



# 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. 2532/2015\*, \*\*

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| <i>Submitted by:</i>                      | Anton Batanov (unrepresented)   |
| <i>Alleged victim:</i>                    | The author  |
| <i>State party:</i>                       | Russian Federation  |
| <i>Date of communication:</i>             | 25 May 2014 (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 16 January 2015 (not issued in document form) |
| <i>Date of adoption of Views:</i>         | 28 July 2017  |
| <i>Subject matter:</i>                    | Torture; denial of fair trial guarantees  |
| <i>Substantive issues:</i>                | Torture and ill-treatment; fair trial   |
| <i>Procedural issues:</i>                 | Abuse of the right to submission; non-exhaustion of domestic remedies; substantiation of claims   |
| <i>Articles of the Covenant:</i>          | 2 (3), 7 and 14 (1)   |
| <i>Articles of the Optional Protocol:</i> | 2, 5 (2) (b)  |

1. The author of the communication is Anton Batanov, a Russian national born on 10 May 1969. He claims that the Russian Federation has violated his rights under articles 7 and 14 of the Covenant. The Optional Protocol entered into force for the Russian Federation on 1 January 1992. The author is not represented.

#### The facts as submitted by the author

2.1 On 1 June 2009, the author was apprehended by police officers while at a market in the town of Kazan. The officers pushed him to the ground and started kicking him, then handcuffed him and transported him to the Soviet District Department of Internal Affairs of Kazan.

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

\*\* The following members of the Committee participated in the examination of the present communication: Tania María Abdo Rocholl, Yadh Ben Achour, Ilze Brands Kehris, Ahmed Amin Fathalla, Olivier de Frouville, Christof Heyns, Yuji Iwasawa, Bamariam Koita, Marcia V.J. Kran, Duncan Laki Muhumuza, Photini Pazartzis, Mauro Politi, José Manuel Santos Pais, Yuval Shany and Margo Waterval.



2.2 During his detention lasting several days at the Department of Internal Affairs,<sup>1</sup> the author was beaten severely<sup>2</sup> by three police officers.<sup>3</sup> The officers repeatedly put a gas mask over his head and turned off the oxygen to prevent him from breathing. Consequently, the author lost consciousness on numerous occasions. His body was covered by large hematomas. He was deprived of food and water.

2.3 On 3 June 2009, the author suffered a heart attack as a result of the violence. Two urgent care physicians examined the author and informed the police officer in charge that he needed urgent medical assistance in a hospital. The police officer in charge refused to act upon the doctor's request. The doctor requested to be given a written refusal of hospitalization.<sup>4</sup>

2.4 On the evening of the same day, the author was transferred to a pretrial detention facility (isolator), located in the same police department building. The officer on duty in the facility, R., took photos of the injuries the author had sustained to his face, arms and body, measured them and recorded the information in a journal,<sup>5</sup> which he requested that the transferring police officers sign. After they left, he gave the author some bread and water.

2.5 On 5 June 2009, the authorities brought the author to the Tatarstan Republican Forensic Medical Office of the Ministry of Health, where a doctor registered the visual traumas on his body in a special journal. He was issued a medical certificate detailing his bodily harm.<sup>6</sup>

2.6 On the same day, the author was brought before the Soviet District Court of Kazan, charged with robbery and murder. The Court issued a decision to extend the author's detention.<sup>7</sup>

2.7 In August 2009, the author was transferred to the Kazan prison hospital after fainting and losing consciousness several times while in detention. After one month in hospital, the author was returned in the place of detention,<sup>8</sup> where he was subjected again to severe and repeated beatings during interrogation. The author tried to end his life by cutting his veins. As a result of the torture, he suffered an organ failure, developed a number of diseases and became partially disabled.<sup>9</sup>

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<sup>1</sup> The submission does not specify the exact number of days. There is a discrepancy as to the date of apprehension, either 1 or 3 June 2009.

<sup>2</sup> The author claims that officer Al. twisted his arms behind his back, handcuffed him and pushed him to the floor, then he and the bald officer kicked him. Then they put him in a chair, then the bald officer hit him on the head and on the face with his elbows and put a gas mask on his head to prevent him from breathing.

<sup>3</sup> The author names two of the officers as "Ar." and "Al.", and describes the third as "the bald officer".

<sup>4</sup> The decision of 28 August 2011 not to open criminal investigation against the police officers includes a statement that a doctor and his assistant had testified that the author had suffered earlier cranial-cerebral trauma and had been hospitalized following a heart attack in the past, that the author had refused to be hospitalized and had signed a statement to that effect, that there had been no sign of physical violence and that the author had not made any complaints.

<sup>5</sup> A copy of the journal/medical record is not included in the file.

<sup>6</sup> A copy of the medical certificate issued by a forensic expert/medical doctor on 5 June 2009 is part of the submission. The medical certificate includes a statement that the examination had taken place on 4 June 2009 at 3.40 p.m. and details of serious bodily harm as a result of being hit with a hard object or objects. In the medical expertise, it is estimated that the bodily injuries had been caused 2 to 5 days before the time of examination for some of the injuries and 4 to 8 days for others. In its conclusion, the medical expertise excludes the possibility that the bodily harm had resulted from the author falling down once. In that document, the author states that he was apprehended by the police on 2 June 2009 at around 3 p.m. and that the officers did not use physical violence during his apprehension. He states that he does not remember whether he had been injured in May 2009, but states that one week earlier he had fallen on the street and damaged his left shoulder and knees. The record indicates that he did not voice any complaints.

<sup>7</sup> This decision is not part of the file.

<sup>8</sup> The submission does not specify the exact place of detention.

<sup>9</sup> Medical certificates, dated 9 and 11 November 2010, outline that the author suffers from hypertension disease, chronic pancreatitis and nephroptosis (also called "floating kidney"), an abnormal medical

2.8 On an unspecified date, during the pretrial investigation, a prosecutor, “M.”, from the Soviet District Prosecutor’s Office of Kazan, exercised psychological pressure on the author with the aim of extracting a confession. The prosecutor threatened to have the author imprisoned for life, used obscene language and twice hit the author’s head using his palm. On 25 December 2009, during the trial against the author at the District Court, the author was unable to request the removal of that prosecutor,<sup>10</sup> who rejected the author’s complaint about being subjected to unlawful investigative methods during the pretrial investigation by the investigator, “Sh.”. On the same day, the Court dismissed the author’s request to issue a special ruling against the investigator “Sh.”, without hearing the author’s arguments.

2.9 On 7 December 2009, “At.”, the man accused of being the accomplice in the robbery and murder case against the author, and who had been called as the main witness in that case stated, before the District Court that investigators of the Investigation Unit CU SK RF in Kazan had extracted his testimony against the author by putting him on an electric chair and electrocuting his genitals.<sup>11</sup> Before the Court, the witness retracted his inculpatory testimony against the author on the grounds that he had provided it under torture and had been promised clemency in his sentencing.<sup>12</sup> The author himself did not plead guilty. He maintained that he was innocent and that the charges against him had been fabricated.

2.10 The author alleges numerous violations of his rights during the trial, including that the Court did not take into account his alibi and had based its verdict on inadmissible evidence, which had been collected in violation of procedural norms and had not been sufficient to prove his guilt. He notably claims that his rights to a fair trial were violated because: (a) the Court had accepted as admissible and credible and had based its sentence on the inculpatory testimony that the witness, “At.”,<sup>13</sup> the main suspect, had given during the pretrial investigation, despite the fact that, during the court hearing of 7 December 2009, “At.” had retracted his statement against the author, claiming that it had been extracted under duress and describing the torture he has been subjected to; (b) the author insists that he has an alibi for his whereabouts on 16 May 2008, the day when the murder and robbery had been allegedly committed, and that, despite the fact that his alibi had been confirmed by four defence witnesses, the Court took into account only the Prosecutor’s evidence; (c) it was not proved that in May 2008 the author had used a certain mobile telephone that had belonged to a certain “T.” and had been lost; (d) the testimony of inspector “Ah.”, who had stopped the author’s car on 22 May 2008, established no link between the author and the crime committed by the co-accused, “At.”; and (e) the court verdict was based mostly on testimony given by witnesses in the pretrial investigation, ignoring their testimony during the court hearings and not taking into account that several of those testimonies had been extracted by the investigators using psychological and physical pressure. Furthermore, the author raised claims concerning the Court’s assessment of the evidence in the case.

2.11 On 25 December 2009, the District Court found the author guilty of premeditated armed robbery and physical assault and sentenced him to a prison term of 11 years. On 11 January 2010, the author appealed his sentence in cassation with the Supreme Court of Tatarstan, on the grounds that the District Court’s decision had contradicted the factual evidence presented in the case.<sup>14</sup> On 12 March 2010, the Supreme Court of Tatarstan rejected the author’s appeal.<sup>15</sup> On an unspecified date, the author submitted a second request for a supervisory review to the Supreme Court. On 24 September 2010, the President of the Supreme Court rejected the author’s request for a supervisory review on

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condition in which the kidney drops down into the pelvis when the patient stands up. The medical certificates also indicate limited disability.

<sup>10</sup> The author explains that the Court did not announce the prosecutor’s name at the beginning of the hearing.

<sup>11</sup> A certified copy of the trial transcripts contains the witness’s testimony and is a part of the submission.

<sup>12</sup> The file contains the name of the witness and the respective police officers.

<sup>13</sup> The money (100,000 roubles) the author owed him was said to be the motive of the inculpatory testimony together with the police pressure to testify against the author.

<sup>14</sup> The cassation appeal is on the file. There is no mention of torture in it.

<sup>15</sup> The decision of the Supreme Court of Tatarstan is not on the file.

the grounds that it found no reason to doubt the admissibility or credibility of the evidence on which the judgment of the District Court of 25 December 2009 had been based.

2.12 On an unspecified date,<sup>16</sup> the author submitted a request for a supervisory review of the decision of the District Court of 25 December 2009, and the decision of the Supreme Court of Tatarstan of 12 March 2010, to the Supreme Court of the Russian Federation. On 13 December 2010, the Supreme Court of the Russian Federation, sitting in a composition of a single judge, dismissed the author's request on the grounds that the judge had come to the same conclusion regarding the evidence presented in the case as the Court in its decision of 25 December 2009, and upheld that decision and the decision of the Supreme Court of Tatarstan of 12 March 2010.

2.13 On an unspecified date, the author submitted to the Supreme Court of the Russian Federation a request for a supervisory review of the Supreme Court decision of 13 December 2010. By a letter of the Deputy President of the Supreme Court of the Russian Federation dated 28 October 2011,<sup>17</sup> stating that no violations by the court of cassation had been found, the Supreme Court refused to quash the decision of 13 December 2010 and to initiate a supervisory review.

2.14 As to the alleged torture, on an unspecified date, the author filed a motion to the Vakhitovsky District Court of Kazan to open a criminal case against two investigators "K." and "Sh.", which was rejected without consideration on 27 February 2010 on the grounds that it was not in the Court's competence to open criminal proceedings against the investigators. In a letter dated 31 March 2010, the Deputy President of the Supreme Court of Tatarstan upheld this rejection. The author and the Chair of the non-governmental organization Committee for Civil Rights (on behalf of the author) also filed several motions with the Prosecutor General of the Russian Federation concerning the methods used against the author during the investigation. On 2 August 2010, the author filed a complaint with the Prosecutor General that was transmitted to the Prosecutor of Tatarstan and rejected by the latter on 3 September 2010.

2.15 On 28 August 2011, the Department of Internal Affairs of Kazan took a decision not to open a criminal case against the police officers who had allegedly ill-treated the author.<sup>18</sup> On 18 May 2012, the Office of the Prosecutor of Tatarstan upheld the decision of 28 August 2011.

2.16 On 30 November 2011, the Office of the Prosecutor General of the Russian Federation dismissed the author's request to initiate criminal investigation into his allegations of torture. On 24 March 2012, the author appealed under the supervisory review proceedings to the Prosecutor General of the Russian Federation, asking again for a criminal case to be opened against the police officers and the investigators from the Department of Internal Affairs of Kazan, and challenging again the decision of the Soviet District Court of Kazan of 25 December 2009.

2.17 On 21 May 2012, the Office of the Prosecutor of Tatarstan ordered a further investigation to be carried out and completed by 13 June 2012, in particular with regard to the allegations of the use of unlawful methods by the police.

2.18 On 5 July 2012, the author filed another motion with the Prosecutor General of the Russian Federation, requesting the authorities to investigate the unlawful investigative methods used against him during the investigation. On 12 July 2012, the Investigative Committee of the Russian Federation forwarded the author's complaint of 27 June 2012 for further investigation and, on 31 July 2012, the Office of the Prosecutor General of the Russian Federation informed the author that the Prosecutor of Tatarstan had been instructed to investigate the author's allegations of torture. On 28 August 2012, the Office of the

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<sup>16</sup> According to the State party submission, 17 November 2010, the author raised his allegations of torture for the first time in his request for supervisory review. This document is not in the file.

<sup>17</sup> The Deputy President of the Supreme Court referred to the author's claims about procedural violations of his rights, notably the violation of his right to defence because he had not been given the possibility to take part in the judicial debates in person and the use of violence against him in the pretrial investigation.

<sup>18</sup> The decision is part of the file.

Prosecutor General dismissed the request on the grounds that the author's documented bodily harm had been inflicted prior to his arrest.

2.19 On 12 December 2013, the Office of the Prosecutor of Tatarstan rejected the motion brought by the Chair of the Committee for Civil Rights on behalf of the author, arguing that the decision not to open a criminal case against the police investigators had been quashed several times and sent back for further investigation, and that, based on the results of the previous investigation of 24 September 2013, no elements of crime had been established.

2.20 Further motions by the author and the Chair of the Committee for Civil Rights on his behalf were rejected by the Prosecutor General of the Russian Federation on 25 April and 17 July 2013, and 7 May 2014.

2.21 The author also filed an application with the European Court of Human Rights on 8 June 2010, which was rejected on 13 March 2014 as inadmissible under articles 34 and 35 of the Convention for the Protection of Human Rights and Fundamental Freedoms. The author claims that he has exhausted all domestic remedies.

### **The complaint**

3.1 The author claims that the State party violated his rights under article 7 of the Covenant, as: (a) he was subjected to torture through severe and repeated beatings, including by being forced to wear a gas mask and having the air turned off, thereby preventing him from breathing, which led the author to suffer a heart attack, develop a heart condition, organ failure and partial disability; (b) the police officer in charge rejected the doctors' request to take the author to a hospital, after he had suffered a heart attack as a result of police violence at the time of his initial arrest; (c) the prison hospital staff failed to provide the author with medical treatment for several days; and (d) the court prosecutor treated the author in a degrading and threatening manner during the pretrial questioning, slapped him with his palm and used obscene language against the author.

3.2 The author claims that, during the judicial proceedings, his rights under article 14 of the Covenant were violated as: (a) all of his appeals on cassation and under the supervisory review proceedings, including his complaints to different authorities aimed at quashing the unlawful, unsubstantiated and unfair verdict, were rejected; (b) the court prosecutor attempted to force him to incriminate himself during the pretrial questioning; (c) the State authorities resorted to torture to force a witness to testify against the author and the court based its sentence on that testimony, obtained under duress, despite the fact that the witness retracted it during the court hearing; and (d) the author was not allowed to present arguments in person before the court and thus his right to defence was violated.

### **State party's observations on admissibility**

4.1 On 31 March 2015, the State party challenged the admissibility of the communication arguing that the author had not raised the allegations of torture and ill-treatment either during the trial before the Soviet District Court of Kazan or in his cassation appeal with the Supreme Court of Tatarstan. The State party submits that, according to the available documents, the author first claimed that he had been subjected to torture in his request for a supervisory review dated 17 November 2010, almost one and a half years after the alleged torture had occurred. The author's complaints and applications to different public organizations in that regard were submitted later, in the period 2012-2014.

4.2 The State party claims that the timely complaint to the public authorities in connection to alleged torture or cruel, inhuman or degrading treatment is one of the main guarantees of an effective investigation into such allegations. The fact that the author only complained almost one and a half years after the alleged torture took place, indicates a possible abuse of the right to submission to the Committee, but also to the State party authorities. According to the State party, no circumstances prevented the author from lodging a complaint with the State party's authorities during the above-mentioned period. Therefore, the State party asserts that the communication is inadmissible in this part owing to an abuse of the right to submission under article 3 of the Optional Protocol.

4.3 With regard to the alleged violation of the author's rights to an independent and impartial tribunal under article 14 of the Covenant, the State party submits that the material available does not show lack of independence and impartiality by the trial court. Furthermore, the author did not raise any claim concerning alleged breaches of fair trial guarantees either before the first instance or in his cassation appeal. The State party also observes that the author disagrees with the examination and evaluation of evidence, witnesses and expert witnesses during the trial. It refers to the Supreme Court decision in its assessment that "the guilt of the author is fully proven by the collected evidence which is examined in detail and analysed accurately in the verdict".

4.4 The State party goes into details as to the facts and law and the methods used by the court in assessing the issue of guilt or innocence of the author, notably through statements of witnesses in the pretrial phase and during the trial, conclusions of expert witnesses and collection of material evidence. It observes that the author's alibi was examined by the court and found to be false. The State party further submits that during the court hearings the court assessed the divergences in the witnesses'/co-defendants testimonies given at the pretrial phase and in the trial phase. The State party denies any violation of the author's rights during the investigation, including with regard to his apprehension as a suspect and the subsequent extension of his detention, and the judicial proceedings in his case. It observes that there is no objective data in support of the author's allegations of torture during the pretrial investigation.

4.5 As to the author's claim that he was not allowed to present arguments in person and thus his right to defence was violated, the State party maintains that, as it transpires from the transcripts of the court hearings, the author was informed about his procedural rights, including the right to challenge the participation of a judge or a prosecutor; he did not request to take part in person in the judicial debate yet his defence counsel presented legal arguments. The author was also given the right to the last retort according to the criminal procedural law of the State party. The State party also explains that the court examined the issue of termination of the judicial investigation (investigation at the trial) in the absence of the victims, "E." and "Z.", and the author and his counsel did not object to its termination. There are no grounds to consider that the author's defence counsel was negligent towards her duties and the principle of equality of arms was not jeopardized. The punishment of the author is commensurate with the crime he committed.

#### **Additional submissions by the State party**

5.1 In a submission dated 7 April 2015, the State party provides further details as to the crime allegedly committed by the author and the collection of evidence. It emphasizes that, according to the medical expertise, the injuries on the author's shoulders and left knee were sustained before his apprehension. The State party confirms its previous observations and maintains that the author's claims should be found inadmissible as unsubstantiated.

5.2 In a submission dated 12 May 2015, the State party reiterates its previous observations and asserts in addition that the communication is inadmissible due to non-exhaustion of domestic remedies under article 5 (2) (b) of the Optional Protocol. It submits that according to article 125 (1) of the Criminal Procedure Code of the Russian Federation:

The resolutions of the inquirer, investigator or public prosecutor regarding the refusal to institute or terminate a criminal case, as well as all other decisions and actions (or lack of action) that may inflict damage upon the constitutional rights and freedoms of the participants in the criminal court proceedings or may interfere with the citizens' access to the administration of justice, may be appealed against at the district court at the place of conducting the preliminary inquisition.

On 27 April 2014, on the basis of the procedural verification results, the senior investigator of the Soviet District of Kazan Investigative Committee decided not to open a criminal case against the police officers (refused to initiate criminal proceedings) owing to an absence of a crime in the actions of the police officers A., K., M., F., D., P., D. and M. The materials of that verification were subsequently examined in the Central Office of the Investigative Committee. It was admitted that the arguments of the author had not been fully checked and, on 3 April 2015, the refusal to initiate criminal proceedings was quashed and the instruction

given to take additional investigative steps. The State party claims that the procedure is ongoing. In the light of those developments, the State party maintains that the author has not challenged the resolution of the investigator of 27 April 2014 and therefore has not exhausted all domestic remedies.

#### **Author's comments to State party's observations**

6.1 In his comments dated 30 April 2015, the author submits his comments to the observations of the State party. He reiterates his allegations of torture and ill-treatment during his apprehension on 1 June 2009 and in the course of pretrial investigation and again provides the names of the alleged perpetrators, including police officers and investigators. Contrary to the State party's affirmation, the author maintains that he did complain during the proceedings of the Soviet District Court of Kazan about the violence and ill-treatment he had suffered, but the judge, "Kh.", dismissed his request without hearing his arguments.<sup>19</sup> He also complained at the beginning of 2010 about the physical violence and torture, less than 3 months following the verdict of 25 December 2009. He also rebuffs the observations of the State party with regard to the alleged violations under article 14 and reiterates that the verdict against him was based mostly on the witness testimonies obtained during the pretrial investigation, while the witness statements during the trial were completely ignored by the court. Moreover, the court did not take into account that most of the testimonies in the pretrial investigation had been extracted through psychological pressure and physical violence.

6.2 The author further reiterates that his guilt was established based on the testimony of witness, "At.", in the pretrial investigation, which had been extracted under duress. During the court hearing of 7 December 2009, "At." stated that he had been tortured in order to testify against the author.

6.3 Contrary to the State party's statement, the author affirms that he has a full alibi, and that several witnesses for the defence testified that on the day of the crime he had been in another town. He claims again that he was not informed about his procedural rights by the district court in its hearing of 25 December 2009, as the court did not explain whether he could take part in the parties' presentations. He further submits that the complaint was raised by his counsel in his cassation appeal of 11 January 2010 and the procedural violation is grounds for the cancellation or alteration of the judicial decision according to article 381 (2) (6) of the Criminal Procedure Code.

6.4 The author complains that different prosecutors took part in the three trial court hearings of 7, 14 and 25 December 2009, but that their names were not announced by the court. The author was therefore unable to challenge the State prosecutor, "M.", who during the investigation exercised psychological pressure on the author, using obscene language, cursing his Tatar mother and twice hit the author with his palm.

6.5 The author further reiterates that the victims, "E." and "Z.", were not present during the court proceedings and the matter of examining the case in their absence was not discussed by the court. He asserts that the medical-forensic expertise of 5 June 2009, the medical conclusions following his treatment in the hospital in the period 19 August 2009 to 16 September 2009 and the medical conclusion of the prison medical commission of 9 November 2010 provide evidence regarding the deterioration of his health due to the torture he was subjected to. His injuries could not have been sustained by falling once.

#### **Author's additional comments**

7. In his comments dated 25 June 2015, the author provides additional information in response to the State party's observations of 12 May 2015. He claims again that the accusations against him were fabricated, that physical violence was used against him in June 2009 during his detention with the aim of extracting a confession. He asserts that his numerous complaints to the judicial and prosecutorial instances were not addressed

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<sup>19</sup> The author refers to the transcripts of the court hearing of 25 December 2009, which are part of the file and show that his request for a special ruling against the actions of the investigator, "Sh.", was dismissed by the judge. The author did not detail the unlawful acts against him.

properly and were instead sent back to the very same bodies that had committed the torture. He reiterates that four witnesses for the defence testified that he had been subjected to physical violence. As to the State party's argument of non-exhaustion, he maintains that his complaint to the Vakhitovsky District Court of Kazan was rejected without consideration on 27 February 2010 on the grounds that it was not in the Court's competency to open criminal proceedings against the investigators "K." and "Sh.".

#### **State party's observations on the merits**

8.1 In a note verbale dated 30 July 2015, the State party submitted additional observations. It maintains that the Prosecutor General examined the author's complaints and responded with motivated letters dated 22 July and 30 November 2011 and 12 January 2012. The final decision was taken by the deputy Prosecutor General, and the Chair of the Committee for Civil Rights, representing the author, was informed about it on 5 May 2014.

8.2 The author was detained in the pretrial detention facility (isolator) from 11 June 2009 until 23 March 2010. Upon admission, he underwent a medical examination and was diagnosed with high blood pressure (hypertensive disease), ischemic heart disease and orthostatic collapse. In connection with those diseases, he was admitted to the hospital, where he was given the necessary medical treatment.

8.3 The State party rejects again the author's allegations of torture. It clarifies that, on 23 May 2015, the author submitted a complaint against the investigator and the assistant prosecutor. On 1 June 2015, the opening of a criminal investigation into his allegations was refused, based on a preliminary examination. On 8 June 2015, the Office of the Prosecutor of Tatarstan quashed that decision and instructed the investigating agency to conduct an additional investigation. The author can appeal the outcome of that procedure to the head of the investigating agency, the prosecutor or the court.

#### **Author's additional comments**

9. In his additional comments submitted on 12 October 2015, the author reiterates the main arguments of his initial submission. He disagrees with the replies provided to his supervisory appeals. He challenges again the first instance verdict against him and the subsequent court decisions as unlawful and unjust.

#### **Issues and proceedings before the Committee**

##### *Consideration of admissibility*

10.1 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.

10.2 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. The Committee observes that, on 8 June 2010, the author presented an application on the same events before the European Court of Human Rights. However, by a letter dated 13 March 2014, the Court rejected the application as inadmissible under articles 34 and 35 of the Convention for the Protection of Human Rights and Fundamental Freedoms. The Committee recalls that, in ratifying the Optional Protocol, the State party did not introduce a reservation excluding the competence of the Committee in relation to cases that have been examined under another procedure of international investigation or settlement. Accordingly, the Committee concludes that it is not precluded by article 5 (2) (a) of the Optional Protocol from examining the communication.

10.3 The Committee takes note of the State party's submission that the communication as to the author's allegations of torture under article 7 of the Covenant should be considered an abuse to the rights to submission under article 3 of the Optional Protocol as the author raised the allegation one and half years after the alleged events, in his request for supervisory review to the Supreme Court of the Russian Federation dated 17 November 2010. The Committee however notes that the author lodged several complaints with the courts in that regard, including a request for a criminal case to be opened against the

investigator in the Vakhitovsky District Court of Kazan, which was rejected on 27 February 2010, and with the Prosecutor's office. The Committee notes that on 25 December 2009 the author attempted to raise the issue of substantive violations in the pretrial detention with the trial court and requested the court to issue a special ruling against the acts of the investigator, and that that request was rejected.<sup>20</sup> The Committee also notes that the author complained about the alleged torture against him in his request for a supervisory review before the Supreme Court of the Russian Federation. Therefore, the Committee finds it is not prevented by the requirements of article 3 of the Optional Protocol from examining the present claim.

10.4 The Committee notes the author's claim that he has exhausted all effective domestic remedies available to him. It also notes the State party's claim that the investigation is ongoing. However, the Committee observes that more than 7 years have passed since on 27 February 2010, when the Vakhitovsky District Court of Kazan rejected without consideration first motion filed by the author to open a criminal case against two investigators, "K." and "Sh.", and that more than five years have passed since 28 August 2011, when the Department of Internal Affairs of Kazan gave its first decision not to open a criminal case against the police officers who had allegedly ill-treated the author. During that time, the author has continued to submit motions, which have been rejected by the Office of the Prosecutor of Tatarstan and by the Prosecutor General of the Russian Federation. The Committee observes that the application of remedies has been unreasonably prolonged and, therefore, considers that the requirements of article 5 (2) (b) of the Optional Protocol have been met.

10.5 The Committee notes the author's claims under article 14 (1) of the Covenant in relation to the examination of evidence and of witnesses during the trial. In particular, it observes the author's disagreement with the sentence against him, the assessment of his alibi and material evidence, and the status of the defence witnesses and their statements. In that regard, the Committee notes, from the information on the file, that the judge had applied domestic law in examining the evidence and witnesses in question. The Committee recalls that it is generally for the courts of the State party to the Covenant to review facts and evidence or to apply domestic legislation, unless it can be shown that such evaluation or application is clearly arbitrary or amounts to a manifest error or denial of justice, or that the court has otherwise violated its obligation of independence and impartiality.<sup>21</sup> In the present case, the Committee observes that the material before it does not allow it to conclude that the examination of the evidence and questioning of witnesses by the court reached the threshold for arbitrariness in the evaluation of the evidence, or amounted to a denial of justice. The Committee therefore declares this part of the communication insufficiently substantiated and inadmissible under article 2 of the Optional Protocol.

10.6 The Committee notes the author's claim that he was not allowed to present arguments in person before the court and thus his right to defence has been violated. However, the Committee notes that the author was present and represented by a private lawyer through the judicial proceedings, was informed about his procedural rights and did not request to take part in person in the judicial debate, and that his defence counsel presented legal arguments and the author was given the last retort. Accordingly, the Committee finds this part of the author's claim under article 14 (3) (d) of the Covenant insufficiently substantiated for the purposes of admissibility under article 2 of the Optional Protocol.

10.7 The Committee considers that the facts of the communication also raise issues under article 7 of the Covenant, read in conjunction with article 2 (3). The Committee declares

<sup>20</sup> The transcript of the court hearing does not indicate that any assessment of the claims was made before the court rejected the request.

<sup>21</sup> See, inter alia, communications No. 1188/2003, *Riedl-Riedenstein et al. v. Germany*, decision on inadmissibility adopted on 2 November 2004, para. 7.3; No. 1138/2002, *Arenz et al. v. Germany*, decision on inadmissibility adopted on 24 March 2004, para. 8.6; and No. 2125/2011, *Tyan v. Kazakhstan*, Views adopted on 16 March 2017, para. 8.10. See also the Committee's general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, para. 26.

admissible the claims under article 7 in conjunction with article 2 (3) and article 14 (1) of the Covenant, and therefore proceeds to their examination on the merits.

*Consideration of the merits*

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

11.2 The Committee notes the author's detailed allegations of torture by police officers and investigators upon apprehension and during the pretrial detention, aimed at extracting a confession. The Committee also notes that, on 4 June 2009, the author was examined by medical experts who found and documented injuries on his body. The Committee notes that the author submitted to this effect the medical certificate dated 5 June 2009, which details his injuries, notably on his shoulders and on his left knee. The Committee takes note of the medical expertise conclusion that some injuries had been inflicted with a hard blunt object and could not have been sustained through a single fall (the author stated he had fallen on the street a week earlier and had damaged his right shoulder and knees). On the other hand, the Committee also notes that the State party rejects the author's allegations and claims the injuries had been sustained earlier and that the author's poor health was taken into consideration by the trial court as a mitigating factor. The Committee also takes note of the two medical certificates of November 2010 that indicate that the author suffered from health problems and several chronic diseases, including hypertension. Regarding the State party's obligation to investigate properly the author's torture claim, the Committee recalls its jurisprudence according to which a failure by a State party to investigate allegations of violations could in and of itself give rise to a separate breach of the Covenant.<sup>22</sup> The Committee notes that the material on file does not allow it to conclude that the investigation into the allegations of torture was carried out promptly and effectively. In the light of the above, the Committee finds that there has been a violation of the author's rights under article 7 read in conjunction with article 2 (3) of the Covenant owing to the lack of effective investigation of his torture allegations.

11.3 The Committee further notes the author's claims that the Court used the testimony of the main accused and witness, "At.", against the author, which allegedly had been extracted under torture and was subsequently retracted by the witness during the court hearing. It further notes that the State party did not contest the argument that decisive weight had been attributed to the testimony of that witness in the author's trial, despite the allegation that it had been extracted under torture. From the information before it, the Committee observes that the trial court did not take into consideration the retraction by that witness of his inculpatory statement against the author or the detailed description of the torture he had been subjected to during pretrial interrogation, instead relying solely on the testimony that the witness had given at the pretrial phase. According to the court transcript, the court also dismissed without addressing its substance the author's allegations of "substantial violations in the pretrial investigation" and his request to issue a special ruling against the investigator, "Sh.". In the light of the above, the Committee finds that there has been a violation of the author's rights under article 14 (1) of the Covenant.

12. The Human Rights Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the information before it discloses a violation by the State party of the author's rights under article 7 read in conjunction with article 2 (3) and article 14 (1) of the Covenant.

13. 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 and, if confirmed, prosecute, try and punish those responsible

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<sup>22</sup> See the Committee's general comment No. 20 (1992) on the prohibition of torture and cruel treatment or punishment, para. 14; and its general comment No. 31 (2004) on the nature of the general legal obligations imposed on States parties to the Covenant, para. 15. See also communication No. 2231/2012, *Askarov v. Kyrgyzstan*, Views adopted on 11 May 2016, para. 8.3.

for the torture of the author; and (b) provide compensation to the author for the violations suffered. The State party is also under an obligation to take all steps necessary to prevent the occurrence of similar violations in the future.

14. 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 in case a violation has been established, 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.

## Annex

### **Individual opinion of Committee member José Manuel Santos Pais (dissenting)**

1. I regret that I am unable to share fully the reasoning by the majority of the Committee that the State party violated the author's rights both under article 7, read in conjunction with article 2 (3), and under article 14 (1) of the Covenant.

2. The author makes several allegations of torture, but when analysed in detail, doubts arise as to their credibility, especially in the light of State party's observations that the author did not raise his allegations of torture and ill-treatment either during the trial before the Soviet District Court of Kazan or in his cassation appeal with the Supreme Court of Tatarstan. Instead, he raised them for the first time in his request for a supervisory review, in November 2010, i.e. one and a half years after the alleged torture had occurred and when it would be very difficult to confirm it through forensic examination (see paras. 4.1-4.2 of the Views).

3. The author alleges he was beaten severely for several days starting 1 June 2009 (see paras. 2.1-2.2).<sup>1</sup> However, on 5 June 2009, supposedly after four days of severe beating, a medical certificate was issued by a forensic expert that included details of his bodily harm (see para. 2.5, footnote 6) and an estimation that some of the bodily injuries had been caused 2 to 5 days previous and others 4 to 8 days previous. In the certificate, the author states he was apprehended by the police but the officers did not use physical violence, and he did not voice any complaints. He also states that one week earlier he had fallen on the street and had damaged his left shoulder and his knees (see footnote 6 and para 5.1).

4. The author further states that, on 3 June 2009, he suffered a heart attack as a result of the violence (see para 2.3). The State party confirms this and notes that the author, upon admission to the pretrial facility (on 11 June 2009), underwent a medical examination and was diagnosed with "high blood pressure (hypertensive disease), ischemic heart disease and orthostatic collapse". In connection with those diseases, he was admitted to the hospital, where he was provided with the necessary medical treatment (see para. 8.2). Furthermore, in its decision of 28 August 2011 not to open criminal investigation against police officers, the Department of Internal Affairs of Kazan indicates that a doctor and his assistant had testified that the author had previously suffered a cranial-cerebral trauma and had been hospitalized following a heart attack, had refused to be hospitalized and had signed a refusal to that effect, and that there had been no sign of physical violence and the author had not made any complaints (see footnote 4).

5. The author also alleges he was transferred in August 2009 to Kazan prison hospital for a month. After returning to the place of detention, he was subject to severe and repeated beatings during interrogations. As a result, he suffered an organ failure, developed a number of diseases and became partially disabled (see para. 2.7). However, the medical certificates dated 9 and 11 November 2010 indicated that the author suffered from hypertension disease, chronic pancreatitis and nephroptosis, which could hardly be described as a direct result of torture. Medical certificates also confirmed his limited disability.

6. Furthermore, the author alleges he complained about violence and ill-treatment before the Soviet District Court of Kazan during court proceedings (see para. 6.1). However, according to the transcripts dated 25 December 2009, the author did not detail the unlawful acts he claims had been committed against him (see footnote 19). He complained of physical violence and torture at the beginning of 2010, i.e. three months after the verdict of December 2009, or nine months after his detention and alleged beating (see para. 6.1).

7. The author, who was found guilty of premeditated armed robbery and physical assault and sentenced to a prison term of 11 years (see para. 2.11), has poor health

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<sup>1</sup> Date is uncertain — 1 or 3 June 2009 (see footnote 1).

conditions. However, the question is whether, as he alleges (see para. 6.5), those conditions derived from his torture or his general health characteristics, which already existed prior to his detention.

8. The State party maintains there is no objective data supporting the allegations of torture during the pretrial investigation (see para. 4.4). The Prosecutor General examined the author's complaints and responded with several motivated letters (see para. 8.1). Later, the opening of another criminal investigation was refused, on the basis of the preliminary examination, a decision that was later quashed (see para. 8.3).

9. The State party has convincingly rebutted the allegations of torture presented by the author, making it difficult to follow the Committee's conclusion that the investigation into the allegations of torture was not carried out promptly and effectively by the State party (see para. 11.2). If no reliable signs of torture were perceived, why should investigations be held? Indeed, the State has conducted such investigations.

10. I would thus have concluded this part of the communication (under article 7, read in conjunction with article 2 (3), of the Covenant), to be insufficiently substantiated by the author.

11. As regards the factual evidence, several bodies decided to reject the author's allegations on appeal (see paras. 2.11-2.13). Those decisions included detailed analyses of the evidence produced during the trial; and the bodies concluded there had been no violations of due process. There was no mention, either before first instance or in cassation appeal, that the author had suffered torture or breaches of fair trial guarantees (see footnote 14 and paras. 4.1 and 4.3).

12. As regards the complaints against police officers, the author's allegations were addressed each time by the authorities and were consistently rejected (see paras. 2.14-2.20), not only because they considered that the author's bodily harm had been suffered prior to his arrest (see para. 2.18), but also because no elements of crime were established (see para. 2.19). It is not uncommon during criminal investigations for defendants to try to jeopardize the credibility of their police investigators by accusing them of torture or ill-treatment.

13. The State party refers to the decision by the Supreme Court that "the guilt of the author is fully proven by the collected evidence which is examined in detail and analysed accurately in the verdict" (see paras. 4.3-4.4) and considers that the author's complaints were duly examined (see paras. 8.1-8.3). The author is not represented by counsel before the Committee and so may fail to understand how successive judicial instances have thoroughly analysed and rebutted his arguments. In the light of the above, and unlike the Committee's findings (see para. 11.3), I would thus have concluded that the author's claim under article 14 (1) of the Covenant was also insufficiently substantiated.

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