



**International Covenant on
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Views

Communication No. 1605/2007

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| <u>Submitted by:</u> | Nikolai Zyuskin (not represented by counsel) |
| <u>Alleged victim:</u> | The author |
| <u>State party:</u> | Russian Federation |
| <u>Date of communication:</u> | 15 March 2007 (initial submission) |
| <u>Document references:</u> | Special Rapporteur's rule 97 decision, transmitted to the State party on 5 October 2007 (not issued in document form) |
| <u>Date of adoption of Views:</u> | 19 July 2011 |

* Made public by decision of the Human Rights Committee.

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| <i>Subject matter:</i> | Long-term imprisonment after torture and unfair trial. |
| <i>Substantive issues:</i> | Effective remedy; no derogation from article 7; torture, cruel, inhuman or degrading treatment or punishment; right to a fair hearing by an independent and impartial tribunal; right to be presumed innocent; right to obtain the attendance and examination of witnesses; right to have one's sentence and conviction reviewed by a higher tribunal. |
| <i>Procedural issue:</i> | Lack of substantiation of claims. |
| <i>Articles of the Covenant:</i> | 7; 14, paragraphs 1, 2, 3(e) and 5 |
| <i>Article of the Optional Protocols:</i> | 2 |

On 19 July 2011, 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. 1605/2007.

[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 (102nd session)

concerning

Communication No. 1605/2007**

Submitted by: Nikolai Zyuskin (not represented by counsel)

Alleged victim: The author

State party: Russian Federation

Date of communication: 15 March 2007 (initial submission)

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

Meeting on 19 July 2011,

Having concluded its consideration of communication No. 1605/2007, submitted to the Human Rights Committee by Mr. Nikolai Zyuskin 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 Mr. Nikolai Zyuskin, a Russian national born in 1978, who is currently serving a prison sentence in the Russian Federation. He claims to be a victim of violations by the Russian Federation of his rights under article 7 and article 14, paragraphs 1, 2, 3(e) and 5, 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 not represented.

Factual background

2.1 At 11.35 p.m. on 19 March 2001, the author was arrested by officers of the District Department for Combating Organised Crime of Gatchina city (District Department) on suspicion of having committed a crime and brought to the District Department where he was allegedly subjected to physical and psychological pressure. On 22 November 2001, the

** The following members of the Committee participated in the examination of the present communication: Mr. Lazhari Bouzid, Mr. Ahmad Amin Fathalla, Mr. Cornelis Flinterman, Mr. Yuji Iwasawa, Ms. Helen Keller, Mr. Rajsoomer Lallah, Ms. Zonke Zanele Majodina, Mr. Gerald L. Neuman, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Fabian Omar Salvioli, Mr. Krister Thelin and Ms. Margo Waterval.

Leningrad Regional Court convicted the author on counts of premeditated murder under aggravated circumstances (article 105, part 2, of the Criminal Code), premeditated infliction of light bodily injuries (article 115) and assault (article 116). He was sentenced to 16 years and 6 months' imprisonment. The court established that, on 24 November 2000, in the course of a quarrel the author assaulted a certain Ms. N. B. with whom he was consuming alcoholic beverages. When Ms. N. B. threatened to report the assault to the police, the author and Mr. I. L. killed her by hitting her with a stick on her head a number of times. Shortly thereafter they threw the body of Ms. N. B. into the ditch and buried it 2 days later.

2.2 On 14 February 2002, the Supreme Court examined the author's cassation appeal and decided to terminate criminal proceedings against him in relation to premeditated infliction of light bodily injuries (article 115 of the Criminal Code) and assault (article 116) for procedural reasons. The Supreme Court, therefore, established that the author was guilty of premeditated murder under aggravated circumstances (article 105, part 2, of the Criminal Code) and sentenced him to 16 years' imprisonment.

2.3 On 17 October 2002, the author submitted an application to the European Court of Human Rights that was declared inadmissible on 7 January 2005, as it was lodged after the expiry of the six-month time-limit.

Allegations of torture and ill-treatment during pre-trial investigation

2.4 The author claims that shortly after his arrest on 19 March 2001, on the premises of the District Department he was forced by officers to wear a gas mask with obstructed air access and was thus prevented from breathing until he fainted. He was unable to remove the gas mask from his head, as his hands were handcuffed behind the chair on which he was sitting. He was also placed a scarf on his head to prevent him from seeing those who beat him with a stick on his head, thighs and shins. These actions of officers of the District Department were accompanied by threats and insults, as well as kicks and punches on his abdomen, groin, back and the head in order to force him to confess guilt. The author could also hear the cries and beatings of his co-accused, Mr. I. L., who was arrested together with him.

2.5 The author submits that the unlawful actions of officers of the District Department were witnessed by a senior investigator of the Gatchina City Prosecutor's Office, Mr. V. V., who was subsequently put in charge of the investigation in relation to the author's criminal case. Mr. V. V. did not intervene and shortly thereafter drew up a report of the author's interrogation as a suspect. In the morning of 20 March 2001, he and Mr. I. L. were transferred to the temporary confinement ward (IVS) of Gatchina city, where Mr. V. V. drew up their respective arrest and personal search reports.

2.6 On 22 March 2001, the author was interrogated by Mr. V. V. in the presence of the Gatchina City Prosecutor and an *ex officio* lawyer. He submits that, still afraid because of the beatings and torture to which he had been subjected and fearing negative repercussions he would have faced had he complained, he did not make any depositions to the prosecutor about the unlawful methods used by officers of the District Department against him and about the investigator's failure to intervene. The author states that he did not ask the prosecutor to order a medical examination in order to document the injuries on his body, since the bruises and scratches on his face were still clearly visible but the prosecutor failed to react, despite his obligation to ensure compliance with law at the preliminary

investigation stage.¹ He adds that the *ex officio* lawyer did not duly react to the bruises and scratches either.

2.7 On 18 June 2001, the author submitted a written complaint to the Gatchina City Prosecutor, stating, *inter alia*, that he was subjected to acts of violence by officers of the District Department. On 10 July 2001, the Gatchina City Prosecutor replied by reminding the author that on 22 March 2001 he was interrogated in the presence of the very same Gatchina City Prosecutor and could have informed him about the use of violence if it had indeed taken place. On 6 August 2001, the author submitted another written complaint to the Gatchina City Prosecutor. On 7 August 2001, the Gatchina City Prosecutor replied by informing the author that, under article 51 of the Constitution, he had a right not to testify against himself and close relatives.

2.8 On 19 September 2001, the author submitted a further written complaint to the Gatchina City Prosecutor's Office with the request to initiate criminal proceedings with regard to the beatings to which he had been subjected on 20 March 2001 by officers of the District Department. On 23 October 2001, the senior assistant of the Gatchina City Prosecutor decided not to initiate criminal proceedings. As transpires from the decision, four officers of the District Department who were questioned in relation to the author's complaint stated that they had to use sambo techniques (martial art) and handcuffs while arresting the author and Mr. I. L., as they tried to escape. The officers further stated that they duly reported the use of sambo techniques and handcuffs and that the report in question was added to the case file materials. They also stated that no force was used against the author and Mr. I. L. on the premises of the District Department. The latter was confirmed by the statement of a certain Mr. A. A., a former officer of the District Department, who was present at the time of arrest. According to the statement of the investigator, Mr. V. V., the author and Mr. I.L. were not subjected to torture and violence on the premises of the District Department and, while being transferred to the IVS, they affirmed that they did not complain about having been beaten. The investigator also stated that the author started complaining 'everywhere' about being subjected to unlawful methods only after he was remanded in custody as an attempt to avoid responsibility for the murder he had committed. The investigator added that all investigation actions, except for the interrogation as a suspect, took place in the presence of a lawyer.

2.9 The author submits that he complained to the Leningrad Regional Court about the use of unlawful methods by three officers of the District Department and refers to page 18 of the trial transcript in support of his claim. He adds that the first instance court disregarded his allegations of torture and ill-treatment as demonstrated by lack of any reference to these allegations in the judgment of the Leningrad Regional Court. The author claims that he also complained about the beatings and torture in his cassation appeal to the Supreme Court. In the ruling of 14 February 2002, the Supreme Court stated that the author's arguments about the use of unlawful methods during pre-trial investigation were examined by the Leningrad Regional Court and were found to be groundless in its reasoned judgment. The author adds that Mr. I. L. also complained about beatings and torture in his cassation appeal.

2.10 The author submits that he unsuccessfully complained about the use of unlawful methods to the Leningrad Regional Prosecutor's Office² and the General Prosecutor's Office³ through the supervisory review procedure.

¹ Reference is made to article 211 of the Criminal Procedure Code and article 1 of the Federal Law "On the Prosecutor's Office".

² The author refers to a letter of the Deputy Prosecutor of the Leningrad Region dated 29 July 2002.

2.11 On 8 January 2002, the author submitted a written complaint to the Human Rights Ombudsman. On an unspecified date, this complaint was transmitted to the Leningrad Regional Prosecutor's Office. On 11 March 2002, the Leningrad Regional Prosecutor's Office revoked the decision of 23 October 2001 not to initiate criminal proceedings and the case file materials were sent back to the Gatchina City Prosecutor's Office for an additional investigation.

2.12 On 18 May 2002, Gatchina City Prosecutor decided not to initiate criminal proceedings with regard to the unlawful methods used by officers of the District Department and the failure of the investigator to duly react to these unlawful actions. In the course of the additional investigation, the author explained that he had not been beaten at the time of his arrest but that the beatings and other forms of physical violence were used by officers on the premises of the District Department in the presence of the investigator who did not intervene. According to the register of medical examination of individuals detained in the IVS, no injuries were identified on the author's body upon his arrival to the IVS and no medical assistance was provided to him from 21 to 23 March 2001. The report of additional investigation referred to what was explained by the author in writing to the administration of the IVS, i.e. that his injuries resulted from a beating before his arrest. The report noted that it was impossible to either confirm or refute this claim. According to the report of the Gatchina District Medical Association, the author was examined on 23 March 2001. The examination established that he had a number of head injuries and a bruise around his right eye. According to the certificate from the IVS, the author was detained there from 23 March to 2 April 2001. He was examined by a duty medical assistant at 6.40 p.m. on 23 March 2001 upon his arrival to the IVS. The examination established that he had a head injury, a haematoma of the right eye and a few scratches on the left side of the forehead; the author did not complain about his health condition and did not require medical assistance. The report of additional investigation also referred to a testimony of a bartender who stated that the author and Mr. I. L. did not offer any resistance at the time of their arrest but could have received injuries when they fell over an overturned table. Four officers of the District Department who were questioned in relation to the author's initial complaint of 19 September 2001 repeated their earlier statements about the use of sambo techniques and handcuffs against the author and Mr. I. L. at the time of their arrest. One of the officers added that there were no gas masks on the premises of the District Department.

2.13 On numerous occasions,⁴ the author unsuccessfully complained about the failure of the Gatchina City Prosecutor's Office to duly provide him with a copy of the decision of 18 May 2002,⁵ as well as with the materials of the additional investigation. On 26 August 2004, the author sent a written complaint to the Leningrad Regional Prosecutor's Office with the request to initiate criminal proceedings against the Gatchina City Prosecutor for her failure to duly provide him with a copy of the decision of 18 May 2002 and with the materials of the additional investigation; this complaint was rejected on 29 October 2004. The First Deputy Prosecutor of the Leningrad Region explained that should the author himself be unable to personally familiarise himself with the materials of the additional investigation, he should authorise a lawyer to represent him. On 18 November 2004, the author complained to the General Prosecutor's Office about the decision of 29 October 2004; this complaint was rejected by the Assistant General Prosecutor on 21 January 2005.

³ The author refers to a letter of the Deputy General Prosecutor dated 14 May 2002 and two letters of the General Prosecutor's Office dated 18 May 2002 and 18 June 2002.

⁴ The author refers to his requests of 4 September 2003, 13 November 2003 and 8 January 2004 to the Gatchina City Prosecutor's Office; of 13 November 2003 and 15 April 2004 to the Leningrad Regional Prosecutor's Office; of 6 November 2003 to the Human Rights Ombudsman.

⁵ The author submits that he was familiarised with the decision of 18 May 2002 on 10 June 2004.

2.14 On 17 June 2004, the author complained to the Gatchina City Court about the decision of 18 May 2002 not to initiate criminal proceedings with regard to the unlawful methods used against him by officers of the District Department. The author argued, *inter alia*, that the following investigation actions have not been undertaken in the course of the additional investigation: questioning of the individuals who were detained in the same cell in the IVS from 20 to 23 March 2001; questioning of Mr. I. L. who saw injuries on the author's face when they were transferred to the IVS; clarifying contradictions between the testimony of the investigator about the use of sambo techniques and handcuffs at the moment of arrest as the author and Mr. I. L. tried to escape and the testimony of a bartender, stating that they did not offer any resistance; duly assessing the author's claims that there was no medical examination at the time of his arrival to the IVS and that, on 23 March 2001, he explained in writing that he had been beaten prior to his arrest on 19 March 2001. The author added that he later retracted these explanations.

2.15 On 18 August 2004, the Gatchina City Court examined the author's complaint in his absence and rejected it. The court concluded that the investigation of the author's allegations about being subjected to beatings and other unlawful methods was comprehensive and impartial. The investigation established that force (sambo techniques) and handcuffs were used against the author at the time of his arrest and that the latter did not exclude the infliction of injuries that have been identified on his body on 23 March 2001 (head injuries, haematoma of the right eye and scratches on the left side of the forehead). The use of force at the time of his arrest was in compliance with the Law "On Police", since the author was suspected of having committed a premeditated murder and there was information that he and Mr. I. L. could offer armed resistance. The court established that it was impossible to question the individuals who were detained together with him from 20 to 23 March 2001, since he did not provide any information that would allow identifying them and their identification at that time was no longer possible. As to the author's request to question Mr. I. L., the court decided that it was unnecessary, since there was enough information in the materials of the additional examination to make a decision.

2.16 On 23 September 2004, the author submitted a cassation appeal to Leningrad Regional Court against the decision of the Gatchina City Court on 18 August 2004 and reiterated his earlier arguments summarised in paragraph 2.14 above. On 26 October 2005, the Leningrad Regional Court rejected the author's appeal and upheld the decision of 18 August 2004.

Proceedings in trial court

2.17 The author refers to the part of the judgment of the Leningrad Regional Court of 22 November 2001, in which the court examined the witness testimony of his mistress, Ms. A. O. given by her at the pre-trial investigation, in which she stated that the author told her that at the end of 2000, he and Mr. I. L. had committed a murder of a friend of Ms. E. S. without naming the victim and that later Ms. E. S. also told her that in November 2000, the author and Mr. I. L. had murdered her friend 'Natasha'. The author argues that the testimony of Ms. A. O. was included in the judgment as inculpatory evidence in violation of his right to a fair trial. He submits that in the first instance court Ms. A. O. retracted her testimony given at the pre-trial investigation and stated that it was obtained by the investigator under pressure, because she had to give a written undertaking not to leave the place of her habitual residence. She stated instead that Ms. E. S. had not told her that her friend had been murdered by the author and Mr. I. L. Ms. E. S. also stated in the first instance court that she did not tell Ms. A. O. who had murdered Ms. N. B. The author argues, therefore, that the testimony of Ms. A. O. given at the pre-trial investigation could not have been used in the judgment. He adds that the court disregarded the subsequent testimony of Ms. A. O. by stating that she changed the testimony to help the author to avoid responsibility for the crime he had committed.

2.18 The author further submits that the Leningrad Regional Court disregarded the testimony of Mr. I. L., affirming that he had murdered Ms. N. B. because he feared that she would report to the police another crime committed by him together with Ms. E. S., as well as a testimony of another witness, corroborating a claim of Mr. I. L. that he had a reason to murder Ms. N. B. The author argues, therefore, that the conclusions of the Leningrad Regional Court set forth in its judgment of 22 November 2001, amounted to a violation of his right to a fair trial.

2.19 The author also submits that, according to conclusions of the pre-trial investigation and the Leningrad Regional Court, he murdered Ms. N.B. after she threatened to report to the police that he had assaulted her earlier on that day. The author argues in great detail that witnesses gave contradictory statements as to the assault and the murder of Ms. N. B. He claims that in violation of article 14, paragraph 1, of the Covenant, these contradictory statements were disregarded by the Leningrad Regional Court.

2.20 The author states that he unsuccessfully complained in his cassation appeal to the Supreme Court about the use of the initial testimony of Ms. A. O. in the judgment of the Leningrad Regional Court, the fact that the Leningrad Regional Court disregarded the testimony of Mr. I. L., affirming that he had murdered Ms. N. B. and the contradictory statements of the key witnesses. He adds that his subsequent complaints to the Supreme Court, the Leningrad Regional Prosecutor's Office and the General Prosecutor's Office through the supervisory review procedure have not remedied the alleged violations either.

Objections to the trial transcript

2.21 On 7 December 2001, the author submitted to the Leningrad Regional Court, pursuant to article 260 of the Criminal Procedure Code, his objections to the trial transcript of the first instance court in order to have his own statements and those of the witnesses amended to correspond to what had actually been stated. On 18 December 2001, the author's objections and those of Mr. I. L. were examined by a judge of the Leningrad Regional Court and were dismissed. The judge concluded that the author and Mr. I. L. submitted their objections to the trial transcript to distort the testimonies that were duly recorded and to avoid responsibility for what they have committed.

2.22 On 13 January 2002, the author expressed his disagreement with the ruling of 18 December 2001 in his cassation appeal to the Supreme Court. On 23 January 2002, the Court decided not to examine this part of the cassation appeal, since that matter had already been examined by the Leningrad Regional Court on 18 December 2001.

2.23 The author submits that a testimony of a witness, Ms. E. Sm., that was distorted in the trial transcript, affected the court's ability to hand down a just judgment, since the statement in question demonstrated that Mr. I. L., unlike the author, had a reason to murder Ms. N. B. The author argues, therefore, that the trial transcript was drawn up in violation of article 264 of the Criminal Procedure Code (trial transcript) and amounts to a substantial procedural violation pursuant to article 345 of the same Code (substantial violations of the law of criminal procedure). On numerous occasions, the author unsuccessfully complained to the Supreme Court, the Leningrad Regional Prosecutor's Office and the General Prosecutor's Office about the inaccuracy and untruthfulness of the trial transcript of the first instance court through the supervisory review procedure.

The complaint

3.1 The author claims that in violation of article 7 of the Covenant, he was subjected to beatings and torture shortly after his arrest on 19 March 2001. He submits that the failure of the State party's authorities to provide him with the materials of the additional investigation confirms his allegation.

3.2 The author claims that his right to a fair trial, guaranteed under article 14, paragraph 1, of the Covenant, was violated, since the first instance court disregarded his allegations about the use of unlawful methods at the pre-trial investigation and the respective trial transcript was inaccurate and untruthful. Furthermore, the Leningrad Regional Court included the testimony of Ms. A. O. given at the pre-trial investigation in its judgment of 22 November 2001 as inculpatory evidence and disregarded her subsequent testimony. Moreover, the Leningrad Regional Court disregarded the testimony of Mr. I. L., affirming that he had murdered Ms. N. B., because he feared that she would report to the police another crime and ignored the contradictory statements of the key witnesses.

3.3 The author claims a violation of the right, guaranteed under article 14, paragraph 5, of the Covenant, to have his conviction and sentence reviewed by a higher tribunal according to law, because the second instance court dismissed the arguments of his appeal in relation to the use of unlawful methods at the pre-trial investigation by merely referring to the judgment of the first instance court and without taking any further measures for the protection of his rights. Furthermore, the Supreme Court has ignored his allegations about the inaccuracy and untruthfulness of the trial transcript of the first instance court. Moreover, the Supreme Court has disregarded his claim that the testimony of Ms. A. O. given at the pre-trial investigation should not have been included in the judgment of the Leningrad Regional Court as inculpatory evidence, as well as his claim in relation to the testimony of Mr. I. L., affirming that he had murdered Ms. N.B., because he feared that she would report to the police another crime. The Supreme Court has also ignored his claim that the statements of the key witnesses were contradictory.

3.4 The author invokes a violation of his rights under article 14, paragraphs 2 and 3(e), of the Covenant, without providing any information in substantiation of these claims.

State party's observations on the merits

4.1 On 25 March 2008 and 28 April 2008, the State party submits its observations on the merits of the communication and reiterates the facts of the case summarised in paragraphs 2.1 and 2.2. above. It adds that at the pre-trial investigation Mr. I. L. gave detailed information about the circumstances of the crime in question and the author's role in it. His testimony corresponds to that of a witness, Ms. A. O., who learned about the crime from the author himself. The author's guilt was established by the testimony of an eye-witness, Ms. E. S., and other witnesses to whom the author offered money in exchange for their silence, forensic medical examination of the body of Ms. N. B., forensic chemical examination of soil from the burial place and the shovel surrendered by the author and Mr. I. L., as well as by other evidence that was duly examined by the court. The author's claims to the effect that the evidence against him was contradictory have been examined on numerous occasions by the General Prosecutor's Office and by the Supreme Court within the framework of cassation proceedings.

4.2 The State party submits that a report of the author's arrest pursuant to article 122 of the Criminal Procedure Code was drawn up at 2.40 a.m. on 20 March 2001. On the same day, he was interrogated as a suspect and did not make any complaints about being subjected to unlawful methods at that time, nor on 22 March 2001, during his interrogation in the presence of the prosecutor and the lawyer. The author was many times interrogated at the pre-trial investigation but he has never admitted his guilt in the murder of Ms. N. B. The State party adds that neither the author nor his lawyer complained about the use of unlawful methods while they were familiarising themselves with the case file materials.

4.3 The State party notes that, on 8 November 2001, the author stated at the hearing before the Leningrad Regional Court that he had been subjected to unlawful methods and that he had previously complained about it to the prosecutor's office. In this regard, the State party recalls the facts of the case summarised in paragraphs 2.8 – 2.9, 2.12 and 2.14 –

2.16 above. It states that there were no medical documents issued in the author's name in the case file materials that were examined by the State party's courts. According to the information provided by the Federal Directorate of Corrections, the author was transferred from the IVS to the detention centre (SIZO) on 2 April 2001 and, according to the medical examination conducted on 2 and 3 April 2001, there were no injuries on his body. The State party concludes that there are no objective facts corroborating the author's claims about the violation of his rights by law enforcement personnel.

4.4 As for the author's claim that testimony of the witness, Ms. A. O., was obtained at the pre-trial investigation in violation of unspecified provisions of the law of criminal procedure, the State party submits that Ms. A. O. clarified in the first instance court that she was warned by the investigator about criminal responsibility for giving false testimony and was explained the guarantees of article 51 of the Constitution. Ms. A. O. stated that she had not testified about the murder of Ms. N. B. by the author and Mr. L.I., and that in fact she had learned from the author about the murder of Ms. N. B. by Mr. L. I. and Ms. E. S. She stated that she signed an interrogation report with a different text in it and did not know how a new text appeared in the interrogation report that was read out in court. The State party submits that according to the Leningrad Regional Court, Ms. A. O., who was the author's mistress, changed her testimony to help him to avoid responsibility.

4.5 The State party submits that the author's remaining claims are related to the lawfulness and reasonableness of his conviction. It recalls that it is not for the Committee, but for the domestic courts to review or to evaluate facts and evidence, as well as the lawfulness and reasonableness of one's conviction. The State party concludes that the author claims about the violations of the State party's obligations under the Covenant, including those under articles 7 and 14, are unfounded.

Author's comments on the State party's observations

5.1 On 19 June 2008, the author submits his comments on the State party's observations. He argues that it did not refute any of his initial claims (see, particularly, paragraphs 2.4, 2.6, 2.9 and 2.13 above) and did not contest the admissibility of his communication. The author rejects the State party's argument that there were no medical documents issued in the author's name in the case file materials and submits that the existence of injuries on his body was not contested by the prosecutor's office and was corroborated by the report of the Gatchina District Medical Association and a medical certificate from the IVS.

5.2 The author argues that, by not addressing his claim in relation to the inaccuracy and untruthfulness of the trial transcript of the Leningrad Regional Court, the State party has accepted this and all related claims. He states that the State party did not provide any evidence to refute his claim that the testimony of Ms. A.O. was obtained by the investigator at the pre-trial investigation under pressure. The author rejects the State party's argument that his remaining claims were related to the lawfulness and reasonableness of his conviction. He reiterates his claims summarised in paragraphs 2.18 – 2.19 above and argues that there was a violation of his rights under article 14, paragraphs 1 and 5, of the Covenant, since the conclusions of the State party's courts do not correspond to the facts and their evaluation of the evidence was arbitrary.

Further submissions from the State party and the author

6.1 On 17 November 2008, the State party reiterates the arguments from its previous submission and adds that neither the Leningrad Regional Court, which examined the author's criminal case at first instance, nor the Supreme Court, which examined his cassation appeal, found any violations of the law of criminal procedure.

6.2 The State party submits that the investigation of the prosecutor's office into the author's allegations of being subjected to unlawful methods at the pre-trial investigation was complete and objective. According to the medical examination of 23 March 2001, there were minor injuries on his body. It notes, however, that the author offered resistance at the time of his arrest and force and handcuffs were used against him. The State party adds that the use of force at the time of the arrest, which was in compliance with the Law "On Police", did not exclude that the injuries on the author's body were inflicted in these circumstances. It argues that the author's allegations about being subjected to torture by police officers and officers of the prosecutor's office have not been confirmed and refers to the facts of the case summarised in paragraphs 2.15 – 2.16 above.

7. On 15 January 2009, the author reiterates the arguments from his previous submission and argues that the State party's explanations as to how the injuries on his body were inflicted contradict the testimony of a bartender who eye-witnessed the arrest of the author and Mr. I. L. and stated that they did not offer any resistance. He adds that he could not have received injuries when he fell over an overturned table, as all tables in the bar where he was arrested had been affixed to the floor and could not have been overturned. The author submits that the State party's authorities failed to question Mr. I. L. and Ms. A. O. who were in the same bar in the evening of 19 March 2001 and witnessed his arrest.

8. On 9 June 2009, the State party reiterates the arguments from its previous submissions and argues that the author's allegations in relation to the inaccuracy and untruthfulness of the trial transcript of the first instance court have already been examined by the Leningrad Regional Court on 18 December 2001 in compliance with the procedure set forth in article 260 of the Criminal Procedure Code. Pursuant to article 266 of the same Code, the ruling of 18 December 2001 gave reasons for dismissing the objections to the trial transcript that had been submitted by the author and his co-accused.

9. On 13 August 2009, the author reiterates the arguments from his previous submission and states that the State is not able to refute any of his claims that are corroborated by relevant documents and witness statements.

Issues and proceedings before the Committee

Consideration of admissibility

10.1 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 case is admissible under the Optional Protocol to the Covenant.

10.2 The Committee has ascertained, as required under article 5, paragraph 2(a), of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

10.3 In the absence of any objection by the State party, the Committee considers that the requirements of article 5, paragraph 2 (b), of the Optional Protocol have been met.

10.4 The Committee notes that the author has invoked a violation of his rights under article 14, paragraphs 2 and 3(e), of the Covenant but has failed to provide any information in substantiation of these claims. Accordingly, he has failed to substantiate his claims, for purposes of admissibility, and this part of the communication is therefore inadmissible under article 2 of the Optional Protocol.

10.5 The Committee has noted the author's claims under article 14, paragraphs 1 and 5, of the Covenant, that the trial transcript of the first instance court was inaccurate and untruthful; that the Leningrad Regional Court included the testimony of Ms. A.O. given at the pre-trial investigation in its judgment of 22 November 2001 as inculpatory evidence and

disregarded her subsequent testimony; that the Leningrad Regional Court disregarded the testimony of Mr. I.L., affirming that he had murdered Ms. N.B., because he feared that she would report to the police another crime and ignored the contradictory statements of key witnesses, and that the Supreme Court considered his cassation appeal superficially and upheld the judgment of the Leningrad Regional Court despite his innocence. The Committee recalls its jurisprudence to the effect, that it is for the courts of the States parties to review or to evaluate facts and evidence in a particular case, and that the Committee will defer to this assessment, unless it can be ascertained that the conduct of the trial or the evaluation of facts and evidence was manifestly arbitrary or amounted to a denial of justice.⁶ The Committee further notes the author's argument that the conclusions of the State party's courts did not correspond to the facts of the case and their evaluation of the evidence was arbitrary. It also notes, however, that according to the material before it, the author's co-accused and the main witnesses have changed their testimony and statements on numerous occasions both at the pre-trial investigation and in the first instance court, often without providing a viable explanation. In the circumstances, the Committee considers that the author has failed to substantiate, for purposes of admissibility, that the conduct of the courts in the present case was arbitrary or amounted to denial of justice, and therefore declares his claims in relation to article 14, paragraphs 1 and 5, of the Covenant inadmissible under article 2 of the Optional Protocol.

10.6 The Committee considers the author's remaining claims under article 7 are sufficiently substantiated, for purposes of admissibility, and proceeds to their examination on the merits.

Consideration of the merits

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

11.2 The author claims that he was beaten, ill-treated, threatened and insulted by officers of the District Department on the night of 20 March 2001 to make him confess guilt, contrary to article 7 of the Covenant. The Committee notes that, on 19 September 2001, the author submitted a written complaint to the Gatchina City Prosecutor's Office with the request to initiate criminal proceedings with regard to the officers of the District Department and that the Prosecutor's Office decided not to initiate criminal proceedings, after hearing only the officers concerned and the investigator. It further notes that the investigation into the author's complaint was reopened by the Leningrad Regional Prosecutor's Office on 11 March 2002 and that the Gatchina City Prosecutor's Office was requested to conduct an additional investigation. On 18 May 2002, the Prosecutor's Office again decided not to initiate criminal proceedings, after hearing the author, the officers of the District Department concerned and the bartender who had witnessed the author's arrest and after reviewing the medical certificates issued by the Gatchina District Medical Association and the IVS. The Committee also notes that although the additional investigation has confirmed that the author suffered injuries, the author and the State party disagree as to the circumstances in which these injuries have been received. It further notes the author's argument that the officers' testimony contradicted the testimony of an eye-witness and that two other eye-witnesses indicated by him have not been heard at all in the course of the additional investigation.

⁶ See, *inter alia*, communication No. 541/1993, *Errol Simms v. Jamaica*, Inadmissibility decision adopted on 3 April 1995, paragraph 6.2.

11.3 The Committee also notes that, as transpires from the judgment of the Leningrad Regional Court of 22 November 2001, the court did not specifically address the author's claims about the use of unlawful methods at the pre-trial investigation and did not carry out any investigation of these claims. It further notes that the Supreme Court did not find it necessary to investigate the author's allegations about the beatings and torture on the ground that they had already been examined by the Leningrad Regional Court and had been found to be groundless.

11.4 The Committee recalls that a State party is responsible for the security of any person in detention and, when an individual claims to have received injuries while in detention, it is incumbent on the State party to produce evidence refuting these allegations.⁷ In this regard, the Committee reaffirms its jurisprudence⁸ that the burden of proof cannot rest on the author of the communication alone, especially considering that the author and the State party do not always have equal access to the evidence and frequently the State party alone has the relevant information. It is implicit in article 4, paragraph 2, of the Optional Protocol that the State party has the duty to investigate in good faith all allegations of violations of the Covenant made against it and its representatives and to furnish to the Committee the information available to it. In cases where the author made all reasonable attempts to collect evidence in support of his claims and where further clarification depends on information exclusively in the hands of the State party, the Committee may consider the author's allegations substantiated in the absence of satisfactory evidence or explanations to the contrary presented by the State party.

11.5 The Committee also recalls that complaints of ill-treatment must be investigated promptly and impartially by competent authorities.⁹ The Committee notes that the author provided a detailed description of the treatment to which he was subjected and of the circumstances in which his injuries were received. It further notes the author's assertion that the investigations conducted by the State party's authorities did not produce evidence refuting these allegations and did not properly address the author's claims about inconsistencies between the witness testimonies collected in the course of the additional investigation and the explanations advanced by the State party's authorities. In the circumstances of the present case, the Committee is of the view that the State party has failed in its obligation to promptly and impartially investigate the author's claims of having been subjected to ill-treatment, in violation of article 7, read in conjunction with article 2, paragraph 3, of the Covenant.

12. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts before it disclose a violation by the State party of article 7, read in conjunction with article 2, paragraph 3, of the Covenant.

13. 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. The remedy should include an impartial, effective and thorough investigation of the author's claims falling

⁷ Communications No. 907/2000, *Siragev v. Uzbekistan*, Views adopted on 1 November 2005, paragraph 6.2; and No. 889/1999, *Zheikov v. Russian Federation*, Views adopted on 17 March 2006, paragraph 7.2.

⁸ See, e.g. communication No. 30/1978, *Bleier v. Uruguay*, Views adopted on 24 March 1980, paragraph 13.3; communication No. 139/1983, *Conteris v. Uruguay*, Views adopted on 17 July 1985, paragraph 7.2; and communication No. 1297/2004, *Medjnoune v. Algeria*, Views adopted on 14 July 2006, paragraph 8.3.

⁹ Human Rights Committee, General Comment No. 20 (1992) on the prohibition of torture and cruel treatment or punishment, *Official Records of the General Assembly, Forty-seventh Session, Supplement No. 40 (A/47/40)*, annex VI, sect. A, paragraph 14.

under article 7, prosecution of any person(s) found to be responsible, and full reparation, including appropriate compensation. The State party is also under an obligation to prevent similar violations in the future.

14. 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 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. In addition, it requests the State party to publish 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.]
