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**Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**

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**Committee against Torture**

**Communication No. 479/2011**

**Decision adopted by the Committee at its fiftieth session, 6 to 31 May 2013**

*Submitted by:* E.E. (represented by his mother L.E.)

*Alleged victim:* E.E.

*State party:* The Russian Federation

*Date of complaint:* 26 August 2010 (initial submission)

*Date of decision:* 24 May 2013

*Subject matter:* Torture and ill-treatment during pretrial investigation in an attempt to obtain forced confessions

*Substantive issues:* Torture and ill-treatment in detention

*Procedural issue:* Examination by another international organ of investigation or settlement

*Articles of the Convention:* 1, para. 1; 2, para. 3; 4, para. 1; 15

**Annex**

**Decision of the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (fiftieth session)**

concerning

**Communication No. 479/2011**

*Submitted by:* E.E. (represented by his mother L.E.)

*Alleged victim:* The complainant

*State party:* The Russian Federation

*Date of complaint:* 26 August 2010 (initial submission)

*The Committee against Torture*, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

*Meeting on* 24 May 2013,

*Having concluded* its consideration of complaint No. 479/2011, submitted to the Committee against Torture on behalf of E.E. under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

*Having taken into account* all information made available to it by the complainant and the State party,

*Adopts* the following:

**Decision under article 22, paragraph 7, of the Convention against Torture**

1.1 The complainant is E.E., a citizen of the Russian Federation born in 1966. He claims to be a victim of a violation by the State party of his rights under article 1, paragraph 1; article 2, paragraph 3; article 4, paragraph 1 and article 15 of the Convention. The complainant is represented by his mother L.E.

1.2 By Note Verbale of 23 December 2011, the State party challenged the admissibility of the communication on ground of non-exhaustion of domestic remedies and given that the same matter was already examined by the European Court of Human Rights. On

16 May 2012, the Committee, acting through its Rapporteur on New Complaints and Interim Measures, decided to accede to the State party's request to have the issue of admissibility of the communication examined first, separately from the issue of the merits.

## **The facts as submitted by the complainant**

2.1 On 16 April 2002, the complainant, then a bus driver on the route Chekhov–Moscow–Chekhov, received a phone call from a police officer informing him that the police needed to question him. Later the same day, two police officers from the Chekhov District Police Station, without providing any further explanation, apprehended the complainant near his house.

2.2 The complainant was brought to the Chekhov District Police Station, where police officers started to threaten him and beat him on the head. They asked him to confess the killing of one Ms. I.B., who had disappeared on 15 April 2002, while on her way from Moscow to Chekhov by bus.

2.3 The complainant claims that initially he was not informed of his right to be represented by a lawyer, he was not officially charged with any crime, and his arrest was not registered at the police station.

2.4 On 18 April 2002, a forensic–medical examination was performed on the complainant. No injuries were found on his body.

2.5 On the night from 19 to 20 April 2002, four police officers brought the complainant to a remote forest area. He submits that he was handcuffed and his head was covered with a hood. He was offered a “last chance” to confess guilt, otherwise he would be killed. The officers started beating him, and he was pushed on his knees very close to a bonfire. One of his knees was burnt by the fire. He was also beaten in the kidneys liver and area, on back and his ribs and was again threatened with murder. The officers also threatened to kill his wife and daughter. Thereafter, the complainant was taken back to the temporary confinement ward at the Chekhov District Police Station.

2.6 On 20 April 2002, the complainant's counsel visited him and he informed her that he was frightened, as he was under constant threats. He told her about the events of the night from 19 to 20 April 2002. On the same day, counsel complained to the Moscow Region Prosecutor's Office about the complainant's ill-treatment and threatening.

2.7 During the night from 21 to 22 April 2002, three unknown men entered the complainant's cell. One explained that he was the Head of the Criminal Police of Chekhov city. After having threatened the complainant and his family, the men left. The following night, several other officers came into his cell, along with the relatives of the missing Ms. I.B. The complainant was again threatened to be killed if he did not confess guilt.

2.8 On 22 April 2002, the Senior Inspector of the Moscow Region Prosecutor's Office of Chekhov city ordered a forensic-medical expert's examination of the complainant, which was carried out on 7 May 2002. During the examination, the complainant explained to the forensic expert that he had acute pain in the chest and that he felt dizzy. He claims that in reply, the expert, orally, told him that his ribs were broken. However, according to the record of the forensic examination, only a small, already healing wound was found on the complainant's left knee. According to the record, the wound in question could have been caused as a result of high or low temperature, by a curved object or by chemical substances. As a result, on 28 June 2002, the Senior Inspector of the Moscow Region Prosecutor's Office of Chekhov city refused to initiate criminal proceedings with respect to the complainant's ill-treatment claims.

2.9 The complainant submits that he finally confessed having committed the crime he was charged with as a result of the torture, threats and ill-treatment suffered. On an unspecified date in November 2002, he was transferred to the Serpukhov city prison, where torture and ill-treatment allegedly continued.

2.10 On 11 March 2003, the Moscow Regional Court found the complainant guilty, *inter alia*, under article 131, paragraph 3 (rape) and article 105, paragraph 2 (murder in a group of persons) of the Criminal Code and sentenced him to 21 years of imprisonment. On appeal, on 13 May 2003, the Supreme Court upheld the judgment of 11 March 2003. The complainant submits that, during the court trial, his counsel requested the Moscow Regional Court to take into account the issue of torture and the injury as established by the forensic-medical expert on 7 May 2002, but the court rejected this request.

2.11 In June 2003 and May 2004, the complainant's counsel complained to the Supreme Court under the supervisory review proceedings, requesting a re-examination of the criminal case, *inter alia*, given that the complainant was subjected to torture and ill-treatment during the pretrial detention and had confessed guilt thereunder. The Court rejected both requests.

2.12 In March 2004, the complainant's mother, acting on his behalf, applied to the European Court of Human Rights complaining about her son's alleged ill-treatment and forced confessions. In March 2006, the Court found the application inadmissible under articles 34 and 35 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

2.13 On 24 November 2006, the complainant lodged a complaint with the Prosecutor-General of the Russian Federation, claiming torture, ill-treatment and the resulting unlawful conviction. The complaint was dismissed on 15 February 2007. Between 15 February 2007 and 3 August 2009, the complainant lodged similar complaints before a number of national authorities, vainly.

## **The complaint**

3.1 The complainant claims that he was subjected to torture and ill-treatment at the initial stages of his detention, as well as while in pretrial detention, and that subsequent failure to investigate his complaints amounted to a violation, by the State party, of his rights under article 1, paragraph 1; article 2, paragraph 3; article 3; and article 4, paragraph 1, of the Convention.

3.2 He also claims that his ill-treatment at the police station and in prison amounted to torture aimed at obtaining a confession, in

violation of the article 15 of the Convention.

### **The State party's observations on admissibility**

4.1 By Note Verbale of 23 December 2011, the State party submitted its observations on the admissibility of the communication. It recalled the facts of the case: on 11 March 2003, the complainant was found guilty of rape and murder of Ms. I.B. in a particularly cruel manner, with use of violence, committed with the aim to conceal another crime, acting as part of an organized group. He was sentenced to 21 years of imprisonment.

4.2 During the pretrial investigation, the complainant's counsel appealed to the Prosecutor's Office alleging that the complainant had been subjected to ill-treatment. In this connection, an inquiry had been carried out, but the facts of ill-treatment were not confirmed. Consequently, on 29 June 2002, the Prosecutor's Office refused to initiate criminal proceedings in this respect. The State party points out that no appeal was lodged against this decision.

4.3 Notwithstanding, on 25 November 2011, the First Deputy Prosecutor of the Moscow Region annulled the decision of 29 June 2002 and the respective case file materials were forwarded to the Moscow Region Head Investigation Department of the Investigation Committee of the Russian Federation, for additional examination.

4.4 In light of the above, the State party maintains that the complainant has not exhausted all available domestic remedies, and the communication should be declared inadmissible pursuant to article 22, paragraph 5 (b) of the Convention.

4.5 In addition, the State party notes that, according to the case file materials, in March 2004 the complainant's mother applied with a similar complaint, on the complainant's behalf, to the European Court of Human Rights. Her application was subsequently declared inadmissible pursuant articles 34 and 35 of the Convention for the Protection of Human Rights and Fundamental Freedoms. The State party maintains that the present communication should also be declared inadmissible pursuant article 22, paragraph 5 (a) of the Convention, as the Committee does not consider any communication which has been or is being examined under another procedure of international investigation or settlement.

### **The complainant's comments on the State party's observations**

5.1 On 5 April 2012, the complainant reiterated that he was found guilty based on his confession obtained under duress. His counsel requested the Moscow Regional Court to take into account that, even if the forensic medical examination of 18 April 2002 established no injuries on him, an injury was established on him by the forensic medical examination of 7 May 2002, but the court dismissed this request. He also points out that the forensic medical examination of 7 May 2002 was performed on him 18 days after the date when he was subjected to ill-treatment, and when his injuries had already started to heal. In his opinion, by delaying his medical examination in 2002, the authorities had tried to hinder the investigation of his complaint of ill-treatment.

5.2 The complainant further extensively challenges the manner the courts interpreted the facts and evidence in the criminal case and enumerates alleged procedural shortcoming that took place during the trial.

5.3 Finally, he contends that his application to the European Court of Human Rights was dismissed because of non-compliance with the six months' time limit (article 35 of the European Convention).

### **The State party's further observations**

6.1 By its Note Verbale of 22 May 2012, the State party added that, on 16 April 2002, Mr. B. had informed the police that his daughter had gone missing. On the same date, the complainant was summoned to the Chekhov District Police Station. He explained that at the end of his last bus ride the previous day, all passengers had gotten off at the last bus stop and that, on his way to the bus park, his bus broke. After he repaired it, he drove to the bus park, where a man was waiting for him to inquire about his daughter's whereabouts.

6.2 The State party further explained in detail the procedure prescribed by the national legislation in force at the material time regarding decisions to arrest and detain a person.

6.3 It adds that on 17 April 2002, the complainant was arrested as a murder suspect. According to the criminal case file materials, he was explained his right not to testify against himself. On 18 April 2002, he was interrogated, and during the interrogation, he did not complain about ill-treatment whatsoever. On the same date, a forensic-medical examination was performed on him, and no injuries were established on the complainant. On 19 April 2002, during the search of the complainant's house, no complaints about the ill-treatment were received either from the complainant's mother or from the complainant himself. On 20 April 2002, the complainant's counsel requested to perform another forensic-medical examination on the complainant. The request was satisfied on 22 April 2002. On the same date, during another interrogation, the complainant did not confess guilt and stated that it was one Mr. Ya. who had raped and murdered Ms. I.B. During the said interrogation, he again did not complain about having been subjected to any ill-treatment.

6.4 On 24 April 2002, Mr. Ya. testified how exactly the complainant committed crimes against Ms. I.B. Consequently, on 26 April 2002, the complainant was charged with murder and rape (article 105, paragraph 2 (k) and article 131, paragraph 1, of the Criminal Code).

6.5 During an interrogation on 26 April 2002, the complainant again reiterated his statements of 22 April 2002 claiming that the crimes were committed by Mr. Ya.; he did not complain of ill-treatment.

6.6 According to the forensic-medical expert's examination of 7 May 2002, a wound was revealed on the complainant's left knee,

but it was impossible to establish its exact causes, as it could have been inflicted by a rounded or sharp object, by high or low temperature or by chemical substances. In this connection, the State party observes that neither the complainant, nor his counsel challenged the conclusions of this forensic report.

6.7 On 8 May 2002, the complainant's mother and his counsel complained to the Moscow Region Prosecutor's Office about the alleged ill-treatment.

6.8 During an interrogation of 20 May 2002, Mr. Ya. again incriminated the complainant, whereas on 21 and 28 May 2002, the complainant reiterated that the crimes were, in fact, committed by Mr. Ya. The complainant did not complain that he had been subjected to any ill-treatment on these last two occasions.

6.9 On 28 June 2002, the Prosecutor's Office adopted a decision not to initiate criminal proceedings concerning the complainant's allegations of ill-treatment, as they were not confirmed.

6.10 On 10 September 2002, the complainant was interrogated, but in the course of interrogation, he did not complain about having been subjected to ill-treatment. On 14 September 2002, Mr. Ya. reiterated his statements that the crimes were committed by the complainant, while on 17 September 2002, the complainant claimed that he did not commit the crimes he had been charged with and pointed to Mr. Ya. as the culprit. He reiterated the same also on 17 October 2002. The complainant did not complain about any ill-treatment, neither on 17 September 2002, nor on 17 October 2002.

6.11 During the trial, the complainant's counsel requested the Moscow Regional Court to take into account the results established by the forensic medical examinations of 18 April 2002 and of 7 May 2002; the court dismissed the request.

6.12 The State party notes that neither in the framework of the cassation proceedings nor within the supervisory review proceedings did the complainant ever mention that he had been subjected to ill-treatment during the pretrial investigation with the aim to force him to confess guilt concerning Ms. I.B.'s disappearance.

6.13 Finally, the State party notes that neither during the pretrial investigation nor during the proceedings before the courts did the complainant confess guilt in the crimes he had been charged with.

### **The complainant's further comments**

7.1 On 22 June 2012, the complainant reiterated extensively his previous submissions, in particular regarding alleged procedural shortcomings and during the court trial.

7.2 He reiterates that as a result of his ill-treatment in the Chekhov District Police Station, he confessed that Ms. I.B. was on his bus on 15 April 2002. He also maintains that he was ill-treated in the Serpukhov city prison.

7.3 On 23 July 2012, the complainant added that he has exhausted all the available domestic remedies. In particular, within the cassation proceedings and the supervisory proceedings, the complainant indicated that he had been subjected to ill-treatment in order to force him to confess guilt.

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

### **Consideration of admissibility**

8.1 Before considering a claim contained in a communication, the Committee must decide whether it is admissible under article 22 of the Convention.

8.2 The Committee has taken note of the State party's objection regarding the admissibility of the communication. It notes, first that in March 2004, the complainant's mother had applied to the European Court of Human Rights with a similar complaint regarding the complainant's ill-treatment during the pre-trial investigation and his subsequent conviction based on his forced confessions. This application was declared inadmissible on 28 March 2006. In this regard, the Committee notes that contrary to the complainant's submission that the application before the European Court of Human Rights was dismissed due to the failure to comply with the six-months' time limit (see paragraph 5.3 above), the material on file demonstrates that the European Court, acting through a Committee of three judges, declared the claims inadmissible on the ground that the information before the Court does not reveal any violation of the rights and freedoms guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms.

8.3 The Committee recalls that it shall not consider any communication from an individual under article 22, paragraph 5 (a), of the Convention, unless it has ascertained that the *same matter has not been, and is not being, examined* under another procedure of international investigation or settlement. The Committee considers that examination by the European Court of Human Rights in the present case constituted an examination.

8.4 The Committee considers that a communication "has been", and "is being examined" by another procedure of international investigation or settlement if the examination by the procedure relates/related to the "same matter" within the meaning of article 22, paragraph 5 (a), that must be understood as relating to the same parties, the same facts, and the same substantive rights. It concludes from the information on the case file that Application No. 14986/04 submitted to the European Court in 2004 on behalf of the complainant concerned the same person, was based on the same facts, and related to the same substantive rights as those invoked in the present communication.

8.5 In view of the above, the Committee considers that the requirements of article 22, paragraph 5 (a), have not been met in the present case. In light of this conclusion, the Committee will not examine other grounds of inadmissibility invoked by the State party, namely, those concerning the issues of non-exhaustion of domestic remedies.

9. The Committee therefore decides:

- (a) That the communication is inadmissible under article 22, paragraph 5 (a), of the Convention;
- (b) That this decision shall be communicated to the complainant and to the State party.

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