



## International Covenant on Civil and Political Rights

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### Human Rights Committee

#### **Decision adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 3038/2017\*\*\***

<i>Communication submitted by:</i>	A. L. (represented by counsel, Lyudmila Romanenko)
<i>Alleged victims:</i>	The author
<i>State party:</i>	The Russian Federation
<i>Date of communication:</i>	14 February 2017 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 10 November 2017 (not issued in document form)
<i>Date of adoption of decision:</i>	23 July 2021
<i>Subject matter:</i>	Unlawful arrest and torture of the author followed by an unfair trial
<i>Procedural issue:</i>	Exhaustion of domestic remedies
<i>Substantive issues:</i>	Arbitrary arrest-detention, torture; cruel, inhuman or degrading treatment or punishment; fair trial, fair trial - witnesses
<i>Articles of the Covenant:</i>	7, 9(1-5), 14(1), 14(3)(e)
<i>Articles of the Optional Protocol:</i>	2, 5 (2) (b)

1. The author is A. L., a citizen of the Russian Federation born in 1971. He claims to be a victim of violation, by the Russian Federation, of his rights under articles 7, 9 (1-5); 14 (1) and 14 (3) (e) of the International Covenant on Civil and Political Rights. The Optional Protocol entered into force for the Russian Federation on 1 January 1992. The author is represented by counsel.

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

2.1 The author submits that he has been arrested by the police on 12 December 2013 and kept in a temporary detention centre until 20 December 2013, when he was charged with murder. During this period, he has been subjected to psychological and physical pressure, to

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\* Adopted by the Committee at its 132nd session (28 June – 23 July 2021).

\*\* The following members of the Committee participated in the examination of the present communication: Tania Abdo Rocholl, Wafaa Ashraf Moharram Bassim, Yadh Ben Achour, Arif Bulkan, Mahjoub El Haiba, Shuichi Furuya, Kobayyah Tchamdja Kpatcha, Carlos Gómez Martínez, Duncan Laki Muhumuza, Photini Pazartzis, Hernán Quezada, Vasilka Sancin, José Manuel Santos Pais, Changrok Soh, Hélène Tigroudja and Gentian Zyberi.

make him confess having committed a crime. He explains that he had been afraid, and the interrogations were accompanied by threats and kicks on the head or the body. He was unable to inform his relatives or anyone else of the unlawful acts by the police. The police officers warned him that they would kill him if he refuses to sign his confession and that in any event nobody was aware of his whereabouts. The author signed his confessions under dictation, knowing the text not to be true, just to avoid further beatings. In court, he explained this, but the presiding judge of the Amursk Regional Court led the trial in an accusatory manner and fully supported prosecution's position.

2.2 The author further submits that on 22 December 2013, the Tynda City Court placed him in a pre-trial detention. On 5 May 2015, the Amursk Regional Court found him guilty of murdering four people and sentenced him to life imprisonment in a special regime correctional facility. The court retained 17 December 2013 as the date of his arrest. The author appealed to the Supreme Court on 13 May and 18 June 2015, claiming that the trial court decision was unlawful, in particular as the court retained as evidence his confession obtained under duress while he had been detained unlawfully by the police. On 11 August 2015, the Supreme Court rejected the appeal. In doing so, the court noted that the author has signed his confession in the presence of a lawyer, he made no complaints against the police during the investigation, and that the fact that he was detained as of 17 December 2013 had been taken into account when calculating his sentence.

2.3 The author submitted a cassation appeal to the Supreme Court on 28 July 2016, which has been rejected on 26 October 2016. On 23 November 2016, he submitted a request for a supervisory review to the Supreme Court, which has been rejected on 9 December 2016.

2.4 On 25 November 2016, the author filed an appeal with the Amursk Regional Court, pointing out that his actual detention started on 12 December 2013 and not on 17 December 2013, and thus his sentence had to be reviewed. In reply, on an unspecified date, the court explained that nothing on file could confirm the author's claims about the date of his arrest.

2.5 The author further submits that on 17 February 2016, he filed a civil claim with the Tynda City Court, seeking damages for his unlawful detention and poor conditions of detention in the temporary detention centre. On 24 May 2016, the Tynda City Court heard the case in the absence of the parties. It rejected the appeal, noting that the author has failed to adduce evidence in support to his claims while nothing on file supported his allegations about unlawful detention. On 8 August 2016, the author filed a further appeal to the Amursk Regional Court, which was rejected as time barred on 21 September 2016.

2.6 The author claims that he has exhausted all available domestic remedies. He asks the Committee to conclude to the violation of his rights and to determine an adequate compensation to the damages he suffered.

### **The complaint**

3.1 The author claims that in violation of article 9 (1-5) of the Covenant, he had been detained by the police on 12 December 2013 at the Tynda temporary detention facility (IVS)<sup>1</sup>, with no reasons or grounds, his arrest was not recorded and he was presented no charges. In fact, the record of his arrest has only been drawn up on 20 December 2013. On 22 December 2013, the Tynda City Court ordered the author's placement in custody. The author claims that the court during the trial has determined that he had been actually apprehended on 17 December and this served as a starting point for the calculation of his conviction. Thus, his arrest has been unlawful, he was not explained the reasons for it nor was he charged, and he was not brought promptly before a judge to decide on his detention.

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<sup>1</sup> The temporary detention facility (IVS) must be differentiated from the pre-trial detention centre (SIZO). In IVS, detained persons are normally kept hours, rarely days, before they are brought before a judge. After the detained person is brought before a judge, he or she is subsequently moved to SIZO (or released, which does not happen often). The IVS is not intended for long stays, therefore, unlike SIZO, IVS lacks facilities to provide basic needs: e.g., there are no proper beds, food, medical assistance, etc. SIZO, on the other hand, provides basic services to detainees, and resembles normal prison conditions.

3.2 The author further claims that the trial was held in an accusatory manner, in violation of article 14(1) of the Covenant. In court, he claimed in vain that his arrest has been unlawful and that he had been forced under duress and psychological pressure to confess guilt in a very serious crime. According to the author, the judgment of 5 May 2015 is unlawful and the trial had been unfair, in particular given that the court retained 17 December as the date of his apprehension.

3.3 The author next claims a violation of his rights under article 14 (3)(e), read together with article 7 of the Covenant. He asked the Tynda City Court to compensate the damages he suffered in connection to his unlawful arrest, the impossibility to meet with his relatives, the fact that the cell was not equipped with any chair or table, and had insufficient light or ventilation, with toilets which were not separated. He also asked the court to examine his claim in his presence. However, on 24 May 2016, in his absence, the court rejected his appeal. The author claims that this decision was unlawful. Without further substantiation, the author claims that in addition, the court failed to interrogate direct witnesses who would have been able to confirm the violation of the author's procedural rights, contrary to article 14 (3)(e) of the Covenant.

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

4.1 The State party presented its observations on admissibility and merits on 27 August 2018. Regarding the alleged violation of article 9 of the Covenant, the State party notes that the author claims that he had been detained unlawfully from 12 to 20 December 2013; no reasons for the arrest were given to him and he was not charged; he was not brought promptly before a judge to verify the reason for his detention; and he was under impossibility to appeal against his placement in detention or to get compensation.

4.2 The State party submits that under article 108 (11) of the Criminal Procedure Code (CPC), court rulings on restraint measure (custody) can be appealed within three days after the decision was adopted. The court must decide within three days after receiving appeal. A decision to annul a restraint measure enters into force immediately. Decisions on restraint measures are subject to cassation appeals under article 47 of the CPC. The material on file shows that the author has not filed any appeal nor a cassation appeal against the decision to have him placed in custody. Thus, the author has failed to exhaust the available domestic remedies and his claims under article 9 of the Covenant should be deemed inadmissible.

4.3 Regarding the allegations under article 14 (1) of the Covenant, the State party notes that the author claims that his trial has been unfair as he had been physically apprehended on 12 December 2013, a record of his arrest has been prepared only on 20 December 2013, but the sentence mentions 17 December as a date of actual arrest. In the author's opinion, the incorrect calculation of the time of arrest shows that the trial had been carried in an accusatory manner and that it has been unfair.

4.4 The State party notes that under article 3 of the Optional Protocol, the Committee may declare that a communication is incompatible with the Covenant's provisions and refers to the Committee's general comment No 32 on article 14, right to equality before courts and tribunals and to fair trial.<sup>2</sup>

4.5 The European Court of Human Rights has repeatedly affirmed that respect of the requirements of fair trial must be assessed in each case taking into account the developments of trial in its entirety, and not by focusing on a single aspect or episode. However, at the same time, a single episode may have such an important significance which could allow to evaluate the fairness of the trial at the early stages of the procedure. This principle is not only fair for the application of the concept of fair trial as such, as prescribed under article 6 of the European Convention, but also for the application of particular guarantees under article 6(3)3.

4.6 The State party believes that the author's allegations about the calculation of the date of his arrest may raise issues under article 9 of the Covenant but not under article 14. In

<sup>2</sup> The State party refers to general comment No 32 on article 14, Right to equality before courts and tribunals and to fair trial, 23 August 2007, CCPR/C/GC/32 and *V.K. v Russian Federation*.

<sup>3</sup> See, for example, ECtHR, Application of *Pishchalnikov v Russian Federation*, ruling of 24 September 2009.

addition, an incorrect calculation of the time period that the author spent in pre-trial detention does not necessary reveal any accusatory manner within the examination of the author's criminal case. Thus, the author's claims under article 14 (1) are not substantiated and shall be declared inadmissible.

4.7 The State party notes that the author also claims unfair trial in light of the use of unlawful methods of investigation against him (acts of violence by the police, with the resulting self-incrimination). The State party emphasises that authors must exhaust the available domestic remedies prior to complaining to the Committee. From the judgment of the Amursk Regional Court dated 5 May 2015, it transpires that the author has admitted his guilt in committing the crime under article 105 of the Criminal Code (CC) (murder). In court, he partially confirmed his deposition given at the preliminary investigation, clarifying that when he started committing these crimes, he first caused bodily injuries to A.M. In addition, he affirmed that he took the axe – the murder weapon - near the entrance and not near the stove. The author also confirmed his initial confession in court. Thus, it transpires from the judgment that at the first instance, the author has not complained whatsoever of unlawful pressure on him during the preliminary investigation, to the contrary, he admitted his guilt in the crime.

4.8 According to the documents on file, the author complained of alleged facts of violence for the first time in his appeal complaint. It should be noted that his claims were contained not in his main appeal but were included in a supplementary appeal. These allegations were given an adequate assessment by the Supreme Court (appeal ruling of 11 August 2015).

4.9 It should also be emphasised that in his cassation appeal dated 28 July 2016, the author invokes no acts of violence by police whatsoever. Thus, the State party considers that the author has not exhausted the available domestic remedies regarding his allegations of unfair trial and regarding the acts of violence allegedly inflicted by the police to coerce his confessions. Accordingly, this part of the communication shall be declared inadmissible.

4.10 Under article 3 of the Optional Protocol, the Committee may declare inadmissible a communication which constitutes an abuse of the right of submission. The author initially admitted guilt and confirmed it before the first instance court; he next invoked allegations of police violence in his appellate claim; and then ultimately did not invoke those claims at all at the stage of the cassation appeal. All this shows, in the State party's opinion, that the author's case constitutes an abuse of the right of submission, and the communication shall be declared inadmissible under article 3 of the Optional Protocol.

4.11 Regarding the allegations under article 14 (3)(e), the State party notes that the author claims a violation of articles 14 (1) and (3)(e), as he did not participate in the adjudication of his claim of moral damages based on his unlawful arrest and poor conditions of detention. The State party notes that the guarantees under art 14 (3)(e) apply to those charged under criminal law. In the present case, however, the author tries to apply this provision in the context of an application for moral damages, i.e. in the context of a suit at law within civil proceedings. Thus, the author's claims under article 14 (3)(e) seem to be incompatible with the provisions of the Covenant and shall be declared inadmissible under article 3 of the Optional Protocol.

4.12 Under article 376 (1) of the Code of Civil Proceedings (CCP), court decisions, which have acquired the force of *res judicata*, with the exception of decisions of the Supreme Court, can be appealed under the cassation procedure by the parties of a trial or other people whose rights and lawful interest have been affected by the court decision.

4.13 Under article 377 (2)(2) CCP, rulings of Supreme Courts of the republics, krai/region courts, the courts of the cities of federal importance, the courts of autonomous regions, the courts of the autonomous districts, and also appeals against decisions/rulings of district courts as a first instance which have become executory, are subjected to appeal before the presidium of the respective Supreme court of the republics, krai/regional court, court of the city of federal importance, court of autonomous region, or autonomous district, or to the Collegium on civil cases of the Supreme Court. However, as of 12 February 2018, the author has not appealed to the Collegium of civil cases of the Supreme Court with a cassation appeal against the decision of the Tynda District Court of Amur region of 24 May 2016 nor against the appeal ruling of the Amursk Regional Court of 28 April 2017. Thus, the author has failed to

exhaust the available domestic remedies regarding his claims under article 14 (1) of the Covenant in connection to the examination of his claims for moral damages related to his unlawful arrest and the poor conditions of detention.

4.14 The State party provides also statistical data to demonstrate that the remedies it invokes constitute effective ones. Thus, in 2017, the Supreme Court has examined a total of 1679 cases under the cassation proceedings. In 935 cases (55,7%) out of those, the court issued rulings for the examination by the Collegium on civil cases. In 52 of those cases, the court ordered that the case is examined by the Collegium of the deputy-Chairs of the Supreme Court. In 874 cases (98,3%), the cassation claims have been successful. In particular, 314 decisions of lower courts have been annulled (35,9%). 471 appellate rulings have been annulled without a modification of the first instance decision (53,9%). In 44 cases, the decision of the lower instance has been confirmed. 426 cases have been transmitted for a new adjudication, and in one case a new decision has been issued directly.

4.15 On the merits, the State party notes that the author has been brought to the Tynda police station as he had committed an offence, i.e. he failed to comply with a lawful requirement by a police official in the course of duty<sup>4</sup>. The author's arrest has been recorded on 17 December 2013. The author recognised his responsibility. On the same day, 17 December 2013, the Tynda District Court of the Amursk region ordered a 10 days administrative arrest and detention against the author under article 19.3 (1) of the Code on administrative proceedings (CAP). The author has been placed in a temporary detention centre, as confirmed by the detention centre's registry and the registration of those placed on administrative arrest and detention. The ruling on his placement on arrest and detention was not appealed by the author.

4.16 The State party adds that a record under articles 91-92 CPC on the author's arrest as a suspect of a crime was established on 20 December 2013. No remarks were formulated by the author or by his lawyer, E.N. On 22 December 2013, the Tynda District Court of Amursk region placed the author in custody. Neither the author nor his lawyer have appealed against this ruling. The decision to have him placed in custody has been renewed on several occasions. When determining the author's prison term, the court calculated the time period starting from 17 December 2013.

4.17 The author did not reject his guilt in the murders during the preliminary investigation and confirmed it in court. He made no claims whatsoever regarding any limitation of his rights. The defence was not prevented from questioning witnesses in court.

4.18 The author's allegations on the use of physical violence or psychological pressure against him to make him confess guilt could not be confirmed. The author presented no concrete data on any unlawful acts of the police when he confessed guilt and when his deposition was recorded, neither at the pre-trial nor the trial stage. He does not adduce such elements in his communication to the Committee either. No procedural verification has been carried out, given the lack of grounds thereon.

4.19 The State party further submits that a witness, U., confirmed in court that the author has confessed guilt in the murder while under administrative arrest. Another witness, P. has testified at the pre-trial investigation that he had been detained together with the author, and that on 20 December 2013, during a conversation with police officers, the later confessed guilt in the murder of 4 people. The author did not complain having been forced to confess guilt or been placed under pressure. The witness saw no bodily injuries on the author's body, and the author did not complain about unlawful methods of investigation.

4.20 In his confessions of 20 December 2013, the author confirms having murdered four people. The confessions also contain his declaration that they were made under no pressure by the police. In court, before the Amursk Regional Court, the author confirmed the testimonies of the witness P. and also his own confessions of 20 December 2013. He also confirmed having murdered four people and while he refused to testify under article 51 of the Constitution, he confirmed his depositions made during the preliminary investigation as

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<sup>4</sup> This administrative case is different from the murder charges, which came later – please see para. 4.24.

an accused on 16 October 2014, where he explained in what circumstances he had committed the crimes. He gave additional information on the circumstances of the murders during the verification at the crime scene, on 22 December 2013 and 27 May 2014.

4.21 When assessing the author's guilt, the court examined his deposition as a suspect on 16 October 2014 and the verification of the deposition at the crime scene, recognised them as admissible evidence of his guilt under article 105 CC as they were received in accordance with the law, including with the explanation that the author had the right not to testify against himself, and that they were given in the presence of a lawyer. No complaints regarding an unlawful pressure were received. The court also gave an assessment of the author's confessions and noted that they were corroborated by the additional expert's examination No 211 and the data contained in the record regarding the examination of the crime scene of 8 December 2013.

4.22 When calculating the author's penalty, the court took into consideration his arrest from 17 December 2013. When appealing his conviction of 5 May 2015 by the Amursk Regional Court, the author affirmed having been arrested on 17 December 2013 and he complained that the record on his arrest has only been prepared on 20 December 2013; he also claimed that his confessions were made under psychological and physical pressure by the police.

4.23 On 11 August 2015, the Collegium on criminal cases of the Supreme Court examined the claims of the appellant and concluded that the guilt of the author was confirmed by the multitude of the evidence examined during the trial that have been given an adequate assessment in the sentence. The author's responses that were given when he was interrogated during the investigation were considered truthful, when he gave a detailed description of the way he murdered four persons. The author confirmed his deposition during a verification at the crime scene but also in court, when he clarified the sequence of the murder and the place from where he collected the axe.

4.24 The court also correctly retained as evidence the deposition of the witness P., who confirmed that the author - his cellmate during his administrative arrest - described to him how he had murdered four people and that he had informed the police of this. The author had not complained to him of having been coerced to do so. In court, the author confirmed the deposition of P. Another witness, D., has confirmed that when P. asked the author who had committed the murder of 4 people, the author replied that it was him.

4.25 The author's allegations about his forced confessions were duly examined by the court, but were rejected as groundless. The court took note in particular of the fact that the confessions were made in the presence of a lawyer, after the author had been informed of his procedural rights including the right not to testify against himself; he did not complain about the police during the investigation, and from the witnesses' depositions it transpires that he had confessed guilt voluntarily. From the sentence, it transpires that the author's guilt was confirmed not only by his depositions, but also by a multitude of other corroborating evidence, permitting to make a grounded conclusion of his guilt. In his appeals against the Amursk Regional Court of 5 May 2015 and the ruling of the Supreme Court of 11 August 2015, the author claimed that he had been arrested on 12 December and not on 17 December 2013, but made no claim of unlawful methods of investigation or forced confessions.

4.26 The author has also complained to court against the Ministry of Finance and the Temporary detention centre of the Ministry of Internal Affairs, claiming moral damages for his unlawful detention. In support, he claimed that on 12 December 2013, he has been placed unlawfully in the Temporary Detention Centre as no record for his arrest as suspect has been prepared. In addition, he has not been informed of his procedural rights and was given no possibility to conclude a representation agreement with a lawyer. The conditions of detention did not correspond to the sanitary and other standards. These circumstances led to physical and moral sufferings by the author. The author asked the court to conclude to the unlawfulness of his detention and to order a compensation equal to 10 000 000 roubles.

4.27 The State party submits that on 9 March 2016, the Tynda District Court accepted the case and determined the 12 April 2016 as date of adjudication and the author has been informed accordingly. Later on, the trial has been postponed to 24 May 2016 and the author

has been informed duly of the change.<sup>5</sup> The case has been examined on 24 May 2016. The author was not present, he did not send his representative and made no requests or complaints. The court, acting under article 167 of the CCP, decided to proceed in the absence of the plaintiff who had been duly notified of the trial. The court examined the arguments by the author on the circumstances of his detention, in conjunction to the rest of the evidence on file, and established that on 20 December 2013, the author has been detained as a suspect of a crime proscribed under article 105 (2) CC. The author has been notified of the arrest and he accepted it as confirmed by a hand written signed statement. Under article 46 CPC, the author has been explained his procedural rights as a suspect as confirmed by his signature. The record also shows that the author's brother has been informed of the arrest. Thus, the court found that the author's arrest record as a suspect was lawful, as it has been prepared by a duly authorised person, in the presence of the author's lawyer, N. On 22 December 2013, the Tynda District Court ordered the author's placement in custody.

4.28 In addition, during the trial, the court has verified the circumstances of the author's detention in the temporary detention facility as a suspect and an accused. The court established that during his detention in custody, the author made no claims regarding unlawful detention and the acts of the police have not been recognised as unlawful. The court, acting under articles 151, 1068, 1071 and 1100 CPC, concluded that the evidence did not corroborate the author's claims and rejected it. The author has been sent the court's decision.

4.29 On 29 August 2016, the author filed an appeal against the decision of 24 May 2016 together with a request to prolong the deadline for appeal. On 21 September 2016, the Tynda District Court rejected the author's request to prolong the deadline for appeal. On appeal, on 30 January 2017, the Amursk Regional Court annulled the decision of 21 September 2016 and extended the deadline for appeal.

4.30 Meanwhile, on 21 March 2016, the author's appeal against the Ministry of Finance and the temporary detention facility reached the Amursk Regional Court. The court determined 28 April 2017 as a date for the trial and the author has been informed accordingly. The author sent no clarification to his appeal and made no request to participate in the trial through a video conference. Thus, on 28 April 2017, the court decided to proceed in the author's absence.

4.31 In his appeal, the author has asked to have the court decision annulled, given that it was examined in his absence. He also noted that the court did not assess the circumstances of his detention between 12 and 20 December 2013 and claimed that the court did not request a number of documents from the Temporary Detention Centre. He also claimed that the obligation to provide evidence regarding the conditions of detention lies on the Ministry of Internal Affairs. The appeal ruling of 28 April 2017 of the Amursk Regional Court and the decision of the Tynda District Court of 24 May 2016 were left without change and the author's appeal has been rejected. The court rejected the author's arguments regarding the failure of the appeal court to assess the circumstances of his arrest between 12 and 20 December 2013 as groundless and confirmed the court's conclusions. The author's claim about the adoption of the decision in his absence was similarly rejected as groundless. The court noted that the law only obliges it to notify the parties of the trial and this was done regarding the author as attested by the relevant notifications. The author could have been represented but he failed to do so and he did not request to have a video conference organised either. In addition, the court noted that the law does provide for the presence of prisoners servicing a sentence to participate in civil cases.

4.32 On 28 July 2017, the author appealed to the Amursk Regional Court against the previous court's decision regarding the trial in his absence as adopted in breach of the material law. He also noted the absence of assessment of the circumstances of his detention from 12 to 20 December 2013 and complained about the failure of the court to request a number of documents from the temporary detention facility. On 28 August 2017, the Amursk Regional Court, examined the appeal against the Tynda District Court's decision of 24 May 2016 and the Amursk Regional court's decision of 28 April 2017. It refused to order an examination of the appeal by the presidium of the Amursk Regional Court. Under article 387

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<sup>5</sup> The case file contains copies of notifications handed down to the author.

CCP, court decisions can be annulled or modified based on significant violations of the norms of material or procedural law, which have affected the outcome of a case, if no other avenues exist to assure the respect of the violated rights and freedoms and if the public concerns so require. The Amursk Regional Court revealed no such breaches by the first and appeal instance courts. The court noted that the author's arguments had already been examined by the appeal court and were correctly rejected, and thus, there was no need for further verification.

4.33 The disagreement of the author concerning the conclusions of the court and the establishment of the circumstances for the purposes of article 387 CCP cannot serve as a basis for the re-examination of a court decision which has acquired the force of *res judicata* as annulment or reformation within a cassation proceeding is only allowed in case of serious breach of norms of material or procedural law which took place in the context of the previous adjudication and affected the outcome of the case. Under article 327 CCP, on appeal, the appeal instance can assess the evidence on file and the additionally presented evidence, while the cassation court is not allowed to assess elements of evidence or to establish new circumstances. A copy of the refusal of the Amursk Regional Court of 28 August 2017 to order the examination of the cassation appeal was sent to the author on 20 September 2017.

4.34 The State party adds that in the context of its monitoring prerogatives, in 2016, the Tynda City Prosecutor's Office established that the temporary detention facility could accommodate 18 detainees. The cells are equipped with chairs, benches and shelves, water pipe, radio receptors to broadcast the all-State channels, illumination, and ventilation. Tableware is assured during nutrition. The cells are equipped with WCs assuring respect of privacy. Walls are plastered and painted and the floors are wooden. Detainees can visit the room for meetings with relatives, and take walks in the temporary detention facility's yard. The prosecutor's office revealed a breach in the regulations regarding the day light and on 29 March 2016, requested the Tynda District Court to recognise the acts of the Office of the Ministry of Internal Affairs of the Amursk Krai and the temporary detention facility as constituting an unlawful inaction materializing in the non-respect of the legislation regarding the daily light in the cells and the service premises of the detention centre. As a result, the Amursk department of the Ministry of Internal Affairs and the temporary detention facility were obliged to carry out reconstruction works, or, alternatively, to build a new detention centre.

4.35 In addition, in light of the requirements of the Federal law on the custody of suspects or accused, those accused or suspects can be transferred from pretrial detention centres to temporary detention centres when this is needed for the conduct of investigation activities, or examination of court cases outside of the locality, when the transfer on a daily basis is impossible, but not more than 10 days a month. It was revealed that the author has been detained unlawfully in the temporary detention facility as a suspect and an accused, from 20 December 2013 to 15 January 2014 (17 days).<sup>6</sup> As a result, a deputy prosecutor of the Amursk region wrote to the head of the Amursk Office of the Ministry of Internal Affairs, regarding the need not to breach the law. Thus, the prosecutor's office has taken the necessary measures to remedy the breach of the law within its monitoring functions.

4.36 In light of the above, the State party believes that no breach of the author's rights under the Covenant has occurred.

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

5.1 The author presented his comments on the State party's observations on 13 December 2018. He reiterates that he was arrested and detained at the temporary detention facility on 12 December 2013, but the State party has not assessed this and its reply is flawed and constitutes a confirmation of the fact that he has indeed been detained on 12 December. His arrest was not recorded within 3 hours as requested under the law, nor was he charged. Thus, according to him, his detention was unlawful and as a consequence, all subsequent investigation activities should be excluded as evidence.

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<sup>6</sup> Please see explanatory footnote 1, on the difference between temporary detention centre – IVS and pre-trial detention centre – SIZO.



5.2 The author adds that the officers exerted physical and psychological pressure on him. His defence lawyer did not discuss with him privately, and did not provide the necessary judicial assistance, and he did not appeal against the detention and the use of physical or psychological pressure. The author is not a lawyer, and at the relevant time had no paper or pen to appeal.

5.3 The author claims that the State party's contention that on 17 December 2013 he had been placed in the temporary detention facility in the context of an administrative case is false and non-confirmed. According to the sentence, his term was calculated starting from 17 December 2013 but it was not stated that he had been arrested based on an administrative case. The author reiterates that he had been arrested on 12 December; he explains that his term was calculated starting as of 17 December only because on this day, he received the visit of criminal investigators from the city of Blagoveshensk and their visit has been duly recorded in the centre's registry. This visit has most probably been recorded on video surveillance cameras; the author has requested the video recordings to be adduced to his appeal to the Tynda City Court, to no avail.

5.4 The sentences are unlawful as they were rendered in breach of the law. The author has not committed the crimes, he self-incriminated himself under pressure following his unlawful arrest and detention. Furthermore, the testimony of the witness P. to the effect that he was a cellmate of the author and the latter has admitted having committed the murders cannot be retained as lawful evidence. P. was also detained and kept under pressure by police. The author could not admit the murders, as he did not commit them.

5.5 In violation of article 14 (3)(e), the trial took place in the author's absence and he could not confirm the violation of his rights during his arrest and detention at the temporary detention facility. In relation to the author, on 29 March 2016, a city prosecutor of Tynda introduced an administrative claim on the absence of natural light in the temporary detention facility. This claim has ultimately been rejected and even the prosecutor's conclusions on the absence of light were not retained as evidence by the court, what shows that the court proceedings do not constitute an effective remedy. In addition, the courts ignored the conclusions of the office of the prosecutor regarding his unlawful detention in the temporary detention centre from 20 December 2013 to 15 January 2014.

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

### *Consideration of admissibility*

6.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 97 of its rules of procedure, whether the communication is admissible under the Optional Protocol.

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

6.3 The Committee notes that the State party challenges parts of the communication for non-exhaustion of domestic remedies. First, the author has not appealed against the decision to have him placed in custody on 22 December 2013. Secondly, he has failed to exhaust the available domestic remedies regarding his claims of use of beatings (torture) or psychological pressure by the police to coerce him to confess guilt in a multiple murder. These allegations were not part of the author's trial or initial appeal, but were only included in his complementary appeal. Later on, according to the documents on file, in his cassation appeal of 28 July 2016, the author invoked no allegation whatsoever related to acts of violence or psychological pressure by the police.

6.4 The Committee further notes that the author has not refuted these State party's objections and has provided no explanation or information whatsoever in reply. For example, he has not explained why he had not raised such important claims as the use of torture or psychological pressure in his initial appeal, nor in his cassation appeal. The Committee further notes the State party's submission that prior to his criminal case, the author was detained on administrative charges (para. 4.15 of the text above). In these circumstances, and in the absence of any further information or explanation on file, the Committee considers

that this part of the communication, raising issues under articles 7 and 9 (1-5) is inadmissible both under articles 2 and 5 (2)(b) of the Optional Protocol.

6.5 The Committee further notes the author's claims with regard to alleged violations of article 14(1) in that his trial was "unfair" and held in an "accusatory manner" and that "the judgment of 5 May 2015 was unlawful". The author further claims that he could not summon witnesses who would corroborate his account of events, in violation of his rights under article 14(3)(e). The author also argues that the courts ignored the unlawfulness of his detention in temporary detention centre from 20 December 2013 to 15 January 2014. The State party replied that a deputy prosecutor of the Amursk region wrote to the head of the Amursk Office of the Ministry of Internal Affairs, regarding the need not to breach the law and thus taken the necessary measures to remedy the breach of the law within its monitoring functions. The Committee also notes that the State party provided detailed responses and explanations regarding the author's claims (paras. 4.7-4.13, and 4.17 – 4.25). In the absence of any further pertinent information on file, the Committee considers that the author has failed to sufficiently substantiate these allegations, for purposes of admissibility. Accordingly, it declares this part of the communication inadmissible under article 2 of the Optional Protocol.

7. The Committee therefore decides:

- (a) That the communication is inadmissible under articles 2 and 5 (2) (b) of the Optional Protocol;
- (b) That the present decision shall be transmitted to the State party and to the author.

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