



# International Covenant on Civil and Political Rights

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## Human Rights Committee

### Decision adopted by the Committee under the Optional Protocol, concerning communication No. 2306/2013\*, \*\*

<i>Communication submitted by:</i>	V.K. (not represented by counsel)
<i>Alleged victim:</i>	The author
<i>State party:</i>	The Russian Federation
<i>Date of communication:</i>	21 September 2013 (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 3 December 2013 (not issued in document form)
<i>Date of adoption of decision:</i>	26 July 2019
<i>Subject matter:</i>	Torture and unlawful detention of the author
<i>Procedural issues:</i>	Non-substantiation of the claims, exhaustion of domestic remedies
<i>Substantive issues:</i>	Torture, unlawful detention, privacy, conditions of detention.
<i>Articles of the Covenant:</i>	2 (3) (b), 5 (2), 7, 9, 14 (3) (e) and (g) and (5), 17 (1) and 23 of the Covenant
<i>Articles of the Optional Protocol:</i>	2 and 5 (2) (b)

\* Adopted by the Committee at its 126th session (1–26 July 2019).

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



1. The author of the communication is V.K., a Russian national born in 1978. He claims to be a victim of a violation by the Russian Federation of his rights under articles 2 (3) (b), 5 (2), 7, 9, 14 (3) (e) and (g) and (5), 17 (1) and 23 of the Covenant. The Optional Protocol entered into force for the Russian Federation on 1 January 1992. The author is not represented by counsel.

### **The facts as presented by the author**

2.1 In 2010, the author worked as a penitentiary officer in the village of Chkalovsk in Primorsky Region, Russian Federation. On 31 August 2010 at around 8 p.m., while on duty, he was arrested by unknown persons. They showed no court order or a prosecutor's warrant for the arrest but handcuffed him, forced him into their car and drove him to his residence. They searched his flat for about one hour, threatening to "drive him, as he was, in uniform, to a temporary detention facility and lock him in one cell with hard-core criminals". The search was also conducted in the absence of any court or prosecutor's warrant.

2.2 Thereafter, the author was driven to the city of Spassk-Dalny. During the night of 31 August 2010, without counsel being present, he was forced by police officers to confess to selling drugs. He was handcuffed and threatened that unless he confessed, the police officers would report that drugs had been found at his place and that his father was also involved in drug dealing. They claimed to be capable of anything, especially in order to revenge their colleagues and warned him that he should not have testified against them. They did not let him take medicine to treat his ulcer and chronic pancreatitis. Then they forced him to confess, in writing and under torture, that he had sold drugs to V.V., an official of the Drug Control Agency. After that, the author was released.

2.3 On 9 September 2010, an investigator notified the author of the charges filed against him. The investigator refused to record the author's statement regarding the exact circumstances as to how his confession had been produced. After that, the author and his relatives started receiving threats, which the author raised in court hearings. However, the prosecutor and the court failed to take any measures. In particular, the court rejected the author's motion to play a record of his conversation with the police officers who had threatened him. The author further claims that his statements were only partly reflected in the trial record, which largely reproduced the indictment act.

2.4 The author also claims that, in violation of his rights, a number of witnesses, including V.V., were not questioned by the Spassky district court. Furthermore, V.V.'s statements were read out in court, despite the author's objection. The author filed objections to the trial transcript before the Spassky district court. He also requested the court to provide him with copies of the objections and other relevant documents. However, the court did not accede to his request, despite having made those documents available to the head of the Spassky district prosecutor's office.

2.5 On 2 December 2011, the Spassky district court found the author guilty of an attempt to sell drugs under articles 30 (3) and 228 (1) (3) of the Criminal Code of the Russian Federation and sentenced him to eight years and six months in prison. Following the verdict and sentence, the author was placed in detention facility SIZO-4 in Spassk-Dalny. He claims that his guilt was not supported with any evidence, such as his fingerprints; that an audio record was not examined in court;<sup>1</sup> that V.V., the main witness who had acted as a buyer, was not questioned in court; and that he was on duty at the time of the events and therefore had an alibi.

2.6 On 27 February 2012, the Primorsky regional court upheld the author's sentence on appeal. The author claims that his complaints regarding the forced confession and continuous threats were disregarded by the regional court, by the president of the same court on supervisory appeal, by the Supreme Court of the Russian Federation and by the Presidential Council on Human Rights and the State Duma of the Russian Federation.

2.7 On an unspecified date, the author attempted to send, from SIZO-4, an envelope containing an application to the European Court of Human Rights, in which he complained

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<sup>1</sup> A copy of this audio disc was not provided to the Committee.

about the conditions of his detention. He argued, in particular, that his cell was badly lit, that his bedding was very uncomfortable, that the water was of poor quality and that it was forbidden to receive fruit, other than apples, from relatives. He also argued that his health had deteriorated, in particular due to low-quality food and a lack of a specific diet and regular medical treatment, including medical appointments. He had also contracted haemorrhoids in detention. At some point the author was approached by the head of SIZO-4, who told him, showing an opened envelope with the author's application to the European Court, that no complaint of torture or any other violation that had allegedly occurred in SIZO-4 would be sent out. He added that Prosecutor SH., who had participated in the author's trial, was in charge of monitoring SIZO-4 and that the author's condition could deteriorate because of such complaints. Thereafter, two other persons from SIZO-4 threatened the author not to complain as "anything could happen to him in detention".

### **The complaint**

3. The author claims that the above-mentioned facts demonstrate that he has been a victim of a violation, by the State party, of his rights under articles 2 (3) (b), 5 (2), 7, 9, 14 (3) (e) and (g) and (5), 17 (1) and 23 of the Covenant. He also alleges a violation of the right to defend himself, without referring to any Covenant provision.

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

4.1 By notes verbales dated 29 January, 16 July, and 24 November 2014, the State party provided its observations on the admissibility and merits of the communication. It recalls that on 2 December 2011, the author was sentenced for attempting to sell prohibited narcotic drugs in an especially large amount. The author complains that he did not commit this crime, was forced to confess and his rights were violated during his detention.

4.2 During the investigation and the court hearings, the author confirmed that he had given a syringe containing a narcotic substance to several unknown men, but denied receiving monetary compensation in return. During the court hearings, he also stated that the investigator had forced him to sign a confession. The court of first instance, the Spassky district court, rejected his arguments and found him guilty as charged. On 27 February 2012, the cassation court of appeals upheld the verdict and sentence. On 10 December 2012 and 29 January 2013, the Primorsky regional court rejected the author's request for a supervisory appeal. On 29 August 2013 and 11 July 2014, the Supreme Court of the Russian Federation also rejected the author's request for a supervisory appeal. No further appeal avenues are currently available to the author.<sup>2</sup>

4.3 The State party notes that the author never complained about the use of unlawful methods of investigation, either to the prosecutor's office, or to the investigators. During his detention in the pretrial detention center SIZO-4, the author did not submit any complaints to the administration of the detention facility about "inappropriate" conditions of detention, including issues regarding the living conditions and access to medical services. During his imprisonment in correctional colony No. 3 in the Irkutsk region, he also failed to submit any complaints to the administration of the prison, courts, the prosecutor's office or any other government agency. The author therefore has not exhausted all available domestic remedies and his communication to the Committee should therefore be considered inadmissible.

4.4 Regarding the merits, the State party submits that the author's rights were observed throughout the investigation and his detention. Under article 182 (3) of the Criminal Procedure Code of the Russian Federation, the search of a dwelling is conducted based on a court decision. A court decision granting a search warrant is issued upon the request of the investigating officer, who in turn must ask permission from either the chief of the investigative agency or a prosecutor. Such requests for a search warrant must be considered by a judge within 24 hours of filing the request. According to article 165 (5) of the Criminal

<sup>2</sup> In coming to this conclusion, the State party cites changes that were introduced by federal Law 433-FZ, dated 29 December 2010.

Procedure Code, when search and seizure cannot be postponed or delayed, in “exceptional circumstances” such actions can be conducted without a court warrant.

4.5 In such cases, the investigating officer files a notification with the relevant court and a prosecutor within 24 hours of conducting an unauthorized search. The court, upon receiving such a notification, examines the lawfulness of the actions in question and issues a decision. If the search is considered unlawful, the evidence obtained as a result is inadmissible in court, in accordance with article 75 of the Criminal Procedure Code. On 31 August 2010, between 8.30 p.m. and 9.30 p.m. a decision was taken by the investigative officer that in the circumstances, a search could not be delayed and the author’s house was searched. The author himself and two witnesses were present during the search. The author was presented with the decision to conduct the search, and had his rights to legal defence and against self-incrimination explained to him. As is clear from the records, the author refused legal assistance.

4.6 In accordance with article 52 of the Criminal Procedure Code, the suspected or accused person has a right to refuse legal assistance at any time during an investigation. Such a right is given only to the suspected or accused himself or herself and must be formalized in a written form. If such a refusal is announced during the investigative action, the investigative officer must so indicate in the records. On 1 September 2010, the investigator informed a judge of the Spassky district court of the search and on 2 September, the judge declared that the search that was carried out on 31 August was valid.

4.7 The Covenant prescribes that everyone has the right to examine witnesses and to obtain the attendance of witnesses on his or her behalf under the same conditions as witnesses against him. Based on the records of his questioning, witness V.V., who was at the time an officer dealing with crimes related to narcotic substances, explained that he was taking part in an investigation which involved “test purchases”. He stated that on 14 July 2010, he and his partner, E.A., purchased a narcotic substance from a person who called himself Viktor. V.V. was dismissed from the police on 11 May 2011. He failed to appear during the court hearing scheduled for 13 May, 1 and 30 August and 16 and 27 September 2011. The court hearings were therefore postponed and additional measures to secure the presence of the witness were ordered. However, V.V. could not be found.

4.8 In accordance with article 281 (1) of the Criminal Procedure Code, with the agreement of both the defendant and the prosecutor, the testimonies of witnesses or victims can be read out in court, if the presence of the said witness or victim cannot be secured. On 11 October 2011, the court asked whether there were any objections to the testimony of V.V. being read out in court. No objections were voiced and the testimony was read out. The author and his lawyer did not file any objections. Moreover, the author and his lawyer posed questions to E.A., who had taken part in the “test purchases”, to another officer, S.A., and to a witness, R.K.

4.9 After the initial search, the author was questioned as a suspect, in the presence of a lawyer, and during this interrogation, he admitted that on 14 July 2010, he had dealt with a narcotic substance. He did not indicate, however, that the police officers had used violence or threats against him.

4.10 In his complaint to the Committee, the author claims that he was charged on 9 September 2010 and during his interrogation he informed the investigating officers that he had confessed under pressure, his relatives had been threatened and he had never dealt with any drugs nor given them to anyone. The records, however, indicate that the author was charged on 10 September 2010, that his lawyer was present during this meeting and there is no information regarding mistreatment of the author. During his interrogation, the author fully admitted his guilt. During an interrogation on 26 October 2010, the author admitted that he had sold drugs to someone for money. During another interrogation on 16 February 2011, he confirmed his earlier statements. All records were signed by the author and his lawyer.

4.11 During questioning in court (minutes of the court hearings of 13 May 2011), the author also admitted his guilt. The State party therefore submits that there were no violations of the author’s rights under the Covenant.

4.12 After submitting a complaint to the Committee, the author also submitted a complaint dated 19 May 2014 against the investigators in his case, claiming that they had exceeded their authority. As a result, on 22 October 2014, the prosecutor's office of the city of Spassk-Dalny initiated an examination, which is currently ongoing, and on which no final decision has been taken.<sup>3</sup>

4.13 The State party confirms that from 18 June to 2 July 2014, the author was treated in hospital No. 1 of the federal penitentiary system with a diagnosis of "exacerbation of chronic calculous cholecystitis". He was treated and released, and was told to follow doctor's recommendations, including a diet. As a result, he received food that contained less fat and fewer spices than usual. The author did not complain about the food to the administration of the prison. He is regularly checked by doctors.

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

5.1 In his responses to the State party's observations on admissibility and the merits, the author submits that he confessed to crimes because he was "tortured and threatened", but that his complaints were disregarded by the court and that this is recorded in court records.<sup>4</sup> The author also stated that he had audio recordings on a compact disc that contained his conversations with the police officers.<sup>5</sup> The author asked for the disc to be forensically examined to ascertain if the voices belonged to the police officers but his request was rejected.

5.2 All complaints that the author filed from SIZO-4 were sent to the prosecutor's office. The prosecutor's office, however, always tried to protect the officials of the pretrial detention facility. The author complained about the lack of medical assistance in SIZO-4 and the conditions of detention, but all his complaints remained unanswered. In support, the author sent a copy of his complaints to the prosecutor's office on 16 December 2011 and 30 January 2012.

5.3 The author also draws attention to the fact that the alleged crime was committed, according to the authorities, on 14 July 2010 and the search was conducted on 31 August 2010. The purpose of the search was to deliver the author to the police station of the city of Spassk-Dalny, subject him to torture and force him to sign a confession. The author complained about this during the court hearings. He submits copies of two complaints, from March and July 2014, but claims to have never received a response.

5.4 The author also claims that the police officer, V.V., who acted as a "buyer", was subsequently fired from the police based on the fact that he had falsified evidence regarding a drug investigation. He could not testify in court because at the time, he was at large and wanted by the authorities.

5.5 The author also claims that he was released after initially being held for 24 hours, and that he had to travel 50 kilometres to reach home. During his 24 hours in detention, he was forced to sign "different papers". In all his complaints, the author complained about torture, threats and that the evidence was falsified against him. According to the author, the court also falsified its final verdict, as is evident from the copies presented to the Committee.

### **Issues and proceedings before the Committee**

#### *Consideration of admissibility*

6.1 Before considering any claims contained in a communication, the Human Rights Committee must decide, in accordance with rule 97 of its rules of procedure, whether it is admissible under the Optional Protocol.

<sup>3</sup> This claim is made in the State party's submission dated 24 November 2014.

<sup>4</sup> The author submitted several responses, dated 23 March, 9 April, 23 August 2014; 15 December and 27 March 2015; and 29 September 2017.

<sup>5</sup> The author refers to this audio disc/CD at various stages of the proceedings before the Committee. However, he has not presented a copy of the disc to the Committee, nor has he provided the transcripts of the alleged recordings.

6.2 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.

6.3 The Committee takes note of the author's claim that he has exhausted all effective domestic remedies available to him. The State party claims that the author has failed to exhaust all available domestic remedies, arguing that he did not complain to the prosecutor's office, the administration of the pretrial detention centre or the investigators. The Committee notes its long-standing jurisprudence that the requirement to exhaust all available domestic remedies refers in the first place to the exhaustion of judicial remedies.<sup>6</sup> The Committee notes that the author filed several supervisory appeal requests to the Primorsky regional court and the Supreme Court of the Russian Federation. Considering the text of the court decisions and in the absence of other explanations or arguments from the State party in this connection, the Committee concludes that it is not precluded by virtue of article 5 (2) (b) of the Optional Protocol from examining the present communication.

6.4 The Committee notes that the author has claimed that in violation of article 7 of the Covenant, he was brought to a police station and forced to confess that he was guilty of crimes, which was subsequently used to have him sentenced. The State party has refuted these allegations, in particular by noting that both during the investigation and in court on several occasions, the author confessed to being guilty of drug-related crimes. The author submits in several of his complaints to the courts that he was "pressured", but does not provide any details regarding the alleged ill-treatment or torture. The Committee further notes, for example, the author's claim before the Committee that his family members were threatened. The Committee notes from the transcripts of the court hearings, however, that both the author's wife and his father testified during the court hearings (the author's wife was present, and her earlier statement to the investigator was read out in court, with her consent and the consent of the author and his lawyer). The Committee notes that these testimonies do not indicate any threats whatsoever by the police or the investigators. In the absence of any other information of relevance on file, in particular a description of the manner in which the author was ill-treated or in which his family members were threatened, the Committee considers that this part of the communication is insufficiently substantiated and therefore inadmissible under article 2 of the Optional Protocol.

6.5 The Committee further considers the author's claims under article 2 (3) (b) and 5 (2) of the Covenant. The Committee notes, however, that these articles cannot be invoked autonomously. The Committee has also noted the author's claims under articles 9, 14 (3) (g) and (e) and (5), 17 (1) and 23 of the Covenant. In the absence of any further pertinent information on file, however, the Committee considers that the author has failed to sufficiently substantiate, for the purposes of admissibility, his allegations. Accordingly, it declares this part of the communication inadmissible under article 2 of the Optional Protocol.

7. The Committee therefore decides:

- (a) That the communication is inadmissible under article 2 of the Optional Protocol;
- (b) That the present decision shall be transmitted to the State party and to the author.

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<sup>6</sup> See, for example, *R.T. v. France* (CCPR/C/35/D/262/1987), para 7.4.