



International Covenant on Civil and Political Rights

Distr.: General
18 December 2023

Original: English

Human Rights Committee

Decision adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communications No. 2964/2017*, **

<i>Communication submitted by:</i>	A.A. (not represented)
<i>Alleged victim:</i>	The author
<i>State party:</i>	The Russian Federation
<i>Dates of communications:</i>	13 January 2017
<i>Document references:</i>	Decisions taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 7 March 2017
<i>Date of adoption of decision:</i>	31 October 2023
<i>Subject matter:</i>	Fair trial
<i>Procedural issue:</i>	Exhaustion of domestic remedies; substantiation of claims
<i>Substantive issues:</i>	Right to defence; right to an interpreter; right to question witnesses; right to compensation; right to be informed of the nature and cause of the charge; right to preparation of defence; right to a fair trial.
<i>Articles of the Covenant:</i>	14 (1), (3) (a), (b), (e) and (f), (5) and (6)
<i>Articles of the Optional Protocol:</i>	2 and 5

1. The author of the communication, dated 13 January 2017, is A.A., a Russian national, born on 20 August 1964 in Azerbaijan and of Azeri ethnicity, currently serving a prison sentence in a State penitentiary colony in the Russian Federation. He claims to be a victim of violation by the Russian Federation of his rights under articles 14 (1), (3) (a), (b), (e) and (f), (5) and (6) of the Covenant. The Optional Protocol entered into force for the Russian Federation on 1 October 1991. The author is not represented by counsel.

* Adopted by the Committee at its 139th session (9 October–3 November 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, Tijana Šurlan, Kobauyah Kpatcha Tchamdja, Teraya Koji, Imeru Tamerat Yigezu.



Facts as submitted by the author

2.1 On 18 January 2011, the city court of Nadym, Russian Federation, found the author, along with his co-defendants, guilty of three counts of a crime under article 163.3 of the Criminal Code, namely extortion committed by a group, and sentenced him to 15 years' imprisonment. In the same judgment, the court acquitted him of charges relating to article 119 (1) (threat of homicide) and article 167 (1) (damage to property) owing to lack of evidence.

2.2 In his cassation appeal, the author maintained that he was innocent, arguing that the charges against him were fabricated.¹ He also claimed that the court had denied his requests to summon witnesses and question particular victims and witnesses regarding one criminal charge,² that part of the court hearing took place in his absence³ and that he was not provided with an interpreter. He also pointed out additional breaches of the domestic criminal procedure⁴ and alleged that the head of a temporary detention facility had applied undue pressure on him, forcing him to withdraw his requests to summon witnesses and victims.⁵ He claimed that the conduct of the trial was accusatory and biased against him. He also mentioned that some witnesses had changed their testimonies from those given during the pretrial investigation, but the court refused to take those changes into account.

2.3 His cassation appeal was rejected on 26 May 2011 by the Judicial Board in Criminal Matters of the Court of the Yamalo-Nenets Autonomous Region. In its decision, the court acknowledged that it was unable to ensure the appearance of one of the victims and two witnesses. However, exhaustive measures were taken to summon them. The court issued five orders requiring the presence of Mr. A., Mr. G. and Ms. G.,⁶ and initiated three searches in an attempt to guarantee their attendance. Despite these efforts, they did not appear in court. Given that victim Mr. A., who purportedly feared retaliation from the author, had left the country for an indefinite period and considering claims that Mr. G. and Ms. G. had been put under pressure by the defendant's relatives, the court decided to rely on the testimonies they had given during the pretrial investigation.

2.4 While assessing the legality of this decision in terms of its compliance with the right of convicted persons to a fair trial,⁷ the court considered that the author had had the opportunity to protect his interests, as provided for in law, including by challenging the testimony of the witnesses and victim and their verification through other evidence. In addition, the court established that, despite the significance of the testimonies of Mr. A., Mr. G. and Ms. G., the court found that the restriction of the defendant's right to question the victim and witnesses did not affect the legality, validity or fairness of the judgment. Besides the testimonies of Mr. A., Mr. G. and Ms. G., given during the preliminary investigation, the court relied on the statements of Mr. A.'s brothers and the testimony of a witness, who, however, did not see the offence being committed. Having examined the author's claims of the violation of his right to have the assistance of an interpreter, the court found them unsubstantiated, as the author explained that he had been living in the Russian Federation for 25 years and spoke Russian. As to the author's claims that part of the court hearing was held in his absence, the court found them unfounded, as the author had violated the court's order, according to the trial transcript, by talking to other convicted persons, refusing to participate in the court hearing, loudly expressing dissatisfaction with the actions of the court and not

¹ A cassation appeal is an old legal procedure, applied before 2012, which was de facto used to replace a court of appeal.

² Mr. A., Mr. G., and Ms. G., based on the fact that they failed to appear in court despite numerous subpoenas.

³ The author was removed from the courtroom for two days for allegedly violating the procedural order (talking loudly, etc). He was brought back when he promised to refrain from violating the order, but he missed some part of the hearing. The author did not challenge the conclusion that had he violated the order. There is no information as to whether the author challenged his removal.

⁴ An identity parade was conducted but using only photographs.

⁵ The author did not substantiate this allegation and it is not mentioned again.

⁶ Mr. A. was the person whose application led to the opening of a criminal case against the author. He, Mr. G. and Ms. G. were the main witnesses of the episode in question.

⁷ In the context of article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights).

responding to the court's warnings. The court concluded that the author had been lawfully removed from the courtroom on 27 and 28 September 2010 and brought back after he promised not to violate the court's order again. Meanwhile, the court excluded from judgment the reference to the testimonies of the three prosecution witnesses and the reference to the identity parade in which the author had participated and in which only photographs were used, which did not comply with the requirements of the new Code of Criminal Procedure. The author's actions were categorized according to similar provisions under the new legislation, which, however, did not affect the remainder of the sentence.

2.5 Subsequently, the author lodged an appeal to the Yamalo-Nenetsky Regional Court for a supervisory review, challenging the court's conclusion of his guilt, along with some factual circumstances on which the decisions of the previous courts had been based.⁸ The author also reiterated his claims about the absence of an interpreter and introduced new claims that the testimony of Mr. G. had been read out without the consent of the prosecution or the defence and that he had been denied access to his criminal file.⁹ On 19 December 2011, the author's appeal was dismissed.

2.6 Thereafter, the author filed another supervisory review appeal to the Supreme Court of the Russian Federation, reiterating his claim about the absence of an interpreter and arguing that the decisions of the previous courts were unfounded, as the lower court's findings of guilt did not correspond to the circumstances of the case. He also maintained that he had been denied access to his criminal file.

2.7 On 28 June 2012, the Supreme Court, sitting as a single judge, rejected the author's supervisory appeal. In justifying its decision, the court held that the author's guilt was corroborated by the body of evidence and that his arguments had been properly examined by the lower courts.

2.8 Without contesting the factual circumstances of the case¹⁰ the author appealed that decision to the Judicial Board in Criminal Matters of the Supreme Court. On 6 June 2013, the court granted the author's appeal and ruled to reduce his sentence by one year.

2.9 The author then lodged a supervisory review appeal with the Chair of the Supreme Court, claiming that his sentence had been insufficiently reduced. That appeal was dismissed as unfounded on 30 September 2013.¹¹ Subsequently, the author lodged a complaint before the European Court of Human Rights, but his application was declared inadmissible on 17 November 2016.¹²

2.10 In the meantime, the author explains that initially he was charged with nine crimes, but subsequently the prosecution dropped four charges and the court acquitted him of three charges under articles 119 and 167 of the Criminal Code. Consequently, he filed a civil lawsuit, requesting compensation for being wrongly accused. On 3 April 2012, the Nadym City Court issued a decision granting him 30,000 Russian roubles¹³ for non-pecuniary damages. However, the author states that the compensation has never been paid.¹⁴

Complaint

3.1 The author contends that he was denied access to the case file following the conclusion of the investigation. During the trial, the court rejected his requests to summon witnesses and

⁸ The author argues that the exclusion of part of the charges from the decision set down by the previous court proves his innocence.

⁹ Without, however, any further substantiation.

¹⁰ According to the Russian legislation in force at that time, as well as now, a supervisory instance can only consider issues of fundamental violations of substantive law. Thus, at this stage of supervisory review proceedings, only points of law can be appealed.

¹¹ The author's trial took place during a period of reform of the judicial system of the Russian Federation, so in his case there was no appeal but there were many supervisory review proceedings.

¹² A copy of the decision is provided. The application was rejected for not meeting admissibility criteria under articles 34 and 35 of the European Convention on Human Rights, without further specification.

¹³ Approximately \$1,000.

¹⁴ The author did not exhaust domestic remedies regarding this claim and did not elaborate on it any further.

question the alleged victims. In addition he states that, despite his limited proficiency in Russian and repeated requests, he was not provided with an interpreter and a part of the court hearing took place in his absence. He also asserts that he was unable to cross-examine key witnesses and that the courts did not take into account the circumstances established in the judgment of the Nady City Court, dated 9 March 2010, against Mr. A., who later became one of the victims in the present criminal case. According to the author, these factors demonstrate a bias in favour of the prosecution on the part of the courts.¹⁵

3.2 The author further contends that his conviction relied heavily and almost exclusively on the testimony of the victims in general and, in particular, that of Mr. A., and the witnesses, Mr. G. and Ms. G., whom he did not have the opportunity to cross-examine. He also emphasizes that certain witnesses¹⁶ altered the statements they had made during the pretrial investigation, which the court disregarded.

3.3 In addition, the author complains about a poor connection during the court session of the Judicial Board in Criminal Matters of the Supreme Court, which was held by videoconference. He alleges that this session concluded within five minutes.

3.4 Based on the issues set out above, the author claims to be a victim of violations by the Russian Federation of his rights under article 14 (1), (3) (a), (b), (e) and (f), (5) and (6) of the Covenant.

State party's observations on admissibility and the merits

4.1 On 22 August 2017, the State party submitted its observations on the admissibility and merits of the communication. Regarding admissibility, the State party presented the following arguments. With reference to the Committee's Views in *José Antonio Cañada Mora v. Spain*,¹⁷ the State party emphasizes that the assessment of facts and evidence and the application of domestic law fall within the competence of the domestic courts, unless it is shown that such assessment or application was manifestly arbitrary or amounted to a manifest error or denial of justice. The State party notes the author's allegations that his criminal case was fabricated and points out that these claims relate to a disagreement with the assessment of factual circumstances made by the courts of the Russian Federation. However, it does not appear from the materials submitted that the assessment was manifestly arbitrary or amounted to a manifest error or denial of justice. Thus, the author's claims in respect of the alleged falsification of the criminal case file are manifestly ill-founded and should be declared inadmissible under article 1 of the Optional Protocol.

4.2 According to his cassation appeal to the Yamalo-Nenetsky Regional Court of 26 May 2011, the author claimed that the criminal case file was fabricated; that there had been a lack of due process, as the court had refused to summon witnesses; that the trial had started in his absence; and that there had been no interpreter to assist him during the proceedings. In his subsequent appeal for a supervisory review to a judge of the Yamalo-Nenetsky Regional Court, the author raised additional claims, citing the alleged unlawfulness and unreasonableness of the prior judgments; one of the victim's prolonged failure to contact the law enforcement authorities after the alleged crime;¹⁸ the exclusion of the testimony of one of the witnesses from the evidence; the contradictory testimony of victim Mr. M.; the refusal of the State Prosecutor to dismiss part of the charges; the disclosure of the victims' testimony in breach of article 281 of the Code of Criminal Procedure of the Russian Federation; and the interrogation of the witnesses Mr. G. and Ms. G. by an unauthorized person. In addition, as in his earlier cassation appeal, the author reiterated the alleged violation of his right to have an interpreter present.

4.3 In his (initial) appeal to the Supreme Court of the Russian Federation for a supervisory review,¹⁹ the author again raised the alleged falsification of the criminal case, the substantial

¹⁵ Many of the claims that the author raises in the communication were not exhausted in, or even mentioned before, the domestic courts.

¹⁶ The author mentions five witnesses other than Mr. G. and Ms. G.

¹⁷ *José Antonio Cañada Mora v. Spain* (CCPR/C/112/D/2070/2011), para. 4.3.

¹⁸ The victim in the first phase of the crime (extortion).

¹⁹ Decision of the Supreme Court of 28 June 2012.

discrepancy between the findings of the court and the factual circumstances of the case, and the unreliability of the testimony given by victim Mr. M.²⁰ In addition, in this complaint the author invoked new arguments he had not raised before: the alleged unreliability of the testimony of the victims Mr. A. and Mr. A.B. and the witnesses Mr. G. and Ms. G.; the alleged absence of access to the materials of the criminal case;²¹ the transcript of the trial being written at the judge's dictation; and the non-compliance of the transcript with the requirements of the procedural legislation. The State party also notes that the author, despite having such an opportunity, did not challenge the factual circumstances of the case in his subsequent appeal for a supervisory review on 6 June 2013, but merely expressed disagreement with the decision of the cassation court not to further reduce his sentence. Similarly, it follows from the text of the Supreme Court judge's decision of 30 September 2013 that, in his appeal for a supervisory review, the author referred solely to the insufficient reduction of his sentence by the court, without challenging the factual circumstances of the case. The State party therefore contends that the author abused his right to submit a communication to the Human Rights Committee because of his inconsistent position during the cassation and supervisory review appeals. Thus, the author's claims regarding the alleged falsification of his criminal case are inadmissible under article 3 of the Optional Protocol.

4.4 Regarding the alleged violation of the author's right to an impartial trial under article 14 (1) of the Covenant, the State party notes that, according to the Committee's jurisprudence, the requirement of impartiality has two aspects: first, judges must not allow their decisions to be influenced by personal interest in the outcome of a case, must not be biased and must not act in a way that unduly favours the interests of one party to the detriment of the other;²² and second, the court must also appear to be impartial in the eyes of a reasonable observer.²³ The State party therefore submits that it does not appear from the material available that there has been a violation of the objective or subjective aspects of judicial impartiality in the criminal proceedings against the author. In that regard, it explains that the refusal by the courts to grant the author's appeals that are highlighted in his communication cannot in and of itself indicate a lack of impartiality of the courts. The State party also points out that in his supervisory appeals to the Yamalo-Nenetsky Regional Court and the Supreme Court of the Russian Federation, the author did not refer to the alleged violation of his right to an impartial trial. Thus, this part of the author's communication is manifestly ill-founded and should be declared inadmissible under article 1 of the Optional Protocol.

4.5 With regard to the alleged violation of the author's right to have access to the case file under article 14 (3) (a) of the Covenant, the State party indicates that, in accordance with article 125 (1) of the Code of Criminal Procedure, certain decisions made during the initial inquiry or investigation, such as a refusal to initiate criminal proceedings or the termination of ongoing cases, along with other actions or omissions by the various authorities involved (including investigators and prosecutors), that have the potential to infringe upon the constitutional rights and freedoms of those involved in criminal proceedings or impede citizen access to case records, are subject to appeal to the courts. However, it does not appear from the author's complaint to the Human Rights Committee that he availed himself of that right. Consequently, the author abused his right to submit a communication to the Human Rights Committee and, therefore, this part of the communication should be declared inadmissible under article 3 of the Optional Protocol.

4.6 Referring to the author's claims under article 14 (3) (e) of the Covenant, the State party notes that in his cassation and supervisory appeals, the author did not raise the alleged violation of the right to a fair trial in connection with the interrogation of victims while he was not present in the courtroom. Thus, in the State party's view, this part of the communication should be considered inadmissible under article 5 (2) (b) of the Optional Protocol owing to non-exhaustion of domestic remedies.

²⁰ Mr. M. is a victim in the second phase of the extortion.

²¹ In accordance with article 217 of the Code of Criminal Procedure.

²² *Karttunen v. Finland* (CCPR/C/46/D/387/1989), para. 7.2.

²³ Human Rights Committee, general comment No. 32 (2007), para. 21.

4.7 Concerning the alleged violation of the author's right to have an interpreter present, as provided under article 14 (3) (f) of the Covenant, the State party refers to the Committee's general comment No. 32 (2007), according to which persons charged with a criminal offence whose mother tongue is different from the official language used in court are not in principle entitled to the free assistance of an interpreter if they know the official language sufficiently well to defend themselves effectively (para. 40). According to the present communication, the author worked as a director of a restaurant, Lankom 2, has been living in Russia for 25 years and speaks Russian. Moreover, according to the materials submitted, the author handwrote the text of his communication to the Human Rights Committee in Russian. These circumstances indicate that he has sufficient knowledge of the Russian language to effectively conduct his defence without an interpreter. Therefore, this part of the author's communication is manifestly ill-founded and should be declared inadmissible under article 1 of the Optional Protocol.

4.8 The State party observes that the author claimed that the connection during his supervisory review appeal on 6 June 2013 by videoconference was inadequate, the time of his appearance in court was short, and the court did not respond to all his arguments. In that regard, the State party points out that those claims are not supported by any evidence. As it appears from the trial transcript, the author did not draw attention to the quality of communication or to other points and did not make any comments in that regard during the proceedings.²⁴ Furthermore, the author did not raise these claims in his subsequent supervisory complaint to the Chair of the Supreme Court. Thus, this part of the author's communication is manifestly ill-founded and should be declared inadmissible under article 1 of the Optional Protocol. The State party also emphasizes that the author's complaint to the European Court of Human Rights was declared inadmissible on similar grounds.

4.9 Regarding the merits of the communication, the State party contends that the author's rights under article 14 (3) (a) of the Covenant have not been violated, as he had access to the materials of the criminal case, which is confirmed by the materials of the case itself. As to the author's claim under article 14 (3) (f), the State reiterates its previously expressed position that the author's claim is groundless. The State party adds that it has done everything within its power to ensure the author's rights under article 14 (3) (e) by issuing multiple summonses to witnesses Mr. G. and Ms. G. and victim Mr. A. and by taking decisions on their compulsory appearance. The State party points out that the author was given an opportunity to defend his interests in court by all the means provided for by law, including challenging the testimony given and verifying it by means of other testimony. The State party argues that the author's claims under article 14 (5) are unfounded, as his criminal case was considered by the court of first instance and the appeal and cassation courts.

4.10 In addition, the State party contends that the author's claim under 14 (6) of the Covenant, is also groundless since, according to the decision of the Nadym City Court of 3 April 2012, he was awarded compensation for non-pecuniary damages in relation to the criminal charges that had been dismissed.

4.11 The State party, therefore, considers that the author's rights under article 14 have not been violated, as his rights to a fair trial were upheld.

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

5.1 On 10 October 2017, the author submitted his comments on the State party's observations. The author claims that the State party deliberately ignored the documents submitted by him proving the falsification of materials in his case. The author refers to a copy of the decision of the magistrate at the Nadym City Court, dated 9 March 2010, whereby Mr. A. was found guilty of assaulting one of the author's co-defendants. In that decision, it was established that Mr. A. came to the restaurant belonging to the author, provoked a quarrel and physically assaulted one of the author's co-defendants. However, during the examination of the criminal case, in violation of the principle of *res judicata*, the court of first instance interpreted the same events in a completely different manner, in favour of the prosecution.

²⁴ The Secretariat was not provided with copies of the transcripts.

5.2 Regarding the State party's contention that the author presents different arguments in different instances, he submits that this is not contrary to Russian legislation. The author points out that in the cassation ruling of 26 May 2011, he had already provided arguments showing that his sentence was unlawful.

5.3 He further asserts that the State party's reference to the Committee's decision in the case of *José Antonio Cañada Mora v. Spain* confirms precisely his position that the assessment of the facts and evidence made by the Russian courts was manifestly arbitrary and amounted to an error.

5.4 The author strongly disputes the State party's assertion that he had access to his criminal case file and the records of the court hearing. In that regard, he contends that the State purposely disregarded the letter the judge addressed to the head of the detention centre asking for the criminal case materials to be taken away from the author.

5.5 With regard to the right to question victims and witnesses, the author submits that the State party's response was limited to the observation that he had not raised that violation before the cassation and supervisory instances without, however, denying the fact that the violation of his right had taken place.

5.6 In relation to the right to receive the free assistance of an interpreter, while the author acknowledges that his knowledge of Russian is sufficient for everyday life, he points out that there is a significant difference between daily communication and knowledge of legal language and therefore he needed an interpreter. The author also explains that his complaint to the Committee was not written by himself but by another prisoner, with his assistance.

5.7 The author states that he has nothing to add to his previous statement regarding the poor technical quality of the videoconference during the examination of his supervisory review appeal on 6 June 2013 by the Supreme Court and reiterates that the hearing lasted at most five minutes.

5.8 The author also contends that the State party failed to prove his guilt for the crimes for which he was convicted and points out the significant contradictions in the testimonies of witnesses and the change of testimony made by many of them, which the courts, however, failed to take into consideration.

5.9 In his additional submission, received on 10 November 2017, the author enclosed a copy of a communication from the Ministry of Finance of the Russian Federation, in which he was asked for several documents to enable the payment for non-pecuniary damages to be made. Those documents include writs of execution, court orders and a court decision to restore the missed deadline for the submission of enforcement documents. However, the author alleges that he has already submitted all those documents several times and has yet to receive payment, which, in his view, amounts to a violation of article 14 of the Covenant.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claims 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 notes that the author's complaint to the European Court of Human Rights was found to be manifestly ill-founded and declared inadmissible on 17 November 2016. 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 allegations that his rights under article 14 (1) of the Covenant have been violated, because his criminal case was fabricated, the court took the side of the prosecution and failed to consider the testimonies of several witnesses, who later altered their accounts in favour of the author. In addition, the author complains that he was absent from the courtroom during a part of the hearing and that the connection was of

poor technical quality during the videoconference session of the Judicial Board in Criminal Matters of the Supreme Court.

6.4 Regarding the author's claims that his criminal case was fabricated, the Committee notes the author's arguments that the State party ignored the decision of the magistrate at the Nady City Court, dated 9 March 2010. In that decision, the court had found the victim, Mr. A., guilty of assaulting one of the author's co-defendants and interpreted the factual circumstances differently from the way in which they were later used to convict the author. The author further claims that the courts failed to consider the testimonies of several witnesses, who later altered their accounts, taking the side of the prosecution, although they had initially been in his favour. The Committee takes note of the State party's assertion that the subject matter of the allegations relates in substance to the evaluation of facts and evidence in the course of proceedings in the Russian courts. In addition, the State party submits that both the objective and subjective aspects of judicial impartiality in the criminal proceedings against the author were ensured and contends that the author's inconsistent position in appealing his sentence amounts to an abuse of the right of submission under article 3 of the Optional Protocol. In that regard, the Committee, referring to its general comment No. 32 (2007) and its jurisprudence, emphasizes that article 14 (1) guarantees procedural equality and fairness only and cannot be interpreted as ensuring the absence of error on the part of the competent tribunal.²⁵ The Committee further recalls that it is generally incumbent on the courts of States parties to evaluate the facts and evidence in a particular case, unless it can be ascertained that the evaluation was clearly arbitrary or amounted to a denial of justice.²⁶ The present communication, however, does not contain any elements to demonstrate that the court proceedings suffered from such defects. In that regard, the Committee observes that the domestic courts duly examined the author's complaints about the alleged fabrication of his case, the prosecution dropped four charges and the court acquitted him of three and later reduced his sentence by one year in accordance with the new legislation. In addition, the Committee notes that the author failed to substantiate why he claimed that the Nady City Court should take into account the circumstances relating to another case. Accordingly, the Committee considers that the requirements of article 2 of the Optional Protocol are not satisfied and the Committee is therefore precluded from considering these allegations on the merits.

6.5 As to the author's allegations that he was absent from the courtroom during part of the hearing, the Committee takes note of the explanation provided by the Nady City Court that the author was temporarily removed from the courtroom for two days, due to his repeated violations of the court's order, and was brought back after promising not to violate the court's order again. The Committee observes that this information was not challenged by the author. In the absence of any further pertinent information or explanations on file, the Committee considers that the author has failed to sufficiently substantiate these allegations for the purposes of admissibility. Accordingly, it declares this part of the communication inadmissible under article 2 of the Optional Protocol.

6.6 The Committee takes note of the author's claims regarding the poor technical connection and the brevity of the session of the Judicial Board in Criminal Matters of the Supreme Court of 6 June 2013, which was conducted by videoconference. The Committee also notes the State party's arguments that these claims are not supported by any evidence and that the author failed to raise them before the national courts. In that regard, the Committee observes that the material before it does not contain information to the effect that the respective claims were raised by the author before the competent domestic authorities and courts. In the absence of further information, the Committee is unable to establish whether those claims were raised before the domestic courts and therefore considers that it is precluded by article 5 (2) (b) of the Optional Protocol from considering this part of the communication.

²⁵ *B.d.B. et al. v. The Netherlands*, communication No. 273/1988, para. 6.3, and *Martínez Mercader, Fajardo Monreal and Orenes v. Spain* (CCPR/C/84/D/1097/2002) para. 6.3.

²⁶ *Linton v. Jamaica*, (CCPR/C/46/D/255/1987), para. 8.3, and *Abdiev v. Kyrgyzstan* (CCPR/C/124/D/2892/2016), para. 8.

6.7 The Committee further notes the author's claim under article 14 (3) (a) of the Covenant that he was denied access to the materials of his criminal case and the records of the court hearing. At the same time, the Committee observes the State party's argument that the author has not exhausted domestic remedies with regard to these claims. The Committee, referring to the case file, notes that the first time the author raised this claim was during the supervisory review proceedings at the Yamalo-Nenetsky Regional Court. In that regard, the Committee recalls its previous jurisprudence, according to which supervisory review procedures against court decisions that have entered into force constitute an extraordinary means of appeal dependent on the discretionary power of a judge or prosecutor.²⁷ When such a review takes place, it is limited to issues of law only and does not permit any review of the facts or evidence. In such circumstances, the Committee concludes that the author's supervisory review appeals are not to be considered an effective domestic remedy. Consequently, the Committee finds that the author failed to exhaust domestic remedies by not raising these claims in previous instances. The Committee therefore considers that the requirements of article 5 (2) (b) of the Optional Protocol have not been met and declares this part of the communication inadmissible.

6.8 The Committee further takes note of the fact that the author claims a violation of his rights under article 14 (3) (b) of the Covenant without providing more information and details. The Committee thus considers the author's claims not sufficiently substantiated for the purposes of admissibility and, in the absence of any further information on file, declares this part of the communication inadmissible pursuant to article 2 of the Optional Protocol.

6.9 As to the author's claims of the alleged violation of article 14 (3) (e) of the Covenant, the Committee takes note of the State party's assertion that the author did not complain about a violation of the right to a fair trial in connection with the interrogation of victim Mr. A. and witnesses Mr. G. and Ms. G. in the cassation and supervisory review instances, and therefore has not exhausted all domestic remedies. In that regard, the Committee notes that according to the information in the case file, the author raised these issues in his cassation appeal, thus exhausting domestic remedies. The Committee further notes the State party's arguments about the extensive measures it has taken to secure the appearance of victim Mr. A. and witnesses Mr. G. and Ms. G., and about the existence of other means of defending the author's rights, such as challenging the testimony of the victim and the witnesses, or their verification through other evidence, of which the author has availed himself. Regarding the opportunity to compel the attendance of witnesses and to examine and cross-examine them, the Committee recalls its general comment No. 32 (2007), in which it emphasized that this guarantee is important for ensuring an effective defence by the accused and his or her counsel. As an application of the principle of equality of arms, it guarantees that the accused has the same legal powers of compelling the attendance of witnesses and of examining or cross-examining any witnesses that are available to the prosecution (para. 39). The Committee also notes, however, that the right of the accused to examine witnesses on his or her own behalf is not absolute. The accused only has the right to have those witnesses admitted who are relevant for the defence and the right to be given a proper opportunity to question and challenge the witnesses testifying against him or her at some stage of the proceedings.²⁸ In the present case, according to the domestic legislation, in exceptional circumstances it is possible for the court to rely on evidence given at the stage of a preliminary investigation by witnesses who do not appear in court, if the court considers the reasons for their non-appearance indicative. The decision is left to the court's discretion. During the preliminary investigation, the author had an adequate and proper opportunity to challenge the testimonies of both the victim and the witnesses. Those testimonies were thus not new to him. The Committee notes the strong procedural safeguards provided to the author during the criminal proceedings against him and that the trial, judged as a whole, was fair. The Committee also takes into account the domestic court's explanations that victim Mr. A. had left the country for an indefinite period, fearing retaliation by the author, and that Mr. G. and Ms. G. had been put under pressure by the defendants' relatives, which was the reason for their non-attendance in court. In that regard, the Committee notes that the court made all

²⁷ *S.P. v. Russian Federation* (CCPR/C/118/D/2152/2012), para. 11.5.

²⁸ *Allaberdiev v. Uzbekistan* (CCPR/C/119/D/2555/2015), para. 8.8, and *Y.M. v. Russian Federation*, (CCPR/C/116/D/2059/2011), para. 9.9.

reasonable efforts to secure their presence, with the help of the domestic authorities, including the police. The court of cassation relied on evidence other than the testimonies of the victim and witnesses, namely the testimonies of relatives of the victim and an individual who witnessed a discussion between the author and the victim. The untested evidence was thus supported by corroborative evidence that the court considered to be strong. In the present case, the Committee notes that the author has failed to provide a precise explanation as to how the cross-examination of victim Mr. A. and witnesses Mr. G. and Ms. G. was relevant for his defence and/or could have potentially impacted the proceedings. In the absence of any further information or explanations from the author, the Committee considers that the author has failed to sufficiently substantiate these allegations for the purposes of admissibility. Accordingly, it declares this part of the communication inadmissible under article 2 of the Optional Protocol.

6.10 The Committee further notes the author's claims under 14 (3) (f) of the Covenant, which he justifies by the fact that he is a foreigner and not able to understand the Russian legal terms used in the proceedings. The Committee also notes the State party's observations that the author has lived in Russia for 25 years, worked as a director of his own catering business, has sufficient knowledge of Russian and, consequently, was not entitled to have an interpreter present. In that respect, the Committee, relying on paragraph 40 of its general comment No. 32 (2007), recalls that the right to have the free assistance of an interpreter if the accused cannot understand or speak the language used in court applies to aliens as well as to nationals. In that regard, the Committee recalls its jurisprudence that accused persons whose mother tongue differs from the official court language are, in principle, not entitled to the free assistance of an interpreter if they know the official language sufficiently to defend themselves effectively.²⁹ The Committee observes that the author has admitted that he speaks Russian and has been living and working in the Russian Federation for many years. The Committee further notes that during the legal proceedings he was represented by counsel, whom he could have consulted if he had any questions. In addition, the Committee notes that the author has not provided sufficient detail as to what he was unable to understand and how it affected the proceedings, but has merely stated that the State party did not provide him with an interpreter. In the light of these circumstances, the Committee considers that these claims are insufficiently substantiated for purposes of admissibility and are thus inadmissible under article 2 of the Optional Protocol.

6.11 Regarding the author's rights under article 14 (5), the Committee notes the State party's argument that the author's criminal case was examined by the courts of the first, second and third instances. Therefore, in the absence of any further pertinent information on file, the Committee considers that the author has failed to substantiate these claims under article 2 of the Optional Protocol.

6.12 In relation to the author's claims of a violation of his rights under article 14 (6) of the Covenant, the Committee acknowledges the State party's explanation that, following the Nadym City Court's decision on 3 April 2012, the author was granted compensation for non-pecuniary damage related to the crimes for which he was acquitted. Despite this, the author contends that he has never actually received this compensation. To support this assertion, the author has provided a letter from the Ministry of Finance, dated 2 October 2017, requesting certain documents for disbursement of the payment. The author points out that he has already submitted these documents multiple times but has not received any payment. The Committee notes that the author has not provided sufficient information or evidence corroborating his claim that he has previously submitted the documents requested, nor has he provided any evidence or explanation that would demonstrate that the State party obstructed or otherwise hindered the realization of the author's rights under article 14 (6). In addition, the Committee observes that the author has not lodged a complaint with the relevant domestic authorities regarding this issue. In the absence of any further pertinent information or explanations on file, the Committee considers that the author has failed to sufficiently substantiate these allegations for the purposes of admissibility. Accordingly, it declares this part of the communication inadmissible under article 2 of the Optional Protocol.

²⁹ *Guesdon v. France*, communication No. 219/1986, para. 10.2.

7. The Committee concludes that the author has failed to substantiate, for the purposes of admissibility, his claims under article 14 (1), (3) (a), (b), (e) and (f), (5) and (6) of the Covenant.

8. The Committee therefore decides:

(a) That the communication is inadmissible under article 2 of the Optional Protocol;

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