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Communication No. 1764/2008

Views adopted by the Committee at its 109th session (8–26 July 2013)

<i>Submitted by:</i>	Zeydulla Vagab Ogly Alekperov (represented by his sister, Ms Rafizat Magaramova)
<i>Alleged victim:</i>	The author
<i>State Party:</i>	The Russian Federation
<i>Date of communication:</i>	16 January 2008
<i>Document references:</i>	Special Rapporteur's rule 97 decision, transmitted to the State party on 5 March 2008 (not issued in document form)
<i>Date of adoption of Views:</i>	21 October 2013
<i>Subject matter:</i>	Unavailability of a jury trial and commutation of the death sentence to life imprisonment
<i>Procedural issues:</i>	Level of substantiation of claims; exhaustion of domestic remedies
<i>Substantive issues:</i>	Right to effective remedy; right to life; prohibition of torture, cruel or inhuman and degrading treatment or punishment; right to a fair hearing by an independent and impartial tribunal; freedom from interference with correspondence; retroactive application of a criminal law providing for a lighter penalty; prohibition of discrimination
<i>Articles of the Covenant:</i>	2; 6; 7; 14; 15; 17 and 26
<i>Articles of the Optional Protocol:</i>	2 and 5, paragraph 2 (b) [Annex]

Annex

Views of the Human Rights Committee under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights (109th session)

concerning

Communication No. 1764/2008*

Submitted by: Zeydulla Vagab Ogly Alekperov (represented by his sister, Ms Rafizat Magaramova)

Alleged victim: The author

State Party: Russian Federation

Date of communication: 16 January 2008

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 21 October 2013,

Having concluded its consideration of communication No. 1764/2008, submitted to the Human Rights Committee by Zeydulla Vagab Ogly Alekperov under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication and the State party,

Adopts the following:

Views under article 5, paragraph 4, of the Optional Protocol

1. The author of the communication is Mr. Zeydulla Vagab Ogly Alekperov, an Azerbaijani national born in 1971, currently serving a life sentence in a correctional facility in Sol-Ilets, in the Russian Federation. He claims to be a victim of a violation by the State party¹ of his rights under articles 2; 6; 7; 14; 15; 17 and 26 of the Covenant. He is represented by his sister, Ms Rafizat Magaramova.

The facts as presented by the author

2.1 On 13 October 1995, the author was sentenced to death, with confiscation of property, on numerous charges by the Murmansk Regional Court, which was composed of

* The following members of the Committee participated in the examination of the present communication: Mr. Yadh Ben Achour, Mr. Lazhari Bouzid, Ms. Christine Chanut, Mr. Ahmad Amin Fathalla, Mr. Cornelis Flinterman, Mr. Yuji Iwasawa, Mr. Walter Kaelin, Ms. Zonke Zanele Majodina, Mr. Kheshoe Parsad Matadeen, Mr. Gerald L. Neuman, Sir Nigel Rodley, Mr. Victor Manuel Rodríguez-Rescia, Mr. Fabian Omar Salvioli, Ms. Anja Seibert-Fohr, Mr. Yuval Shany, Mr. Konstantine Vardzelashvili and Ms. Margo Waterval.

¹ The Optional Protocol entered into force for the State party on 1 January 1992.

a professional judge and two lay judges. The author claims that he was not tried by a competent tribunal, as he was deprived of the right, guaranteed by articles 20²; 47³ and 19⁴ of the Russian Constitution (hereinafter “the Constitution”), to have his case examined by a jury.

2.2 The author notes that on 16 July 1993, pending the establishment of the jury system in the Russian Federation, the law “On Introducing Changes and Amendments to the Law of the Russian Soviet Federative Socialist Republic (hereinafter “the RSFSR”) “On the RSFSR Judicial System”, the RSFSR Criminal Procedure Code, the RSFSR Criminal Code and the RSFSR Code on Administrative Offences” (hereinafter “the law of 16 July 1993”) was adopted. Paragraph 7, section II, of the law added a new section 10 to the RSFSR Criminal Procedure Code “On jury trial”. According to paragraph 2 of the decision of the Russian Supreme Council (Parliament), also adopted on 16 July 1993 (hereinafter “the decision of 16 July 1993”), jury trials were first to be introduced, as of 1 November 1993, in five subjects, or regions, of the Russian Federation (Stavropol, Ivanovo, Moscow, Ryazan and Saratov) and then, as of 1 January 1994, in four other subjects (Altai, Krasnodar, Ulyanovsk and Rostov). Therefore, as of 13 October 1995, i.e. the date when the author’s sentence was handed down, death penalty cases were examined by a jury in the nine regions of the Russian Federation. In this regard, the author claims that, in violation of articles 15⁵ and 46⁶ of the Constitution, the jury system was not created in the Murmansk Region at that time.

2.3 On 23 January 1996, the author’s sentence was upheld by the Supreme Court. Although the author did not invoke a violation of the Constitutional provisions in his cassation appeal due to his legal ignorance, he submits that the Supreme Court was obliged to notice these violations and quash his sentence.

2.4 On 21 December 1998, the author’s death sentence was commuted into life imprisonment by a presidential decree of pardon. He claims that, in violation of article 18 of the Constitution, establishing that administration of justice in the Russian Federation is carried out only by courts, his life imprisonment was prescribed by presidential decree. Moreover, the presidential decree itself is contrary to article 54 of the Constitution⁷ and article 10 of the Russian Criminal Code, as the RSFSR Criminal Code at the time of commission of the crime (July 1994) did not provide for punishment in the form of life

² Article 20 of the Constitution reads: “(1) Everyone shall have the right to life. (2) Capital punishment until its complete elimination may be envisaged by a Federal Law as an exclusive penalty for especially grave crimes against life, and the accused shall be granted the right to have his case examined by a jury.”

³ Article 47 of the Constitution reads: “(1) No one may be deprived of the right to have his case considered by competent court and judge, having jurisdiction over it under the law. (2) Any accused shall have the right to have his case examined by a jury, when such an opportunity is provided for under the Federal Law.”

⁴ Article 19, paragraph 1, of the Constitution reads: “Everybody is equal before the law and court.”

⁵ Article 15, paragraph 1, of the Constitution reads: “The Constitution of the Russian Federation shall have the supreme juridical force, direct action and shall be used on the whole territory of the Russian Federation. Laws and other legal acts adopted in the Russian Federation shall not contradict the Constitution.”

⁶ Article 46, paragraph 1, of the Constitution reads: “Everyone shall be guaranteed the judicial protection of his rights and freedoms.”

⁷ Article 54 of the Constitution reads: “(1). A law introducing or aggravating responsibility shall not have retrospective effect. (2). No one shall be held guilty of any act which was not regarded as a criminal offence when it was committed. If, subsequent to the commission of the offence, provision is made by law for the removal of the criminal responsibility or the mitigation of the penalty, the new law should apply”.

imprisonment. Maximum imprisonment for the crime he committed was 15 years, or the death penalty.

2.5 Upon the request of the Moscow City Court and on the basis of the complaints of three prisoners, Mr. G., Mr. F. and Mr. K., the Russian Constitutional Court examined the constitutionality of paragraphs 1 and 2 of the decision of 16 July 1993.⁸ On 2 February 1999, the Constitutional Court found that paragraph 1 of the decision is in part contrary to articles 19, 20 and 46 of the Constitution, as it does not provide for the realisation of the right, afforded to all accused persons liable to the death penalty, to have their cases examined by a jury on the entire territory of the Russian Federation. The Constitutional Court held that paragraph 1 of the decision of 16 July 1993 could no longer be used as a ground for refusing motions for jury trial and that the sentenced should be afforded the possibility to have their cases examined by a jury. Between the entry into force of the Constitutional Court's decision of 2 February 1999 and the entry into force of a federal law ensuring that the right to a trial by jury is effectively realised throughout Russia, the death penalty cannot be imposed by a court of any composition (a jury, three professional judges or one professional judge and two lay judges).

2.6 The author claims that under article 10 of the Criminal Code, article 54 of the Constitution and article 397, paragraph 13, of the Criminal Procedure Code, a competent court was supposed, on its own initiative, to bring his sentence into compliance with the Constitutional Court's decision of 2 February 1999. This was not done, and the author did not petition the court to initiate a review procedure because of his ignorance of the law.

2.7 In 2004, the author petitioned the Sol-Iletsk District Court of the Orenburg Region to bring his case into compliance with changes introduced to the Criminal Code by the law of 8 December 2003 "On Introducing Changes and Amendments to the Criminal Code". On 29 June 2004, the Sol-Iletsk District Court reviewed the author's sentence, changed the legal qualification of some of his actions but retained the sentence to life imprisonment. The author claims that the Sol-Iletsk District Court failed to bring his sentence into compliance with the law then in force, and, specifically, the Constitutional Court's decision of 2 February 1999.

2.8 In March 2006, the author learned about the decision of the Zlatoust City Court of the Chelyabinsk Region of 29 January 2001 that brought a sentence of another prisoner, Mr. D., in compliance with the Constitutional Court's decision of 2 February 1999. The author was told that this decision was a precedent that he could use it in order to petition a competent court concerning his case. On an unspecified date, he submitted such a petition to the Sol-Iletsk District Court of the Orenburg Region.

2.9 On 23 August 2006, the Sol-Iletsk District Court of the Orenburg Region rejected the author's petition for lack of jurisdiction on the matter, explaining that the matter fell under the jurisdiction of the Presidium of the Supreme Court. The author claims that this decision violated his rights under article 397, paragraph 13, of the Criminal Procedure Code, article 19 of the Constitution, as this court was at the same level in the hierarchy of courts as the Zlatoust City Court of the Chelyabinsk Region (see paragraph 2.8 above) and, therefore, it was endowed with the same authority as the latter to bring his sentence into compliance with the Constitutional Court's decision of 2 February 1999.

2.10 In October 2006, the author submitted a petition to the Chairperson of the Supreme Court. On 2 March 2007, the petition was rejected by a judge of the Supreme Court on the grounds that the author did not participate in the constitutional proceedings that resulted in the Constitutional Court's decision of 2 February 1999. Therefore, there was no basis under

⁸ See paragraph 2.2 above.

article 49 of the Criminal Procedure Code to review his sentence. The author submits that despite the fact that Mr. D. (see paragraph 2.8 above) did not participate in the constitutional proceedings in question, his sentence was brought in compliance with the Constitutional Court's decision of 2 February 1999. Moreover, the Constitutional Court cannot take two decisions on the same matter and, when a similar issue arises, the courts should be guided by the existing decision of the Constitutional Court⁹.

2.11 By a letter received on 31 August 2010, the author's sister informed the Committee that the author is experiencing continuous difficulties receiving and sending correspondence in relation to the present communication. In particular, although he received a letter of the Committee of 31 March 2010, his comments of 4 May 2010¹⁰ sent to her address for subsequent transmittal to the Committee have never reached her. On 7 July 2010, the author re-sent a copy of his comments of 4 May 2010 to her address but she has not received them either. The author's sister requested the Committee: (1) not to discontinue his communication, (2) to inform the Permanent Mission of the Russian Federation in Geneva about the interference with his correspondence with the Committee, and (3) to request the Permanent Mission of the Russian Federation to provide explanations¹¹.

The complaint

3.1 The author claims that the above-mentioned facts amount to a violation by the State party of his rights under articles 2, 6, 7, 14, 15 and 26 of the Covenant.¹² In particular, he argues that he was not tried by a competent court, in violation of articles 2, 6 and 14 of the Covenant. He refers to articles 14 and 15 of the Covenant to complain that his sentence was not brought into compliance with the Constitutional Court's decision of 2 February 1999, providing all accused with the right to have their criminal cases examined in a jury trial. He also argues that, in violation of article 15 of the Covenant, (1) he was pardoned by the President rather than a court, despite the fact that domestic courts are responsible for the administration of justice in Russia; and that (2) a heavier penalty was imposed on him as a result of the commutation of sentences, than the one which was applicable at the time of commission of the crime, i.e. 15 years' imprisonment. He further alleges a breach of article 26 of the Covenant as he was denied a trial by jury in the Murmansk Region, whereas jury trials examined death penalty cases in the nine other Russian regions.

3.2 The author also complains of unlawful interference with his correspondence with the Committee in relation to his communication, which raises issues under article 17, paragraph 1, of the Covenant.

⁹ On 10 September 2008, the author applied to the European Court of Human Rights, alleging a violation of article 7 (no punishment without law) of the European Convention. On 17 April 2009, the European Court of Human Rights declared the author's complaint inadmissible as it did not meet the admissibility criteria laid out in articles 34 and 35 of the Convention. Having regard to all material in its possession, the Court established that the complaints submitted by the author, in so far as they fall within its competence, do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

¹⁰ The author's submissions of 4 May 2010 have not reached the Committee.

¹¹ On 24 November 2010, the Committee requested the State party to comment on the information imparted by the author's sister regarding his difficulty receiving and sending correspondence in relation to the present communication due to alleged interference from prison authorities.

¹² The author includes article 7 in his initial list of articles of the Covenant violated, but thereafter does not refer to it again or explain how it is relevant to his complaint.

State party's observations on admissibility and merits

4.1 By a Note Verbale of 22 July 2008, the State party submitted that the decisions adopted in the author's case were in compliance with its international obligations and domestic legislation, and that his allegations are unfounded. The author was sentenced to death on 13 October 1995 by the Murmansk Regional Court. His case was considered by a tribunal composed of a professional judge and two lay judges. On 23 January 1996, the Supreme Court upheld his sentence on appeal. On 29 June 2004, the Sol-Iletsk District Court reviewed the author's sentence and changed legal qualification of some of his actions, bringing it into compliance with the law of 8 December 2003¹³. The court confirmed the author's life imprisonment.

4.2 Pursuant to article 421 of the RSFSR Criminal Procedure Code, any accused of a crime for which death penalty is prescribed and which falls within the jurisdiction of a territorial, regional or a city court, as stated in article 36 of the this Code, could request that his case be examined with the participation of a jury. The author was accused of a crime falling under the jurisdiction of such a court. However, at the time of examination of his death penalty case, jury trials were not yet introduced in the Murmansk Region. According to chapter 2, part 6, of the "Final and Transitional Provisions" of the Constitution, until the entry into force of the federal law setting out the procedure for the examination of cases by a jury, the existing procedure of examination of that category of cases by courts is preserved.

4.3 Pursuant to article 8 of the Federal Law of 18 December of 2001 No. 177-FZ "On putting into effect the Russian Criminal Procedure Code" with amendments, jury trials were introduced in the Murmansk Region as of 1 January 2003. On 13 April 2000, the Constitutional Court examined the constitutionality of article 421 of the RSFSR Criminal Procedure Code. By its decision No.69-0, the Court held that transferring a criminal case for consideration from a court having territorial jurisdiction over it to another court, for the sole reason that a jury trial was unavailable in the former court, is contrary to article 47, paragraph 1, of the Constitution. The State party further points out that, at the time of the events, the author did not object to the examination of his criminal case by a tribunal with the participation of two lay judges. Therefore, his case was considered by a tribunal of due composition.

4.4 The State party further submits that, on 21 December 1998, the author was pardoned by presidential decree and the death penalty was commuted into life imprisonment, which is a more lenient penalty. The presidential decree pardoning the author was adopted in the exercise of the President's constitutional prerogative to pardon. Pardon operates outside the framework of administration of justice in criminal cases, which requires compliance with articles 10 and 54 of the Russian Criminal Code, proscribing the retroactive application of the law aggravating the liability of a person. The presidential decree was issued in compliance with articles 59 and 85 of the Russian Criminal Code, then in force, which provides for the possibility to commute death sentences into life imprisonment. Article 24 of the RSFSR Criminal Code, which was in force at the time of commission of the crime by the author, also provided for commutation of the death penalty to life imprisonment. Pardon is not linked with the issues of criminal responsibility or determination of sentences, which are governed by criminal procedure provisions and decided exclusively by courts.

4.5 The State party further refers to decisions of the Constitutional Court Nos. 60-0 and 61-0 of 11 January 2002 in the cases of A.G and I.F., according to which pardon, as an act of mercy, cannot lead to consequences which are heavier for the convict than those

¹³ See paragraph 2.7 above.

provided for in criminal law establishing criminal liability and decided by court on a specific case. Therefore, commutation, by way of pardon, of the death sentence to a lighter one (in the author's case – to life imprisonment) under the criminal law in force, cannot be deemed as worsening the convict's situation.

4.6 According to article 413, paragraph 4(1), of the Russian Criminal Procedure Code, in force as of 1 July 2002, a criminal case can be reviewed due to newly-established circumstances, in particular, in the event that the Constitutional Court finds that law applied to such a case is contrary to the Constitution. The State party notes that the author did not participate in the proceedings before the Constitutional Court that resulted in the decision of 2 February 1999. Therefore, there were no grounds under article 49 of the Russian Criminal Procedure Code to review his case.

4.7 The decision of the Zlatoust City Court of 29 January 2001 also does not provide grounds for reviewing the author's case. Court decisions do not have precedential value under the Russian law. Furthermore, the amendments to article 24 of the Russian Criminal Code that provided for the possibility to commute the death penalty into life imprisonment by way of pardon, were introduced by Federal Law No. 4123-1 of 17 December 1992 and came into force as of 6 January 1993. Prior to that, article 24 of the RSFSR Criminal Code, with amendments of 28 May 1986, provided for the possibility to commute the death penalty into imprisonment of 15 to 20 years. Mr. D., whose sentence was modified by the Zlatoust City Court¹⁴, had committed the crime on 12 November 1992, i.e. before the entry into force of the Federal Law of 17 December 1992. Therefore, there is nothing in the case-file to suggest that the author was deprived of his rights under the RSFSR Criminal Code and the RSFSR Criminal Procedure Code applicable at the time or under the provisions of the Covenant.

Author's comments on the State party's observations

5.1 On 6 December 2011, the author challenged the State party's argument that at the time his sentence was delivered (13 October 1995), the federal law providing for the establishment of jury trials was not enforced and there were no jury trials in the Murmansk Region. He argues that jury trials were introduced by virtue of the law of 16 July 1993¹⁵, that is, even before the entry into force of the Russian Constitution on 12 December 1993. By the decision of the Russian Supreme Council of 16 July 1993¹⁶, jury trials were to be introduced in nine regions by 1 January 1994 at the latest.

5.2 The author argues that the State party had enough time, from 12 December 1993 (the entry into force of the Constitution) to 13 October 1995 (the date of delivery of his sentence), to establish jury trials throughout the Russian Federation. The State party's failure to do so resulted in a violation of his rights under articles 20 and 47 of the Constitution and article 6 of the Covenant, as he was deprived of the possibility to file a petition to have his case examined by a jury. The author further claims a violation of his rights under article 19 of the Constitution and article 26 of the Covenant, protecting the right to equality before the law, as the State party's failure to establish jury trials in the Murmansk Region placed him in a disadvantaged position, compared with the accused in the nine regions where they could request the examination of their cases by a jury. The author further submits that the State party's failure to ensure the realisation of his right to apply for the examination of his case by a jury, enshrined in article 20 of the Constitution, implies that the Murmansk Regional Court, composed of a professional judge and two lay

¹⁴ See paragraph 2.8 above.

¹⁵ See paragraph 2.2 above.

¹⁶ *Idem*.

judges who found him guilty on 13 October 1995, was not competent to impose the death penalty on him. Therefore, after the entry into force, on 12 December 1993, of the Constitution, providing that the death penalty cannot be applied unless the criminal case is examined by a jury, the State party should have adopted a law proscribing the death sentences until jury trials are created throughout Russia. However, such a law was adopted only after the Constitutional Court's decision of 2 February 1999, which was prompted by citizens' claims alleging violations of their rights to a jury trial.

5.3 The author further maintains that commutation of the death penalty to life imprisonment is unlawful, as pursuant to the RSFSR Criminal Code in force at the time of the commission of the crime, imprisonment could not exceed 20 years.

5.4 With reference to the Constitutional Court's decision of 2 February 1999, the author notes that Mr. F.'s sentence¹⁷, which prompted this decision, was subject to review. This implies, according to the author, that the Constitutional Court acknowledged that (1) Mr. F.'s death sentence had been handed down in breach of the Constitution and that (2) the breach had occurred before the Constitutional Court's decision of 2 February 1999. Given that the author, like Mr. F., was sentenced to death before the decision of 2 February 1999, the author claims a violation of his rights to equality before the law and to the equal protection before the law, under article 19 of the Constitution and article 26 of the Covenant. The author further maintains that such a violation shall lead to a review of his case due to newly-established circumstances, under article 413, paragraph 4(1), of the Russian Criminal Procedure Code. He challenges the State party's argument that the outcome of the constitutional proceedings is inapplicable to his case since he did not participate therein. He refers to the decision of the Zlatoust City Court of 29 January 2001, whereby the sentence of another prisoner, Mr. D., was brought in compliance with the Constitutional Court's decision, notwithstanding that he not did participate in the constitutional proceedings either¹⁸.

5.5 The author further refutes the State party's argument that at the time of commission of the crime by Mr. D., the law provided for the possibility to commute the death penalty into imprisonment of 15 to 20 years, whereas at the time of commission of the crime by the author, the law provided for its commutation to life imprisonment. He argues that this provision is contrary to article 21 of the RSFSR Criminal Code as life imprisonment is not listed among the types of penalties contained therein. Therefore, the President cannot, in exercise of his right to pardon, assign a penalty which has no basis under domestic law.

5.6 In light of the above, the author requests that the State party bring his sentence into compliance with the Constitutional Court's decision 2 February 1999, as it was done by the Zlatoust City Court with respect to Mr. D. Alternatively, the author requests that, in accordance with the said decision, his sentence be reviewed, quashed and transferred to the Murmansk Regional Court for re-consideration with the participation of a jury, given that jury trials were established throughout the Russian Federation as of 1 January 2010.

5.7 The author adduces to his submission an open letter addressed to the Chairperson of the Supreme Court by a lawyer from Stavropol, Russia, which relays difficulties in the application of the Constitutional Court's decision of 2 February 1999 to death sentences, which became final prior to this date.

¹⁷ See paragraph 2.5 above.

¹⁸ See paragraph 2.8 above.

Additional observations by the State party

6.1 By Note Verbale of 21 February 2011, the State party submitted that since 23 May 2001, the author has been serving his prison sentence in Correctional facility No. 6 of the Administration of the Federal Penitentiary Service in the Orenburg Region (*Исправительная колония № 6 Управления Федеральной Службы Исполнения Наказаний России по Оренбургской области, ИК-6*, hereinafter “IK-6”). During this period, the author has sent 87 pieces of correspondence to different domestic authorities and non-governmental organisations, including three letters addressed to the Committee¹⁹ and a letter addressed to the Organisation of the United Nations²⁰. No delays in processing or sending the author’s correspondence have been recorded on behalf of the prison administration. The author has been duly informed that his correspondence has been dispatched, which is confirmed by his signature on supporting documents. According to the administration of IK-6, no correspondence from the Committee has been received to the author’s attention.

6.2 The State party further submits that the author has never complained of any interference with sending or receiving his correspondence, while serving his prison sentence in IK-6. In addition, a service check conducted by the prison authorities further to the Committee’s query²¹ demonstrated no appearance of a violation of the author’s rights to suggestion, submission and complaint, protected under article 12 of the Russian Criminal Procedure Code.

Further submissions by the author

7.1 On 6 December 2011, the author added that he had received five letters from the Committee requesting him to submit comments on the State party’s submissions. The last letter was received on 2 December 2011. He notes that he has replied to the first four letters, which is partly confirmed by the State party’s submission of 21 February 2011.

7.2 The author confirms the State party’s finding that he has sent three letters to the Committee through IK-6 prison authorities. These letters contained his comments on the State party’s observations of 22 July 2008. The last letter was registered under no. 56/5 A-54 and dispatched on 28 July 2010. The author sent copies of these letters to his sister and instructed her to send them to the Committee. It appears that neither his sister nor the Committee received these letters. Therefore, his sister complained of interference with his correspondence (on 31 August 2010) and the Committee requested the State party to comment on the situation (on 24 November 2010).

7.3 The author adds that in early December 2010, IK-6 prison authorities informed him of the Committee’s request of 24 November 2010. As it follows from the State party’s submissions of 21 February 2011, the author confirmed in writing that the prison authorities did not interfere with his correspondence. Prison authorities sent all his letters to the Committee and his sister, and informed him of their registration numbers. The author further reiterates that he is unable to explain why these letters have not reached the addressees.

¹⁹ Two letters no. 56/4-A-54 of 8 and 18 June 2009 and letter no. 56/5-A-54 of 28 July 2010.

²⁰ Letter no. 56/4-A/114 of 30 November 2009.

²¹ On 24 November 2010, the Committee requested the State party to comment on the information imparted by the author’s sister regarding his difficulty receiving and sending correspondence in relation to the present communication, due to alleged interference from prison authorities (see paragraph 2.11 above).

Issues and proceedings before the Committee

Consideration of admissibility

8.1 Before considering any claims contained in a communication, the Human Rights Committee must, in accordance with rule 93 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

8.2 The Committee has ascertained, as required under article 5, paragraph 2 (a), of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement. The Committee notes that a similar claim filed by the author was declared inadmissible by the European Court of Human Rights on 17 April 2009. It observes, however, that the matter is no longer pending before another procedure of international investigation or settlement and that the Russian Federation has not entered a reservation to article 5, paragraph 2 (a), of the Optional Protocol. Therefore, the Committee is not precluded by article 5, paragraph 2 (a) of the Optional Protocol, from considering the present communication.

8.3 The Committee notes that the author claims a violation of his rights under article 2 of the Covenant, without clarifying the nature of the violation of this provision. It observes that the provisions of article 2 of the Covenant, which lay down general obligations for States parties, cannot, in isolation, give rise to a claim in a communication under the Optional Protocol²². To the extent, however, that the author invokes article 2 along with article 14 as the basis for a claim that he was discriminatorily denied the right to jury trial, the Committee considers the claim sufficiently substantiated for purposes of admissibility.

8.4 The Committee takes note of the author's claim that his rights under article 7 of the Covenant have been violated. However, in the absence of any information or evidence in support of this claim, the Committee finds it insufficiently substantiated, for purposes of admissibility, and declares it inadmissible under article 2 of the Optional Protocol.

8.5 The Committee takes note of the author's sister's claim regarding the alleged interference, by IK-6 prison authorities, with the author's correspondence related to the present communication, which potentially raises issues under article 17 of the Covenant²³. The Committee notes that, as submitted by the State party and acknowledged by the author, the latter has never complained of interference with his correspondence to IK-6 prison authorities during the relevant period. The Committee also notes that the State party conducted an official verification on these allegations, and it was established that the prison authorities have timely processed and dispatched the author's incoming and outgoing correspondence and notified him thereof, which is confirmed by his signature²⁴. It further observes that the author does not refute the above arguments of the State party and confirmed to have received and replied to all Committee's correspondence in his case²⁵. Under such circumstances, the Committee cannot conclude that the fact that the author's letter of 4 May 2010 has not reached it is attributable to the State party's authorities. Therefore, the Committee considers that this part of the communication is insufficiently

²² See, among others, communications No. 316/1988, *C.E.A. v. Finland*, decision of 10 July 1991, paragraph 6.2; No. 802/1998, *Rogerson v. Australia* Views adopted on 3 April 2002; and No. 1213/2003, *Sastre Rodríguez et al v. Spain*, decision of 28 March 2007, paragraph 6.6.

²³ See paragraph 2.11 above; communication No. 512/1992, *Pinto v. Trinidad and Tobago*, Views adopted on 16 July 1996, para. 8.5.

²⁴ See paragraphs 6.1 and 6.2 above.

²⁵ See paragraphs 7.1 to 7.3 above.

substantiated for purposes of admissibility, and declares it inadmissible under article 2 of the Optional Protocol.

8.6 The Committee considers that the author's remaining claims raising issues under articles 2; 6; 14, paragraph 1; 15, paragraph 1; and 26, of the Covenant, have been sufficiently substantiated for purposes of admissibility, and proceeds to their examination on the merits.

Consideration of the merits

9.1 The Human Rights Committee has considered this communication in the light of all the information received, in accordance with article 5, paragraph 1, of the Optional Protocol.

9.2 The Committee notes that the author's claims (1) that he was not afforded a trial by jury; (2) that the domestic courts failed to bring his death sentence into compliance with the Constitutional Court's decision of 2 February 1999; and (3) that his pardon was decided by the President and not by a court, raise issues under article 14, paragraph 1, of the Covenant, in particular, regarding the right to a fair hearing, by a competent tribunal, established by law.

9.3 As regards the unavailability of a jury trial in the author's case, the Committee takes note of the State party's argument that his sentence was handed down on 13 October 1995 by a court composed of one professional judge and two lay judges and that this was due to the fact that, at that time, trials by jury were not yet introduced in the Murmansk Region. The State party further pointed out that, at the material time, the author did not object to the examination of his criminal case by a court of such composition and this remained unrefuted by the author. The Committee also notes the State party's explanation that the author's case was considered by a competent tribunal established by law, since, according to chapter 2, part 6 of the "Final and Transitional Provisions" of the Constitution, the previous procedure of examination of that category of cases by courts was preserved until the entry into force of the federal law setting out the procedure for the examination of cases by a jury. It also takes note of the State party's reference to the Constitutional Court's decision of 13 April 2000, according to which transferring a criminal case for consideration to a court other than the court having territorial jurisdiction over it, for the sole reason that a jury trial is unavailable in the latter, would amount to a violation of the constitutional right to have one's case considered by a competent court²⁶. In light of these explanations, the Committee considers that the author's case was examined by a competent tribunal within the meaning of article 14, paragraph 1, of the Covenant.²⁷

9.4 As regards the alleged failure of the domestic courts to review the author's death sentence on the basis of the Constitutional Court's decision of 2 February 1999, the Committee observes that, in essence, the author challenges the temporal application of the Constitutional Court decision and the failure to follow the example of the Zlatoust City Court. As such, this claim relates to the interpretation of domestic law. The Committee reiterates its jurisprudence that the evaluation of facts and evidence and interpretation of domestic legislation is in principle a matter to be decided by the courts of States parties, unless the determination was clearly arbitrary or amounted to a denial of justice²⁸. However, the author has not shown that the decision of the Sol-Iletsk District Court of the

²⁶ See paragraphs 4.2 and 4.3 above.

²⁷ See communication No. 1861/2009, *Bakurov v. Russian Federation*, Views adopted 25 March 2013, para. 10.3.

²⁸ See, e.g., communication No. 967/2001, *Valentin Ostroukhov v. the Russian Federation*, decision adopted on 31 March 2005, paragraph 6.4.

Orenburg Region²⁹, which reviewed his sentence, suffered from such defects. In particular, the Committee recalls that the Constitutional Court ruled that from the moment of the entry into force of its decision (2 February 1999) and until the adoption of a federal law ensuring the exercise of the right of the accused liable to the death penalty to be tried by a jury, the imposition of the death penalty was no longer permissible. The Committee takes note of the argument of the State party that the decision does not have retroactive effect and that death sentences handed down prior to its entry into force (i.e., prior to 2 February 1999) were not subject to review on the basis of the decision. The Committee observes that the author was sentenced to death on 13 October 1995, over three years and seven months before the entry into force of the said decision, and therefore the decision cannot serve as a legal basis for the review of his sentence. The Committee also takes note of the State party's argument that the decision of the Zlatoust City Court involved an individual who, unlike the author, had been convicted of a crime committed prior to a relevant amendment to the Criminal Code in 1992. In light of the above, the Committee is satisfied that there has been no appearance of arbitrariness or denial of justice in the present case.

9.5 As regards the author's objection to the commutation of his sentence by presidential decree rather than by a court, the Committee notes the State party's arguments that the decree was adopted in the exercise of the President's constitutional prerogative to pardon, and carried out in compliance with articles 59 and 85 of the Russian Criminal Procedure Code, in force at the time of the pardon, and article 24 of the RSFSR Criminal Procedure Code, in force at the time of commission of the crime, which both provide for the possibility to commute the death penalty into life imprisonment³⁰. The Committee recalls that the discretionary power of commutation, which is specifically contemplated in relation to death sentences by article 6, paragraph 4, of the Covenant, may be vested in a head of state or other executive body without infringing article 14.³¹ The Committee has no basis for finding the State party's position that the executive power of pardon is consistent with its Constitution arbitrary.

9.6 In light of the above considerations, the Committee finds that the materials on file do not permit it to conclude that the author's rights under article 14, paragraph 1, of the Covenant, have been violated in the present case.

9.7 With regard to the author's claim under article 6 of the Covenant, the Committee observes that, on 21 December 1998, the author was pardoned by presidential decree and his death sentence imposed on 13 October 1995 was commuted to life imprisonment. In the circumstances, the Committee will not examine separately the author's claims under this provision of the Covenant³².

9.8 The Committee notes the author's claim that the commutation of his death sentence to life imprisonment amounts to a violation of his rights under article 15, paragraph 1, of the Covenant. The Committee notes in this respect the author's arguments that (1) the Constitutional's Court decision of 2 February 1999 outlawed the death penalty and therefore the sanction for the crime he committed became lighter (maximum 15 or 20 years' imprisonment³³); (2) as a consequence of the presidential pardon, a heavier penalty

²⁹ See paragraphs 2.7 and 2.9 above.

³⁰ See paragraph 4.4 above.

³¹ See General Comment No. 32, paragraph 17; communication No. 845/1998, *Kennedy v. Trinidad and Tobago*, Views adopted 26 March 2002, para. 7.4.

³² See, e.g., communication No. 1861/2009, *Bakurov v. Russian Federation*, Views adopted on 25 March 2013, paragraph 10.5.

³³ The author refers to 15 years' imprisonment in paragraph 3.1 above but to up to 20 years' imprisonment in paragraph 5.3 above.

was imposed on him than the one that was applicable at the time of commission of the crime; and (3) his pardon should have been decided by a court.

9.9 The Committee observes that article 15, paragraph 1, regards the nature and the purpose of the penalty, its characterisation under national law and the procedures regarding the determination and the enforcement of the penalty as part of the criminal proceedings. The Committee further notes that pardon is in essence humanitarian or discretionary in nature, or motivated by considerations of equity, not implying that there has been a miscarriage of justice³⁴. It points out that, as argued by the State party, the death penalty could be commuted into life imprisonment under both the law in force at the time of the crime and the law in force at the time of the pardon, and that the power of commutation was vested in the president by the Constitution at all relevant times³⁵. It also notes that, in any event, life imprisonment cannot be seen as constituting a heavier penalty than the death penalty. The Committee therefore concludes that there has been no violation of article 15, paragraph 1, of the Covenant³⁶.

9.10 The Committee further notes that the author also claims a violation of his rights under article 26 of the Covenant as he was not afforded the possibility to have his case examined by a jury, whereas such a possibility was offered to accused liable to the death penalty in other Russian regions. The Committee takes note of the State party's reference to chapter 2, part 6, of the "Final and Transitional Provisions" of the Constitution of the Russian Federation, setting out that until the entry into force of the federal law establishing the procedure for jury trials, the existing procedure of examination of that category of cases by courts should be preserved³⁷. It further notes that jury trials were initially introduced in nine Russian regions and the Murmansk Region was not one of them³⁸. As it follows from the information provided by the State party, a trial by jury was introduced in the Murmansk Region as of 1 January 2003, pursuant to article 8 of the Federal Law of 18 December 2001³⁹. The Committee recalls its jurisprudence⁴⁰ to the effect that while the Covenant contains no provision establishing a right to a trial by jury in criminal cases, if such a right is provided under the domestic law of a State party, and is granted to some persons charged with crimes, it must be granted to others similarly situated on an equal basis. If distinctions are made, they must be based on objective and reasonable grounds. The Committee notes that the availability of a jury trial is governed by federal law, but that, until the above-mentioned law of 18 December 2001, there was no federal law on the subject. The Committee considers that the fact that a federal State permits differences among the federal units in respect of jury trial does not in itself constitute a violation of article 26 of the Covenant⁴¹. Since the author has not provided any information to the effect that jury trials have been held in death-penalty cases in the Murmansk Region so as to substantiate a difference in treatment between him and other accused, the Committee cannot conclude to a violation of his rights under article 26 of the Covenant. For similar reasons, the Committee finds no violation of the author's rights under article 2, paragraph 1, in conjunction with article 14 of the Covenant.

³⁴ See communication No. 1425/2005, *Marz v. Russian Federation*, Views adopted on 21 October 2009, paragraph 6.6.

³⁵ See paragraph 4.4 above.

³⁶ See communication No. 1861/2009, *Bakurov v. Russian Federation*, paragraph 10.9.

³⁷ See paragraph 4.2 above.

³⁸ See paragraph 2.2 above.

³⁹ See paragraph 4.3 above.

⁴⁰ See communications No. 1861/2009, *Bakurov v. Russian Federation*, paragraph 10.6.; No. 790/1997, *Cheban et al. v. Russian Federation*, Views adopted on 24 July 2001, paragraph 7.2.

⁴¹ See communications No. 1861/2009, *Bakurov v. Russian Federation*, paragraph 10.6; No. 1425/2005, *Marz v. Russian Federation*, paragraph 6.3.

10. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts before it do not reveal a breach of any provision of the Covenant.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]
