



Human Rights Committee
One hundredth and first session
14 March - 1 April 2011

Views

Communication No. 1517/2006

<u>Submitted by:</u>	Rastorgueva Tatyana (represented by counsel, the Helsinki Foundation for Human Rights.)
<u>Alleged victim:</u>	Rastorguev Maxim (author's nephew)
<u>State party:</u>	Poland
<u>Date of communication:</u>	25 September 2006 (initial submission)
<u>Document references:</u>	- Special Rapporteur's rule 97 decision, transmitted to the State party on 22 November 2006 (not issued in document form) - CCPR/C/96/D/1517/2006 - decision on admissibility adopted on 8 July 2009.
<u>Date of adoption of Views:</u>	28 March 2011

* Made public by decision of the Human Rights Committee.

<i>Subject matter:</i>	Detention and conviction for murder and robbery after an alleged unfair trial.
<i>Procedural issue:</i>	Representation of the alleged victim, non-exhaustion of domestic remedies, same matter being examined under another procedure of international investigation or settlement.
<i>Substantive issues:</i>	Ill-treatment, right to be promptly informed of charges, right to be immediately brought before a judge or other authorized official, right to fair trial, right to legal defence, non-discrimination.
<i>Articles of the Covenant:</i>	7; 9 paragraphs 2 and 3; 14, paragraphs 1 and 3 (b); and 26.
<i>Articles of the Optional Protocol:</i>	5, paragraph 2(b)

On 28 March 2011, the Human Rights Committee adopted the annexed text as the Committee's Views under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 1517/2006.

[Annex]

Annex

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

concerning

Communication No. 1517/2006**

<u>Submitted by:</u>	Tatyana Rastorgueva (represented by counsel, the Helsinki Foundation for Human Rights)
<u>Alleged victims:</u>	Maxim Rastorguev, the author's nephew
<u>State party:</u>	Poland
<u>Date of the communication:</u>	25 September 2006 (initial submission)
<u>Date of Admissibility decision:</u>	8 July 2009

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

Meeting on 28 March 2011,

Having concluded its consideration of communication No. 1517/2006, submitted to the Human Rights Committee on behalf of Mr. Maxim Rastorguev, 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

1.1 The author of the communication is Tatyana Rastorgueva, a citizen of Belarus born in 1953, who submits the complaint on behalf of her nephew, Maxim Rastorguev, also a citizen of Belarus born in 1976, currently serving a prison sentence in Poland. The author claims that her nephew is a victim of violations by Poland of articles 7; 9, paragraphs 2 and 3; 14, paragraphs 1 and 3 (b); and 26 of the Covenant. She is represented by counsel, the Helsinki Foundation for Human Rights. The Optional Protocol entered into force for the State party on 7 February 1992.

** The following members of the Committee participated in the examination of the present communication: Mr. Lazhari Bouzid, Ms. Christine Chanet, Mr. Cornelis Flinterman, Mr. Yuji Iwasawa, Ms. Helen Keller, Ms. Iulia Motoc, Mr. Gerald L. Neuman, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Fabian Omar Salvioli, Mr. Krister Thelin and Ms. Margo Waterval.

1.2 On 7 July 2009, the Committee, acting through its Special Rapporteur on New Communications and Interim Measures, decided to examine the issue of the admissibility of the communication separately from that of the merits.

The facts as presented by the author

2.1 On 18 March 2000, the author's nephew was detained by Polish border guards at the border between Poland and Belarus. He was informed that he was wanted by the Polish police, but not told why. For about eight hours after his arrest, he was kept in the town of Terespol. Thereafter, he was taken to Bjala-Podljaska, where he was detained for six days. The author claims that her nephew was not informed of the charges against him during this period; he only overheard policemen saying that they were transferring a "murderer". On 24 March 2000, he was taken to Chelm, where, for the first time, he appeared before a court. He was informed that he was suspect in a robbery and in the murder of one Ruslan Tsorojev and his detention prolonged. The same day, he was interrogated by a prosecutor in the absence of a lawyer, but in the presence of an interpreter, as he did not speak Polish. During the preliminary investigation, he was questioned several times without the presence of a lawyer.

2.2 Mr. Rastorguev allegedly saw his court appointed lawyer for the first time only on 13 December 2000, shortly before the beginning of the trial. The author claims that he could not talk to his lawyer nor prepare his defence as he was not provided with an interpreter and could not communicate with the lawyer because of the language barrier. His lawyer allegedly stayed with him for no more than five minutes, and policemen were close enough to overhear their conversation. He saw the lawyer twice more before the court proceedings started on 8 February 2001 and again on 23 April 2001, both times without an interpreter and only for a very short period of time.

2.3 On 4 July 2001, the District Court of Lublin sentenced the author's nephew to 25 years' imprisonment for murder and robbery. His lawyer appealed without consulting him. On 20 December 2001, the Appeal Court of Lublin upheld the sentence of the District Court. His lawyer decided not to file a cassation appeal, arguing that the prerequisites for such an appeal were not met. He did not inform his client of this decision, and, as a consequence, the author's nephew missed the deadline to lodge a cassation appeal.

2.4 Mr. Rastorguev's case was then transmitted to another lawyer, who lodged a cassation appeal. The new lawyer only communicated with him by telephone. On 1 October 2002, the Supreme Court upheld the decisions of the other courts.

2.5 The author claims that her nephew had no opportunity to appeal himself against the violations of his rights under the Covenant due to the compulsory requirement in Poland for appeals to be submitted by lawyers. She argues that the lawyers who represented her nephew during the different stages of the criminal proceedings did not raise violations of the Covenant. Therefore, she claims her nephew did not have access to effective domestic remedies.

2.6 In 2003, the author's nephew submitted a complaint to the European Court on Human Rights. The author claims that his case was discontinued, as the Registry of the European Court could not contact him.

The complaint

3.1 The author claims that by detaining her nephew for six days without informing him of the charges against him, the State party violated his rights under article 9, paragraph 2. She claims this also amounts to a violation of article 7, as during those six days, he was subjected to inhuman treatment since he was kept unaware of the reasons for his situation. She adds that her nephew was only brought before a judge after six days' detention, which

is said to amount to violation by the State party of his rights under article 9, paragraph 3, of the Covenant.

3.2 She claims that her nephew was questioned several times without the presence of a lawyer and his rare meetings with his lawyer who spoke only Polish, were held without an interpreter and only for very brief periods of time, in violation of his rights under article 14, paragraph 3 (b), of the Covenant.

3.3 The author claims that her nephew was discriminated against by the court on the basis of his nationality and that during the proceedings the court's attitude was biased against him and therefore the State party violated articles 14, paragraph 1, and article 26, of the Covenant.

State party's observations on admissibility

4.1 On 22 January 2007, the State party argued that the communication was submitted by a close relative of the alleged victim, in violation of the rules of procedure of the Committee. It argues that the fact that Mr. Rastorguev is currently in a Polish prison does not make it impossible for him to submit his case to the Committee personally. Polish law guarantees such a right under Section 103 paragraph 1 of the Criminal Executive Code. It submits that the author provided no evidence of her relationship to the alleged victim. She was not a party to the facts raised in the communication and did not have access to the court case files. The State party argues that the alleged victim is best placed to submit a communication himself as he knows the domestic proceedings and has access to his case file.

4.2 The State party recalls that in 2003, Mr. Rastorguev lodged a complaint with the European Court on Human Rights, raising the same allegations that are raised in the present complaint. Although the author suggests that the case was not considered by the European Court, the State party argues that the same matter is being examined under another international procedure of international investigation or settlement.

4.3 As to the claim that Mr. Rastorguev was detained for six days without being informed of charges against him, the State party submits that the investigation in the murder case was initiated several months before his detention. On 9 February 2000, the Chelm District Court ordered his detention for seven days. The court decision was prompted by the fact that the investigators did not know the whereabouts of Mr. Rastorguev, as he did not live in Poland. The arrest warrant was issued on the basis of this decision, and he was arrested when crossing the border between Poland and Belarus.

4.4 On 24 March 2000, six days after his arrest, the District Court decided to prolong his custody for three months. Mr. Rastorguev's custody was subsequently prolonged on several occasions, always after a court hearing. At no time was Mr. Rastorguev detained without a court order. He had the possibility to challenge the decisions and was informed of his rights on many occasions. He was provided with an interpreter and with the translation of crucial documents at all stages of the proceedings. Mr. Rastorguev was questioned for the first time on 21 March 2000. During the interrogation he was informed of his right not to testify against himself and his right to file the pertinent motions. He also participated in the visit to the scene of crime in the presence of an interpreter. It submits that on 24 March 2000 he was again questioned as a suspect in the presence of an interpreter, when he stated that he testified of his own free will and that he had no objections to the way the prosecutor was conducting the proceedings. He was questioned on several more occasions always in the

presence of an interpreter¹ and he was duly informed of his procedural rights. Mr. Rastorguev was acquainted with the content of his case file². He was at all times informed in writing (in Russian) of all the details concerning the proceedings, for example he was informed that a bill of indictment was lodged with the District Court and he was provided with the translation into Russian³. In accordance with article 72 of the Code of Criminal Procedure, Mr. Rastorguev was at all stages of the proceedings provided with appropriate translations of all crucial documents⁴, as well as assisted by an interpreter. Accordingly, he was properly informed of all his rights and obligations.

4.5 Mr. Rastorguev did not apply for release on bail; nor were complaints about the way the proceedings were conducted filed, or any interlocutory appeal against decisions about the prolongation of his detention, although he was informed of the possibility of doing so. He merely made requests on two occasions (in letters dated 29 March 2000 and 9 June 2000), to the prosecutor in charge of the preliminary investigation, asking for an audition and inviting him to “come to his prison”. The investigative authorities commissioned the translation of the above-mentioned letters⁵ in order to be able to understand his requests.

4.6 As to the author’s allegations that her nephew was not properly represented, the State party submits that on 24 March 2000, the Chelm District Prosecutor requested the District Court to appoint a defence counsel for Mr. Rastorguev, in view of the fact that he did not speak Polish. On the same day, Z Ch. was appointed as counsel. On 24 November 2000, a new counsel J. Z was appointed to defend him.

4.7 This lawyer was present during all court hearings. Mr. Rastorguev could have contacted his counsel *inter alia* by mail, as provided for under Section 73 of the Code of Criminal Procedure, and have requested him to file a complaint and/or appeal on his behalf, or ask questions concerning his procedural rights or the course of the proceedings. He did not do so. He could also have requested a change of his defence counsel under Section 81 of the Criminal Procedure Code, which he did not do.

4.8 Mr. Rastorguev could have also requested that certain judges recuse themselves from the proceedings if he had any doubts as to their impartiality, but he did not raise any objections about the composition of the court.

4.9 With respect to the argument that he was not able to file a cassation appeal to the Supreme Court, the State party submits that on 22 December 2001, he requested the Supreme Court to grant him legal aid for the purpose of initiating cassation proceedings. Following this request, the Lublin Court of Appeal appointed a defence counsel for him on 14 January 2002. However, this lawyer refused to lodge a cassation appeal with the Supreme Court, as he considered that the prerequisites for a cassation appeal were not met. On 11 March 2002, Mr. Rastorguev was informed about this decision and the fact that, under domestic law, a cassation appeal had to be prepared and signed by a lawyer.

¹ All available interrogation reports on file, including the reports dated 7 and 26 June 2000, are signed by an interpreter and by Mr. Rastorguev, who acknowledged that the content of the reports was read and translated to him into Russian.

² The State party provided a copy of the document, signed by the interpreter and by Mr. Rastorguev who acknowledged that he was acquainted with the case file.

³ A copy of the translation into Russian is available on file.

⁴ The following documents are translated: decisions to extend Mr. Rastorguev’s detention dated 4 September and 28 November 2001; the judgment of the District Court of Lublin (first instance court); the copy of the indictment dated 29 June 2000; the judgment of the Appeal Court; the statement of reasoning of the judgment of the Appeal Court; the letter dated 29 March 2000 sent by Mr. Rastorguev to the prosecutor.

⁵ The copy of the letter dated 29 March 2000 is provided (the translation into Polish).

Mr. Rastorguev did not avail himself of this opportunity and did not appeal against the decision of 11 March 2002. Neither did he request the court to appoint another counsel who could lodge a cassation appeal.

4.10 The State party submits that Mr. Rastorguev, finally did find a legal counsel who filed a cassation appeal on his behalf in the Supreme Court. The Court dismissed the appeal on 1 October 2002 as manifestly ill founded.

4.11 The State party argues that Mr. Rastorguev did not exhaust all available domestic remedies, in view of the fact that he did not avail himself of the possibility of filing motions or interlocutory appeals, did not request the appointment of different defence counsel and did not complain about the partiality of trial judges. The author's claim that her nephew was unable to lodge a cassation appeal to the Supreme Court is groundless, as he did file such an appeal.

Author's comments on State party's observations

5.1 On 23 March 2009, the author refutes the arguments of the State party. She recalls that she is a sister of Mr. Rastorguev's mother. Her birth certificates prove this close relation. She also points out that due to the fact that her nephew's contact with the European Court of Human Rights was lost, her nephew decided to ask her, as his closest available relative, to lodge a complaint with the Committee on his behalf. The author has also attached the power of attorney by which Mr. Rastorguev authorizes the author to represent his interests.

5.2 As to the State party's argument that the communication should be inadmissible because it is being examined under another international procedure, the author submits that, indeed, in 2003, her nephew submitted a complaint to the European Court of Human Rights. For unknown reasons his subsequent correspondence to the Court was not received by the Court's Secretariat. Correspondence from the European Court addressed to him also did not reach him. Consequently, her nephew's case was discontinued, and the European Court did not examine his case either on admissibility or on the merits. She refers to the Committee's practice that inadmissibility decisions by the European Court on the basis of the fact that the complaint was not lodged within six months of exhaustion of domestic remedies should not be considered as a ground for inadmissibility. She claims that the receipt and registration of the individual complaint by the European Court with its subsequent discontinuance decision does not mean it was "considered" by the Court.

5.3 With regard to the argument of non-exhaustion of domestic remedies the author submits that in order for her nephew to submit requests for his release, to lodge complaints against the decisions about his detention and its prolongation, to request for a change of lawyer, he should have been aware of the procedures and know how to write such submissions. The author reiterates that her nephew does not speak Polish and was not familiar with the criminal procedure law of Poland, as he is not a lawyer. To avail himself of the remedies mentioned by the State party he required help from a lawyer. She claims that the State party does not contest that her nephew was not provided with legal assistance by the lawyers assigned to him. The State party does not refute her claim that during pre-trial investigation he was questioned in the absence of a lawyer.

5.4 As to the rejection of the cassation appeal on 1 October 2002, the author claims that the lawyer who submitted the cassation appeal did not meet her nephew prior to submission of the appeal and did not discuss the issues that her nephew would have wanted raised on cassation.

5.5 The author argues that lack of legal professionalism of lawyers is a common practice in the State party and violations of the right to defence are widespread. In the absence of legal assistance from Polish lawyers, there were no effective domestic remedies available.

Committee's decision on admissibility

6.1 At its 96th session, on 8 July 2009, the Committee examined the admissibility of the communication. As to the State party's argument that the author had no authorisation to represent her nephew, the Committee noted that it had received written evidence of the representative's authority to act on the behalf of Mr. Rastorguev and referred to Rule 96 (b) of its Rules of Procedure, which provides for such a possibility. It concluded that the author had proper standing to act on behalf of her nephew and that the communication was therefore not inadmissible for this reason.

6.2 In accordance with article 5, paragraph 2 (a), of the Optional Protocol, the Committee had ascertained that a similar complaint filed by the author in 2003 was discontinued by the European Court of Human Rights. The Committee noted also that on acceding to the Optional Protocol, the State party had entered a reservation to article 5, paragraph 2 (a), of that Protocol "that would exclude the procedure set out in article 5 (2) (a), in cases where the matter has already been examined under another procedure of international investigation or settlement". The Committee noted that in the present case, however, the European Court had not "examined" the case within the meaning of article 5, paragraph 2 (a), of the Optional Protocol. It concluded that there was therefore no impediment arising out of this provision of the Optional Protocol, bearing in mind the State party's reservation.

6.3 With respect to the alleged violation of article 7 of the Covenant, the Committee considered that the author had failed to sufficiently substantiate, for purposes of admissibility, how her nephew's unawareness of the reasons for his arrest would amount to inhuman or degrading treatment. Accordingly, this part of the communication was declared inadmissible under article 2 of the Optional Protocol.

6.4 As regards the author's claims relating to article 14, paragraph 1, of the Covenant, the Committee observed that the author had not provided any explanation on how her nephew's right under this provision were violated. It concluded that the author had failed to sufficiently substantiate this claim, for purposes of admissibility, and declared it inadmissible under article 2 of the Optional Protocol.

6.5 The Committee further noted the author's claim that her nephew's right under article 26 were violated as he had been allegedly discriminated by the Polish authorities on the basis of his nationality. It considered that the author had failed to sufficiently substantiate this claim, for purposes of admissibility, and declared it inadmissible under article 2 of the Optional Protocol.

6.6 Finally, with regard to the requirement of exhaustion of domestic remedies, the Committee noted the State party's observation that the author had not resorted to the possibility of filing motions or interlocutory appeals, and had not requested the appointment of different defence counsel or the exclusion of trial judges. The Committee further noted the author's argument about the lack of awareness of Mr. Rastorguev of Polish criminal procedure law, language barriers with counsel, and the alleged lack of professionalism of the lawyers assigned to him. The author claimed that the lawyer who submitted an appeal had not met her nephew prior to filing the appeal and had not discussed the issues that her nephew would have wanted to have raised. The Committee recalled its jurisprudence that while the Covenant does not entitle an accused to choose counsel provided to him free of charge, measures must be taken to ensure that counsel, once assigned, provides effective

representation in the interest of justice⁶. In this connection, the Committee considered that the question of the exhaustion of domestic remedies was closely linked to the issue of effective legal aid and should be examined on the merits. It thus declared the communication admissible regarding the author's claims under articles 9, paragraphs 1, 2 and 3; and 14, paragraph 3 (b), of the Covenant.

State party's observations on the merits

7.1 The State party submitted its observations on the Committee's admissibility decision by Note Verbale of 2 February 2010. It contends that Mr. Rastorguev was apprehended in accordance with the law and he was brought promptly before a judge. He was arrested for the reasons contained in an arrest warrant issued on 9 February 2000.

7.2 Mr. Rastorguev was provided with free legal aid before the courts of both instances. Subsequently, a cassation appeal was lodged with the Supreme Court on his behalf, by a lawyer of his own choice, and, therefore, on this occasion the author could have also complained about possible shortcomings in the criminal proceedings. In any event, according to the State party, it is noteworthy that allegations such as lack of information on the reasons for arrest at the time of apprehension and subsequent application for detention on remand; absence of interpreter in the course of the above activities; or lack of possibility to communicate with counsel, constitute valid grounds of appeal, which are always taken into account by a higher court. However in the present case, the State party points out that the Supreme Court had found that the cassation appeal was manifestly ill-founded.

7.3 In light of all the above-mentioned considerations, the State party concludes that no violation of Mr. Rastorguev's rights under the Covenant has taken place.

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

8.1 Commenting on the State party's observations, the author, in her submission of 12 July 2010, reaffirms her initial allegations and maintains that Mr. Rastorguev's rights under article 9, paragraphs 1, 2, 3; and article 14, paragraph 3 (b), have been violated.

8.2 With respect to the alleged violation of article 14, paragraph 3 (b), the author submits that the State party has contested neither the fact that Mr. Rastorguev had no knowledge of the Polish language and of criminal procedure legislation of Poland nor that he was questioned in the absence of a lawyer. It also did not refute Mr. Rastorguev's claim that he had no possibility to consult his lawyer during the pre-trial investigation.

8.3 The author claims that the State party has not submitted any concrete evidence that Mr. Rastorguev was provided with free legal assistance before the court of two instances and maintains that no adequate legal aid was provided to her nephew. She maintains that there was a language barrier between Mr. Rastorguev and his lawyers, and the State party failed to submit any concrete evidence either on the fact that the lawyers assigned ex officio to Mr. Rastorguev have command of the Russian language or on the assistance of an interpreter made available to her nephew.

8.4 The author claims that the lawyer who lodged a cassation appeal on behalf of Mr. Rastorguev did not meet him and did not discuss the issues which Mr. Rastorguev would have wished to raise, including issues concerning the violation of his civil rights. She further submits that Mr. Rastorguev had no possibility to appeal against the violation of his rights under the International Covenant on Civil and Political Rights because he was not

⁶ See, inter alia, Communication No. 253/1987, *Paul Kelly v Jamaica*, Views adopted on 8 April 1991, para 5.10; Communication No. 250/1987 *Carlton Reid v. Jamaica*, Views adopted on 21 August 1990, para 11.4.

provided with adequate legal aid, and the lawyers representing his interests at different stages of criminal proceedings failed to raise the violation of his Covenant's rights in their appeals. Thereby, the author claims that Mr. Rastorguev had no effective legal remedy of which he could have availed himself.

8.5 With respect to the alleged violation of article 9, paragraphs 1, 2, and 3, of the Covenant, the author refers to the State party's submission that Mr. Rastorguev was arrested in accordance with the law and was brought promptly before a judge. She submits that, in the view of the State party, in order to comply with the obligation laid down in art. 9, paragraph 3, it was sufficient to arrest Mr. Rastorguev for seven days on the basis of an arrest warrant issued by the court. The author considers that, in the sense of art.9, paragraph 3 of the Covenant, the competent Polish authorities were not only obliged to arrest on the basis of a court decision, but also to bring the person promptly before a judge, in order for the arrested person to have the possibility to personally present arguments against his arrest directly to a judge or other officer authorized by law to exercise judicial power.

8.6 The author submits that the State party has not contested the fact that Mr. Rastorguev was arrested on 18 March 2000 and was brought before a judge for the first time on 24 March 2000, i.e. after six days from the time of his arrest. She challenges the State party's contention that Mr. Rastorguev was brought promptly before the court. She recalls the Committee's General Comment No. 8 (16), where the Human Rights Committee explains that the wording "promptly" in art. 9, paragraph 3, means that the delay must not exceed a few days and also recalls the Committee's Views in *Rostislav Borisenko v. Hungary* (case no. 852/1999), where it concluded that the author's detention for three days before being brought before a judicial officer did not meet the requirement of promptness in the sense of art. 9, paragraph 3, of the Covenant insofar as no explanation on the necessity for such a delay was provided (paragraph. 7.4 of the Views). The author claims that the State party has not provided sufficient explanations to justify the delay of six days before bringing her nephew before a judge and considers that this delay is too long and does not meet the requirement of promptness in the sense of art. 9, paragraph 3, of the Covenant. Therefore, the author claims that the State party violated Mr. Rastorguev's rights under article 9, paragraphs 1, 2 and 3, of the Covenant.

Issues and proceedings before the Committee

Consideration of the merits

9.1 The Human Rights Committee has considered the present communication in light of all the information made available to it by the parties, as required under article 5, paragraph 1, of the Optional Protocol.

9.2 The Committee notes the author's claim that no adequate legal aid was provided to her nephew, and that he could neither communicate with his lawyer because of the language barrier nor prepare his defence, as he did not have the assistance of an interpreter. It also notes the State party's argument that throughout the criminal proceedings, including in court, Mr. Rastorguev was represented by a lawyer (assigned either *ex-officio* or, as was the case before the Supreme Court, by a privately retained lawyer), and he was provided with an interpreter and the translation of important documents at all stages of the proceedings. According to the State party, he could also have contacted his lawyer, including by mail, and requested him to file complaints on his behalf or inquire about his procedural rights or the conduct of proceedings. He could also have requested a change of lawyer. However, he did not avail himself of these possibilities.

9.3 The Committee also notes the author's claim that the legal aid lawyer who represented Mr. Rastorguev did not contact him before filing the appeal against the decision of the first instance court. In this connection, the Committee recalls that, although it is

incumbent on the State party to provide effective legal aid representation, it is not for the Committee to determine how this should have been ensured, unless it is apparent that there has been a miscarriage of justice⁷. Notwithstanding the author's claim, the information available to the Committee does not contain indications that the lawyer's conduct in the appeal process was contrary to the interests of justice⁸.

9.4 With respect to the cassation appeal, the author claims that the legal aid lawyer refused to lodge a cassation appeal because, in his view, the prerequisites for such an appeal were not met. However, the Committee notes the State party's argument that Mr. Rastorguev was duly informed about the refusal and advised to find another lawyer to submit the cassation appeal. It further observes that a cassation appeal with the Supreme Court was submitted on his behalf by a lawyer of his own choice, and was dismissed as manifestly ill-founded. The Committee notes the author's claim that the lawyer did not meet her nephew prior to the submission of the appeal and therefore could not discuss with the lawyer the issues that Mr. Rastorguev would have wished to raise on appeal. In this respect, the Committee recalls its jurisprudence that the State cannot be held responsible for the conduct of a privately retained lawyer⁹.

9.5 On the basis of the material available to it, the Committee cannot conclude that Mr. Rastorguev's lawyers were unable to represent him adequately, or that they displayed lack of professional judgment in the conduct of his defence. There is nothing in the file which suggests that it should have been manifest to the courts that the lawyers' conduct was incompatible with the interests of justice.

9.6 The Committee must also address the author's allegation that Mr. Rastorguev could not communicate with his lawyer and properly prepare his defence because of the language barrier. The Committee notes the State party's observations that Mr. Rastorguev was assisted by an interpreter during the interrogations and the court hearings. However, the author has not indicated the reasons why Mr. Rastorguev could not have made use of the opportunity that the interpreter was present during the hearings in order to address the court with his claims regarding the alleged violation of his rights, such as the alleged absence of an interpreter during his meetings with the lawyer, the inadequate preparation of his defence, and the alleged lack of professionalism of his defence counsel. The material before the Committee reveals that Mr. Rastorguev at no point during the court proceedings addressed the judge with such requests.

9.7 The Committee takes note of the author's argument that Mr. Rastorguev had no possibility to complain against the alleged violation of his rights, in the absence of an interpreter and adequate legal aid. However, these allegations seem to be in contradiction with the fact that Mr. Rastorguev addressed himself to the authorities on certain issues. Thus, as it transpires from the materials on file, he made requests on two occasions (in letters dated 29 March 2000 and 9 June 2000) to the prosecutor in charge of the preliminary investigation, asking for an audition and inviting him to "come to his prison". The investigative authorities commissioned the translation of the above-mentioned letters from Russian into Polish in order to be able to respond to his requests. On 22 December 2001, he

⁷ Communication No. 667/1995, *Hensley Ricketts v. Jamaica*, Views adopted on 4 April 2002, para. 7.3

⁸ Communication No. 536/1993, *Perera v. Australia*, inadmissibility decision adopted on 28 March 1995, para. 6.3; communication No. 618/1995, *Campbell v. Jamaica*, Views adopted on 20 October 1998, para. 7.3;

⁹ Communication No. 226/1987; *Michael Sawyers; Michael and Desmond McLean v. Jamaica*, 256/1987, Views adopted on 11 April 1991; communication No. 493/1992, *Griffin v. Spain*, Views adopted on 4 April 1995, para. 9.8.

also requested the Supreme Court to appoint a lawyer for the purpose of initiating cassation proceedings. Therefore, the Committee finds the author's argument that Mr. Rastorguev had no possibility to lodge complaints and/or appeals or any other motions related to the proceedings and the alleged violation of his rights because of the language barrier as unconvincing.

9.8 In view of the fact that the decision of the Committee to declare the present communication admissible was linked to the issue of effective legal aid and that, as it transpires from the information contained in the file, Mr. Rastorguev had access to such legal aid, the Committee concludes that the facts before it do not reveal violations of Mr. Rastorguev's rights under article 9 and article 14, paragraph 3 (b) of the Covenant.

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.]
