



International Covenant on Civil and Political Rights

Distr.: General
12 November 2021

Original: English

Advance unedited version

Human Rights Committee

Views adopted by the Committee under the Optional Protocol, concerning communication No. 2711/2015^{*,**}

<i>Communication submitted by:</i>	Olga Pichugina, represented by counsel, Roman Kisliak
<i>Alleged victim:</i>	The author
<i>State party:</i>	Belarus
<i>Date of communication:</i>	6 March 2009 (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 23 December 2015 (not issued in document form)
<i>Date of adoption of Views:</i>	7 July 2021
<i>Subject matter:</i>	Inhuman and degrading treatment; conditions of detention
<i>Procedural issues:</i>	<i>Ratione personae</i>
<i>Substantive issues:</i>	Torture; cruel, inhuman or degrading treatment or punishment; conditions of detention
<i>Articles of the Covenant:</i>	2, 3, 7, 10 (1) and 14 (1)
<i>Article of the Optional Protocol:</i>	3

1. The author of the communication is Ms. Olga Pichugina, a national of Poland born in 1962.¹ She claims that the State party has violated her rights under articles 2, 3, 7, 10 (1) and 14 (1) of the Covenant. The Optional Protocol entered into force for the State party on 30 December 1992. The author is represented by counsel. The communication was initially submitted in 2009 but was not registered until 2015. The delay occurred due to shortcomings in supporting documents submitted by the author and shortage of staff at the Secretariat.

The facts as submitted by the author

2.1 The author was travelling on a night train from Moscow to Warsaw when at 6:30 am on 20 April 2002, she was arrested in Brest, Belarus by a customs inspector for attempting

* Adopted by the Committee at its 132nd session (28 June-23 July 2021).

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

¹ Also see *Pichugina v. Belarus* (CCPR/C/108/D/1592/2007).

to smuggle a large amount of cash through the border. She was placed in the temporary detention facility of the Leninsky District Police Department in Brest. On 22 April 2002, an investigating officer issued an order for her detention on remand, which was approved by the prosecutor of the Brest province on the same day. Later on 22 April, she was transferred to the National Security Service (KGB) Detention Centre, where she was kept for several hours before being transferred to the Investigative Detention Centre No.7 in Brest. She was released on 30 April 2002.

2.2 The author submits that between 20 and 22 April 2002, she was detained in the temporary detention facility of the Leninsky District Police Department in a basement cell with concrete walls together with five other persons. The door of the cell had a peephole through which the all-male personnel of the detention facility could watch her and other detainees. The author was not provided with a mattress, pillow or blankets and had to sleep on her coat spread on the metal grid of the bed frame. The cell was cold; the light in the cell was red and it was on 24 hours, which disturbed her sleep. The cell had one window, covered with a plastic sheet, which did not allow day light to penetrate. It was too dark to read. The toilet was a hole in the floor, which was not separated from the rest of the cell and she had to use it in front of the detainees. Above the toilet there was a cold water tap, without a sink. Towels and soap were not provided. When the author was fingerprinted, her fingers were covered with black ink which she was not able to wash away. There were rats and spiders in the cell. There was no ventilation and the air in the cell was stale.

2.3 The author further submits that between 22 and 30 April 2002, she was detained in the Investigative Detention Centre No.7 in the following conditions: she was placed in a cell on the ground floor, which was 2.2 meters wide, 6.5 meters long and 3 meters high; it was cold; loud marching music played at all times throughout the Centre so it was not possible to have a conversation with other detainees; her cellmates smoked all the time and the ventilation was poor, so the author who suffers from asthma had difficulties breathing; she was given a mattress but she did not receive a pillow or blanket; the cell had one window covered with iron blinds which did not open; there was a blue light and it was always on, which disturbed her sleep but at the same time it was too dark to read. She was taken for a walk once a day to a cell without a roof. The accompanying guards chased detainees with big dogs, and the author feared that they would release the dogs and she would get bitten. Because the author kept repeatedly demanding a meeting with the Polish Consular official and insisted that her rights be respected, on three occasions she was placed in a special "box", which was a 0.7 by 0.7 meters small and extremely cold where it was not even possible to sit. Each time she was forced to stay in that box for two hours. On 22 April 2002, the author fell ill and guards had to call for an ambulance. The ambulance registered high blood pressure (180/110) and haemorrhage in the author's brain, which she attributes to the conditions of her detention.

2.4 On 11 April 2008, the author filed a complaint to the prosecutor of the Brest province claiming that the conditions of her detention and treatment by guards in the Leninsky District temporary detention facility and the Investigative Detention Centre No.7 between 20 and 30 April 2002 violated her rights under article 7 of the Covenant and amounted to sex discrimination. The author submits that her claims were rejected by the decision of the prosecutor of the Brest province, however provides no copy of such decision.

2.5 On 11 April 2008, the author filed a similar complaint to the head of the Brest Region Police Department. In her complaint, the author requested to conduct an investigation into conditions of her detention and actions of personnel at both facilities; to improve conditions of detention, especially for female detainees; to hire female staff to guard female detainees; and, to pay her adequate compensation for cruel and inhuman treatment. On 23 April 2008, the author received a response from the head of the Leninsky District Police Department informing her that her claims were not confirmed by the police department's internal inquiry and that the conditions of detention in the temporary detention facility were in line with the requirements set by law. On 7 August 2008, the author received an additional response from the head of the Leninsky District Police Department informing her that the temporary detention facility did not employ any female personnel in 2002 or in 2008. According to the letter, body searches of all newly booked female detainees were conducted by certified female police officers of the Leninsky District Police Department.

2.6 On 23 May 2008, the author filed a complaint to the Leninsky District Court claiming that conditions of detention and actions of guards were contrary to article 7 of the Covenant and amounted to sex discrimination. On 27 June 2008, the court dismissed the case due to lack of jurisdiction. The court ruled that in accordance with the law “On order and conditions of detention”, any complaint concerning places of detention should be addressed to a relevant prosecutor’s office.

2.7 On 7 July 2008, the author filed an appeal to the Brest Regional Court, which granted it on 24 July 2008 and ordered a new trial.

2.8 On 15 September 2008, the Leninsky District Court again dismissed the case due to lack of jurisdiction. On 20 October 2008, after the author’s appeal, the Brest Regional Court confirmed the decision of the Leninsky District Court.

2.9 On 20 November 2008, the author submitted a lawsuit against the Leninsky District Police Department and the Investigative Detention Centre No.7 for pain and suffering during her detention between 20 and 30 April 2002. On 29 December 2008, the Leninsky District Court found no violation of the author’s rights. On 2 February 2009, the Brest Regional Court upheld the decision of the first instance court.

2.10 The author notes that she has filed several complaints to the prosecutor’s office during her detention in 2002, however they were ignored and she never received a response. She submits that she has exhausted all available domestic remedies

The Complaint

3.1 The author claims that the conditions of her detention between 20 and 30 April 2002 have caused her physical and mental suffering and amounted to a violation of her rights under articles 7 and 10 (1) of the Covenant.

3.2 The author claims that the State party has violated her rights under articles 2, 3 and 26 by placing her in the detention facility guarded only by male guards in violation of para. 53 of the Standard Minimum Rules for the Treatment of Prisoners.

3.3 The author also claims that by dismissing her complaint, the domestic courts violated her rights under article 14 (1) of the Covenant.² She submits that courts in Belarus are not independent and submit to the executive branch because local justice department within municipal governments have the power to investigate complaints against judges.

State party’s observations on admissibility

4. In a note verbale dated 23 February 2016, the State party submitted its observations on the admissibility of the communication. The State party submits that it recognizes the Committee’s competence to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of violations of their rights under the Covenant. However, since the author is a national of Poland, she is not subject to the State party’s jurisdiction. Thus, the State party considers this communication inadmissible.

Issues and proceedings before the Committee

Consideration of admissibility

5.1 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.

5.2 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.

² A claim under article 14 (1) of the Covenant was made by the author also in her previous communication 1592/2007.

5.3 The Committee notes that State party's submission that this communication is inadmissible since the author is a national of Poland and is not subject to the State party's jurisdiction. The Committee recalls that article 1 of the Optional Protocol applies to individuals subject to the jurisdiction of the State concerned who claim to be victims of a violation by that State of their rights under the Covenant, regardless of their nationality.³ Accordingly, and since the author was in the relevant period in custody under the jurisdiction of the State Party, the Committee considers that it is not precluded by article 1 of the Optional Protocol from examining the present communication.

5.4 The Committee notes the author's claim that by dismissing her complaint, the domestic courts violated her rights under article 14 (1) of the Covenant. The Committee notes that the author submitted a claim under article 14 (1) of the Covenant stemming from the same events in her previous communication to the Committee in 2007, claiming a failure by domestic authorities to take her before a judge during her detention, which was examined in 2013 and found inadmissible. The Committee finds it regrettable that the author failed to inform the Committee at the outset of the present communication that she had previously submitted another communication relating to the same events, even if the claims and facts now presented in this communication are different from her previous one.

5.5 As to the alleged violation of the author's rights under articles 2, 3, 14 (1) and 26 of the Covenant, the Committee considers that these claims have been insufficiently substantiated, for purposes of admissibility. In the absence of any further pertinent information on file, the Committee concludes that this part of the communication is inadmissible under article 2 of the Optional Protocol.

5.6 The Committee considers that the author's claim under articles 7 and 10 (1) of the Covenant relating to conditions of her detention has been sufficiently substantiated for the purposes of admissibility. Accordingly, it declares this claim admissible and proceeds to its consideration on the merits.

Consideration of the merits

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

6.2 The Committee notes the author's claim that between 20 and 22 April 2002, she was incarcerated in the temporary detention facility of the Leninsky District Police Department in a basement cell, which was cold and had very poor sanitary and hygiene conditions, such as rats and spiders in the cell; no ventilation, the air in the cell being stale; poor lighting which was always on and disturbed the author's sleep; lack of a mattress, pillow or blanket; a hole in the floor instead of a toilet, which was not separated from the rest of the cell, and a cold water tap above it without a sink. The Committee also notes that between 22 and 30 April 2002, the author was incarcerated in the Investigative Detention Centre No.7 where conditions of detention were similar to the above. Moreover, on three occasions, each lasting two hours, for demanding to see a Polish consular official she was placed in a 0.7 by 0.7 meters sized box, which was extremely cold and too small to even sit. The author claims that the conditions of detention caused her physical and mental suffering. Specifically, on 22 April 2002, she fell ill, guards had to call for an ambulance and she was then diagnosed to suffer from high blood pressure and haemorrhage in her brain, which she attributes to the conditions of her detention.

6.3 The Committee notes that these allegations are consistent with the findings of the Committee against Torture in its concluding observations with regard to the State party, adopted in November 2011, in which it stated that it remained deeply concerned about continuing reports of poor conditions in places of deprivation of liberty, including with respect to the problems of overcrowding, poor diet, lack of access to facilities for basic hygiene, and inadequate medical care.⁴ The Committee recalls that persons deprived of their liberty may not be subjected to any hardship or constraint other than that resulting from the deprivation of liberty; they must be treated humanely in accordance with the Standard

³ *Mika Miha v. Equatorial Guinea* (CCPR/C/51/D/414/1990), para. 5.1.

⁴ CAT/C/BLR/CO/4, para. 19.

Minimum Rules for the Treatment of Prisoners.⁵ The Committee notes that the State party has not contested the information provided by the author on her conditions of detention, nor has it provided any information in this respect. In these circumstances, due weight must be given to the author's allegations to the extent that they are substantiated. The Committee considers, as it has repeatedly found in respect of similar substantiated claims,⁶ that the author's conditions of detention as described violated her right to be treated with humanity and with respect for the inherent dignity of the human person, and are therefore also contrary to article 10 (1), a provision of the Covenant dealing specifically with the situation of persons deprived of their liberty and encompassing for such persons the elements set out generally in article 7. For these reasons, the Committee finds that the circumstances of the author's detention, as described by the author, constitute a violation of articles 7 and 10 (1) of the Covenant.

7. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the information before it discloses a violation by the State party of articles 7 and 10 (1) of the Covenant.

8. 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. The Committee considers that, in the present case, its Views on the merits of the complaint constitute sufficient reparation for the violation found. The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future.

9. 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 of the Covenant, 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 official languages of the State party.

⁵ *Aminov v. Turkmenistan* (CCPR/C/117/D/2220/2012), para. 9.3.

⁶ *Bobrov v. Belarus* (CCPR/C/122/D/2181/2012), para. 8.2; *Weerawansa v. Sri Lanka* (CCPR/C/95/D/1406/2005), para. 7.4; and *Evans v. Trinidad and Tobago* (CCPR/C/77/D/908/2000), para. 6.4.