United Nations

CCPR/C/129/D/2478/2014

International Covenant on Civil and Political Rights

Distr.: General
14 October 2020

Original: English

Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2478/2014*, **

Communication submitted by:	Sergei Sotnik (represented by counsel, Dmitri Bartenev)
Alleged victim:	The author
State party:	Russian Federation
Date of communication:	25 October 2014 (initial submission)
Document references:	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 20 November 2014 (not issued in document form)
Date of adoption of Views:	23 July 2020
Subject matter:	Unlawful detention and failure to compensate
Procedural issue:	Non-substantiation
Substantive issues:	Unlawful detention; right to remedy
Articles of the Covenant:	9 (1) and (5), and 14 (1)
Article of the Optional Protocol:	2

1. The author of the communication is Sergei Sotnik, a national of the Russian Federation born in 1974. He claims that the State party has violated his rights under articles 9 (5) and 14 (1) of the Covenant. Even if they have not been invoked specifically, the Committee considers that the facts as submitted also raise issues under article 9 (1) of the Covenant. The Optional Protocol entered into force for the State party on 1 January 1992. The author is represented by counsel.

The facts as submitted by the author

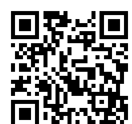
2.1 The author submits that a criminal investigation was initiated against him on 28 November 2006, on charges of insulting and using violence against police officers in the course of their duties. According to the testimony of the police officers involved and four

* Adopted by the Committee at its 129th session (29 June–24 July 2020).

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

GE.20-13561(E)

Please recycle



other witnesses, the group of police officers were interrogating three suspects during their investigation of an unrelated case of theft when the author approached them and started insulting them. After two of the police officers showed their identification, the author reportedly continued his verbal assaults and physically assaulted one of the officers by kicking him in the abdominal area, which eventually led to the author's arrest by the police.[1]

2.2 On 20 February 2008, the Kuibyshevsky District Court of Saint Petersburg confirmed the acts imputed to the author, yet in the light of a psychiatric examination ordered by the court, which diagnosed him with acute paranoid schizophrenia, it was noted that the author cannot be held criminally responsible.[2] Consequently, the court terminated the criminal proceedings and ordered him to undergo psychiatric treatment. The author appealed, but the judgment was upheld by the district court on 7 December 2009 and by the Saint Petersburg City Court on 28 September 2010. On 1 August 2008, the case was returned to the prosecutor by the district court in order to join the two cases relating to his verbal and physical assaults in one set of proceedings. According to the author, he was not informed of any subsequent actions undertaken by the prosecutor.

2.3 On 12 November 2008, however, the author was arrested by an investigating officer on the basis of his alleged failure to appear before an investigator, which was interpreted as a risk of flight and a breach of his written pledge not leave his place of residence without permission. The author denied ever trying to abscond, and stated that neither he nor his lawyer ever received any notices to appear. On 14 November 2008, the district court granted the investigative officer's request to hold the author in pretrial detention. The author appealed against the detention order, claiming that there was no evidence that he would try to abscond and that therefore, the allegations of the investigation officer were baseless and his detention unlawful. Nevertheless, the author remained in detention from 12 November 2008 to 27 March 2009, a duration exceeding 139 days (four months and two weeks).

2.4 On 29 January 2009, the Saint Petersburg City Court dismissed the judgment of 14 November 2008 issued by the district court and returned the case for a de novo hearing. On 4 February 2009, the district court re-examined the author's case and again granted the investigating officer's request on the same grounds. On 20 February 2009, this decision was annulled, and sent for further re-examination. The lower court, having heard the case anew, again found that the author should be kept in detention. On appeal from the author, on 26 March 2009, the city court dismissed the decision of the district court and ordered the author's release. On 3 April 2009, the district court again rejected the investigator's request to detain the author.

2.5 The author submits that not only was he unlawfully detained, but he was also subjected to deplorable conditions at the IZ-47/1 pretrial detention centre in Saint Petersburg, having spent over four months in overcrowded cells with despicable sanitary conditions, which led to his lawsuit for damages. However, on 3 February 2010, the Nevsky District Court of Saint Petersburg rejected the author's claim for damages, on the ground that he had failed to produce any evidence of the unlawfulness of the judgments ordering his detention. The author appealed to the Saint Petersburg City Court, which had dismissed his appeals on 3 February, 6 April and 20 August 2010 and upheld the judgment of the district court. The author then filed appeals for supervisory reviews to the Supreme Court and the Constitutional Court of the Russian Federation, which were rejected on 18 October 2010 and 17 November 2011, respectively.

The complaint

3.1 The author is of the view that his claim for damages for unlawful detention was rejected in violation of article 9 (5) of the Covenant and various domestic legal provisions providing him with a right to compensation, as the latter were interpreted as safeguarding the right to compensation exclusively in those cases where the person has been acquitted in

[1] The author disputed the facts during his criminal proceedings, claiming his actions were not unprovoked, but that he was himself the victim of a beating. However, his claims were later dismissed by the Kuibyshevsky District Court in the light of the testimonies of the witnesses.

[2] Article 21 of the Criminal Code of the Russian Federation declares that a person whose capacity of volition is impaired by a mental illness is not to be held criminally responsible.

criminal proceedings. Furthermore, the Saint Petersburg City Court held that the fact that the order of detention had been struck down as a result of being groundless did not give rise to a claim of unlawfulness.

3.2 The author contends that domestic courts erred in their application of the law, as he spent over four months in pretrial detention on the basis of court orders that were issued without an examination of all the necessary grounds for depriving him of his liberty. Thus, while the author does not deny that the court orders were formally lawful, he claims that they are nevertheless substantially unlawful, as they were ordered in the absence of sufficient grounds and led to his unlawful detention.

3.3 Furthermore, the author highlights that if it were acceptable for domestic courts to apply this interpretation, it would mean that he has been denied an enforceable right to compensation under article 9 (5) of the Covenant. He was detained for over four months with no apparent reason and his rights under article 9 (5) were violated. In the view of the author, that demonstrates that the law of the Russian Federation does not provide for an effective remedy for obtaining redress for arbitrary detention in cases where the pretrial detention is based on a formal court order.

3.4 The author contends that in the absence of a reasoned judgment regarding his claim for compensation, the judgment amounts to a violation of his right to a fair trial, as protected by article 14 (1) of the Covenant.

State party's observations on admissibility and the merits

4.1 In a note verbale dated 19 July 2016, the State party submitted its observations on admissibility and the merits. In accordance with article 9 (5), an unlawfully detained person indeed has an enforceable right to compensation. In accordance with article 1070 (1) of the Civil Code of the Russian Federation, a person who was unlawfully convicted, charged with a crime, subjected to pretrial detention, or unlawfully sentenced to an administrative arrest, must be compensated fully, and such compensation must be paid by the regional unit of the Russian Federation or a municipality. This rule applies whether the violation of the rights was caused by investigators, prosecutors or the judiciary.

4.2 On 6 April 2010, the Civil Court of Saint Petersburg issued a decision refusing to grant compensation to the author, and reasoned that the author's detention was not necessarily unlawful. The author's detention was recognized as "unwarranted", in accordance with article 7 of the Criminal Procedure Code of the Russian Federation, but this detention was not recognized as unlawful. In its decision dated 18 October 2010, the Civil Collegium of the Supreme Court of the Russian Federation reasoned that lower courts did not find any "grounds for rehabilitation", which is a necessary finding for the awarding of compensation, and the author's lawsuit was dismissed. The Supreme Court also found that the detention was "unwarranted", but not unlawful.

4.3 Paragraph 51 of the Committee's general comment No. 35 (2014) on liberty and security of person states that the "unlawful" character of the arrest or detention may result from violation of domestic law. The same paragraph also states that the acquittal of the criminal defendant does not in and of itself render any preceding detention "unlawful".

4.4 On 29 January and 20 February 2009, the Saint Petersburg City Court annulled a lower court decision on the author's detention, but it did not order the release of the author. Instead, it asked the lower court to conduct a new pretrial detention hearing. Subsequently, on 26 March 2009, the city court decided to release the author, and he was freed pending trial.

4.5 The author's complaint to the Committee on the violation of his rights under article 9 (5) of the Covenant can therefore be considered as "incompatible" with the provisions of the Covenant.

4.6 When courts considered the author's compensation lawsuit, they sent an information request to the chief of pretrial detention centre No. 4 in Saint Petersburg, asking for details of the author's conditions of detention. The courts did not find that the author was entitled to compensation for material damage. In accordance with article 56 (1) of the Civil Procedure Code of the Russian Federation, each side to the lawsuit must provide evidence of the circumstances to which they refer. The court of first instance, for example, examined the author's claim that he lacked food and sanitary items, or that they were of poor quality.

The author's "different nutrition habits" cannot be considered as evidence of material damage. The author also failed to furnish evidence that he had requested medical evidence.

4.7 The State party notes that the issues of admissibility, sufficiency and relevance of evidence are normally considered only by national courts. The Committee itself established that the assessment of facts and evidence in each specific case and the application of law should be left to the national court, unless it can be shown that such assessment was arbitrary or resulted in the denial of justice.[3] However, based on the materials of the communication, there is no evidence that the assessment made by national courts was arbitrary or amounted to a denial of justice.

4.8 The State party therefore submits that the author's communication to the Committee must be considered as inadmissible, as it is incompatible with the provisions of the Optional Protocol to the Covenant and reveals no violations of article 9 (5) and 14 (1) of the Covenant.

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

5.1 The author on 17 January 2017 responded to the State party's observations on admissibility and the merits. The author claims that the State party must pay compensation for his unlawful detention from 12 November 2008 to 27 March 2009.

5.2 The State party contends that the author's detention was lawful since it was based on court orders. In this regard, the author submits, however, that the State party's arguments that his detention was lawful run contrary to the facts of the communication and the jurisprudence of the Committee. The State party mistakenly refers to paragraph 51 of the Committee's general comment No. 35, which indicates that the mere acquittal does not in and of itself render any preceding detention "unlawful". In his initial communication to the Committee, the author claimed violation of article 9 (5) of the Covenant independent of the eventual outcome of the criminal case against him.

5.3 As stated in paragraph 12 of general comment No. 35, an arrest or detention may be authorized by domestic law and nonetheless be arbitrary. The Committee further explained that the notion of "arbitrariness" is not to be equated with "against the law", but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law, as well as elements of reasonableness, necessity and proportionality. The pretrial detention must therefore be reasonable and necessary in all circumstances.

5.4 The author indicated in his complaint to the Committee that while his detention may have been lawful under domestic law, it did not fulfil the lawfulness requirements under article 9 of the Covenant, since the detention was not reasonable or necessary in the circumstances of the author's case. Lack of such reasonable and necessary criteria is confirmed by national courts. In its final decision dated 3 April 2009, the Kuibyshevsky District Court decided not to hold the author pending trial, since the request to hold him, which was submitted by an investigator on 12 November 2008, lacked any basis for detaining the author under the laws of the Russian Federation. The State party provides no explanation regarding this matter, and instead, argues that formally, the decision to hold the author was not found to be unlawful.

5.5 The author points out that the State party argues that on 29 January and 20 February 2009, the courts simply sent the case for re-examination, but did not release the author. The fact of the matter is that the courts, by sending the author's case for re-examination, confirmed the fact that the lower court's decision to detain the author was unlawful. The author was not released despite the fact that the decision of the lower court was invalidated, which proves once again that the State party violated his rights under article 9 of the Covenant. The author should have been released while his case was sent for re-examination. The courts did not release him, and it did not conduct the necessary test to determine whether his detention was necessary. The author therefore claims that his rights under article 9 (5) of the Covenant were violated.

[3] *Cañada Mora v. Spain* (CCPR/C/112/D/2070/2011).

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claims contained in a communication, the Human Rights Committee must, in accordance with rule 97 of its rules of procedure, decide whether or not it 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 claim that the author has exhausted all available effective domestic remedies. In the absence of any objection by the State party in this connection, the Committee considers that the requirements of article 5 (2) (b) of the Optional Protocol have been met.

6.4 The Committee has noted the author’s claims under article 14 (1) of the Covenant. In the absence of any further pertinent information on file, however, the Committee considers that the author has failed to sufficiently substantiate, for purposes of admissibility, these allegations. Accordingly, it declares this part of the communication inadmissible under article 2 of the Optional Protocol.

6.5 The Committee takes note of the State party’s submission that the communication should be considered as incompatible with the provisions of the Covenant since the author failed to substantiate his claims. In the Committee’s view, however, the author has sufficiently substantiated, for the purposes of admissibility, his claims of violations of rights under article 9 (5) of the Covenant. The Committee also considers that this part of the communication raises issues under article 9 (1) of the Covenant. The Committee therefore declares them admissible and proceeds with its consideration of the merits.

Consideration of the merits

7.1 The Committee has considered the communication in the light of all the information submitted to it by the parties, in accordance with article 5 (1) of the Optional Protocol.

7.2 The Committee notes the author’s allegations that from 12 November 2008 to 27 March 2009, he was detained unlawfully pending his trial. The State party acknowledges that the author was detained and subsequently released, but it contends that his detention was found by domestic courts to be “unwarranted” rather than “unlawful”.

7.3 The Committee recalls its jurisprudence indicating that an arrest or detention may be authorized by domestic law and nonetheless be arbitrary. The notion of “arbitrariness” is not to be equated with “against the law”, but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law,[4] as well as elements of reasonableness, necessity and proportionality. For example, remand in custody on criminal charges must be reasonable and necessary in all the circumstances.[5] Furthermore, while the fact that a criminal defendant was ultimately acquitted, at first instance or on appeal, does not in and of itself render any preceding detention “unlawful”,[6] the “unlawful” character of the arrest or detention may result from violation of domestic law or violation of the Covenant itself.[7]

7.4 The Committee notes that in the present case, the national courts recognized that there was no evidence that the author had been properly notified and had failed to appear, according to the Kuibyshevsky District Court decision dated 3 April 2009. The Committee further notes that on both 14 November 2008 and 4 February 2009, the same court decided to detain the author but did not consider whether the author would abscond, and whether

[4] *Gorji-Dinka v. Cameroon* (CCPR/C/83/D/1134/2002), para. 5.1; and communication No. 305/1988, *Van Alphen v. Netherlands*, para. 5.8.

[5] *Kulov v. Kyrgyzstan* (CCPR/C/99/D/1369/2005), para. 8.3.

[6] Communication No. 432/1990, *W.B.E. v. Netherlands*, para. 6.5; communication No. 963/2001, *Uebergang v. Australia*, para. 4.4.

[7] Human Rights Committee, general comment No. 35 (2014) on liberty and security of person, para. 51.

the detention in such circumstances was "reasonable and necessary".[8] In the light of the circumstances described above, and in the absence of specific explanations from national courts and the State party thereon, the Committee considers that the State party violated the author's rights under article 9 (1) of the Covenant.

7.5 The Committee next notes the author's argument that because he was held arbitrarily, he should have had an enforceable right to compensation. The Committee recalls that article 9 (5) obliges States parties to establish the legal framework within which compensation can be afforded to victims, as a matter of enforceable right and not as a matter of grace or discretion. The remedy must not exist merely in theory, but must operate effectively and payment must be made within a reasonable period of time.

7.6 In the present case, while the domestic courts accepted the author's lawsuit and considered it, they refused to compensate the author for the time he spent in detention based on the finding that his detention was "unwarranted", rather than "unlawful". The Committee notes the Nevsky District Court's decision dated 3 February 2010, in which the court refused compensation based on the fact that the author was not "rehabilitated", within the meaning established by articles 133 and 134 of the Criminal Procedure Code of the Russian Federation. The Committee therefore considers that the Nevsky District Court limited the author's right to compensation by conditioning this right on finding of grounds for "rehabilitation", a finding only made by criminal courts. The Committee notes that this deficiency was not subsequently corrected by the Saint Petersburg City Court (appeal decisions dated 3 February, 6 April, and 20 August 2010) or by the Supreme Court of the Russian Federation. By requiring a necessary finding of rehabilitation by a criminal court, the State party makes it impossible, in the absence of a previously favourable finding, for persons like the author to exercise their right to an enforceable compensation. In the light of this finding, and considering the Committee's finding to the effect that the author's detention was indeed arbitrary, the Committee concludes that the State party violated the author's right to an enforceable remedy, as protected under article 9 (5) of the Covenant.

8. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts before it disclose a violation of the author's rights under articles 9 (1) and (5) of the Covenant.

9. Pursuant to 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. In the present case, the State party is obliged to provide the author with an effective remedy, including adequate compensation for the violations suffered. The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future.

10. 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 or not and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective 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 have them widely disseminated in the official language of the State party.

---

[8] Ibid., para. 12.