



## International Covenant on Civil and Political Rights

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### Human Rights Committee

#### Communication No. 1858/2009

**Decision adopted by the Committee at its 104th session,  
12–30 March 2012**

<i>Submitted by:</i>	Y. M. (not represented by counsel)
<i>Alleged victim:</i>	The author
<i>State Party:</i>	Russian Federation
<i>Date of communication:</i>	20 October 2007 (initial submission)
<i>Document references:</i>	Special Rapporteur's rule 97 decision, transmitted to the State party on 12 January 2009 (not issued in document form)
<i>Date of adoption of decision:</i>	26 March 2012
<i>Subject matter:</i>	Illegal arrest and ill-treatment by customs officers due to ethnic discrimination
<i>Procedural issues:</i>	Non-exhaustion of domestic remedies; non- substantiation of claims
<i>Substantive issues:</i>	Right to remedy; prohibition of torture, cruel or inhuman and degrading treatment or punishment; arbitrary arrest and detention; right to compensation for unlawful arrest or detention; right to humane treatment and respect for dignity; right to a fair hearing by an independent and impartial tribunal; right to recognition everywhere as a person before the law; prohibition of discrimination
<i>Articles of the Covenant:</i>	2, paragraph 3; 7; 9, paragraphs 1, 3 and 5; 10, paragraph 1; 14, paragraph 1; 16 and 26
<i>Articles of the Optional Protocol:</i>	2 and 5, paragraph 2(b)

## Annex

### **Decision of the Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political Rights (104th session)**

concerning

#### **Communication No. 1858/2009\***

*Submitted by:* Y. M. (not represented by counsel)

*Alleged victim:* The author

*State Party:* Russian Federation

*Date of communication:* 20 October 2007 (initial submission)

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

*Meeting on 26 March 2012,*

*Adopts the following:*

#### **Decision on admissibility**

1. The author of the communication dated 20 October 2007 is Mr Y. M., a Russian citizen of Chechen origin, born in 1949. He claims to be a victim of violation by the Russian Federation of his rights under article 2, paragraph 3; article 7; article 9, paragraphs 1, 3 and 5; article 10, paragraph 1; article 14, paragraph 1; article 16 and article 26, 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 The author lived in Grozny, Chechen Republic, Russian Federation. On an unspecified date, his house was destroyed by the Russian Air Forces and he had to leave the Chechen Republic and settle in the Altai Territory of the Russian Federation. On 19 June 1998, the author purchased dry milk in Kulunda settlement with the aim of selling it in the future for a better price. He and one A. were transporting the dry milk in a truck in the direction of Altai Territory customs. However, they were arrested by customs officers and officers of the Border Guard of Altai Territory in the surroundings of Znamenka settlement, approximately 50 metres away from the customs and State border of the Russian Federation. The author claims that all the officers carried guns and once the officers found out that they were of Chechen origin, they arrested them.

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\* The following members of the Committee participated in the examination of the present communication: Mr. Lazhari Bouzid, Ms. Christine Chanet, Mr. Ahmad Amin Fathalla, Mr. Cornelis Flinterman, Mr. Yuji Iwasawa, Mr. Walter Kaelin, Ms. Zonke Zanele Majodina, Ms. Iulia Antoanella Motoc, Mr. Gerald L. Neuman, Mr. Michael O'Flaherty, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Fabian Omar Salvioli, Mr. Marat Sarsembayev, Mr. Krister Thelin and Ms. Margo Waterval.

2.2 At gunpoint, the author and his companion were forced to unload the bags of dry milk from the truck and to reload it again.<sup>1</sup> As a result of the effort, the author claims that his blood pressure increased and he had heart pain. All his requests for medical assistance were ignored. He was under arrest from 19 to 25 June 1998,<sup>2</sup> and throughout this period, he was subjected to torture and pressured to confess to having committed a number of terrorist attacks.<sup>3</sup> He was released without having made any confession.

2.3 Because of his Chechen origin, the authorities fabricated a case against him under article 276 of the Customs Code (“Movement of goods and/or vehicles across the customs border of the Russian Federation eluding customs control”).<sup>4</sup> By a ruling of 10 July 1998 issued by the Head of the Kulunda Customs Post, he was sentenced to a fine of 519.50 Russian roubles.<sup>5</sup>

2.4 Customs authorities ordered his expulsion from the Russian Federation to Kazakhstan and, by doing so, *de facto* deprived him of his Russian citizenship.<sup>6</sup> He was registered with the Immigration Service of Kazakhstan as a Russian citizen, but the ruling of 10 July 1998 referred to him as to a Kazakh citizen. The author contends that, because of the above-mentioned ruling, he is denied entry into the Russian Federation.

2.5 On an unspecified date, the author appealed the ruling to the Altai Customs Service, however, it was rejected on 10 August 1998. On an unspecified date, the author filed an appeal to the Kulunda District Court. On 29 December 1998, the Court reversed the decision of the Head of the Kulunda Customs Post and ordered the closure of the author’s case. However, on 29 June 1999, the Presidium of the Altai Territory Court overturned the

<sup>1</sup> According to the author’s complaint of 20 March 2002, addressed to the Oktyabrsk District Court of Barnaul (available on file), the customs officers asked him and his companion to unload the truck in order to check whether they were transporting weapons under the bags with dry milk. After the inspection was carried out, the officers themselves loaded the truck (this contradicts the author’s claim that he was forced to load the truck himself).

<sup>2</sup> There are no materials available on file in support of the author’s allegation that he was held in custody from 19 to 25 June 1998. It seems that these claims were never raised in court either.

<sup>3</sup> The author has never raised this claim about torture in court. It appears from the author’s numerous complaints to the courts, that he considered as torture the fact that he was asked by the customs officers to unload the truck, an activity which, he claims, caused him to feel unwell and which affected his physical health and his psychological state. The author has never referred to any specific forms of torture or ill-treatment (such as beatings or other forms of physical abuse) inflicted on him by the customs officers.

<sup>4</sup> Article 276 of the Customs Code of 18 June 1993 reads as follows: “Movement of goods and/or vehicles across the customs border of the Russian Federation without customs control, that is, outside of certain places established by the customs authorities of the Russian Federation for that purpose or outside the time specified for customs clearance, in the absence of any indication of smuggling – is punishable by a fine of one hundred to three hundred per cent of the value of goods and/or vehicles which are direct objects of the offense; with the confiscation of the items or the recovery of their value or involves the confiscation of goods and/or vehicles which are direct objects of the offense; with confiscation of vehicles used for the transportation of such commodities or involves the recovery of the value of the goods and vehicles which are the direct object of the offense and confiscation of vehicles on which such goods are transported.

<sup>5</sup> According to the ruling of 10 July 1998 (available on file), the author was found in breach of article 276 of the Customs Code (see footnote 4 above). The official who issued the ruling took into account several mitigating circumstances (such as the fact that the author had committed the breach for the first time, had cooperated with the authorities in the course of investigation and had consented to the conduct of a merchandise customs valuation). Accordingly, the authorities confiscated the dry milk (1,229 kg) and imposed a fine equivalent to 10 per cent of the value of his car (519.50 Russian roubles), without confiscating it.

<sup>6</sup> The author has provided copies of two passports issued by the Russian Federation in his name on 15 March 2003 and 19 March 2004.

decision of the Kulunda District Court and referred the author's case for a new examination. On 17 December 1999, the Kulunda District Court upheld the decision of the Head of the Kulunda Customs Post of 10 July 1998.

2.6 In June 1999, the author filed another complaint to the Oktyabrsk District Court of Barnaul against the Altai Customs Service and the Ministry of Finance of the Russian Federation, requesting award of compensation for material and moral damages. The complaint was rejected by the Oktyabrsk District Court on 1 August 2001 and 27 December 2001.

2.7 On an unspecified date, the author appealed the decision of the Oktryabrsk District Court to the Judicial Chamber on Civil Cases of the Altai Territory Court, which, on 13 February 2002, reversed the decision and referred the case to the first instance court for a new examination.

2.8 On 2 April 2002, the Oktyabrsk District Court of Barnaul rejected the author's request for compensation. On 3 April 2002, the author appealed the decision to the Judicial Chamber on Civil Cases of the Altai Territory Court, which, on 15 May 2002, upheld the decision of the Oktyabrsk District Court of 2 April 2002. The author's supervisory review applications were rejected by the Altai Territory Court on 16 October 2003, 27 November 2003 and 1 March 2006; and by the Supreme Court of the Russian Federation on 21 July 2004.

2.9 The author submitted complaints alleging a violation of his rights guaranteed by the Russian Constitution<sup>7</sup> and the International Covenant on Civil and Political Rights<sup>8</sup> by officers of the Kulunda Customs Post to the Oktyabrsk District Court (21 January 2006), the Presidium of the Altai Territory Court (10 February 2006) and the Supreme Court of the Russian Federation (3 January 2006). However, the Oktyabrsk District Court and the Supreme Court of the Russian Federation rejected his complaints on 1 March 2006 and 9 February 2006, respectively.

2.10 On 10 February 2009, that is, after the registration of his initial communication by the Committee (12 January 2009), the author submitted to the Committee new allegations, unrelated to the facts initially reported.<sup>9</sup> He claimed that, on 14 August 2006, in accordance with the schedule of citizens' reception by the Staropromyslovsk District Court of Grozny, he came to the Court in order to see a judge. However, he was prevented from entering the premises by court's bailiffs. He was about to leave when the secretary of the court approached him and invited him inside. When he entered the court building, bailiffs attacked him, snatched his bag and seized his passport. They ignored his explanations that he was invited inside by the secretary of the court, that he had come to see a judge and that he had a heart condition.

2.11 Notwithstanding his explanations, some ten bailiffs surrounded him, said he looked suspicious and threatened him with 15 days' imprisonment if he did not leave the building. One of the bailiffs grabbed his neck and waist, lifted him off the ground and flung him of the court's premises, during which his chest (heart side) got caught on the door handle. As a result, he was in a state of shock, had a heart attack and began to lose consciousness. He

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<sup>7</sup> See Constitution of the Russian Federation, articles 6 (citizenship of the Russian Federation); 21 (prohibition of torture and ill-treatment); 22, paragraph 2 (freedom of liberty); 19, paragraph 2 (equality and non-discrimination); 27 (freedom of movement) and 45 (state protection of rights and freedoms of individuals)..

<sup>8</sup> See International Covenant on Civil and Political Rights, articles 2; 7; 14, paragraph 1; 16 and article 26.

<sup>9</sup> This second submission was transmitted to the State party on 25 April 2009.

was thereafter dragged into the court building and taken to the chief of bailiffs. He asked for medical assistance, but his request was ignored. He remained under arrest for a few hours. Upon release, he immediately went to a medical institution which issued a report documenting the injuries he sustained.

2.12 On 18 August 2006, the author filed a complaint to the Prosecutor's Office of the Chechen Republic, and on 28 August 2006 was informed that his complaint was forwarded to the Supreme Court. On 30 August 2006, the author was informed by the Vice Chairman of the Supreme Court that an investigation into his allegations would be carried out and that he would be informed of the outcome by 11 September 2006. Since the author did not receive any response by that date, he resubmitted his complaint to the Vice Chairman of the Supreme Court on 25 September 2006, and on 29 September 2006. On 15 September 2006, the author complained of ill-treatment to the Staropromyslovsk District Court of Grozny. He claims that all his complaints remained unanswered. On 22 April 2008, the Prosecutor's Office of the Chechen Republic informed the author that his complaint has been referred to the inter-district Investigative Department of Grozny. On 19 July 2008, after the examination of the materials produced during the investigation, the Lenin inter-district Investigative Committee, under the Prosecutor's Office of Russian Federation for the Chechen Republic, refused to open a criminal case against the bailiffs for lack of *corpus delicti*.

### **The complaint**

3.1 The author claims a violation of his rights under article 2 of the Covenant, as his rights under the Russian Constitution were not guaranteed because of his Chechen origin and current events in the Chechen Republic.

3.2 The author submits that he was subjected to treatment contrary to article 7 of the Covenant. As a consequence, he suffers from, and was diagnosed with, obsessional neurosis and astheno-depressive syndrome, as documented by medical reports, inter alia, the reports of 26 June 1998 and 9 August 1999 issued by the Omsk Diagnostic Centre and the report of 30 November 2004 issued by the Ekibastuz Psychoneurological Centre (Kazakhstan).

3.3 The author claims to be a victim of a violation of article 9, paragraph 5, of the Covenant. He was unlawfully arrested and detained and, therefore, is entitled to compensation.

3.4 In violation of article 10, paragraph 1, customs officers subjected him to torture, in order to compel him to confess to having committed a number of terrorist attacks.

3.5 The author claims a violation of his rights under article 14, paragraph 1, as he was not provided with the right to a fair trial guaranteed under the Russian Constitution to the citizens of the Russian Federation. In addition, the author claims that his right to defense was also violated, because the Oktyabrsk District Court of Barnaul (Russian Federation) rejected his motion to examine Mr. A. as a witness in court while considering his case on 2 April 2004.

3.6 The author claims that his right to recognition as a person before the law, as stipulated in article 16 of the Covenant, was violated by the ruling of the Head of the Kulunda Customs Post of 10 July 1998 and its subsequent affirmation by the State party's courts.

3.7 The author claims that, due to his origin, his rights under article 26 of the Covenant were not respected. Unlike other citizens of the Russian Federation, he was not allowed to purchase dry milk and transport it on the territory of the Russian Federation. He states that article 276 of the Customs Code concerns responsibility for the movement of goods and

vehicles across the customs border of the Russian Federation. However, he was arrested on the territory of the Russian Federation.

3.8 In connection with his second set of allegations, regarding the incidents at the Staropromyslovsk District Court, the author claims a violation of article 2, paragraph 3, of the Covenant, since the Russian Federation failed to respect and to ensure his rights under the Covenant, on account of his Chechen origin. The State party also failed to ensure his right to judicial remedy by competent authorities when he lodged complaints with the courts.

3.9 He claims that he was subjected to inhuman treatment by bailiffs, in violation of article 7 of the Covenant, which put his life at risk. Following the events, he suffered a heart attack, as confirmed by the medical report issued by the Bakulev Scientific Center of Cardiovascular Surgery under the Russian Academy of Medical Sciences.<sup>10</sup> The author also claims that the above facts constitute a violation of his rights under article 9, paragraphs 1 and 3, of the Covenant.

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

4.1 On 29 June 2009, the State party provided its observations. It submits that, on 25 June 2006, the Kulunda Customs Post of the Altai Customs Service initiated a case against the author for violation of customs rules for the movement of goods and vehicles across the customs border outside of places established by the customs authorities for that purpose. Based on the materials on file, on 10 July 1998, the head of the Kulunda Customs Post issued a ruling by which the author was fined and his goods were confiscated. The author repeatedly appealed against the ruling. However, the courts, including the Supreme Court, rejected his claims.

4.2 On 27 October 2001, his complaint was rejected by the Oktyabrsk District Court of Barnaul city. On 13 February 2002, the Judicial Chamber on Civil Cases of the Altai Territory Court reversed the decision of the Oktyabrsk District Court and referred the case for a new examination. On 2 April 2002, the Oktyabrsk District Court rejected the author's complaint for the second time. This decision was upheld by the Judicial Chamber on Civil Cases of the Altai Territory Court on 15 May 2002. The author's further applications under supervisory review procedure were rejected by the Altai Territory Court on 27 November 2003, and by the Supreme Court of the Russian Federation on 21 July 2004.

4.3 According to the State party, the author failed to adduce any evidence to support his allegations that he was held responsible for violation of customs rules due to his origin. Therefore the courts found his claims unfounded. The State party further submits that it is impossible to study the materials of the author's case, since they were destroyed in 2005 by the Altai Customs Service at the expiration of the term for their retention. Taking into account that more than ten years elapsed since the events reported by the author had taken place, it is impossible to verify the information about the physical and psychological pressure towards the author by the officers of the Kulunda Customs Post. Although the author has exhausted all available domestic remedies, in the absence of any basis for concluding that his rights have been violated by the State party, his communication should be declared inadmissible.

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<sup>10</sup> According to the medical report, the author underwent treatment from 28 February to 12 March 2008. The author complained of heart pains, rapid heartbeat and dyspnoea (difficult breathing). The hospital diagnosis was coronary atherosclerosis, stenocardia and post-infarct cardiac sclerosis. The report does not mention beatings or other injuries.

4.4 As to the author's second submission regarding his ill-treatment by bailiffs of the Staropromyslovsk District Court of Grozny city, the State party submits that the investigation into his allegations was carried out by the Lenin inter-district Investigative Committee under the Prosecutor's Office of Russian Federation for the Chechen Republic. Based on its results, the authorities repeatedly refused to initiate criminal proceedings due to lack of *corpus delicti*. The last ruling on this matter was issued on 25 December 2008. However, the author failed to appeal it in accordance with the criminal procedure norms of the Russian Federation. Accordingly, his claims should be declared inadmissible for failure to exhaust domestic remedies, as required under article 5 of the Optional Protocol.

4.5 On 27 August 2009, the State party submitted additional observations. It considers the medical documents adduced by the author with blurred seals to be of doubtful origin. The State party recalls that the author had not filed an appeal against the ruling refusing initiation of criminal proceedings and therefore contends that the claims contained in his second submission are inadmissible for failure to exhaust domestic remedies.

#### **Author's comments on the State party's observations**

5.1 The author provided his comments on 1 October 2009. He claims that his allegation that he was held liable for violation of customs rules due to his Chechen origin is confirmed by the fact that the ruling of 10 July 1998 refers to him as to a Kazakhstani national (and not a national of the Russian Federation). The fact that the materials of his case were destroyed in 2005 cannot serve as a basis for declaring his communication inadmissible. The author also claims that the State party's argument about the doubtful origin of the medical reports is unfounded.

5.2 As regards the ruling of 25 December 2008 by which the authorities refused to initiate criminal proceedings against bailiffs, the author claims that he has no knowledge of it and has never seen or signed it. He submits that he seized the Staropromyslovsk District Court of the matter of ill-treatment on 15 September 2006 (which remains unanswered), and recalls his subsequent complaints lodged with the Supreme Court in 2006. Therefore, he has exhausted all domestic remedies.

5.3 On 25 October 2009, the author provided further comments, recalling his complaints lodged in 2006 with the Staropromyslovsk District Court, the Prosecutor's Office of Chechen Republic and the Supreme Court. He claims that on 19 July 2008, the Lenin inter-district Investigative Committee under the Prosecutor's Office of Russian Federation for the Chechen Republic, without his knowledge, considered the materials of the investigation into his allegations of ill-treatment and refused to open a criminal case for lack of *corpus delicti*. The author reiterates his arguments that he has never seen or signed a similar ruling dated 25 December 2008. Consequently, he could not appeal it to the Staropromyslovsk District Court. Furthermore, the requirement of exhaustion of domestic remedies should not apply in his case, because the remedies were unreasonably prolonged.

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

##### *Consideration of admissibility*

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

6.2 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.

6.3 With regard to the author's initial claims under articles 7; 9, paragraph 5; 10, paragraph 1; 14, paragraph 1; 16 and 26 of the Covenant, the Committee takes note of the State party's acknowledgment that the author has exhausted all domestic remedies. It considers therefore that the requirements of article 5, paragraph 2 (b), of the Optional Protocol have been met as regards this part of his communication.

6.4 The Committee notes the author's allegations that he was subjected to torture and ill-treatment by customs officers, in violation of article 7 of the Covenant. Although the author provided some medical reports that, in his opinion, corroborate his allegations, the Committee observes that none of them mention the existence of a link between the author's medical condition and symptoms (i.e. obsessional neurosis, astheno-depressive syndrome, heart problems and hypertension) and his claims of ill-treatment. Moreover, none of the reports refer to injuries that would be indicative of beatings or other forms of ill-treatment or torture. Therefore, and in the absence of other evidence in support of his allegations, the Committee concludes that the author failed to substantiate this claim, for purposes of admissibility, and declares it inadmissible under article 2 of the Optional Protocol.

6.5 The Committee takes note of the author's claims under article 9, paragraph 5, of the Covenant, that he is entitled to compensation for his unlawful arrest and detention. The Committee observes that nothing in the information before it – either complaints by the author or court decisions on the matter – attests that the author was detained for six days, as alleged, or that he had raised his claims of unlawful arrest and detention in court. In the absence of any information indicating that the author was a victim of unlawful arrest and detention, his claim under article 9, paragraph 5, of the Covenant is not sufficiently substantiated for purposes of admissibility, and is therefore inadmissible under article 2 of the Optional Protocol. In light of the above conclusion, the author's allegation under article 10, paragraph 1, is also inadmissible under article 2 of the Optional Protocol due to insufficient substantiation.

6.6 The Committee notes the author's claim under article 14, paragraph 1 of the Covenant that he did not benefit from a fair trial, but observes that the author does not provide any information or evidence in support of his allegations. Accordingly, this claim is insufficiently substantiated, and therefore inadmissible under article 2 of the Optional Protocol.

6.7 In view of the fact that the author was able to file and pursue in court his numerous complaints, the Committee considers that he has failed to substantiate the claim that he was not recognized as "a person before the law," as provided for under article 16 of the Covenant. Therefore, this claim is inadmissible under article 2 of the Optional Protocol.

6.8 As to the author's claim under article 26 of the Covenant, the Committee notes that the author does not provide any information in support of his claim that his sanctioning by customs authorities and the consideration of his case by domestic courts was based on discriminatory grounds, namely, his Chechen origin. Therefore, this claim is inadmissible under article 2 of the Optional Protocol due to insufficient substantiation.

6.9 The Committee further notes the author's additional claims under articles 7 and 9, paragraphs 1 and 3, of the Covenant, raised in his second submission of 10 February 2009, in relation to the alleged ill-treatment by bailiffs of the Staropromyslovsk District Court of Grozny on 14 August 2006. The Committee observes that the State party objects to the admissibility of the author's allegation under article 7 on the grounds that he failed to appeal in court the ruling of 25 December 2008, in which the authorities refused to initiate criminal proceedings against the respective bailiffs for lack of *corpus delicti*. The author claims that he has no knowledge about said ruling; he claims that he never received it and thus could not appeal against it. In the absence of any information to the contrary from the State party in this regard, the Committee considers that it is not precluded by article 5,



paragraph 2 (b), of the Optional Protocol from considering this part of the author's communication.

6.10 However, the Committee also observes that the author failed to provide clear information and evidence in support of his allegation under article 7 of the Covenant. The medical report adduced by the author, dated 15 August 2006, does not establish a link between his heart condition (see para. 3.9 and footnote 10 above) and the alleged ill-treatment by bailiffs. Furthermore, the State party has challenged the authenticity of the medical reports adduced by the author. In the circumstances, and noting that the medical report dated 15 August 2006 does not establish a link between the author's medical condition and his allegations, the Committee considers that this claim is inadmissible under article 2 of the Optional Protocol, due to insufficient substantiation.

6.11 In the absence of any information or evidence in support of the author's claim that he was arrested and detained on 14 August 2006, and taking into account that this claim has never been raised in court, the Committee concludes that the author has failed to substantiate, for purposes of admissibility, his claims under article 9, paragraphs 1 and 3, of the Covenant, and thus declares them inadmissible under article 2 of the Optional Protocol.

7. The Human Rights Committee therefore decides:

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

[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.]