



International Covenant on Civil and Political Rights

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Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2099/2011^{*,**}

<i>Communication submitted by:</i>	Fillip Maksimovich Polskikh (not represented by counsel)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Russian Federation
<i>Date of communication:</i>	29 September 2008 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 97 of the Committee's rules of procedure, transmitted to the State party on 14 September 2011 (not issued in a document form)
<i>Date of adoption of Views:</i>	11 March 2016
<i>Subject matter:</i>	Author arrested on suspicion of murder and forced to confess through torture
<i>Procedural issues:</i>	None
<i>Substantive issues:</i>	Effective remedy; forced confession; arbitrary arrest-detention; fair trial
<i>Articles of the Covenant:</i>	2, 7, 9 and 14
<i>Articles of the Optional Protocol:</i>	None

* Adopted by the Committee at its 116th session (7-31 March 2016).

** The following members of the Committee participated in the examination of the communication: Yadh Ben Achour, Lazhari Bouzid, Sarah Cleveland, Yuji Iwasawa, Ivana Jelić, Duncan Laki Muhumuza, Mauro Politi, Sir Nigel Rodley, Víctor Manuel Rodríguez-Rescia, Fabián Omar Salvioli, Anja Seibert-Fohr, Yuval Shany, Konstantine Vardzelashvili and Margo Waterval.

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1. The author of the communication is Phillip Maksimovich Polskikh, a national of the Russian Federation born in 1955, at the time of submission serving a prison sentence in a State penitentiary in Elets, in the Lipetsk Region of the Russian Federation. He claims to be a victim of violations by the Russian Federation of his rights under articles 2, 7, 9 and 14 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 not represented by counsel.

The facts as presented by the author

2.1 On 29 January 2003, the Lypetsk Regional Court convicted the author of murder and robbery and sentenced him to 21 years of imprisonment. The author submitted a cassation appeal to the Supreme Court of the Russian Federation. On 18 June 2003, the Supreme Court denied his appeal. He complained to the local prosecutor's office and to the Office of the Prosecutor General that during the pretrial investigation he had been subjected to torture and ill-treatment.¹ He repeated his allegations during the first instance trial and in his cassation appeal.

2.2 The author is accused of killing a certain D. According to the prosecution, on 21 June 2002, D. was taking the author, his sister and his brother to Telelyui village to purchase meat. The prosecution alleged that during the trip, D. was attacked, murdered and robbed by the author.

2.3 On 24 June 2002, police officers from the Gryazi police station detained the author's sister, took her to a nearby forest and severely beat her. Police officers also splashed gasoline on his sister, threatening to set her on fire and forcing her to sign a statement incriminating the author.

2.4 On 30 July 2002, the author and his brother were returning home from work when they were stopped by several police officers, handcuffed and taken to a garage, where both were beaten with rubber tubes. On the same day, the author was taken to another location in Gryazi, where he was also beaten by police officers. Later on that day, he and his brother were taken to the Gryazi police station, where the beating with rubber tubes continued. The police officers repeatedly picked him up by his legs and dropped him on the floor. The author was forced to wear a gas mask with a blocked valve, so he could not breathe. As a result, he lost consciousness several times. His brother was forced to sign a statement incriminating him.

2.5 The author claims that, on 1 August 2002, he was taken to a hospital, where he was examined by a doctor. The author claims that the doctor diagnosed broken ribs, several bruises on his chest and other parts of the body and a brain concussion. He submits in evidence a copy of a handwritten note from the hospital in Gryazi, stating that he was diagnosed with the injuries described on 31 July 2002 and from 1 to 3 August 2002. The author also claims that his cellmate was a stooge placed by the police, and that he also beat the author and pressured him to confess. The beatings and ill-treatment continued until, on 9 August 2002, he agreed to sign a confession, which was written for him by someone else, without his having had a chance to read it.

2.6 On 10 August 2002, the author was visited by an investigator from the prosecutor's office and by his defence lawyer, S. The author claims that instead of defending him, S.

¹ The author provides copies of several letters from different prosecutor's offices, stating that "verifications" of his claims that the police had used illegal methods had been conducted and could not be confirmed. One of the letters states that the author's request for a supervisory review was rejected by a decision of a Supreme Court judge on 20 November 2003.

helped the investigator, accusing the author of having committed crimes and pressuring him both physically and psychologically. After a while, S. left the room, and the author was officially charged with crimes in the absence of his lawyer.

2.7 The author was kept in pretrial detention from the moment of his arrest on 30 July 2002 until his initial court hearing on 21 January 2003. At various stages of the investigation and during the court hearings, the State violated his procedural rights, including his right to a lawyer. During the initial court hearing, he complained that his defence lawyer had not been present during several stages of the investigation and that he had witnessed the torture and ill-treatment, but took no steps to stop it. Following this complaint, during the initial court hearing, the judge agreed to appoint a new *ex officio* defence lawyer.

2.8 The author contends that in violation of his rights, he was not given a chance to become acquainted with the content of the documents outlining the criminal charges against him, once the investigation had been completed. On 21 January 2003, during the initial court hearing, the author asked for the hearing to be postponed so that he could study the content of the case. He told the court that one of the reasons he could not study his case file was because he had been severely beaten. The court denied his request.

2.9 Also in violation of his rights, the author was not able to call witnesses in his own defence. He had asked the court to call certain witnesses, but the court refused, stating that there was insufficient information about the identity of the witnesses and their addresses.

2.10 Despite the author's claims of torture, the court admitted his coerced confession as evidence. The court also disregarded his complaint of a broken rib and bruises, as documented by the doctor's note. The author contends that he has exhausted all available and effective domestic remedies.

The complaint

3.1 The author claims to be a victim of violations by the Russian Federation of his rights under article 7 of the Covenant. He contends that the ill-treatment and the beatings amounted to torture, prohibited under the article 7 of the Covenant.

3.2 The author cites numerous examples of procedural violations by the State, including the right to a lawyer and the right to call witnesses in his own defence which, he claims, violated his right to a fair trial under article 14 (1) of the Covenant. The author further argues that the court did not evaluate the evidence correctly and maintains that he is innocent of the crime of which he was convicted.

3.3 The author also claims that the facts as presented constitute a violation of articles 2 and 9 of the Covenant.

State party's observations on admissibility and merits

4.1 In its observations dated 17 August 2012, the State party submits that on 29 January 2003, the author was convicted by the Lypetsk Regional Court for crimes under articles 105.2 (3) and 162.3 (B) of the Criminal Code of the Russian Federation and sentenced to 21 years of imprisonment. On 18 June 2003, the Supreme Court confirmed the verdict fully upon appeal. On 23 August 2004, the Eletsy City Court of Lypetsk Region brought the verdict into compliance with the legislation in force, excluding from the sentence confiscation of property and forcible medical treatment.

4.2 The State party notes that the author claims that his rights under articles 2, 7, 9 and 14 of the Covenant were violated, that he was tortured during the pretrial investigation and that his right to a defence was violated. The State cannot agree with the allegations because the claim of torture was reviewed and rejected by the courts. On 2 December 2002, the

Gryazi Deputy Interregional Prosecutor conducted a verification and issued a ruling refusing to initiate a criminal case. The ruling was reviewed and confirmed by the Office of the Prosecutor of the Lypetsk Region. The files relating to the verification were destroyed on 21 September 2010, as their storage period had expired. During the pretrial investigation the author, in the presence of his defence lawyer, partially admitted guilt, recounting how he had killed the victim. The State party describes the testimonies of the author's brother and sister and maintains that during the court hearings the latter denied having been subjected to pressure. It maintains that the court fully assessed the available evidence and correctly characterized the acts of the author. The author's claims were subject to verification by the prosecution in accordance with articles 144 and 145 of the Code of Criminal Procedure and could not be confirmed.

Author's comments on the State party's observations

5.1 In comments dated 14 September 2012, the author notes the State party's statement that the files regarding the verification of his claims by the Gryazi Deputy Interregional Prosecutor were destroyed on 21 September 2010, as their storage period had expired. He maintains, however, that the files were presented to the Gryazinsky City Court by the Office of the Prosecutor of Gryazi much later, in 2012, in the context of proceedings initiated following his complaint of a lack of action by the Prosecutor's Office. The author provides a copy of a ruling by the Gryazinsky City Court dated 4 June 2012, in which the court mentions explicitly having studied the case file of verification No. 1081 and the review of the above verification No. 6-107-10. The author maintains that the State party is attempting to conceal evidence from the Committee.

5.2 The author also denies that having partially admitted his guilt in the presence of his lawyer excludes the fact that he had been subjected to torture to extract that confession. He submits that his lawyer, upon seeing the author's injuries after the "voluntary" confession, lodged a complaint that the author had been beaten. The author claims that the State party wishes to conceal the practice of beatings in police stations in the Russian Federation. He maintains that perpetrators are not investigated or punished and, consequently, that he is denied access to justice.

State party's additional observations

6.1 In observations dated 28 March 2013, the State party submits that the prosecution case file concerning the author contains an interrogation protocol dated 9 December 2002, according to which the author was formally questioned in the capacity of accused in the presence of his defence lawyer after his procedural rights were explained to him, including the right not to testify against himself under article 51 of the Constitution. This is confirmed by his signature. At the end of the interrogation, neither the author nor his lawyer had any objections to the content of the protocol, which is also confirmed by their signatures. The protocol contains a note by the author stating: "Written from my words correctly, read aloud to me. I killed [the victim] in a fit of anger; he was threatening me and asking for the repayment of a loan. I wrote this note myself."²

6.2 The State party also submits that the court admitted the protocol and the confession of the author in evidence. The court ruled that on the basis of the content of the protocol and the confession, it followed that the author had provided voluntarily testimony regarding the circumstances of the attack against and murder of the victim. The court also concluded that, on the basis of the materials before it, the investigation had been conducted in accordance with the law; it did not establish that any violations of the criminal procedure

² Unofficial translation.

had occurred that would lead it to doubt the evidence of the author's guilt. The Supreme Court did not find grounds to overturn the verdict because it found that the cassation arguments of the author, i.e. that he was subjected to unlawful investigation methods, had been thoroughly reviewed by the first instance court and declared unfounded, and it did not find any procedural violations.

6.3 According to information presented by the Gryazinsky City Court, during the review of the author's complaint that the Office of the Gryazinsky Interregional Prosecutor had failed to take action, on 30 May and 4 June 2012, the court reviewed the case file of verification No. 1-81 pr-2002, requested from the Office of the Gryazinsky Interregional Prosecutor, and the file of the review of verification No. 6-107-10, requested from the Gryazinsky Interregional Investigative Department. It was determined that on 2 December 2002, the Office of the Gryazinsky Interregional Prosecutor refused to open a criminal case against police officers of the Gryazinsky Regional Department of Internal Affairs because their actions did not constitute a crime. On 4 June 2012, the Gryazinsky City Court discontinued the proceedings on the inaction complaint under article 125 of the Criminal Procedure Code because the author had not filed a complaint regarding the actions of the "unknown person" who had inflicted injuries upon him while he was in detention. The author filed such a complaint in October 2012. The competent investigating body conducted a verification in accordance with articles 144 and 145 of the Code of Criminal Procedure and, on 24 November 2012, issued a ruling refusing to open a criminal investigation on the ground that no crime had been committed. On 21 December 2012, the Office of the Gryazinsky Interregional Prosecutor revoked that ruling and the ruling of 2 December 2002 and ordered a new verification to be conducted. At the time of submission that investigation was ongoing.

Author's additional comments

7. In additional comments dated 25 November 2013, the author submits that the decisions refusing to open an investigation were not revoked and that no investigation has taken place. He presents in evidence a copy of a decision of the Gryazinsky City Court dated 8 November 2013 stating that the Investigative Committee for the Lypetsk Region had issued a ruling dated 23 February 2013, refusing to open a criminal investigation; that the author had appealed the ruling before the Gryazinsky City Court; that the court rejected the appeal on 12 April 2013; and that no investigation of the author's allegation was taking place.

Issues and proceedings before the Committee

Consideration of admissibility

8.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 93 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 claims to have exhausted all the available domestic remedies. The Committee also notes the State party's assertion that on 21 December 2012, the Office of the Gryazinsky Interregional Prosecutor revoked the rulings of 24 November 2012 and 2 December 2002 and ordered a new verification to be conducted. However, the Committee observes that according to the author's uncontested claim, the Investigative Committee for the Lypetsk Region issued a ruling dated 23 February 2013, stating that it refused to open a criminal investigation; that the author

appealed that ruling before the Gryazinsky City Court; and that the court rejected the appeal on 12 April 2013. Accordingly, the Committee considers that it is not precluded from examining the communication by the requirements of article 5 (2) (b) of the Optional Protocol.

8.4 The Committee notes that the author claims that there has been a violation of his rights under article 2 of the Covenant, without clarifying the nature of the violation of this provision. It observes that the provisions of article 2 of the Covenant, which lay down general obligations for States parties, cannot, in isolation, give rise to a claim in a communication under the Optional Protocol.³ However, insofar as the author invokes article 2 along with article 7 as the basis for a claim that his allegations of torture had not been adequately investigated, the Committee considers the claim sufficiently substantiated for purposes of admissibility.

8.5 The Committee notes the author's claim under article 9 of the Covenant, to the effect that his detention was arbitrary. In the absence of any further pertinent information on the file, the Committee considers that the author has failed to sufficiently substantiate this particular claim for the purposes of admissibility. Accordingly, the Committee concludes that this part of the communication is inadmissible under article 2 of the Optional Protocol.

8.6 The Committee notes the author's claim that his rights under article 14 of the Covenant have been violated, as his lawyer, S., did not provide an adequate defence; the author was not given a chance to become acquainted with the content of the criminal charges against him upon completion of the investigations; and the first instance court refused to summon several of the witnesses whose presence he had requested. The Committee considers these general allegations to be inadmissible under article 2 of the Optional Protocol as insufficiently substantiated. The Committee considers, however, that the facts as described by the author relating to the circumstances in which a confession was extracted from him raise issues under article 14 (3) (g) of the Covenant.

8.7 The Committee declares the remaining claims admissible and proceeds with their examination on the merits.

Consideration of the merits

9.1 The Committee has considered the communication in the light of all the information made available to it by the parties, as provided under article 5 (1) of the Optional Protocol.

9.2 The Committee notes the author's claims that he was beaten and tortured by the police immediately after his arrest on 30 July 2002 and during the following days. The author claims that he was beaten with rubber tubes, repeatedly picked up by his legs and dropped on the floor, and forced to wear a gas mask with a blocked valve, as a result of which he lost consciousness. The Committee also notes that the author presented a copy of a note from the hospital in Gryazi, stating that between 31 July 2002 and 21 August 2002 the author was diagnosed with numerous injuries, including broken ribs and a brain concussion. The author provided detailed information regarding his ill-treatment and claims that the complaints made to that effect were ignored by the prosecution and the courts.

³ See, inter alia, communications No. 316/1988, *C.E.A. v. Finland*, decision of inadmissibility adopted on 10 July 1991, para. 6.2; No. 802/1998, *Rogerson v. Australia*, Views adopted on 3 April 2002; and No. 1213/2003, *Sastre Rodríguez et al. v. Spain*, decision of inadmissibility adopted on 28 March 2007, para. 6.6.

9.3 The Committee recalls that once a complaint about ill-treatment contrary to article 7 has been filed, a State party must investigate it promptly and impartially.⁴ Although the verdict of 29 January 2003 of the Lypetsk Regional Court mentions the author's torture allegations, the court rejected them with a blanket statement that the evidence in the case confirmed the guilt of the accused. The Committee observes that, according to the State party's submission, the Prosecutor's Office on several occasions issued decisions refusing to open an investigation into the author's torture allegations and that those decisions were ultimately confirmed by the courts. The Committee also notes the State party's submission of 28 March 2013 that, on an unspecified date in 2013, the Office of the Gryazinsky Interregional Prosecutor revoked the ruling of 21 December 2012 and the ruling of 2 December 2002 and ordered a new verification of the author's claims to be conducted. The Committee observes, however, that the investigation resulted, in April 2013, in another refusal to open a criminal case on the basis of the author's torture allegations. At the same time, the Committee observes that neither the verdict and the decisions of the Prosecutor's Office nor the State party's submissions in the present proceedings provide any details as to the concrete steps taken by the authorities to investigate the author's allegations. The Committee observes in particular that the State party did not provide any explanation regarding the author's numerous documented injuries incurred at the time immediately following his arrest.

9.4 The Committee recalls that the State party is responsible for the security of any person in its custody, and when an individual is injured while in detention it is incumbent on the State party to produce evidence refuting allegations that the State party's agents are responsible⁵ and showing that they applied due diligence in protecting the detainee. The Committee considers that in the circumstances of the present case, the State party has failed to demonstrate that its authorities did address the torture allegations advanced by the author expeditiously and adequately, in the context of both domestic criminal proceedings and the present communication. Accordingly, due weight must be given to the author's allegations. The Committee therefore concludes that the facts before it disclose a violation of the rights of the author under article 7 read by itself and in conjunction with article 2 (3) of the Covenant.⁶

9.5 The Committee further notes the author's claims that he was subjected to torture and forced to confess guilt to a number of crimes and that this confession was used by the courts as evidence to convict him, despite requests by the author that such evidence should be suppressed. The Committee recalls that the safeguard set out in article 14 (3) (g) of the Covenant must be understood in terms of the absence of any direct or indirect physical or undue psychological pressure from the investigating authorities on the accused with a view to obtaining a confession of guilt.⁷ Information obtained as a result of torture must be excluded from the evidence.⁸ In the light of the inadequate and inconclusive investigation

⁴ See general comment No. 20 (1992) on article 7: prohibition of torture or other cruel, inhuman or degrading treatment or punishment, para. 14 and, for example, communication No. 1304/2004, *Khoroshenko v. Russian Federation*, Views adopted on 29 March 2011, para. 9.5.

⁵ See communications No. 907/2000, *Siragev v. Uzbekistan*, Views adopted on 1 November 2005, para. 6.2; No. 889/1999, *Zheikov v. Russian Federation*, Views adopted on 17 March 2006, para. 7.2; and *Zhumbaeva v. Kyrgyzstan*, para. 8.9.

⁶ See, for example, *Zheikov v. Russian Federation*, para. 7.2 and *Khoroshenko v. Russian Federation*, para. 9.5.

⁷ See, for example, general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, para. 41; and communications No. 330/1988, *Berry v. Jamaica*, Views adopted on 7 April 1994, para. 11.7; No. 1033/2001, *Singarasa v. Sri Lanka*, Views adopted on 21 July 2004, para. 7.4; and No. 1769/2008, *Ismailov v. Uzbekistan*, Views adopted on 25 March 2011, para. 7.6.

⁸ See general comment No. 32, para. 41.

by the State party's authorities into the author's allegations of torture to extract his confession, the Committee concludes that the facts before it disclose a separate violation of the author's rights under article 14 (3) (g) of the Covenant.

10. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the State party has violated the author's rights under article 7 read by itself and in conjunction with articles 2 (3) and 14 (3) (g) of the Covenant.

11. In accordance with article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the author with an effective remedy. This requires it to make full reparation to individuals whose Covenant rights have been violated. Accordingly, the State party is obligated, *inter alia*, to: (a) conduct a thorough and effective investigation into the author's allegations of torture during his pretrial detention; (b) provide him with detailed information on the results of the investigation; (c) prosecute, try and, if confirmed, punish those responsible for the violations committed; (d) provide the author with a retrial with all the guarantees enshrined under the Covenant; and (e) provide adequate compensation to the author for the violations suffered. The State party is also under an obligation to take measures to prevent similar violations in the future.

12. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy when it has been determined that a violation has occurred, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the present Views and to have them widely disseminated in the State party.
