality when transfer on a daily basis is impossible. However, it is not permitted for more than 10 days a month. It was revealed that the author had been detained unlawfully in the temporary detention facility as a suspect and as an accused, from 20 December 2013 to 15 January 2014.<sup>5</sup> As a result, a deputy prosecutor of the Amursk region wrote to the head of the Amursk Office of the Ministry of Internal Affairs regarding the need not to breach the law. Thus, the prosecutor's office has taken the necessary measures to remedy the breach of the law within its monitoring functions.

4.36 In the light of the above, the State party believes that no breach of the author's rights under the Covenant has occurred.

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

5.1 The author submitted his comments on the State party's observations on 13 December 2018. He reiterates that he was arrested and detained at the temporary detention facility on 12 December 2013, but that the State party had not assessed that and its reply was flawed and constituted a confirmation of the fact that he was indeed detained on 12 December. His arrest

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<sup>5</sup> See footnote 1 above, on the difference between temporary detention centres and pretrial detention centres.



was not recorded within three hours, as required under the law, nor was he charged. Thus, according to him, his detention was unlawful and, as a consequence, the evidence arising from all subsequent investigation activities should be excluded.

5.2 The author adds that the officers exerted physical and psychological pressure on him. His defence lawyer did not speak with him privately and did not provide the necessary judicial assistance, and he did not appeal against the detention and the use of physical or psychological pressure. The author is not a lawyer, and at the relevant time had no paper or pen to prepare an appeal.

5.3 The author claims that the State party's contention that he was placed in the temporary detention facility on 17 December 2013 in the context of an administrative case is false and unconfirmed. According to the sentence, his term was calculated as starting from 17 December 2013, but it was not stated that he had been arrested on the basis of an administrative case. The author reiterates that he was arrested on 12 December; he explains that his term was calculated as starting on 17 December only because that was the day on which he received a visit from criminal investigators from the city of Blagoveshchensk and their visit was duly recorded in the centre's registry. That visit was probably recorded by video surveillance cameras; the author has requested the video recordings to be added to his appeal to the Tynda City Court, to no avail.

5.4 The sentences are unlawful as they were rendered in breach of the law. The author did not commit the crimes; he incriminated himself under pressure following his unlawful arrest and detention. Furthermore, the testimony of the witness P. to the effect that he was a cellmate of the author and that the author admitted having committed the murders cannot be retained as lawful evidence. P. was also detained and placed under pressure by police. The author could not admit to the murders, as he did not commit them.

5.5 In violation of article 14 (3) (e) of the Covenant, the trial took place in the author's absence and he could not confirm the violation of his rights during his arrest and detention at the temporary detention facility. In relation to the author, on 29 March 2016, a city prosecutor of Tynda introduced an administrative claim with regard to the absence of natural light in the temporary detention facility. That claim was ultimately rejected and even the prosecutor's conclusions on the absence of light were not retained as evidence by the court, which shows that the court proceedings do not constitute an effective remedy. In addition, the courts ignored the conclusions of the office of the prosecutor regarding his unlawful detention in the temporary detention centre from 20 December 2013 to 15 January 2014.

## **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 97 of its rules of procedure, whether the communication 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 notes that the State party challenges parts of the communication for non-exhaustion of domestic remedies. Firstly, the author did not appeal against the decision to have him placed in custody on 22 December 2013. Secondly, he failed to exhaust the available domestic remedies regarding his claims of use of beatings (torture) or psychological pressure by the police to coerce him into confessing guilt in a multiple murder. Those allegations were not part of the author's trial or initial appeal, but were included only in his complementary appeal. Later on, according to the documents on file, in his cassation appeal of 28 July 2016, the author invoked no allegation whatsoever related to acts of violence or psychological pressure by the police.

6.4 The Committee also notes that the author has not refuted the State party's objections and has provided no explanation or information whatsoever in reply. For example, he has not explained why he did not make such important claims as the use of torture or psychological

pressure in his initial appeal or in his cassation appeal. The Committee further notes the State party's submission that, prior to his criminal case, the author was detained on administrative charges (see para. 4.15 above). In these circumstances, and in the absence of any further information or explanation on file, the Committee considers that this part of the communication, raising issues under articles 7 and 9 (1–5), is inadmissible under both articles 2 and 5 (2) (b) of the Optional Protocol.

6.5 The Committee notes the author's claims with regard to alleged violations of article 14 (1) in that his trial was "unfair" and held in an "accusatory manner" and that "the judgment of 5 May 2015 was unlawful". The author claims that he could not summon witnesses who would corroborate his account of events, in violation of his rights under article 14 (3) (e). The author argues that the courts ignored the unlawfulness of his detention in a temporary detention centre from 20 December 2013 to 15 January 2014. The State party replied that a deputy prosecutor of the Amursk region wrote to the head of the Amursk Office of the Ministry of Internal Affairs regarding the need not to breach the law and thus took the necessary measures to remedy the breach of the law within its monitoring functions. The Committee notes that the State party provided detailed responses and explanations regarding the author's claims (paras. 4.7–4.13 and 4.17–4.25 above). In the absence of any further pertinent information on file, the Committee considers that the author has failed to sufficiently substantiate these allegations for the purposes of admissibility. Accordingly, it declares this part of the communication inadmissible under article 2 of the Optional Protocol.

7. The Committee therefore decides:

- (a) That the communication is inadmissible under articles 2 and 5 (2) (b) of the Optional Protocol;
  - (b) That the present decision shall be transmitted to the State party and to the author.
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