



**International Covenant on
Civil and Political Rights**

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Human Rights Committee
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8 to 26 March 2010

Views

Communication No. 1232/2003

<u>Submitted by:</u>	Oleg Pustovalov (not represented by counsel)
<u>Alleged victim:</u>	The author
<u>State party:</u>	Russian Federation
<u>Date of communication:</u>	5 November 2003 (initial submission)
<u>Document references:</u>	Special Rapporteur's rule 97 decision, transmitted to the State party on 2 December 2003 (not issued in document form)
<u>Date of adoption of Views:</u>	23 March 2010

* Made public by decision of the Human Rights Committee.

Subject matter:	Criminal procedural violations and prison conditions
Procedural issues:	non-substantiation of claims, exhaustion of domestic remedies.
Substantive issues:	Allegations of ill-treatment, right to fair trial, right to legal assistance, right to obtain examination of witnesses, right to be treated with humanity and respect to one's dignity.
Articles of the Covenant:	2(3); 7; 9(1) and 9(3); 10; 14(1), 14(2), 14(3)(b), 14(3)(d), 14(3)(e) and 14(3)(g).
Articles of the Optional Protocol:	2 and 5, paragraph 2(b)

On 23 March 2010, the Human Rights Committee adopted the annexed text as the Committee's Views, under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 1232/2003.

[Annex]

ANNEX

Views of the Human Rights Committee under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political rights (Ninety-eighth session)

Concerning

Communication No. 1232/2003**

Submitted by: Oleg Pustovalov (not represented by counsel)

Alleged victim: The author

State party: Russian Federation

Date of communication: 5 November 2003 (initial submission)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 23 March 2010,

Having concluded its consideration of communication No. 1232/2003, submitted to the Human Rights Committee by Mr. Oleg Pustovalov under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication and the State party,

Adopts the following:

Views under article 5, paragraph 4, of the Optional Protocol

1. The author of the communication is Oleg Pustovalov, born in 1963, currently serving a prison sentence in Russian Federation. The author claims violations by the Russian Federation of articles 2, paragraph 3; 7; 9, paragraphs 1 and 3; 10; 14, paragraphs 1, 2 and 3 (b, d, e and g), of the International Covenant on Civil and Political Rights. The Optional Protocol entered into force for the State party on 1 January 1992. The author is unrepresented.

** The following members of the the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Lazhari Bouzid, Ms. Christine Chanet, Mr. Mahjoub El Haiba, Mr. Ahmad Amin Fathalla, Mr. Yuji Iwasawa, Mr. Rajsoomer Lallah, Mr. Michael O'Flaherty, Mr. José Luis Pérez Sanchez-Cerro, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Fabian Omar Salvioli and Mr. Krister Thelin.

Factual background

2.1 On 23 December 2000, the Moscow City Court sentenced the author to 24 years and 3 months' imprisonment for attempted murder, rape, robbery and other crimes that took place between November 1999 and February 2000. On 27 March 2001, the Judicial Collegium of the Supreme Court, as a cassation instance, upheld the sentence of the Moscow City Court.

2.2 The author claims that several procedural violations took place during his arrest (on 5 February 2000) and his pre-trial detention. He claims that his arrest was illegal and based solely on the "grave nature of the charges and the danger he represented". He was not told how to appeal the decisions governing his arrest and detention. He was allegedly severely beaten and tortured by police officers at Petrovka 38 police department in order to make him confess his guilt. Police officers allegedly put plastic bags over his head and forced him to take psychotropic drugs. He claims he fainted and almost died. His head and entire body were blooded. He was thus forced to testify against himself. The nature of the beatings was allegedly confirmed by a medical note issued by a doctor at the pre-trial detention center SIZO No 1. The author claims that his torture was taped on video, which was later destroyed. Due to his bad physical condition as a result of torture, he was not brought before the prosecutor who had authorized his detention. Allegedly, he was not provided with a lawyer for three days after his arrest. In all his appeals to higher courts the author allegedly insisted that he had not participated in the crimes he was convicted for and that he had confessed guilt as a result of torture.

2.3 The author claims that the result of the identification parade was forged and that he was not allowed to have access to a lawyer during the process. The physical characteristics of the perpetrator pointed out by victims and witnesses did not allegedly match his. He claims that he was not able to meet his lawyer and thus did not have legal assistance during the identification parade.

2.4 The author claims that a number of irregularities took place during his trial. His requests to invite additional experts and witnesses were all denied. During the time the crimes took place in Moscow, he was in fact in Ulyanovsk. To prove his alibi, he requested to call a witness from Ulyanovsk, but his request was denied. There were also alleged contradictions in the conclusions of experts. For example, one expert concluded that the crime weapon was a firearm, while the other concluded that it was not. The author was allegedly removed from the court room at the request of a witness, despite his objections and his intervention was suspended by a judge. He allegedly requested a medical expertise to prove that he was unable for medical reasons to father children, as one of the rape victims had become pregnant. This request was also rejected. He also complained to the court about the torture during his interrogation, which is allegedly reflected in the records of the proceedings. However, his allegations were not considered by the court.

2.5 At the beginning of the court proceedings, the author requested the court to change his lawyer, who was supposed to act on a pro bono basis but had asked him for 5000 US dollars to handle the case. The court rejected this request. The author submits that under section 51, paragraph 7, of the Criminal Procedure Code, a court cannot deny a request to change counsel, if the accused does not agree with counsel's opinion. Later, he requested to be

represented by his sister, pursuant to section 47, paragraph 6 (a), of the Criminal Procedure Code; this request was also rejected.

2.6 The author claims that some newspapers published personal information about him, such as his name, age and address as well as the charges against him even before his trial began. He claims that the information about him was intentionally distorted: it stated that he had previously been convicted of rape, that he was a sexual maniac and a former police officer.

The complaint

3. The author claims that the facts as described reveal violations by the Russian Federation of articles 2, paragraph 3; 7; 9, paragraphs 1 and 3; 10; 14, paragraphs 1, 2 and 3 (b), (d), (e) and (g), of the Covenant.

State party's observations on admissibility

4. On 24 March 2004, the State party submitted that the communication should be declared inadmissible, as the author had not exhausted all available domestic remedies. It submits that the Supreme Court received a complaint under the supervisory review procedure from the author, with the same arguments as those in the present communication. The Supreme Court is considering to initiate a supervisory review process and to transmit the complaint to the Presidium of the Supreme Court under section 48 of the Criminal Procedure Code.

Author's comments on the State party's observations

5. On 17 May 2004, the author submits that his complaint was sent to the Supreme Court under supervisory review after he had received a notification from the Committee informing about the registration of his case. He requested the Supreme Court to give him a response in order to transmit it to the Committee. On 21 April 2004, the Presidium of the Supreme Court issued a decision rejecting his complaint under supervisory review, but at the same time reducing his sentence to 22 years and 3 months' imprisonment, following the entry into force of the new Criminal Code.

Additional submissions by the parties

6.1 Additional submissions from the parties to the case have been summarized and divided thematically in the following:

Allegations of ill-treatment during the interrogation phase

6.2 The author submits that the decision of the Presidium of the Supreme Court of 21 April 2004 allegedly conceded his bodily injuries, but stated that they were caused during his capture. He insists that his injuries were the result of torture by police officers during his interrogation. His complaints of torture addressed to the court and the prosecutor's office were allegedly ignored. He does not have copies of their responses, as he claims they were not given to him. He was only requested to sign the copies of their responses. Initially he was not given a copy of the letter that he had addressed to the Administration of SIZO 1, where he stayed for 10 days after his beatings by police officers at Petrovka 38. In this letter, he had explained that he had been ill-treated by the police. However, in a later submission, the author

provided the Committee with a copy of the letter. The author also claims that he was not given a copy of the medical report confirming his torture allegations.

6.3 The State party contended on this issue that under the Internal Rule No 205 issued by the Ministry of Justice on 3 November 2005, convicts cannot request from the administration of correctional institutions copies of documents from their personal files. Only suspects and accused persons have this right, under Rule No 189 issued by the Ministry of Justice on 14 October 2005. However, in a later submission, the State party acknowledged that it was against the law not to provide the author with a copy of his letter and that the prosecutor of the Ulyanovsk had been ordered to take action in this regard. The State party also provided a copy of the medical note which confirms that the author had bodily injuries on 12 February 2000, the day of his arrival at detention centre. It contends that the author has never requested a copy of this medical note.

Allegations of procedural violations

6.4 The author submits that the decision of the Presidium of the Supreme Court acknowledged his claim that at the beginning of the trial, he had requested to change his lawyer, but that his request was denied as unjustified. He argues that he requested this change as his lawyer had asked for a retainer his family could not afford. The author claims that the decision also acknowledged that he was not provided with a lawyer during the identification parade, but it stated that he had not asked for one. He notes that, in fact, he had asked for a lawyer throughout the process, ever since his arrest. No lawyer was present during the initial medical test on his ability to have sexual relations. His complaints to the office of the President were forwarded to the General Prosecutor's office, which merely returned a standard letter. He notes that during the trial, he was asked to leave the court room during the testimony of one of the victims. When he returned, he was not informed about the content of the testimony and he was not able to question the victim.

6.5 The author adds that the decision of the Presidium of the Supreme Court did not address the issue of his inability to procreate; neither did the other court decisions. It also omitted to mention the refusal of his numerous requests to invite a witness who could confirm that he was not in Moscow at the time of the crimes. The decision also ignored his statements that he was forced to confess his guilt and that he did request the court for legal assistance. He adds that he did not confess his guilt on the rape charge, that there was no material evidence to prove his guilt, and that no crime weapon was found on him. One of the rape victims allegedly stated that her attacker was shorter than her, while the author himself is 8 cm taller than the victim. He gives details of physical characteristics and circumstances of each assault indicated by victims and witnesses. He argues that the identification parade, was unfair, as the witnesses and victims were shown his photo in advance.

6.6 The State party merely submits that the author's claims about criminal procedural violations during his trial and appeal, including the violation of his right to a lawyer, are without substance.

Allegations of inhumane treatment in prison

i. right to receive food

6.7 The author claims that food parcels and money sent by his family on 24 August 2004 were never delivered to him in prison, while the food parcel sent by his family on 18 January 2005 for his birthday, was delivered to him only on 27 January 2005. He claims that this was done by the prison administration intentionally and caused moral damage to him and material damage to his family. He provides the names and positions of officials who were allegedly involved in delaying delivery of his parcels.

6.8 The State party contests the author's claim and submits that the food parcel sent in August 2004 was received while he was in a penitentiary institution in the Irkutsk region. Thus, the parcel was returned to the sender. Concerning the delayed delivery of his parcel in January 2005, the State party submits that it was due to the big number of parcels received during Christmas. The State party acknowledges that money transferred to the author's account was illegally transferred to an account of the prison administration. The Deputy Prosecutor of Vladimir region took necessary actions in this regard.

ii. right to adequate recreation and clothing

6.9 The author submits that his health deteriorated due to his inability to walk, and his continued confinement to his cell, as the administration of the prison refused to give him winter shoes or to allow him to use his own shoes when the ones he had been given were worn out. The administration allegedly gave him shoes only 5 months after he requested them. He contracted pneumonia and sinusitis. He claims that his numerous requests for medical assistance were simply ignored by the prison administration, which pretended that it had not received the requests. He allegedly did not get any medical assistance from 2004 to 2005.

6.10 The State party notes that the author was provided with new shoes in March 2005. According to the prison rules shoes are provided once a year. It also notes that the author did not ask for medical assistance during the period of 2004-2005. It argues that during his time in prison T-2 in Vladimir, the author received adequate medical treatment. His health did not deteriorate and he did not complain of pneumonia and sinusitis.

iii. right to adequate food

6.11 The author complains of bad quality of prison food, which he claims does not have any taste or colour. The meat is allegedly spoiled, bread is half baked. Decent food is served only when there is a visit by a commission of the Ministry of Justice.

6.12 The State party rejects the author's allegations and states that the menu is prepared in accordance with the requirements established by order of the Ministry of Justice No 136 of 4 May 2001. The menu was further improved by another order of the Ministry of Justice No 125 of 2 August 2005. The medical unit within the institution regularly controls the menu. It checks the

quality of meals, conditions of their storage as well as their expiration dates.¹ In addition, inmates have a right to buy food items at the shop of the prison T2 or to receive them in parcels or other types of transfers. The State party adds that the author purchased food items at the prison shop, as shown on his personal account statements.

iv. right to adequate prison accommodation

6.13 The author claims that he was transferred to cell No 12 on the 1st floor of the prison reserved for convicts with psychiatric problems. His cell allegedly was in bad condition, cold and full of insects and rats. His numerous requests to transfer him to a different cell were ignored. As a result, he became ill. He treated himself with medication sent by his family. He adds that he had never requested help of a psychiatrist, and doctors could confirm this from his medical records.

6.14 The State party argues that according to the records of the psychiatric unit, the author was not listed at all in the unit between 2001 and 2005. The author contacted the psychiatrist, who established that he was having difficulties with psychological adaptation to his environment and concluded that he did not need psychiatric monitoring. It submits that the official documents as well as statements from officials show that the cell No 12 on the 1st floor, where the author was held, does not belong to the psychiatric unit. In fact, he was transferred there in order to improve his conditions. The cell complies with the requirements of section 80 of the Criminal Executive Code.² It adds that the cell is equipped in accordance with the order of the Ministry of Justice N 161 of 28 May 2001,³ and cell complies with sanitary epidemiological requirements.⁴ It submits that in compliance with the Federal Law No 52 of 30 March 1999 "On sanitary epidemiological conditions of population" as well as with sanitary rules issued by the Head Doctor of the Ministry of Health and Social Development No 24 of 18 July 2002, rat disinfection measures were taken in order to prevent insects and rats in cells. No insects or rats were found in T2 prison of Vladimir.⁵

¹ The State party has submitted a document from the Federal Office for Execution of Punishment which provides a list of food items in grams per person per day. For example, it states that meat is provided 5 times a week the rest is canned meat. It submits that the daily portion of meat is 80 grams, after cooking it amounts to 45 grams. Fish is also provided systematically. Daily portion is 100 grams. After cooking it amounts to 70 grams.

² The State party attached a letter from the Federal Office for Execution of Punishment stating that the cell No 12 where the author was transferred was not part of the psychiatric unit and there were no persons with psychiatric problems.

³ The State party attached a letter from the Federal Office for Execution of Punishment which provides list of items in the author's cell, such as radio, shelves for food, hangers for cloth, table, chairs, water tank, garbage bin, toilette facilities, mirror, ventilator etc.

⁴ The State party submitted a letter from the Head sanitary doctor of the prison T-2 in Vladimir, which provides detailed description of microclimate in the cells. For example, it states that during warm seasons temperature in the cell is from 18,3 to 18,5 degree C. Humidity is from 46,3 %. During winter the temperature is from 19,5 to 19,7 degree C. The humidity is 38,7 %.

⁵ The State party submitted a letter from the Federal Office for Execution of Punishment, which confirms its statement.

v. right to send and receive correspondence

6.15 The author also complains about delays up to 40-45 days in sending and receiving correspondence, as well as not being able to use a phone. He argues that he could not send the letter dated 29 September 2005 on 31 October 2005, more than a month later, as stated by the State party. His complaints to the Prosecutor of Ulyanovsk region that the prison administration obstructed his correspondence with the Committee was not replied to. The author points out that most of the documents produced by the State party do not bear his signature.

6.16 The State party in turn argues that the author's correspondence was delivered and dispatched on time, and this was verified by testimonies of prison staff. It provides a list of incoming and outgoing correspondence of the author, including registration numbers and the dates for each correspondence. It notes that from 2002 to 25 August 2005 the author submitted 19 complaints to various institutions. The letter of the author dated 29 September 2005 addressed to the Committee was received on 31 October 2005 and sent to the addressee on 1 November 2005. No complaint or letters addressed to the Committee were received prior to this date. The State party contests the author's claim that his right to use a telephone was violated. It submits that the author was unable to telephone since he used all the money on his account to buy food products at the local shop and had no money left for phone calls. Still, he exercised his right to use a telephone under article 92 of the Criminal Executive Code. The State party submits extracts from the book with records of telephone use by inmates.⁶

vi. right to employment

6.17 The author claims that his right to employment was violated. He argues that his requests and applications for jobs were not registered.

6.18 The State party responds that he was offered jobs at production units of the prison numerous times, however he refused the offers stating that he did not want to work.

Issues and proceedings before the Committee**Consideration of admissibility**

7.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 93 of its rules of procedure, decide whether or not the communication is admissible under the Optional Protocol to the Covenant.

7.2 The Committee notes, as required by article 5, paragraph 2 (a) and (b), of the Optional Protocol, that the same matter is not being examined under any other international procedure of investigation or settlement.

7.3 The Committee has taken note of the State party's arguments that the author had not exhausted domestic remedies at the time the case was submitted to the Committee, and that he subsequently continued to make use

⁶ The record book states that the author used the prison telephone on 30 April 2003, 6 November 2003 and 14 May 2004.

of domestic remedies. The Committee recalls its jurisprudence that the issue of exhaustion of domestic remedies is to be decided at the time of its consideration of the case, save in exceptional circumstances,⁷ which does not appear to be the case in the present communication.⁸

7.4 The Committee notes the author's claim that he was not brought before the judge or the prosecutor, who authorized his detention due to his bad physical condition as a result of torture, which might raise issues under article 9, paragraphs 1 and 3. It considers, however, that the author has not provided sufficient information to substantiate his claim, including information on whether his claim was brought before the judicial authorities. Accordingly, the Committee considers this claim inadmissible under article 2 of the Optional Protocol, for lack of substantiation.

7.5 The Committee considers that the author's remaining allegations, which appear to raise issues under article 7; article 10; and article 14, paragraph 3 (b),(d),(e), and (g), of the Covenant, have been sufficiently substantiated, for purposes of admissibility, and declares them admissible.

Consideration of merits

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

8.2 The Committee notes the author's claim that he was beaten and subjected to ill-treatment by the police during the interrogation, thus forcing him to confess guilt. He provides details on the methods of ill-treatment used and contends that these allegations were raised in the court, but were ignored. The Committee also notes the medical note issued by SIZO No 1 and the letter addressed to the administration of SIZO 1 by the author, a copy of which was provided by the State party. Both confirm the author's allegations. The Committee recalls its jurisprudence that it is essential that complaints about ill-treatment must be investigated promptly and impartially by competent authorities.⁹ In the absence of any other substantive refutation by the State party, the Committee concludes that the treatment to which the author was subjected, as described by him and supported by the medical note and letter, amounts to a violation of article 7 and article 14, paragraph 3 (g), of the Covenant.¹⁰

8.3 As to the allegations of bad quality of food, bad conditions in his cell, his transfer to psychiatric unit of the prison as well as complaints about not being able to receive parcels, to send and receive correspondence, to use phone, to walk outdoors, to receive adequate clothing and be provided with medical assistance, the Committee notes that the State party has submitted detailed information to refute each allegation. In such circumstances the

⁷ See communication No. 925/2000, *Kuok Koi v. Portugal*, decision of inadmissibility adopted on 22 October 2003, para. 6.4.

⁸ See communication 1085/2002, *Abdelhamid Taright et al. v. Algeria*. Views adopted on 15 March 2006, paragraph 7.3

⁹ General Comment No 20 (on article 7) forty-fourth session. 1992. para. 14

¹⁰ See communication 1057/2002, *Tarasova v. Uzbekistan*. Views adopted 20 October 2006, para 7.1

Committee cannot conclude that there was a violation of article 10 of the Covenant.

8.4 The Committee notes the author's claim that he was not allowed to have his lawyer present during the identification process and that the trial court denied his request to change his lawyer as well as his requests to invite additional experts and witnesses. The Committee also notes that the State party merely stated that the author's claims concerning procedural violations and violation of his right to fair trial are groundless and did not provide any arguments refuting these allegations. In these circumstances the Committee concludes that the author's allegations must be given due weight and that the author's rights under article 14, paragraph 3 (b, d and e), were violated.

9. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol, is of the view that the facts before it disclose a violation of article 7 and article 14, paragraph 3 (g), and article 14, paragraph 3 (b), (d), and (e), of the International Covenant on Civil and Political Rights.

10. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author with an effective remedy including the payment of adequate compensation, initiation and pursuit of criminal proceedings to establish responsibility for Mr. Pustovalov's ill-treatment, and a retrial with the guarantees enshrined in the Covenant. The State party is also under an obligation 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 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 and enforceable remedy in case a violation has been established, 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.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]