

## INDIVIDUAL COMPLAINT

### The Human Rights Committee

c/o Office of the United Nations  
High Commissioner for  
Human Rights  
8-14 avenue de la Paix  
1211 Geneva 10  
SWITZERLAND

For communication under the Optional Protocol to the International Covenant on Civil and Political Rights

#### I. Information on the complainant:

Last Name: XXXXX First Name: XXXXX  
Nationality: Russian Federation Occupation: Lawyer  
Date and place of birth: XXXXX, Russia, Moscow region, XXXXX  
Residence Address: Russia, Moscow region, XXXXX, XXXXXXXXXXX  
Address for correspondence  
on this complaint: Russia 101000, Moscow, Chistoprudniy Boulevard 5, office no. 108

*If the complaint is being submitted on behalf of another person:*

Please provide the following personal details of that person:

Last Name: XXXXX First Name: XXXXX XXXXX  
Nationality: Russian Federation Occupation: \_\_\_\_\_  
Date and place of birth: XXXXX, XXXXX, XXXXX region  
Residence Address  
or current whereabouts: XXXXX, urb.vil. XXXXX, XXXXX

If you are acting with the knowledge and consent of that person, please provide that person's authorization for you to bring this complaint \_\_\_\_\_

*Or*

If you are not so authorized, please explain the nature of your relationship with that person:  
\_\_\_\_\_

And detail why you consider it appropriate to bring this complaint in his or her behalf:  
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## II. Information on the States concerned and Articles:

Name of the State that is a party to the International Covenant on Civil and Political Rights and the Optional Protocol thereto, against which the complained is filed.

Russian Federation

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Articles of the Covenant alleged to have been violated

Paragraph 1 Article 14 of the International Covenant

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Paragraph 2 Article 14 of the International Covenant

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## III. Exhaustion of domestic remedies

Steps taken by or on behalf of the alleged victims to obtain redress within the State concerned for the alleged violation-detail which procedures have been pursued, including recourse to the courts and other public authorities, which claims you have made, at which times, and with which outcomes (Attach copies of all relevant judicial or administrative decisions, where possible):

1. The XXXXX City Court of the XXXXX Region found the applicant guilty by a Sentence of XXXXX (Annex 9).
2. On XXXXX The applicant filed an appeal against the Sentence of XXXXX City Court of XXXXX to the Judicial Board for Criminal Cases of the XXXXX Regional Court (Annex 10).
3. The appeal decision of the XXXXX Regional Court of XXXXX in the sentence of the XXXXXiy City Court of XXXXX left the sentence unchanged in terms of the violations indicated by the applicant (Annex 11).
4. The applicant filed a cassation appeal to the Presidium of the XXXXX Regional Court. The transfer of the complaint for consideration was refused by the ruling of the XXXXX regional court from XXXXX (Appendix 12).
5. On XXXXX The Applicant filed a cassation appeal to the Judicial Board on criminal cases of the Supreme Court of the Russian Federation (Annex 13).
6. The Supreme Court of the Russian Federation refused to transfer the complaint for consideration by the ruling of XXXXX (Annex 14).

If domestic remedies have not been exhausted, please explain the reasons in detail:

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#### IV. Application to other international procedures

Have you submitted the same matter for examination under another procedure of international investigation or settlement (e.g. the European Court of Human Rights)? If so, detail at which times, and with which outcomes:

No

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#### V. Facts of the complaint and nature of the alleged violation(s)

Detail the facts and circumstances of the alleged violation or violations, including relevant dates:

7. XXXXX XXXXX XXXXX ("the Applicant") claims that several provisions of the Covenant were violated by the Russian Federation in respect of him, namely:

(a) Article 14, paragraph 1, of the Covenant - violation of the applicant's right to a fair hearing of his criminal case by an impartial court established by law, as expressed in:

- violation of procedural guarantees of equality of the parties to the proceedings;
- deprivation of the opportunity for the complainant to present evidence in his defence.

(b) Article 14, paragraph 2, of the Covenant - a violation of the right of the applicant to be presumed innocent until proven guilty according to law, as expressed in:

- an accusatory bias in the entire proceedings,
- violation of the principle of reasonable doubt in connection with sentencing on the basis of materials obtained with gross violations of procedural rules.

8. The applicant is a founder of XXXXX LLC (ООО «XXXXX») with a 25% stake (Annex 9).
9. From XXXXX to XXXXX the Applicant worked at XXXXX as Technical Director, and from XXXXX - as General Director (Annex 9).
10. On XXXXX Based on the results of the field inspection (Annex 2), Inspection No. 8 of the Federal Tax Service issued a decision to hold XXXXX LLC liable for tax violation (Annex 1).
11. On XXXXX by the decision of the XXXXX Arbitration Court the actions of the tax authorities on bringing to responsibility were suspended (Annex 1). According to this definition, XXXXX llc was not obliged to pay the arrears until the dispute is resolved in court.

12. On XXXXX, during the period of validity of the XXXXX Arbitration Court decision of XXXXX, a criminal case was initiated against the Applicant on the grounds of an offence under Part 1 of Article 199 of the Criminal Code of the Russian Federation: evasion of taxes and dues from the organization by including deliberately false information in the tax return (Appendix 3).
13. By the appeal decision of the 18th Arbitration Court of XXXXX the demand of the tax authorities was recognized to be satisfied (Annex 4).
14. The arrears were immediately paid in full by XXXXX llc in XXXXX 2017 (Annexes 10, 13).
15. Nevertheless, the criminal proceedings against the Applicant continued. On XXXXX, the Acting Head of the Investigation Department of the Investigative Committee of the Russian Federation for the XXXXX Region issued a decision on the return of the criminal case for additional investigation, allegedly due to the improper familiarization of the accused and the defence with the case file (Annex 7).
16. The XXXXX City Court of the XXXXX Region found the applicant guilty of large scale tax evasion by including deliberately false information in the tax return by the Sentence of XXXXX (Annex 9).
17. On XXXXX The Applicant filed an appeal against the Sentence of XXXXX City Court of XXXXX to the Judicial Board for Criminal Cases of the XXXXX Regional Court (Annex 10).
18. In his complaint, the Applicant stated that:
  - A criminal case against him was initiated in violation of the provisions of parts 7 and 8 of article 144 of the Code of Criminal Procedure of the Russian Federation. In addition, the extension of the procedural term of investigative actions was based on materials drawn up with gross violations of Articles 166 and 167 of the Code of Criminal Procedure of the Russian Federation; the court was presented with a fictitious record on familiarization of the accused and his counsel with the materials of the criminal case without signatures of the parties (Annex 6);
  - The verdict was based on materials drawn up in the record on the inspection of objects dated 27 August 2017, that contains forged signatures of the witness;
  - On XXXXX The Applicant filed a motion to investigate in court a number of documents seized at the preliminary investigation stage (Annex 8). The request was formally granted by the court,

but the physical evidences were never provided to the court and, therefore, were not examined by the court.

19. These arguments were not assessed by the court, and the appeal decision of the XXXXX Regional Court of XXXXX in the sentence of XXXXX city court of XXXXX made the only change: from the descriptive and motivational part was excluded reference to Article 20 of the Tax Code. Otherwise, the sentence was left unchanged, the abovementioned violations were not eliminated. (Приложение 11).
20. The applicant filed a cassation appeal to the Presidium of the XXXXX Regional Court. The transfer of the complaint for consideration was refused by the ruling of the XXXXX regional court of XXXXX (Appendix 12).
21. On XXXXX The Applicant filed a cassation appeal to the Judicial Board on criminal cases of the Supreme Court of the Russian Federation (Annex 13).
22. The Supreme Court of the Russian Federation refused to transfer the complaint for consideration by the ruling of XXXXX (Annex 14).

**A Violation of article 14, paragraph 1, of the Covenant - right to a fair trial. Right to equality before the courts**

The complainant alleges that his trial and prosecution in general violated the principles of equality and adversarial proceedings, which deprived him of his right to access to a fair trial.

23. The complainant invokes article 14, paragraph 1, of the Covenant, which provides in the relevant part:

*«All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law...».*

24. The complainant also refers to paragraph 8 of the Human Rights Committee's general comment No. 32 of 2007, which clarifies that the right to equality before courts and tribunals guarantees the "right of equal access and equality of arms" of the parties.
25. Access to justice must be effectively guaranteed in order to ensure that no person is procedurally

deprived of his or her right to seek justice. In this case, the investigation and national courts have taken a position that undermines the procedural equality of the parties to the proceedings. The formalism admitted by the first instance court in the matter of requesting evidences at the applicant's request deprived the applicant of the possibility to present additional evidences in his defence (see § 18). This violation was not remedied by the court of appeal due to the court's total disregard of the matter. This approach by the investigation and the national courts violated the guarantees of article 14 of the Covenant, which guarantees procedural equality (communications No. 273/1988, B.d.B. v. the Netherlands, para. 6.3; No. 1097/2002, Martínez-Mercader and others v. Spain, para. 6.3) and, as a result, the fairness of the prosecution. This approach by national authorities also raises the issue of the impartiality of the court.

**B Article 14, paragraph 2, of the Covenant – Alleged violation of the principle of presumption of innocence and requirement of legality of a judicial decision**<sup>27</sup>. Article 14, paragraph 2, of the Covenant provides:

*«Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law».*

28. The presumption of innocence, which is fundamental to the protection of human rights, places the burden of proof on the prosecution, ensures that no guilt can be presumed until proven guilty beyond reasonable doubt, ensures that doubts are interpreted in favour of the accused and requires that persons charged with a criminal act be treated in accordance with this principle (Human Rights Committee's general comment No. 32, 2007, para. 30). In the present case, the judgment was based on materials obtained with gross procedural violations: a criminal case against the Applicant was initiated during the consideration of a dispute about a tax offense in the Arbitration Court, in the presence of a ruling of the XXXXX Arbitration Court dated XXXXX, according to which XXXXX LLC had no obligation to pay the arrears during the period of interim measures (see §§ 11-12; Appendix 1). In addition, the criminal case was initiated outside the procedural time limit in the absence of rulings issued in accordance with Part 3 of Article 144 of the Code of Criminal Procedure. The reason for the extension of the time limit was allegedly inadequate familiarization of the accused and the defence with the case materials, however, the record of familiarization submitted to the court is fictitious and does not contain the signatures of the parties (Appendix 6). Thus, materials obtained during the pre-trial investigation could not be considered admissible evidence due to the abovementioned violations.

29. In addition, the indictment was based on the materials (statement of cash flow of XXXXX LLC and IE XXXXX S.V. and registration file of XXXXX LLC) drawn up in the record on inspection of items dated XXXXX (Annex 5). At the trial, the witness whose signature allegedly stood on the inspection record of XXXXX pointed out that the record was forged because the signature did not belong to him and that he was not present when the record was drawn up (Annex 8). These circumstances were confirmed by a second witness. Thus, the materials on which the sentence was based could also not be considered admissible evidence, as they were obtained in violation of the requirements of national legislation.
30. Consequently, the applicant was found guilty while questions about the inadmissibility of key evidence rested unresolved. The courts were indifferent to his case and failed to take the necessary measures to guarantee the satisfaction of the legitimate demand for an impartial, full and objective examination of all the circumstances of the case (cf. Communication No. 815/1998, Dugin v. Russian Federation, para. 3.2-3.3): the court of appeal completely ignored the above arguments of the applicant, and the courts of cassation considered the violations to be insufficiently significant to influence the court's decision, which is certainly a manifestation of formalism, as it concerns the very legality of criminal prosecution and the inadmissibility of key evidence in the case.
31. This approach of national courts to the consideration of his case is a result of the general viciousness of Russian justice, which is expressed in the a priori accusatory/punitive nature of justice in the Russian Federation. Similar issues have previously been raised with the United Nations Human Rights Committee in the case of Vyacheslav Berezhnoy v. Russian Federation (communication No. 2107/2011, Berezhnoy v. Russian Federation, para. 2.6). The Institute for Problems of Law Enforcement of the European University in St. Petersburg published an independent record in 2016, which provides the following statistics: only 0.3% of defendants are acquitted in cases investigated. The probability that the acquittal will be changed or reversed by a higher court is 30% and that the conviction will be reversed 3%.<sup>1</sup> In addition, the Adviser to the Chairman of the Constitutional Court of the Russian Federation, Tamara Morshchakova, stated that: "If the case has not reached the court, this is an indicator of the negative quality of the investigation. And if the court, having received the case, failed to pass a guilty verdict that would stand [in the appeal instance], it means that the court is not working well", which forms a "low

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<sup>1</sup> «Диагностика работы судебной системы в сфере уголовного судопроизводства и предложения по ее реформированию. Часть I» - Т. Бочаров, В. Волков, А. Дмитриева, К. Титаев, И. Четверикова, М. Шклярчук, СПб: ИПП ЕУСПб, 2016, стр. 34

quality" of the investigation and proceedings.<sup>2</sup> Thus, the domestic courts had initially not been interested in a thorough examination of the applicant's arguments, thus violating the guarantees of article 14, paragraph 2, of the Covenant.

*On the basis of the aforementioned, we ask the Human Rights Committee:*

32. To admit that there has been a violation by the Russian Federation of article 14, paragraph 1, and article 14, paragraph 2, of the International Covenant on Civil and Political Rights.

## **VI. Checklist of supporting documents**

1. Decision of the Arbitration Court of the XXXXX Region of XXXXX pp. 1-5
2. Documentary inspection record of XXXXX pp. 6-14
3. Decision on initiation and acceptance of criminal proceedings of XXXXX pp. 15-16
4. Ruling of the Eighteenth Arbitration Court of Appeal of XXXXX pp. 17-34
5. Record of inspection of objects from XXXXX p. 35-37
6. Record of the familiarization of the accused and his counsel with the materials of the criminal case from XXXXX pp. 38-40
7. Decision on return of the criminal case for additional investigation of XXXXX pp. 41-42
8. Trial transcript of XXXXX and XXXXX pp. 43-64
9. Sentence of the XXXXX city court of the XXXXX region of XXXXX pp. 65-120
10. Appeal and Additional Appeal to the XXXXX Regional Court against the Sentence of the XXXXXy City Court of the XXXXX Region of XXXXX pp. 121-128
11. Appeal decision of the XXXXX regional court of XXXXX pp. 129-163
12. Ruling of the XXXXX regional court of XXXXX pp. 164-172
13. Cassation appeal to the Judicial Board for Criminal Cases of the Supreme Court of the Russian Federation of XXXXX pp. 173-176
14. Ruling of the Supreme Court of the Russian Federation of XXXXX pp. 177-180

Date: \_\_\_\_\_

Author's Signature: XXXXXX XXXXX, lawyer

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<sup>2</sup> «1 к 466: почему российские суды стали оправдывать реже», [25 апреля 2018г.] || ИА «РосБизнесКонсалтинг», <https://www.rbc.ru/society/25/04/2018/5added539a79477ac3e23377>