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International Covenant on Civil and Political Rights

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Human Rights Committee

Decision adopted by the Committee under the Optional Protocol, concerning communication No. 2534/2015*, **

Communication submitted by:	M.I. (not represented by counsel)
Alleged victim:	The author
State party:	Russian Federation
Date of communication:	19 May 2014 (initial submission)
Document references:	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 19 January 2015 (not issued in document form)
Date of adoption of decision:	13 March 2020
Subject matter:	Commutation of the death sentence to life imprisonment
Procedural issue:	Abuse of the right of submission
Substantive issues:	Fair trial – the principle of equality of arms; fair trial – legal assistance; right to appeal criminal conviction and sentence; retroactive application of criminal law providing for a lighter penalty; prohibition of discrimination
Articles of the Covenant:	14 (1), (3) (b) and (5), 15 (1) and 26
Article of the Optional Protocol:	3

1. The author of the communication is M.I., a national of the Russian Federation born in 1962. He claims that the State party has violated his rights under articles 14 (1), (3) (b) and (5), 15 (1) and 26 of the Covenant. The Optional Protocol entered into force for the State party on 1 January 1992. The author is not represented by counsel.

The facts as submitted by the author

2.1 On 23 June 1995, the author was found guilty of robbery[1] and three premeditated murders accompanied by aggravating factors,[2] committed under the influence of alcohol,

* Adopted by the Committee at its 128th session (2–27 March 2020).

** The following members of the Committee participated in the examination of the communication: Yadh Ben Achour, Arif Bulkan, Ahmed Amin Fathalla, Christof Heyns, Bamariam Koita, Marcia V.J. Kran, Duncan Laki Muhumuza, Photini Pazartzis, Vasilka Sancin, José Manuel Santos Pais, Yuval Shany, Hélène Tigroudja and Gentian Zyberi.

[1] Article 146 (2) (a) of the 1960 Criminal Code.

and he was sentenced to death by the Chelyabinsk Regional Court. Since he had been previously convicted of a premeditated murder,[3] the Court declared the author to be a serious repeat offender, in accordance with note 1 in article 24.1 (1) of the 1960 Criminal Code of the Russian Soviet Federative Socialist Republic, which was in force at that time. On 11 January 1996, his death sentence was upheld by the Judicial Panel of the Supreme Court, acting as court of cassation.

2.2 On 17 May 1999, the author's death sentence was commuted to life imprisonment by a presidential decree of pardon. On 23 September 1999, the Chelyabinsk Regional Court excluded the reference to the commission of a murder under the influence of alcohol as one of the aggravating factors from the author's sentence, in line with the new Criminal Code that came into force on 13 June 1996.

2.3 On 4 May 2006, the Solikamsk City Court of Perm Region removed[4] the confiscation of property as an additional punishment under article 146 (2) (a) of the 1960 Criminal Code and excluded the reference to "murder committed by a person who has committed murder before, with the exception of murders committed under articles 105 and 106 of the Criminal Code" from the qualification of the crime of premeditated murder committed by the author, in line with changes introduced to the Criminal Code by the law of 8 December 2003 on introducing changes and amendments to the Criminal Code. On 20 June 2006, the Perm Regional Court accepted the author's cassation appeal against the decision of the Solikamsk City Court and excluded the reference to the author as a serious repeat offender, while retaining his sentence of life imprisonment. The Perm Regional Court specifically stated in that regard that the author's punishment was not subject to change, because it had been imposed within the framework of the current legislation.

2.4 On an unspecified date, the author requested a supervisory review of the court decisions made by the Solikamsk City Court on 4 May 2006 and by the Perm Regional Court on 20 June 2006, arguing that his sentence was not brought fully into compliance with the new criminal law and asking for his sentence of life imprisonment to be changed to 15 years' imprisonment. In his claim, he invoked article 18 (5), read together with articles 63 (1) (a) and 68 (1), of the 1996 Criminal Code, which stipulate that due consideration should be given to the type of the relapse when imposing a punishment. He further referred to the ruling of the Constitutional Court of 20 April 2006, which had determined that when bringing a sentence into compliance with the new criminal law, all the provisions regarding the imposition of punishment, as prescribed by the Criminal Code, should be applied. The author argued that when the Chelyabinsk Regional Court initially decided to sentence him to death, it based its decision on the fact that he had been declared to be a serious repeat offender. Since that reference has subsequently been excluded from the author's sentence, his punishment should be reduced to 15 years' imprisonment.

2.5 On 27 January 2009, the Perm Regional Court rejected the author's request for a supervisory review of the court decisions made by the Solikamsk City Court on 4 May 2006 and by the Perm Regional Court on 20 June 2006, determining that since the author's death sentence was commuted to life imprisonment by a presidential decree of pardon, in the exercise of the President's constitutional prerogative to grant pardon,[5] and not in the framework of the criminal proceedings, the rules on the imposition of punishment prescribed by article 54 of the Constitution of the Russian Federation[6] and article 10 of the 1996 Criminal Code (retroactive effect of criminal law) did not apply in the author's case. The Perm Regional Court added that it was therefore not competent to repeal or review the

[2] Article 102 (c), (d), (f) and (i) of the 1960 Criminal Code.

[3] On 6 February 1985, the author was found guilty of the premeditated murder of his father and sentenced to six years' imprisonment.

[4] On the basis of a procedural motion filed by the author.

[5] Reference is made to article 89 (c) of the Constitution of the Russian Federation.

[6] Article 54 of the Constitution reads:

> (1). A law introducing or aggravating responsibility shall not have retrospective effect. (2). No one shall be held guilty of any act that was not regarded as a criminal offence when it was committed. If, subsequent to the commission of the offence, provision is made by law for the removal of the criminal responsibility or the mitigation of the penalty, the new law should apply.

punishment imposed by the presidential decree of pardon. For the same reason, the legal position of the Constitutional Court, which was specified in its ruling of 20 April 2006 and referred to by the author, did not apply to presidential decrees.

2.6 On 15 April 2009, the Chair of the Perm Regional Court denied the author's request for a supervisory review of the court decisions made by the Solikamsk City Court on 4 May 2006 and by the Perm Regional Court on 20 June 2006 and 27 January 2009. The decision stated that although the author was pardoned by the President of the Russian Federation, his sentence was brought into compliance with the new criminal law, which had a retroactive effect, and was subjected to a judicial review.

2.7 On 23 April 2013, the Supreme Court denied the author's request for a supervisory review of the court decisions made by the Solikamsk City Court on 4 May 2006 and by the Perm Regional Court on 20 June 2006. On 17 December 2013, the Deputy Chair of the Supreme Court denied the author's request for a supervisory review of the above-mentioned court decisions made by the Solikamsk City Court and by the Perm Regional Court, and of the decision made by the Supreme Court on 23 April 2013. On 30 August 2013, 24 October 2013 and 11 December 2013, the Perm Regional Prosecutor's Office rejected the author's requests for a supervisory review of the above-mentioned decisions made by the Solikamsk City Court and by the Perm Regional Court. The Perm Regional Prosecutor's Office determined, inter alia, that in making changes to the author's sentence, the courts gave due consideration to the nature and seriousness of the offences that had been committed by him, as well as to the circumstances in which they had been committed.

2.8 On an unspecified date, the author requested a supervisory review of the decision of the Supreme Court dated 11 January 1996, arguing that his right to defence had been violated by the court of cassation, since he had not been informed by the Chelyabinsk Regional Court about the fact that other participants in criminal proceedings had submitted cassation appeals during the period in which his criminal case was being prepared for a hearing by the Supreme Court.

2.9 On 10 January 2013, the Judicial Panel of the Supreme Court rejected the author's request for a supervisory review of the decision of the Supreme Court dated 11 January 1996, informing him that, according to the cassation case file, the court of first instance had sent a notification to the remand centre, where the author had been detained at that time. The notification contained information about the transmittal of the author's case, together with the cassation appeals submitted by the convicted persons and their lawyers, to the Judicial Panel of the Supreme Court for a hearing. On 15 March 2013, the author requested the head of the remand centre in question to inform him whether there was any record of that notification in the author's personal file. On an unspecified date, the head of the remand centre informed the author that there was no record in his personal file of the notification sent by the Chelyabinsk Regional Court.[7] The author's appeal against the decision of the Judicial Panel of the Supreme Court of 10 January 2013 was rejected by the Deputy Chair of the Supreme Court on 16 April 2013.

2.10 The author's further request for a supervisory review of the decision of the Supreme Court dated 11 January 1996 was rejected by the Office of the Prosecutor General on 30 July 2013. The author was informed that, according to the criminal case file, the court of first instance had sent a notification to the remand centre. The notification contained information about the transmittal of the author's case, together with the cassation appeals, to the Judicial Panel of the Supreme Court for a hearing. The author was also informed that there was no record of the fact that he had requested the opportunity to get acquainted with the appeals submitted by other participants in criminal proceedings. On 4 December 2013, the Chelyabinsk Regional Prosecutor's Office also rejected the author's similar request for a supervisory review of the above-mentioned decision of the Supreme Court. The rejection letter of the Prosecutor's Office stated, inter alia, that the author was able to present his arguments in his cassation appeal and that there were no contradictions between his

[7] In a letter dated 10 September 2013, the Chair of the Chelyabinsk Regional Court informed the author that there was no record in his criminal case file to confirm that he had received a notification about the transmittal of the author's case, together with the cassation appeals submitted by the convicted persons and their lawyers, to the Judicial Panel of the Supreme Court for a hearing.

arguments and those submitted by his lawyer and co-defendants in their respective cassation appeals.

2.11 The author submits, therefore, that he has exhausted all available and effective domestic remedies.

The complaint

3.1 The author claims a violation of his rights under article 14 (3) (b) of the Covenant, because contrary to the requirements of article 327 of the 1960 Code of Criminal Procedure of the Russian Soviet Federative Socialist Republic, which was in force at the time,[8] he was not informed by the Chelyabinsk Regional Court about the fact that other participants in criminal proceedings, including his lawyer, A., and co-defendants, had submitted cassation appeals during the period in which his criminal case was being prepared for a hearing by the Judicial Panel of the Supreme Court, acting as court of cassation. The author argues that his right to get acquainted with the cassation appeals submitted to the Chelyabinsk Regional Court by other participants in criminal proceedings has been violated, thus effectively depriving him of the opportunity to submit counterarguments, additional clarifications and/or procedural motions. He refers in this regard to article 19 of the 1960 Code of Criminal Procedure (ensuring the right of defence to the suspect and the accused). The author adds that neither he nor his lawyer were present at the cassation hearing.

3.2 The author claims a violation of articles 14 (1) and (5) of the Covenant, since he was effectively denied the right to a fair trial, carried out according to the adversarial system on the basis of equality of the parties, when his criminal case was considered by the Judicial Panel of the Supreme Court, acting as court of cassation. He argues in that regard that the State party's authorities have failed to ensure that the requirements of article 327 of the 1960 Code of Criminal Procedure have been complied with (see paras. 2.9 and 2.10 above).

3.3 The author claims that, in violation of articles 14 (1) and 15 (1) of the Covenant, his sentence was not brought fully into compliance with the new criminal law. The author argues that when the Chelyabinsk Regional Court initially decided to sentence him to death, it based its decision on the fact that, at that time, he had been declared to be a serious repeat offender. Since this reference has subsequently been excluded from the author's sentence, his punishment should be reduced to 15 years' imprisonment, pursuant to the requirements of article 54 of the Constitution of the Russian Federation and article 10 of the 1996 Criminal Code (see para. 2.4 above).

3.4 The author submits that his rights under article 26 of the Covenant have been violated, since the refusal to change his sentence to a term of imprisonment was justified by the State party's authorities and courts by the fact that he had initially been sentenced to death, with his death sentence subsequently being commuted to life imprisonment by a presidential decree of pardon. The author argues that such prejudice against him amounts to discrimination on the ground of social origin – that is, a person sentenced to death and pardoned to life imprisonment.

[8] Article 327 of the Code of Criminal Procedure (notification about the raised objections and the filed appeals) reads:

> The court of first instance shall notify a convict, an acquitted person and other participants in the proceedings, whenever their interests are affected, of any raised objection or any filed appeal.
>
> A convict, an acquitted person and other participants in the proceedings shall have the right to acquaint themselves with any objections raised or appeals filed with the court and submit their own objections thereto.
>
> A copy of an objection raised or an appeal filed by an injured party shall be provided to a convict or an acquitted person upon request of the latter.
>
> The objections against a filed appeal or a previously raised objection shall be added to a case file or shall be transmitted [to the court that will hear the case] in addition to a case file within 24 hours.

State party's observations on admissibility and the merits

4.1 In a note verbale dated 15 July 2015, the State party submitted its observations on admissibility and the merits. It provides a list of court decisions adopted with regard to the author (see paras. 2.1–2.6 above) and argues that the communication constitutes an abuse of the right of submission, because it was first submitted to the Committee in May 2014 – that is, more than 18 years after his sentence became executable pursuant to the decision of the Supreme Court of 11 January 1996. The State party submits, therefore, that in the absence of any circumstances justifying such a delay by the author in submitting his communication to the Committee, the author's claims under article 14 (3) of the Covenant should be declared inadmissible under article 3 of the Optional Protocol, as constituting an abuse of the right of submission.

4.2 With reference to paragraph 9 of the Committee's general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, the State party submits that the revision of one's sentence pursuant to the adoption of a new criminal law providing for a lighter penalty, which has a retroactive effect, does not constitute a determination of criminal charges or rights and obligations in a suit at law, within the meaning of article 14 of the Covenant. Likewise, the procedure that applies to the revision of one's sentence pursuant to the adoption of a new criminal law providing for a lighter penalty, which has a retroactive effect, does not seem to fall within the scope of article 15 of the Covenant.

4.3 The State party also argues that the review of the author's sentence pursuant to the adoption of a new criminal law providing for a lighter penalty, which has a retroactive effect, took place in the period of May and June 2006, whereas the author submitted his communication to the Committee only in May 2014 – that is, eight years later. In the absence of any circumstances justifying such a delay by the author in submitting his communication to the Committee, the author's claims under articles 14 and 15 of the Covenant, with regard to the review of his sentence pursuant to the adoption of a new criminal law providing for a lighter penalty, which has a retroactive effect, should be declared inadmissible under article 3 of the Optional Protocol, as constituting an abuse of the right of submission.

4.4 The State party submits that the author's claim under article 26 of the Covenant (see para. 3.4 above) should be declared inadmissible under article 2 of the Optional Protocol as manifestly ill-founded.

4.5 The State party further submits that the author's claims under articles 14 (1), (3) (b) and (5), 15 (1) and 26 of the Covenant are without merit.

4.6 According to articles 335 and 336 of the 1960 Code of Criminal Procedure, which was in force at the time of the cassation hearing of the author's criminal case,[9] participants in criminal proceedings were notified about the date, time and venue of the hearing by the Judicial Panel of the Supreme Court only if they had requested such notification in their cassation appeal or in their objections to the appeal. A lawyer, A., who represented the author in the court of first instance did not request in his cassation appeal to be present at the hearing before the Judicial Panel of the Supreme Court. The author did not request to be present at the cassation hearing and he did not ask for legal assistance at this stage of the criminal proceedings either. The position of the author and his lawyer were communicated to the court of cassation in their respective cassation appeals.

4.7 As to the obligations of the court of first instance pursuant to article 327 (1) of the 1960 Code of Criminal Procedure (see paras. 3.1 and 3.2 above), the State party argues that there were no contradictions between the author's arguments and those submitted by his lawyer and co-defendants in their respective cassation appeals. Therefore, a failure to inform the author about the submission of cassation appeals by other participants in criminal proceedings did not result in a violation of his right to defence. The State party recalls that the author's claims about a violation of his right to defence have been examined

[9] Pursuant to article 1 (2) of the 1960 Code of Criminal Procedure and article 4 of the 2002 Code of Criminal Procedure, the procedural actions or decisions are to be made on the basis of the law of criminal procedure which is in force at that time.

and rejected by the Judicial Panel of the Supreme Court on 10 January 2013 and by the Deputy Chair of the Supreme Court on 16 April 2013.

4.8 The State party submits that the author's sentence was fully brought into compliance with the new criminal law. Article 102 of the 1960 Criminal Code (premeditated murder accompanied by aggravating factors), under which the author was initially sentenced, provided for between 8 and 15 years' imprisonment or the death penalty. Article 15 (2) of the 1996 Criminal Code provides for a heavier penalty for the same offence – that is, life imprisonment or the death penalty. The fact that the references to "murder committed by a person who has committed murder before, with the exception of murders committed under articles 105 and 106 of the Criminal Code" and a "serious repeat offender" were excluded from the qualification of the offences committed by the author does not constitute an absolute requirement for the imposition of a lighter penalty.

4.9 The State party submits that the author's communication does not contain any objectively confirmed information about a violation of the provisions of the Covenant. The fact that the author is dissatisfied with the outcome of the consideration of his criminal case, conducted in compliance with the domestic law in force at that time, does not amount to a violation of his Covenant rights. The State party concludes that the author's entire communication constitutes an abuse of the right of submission and it should be declared inadmissible under article 3 of the Optional Protocol.

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

5. On 10 August 2015, the author submitted his comments on the State party's observations. He expresses his general disagreement with the position taken by the State party's authorities and states that it is unnecessary for him to comment on it. The author refers to his initial submission to the Committee, which, in his opinion, clearly explains his claims and supporting arguments.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 97 of its rules of procedure, whether the communication is admissible under the Optional Protocol.

6.2 The Committee has ascertained, as required under article 5 (2) (a) of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

6.3 The Committee takes note of the author's claim that he has exhausted all effective remedies available to him. In the absence of any objection by the State party in this connection, the Committee considers that the requirements of article 5 (2) (b) of the Optional Protocol have been met.

6.4 The Committee further notes the State party's position that, owing to the delay in submission of the present communication, the Committee should consider it inadmissible as constituting an abuse of the right of submission under article 3 of the Optional Protocol.

6.5 The Committee notes in that regard that there are no fixed time limits for the submission of communications under the Optional Protocol and that mere delay in bringing a communication to the Committee does not of itself involve abuse of the right of submission.[10] However, in certain circumstances, the Committee expects a reasonable explanation justifying a delay.[11] In addition, according to rule 99 (c) of the Committee's rules of procedure, a communication may constitute an abuse of the right of submission when it is submitted five years after the exhaustion of domestic remedies by the author of the communication, or, where applicable, three years from the conclusion of another

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

[11] *Gobin v. Mauritius* (CCPR/C/72/D/787/1997), para. 6.3.

procedure of international investigation or settlement, unless there are reasons justifying the delay, taking into account all the circumstances of the communication.[12]

6.6 In the present case, the communication was submitted to the Committee with a notable delay of 18 years since the author's sentence became executable pursuant to the decision of the Supreme Court of 11 January 1996, and 8 years after the review of that sentence pursuant to the adoption of a new criminal law providing for a lighter penalty, which has a retroactive effect, by the Solikamsk City Court on 4 May 2006 and by the Perm Regional Court on 20 June 2006. The Committee observes that there is nothing in the submission to suggest that the author was limited in contacting the outside world from prison, especially taking into account the number of complaints to the domestic authorities and courts submitted by him while in prison. The Committee also observes that the author's recourse to the supervisory review procedure after 2006 was primarily based on the facts and circumstances that took place before or in the course of that year. The author, however, does not provide any explanation as to when he became aware of the alleged procedural flaws in the domestic proceedings invoked by him in the present communication, as well as why it was not possible for him to submit his communication to the Committee earlier. Moreover, the author's latest requests to initiate the supervisory review procedure, which he submitted in 2013, do not seem to raise any new elements other than the same alleged procedural flaws in the domestic proceedings that he had already raised in the past. The Committee thus considers that the author has failed to provide a convincing explanation for the delay in submission. In the absence of such an explanation, the Committee considers that submitting the communication after such a long lapse of time constitutes an abuse of the right of submission. Therefore, the Committee finds the communication inadmissible under article 3 of the Optional Protocol and rule 99 (c) of the Committee's rules of procedure.

6.7 Having reached this conclusion, the Committee decides not to examine the remainder of the State party's claims concerning the admissibility of the present communication.

7. The Committee therefore decides:

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

(b) That the decision shall be communicated to the State party and to the author.

[12] This rule applies to communications received by the Committee after 1 January 2012.