



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. 2705/2015*, **

<i>Communication submitted by:</i>	D.S.
<i>Alleged victim:</i>	D.S.
<i>State party:</i>	Russian Federation
<i>Date of communication:</i>	17 September 2015 (initial submission)
<i>Document references:</i>	Special Rapporteur's rule 97 decision, transmitted to the State party on 16 December 2015 (not issued in document form)
<i>Date of adoption of decision:</i>	14 July 2017
<i>Subject matters:</i>	Torture; arbitrary arrest and detention; fair trial
<i>Procedural issues:</i>	Abuse of the right of submission; undue delay in submission; non-exhaustion of domestic remedies; substantiation of claims
<i>Substantive issues:</i>	Torture; arbitrary arrest and detention; fair trial
<i>Articles of the Covenant:</i>	7, 9 (1), (2), (3) and (4), and 14 (1), (2), and (3) (b), (d), (e) and (g)
<i>Articles of the Optional Protocol:</i>	2 and 3

1.1 The author of the communication is D.S., a national of the Russian Federation born in 1975. He claims that the Russian Federation violated his rights under articles 7, 9 (1), (2), (3) and (4), and 14 (1), (2) and (3) (b), (d), (e) and (g) of the Covenant. The author is not represented by counsel.

1.2 On 30 April 2016, the State party requested the Committee to consider admissibility of the communication separately from the merits. On 5 September, the Special Rapporteur on new communications and interim measures, acting on behalf of the Committee, granted the State party's request.

* Adopted by the Committee at its 120th session (3-28 July 2017).

** The following members of the Committee participated in the examination of the communication:
Tania Abdo Rocholl, Yadh Ben Achour, Ilze Brands Kehris, Sarah Cleveland, Ahmed Amin Fathalla,
Olivier de Frouville, Christof Heyns, Yuji Iwasawa, Bamarian Koita, Duncan Laki Muhumuza,
Photini Pazartzis, Mauro Politi, José Manuel Santos Pais and Margo Waterval.



The facts as submitted by the author

2.1 On 26 August 2004, the author was taken to the police station in the city of Sokol for questioning in relation to the murder of a certain M. the day before. On 27 August, the justice of the peace of district No. 36 of the Vologda region authorized the author's administrative arrest for 11 days for violation of article 20.1 (1) of the code of administrative offences of the Russian Federation (public disobedience — cursing in public). During his detention, the author was interrogated by police officers who, using psychological pressure, tried to force him to confess to raping a boy on 20 August, a crime he did not commit. Eventually, having been promised by the police that he would be charged only with hooliganism, the author signed a confession, specifying that he did not have sexual intercourse with the boy and only "scolded" him. On 31 August, the police notified the prosecutor's office that the author was detained on suspicion of committing a crime under article 132 (3) (b) (violent sexual actions) of the criminal code of the Russian Federation. On 2 September, the Sokol district court authorized the author's detention as a suspect in a criminal case. The author's appeal regarding his administrative arrest was rejected by the Vologda regional court on 26 November. His appeal regarding the extension of his pretrial detention was rejected on an unspecified date by the same court.

2.2 On 15 December 2004, the author was charged under article 132 (3) (b) of the criminal code and on 21 February 2005, the Sokol district court sentenced him to eight years in prison. The author appealed on 28 February to the Vologda regional court, claiming that there were numerous procedural violations during the questioning, investigation and trial processes, and that his guilt had not been proven. The court rejected his appeal on 5 April. On unspecified dates, the author appealed to the Vologda regional court under the supervisory review procedure. His appeals were rejected on 28 February and 2 June 2006. On an unspecified date, the author appealed under the supervisory review procedure to the Supreme Court and on 19 October 2006, he appealed to the presidium of the Supreme Court; on 13 November 2006 and 11 January 2007, he appealed to the head of the Supreme Court. His appeals were rejected on 25 August, 19 October and 4 December 2006 and on 2 February 2007, respectively. On unspecified dates, the author appealed under the supervisory review procedure to the Office of the Prosecutor General. His appeal was rejected on 28 August 2008. The author's sentence ended in August 2012.

2.3 The author claims that the courts were biased and failed in their duty of objectivity. He was handcuffed during the trial. He was not offered sufficient time to prepare his defence and his access to his lawyer was limited, and he was deprived of the possibility to question experts and witnesses.

The complaint

3.1 The author alleges a violation of article 7 of the Covenant because of psychological pressure and threats by the police, and because he was kept handcuffed throughout the trial process.

3.2 He alleges violation of article 9 of the Covenant, claiming that his detention at the police station was unlawful and that he was not brought promptly before a judge. In addition, he claims that he was not duly informed about the reasons for his detention and the charges brought against him.

3.3 The author claims violation of article 14 (1) of the Covenant, alleging that the courts were biased and failed in their duty of objectivity.

3.4 The author claims violation of his rights under article 14 (2) of the Covenant due to the false statements of his guilt made by the police, which affected the expert conclusions and the trial.

3.5 The author claims that because he could not contact a lawyer while in detention, he was unable to obtain the evidence and prepare his defence, in violation of article 14 (3) (b) of the Covenant. The author also claims that the police interrogated him on several occasions during his detention without a lawyer being present.

3.6 The author alleges violation of article 14 (3) (e) of the Covenant, claiming that he was unable to question experts and witnesses.

3.7 He claims violation of article 14 (3) (g) of the Covenant due to the forced confession extracted from him by the police.

3.8 The author asks the Committee's assistance in quashing the court decisions in his case. He also asks €3 million in compensation for unlawful imprisonment and moral damages, and €1,200 in compensation for legal costs.

State party's observations on admissibility

4.1 In a note verbale dated 30 April 2016, the State party challenged the admissibility of the communication. The State party refers to rule 96 (c) of the Committee's rules of procedure and states that the author submitted his complaint to the Committee nine years after exhaustion of the domestic remedies and after his supervisory review appeal was rejected on 25 August 2006. In the view of the State party, such a delay constitutes abuse of the right to submission.

4.2 The State party submits that the author has not complained to the domestic authorities about psychological pressure exerted on him by the police. It also observes that the author has not raised before the domestic authorities the complaint regarding the lack of legal assistance during the pretrial proceedings.

4.3 Finally, the State party states that the author's claims under article 14 of the Covenant would entail an evaluation of facts and evidence by the domestic courts and their review after a long lapse of time, which would be a violation of the principle of legal certainty.

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

5.1 On 4 July 2016, the author claimed that while he was in prison it was not possible to submit a complaint to the Committee, as he did not know that such a possibility existed and he had no money to hire a lawyer, make copies of the documents and send the correspondence.

5.2 The author claims that he did file a complaint with the prosecutor's office about the psychological pressure brought to bear on him by the police during his detention, and submits a copy of the complaint. The author also claims that during the court hearings, he raised complaints about the lack of legal assistance.

5.3 The author lastly alleges that although his claims under article 14 of the Covenant relate to an evaluation of facts and evidence, he has pointed out in his communication numerous violations which indicate that the judicial proceedings were unfair.

5.4 On 25 July 2016, the author informed the Committee that (on an unspecified date) he was summoned to the Sokol interdistrict investigative committee, where he was questioned regarding the police treatment and detention in August 2004. On 4 April 2016, the investigative committee decided not to open a criminal case against the police officers indicated by the author as their actions did not constitute a crime. On 25 April, the author appealed the decision to the Sokol interdistrict prosecutor's office, which rejected his appeal on 28 April.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 93 of its rules of procedure, whether the communication is admissible under the Optional Protocol.

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

6.3 The Committee takes note of the author's claim that he has exhausted all effective domestic remedies available to him and of the State party's observation that the author's claim was submitted after an unreasonable delay of nine years, that domestic remedies have

not been exhausted regarding his claims under articles 7 and 14 (3) (b), and that his claims under article 14 of the Covenant concern review of the evaluation of facts and evidence by the national courts.

6.4 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.¹ However, in certain circumstances, the Committee expects a reasonable explanation justifying a delay.² In the present case, the communication was submitted to the Committee with a notable delay of nine years after the author's first supervisory review appeal was rejected by the Supreme Court in August 2006 and seven years after his last appeal was rejected by the Office of the Prosecutor General in August 2008. The Committee takes note of the author's explanation that while in prison he had no knowledge of the individual complaint procedure under the Covenant and no means to submit a complaint to the Committee. The Committee observes, however, that there is nothing in the submission to suggest that the author was limited in contacting the outside world from prison, especially taking into account the complaints to the domestic authorities submitted by him while in prison. The Committee also notes that the author was represented by lawyers retained by his family throughout the judicial proceedings, including while he was in prison. It also notes that the author submitted his communication to the Committee more than three years after his release in 2012. The Committee thus considers that the author has failed to provide a convincing explanation for the delay in submission. In the absence of such explanation, the Committee considers that submitting the communication after such a long lapse of time should be regarded as an abuse of the right of submission, and finds the communication inadmissible under article 3 of the Optional Protocol and rule 96 (c) of the Committee's rules of procedure.

6.5 Having come to that conclusion, the Committee decides not to examine the remainder of the State party's claims concerning admissibility of the communication.

7. 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.

¹ See communication No. 1445/2006, *Polacková and Polacek v. Czech Republic*, Views adopted on 24 July 2007, para. 6.3.

² See, for example, communications No. 787/1997, *Gobin v. Mauritius*, decision of inadmissibility adopted on 16 July 2001, para. 6.3; and No. 1434/2005, *Fillacier v. France*, decision of inadmissibility adopted on 27 March 2006, para. 4.3.