



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. 1941/2010*,**

<i>Communication submitted by:</i>	Vladimir Vasilievich Neporozhnev (not represented by counsel)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Russian Federation
<i>Date of communication:</i>	21 March 2010 (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 14 May 2010 (not issued in a document form)
<i>Date of adoption of Views:</i>	11 March 2016
<i>Subject matter:</i>	Allegations of torture in pretrial detention not investigated adequately by the State party and unfair trial
<i>Procedural issues:</i>	Admissibility – exhaustion of domestic remedies; admissibility – manifestly ill-founded
<i>Substantive issues:</i>	Effective remedy, fair trial, torture – prompt and impartial investigation
<i>Articles of the Covenant:</i>	2 (1) and (3) (a), (b) and (c), 7, 14 (1), (2), (3) (d), (e) and (g) and (5) and 15 (2)
<i>Articles of the Optional Protocol:</i>	2 and 5 (2) (a) and (b)

* Adopted by the Committee at its 116th session (7-31 March 2016).

** The following members of the Committee participated in the examination of the communication:
Yadh Ben Achour, Lazhari Bouzid, Yuji Iwasawa, Ivana Jelić, Duncan Laki Muhumuza,
Mauro Politi, Sir Nigel Rodley, Víctor Manuel Rodríguez-Rescia, Fabián Omar Salvioli,
Anja Seibert-Fohr, Yuval Shany, Konstantine Vardzelashvili and Margo Waterval.



1. The author of the communication, dated 21 March 2010, is Vladimir Vasilievich Neporozhnev, a national of the Russian Federation born in 1957, at the time of submission serving a prison sentence in a State penitentiary in Novotroitsk, Russian Federation. He claims to be a victim of violations by the Russian Federation of his rights under article 2 (1) and (3) (a), (b) and (c), article 7, article 14 (1), (2), (3) (d), (e) and (g) and (5) and article 15 (2) of the International Covenant on Civil and Political Rights. The Optional Protocol entered into force for the Russian Federation on 1 October 1991. The author is not represented by counsel.

The facts as submitted by the author

2.1 In the morning of 11 September 2006, the author was detained by officers from the Novogiresvo Regional Police Department and taken to the Bogorodskoe Department of Internal Affairs in Moscow, following a complaint from a mother and a daughter, with whom he was sharing a communal lodging, that he had insulted them, threatened to kill them, attacked them and injured one of them with a knife. He was freed at around 8 p.m., but at 10 p.m. he was rearrested following a further complaint by one of his cohabitants. On the way to the Bogorodskoe Department of Internal Affairs, the author was severely beaten by several police officers, who also took 1,500 roubles from him. He was detained in the basement of the police station until 8 a.m. the next morning, and throughout the night he was subjected to beatings while being handcuffed to heavy weightlifting equipment. He was hit with the butt of a Kalashnikov in the face and his jaw was broken. He was kicked in the ribcage, which resulted in several fractured ribs. Officers also stepped on his throat to cut off the air flow, which resulted in hematomas. At around 9 a.m., he was put in an ambulance and taken to city hospital No. 1 in Moscow, where he received treatment. The author states that these facts amount to a violation of his rights under article 7 of the Covenant.

2.2 The author claims that he complained on numerous occasions to the prosecutorial authorities and to the courts about the ill-treatment and torture he had suffered at the hands of the police. Following his complaints, on 26 September 2006, a criminal investigation against “unknown persons” was initiated under article 112, paragraph (2) (g), of the Criminal Code. However, the investigation was terminated on 26 November. On 27 November, the Office of the Regional Prosecutor ordered the investigation to be reopened. On 25 February 2007, the investigation was terminated for a second time, and for the second time the Office of the Regional Prosecutor ordered that the investigation be reopened. At the time of the submission, no one had been charged, prosecuted or convicted for the ill-treatment and torture inflicted on the author.

2.3 On an unspecified date, the author complained to the Preobrazhensky Regional Court about the lack of an investigation into his allegations of torture and ill-treatment. On 4 December 2007, the court decided that his complaint was unfounded, since an investigation into “unknown persons” had been initiated by the Prosecutor’s Office, of which the author was informed on 16 December 2006 and 25 January and 26 February 2007. On 27 December 2007, the author filed a cassation appeal with the Moscow City Court against the Preobrazhensky Regional Court decision, which was rejected on 3 March 2008 on the ground that the Regional Court had complied with the law in reviewing his complaint. The author filed a request for a supervisory review of the two decisions before the Moscow City Court, but the request was also rejected, on similar grounds, on 3 June 2008.

2.4 On the basis of the allegations of his cohabitants, the author was charged with two counts of insult, two counts of threat of murder and one count of intentional infliction of light bodily injury on his cohabitant and her underage daughter. The author maintains that the police officers fabricated the criminal case against him to cover up the beatings and the

theft of his money. The author states that at the time when the alleged crimes took place — the night of 11 September 2006 and the morning of 12 September 2006 — he had already been arrested and was being beaten and tortured by the police officers.

2.5 The author was tried by the Bogorodsky District Court. On 13 November 2006, the author attempted to have the magistrate judge recused, but his application was denied. He appealed that decision before the Preobrazhensky Appellate Court, which rejected his appeal on 26 January 2007. He maintains that since the judge was biased against him, his right to fair trial under article 14 (1) of the Covenant was violated. The author also maintains that he was removed from parts of the first instance court hearings and was thereby prevented from testifying in his own defence, violating his right to be tried in his presence (article 14 (3) (d) of the Covenant).

2.6 On 1 December 2006, the author was convicted by the magistrate judge of the Bogorodsky District Court and sentenced to two years of imprisonment. The author maintains that numerous violations of the domestic legislation took place during the trial and that the verdict was not announced publicly, which was also a violation of article 14 of the Covenant. The author also maintains that he was deprived of the possibility of questioning witnesses, which could have established his innocence; that was a further violation of his rights under the Covenant (art. 14 (3) (e)).

2.7 On an unspecified date, the author filed an appeal against the verdict with the Preobrazhensky Regional Court. The appeal was rejected on 10 December 2007.¹ The author filed a cassation appeal against that decision with the Moscow City Court. The cassation appeal was rejected on 9 April 2008.

2.8 The author notes that both the appellate and the cassation courts requested the Office of the Prosecutor of the Preobrazhensky Region to present in evidence the medical records of the author concerning his hospitalization in Moscow hospital No. 1 and that the Prosecutor's Office failed to do so.

2.9 On an unspecified date, the author applied for a supervisory review of his conviction by the Moscow City Court; his request was rejected on 28 July 2008. On 12 January 2009, the author attempted to obtain an extraordinary review of his case by the Supreme Court, but that request was also denied, on 23 March 2009. The author claims that the denials violate his right under article 14 (5) of the Covenant. The author contends that he has exhausted all available and effective domestic remedies.

The complaint

3. The author claims to be a victim of violations by the Russian Federation of his rights under article 2 (1) and (3) (a), (b) and (c), article 7, article 14 (1), (2), (3) (d), (e) and (g) and (5) and article 15 (2) of the Covenant.

¹ The author provides a copy of the decision of the Preobrazhensky Regional Court dated 10 December 2007, which states, among other things, that the author attempted to stab one of his cohabitants on 11 September 2006 in the evening; that the police stated that he had been arrested at 11 a.m. on 12 September 2006; that one of the author's cohabitants stated that he had been arrested in the evening of 12 September 2006; that the representative of Moscow hospital No. 1 stated that the author had been hospitalized on 12 September and remained in hospital until 23 September 2006; and that the records of the Emergency Health Service stated that an ambulance had been called to attend to the author at the police department where he was detained on 13 September 2006 at 9.42 a.m. and that he was diagnosed with numerous fractures of the jaw and the ribs and taken to Moscow hospital No. 1 at 11.23 a.m. on 13 September 2006. The decision also states that although the court had requested them, the medical records of the author were not provided by the Prosecutor's Office.

State party's observations on admissibility

4.1 In a communication dated 20 May 2011, the State party stated that the author had been convicted a number of times for different crimes, including banditry and hooliganism. On 10 and 11 September 2006, during a dispute with a certain B., the author insulted her; he also threatened B. and her daughter and waved a knife at them; lastly, the author stabbed B.'s daughter in the stomach. On 1 December 2006, the magistrate judge of district No. 110 of the Bogordskoe Region of Moscow convicted the author of threatening to commit murder, light body injury, and insult and sentenced him to two years of imprisonment. On 10 December 2007, the Preobrazhensky Regional Court confirmed the verdict fully upon appeal. On 9 April 2008, the Moscow City Court, ruling on his cassation appeal, confirmed the decisions. The author's request for a supervisory review, received by the Supreme Court of the Russian Federation on 20 May 2009, was returned owing to a failure to enclose the relevant court decisions, in accordance with article 404.2 of the Code of Criminal Procedure of the Russian Federation. The author was informed that if he enclosed the requested documents, the Supreme Court would accept the request, but he failed to do so. Accordingly, the State party maintains that the communication is inadmissible under article 2 of the Optional Protocol, since the author has failed to exhaust the available domestic remedies.

4.2 The State party further submits that regarding the bodily injuries inflicted on the author, on 26 September 2006, the Office of the Prosecutor of the Preobrazhensky Region of Moscow initiated a criminal investigation for a crime under article 112.2 of the Criminal Code. The investigation established that, on 12 September 2006, in the entrance of building No. 27 on Podbelsky Street in Moscow, unknown persons deliberately inflicted injuries on the author, including a double fracture of the jaw, hematomas on the throat and bruises on the ribcage, face and stomach. The investigation was delegated to the Investigative Department of the Internal Affairs Department of Bogorodsky District in Moscow. On 7 November 2006, the author filed a complaint with the Office of the Prosecutor of the Preobrazhensky Region against the unlawful actions of police officers. A verification was conducted regarding the author's allegations in accordance with articles 144-145 of the Code of Criminal Procedure and on the same date the Prosecutor's Office refused to open a criminal case, on the basis of article 24.1.1 of the Code (absence of a crime). That decision by the Prosecutor's Office was overruled by a decision of 2 March 2011, on the ground that the investigative actions had not been complete. The case file was sent to the Preobrazhensky Intraregional Investigative Department for additional investigation. The results of the investigation are being monitored. The developments in the case have not been challenged by the author before the courts. Accordingly, the State party maintains that the communication is inadmissible under article 2 of the Optional Protocol since the author has failed to exhaust the available domestic remedies.

Author's additional submissions

5. On 12 December 2010 and 25 February, 17 April and 14 November 2011, the author provided details regarding his personal conflict with B. He further submits that he is suffering from cancer, alleges that the State party's authorities knew that he was ill but had falsified his medical records, and states that he also suffers from tuberculosis. He maintains that remaining in prison would have grave consequences for his health. In 2009 he was removed from the register of tuberculosis patients. In April 2011 he started coughing blood, but was not provided with adequate medical treatment (he was given medication for the coughing, but nothing else). He further submits that he was subjected to discrimination on the ground that he was an illegally convicted person.

State party's additional observations

6. In a submission dated 23 January 2012, the State party reiterated its position regarding the inadmissibility of the communication. It also submits that the author has not filed a motion before a court to be released from serving his remaining sentence owing to his grave illness, as he is entitled to do under article 175 of the Criminal Executive Code of the Russian Federation. The list of medical conditions that are incompatible with serving a prison sentence is approved by Government Ordinance No. 54 of 6 February 2004, as amended on 30 December 2005. The State party also submits that the new allegations raised by the author were not part of his original complaint and had not been raised before the domestic authorities and are therefore inadmissible under article 2 of the Optional Protocol.

Issues and proceedings before the Committee*Consideration of admissibility*

7.1 Before considering any claims 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 to the Covenant.

7.2 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.

7.3 The Committee notes the author's claim that his rights under article 14 (1), (2), (3) (e) and (g) and (5) of the Covenant have been violated, as the magistrate judge was biased and there were numerous violations of the domestic legislation during his trial, including being deprived of the possibility of questioning witnesses, which could have established his innocence, and as the courts refused to grant a supervisory review of his case. The Committee recalls that generally, it is for the courts of States parties to review facts and evidence, or the application of domestic legislation, in a particular case, unless it can be shown that such evaluation or application was clearly arbitrary or amounted to a manifest error or denial of justice, or that the court otherwise violated its obligation of independence and impartiality. The Committee notes that apart from general statements, there is nothing in the submissions of the author that would support his claim. The Committee therefore considers that the author has failed to sufficiently substantiate his allegations. The Committee also notes that the author has alleged a violation of article 15 (2) of the Covenant without providing any further information. Accordingly, the Committee considers the above claims inadmissible under article 2 of the Optional Protocol as insufficiently substantiated.

7.4 In the context of the author's claim that his medical records had been falsified and that he was not provided with adequate medical treatment for his condition while in prison, the Committee notes that the State party has challenged the admissibility of these allegations on the grounds that domestic remedies have not been exhausted, as the author has not applied for early release from prison on health grounds. The Committee notes that in the present case, the author has not submitted any information or documents to demonstrate that he has ever complained at the domestic level about being wrongly diagnosed or about receiving inadequate medical treatment. In the absence of any further information on file, the Committee declares that part of the communication inadmissible pursuant to article 5 (2) (b) of the Optional Protocol.

7.5 The Committee also notes that the State party has challenged the admissibility of the communication for non-exhaustion of domestic remedies on the ground that the author should have resubmitted his request for a supervisory review, which was received by the

Supreme Court of the Russian Federation, completed with certain documentation. The Committee considers that filing requests for supervisory review to the president of a court directed against court decisions which have entered into force and depend on the discretionary power of a judge constitute an extraordinary remedy and that the State party must show that there is a reasonable prospect that such requests would provide an effective remedy in the circumstances of the case.² The State party has not shown, however, whether and in how many cases a petition to the President of the Supreme Court for supervisory review procedures were applied successfully in cases concerning the right to a fair trial or failure to investigate torture. In these circumstances, the Committee considers that it is not precluded by article 5 (2) (b) of the Optional Protocol from examining the present communication.

7.6 The Committee further notes that the State party has challenged the admissibility of the communication for non-exhaustion of domestic remedies on the ground that, on 2 March 2011, a decision was taken to reopen the investigation into the torture allegations and the case file was sent to the Preobrazhensky Intraregional Investigative Department of the Investigative Directorate of the Investigative Committee of the Russian Federation for additional investigation. The Committee, however, observes that no additional information has been provided by the State party as to the outcome of that investigation. The Committee recalls its jurisprudence that, for the purposes of article 5 (2)(b) of the Optional Protocol, domestic remedies must both be effective and available, and must not be unduly prolonged.³ The Committee observes that in the instant case the investigation was reopened four and a half years after the alleged torture of the victim and that, to the Committee's knowledge, those proceedings have yet to be finalized. Therefore, the Committee considers that, in the circumstances of the present case, domestic remedies have been unreasonably prolonged and that article 5 (2) (b) does not preclude it from considering the communication.⁴

7.7 The Committee notes that the author claims that there has been a violation of his rights under article 2 of the Covenant without clarifying the nature of the violation of this provision. It observes that the provisions of article 2, which lay down general obligations for States parties, cannot, in isolation, give rise to a claim in a communication under the Optional Protocol.⁵ In the absence of any further information on file, the Committee declares that part of the communication inadmissible pursuant to article 3 of the Optional Protocol.

7.8 Finally, the Committee considers that the author's remaining claims raising issues under articles 7 and 14 (1) and (3) (d) of the Covenant have been sufficiently substantiated

² See communications No. 836/1998, *Gelazauskas v. Lithuania*, Views adopted on 17 March 2003, para. 7.4; No. 1851/2008, *Sekerko v. Belarus*, Views adopted on 28 October 2013, para. 8.3; Nos. 1919/2009 and 1920/2009, *Protsko and Tolchin v. Belarus*, Views adopted on 1 November 2013, para. 6.5; No. 1784/2008, *Schumilin v. Belarus*, Views adopted on 23 July 2012, para. 8.3; and No. 1814/2008, *P. L. v. Belarus*, decision of inadmissibility adopted on 26 July 2011, para. 6.2.

³ See communications No. 2054/2011, *Ernazarov v. Kyrgyzstan*, Views adopted on 25 March 2015, para. 8.3; and No. 612/1995, *Villafañe Chaparro et al. v. Colombia*, Views adopted on 29 July 1997, paras. 5.2, 8.8 and 10.

⁴ See *Ernazarov v. Kyrgyzstan*, para. 8.3; communications No. 1560/2007, *Marcellana and Gumanoy v. Philippines*, Views adopted on 30 October 2008, para. 6.2; No. 1250/2004, *Rajapakse v. Sri Lanka*, Views adopted on 14 July 2006, paras. 6.1 and 6.2; and No. 992/2001, *Bousroual v. Algeria*, Views adopted on 30 March 2006, para. 8.3.

⁵ See, inter alia, communications No. 316/1988, *C. E. A. v. Finland*, decision of inadmissibility adopted on 10 July 1991, para. 6.2; No. 802/1998, *Rogerson v. Australia*, Views adopted on 3 April 2002; and No. 1213/2003, *Sastre Rodríguez et al v. Spain*, decision of inadmissibility adopted on 28 March 2007, para. 6.6.

for purposes of admissibility. It declares them admissible and proceeds with their examination on the merits.

Consideration of the merits

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

8.2 The Committee notes the author's claims that he was detained and, on the way to the police station, was severely beaten by officers from the Novogiresvo Regional Police Department; he was held in the basement of the police department until 8 a.m. the next morning and throughout the night was subjected to beatings, while handcuffed, resulting in a broken jaw and several fractured ribs; and officers stepped on his throat to cut off the air flow, resulting in hematomas. The Committee also notes the State party's submission that the investigation following the author's complaint established that unknown persons had inflicted the injuries on the author and that none of the police officers were involved. The Committee, observes however, that according to the testimony of the hospital officials during the trial, an ambulance was called for the author from the police station on 13 September 2006, when he was already in custody, and the ambulance personnel diagnosed the fractured ribs and jaw and the hematomas. The Committee also notes that the initial investigation was closed without having identified the perpetrators of the injuries inflicted on the author and that, despite the State party's submission that the investigation had been reopened on 2 March 2011, no information is available regarding the results of the renewed investigation.

8.3 The Committee further observes that the investigations appear to have been ineffective, while submissions made by the State party and statements made during the trial by representatives of the hospital and the emergency health service and the author contain contradictory information as to the events surrounding his arrest and how he came to sustain serious injuries. The Committee further observes that according to the decision of the Preobrazhensky Regional Court, the medical records of the author were not provided by the Prosecutor's Office despite the court's having requested them.

8.4 The Committee recalls that once a complaint about ill-treatment contrary to article 7 has been filed, a State party must investigate it promptly and impartially.⁶ Taking into consideration the contradictory information and the absence of an official conclusion of the investigation into the author's torture allegations that started on 26 September of 2006, the Committee considers that in the circumstances of the present case, the State party has failed to demonstrate that its authorities adequately and efficiently addressed the torture allegations advanced by the author expeditiously and adequately, in the context of both domestic criminal proceedings and the present communication. Accordingly, due weight must be given to the author's allegations. The Committee therefore concludes that the facts before it disclose a violation of the rights of the author under article 7 of the Covenant.⁷

8.5 The Committee also notes the author's claims under article 14 (1) and 3 (d) that he was removed from parts of the first instance court hearings and could not deliver testimony in his defence and that the verdict had not been announced publicly. The Committee recalls that article 14 (3) (d) requires that accused persons be present during their trial, even though proceedings in the absence of the accused may in some circumstances be permissible in the

⁶ See general comment No. 20 (1992) on the prohibition of torture or other cruel, inhuman or degrading treatment or punishment, para. 14 and, for example, communication No. 1304/2004, *Khoroshenko v. Russian Federation*, Views adopted on 29 March 2011, para. 9.5.

⁷ See, for example, communication No. 889/1999, *Zheikov v. Russian Federation*, Views adopted on 17 March 2006, para. 7.2 and *Khoroshenko v. Russian Federation*, para. 9.5.

interest of the proper administration of justice.⁸ The Committee further recalls that all trials in criminal matters must in principle be conducted orally and in public, unless the court decides to exclude all or part of the public for reasons of morals, public order (*ordre public*) or national security.⁹ Even in cases in which the public is excluded from a trial, the judgment, including the essential findings, evidence and legal reasoning, must be made public.¹⁰ The Committee observes that the State party has not refuted the allegations of the author that he was removed from part of the trial and that the verdict was been announced publicly, and thus failed to justify why these acts would be in the interest of the proper administration of justice. In these circumstances, due weight must be given to the author's claims, and the Committee concludes that the facts before it disclose a violation of the author's rights under article and 14 (1) and (3) (d) of the Covenant.

9. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the State party has violated the author's rights under article 7, read by itself and in conjunction with article 2 (3), as well as article 14 (1) and (3) (d) of the Covenant.

10. 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 during pretrial detention; (b) provide him with detailed information on the results of the investigation; (c) prosecute, try and, if confirmed, punish those responsible for the violations committed; and (d) provide adequate compensation to the author for the violations suffered. The State party is also under an obligation to take measures to prevent similar violations in the future.

11. 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, 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 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 to have them widely disseminated in the State party.

⁸ See the Committee's general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, para. 36.

⁹ *Ibid.*, para. 29.

¹⁰ *Ibid.*