



# 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. 3068/2017\*, \*\*

<i>Communication submitted by:</i>	A.M. (not represented by counsel)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Russian Federation
<i>Date of communication:</i>	22 July 2017 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 12 December 2017 (not issued in document form)
<i>Date of adoption of decision:</i>	19 July 2024
<i>Subject matter:</i>	Imprisonment as a result of unfair trial; torture by investigator to extract confession
<i>Procedural issues:</i>	Exhaustion of domestic remedies; lack of substantiation
<i>Substantive issues:</i>	Torture; unfair trial
<i>Articles of the Covenant:</i>	7, 10 (1) and 14 (3) (e) and (g)
<i>Articles of the Optional Protocol:</i>	2 and 5 (2) (b)

1. The author of the communication is A.M., a national of the Russian Federation, born in 1988. He claims that the State party has violated his rights under articles 7, 10 (1) and 14 (3) (e) and (g) of the Covenant. The Optional Protocol entered into force for the State party on 1 January 1992. The author is not represented by counsel.

#### Facts as submitted by the author

2.1 On 8 July 2009, the author was detained in the town of Yugra in Yamalo-Nenets autonomous region of the Russian Federation, on suspicion of the murder of Mr. I. in January 2008. His detention was recorded only on 10 July 2009. From the first hours of his detention in the Novy Urengoy police department, he was beaten by the police investigator and pressured to falsely testify that Mr. P. had ordered Mr. M, a co-accused, to commit the murder. On the second or third day of his detention, his manager, Mr. D., went to the police station,

\* Adopted by the Committee at its 141st session (1–23 July 2024).

\*\* The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Wafaa Ashraf Moharram Bassim, Rodrigo A. Carazo, Yvonne Donders, Mahjoub El Haiba, Carlos Gómez Martínez, Laurence R. Helfer, Marcia V.J. Kran, Bacre Waly Ndiaye, Hernán Quezada Cabrera, José Manuel Santos Pais, Soh Changrok, Tijana Šurlan, Kobauyah Tchamdja Kpatcha, Teraya Koji, Hélène Tigroudja and Imeru Tamerat Yigezu.



where he saw traces of the beatings and called an ambulance and a prosecutor. The ambulance arrived and medical personnel attended to the author's injuries, reporting that they were minor. The prosecutor accepted the author's complaint concerning the beatings by the police. The author submitted complaints to the Novy Urengoy City Court concerning the beatings, but did not receive any response from the prosecutor's office or the court.

2.2 On the third day of his detention, a State appointed lawyer visited the author. The lawyer tried to convince him to testify and ignored his complaints regarding his treatment by the police.

2.3 On 5 February 2010, the Sverdlovsk Regional Court sentenced the author to 16 years in prison after a jury found him guilty of murder under article 105 (2) of the Criminal Code. On 24 May 2010, the Supreme Court rejected the author's cassation appeal. In his appeal, the author complained that he had not been allowed to inform the jury that his initial testimony had been obtained under pressure, thus violating his right to defence, and that two male witnesses – Mr. S.Z. and Mr. M.T. – had not been questioned in court. On 1 November 2010, 21 November 2013 and 28 January 2014, Supreme Court judges rejected the author's supervisory review appeals.

### **Complaint**

3.1 The author claims that articles 7, 10 (1) and 14 (3) (g) of the Covenant were violated because the investigator in Novy Urengoy police department tried to force him to provide testimony by beating him and by exerting psychological pressure on him.

3.2 The author claims that the court of first instance violated his rights under article 14 (3) (e) of the Covenant, having refused to question the witnesses, Mr. S.Z. and Mr. M.T. In addition, the court refused to question four other witnesses, one of whom had used his phone to record the confession of the author's co-accused, Mr. M., right after the murder. The court also refused to view the video recording.

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

4.1 In a note verbale dated 12 March 2019, the State party submitted its observations on admissibility and the merits of the communication.

4.2 The State party submits that the author's allegations under articles 7, 10 (1) and 14 (3) (g) of the Covenant are inadmissible under article 5 (2) (b) of the Optional Protocol. According to the information from the Office of the Prosecutor General, the investigative authorities of Yamalo-Nenets autonomous region did not receive any complaints from the author about any beatings or the extraction of a forced confession by the police. The trial records indicate that, in the court of first instance, the author did not report any physical violence by the police during his detention in July 2009. The first time the author mentioned the beatings by the police was during the cassation appeal. He did not complain about the beatings in his supervisory review appeals. The State party notes that the cassation court cannot review facts which were not established by the court of first instance. The State party submits that the author could have submitted a complaint concerning police action under article 286 (3) (a) of the Criminal Code at any time, even while his trial was ongoing. He has 10 years to submit a complaint under that article.

4.3 The Office of the Prosecutor General denied having received the complaint from the author about beatings by the police that he claims to have submitted to the prosecutor who was summoned on the third or fourth day of his detention. According to the Supreme Court, the Novy Urengoy City Court did not receive any complaints of the author being beaten.

4.4 The State party submits that the author did not appeal the decision of the Novy Urengoy investigative unit dated 31 July 2009 not to open a criminal investigation into his injuries. The decision, which was sent to the author, mentioned the appeal options.

4.5 The State party submits that the author's claims under article 14 (3) (e) of the Covenant are unsubstantiated and inadmissible under article 2 of the Optional Protocol. The trial record indicates that a witness, Mr. A.T., was questioned at the author's request without any limitations being imposed by the judge. The author did not mention in his cassation or supervisory review appeals the refusal of the judge to question the other four witnesses.

4.6 On the merits of the communication, the State party submits that the court of first instance tried to summon Mr. S.Z. and Mr. M.T. as witnesses, following the request of the author. The court unsuccessfully tried to reach them by telegram at the addresses recorded in the case file, and later also by telephone. The presiding judge indicated that the court does not have a duty to locate witnesses, although it would not be able to deny the questioning of witnesses if parties could bring them to the court hearings. The State party adds that the witnesses in question were witnesses of the public prosecution. Since the witnesses did not attend the court proceedings, the public prosecutor requested the court to read out the testimonies they had given during the preliminary investigation. In their testimonies, the witnesses had described in detail the number of times and the manner in which the author had struck the victim with a chair and an axe. That request was denied by the court following the defendant's protest.

4.7 With regard to the author's claim that the court denied, without explanation, his motion to question four more witnesses and to examine a video recording of the confession of his co-accused, Mr. M., made by one of those witnesses, the State party refers to the conclusion of the presiding judge that the recording had not been made through procedural means and that it was impossible to verify its authenticity and compliance with the requirements of the Code of Criminal Procedure. Referring to the additional witnesses, the judge noted that the court did not know their location and the information they possessed. The judge allowed the defence to resubmit the motion after questioning Mr. A.T. After Mr. A.T. was questioned, the parties had no further questions for him.

4.8 Referring to the merits of the author's allegation that he testified under duress, the State party submits that, according to the trial record, the author requested to add to the case file letters received in response to his complaints. They included three letters containing the author's allegations that he was wrongfully accused, which were transmitted to various authorities, four replies stating that the complaints about the actions of a police officer of the Novy Urengoy police department were transmitted to the prosecutor's office and were under consideration, and two responses from the prosecutor of the Oktyabrsky district stating that the author had been accused and the case was being investigated by the Investigative Committee. The State prosecutor objected to adding those letters to the case file, stating that they were merely accompanying letters, they did not contain any information about the author's interrogation and could not be useful in consideration of the admissibility of the evidence.

4.9 The State party submits that, since there were differences between the testimony the author provided during the trial and the testimony he provided during the preliminary investigation, the court of first instance decided on whether the author's interrogation records of 16 July 2009 (signed in the presence of a lawyer and without remarks) could be used as evidence. His lawyer questioned him about the circumstances under which he was interrogated on 16 July 2009. She also asked the author what issues he raised in his complaints against the law enforcement officers. The author clarified that the investigator exerted psychological pressure on him by informing him of the prison term for murder. According to the author, the complaints concerned the difference between the factual date of his detention and the date when it was recorded. The author did not mention that he was subjected to physical violence during the interrogation. Based on the author's answers, the judge concluded that his interrogation was lawful.

#### **Author's comments on the State party's observations**

5.1 On 29 April 2019, the author submitted comments on the State party's observations. He clarifies that he did state before the court of first instance, as attested by the trial record, that at the time of his arrest, he had been beaten by two police officers to force him to testify against himself and a co-accused. The presiding judge dismissed that statement and denied him an opportunity to tell the jury about the beatings and the forced testimony. The author submits that the letters he submitted to the court were the only means to prove that he complained about his treatment. He did not have any other proof, since he did not receive any records or replies from the authorities to his complaints or follow-up inquiries.

5.2 The author claims that he could not have appealed the decision of the Novy Urengoy investigative unit dated 31 July 2009 denying his request to open a criminal investigation

into his injuries, since he did not receive it. The mere fact that the document exists is proof that he did complain about the beatings by the police.

5.3 The author reiterates his claims under article 14 (3) (e) of the Covenant.

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

#### *Considerations of admissibility*

6.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 97 of its rules of procedure, whether the communication is admissible under the Optional Protocol.

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 notes the State party's arguments under article 5 (2) (b) of the Optional Protocol that the author has not exhausted domestic remedies concerning his claims under articles 7, 10 (1) and 14 (3) (g) of the Covenant, since he failed to bring the beatings by the Novy Urengoy police officers to the attention of the prosecutor's office and the court. He also failed to appeal the decision of the Novy Urengoy investigative unit dated 31 July 2009 not to open an investigation into his claims of injuries. The Committee notes the author's reference to the trial record, attesting to his complaint about having been beaten by two police officers at the time of his arrest, and his claim that he did not receive a copy of the decision of the Novy Urengoy investigative unit.

6.4 Before considering the parties' arguments concerning the exhaustion of domestic remedies, the Committee notes that the three articles of the Covenant – 7, 10 (1) and 14 (3) (g) – violation of which the author claims on account of the beatings by the Novy Urengoy police officers, should be separated as different claims. The Committee notes that only article 7 of the Covenant relates to the author's allegations of his treatment by the police. Article 14 (3) (g) relates to the use of his forced testimony by the court. The author does not clarify how article 10 (1) of the Covenant, which relates to treatment of prisoners, was violated in his case.

6.5 With regard to the author's claims under article 7 of the Covenant, the Committee notes that the case file does not contain the text of the complaint to the prosecutor's office or the Novy Urengoy City Court (see para. 2.1 above), allegedly filed by the author regarding his beatings by the police investigator. The Committee also notes that the trial record provided by the author mentions the beatings by two police officers at the time of his arrest (see para. 5.1 above), not by the police investigator during his questioning. In the absence of any documentary evidence, the Committee finds the author's complaint insufficiently substantiated and inadmissible under article 2 of the Optional Protocol. The lack of substantiation does not allow the Committee to proceed with an assessment of whether the domestic remedies have been exhausted.

6.6 The Committee notes that, since the author does not clarify how article 10 (1) of the Covenant is relevant in his case, this part of the claim is unsubstantiated and inadmissible under article 2 of the Optional Protocol.

6.7 The Committee notes the author's claim that the court of first instance used his testimony, extracted under pressure by the investigator, in violation of article 14 (3) (g) of the Covenant. The Committee notes the State party's argument that, before accepting as evidence the author's testimony provided on 16 July 2009, the court of first instance assessed the circumstances under which it had been provided. The author did not allege that physical violence had been towards him.

6.8 The Committee refers to its general comment No. 32 (2007), according to which the safeguard under article 14 (3) (g) 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 (para. 41). The Committee notes that the author alleged in court that he gave his testimony under the psychological pressure from State-appointed counsel and the investigator, who threatened him with up to 25 years in

prison if he did not testify, and that he was told what to say by the investigator. The Committee observes, however, that the public prosecutor requested the use of the interrogation record in question to clarify the inconsistencies between the testimonies given by the author during the preliminary investigation and in court. The Committee is not aware of the context of the interrogation records and how they were assessed by the court. The Committee finds that the file does not contain information on whether the author was made to testify against himself and to confess guilt in terms of article 14 (3) (g) of the Covenant. The Committee thus finds this part of the communication insufficiently substantiated and inadmissible under article 2 of the Optional Protocol.

6.9 The Committee notes the author's allegations under article 14 (3) (e) of the Covenant that his motion to question additional witnesses and to accept as evidence a video recording made by one of the witnesses was denied without justification by the court of first instance. The Committee recalls that it is primarily for the domestic legislatures of States parties to determine the admissibility of evidence and how their courts assess it. The principle of equality of arms guaranteed under article 14 (3) (e) of the Covenant does not provide an unlimited right to obtain the attendance of any witness requested by the accused or their counsel, but only a right to have witnesses admitted that are relevant for the defence, and to be given a proper opportunity to question and challenge witnesses against them at some stage of the proceedings.<sup>1</sup>

6.10 The Committee notes that the trial record submitted by the author indicates that the presiding judge provided justification for the refusal to summon additional witnesses and to examine the video recording in question. The Committee also notes that the testimonies provided by Mr. S.Z. and Mr. M.T. during the preliminary investigation were not taken into consideration by the court. The other witnesses were never questioned. Therefore, none of the witnesses requested by the author testified. The author does not clarify how the testimonies of those witnesses were relevant to his defence.<sup>2</sup> The judge refused to examine the video recording on the ground that it was not obtained in a procedural way and that its authenticity could not be verified. The Committee does not consider that the court of first instance acted arbitrarily by refusing the author's motions to question additional witnesses and to examine the video recording in question. The Committee finds the author's claim under article 14 (3) (e) of the Covenant insufficiently substantiated and thus inadmissible under article 2 of the Optional Protocol.

7. The Committee therefore decides:

- (a) That the communication is inadmissible under articles 2 and 5 (2) (b) of the Optional Protocol;
- (b) That the present decision shall be transmitted to the State party and to the author.

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<sup>1</sup> General comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, para. 39.

<sup>2</sup> *S.V. v. Belarus* (CCPR/C/116/D/2047/2011), para. 6.4; *A.A. v. Russian Federation* (CCPR/C/139/D/2964/2017), para. 6.9; and *Khmelevsky v. Belarus* (CCPR/C/139/D/2792/2016), para. 8.4.