



## International Covenant on Civil and Political Rights

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### Human Rights Committee

#### Views adopted by the Committee under article 5 (4) f the Optional Protocol, concerning communication No. 2059/2011\*, \*\*

<i>Communication submitted by:</i>	Y.M. (not represented by counsel)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Russian Federation
<i>Date of communication:</i>	5 July 2010 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 97 of the Committee's rules of procedure, transmitted to the State party on 4 May 2011 (not issued in document form)
<i>Date of adoption of Views:</i>	31 March 2016
<i>Subject matter:</i>	Author denied fair trial procedural guarantees
<i>Procedural issues:</i>	Admissibility;– non-substantiation
<i>Substantive issues:</i>	Fair trial: witnesses; fair trial: legal assistance; family rights; defence: adequate time and facilities; human dignity
<i>Articles of the Covenant:</i>	9 (1), (2) and (4), 10 (1), 14 (1), (3) (a)-(b), (d)-(e) and (5) and 23 (1) and (4)
<i>Articles of the Optional Protocol:</i>	2

\* Adopted by the Committee at its 116th session (7-31 March 2016).

\*\* The following members of the Committee participated in the examination of the communication: Yadh Ben Achour, Lazhari Bouzid, Sarah Cleveland, Olivier de Frouville, Yuji Iwasawa, Ivana Jelić, Duncan Laki Muhumuza, Photini Pazartzis, Sir Nigel Rodley, Víctor Manuel Rodríguez-Rescia, Fabián Omar Salvioli, Dheerujlall B. Seetulsingh, Anja Seibert-Fohr, Yuval Shany, Konstantine Vardzelashvili and Margo Waterval.



1. The author of the communication is Y.M., a national of the Russian Federation born in 1966. He claims that the State party has violated his rights under articles 9 (1), (2) and (4); 10 (1); 14 (1), (3) (a)- (b), (d)- (e) and (5); 23 (1) and (4) of the Covenant. The Optional Protocol entered into force for the State party on 1 January 1992. The author is not represented by counsel.

#### **The facts as submitted by the author**

2.1 The author submits that, on 15 May 2002, by the verdict of the Sverdlovsk Regional Court, he was convicted of having committed a number of serious criminal offences, including murder, robbery and illegal possession of weapons. He was sentenced to a total of 25 years' imprisonment.

2.2 The author submits that, since the first day of the trial, he had complained to the court that he had not been given an adequate opportunity to acquaint himself with the case file and that his requests had been noted on numerous occasions in the trial record.<sup>1</sup> He maintains that he did not have the opportunity to read more than 80 per cent of the criminal case files and that this did not allow him to prepare his defence. He also submits that the court ignored his complaints, which violated his right under the Covenant to have adequate time and facilities for the preparation of his defence. He maintains that he had raised the above complaint in his cassation appeal, which was rejected by the Supreme Court of the Russian Federation on 13 January 2007. His subsequent supervisory appeal, also to the Supreme Court, was rejected on 13 March 2006.

2.3 The author submits that he was denied the right to be represented by a lawyer of his choice during the first instance trial hearings. He maintains that he was represented by a certain Mr. B., who was initially hired to represent him by relatives of one of his co-defendants.<sup>2</sup> He maintains that he clearly stated that he did not want to be represented by that lawyer and that he preferred a public defender who had already been at the first court hearing,<sup>3</sup> but the court refused to take this into consideration and ordered the lawyer to continue to represent him. He maintains that the co-defendant, whose relatives had hired the lawyer, testified against him during the trial and that the lawyer did not provide adequate defence as he did not file any motions to protect the author's rights.

2.4 The author submits that, contrary to what was noted in the trial record, the trial was not public, since the court did not call his mother and sons to be present at the court hearings. The author states that he objected to the "closed" nature of the trial on numerous occasions, as noted in the trial record, but the court ignored his complaints and the hearings remained closed to the public.

2.5 The author submits that the court took the side of the prosecution entirely. He maintains that the biased nature of the court is obvious from the trial record, since the judge in fact acted as a prosecutor, because he was the one reading the charges and asking questions, instead of the prosecutor. The author further submits that some portions of the trial transcripts do not contain correct information and that some parts were falsified.<sup>4</sup>

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<sup>1</sup> The author submits a copy of the trial record and refers to pages 2, 3, 7, 22, 23, 59 and 71 of the record.

<sup>2</sup> The author submits a letter from the Bar Association, confirming that the attorney Mr. B. was hired by the relatives of one of the codefendants and that the court obliged him to continue representing the author even after the latter had rejected him.

<sup>3</sup> In his later submissions, the author claims that he even provided the name of a new lawyer.

<sup>4</sup> More detailed information on this was provided by the author in later submissions.

2.6 The author submits that, according to decision No. 40 of the Supreme Court of the Russian Federation dated 11 June 1999, and article 60 of the Criminal Code of the Russian Federation, when pronouncing a guilty verdict and imposing a custodial sentence on an individual who has minor children who would remain without supervision, the trial court is obliged to include instructions regarding the custody of the children. He maintains that, in his case, the court failed to do so, despite the fact that his two minor sons were in the care of his elderly mother and his former wife had testified that she would not take care of them or provide any alimony. He maintains that the verdict violated his right to a family life.

2.7 Lastly, the author submits that, at the first trial hearing, he had requested one expert witness and six additional witnesses, including Mr. C.H.A., to be summoned and questioned by the court, but the court rejected his requests. He claims that this violated his right to cross-examine witnesses and secure the presence of witnesses in his defence.

### **The complaint**

3.1 The author claims that the State party violated his right to a fair trial under article 14 (1) and his right to an effective appeal under article 14 (5) of the Covenant.<sup>5</sup>

3.2 The author contends that, by limiting his time to study the materials of the results of the criminal investigation against him, the State party violated his rights under article 14 (3) (b) of the Covenant.

3.3 The author submits that the trial court violated his rights under article 14 (3) (d), by denying his request to have a different lawyer represent him in court.

3.4 The author also claims that the trial court rejected his request for additional witnesses, who, he claims, would have testified in his defence. By not allowing any witnesses whom he requested, the State party violated his rights under article 14 (3) (e) of the Covenant.

3.5 The author further claims that the State party violated articles 9 (1)-(2) and (4) and 10 of the Covenant.<sup>6</sup>

3.6 He claims that his rights under articles 10 (1) and 23 (1) and (4) of the Covenant were also violated.

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

4.1 In a note verbale dated 12 July 2011, the State party contested the author's claims under all the articles that were mentioned in his initial communication. The State party submits that the lawyer, Mr. B., was assigned to the author from the very beginning of the investigation and that the author had agreed to this representation. Furthermore, on 25 January 2002, the author requested the presence of Mr. B. to prepare for his defence before the trial.

4.2 This counsel also represented the author during the trial. The author asked for a different lawyer when the trial started. When questioned by court, Mr. B. explained that on 27 July 2001, he was hired by one of the relatives of P. — one of the co-defendants in the case — to represent P., Y.M. (the author) and G., another co-defendant. As it appeared that the three co-defendants may have differences of positions, Mr. B. stopped representing P. and G. on 4 August 2001.

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<sup>5</sup> The author's right to an effective appeal was raised during consideration of his subsequent submission to the Committee and not with his initial complaint.

<sup>6</sup> While the author explicitly claims that his rights under articles 9 and 10 were violated, in the description of the facts, he does not provide any substantiation of those claims.

4.3 On 16 April 2002, the court considered the author's request to replace his lawyer. The author did not have the name of another lawyer as a replacement. Since the charges against the author were very serious, the court decided that Mr. B. should continue to represent the author. During this hearing, Y.M. claimed to have "differences of position" with his lawyer, but he failed to explain what those differences were.

4.4 The State party submits that the Supreme Court of the Russian Federation considered the author's complaint, but found no violation of the law. As it transpires, in his appeals, the author failed to explain the differences of position that he had with his lawyer. Based on article 50, paragraph 2, of the Criminal Procedure Code of the Russian Soviet Federative Socialist Republic,<sup>7</sup> the court is not obliged to replace a lawyer, therefore the court had the right to reject the author's request.

4.5 Regarding the author's claim that he did not have adequate time and facilities to prepare his defence, the State party submits that the author had more than enough time. On 25 January 2002, the author was officially informed of the end of the investigation and his right to study the materials of the criminal case, both alone and with his lawyer. According to the author's statement, he preferred to prepare alone. Based on the entries in the criminal case file, in which the times that the author was studying the case were recorded, it seems that the author deliberately delayed his study of the case. For example, on 28 January 2002, the record indicates that the author reading the case from 9 a.m. to 12.20 p.m. and again from 2.35 p.m. to 4.25 p.m. During this time, he studied only six pages in the morning and four pages in the afternoon.<sup>8</sup>

4.6 On 11 and 18 February 2002, the investigator warned the author that the delaying tactic could not continue and that he would be forced to set a deadline for the author to complete his study of the case. However, the author's behaviour did not change and the investigator issued a decision limiting the study of the case to 12 March 2002. Despite this decision, the author did not change his pace, which, in the State party's view, showed that the author was "abusing his right" to study the case in preparation of his defence.

4.7 The author also asked to study the case materials after each day of hearings during the trial. This request was denied, because the relevant legislation does not provide for such a procedure. The author was told that he would have the opportunity to study the trial transcript after the trial was over. Also, according to article 286 of the Criminal Procedure Code, if a witness is absent during the trial and his presence cannot be secured, his pretrial testimony can be read on record during the trial. Since the witness, C.H.A., was absent because he was undergoing medical treatment, the court decided to read his testimony.

4.8 Regarding the closed nature of the trial, the State party submits that according to article 15, paragraph 1, of the Criminal Procedure Code, the court can decide to hold closed hearing when the case involves intimate details of the life of the persons participating in the trial.<sup>9</sup>

4.9 Regarding the author's minor children, the State party submits that after the author's divorce, two children of the couple's children resided with their father (the author) and the third child resided with the mother. The court considered that since the parental rights of

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<sup>7</sup> Based on the submission, the State party was still using the Code of Criminal Procedure of the Russia Soviet Republic, up to 2002.

<sup>8</sup> A copy of the decision of the Cassation Court indicates that the criminal investigation case file consisted of six volumes and three videocassettes.

<sup>9</sup> It is not clear what the "intimate details" refer to, but it was known that some of the participants in the trial had been accused of infidelity.

the children's mother had not been terminated, it did not find it necessary to issue a decision in this case.

4.10 The author does not substantiate his claims under articles 14 (3) (a); 9 (2) and (4) and 10 (1). The State party acknowledges that the author has exhausted all domestic remedies.

#### **Author's comments on the State party's observations**

5.1 On 21 August 2012,<sup>10</sup> the author submitted that the State party interrogated his two children (aged 12 and 15 years at the time) and "threatened them with reprisals" if they did not testify against their father. The lawyer, Mr. B., was present during some of the interrogations although he did not represent the author's children. Instead of helping the children, however, the lawyer urged them to change their initial testimony and tell the investigators that their father was guilty.

5.2 Regarding the lawyer, Mr. B., the author submits that, throughout the process, the lawyer acted against his interests, because he was initially hired by the family of P., a co-defendant in the case. During the court hearings, the author asked the court for a different attorney. Since he did not have the name of a new lawyer, he asked the court to appoint any other counsel or a public defender.

5.3 Regarding his right to study the case to prepare his defence, the author submits that his requests to make a copy of some case materials were rejected. The investigators locked him in a small room without adequate facilities to study the case.<sup>11</sup> Also, as a punishment,<sup>12</sup> he was moved to a solitary confinement cell, which further restricted his ability to study the criminal case materials. Article 264 of the Criminal Procedure Code, to which the State party referred, does not provide for restrictions on the amount of time to study case materials.

5.4 The author further submits that the court rejected his requests for the witness, C.H.A. to be questioned in court. It also rejected his request to summon other witnesses, without any explanations. He submits that he insisted on questioning C.H.A. since there were many inconsistencies in his written testimony.

#### **State party's additional submissions**

6.1 On 28 March 2013, 9 April 2014 and 16 February 2015, the State party reiterated its position that the author's claims were not based on any evidence. Regarding the treatment of his children, for example, the State party submits that they were not harassed. Their testimony during the pretrial investigation was taken, but they refused to sign it. The author's sons were in the police station only from 6 p.m. on 18 July 2001 and were sent to foster care at 1 a.m. on 19 July 2001.

6.2 The author's son, D.U.M., was questioned on 27 July 2001 and 7 December 2001 in the presence of Mr. B. He refused to answer most of the questions, as provided for under

<sup>10</sup> The author sent the Committee another letter on 29 August 2012, in which he reiterates his claims contained in his letter dated 21 August 2012.

<sup>11</sup> The author submits that the room was 2 m x 2 m, that it was very dark and damp with only a small window and that he was prohibited from using any pens or pencils.

<sup>12</sup> The reasons for this disciplinary punishment are not provided. It is also not known how long the solitary confinement lasted. The lawyer, Mr. B., in his opening speech to the court during the trial, stated that his client was placed in solitary confinement "at least five times" during the pretrial investigation. He did not provide any further details.

article 51 of the Constitution of the Russian Federation<sup>13</sup> and only talked about his parents' relationships.

6.3 The author's younger son, A.U.M., was questioned on 7 December 2001, also in the presence of Mr. B., and one of his teachers, as prescribed by law. He also refused to provide any information about his father's alleged criminal activities and availed himself of the provisions of article 51 of the Constitution. It was obvious from the records of these conversations that both boys understood the nature of the questioning. Neither D.U.M. or A.U.M. or the lawyer complained about threats or intimidation. During the court hearings, D.U.M. testified that he was "pressured to tell the truth", but he did not testify that he was tortured.

6.4 After the completion of the trial, a copy of the criminal case was sent to the author, as confirmed by his signature. In addition, he was given time to comment on the transcripts of the court hearings. Regarding the materials of the criminal case against the author, he had the right to study these materials and to make notes. But the legislation does not provide for making photocopies for the author.

6.5 The State party also submits that the author's contentions regarding the violation of article 14 (1) are baseless. It stated that the author complained about the fact that court consisted of one professional judge and two lay assessors, instead of three professional judges. The State party submits that the provisions of article 15, paragraph 2, of the Criminal Procedure Code requiring three professional judges to consider serious cases was not in force at the time.

6.6 Regarding the witnesses, the State party submits that in considering the author's request to call additional witnesses, the court followed the provisions of article 276 of the Criminal Procedure Code. The court considered whether the witnesses requested had information that was relevant to the case.

6.7 Regarding the author's right of access to counsel and his right to choose counsel, the State party reiterates its position that Mr. B. defended the author properly. The author's request for a new lawyer was denied because he did not provide the name of another lawyer. The sheer gravity of the charges against the author made it mandatory that he be represented by a lawyer. Although the author claims that he gave the name of another lawyer to the court, the transcripts of the court hearings do not confirm this.

6.8 It is also evident from the records of the case that the national courts carefully considered the author's appeal claims. Upon his conviction on 15 May 2002, the author and his co-defendant filed a cassation appeal with the Supreme Court of the Russian Federation. Both the author and the co-defendant requested to be present during the cassation appeal hearings and this request was granted. On 13 January 2003, the hearing was conducted by videoconference.<sup>14</sup> Both the author and his co-defendant were able to clearly state their position.

6.9 The State party further submits that, according to article 50, paragraph 1, of the Criminal Procedure Code, counsel can be retained by a suspected or charged person or their representatives. According to paragraph 2 of this article, counsel is provided by the court if requested by a suspected or charged person himself or herself. In its decision No. 479-O

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<sup>13</sup> Article 51 of the Constitution states as follows:

1. No one shall be obliged to give incriminating evidence, [against] husband or wife and close relatives, the range of whom is determined by the federal law.
2. The federal law may envisage other cases of absolution from the obligation to testify.

<sup>14</sup> It is not clear from the State party's submissions whether the author was present at some of the hearings or whether all the hearings were conducted by videoconference.

dated 18 December 2003, the Constitutional Court of the Russian Federation stated that the participation of counsel is not mandatory in cassation appeals. However, the Supreme Court of the Russian Federation informed the lawyer who had represented the author at the initial trial about the time and date of the cassation appeal hearings.

6.10 As is evident from the text of the cassation appeal decision, the author did not request the court to postpone the hearings to secure the presence of the lawyer, nor did he complain about the absence of counsel. In his subsequent supervisory procedure appeals, the author failed to put forward this argument.<sup>15</sup>

#### **Additional submissions by the author**

7.1 In submissions dated 16 October 2013, 20 November 2013, 24 September 2014 and 12 November 2014 and an undated letter, which was received on 28 July 2015, the author reiterates his allegations regarding the violations of the Covenant. He submits that, throughout the criminal investigation, trial and appeal procedures, the investigators and the courts manipulated the records by omitting or falsifying important information.

7.2 He submits that the interrogations of his children were illegal, as they were threatened with violence, beaten, not allowed to use a toilet, among other things. The lawyer who was present did not act in the interests of children and did not file any complaints to the authorities about the mistreatment. According to article 159 of the Criminal Procedure Code on questioning witnesses, children witnesses must be questioned in presence of a lawyer, a teacher and a lawful representative.

7.3 The author claims that he complained about this to the Office of the President of the Russian Federation, and the State Duma (the lower house of the Parliament of the Russian Federation).<sup>16</sup> He received a response that his complaints has been examined and no violations were found.

7.4 The author contends that the Sverdlovsk Regional Court falsified the transcripts of the court hearings and did not record his son's testimony properly.<sup>17</sup> He claims that the official transcript of the court hearings was prepared 13 days after the verdict was handed down, while according to national legislation, it should be three days after the verdict of the court.<sup>18</sup> This interval of time was used by the authorities to further falsify the records to the benefit of the prosecutor's position.

7.5 The author further submits that, throughout the court hearings, he had complained that the hearings should be open to the public. He claims that the hearings were closed to the public because the prosecutors and the court wanted to hide violations of the provisions of the Criminal Procedure Code.

7.6 The author further claims that the verdict of the court verdict was signed by the professional judge only, but not by two lay assessors on the panel, in violation of article 15, paragraph 4, of the Criminal Procedure Code. The same was true for the decision of the cassation appeal court, which should have been signed by all the judges on the panel, but was signed by only one judge (the Chairperson).

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<sup>15</sup> The non-exhaustion claim seems to relate only to the presence of a lawyer during the cassation and supervisory appeals.

<sup>16</sup> The author did not provide copies of these complaints.

<sup>17</sup> The author also claims that the protocols of his interrogations were falsified and that, while there is a signature on the last page of the document, according to law, he should have signed each page separately.

<sup>18</sup> The author claims that the verdict was announced on 15 May 2002 and the transcript was prepared on 28 May 2002.

7.7 Regarding the materials of the criminal case, the author claims that he could not study it properly because the investigators refused to make him copies of certain documents. He claims that there is no prohibition on making copies of documents from criminal case files. The ineffectiveness of counsel was also proved by the fact that the lawyer did not provide him with copies of any documents.

7.8 The author reiterates his position that his right to have adequate time and facilities to prepare for his defence was violated.<sup>19</sup>

7.9 He further claims that his right to cross-examine witnesses was violated. He states that he was not able to cross-examine a key witness, C.H.A., whose initial statement was read in court, and that his request to subpoena another witness, M.R.V., was also denied. This also violated article 223 of the Criminal Procedure Code of the Russian Federation. The author also requested to have his mother and eldest son testify in court in his defence, but this request was also rejected.

7.10 The author's right to counsel was not respected throughout the trial. Not only did he asked for a different lawyer, but he had also asked the court to contact his mother, so that she could hire an attorney for him. The lawyer, Mr. B., was never active in his case and did not support the author's motions. He claims that even during the pretrial investigation, the lawyer was present, but only "pro forma", and did not protect his rights. The author submits that he had explained to the court that he needed a different lawyer and that Mr. B. had not been hired by him or his relatives.

## **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 93 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. The Committee also notes that the State party does not dispute the admissibility of the communication. Accordingly, the Committee considers that, for purposes of admissibility, it is not precluded from examining the communication under article 5 (2) (b) of the Optional Protocol.

8.3 With regard to the author's claims of a violation of article 14 (1) of the Covenant, as they relate to his general claims regarding a biased court, falsification of records, incomplete records, judicial signatures, the composition of the court and so on, the Committee considers that the author has failed to provide sufficient information and factual evidence in support of these claims and has therefore failed to substantiate his claims regarding his right to a fair trial under article 14 (1) of the Covenant, except as they relate to his claim regarding the closed nature of the court hearings. Similarly, the Committee considers that the author has failed to substantiate his claims under to articles 14 (3) (a) and 9 (1)-(2) and 4 of the Covenant. Accordingly, and in the absence of any further pertinent information on file, the Committee considers that, for the purposes of admissibility, the author has failed to sufficiently substantiate his claims under articles 9 (1)-(2) and (4) and 14 (1) and (3) (a) and declares this part of the communication inadmissible under article 2 of the Optional Protocol.

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<sup>19</sup> According to submissions from the author, the criminal case file had six volumes and three videocassettes. Each volume consisted of approximately 200 pages.



8.4 As to other claims, the Committee considers that the author has failed to substantiate his claims regarding violations of articles 10 (1) and 23 (1) and (4). It is also not clear from the submission whether the author brings the claim on behalf of his children or whether he believes that the alleged illegal questioning and intimidation resulted in a violation of his rights under the Covenant. Accordingly, the Committee declares this part of the communication inadmissible under article 2 of the Optional Protocol.

8.5 The Committee considers that, for the purposes of admissibility, the author has sufficiently substantiated his claims under article 14 (1), (3) (b) and (d)-(e) and (5) of the Covenant and proceeds with its consideration of the merits.

*Consideration of the merits*

9.1 The Committee has considered the communication in the light of all the information made available to it by the parties, as required under article 5 (1) of the Optional Protocol.

9.2 The Committee first notes the author's claim that his trial was not open to the public. The Committee also notes that the State party's submission that the decision to hold a closed trial was justified as the case involved "intimate details" about the life of parties in the case, however, no further details were provided. The Committee recalls its general comment No. 32 (2007) on the right to equality before the courts and tribunals and to a fair trial, in which it stated that all trials in criminal matters must in principle be conducted orally and publicly, unless the court decides to exclude all or part of the public for reasons of morals, public order (*ordre public*) or national security, or when the interest of the private lives of the parties so requires. Even in cases in which the public is excluded from the trial, the judgement, including the essential findings, evidence and legal reasoning, must be made public (paras. 28-29). The Committee considers that the State party failed to explain why it was necessary to close the entire trial, including the hearings of the facts and evidence related to the charges of murder, robbery and illegal possession of weapons, instead of closing only part of the trial in order to protect rights of minors, or intimate and personal information of parties in the trial. The Committee therefore considers that the State party failed to justify the exclusion of the public from the author's entire trial under any of the justifications provided for in article 14 (1) of the Covenant. In the absence of other pertinent information on file, the Committee considers that the State party violated the author's rights under article 14 (1) of the Covenant.

9.3 The Committee also notes the author's claim that his right to have adequate time and facilities for the preparation of his defence were violated and that he was not provided with a copy of the materials. In response to these claims, the State party provided details, including the exact times and dates when the author had an opportunity to study the materials of the criminal case against him. The Committee recalls its general comment No. 32, in which it pointed out that the determination of "adequate time" depends on the circumstances of each case and that "adequate facilities" must include access to all materials that the prosecution plans to offer in court against the accused (paras. 32-33). The Committee further notes that the author had the opportunity to study the case materials from 25 January 2002 until 12 March 2002. Moreover, on 11 and 18 February 2002, the author was warned that he should not use delaying tactics in studying the case materials. The Committee recognizes the restrictions placed on the author, however, given the fact that he had about one and a half months to study the case, it does not consider that the time allocated was inadequate. The Committee therefore concludes that the author's right under article 14 (3) (b) of the Covenant have not been violated.

9.4 The Committee further notes the author's contention that he was not able to replace the lawyer, Mr. B., who, he claims, failed to protect his rights during the pretrial investigation as well as during the court hearings. The Committee also notes the State party's submission that the author failed to explain the differences that he had with the

lawyer and that he failed to provide the name of another lawyer. The Committee observes that the Covenant guarantees the right of an individual to defend himself “in person or through legal assistance of his own choosing”. This right entails the freedom of the defendant not only to choose but also to replace a lawyer and this right should not be restricted unless it is absolutely necessary for the administration of justice, for instance, if the defendant abuses the right to replace a lawyer. The Committee further observes that the Covenant guarantees the right of the defendant to replace a lawyer who he or she does not perceive to be fit for the case or who he or she suspects is acting contrary to his or her interests.

9.5 It is evident from transcript No. 2-125/02 of the relevant court hearings that the author requested “any other lawyer”, and insisted that he wanted “to consult with his family to choose a lawyer”. On page 44 of the said transcript, the author again raised the issue and requested a “public defender”. It emerges from the submissions by both the author and the State party, as well as transcript No. 2-125/02, which was provided by the author, that the Sverdlovsk Regional Court and, subsequently, the cassation and supervisory appeal courts, failed to entertain the author’s requests for any other lawyer or for a public defender and imposed on him the obligation to justify his request. The Committee further notes that the lawyer, Mr. B., was initially retained by relatives of one of the author’s co-defendants, whose interests was different from those of the author. While noting that there is nothing in the file to indicate that the author abused his right to choose or replace the lawyer, the Committee concludes that the State party failed to justify why it was necessary for the administration of justice to restrict the author’s right to replace the lawyer or why it was not possible to assign a public defender to him. In the circumstances, the Committee concludes that the author’s rights under article 14 (3) (d) were violated.

9.6 The Committee notes that the author was not represented by counsel during the cassation appeal hearings. It also notes the State party’s submission that, although the Constitutional Court of the Russian Federation provides that the participation of counsel is not mandatory in cassation appeals, the Supreme Court of the Russian Federation had informed the lawyer who had represented the author at his initial trial of the time and date of the cassation appeal hearings. The Committee further notes the State party’s argument that the author did not request the court to postpone the hearings in order to secure the presence of a lawyer, nor did he complain about the absence of counsel. The Committee finds that article 14 (3) (d) of the Covenant applies to the present case, as the court examined the case as to the facts and the law and made a new assessment of the issue of guilt or innocence.<sup>20</sup>

9.7 The Committee considers, however, that it is up to the State party to demonstrate that the author, who was being tried for serious crimes, punishable by up to 25 years’ imprisonment, was adequately informed of his right to have counsel and that he deliberately declined to exercise this right. The Committee notes that, in this particular case, the Supreme Court considered it expedient to hear the author’s arguments in order to reach its conclusion. In such circumstances, the Supreme Court was under the obligation to inform the defendant about his right to request the presence of his lawyer during the hearings. The Committee also observes that, in the light of its findings in paragraph 8.3 above, Mr. B., who was allegedly informed about the cassation hearings but chose not to be present at the hearings, cannot be considered as the lawyer of the author’s own choosing. It cannot be assumed either that the author declined his right to be represented by a lawyer during the cassation appeal. Furthermore, the Committee observes that the author had to prepare for the cassation appeal without legal assistance of his own choosing owing to the decision of the lower court. The Committee considers that the above findings reveal a violation of the author’s rights under article 14 (3) (d).

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<sup>20</sup> See communication 2041/2011, *Dorofeev v. the Russian Federation*, Views adopted on 11 July 2014, para. 10.6.

9.8 Having concluded that there has been a violation of article 14 (3) (d) of the Covenant, the Committee decides not to separately examine the author's claims under article 14 (5).

9.9 With regard to the author's claims that he was not afforded the right to cross-examine an important witness, C.H.A., in court and that only his initial statement was recorded as having been read, the Committee notes that, according to the State party, C.H.A. was undergoing medical treatment at the time and could not attend. However, nothing in the submissions indicates that C.H.A. was permanently unavailable. Similarly, since the author's wife refused to testify by invoking her rights under article 51 of the Constitution, her statement to the police was recorded as having been read, and she was not subject to cross-examination by the author. The Committee also notes that six additional witnesses requested by the author were not subpoenaed to testify in his defence. The State party did not provide any specific information regarding those witnesses; it only stated that it was up to the court to decide on those types of requests. The Committee further notes that while the right to obtain the attendance of witnesses is not unlimited, the accused or their counsel should have the right to have witnesses who are relevant for the defence admitted and to be given a proper opportunity to question and challenge witnesses against them at some stage of the proceedings.<sup>21</sup> Furthermore, the Sverdlovsk Regional Court did not give any reasons as to why it refused the author's request to summon additional witnesses or why, for that matter, the court hearing could not have been postponed to secure the presence of C.H.A. or any other witnesses, especially considering the gravity of the charges against him. These factors, taken together, in particular the author's inability to cross-examine an important witness, lead the Committee to conclude that the State party violated the author's rights under article 14 (3) (e).<sup>22</sup>

10. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts before it disclose a violation of the author's rights under article 14 (1), (3) (d) and (e) of the Covenant.

11. In accordance with article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the author with an effective remedy. This requires it to make full reparation to individuals whose Covenant rights have been violated. Accordingly, the State party is obligated to, inter alia, take appropriate steps to: (a) quash the author's conviction and, if necessary, conduct a new trial, subject to the principles of fair hearings, access to counsel and other procedural safeguards; and (b) provide the author with adequate compensation. The State party is also under an obligation to take steps to prevent similar violations in the future.

12. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant and to provide an effective remedy when it has been determined that a violation has occurred, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the present Views. In addition, it requests the State party to publish the Views.

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<sup>21</sup> See the Committee's general comment No. 32, para. 39.

<sup>22</sup> See also communications No. 815/1998, *Dugin v. the Russian Federation*, Views adopted on 5 July 2004, para. 9.3; and No. 1082/2002, *Rouse v. Philippines*, Views adopted on 25 July 2005, para. 7.5.