



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. 2433/2014* **

<i>Communication submitted by:</i>	V.S., not represented by counsel
<i>Alleged victim:</i>	The author
<i>State party:</i>	Russian Federation
<i>Date of communication:</i>	9 January 2014 (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 20 June 2014 (not issued in document form)
<i>Date of adoption of decision:</i>	25 March 2021
<i>Subject matter:</i>	Unfair trial; forced confession
<i>Procedural issue:</i>	Abuse of the right of submission
<i>Substantive issues:</i>	Fair trial guarantees; confession under duress
<i>Articles of the Covenant:</i>	7, 9 (1), 10 and 14 (1) and (3) (a), (d), (e) and (g)
<i>Article of the Optional Protocol:</i>	3

1. The author of the communication is V.S., a national of the Russian Federation born in 1959. He claims that the State party has violated his rights under articles 7, 9 (1), 10 and 14 (1) and (3) (a), (d), (e) and (g) of the Covenant. The Optional Protocol entered into force for the Russian Federation on 1 January 1992. The author is not represented by counsel.

Facts as submitted by the author

2.1 The author was an owner of a flat, which he rented to two female students. On 8 November 2005, he was arrested on suspicion of two separate episodes of attempted rape against the tenants. He was brought to a police station and interrogated by an investigator, who poked his hands with a paper clip in an attempt to force him to confess. However, the author refused to confess guilt. According to him, the tenants had conspired with the investigator to falsely charge him with crimes because the tenants did not want to pay the rent, and the investigator wanted to take away his flat.

* Adopted by the Committee at its 131st session (1–26 March 2021).

** The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Wafaa Ashraf Moharram Bassim, Yadh Ben Achour, Arif Bulkan, Mahjoub El Haiba, Furuya Shuichi, Carlos Gómez Martínez, Marcia V.J. Kran, Duncan Laki Muhumuza, Photini Pazartzis, Hernán Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Soh Changrok, Kobauyah Tchamdja Kpatcha, Hélène Tigroudja, Imeru Tamerat Yigezu and Gentian Zyberi.



2.2 On 14 March 2006, the investigator brought the author to the police station again and, using threats and physical violence, forced him to sign a power of attorney authorizing two real estate agents unknown to him to sell his apartment for a price they deemed appropriate. Later in the detention facility, the author was beaten and forced to confess to the two crimes with which he had initially been charged, in the absence of a lawyer.

2.3 On 14 May 2007, the Court of the Central District of Chita found the author guilty of the attempted rapes and sentenced him to nine years' imprisonment. The author claimed that the investigator had plotted the crime, in order to misappropriate his flat, and that he had been forced to confess guilt. He argued that he would not have been physically able to attempt the rapes because at that time he had broken ribs. The court dismissed the author's arguments stating that it was an attempt to "avoid criminal liability". During the trial, the author motioned the court to allow P., who was a human rights defender, to defend him in addition to his lawyer M.; however, the trial court did not allow P. to represent the author because she was not a licensed lawyer.

2.4 On 29 October 2007, the Chita Regional Court rejected the author's cassation appeal and upheld the sentence. On 5 May 2008, the author's appeal for a supervisory review was denied by the Supreme Court. In 2013, the author submitted another appeal for a supervisory review which was denied by the Deputy Chairperson of the Supreme Court on 18 April 2013.

2.5 On 8 February 2010, the author submitted a complaint against the investigator to the Central District Department of the Investigation Committee, accusing him of torture with the goal of misappropriating his flat. Between 2010 and 2013, the Department took a number of decisions refusing to initiate criminal proceedings against the investigator, which were quashed by supervising authorities owing to incomplete or protracted investigation. The last refusal to initiate criminal proceedings, dated 24 July 2013, was signed by the deputy head of the Central District Department of the Investigation Committee. It was based on the fact that the author's allegations could not be verified during the Department's preliminary inquiry, nor could his allegations be refuted by it. On 16 September 2013, the refusal was quashed by the head of the Department who ordered that the whereabouts of a number of additional witnesses be established and that they be questioned. It appears that the author's complaint remained pending at the time of the submission of the present communication.

Complaint

3.1 The author claims, without providing any details or medical records of injuries, that he was subjected to torture and ill-treatment at the hands of the investigator and was forced to confess guilt in violation of articles 7 and 14 (3) (g) of the Covenant.

3.2 He claims that the criminal proceedings against him were held in violation of article 14 (1) of the Covenant. He challenges the outcome of the proceedings and the assessment of evidence by the domestic courts. He maintains that his complaint regarding the forced confession in the absence of a lawyer was never duly examined. He argues that, in violation of his presumption of innocence, he was found guilty because of his previous rape conviction.¹ He claims that a number of witnesses were not questioned and that he was not given an opportunity to familiarize himself with a full version of the indictment act.

3.3 The author claims that the trial court violated his rights under article 14 (3) (d) when it did not allow P. to represent him during the trial.

3.4 The author also claims a violation of articles 9, 10 and 14 (3) (a) and (e) of the Covenant, but without providing further details.

State party's observations on admissibility

4.1 In a note verbale dated 6 October 2014, the State party submitted its observations on admissibility. It notes that on 14 May 2007, the author was found guilty of attempting to rape L. and M. and was sentenced to nine years' imprisonment by the Court of the Central District of Chita. On 29 October 2007, the sentence was upheld by the Chita Regional Court. On 5 May 2008, the author's appeal for a supervisory review was denied by the Supreme Court.

¹ The author had been previously convicted of rape in 1995.

Another appeal for a supervisory review was denied by the Deputy Chairperson of the Supreme Court on 18 April 2013.

4.2 According to the State party, the author's rights and the general principle of the equality of arms was duly ensured during the trial. The author and his counsel actively participated in the criminal proceedings, and they were able to present all of their evidence and to challenge the prosecution's case. All motions submitted by the defence were examined by the court and several were granted, including motions to replace the defence counsel, to examine evidence, to cross-examine witnesses and to conduct a forensic examination. The State party notes that the author's allegations of wrongdoing and of the violation of his rights by the investigative authorities have been examined by the courts and have been found to be baseless.

4.3 The State party argues that the author's communication does not contain objective arguments and evidence demonstrating a breach of the invoked articles of the Covenant. The author's dissatisfaction with the outcome of the criminal proceedings, which were carried out in accordance with domestic law and with the State party's international obligations, does not constitute a violation of the Covenant. Therefore, the State party considers that the present communication should be treated as an abuse of the right of submission within the meaning of article 3 of the Optional Protocol and should be found inadmissible.

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

5. On 8 December 2015, the author submitted his comments to the State party's observations on admissibility. He notes that the State party has not addressed his claims, and he maintains that he was serving an unlawful prison sentence. He also notes that he was released from prison after serving his sentence.

State party's observations on the merits of the communication

6.1 In a note verbale dated 6 May 2016, the State party submitted its observations on the merits. It reiterates that the author's claims are unsubstantiated and have been thoroughly examined by the domestic courts, including his claims of torture and forced confession.

6.2 With regard to the author's claim of a violation of his right to defence, the State party submits that in accordance with the author's request, his first lawyer Z. was removed from the case and replaced with another lawyer, M. During the trial, the author motioned the court to allow P. to join his legal defence team; however, the court was not provided with documents showing that P. was a licensed lawyer. Since P. was not present in the courtroom, the author, after consulting his lawyer M., agreed to continue the trial with only his lawyer M. defending him. The same lawyer represented the author during the cassation proceedings.

Issues and proceedings before the Committee

Consideration of admissibility

7.1 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.

7.2 In accordance with article 5 (2) (a) of the Optional Protocol, the Committee shall not consider any communication from an individual unless it has been ascertained that the same matter is not being examined under another procedure of international investigation or settlement.

7.3 The Committee observes that the present communication was submitted by the author on 9 January 2014, i.e. more than six years after the cassation court's ruling, which upheld the first instance decision sentencing him to nine years' imprisonment, entered into force, and five years and eight months after his first appeal for a supervisory review was denied by the Supreme Court on 5 May 2008. Even though he submitted another appeal for a supervisory review in 2013, which was denied by the Deputy Chairperson of the Supreme Court on 18 April 2013, it does not seem to raise any new elements other than the same procedural flaws in the domestic proceedings that he had already raised in the first appeal for

a supervisory review. The Committee notes that there are no fixed time limits for submission of communications under the Optional Protocol and that mere delay in submission does not of itself involve abuse of the right of communication.² However, according to the Committee's rules of procedure, a communication may constitute an abuse of the right of submission, when it is submitted five years after the exhaustion of domestic remedies by the author of the communication, or, where applicable, three years from the conclusion of another procedure of international investigation or settlement, unless there are reasons justifying the delay, taking into account all the circumstances of the communication. The Committee observes that there is nothing in the author's communication to justify the delay of more than five years. Nothing in the author's submissions suggest that he was limited in contacting the outside world from prison, which is evident by the fact that he was able to submit a complaint against the investigator in 2010. In the absence of any explanation of pertinence, the Committee considers that in this case, submitting the communication after such a long lapse of time constitutes an abuse of the right of submission. Accordingly, the Committee concludes that the communication is inadmissible under article 3 of the Optional Protocol and rule 99 (c) of the Committee's rules of procedure.

8. The Committee therefore decides:

- (a) That the communication is inadmissible under article 3 of the Optional Protocol;
- (b) That the decision shall be communicated to the State party and to the author.

² *Polacková and Polacek v. Czech Republic* (CCPR/C/90/D/1445/2006), para. 6.3; and *D.S. v. Russian Federation* (CCPR/C/120/D/2705/2015), para. 6.4.