



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. 2675/2015*, **

<i>Communication submitted by:</i>	D.V.K. (represented by counsel, Maxim Neveselov)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Kazakhstan
<i>Date of communication:</i>	20 May 2015 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 12 November 2015 (not issued in document form)
<i>Date of adoption of decision:</i>	23 July 2021
<i>Subject matters:</i>	Equality before the courts; torture and other cruel, inhuman or degrading treatment; unfair criminal trial
<i>Procedural issues:</i>	Non-exhaustion of domestic remedies; insufficient substantiation of claims; incompatibility
<i>Substantive issues:</i>	Effective remedy; torture and other cruel, inhuman or degrading treatment; right to a fair trial
<i>Articles of the Covenant:</i>	2, 7 and 14 (1)–(2) and (3) (b), (e) and (g)
<i>Articles of the Optional Protocol:</i>	2–3 and 5 (2) (b)

1. The author of the communication is D.V.K., a national of Kazakhstan born on 18 March 1991. He is currently serving a prison sentence in a State prison in Aktau, Kazakhstan. He claims that the State party has violated his rights under articles 2, 7 and 14 (1)–(2) and (3) (b), (e) and (g) of the Covenant. The Optional Protocol entered into force for the State party on 30 September 2009. The author is represented by counsel.

* Adopted by the Committee at its 132nd session (28 June–23 July 2021).

** The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Wafaa Ashraf Moharram Bassim, Yadh Ben Achour, Arif Bulkan, Mahjoub El Haiba, Furuya Shuichi, Carlos Gómez Martínez, Duncan Laki Muhumuza, Photini Pazartzis, Hernán Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Soh Changrok, Kobayuh Tchamdja Kpatcha, Hélène Tigroudja and Gentian Zyberi.



Facts as submitted by the author

2.1 On 4 October 2013, the author was convicted for the violent murder of his mother and sentenced to 10 years of imprisonment by the Specialized Interregional Court for Criminal Affairs of Mangystau. He appealed the verdict and his appeal was rejected on 27 November 2013. The author's cassation appeal was rejected by a decision of the Mangystau Regional Court on 12 February 2014. On 9 July 2014, the Supervisory Review Panel for Criminal Affairs of the Supreme Court issued a decision dismissing his application for supervisory review.

2.2 The author claims that the courts violated a number of procedural norms during his trial and contests some of the evidence and facts on which the verdict was based. In particular, he submits that he was not allowed to meet with his lawyer until he had signed a confession of guilt. In addition, he alleges that the expert opinion according to which a hammer was the murder weapon has not been objectively established; that the crime did not take place in a garage, as stated in the verdict; that he was not present at the crime scene; and that the witness testimonies were interpreted against his interests, in violation of article 14 (1)–(2) and (3) (b), (e) and (g) of the Covenant.

2.3 He also claims that on 2 May 2013, sometime after his arrest,¹ the police officers investigating his case beat him with a plastic bottle filled with water and placed a plastic bag over his head so he could not breathe. The police officers then forced him to confess in writing that he had murdered his mother because she opposed his marriage to his girlfriend. On the same day, the author's lawyer, who was present during his interrogation, noticed that the author was pale, looked scared and had traces of a beating on his face.

2.4 The lawyer requested a medical examination of the author.² The author claims that he withdrew his forced confession and complained that he had been beaten and suffocated on several occasions, during both the pretrial proceedings and the court trial.

2.5 On 14 May 2013, the author's fiancée, who married the author on 11 November 2013, filed a complaint to the interior department of the regional prosecutor's office against the police officers who had used physical violence against the author. On 20 May 2013, the prosecutor's office refused to initiate criminal charges against the police officers owing to a lack of substantiation of the allegations. That refusal was appealed to the Mangystau regional prosecutor, who rejected the appeal on 25 June 2013. On 7 and 15 November 2013, following further complaints, the prosecutor's office again refused to initiate criminal proceedings against the alleged perpetrators. On all those occasions, the prosecutor's office stated that the author's allegations had been investigated and that no crime was found to have taken place.

2.6 The author contends that he has exhausted all available and effective domestic remedies. The same matter has not been and is not being examined under another procedure of international investigation or settlement.

Complaint

3.1 The author claims that the State party has violated his rights under articles 2, 7 and 14 (1)–(2) and (3) (b), (e) and (g) of the Covenant. In respect of article 14 (3) (g) specifically, he claims that the courts treated him as a person who had breached the law, disregarding the fact that he could not enjoy his right to be represented by counsel. He adds that he was beaten into confessing to the murder of his mother, that he did not enjoy equality of treatment before the courts, that he was subjected to an unfair trial, as he was perceived as a perpetrator, that due regard was not given to the evidence in his favour and that the witness testimonies and expert opinions were interpreted against his interests.

3.2 The author requests the Committee to recommend that the State party: (a) review the court decisions; (b) grant monetary compensation and moral satisfaction to the author for the unlawful deprivation of his liberty; (c) ensure that individuals can be deprived of liberty only on the grounds and in a manner provided by the law; (d) guarantee that all individuals

¹ The date of his arrest has not been specified.

² Based on the responses of the prosecutor's office, it appears that an examination was ordered on 8 May 2013; however, a copy of the medical certificate and the relative results have not been provided.

subjected to criminal procedures are treated humanely; and (e) prevent similar violations from occurring in the future.

State party's observations on the merits

4.1 On 18 May 2016, the State party submitted its observations on the merits of the communication.

4.2 The Attorney-General's Office referred to the author's sentence of 10 years of imprisonment for the murder of his mother. The author was also sentenced to a fine of 181,000 tenge,³ which he had to pay to the victim as compensation for material damages, and a fine of 18,100 tenge,⁴ which he had to pay to the State.

4.3 The fines were imposed by the appeals chamber of the Mangystau Regional Court on 27 November 2013 when reviewing the first instance judgment; the Court upheld the rest of the criminal sentence. On 12 February 2014, the cassation chamber of the Mangystau Regional Court dismissed the cassation appeals submitted by the author. On 9 July 2014, the Supervisory Review Panel for Criminal Affairs of the Supreme Court refused the author's application for supervisory review.

4.4 Regarding the facts, the State party submits that the author had been in a relationship with his girlfriend since April 2011 and that they wished to get married. The author's mother, however, was against the marriage. The author's dispute with his mother served as the motive for the author's crime. On 1 May 2013, between 11 a.m. and noon, the author equipped himself with a hammer and went to visit his mother at work, at a wastewater treatment plant owned by Kazatomprom. They argued again about the planned wedding. The author started hitting his mother with the hammer on the head, with the intention of killing her. When she fell to the ground, he stabbed her with a knife in the neck, chest, legs and arms. As a result of those injuries, she passed away at the site.

4.5 The author fled the scene, throwing the hammer into the reeds and the victim's bag and the knife into a drainage canal. The author's guilt was established through witness statements, forensic and material evidence, analyses of his mobile telephone calls, legal expertise and other means. On 2 May 2013, a piece of white tulle and a hammer with dark brown spots and hair fragments on them were found at the crime scene and in the reeds. According to forensic biology experts, the blood stains and hair belonged to the victim and the sweat on the hammer belonged to the author. According to the forensic medical experts, the victim's death was caused by bruises to and crushing of the brain, in conjunction with repeated fractures of the cranial vault and severe damage to several organs as a consequence of numerous stabbings. On 13 May 2013, the author was placed in pretrial detention in the city of Aktau. While in custody, the author wrote a confession admitting to the crime and indicating where he had thrown the bag and the knife used in the murder. During the crime scene visit on 14 May 2013, held in the presence of the author, a black bag was found and seized from the drainage canal. The bag contained the victim's belongings, as identified by her spouse and colleagues. A knife, the handle of which was wrapped in blue tape, was also found.

4.6 One witness, who was a colleague of the author, recognized the hammer used in the murder as belonging to a certain garage. Two other witnesses stated that, on 1 May 2013, when they were driving back from the seaside, they saw the author next to the drainage canal, walking towards the city, and offered to take him there; they confirmed their initial testimonies during the cross-examination with the author. Three other witnesses submitted, during the court trial, that the author had recounted to them, while in custody, the circumstances of the murder of his mother.

4.7 The State party requests that the author's allegations that his rights were violated while the courts were establishing his criminal liability be dismissed as unfounded. The author's objections that the findings presented by the forensic medical expert to the court, according to which the hammer was the murder weapon, do not correspond to reality. The expert did

³ Approximately 362 euros.

⁴ Approximately 36 euros.

not state that the hammer did not appear to be the murder weapon, as interpreted by the author. Nor did he state that the lethal wounds were caused by a shovel or a hoe, or similar instrument. During the trial, the expert responded to the author's counsel's questions by saying that if a hammer had a sharp end, it could be included in the category of chopping tools. Based on the photographs on file, it was impossible to determine whether the hammer in question could be considered a chopping tool. In order to make such a determination, a medical/criminal examination would have to be carried out. The counsel's request to hear a different expert was denied because all the questions had been clarified by the first expert and because the courts had duly assessed all available expert opinions.

4.8 Regarding the counsel's argument about the failure of a witness to appear in court and the absence of measures to summon her, the State party submits that that witness had been summoned by the investigator. The witness had stated that her neighbour had once told her that she wanted to re-register the apartment in her name and in the name of her husband because their son, whom they had adopted in 1993, had become hostile and had had conflicts with them lately. Since the witness had not been present at the crime scene, she was not considered by the investigator as a witness for the prosecution and the court did not consider it necessary to summon her to testify during the trial. The court, however, did refer to the witness in its judgment, as she had witnessed conflict between the author and his mother. The court duly assessed the arguments of both the prosecuting and defending parties, and the decision not to summon the witness was deemed justified.

4.9 Regarding the forensic biological and criminological examinations carried out on the basis of material evidence, the State party argues, among other things, that the expert findings regarding the clothes of both the perpetrator and the victim, the hammer and the knife were signed by the investigator and the relevant witnesses, as were the protocols on the crime scene visit. The findings concerning the blood stains found at the crime scene, however, bore no such signatures. In addition, the defence did not raise any doubts during the court trial about the taking of blood samples. The results of the biological examination indicate that the sweat on the handle of the hammer could have come from a person with blood "type B (III)" or "type O (I)", including the author. During the court trial, the biology expert stated that it was possible to use DNA to link human sweat to a person, but that doing so would require genetic testing. No request for such testing was received from those involved in the court trial, however, and no related question arose in court. The totality of the evidence collected in the case, as investigated by the court, confirmed the guilt of the author. The court did not have doubts about the admissibility or the sufficiency of the evidence presented.

4.10 According to one of the witnesses, the author was walking along the canal heading towards the city on 1 May 2013, at around 12.30 p.m. The witness, who drove by, offered to take the author. The author accepted, sat in the back seat, and was dropped off near the store Akku. The author's counsel did not contest the witness statement during the trial. The court justifiably rejected the counsel's motions contesting the account given by the author's girlfriend, as the witness' account was confirmed by police footage of his car. During the cross-examination, the other witness that day confirmed that the author had been taken by car to the vicinity of the store Akku.

4.11 Furthermore, the State party argues that the author's telephone calls from the crime scene area were detected, that the witness statements supported and confirmed the facts set out in the author's criminal conviction, that the author's procedural rights, including the right to be represented by counsel, were respected from the moment of his apprehension and that the medical examination undertaken to assess the claims of beating during the interrogation did not confirm any injury of the author.

4.12 The State party asserts that, in the determination of the criminal charges against the author, his rights to equal treatment before the courts and to a fair and public hearing by a competent, independent and impartial tribunal established by law were respected, as required by the Constitution of Kazakhstan (arts. 13 (2) and 14 (2)) and the Code of Criminal Procedure (art. 21 (2)). The State party also observed its obligations under article 14 (2) and (5) of the Covenant as regards the presumption of innocence (art. 77 (3) of the Constitution) and the review of the author's conviction and sentence by a higher tribunal, in accordance with the law.

4.13 The author married his girlfriend on 11 November 2013, after having committed the murder on 1 May 2013. The main motive of the crime, as established by the investigation and the court trial, was the dispute between the author and his mother about the author's relationship and intended marriage. The criminal conviction of the author, and its review by the appeals and cassation courts, was based on confessions by the author, transcripts of conversations held in the investigation cell, witness statements, expert opinions for the court trial and other evidence. The Supreme Court considered the criminal judgment as lawful and substantiated. In accordance with article 31 of the Constitution, the criminal sentence of the author was duly reviewed by the superior courts. Therefore, the claims of a violation of article 14 (5) are also unsubstantiated.

4.14 The State party concludes that the provisions of the Covenant were respected and requests that the complaint be dismissed as manifestly unfounded.

Author's comments on the State party's observations

5.1 On 3 August 2016, the author submitted objections to the State party's observations, disputing major arguments concerning the facts and the evidence. The author focuses on individual pieces of evidence, questioning the findings of forensic biological experts as regards the author's sweat and blood on the murder weapon that allegedly established a link between the perpetrator and the victim. He recalls that the written confession produced while he was in pretrial detention, in the presence of police officers, including the Chief of Criminal Investigation, had been forced upon him. The author contests that he had a conflictual relationship with his mother, pointing out that the victim's husband had stated that the victim was looking forward to the author's wedding.

5.2 The author also questions the finding of the forensic medical expert that the hammer was the murder weapon. In that context, he argues that the divergent findings of a different medical expert were not admitted by the court, thereby violating the author's right to a defence. In addition, the author recalls that he did not have access to a lawyer during the first eight days of administrative detention and that he could enjoy that right only once he had signed the confession. Moreover, the counsel's conversation with the author's girlfriend was intercepted unlawfully, as the investigators wanted to facilitate their tasks. Objections thereto and other evidence in favour of the author were not admitted by the courts, to the author's detriment.

5.3 Furthermore, the author claims that the crime scene visit was also problematic, as the investigators told the divers in which part of the canal to look for the knife that had been thrown away after the killing. The video recording taken in the pretrial cell where he allegedly made a self-incriminating confession was not genuine, according to the author. The recognition of the hammer was not objective either, as some of the witnesses stated that they were asked to recognize one of the four hammers on display, while the author insists that there was only one hammer presented during the recognition. As to the beating by the police officers during interrogation, it was done using a plastic bottle filled with water, precisely to avoid leaving any traces on the author's body. Therefore, it was not possible to demonstrate any injuries. As regards other unlawful treatment by the police officers, he refers to his initial submission. Finally, the author claims that his trial was neither objective nor impartial, emphasizing that only about 1 per cent of criminal judgments absolve those convicted in the end.

5.4 The author concludes that his communication should be considered admissible, as the author's right to equal treatment before the courts and the procedural guarantees in the determination of criminal charges against him were violated. He asserts that he was unjustly convicted and denies any guilt.

State party's additional observations

6.1 In its submission of 24 October 2016, the State party reiterates its observations of 18 May 2016, arguing that the author's comments of 3 August 2016 do not raise any new facts or evidence supporting the claim that his rights were violated by either the law enforcement or judicial authorities. It submits that the communication should be considered inadmissible owing to non-exhaustion of domestic remedies or to be without merits.

6.2 The State party recalls that the author was convicted on 4 October 2013 for the murder of his mother, whom he hit 11 times with a hammer on the head and stabbed repeatedly (see art. 96 (1) of the Criminal Code). The criminal sentence of 10 years of imprisonment was reviewed by the appeals and cassation courts, on 27 November 2013 and 12 February 2014, respectively. On 9 July 2014, the Supervisory Review Panel for Criminal Affairs of the Supreme Court issued a decision dismissing the author's application for a supervisory review.

6.3 Following the amendment to the Code of Criminal Procedure Code in 2017, the author and his counsel could nonetheless also submit an appellate complaint – a request to the Supreme Court to review the final criminal sentence, pursuant to article 414 (1) of the Code of Criminal Procedure, or apply to the Prosecutor-General to submit a request for review by the Supreme Court. The author had an opportunity to submit a request to the Cassation Chamber of the Supreme Court based on the new evidence or to apply to the Prosecutor-General to submit a request for review. Since the author failed to exhaust all available domestic remedies, without explaining why he did not resort to them, the State party requests that the communication be considered inadmissible pursuant to article 5 (2) (b) of the Optional Protocol.

6.4 The State party asserts that all the arguments presented by the author had already been examined by the criminal courts of three different instances. The arguments were not supported by facts and evidence and appeared made up. In principle, the author disputes the assessment of the facts and the evidence by the national courts. The State party explains the reasons for its dismissal of the author's objections regarding the forensic medical expertise, the summoning of witnesses, the statements and cross-examination of the witnesses and the claims made by experts regarding biological, criminological and telecommunications aspects admitted by the courts, which were deemed to have been substantiated and which did not meet with any objections or questions by the participants in the proceedings. The totality of the evidence proved the author's guilt (see para. 4.5 above). Furthermore, the State party rejects the allegation that the evidence was tampered with.

6.5 As concerns the right to have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing, the State party rejects the author's claim that this right was violated in his case, arguing that the author had access to his lawyer since 2 May 2013 and that the lawyer participated in all aspects of the investigation that required the author's presence. The lawyer also had access to the author when in pretrial detention, and there is no evidence that restrictions were imposed by the detention authorities or the investigator. Regarding the interceptions of conversations between the lawyer and the author's girlfriend, they were authorized at the request of the prosecutor and were used only in relation to the author's criminal case. However, the court did not use the recorded conversations as evidence of the author's guilt or to convict the author. In the protocol of 29 July 2013 informing the author and his counsel about the material evidence gathered, no objections were entered, and the author confirmed the absence of reservations even as concerns the expertise on the video recording of the pretrial detention cell. The recording is of the author, including his voice, as confirmed by the protocols on the author's questioning and witness testimonies.

6.6 The results of the inspection by the Regional Office of Public Security of the Ministry of the Interior did not confirm the use of violence against the author during his investigation. The medical forensic expertise presented on 6 May 2013 did not establish any injuries on the author's body. The State party further rejects the author's allegations that his confession was extracted by force, since the victim's bag and a knife were found in the canal on the basis of the information included in the author's confession, which confirmed the author's admission of guilt. Importantly, the author and his counsel did not make any claims of torture or ill-treatment during the court trial. The courts did not receive any evidence that the criminal investigation officers had violated any of the author's procedural guarantees during the investigation, including during his questioning. The courts assessed those claims fully and objectively, but to no avail. The fact that the knife was found in the canal, without any tampering by the authorities, was confirmed by two witnesses. The authorities searched that specific part of the canal following the author's written confession, in which the author had indicated the exact location where he had thrown the knife, as well as the handbag and the

mobile telephone of the victim. While the knife and handbag were found, the mobile telephone was not.

6.7 In conclusion, the State party reiterates that it has complied with its obligations under the Covenant and requests that the communication be dismissed for being without merit.

Additional comments from the author

7.1 On 21 December 2016, the author reiterated the main claim that his rights were violated during the investigation and the court proceedings, all the way through to his criminal conviction.

7.2 In his comments, the author objects to the State party's claim that all available domestic remedies have not been exhausted, arguing that, in accordance with article 414 (1) of the Code of Criminal Procedure, the cassation proceedings before the Supreme Court could not be initiated because the requirements were not met. As concerns the possibility of applying to the Prosecutor-General to submit a request for review by the Supreme Court, such an application was made but the Prosecutor-General rejected it. Therefore, the proposed remedies by the State party cannot be considered effective and the requirements of article 5 (2) (b) of the Optional Protocol have been met.

7.3 The author reiterates his initial claims and his comments on the State party's observations. He contests again the forensic medical expertise, the summoning of witnesses, the statements and cross-examination of the witnesses, the claims made by the experts regarding biological, criminological and telecommunications aspects and the findings from the crime scene. As regards the right to a defence, the author reasserts that he did not have access to counsel while he was in administrative (pretrial) detention. He only had access to counsel after he had signed the confession. However, the author does not raise the objections in support of his initial claims that he was beaten during the interrogation and that his confession was extracted by force.

7.4 In conclusion, the author requests that the communication be considered admissible and be examined on the merits.

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 97 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.

8.3 The Committee recalls its jurisprudence to the effect that authors must avail themselves of all domestic remedies in order to fulfil the requirement of article 5 (2) (b) of the Optional Protocol, insofar as such remedies appear to be effective in the given case and are de facto available to the author.⁵ The Committee notes that the State party has argued that the communication should not be considered admissible for non-exhaustion of available domestic remedies, as the author could have submitted an appellate complaint. In other words, the author could have requested the Supreme Court to review the final criminal sentence on the basis of new evidence, pursuant to article 414 (1) of the Code of Criminal Procedure, or he could have requested the Prosecutor-General to seek a review by the Supreme Court. The Committee notes that the author's criminal conviction was reviewed by the appellate and cassation instances. The Committee also notes the author's argument that, in accordance with

⁵ See, e.g., *Patiño v. Panama* (CCPR/C/52/D/437/1990), para. 5.2; *P.L. v. Germany* (CCPR/C/79/D/1003/2001), para. 6.5; *Riedl-Riedenstein et al. v. Germany* (CCPR/C/82/D/1188/2003), para. 7.2; *Gilberg v. Germany* (CCPR/C/87/D/1403/2005), para. 6.5; *Warsame v. Canada* (CCPR/C/102/D/1959/2010), para. 7.4; and *H.S. et al. v. Canada* (CCPR/C/125/D/2948/2017), para. 6.4.

article 414 (1) of the Code of Criminal Procedure, the cassation proceedings before the Supreme Court could not be initiated because the requirements had not been met and that he has already applied to the Prosecutor-General to submit a request for review of the final court decision by the Supreme Court, but that his application was rejected. The Committee observes that, according to the author, the remedies proposed by the State party were not available and effective and that the State party did not rebut this argument. In this context, the Committee recalls its jurisprudence according to which a petition to a prosecutor's office, which is dependent on the discretionary power of the prosecutor, requesting a review of court decisions that have taken effect does not constitute a remedy that has to be exhausted for the purposes of article 5 (2) (b) of the Optional Protocol.⁶ The Committee considers that the State party has not demonstrated that there were additional effective remedies available to the author in the present case. Accordingly, the Committee finds that it is not precluded from examining the communication by the requirements of article 5 (2) (b) of the Optional Protocol.

8.4 The Committee notes the author's claims that, during his criminal investigation and the court trials, his rights under articles 2, 7 and 14 of the Covenant were violated. The Committee also notes, however, the State party's argument that the author's claims are manifestly ill-founded.

8.5 As concerns the author's claims under article 2, the State party argues that the author enjoyed equality before the courts and all procedural safeguards during the determination of the criminal charges against him. Recalling its jurisprudence according to which the provisions of article 2 of the Covenant lay down general obligations for States parties and cannot, by themselves, give rise to a separate claim under the Optional Protocol as they can be invoked only in conjunction with other substantive articles of the Covenant,⁷ the Committee considers the author's claims under article 2 to be inadmissible under article 3 of the Optional Protocol.

8.6 Regarding the author's claims under article 7, that he was beaten into confessing to the murder of his mother, the Committee notes the author's argument that there were no traces of the beating on his body because he was beaten with a plastic bottle filled with water. In this regard, the Committee recalls the State party's submission that the medical report of 6 May 2013 – following an examination of the author for signs of the sequelae of torture – did not establish any injuries to the author's body. Based on the material on file, the Committee considers that the author has not adduced sufficient evidence to support his allegations. Accordingly, this part of the communication is declared inadmissible for lack of substantiation, pursuant to article 2 of the Optional Protocol.

8.7 As regards the author's claims under article 14 (1)–(2) and (3) (b), (d)–(e) and (g) of the Covenant, and article 14 (3) (g) in particular, the Committee notes the author's argument that the courts treated him as a person who had breached the law and disregarded the facts that he could not enjoy his right to be represented by counsel and that his confession had been extracted by force. The author also asserted that he did not enjoy equality before the courts, that he was subjected to an unfair trial, as he was perceived as a perpetrator, without due regard to evidence in his favour, and that the witness testimonies and expert opinions were interpreted against his interests. The Committee notes the State party's objections that, during both the pretrial and court proceedings, the author was informed about his right to be represented by counsel, that he had had access to counsel since 2 May 2013 and that his counsel had already assisted the author while he was in pretrial detention, both before and after signing the written confession, as attested by the fact that his counsel participated in all aspects of the investigation that required the author's presence. Furthermore, the Committee

⁶ See *Alekseev v. Russian Federation* (CCPR/C/109/D/1873/2009), para. 8.4; *Lozenko v. Belarus* (CCPR/C/112/D/1929/2010), para. 6.3; *Sudalenko v. Belarus* (CCPR/C/115/D/2016/2010), para. 7.3; *Poplavny and Sudalenko v. Belarus* (CCPR/C/118/D/2139/2012), para. 7.3; and *Zhagiparov v. Kazakhstan* (CCPR/C/124/D/2441/2014), para. 12.3.

⁷ See, e.g., *H.E.A.K. v. Denmark* (CCPR/C/114/D/2343/2014), para. 7.4; *Castañeda v. Mexico* (CCPR/C/108/D/2202/2012), para. 6.8; *Ch.H.O. v. Canada* (CCPR/C/118/D/2195/2012), para. 9.4; *Peirano Basso v. Uruguay* (CCPR/C/100/D/1887/2009), para. 9.4; *A.P. v. Ukraine* (CCPR/C/105/D/1834/2008), para. 8.5; and *Toussaint v. Canada* (CCPR/C/123/D/2348/2014), para. 10.12.

notes the State party's argument that the author's written confession was not extracted by force, as the information contained therein matched the accounts presented by the author to his cellmates while he was in pretrial detention and as evidenced by the video recording. The Committee recalls that the right to equality before the courts and tribunals encompasses the rights of equal access and of equality of arms,⁸ and that the Committee's role is not to serve as a fourth instance. While noting that the fair trial issues remain disputed by both parties, with alleged inconsistencies in interpretation of most of the evidence by the author, and that the information on file mainly pertains to the facts and evidence, which were thoroughly reviewed by the appellate and cassation instances, the Committee considers that the author has not sufficiently substantiated his claims for purposes of admissibility.⁹ Accordingly, it concludes that this part of the communication is inadmissible under article 2 of the Optional Protocol.

9. The Human Rights Committee therefore decides:

- (a) That the communication is inadmissible under articles 2 and 3 of the Optional Protocol;
 - (b) That the present decision shall be communicated to the State party and to the author.
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⁸ See the Committee's general comment No. 32 (2007), para. 8.

⁹ See, e.g., *E.Z. v. Kazakhstan* (CCPR/C/113/D/2021/2010), para. 7.5.