



# 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. 2524/2015\*, \*\*

<i>Communication submitted by:</i>	Madina Magomadova (not represented by counsel)
<i>Alleged victims:</i>	The author and her brother, Shamsy Magomadov
<i>State party:</i>	Russian Federation
<i>Date of communication:</i>	16 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 12 January 2015 (not issued in document form)
<i>Date of adoption of Views:</i>	19 March 2019
<i>Subject matters:</i>	Detention and mistreatment of the author
<i>Procedural issue:</i>	Non-substantiation of the claims
<i>Substantive issues:</i>	Torture, arbitrary arrest/detention, right to remedy, right to life
<i>Articles of the Covenant:</i>	2 (3), 6 (1), 7, 9 (1) and (5)
<i>Article of the Optional Protocol:</i>	5 (2) (b)

1. The author is Madina Magomadova, a Russian national born in 1954. She submits the communication on her own behalf and on behalf of her brother, Shamsy Magomadov, a Russian national born in 1957. The author claims that the State party violated her rights under article 7, and her brother's rights under articles 6 and 9 (1) and (5) of the International Covenant on Civil and Political Rights. The Optional Protocol entered into force for the Russian Federation on 1 January 1992. The author is not represented.

\* Adopted by the Committee at its 125th session (4–29 March 2019).

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



**The facts as submitted by the author**

2.1 On 9 January 1995, the author's brother was arrested in the city of Grozny, Chechen Republic, by Russian military officers. From 1995 to 2004, the author and her mother requested information from various law enforcement authorities and public bodies in order to establish Mr. Magomadov's whereabouts, all without success.

2.2 The author learned at some point in 1995 that her brother was imprisoned in jail No. 5 in Stavropol, Russian Federation.<sup>1</sup> The Commission for Search and Exchange at the headquarters of the federal military forces in Grozny informed the author that her brother had been sentenced to 14 years in prison but never arrived at the location where he was supposed to serve his sentence. On 13 January 1997, the author received a letter from the interregional prosecutor's office for the Caucasus informing her that a criminal case had been opened concerning the unlawful arrest and detention of Chechen nationals.<sup>2</sup> On 10 March 1997, the interregional prosecutor's office for the Caucasus informed the author that her brother had been arrested in Grozny on 9 January 1995 by federal military forces and detained in jail in Mozdok city, North Ossetia-Alania, until 3 February 1995, when he was released.

2.3 On 4 July 2000, the author received a response from the criminal investigations unit of the Chelyabinsk regional police that her brother was not being held in any of the prisons in that region of the Russian Federation. On 12 October 2004, the author received a letter from the State Duma (parliament) of the Russian Federation stating that her request for information had been sent to the Ministry of Justice of the Russian Federation.<sup>3</sup>

2.4 On 2 July 2010, the author applied to the prosecutor's office in Grozny with a request to reopen the criminal investigation for the alleged murder of her brother. On 15 May 2011, the prosecutor's office rejected the request, as the time limit for a murder investigation had expired in January 2010.

2.5 The author appealed the decision of the Grozny prosecutor's office to the courts. On 9 September 2011 the Staropromyslovsky district court in Grozny upheld the decision of the prosecutor's office. The author argued that she believed that the criminal investigation had been opened in 1995 when she first applied to the prosecutor's office about the disappearance of her brother.<sup>4</sup> The author appealed the court's decision to the Supreme Court of the Chechen Republic. On 19 October 2011 her appeal was rejected.

**The complaint**

3.1 The author claims that the circumstances of the detention and disappearance of her brother provide reasonable grounds to believe that he was intentionally and unlawfully killed by Russian military forces in violation of article 6 (1) of the Covenant.

3.2 The author states that her brother was detained and abducted in territory under the effective control of the State party and that his fate remains unknown. She claims violations of article 9 (1) and 9 (5) of the Covenant in that regard.

3.3 The indifference demonstrated by the authorities of the State party to the disappearance of the author's brother caused her pain and moral suffering, which can be qualified as a treatment contrary to article 7 of the Covenant.

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<sup>1</sup> It is unclear whether this information was received orally or in writing. If it was in writing, the document is not among the materials of the communication.

<sup>2</sup> The complaint itself is not among the materials of the communication and it is not clear whether the author requested the opening of a criminal case on the grounds of the unlawful arrest and detention of her brother or whether it was a general request for investigation concerning all Chechen nationals. The letter of the prosecutor is addressed to the author as head of the "Mothers of Chechnya" organization.

<sup>3</sup> The author does not provide further details regarding this request.

<sup>4</sup> There is no document among the materials submitted with the communication indicating that a criminal investigation was initiated in 1995.

3.4 The author is seeking an effective investigation into the disappearance of her brother, requests compensation for the moral damage suffered by her and asks the Committee to find that the Covenant has been violated, as stated above.

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

4.1 In a note verbale of 31 March 2015, the State party challenged the admissibility of the communication. According to article 402 (1) of the Criminal Procedure Code of the Russian Federation, a suspect, defendant, convicted or acquitted person has a right to appeal a court verdict – in this case, the cassation decision of the Supreme Court of the Chechen Republic dated 19 October 2011. In accordance with article 403 (1) of the Criminal Procedure Code, decisions at the cassation level can be further appealed under the supervisory review procedure.

4.2 Under federal law No. 518-FZ, dated 31 December 2014, those persons who had not filed for a supervisory appeal challenging court verdicts and decisions that came into force before 1 January 2013, maintained their right to file such a supervisory appeal until 1 January 2014. Those changes came into force on 11 January 2015 and from that date, all supervisory review requests on court verdicts and decisions that came into force before 1 January 2013, must be filed under chapters 47 and 48 of the Criminal Procedure Code, only by persons who had not previously had recourse to a supervisory review procedure. In such cases, the appeals are filed either under the cassation appeal procedure or the supervisory appeal procedure. It is clear from the author's submissions that she did not file any appeals under chapters 47 and 48 of the Criminal Procedure Code regarding the decisions dated 9 September and 19 October 2011. Ms. Magomadova currently has the right to submit such appeals. The State party therefore contends that the author has not exhausted all available domestic remedies, and therefore her communication should be considered inadmissible.

4.3 In a note verbale dated 16 April 2015, the State party also submitted its observations on the merits of the communication. On 2 July 2010, the authorities received a complaint about a missing person, Mr. Magomadov. The Investigations Committee of the Russian Federation conducted a preliminary assessment ("protseussualnaya proverka").<sup>5</sup> According to the assessment, Mr. Magomadov disappeared on 9 January 1995 near the "Kavkaz" hotel in the city of Grozny and his current whereabouts is unknown.

4.4 Mr. Magomadov's brother, M.M. was questioned as part of the preliminary assessment. He testified that from his birth, his family, including his brother, resided in Shalazhi village in the Urus-Martan district of the Chechen Republic. From 1982, M.M. had resided in Moscow. On 1 January 1995, he learned from his father that his brother Shamsy had left for Grozny in his car. The purpose of the trip was to take home a Mr. I.S., who lived in Grozny. Shamsy Magomadov was joined in the car by another brother, M. Magomadov. The father of the family told M.M. that the two brothers never came back from that trip.

4.5 In the first half of January 1995, distant relatives of the family brought to the village M. Magomadov's body showing signs of shrapnel wounds. M.M. went to the village to be present at the funeral. After the funeral, he started his search for Shamsy Magomadov. He learned from Mr. I.S. that the two brothers had indeed taken him to his house in Grozny. The two brothers left their car at his house and told Mr. I.S. that they would try to find an alternative way to reach Shalazhi.<sup>6</sup>

4.6 The author was also questioned as part of the preliminary assessment. She also testified that Shamsy Magomadov and M. Magomadov had indeed left for Grozny and that they had taken Mr. I.S. to his house, but had had to stay with neighbours for safety reasons. On 31 December 1994, the authorities had started what was called the first military campaign in Chechnya. On 2 January 1995, the brothers attempted to leave Grozny. On the way out of the city, they were shot at by a military helicopter and had to return to the house of Mr. I.S. and leave the car there. They decided to attempt to leave the city again on 7 or 8

<sup>5</sup> A preliminary assessment or a preliminary investigation is conducted to assess whether a more formal process or a full criminal investigation is warranted.

<sup>6</sup> They decided not to use the car due to military escalation.

January 1995. On their way out, they stopped to visit a friend, Ms. Goncharenko, who lived on Mir Street in Grozny. They spent several hours there and finally decided to leave the city.

4.7 The author was at her parents' house in Shalazhi village when some persons unknown to her brought in the body of M. Magomadov. They did not know how he had died, nor did they know the whereabouts of Shamsy Magomadov. The authorities sent requests for information to all city and district police departments regarding Shamsy Magomadov, but received no information. It therefore appeared impossible to find out where he was.

4.8 The authorities refused to initiate a formal criminal investigation several times, based on article 24 (1) (3) of the Criminal Procedure Code of the Russian Federation, owing to the expiration of the statute of limitation on prosecutions under article 103 (murder) of the Criminal Code in force at the time. On 15 May 2011, the authorities rejected another such request to initiate a criminal investigation.

4.9 On 26 February 2015, however, that decision was annulled and on 27 February 2015, the Grozny city department of the Investigations Committee sent the case for consideration to the military investigations unit for the Southern Federal Military District.<sup>7</sup>

4.10 The author further complained to the Staropromyslovsky district court, challenging the refusal to initiate a formal criminal investigation. The court rejected the author's appeal, which was in turn rejected by the Supreme Court of the Chechen Republic. The author filed an appeal to the Supreme Court of the Russian Federation.

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

5.1 The author notes that the State party claims that Shamsy Magomadov disappeared under unknown circumstances and it should not therefore be held responsible for violation of articles of the Covenant. The evidence shows, however, that on 9 January 1995, Mr. Magomadov was detained by federal military forces in the Chechen Republic and was held in the temporary detention centre in Mozdok (paras. 2.1 and 2.2 above).<sup>8</sup> Another letter, dated 12 September 1996, and written by the International Committee of the Red Cross, also states that representatives of the Red Cross had visited Mr. Magomadov in the temporary detention centre in Mozdok.<sup>9</sup> The interregional prosecutor's office for the Caucasus also confirmed that Mr. Magomadov had been held in detention until 3 February 1995.

5.2 However, the State party denies the very fact that Mr. Magomadov was detained in the hands of the federal authorities. The State party also fails to provide any information as to whether Mr. Magomadov was released and if he was released, whether he was seen at any time after his detention. The author claims that this shows that he disappeared while in the hands of the authorities. It has been 23 years since his disappearance and the author has not been able to obtain any information about his fate. The author submits that the State party failed to conduct a timely investigation and refused to initiate a formal criminal investigation. The State party therefore violated Mr. Magomadov's right to life, under article 6 of the Covenant.

5.3 The author reiterates that the State party authorities are responsible for holding Mr. Magomadov unlawfully. The State party failed to provide any plausible explanations as to his fate during or after his detention. Mr. Magomadov's detention was therefore arbitrary in nature. There is also information, based on a newspaper article, that at some point in 1995, Mr. Magomadov was being held in prison in the city of Pyatigorsk, where he was serving a 14-year sentence (para. 2.2 above).

5.4 Enforced disappearances bring suffering to the victims, but also to the members of their families. The families wait years for news which they will probably never receive. The family members often experience the same feelings as the victims of torture themselves.

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<sup>7</sup> The result of this consideration has not been communicated to the Committee.

<sup>8</sup> The author attached a relevant letter from the Ministry of Internal Affairs of the Russian Federation which attests to this fact.

<sup>9</sup> A copy of the letter is attached.

For example, after his disappearance Mr. Magomadov's mother had a stroke, was bedridden for 7 years and died after 10 years of waiting for news about her son. The author herself suffered from the indifference of the State party authorities to the fate of her brother. The occurrences of killings, torture and mistreatment at the hands of the law enforcement agencies in Russia are well known.

5.5 As for the admissibility of the communication, the author submits that the remedies offered under the domestic procedures are ineffective. That can be proven by the fact that after so many years, the investigation has not yet been completed. Moreover, the Committee has long held that the exhaustion requirement for domestic remedies does not apply if the procedures are unreasonably prolonged. The author does not have any means of forcing the authorities to conduct a thorough investigation into the disappearance and filing a cassation appeal or a supervisory appeal would not remedy the situation.

## **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 93 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

6.2 The Committee has ascertained, as required under article 5, paragraph 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 State party's argument that the author has failed to exhaust all available domestic remedies by not filing cassation and supervisory review appeals regarding the decisions dated 9 September and 19 October 2011 (paras. 4.1, 4.2 above). The Committee notes that the cassation and the supervisory review procedures concern the revision, on points of law only, of court decisions that have entered into force. The decisions on whether to refer a case for hearing by the cassation court or a supervisory appeals court are discretionary in nature, do not have a time limit and are made by one single judge. Those characteristics lead the Committee to believe that such cassation and supervisory review requests contain elements of an extraordinary remedy. In accordance with the Committee's long-standing jurisprudence, therefore, the State party must show that there is a reasonable prospect that such a procedure would provide an effective remedy in the circumstances of the case.<sup>10</sup> In the absence of any clarification from the State party on the effectiveness of the cassation and supervisory review procedures in cases similar to the present one, the Committee finds that it is not precluded by article 5 (2) (b) of the Optional Protocol from examining the present communication for purposes of admissibility.

6.4 In the Committee's view, the author has sufficiently substantiated, for the purposes of admissibility, her claims of violations of her rights under article 7 and her brother's rights under articles 6 (1) and 9 (1) and (5) of the Covenant. The Committee therefore declares them admissible and proceeds with the consideration of the merits. The Committee notes that the claims as presented by the author also seem to raise issues under article 6 (1) read in conjunction with article 2 (3).

### *Consideration of the merits*

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

7.2 The Committee first notes the author's claim that on 9 January 1995, her brother was arrested and detained in the city of Grozny in the Chechen Republic, and was allegedly killed at the hands of Russian military forces (para. 3.1 above). To prove her claims, the Committee further notes several documents presented by the author showing that Mr.

<sup>10</sup> See *Schumilin v. Belarus* (CCPR/C/105/D/1784/2008), para. 8.3; and *Dorofeev v. the Russian Federation* (CCPR/C/111/D/2041/2011).

Magomadov was indeed held in at least one pretrial detention facility in the city of Mozdok (para. 5.1 above). Those documents include letters from the Ministry of Internal Affairs of the Russian Federation and the International Committee of the Red Cross that attest to Mr. Magomadov's detention. The State party, however, denies ever holding him, claiming that its preliminary investigation indicates that Mr. Magomadov disappeared without the participation of the law enforcement authorities (paras. 4.7 and 5.2 above).

7.3 The Committee recalls its general comment No. 36 (2018) on the right to life, according to which the State party has an obligation to investigate all claims of potentially unlawful deprivation of life. Investigations and prosecutions of potentially unlawful deprivation of life should be undertaken in accordance with relevant international standards, including the Minnesota Protocol on the Investigation of Potentially Unlawful Death (2016),<sup>11</sup> and must always be independent, impartial, prompt, thorough, effective, credible and transparent.<sup>12</sup>

7.4 The Committee further recalls that the cases of loss of life in custody create a presumption of arbitrary deprivation of life by the State authorities,<sup>13</sup> which can only be rebutted based on a proper investigation as set out above (para. 7.3). States parties also have a particular duty to investigate allegations of violations of article 6 whenever State authorities have used or appear to have used firearms or other potentially lethal force outside the immediate context of an armed conflict.<sup>14</sup> In the present case, instead of promptly launching an investigation, the State party refused to do so after only a "preliminary" assessment and never opened a formal criminal investigation, despite a number of requests from the author and her complaints to the authorities, including the courts. In the circumstances as described by the author, considering the evidence of the detention of Mr. Magomadov in the hands of the State party authorities, and in the absence of an explanation of the lack of a proper investigation by the authorities, the Committee concludes that the State party has violated its obligations under article 6 (1), read alone and in conjunction with article 2 (3) of the Covenant.

7.5 The Committee also considers the author's allegations that Mr. Magomadov was arbitrarily detained by the State party authorities, in violation of his rights under article 9 (1). The Committee notes that the State party denies having arrested Mr. Magomadov, claiming only that he simply vanished in the streets of Grozny. The Committee further notes that this claim was rebutted by evidence submitted by the author that attests to his detention in Mozdok from 9 January to 3 February 1995 (para. 5.1 above). The State party has not informed the Committee of the reasons for Mr. Magomadov's arrest, any charges against him, or whether on 3 February 1995 he was transferred to another facility. The Committee recalls its general comment No. 35 (2014) on liberty and security of person, according to which arrest within the meaning of article 9 need not involve a formal arrest as defined under domestic law. Under the provisions of this article of the Covenant, no one shall be deprived of liberty except on such grounds and in accordance with such procedures as are established by law. Based on the material on file, and in the absence of further explanations from the State party in this connection, the Committee considers that the facts as presented reveal that Mr. Magomadov's rights under article 9 (1) of the Covenant were violated.

7.6 Having thus concluded for a violation of Mr. Magomadov's rights under article 9 (1), the Committee decides not to examine the claims under article 9 (5) separately.

7.7 The Committee further observes that although more than 23 years have elapsed since the disappearance of Mr. Magomadov, the author still does not know the exact circumstances surrounding it or the current whereabouts of her brother and the State party's authorities have been unable or unwilling to conduct an effective investigation. The Committee understands the continued anguish and mental stress caused to the author as the sister of a disappeared person, compounded by the refusal of the State party to acknowledge

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<sup>11</sup> See paragraph 11 of the Minnesota Protocol and the Committee's general comment No. 36, para. 27.

<sup>12</sup> General comment No. 36, para. 28.

<sup>13</sup> *Ibid.*, para. 30.

<sup>14</sup> *Ibid.*

the detention of Mr. Magomadov or to investigate his current whereabouts and considers that it amounts to inhuman treatment of the author, in violation of article 7 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 Mr. Magomadov's rights under article 6 (1), read alone and in conjunction with articles 2 (3) and 9 (1), and the author's rights under article 7 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. That requires it to make full reparation to individuals whose rights under the Covenant have been violated. Accordingly, the State party is obligated, *inter alia*, to take appropriate steps to (a) conduct a thorough, prompt and impartial investigation into Mr. Magomadov's disappearance and his current whereabouts; (b) provide all information regarding the investigation to the author; and (c) provide adequate compensation and other measures of satisfaction to the author for the violations that have occurred. 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 for 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 disseminate them widely in the official languages of the State party.

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