



International Covenant on Civil and Political Rights

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Human Rights Committee

Decision adopted by the Committee under the Optional Protocol, concerning communication No. 3083/2017*, **

<i>Communication submitted by:</i>	A.P. (represented by counsel, Alexey Laptev)
<i>Alleged victim:</i>	The author
<i>State Party:</i>	Russian Federation
<i>Date of communication:</i>	28 February 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 22 December 2017
<i>Date of adoption of decision:</i>	17 July 2025
<i>Subject matter:</i>	Fair trial and life imprisonment
<i>Procedural issues:</i>	Abuse of the right of submission; exhaustion of domestic remedies; non-substantiation
<i>Substantive issues:</i>	Fair trial; legal assistance
<i>Article of the Covenant:</i>	14 (1), (3) (b), (d) and (g) and (5)
<i>Articles of the Optional Protocol:</i>	2, 3 and 5

1. The author of the communication is A.P., a national of the Russian Federation born in 1986. He claims that the State Party has violated his rights under article 14 (1) and (3) (d) and (g) 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 27 April 2006, the author was arrested on suspicion of committing an act of arson in May 2005 in a shopping centre in the city of Ukhta, in the Komi Republic, that resulted in the deaths of 25 people. Upon his arrest, he informed the police that he would like to retain the services of two lawyers. One of the two lawyers was allowed to meet with the author on 28 April 2006, and the other on 2 May 2006. On 29 April 2006, the Ukhta Federal Court authorized the author's detention until 2 May 2006. On 2 May 2006, the same court authorized the author's detention pending trial.

* 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.



2.2 On 6 May 2006, the case investigator called in both lawyers and attempted to question them as witnesses, asking questions regarding information that they had obtained in their meetings with the author. Both lawyers refused to answer the investigator's questions, citing their status as the author's defence counsel. Nevertheless, on 10 May 2006, the investigator issued an order barring both lawyers from continuing with the author's defence due to their status as witnesses in the criminal case. On an unspecified date, an ex officio lawyer was appointed by the investigator to take over the defence of the author. On 18 and 19 May 2006, the investigator pressured the author into signing a confession, which he eventually did and then later retracted. This confession was documented in the presence of the ex officio lawyer and used against the author during the trial.

2.3 On 7 May 2006, the lawyer assigned to represent the author's co-defendant recused himself from further defending his client because he thought that the latter was incriminating himself. However, in accordance with article 49 (7) of the Code of Criminal Procedure, such recusals are not allowed in criminal cases. Despite this, the case investigator unlawfully replaced the lawyer representing the author's co-defendant with another, which resulted in the violation of the rights of the author's co-defendant, as well as the rights of the author himself.

2.4 On 7 November 2007, during the trial before the Supreme Court of the Komi Republic, the author submitted a complaint against the decision of the investigator barring the author's two lawyers from the case. On 8 November 2007, the Court held that the questioning of the lawyers by the case investigator had violated article 56 (3) of the Code of Criminal Procedure,¹ and reinstated both lawyers as the author's defence counsel in the case.

2.5 On 26 June 2008, a panel of three judges of the Supreme Court of the Komi Republic acquitted the author and his co-defendant of all charges. The Court also issued a special ruling drawing the attention of the prosecutor's office to several procedural violations that had taken place during the investigation, including the illegal barring of the author's lawyers from the case.

2.6 On 30 October 2008, upon appeal from the prosecutor's office, the Supreme Court of the Russian Federation quashed the acquittal and sent the case for a retrial before the Supreme Court of the Komi Republic by a different panel of judges. The Supreme Court of the Russian Federation held that the trial court's conclusions were not supported by the evidence examined during the trial and that it had not taken into consideration certain circumstances that could have significantly affected its conclusion.

2.7 On 17 June 2009, a new panel of judges of the Supreme Court of the Komi Republic found the author and his co-defendant guilty of arson and several other crimes and sentenced them to life imprisonment.

2.8 On 26 October 2009, the Criminal Division of the Supreme Court of the Russian Federation, acting as a court of cassation, amended the verdict by excluding the finding of guilt on the charge of "premeditated murder" but upheld the trial court's sentence of life imprisonment. On 26 October 2016, the author filed an appeal to the Supreme Court of the Russian Federation for a supervisory review, which was dismissed on 28 December 2016. Between 2011 and 2016, the author submitted numerous complaints to the Prosecutor's Office of the Komi Republic and to the Office of the Prosecutor General of the Russian Federation, but all his complaints were dismissed.² The author therefore contends that he has exhausted all available and effective domestic remedies.

Complaint

3.1 The author submits that he was denied a fair trial by a competent and impartial tribunal, as guaranteed by article 14 (1) of the Covenant. He argues that: (a) the Supreme Court of the

¹ Article 56 (3) of the Code of Criminal Procedure states that the defence counsel for a suspect or accused person may not be questioned as a witness about circumstances that have become known to him or her in connection with the seeking of legal assistance from him or her or in connection with the provision of legal assistance.

² The author provides copies of letters received from the Prosecutor's Office of the Komi Republic and from the Office of the Prosecutor General of the Russian Federation.

Komi Republic did not follow the instructions of the cassation court for the retrial, by failing to request necessary documents, to question forensic experts, and to conduct new forensic examinations; (b) during the retrial, the Supreme Court of the Komi Republic court insufficiently substantiated its decision that the conclusions from the polygraph tests were unreliable; (c) the Supreme Court of the Komi Republic did not ensure that the author and his co-defendant had the right to determine the composition of the court for the retrial, in violation of article 30 of the Code of Criminal Procedure;³ (d) the domestic courts ignored the forgery of documents during the pretrial investigation (for example, the same forensic experts and witnesses were recorded as having participated at the same time in different investigative activities in different locations); (e) the courts allowed the prosecution to introduce evidence that had been obtained unlawfully or lacked credibility, such as wiretappings of the author's phone calls from detention facilities and contradicting testimonies of witnesses; and (f) some of the charges against the author were based on an incorrect classification of his actions.

3.2 The author claims that, by removing the two original lawyers from his case, the investigative authorities prevented him from defending himself through legal assistance of his own choosing, in violation of his rights under article 14 (3) (d) of the Covenant.

3.3 The author also claims that, by admitting as evidence the confession that he gave under duress during the pretrial investigation, the domestic courts violated his rights under article 14 (3) (g) of the Covenant.

State Party's observations on admissibility and the merits

4.1 By note verbale dated 27 August 2018, the State Party submitted its observations on the admissibility and merits of the communication.

4.2 With regard to admissibility, the State Party notes that the Criminal Division of the Supreme Court of the Russian Federation, acting as a court of cassation, amended the verdict of the Supreme Court of the Komi Republic on 26 October 2009, while the author submitted his communication to the Committee on 28 February 2017. Thus, the State Party argues, the author submitted his communication seven years and four months after exhausting domestic remedies, which constitutes an abuse of the right of submission under rule 99 (c) of the Committee's rules of procedure. The State Party also notes that the author submitted his first appeal for a supervisory review to the Presidium of the Supreme Court of the Russian Federation on 17 June 2015, that is, more than five years and seven months after the decision of the cassation court. The State Party considers that there are no indications of any circumstances justifying such a delay, and, therefore, the author's communication is inadmissible under article 3 of the Optional Protocol.

4.3 The State Party further submits that the author's claim under article 14 (1) of the Covenant is manifestly unfounded. 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. The State Party argues that the author has failed to sufficiently substantiate this claim, and, therefore, it is inadmissible under article 2 of the Optional Protocol.

4.4 With regard to the author's claims under article 14 (3) (d) and (g) of the Covenant, the State Party notes that the author did not raise them in his cassation appeal to the Criminal Division of the Supreme Court of the Russian Federation. According to the State Party, in his appeals for a supervisory review to the Presidium of the Supreme Court of the Russian

³ The author submits that, according to article 30 of the Code of Criminal Procedure, the composition of the court could have been formed by a panel of three judges, by a single judge, or by a single judge and a panel of 12 jurors.

Federation,⁴ the author also failed to raise these claims as submitted in his communication to the Committee. In view of the above, the State Party argues that the author has not exhausted all available domestic remedies with regard to his claims under article 14 (3) (d) and (g) of the Covenant and, therefore, they are inadmissible in accordance with article 5 (2) (b) of the Optional Protocol.

4.5 With regard to the merits, the State Party notes that the author's claim that the Supreme Court of the Komi Republic did not follow the instructions of the cassation court for the retrial has already been the subject of a cassation review by the Criminal Division of the Supreme Court of the Russian Federation and found to be unsubstantiated. In its cassation ruling of 26 October 2009, the cassation court concluded that, in the previous cassation ruling, of 30 October 2008, it had been stated that, if needed, the trial court should discuss the necessity of questioning experts in court to have them explain their conclusions and of appointing additional expert examinations. The State Party notes that two forensic experts were questioned during the retrial, and the trial court saw no grounds for requesting additional expert examinations.

4.6 With regard to the conclusions from the polygraph tests, the State Party submits that, as follows from the judgment of 17 June 2009, the trial court found that the conclusions from the polygraph tests conducted in respect of the author and his co-defendant were unreliable because they contradicted the totality of the evidence examined in court, which showed that the author and his co-defendant had committed the act of arson.

4.7 As to the author's claim that the Supreme Court of the Komi Republic did not provide him with the right to determine the composition of the court for the retrial, in violation of article 30 of the Code of Criminal Procedure, the State Party submits that, before the first trial, the author petitioned for a preliminary hearing, which was held on 10 July 2007. At the hearing, on the basis of relevant requests by the author and his co-defendant, the presiding judge ruled that the trial would be conducted by a panel of three judges. The State Party notes that, following the quashing of the acquittal judgment on 30 October 2008 by the Supreme Court of the Russian Federation, the criminal case was remitted for a new examination to the same first instance court, and there were no legal grounds for holding a new preliminary hearing and deciding on the composition of the court again. The State Party also notes that the author's arguments as to the composition of the court for the retrial were examined by the cassation court and found to be unsubstantiated.

4.8 With regard to the author's claim that the same forensic experts and witnesses were recorded as having participated at the same time in different investigative activities in different locations, the State Party submits that these allegations were examined by both the trial court and the cassation court. The courts determined that these forensic specialists and witnesses, as identified by the author, were involved in different investigative actions carried out at different times by different investigators, and thus the investigative actions were in compliance with the rules of criminal procedure and evidence.

4.9 As regards the author's claims that the courts allowed the prosecution to introduce evidence that had been obtained unlawfully or lacked credibility, such as wiretappings of the author's phone calls from detention facilities and contradicting testimonies of witnesses, the State Party notes that the trial court recognized the wiretappings mentioned by the author and the testimonies given by witnesses during the preliminary investigation as admissible evidence, as they had been obtained in accordance with the requirements of the Code of Criminal Procedure. The court had no doubts about the credibility of the witnesses' testimony, since their testimony was confirmed by the totality of the evidence examined in court and cited in the judgment. The State Party also notes that the trial court's findings were confirmed by the cassation court.

4.10 The State Party submits that, on 8 November 2007, the Supreme Court of the Komi Republic found that the actions of the case investigator barring the author's two lawyers from the case were unlawful and reinstated them in the case. In addition, during the retrial, the

⁴ The State Party refers to three decisions of the Presidium of the Supreme Court of the Russian Federation denying the author's appeals for a supervisory review, dated 17 June 2015, 5 October 2015 and 28 December 2016.

court ensured the participation of both lawyers. The State Party notes that, in its cassation ruling of 26 October 2009, the Criminal Division of the Supreme Court of the Russian Federation held that, during the preliminary investigation, the right of the author to defence had not been violated because, even in the absence of the two barred lawyers, the author had been provided with an ex officio lawyer.

4.11 As regards the author's claim that his confession during the pretrial investigation was given under duress, the State Party submits that, after carefully examining all documents received from the places of detention where the author had been held during the pretrial investigation, including medical and video records, the trial court came to the conclusion that no physical or mental pressure had been exerted on him by law enforcement officers that would have forced him to give a false confession. The State Party notes that the findings of the trial court were later confirmed by the cassation court.

Author's additional claims

5.1 On 15 December 2018, the author submitted additional claims under article 14 (1), (3) (b) and (5) of the Covenant.

5.2 The author submits that, on 26 October 2009, prior to the cassation hearing before the Criminal Division of the Supreme Court of the Russian Federation, his co-defendant's lawyer submitted an additional cassation appeal, which was directly related to the rights and interests of the author but contained legal arguments that were different from those made by the author in his own cassation appeal. However, the author was not provided with a copy of this appeal or informed that he had the right to submit comments on his co-defendant's appeal. The author submits that domestic law requires the courts to ensure that all parties are informed about any motions or appeals submitted and to provide defendants with an opportunity to react to those submissions. According to the author, he learned about the additional appeal on 2 November 2011, that is, after the cassation court had already rendered its decision, when a copy of the appeal was sent to him in prison without any further explanation.

5.3 On 15 May 2018, the author submitted an appeal for a supervisory review to the Presidium of the Supreme Court of the Russian Federation, requesting that it quash the decision of the cassation court dated 26 October 2009 because he had not been provided with an opportunity to react to his co-defendant's additional cassation appeal. On 14 June 2018, a judge of the Supreme Court dismissed the author's appeal, citing the author's participation by video link during the cassation hearing and the similarity of the arguments contained in his co-defendant's additional appeal with other arguments made by the author and his co-defendant during the proceedings.

5.4 On 18 July 2018, the author submitted another appeal for a supervisory review that was also dismissed by a deputy chairperson of the Supreme Court of the Russian Federation on 7 August 2018.

5.5 The author claims that, in view of the above, the State Party has violated his rights: (a) to a fair hearing by a competent, independent and impartial tribunal established by law (art. 14 (1)); (b) to have adequate time and facilities for the preparation of his defence (art. 14 (3) (b)); and (c) to have his conviction and sentence reviewed by a higher tribunal according to law (art. 14 (5)).

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

6.1 In a letter dated 19 April 2019, the author submitted his comments on the State Party's observations on the admissibility and merits of his original communication. With regard to the State Party's argument that the delay in the submission of his communication constitutes an abuse of the right of submission, the author notes that, under the Optional Protocol, there is no time limit to submit complaints to the Committee, and a delay in submission will not automatically constitute an abuse of the right of submission. The author notes that, before submitting his communication to the Committee, he submitted several complaints to the European Court of Human Rights, three of which were communicated to the State Party in

2018,⁵ while others were found to be inadmissible. According to the author, after the verdict against him had entered into force, he also submitted numerous appeals to higher courts and the prosecutor's office. The author argues that he should not bear the negative consequence of providing the authorities with additional opportunities to remedy the violations committed at the national level.

6.2 The author rejects the State Party's argument that he has not exhausted domestic remedies in respect of his claims under article 14 (3) (d) and (g) of the Covenant. The author notes that the ruling of the cassation court dated 26 October 2009 states that the defence argued that the author's confession had been obtained under duress and that his two lawyers had been unlawfully barred from the case by the investigator. The author notes that the Committee does not require reference to specific articles when provisions of the Covenant are invoked in domestic proceedings.

6.3 As regards the merits of the claims, the author notes that the State Party does not refute that not all instructions of the cassation court were followed by the first instance court during the retrial. He submits that, in such circumstances, it cannot be said that the trial court took all measures provided by law for a comprehensive and objective examination of the case and provided the necessary conditions in which the parties could exercise their procedural rights and obligations. The author reiterates his claims with respect to the violation of his rights under article 14 (1) and (3) (d) and (g) of the Covenant.

State Party's additional observations

7.1 By note verbale dated 15 December 2020, the State Party submitted its additional observations on the admissibility and merits of the communication. The State Party notes that the author's comments contain the same arguments as his original communication. It reiterates that it considers the delay of seven years and four months in the submission of the communication by the author to be an abuse of the right of submission under the Committee's rules of procedure. The State Party submits that the author's complaints to the European Court of Human Rights that are mentioned in his comments do not contain any claims related to his communication to the Committee. Specifically, application No. 5264/10 concerns alleged cruel treatment that took place in 2010–2013, that is, after the author had been sentenced in 2009. Application No. 11402/17 concerns conditions of detention and the use of handcuffs during detention. Lastly, application No. 82352/17 concerns his detention in solitary confinement. The State Party notes that the author has not shown that any other complaints to the European Court of Human Rights, including those that were found inadmissible, concern the same facts and the same claims as those raised by him in his communication to the Committee.

7.2 On the issue of the alleged violation of the author's right to legal assistance, the State Party submits that, on 8 November 2007, the Supreme Court of the Komi Republic had already provided redress by finding the actions of the case investigator unlawful and had reinstated both lawyers as the author's defence counsel in the case. Furthermore, the claim under article 14 (3) (d) of the Covenant should be declared inadmissible for being incompatible with the provisions of the Covenant. According to the State Party, the author's right to legal assistance was never violated because, after his two lawyers had been barred from continuing to represent him, he was provided with a new lawyer who assisted him throughout all investigative actions.

7.3 With regard to the author's claim under article 14 (3) (g) of the Covenant, the State Party reiterates that the domestic courts concluded that no physical or mental pressure had been exerted on the author. It notes that the courts examined the video and audio recordings of the author's interrogations and noted that his testimonies were calm and voluntary. The State Party also notes that, in his October 2016 appeal for a supervisory review to the Supreme Court of the Russian Federation, the author did not contest his conviction or the evidence admitted by the trial court. Instead, the author petitioned for a change of the sentence without referring to procedural violations during the pretrial investigation.

⁵ Application No. 82352/17 was communicated on 22 January 2018, application No. 11402/17 on 11 January 2018 and application No. 5264/10 on 5 September 2018.

7.4 As to the author's additional claims, the State Party submits that the Supreme Court of the Russian Federation, in single-judge decisions, twice dismissed the author's appeals for a supervisory review, for lack of merit, in relation to the additional appeal submitted by the author's co-defendant before the cassation hearing.

Additional comments from the author

8.1 In a letter dated 21 April 2021, the author again rejects the State Party's submission that he never raised his claims before the domestic courts. He submits that he raised all his claims before the domestic courts, including during the first trial when he was acquitted of all charges, and that, in its decision of acquittal dated 26 June 2008, the Supreme Court of the Komi Republic mentioned the violations raised by him. According to the author, the State Party bases its argument that he has not raised his claims in the domestic courts on the decision of the Supreme Court of the Komi Republic dated 17 June 2009. However, the author notes that, in the new decision, it is mentioned that he reiterated his testimony from the first trial, including the claims raised in the present communication. The author notes that the Supreme Court of the Komi Republic, in its decision dated 17 June 2009, ignored numerous arguments put forward by the author and his lawyers and did not properly reflect his claims in its final decision. The author also notes that the claims contained in his communication were raised by him and his co-defendant in their appeals for supervisory review.

8.2 In a letter dated 7 September 2021, the author reiterates his argument that there was no delay in the submission of his communication to the Committee because, in 2010, he submitted several complaints to the European Court of Human Rights and waited for the outcome of those complaints before engaging with the Committee. He provides copies of letters from the European Court of Human Rights confirming receipt of two complaints.

Issues and proceedings before the Committee

Consideration of admissibility

9.1 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.

9.2 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.

9.3 The Committee takes note of the State Party's position that, owing to a delay in the submission of the communication, the Committee should consider the author's claims inadmissible as constituting an abuse of the right of submission under article 3 of the Optional Protocol. The Committee notes that there are no fixed time limits for the submission of communications under the Optional Protocol and that mere delay in bringing a communication before the Committee does not in itself involve an abuse of the right of submission. However, in certain circumstances, the Committee expects a reasonable explanation justifying a delay.⁶ In addition, according to rule 99 (c) of the Committee's rules of procedure, 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 from 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.

9.4 In the present case, the communication was submitted to the Committee about seven years and four months after the author's sentence had entered into force pursuant to the decision of the Criminal Division of the Supreme Court of the Russian Federation on 26 October 2009. The Committee takes note of the author's argument that he submitted several complaints to the European Court of Human Rights and waited for the outcome of those complaints before

⁶ See, for example, *M.R. v. Russian Federation* (CCPR/C/129/D/2427/2014), para. 8.5; and *D.S. v. Russian Federation* (CCPR/C/120/D/2705/2015), para. 6.4.

submitting his communication to the Committee. The Committee also notes the author's submission that his three complaints were communicated to the State Party in 2018, while others were found inadmissible. However, the Committee observes that none of the three complaints referred to by the author concern the same facts and the same claims as those contained in his communication. In this regard, the Committee takes note of the State Party's submission that: (a) application No. 5264/10 concerns allegations of cruel treatment against the author relating to the period 2010–2013, that is, after the author had been sentenced in 2009; (b) application No. 11402/17 concerns the conditions of the author's detention and the use of handcuffs during detention; and (c) application No. 82352/17 concerns the author's detention in a solitary confinement. The Committee notes that the author has not provided information about any other complaints submitted to another procedure of international investigation or settlement, including those that were found inadmissible, that concern the same facts and claims as are raised in the present communication.

9.5 The Committee also notes the author's assertion that there were several further complaints to the Prosecutor's Office of the Komi Republic and to the Office of the Prosecutor General of the Russian Federation concerning his case between 2011 and 2016. The Committee considers, however, that these complaints constitute extraordinary review proceedings launched long after the judgment against the author became final.⁷

9.6 Similarly, the Committee notes that the author has not provided any reasons justifying the delay in submitting his additional claims, as received on 15 December 2018.

9.7 The Committee thus considers that the author has failed to provide an explanation for the delay in submitting his communication. In the absence of any other information or explanation of pertinence on file, the Committee considers the delay to be unreasonable and excessive enough to amount to an abuse of the right of submission, which renders the communication inadmissible under article 3 of the Optional Protocol and rule 99 (c) of the Committee's rules of procedure.

10. The Committee therefore decides:

- (a) That the communication is inadmissible under article 3 of the Optional Protocol;
- (b) That the present decision shall be communicated to the State Party and to the author.

⁷ See, for example, *Dorofeev v. Russian Federation* (CCPR/C/111/D/2041/2011), para. 9.6; and *Salikhov v. Russian Federation* (CCPR/C/133/D/2759/2016), para. 9.3.