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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 communications No. 2895/2016 and No. 2896/2016*, **

Communications submitted by:	A.K. (not represented by counsel) and M.K. (not represented by counsel)
Alleged victims:	The authors
State party:	Russian Federation
Dates of communications:	10 August 2016 (communication No. 2895/2016), 20 July 2016 (communication No. 2896/2016) (initial submissions)
Document references:	Decisions taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 12 December 2016 (not issued in document form)
Date of adoption of decisions:	19 July 2023
Subject matter:	Fair trial; right to counsel
Procedural issue:	Abuse of the right of submission
Substantive issues:	Absence of a counsel in a cassation appeal hearing in criminal proceedings
Articles of the Covenant:	2 (3), 14 (1) and (3) (d)
Article of the Optional Protocol:	3

1.1 The authors of the communications are A.K. (communication No. 2895/2016) and M.K. (communication No. 2896/2016). The authors are nationals of the Russian Federation born in 1980 and 1976 respectively. They claim that the State party has violated their rights under article 14 (3) (d) of the Covenant. In addition, the author of communication No. 2896/2016 alleges that the State party has violated his rights under articles 2 (3) and 14 (1) of the Covenant. The Optional Protocol entered into force for the State party on 1 January 1992. The authors are not represented by counsel.

1.2 On 19 July 2023, pursuant to rule 97 (3) of the Committee's rules of procedure, the Committee decided to join communications No. 2895/2016 and No. 2896/2016, which had

* Adopted by the Committee at its 138th session (26 June–26 July 2023).

** The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Farid Ahmadov, Wafaa Ashraf Moharram Bassim, Rodrigo A. Carazo, Yvonne Donders, Mahjoub El Haiba, Carlos Gómez Martínez, Laurence R. Helfer, Marcia V.J. Kran, Bacre Waly Ndiaye, Hernán Quezada Cabrera, José Manuel Santos Pais, Soh Changrok, Tijana Šurlan, Kobauyah Tchamdja Kpatcha, Teraya Koji, Hélène Tigroudja and Imeru Tamerat Yigezu.

been submitted by two different authors, for a joint decision, in view of the substantial factual and legal similarity.

Facts as submitted by the authors

2.1 Both communications deal with the absence of legal assistance at cassation appeal hearings held by the Judicial Panel on Criminal Affairs of the Supreme Court of the Russian Federation in the authors' criminal cases. The facts relevant to each communication are summarized below.

Communication No. 2895/2016: A.K. v. Russian Federation

2.2 On 19 August 2004, the author was sentenced to life imprisonment by the Supreme Court of the Kabardino-Balkarian Republic for nine murders, one attempted murder and several assaults. On the same day, he lodged a cassation appeal with the Supreme Court of the Russian Federation, asking for permission to attend the hearing. On 8 September 2004, D., an attorney who had been hired by the author's family during the proceedings in the court of first instance, also submitted a cassation appeal against the verdict.

2.3 The author participated in the cassation appeal hearing held on 30 March 2005 by the Judicial Panel on Criminal Affairs of the Supreme Court via videoconference, but his attorney did not attend. The Court, in its judgment, which it passed on the same day, did not clarify the reasons behind the absence of the attorney, did not consider postponing the hearing, did not offer the author another attorney and did not inform him of his right to counsel at this stage of criminal proceedings. The Judicial Panel upheld the verdict of 19 August 2004 without justifying the absence of the attorney at the hearing, notwithstanding the fact that under article 51.1 (1) and (5) of the Criminal Procedure Code the presence of a counsel was obligatory.

2.4 On 1 August 2011, the author complained about the absence of a counsel in the cassation appeal hearing to the Prosecutor General's Office of the Russian Federation. His complaint was transferred to the Prosecutor of the Kabardino-Balkarian Republic, who on 27 October 2011 rejected it on the grounds that the author had attended the hearing. This decision was upheld on 20 January 2012 by the Prosecutor General's Office on the grounds that the author had not requested a counsel and his counsel had been informed of the date and the place of the hearing.

2.5 On 2 August 2011, the author submitted a supervisory review appeal against the cassation judgment of 30 March 2005 to the Presidium of the Supreme Court, complaining about violation of his right to defence. His appeal was rejected on 15 September 2011 by a judge of the Supreme Court. This decision was upheld on 2 November 2011 by the Court's Deputy Chairperson. The author also complained to the Ombudsperson for Human Rights, who, on 23 August 2012, informed the author that repeated judicial appeals for supervisory review were not allowed. On 3 August 2012, a judge of the Supreme Court found the author's new appeal for supervisory review inadmissible.

2.6 On 10 January 2013, the author complained to the Constitutional Court, claiming the unconstitutionality of articles 50.2, 51.1 (1) and (5), and 376.4 of the Criminal Procedure Code, which allowed for cassation jurisdictions to interpret provisions on the obligatory presence of a counsel in criminal proceedings, in the sense that the presence of a counsel was only required when the convict requested it. On 28 May 2013, the Constitutional Court found that complaint inadmissible, stating that it had already considered similar claims in its views of 8 February 2007 – No. 251-O-P, No. 252-O-P, No. 254-O-P and others – and had concluded that article 51 of the Criminal Procedure Code imposed an obligation on the cassation court to ensure the presence of a counsel. On 21 February 2014, the Constitutional Court declared inadmissible the author's claim of the unconstitutionality of article 406 of the Criminal Procedure Code (cited in the judgment of 15 September 2011 of the Supreme Court on the author's supervisory review appeal), which had allowed for a supervisory review jurisdiction to compensate for the absence of factual data in the impugned decisions with references to case law, because article 406 was no longer in force.

2.7 On 18 December 2014, the Prosecutor General's Office rejected the author's request for the proceedings to be reopened in his criminal case. In response to the author's claim that

his oral request for a counsel had not been granted in the cassation appeal hearing of 30 March 2005, the decision stated that this claim was impossible to verify due to absence of the minutes of the hearing. This decision was further upheld by Tverskoy District Court of Moscow on 18 March 2015 and by Moscow City Court on 10 August 2015. On 14 December 2015, a judge of Moscow City Court refused to admit the author's cassation appeal against these judgments.

Communication No. 2896/2016: M.K. v. Russian Federation

2.8 On 28 January 2009, the author was sentenced to 17 years and six months of imprisonment by Chelyabinsk Regional Court for murder and a burglary with the use of violence by a group of people. On 18 May 2009, the Judicial Panel on Criminal Affairs of the Supreme Court heard his cassation appeal against this verdict. The author was not represented by counsel, despite the fact that he was charged with an offence punishable by life imprisonment and the fact that article 51.1 (5) of the Criminal Procedure Code provided for the obligatory presence of a counsel, notwithstanding the wishes of the accused.

2.9 On 29 January 2014, the Supreme Court rejected the author's supervisory review appeal against this judgment, referring to the minutes of the cassation hearing according to which the author had refused to be represented by a counsel. This decision was upheld on 10 March 2015 by the Deputy Chairperson of the Supreme Court.

2.10 On 21 August 2014, the Chelyabinsk Regional Prosecutor's Office dismissed the author's supervisory review appeal against the cassation judgment of 18 May 2009, citing his refusal to be represented by a counsel. This decision was upheld on 16 October 2014 by the Deputy Public Prosecutor of the Chelyabinsk Region and on 26 November 2014 by the Public Prosecutor of the Chelyabinsk Region. The judicial decisions adopted in the author's criminal case were recognized as legally substantiated by the Prosecutor General's Office on 21 January 2015 and 19 June 2015.

2.11 Another supervisory review appeal submitted by the author to the Supreme Court against the cassation judgment of 18 May 2009 was found inadmissible on 30 April 2015.

Complaint

3.1 Both authors claim a violation of article 14 (3) (d) of the Covenant because they were not represented by counsel at the cassation hearings of the Judicial Panel on Criminal Affairs of the Supreme Court. The author of communication No. 2895/2016 submits that the court did not inform him of his right to legal assistance and did not offer him a counsel. The author of communication No. 2896/2016 claims that under domestic legislation, it was obligatory for him to be assisted by a counsel, notwithstanding his refusal to be represented by an attorney.

3.2 In addition, the author of communication No. 2896/2016 claims violations of articles 2 (3) and 14 (1) and (3) (d) of the Covenant due to absence of legal assistance at the cassation hearing.

State party's observations on admissibility and the merits

4.1 In notes verbales dated 16 February 2017 and 16 June 2017 (in respect of communication No. 2895/2016) and 21 February 2017 and 18 June 2017 (in respect of communication No. 2896/2016), the State party submitted its observations on the admissibility and the merits of the communications.

4.2 According to the information provided, article 51.1 (5) of the Criminal Procedure Code provides for the obligatory participation of a counsel in criminal proceedings if the accused is charged with a crime punishable by a sentence of over 15 years of imprisonment, life imprisonment or the death penalty. Under article 51.5 (1) and (5) of the Code, the presence of a counsel is obligatory if the suspect or the accused has not refused to be represented by a counsel under the procedure provided for by article 52 of the Code. According to article 47.2 of the Code, the same provision applies to convicts.

4.3 Following the coming into force of the Criminal Procedure Code on 1 July 2002, cassation jurisdictions interpreted its article 51 in conformity with its article 50.2, which

imposed on tribunals the obligation to appoint a counsel only at the request of the accused. Therefore, the absence of a counsel was interpreted as the lack of an expression of will for an appointed attorney to take part in the cassation proceedings.

4.4 On 8 February 2007, the Constitutional Court adopted several views (No. 252-O-P, No. 254-O-P and others) clarifying that article 51.1 of the Criminal Procedure Code could not be interpreted as allowing for a restriction of the right of the accused to professional legal assistance, and that, in the absence of refusal by the accused to be represented by a counsel, the cassation court was obliged to ensure the participation of a counsel in the hearing. A court was absolved of its obligation to appoint a counsel in cases where the accused explicitly waived his or her right to representation. Decisions of the Constitutional Court are not retroactive except in relation to the applicants and to legal decisions which have been adopted prior to the Court's decision but have not yet been implemented. The same rule applies to decisions of the Constitutional Court which, without finding a legal act incompatible with the Constitution, elicit its constitutional and legal meaning in a way that differs from its prior interpretation in the jurisprudence.

4.5 Decision No. 21 adopted by the Plenum of the Supreme Court on 27 June 2013 states that under article 17.2 of the Constitution, fundamental human rights and freedoms are inalienable and belong to every person from birth. However, an individual has a right to renounce the enjoyment of his or her rights and freedoms, including rights of a procedural nature. Such a waiver has to be clearly expressed and voluntary, and should not be incompatible with the legislation of the Russian Federation, with generally accepted principles and norms of international law and with international treaties that the Russian Federation is a party to. Expression of the will to renounce the enjoyment of one's rights and freedoms can be reflected in a written declaration, minutes or other documents included into the court case file.

4.6 Decision No. 29 adopted by the Plenum of the Supreme Court on 30 June 2015 clarifies that under article 51.1 of the Criminal Procedure Code, the participation of a counsel in criminal proceedings is obligatory unless the accused has waived it under article 52 of the Code, which allows the accused to forfeit his right to legal representation in writing, at any time in the criminal proceedings, regardless of the participation of the public prosecutor in the court hearing. The court has to ensure that the will of the accused not to be assisted by a counsel is expressed clearly and unequivocally. In a court of first instance, a waiver of counsel can only be accepted on the condition that the counsel's participation in the hearing is effectively ensured by the court. A waiver of counsel due to lack of financial means to pay for the attorney's services or due to the failure by a contracted or an appointed attorney to attend the hearing or a refusal from a particular attorney cannot be interpreted as a waiver of counsel under article 52 of the Criminal Procedure Code. The court has to substantiate its decision to accept the waiver of legal representation.

4.7 The State party also refers to the case law of the European Court of Human Rights, according to which "neither the letter nor the spirit of article 6 of the Convention prevents a person from waiving of his own free will, either expressly or tacitly, the entitlement to the guarantees of a fair trial … However, if it is to be effective for Convention purposes, a waiver of the right must be established in an unequivocal manner and be attended by minimum safeguards commensurate to its importance … A waiver of the right, once invoked, must not only be voluntary, but must also constitute a knowing and intelligent relinquishment of a right."[1]

Communication No. 2895/2016: A.K. v. Russian Federation

4.8 In relation to communication No. 2895/2016, the State party submits that the first time that the author claimed a violation of his right to defence was at the cassation appeal hearing on 30 March 2005 in his appeal to the Supreme Court for supervisory review lodged on 17 August 2011, that is, six years and four months after the alleged violation. His supervisory

[1] European Court of Human Rights, *Pishchalnikov v. Russia* (application No. 7025/04), judgment of 24 September 2009, para. 77; and European Court of Human Rights, Grand Chamber, *Sejdovic v. Italy* (application No. 56581/00), judgment of 1 March 2006, para. 86.

review appeal was rejected by a judge of the Supreme Court on 15 September 2011 and this decision was upheld by the Deputy Chairperson of the Supreme Court on 2 November 2011. His communication to the Committee was submitted on 10 August 2016, 11 years and four and a half months after the adoption of the cassation judgment of 30 March 2005 and five years after the rejection of his supervisory review appeal. He did not raise this violation in his appeal, against the verdict of 19 August 2005 and the cassation judgment of 30 March 2005, lodged with the Supreme Court in 2006. The State party concludes that the communication constitutes an abuse of the right of submission and should be declared inadmissible under article 3 of the Optional Protocol.

4.9 The State party also notes that views of the Constitutional Court (No. 252-O-P, No. 254-O-P and others adopted on 8 February 2007 and later) do not retroactively apply to the cassation appeal hearing in the author's case, which had taken place on 30 March 2005. Although the author requested to be personally present at the cassation appeal hearing, in his cassation appeal and the numerous supplements to it he did not request the appointment of a counsel. The counsel D., who had submitted a cassation appeal for the author, had been informed of the day, time and place of the hearing. The Criminal Procedure Code does not include an obligation for a court to ensure the presence at a hearing of a contracted counsel who has been duly informed of the date and time of the hearing. To the contrary, under article 376.4 of the Code, in force at the time of the facts, a failure by individuals who have been duly informed of the date, time and place of the hearing to attend the hearing does not create obstacles to the examination of a criminal case. The case file does not include information that would indicate that the author, who participated in the hearing via videoconference and was aware that his counsel was not present, requested that another counsel be appointed by the court or that the hearing be postponed. The State party concludes that no violations of the Covenant have been committed in relation to this author.

Communication No. 2896/2016: M.K. v. Russian Federation

4.10 Regarding communication No. 2896/2016, the State party notes that the author submitted a supervisory review appeal against the cassation judgment of 18 May 2009 to the Supreme Court on 15 January 2014, that is, four years and seven months after the adoption of the cassation judgment. The author complained to the Committee seven years and three months after the cassation judgment of 18 May 2009 and two years and seven months after the rejection of his supervisory review appeal by the Supreme Court on 29 January 2014.

4.11 In its decision of 29 January 2014 rejecting the author's supervisory review appeal, the Supreme Court established that the cassation hearing had been held due to cassation appeals submitted by the author and his attorney, N. The participants in the hearing were informed of their rights, including the right to legal assistance under articles 49 and 51 of the Criminal Procedure Code. The author, who attended the hearing via videoconference, stated that he understood his rights and agreed for the case to be examined in the absence of an attorney. Therefore, the author was aware of his right to legal assistance under articles 49 and 51 of the Criminal Code but unequivocally refused to exercise that right. The State party also submits that the counsel, N., contributed to the author's defence in the cassation jurisdiction. She studied the criminal case and drafted a cassation appeal, outlining arguments that were later examined by the court.

4.12 The State party concludes that the author's communication constitutes an abuse of the right of submission, clearly lacks substantiation and should be declared inadmissible under article 3 of the Optional Protocol. The State party also considers that it has not committed violations of domestic legislation and of the Covenant as claimed by the author.

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

5.1 In submissions dated 20 April 2017 and 30 August 2017 (in respect of communication No. 2895/2016) and 15 February 2017 (in respect of communication No. 2896/2016), the authors provided the following comments on the State party's observations.

Communication No. 2895/2016: A.K. v. Russian Federation

5.2 The author of communication No. 2895/2016 refutes the State party's argument that his communication constitutes an abuse of the right of submission. He points to the absence, at the time of the facts, of deadlines for supervisory review appeals against cassation judgments in domestic legislation. He refers to decision No. 317-P 13 of the Presidium of the Supreme Court, adopted on 2 April 2014, which recognized a violation of the right to defence in a cassation hearing following an appeal submitted six years after the violation. He argues that he had little legal knowledge at the time of the adoption of the cassation judgment of 30 March 2005 and had not been provided with renumerated work in the prison that would have allowed him to pay an attorney. He took time to educate himself and submitted the supervisory review appeal as soon as he understood the nature of the violation and the available legal remedies.

5.3 The author argues that the Covenant, the Optional Protocol and the Committee's rules of procedure do not require authors of individual communications to start actively defending and restoring their rights immediately after the violation. On the contrary, there is no deadline for submitting a communication in relation to the time of the violation, so long as it is lodged after the acceptance by the State party of the Committee's competence to consider individual communications.

5.4 Between 1 August 2011 and 10 August 2016, the author was exhausting domestic remedies in order to meet the Committee's admissibility criteria. He applied to all existing national human rights defence bodies, including the Ombudsperson for Human Rights, the Prosecutor General's Office and the Constitutional Court. His belief about his obligation to exhaust these remedies was reinforced by decisions of the Presidium of the Supreme Court, including decisions adopted in response to submissions of the Prosecutor General's Office, which had recognized violations of rights in similar cases (he refers to decisions adopted on 20 April 2005 and 25 July 2007). The author also refers to views No. 253-O-P of 8 February 2007 of the Constitutional Court, which resulted in restoration of the applicant's rights. Even if the Committee accepts the State party's argument that the final decision in his case was adopted on 15 September 2011 by the Supreme Court, his communication was still submitted within five years of the adoption of that decision.

5.5 Regarding the State party's reference to his supervisory review appeal against the cassation judgment of 30 March 2005 lodged with the Supreme Court in 2006, the author states that in this appeal, he asked for permission to attend the hearing in order to present his numerous arguments about violations committed in his criminal case. However, this appeal was not transmitted for consideration to the Court's Presidium. Aware of this practice, the author intentionally did not include in it a claim about violation of his right to defence, in order not to be later deprived of the possibility of claiming this violation separately, after thorough preparation.

5.6 In relation to the State party's argument that he did not request the appointment of a counsel, the author submits that the cassation jurisdiction was obliged to ensure the presence of a counsel notwithstanding any requests by the accused, as confirmed by the Plenum of the Supreme Court in its decisions No. 8 of 31 October 1995 and No. 1 of 5 March 2004. Regarding the State party's argument about there not being an indication in the case file that the author requested the court to appoint a counsel or to postpone the hearing, the author notes that this information is missing because the domestic legislation in force at the time of the facts did not provide for the taking of minutes in hearings of cassation jurisdictions. The author stresses that the cassation judgment of 30 March 2005 does not justify the restriction of his right to defence. The court did not attempt to clarify the reasons for the absence of his counsel, did not offer him another counsel and did not inform him of his right to a counsel. The case file does not contain any indication of express or tacit waiver of counsel by the author.

5.7 With regard to the State party's statement that views of the Constitutional Court adopted on 8 February 2007 and later do not retroactively apply to his case, the author notes that it appears from those views that the relevant provisions of the criminal procedure legislation do not violate the Constitution or the Covenant, which means that those provisions

imposed an obligation on cassation courts to ensure the participation of a counsel from the moment that they came into force on 1 July 2002.

5.8 In the light of these arguments, the author requests the Committee to declare his communication admissible, to recognize the alleged violations of the Covenant, and to recommend that the State party quash the judgment adopted on 30 March 2005 by the Judicial Panel on Criminal Affairs of the Supreme Court and order a re-examination of his criminal case in a court of second instance with guarantees of effective remedies.

Communication No. 2896/2016: M.K. v. Russian Federation

5.9 The author of communication No. 2896/2016 requests the Committee to recommend that the State party quash the judgment adopted on 18 May 2009 by the Judicial Panel on Criminal Affairs of the Supreme Court, hold a new hearing in conformity with guarantees of effective remedies, and provide the author with just compensation.

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 domestic remedies attempted by the authors before submitting their communications. In the absence of any objection by the State party in relation to the exhaustion of domestic remedies, the Committee considers that the requirements of article 5 (2) (b) of the Optional Protocol have been met.

6.4 The Committee takes note of the State party's argument that communication No. 2895/2016 should be considered inadmissible for abuse of the right of submission under article 3 of the Optional Protocol due to the delay at the national level between the alleged violation on 30 March 2005 and the author's first attempt to challenge it at the domestic level on 17 August 2011, as well as the long delays between the alleged violation in 2005 and the submission of the communication to the Committee on 10 August 2016, and between the final judicial decision rejecting the author's claims adopted by the Deputy Chairperson of the Supreme Court on 2 November 2011 and the submission of the communication on 10 August 2016. The Committee takes note of the arguments provided by the author to justify these delays, including his legal illiteracy, his lack of means to hire a professional counsel, and his attempts to exhaust other domestic remedies available for human rights protection, including the Prosecutor General's Office, the Constitutional Court and the Ombudsperson for Human Rights.

6.5 The Committee takes note of the State party's argument that communication No. 2896/2016 should also be considered inadmissible for abuse of the right of submission under article 3 of the Optional Protocol due to the delays at the national level between the alleged violation on 18 May 2009 and the author's first attempt to challenge it at the domestic level on 15 January 2014, and to the long delays between the alleged violation in 2009 and the submission of the communication to the Committee on 20 July 2016, and between the decision of the Supreme Court on the author's supervisory review appeal on 29 January 2014 (upheld on 10 March 2015 by the Deputy Chairperson of the Supreme Court) and the submission of the communication on 20 July 2016. The Committee notes that the author does not challenge these arguments.

6.6 The Committee notes that there are no fixed time limits for the submission of communications under the Optional Protocol and that mere delay in submission does not of

itself involve abuse of the right to submit a communication.[2] However, in certain circumstances, the Committee expects a reasonable explanation justifying a delay.[3] In addition, according to rule 99 (c) of its rules of procedure,[4] 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 after the conclusion of another procedure of international investigation or settlement, unless there are reasons justifying the delay, taking into account all the circumstances of the communication.[5]

6.7 At the same time, the Committee notes that, especially where time is of the essence in resolving a case, the author generally bears the burden in ensuring that his or her claims are raised with the necessary expedition to ensure that they may be properly and fairly resolved. The Committee also notes that it is best for an author if his or her claims are filed with the national authorities for consideration as soon as possible, so as to enable the authorities to respond in a timely manner to any alleged human rights violations. While it is essential for the efficacy of the protection system under the Covenant that a State party meet its international legal obligations in good faith, demonstration by authors of due diligence and initiative in the protection of their rights generally contributes to avoiding excessive or unexplained delays in the administration of justice and the enforcement of the rights protected under the Covenant.[6]

6.8 In the present case, the Committee observes that the communications were submitted eleven years (No. 2895/2016) and seven years (No. 2896/2016) after the authors' final convictions by the Judicial Panel on Criminal Affairs of the Supreme Court. While noting that the authors justify these delays with references to the supervisory review appeals that they lodged with the Supreme Court and prosecutorial authorities, as well as, in the case of communication No. 2895/2016, to complaints submitted to the Constitutional Court and the Ombudsperson for Human Rights, the Committee does not consider the pursuit of such extraordinary review proceedings to be in itself a convincing justification for the delay in submitting the communications, given that the authors' sentences became final and executable on 30 March 2005 and 18 May 2009 respectively. The Committee also notes in this regard that the Constitutional Court and the Ombudsperson for Human Rights have no competence to review sentences or any other court decisions adopted in criminal cases.[7]

6.9 Even supposing, as suggested in communication No. 2895/2016, that supervisory review proceedings and constitutional complaints may have been effective in some similar cases, there is nothing in the submissions to suggest that the authors – who waited for six years (communication No. 2895/2016) and nearly five years (communication No. 2896/2016) to challenge the alleged violations at the national level – demonstrated due diligence and initiative in pursuing their claims regarding the protection of their human rights. The Committee observes that the authors provide no persuasive explanations as to why they were unable to bring their claims before the domestic authorities during these lengthy periods. The claims by the author of communication No. 2895/2016 about his legal illiteracy and lack of awareness of his rights remain vague and general in nature. In this connection, the Committee observes that notwithstanding his claims, the author was indeed able to prepare a cassation appeal, separate from the one submitted by his lawyer,[8] and a supervisory review appeal, to the Supreme Court.

6.10 The Committee thus considers that the authors have failed to provide convincing reasons to justify the lengthy delays in raising the alleged violations before the national authorities, and in the submission of their communications to the Committee. In the absence of any other information or explanation of pertinence in both files, the Committee considers

[2] *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.
[3] *Gobin v. Mauritius* (CCPR/C/72/D/787/1997), para. 6.3.
[4] See CCPR/C/3/Rev.12 (of 4 January 2021). At the time of submission of the communications, the same rule was enshrined in rule 96 (c) of the rules of procedure.
[5] See CCPR/C/3/Rev.10 (of 1 January 2012).
[6] *M.R. v. Russian Federation* (CCPR/C/129/D/2427/2014), para. 8.6.
[7] *O.D. v. Russian Federation* (CCPR/C/131/D/2578/2015), para. 10.4.
[8] *M.R. v. Russian Federation*, para. 8.7.

that the two communications constitute an abuse of the right of submission and declares them inadmissible under article 3 of the Optional Protocol.

6.11 Having reached this conclusion, the Committee decides not to examine any other admissibility grounds.

7. The Committee therefore decides:

(a) That the communications are inadmissible under article 3 of the Optional Protocol;

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