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International Covenant on Civil and Political Rights

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Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2576/2015*, **, ***

Communication submitted by:	Yuriy Gritsunov (not represented by counsel)
Alleged victim:	The author
State party:	Russian Federation
Date of communication:	16 December 2014 (initial submission)
Document references:	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 27 February 2015 (not issued in document form); decision of admissibility (CCPR/C/117/D/2576/2015)
Date of adoption of Views:	8 July 2024
Subject matter:	Absence of legal counsel at cassation hearing
Procedural issue:	Abuse of the right of submission
Substantive issue:	Fair trial – legal assistance
Articles of the Covenant:	2 (1) and 14 (3) (d) and (5)
Articles of the Optional Protocol:	2, 3 and 5 (2) (b)

1.1 The author of the communication is Yuriy Gritsunov, a citizen of the Russian Federation born in 1969. He claims that the State party has violated his rights under articles 2 (1) and 14 (3) (d) and (5) of the Covenant. The Optional Protocol entered into force for the State party on 1 January 1992. The author is not represented by counsel.

1.2 On 19 January 2016, pursuant to rule 93 of its rules of procedure, the Committee, acting through its Special Rapporteurs on new communications and interim measures, decided to examine the admissibility of the communication separately from the merits.

1.3 On 14 July 2016, the Committee, acting under article 4 (2) of the Optional Protocol and rule 101 (2) of its rules of procedure, concluded that the author's claims under article 2 (1) of the Covenant were inadmissible under articles 2 and 3 of the Optional Protocol, while

* Adopted by the Committee at its 141st session (1–23 July 2024).

** The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, 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.

*** Individual opinions by Committee members Hernán Quezada Cabrera (concurring) and José Manuel Santos Pais (dissenting) are annexed to the present Views.

claims under article 14 (5) of the Covenant lacked substantiation and were inadmissible under article 2 of the Optional Protocol. The Committee also concluded that the communication did not constitute an abuse of the right of submission according to rule 99 (c) of its rules of procedure. At the same time, the Committee considered that the author had sufficiently substantiated his claims under article 14 (3) (d) of the Covenant for the purposes of admissibility and requested the parties to submit information on the merits of those claims.[1]

Facts as submitted by the author

2.1 On 16 January 1997, the Rostov Regional Court found the author guilty of a number of serious crimes, including abduction and murder of a minor, and sentenced him to death. On 22 May 1997, the Supreme Court of the Russian Federation, acting as a court of second instance, reviewed his cassation appeal, introduced minor changes to the judgment of the court of first instance, but confirmed his sentence. On 3 June 1999, the author's death sentence was commuted to life imprisonment by a presidential decree.

2.2 In May 2009,[2] the author complained to the Office of the Prosecutor General under the supervisory review procedure, claiming that his right to defence had been violated at the stage of cassation appeal in 1997 because his lawyer had not been present when the Supreme Court had examined his case on 22 May 1997, while, according to him, the prosecutor was present. The author requested the Office of the Prosecutor General to appeal on his behalf to the Supreme Court about this procedural violation. On 22 June 2009, the Office of the Prosecutor General rejected his appeal, finding no grounds to initiate a supervisory review, but informed the author that he could himself appeal to the Chair of the Supreme Court under the supervisory procedure.

2.3 In September 2012, the author submitted a request for a supervisory review to the Supreme Court. On 12 October 2012, in a single-judge ruling, the Supreme Court rejected his appeal. The Supreme Court concluded that the presence of a lawyer when a cassation appeal was examined was not mandatory according to the legislation in force at the time.[3]

2.4 In August 2013, the author submitted a request for a supervisory review to the Chair of the Supreme Court. In a letter of 9 September 2013, a Deputy Chair of the Supreme Court stated that no violations had been committed in 1997 during the cassation appeal and refused to initiate a supervisory review of the case.

Complaint

3.1 The author claims to be a victim of violations by the State party of his rights under article 14 (3) (d) of the Covenant.[4]

3.2 The author maintains that his right under article 14 (3) (d) of the Covenant has been violated as "he had no legal assistance at the cassation stage" because his lawyer was not physically present when the cassation appeal was examined by the Supreme Court.

State party's observations on the merits

4.1 On 19 June 2023, the State party submitted its observations on the merits of the communication. The State party notes that, after the Committee adopted its decision on admissibility of the communication, the author submitted another appeal for a supervisory

[1] For further information on the parties' observations and comments on admissibility, please refer to the Committee's decision on admissibility, adopted on 14 July 2016, in *Gritsunov v. Russian Federation* (CCPR/C/117/D/2576/2015).

[2] In its decision on admissibility, the Committee rejected the State party's argument that the communication constituted an abuse of the right of submission according to rule 96 (c) (now rule 99 (c)) of the rules of procedure, in part based on the fact that the author had not lodged any appeals between 1997 and 2009. See *Gritsunov. v. Russian Federation*, para. 6.5.

[3] According to the legislation in place at the time, only parties in the process who had requested it formally were informed about the date, time and location of the Supreme Court hearing on cassation. Neither the author nor his lawyer ever made a request to that effect.

[4] The Committee previously concluded that the author's claims under articles 2 (1) and 14 (5) were inadmissible. See *Gritsunov. v. Russian Federation*, para. 6.6 and 6.7.

review to the Supreme Court. However, the appeal did not contain any arguments with regard to the alleged violation of the author's right to legal defence at the cassation hearing. On 12 December 2019, the Supreme Court, in a single-judge decision, dismissed the author's appeal, and this decision was upheld, on 6 November 2020, by the Deputy Chair of the Supreme Court.

4.2 The State party submits that, according to the jurisprudence of the European Court of Human Rights, the right to a defence counsel is not absolute.[5] It notes that the violation of fair trial guarantees may depend on several factors, including whether the domestic legislation requires the presence of defence counsel during court hearings.[6] Applying the above principle to the author's case, the State party notes that, at the time of the cassation hearing, the previous Criminal Procedure Code did not provide for the mandatory participation of a defence counsel in cassation courts. The State party submits that the author was convicted on 16 January and 22 May 1997, and his appeal was examined by the cassation court under the previous Criminal Procedure Code, which was still in force at that time. Article 223 (1) of the previous Criminal Procedure Code allowed for the participation of a defence counsel in a cassation hearing, but did not require such participation. In addition, according to articles 335 and 336 of the previous Criminal Procedure Code, the Supreme Court had an obligation to notify the date, time and place of an appellate hearing only to those participants who had petitioned the court to provide such information. The State party notes that neither the author nor his defence counsel petitioned the Supreme Court for the counsel's participation in the cassation hearing. It also notes that, in his appeals for supervisory review submitted to the Supreme Court in March, June and July 2008, the author did not complain about the violation of his right to legal assistance due to the absence of his defence counsel, and that the first time such an allegation was made by him was in his appeal dated 10 November 2008, that is 10 years and 5 months after the cassation hearing.

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

5.1 In a letter dated 25 September 2023, the author responded to the State party's observations on the merits of the communication. The author rejects the State party's arguments regarding the rules of participation of a defence counsel under the previous Criminal Procedure Code and submits that those rules applied only to those who were accused of crimes that provided for possible punishments of up to 15 years in prison. The author asserts that article 51 of the previous Criminal Procedure Code provided for mandatory participation of a defence counsel when an accused faced a punishment of more than 15 years in prison or the death penalty. He also notes that article 123 of the Constitution of the Russian Federation requires that judicial proceedings are conducted on an adversarial basis and that the parties have equal rights. That is realized by ensuring that an accused has a defence counsel during pretrial investigation and trial and, if an accused cannot afford one, one must be assigned by a case investigator or the court.

5.2 The author further submits that, starting from 1 January 1997, the new Criminal Code of the Russian Federation entered into force. According to the Federal Act on the Enactment of the Criminal Law of the Russian Federation, all normative legal acts adopted between 1960 and 1997 had to be brought into conformity with the new Criminal Code. The author notes that he was found guilty and sentenced on 16 January 1997 under the previous Criminal Code, which had already been replaced by the new Criminal Code, which makes his sentence unlawful.

Issues and proceedings before the Committee

Consideration of the merits

6.1 The Committee has considered the communication in the light of all the information submitted to it by the parties, in accordance with article 5 (1) of the Optional Protocol.

[5] European Court of Human Rights, *Steel and Morris v. United Kingdom*, Application No. 68416/01, Judgement, 15 February 2005, para. 62.

[6] European Court of Human Rights, *Airey v. Ireland*, Application No. 6289/73, Judgment, 9 October 1979, para. 26.

6.2 The Committee notes the author's claim that the cassation hearing in his death penalty case was held in the absence of his lawyer, while the prosecutor attended the hearing. The Committee observes that the author had a lawyer during the trial in the first instance court and the same lawyer submitted a cassation appeal to the Supreme Court on the author's behalf but she was not present during the cassation hearing. The Committee also notes the State party's submission that, at the time of the cassation hearing, the Criminal Procedure Code did not provide for the mandatory participation of defence counsel in cassation courts. According to the State party, the Supreme Court had an obligation to notify the date, time and place of an appellate hearing only to those participants who had petitioned the court to provide such information and the author's lawyer had not requested to be informed.

6.3 The Committee recalls that article 14 (3) (d) of the Covenant requires that all those accused of a criminal charge to be informed of the right to defend themselves in person or through legal counsel of their own choosing.[7] Violation of the fair trial guarantees provided for in article 14 of the Covenant in proceedings resulting in the imposition of the death penalty would render the sentence arbitrary in nature and a violation of article 6 of the Covenant.[8] The Committee also recalls its jurisprudence that, particularly in cases involving capital punishment, it is axiomatic that the accused must be effectively assisted by a lawyer at all stages of the proceedings.[9] In the instant case, the Committee notes that the State party and the author have opposing views as to the requirements of the Criminal Procedure Code with regard to the defence counsel's participation in cassation proceedings. Irrespective of the requirements of domestic law, the Committee considers that the cassation hearing was a vital part of the criminal proceedings, because under the law in force at that time, the cassation court examined the case as to both the facts and the law and made a new assessment of the author's guilt or innocence.[10] At the same time, the State party has not shown that it took any steps to inform the author of his right to be represented by a lawyer during the cassation hearing. In these circumstances, the Committee considers that the facts presented reveal a violation of the author's rights under article 14 (3) (d) of the Covenant.

7. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the information before it discloses a violation by the State party of article 14 (3) (d) of the Covenant.

8. Pursuant to article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the author with an effective remedy. This requires it to make full reparation to individuals whose Covenant rights have been violated. Accordingly, the State party is obligated to: (a) review the trial court's verdict in compliance with the provisions of the Covenant and taking into account the Committee's findings in the present Views; and (b) provide the author with adequate compensation. The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future.

9. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy when it has been determined that a violation has occurred, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the present Views and to have them widely disseminated in the official language of the State party.

[7] General comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, para. 37.

[8] General comment No. 36 (2018) on the right to life, para. 41.

[9] *Chikunova v. Uzbekistan* (CCPR/C/89/D/1043/2002), para. 7.4; and *Simpson v. Jamaica* (CCPR/C/73/D/695/1996), para. 7.3.

[10] *Dorofeev v. Russian Federation* (CCPR/C/111/D/2041/2011), para. 10.6.

Annex I

[Original: Spanish]

Individual opinion of Committee member Hernán Quezada Cabrera (concurring)

1. I agree with the Committee's conclusion on the merits, namely that the information before it discloses a violation by the State party of the author's rights under article 14 (3) (d) of the Covenant, in view of the author's lack of legal representation during the cassation hearing, which constituted an essential part of the criminal proceedings against him. The State party has not shown that it took any steps to inform him of his right to have the assistance of counsel at the hearing, which is absolutely vital when there is a possibility that the death penalty might be imposed on a defendant (see paras. 6.2, 6.3 and 7 of the Views). In this regard, it should be recalled that the author was sentenced to death but, by presidential decree of 3 June 1999, the sentence was commuted to life imprisonment.

2. However, I have serious doubts as to the first remedy that the State party is being asked to provide, namely, a review of the trial court's verdict handed down on 16 January 1997, in compliance with the provisions of the Covenant and taking into account the Committee's findings in the present View s (see para. 8). I consider that such a review might not be feasible due to the lengthy period that has elapsed since the State party's Supreme Court examined the cassation appeal and, on 22 May 1997, issued the judgment upholding the trial court's verdict. Although the author has made several unsuccessful attempts, between May 2009 and August 2013 and including through an appeal filed after the Committee's admissibility decision (see paras. 2.2, 2.3, 2.4 and 4.1), to have the Supreme Court's judgment reviewed, the fact remains that the trial court verdict to be reviewed was rendered more than 27 years ago.

Annex II

Individual opinion by Committee member José Manuel Santos Pais (dissenting)

1. I regret not being able to concur with the finding by the Committee of a violation of the author's rights under article 14 (3) (d) of the Covenant.

2. On 16 January 1997, the Rostov Regional Court found the author guilty of a number of serious crimes, including abduction and murder of a minor, and sentenced him to death. On 22 May 1997, the Supreme Court of the Russian Federation, acting as a court of second instance, reviewed his cassation appeal and confirmed his sentence. On 3 June 1999, the author's death sentence was commuted to life imprisonment by a presidential decree (para. 2.1).

3. In May 2009, that is, 12 years after the decision of the Supreme Court confirming the death sentence, the author complained to the Office of the Prosecutor General under the supervisory review procedure, claiming that his right to defence had been violated at the stage of cassation appeal in 1997 because his lawyer had not been present when the Supreme Court had examined his case, while, according to him, the prosecutor was present (para. 2.2). In September 2012, that is, 3 years later, and 15 years after the final decision of the Supreme Court confirming his conviction and sentence, the author submitted another request for a supervisory review, now to the Supreme Court.

4. The explanation given as to the reasons for the delay in submitting such supervisory review procedures was the lack of information, the author not being aware of the possibility to complain to the Committee before.[1]

5. On 12 October 2012, the Supreme Court rejected his appeal, concluding that the presence of a lawyer when the cassation appeal was examined was not mandatory according to the legislation in force at the time (paras. 2.3 and 4.2). In fact, according to such legislation, only parties in the process who had requested it formally were informed about the date, time and location of the Supreme Court hearing on cassation. Neither the author nor his lawyer had ever made a request to that effect (para. 4.2 and footnote 3).

6. Unlike the Committee,[2] I consider that the present communication constitutes an abuse of the right of submission according to rule 99 (c) of the rules of procedure, since the author did not lodge any appeals between 1997 and 2009 and the explanation provided as to the reasons for such a delay – lack of awareness of the possibility of an appeal – is simply not convincing.[3] The argument relating to the rulings of the Supreme Court of 2012 (para. 2.3) and 2013 (para. 2.4) to circumvent that rule is hardly acceptable in face of a res judicata criminal sentence taken 27 years ago. Such a reasoning will justify any reopening of criminal proceedings, namely due to changes in the domestic legislation, significantly hampering the principle of certainty of judicial decisions that have entered into force.

7. I understand and share the concerns expressed in the present Views relating to the full respect of the safeguards of the rights of defence in criminal proceedings, particularly when the death sentence may be imposed on the defendant. However, while article 223 (1) of the Criminal Procedure Code in force at the time of conviction allowed for the participation of a defence counsel in a cassation hearing, it did not require such participation. According to articles 335 and 336 of the same Code, the Supreme Court had an obligation to notify the date, time and place of an appellate hearing only to those participants who had petitioned the court to provide such information. Neither the author nor his defence counsel petitioned the Supreme Court for the counsel's participation in the cassation hearing. Moreover, the author

[1] *Gritsunov v. Russian Federation* (CCPR/C/117/D/2576/2015), para. 5.3.

[2] Ibid., para. 6.5.

[3] Please see also the joint opinion of Committee members Ahmed Amin Fathalla, José Manuel Santos Pais and Hélène Tigroudja (dissenting) in *Kaliyev v. Russian Federation* (CCPR/C/127/D/2977/2017), with further arguments to the same effect.

only complained about the violation of his right to legal assistance due to the absence of his defence counsel 10 years and 5 months after the cassation hearing (para. 4.2).

8. Moreover, the author had a lawyer during the trial in the court of first instance, who submitted a cassation appeal to the Supreme Court on the author's behalf (para. 6.2). The lawyer could therefore have requested to be notified of the cassation hearing but did not present such a request. The author did not request that either at the time (footnote 3) and he was also able to submit his own cassation appeal.

9. In its judgment of May 1997, the Supreme Court reviewed the author's cassation appeal, addressed the author's defence arguments, introduced minor changes to the judgment of the court of first instance and still confirmed the sentence.

10. I therefore consider the present communication inadmissible for abuse of the right of submission. However, were such a communication declared admissible, I see no reason to find a violation of article 14 (3) (d) of the Covenant, since the author and his lawyer had the opportunity to submit their cassation appeals in due course with all the arguments they thought necessary for the author's defence.