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Communication No. 1856/2008

Views adopted by the Committee at its 109th session (14 October–1 November 2013)

Submitted by:	Sergei Semenovich Sevostyanov (not represented by counsel)
Alleged victim:	The author
State party:	Russian Federation
Date of communication:	28 November 2006 (initial submission)
Document references:	Special Rapporteur's rule 97 decision, transmitted to the State party on 29 December 2008 (not issued in document form)
Date of adoption of Views:	1 November 2013
Subject matter:	Arbitrary detention; unfair trial
Procedural issues:	Exhaustion of domestic remedies; level of substantiation of a claim
Substantive issues:	Arbitrary detention and the right to challenge detention in court; equality before the courts; presumption of innocence; examination of witnesses; conviction and sentence under review by a higher tribunal
Articles of the Covenant:	9, paragraphs 1 and 4; 14, paragraphs 1, 2, 3 (e) and 5
Articles of the Optional Protocol:	2; 5, paragraph 2 (b)

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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 (109th session)

concerning

Communication No. 1856/2008*

Submitted by:	Sergei Semenovich Sevostyanov (not represented by counsel)
Alleged victim:	The author
State party:	Russian Federation
Date of communication:	28 November 2006 (initial submission)

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

Meeting on 1 November 2013,

Having concluded its consideration of communication No. 1856/2008, submitted to the Human Rights Committee by Sergei Semenovich Sevostyanov 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 Sergei Semenovich Sevostyanov, a citizen of the Russian Federation, born in 1960 and currently imprisoned in the Russian Federation. He claims to be a victim of violations by the State party of his rights under article 9, paragraphs 1 and 4; and article 14, paragraphs 1, 2, 3 (e) and 5 of the International Covenant on Civil and Political Rights.[1] The author is represented by his wife, Mrs. Sevostyanova.

Factual background

2.1 On 25 September 2004, the author and his wife were working on his garden plot when a neighbour, Mr. Mikitenko, came and asked the author to accompany him to a

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

[1] The Optional Protocol entered into force for the Russian Federation on 1 January 1992.

neighbouring garden plot. There had been multiple thefts and robberies in the surrounding summer houses and Mr. Mikitenko stated that the perpetrators were hiding at that neighbouring garden plot. Mr. Mikitenko was holding a pack from which a wooden object similar to a handle of an axe could be seen. When the author and Mr. Mikitenko approached the neighbouring garden plot in question, Mr. Mikitenko told the author to wait for him outside, behind the fence, and he entered the house on his own. Several minutes later the author heard the sound of shooting from inside the house and decided to enter. At the doorstep of the house he bumped into Mr. Mikitenko who told him that the two of them should immediately leave. The author looked inside the house and saw two young men, one of whom had a bleeding jaw. The author returned to his garden plot. Shortly thereafter, Mr. Mikitenko passed by the author's garden plot again and told him that he had injured one of the young men and was on his way to call an ambulance.

2.2 The same day, the author was taken to a police station by officers of the Ust-Ilimsk Department of Internal Affairs to give evidence as a witness of the incident and was then released. Mr. Mikitenko was also taken to the same police station and subsequently arrested on the suspicion of having committed the murder of one Mr. Zagrebin.

2.3 On 27 September 2004, the author was again taken to the police station by officers of the Ust-Ilimsk Department of Internal Affairs. While he was waiting in one of the rooms of the police station, an officer present in the same room told him with a smile that his "family tradition was to kill people".[2] Later on, the head of the criminal investigation department entered the room and said in passing that a witness would recognize him. The author was then transferred to another room where an investigator from the Prosecutor's Office announced that they would identify the murderer. The author was then presented, along with two other men (Mr. Mikitenko was not among them), for identification as Mr. Zagrebin's murderer to an eyewitness of the crime, one Mr. Bekreev (the second young man who was inside the house situated on the neighbouring garden plot on 25 September 2004). Two attesting witnesses (observers) were present at the identification procedure. The investigator asked the eyewitness whether he knew any of the men presented to him and the latter pointed in the author's direction. The investigator then asked him whether the author was the one who had a rifle, but the witness replied that he did not know. The investigator asked the same question many times, and eventually the witness hesitantly acknowledged that it was the author who had a rifle. At the end of the identification procedure, the father of the witness, a former police officer, asked the investigator whether he and his son had done everything correctly. The investigator made a sign in the author's direction and led the witness and his father out of the room. The same day, the author orally motioned the investigator to request an expert fingerprint and ballistics (gunpowder residue) examination that would prove that he had never been in possession of the murder weapon. This and all subsequent oral motions on the same matter were rejected by the investigator.

2.4 The author was kept in detention until the end of the trial. He claims that from 25 December 2004 to 12 January 2005, he was held in custody further to instructions by phone from the investigator.

[2] The author submits that on 23 November 2003, his son, acting in self-defence, had killed one Mr. Peshkov, who was the Deputy Head of Ust-Ilimsk Department on the Fight against Organized Crime. The author maintains that Mr. Peshkov was heavily intoxicated and had opened fire on his unarmed son and his son's friend (who was twice wounded by Mr. Peshkov). The author's son was convicted under article 317 of the Criminal Code (of killing a police officer discharging professional duty) and sentenced to long-term imprisonment. The author claims that "an order" to tamper with his own criminal case was given to Mr. Chelmodeev as revenge by Mr. Knyazev, Head of Ust-Ilimsk Department on the Fight against Organized Crime, who was Mr. Peshkov's direct supervisor.

2.5 The author further submits that in the course of the pretrial investigation, he and his lawyer requested a confrontation between Messrs. Bekreev and Mikitenko, but this investigative action was not granted. On an unspecified date, a confrontation between Mr. Bekreev and the author was arranged and Mr. Bekreev took a piece of paper out of his pocket and read from it, stating that Mr. Zagrebin's fatal wound was inflicted by the author. Mr. Bekreev further stated that on the day in question, the author was wearing a camouflage suit, whereas numerous other witnesses, including Mr. Mikitenko, testified that on the day in question the author was wearing a tracksuit.

2.6 On 31 May 2005, the author was convicted pursuant to article 105, paragraph 1, of the Criminal Code for the premeditated murder of Mr. Zagrebin by the Ust-Ilimsk City Court and sentenced to 10 years' imprisonment in a high-security prison. In the course of the court hearing, both identifying witnesses,[3] who were present during the identification procedure of 27 September 2004, testified that the investigator had exercised pressure on Mr. Bekreev to identify the author. Mr. Mikitenko testified in court that he was wrestling with Mr. Zagrebin over a rifle when a shot occurred and Mr. Zagrebin received his fatal wound. The court, however, concluded that Mr. Mikitenko's self-implication in Mr. Zagrebin's murder was not trustworthy.[4]

2.7 On 6 June 2005, the author appealed the judgement of the Ust-Ilimsk City Court before the Judicial Chamber for Criminal Cases of the Irkutsk Regional Court. In his cassation appeal, the author submitted that the first instance court did not take into account crucial evidence. On 3 November 2005, the Judicial Chamber for Criminal Cases of the Irkutsk Regional Court upheld the judgement of the Ust-Ilimsk City Court.[5]

2.8 On an unspecified date, the author filed a request for supervisory review with the Presidium of the Irkutsk Regional Court. In the request, he, inter alia, challenged the fact that the cassation court disregarded a statement written by Mr. Bekreev, dated 10 August 2005 and addressed to the Ust-Ilimsk Inter-District Prosecutor, in which he admitted that he had been pressured by investigators to lay the blame for Mr. Zagrebin's death on the author. In the same statement Mr. Bekreev stated that Mr. Zagrebin was killed by Mr. Mikitenko, who had entered the house first. On 28 February 2006, a judge of the Irkutsk Regional Court rejected the author's request to initiate a supervisory review procedure.

[3] See para. 2.3 above.

[4] The investigation against Mr. Mikitenko was discontinued after Mr. Bekreev had identified the author as the perpetrator of the murder.

[5] Insofar as relevant, the 3 November 2005 judgement of the Judicial Chamber for Criminal Cases of the Irkutsk Regional Court [on file] reads as follows: "The author's counsel states in his cassation appeal that witness Mr. Bekreev was pressured during the identification, which was confirmed by Messrs. Dzyuvina and Makhmudova. He also states that witness Mr. Mikitenko, who claimed that he was involved in the crime, knew the consequences of giving false testimony. […] The [Regional] Court considers the author's contention that eyewitness Mr. Bekreev gave false testimony unsubstantiated. The [City] court's conclusion that there is no reason to distrust Mr. Bekreev's testimony is based on the material of the case. It follows therefrom that the [City] court sufficiently examined and rightly established the facts of the crime committed by Mr. Sevostyanov [the author] as well as the motives thereof. The claim that Mr. Sevostyanov was not involved in Mr. Zagrebin's murder lacks substantiation as the material on file proves, with no doubt, that Mr. Sevostyanov entered Mr. Ignatov's house and, acting intentionally and out of revenge, shot Mr. Zagrebin in the face, which caused acute blood loss and his subsequent death. The Judicial Chamber considers that the [City] court's conclusions as to Mr. Sevostyanov's guilt are accurate and agrees to the court's qualification of the crime under article 105, paragraph 1, of the Criminal Code." (unofficial translation)

2.9 On an unspecified date, the author appealed the 28 February 2006 decision of Irkutsk Regional Court before the Presidium of the same court. The appeal was rejected by the Acting Chairperson of the Irkutsk Regional Court on 20 June 2006.

2.10 On 12 March 2007, the author submitted a request for review in order of supervision to the Supreme Court on the basis of Mr. Bekreev's written statement of 10 August 2005, which, according to the author, constituted "newly discovered evidence".[6] On 23 April 2007, the Supreme Court rejected the author's request. On an unspecified date, the author challenged this decision before the Presidium of the Supreme Court. The author's complaint was rejected by the Presidium of the Supreme Court on 28 January 2008.

2.11 On unspecified dates, the author submitted further requests for review in order of supervision to the Irkutsk Regional Prosecutor's Office and to the General Prosecutor's Office. In its replies, dated 16 February 2007, 9 March 2007 and 18 May 2007, respectively, the Irkutsk Regional Prosecutor's Office stated that there were no grounds to initiate a supervisory review procedure in the author's case. The General Prosecutor's Office also rejected the author's requests on 16 August 2007 and 7 December 2007.

The complaint

3. The author claims that his arrest and trial constitute violations of article 9, paragraphs 1 and 4, and article 14, paragraphs 1, 2, 3 (e) and 5, of the Covenant.

State party's observations on admissibility and merits

4.1 On 9 June 2009, the State party submits that on 25 September 2004, the author and Mr. Mikitenko agreed to find and punish persons who, according to them, were committing thefts from summer houses in the area. They entered one summer house, where they found two unknown adolescents and the author shot one of them in the face with a hunting rifle, which resulted in the adolescent's death. On the same date, the police arrested Mr. Mikitenko. On 27 September 2004, in accordance with article 91 of the Criminal Procedure

[6] Article 413 of the Criminal Procedure Code, Grounds for Resumption of the Proceedings on a Criminal Case Because of New or Newly Revealed Circumstances, regulates what is considered new evidence and reads as follows:

"1. The court sentence, ruling or resolution, which has come into legal force, may be cancelled and the proceedings on a criminal case may be resumed because of new or newly revealed circumstances. […]

3. Seen as the newly revealed circumstances shall be:

1) a deliberate falsity of the evidence of the victim or of the witness, or of the expert's conclusion, as well as the forgery of the demonstrative proof, of the protocols of the investigative and the judicial actions and of other documents, or a deliberate erroneousness of the translation, which have entailed the passing of an unlawful, unsubstantiated or unjust sentence or of an unsubstantiated ruling or resolution;

2) the criminal actions of the inquirer, the investigator or the public prosecutor, which have entailed the adjudgement of an unlawful, unsubstantiated or unjust sentence, or of an unlawful or unsubstantiated ruling or resolution;

3) the criminal actions of the judge which he has committed during the examination of the criminal case, established by the court sentence that has entered into legal force. […]

5. The circumstances, indicated in the third part of this Article, may be established, in addition to the sentence, by a ruling or a resolution of the court, by a resolution of the investigator or of the inquirer on the termination of the criminal case on account of an expiry of the term of legal limitation, of an act of amnesty or an act of mercy, in connection with the death of the accused or on account of the person not reaching the age, from when the criminal liability sets in." (Criminal Procedure Code of the Russian Federation (Eng.) at Legislationline, available from http://legislationline.org/documents/section/criminal-codes/country/7)

Code, the police arrested the author, because the second adolescent (Mr. Bekreev) had testified that the author had committed the murder. On 29 September 2004, the Deputy Prosecutor of Ust-Ilimsk filed a motion with the Ust-Ilimsk City Court to order the author's detention on remand. The court postponed the decision, but extended the author's detention by 72 hours, until 2 October 2004. On 2 October 2004, the Ust-Ilimsk City Court ordered the author's detention on remand on suspicion of having committed a murder. On 5 October 2004, the author was charged under article 105, paragraph 1, of the Criminal Code (premeditated murder). On 26 November 2004, the author's detention was extended upon a motion of the Deputy Prosecutor of Ust-Ilimsk until 25 December 2004 by the Ust-Ilimsk City Court. On 22 December 2004, the author and his defence attorney were informed that the preliminary investigation had been finalized and on 24 December 2004, they were presented with the evidence. On 25 December 2004, the Deputy Prosecutor approved the indictment against the author.

4.2 The State party submits that on 12 January 2005, the author and his attorney were given the indictment and neither made any objections or filed any complaints then or during the court proceedings.

4.3 The State party submits that on 25 December 2004 the author's criminal case was sent to the Ust-Ilimsk City Court, which received it on 21 January 2005, and on 31 January 2005, extended the author's detention and scheduled a preliminary hearing for 7 February 2005. On 7 February 2005, the author's detention was again extended by the court. The author's lawyer appealed on cassation only the 2 October 2004 order for the author's detention. The Judicial College on Criminal Cases of the Irkutsk District Court rejected that appeal on 9 November 2004. Neither the author, nor his lawyer appealed the 26 November 2004 decision to extend his detention. The State party maintains that the author's allegations that his rights under article 9 of the Covenant had been violated are unfounded, because he was detained in accordance with the domestic criminal procedure and could have appealed his detention before the court.

4.4 The State party further submits that on 31 May 2005, the Ust-Ilimsk City Court convicted the author of premeditated murder under article 105, paragraph 1, of the Criminal Code. In determining the length of his sentence the court took into consideration the duration of his detention between 27 September 2004 and 31 May 2005. On 3 November 2005, the Judicial College on Criminal Cases of the Irkutsk District Court rejected the author's appeal against the verdict. The State party submits that the author had appealed his conviction on multiple occasions as well as filed complaints regarding irregular acts of the investigators, prosecution and the court. The State party maintains that the author's complaints have been investigated and rejected.

4.5 The State party submits that Mr. Bekreev's declaration, dated 4 August 2005, that he had wrongly identified the author as the murderer was made after the first instance verdict and therefore could not be taken into consideration by the cassation court.[7] Another

[7] The State party does not explain why the cassation court could not take into consideration Mr. Bekreev's declaration. However, based on the Criminal Procedure Code, it appears that the cassation court is limited to checking the legality, the substantiation and the justness of the sentence, as pronounced by the first instance court, but it does not hear new evidence. Article 360, Limits of an Examination of a Criminal Case by a Court of the Appeals or Cassation Instance, reads as follows:

"1. The court examining a criminal case in accordance with either the appeals or the cassation procedure, shall check the legality, the substantiation and the justness of the sentence and of another judicial decision.

2. The court examining a criminal case in accordance with either the appellate or the cassation procedure, shall only check up the legality, the substantiation and the justness of the sentence in the part in which it is appealed against. If in the course of trying a criminal case there are

declaration by Mr. Bekreev that he had wrongly accused the author was also investigated by the Investigation Department of Ust-Ilimsk Prosecutor's Office, which on 9 January 2008, issued a ruling refusing to open a criminal investigation since it did not find any indication that a crime had been committed. A subsequent complaint by the author, which included an identical declaration by Mr. Bekreev, was investigated in accordance with articles 144 and 145 of the Criminal Procedure Code.[8] On 8 December 2008, the Ust-Ilimsk

established circumstances which concern the interests of other persons convicted or acquitted in the same criminal case and in respect of which an appeal or presentation have not been filed, the criminal case has to be likewise checked in respect of these persons. With this, the deterioration of their position shall not be allowable. […]"

See also articles 373 and 380:

"Article 373. Object of the Judicial Proceedings in a Court of the Cassation Instance

A court of the cassation instance shall verify the legality, the substantiation and the justness of the sentence and of the other court decision by the cassational appeals and presentations."

"Article 380. Non-Correspondence Between the Conclusions of the Court, Expounded in the Sentence, and the Factual Circumstances of the Criminal Case

The sentence is recognized as not corresponding to the factual circumstances of the criminal case, established by the court of the first or of the appeals instance, if:

1) the court conclusions are not confirmed by the proof, examined in the court session;

2) the court has not taken into account the circumstances which could have exerted an essential impact on the court conclusions;

3) in the face of the existence of contradictory proof of essential importance for the court conclusions, it is not indicated in the sentence on what grounds the court has accepted some of them while rejecting the other;

4) the court conclusions, expounded in the sentence, contain essential contradictions, which have exerted or could have exerted an impact on the resolution of the question of the guilt or the innocence of the convict or of the acquitted person, on the correctness of the application of the criminal law or on determining the measure of punishment." (See Criminal Procedure Code at Legislationline, available from http://legislationline.org/documents/section/criminal-codes/country/7)

[8] The relevant parts of articles 144 and 145 read as follows:

"Article 144. Procedure for Considering the Communication on a Crime

1. An inquirer, inquiry body, investigator, and the head of an investigative body must accept and check information about any crime committed or being prepared and shall, within the competence established by this Code, take a decision on it within three days from the day when such information is received. When checking certain information about a crime, an inquirer, inquiry body, investigator, the head of an investigative body may demand the conduct of documentary checks, audits, examinations of documents, objects, corpses and attract specialists to participation in such checks, audits and examinations, as well as to give instructions in writing on taking operative search measures to an inquiry body to be followed without fail. […]

4. The applicant shall be issued a document about accepting the communication on a crime with the information on the person who has accepted it and with an indication of the date and the hour of its acceptance.

5. Refusal to accept the communication on a crime may be appealed against with the public prosecutor or with the court in the procedure established by Articles 124 and 125 of the present Code.

6. An application of a victim or his legal representative on criminal cases of private accusation submitted to a court shall be considered by a judge in accordance with Article 318 of this Code. In the cases stipulated by Part four of Article 147 of this Code, and the communication about the crime shall be verified in accordance with the rules established by this Article."

"Article 145. Decisions Taken on the Results of Considering the Communication on a Crime

Prosecutor's Office refused to initiate criminal prosecution against the investigator, because it did not find that any crime had been committed. The Irkutsk District Prosecutor's Office confirmed that decision. The author did not appeal the decision of the Irkutsk District Prosecutor before the court.

4.6 The State party further maintains that the court ensured equality of arms during the trial, that all witnesses requested by the prosecution and the defence were summoned and questioned, and that the defence's arguments that Mr. Mikitenko had committed the murder had been investigated by the court but could not be confirmed because they contradicted other evidence. The State party describes in detail the pretrial investigation against the author. In particular the State party notes that the author's defence attorney had requested exclusion from evidence of the protocol for the identification of the author by the main witness, but the court rejected that motion by rulings dated 2 and 28 March 2005.

4.7 The State party submits that the author twice submitted requests for review in order of supervision of the verdict and the decision of the cassation court against him to the Irkutsk District Court and twice to the Supreme Court. The verdict and decisions were reviewed and the appeals were rejected on 28 February 2006, 20 June 2006, 23 April 2007 and 28 January 2008, respectively. The State party maintains that no violation of the author's rights under the Covenant has taken place.

Author's comments on the State party's observations

5.1 On 30 July 2009, the author submits that during the trial, his lawyer requested that the protocol for the identification of the author by the main witness be excluded from the evidence, but the court rejected the motion; that the witnesses of the identification had testified in court that the investigator had put pressure on the main witness to identify the author as the murderer, but the court chose to interpret their evidence in favour of the prosecution; that he (the author) did not have a lawyer during the identification procedure; that Mr. Mikitenko was not presented to the main witness for identification at the same time as the author; that the State party has argued that he (the author) failed to file certain appeals on time, but that was because he (the author) was not familiar with the criminal procedure and his lawyer was not competent;[9] that the court failed to take into consideration the testimony of one witness who stated that she had seen the author standing outside the fence at the moment of the murder; that the State party claimed that the main witness was underage and therefore had to be accompanied by his father, but did not mention that the father was a former police officer who wanted to support his colleagues. The author further emphasizes that the main witness, Mr. Bekreev, had written several statements, admitting

1. On the results of considering the communication on a crime, the body of inquiry, the inquirer, the investigator, the head of an investigatory agency shall take one of the following decisions:

1) on the institution of a criminal case in accordance with the procedure established by Article 146 of the present Code;

2) on the refusal of the institution of a criminal case;

3) on handing over the communication in accordance with the jurisdiction in conformity with Article 151 of the present Code, and as concerns criminal cases of the private prosecution - to the court, in conformity with the second part of Article 20 of the present Code.

2. The applicant shall be informed about the adopted decision. He shall also be explained his right to appeal against the given decision and the procedure for filing an appeal. […]" (See Criminal Procedure Code at Legislationline, available from http://legislationline.org/documents/section/criminal-codes/country/7)

[9] The lawyer was privately retained by the author.

that he had falsely implicated the author as the perpetrator of the crime, but that the Ust-Ilimsk Prosecutor's Office did not conduct a proper investigation.

5.2 On 30 December 2009, the author submits that he addressed another complaint to the Prosecutor's Office, enclosing Mr. Bekreev's statements of false testimony, and that his complaint was again rejected.[10]

Issues and proceedings before the Committee

Consideration of admissibility

6.1 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 it is admissible under the Optional Protocol to the Covenant.

6.2 As required under article 5, paragraph 2 (a), of the Optional Protocol, the Committee has ascertained that the matter is not being examined under another procedure of international investigation or settlement.

6.3 The Committee considers that the author has sufficiently substantiated, for purposes of admissibility, his claims under article 9, paragraph 1, and article 14, paragraph 5, of the Covenant, and therefore proceeds to their examination on the merits.

6.4 The Committee notes the author's allegations that the criminal charges against him were fabricated by the investigation in revenge for the killing of a police officer by the author's son. The Committee, however, observes that the author's claims under article 14 of the Covenant relate exclusively to the evaluation of facts and evidence by the State party's courts. It recalls that it is generally for the courts of States parties to evaluate facts and evidence in a particular case, unless it can be ascertained that the evaluation was clearly arbitrary or amounted to a denial of justice.[11] The material before the Committee does not contain enough elements to demonstrate that the court proceedings suffered from such defects. Accordingly, the Committee considers that the author has failed to substantiate his claims under article 9, paragraph 4, and article 14, paragraphs 1, 2, 3 (e), of the Covenant and thus declares said claims inadmissible under article 2 of the Optional Protocol.

Consideration of the merits

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

7.2 The Committee observes that article 9, paragraph 1, of the Covenant recognizes that everyone has the right to liberty and security of person, and that no one may be subjected to arbitrary arrest or detention. However, this article provides for certain permissible limitations on this right, by way of detention where the grounds and procedures for doing so are established by law. The Committee notes the author's allegation that from 25 December 2004 to 12 January 2005, he was kept in custody arbitrarily further to a phone instruction from the investigator. The Committee also takes note of the State party's submission that neither the author, nor his lawyer had appealed the 26 November 2004

[10] The author submits a copy of the response from the Irkutsk District Prosecutor's office, dated 15 October 2009, which states that it had already investigated an identical complaint and on 8 December 2008 it had issued a decision not to open a criminal investigation since no crime was committed.

[11] See, inter alia, communication No. 541/1993, *Errol Simms* v. *Jamaica*, decision of inadmissibility adopted on 3 April 1995, para. 6.2.

decision for his detention. The Committee, however, observes that the above decision according to the State party's submission extended the author's detention to 25 December 2004, and that the next decision to extend the author's detention was not taken by the court until 31 January 2005. The Committee finds that, in the absence of a court decision for his detention, the author was detained arbitrarily for that period in violation of his rights under article 9, paragraph 1, of the Covenant.

7.3 The Committee notes the author's allegation that the appellate court did not conduct a full review of the criminal case against him, in violation of article 14, paragraph 5, of the Covenant, since it did not take into account Mr. Bekreev's written statement of 10 August 2005, in which he admitted that he laid the blame for Mr. Zagrebin's death on the author, because he had been pressured by the investigator and that the actual killer was Mr. Mikitenko. The Committee also notes the State party's submission that the appellate court, in accordance with the criminal procedural law, could not take into consideration the above-mentioned statement because it was made after the first instance court had issued the verdict. The Committee observes that under article 14, paragraph 5, of the Covenant, a higher tribunal must review the conviction and sentence, but is not required to proceed to a factual retrial. However, this provision imposes on the State party the duty to review substantively, both on the basis of sufficiency of evidence and of law, the conviction and sentence such that the procedure allows for due consideration of the nature of the case. A review that is limited to the formal or legal aspects of the conviction without any consideration whatsoever of the facts is not sufficient under the Covenant.[12] The Committee notes that in the present case, the appellate court (see para. 2.7 above), despite the limitations imposed on it by procedural law with regard to the examination of facts, not only considered the grounds for cassation submitted by the author in his appeal in general, but also examined the evidence reviewed by the first instance court, upheld, in particular, that court's conclusion that there was no reason to distrust Mr. Bekreev's initial testimony, and concluded that the conclusions of the contested judgment regarding the facts of the case and the guilt of the author were well reasoned. In the light of the circumstances of the case, the Committee is of the view that the facts before it do not reveal any violation of article 14, paragraph 5, of the Covenant.

8. 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 violations of the author's rights under article 9, paragraph 1, of the Covenant.

9. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under the obligation to provide the author with an effective remedy, which should include adequate and appropriate compensation. The State party is under the obligation to avoid similar violations in the future.

10. 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 when 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

[12] See the Committee's general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, para. 48, *Official Records of the General Assembly, Sixty-second Session, Supplement No. 40*, vol. I (A/62/40 (Vol. I)), annex VI.

to its 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.

[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.]