



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. 3132/2018*, **

<i>Communication submitted by:</i>	Valeriy Milyukov (represented by counsel, Natalya Savitskaya)
<i>Alleged victim:</i>	The author
<i>State Party:</i>	Russian Federation
<i>Date of communication:</i>	10 May 2017 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State Party on 5 March 2018 (not issued in document form)
<i>Date of adoption of Views:</i>	9 July 2025
<i>Subject matter:</i>	Absence of witness for cross-examination
<i>Procedural issues:</i>	Exhaustion of domestic remedies; non-substantiation of claims
<i>Substantive issues:</i>	Fair trial; defence – adequate time and facilities; fair trial – witnesses
<i>Article of the Covenant:</i>	14 (1) and (3) (a) (b) and (e)
<i>Articles of the Optional Protocol:</i>	2 and 5

1. The author of the communication is Valeriy Milyukov, a national of the Russian Federation born in 1964. He claims that the State Party has violated his rights under article 14 (1) and (3) (a) (b) and (e) of the Covenant. The Optional Protocol entered into force for the State Party on 1 January 1992. The author is represented by counsel.

Facts as submitted by the author

2.1 On 8 December 2014, Kirov District Court, in the city of Perm, sentenced the author to 14 years in prison on one count of attempted sale of drugs in large amounts by an organized group. During the same trial, he was acquitted of two other charges – one count of sale and one count of attempted sale of drugs in large amounts. On 19 February 2015, Perm Regional Court denied the author's appeal. On 5 June 2015, Perm Regional Court dismissed his

* Adopted by the Committee at its 144th session (23 June–17 July 2025).

** The following members of the Committee participated in the examination of the communication: Wafaa Ashraf Moharram Bassim, Rodrigo A. Carazo, Yvonne Donders, Carlos Ramón Fernández Liesa, Laurence R. Helfer, Konstantin Korkelia, Dalia Leinarte, Bacre Waly Ndiaye, Hernán Quezada Cabrera, Akmal Saidov, Ivan Šimonović, Soh Changrok, Teraya Koji, Hélène Tigroudja and Imeru Tamerat Yigezu.



cassation appeal. On 2 September and 22 December 2015, a judge of the Supreme Court and the Deputy Chairman of the Supreme Court, respectively, dismissed the author's further cassation appeals.

2.2 The author was found guilty of selling, with his brother,¹ 5.18 grams of cocaine to Mr. K, who one month later resold the drugs to a third person who was then arrested by the police. The sale of the drugs allegedly took place on 6 October 2013, while the author was being surveilled and videotaped by an officer of the Federal Security Service. In his report, the surveillance officer states that he observed the author and his brother entering Mr. K's car and exiting it five minutes later. They were not detained or questioned at that time. The report makes no mention of any drugs being observed. The author and his brother denied that any sale of drugs took place and stated that they met Mr. K to discuss other business.

2.3 The author claims that he was charged and convicted solely on the basis of testimony given by one witness – Mr. K – who at the time was himself under criminal investigation for the commission of other crimes. The author submits that Mr. K falsely testified against him to improve the outcome of his own case.² According to the author, during the trial, there were five other witnesses on the side of the prosecution, including the Federal Security Service officer who conducted the surveillance on 6 October 2013. Two of those witnesses testified that they had purchased drugs from the author before 2013, however they denied that the author had sold them any drugs during the specific period in 2013 indicated in the prosecution's indictment. The third witness testified that his testimony during the pretrial investigation was obtained under duress by Federal Security Service operatives. The fourth witness, witness S, did not appear in court, however his testimony, given during the pretrial investigation and confirming that he had purchased drugs from the author during the time period suggested by the prosecution, was read to the court despite the author's objection on the grounds that it had been obtained under duress. Since the witness did not appear in court, the author and his lawyer could not cross-examine him. Also, the identities of three witnesses in the case were kept confidential, which prevented the author from verifying their testimonies. The author petitioned the court to reveal the identities of those witnesses, but the court refused to do so, on the basis of domestic law protecting the identities of confidential witnesses.

2.4 The author submits that he has exhausted all available and effective domestic remedies.

Complaint

3.1 The author claims that he was denied a fair trial before an independent and impartial court, in violation of article 14 (1) of the Covenant. He argues that the domestic courts were biased, because they only relied on arguments presented by the prosecution, and found him guilty on the basis of the testimony of a single witness who himself had a vested interest in the author's conviction.

3.2 The author also claims that he was not promptly informed of the nature of the charges against him, in violation of article 14 (3) (a) of the Covenant, and that his lawyer was not allowed to examine the criminal case file until after the pretrial investigation had ended, citing confidentiality issues, which did not give him enough time to prepare his defence, in violation of article 14 (3) (b) of the Covenant.

3.3 Finally, the author claims a violation of article 14 (3) (e) of the Covenant, because the courts did not ensure the attendance and questioning of a key witness – witness S – who testified against the author during the pretrial investigation.

State Party's observations on the merits

4.1 In a note verbale dated 2 October 2018, the State Party submitted its observations on the merits of the communication. The State Party submits that despite the author's allegations of unfair trial, his guilt was confirmed not only by the testimony of Mr. K, but also by the testimonies of a law enforcement officer who conducted the surveillance of the meeting

¹ The author was tried separately from his brother.

² Mr. K was sentenced in a separate trial to eight years in prison.

during which the drugs were sold by the author, and of three other witnesses, whose true identities were kept confidential and who confirmed that they had previously purchased drugs from the author. The State Party notes that testimonies of all the witnesses were consistent with one another.

4.2 With regard to the failure of witness S to attend the trial, the State Party submits that he was undergoing medical treatment abroad at the time of the hearing and also that under article 281 (2) (a) of the Code of Criminal Procedure it was permitted for his testimony given during the pretrial investigation to be read to the court and be admitted as evidence. The State Party notes that the trial court admitted this particular testimony as indirect evidence of the author's guilt and that it was consistent with the testimonies given by two other witnesses who provided testimony during the trial.

4.3 The State Party also rejects the author's claim under article 14 (3) (b) of the Covenant, noting that articles 215 and 217 of the Code of Criminal Procedure provide for access to the criminal case file for the defendant and the defence counsel only after the pretrial investigation is over. It also rejects the author's allegation that he did not have sufficient time to prepare for the trial. The State Party notes that the author was arrested on 17 November 2013 and was immediately informed that he was suspected of illegal sale of drugs. On 26 November 2013, he was provided with a copy of the formal sheet of charges, and the indictment was filed on 10 September 2014. All the documents were served on the author in the presence of his lawyer.

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

5.1 In a letter dated 25 November 2018, the author submitted his comments on the State Party's observations on the merits of the communication. He rejects the State Party's arguments and submits that he was convicted on the basis of testimony by only one witness, who himself had a vested interest in the author's conviction due to a criminal case against him. He notes that other than Mr. K's testimony, no other witnesses confirmed that they had observed the alleged sale of drugs on 6 October 2013.

5.2 The author reiterates his claims of insufficient time to prepare his defence, including insufficient access to evidence. Regarding the absence of witness S during the trial, the author submits that no medical documents were produced to the court to show that the witness was indeed ill and was undergoing treatment abroad.

State Party's additional observations

6.1 In a note verbale dated 7 February 2020, the State Party submitted its additional observations on the merits of the communication. The State Party notes that despite the author's arguments that the court's ruling was based on the testimony of only one witness, the verdict shows that the court's decision was supported by several pieces of evidence, including testimony by a number of witnesses and by the author himself.

6.2 According to the State Party, the author's claims relate essentially to the evaluation of facts and evidence and the application of domestic law by the domestic courts. It notes that it is generally for the courts of States Parties to review facts and evidence, or the application of domestic legislation, in a particular case, unless it can be shown that such evaluation or application was clearly arbitrary or amounted to a manifest error or denial of justice, which the author failed to show. Therefore, the State Party argues that the author has failed to sufficiently substantiate his claims under article 14 of the Covenant.

Issues and proceedings before the Committee

Consideration of admissibility

7.1 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.

7.2 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.

7.3 The Committee notes that it is not disputed by the State Party that the author has exhausted all effective domestic remedies available to him. However, the Committee still must ascertain that the author has exhausted all available domestic remedies. In that regard, the Committee notes the author's claims that he was not promptly informed of the nature of the charges against him and that his lawyer was not permitted to examine the criminal case file until after the pretrial investigation had ended, which did not give him enough time to prepare his defence. The Committee observes from the material before it that the author failed to raise these issues during the trial at Kirov District Court, in Perm, or at his appeal to Perm Regional Court. In the absence of further information, the Committee is unable to establish whether the author's claims under article 14 (3) (a) and (b) were raised before the domestic authorities and therefore considers that it is precluded by article 5 (2) (b) of the Optional Protocol from considering this part of the communication.

7.4 The Committee also notes the author's claim that the State Party violated his right to fair trial, under article 14 (1) of the Covenant, because the domestic courts were biased, as they relied only on arguments presented by the prosecution, and found him guilty on the basis of the testimony of a single witness who himself had a vested interest in the author's conviction. The Committee notes the State Party's assertion that the author's claims relate essentially to the evaluation of facts and evidence in the course of proceedings in the domestic courts. In addition, the State Party submits that the author's guilt was confirmed not only by the testimony of Mr. K but also by the testimony of a law enforcement officer who conducted the surveillance of the meeting during which the drugs were allegedly sold by the author, and of three other witnesses, whose true identities were kept confidential and who confirmed that they had previously purchased drugs from the author. The Committee also notes that during the same trial, the author was eventually acquitted of two other charges related to sale of drugs. The Committee 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 proceedings before the domestic courts were arbitrary or amounted to a denial of justice, or that the courts otherwise violated their obligation of independence and impartiality.³ In the present case, the Committee is not in a position, on the basis of the materials at its disposal, to conclude that, in deciding the author's case, the domestic courts acted arbitrarily or that their decision amounted to arbitrariness or a denial of justice. Accordingly, these claims are inadmissible under article 2 of the Optional Protocol.

7.5 The Committee considers that, for the purposes of admissibility, the author has sufficiently substantiated his claim under article 14 (3) (e) of the Covenant, and proceeds with its consideration of the merits.

Consideration of the merits

8.1 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.

8.2 The Committee notes the author's claim that he did not have the possibility to cross-examine witness S due to the absence of the latter from the trial, and that cross-examination of witness S was essential to the author's defence because, according to the prosecution, his testimony served as a proof of the author's guilt. Instead, the testimony of witness S was read out at the hearing, despite the author's objection on the grounds that it had been obtained under duress. The Committee also notes the State Party's submission that since witness S was undergoing medical treatment abroad at the time of the court hearing, in conformity with article 281 (2) (a) of the Code of Criminal Procedure, his testimony given during the pretrial investigation was permitted to be read to the court and admitted as evidence.

³ See, for example, *G.A. v. Uzbekistan* (CCPR/C/124/D/2335/2014), para. 9.10; and *A.W.K. v. New Zealand* (CCPR/C/112/D/1998/2010), para. 9.3.

8.3 From the materials in the case file, the Committee observes that the trial court overruled the author's objection to the testimony of witness S given during the pretrial investigation being admitted as evidence, on the grounds that the objection was unsubstantiated. At the same time, the Committee observes that earlier in the trial, one of the witnesses had already testified that the testimony he provided during the pretrial investigation had been obtained under duress by Federal Security Service operatives. The Committee notes that nothing in the submissions indicates that witness S was permanently unavailable, however neither Kirov District Court nor Perm Regional Court provided any reasons as to why the trial could not have been postponed to secure the presence of witness S, especially in view of the gravity of the charges against the author and the allegations by another witness of coerced testimony.

8.4 The Committee also notes the State Party's submission that the trial court admitted the testimony of witness S only as indirect evidence of the author's guilt and that it was consistent with the testimony provided by other witnesses. However, the Committee observes that in the ruling of Kirov District Court, the testimony of witness S, provided during the pretrial investigation, is mentioned on par with the testimony of the other two witnesses, provided during the trial, as evidence of the author's guilt in committing the crime. Moreover, in the appellate decision, Perm Regional Court made a direct reference to the testimony of witness S and of one other witness to confirm that the author had sold drugs in 2013, as charged by the prosecution.

8.5 The Committee recalls that the right of accused persons to examine the witnesses against them and to obtain the attendance and examination of witnesses on their behalf under the same conditions as witnesses against them is important for ensuring an effective defence by the accused and his or her counsel.⁴ 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 who are available to the prosecution. Under this provision, accused persons have a right to have witnesses admitted who are relevant for the defence, and to be given a proper opportunity to question and challenge witnesses against them at some stage of the proceedings.⁵ In this regard, the Committee notes that the State Party did not provide any information about whether the author had an adequate and proper opportunity to challenge the testimony of witness S during the pretrial investigation, especially in view of the confidentiality afforded to witness S by the investigation and the courts.

8.6 These factors, taken together, in particular the author's inability to cross-examine an important witness, lead the Committee to conclude that the State Party violated the author's rights under article 14 (3) (e) of the Covenant.

9. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts before it disclose a violation of the author's rights under article 14 (3) (e) of the Covenant.

10. In accordance with 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, *inter alia*, to take appropriate steps: (a) to conduct a new trial, subject to the principles of fair hearing and other procedural safeguards; and (b) to provide the author with adequate compensation. The State Party is also under an obligation to take steps to prevent similar violations from occurring in the future.

11. 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

⁴ See the Committee's general comment No. 32 (2007), para. 39. See also *Abdiev v. Kazakhstan* (CCPR/C/137/D/2618/2015), para. 7.8.

⁵ See the Committee's general comment No. 32 (2007), para. 39. See also *Y.M. v. Russian Federation* (CCPR/C/116/D/2059/2011), para. 9.9.

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 languages of the State Party.
