



International Covenant on Civil and Political Rights

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Human Rights Committee

Decision adopted by the Committee under the Optional Protocol, concerning communication No. 2518/2014*, **

<i>Communication submitted by:</i>	A.N. (not represented by counsel)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Russian Federation
<i>Date of communication:</i>	24 March 2014 (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 8 January 2015 (not issued in document form)
<i>Date of adoption of decision:</i>	8 November 2019
<i>Subject matter:</i>	Arbitrary detention; inhumane conditions of detention
<i>Procedural issue:</i>	Exhaustion of domestic remedies
<i>Substantive issues:</i>	Arbitrary detention; inhumane conditions of detention; fair trial
<i>Articles of the Covenant:</i>	7; 9; 10 (1); 14 (3) (b) and (d); and 14 (5)
<i>Articles of the Optional Protocol:</i>	2 and 5 (2) (b)

1. The author of the communication is A.N., a national of the Russian Federation, born in 1978. He claims that the State party has violated his rights under articles 7, 9, 10 (1), 14 (3) (b) and (d) and 14 (5) of the Covenant. The Optional Protocol entered into force for the State party on 1 October 1991. The author is not represented by counsel.

The facts as submitted by the author

2.1 On 16 January 2000, in the first half of the day, the author was arrested in Kemerovo city after he was attacked on the street by three armed persons who shot into the air with a handgun and then used it to beat him. They wore civilian clothes and did not identify themselves or inform him of the reasons for his arrest. In a near-unconscious state the author was taken to the local police station where he learned that the three men were police

* Adopted by the Committee at its 127th session (14 October–8 November 2019).

** The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Yadh Ben Achour, Ilze Brands Kehris, Arif Bulkan, Ahmed Amin Fathalla, Shuichi Furuya, Christof Heyns, Bamariam Koita, Marcia V.J. Kran, Duncan Laki Muhumuza, Photini Pazartzis, Hernán Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Yuval Shany and Hélène Tigroudja.



officers. The author submits that he could not imagine they were police officers because he had already been detained for 3 days and interrogated by the police in November 1999, on suspicion of having committed a robbery, but was released after promising to appear in court. On that occasion, he had provided the police with his address and place of work, and thus did not think that the police would try to arrest him with such violence when they could have just called and asked him to come to the police station, which was located only 300 metres from his house.

2.2 While at the police station, the officers beat the author with a plastic bottle filled with water – since it wouldn't leave marks on his body – and demanded that he confess.¹ At 11 p.m., the author was taken to the central police department of Kemerovo city, where he was interrogated for two hours without a lawyer. After the interrogation, he was put in a cell until late afternoon of the next day, which was 17 January. He was then taken to an office in the police department where he was presented with both a document sanctioning his arrest, signed by a prosecutor,² and the protocol of his detention, which stated that he had been detained on 17 January instead of 16 January. The author submits that his detention on 16 January can be verified by a copy of a witness affidavit given to the police on 31 January 2000,³ in which case witness D. states that the author was detained on 16 January and called D. from the police station asking her to come and collect his personal belongings. The protocol of his detention did not contain any information about the time and place of his detention or which police officers had detained him. When he asked for a lawyer, the investigator told the author that he would only need a lawyer during the trial. The author did not have an opportunity to challenge his arrest because he was never taken before a prosecutor or a judge and was not allowed to see a lawyer or relatives for over a month.

2.3 From 16 to 18 January 2000, the author was held at the police department without any food. He was also not able to sleep because the cell he was kept in did not have any sleeping space as it had only seating benches. On 18 January, he was transferred to the Kemerovo temporary detention facility. On 19 January, the author was interrogated without a lawyer, despite his repeated requests for one. To avoid providing him with a lawyer, the investigator interrogated him as a witness.⁴ On 23 January, the author was again interrogated without a lawyer.⁵ The author submits that even after he was assigned a lawyer, he was interrogated without his lawyer present on multiple occasions.⁶

2.4 On 25 January 2000, the author was transferred to pretrial detention centre No. 1 in Kemerovo city. While detained there, the author was kept in inhumane conditions. During the first three days, he was placed in a cell measuring 12 square metres, which he shared with 20 to 30 other inmates. Inmates were continuously brought in and out, thus the number was always fluctuating. There were several inmates who worked for the jail administration and, on orders from prison guards, abused other inmates, including the author, who broke his hand while fighting with one of those inmates. Three days later, the author was moved to a cell that housed 35 inmates but had only 24 beds. At times, the number of inmates reached 40. The toilet was separated with a bed sheet, there was no ventilation, the light in the cell was always on, there was no natural light in the cell because the window was completely shut by blinds from outside, and inmates were allowed to go for a walk only for an hour each day. During his detention in pretrial detention centre No. 1, which continued until September 2001, the author was moved to several other cells, and the conditions of detention in all of them were very similar. In each cell there were inmates working for the jail administration who physically and psychologically abused other inmates. Owing to

¹ The author does not provide information as to the subject of the confessions. The submitted documents show that the author was charged with a robbery.

² A copy of the document shows that the author's arrest was sanctioned by a prosecutor in December 1999 (date unreadable).

³ A copy of this document was submitted by the author.

⁴ The author submitted a copy of the interrogation protocol, which identifies him as a witness. According to the law, when interrogated as a witness, one does not have the right to a lawyer and can be criminally prosecuted for providing untruthful statements.

⁵ The submitted documents show that this time the author was interrogated as a suspect in the killing of B.

⁶ The author provided a reference to 12 other interrogation protocols contained in his criminal case file.

overcrowding, unsanitary conditions and abuse from other inmates, the author was not able to adequately prepare for his trial. The author submits that he was not given any information about his case and evidence against him until the end of the pretrial investigation in September 2000, which also prevented him from building his defence.

2.5 On 10 October 2000, the author's trial at the Kemerovo regional court began. The author submits that it was the prosecutor and not the judge who determined in which order the trial should proceed and which evidence should be presented first. During the trial, the author's co-defendant on several occasions told the court that physical and psychological violence were used against him during the pretrial investigation and that he would like to retract his testimony against the author because it was obtained under duress. However, every time the author's co-defendant said that, the prosecutor read the testimony given by the author's co-defendant during the pretrial investigation and asked the court to disregard the co-defendant's claims. Despite the principle that any reasonable doubt shall be interpreted in favour of a defendant, the court showed a lack of impartiality by allowing the prosecution to introduce questionable evidence and by disregarding procedural violations. The court kept all witnesses in check by making sure that they didn't change the testimonies they gave during the pretrial investigation and by cutting them off when they said things that would contradict the prosecution. The author submits that from the beginning of the trial it was evident that the court had already presumed him guilty and would render a guilty verdict irrespective of the available evidence. On 17 November 2000, the author was found guilty of murder and robbery and sentenced to 24 years in prison.

2.6 On an unspecified date, the author appealed the decision of the trial court to the Supreme Court of the Russian Federation. On 29 May 2001, the Supreme Court upheld the decision of the trial court. The author alleges that neither he nor his lawyer were informed of the date of the cassation hearing and thus were deprived of a possibility to participate in the hearing. At the same time the prosecution was informed and took part in the cassation hearing.

2.7 On several occasions the author appealed under the supervisory review procedure to the Supreme Court. The Supreme Court rejected his appeals on 7 December 2006, 31 May 2007, and 22 May 2009.

2.8 In 2012, the author again appealed under the supervisory review procedure to the Supreme Court claiming violation of his right to a fair trial and the equality of arms principle by the court of cassation owing to its failure to inform the author and his lawyer of the date of the hearing. On 9 April 2012, the Supreme Court rejected his appeal. The Supreme Court stated that, according to the law in force at the time of the hearing, the Cassation Court was obliged to notify only those who requested to participate in the hearing in person or be represented by a lawyer. Since the author did not submit a request to the Cassation Court to participate in person in the cassation hearing or to appoint him a lawyer for the hearing, the Court was not obliged to notify him about the date of the cassation hearing.⁷

2.9 On an unspecified date, the author appealed to the Chair of the Supreme Court against the Supreme Court's decision of 9 April 2012. His appeal was rejected by the Vice Chair on 14 June 2012.

2.10 The author submits that he has exhausted all available and effective domestic remedies. He notes that he could not exhaust domestic remedies with regard to conditions of his detention because all inmates were kept in the same conditions and there was nothing that could have been done to improve the conditions in places of detention. Therefore, the author considers that there were no effective domestic remedies available to him during his detention at pretrial detention centre No. 1.

⁷ The submitted documents show that, in at least one of the appeals (in 2012), the author raised the issues of the denial of legal assistance and failure of the Cassation Court to inform him of the date of his cassation hearing.

The complaint

3.1 The author claims that his detention on 16 January 2000 was arbitrary, that he was not informed of the reason for his arrest, and that his arrest was sanctioned only by a prosecutor, thus violating his rights under article 9 of the Covenant.

3.2 The author claims that the conditions of his detention at pretrial detention centre No. 1 violated his rights under articles 7 and 10 of the Covenant.

3.3 The author claims a violation of his rights under article 14 (1) of the Covenant owing to his conditions of detention, which prevented him from adequately preparing for his trial, as well as the Court's unfair assessment of material evidence and its lack of impartiality.

3.4 The author claims a violation of his rights under article 14 (2) because the trial court actions showed that he was presumed guilty from the beginning of his trial.

3.5 The author claims a violation of his rights under article 14 (3) (b) because he was denied a lawyer from the moment of his arrest.

3.6 The author claims a violation of his rights under articles 14 (3) (d) and 14 (5) owing to the failure of the Cassation Court to notify him and his lawyer about the date of the cassation hearing.

State party's observations on the merits

4.1 By a note verbale dated 31 March 2015, the State party provided its observations on the merits of the communication. The State party notes that the author was detained on 17 January 2000 on suspicion of a grave crime. On the same day, he was presented with an order sanctioning his arrest by the prosecutor as per the requirements of the domestic law at that time. There is no information about the author being detained on 16 January 2000.

4.2 The State party submits that starting on 25 January 2000, the author was represented by advocate D. There have been no complaints filed by the author with regard to unlawful methods of investigation or inappropriate legal defence. At the end of the pretrial investigation, the author and his two lawyers – D. and P. – were given all the documents from the criminal case for examination. During the trial, the author was defended by advocate P. The author refused to testify during the trial; however, his written testimony given during the pretrial testimony was not used by the court and was not reflected in the verdict. The State party notes that the author's guilt was proved by other evidence, including from witness and victim testimonies, and testimony of the author's co-defendant who during the trial gave details of the committed crimes and confirmed information contained in his confession.

4.3 The State party further notes that the author was informed about the right to defend himself in person or through legal assistance during his cassation appeal. However, he did not make a motion for the Cassation Court to appoint him a lawyer, to inform him about the date of the cassation hearing or to provide for his participation in person at the cassation hearing. As a result, the hearing was held on 29 May 2001 without the author's presence, as per the requirements of the Criminal Procedure Code at that time. The State party submits that even though the Constitutional Court of the Russian Federation on 17 October 2001 determined that defendants should be notified about their cassation hearings, its decision could not be applied retroactively to the author's case since his cassation hearing took place before the decision of the Constitutional Court.

4.4 The State party submits that while in pretrial detention centre No. 1, the author was kept in a 35.8 square metre cell with 22 beds. The toilet was separated from the rest of the cell with a partition that was 1.3 metres high. In addition, the cell had cold and hot water, two windows, two light bulbs, a table and a night lamp. According to the State party the facility met all sanitary requirements; however, it was not possible to determine the exact number of inmates in each cell since all journals containing their names had been destroyed owing to the expiration of the required storage period. Since 22 November 2012, the author has been serving his sentence in prison No. 2 of the Tyumen region.

Author's comments on the State party's observations on the merits

5.1 On 13 May 2015, the author submitted his comments to the State party's observations. The author rejects the State party's allegations that he was detained on 17 January 2000, arguing instead that he was arrested on 16 January 2000 (para. 2.2). The author submits that, since the detention protocol was also missing information about the time and place of detention and the officers who detained him, it could not be said that his detention was carried out in accordance with the procedure established by the law; therefore, his detention violated article 9 of the Covenant.

5.2 The author notes the State party's observation that he was not assigned a lawyer until 25 January 2000, which proves that on 19 and 23 January 2000 he was interrogated without a lawyer. The author submits that even though his lawyer was appointed on 25 January, he did not see her until one month after he was arrested. As a result, all interrogations before then took place without a lawyer present.

5.3 The author rejects the State party's observation that his testimony given during the pretrial investigation was not used during the trial. He refers to page 24 of the court hearing protocol where it is reflected that the prosecutor asked the Court to read the author's testimony given during police interrogations, and even though the author's lawyer objected to this since the testimony was obtained in the absence of a lawyer, the Court allowed the testimony to be read and added to the Court file.⁸ Also, in the verdict the Court on several occasions refers to inconsistencies in the author's testimony. The author submits that since he informed the Court that his testimony during the pretrial investigation had been obtained under duress, the court should have considered inadmissible everything he said without a lawyer.

5.4 With regard to the State party's observation that he did not file any complaints about physical or psychological violence used against him during the pretrial investigation, the author submits that he did not file any complaints because he did not have any hard evidence to prove his claims; however, he notes that the State party could not deny the fact that while detained he was interrogated by the police for one month without a lawyer.

5.5 With regard to the testimony of his co-defendant, the author notes that his co-defendant was interested in a positive outcome for himself, and on several occasions changed his testimony, including during the trial, and told the court that during the pretrial investigation he was forced to testify under duress.

5.6 The author reiterates that he was detained in inhumane conditions at pretrial detention centre No. 1 and refers to several decisions of the European Court of Human Rights that found violations of article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms (the European Convention on Human Rights) with regard to the conditions of detention of inmates in various detention centres in the Russian Federation.⁹ The author also refers to the 2004 report by the Council of Europe Commissioner for Human Rights, Alvaro Gil-Robles, on his visits to the Russian Federation, in which he determined that conditions of detention in various detention centres in the Russian Federation remained awful.¹⁰ The author notes that in its observations the State party has ignored the facts provided by him about his conditions of detention. In addition, he refers to the 2001 report of the Médecins sans frontières on their assistance in treating ill inmates in places of detention in the Kemerovo region. The report describes conditions of detention in detention centres in the Kemerovo region, including pretrial detention centre No. 1, where the author was kept during the pretrial investigation. The author reiterates that it was impossible for him to complain about his conditions of detention owing to the absence of effective domestic remedies. The author notes that he

⁸ The author submitted a copy of the court hearing protocol (minutes).

⁹ The author makes references to various decisions, including *Stadukhin v. Russia*, Application No. 6857/02, dated 18 October 2007; *Fokin v. Russia*, Application No. 75893/01, dated 18 September 2008; and *Shulepov v. Russia*, Application No. 15435/03, dated 26 June 2008.

¹⁰ Office of the Commissioner for Human Rights of the Council of Europe, "Report by Mr Alvaro Gil-Robles, Commissioner for Human Rights, on his visits to the Russian Federation", p. 35. Available at rm.coe.int/16806db7be (25 November 2019).

continues to be kept in inhumane and cruel conditions at his current place of detention, the unsanitary conditions of which led him to become infected with hepatitis C.

5.7 The author submits that the Vice Chair of the Supreme Court of the Russian Federation erred in its decision of 14 June 2012 by ignoring the author's arguments based on the jurisprudence of the European Court of Human Rights. The author submits that in his supervisory appeal he has referred to the case of *Stadukhin v. Russia*, where the Court held that, even assuming that the applicant had failed to request explicitly that he be apprised of the appeal hearing, it was incumbent on the judicial authorities to do so in order for the proceedings to be fair.¹¹ The author also refers to the case of *Shulepov v. Russia*, where the Court held that the situation in a case involving a heavy penalty where an appellant was left to present his own defence unassisted before the highest instance of appeal was not in conformity with the requirements of article 6.¹² The author argues that this jurisprudence, along with relevant decisions of the Constitutional Court of the Russian Federation, merited him a new trial owing to undeniable judicial error.

State party's additional observations on the merits

6.1 In a note verbale dated 21 December 2015, the State party provided its further observations. The State party informs the Committee that in the period 2000–2001, pretrial detention centre No. 1 could hold up to 1,120 inmates. However, since all of the journals with information about inmates have been destroyed owing to the expiration of storage period, it is impossible to identify in which cells the author was kept and the number of inmates in those cells. The State party notes that upon arrival at pretrial detention centre No. 1, the author was provided with an individual sleeping place, bedding and eating utensils as required by federal law. Conditions of detention were in line with legal requirements, and the size and design of the windows allowed for reading under natural light. Toilets in cells were located in a corner near the entrance and were separated from the rest of the cell by a partition that allowed for the necessary privacy. Toilets were located at the required distance from sleeping and eating spaces. All inmates at pretrial detention centre No. 1 were allowed to go for walks for at least one hour per day.

6.2 The State party further submits that, during the author's incarceration, his right to submit complaints and suggestions was never violated. The author has repeatedly sent correspondence to various State authorities, courts, the prosecutor's office, the ombudsperson and the European Court of Human Rights. Between 2010 and 2012, the author sent out 116 pieces of correspondence, including 2 letters to the European Court of Human Rights.

Author's further comments

7.1 On 23 January 2016, the author reiterated all his claims against the State party.

7.2 On 13 January 2017, the author noted that the European Court of Human Rights had adopted two decisions that identified a violation of article 3 of the European Convention on Human Rights resulting from the author's conditions of detention. The author emphasizes that in the case of *Kolbasov v. Russia*, the court found a violation of detention conditions in the detention centres of the Kemerovo region, including the detention centre where the author had been incarcerated. The author reiterates that the conditions of his detention violated not only articles 7 and 10 of the Covenant, but also article 14 because the conditions affected his preparation for the trial. He notes that complaining to domestic authorities in his case would have been meaningless and could have triggered further repression from the authorities.

7.3 On 28 March 2017, the author submitted a copy of his motion for a supervisory appeal to the Supreme Court of the Russian Federation, dated 16 February 2017, and a response letter from the Supreme Court, dated 9 March 2017. In his motion for an appeal, the author complained about a violation of his rights under article 14 of the Covenant and requested the Supreme Court to quash the decision of the Cassation Court in his case. In its

¹¹ *Stadukhin v. Russia*, para. 30.

¹² *Shulepov v. Russia*, para. 32.

response letter, the Supreme Court referred to its decision dated 9 April 2012 (see para. 2.8) and rejected the author's motion for an appeal.

Issues and proceedings before the Committee

Considerations of admissibility

8.1 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.

8.2 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.

8.3 The Committee notes that the author's communication was submitted 14 years after his trial and 8 years after his first supervisory review appeal was rejected by the Supreme Court, which occurred in December 2006. The Committee notes that there are no fixed time limits for submission of communications under the Optional Protocol and that mere delay in submission does not of itself involve abuse of the right of communication.¹³ However, in certain circumstances, the Committee expects a reasonable explanation justifying a delay.¹⁴ The Committee observes that there is nothing in the submission to suggest that the author was limited in contacting the outside world from prison. and the Committee also notes that, in its submission, the State party indicated that between 2010 and 2012 alone, the author had sent out 116 pieces of correspondence, including 2 letters to the European Court of Human Rights. The Committee thus considers that the author has failed to provide a convincing explanation for the delay in submission. In the absence of such an explanation, the Committee considers that submitting the communication after such a long lapse of time may constitute an abuse of the right of submission. The Committee finds the communication inadmissible under article 3 of the Optional Protocol and rule 99 (c) of the Committee's rules of procedure.

9. The Committee therefore decides:

- (a) That the communication is inadmissible under article 3 of the Optional Protocol;
- (b) That the decision shall be communicated to the State party and to the author.

¹³ CCPR/C/90/D/1445/2006, para. 6.3; and CCPR/C/120/D/2705/2015, para. 6.4.

¹⁴ CCPR/C/120/D/2705/2015, para. 6.4.