



## 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. 2107/2011\*, \*\*

<i>Communication submitted by:</i>	Vyacheslav Berezhnoy (not represented by counsel)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Russian Federation
<i>Date of communication:</i>	26 September 2009 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 97 of the Committee's rules of procedure, transmitted to the State party on 30 September 2011 (not issued in document form)
<i>Date of adoption of Views:</i>	28 October 2016
<i>Subject matters:</i>	Unlawful detention of a juvenile and unfair trial
<i>Procedural issue:</i>	Exhaustion of domestic remedies
<i>Substantive issues:</i>	Juvenile justice; guardian/guardianship; fair trial — legal assistance, fair trial — undue delay, forced confession
<i>Articles of the Covenant:</i>	9 (1), (2), (3) and (4), 10 (2) (b), 14 (1), (3) (b), (c), (g), (4) and (5) and 24
<i>Article of the Optional Protocol:</i>	5 (2) (b)

\* Adopted by the Committee at its 118th session (17 October-4 November 2016).

\*\* The following members of the Committee participated in the examination of the communication: Yadh Ben Achour, Lazhari Bouzid, Olivier de Frouville, Yuji Iwasawa, Ivana Jelić, Duncan Laki Muhumuza, Photini Pazartzis, Mauro Politi, Sir Nigel Rodley, Víctor Manuel Rodríguez-Rescia, Fabián Omar Salvioli, Anja Seibert-Fohr, Yuval Shany, Konstantine Vardzelashvili and Margo Waterval.



1. The author of the communication is Vyacheslav Berezhnoy, citizen of the Russian Federation born in 1979. He claims to be a victim of violations by the Russian Federation of his rights under articles 9 (1), (2), (3) and (4), 10 (2) (b), 14 (1), (3) (b), (c), (g), (4) and (5) and 24<sup>1</sup> of the International Covenant on Civil and Political Rights. The Optional Protocol entered into force for the Russian Federation on 1 January 1992. The author is not represented by counsel.

#### **The facts as submitted by the author**

2.1 The author<sup>2</sup> submits that at 4 a.m. on 16 February 1995, he was detained by the police and taken to a local police station in the city of Saratov. At the time of his detention, he was not informed of the reasons for his apprehension, his rights were not explained to him and he was not provided with access to legal counsel. He claims that, at the police station, he was subjected to “physical and psychological pressure” for about 10 hours and was forced to write a confession that he had committed several thefts and burglaries. After writing the confession, he was questioned as a suspect and only then was an official record of his detention prepared and indicating 14:20 p.m. as the time of detention.

2.2 The author also submits that during those 10 hours of illegal detention, he had no access to legal counsel or to his parents.<sup>3</sup> He requested the investigators to arrange for his mother to be present in order to help him choose a lawyer to represent him, but was informed that no visits were allowed. Throughout the investigation, he was not represented by a lawyer, despite the fact that he was underage. He was not provided with a State-appointed lawyer until immediately before the court hearings.

2.3 The author further submits that all interrogations continued without the presence of a lawyer or of his mother. This, according to him, constitutes a violation of the domestic criminal procedure, which requires that underage (minor) suspects be immediately provided with a lawyer free of charge. He submits that the State-appointed lawyer, Ms. P.N., examined the case file and signed the examination records only a few days before the start of the trial, and back-dated and signed all the minutes and records of the interrogations to which he had been subjected without ever providing him with any legal advice. The lawyer was only appointed on 20 March 1996, and was not present during any interrogations.<sup>4</sup>

2.4 The author submits that he was never brought before a judge to have his detention reviewed and that, on 28 February 1995, a prosecutor issued an order for his remand into custody. On 10 March 1995, the same prosecutor extended his custody by three months, again without a court decision.<sup>5</sup> Both orders were issued in the absence of the author, despite the requirement in domestic legislation for the prosecutor to hear the accused juvenile when deciding on his or her detention.<sup>6</sup> The author also submits that he was not given a copy of the detention orders and that, because of this and of the absence of a lawyer, he was unable to appeal the orders.

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<sup>1</sup> The author did not invoke article 24 specifically, but when registering the case, the Special Rapporteur on new communications and interim measures asked the State party to provide observations concerning this provision.

<sup>2</sup> The author submits that he was 15 years old at the time of arrest.

<sup>3</sup> The order assigning the author’s mother as his legal representative, as he was a minor accused of committing crimes, was signed on 8 April 1995.

<sup>4</sup> The author provides a copy of the order to assign him a State-appointed lawyer.

<sup>5</sup> The author provides the text of article 11, paragraph 1, of the Criminal Procedure Code at the time, which stated that, “nobody can be subjected to arrest, unless such arrest is ordered by a court decision or a decision of a prosecutor”.

<sup>6</sup> The author provides the text of article 49, paragraph 1, part 2, of the Criminal Procedure Code at the time, which stated that, “participation of the defence lawyer is mandatory during the investigation period when the accused person is underage (minor)”.

2.5 The author further submits that the second detention order expired on 18 May 1995 and he should have been released thereafter. However, he was not released and, instead, remained in unlawful detention for over nine months until the trial began on 5 March 1996 in the Krasnoarmeisk City Court in the Saratov region. He submits that he was not informed of the date of the trial nor did he receive a copy of the order to start the court hearings, as required by law, and only learned about it when he was taken to the court, which did not allow him to prepare for the hearing.

2.6 The author submits that, during the entire trial, the judge used an “accusatory” approach by personally reading out the charges against him at the outset of the hearings and questioning him in an accusatory manner, which led him to believe that, in the court room, there were two accusers: the prosecutor and the judge. As a result, he was afraid to complain about the manner in which he was forced to write a confession and simply confirmed what was being read to him. He was only 16 years old at the time of the court hearings and did not know how to formulate his objections. On 25 March 1996, he was convicted to four years of imprisonment for several thefts and burglary.

2.7 The author submits that, according to domestic legislation, the trial judge has the discretion to allow visits to convicts during the cassation appeal period but, in his case, the judge refused to grant his parents permission to visit, despite his explicit request. As a consequence, he could not ask his parents to find him a lawyer or to help him to prepare an appeal and he missed the deadline to file a cassation appeal against the verdict.

2.8 On unspecified dates, the author requested a supervisory review of his verdict by petitioning the Saratov Regional Court and the Supreme Court of the Russian Federation. The case was reviewed and the verdict was confirmed by both courts on 27 October 2007 and 9 February 2009, respectively. Both courts rejected the author’s arguments that the investigation used unlawful methods to obtain a confession by stating that the author had confirmed his confession before the first instance court in the presence of a lawyer and his legal guardian. The Supreme Court also rejected the author’s claim that his detention during the pretrial stage had been unlawful, stating that his arguments “cannot be taken into consideration, because with regard to the accused, a guilty verdict was pronounced and the time that he spent in custody was deducted from his sentence”.

### **The complaint**

3.1 The author claims that by detaining him for 10 hours without a formal arrest order, the State party violated his rights under article 9 (1) of the Covenant. During this time, he was forced to confess to crimes that he did not commit.

3.2 The author also claims that, after his arrest, he was informed of the reasons for his arrest, but he was not given a copy of the detention order nor brought promptly before a judge and could not appeal his detention, which violated his rights under article 9 (2), (3) and (4) of the Covenant.

3.3 The author further claims that, by issuing a detention order against him without a hearing, the Prosecutor violated his rights under article 10 (2) (b) of the Covenant.

3.4 The author claims that by adopting an accusatory approach during the trial, the judge violated his rights under article 14 (1) of the Covenant. He states that he was not given enough time nor adequate facilities to prepare his defence before the hearing, in violation of article 14 (3) (b) of the Covenant because he was not informed of the date of the hearing nor was he informed of his right to have a lawyer or to be provided with a lawyer ex officio during the pretrial proceedings.

3.5 The author contends that he was not tried promptly, but was held in custody for over one year, despite the fact that he was underage, in violation of article 14 (3) (c) of the

Covenant. He submits that he was questioned in the absence of a lawyer and was not notified that he was not obliged to testify against himself, in violation of article 14 (3) (g).

3.6 The author claims that his age was not taken into account by the courts, in violation of article 14 (4) of the Covenant. He also claims that his right to appeal under article 14 (5) was violated because he was not given the opportunity to consult a lawyer after the pronouncement of the verdict and was therefore unable to file a cassation appeal.

#### **State party's observations on admissibility and the merits**

4.1 On 25 June and 17 August 2012, the State party provided its observations on the admissibility and merits of the communication. The State party submits that the author was first apprehended at around 3 a.m. on 16 February 1995, on suspicion of thefts and burglary, in particular from the "Garantia" shop. Along with the author, several other persons were arrested. The police initiated a criminal investigation on the same day. The record of the investigation contains the author's confession to the theft from the "Garantia" shop as well as to other crimes that were committed from 27 January to 10 February 1995.

4.2 On 16 February 1995, the author was duly informed of his rights and of the charges against him, and this is confirmed by the relevant documents containing the author's signature. After the initial interrogation, the author was formally arrested as a suspect in several crimes provided for in article 144, paragraph 2, of the Criminal Code of the Russian Soviet Federative Socialist Republic (RSFSR).

4.3 In accordance with article 393 of the Criminal Procedure Code of RSFSR, an underage person may be arrested only in exceptional circumstances. As it transpires from the police report, the reason for detaining the author and the other co-defendants was that they could commit other crimes if not detained or could avoid investigation. The parents of the author were informed orally about his arrest.<sup>7</sup>

4.4 On 18 February 1995, by an order issued by an interdistrict prosecutor the author was detained pending trial. Article 22, paragraph 2, of the Constitution of the Russian Federation establishes that a person shall be arrested only by a court order. However, at the time, in 1995, this provision was not yet enforced and the State party was still applying the provisions of the Criminal Procedure Code of RSFSR. According to article 91 of this Criminal Procedure Code, detention may be decided by a court, an investigator or a prosecutor. The copy of such decision must be given to the person concerned. The records show that the prosecutor's decision was signed by the author and his lawyer, Ms. P.N.

4.5 The records show that the lawyer, Ms. P.N., was present on 24 February 1995, when the author was formally charged with committing several crimes and when he was interrogated by an investigator. The records also show that the lawyer was also present when the author was interrogated on 27 March 1995. On 8 April 1995, the author's mother, B.O., was appointed as his legal representative and her procedural rights were explained to her.

4.6 On 11 April 1995, in the presence of Ms. P.N. and his mother, the author was read his final charges. He again confessed that he was guilty and did not complain of any mistreatment. On 13-14 April 1995, he was informed that the investigation was completed and he was given time to study the materials in the criminal case file. The records indicate that the author and his lawyer studied the case materials and that he did not make any comments or complaints. In general, the author's allegations that he was mistreated during the investigation and denied meetings with his lawyer or his parents are not confirmed by the records.

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<sup>7</sup> The State party does not provide any details of such notification.

4.7 On 27 April 1995, the criminal case was referred to the Krasnoarmeisk City Court. The author did not file any complaints regarding his ability to study the materials in the case file. By a court decision of the court of 5 March 1996, the author's detention was extended, based on article 222 of the Criminal Procedure Code. On 25 March 1996, when calculating the author's final sentence, the court considered the time spent by the author in pretrial detention. Analysis of the transcript of the trial does not show that the court employed an "accusatory" approach, as claimed by the author.

4.8 Regarding the alleged procedural violations during the trial, the State party submits that the judge has the right to ask questions during the hearings. Furthermore, the order of questioning the witnesses is decided by the court. The trial transcript shows that the author again admitted his guilt and testified on the details of the crimes he committed. The author did not complain about mistreatment to the court. A copy of the court verdict dated 25 March 1996 was provided to the author on 27 March 1996. The copy contained information on the author's right to file a cassation appeal. Despite this, the author did not make any complaints or comments.

4.9 The State party also submits that, on 16 April 2007, the verdict of 25 March 1996 was changed to bring it into compliance with newly adopted legislation. For example, the indication of "repetitive" crimes was removed, as was one of the thefts committed at the "Kluchevskoe" shop. As a result, the author was resentenced to a term of imprisonment of 3 years and 11 months.

4.10 The State party further submits that the author did not file a cassation appeal against the verdict of 25 March 1996, therefore, it cannot consider that the author has exhausted all available domestic remedies. Although the author subsequently filed several appeals before the Supreme Court of the Russian Federation, these were for supervisory reviews, which are limited in their scope. The State party therefore asks the Committee to consider the communication inadmissible.

4.11 Furthermore, based on the information submitted above, the State party contends that the author's claims relating to his rights as a juvenile under article 24 of the Covenant have no merit.

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

5.1 On 30 August, 3 September and 29 September 2012, the author submitted his comments on the State party's observations on admissibility and the merits. He notes that the State party does not deny the fact that his mother was first allowed to see him only on 8 April 1995, that is, after the investigation was completed. The author submits that he first requested to see his mother on 16 February 1995.

5.2 The author claims that he was tortured and otherwise mistreated when he was first detained, with the purpose of obtaining a confession. The police officers hit him in the stomach, hit him on the head with a thick book and threatened to place him in a cell together with persons accused of rape and other violent crimes. The author first complained about this treatment in 2007 and 2008<sup>8</sup> to the Office of the Prosecutor General, but he never received a reply.

5.3 The author also claims that he was not allowed to choose a lawyer, despite the fact that he requested to see his mother, so she could help him find a lawyer. The author submits that he was only 15 years old at the time and he did not understand many of the questions that he was asked, and that he was constantly asked to confess to crimes that he did not commit. He also submits that, from 3 a.m. to 2.20 p.m. on 16 February 1995, he was

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<sup>8</sup> The author does not provide exact dates or copies of these complaints.

detained unlawfully and that there was no order assigning the lawyer, Ms. P.N., to him; it was most probably faked, since it does not contain a registration number or the signature of the lawyer. He claims that the lawyer signed all the documents after the investigation was completed and never represented him. The author further submits that the lawyer was appointed by the investigator in his case and he did not have a chance to consult with his mother and choose another lawyer.

5.4 The author notes that the State party does not deny the fact that his detention was ordered by the prosecutor, not by the court. The State party claims that the records show that the author was notified of his rights and that his signature is on the minutes of interrogation. The author submits that the signatures do not resemble his handwriting and that many of the records do not indicate a time or date. He denies the State party's claim that he could have complained against his arrest if he wished to. First of all, he did not have access to legal assistance to do that and, second, he was not given a copy of the decision, which made it impossible for him to complain. He claims that, in violation of article 10 (2) (b), his case was not adjudicated quickly.

5.5 The author also notes that the State party does not deny that he was unlawfully detained for more than 10 months before he was tried. The first detention order authorized two months of detention up to 18 April 1995. From that date until his trial on 5 March 1996, he was detained unlawfully, since there was no detention order or decision from either a prosecutor or a court.

5.6 The author submits that he did not have any means or opportunities to submit a cassation appeal after his verdict were handed down. He only learned about the initial court hearing when he was being brought to court. He also did not have an opportunity to consult with the lawyer or his parents before the hearing. The State party claims that the records do not show that the author requested to file a cassation appeal and that the lawyer did not request to meet with the author after the verdict. The author claims that, because of his age, he did not know how to file or draft a cassation appeal.

5.7 Regarding the fact that his verdict was reconsidered on 16 April 2007, the author submits that the new decision did not consider any of the violations that he claims to have suffered. It was a formal decision aimed at bringing the previous verdict into compliance with the new Criminal Procedure Code of the Russian Federation and it only decreased his sentence by one month.

#### **Additional observations from the parties**

##### *From the State party*

6.1 On 28 March 2013, the State party reiterated its previous observations. It adds that the records of the criminal case contain the author's confession made on 16 February 1995. At the same time, he was informed about his rights under article 51 of the Constitution of the Russian Federation, which provides that nobody shall be compelled to testify against himself or herself, his or her spouse and close relatives. The author's parents were also notified of the author's arrest.

6.2 The records of the criminal case do not contain any request by the author for a different lawyer. On 8 April 1995, the author's mother was assigned to act as his legal representative. As required by article 92 of the Criminal Procedure Code of RSFSR, the detention order was issued in the form of a decision spelling out the grounds for the decision. According to article 96 of the Criminal Procedure Code of RSFSR, such decision may be made by an investigator and approved by a prosecutor.

6.3 The State party submits that there is no record of any complaints by the author regarding his detention or the conditions of detention or any mistreatment that he allegedly

suffered. Furthermore, following his conviction, the author was provided with explanations regarding the procedure for filing a cassation appeal, but no appeal was filed.

6.4 The State party also submits that the first time the author submitted a complaint was on 18 December 2008, under the supervisory review procedure to the Supreme Court of the Russian Federation. In this complaint, he indicated that he was mistreated while in detention, that his rights to legal assistance were violated and that he was pressured by the police to confess to crimes that he did not commit. On 9 February and 29 May 2009, the Supreme Court of the Russian Federation rejected those claims. The State party notes that the author submitted these claims to the Committee 16 years after his initial conviction in 1995, after being sentenced for committing another unrelated crime.

6.5 The State party states that the author's claims that some documents, signatures and other records were somehow falsified are incorrect. The records contain all the necessary proofs and were compiled in accordance with the requirements of the law at the time.

6.6 The State party further submits that, in his complaints to the Office of the Prosecutor General on 9 August and 13 December 2007, the author did not mention any torture or mistreatment while in detention but, rather, complained about the lawfulness of another, unrelated conviction in 1998. The author did not mention anything related to the verdict that was handed down against him in 1995.

#### *From the author*

7.1 The author submitted a letter, in which his mother denies having been promptly informed about her son's arrest. The author contends that his mother was only informed about his arrest several days after his arrest, without providing the exact date. He claims that his mother came to the police station (no dates specified) several times, but was denied a meeting with him by an investigator, Ms. R.S. The author also claims that his mother wanted to hire a lawyer privately, but she was told that her son already had one.

7.2 The author contends that his mother, as his legal representative, was only allowed to participate in the criminal case as of 8 April 1995 when the investigation was almost completed. He adds that the signature confirming that he had completed studying the criminal case against him and that he had no comments was falsified. The records do not indicate the time frame in which the author studied the case file, it is the State party that claims that he was given time to study the case materials on 13-14 April 1995.

7.3 The author further submits that the delay in submitting his complaints to the Supreme Court of the Russian Federation and to the Committee can be explained by the fact that he was only 15 years at the time of the verdict and sentence in 1995 and also by the fact that he does not have a legal background. He also did not have access to the Criminal Code and the Criminal Procedure Codes until 2006, when prisons started opening "legal sections" for prisoners to use.

### **Issues and proceedings before the Committee**

#### *Consideration of admissibility*

8.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 93 of its rules of procedure, whether it is admissible under the Optional Protocol.

8.2 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.

8.3 The Committee takes note of the State party's argument regarding the delay in the submission of the communication to the Committee.<sup>9</sup> The Committee notes that the author filed a request for supervisory review with the Supreme Court of the Russian Federation on 18 December 2008, before he submitted his communication to the Committee in 2009, and that, according to domestic law, there is no time limit for submitting a request for supervisory review. The Committee notes that there is no fixed time limit for submission of a communication under the Optional Protocol<sup>10</sup> and that a mere delay in submission does not, in itself, constitute an abuse of the right to submit a communication.<sup>11</sup> In these circumstances, the Committee does not regard the delay in this case to amount to an abuse of the right of submission.

8.4 With regard to the requirement set out in article 5 (2) (b) of the Optional Protocol, the Committee notes that the State party challenged the admissibility of the present communication on the grounds of non-exhaustion of domestic remedies, as the author did not file a cassation appeal following the verdict in 1995 and only filed a request for supervisory review to the Supreme Court on 18 December 2008. The Committee also notes that on 9 February and 29 May 2009, the Supreme Court of the Russian Federation rejected his appeals. The Committee further notes the author's claims that he was denied access to his parents in order to discuss a cassation appeal and did not have a chance to select a lawyer of his own choosing, instead of Ms. P.N., who was appointed by the investigator. Given the author's age and his vulnerable position at the time and noting the author's claims regarding his lack of access to the records of the hearings and to adequate legal representation and his parents, the Committee cannot conclude that the author was given adequate opportunity to prepare an appeal. In such circumstances, the Committee considers that it is not precluded by article 5 (2) (b) of the Optional Protocol from considering the present communication.

8.5 The Committee notes the author's claims under articles 14 (1) and (3) (g) of the Covenant regarding the accusatory attitude of the trial judge. In the absence of any further pertinent information on file, however, the Committee considers that the author has failed to sufficiently substantiate these allegations, for purposes of admissibility. Accordingly, it declares this part of the communication inadmissible under article 2 of the Optional Protocol.

8.6 The Committee considers that, for the purposes of admissibility, the author has sufficiently substantiated the remaining claims under article 9 (1), (2), (3), and (4), article 10 (2) (b), article 14 (3) (b) and (c), (4) and (5), as well as article 24 of the Covenant. It therefore declares the communication admissible and proceeds with its consideration of the merits.

#### *Consideration of the merits*

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

9.2 The Committee recalls that, in accordance with article 9 (3) of the Covenant, anyone arrested or detained on a criminal charge "shall be brought promptly before a judge or other officer authorized by law to exercise judicial power". The Committee also recalls that while the exact meaning of "promptly" may vary depending on objective circumstances, delays should not exceed a few days from the time of arrest. In the view of the Committee, 48

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<sup>9</sup> See para. 6.4 above.

<sup>10</sup> See, inter alia, communication No. 1445/2006, *Polacková and Polacek v. Czech Republic*, Views adopted on 24 July 2007, para. 6.3.

<sup>11</sup> The Committee notes that the present communication was submitted prior to its adoption of rule 96 (c) of its rules of procedure.



hours is ordinarily sufficient to transport the individual and to prepare for the judicial hearing; any delay longer than 48 hours must remain absolutely exceptional and be justified under the circumstances.<sup>12</sup> An especially strict standard of promptness, such as 24 hours, should apply in the case of juveniles.<sup>13</sup> The Committee notes the author's unchallenged allegations that he was apprehended on 16 February 1995, officially placed in pretrial detention by decision of a prosecutor on 18 February 1995, but not brought before a judge until many months later, on the day that the court trial began. The Committee recalls that it is inherent to the proper exercise of judicial power that it be exercised by an authority which is independent, objective and impartial in relation to the issues dealt with, and that a public prosecutor cannot be considered as an officer authorized to exercise judicial power within the meaning of article 9 (3).<sup>14</sup> Accordingly, the Committee concludes that the above-mentioned facts reveal a violation of the author's rights under article 9 (3) of the Covenant.

9.3 The Committee notes the author's unrefuted claims that he was unlawfully detained from 18 May 1995 until the beginning of the court hearings on 5 March 1996. The Committee also notes that the State party has not provided any information on the author's whereabouts during this time. The Committee recalls that article 9 (4) of the Covenant and its longstanding jurisprudence provide that a detained person shall to be entitled to take proceedings before the court, in order that the court may decide on the lawfulness of his detention. If there is no lawful basis for continuing the detention, the judge must order release.<sup>15</sup> In the present case, not only was the author not brought before a judge for issuance of the initial detention order, but he was not allowed to take proceedings before a court to challenge the lawfulness of his detention, in direct violation of the provisions of article 9 (4) of the Covenant. The Committee therefore concludes that the author's unlawful detention violated his rights under article 9 (4) of the Covenant. In the light of this finding, the Committee decides not to examine the author's claims under article 9 (1) and (2) of the Covenant separately.

9.4 The Committee recalls its general comment No. 17 (1989) on the rights of the child, its general comment 32 (2007) on the right to equality before courts and tribunals and to a fair trial and its jurisprudence, in which it states that accused juvenile persons are entitled to be tried as soon as possible in a fair hearing. Article 10 (2) (b) reinforces for juveniles the requirement in article 9 (3) that pretrial detainees be brought to trial expeditiously.<sup>16</sup> The Committee notes that the author was arrested on 16 February 1995 and that his case was not adjudicated until 25 March 1996. The Committee also notes that, according to the State party, the criminal investigation was completed and the case was referred to Krasnoarmeisk City Court on 27 April 1995, almost one year before the final adjudication. In the absence of any pertinent explanation by the State party regarding this significant delay in the adjudication of a case concerning a juvenile held in detention, the Committee considers that the author's rights to a speedy trial under article 10 (2) (b) have been violated. Consequent to the finding of a violation of the author's rights to a speedy adjudication as provided for under article 10 (2) (b) of the Covenant and for the same reasons as stated above, the Committee finds that the facts before it disclose a violation of the author's rights under article 14 (3) (c) of the Covenant.

9.5 Regarding the right to legal counsel, the Committee notes the author's claims that he requested to see his mother so that she could help him to select a lawyer. The Committee also notes that the author's mother, who, given the author's age, could have been instrumental in finding him a lawyer, was only appointed as his legal representative on 8

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<sup>12</sup> See general comment No. 35 (2014) on liberty and security of person, para. 33.

<sup>13</sup> Ibid.

<sup>14</sup> Ibid., para. 32.

<sup>15</sup> Ibid., para. 36.

<sup>16</sup> Ibid., para. 59.

April 1995, when the investigation was almost completed. The Committee recalls that article 14 (3) (b) of the Covenant provides that accused persons must have adequate time and facilities for the preparation of their defence and to communicate with counsel of their own choosing. This provision is an important element of the guarantee of a fair trial and an application of the principle of equality of arms.<sup>17</sup> Taking into consideration the age of the author at the time and his vulnerability, the Committee considers that the author was not provided with adequate time and facilities to prepare his defence or to communicate with counsel of his own choosing, and that his rights under article 14 (3) (b) of the Covenant have thus been violated.

9.6 Having concluded that, in the present case, there has been a violation of article 14 (3) (b) and (c) of the Covenant, the Committee decides not to separately examine the author's claims under article 14 (5).

9.7 Regarding the author's claims that his rights under article 14 (4) were violated, the Committee recalls article 24 of the Covenant and that, in criminal proceedings, juveniles need special protection.<sup>18</sup> The Committee has already stressed the importance of providing appropriate assistance to juveniles in criminal proceedings, including through their parents or legal guardians.<sup>19</sup> The Committee notes the State party's observation that the author's parents were informed "orally" at the time of the author's arrest, however, it observes that the author's mother was only appointed as his legal representative on 8 April 1995, that is almost two months after his arrest.<sup>20</sup> The Committee considers that, in the present case, given the author's age at the time, which placed him in a vulnerable position, unimpeded access by his parent or legal guardian or legal representative could have played a crucial role in protecting his rights throughout the criminal proceedings.<sup>21</sup> Those rights include, but are not limited to, the right to counsel of his own choosing, the right to a speedy trial and the right to have adequate time and facilities to prepare his defence. Considering that the information provided by the parties shows that the State party failed to adopt any special measures to protect the author on account of his age, the Committee finds that the State party violated the author's rights under article 14 (4), read in conjunction with article 24 (1), of the Covenant.

10. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts before it disclose a violation by the State party of the author's rights under article 9 (3) and (4), article 10 (2) (b), article 14 (3) (b) and (c), and article 14 (4), read in conjunction with article 24 (1), of the Covenant.

11. In accordance with article 2 (3) (a) of the Covenant, the State party is under an obligation to provide an effective remedy to individuals whose Covenant rights have been violated. Accordingly, the State party is obligated to, inter alia, provide Vyacheslav Berezhnoy with adequate compensation, including reimbursement of court fines, legal costs and other related fees incurred. The State party is also under an obligation to take all the

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<sup>17</sup> See general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, para. 32.

<sup>18</sup> Ibid., para. 42.

<sup>19</sup> Ibid. See also communication No. 1390/2005, *Koreba v. Belarus*, Views adopted on 25 October 2010, para. 7.4.

<sup>20</sup> See Committee on the Rights of the Child, general comment No. 10 (2007) on children's rights in juvenile justice, in which the Committee stresses the importance of informing both the child and his or her parents or legal guardians about the criminal proceedings (para. 48) and of the child who is being questioned having access to a legal or other appropriate representative and being able to request the presence of his or her parent(s) during questioning (para. 58).

<sup>21</sup> See European Court of Human Rights, *Blokhin v. Russia* (application No. 47152/06), judgment of 23 March 2016, para. 183, in which the Court found that the questioning of a juvenile in the absence of a guardian, a defence lawyer or a teacher to be "psychologically coercive".

steps necessary to prevent similar violations against juvenile offenders from occurring in the future.

12. 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 or not and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective 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 its Views. The State party is also requested to publish the present Views and to have them widely disseminated in the State party.

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