



## International Covenant on Civil and Political Rights

Distr.: General  
26 August 2014

Original: English

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### Human Rights Committee

#### Communication No. 2041/2011

##### Views adopted by the Committee at its 111th session (7–25 July 2014)

<i>Submitted by:</i>	Sergey Sergeevich Dorofeev (represented by counsel Evgeny Pavlov)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Russian Federation
<i>Date of communication:</i>	4 June 2010 (initial submission)
<i>Document references:</i>	Special Rapporteur's rule 97 decision, transmitted to the State party on 12 April 2011 (not issued in document form)
<i>Date of adoption of Views:</i>	11 July 2014
<i>Subject matter:</i>	The author, charged with a crime potentially punishable by death, was not informed of his right to have a defender and was unrepresented during cassation proceedings
<i>Substantive issues:</i>	Right to be informed, if he does not have legal assistance, of the right to have such assistance; and to have legal assistance assigned to him, in any case where the interests of justice so require
<i>Procedural issues:</i>	Non-exhaustion
<i>Articles of the Covenant:</i>	14 (paras. 3 (d) and 5), 2 and 5
<i>Articles of the Optional Protocol:</i>	5, paragraph 2 (b)

GE.14-14734 (E)



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## 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 (111th session)**

concerning

#### **Communication No. 2041/2011\***

*Submitted by:* Sergey Sergeevich Dorofeev (represented by counsel Evgeny Pavlov)

*Alleged victim:* The author

*State party:* Russian Federation

*Date of communication:* 4 June 2010 (initial submission)

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

*Meeting* on 11 July 2014,

*Having concluded* its consideration of communication No. 2041/2011, submitted to the Human Rights Committee by Sergey Sergeevich Dorofeev 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 pursuant to article 5, paragraph 4 of the Optional Protocol**

1. The author of the communication, dated 4 June 2010, is Sergey Sergeevich Dorofeev, a Russian Federation national born in 1973, at the time of submission serving a prison sentence of 21 years in a State penitentiary in Udarny in the Zubovo-Polyansky region of the Republic of Mordovia in the Russian Federation. He claims to be a victim of violations by the Russian Federation of his rights under articles 14 (paras. 3 (d) and 5), 2 and 5 of the International Covenant on Civil and Political Rights.<sup>1</sup> The author is represented by counsel Evgeny Pavlov.

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\* The following members of the Committee participated in the examination of the present communication: Yadh Ben Achour, Lazhari Bouzid, Christine Chanet, Cornelis Flinterman, Yuji Iwasawa, Walter Kälin, Zonke Zanele Majodina, Gerald L. Neuman, Sir Nigel Rodley, Víctor Manuel Rodríguez-Rescia, Fabián Omar Salvioli, Dheerujall Seetulsingh, Anja Seibert-Fohr, Yuval Shany, Margo Waterval and Andrei Paul Zlătescu.

<sup>1</sup> The Optional Protocol entered into force for the Russian Federation on 1 October 1991.

**The facts as submitted by the author**

2.1 On 11 April 2006, the author was convicted of having committed a number of criminal offences, including under article 105 of the Criminal Code (murder) which provided for possible punishments of 20 years' imprisonment, life imprisonment or the death penalty. The author submits that, in such circumstances, in accordance with article 48 of the Constitution and with article 51 of the Code of Criminal Procedure, the participation of a defence attorney in the first and in the cassation instances is mandatory. The author submits that the court of first instance did not inform him of his right to have an attorney to represent him during the cassation procedure, in violation of articles 11 of the Code of Criminal Procedure and articles 2 and 17 of the Constitution. As a result, during the review in cassation he did not have a defence attorney, while his co-defendant was represented by two lawyers. On 13 July 2006, the cassation court confirmed the verdict in the first instance and it became final. The author maintains that, according to article 51 of the Code of Criminal Procedure, if the defendant had failed to hire a lawyer, the cassation court was obliged to find him a defender ex officio.

2.2 On 26 November 2007, the author submitted a complaint to the Moscow Prosecutor, requesting a supervisory review of his case based on the violation of his right to defence by the court of cassation. The Prosecutor rejected the complaint on 29 February 2008. Subsequent identical complaints to the Moscow Prosecutor's Office and the Office of the Prosecutor-General, submitted on 21 March 2008, 7 June 2008, 8 April 2009 and 5 October 2009, were rejected, respectively, on 14 May 2008, 14 July 2008, 20 May 2009 and 16 November 2009. On 13 August 2008, the author submitted a request for a supervisory review to the Supreme Court claiming the same violation. By a letter of the Deputy President of the Supreme Court, dated 8 September 2009, stating that no violations by the court of cassation were found, the Supreme Court refused to initiate a supervisory review. The author attempted to file a supervisory review request to the President of the Supreme Court, on 1 January 2010; it was rejected on an unspecified date on the grounds that the Supreme Court had already rejected an identical request. The author contends that he has exhausted all available and effective domestic remedies.

2.3 On 5 July 2011, the author submitted that the violation indicated in his initial communication had been corrected by the State party only on 16 March 2011, four years and eight months after the violations took place. He notes that, at the time of his initial submission to the Committee (4 June 2010), the above-mentioned violation had not been corrected by returning the verdict against the author for a new review in cassation.

**The complaint**

3.1 The author claims to be a victim of violations by the State party of his rights under articles 14 (paras. 3 (d) and 5), article 2 read together with article 14 (para. 3 (d)) and article 5 of the Covenant.

3.2 The author maintains that the participation of a defence attorney in the court of cassation of his trial was necessary in the interests of justice and that the fact that the courts did not inform him of his right to a defence attorney and did not ensure the presence of one during the cassation proceedings violate his rights under article 14, paragraph 3 (d), of the Covenant. He also maintains that the Office of the Prosecutor-General and the Supreme Court refused to review the decision of the court of cassation in violation of his rights under article 14, paragraph 5, of the Covenant. Lastly, he complains that the State party did not

provide him with an effective remedy for the violation of his rights under article 14 and accordingly violated article 2 of the Covenant.<sup>2</sup>

#### **State party's observations on admissibility**

4. On 9 August 2011, the State party submits that, on 11 April 2006, the author was convicted of murder, car theft and other crimes by Moscow Regional Court and sentenced to 21 years' imprisonment. On 13 July 2006, the criminal division of the Supreme Court confirmed the verdict on appeal. The cassation proceedings were conducted in the presence of the author, but he was unrepresented. In connection with the violation of his right to defence, the Deputy Prosecutor-General of the Russian Federation made a request for supervisory review on 22 April 2010. The request was granted on 6 October 2010. The 13 July 2006 cassation decision was revoked and a new review in cassation took place on 16 March 2011. During that review, the author was represented by a lawyer. As a result, the duration of his sentence was reduced to 20 years' imprisonment. The State party submits that the violation had been rectified through a domestic remedy and therefore the communication is inadmissible under article 5, paragraph 2 (b), of the Optional Protocol.

#### **Author's comments on admissibility**

5. On 13 September 2011, the author submitted that article 5, paragraph 2 (b), indicates that domestic remedies need not be exhausted where the application of the remedies is unreasonably prolonged. He reiterated that, in order to have his rights restored, he had filed numerous complaints between 26 October 2007 and 29 April 2010 and that his requests for review of the cassation proceedings were rejected on nine different occasions.<sup>3</sup> He submits that the 17 February 2010 ruling of the Supreme Court informed him that the issue had already been reviewed by the Supreme Court and no further appeals to that Court were provided for by the law; the 29 April 2010 letter of the Office of the Prosecutor-General stated that the Office had already taken a decision on the issues he was raising and would discontinue the correspondence with the author. The author maintains that in applying to the above-mentioned institutions he had exhausted all available remedies before submitting a communication to the Committee. He further submits that he only received the 7 July 2010 ruling of the Supreme Court, stating that a supervisory review had been initiated on 19 August 2010, after he had submitted a communication to the Committee. He further maintains that the application of the domestic remedies had been unreasonably prolonged, since it took more than four years to rectify the violation of his rights. He maintains that his communication should be declared admissible and reviewed on its merits.

#### **State party's further observations**

6.1 On 28 March 2013, the State party reiterated its submission on the admissibility of the communication. It further submitted that, on 16 March 2011, the Supreme Court had revoked the charges under articles 116 (para. 1), 158 (para. 1), 325 (para. 2) and 167 (para. 1) of the Criminal Code because of the expiration of the statute of limitations for the above-mentioned crimes. Based on article 69, paragraph 3, of the Criminal Code, for the remaining charges under articles 166 (para. 2 (a) and (b)) and 105 (para. 2 (h) and (l)) of the

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<sup>2</sup> The author mentions article 5 of the Covenant, but does not provide any details as to the alleged violations of that article.

<sup>3</sup> Respectively on 26 October 2007, 8 September 2008 and 17 February 2010 by the Supreme Court, on 29 February 2008 by the Moscow Regional Prosecutor's Office, on 17 July 2008, 16 November 2009, 17 February 2010 and 29 April 2010 by the Office of the Prosecutor-General and on 13 November 2009 by the Office of the Authorized Representative for Human Rights.

Criminal Code, the author was sentenced to 20 years' imprisonment. The rest of the verdict was not amended.

6.2 Regarding the duration of the domestic proceedings, the State party submits that, in accordance with the practice of the European Court of Human Rights, the period to be taken into consideration begins on the day on which a person is "charged" within the autonomous and substantive meaning to be given to that term and ends on the day on which a charge is finally determined or the proceedings are discontinued. It also maintains that the Court has observed that it is appropriate to take into account only the periods when the case was actually pending before the courts, that is, the periods when there was no effective judgment in the applicant's case and when the authorities were under an obligation to determine the charge against him within a "reasonable time".<sup>4</sup> Accordingly, the State party maintains that the period from the moment when the court decision against the author entered into force and the moment when it was revoked as a result of a supervisory review, would not be taken into consideration by the European Court. The period between the revocation of the 13 July 2006 decision of the cassation court by the Supreme Court (on 6 October 2010), and the new decision of the cassation (issued on 16 March 2011) was 5 months and 10 days. The State party maintains that there was no excessive delay in the review of the 13 July 2006 court decision.

#### **Author's comments on the State party's observations**

7.1 On 5 July 2013, the author reiterated that his communication should be declared admissible (see para. 5 above). The author maintains that he had exhausted the available remedies. He submits that, according to the Committee's jurisprudence for purposes of article 5, paragraph 2 (b), of the Optional Protocol, domestic remedies must be both effective and available.<sup>5</sup> He further submits that the Committee's jurisprudence under article 5, paragraph 2 (b), does not oblige complainants to exhaust domestic remedies that offer no reasonable prospect of success and maintains that submitting further appeals in his case would have been futile, since for four years all institutions responded to him that the court of cassation had not violated his rights.

7.2 Regarding the length of proceedings, the author reiterates that he considers that the review of the 13 July 2006 decision was exceedingly long as it took over four years for a court judgement, issued in violation of his right to defence, to be corrected. He maintains that the fact that the State party for such a long period failed to take action to rectify the violation of his rights caused him distress and accordingly violated articles 2, 5 and 14 of the Covenant.

7.3 The author also maintains that victims of judicial errors have a right to compensation.<sup>6</sup>

7.4 The author challenges the State party's assertion that the participation of an ex officio lawyer in the review of the case by the court of cassation on 16 March 2011 fully rectified the violation of his right to defence. The author maintains that, even though the lawyer charged fees for five days, he only saw her three times: twice during court hearings (on 23 October 2010 and on 16 March 2011) through a video conference connection and

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<sup>4</sup> The State party refers to the European Court's jurisprudence in *Oblov v. Russia*, application No. 22674/02, judgement of 15 January 2009, para. 22.

<sup>5</sup> The author refers to communication No. 445/1991, *Champagnie et al. v. Jamaica*, Views adopted on 18 July 1994, para. 5.1.

<sup>6</sup> The author refers to the version of the Basic Principles and Guidelines on the Right to Reparation for Victims of Violations of Human Rights and International Humanitarian Law contained in document E/CN.4/1997/104 of 16 January 1997.

once in person in the remand centre, where she met with him for 15 minutes. The lawyer was not present during the period when the author reviewed the case file, giving the explanation that she was busy with other cases, and the author did not have the opportunity to consult her regarding his defence. During the cassation court hearing she did not submit a separate motion, but stated that she supported the author's appeal. That was the extent of her participation.

7.5 The author further submits that he participated in the cassation hearing through a video conference connection, despite the fact that he had requested to participate in person, and that therefore he did not have the opportunity to consult with his lawyer regarding the submissions that the prosecutor made in court. He refers to a ruling of the Constitutional Court, stating that it was not clear whether the person accused has equal procedural opportunities for verification and evaluation of new evidence when video connection is used, since he/she would not have the option to discuss with the defence lawyer additional documents and other circumstances, outside of the scope of the written cassation appeal.<sup>7</sup> He further submits that the participation of the person accused in the cassation hearing is regulated by article 376, paragraph 3, of the Code of Criminal Procedure and that the Constitutional Court had repeatedly ruled that the participation of the person accused constitutes a necessary guarantee for the judicial defence and the just resolution of the case at the cassation stage. He further maintains that, in the interests of justice, in adversary proceedings the person accused should have the same rights as the prosecution and the other participants in the process. He submits that, on three occasions,<sup>8</sup> he had submitted written requests to be allowed to participate in person in the cassation hearing, but those requests were ignored. Accordingly, the author maintains that the violation of his right to defence was not completely rectified at the 16 March 2011 cassation court hearing, since the right to a fair trial includes equality before the courts.<sup>9</sup>

#### **Further submission from the State party**

8. On 19 November 2013, the State party reiterates that by a ruling of 6 October 2010 the Supreme Court established that the author's right to receive qualified legal assistance had been violated and that the case was returned for a new review in cassation. According to a note in the case file, the author had requested that his defence was conducted by a certain defence lawyer, but the latter had stated that the agreement between him and the author had been cancelled. In accordance with article 51 of the Code of Criminal Procedure, the cassation court appointed a defence lawyer for the protection of the author's interests. The lawyer implemented her obligations regarding the author's defence. In particular: on 20 December 2010 and 10 March 2011 the lawyer studied the case file; on 23 December 2010 she participated in a court hearing in which the author's request to review the case file was adjudicated; on 9 March 2011 she visited the author in the remand centre; on 16 March 2011 she participated in the cassation court hearing. The State party reiterates that, on 16 March 2011, the cassation court amended the verdict against the author by excluding some of the charges and reducing the sentence (see para. 6.1 above). The State party submits that, when asked if he had any additional motions to submit during the cassation hearing, the author did not state that he would like to review the case file together with his lawyer, nor did he request additional time to consult with her. Further, in his requests for supervisory review of the 16 March 2011 cassation decision, dated 14 June

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<sup>7</sup> The author refers to ruling No. 27- P of the Constitutional Court of the Russian Federation, dated 10 December 1998.

<sup>8</sup> On 26 November 2010, 24 December 2010 and 9 March 2011.

<sup>9</sup> The author refers to the Committee's general comment No. 13 (1984) on equality before the courts and the right to a fair and public hearing by an independent court established by law.

2011 and 22 August 2011, the author did not raise any alleged violations of his right to defence. The State party maintains that the above-mentioned allegations should be declared inadmissible under articles 2, 3 and 5 of the Optional Protocol and that the author's rights under article 14, paragraph 3 (d), of the Covenant had not been violated.

### Issues and proceedings before the Committee

#### *Consideration of admissibility*

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

9.2 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.

9.3 The Committee takes note of the author's submissions that the State party violated his rights under article 5 of the Covenant. The Committee, however, observes that this provision does not give rise to any separate individual right.<sup>10</sup> Thus, the claim is incompatible with the Covenant and inadmissible *ratione materiae* under article 3 of the Optional Protocol.

9.4 The Committee takes note of the State party's submission that the communication should be declared inadmissible under article 5, paragraph 2 (b), of the Optional Protocol. The Committee, however, notes that article 5, paragraph 2 (b), of the Optional Protocol requires the individual submitting the communication to the Committee to have exhausted all available domestic remedies and observes, with regard to the author's initial complaint, that he had submitted at least nine complaints, including to the highest judicial body of the State party, which had all been rejected, before he complained to the Committee. Accordingly, the Committee finds that it is not prevented by the requirements of article 5, paragraph 2 (b), of the Optional Protocol from examining the above claim.

9.5 The Committee takes note of the State party's submission that the violation of the author's rights, under article 14, paragraph 3 (d), of the Covenant, which took place during the first review in cassation of his verdict, had been rectified through a domestic remedy. The reopening of the proceedings, however, do not prevent the Committee from considering whether the author of the communication was provided with an effective remedy. The Committee observes that, although the cassation proceedings were reopened, that happened four years and eight months after the violation took place and finds that the author has sufficiently substantiated his standing as a victim of a violation of article 14 in conjunction with article 2, paragraph 3. Accordingly, the Committee finds that it is not prevented by the requirements set forth in article 1 of the Optional Protocol from examining the claim.

9.6 The Committee takes note of the State party's submission that the author's allegations that his right to defence under article 14, paragraph 3 (d), of the Covenant was violated during the second review in cassation of his verdict were inadmissible, because he failed to raise those allegations in a request for supervisory review. The Committee recalls its jurisprudence according to which a petition for supervisory review to a prosecutor's office against a judgment having the force of *res judicata* does not constitute an effective

<sup>10</sup> See communications No. 1167/2003, *Rayos v. the Philippines*, Views adopted on 27 July 2004, para. 6.8; No. 1011/2001, *Madafferi and Madafferi v. Australia*, Views adopted on 26 July 2004, para. 8.6; and No. 1361/2005, *X. v. Colombia*, Views adopted on 30 March 2007, para. 6.3.

remedy which has to be exhausted for the purposes of article 5, paragraph 2 (b), of the Optional Protocol.<sup>11</sup> It also considers that filing requests for supervisory review to the president of a court directed against court decisions which have entered into force and depend on the discretionary power of a judge constitutes an extraordinary remedy and that the State party must show that there is a reasonable prospect that such requests would provide an effective remedy in the circumstances of the case.<sup>12</sup> The State party has not shown, however, whether and in how many cases petitions to the president of the Supreme Court for supervisory review procedures were applied successfully in cases concerning the right to a fair trial. In such circumstances, the Committee finds that article 5, paragraph 2 (b), of the Optional Protocol does not preclude it from considering the communication.

9.7 The Committee considers that the author's allegations related to violations of his right to defence during the reviews in cassation of the verdict against him, raise issues under article 14 (paras. 3 (d) and 5) and article 2, read together with article 14 (para. 3 (d)), of the Covenant, and have been sufficiently substantiated for purposes of admissibility. Accordingly, it declares these claims admissible and proceeds to their examination on the merits.

#### *Consideration of the merits*

10.1 The Human Rights Committee has considered the communications in the light of all the information made available to it by the parties, as provided for under article 5, paragraph 1, of the Optional Protocol.

10.2 With regard to the author's allegations of violation of his rights under article 14, paragraph 3 (d), of the Covenant, during the first review in cassation of his verdict, the Committee observes that it is undisputed that the author, who was tried for serious crimes, one of which potentially punishable by death penalty, was not informed of the right to have a counsel and was unrepresented during the cassation proceedings. The Committee considers that the above resulted in a violation of the author's right to defence under article 14, paragraph 3 (d). The Committee notes, however, that, on 6 October 2010, the State party's Supreme Court recognized that the author's right to defence had been violated, quashed the 6 July 2006 decision of the court of cassation and returned the verdict against the author for a new review in cassation.

10.3 With regard to the author's complaint that the State party did not provide him with an effective remedy for the violation of his rights under article 14 the Committee recalls that article 2, paragraph 3, of the Covenant requires that States parties must ensure that individuals have accessible and effective remedies to vindicate their Covenant rights and that the cessation of an ongoing violation is an essential element of the right to an effective remedy.<sup>13</sup> The Committee takes note of the author's allegation that the remedy available to him for the violation of his right to defence, namely the supervisory review procedure under the State party's legislation, was not effective, in that it was delayed for over four years. The Committee observes that the violation of the author's right to defence was eventually acknowledged by the Supreme Court of the State party so that a new review in cassation

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<sup>11</sup> Communication No. 1873/2009, *Alekseev v. the Russian Federation*, Views adopted on 25 October 2013, para. 8.4.

<sup>12</sup> Communications No. 836/1998, *Gelazauskas v. Lithuania*, Views adopted on 17 March 2003, para. 7.4; No. 1851/2008, para. 8.3; *Protsko and Tolchin v. Belarus*, Views adopted on 1 November 2013, para. 6.5; No. 1784/2008, *Schumilin v. Belarus*, Views adopted on 23 July 2012, para. 8.3; No. 1814/2008, *P.L. v. Belarus*, decision of inadmissibility, 26 July 2011, para. 6.2.

<sup>13</sup> See the Committee's general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, para. 15.

took place, but that happened more than four years after the violation had taken place. The Committee further observes that, during those four years, the author had submitted numerous requests for the initiation of supervisory review, which had been repeatedly rejected by Moscow Regional Prosecutor's Office, the Office of the Prosecutor-General and the Supreme Court. Based on the facts before it, the Committee concludes that, since the application of the supervisory review was excessively delayed, the author did not have access to an effective remedy within the meaning of article 2, paragraph 3, of the Covenant until the Supreme Court revoked the cassation decision. Accordingly, the Committee finds that the facts before it reveal a violation of article 2, paragraph 3, of the Covenant, in conjunction with article 14, paragraph 3 (d), of the Covenant.

10.4 Having concluded that there has been a violation of article 2, paragraph 3, in conjunction with article 14, paragraph 3 (d), of the Covenant, the Committee decides not to examine separately the author's claims under article 14, paragraph 5.

10.5 The Committee takes note of the author's allegations that his right to defence under article 14, paragraph 3 (d), of the Covenant was violated during the second review in cassation, because he only saw his ex officio lawyer three times, his counsel was not present during the period when he reviewed the case file, he did not have the opportunity to consult her regarding his defence and she did not diligently fulfil her obligations on his defence. The Committee observes, however, that in the instant case the lawyer of the author reviewed the case file, participated in the scheduled court hearings and supported his appeal. The Committee further notes that the author did not make any motions during the hearing indicating that he wanted to consult further with his lawyer regarding the proceedings or the evidence presented in the courtroom. In that respect, the Committee recalls its jurisprudence that the State party cannot be held responsible for alleged errors made by a defence lawyer, unless it was or should have been manifest to the judge that the lawyer's behaviour was incompatible with the interests of justice.<sup>14</sup> The material before the Committee does not show that this was so in the instant case and, consequently, there is no basis for a finding of a violation of article 14, paragraph 3 (d), in that respect.

10.6 The Committee further takes note of the author's allegations that his right to defence under article 14, paragraph 3 (d), of the Covenant was violated during the second review in cassation, because he participated in the hearing through a video conference connection. The Committee finds that article 14, paragraph 3 (d), applies to the present case as the court examined the case as to the facts and the law and made a new assessment of the issue of guilt or innocence. The Committee recalls that article 14, paragraph 3 (d), requires that accused persons are entitled to be present during their trial and that proceedings in the absence of the accused are only permissible if this is in the interest of the proper administration of justice, i.e. when accused persons, although informed of the proceedings sufficiently in advance, decline to exercise their right to be present.<sup>15</sup> The Committee notes the author's allegation that, on three occasions, he had submitted written requests to be allowed to participate in person in the cassation hearing, but those requests were ignored. The Committee further notes the author's allegation that he did not have the opportunity to consult with his lawyer regarding the submissions that the prosecutor made in court. The Committee finds that the facts before it reveal a violation of article 14, paragraph 3 (d), of the Covenant.

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<sup>14</sup> See the Committee's jurisprudence in communications No. 527/1993, *Lewis v. Jamaica*, Views adopted on 18 July 1996, para. 6.6; No. 610/1995, *Henry v. Jamaica*, Views adopted on 20 October 1998, para. 7.4; and No. 1128/2002, *Márques de Morais v. Angola*, Views adopted on 29 March 2005, para. 5.4.

<sup>15</sup> See the Committee's general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, para. 36.

11. 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 disclose a violation by the State party of the author's rights under article 14, paragraph 3 (d), and of article 2, paragraph 3, read in conjunction with article 14, paragraph 3 (d), of the Covenant.

12. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author with an effective remedy, including adequate compensation. The State party is also under an obligation to prevent similar violations in the future.

13. 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 and enforceable remedy in case a violation has been established, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the present Views and to have them widely disseminated in the official language of the State party.

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