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International Covenant on Civil and Political Rights

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Human Rights Committee

Communication No. 2040/2011

Views adopted by the Committee at its 115th session
(19 October-6 November 2015)

Submitted by:	Akhliman Avyaz Ogly Zeynalov (represented by counsel, Javanshir Islam Ogly Suleymanov)
Alleged victim:	The author
State party:	Estonia
Date of communication:	28 September 2009 (initial submission)
Document references:	Special Rapporteur's rule 97 decision, transmitted to the State party on 12 April 2011 (not issued in a document form)
Date of adoption of Views:	4 November 2015
Subject matter:	State party courts did not allow the alleged victim to be represented by a counsel of his choice throughout criminal proceedings and did not allow adequate time and facilities for the preparation of his defence.
Procedural issue:	Admissibility *ratione personae*; admissibility — exhaustion of domestic remedies; admissibility — other procedure; accessory — character of article 2 of the Covenant
Substantive issues:	Counsel; defence; adequate time; facilities
Articles of the Covenant:	2 and 14
Article of the Optional Protocol:	1, 2, 5 (2) (a) and 5 (2) (b)

GE.16-00187(E)

Annex

Views of the Human Rights Committee under article 5 (4) of the Optional Protocol to the International Covenant on Civil and Political rights (115th session)

concerning

Communication No. 2040/2011*

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Alleged victim:	The author
State party:	Estonia
Date of communication:	28 September 2009 (initial submission)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 4 November 2015,

Having concluded its consideration of communication No. 2040/2011, submitted to the Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication and the State party,

Adopts the following:

Views under article 5 (4) of the Optional Protocol

1. The author of the communication is Akhliman Avyaz Ogly Zeynalov, a national of Azerbaijan, born on 10 October 1979. He claims to be a victim of violations by Estonia of his rights under articles 2 and 14 of the Covenant. The Optional Protocol entered into force for Estonia on 21 January 1992. The author is represented by counsel, Javanshir Islam Ogly Suleymanov.

The facts as presented by the author

2.1 On 3 December 2007, the author was arrested on the suspicion of smuggling narcotics. On 18 November 2008, the case was submitted to the court and the first hearing was scheduled for 20 April 2009. In November 2008, Mr. Suleymanov, who is an attorney

* The following members of the Committee participated in the examination of the present communication: Yadh Ben Achour, Lazhari Bouzid, Sarah Cleveland, Olivier de Frouville, Yuji Iwasawa, Ivana Jelić, Duncan Muhumuza Laki, Photini Pazartzis, Mauro Politi, Sir Nigel Rodley, Victor Manuel Rodríguez-Rescia, Fabián Omar Salvioli, Dheerujlall Seetulsingh, Anja Seibert-Fohr, Yuval Shany, Ahmed Amin Fathalla, Konstantine Vardzelashvili and Margo Waterval. Two opinions signed by two Committee members are appended to the present Views.

in Azerbaijan, was admitted by the Harju County Court as a defence attorney of the author in the criminal trial.

2.2 On 4 June 2009, following a motion from the prosecutor, the Court annulled the ruling admitting Mr. Suleymanov as a defence attorney, stating that: (a) he had participated in hearings until 8 May 2009 but had failed to attend subsequent hearings, which had resulted in several postponements of the hearings; (b) on two occasions, the Court had had to appoint other defenders and grant them time to familiarize themselves with the case file; (c) the author had stated in motions that the dates of the hearings had been inconvenient for him since he had other cases; (d) he had declared in a letter that he had been planning to participate in the trial, but did not appear on 21 May 2009; (e) at the same time, he had answered a telephone call, thus indicating that he was not unduly busy; (f) that he had presented evidence concerning his need to participate in a hearing of the Supreme Court of Azerbaijan on 27 May 2009, but that that date did not coincide with any of the hearings in Estonia; and (g) that he had failed to present any evidence that he had been otherwise engaged on the dates of the hearings in Tallinn. The Court came to the conclusion that Mr. Suleymanov had deliberately abused the provision of article 270 of the Criminal Procedure Code of Estonia, which obliges a court to postpone the hearing if a defence attorney is not present, and that his behaviour was contrary to the interests of the accused and demonstrated lack of respect for the Court.

2.3 The author submits that the ruling of the Court does not correspond to the reality and to Estonian legislation. He maintains that, on 30 December 2008, the Harju County Court issued a ruling that the trial hearings would take place on 8, 9, 13 and 20-24 April 2009. Accordingly, Mr. Suleymanov had arranged his schedule so that he could be present on those dates. On 24 April 2009, Mr. Suleymanov learned that the Court had scheduled further hearings for 7, 8, 18, 21, 22, 25 and 26 May and 3 and 4 June 2009. The Court had discussed those dates in Estonian with the other participants in the trial, but failed to consult with the author or Mr. Suleymanov. Mr. Suleymanov informed the Court that he would be available for the hearings on 8 and 9 May and then only in July 2009 because of his participation in trials and conferences in other States. He also pointed out that the prosecution and the Court had given him a large amount of material, which he needed to translate and familiarize himself with in order to provide adequate defence. On 28 April 2009, Mr. Suleymanov submitted to the Court an application to be given time to examine the material relating to the case and to continue the trial on 22 July 2009. On 7 May 2009, the author refused the services of his Estonian defender, Mr. Sillar. On 8 May 2009, the Court rejected the motion to continue the trial in July and appointed ex officio an Estonian attorney to defend the author, against his will. The author submits that delays in the trial were not caused by the absence of Mr. Suleymanov, but rather by the decision of the Court to reject his plea to continue the trial in July 2009 and to postpone it first to September 2009 and then to November and December 2009. He submits that, in 180 days, the Court scheduled only 15 hearings and notes that he had been held in detention since 3 December 2007.

2.4 On 11 June 2009, Mr. Suleymanov appealed the 4 June 2009 decision of the Harju County Court before the Tallinn Court of Appeals. On 25 June 2009, the latter decided not to review the appeal. On 7 July 2009, together with an Estonian attorney, Mr. Suleymanov filed an appeal before the Supreme Court of Estonia, which rejected it on 27 August 2009 on the grounds that such appeal can only be submitted by an Estonian attorney. Mr. Suleymanov visited the Supreme Court on 28 August 2009 and presented a copy of the appeal with the signature of his Estonian colleague. After a long search, the Court's administration staff found the original appeal, but the 27 August 2009 decision remained in force. Subsequent complaints remained unsuccessful. The author contends that he has exhausted all available and effective domestic remedies.

2.5 The author further submits that other violations of his right to defence occurred, including: (a) the Harju County Court's refusal to provide translations of documents from Estonian into Russian or Azeri languages, thereby obliging him to pay to an interpreter from the security police to translate documents; (b) the Court's refusal to provide him with certain trial-related documents, with the explanation that they had already been given to his lawyer; (c) the Court's refusal to allow Mr. Suleymanov, after discharging him from the defence, to hand over to the author the case documents in his possession; and (d) in responding to one of Mr. Suleymanov 's motions, the Court's statement that the mental health of the individual who had written it should be subjected to assessment. In addition, during the trial, the Court used four different versions of the indictment; the version used by the Court and the prosecution differed from the versions given to the Russian-speaking defender and the author. When Mr. Suleymanov raised the issue with the Court, the latter responded that it was a problem of the prosecution; the prosecution then threatened that, if he continued to complain, his attitude would be considered a violation of public order.

2.6 The present communication was submitted before the Committee by Mr. Suleymanov, who explained that his action was with the consent of and following a request by the author, who had been deprived of the opportunity to sign the communication and to provide a power of attorney to Mr. Suleymanov, since the latter had not been allowed to see the author since the 4 June 2009 decision of the Harju County Court.

The complaint

3. The author submits that the State party has violated his right to communicate with a counsel of his own choosing, under article 14 of the Covenant. The author also submits that his right to have adequate time and facilities for the preparation of his defence, inter alia, was violated because: (a) the Harju County Court refused to provide him with copies of the case material, stating that he had a lawyer; (b) the Court refused to allow Mr. Suleymanov to meet with the author and hand over the material that remained in his possession after he was discharged from the case; and (c) the content of the indictment that the Court and the prosecution were using was different to the content of the document provided to the Russian-speaking defender of the author.

State party's observations on admissibility

4.1 On 14 June 2011, the State party submitted that the communication was inadmissible under rule 96 (b) of the Committee's rules of procedure, according to which a communication should be submitted by the individual personally or by that individual's representative.[1] The State party maintains that the individual submitting the communication claims that he concluded a contract with the alleged victim to provide legal aid, but fails to submit a copy of the alleged contract or a power of attorney authorizing him to represent the alleged victim before the Committee. It also maintains that the allegations of the said individual, that the alleged victim was not allowed to write to him or to hand him a power of attorney, are untrue and submitted in bad faith because, under article 143 (4) of the Criminal Procedure Code, prohibitions on the right to correspond or communicate via telephone are never extended to communications with legal defence counsel, and therefore it was possible at the time for the alleged victim to contact his legal defence counsel freely. The State party concludes that it would have been possible for the alleged victim to submit the communication personally, but that he did not do so and did not authorize any other person to do so.

[1] The State party refers to rule 96 (b) of the rules of procedure of the Human Rights Committee (CCPR/C/3/Rev.9).

4.2 Furthermore, the State party maintains that the interests of the alleged victim were protected throughout the Estonian court proceedings, as he had legal counsels. It further maintains that, at the moment of submission of the present communication, Mr. Suleymanov was not considered to be a legal representative of the author before the courts of the State party, since the permission given on 4 June 2009 had been withdrawn and, for the remaining proceedings, the author was represented by several State-appointed counsels. The State party considers that the communication is submitted in abuse of the right to submission, since Mr. Suleymanov emphasizes the fact that he himself was unable to defend the accused, rather than elaborating on the facts according to which the right to defence had been violated. It maintains that the rights of the defence counsel are not protected by the Covenant if those rights are not connected with the procedural rights of the accused.

4.3 The State party further submits that the communication is inadmissible under article 5 (2) (b) of the Optional Protocol since, according to the Criminal Procedure Code, a court ruling, which cannot be contested by way of an appeal against the ruling, may be contested by an appeal or appeal in cassation filed against the court judgement. At the time of submission of the communication (29 September 2009), no judgement had been rendered in the criminal proceedings against the author.[2]

4.4 The State party also submits that the communication is inadmissible under article 5 (2) (e) of the Optional Protocol, since the author declared that he intended to submit a communication to the Committee against Torture on the account of acts of torture committed against him. The State party notes that, at the time of submission of its observations, it had not received any communication on that matter but would like to emphasize that there is likelihood for "simultaneous examination of the same matter". The State party further notes that, according to information received from the Registry of the European Court of Human Rights, two applications have been filed during the court proceedings and one has been submitted after the final decision in the case concerning the author. It submits that, at the time of submission of its observations, there had been no decision on the admissibility of the case before the European Court, and the application had not been communicated to the State party. The State party concludes that the same matter is being reviewed by the European Court and by the Committee against Torture.

Author's comments on the State party's observations

5.1 On 24 August 2011, the author submitted that, on 15 October 2008, his mother, upon his request, had hired Mr. Suleymanov to represent him in proceedings before the Harju County Court.[3] On 31 July 2009 and on 18 September 2009, the mother and the wife of the author respectively issued powers of attorney to Mr. Suleymanov, valid until 2014, to represent their interests before all State institutions, including bodies of Azerbaijan and Estonia, and the European Court of Human Rights and other international organizations. On 6 August 2009, the author's mother signed another contract with Mr. Suleymanov for the legal defence of the author in the first, appeal and cassation instances of the Estonian courts. On 10 August 2009, the author gave Mr. Suleymanov a power of attorney to represent his interests before the European Court of Human Rights. On 1 April 2010, following the author's request, his relatives signed an additional contract with Mr. Suleymanov to provide legal defence in the proceedings before the Tallinn Court of Appeals. On the same date, the wife of the author signed a contract with Mr. Suleymanov

[2] The State party submits that the Harju County Court issued a judgement on 31 March 2010, the Tallinn Court of Appeals issued a decision on 12 October 2010 and the Supreme Court rejected an appeal on cassation by a ruling of 17 January 2011.

[3] The author provides a translated copy of the contract.

for the defence of her interests in the Tallinn Court of Appeals. Mr. Suleymanov maintains that the author can confirm his "powers for defence … including for submitting complaint and defence in UN Committee for human rights".

5.2 The author further contests the State party's submission that he could have signed the complaint or a power of attorney insofar as he had been deprived of the possibility to meet with Mr. Suleymanov since 25 August 2009, when guards at the Tallinn prison presented Mr. Suleymanov with a written prohibition to meet with the author. That prohibition referred to the 4 July 2009 decision of the Harju County Court and to oral instructions of the public prosecutor. The author proceeds to explain that he only recognized Mr. Suleymanov as his defence counsel, and that he refused the services of Estonian lawyers.

5.3 The author also contests the State party's submission that he failed to exhaust all available remedies and reiterates that appeals against the 4 June 2009 decision of the Harju County Court had been rejected by the Tallinn Court of Appeals and the Supreme Court of Estonia on 25 June and 27 August 2009, respectively (see para. 2.4 above). He submits that Mr. Suleymanov raised the issue of his removal from the proceedings in the appeal against the 31 March 2010 verdict of the Harju County Court against the author but, on 16 April 2010, that Court ruled that the appeal should be left without consideration, because Mr. Suleymanov was not admitted to appear in court proceeding. Mr. Suleymanov's subsequent appeal of that decision was also left without consideration by the Tallinn Court of Appeals which, on 29 April 2010, specified that Mr. Suleymanov was not a participant in the court proceedings. Mr. Suleymanov submitted further requests to be admitted as a defence counsel at the appeals proceedings, on 3 and 11 May 2010. Those requests were dismissed on 11 May 2010, and the subsequent appeal of that dismissal was left without satisfaction by a decision of the Supreme Court of 2 August 2010.

5.4 The author submits that the complaint submitted on 4 February 2009 on his behalf before the European Court had been rejected on 16 April 2009 for failure to exhaust domestic remedies. A second complaint to the European Court, lodged on 21 August 2009, was also rejected by a decision of 13 October 2009, on the same ground. On 13 May 2011, another complaint had been submitted to the European Court alleging violations of the author's rights. At the time of the author's submission to the Human Rights Committee this complaint had not been adjudicated. The author maintains that, after he alerted his representatives before the European Court of the case pending before the Human Rights Committee, the latter excluded from their allegations to the European Court all issues "concerning violations of the rights for protection". The possibility that the same matter would be examined under another procedure of international investigation or settlement was therefore excluded.

5.5 The author provides details regarding the discrepancies between the Estonian and the Russian versions of the indictment against him. He further points out numerous contradictions and imprecisions in the description of the facts in the charges and argues that the lack of clarity of the charges constitutes a violation of article 14 of the Covenant. He also submits that, on 20 January 2010, the prosecution amended the charges but failed to present him with a new statement of charges, in violation of article 268 (2) of the Criminal Procedure Code. The Harju County Court failed to conduct a preliminary hearing as required under domestic law. At the next trial hearing, the prosecutor presented two pages entitled "amendment of charges"; the content of that document substantially worsened the situation of the author, but the prosecutor failed to specify what parts of the original indictment should be replaced by the new charges.

5.6 The author further submits that his right to adequate time and facilities to prepare his defence was violated on multiple occasions. The only documents provided to him in Russian were the indictment and the verdict, but the translations were of poor quality. He

had to translate all other documents himself. Despite several requests, the author was not provided with an interpreter. On 4 September 2009, in response to the request of Mr. Suleymanov that he be allowed to hand over the case material in his possession to the author, the Harju County Court issued a ruling refusing permission and stating that the case material has been given to the lawyer, who had signed for the documents and who must ensure that no other person be given access to them. The ruling also stated that the domestic law in force did not provide for the accused to be given access to the case material, in particular since the author had been accused of a crime for which the participation of a lawyer in the trial was mandatory, according to article 45 of the Criminal Procedure Code. His wish to defend himself could therefore not be taken into consideration. Mr. Suleymanov was recording the trial hearing with a dictaphone; on 17 November 2009, the courtroom security confiscated his dictaphone upon instructions from the judge; on 19 November 2009, the court issued a ruling that the recording of the proceedings was not allowed, because the records were used to request corrections of the court records. On 30 November 2009, the author appealed against that ruling, but the appeal was rejected. The author further submits that, during different periods of the pretrial proceedings and the trial, he was represented by lawyers who also represented other accused, while there was a clear conflict of interests between the accused clients.

5.7 The author reiterates that the 4 June 2009 ruling of the Harju County Court revoking the permission for Mr. Suleymanov to participate in the proceedings violated his right to defence. He reiterates that Mr. Suleymanov's participation was essential since the author did not speak Estonian and spoke Russian poorly, and therefore needed to have the charges and the proceedings explained to him by a native speaker. From the beginning of the trial, the author had been defended by Mr. Suleymanov and an Estonian lawyer, Mr. Sillar. On 7 May 2009, the author declared that he no longer wanted to be defended by Mr. Sillar, since the latter had been sabotaging his defence. The prosecutor requested and the Court appointed another lawyer, Mr. Kull. On 21 May 2009, the Court denied the request of the above lawyer, who was newly appointed and asked for a one-month adjournment of the trial in order to familiarize himself with the case file. In that connection, the author argues that the lawyer recused himself, stating that the right to defence of the author would be violated since he could not acquaint himself with the case file. The Court accepted the recusal and appointed another lawyer, Mr. Ladva. The latter spoke limited Russian; given that the author did not speak Russian well either, he repeatedly stated that he could not be defended by Mr. Ladva, as they did not understand each other. The author alleges that Mr. Ladva himself stated at the end of the trial that he could not provide adequate defence, since he did not have enough time and opportunity to study the case file. From April to June 2010, the author requested the participation in the appeals proceedings of two other Azerbaijani lawyers to act as his defenders, but the Tallinn Court of Appeals rejected his request on 8 June 2010, on the grounds that the lawyers had presented poor quality copies of their educational credentials. On 11 August 2010, the Tallinn Court of Appeals issued another ruling rejecting the request of the Azerbaijani lawyers to act as defenders of the accused on the grounds that they had not participated in the proceedings and that the author already had a defence counsel.

The State party's observations on admissibility and merits

6.1 On 10 October 2011, the State party requested the Committee to dismiss the communication as inadmissible under articles 3, 5 (2) (a) and 2(b) of the Optional Protocol.

6.2 The State party also submits that there is no evidence that the author's right to submit complaints was limited and that, throughout the trial, the author had submitted several applications and requests by himself and through his legal counsel. The State party maintains that any complaint submitted by Mr. Suleymanov without a power of attorney should therefore be declared inadmissible. The State party also points out that, according to

the author's submission, an application submitted on his behalf was pending before the European Court of Human Rights and that, therefore, the communication before the Committee should be declared inadmissible since the same matter is being examined by another procedure of international settlement.

6.3 The State party details the criminal charges against the author. It submits that the author was arrested on 3 December 2007. According to a summary of the pretrial proceedings, his mother tongue is Azeri, he is proficient in Russian and Estonian and he requested to have a Russian-language interpreter present during the proceedings. On 28 September 2008 and 14 October 2008, he submitted handwritten applications for bail in Estonian; on 5 December 2008, he submitted a handwritten application in Russian to be released from custody. On 18 November 2008, based on a request from the author, Mr. Suleymanov was permitted to participate in the criminal proceedings as defence counsel. At the same time, the author was represented by a member of the Estonian Bar Association, Mr. Sillar, who actively participated in the proceedings.

6.4 During a court hearing on 24 April 2009, Mr. Suleymanov stated that he was able to participate in hearings only until 8 May and then in July 2009, owing to other commitments. The Harju County Court determined that, since Mr. Zeynalov had two counsels, the trial could continue without Mr. Suleymanov. On 7 May 2009, Mr. Suleymanov submitted a complaint to the Harju County Court stating that his opinion in determining the dates of the future court hearings had been ignored and that the right to defence of his client had been violated. On the same date, during a court hearing, Mr. Sillar declared that he no longer represented the accused. Mr. Suleymanov requested that the trial be postponed until 23 July 2009. The prosecutor requested that another Estonian lawyer would be appointed for the author. On 8 May 2009, the Court refused the motion to postpone the trial and requested the Estonian Bar Association to appoint another Estonian lawyer to represent the author in order to ensure his right to defence.

6.5 On 20 May 2009, the newly appointed counsel, Mr. Kull requested the adjournment of the trial until August or September in order to study the case file. He participated in a hearing on 21 May 2009 and reiterated his request. Pursuant to article 273 (4) of the Criminal Procedure Code, in which it is stated that if a counsel is not familiar with a case, the court may adjourn the trial for up to 10 days, the court issued a ruling postponing the hearing to 26 May 2009. After the ruling, Mr. Kull stated that he considered himself removed as a counsel, because acting as counsel would be in violation of the right to defence. The prosecutor requested that another lawyer be appointed. The Court adjourned the trial until 3 June 2009 and requested the Estonian Bar Association to appoint another Estonian lawyer to represent the author. At the 3 June 2009 hearing, an assistant of attorney Mr. Ladva informed the court that the latter had been appointed to represent Mr. Zeynalov and that he had requested the adjournment of the trial until 2 September 2009. Following a motion from the prosecutor, on 4 June 2009, the Harju County Court revoked the permission for Mr. Suleymanov to participate in the trial as defence attorney. The Court concluded that the right to defence of the author had been guaranteed, because a member of the Estonian Bar Association had been appointed as counsel who was proficient in the language of the proceedings and knew the criminal procedure. In a separate ruling, the Court rejected the request for adjournment of the newly appointed counsel.

6.6 Both Mr. Ladva and Mr. Suleymanov appealed against the ruling revoking the permission for Mr. Suleymanov to participate in the trial. In a ruling dated 25 June 2009, the Tallinn Court of Appeals found the appeals inadmissible under article 385 (16) of the Criminal Procedure Code, which states that appeals shall not be filed against a ruling made in the course of a court proceeding on the adjudication of a request by a party to the said proceeding. In the present case, the ruling was issued following a request by the prosecutor, who was a party to the proceeding. Mr. Suleymanov appealed the above ruling before the

Supreme Court; the latter also declared the appeal inadmissible since it considered that Mr. Suleymanov was not among the persons entitled to submit a cassation appeal.

6.7 After the 4 June 2009 ruling of the Harju County Court entered into force, the author's defence was continued by Mr. Ladva. On two occasions, he was replaced by another attorney. On 31 March 2010, the Court issued a verdict finding the author guilty of several crimes and convicted him to 14 years and 6 months of imprisonment. Separate appeals against the verdict were submitted by Mr. Ladva (on 29 April 2010), Mr. Sillar (on 27 April 2010), Mr. Suleymanov (on 14-16 April 2010) and the author himself (on 21 April 2010). The appeals submitted on 14-16 April 2010 by Mr. Suleymanov were found inadmissible by a 16 April 2010 ruling of the Harju County Court, as they had not been submitted by a party to the proceedings.[4] On 3 May 2010, Mr. Suleymanov filed another application to be allowed to participate as contractual counsel for the author. The Tallinn Court of Appeals rejected the application, reiterating that the permission to participate had been withdrawn because Mr. Suleymanov's actions were contrary to the interests of the accused and disrespectful towards other parties in the proceedings and, furthermore, because he had not been able to keep the duties that he had taken, had left the author without defence and had caused the repeated adjournment of the hearing of the criminal matter. The ruling was final and not subject to any further appeals.

6.8 However, Mr. Suleymanov attempted to file an appeal before the Supreme Court, which found the appeal inadmissible and ruled that it is possible to for a person to be not allowed to participate in a court proceeding, stating that, otherwise, this might lead to a situation where the accused is left without a substantive defence. The Supreme Court considered that it was possible for a court to initially deem a person competent, but in the course of the proceedings it could turn out that actually the respective person did not possess the necessary knowledge or skills to perform effective defence, and therefore the court needed to be able to remove an incompetent counsel from the proceedings.[5]

6.9 In the context of the appeal against the verdict, the Tallinn Court of Appeals, in a decision of 12 October 2010, partially revoked the 31 March 2010 verdict, but did not change the part concerning the author. The State party submits that the Tallinn Court of Appeals, in its judgement, analysed the issue of removing Mr. Suleymanov from the proceedings and found that the act did not constitute a violation of the author's right to defence. The Court found that it was beyond doubt that Mr. Suleymanov had shown himself to be an incompetent defence counsel and that his removal had been justified. The Court noted that the choosing of a counsel was the right of the accused, but that the State had the authorization and the obligation to assess its practicability and effectiveness. The State party also submits that the Court had assessed the issue of the right to defence and that it was better placed to assess the circumstances of the case.

6.10 The State party further submits that, in the cassation appeal submitted against the 12 October judgement of the Tallinn Court of Appeals, issues related to the right to defence had been raised. On 17 January 2011, the Supreme Court rejected the appeal (submitted by Mr. Ladva) as manifestly ill-founded.

6.11 The State party reiterates that Mr. Suleymanov failed to appear at one hearing; that he caused other hearings to be postponed, since he claimed that he could not participate in proceedings after 8 May 2009; and that those actions resulted in the appointment of two new counsels. According to the Harju County Court, the author "knowingly and intentionally" used the binding nature of article 270 (2) of the Criminal Procedure Code,

[4] The rest of the appeals were reviewed on their merits.

[5] The State party provided a copy of the ruling, dated 2 August 2010, No. 3-1-1-61-10 in Estonian.

according to which, if a defence counsel fails to appear, the court must adjourn the proceedings. The State party also refers to the jurisprudence of the European Court of Human Rights, finding that the State needs to guarantee to a person the legal aid which is practical and efficient and not theoretical and illusory.[6]

6.12 The State party reiterates that the author was represented by counsel throughout the proceedings. It emphasizes that the investigative bodies, the prosecution and the courts have the obligation to provide the suspect and the accused with a real opportunity to defend themselves. It refers to jurisprudence of the Supreme Court, which found that the question of the right to defence was not solely a question of the relationship between the person being defended and his or her counsel.[7] It also refers to the jurisprudence of the European Court, which found that States can choose the means by which they ensure that the right to defence is secured in their judicial systems, and that the Court's task is to ascertain whether that method is consistent with the requirements of a fair trial.[8]

6.13 The State party further submits that rulings and judgements of the Harju County Court were translated into Russian for the accused; that there were only a few minor mistakes in the Russian-language translation of the statement of charges, which were corrected; and that the Court did not use any insulting expressions towards the author.

6.14 On 7 December 2011, the State party further submits that references made by Mr. Suleymanov regarding contracts between him and the mother and the spouse of the author are irrelevant, because they are said to be concluded for the representation of their interests and not the interests of the author. Furthermore, under the Estonian Bar Association Act, since the author is an adult with active legal capacity, other persons may conclude legal aid contracts in his name only with explicit authorization. No evidence had been provided that the mother and spouse of the author had been authorized by him to hire Mr. Suleymanov as his legal defender in the Estonian courts, and therefore all references to power of attorney given to Mr. Suleymanov by persons other than Mr. Zeynalov are irrelevant.

6.15 Regarding the author's submission that Mr. Suleymanov had not been allowed to communicate with the author, the State party reiterates that, under article 143 (4) of the Criminal Procedure Code, the prohibitions on the right to correspond or use the telephone are never extended to communications with legal defence counsel and therefore it was possible at the time for the alleged victim to freely contact the legal defence counsel.

6.16 The State party further reiterates that the communication is inadmissible under article 5 (2) (b) of the Optional Protocol, since the author had failed to exhaust domestic remedies.

6.17 The State party submits that, during a hearing on 1 January 2010, the prosecutor admitted that there were indeed two different translations of the indictment, but explained that the differences were due to translation errors, which were corrected, and the "amended points had no connection with Zeynalov". It further submits that, according to article 268 (2) of the Criminal Procedure Code, an amendment of the statement of charges by the prosecution is acceptable in Estonian criminal proceedings until the completion of examination by the court. A new statement of charges shall be prepared only if the charges

[6] The State party refers to *Artico v. Italy*, judgement of 13 May 1980, para. 33 and *Imbrioscia v. Switzerland*, judgment of 24 November 1993, para. 38.

[7] The State party refers to a ruling of the Supreme Court of 21 September 2002 in a criminal case No. 3-1-1-3-02, paras. 7.1, 7.2, copy provided.

[8] The State party refers to *Quaranta v. Switzerland*, judgment of 24 May 1991, para. 30 and *Öcalan v. Turkey*, judgement of 12 May 2005, para. 135.

are supplemented or substantially amended, which was not the case and the matter was clarified in the 20 January 2010 court proceedings. The State party maintains that there was no violation of the author's rights since he was guaranteed the right to be informed of the nature and cause of the charge against him promptly and in detail in a language he understood.

6.18 The State party maintains that the cited facts regarding the appointment and recusal of the defence attorney, Mr. Kull, were irrelevant, since the State party had guaranteed effective defence to the author throughout the criminal proceedings.

6.19 The State party further submits that, in appointing a lawyer from the Estonian Bar Association to represent the author, it acted in full compliance with article 14 (3) of the Covenant. The submission that the author refused the services of Mr. Sillar because the latter had opposed all petitions of the accused and sabotaged the defence is unfounded.

6.20 With regard to the right to have the free assistance of an interpreter, the State party refers to articles 10 (2), 161 (1) and 161 (6) of is Criminal Procedure Code and reiterates that, at the beginning of the trial, the author claimed that he was "competent in the Russian language" and that, during the pretrial proceedings, he stated that he was "competent in the Russian and Estonian languages" and he asked for a Russian interpreter. Such an interpreter was provided throughout the proceedings.

Author's further comments

7.1 On 31 March 2012, the author reiterated his submission regarding the admissibility of the communication (see paras 5.1-5.4 above). He maintains that his relatives concluded a contract with Mr. Suleymanov to defend him in his interests and on his case. The author enclosed a power of attorney, signed by the himself and dated 29 February 2012, which states, inter alia, that he confirms that Mr. Suleymanov was authorized by him to submit the communication dated 28 September 2009 to the Human Rights Committee, and that the Estonian authorities had prevented him from issuing a power of attorney and personally signing the communication of 28 September 2009.

7.2 The author reiterates that he does not speak Estonian and that his command of Russian is insufficient for defence against criminal prosecution. After Mr. Suleymanov was dismissed from the proceedings, the author applied for an interpreter from Azeri, but the Court rejected that application on 7 September 2009. Furthermore, his requests to the Court for the translation of documents or for interpretation services to be provided for the proceedings were rejected on 30 September and 19 November 2009. On 13 November, the Court rejected the author's petition to be allowed to testify in Azeri. He also explicitly requested to be provided with an interpreter to Azeri during the appeals proceedings, but he was not provided with any. The author reiterates that serious discrepancies exist between the Russian version of the indictment and the original, for example, the last page containing the list of witnesses was missing, and there is contradicting information regarding the amounts of narcotics that had been allegedly smuggled by the accused. The author proceeds to question the facts and evidence that were presented by the prosecution during the trial.

7.3 The author further reiterates the alleged violations of his right to defence (see paras 5.6 and 5.7 above). He contests the State party's submission that Mr. Suleymanov deliberately missed hearings in order to prolong the trial and states that the latter submitted 99 pages of documents testifying that he had other commitments (participation in trials, conferences and teaching) between 8 May and 22 July 2009, which legitimately prevented him from attending hearings in Estonia. He points out that the Court revoked the permission for Mr. Suleymanov to participate in the trial allegedly to avoid delaying the process until July and then proceeded to schedule hearings in September 2009. He also contests the State party's submission that Mr. Suleymanov had showed disrespect to the other parties in the

proceedings and submits that on the contrary, Mr. Suleymanov had been insulted by the Court. He also reiterates that, during the appeal stage, he had requested the participation of two other Azerbaijani lawyers to act as his defenders, but the Tallinn Court of Appeals rejected his request on 8 June 2010, on the grounds that the lawyers had presented bad quality copies of their educational credentials. On 11 August 2010, the Tallinn Court of Appeals issued another ruling rejecting the request on the grounds that they were not participants in the proceedings and that the author already had a defender.

Issues and proceedings before the Committee

Consideration of admissibility

8.1 Before considering any claims contained in a communication, the Committee must, in accordance with rule 93 of its rules of procedure, decide whether or not the communication is admissible under the Optional Protocol to the Covenant.

8.2 The Committee notes the State party's contention that the communication should be declared inadmissible *ratione personae*, because Mr. Suleymanov did not provide evidence that he was authorized by the author to submit a communication to the Committee. In that respect, it notes that, on 31 March 2012, the author provided a power of attorney, signed by himself and dated 29 February 2012. The Committee therefore considers that it is not precluded by article 1 of the Optional Protocol from examining the communication.[9]

8.3 The Committee notes the State party's submission that the communication is inadmissible under article 5 (2) (a) of the Optional Protocol, since the author declared that he intends to submit a communication to the Committee against Torture on the account of acts of torture committed against him, and since his representatives submitted three applications to the European Court of Human Rights. The Committee, however, observes that no communication before the Committee against Torture had ever been submitted by or on behalf of the author and that the applications to the European Court were dismissed as inadmissible respectively on 16 April 2009 (Application No. 11815/09), 13 October 2009 (Application No. 48410/09) and 20 February 2014 (Application No. 22046/11). The Committee recalls its jurisprudence[10] that it is only where the same matter is being examined under another procedure of international investigation or settlement that the Committee has no competence to deal with a communication under article 5 (2) (a) of the Optional Protocol.[11] Accordingly, the Committee considers that it is not precluded by article 5 (2) (a) of the Optional Protocol from examining the communication.

8.4 The Committee notes the State party's submission that the communication is inadmissible under article 5 (2) (b) of the Optional Protocol since, according to the Criminal Procedure Code, a court ruling, which cannot be contested by way of an appeal against the ruling, may be contested by an appeal or appeal in cassation filed against the court judgement. The Committee, however, observes that, in his appeal before the Tallinn Court of Appeals dated 21 April 2010[12] against the 31 March 2010 verdict of the Harju County Court, the author raised the issues regarding the removal of Mr. Suleymanov as his

[9] See communication No. 688/1996, *Arredondo v. Peru*, Views adopted on 27 July 2000, para. 10.1.

[10] See communications No. 824/1998, *Nicolov v. Bulgaria*, decision on admissibility adopted on 24 March 2000, para. 8.2; No. 1185/2003, *Van den Hemel v. The Netherlands*, decision on admissibility adopted on 25 July 2005, para. 6.2; No. 1193/2003, *Sanders v. The Netherlands*, decision on admissibility adopted on 25 July 2005, para. 6.2.

[11] See also communication No. 2202/2012, *Castañeda v. Mexico*, Views adopted on 18 July 2013, para. 6.3.

[12] Copy provided by the author.

counsel and of the absence of adequate time and facilities for the preparation of his defence. The author also raised these issues in his cassation appeal to the Supreme Court of Estonia against the 12 October 2010 decision of the Tallinn Court of Appeals, and that appeal was rejected as manifestly ill-founded on 17 January 2011. Accordingly, the Committee considers that it is not precluded by article 5 (2) (b) of the Optional Protocol from examining the communication.

8.5 The Committee takes note of the author's claim that the removal of his chosen counsel from the criminal trial constitutes a violation of article 2 of the Covenant. The Committee recalls its jurisprudence in this connection, which indicates that the provisions of article 2 of the Covenant, which lay down general obligations for States parties, cannot, in and of themselves, give rise to a claim in a communication under the Optional Protocol. The Committee therefore considers that the author's contentions in this regard are inadmissible under article 3 of the Optional Protocol.[13]

8.6 The Committee considers that the author's remaining claims, raising issues under article 14 of the Covenant, have been sufficiently substantiated for purposes of admissibility and proceeds to their examination on 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 provided under article 5 (1) of the Optional Protocol.

9.2 The Committee notes the author's claim that his right to adequate time and facilities to prepare his defence was violated, since the only documents provided to him in Russian were the indictment and the verdict and the translations were of poor quality, and because, despite several requests, he was not provided with an interpreting services to his mother tongue. The Committee observes that the requirement of a fair hearing does not oblige States parties to make available to a person whose mother tongue differs from the official court language the services of an interpreter, if that person is capable of understanding and expressing himself or herself adequately in the official language. Only if the accused or the witnesses have difficulties in understanding or expressing themselves in the court language is it obligatory that the services of an interpreter be made available.[14]

9.3 The Committee also notes the State party's submission that Mr. Zeynalov was proficient in Russian and Estonian, that during the pretrial proceedings he had requested to have a Russian-language interpreter and that such an interpreter was provided to him throughout the proceedings and that, on several occasions, he had submitted handwritten applications in Estonian and in Russian. In this context, the Committee notes that the notion of a fair trial in article 14 (1), together with article 14 (3) (f), does not imply that the accused be afforded the possibility to express himself or herself in the language that he or she normally speaks or speaks with a maximum of ease. Accused persons whose mother tongue differs from the official court language are, in principle, not entitled to the free assistance of an interpreter if they know the official language sufficiently to defend themselves effectively.[15] In the present case, it transpires from the decision of the Harju County Court and the Tallinn Court of Appeals that the accused was sufficiently proficient in the court's language, and that they did not need to take into account whether it would be

[13] See, for example, communications No. 802/1998, *Rogerson v. Australia*, Views adopted on 3 April 2002, para. 7.9, and No. 1887/2009, *Peirano Basso v. Uruguay*, Views adopted on 19 October 2010, para. 9.4.

[14] See, for example, communication No. 323/1988, *Le Bihan v. France*, Views adopted on 11 April 1991, para. 5.6.

[15] See the Committee's general comment No. 32 (CCPR/C/GC/32, para. 40).

preferable for the accused to express himself in a language other than the court language.[16] In the circumstances, the Committee finds that the information before it does not show that the author's right under article 14 (3) (f), to have the free assistance of an interpreter if he cannot speak or understand the language used in court, has been violated.[17]

9.4 The Committee notes the author's claim that the State party had violated his right to communicate with a counsel of his own choosing, under article 14 of the Covenant, by revoking the permission for Mr. Suleymanov to participate in the proceedings, despite the fact that he was the author's chosen counsel. The Committee also notes the State party's submission that Mr. Suleymanov's permission to participate in the proceedings as counsel was revoked because the court considered that he had shown himself to be an incompetent defence counsel and his removal was in the interest of the accused. The above conclusion was based primarily on the fact that Mr. Suleymanov had requested the adjournment of the trial because of other commitments and because he had been allegedly disrespectful towards other parties in the proceedings. The Committee further notes the State party's submission that the right to defence of the author was guaranteed because, after the removal of Mr. Suleymanov, a member of the Estonian Bar Association had been appointed as counsel for the author and that the counsel was proficient in the language of the proceedings and knew the criminal procedure.

9.5 The Committee observes that, according to the court assessment, Mr. Suleymanov met the educational requirements to act as counsel in the proceedings and that the State party has not substantiated the way in which Mr. Suleymanov was disrespectful to the other participants of the trial. The Committee observes that the author was accused of serious crimes and potentially faced a conviction entailing a considerable prison sentence. The Committee notes the author's uncontested submission that, in 2010, he had requested the participation in the appeals proceedings of two other Azerbaijani lawyers to defend him, but the Tallinn Court of Appeals had rejected his requests.

9.6 The Committee recalls that the right to a defence in criminal proceedings is a fundamental right which entails the right to be tried in one's presence and through legal assistance of one's own choosing.[18] The Committee also recalls that the interests of justice may require the assignment of a lawyer against the wishes of the accused, particularly in cases where a person substantially and persistently obstructing the proper conduct of trial.[19] However, any such restriction must have an objective and sufficiently serious purpose and not go beyond what is necessary to uphold the interests of justice.[20] While the State party has explained why the Harju County Court requested the Estonian Bar Association to appoint another Estonian lawyer to represent the author, it has not provided sufficiently convincing reasons to explain why it was necessary in the interest of justice to entirely remove Mr. Suleymanov as the author's counsel and how his remaining on the defence team would have jeopardized the interests of justice.[21] Furthermore, the State party has

[16] See, for example, *Le Bihan v. France*, para. 5.7.

[17] See also communications No. 623/1995, 624/1995, 626/1995, 627/1995, *Domukovsky, Tsiklauri, Gelbakhiani and Dokvadze v. Georgia*, Views adopted on 6 April 1998, para. 18.7.

[18] See the Committee' s Views, inter alia, in *Domukovsky, Tsiklauri, Gelbakhiani and Dokvadze v. Georgia*; and in communications No. 52/1979, *Sadías de Lopez v. Uruguay*, Views adopted on 29 July 1981; and No. 74/1980, *Estrella v. Uruguay*, Views adopted on 29 March 1983. See also communication No. 232/1987, *Pinto v. Trinidad & Tobago*, Views adopted on 20 July 1990, para. 12.5.

[19] See communication No. 1123/2002, *Correia de Matos v. Portugal*, Views adopted on 28 March 2006, para. 7.4.

[20] See CCPR/C/GC/32, para. 37.

[21] Ibid., para. 7.5.

neither shown that it made efforts to otherwise provide the author with counsel of his choice, nor has it persuasively justified its decision to prevent two Azerbaijani lawyers chosen by the author from joining the defence team at the appeal stage. Accordingly, the Committee concludes that the facts in the present case disclose a violation of the author's right under article 14 (3) (d) to be assisted by counsel of his choice.

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

11. In accordance with article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the victim 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, inter alia, to provide the author with adequate compensation. The State party is also under an obligation to take steps to prevent similar violations occurring 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 or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable 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 Committee's Views. The State party is also requested to publish the present Views and to have them translated into Estonian and widely disseminated in Estonian and Russian in the State party.

Appendix I

Individual opinion of Committee member Nigel Rodley (concurring)

1. I agree with the Committee's finding in the present case, only on the basis that the State party has failed adequately to explain the need to remove Mr. Suleymanov from the author's defence team. There is no implication that a State party is required to recognize the credentials of counsel from a foreign country's bar association. However, once such credentials are recognized, then there should be no basis for distinguishing the status of members of the defence team.

2. Equally, there is no reason why the court system should have its proceedings disrupted by unreasonable demands to accommodate the special needs of counsel from abroad. The appropriate response to such demands would normally have been to reject them, not to remove the lawyer.

Appendix II

Individual opinion of Committee member Dheerujlall Seetulsingh (dissenting)

1. The facts of the case do not reveal a violation of article 14 (3) (d) of the Covenant, namely, the fundamental but not absolute right to a counsel of one's own choosing in a trial.

First instance

2. After being arrested in December 2007, the author was prosecuted in November 2008 in Estonia along with other "participants" or accomplices for the offence of smuggling narcotics. Being from Azerbaijan, he chose Mr. Suleymanov, a lawyer from his home country, to represent him, and that choice was accepted by the Estonian Court. Mr. Suleymanov, who is also the author's counsel before the Committee, appeared in the trial, which started on 8 April 2009 and continued for seven days until 24 April. The Court decided that the case would continue over six days in May 2009 and two days in June 2009. Only the first two days (7 and 8 May) were convenient to Mr. Suleymanov, who was present on 8 May and who requested that the trial should continue on 22 July 2009. The author also had an Estonian lawyer but, on 7 May, the author refused his services. The Court rejected Mr. Suleymanov's request — a rejection that was the subject matter of different appeals, all dismissed — and appointed another counsel to appear for the author.

3. The grounds as given by the State party for the rejection are that Mr. Suleymanov's actions were contrary to the interests of the accused and disrespectful towards the other parties in the proceedings and that he had not fulfilled the duties he had undertaken and caused the repeated adjournment of the hearings of the criminal matter. Mr. Suleymanov was allegedly a busy lawyer in his own country and had to appear in trials and participate in conferences in other States. The State party claimed that the lawyer could not actually provide solid evidence that he was otherwise engaged. This contention was not rebutted by the author.

Appellate stage

4. The author claimed that, at the appellate stage, following his conviction on 14 March 2010, he had been deprived of the right to choose two Azerbaijani lawyers to represent him. Their request to appear had been declined on the grounds that (a) they had produced bad quality copies of their education credentials, which did not enable them to be registered in the Estonian Court; (b) the author already had a lawyer who had filed his grounds for appeal; and (c) that they were not participants in the proceedings.

5. The author did have an Estonian lawyer who had filed his grounds for appeal. He has not satisfactorily shown to us what prejudice he suffered by the rejection of his request and what additional benefits their participation would have brought him. A mere assertion to the right to be represented by the counsel of one's own choosing is not sufficient. As pointed out by the majority in paragraph 9.6 of the Views, the two lawyers only intended to join the defence team.

6. The underlying principles applicable in the case are:

(a) The author was initially allowed to be represented by the counsel of his own choosing. Once a chosen counsel has been retained to appear, he must make himself available to the court to defend the interests of his client and must give valid reasons to

justify his later absence. Participation in conferences cannot have priority over court business. Views expressed by the Committee in the past concern cases where, at the very initial stage, an accused party was not allowed to retain a counsel of his own choosing or where a counsel was imposed on him.

(b) There were other participants (co-defendants) in the trial and their counsels were agreeable to appear on the dates fixed by the court. The court could not let one counsel override the interests of the other accused parties in the case and prefer the dates of one counsel over those accepted by the others. Should a court be dictated by the demands of each counsel, then the trial may be unduly prolonged to the detriment of all accused parties and, more especially in this case, to the detriment of the author, who had been detained since December 2007.

(c) Not only must the interests of accused parties be protected, but a fair balance must be struck between the interests of the accused in choosing counsel and the convenience of the witnesses, both for the prosecution and the defence.

(d) The court cannot adjust its calendar of sittings according to the diary of counsel. Case management has become a major preoccupation of the judiciary, often widely criticized for systemic delays. A court has a heavy schedule and other cases to attend to. Cases already fixed cannot be displaced to satisfy the demands of one accused party and his counsel in any particular case, thus penalizing other litigants.

(e) It is also for the appellate courts to assess whether the author suffered prejudice by being "denied" the counsel of his choice in the middle of the proceedings. The courts have an obligation to assess the practicability and effectiveness when an accused party insists on choosing his counsel, if this creates problems and are better placed to do so.

7. In presenting the case to the Committee, Mr. Suleymanov gives the impression that he claimed an absolute right to be author's counsel. He took a position that was obstructing the proper conduct of the trial and not serving the interests of justice. The court was obliged to entirely remove Mr. Suleymanov as he claimed to be the lead counsel, even imposing dates for continuation. Had he been allowed to remain on the defence team, it would have been impossible for other counsel to take the lead. Finally, the author's claim that he suffered prejudice with respect to not having adequate time and facilities to prepare his defence and to there being language difficulties, has been totally rejected in the Views of the majority, in paragraphs 9.2 and 9.3. Consequently, it has not been shown that the removal of Mr. Suleymanov deprived the author of the right to a fair trial.