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Ninety-seventh session
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VIEWS

Communication No. 1425/2005

Submitted by:	Anton Marz (not represented by counsel)
Alleged victim:	The author
State party:	Russian Federation
Date of communication:	14 March 2005 (initial submission)
Document references:	Special Rapporteur's rule 97 decision, transmitted to the State party on 13 November 2007 (not issued in document form)
Date of adoption of Views:	21 October 2009

* Made public by decision of the Human Rights Committee.

Subject matter: Retroactive application of the law with lighter penalty.

Procedural issues: incompatible *ratione materiae*

Substantive issues: Right to be equal before the courts; right to be heard by a competent tribunal; retroactive application of the law with lighter penalty; discrimination on the grounds of sex and social status.

Articles of the Covenant: article 9, paragraphs 1 and 5; article 14, paragraphs 1 and 3 (d); article 15, paragraph 1; article 26.

Article of the Optional Protocol: article 3.

On 21 October 2009, the Human Rights Committee adopted the annexed text as the Committee's Views, under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 1425/2005.

[Annex]

ANNEX

Views of the Human Rights Committee under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political rights

Ninety-seventh session

concerning

Communication No. 1425/2005[**]

Submitted by:	Anton Marz (not represented by counsel)
Alleged victim:	The author
State party:	Russian Federation
Date of communication:	14 March 2005 (initial submission)

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

Meeting on 21 October 2009,

Having concluded its consideration of communication No. 1425/2005, submitted to the Human Rights Committee by Mr. Anton Marz 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 Anton Marz, a citizen of the Russian Federation born in 1962, currently serving a life sentence in the Russian Federation. He claims to be a victim of violations by the Russian Federation of his rights under article 9, paragraphs 1 and 5; article 14, paragraphs 1 and 3 (b and d); article 15, paragraph 1; and article 26, of the International Covenant on Civil and Political Rights. The Optional Protocol entered into force for the State party on 1 January 1992.

[**] The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Lazhari Bouzid, Ms. Christine Chanet, Mr. Ahmad Amin Fathalla, Mr. Yuji Iwasawa, Ms. Helen Keller, Mr. Rajsoomer Lallah, Ms. Zonke Zanele Majodina, Mr. José Luis Pérez Sanchez-Cerro, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Fabian Omar Salvioli, Mr. Krister Thelin and Ms. Ruth Wedgwood.

Factual background

2.1 On 17 November 1994, the Krasnoyarsk Regional Court found the author guilty of multiple rape, murder, attempted murder, illegal handling and storing of fire arms, and sentenced him to death. On 5 April 1995, the Supreme Court upheld the decision of the Regional Court.

2.2 The Decree of the President of the Russian Federation of 2 April 1999 "On Pardon", commuted the author's death sentence to life imprisonment, under Section 59, paragraph 3, of the Criminal Code of 1 January 1997.

The complaint

3.1 The author claims that commutation of his death sentence to life imprisonment constitutes a violation of article 15, paragraph 1, of the Covenant. In substantiation of his claim, he explains that between 1992 and 1993, when the incriminated facts took place, the Criminal Code of the Russian Soviet Federative Socialist Republic (RSFSR) of 27 October 1960, then in force, did not include life imprisonment as a penalty. He claims that section 24 of the Criminal Code of the RSFSR of 27 October 1960 provided that in case of pardon the death penalty is commuted to 15 years of imprisonment. Therefore, he argues that commutation of his sentence to life imprisonment under section 59, paragraph 3, of the Criminal Code of 1 January 1997 is a heavier penalty than the penalty proscribed by the law that was applicable when the criminal offences he was convicted of were committed.

3.2 The author claims that he has exhausted all available domestic remedies.

Submissions by the parties

4.1 As there have been many submissions from the parties, with inevitable repetitions, an attempt has been made to group and cluster the arguments.

Retroactive application of the law with lighter penalty

4.2 The author argues that the President's decree of 2 April 1999 "On pardon" contradicts the Decree of the Constitutional Court No 3 P of 2 February 1999, which states that the death penalty is illegal and violates sections 19, 20 (2) and 46 of the Constitution. He claims that under this decree of the Constitutional Court his death sentence should have been annulled and the sentence be brought in accordance with the legislation in force under section 10, paragraph 1, of the Criminal Code and section 54, paragraph 2, of the Constitution. The Russian President issued his decree of 2 April 1999 "On pardon" when the death penalty was already abolished by decree of the Constitutional Court N 3 P of 2 February 1999. He adds that under the former Criminal Code of the RSFSR, there were "crimes" and "serious crimes", while the Russian Criminal Code of 1 January 1997 introduced a new category entitled "particularly serious crimes." Under the old code, he was convicted for committing "serious crimes", while under the new code, the crimes he committed fall under the category of "particularly serious crimes", which involve harsher sentences. Under section 10 of the Criminal Code, this law should not have been applied to him.

4.3 On 23 November 2005, the State party submits that the author's claim that the President's Decree of 2 April 1999 "On pardon" made his condition worse in comparison to the legislation that was in force when the crimes were committed, is unfounded. Under section 102 of the Criminal Code of the RSFSR, the maximum penalty for the crimes committed by the author was death. Under section 24, paragraph 1, of the Criminal Code of the RSFSR (the version of 17 December 1992, in force when the crimes took place), the death penalty could be commuted to life imprisonment. The decree of the Constitutional Court of 11 January 2002 declares that "pardon as an act of mercy cannot lead to consequences that are heavier for the convict than those that were established for by the criminal law and decided by a court on a specific case". The State party argues that the commutation of a death sentence to a lighter sentence under the criminal law cannot be considered as worsening the convict's situation. Neither constitutional rights nor the provisions of section 10 of the Criminal Code, nor norms of international law were violated. The State party challenges the author's claim regarding the decree of the Constitutional Court and submits that this decree establishes a date (2 February 1999), after which no accused could be sentenced to death independently of whether his/her case was examined by a jury or by a panel of three professional judges or by one professional judge and two lay judges. The sentence of the author was handed down on 17 November 1994 and became executory on 11 April 1995.

Allegations of procedural violations in relation to the Decree on Pardon.

4.4 On 27 September 2006, the author submits that under the "The order for consideration of petitions for pardon in the Russian Federation" endorsed by the President's decree of 28 December 2001, a request for pardon should come from the convict in the form of a written petition to the President of the Russian Federation indicating the reasons for his request. However, in his case, the President issued the Decree on Pardon without his consent and without any written petition from him. He argues that he had requested that his case be sent for additional investigation in his cassation appeal to the Supreme Court, and that he had not addressed any petition to the President. These are two different legal documents and procedural actions. The President's Decree of 2 April 1999 "On pardon" allegedly was not published, which the author claims contradicts section 15, paragraph 3, of the Constitution of the Russian Federation. It allegedly also contradicts the President's Decree No 763 of 23 May 1996 "On the order of publication and enforcement of acts issued by the President of the Russian Federation, the Government of the Russian Federation and normative acts of the federal executive bodies." He adds that he was not able to familiarize himself with the President's pardon decree, as he did not get a copy of it, in violation of section 24, paragraph 2, of the Constitution and the Decree of the President of 4 August 1983 "On the order of issuing and certifying documents on the rights of citizens by companies, organizations and other establishments." Thus, the President's pardon decree of 2 April 1999 is not in his case file. He claims that his case file contains only extracts of the pardon, and is not signed by the President, therefore being void. In his appeal to the office of the General Prosecutor, he attached a copy of the "extracts" of the decree, not the full text. Under section 85 of the Criminal Code and section 89, paragraph b, of the Constitution, the President may pardon individuals, but from February to June 1999 the President issued 12 pardon decrees, by which he pardoned more than six hundred persons, which means that he did not pardon each individually. Section 15, paragraph 3, of the Constitution and the President's decree No 763 of 23 May 1996 "On the order of publication and enforcement of acts issued by the President of the Russian Federation, the Government of the Russian Federation and normative acts of the federal

executive bodies" allegedly do not establish exceptions or restrictions on the publication of any decrees and legal acts concerning human rights and freedoms in the press.

4.5 The State party contests the claims that the President's pardon decree was issued without his petition and that he was not given a copy thereof. The author's case file contains information that he did submit a petition requesting his pardon, in which he requested "to send his case for additional investigation". It states that the author's reference to the "Order for consideration of petitions for pardon in the Russian Federation" of 28 December 2001, is unfounded as this order was endorsed by the President after his pardon decree of 2 April 1999. The case file contains extracts of the Presidential pardon decree. The author was given a copy of the decree on 9 June 1999. In his appeal to the General Prosecutor's office, he did attach a copy.

Allegations of unlawful deprivation of liberty

4.6 The author claims that under Section 90 of the Constitution of the Russian Federation "decrees, formal and non-formal orders issued by the President should be applied by the courts if they comply with the Constitution and federal laws". He claims that his case file contains no decision by a court which endorsed the commutation of death penalty to life imprisonment. He claims that he is serving his life imprisonment illegally solely on the basis of "extracts" from the decree with no signature of the President and with no incoming and outgoing registration numbers. The stamp on the document is very simple with no state emblem, thus the "extracts" allegedly do not meet the requirements of the State standards No p-6 30-97, therefore is legally void. The format of the "extracts" shows that the pardon was issued by the President, who established the sentence, which contradicts section 118 of the Constitution and section 8 of the Criminal Procedure Code, which state that determining a sentence is the exclusive prerogative of the courts. Commentary to section 8 of the Criminal Procedure Code states that "despite the position or the rank of the official, he or she does not have a right to appoint, establish or select punishment". He argues, if there is no court decision sentencing him to life imprisonment, it means that he is serving his life imprisonment term illegally. The President can only issue a pardon decree and request another penalty, but it should be the court which enforces the decree and determines the type of penalty under the Criminal Code of the RSFSR, which was in force when the crimes were committed. The sentence of 17 November 1994, did not indicate the prison term would start, as well as the type and regime of the penitentiary institution, thus violating section 302, paragraph 7, of the Criminal Procedure Code and section 308, paragraph 6 (1), of the Criminal Code. As there was no decision by a court replacing the death penalty by life imprisonment, no changes were introduced to his sentence. Therefore, he claims his detention in colony No. 6 is illegal. He claims he was deprived of his right under chapter 47 of the Criminal Procedure Code and sections 78-140 of the Criminal Executive Code to address issues related to the enforcement of his sentence. He thus claims a violation of his rights under article 9, paragraphs 1 and 5, of the Covenant.

4.7 The State party in turn contests the author's claim and submits that the commutation of the author's death sentence to life imprisonment was decided by the President not as part of the criminal proceedings determining a sentence, but in exercise of the constitutional right of the President to pardon. There was thus no need for an additional court decision to approve the pardon.

Right to be heard by a competent tribunal established by law

4.8 The author claims that the sentence of the Krasnoyarsk Regional Court on his case was illegal. He argues that criminal cases carrying the death penalty should have been examined by a panel of three professional judges or by a jury under section 15, paragraph 2, of the Criminal Procedure Code of the RSFSR. But the death sentence against the author was handed down by a panel of one professional judge and 2 lay judges under section 15, paragraph 1, of the Criminal Procedure Code of the RSFSR. He argues that under section 381, paragraph 2, of the Criminal Procedure Code, the sentence issued by an unlawfully constituted panel of judges violates as well article 14 of the Covenant. He claims that he had insisted to be tried by a panel of three professional judges. He also adds that the decision of the Supreme Court of 5 April 1995 is also illegal as there were significant violations of criminal procedure law. He claims the decision was signed by one judge, who was not even the President of the Panel, contrary to section 381, paragraph 3, part 10, of the Criminal Procedure Code. Thus his sentence of 17 November 1994 has not been "confirmed" and therefore has not yet become executory. Under Section 48 of the Criminal Code of the RSFSR, the statute of limitations for criminal liability for serious crimes is 10 years. As the author has already served 13 years in prison, he claims he should now be released. He argues since the court decisions in the case are void, the pardon decree of the President of 2 April 1999 is also unlawful.

4.9 The State party in turn admits that the author requested that his case be examined by three professional judges. Under section 15 of the Criminal Procedure Code, then in force, criminal cases could be examined either by collegium of judges or individually. Examination of a case by collegium of judges means examination by a professional judge and two lay judges. In all courts except for district (town) courts cases could be examined by three professional judges by decision of the court concerned and with the consent of the accused. As such, the choice of the composition of the panel was a prerogative of the court itself. The State party submits that the author did not challenge the composition of the court, nor did he present any petitions in this regard. For cases with sentences higher than 15 years' imprisonment, life imprisonment or death penalty, a court must be composed by three professional judges, but this rule was only set out in Federal Law No 160 of 21 December 1996, after the author's sentence had been handed down.

4.10 The State party argues that the cassation decision was signed by all judges. A copy of the decision was verified by one judge of the Supreme Court as per applicable. The author's complaint under the supervisory review was rejected by the decision of the Supreme Court on 11 April 2005. Deputy Chair of the Supreme Court upheld the decision.

Allegations of violation of the principle of equality before the courts

4.11 The author claims that the fact that his case was not examined by a jury contradicts section 20, paragraph 2, and section 123, paragraphs 3 and 4, of the Constitution of the Russian Federation. When his sentence was handed down, the jury panel had not yet been established in Krasnoyarsk region; as such, he claims the principle of equality was violated, contrary to article 14, paragraph 1, of the Covenant.

4.12 The State party submits that the author's claim that he was deprived of his right to a jury is unfounded and contradicts laws in force when the case was examined. Under chapter 2, part 6 on "concluding and transitional provisions" of the Constitution of the Russian Federation, until the

adoption of a federal law setting out the procedure for the examination of cases by jury, the previous procedure of examination of that category of cases by courts was preserved. Chapter 10 of the Criminal Procedure Code of the RSFSR on "proceedings in the court of jury", in particular section 421 read together with section 36, establishes that crimes carrying the death penalty are examined by juries in the regional, district and city courts on the basis of a petition by the accused. At the same time, under Section 420 of the Criminal Procedure Code of the RSFSR, the regions in which the jury trials were established, were determined by the Supreme Court. Section 30, paragraph 2, part 2 of the Criminal Procedure Code, which sets up a jury trial, was enforced in the Krasnoyarsk region only since 1 January 2003 under Section 8, paragraph 2 of the Federal Law "On entry into force of the Criminal Procedure Code of the Russian Federation" No 177 of 18 December 2001.

Allegations of discrimination on the ground of sex and social status.

4.13 The author claims that he is a victim of discrimination on the grounds of "social status" and sex, in violation of article 26, of the Covenant as under sections 57 and 59 of the Criminal Code neither death penalty nor life imprisonment can be issued against women. The author argues that the State party did not explain why this exception in law cannot be regarded as discrimination as it violates the Constitution, which guarantees that men and women have equal rights and freedoms. He also claims that he was deprived of his right to have his sentence reconsidered on the basis of new circumstances, namely the resolution of the Constitutional Court N 3-p of 2 February 1999, due to his social status. His appeal to the Supreme Court on this matter was rejected as repetitive.

4.14 The State party submits that the fact that women, minors as well as men above 65 are exempted from the death penalty under section 23, paragraph 2, of the Criminal Code cannot be considered as discrimination on any ground.

Alleged criminal procedure violations

4.15 The author claims that procedural violations during the pre-trial investigation, the trial and the cassation court hearing, should have led to the annulment of his sentence, as they violated his rights under article 14, paragraph 1, of the Covenant. He claims that most investigation acts were carried out without a lawyer; he was familiarized with the materials of his case again in the absence of his lawyer; his case was examined by an unlawfully constituted panel of judges; he was not given the protocol of the trial and did not sign it, as a result of which he could not comment on the protocol; neither he nor his lawyer participated in the hearing before the Supreme court; and he did not see the cassation appeal prepared by his lawyer. He stresses that participation of a lawyer in death penalty cases is mandatory even if the accused refuses legal assistance. He claims that the cassation court did not correct these mistakes, as it did not examine his case fully and did not admit that his right for legal assistance was violated under section 332 of the Criminal Procedure Code of the RSFSR. Therefore, he claims a violation of articles 14, paragraph 1, of the Covenant. The Committee notes that allegations may also raise issues under article 14, paragraph 3 (b and d), of the Covenant.

4.16 The State party in turn submits that the author's claim that most investigation processes were conducted in the absence of his lawyer contradict the case materials. It submits that in delivering the sentence the court relied only on those testimonies which had been given in the

presence of his lawyer. The interrogations of the author as an accused person were also conducted in the presence of a lawyer. Only three initial interrogations of the author, as a suspect, and one interrogation, as an accused person, were conducted without a lawyer, as the author had refused the services of a lawyer himself stating he did not need legal assistance. Under section 50 of the Criminal Procedure Code of the RSFSR, which was in force when these investigation acts took place, the accused has a right to refuse the services of a lawyer at any stage of the process. It also contests the author's argument that he was forced to familiarize with the case materials in the absence of a lawyer. The State party submits that the author wanted to familiarize himself with his case file separately from his lawyer, in accordance with applicable rules. His request was granted. Therefore, his argument that he was not provided with a lawyer while familiarizing himself with his case materials is unfounded. The State party submits that a copy of the cassation appeal field by the author's lawyer, who was representing him during the court proceeding, was sent to the author by the court on 16 January 1995. Under Section 335 paragraph 2, of the Criminal Procedure Code of the RSFSR, cassation court proceedings can only be attended by a lawyer. Participation of the accused during the process is decided by the respective court. In the present case, neither the author nor his lawyer requested the author's participation during the cassation court hearings.

Issues and proceedings before the Committee

Consideration of admissibility

5.1 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.

5.2 The Committee has ascertained that the same matter is not being examined under another procedure of international investigation or settlement for purposes of article 5, paragraph 2(a), of the Optional Protocol. It also notes that the author has exhausted domestic remedies, as has been conceded by the State party.

5.3 The Committee notes the author's allegations with respect to unlawful deprivation of his liberty as he claims there were several procedural irregularities in violation of article 9, paragraphs 1 and 5, of the Covenant. It notes the author's claim that his sentence does not indicate the beginning of his sentence term, the type and regime of the penitentiary institution in violation of the Criminal Procedure Code. The Committee observes that the author's sentence was based on a court decision, i.e. on legal grounds, while the requirements of domestic legislation on the type of information a sentence should contain are outside the scope of the Covenant. Therefore, the Committee considers that this part of the complaint is incompatible *ratione materiae* with the provisions of the Covenant, and thus inadmissible under article 3 of the Optional Protocol.

5.4 The Committee notes the author's claim concerning discrimination of article 26 in respect of the capital punishment and a life sentence, on grounds of social status and sex. As regards the claim in respect of social status, the author has not sufficiently substantiated the claim for the purposes of admissibility.

5.5 With regard to his claim of discrimination on the ground of sex in respect of life imprisonment, the claim is inseparable from the claim in respect of the death penalty, as the punishment is the result of commutation of the death penalty. As to the argument that the death penalty did not apply to women and thus constituted discrimination against men, the Committee recalls its jurisprudence that not all differentiations in treatment can be deemed to be discriminatory under article 26.[1] In the light of the fact that under article 6 of the Covenant all measures of abolition should be considered as progress in the enjoyment of the right to life,[2] the Committee considers that this exemption from the death penalty cannot constitute differential treatment contrary to article 26. Accordingly the claim is insufficiently substantiated for the purposes of admissibility.

5.6 The Committee considers that the author's other allegations, under article 14, paragraphs 1 and 3 (b and d), and article 15, paragraph 1, of the Covenant, have been sufficiently substantiated, for purposes of admissibility, and declares them admissible.

Consideration of the merits

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

6.2 The Committee notes the author's claim that his sentence was issued by an illegal panel of judges; the cassation decision was not signed by all judges; and that he was not given the protocol of the court trial and he did not sign it, in violation of article 14, paragraph 1, of the Covenant. The Committee notes the State party's submission that under Section 15 of the Criminal Procedure Code of the RSFSR, the choice about the composition of the court panel was a prerogative of the court itself. The mandatory nature of examination of cases carrying over 15 years imprisonment, life imprisonment or the death penalty by a panel of three professional judges was set out only in Federal Law No 160 of 21 December 1996, which entered into force after the author's sentence was handed down on 17 November 1994. The Committee notes the State party's argument that the original of the court decision was signed by all judges of the penal, that only the copy was verified by one judge under applicable rules. The State party argues that the author did not request a copy of the protocol of the court proceedings. The Committee notes that the author has not refuted these claims. In the absence of any other pertinent information the Committee concludes that the facts of the case do not disclose a violation of article 14, paragraph 1, of the Covenant.

6.3 The Committee takes note of the author's argument that the President's pardon decree contradicts the Decree of the Constitutional Court dated 2 February 1999. The latter states that the death penalty is not legal and violates articles 19, 20 (2) and 46 of the Constitution of the Russian Federation, as not every citizen had an opportunity to be heard by the court of jury. The author claims that the President issued his pardon decree of 2 April 1999 when the death penalty had already been abolished by the Constitutional Court decree N 3 P. In 1994, when the sentence

[1] See Communication No. 182/1984, *Zwaan-de Vries v. The Netherlands*, Views adopted on 9 April 1987, paragraph 13

[2] General Comment No. 06: The right to life (art. 6): 30/04/82, paragraph 6

of the author was handed down, jury panel had not yet been established in Krasnoyarsk region and he claims this violates the principle of equality before the courts. The Committee notes the State party's argument that the decree of the Constitutional Court N 3 P establishes a date, 2 February 1999, from which no accused could be sentenced to death. It also notes the State party's argument that chapter 2, part, 6 on "concluding and transitional provisions" of the Constitution established that until the adoption of the federal law setting out the procedure for the examination of cases by a jury, the previous procedure of examination of that category of cases by courts should be preserved. The Committee recalls its jurisprudence[3] to the effect that while the Covenant contains no provision establishing a right to a jury trial in criminal cases, if such a right is provided under domestic law, and is granted to some persons charged with crimes, it must be granted to others similarly situated on an equal basis. If distinctions are made, they must be based on objective and reasonable grounds. The Committee notes that under the Constitution of the State party, the availability of a jury trial is governed by federal law, but that there was no federal law on the subject. The fact that a State party that is a federal union permits differences among the federal units in respect of jury trial does not in itself constitute a violation of article 14, paragraph 1, of the Covenant.

6.4 The Committee notes the author's claim that most investigative acts were carried out in the absence of a lawyer; that he familiarized himself with the materials of his case again in the absence of a lawyer and that neither he nor his lawyer participated in the hearing before the cassation court, even though the participation of a lawyer in death penalty cases is mandatory even if the accused refuses legal assistance. The State party refutes these allegations by stating that all proceedings were conducted in the presence of a lawyer, except the initial three interrogations as a suspect and one as an accused, because the author had refused the services of a lawyer himself at that stage of the proceedings. While familiarizing himself with his case, the author wished to study his case file separately from his lawyer, and neither the author nor his lawyer requested for participation during the cassation court hearing. The author has not refuted these arguments of the State party. In the absence of any other pertinent information, the Committee concludes there has been no violation of article 14, paragraph 3 (b) and (d), of the Covenant.

6.5 With regard to the author's claim under article 15, paragraph 1, of the Covenant that commutation of his death sentence to life imprisonment is a heavier penalty than the one proscribed by the law that was applicable when the criminal offences were committed. The Committee notes the author's argument that the law did not include life imprisonment as a penalty and that consequently the death sentence should not have been commuted to life imprisonment, but should have been commuted only to 15 years imprisonment. The Committee, however, points out as argued by the State party that under section 24, paragraph 1, of the Criminal Code of the RSFSR, which was in force during the author's conviction, the death penalty could be commuted to life imprisonment.

6.6 The Committee notes that the author also submitted additional arguments, namely that the Decree on Pardon was issued without his consent and without his written petition; it was not published in press; it was not issued for each convict individually; he is serving life

[3] See communication in relation to article 26, No 790/1997, *Cheban et al. v.Russian Federation,* paragraph 7.2 and 7.4

imprisonment illegally on the basis of "extracts" from the decree with no signature of the President, no registration number and no official state emblem on the stamp; he was not familiarized with the Decree of the President "on Pardon" fully as he did not get a copy of the decree; pardon was issued by the President while establishing penalty is the prerogative of only courts; and finally the crimes he committed fall under the category of "particularly serious crimes" of the new Criminal Code, which entail harsher punishments, thus cannot be applied to him. The Committee observes that article 15, paragraph 1, entails the nature and the purpose of the penalty, its characterisation under national law and the procedures involved in making and implementation of the penalty as part of criminal proceedings. The Committee notes that pardon is in essence humanitarian or discretionary in nature, or motivated by considerations of equity, not implying that there has been a miscarriage of justice. The Committee considers that even if the author's sentence was deterred as part of the criminal proceedings, it was well within the limits provided by both the old Code and the new Code. Therefore the Committee concludes that there has been no violation of article 15, paragraph 1, of the Covenant.

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

[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.]
