



International Covenant on Civil and Political Rights

Distr.: General
30 September 2019

Original: English

Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2410/2014*, **, ***

<i>Communication submitted by:</i>	Yury Orkin (not represented by counsel)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Russian Federation
<i>Dates of communication:</i>	16 December 2013 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 97 of the Committee's rules of procedure (now rule 92), transmitted to the State party on 3 June 2014 (not issued in document form)
<i>Date of adoption of Views:</i>	24 July 2019
<i>Subject matter:</i>	Cruel and inhuman treatment; arbitrary detention
<i>Procedural issue:</i>	Exhaustion of domestic remedies
<i>Substantive issues:</i>	Cruel and inhuman treatment; arbitrary detention
<i>Articles of the Covenant:</i>	7, 9, 14 (1), (2), (3) (b), (d) and (e) and (5), and 15; and 2 (2) and (3) (a), read in conjunction with 14 (5)
<i>Articles of the Optional Protocol:</i>	2 and 5 (2) (b)

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

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

*** An individual opinion (partly dissenting) by Committee member José Manuel Santos Pais is annexed to the present Views.



1. The author of the communication is Yury Orkin, a national of the Russian Federation born in 1964. He claims that the State party has violated his rights under articles 7, 9, 14 (1), (2), (3) (b), (d) and (e) and (5), and 15; and 2 (2) and (3) (a), read in conjunction with 14 (5), of the Covenant. The Optional Protocol entered into force for the State party on 1 January 1992. The author is not represented by counsel.

The facts as submitted by the author

2.1 On 13 September 2005, at 2 a.m., when the author was spending the night at his friend's apartment in Bogotol, several men in civilian clothes broke into the apartment without identifying themselves. Upon entering, the men started beating the author and his friend. Subsequently, the author was taken, handcuffed, to a nearby river where he was subjected to further physical ill-treatment, including drowning, and psychological pressure for more than three hours. The men, who then told the author that they were police officers, asked him to confess to the killing of four people and wounding another one two days prior. The author submits that the fact that he was taken to the river and beaten there was confirmed by a witness during the trial.¹

2.2 After the author refused to confess to anything, at 5 a.m., he was taken to the local police department where he was again beaten and held for 15 hours in handcuffs and wet clothes, without food or water. At 7.30 p.m., the author was finally taken to the office of the investigator of the Krasnoyarsk Region Prosecutor's Office for formal questioning. The author demanded to be given access to a lawyer and an explanation of the grounds on which he was being detained. He also complained about the injuries, clearly visible on his face, that he had sustained at the hands of the police officers. However, the investigator ignored his injuries and told him that he would be detained without providing reasons.²

2.3 The lawyer, called in and appointed by the investigator, was not interested in any details of the author's detention and ignored his injuries. On 15 September 2005, the author was declared a suspect in another crime and at 10 a.m. on the same day taken to the Bogotol District Court, which sanctioned his arrest.³ The author's appointed lawyer failed to attend the court hearing. A new lawyer was assigned to the author only on 20 September 2005. However, by then, the three-day period to appeal his arrest had already passed.⁴

2.4 On 20 September 2005, the author submitted a complaint to Krasnoyarsk Region Prosecutor's Office about the injuries that he had sustained during his detention. On 21 September 2005, the author underwent a forensic medical examination, which revealed injuries to his face, arms and legs that had been caused at least three to five days prior to the examination. Based on the examination report, the author submitted a complaint to the Krasnoyarsk Region Prosecutor's Office claiming that the injuries had been caused by the police. However, the complaint was examined by the same investigator who had investigated his case and ignored his injuries when he had first complained about them on the night of his arrest. On 14 October 2005, the Bogotol Inter-district Prosecutor's Office refused to open a criminal case against the police due to the lack of *corpus delicti*. The Prosecutor's Office determined that the police had acted within their powers while detaining the author since he had resisted his arrest and had to be subdued, which had caused his injuries.⁵

¹ A copy of the court transcript shows that one of the witnesses during the author's trial testified that he had been beaten and threatened by the police with being "taken to the place where they had drowned the author".

² The detention report signed by the investigator lists the reason for the author's detention as "there are other reasons to believe that the detained person was trying to escape". The report contains no record of any injuries.

³ The documents show that the Court sanctioned the author's arrest only for the second crime.

⁴ A supervisory appeal was submitted by the author to the Krasnoyarsk Regional Court on 27 May 2013. On 8 October 2013, the Krasnoyarsk Regional Court denied the appeal.

⁵ Submitted documents show that the Prosecutor's Office refused, on two more occasions, to open a criminal case against the police after the refusals were quashed by higher ranked prosecutors. On 22 April 2014, the refusal was confirmed by the Bogotol District Court after being appealed by the author.

2.5 On 13 December 2005, a psychiatric evaluation initiated by the investigator established that the author was suffering from a mental illness (schizotypal disorder) whereupon he was immediately placed in psychiatric care in jail, without a formal decision by a court or investigator. Only on 17 February 2006 did the Zheleznodorozhniy District Court of Krasnoyarsk City formally sanction the author's placement in psychiatric care. Due to his diagnosis, a legal guardian was appointed, in addition to his lawyer. While in psychiatric care, he was not visited by his lawyer or his legal representative. Due mostly to his diagnosis, motions and complaints submitted by the author to the case investigator were denied or ignored, and even final criminal charges against him were filed in his absence.⁶

2.6 On 22 February 2006, the author's case was sent to the Krasnoyarsk Regional Court. On 3 July 2006, the Krasnoyarsk Regional Court, at the request of the prosecutor, ordered another forensic psychiatric evaluation of the author. The second evaluation determined that the author had never suffered from a mental illness and, therefore, he was fit to stand on criminal charges.⁷ On 30 August 2006, his case was sent back to the Krasnoyarsk Region Prosecutor's Office for additional investigation, during which he was charged with another crime.

2.7 On 20 November 2006, the additional investigation was completed and the case against the author was sent for trial by jury, as requested by the author. On 19 April 2007, a jury found the author guilty of committing multiple murders, extortion, hooliganism, illegal acquisition of firearms and assault. On 3 May 2007, the Krasnoyarsk Regional Court sentenced the author to life imprisonment.

2.8 On 25 December 2007, the Supreme Court denied the author's cassation appeal. Before the appeal, the author motioned the Supreme Court for a confidential meeting with his lawyer to discuss his case. However, he was only granted a meeting using a video link from the courtroom on the day of the trial during which other people were also present.

2.9 On 29 October 2008, the Deputy Chair of the Supreme Court dismissed the author's supervisory appeal. The author submitted several supervisory appeals to reopen the case due to new circumstances to the Krasnoyarsk Region Prosecutor's Office and the General Prosecutor's Office, which were all dismissed.

2.10 On 15 January 2008, the author submitted a complaint to the European Court of Human Rights. On 4 April 2013, the complaint was found inadmissible by a single judge based on article 35 of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights).

The complaint

3.1 The author claims that the State party has violated his rights under article 7 of the Covenant. He was subjected to beatings and psychological pressure by police officers on several occasions, including the night of his arrest. Moreover, for more than 15 hours he was detained, handcuffed, in inhuman and degrading conditions without access to food or water.

3.2 The author also considers that his rights under article 9 of the Covenant have been violated. He claims to have been unlawfully arrested by several men who did not identify themselves as police officers or provide him with an arrest warrant. He was unlawfully held for 18 hours before being interrogated, including beaten for 3 hours by the river. Also, he was held for 53 hours before appearing in front of a judge, while domestic law requires that any arrest must be sanctioned by a judge within 48 hours.⁸

⁶ The author submitted copies of two decrees by the investigator denying his motions, in which, among the reasons for denial, the investigator states the author's diagnosis and his "inability to comprehend the character of his actions and to defend his rights".

⁷ In 2014, the author sued the medical institution that declared that he was suffering from a mental illness for moral damages due to an incorrect diagnosis. However, his lawsuit was unsuccessful since it was found that there was no wrongdoing on the part of the doctors.

⁸ Article 22 (2) of the Constitution.

3.3 The author further claims that the State party has violated his rights under article 14 (1) of the Covenant because he was convicted despite the lack of any direct evidence tying him to the crimes and the existence of an alibi corroborated by two witnesses. According to the author, the trial court refused to allow certain evidence to be submitted, and the prosecutor unlawfully influenced the jury resulting in an unfair trial. The author claims that the conclusion of his first psychiatric evaluation was not formally invalidated by the second evaluation. His subsequent lawsuit against the medical institution was denied on the grounds that there had been no wrongdoing on the part of the doctors, which meant that the initial conclusion was correct. Thus, the evaluation should have been treated by the trial court as forensic evidence and used as such.

3.4 The author claims that the State party has violated his rights under article 14 (2) of the Covenant because, after his trial but before his cassation appeal and before his verdict entered into force, the official website of the Krasnoyarsk Regional Court published a press release in which it stated that the author was a recidivist, was guilty of all charges against him and that he had faked his mental illness, which could have influenced the decision of the cassation court.

3.5 The author claims a violation of his rights under article 14 (3) (b) and (e) of the Covenant because during the pretrial investigation, after he had been misdiagnosed with mental illness and placed in psychiatric care, he did not receive any information about his case, including what the final criminal charges against him were, was not visited by his lawyer or legal representative and had his motions and complaints denied, inter alia, due to his diagnosis. The investigator did not inform the author about any forensic examinations he had ordered or their results, therefore denying him an opportunity to submit his own questions to forensic experts before an examination. Moreover, the Supreme Court did not provide for a confidential meeting with his lawyer prior to his cassation appeal. Thus, he did not have adequate time and facilities to prepare for his defence and to communicate with the counsel of his choosing.

3.6 The author claims that the State party has violated his rights under article 2 (2) and (3) (a), read in conjunction with article 14 (5), of the Covenant because he was unable to appeal the decision of the jury in his trial. The cassation court denied his appeal on the grounds that domestic law did not allow for a review of a jury's verdict on the grounds that the jury had failed to correctly evaluate the facts and evidence in the case.

3.7 The author claims that, since each of the crimes he was convicted of carries a prison sentence for a definite term, his overall prison sentence cannot exceed 25 years in accordance with article 56 (4) of the Criminal Code.⁹ Therefore, his imprisonment for life violates his rights under article 15 (1) of the Covenant.

State party's observations on admissibility

4. In a note verbale dated 31 July 2014, the State party submitted its observations on admissibility of the communication. The State party submits that, in 2008, the author submitted a complaint to the European Court of Human Rights, thus his communication to the Committee should be ruled inadmissible based on article 5 (2) of the Covenant.

Author's comments on the State party's observations on admissibility

5. In a letter dated 23 October 2014, the author provided his comments on the State party's observations on admissibility. The author submits that his complaint to the European Court of Human Rights was different from his current claims. In any event, his complaint was not examined by the Court due to it having been ruled inadmissible.

⁹ Article 56 (4) of the Criminal Code states: "In case of a partial or full merger of the terms of deprivation of liberty into the assignment of punishment by a cumulation of penalties, the maximum total term of deprivation of liberty may not exceed 25 years and, for cumulative sentences, 30 years."

State party's observations on the merits

6.1 In a note verbale dated 9 September 2014, the State party submitted its observations on the merits of the communication.

On article 15 (1) of the Covenant

6.2 The State party submits that the Criminal Code provides for two types of imprisonment – for a definite term and for life. It notes that article 56 (4) of the Criminal Code cannot be applied in the author's case because he has been sentenced, inter alia, to life imprisonment on separate counts for several crimes. Therefore, his final verdict was rendered in accordance with article 57 of the Criminal Code, which provides for life imprisonment for certain crimes.¹⁰

6.3 The State party notes that a person sentenced to life imprisonment can qualify for conditional early release in accordance with article 79 (5) of the Criminal Code, if it can be established by the courts that the person does not require further imprisonment and has served at least 25 years of his sentence.

On article 14 (3) (b) of the Covenant

6.4 The State party rejects the author's claim that providing a meeting with his lawyer using a video link during his cassation appeal violates article 14 (3) (b) of the Covenant. It notes that the Supreme Court has conducted a study on how the right to legal assistance is provided in courts of cassation and supervisory appeals in which defendants participate through video links. The study has shown that video calls are carried out before court hearings and defence lawyers are the only persons present during those calls in courtrooms. Court employees who are responsible for setting up the video connections remain outside of the courtrooms, and prison guards also leave videoconference rooms while defendants talk to their lawyers. During a court hearing, if a lawyer or defendant motions for a confidential meeting, the judge adjourns the hearing and provides an opportunity for a defendant to confidentially consult with his or her lawyer. Once the hearing resumes, the defendant is asked whether there was enough time to consult with the lawyer. This information is reflected in the record of the court hearing.

On article 14 (5) of the Covenant

6.5 The State party notes that, at the time of the author's trial, a verdict by a jury could be quashed or amended on appeal only in cases of a violation of the law on criminal procedure, an incorrect application of criminal law or an unjust verdict. Therefore, the cassation court could not review the author's verdict on the grounds that the conclusions of the trial court did not conform to the factual circumstances of the case determined by the court. As confirmed by the Krasnoyarsk Regional Court, the trial judge had explained to the author the peculiarities of jury trials prior to the trial, including the grounds for future appeals. The author confirmed to the trial judge that he had understood the explanations, that he did not need additional consultations with his lawyer in this regard and that he agreed to a trial by jury.

On article 14 (1) of the Covenant

6.6 The State party submits that the cassation court confirmed that the trial had been held in accordance with the law and the parties had not been restricted in presenting and examining the evidence. The trial court was correct in not allowing certain evidence, because it was either inadmissible or not relevant.

¹⁰ Article 57 (1) of the Criminal Code states: "Deprivation of liberty for life is established for the commission of especially grave crimes of attacks on human life, as well as for committing especially grave crimes against the health of the population and public morals, public safety and the sexual integrity of minors under 14 years of age."

Author's comments on the State party's observations on the merits

7.1 In a letter dated 16 October 2014, the author provided his comments on the State party's observations on the merits.

On article 15 (1) of the Covenant

7.2 The author admits that for some of the crimes for which he was convicted he was sentenced to life imprisonment. However, he reiterates his position, namely that article 56 (4) of the Criminal Code should have been applied in his case and the final sentence should not exceed 25 years in prison.

On article 14 (3) b) of the Covenant

7.3 The author rejects the State party's argument that his meeting by video link with his lawyer was confidential. He submits that, during the video call, he saw the prosecutor and a court employee present in the courtroom. The room in the prison, from where he was talking to his lawyer, was also not private as there were a prison guard and a computer technician behind a lattice who could see and hear him. Moreover, the author submits that, on 22 October 2007, he motioned the Supreme Court to appoint him a lawyer for his appeal hearing and provide for a confidential meeting with the lawyer prior to the appeal. Even though the Supreme Court had sufficient time to appoint a lawyer and to arrange for a meeting, the meeting by video link was not arranged until the day of the appeal hearing.

On article 14 (1) of the Covenant

7.4 The author alleges that some evidence during his trial was manipulated, namely the reports of the biological and ballistic forensic examinations of the gun that was allegedly used to kill the victims, resulting in discrepancies that should have made the reports inadmissible as evidence. However, the author claims that his motions to suppress the reports were denied by the trial court and the reports were presented by the prosecution to the jury. Although the author later motioned the Krasnoyarsk Region Prosecutor's Office to reopen his criminal case due to newly discovered evidence, citing the forensic reports, his motions were denied.

7.5 The author notes that, during the trial, there were six witnesses who disowned their testimonies given during the pretrial investigation. The witnesses stated that the testimonies contained elements that they had not said during interrogation. In response, the prosecutor told the jury that those witnesses were all part of the same gang and they were trying to help the author to escape responsibility for the crimes that he had committed.

7.6 The author further notes that he was precluded from presenting evidence to the jury to support the claim that one of the crimes he had been charged with could have been committed by another person. His motion to reveal the report of the forensic examination of the clothes worn by the husband of one of the victims was denied by the trial judge as irrelevant to the trial. The author claims that this report would have shown to the jury that the crime could have been committed by the victim's husband, or at least cast doubt on his own guilt.

7.7 The author submits that, during the trial, the prosecutor illegally influenced the jury by telling them that the author was guilty of the death of an infant girl who in fact had died from heart illness.¹¹ The prosecutor speculated that the illness could have been triggered by the author's actions against the parents before the birth.

State party's additional observations

8.1 In a note verbale dated 13 February 2015 and another dated 23 February 2015, the State party submitted further observations on admissibility and the merits.

¹¹ The author was found guilty of extorting money from a couple who were expecting a girl who was later born with a congenital heart defect. She died from the illness shortly after birth.

On admissibility

8.2 The State party notes that, in 2014, the author complained to the Krasnoyarsk Region Prosecutor's Office that some evidence used against him had been manipulated during the forensic examinations, including the ballistics examination of the gun, and asked for a criminal investigation to be initiated against those responsible and to reopen his case based on newly discovered evidence. On 25 February 2014, the Deputy Prosecutor of Krasnoyarsk Region informed the author that there was no credible information to support his allegations. On the same day, the Deputy Prosecutor issued a ruling officially denying the author's request to have the case reopened, noting that all forensic evidence had already been examined by the court and ruled admissible and there were no new circumstances in the author's motion to rule otherwise.

8.3 The author appealed the Deputy Prosecutor's first letter to the Central District Court of Krasnoyarsk City, which, on 5 May 2014, denied the appeal. On 1 July 2014, the Krasnoyarsk Regional Court confirmed the decision of the Central District Court and explained to the author that the Deputy Prosecutor's letter could only be appealed through a civil court because it was not a procedural decision, but that he could appeal to the criminal court the Deputy Prosecutor's ruling not to reopen the criminal case based on new evidence. The State party submits that, to this day, the Deputy Prosecutor's ruling to deny reopening the criminal case based on new evidence has not been appealed. Thus, the author has not exhausted all available domestic remedies.

On article 14 (1) of the Covenant

8.4 With regard to the author's claim that, during the trial, the prosecution illegally influenced the jury by telling them that he had been responsible for the death of an infant girl, the State party notes that, although he had not been charged with the death of the child, the circumstances surrounding her death had been mentioned by the prosecution in its closing remarks due to the fact that the defence had investigated the girl's death certificate during the trial.

8.5 With regard to the author's claim that he was precluded from presenting evidence to the jury to the effect that one of the crimes that he had been charged with could have been committed by another person, the State party submits that the possible connection of this person to one of the crimes was investigated by the police and the investigation against him was officially closed on 24 November 2005. The author's motion to present certain evidence against that person to the jury was partially granted by the judge during the trial, while other evidence was precluded on the grounds of relevance.

On article 7 of the Covenant

8.6 The State party also notes that, on 22 April 2013, the Bogotol District Court denied the author's complaint against the unlawful actions of the police related to the night of his arrest due to the lack of grounds for opening a criminal investigation against the police officers.

Author's comments on the State party's additional observations

9.1 In letters dated 2 April, 14 April, 25 May, 15 June and 18 September 2015, the author provided his comments on the State party's additional observations.

On article 7 of the Covenant

9.2 The author submits that, while investigating his complaint against the police, the Krasnoyarsk Region Prosecutor's Office never tried to inquire where he had been held between 5 a.m. and 7.30 p.m. when the official interrogation took place. He also notes that the Krasnoyarsk Region Prosecutor's Office did not question his friend at whose apartment he was detained. According to the author, his friend testified at the trial that he had also been subjected to beatings when the police came looking for the author. However, he never spoke about this again out of fear of repercussions from the police. In their testimonies, the arresting officers omitted, on purpose, to mention the presence of the author's friend, so he could not be questioned as a witness in the investigation against them.

On article 14 (1) of the Covenant

9.3 The author reiterates that his right to a fair trial was violated by: (a) the denial of his motion to reveal the reports of the forensic examination of the clothes worn by the husband of one of the victims, as these reports could have influenced the jury's verdict; (b) the prosecution when it tried to convince the jury that he was responsible for the death of a newborn girl even though she died from natural causes.

Additional observations*From the State party*

10.1 In a note verbale dated 12 October 2015, the State party submitted its additional observations on the merits of the communication.

On article 9 of the Covenant

10.2 The State party rejects the author's claim that his arrest was arbitrary. It submits that, on 13 September 2005 at 5 a.m., the author was detained as a suspect in the murder of a couple, after which he was taken to a local police department and that his parents were informed by telephone of his detention. On the same day, he was held in a temporary detention facility on the grounds that he had attempted to flee. The author did not complain about the beatings by the police while in the temporary detention facility. On 14 September 2005, the author was interrogated in the presence of a lawyer, but he refused to testify. He also did not request to appoint another lawyer due to inadequate defence. At 4.50 a.m. on 15 September 2005, the author was detained again as a suspect in an attempted murder case. The author's second arrest was based on the existence of "reasons to believe that he was attempting to flee and witnesses having identified him as the perpetrator". On 15 September 2005, the author was interrogated in the absence of a lawyer, but again he refused to testify.

On article 7 of the Covenant

10.3 With regard to the author's claim of beatings by the police, the State party notes that the author's complaint was examined not by the case investigator but by another investigator of the Bogotol Inter-district Prosecutor's Office. During the October 2005 inquiry procedure initiated as a result of the complaint, the author refused to testify. The investigator interrogated three police officers who explained that the author had displayed active resistance to the police by taking swipes at them with an iron and moving towards the exit, which had prompted the officers to use force to detain him. The medical examination of the author concluded that he had suffered light injuries to his face. On 14 October 2005, the investigator concluded that the police had acted within their powers and refused to bring criminal charges against them. This decision was appealed by the author on the grounds that the investigator who conducted the inquiry had a conflict of interest. However, an additional inquiry revealed no such conflict.

10.4 In 2008, a different investigator of the Bogotol Inter-district Prosecutor's Office conducted another inquiry into the author's complaint about the beatings. On 14 April 2008, the investigator in question refused to bring charges against the police officers given the absence of *corpus delicti* in their acts. This time the author appealed it on the grounds that, at the time of his arrest, the police officers were not officially employed by the police because the records of the inquiry showed that they had held their respective positions since 2006, thus they were prohibited from detaining him or using any force against him at the time. On 22 April 2013, the author's appeal was denied by the Bogotol District Court. On 19 September 2013, his further appeal was denied by the Krasnoyarsk Regional Court. The Courts held that the police officers had acted within their powers while detaining the author and that the inquiry report showing that the police officers had held their respective positions since 2006 was only in reference to their current positions. Therefore, it did not imply that they were not part of the police force prior to 2006.

On article 14 (1) of the Covenant

10.5 With regard to the author's psychiatric evaluation, the State party notes that, in his appeal, the author argued that, *inter alia*, the first psychiatric evaluation that found that he suffered from a mental illness was unlawful. The appellate court found that this argument could not be considered as grounds for overturning the initial verdict because the results of the first psychiatric evaluation were not used by the court when rendering the verdict.

10.6 The State party submits that, on 28 October 2005, the case investigator ordered a psychiatric evaluation of the author. This order was provided to the author's lawyer and legal representative on 19 December 2005 and 16 January 2006, respectively. They reviewed the results of the evaluation on 22 December 2005 and 16 January 2006. There were no complaints or comments made by them regarding the initiation of the evaluation or the results thereof. On 28 March 2006, the Krasnoyarsk Regional Court started the court procedure to determine whether the author required compulsory medical treatment in a psychiatric institution. During the court hearing, the author's brother, who was acting as his legal representative, testified that he had never noticed anything abnormal in the author's behaviour, there was no one in the family who suffered from mental illness and that he studied in ordinary secondary and vocational schools. During the same hearing, the prosecutor requested the Court to arrange for another psychiatric evaluation of the author at a specialized medical institution in Moscow. The author's lawyer supported the prosecutor's request.

10.7 On 3 July 2006, the second psychiatric evaluation determined that the author did not have a mental illness that would prevent him from recognizing the character and public danger of his actions. On 30 August 2006, the Court announced the results of the evaluation, and both the author's legal representative and his lawyer agreed with the results.

10.8 The State party submits that the first psychiatric evaluation was conducted at the place of the author's detention, thus he was not placed in a psychiatric facility. Since the second evaluation was conducted by a specialized medical institution in Moscow, he was temporarily moved there from his pretrial detention facility for the duration of the second evaluation.

From the author

11.1 In letters dated 12 February, 4 August, 3 October, 17 October, 14 November and 28 November 2015, 12 February and 22 June 2018, and 4 February and 11 March 2019, the author submitted additional comments.

On admissibility

11.2 The author submits that, on 25 February 2014, the Deputy Prosecutor of Krasnoyarsk Region denied his request to reopen his case due to newly discovered evidence (para. 8.2). On 18 September 2015, the Central District Court of Krasnoyarsk City denied his appeal. The author appealed the decision of the Central District Court to the Krasnoyarsk Regional Court and asked the Court to allow him to attend the hearing either in person or by video link. On 22 January 2016, the author's request was denied. On 18 February 2016, the appellate hearing was held in the absence of the author, with only his lawyer present, and his appeal was denied. The author submits that, although his lawyer was present at the hearing, she could not adequately represent him because they did not have a prior private meeting to discuss the appeal and relevant legal issues.

On article 9 of the Covenant

11.3 The author rejects the State party's argument that he was arrested on 15 September 2005 because he was attempting to flee and witnesses had identified him as the perpetrator. He submits that, at the time of his arrest, the victim identified her husband as the only suspect in the crime, and there were no other witnesses, so he could not have been named as a suspect. As for his attempt to flee, he notes that, commencing 13 September 2005 when he was detained as a suspect in another crime, he was being held in a police cell, so he could not have attempted to flee. The author submits that this shows that the Bogotol

District Court used formalistic grounds for his arrest without examining the real evidence, thus his arrest had no legal grounds and was arbitrary in nature.

On article 14 (1) of the Covenant

11.4 With regard to his first psychiatric evaluation, the author notes that, although it was conducted at the pretrial detention facility, the cell he was held in for the evaluation between September 2005 and July 2006 was used for psychiatric evaluations and the treatment of all detainees. During his time in the cell, he was held with another inmate suffering from schizophrenia.

Issues and proceedings before the Committee

Consideration of admissibility

12.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 97 of its rules of procedure, whether the communication is admissible under the Optional Protocol.

12.2 The Committee notes the State party's submission that the communication should be declared inadmissible because the author filed a complaint with the European Court of Human Rights in 2008, which was rejected on 4 April 2013, since the Court decided that the application did not correspond to the requirements of article 35 of the European Convention on Human Rights. The Committee observes that the matter is no longer pending before another procedure of international investigation or settlement. Therefore, the Committee is not precluded by virtue of article 5 (2) (a) of the Optional Protocol from considering the present communication.

12.3 The Committee takes note of the State party's argument that the author has not appealed the decree by the Deputy Prosecutor of the Krasnoyarsk Region to deny reopening the criminal case on the basis of newly discovered evidence (para. 8.2). The Committee also notes the author's submission that, on 18 September 2015, the Central District Court of Krasnoyarsk City denied his appeal concerning the prosecutor's decree. The author appealed the decision of the Central District Court and, on 18 February 2016, the Krasnoyarsk Regional Court denied his appeal (para. 11.2). In those circumstances, the Committee considers that it is not precluded by articles 2 and 5 (2) (b) of the Optional Protocol from examining the present communication.

12.4 The Committee notes the author's claim that his rights under article 14 (1) of the Covenant were violated because he was convicted despite the lack of any direct evidence tying him to the crimes in question and the existence of an alibi corroborated by two witnesses. According to the author, the trial court did not treat the conclusion of the first psychiatric evaluation as forensic evidence and allow him to introduce certain evidence, while the prosecutor unlawfully influenced the jury resulting in an unfair trial. The Committee notes, however, that the author's claims basically refer to the evaluation of facts and evidence, and the application of domestic legislation by the courts of the State party. The Committee recalls its case law, according to which it is for the courts of States parties to evaluate the facts and the evidence in each case, or the application of domestic legislation, unless the evaluation is manifestly arbitrary or amounts to a denial of justice.¹² In the present case, the Committee notes that the author disagrees with the jury's assessment and findings, but has not managed to show that the domestic court decisions, which were based on physical evidence, expert opinions and witness testimonies, were clearly arbitrary or amounted to a manifest error or denial of justice. The Committee considers, therefore, that the author has insufficiently substantiated his claim under article 14 (1) for the purposes of admissibility and considers it inadmissible under article 2 of the Optional Protocol.

12.5 Similarly, with respect to the author's claim under article 2 (2) and (3) (a), read in conjunction with article 14 (5), of the Covenant, the Committee finds it inadmissible under

¹² *G.C.A.A. v. Uruguay* (CCPR/C/115/D/2358/2014), para. 8.8. See also the Committee's general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, para. 26.

article 2 of the Optional Protocol because it would refer to the evaluation of facts and evidence, and the application of domestic legislation by the courts of the State party. The Committee also considers that the provisions of article 2 (2) cannot be invoked as a claim in a communication under the Optional Protocol in conjunction with other provisions of the Covenant, except when the failure by the State party to observe its obligations under article 2 is the proximate cause of a distinct violation of the Covenant directly affecting the individual claiming to be a victim.¹³ The Committee therefore considers, for this reason too, that the author's claims under article 2 (2) are incompatible with article 2 of the Covenant and inadmissible under article 3 of the Optional Protocol.

12.6 The Committee notes the author's claim that his right to be presumed innocent was violated, since after his trial but before his cassation appeal and before his verdict entered into force, the official website of the Krasnoyarsk Regional Court published a press release in which it said that the author was a recidivist, was guilty of all the crimes that he had been charged with and that he had faked his mental illness, which could have influenced the decision of the cassation court. Based on the material before it, the Committee considers that the author has not shown sufficient grounds to support his argument that the above facts influenced the Supreme Court and resulted in a violation of his rights under article 14 (2) of the Covenant. Accordingly, the Committee considers that this part of the communication is insufficiently substantiated and is therefore inadmissible under article 2 of the Optional Protocol.

12.7 The Committee further notes the author's claim that the State party violated his rights under article 15 (1) of the Covenant by sentencing him to life imprisonment, whereas article 56 (4) of the Criminal Code only provided for a prison sentence for a definite term. The Committee also notes the State party's submission that the author was sentenced, *inter alia*, to life imprisonment on separate counts for several crimes, thus his final verdict was rendered in accordance with article 57 of the Criminal Code, which provides for life imprisonment. In the absence of any other information in support of his allegations, the Committee considers that this claim by the author has been insufficiently substantiated for the purposes of admissibility and therefore considers it inadmissible under article 2 of the Optional Protocol.

12.8 The Committee notes the author's claim that his appointed lawyer failed to attend the hearing on 15 September 2005 at the Bogotol District Court, which sanctioned the author's arrest. The Committee considers that the author's claims also raise issues under article 14 (3) (d) of the Covenant. In the Committee's view, the author has sufficiently substantiated his claims under articles 7, 9 and 14 (2) and (3) (b), (d) and (e) of the Covenant, for the purposes of admissibility. It therefore declares them admissible and proceeds with its consideration of the merits.

Consideration of the merits

13.1 The Committee has considered the communication in the light of all the information submitted to it by the parties, in accordance with article 5 (1) of the Optional Protocol.

13.2 The Committee notes the author's claim that, at 2 a.m. on 13 September 2005, he was apprehended by several men in civilian clothes who broke into his friend's apartment without identifying themselves as police officers, and then taken to a nearby river where he was subjected to physical ill-treatment, including drowning, and psychological pressure with the aim of extracting a confession regarding several crimes that had been committed two days prior (para. 2.1). At 5 a.m., the author was taken to the local police department where he was again beaten and held for 15 hours in handcuffs and wet clothes, without providing him with food or water. The Committee further notes the author's claim that, when interrogated by the case investigator later that day, he complained about the injuries, which were clearly visible on his face, that he had sustained at the hands of the police officers. However, the investigator ignored his complaints (para. 2.2) and, as a result, the forensic medical examination of his injuries was not carried out until 21 September 2005, after his new lawyer submitted a formal complaint to the prosecutor's office. The forensic

¹³ *Poliakov v. Belarus* (CCPR/C/111/D/2030/2011), para. 7.4.

medical examination concluded that the author had suffered light injuries to his face, arms and legs (para. 2.4). The Committee also notes the State party's submission that the author was detained at 5 a.m. on 13 September 2005 and, when taken to a temporary detention facility, he did not complain about the beatings by the police (para. 10.2). An inquiry procedure was initiated by the Bogotol Inter-district Prosecutor's Office after the author's lawyer submitted a complaint. However, during the course of the inquiry, the author refused to testify. The inquiry investigator interrogated three police officers who explained that, at the time of the detention, the author had shown active resistance to the police by taking swipes at them with an iron and moving towards the exit, which had prompted the officers to use force to detain him. Therefore, the inquiry concluded that the police had acted within their powers and refused to bring criminal charges against them (para. 10.3). The Committee further notes that there was another inquiry conducted in 2008, which also resulted in a refusal to charge the police officers, in the absence of *corpus delicti* (para. 10.4). This decision was upheld both by the Bogotol District Court and the Krasnoyarsk Regional Court, which held that the police officers had acted within their powers while detaining the author. Finally, in 2013, the Bogotol District Court denied another complaint by the author against unlawful actions of the police related to the night of his arrest due to the lack of grounds for opening a criminal investigation against the police officers (para. 8.6).

13.3 The Committee notes that, while the State party reports that it conducted several inquiries into the author's claims, it has not been shown that those investigations were launched promptly or that they were conducted effectively. The Committee emphasizes that the first allegations of ill-treatment were made by the author on the day of his detention on 13 September 2005, with injuries clearly visible on his face, while the first investigation into the allegations did not start until after the lawyer's complaint on 20 September 2005. Furthermore, as it appears from the parties' submissions, a key witness, the author's friend at whose apartment he was detained, was not questioned by the authorities to clarify the circumstances of the author's detention or if he was, indeed, detained at 2 a.m. as he had claimed and not at 5 a.m. as recorded in the official report.

13.4 The Committee recalls its jurisprudence according to which a failure by a State party to investigate allegations of violations could in and of itself give rise to a separate breach of the Covenant.¹⁴ The Committee reiterates that the Covenant does not provide a right for individuals to require that the State party criminally prosecute another person.¹⁵ It considers, nonetheless, that the State party is under a duty to investigate promptly, impartially and thoroughly alleged violations of human rights, prosecute the suspects and punish those held responsible for such violations¹⁶ and provide other forms of reparation, including compensation.¹⁷ The Committee notes that nothing in the material on file allows it to conclude that the investigation into the allegations of the author's cruel and inhuman treatment was carried out promptly or effectively by the authorities. Therefore, the Committee concludes that the facts as submitted reveal a violation of the author's rights under article 7, read in conjunction with article 2 (3), of the Covenant.

13.5 The Committee recalls that, in accordance with article 9 (1), no one shall be subjected to arbitrary arrest or detention and no one shall be deprived of his or her liberty except on such grounds and in accordance with such procedure as are established by law. The Committee also recalls that, in accordance with article 9 (2), anyone who is arrested shall be informed, at the time of arrest, of the reasons for his or her arrest and shall be promptly informed of any charges against him or her. The Committee notes the author's claim that, on 13 September 2005 at 2 a.m., several men in civilian clothes broke into his friend's apartment without identifying themselves as police officers and, upon entering,

¹⁴ The Committee's general comment No. 20 (1992) on the prohibition of torture or other cruel, inhuman or degrading treatment or punishment, para. 14; and general comment No. 31 (2004) on the nature of the general legal obligations imposed on States parties to the Covenant, para. 15. See also *Askarov v. Kyrgyzstan* (CCPR/C/116/D/2231/2012), para. 8.3; and *Batanov v. Russian Federation* (CCPR/C/120/D/2532/2015), para. 11.2.

¹⁵ See, for example, *X. v. Sri Lanka* (CCPR/C/120/D/2256/2013), para. 7.4.

¹⁶ *Ibid.*

¹⁷ *Ibid.*

started beating both him and his friend. Subsequently, as claimed by the author, he was handcuffed and taken to a nearby river where he was subjected to further physical ill-treatment, including drowning. The Committee also notes the State party's argument that the author was apprehended on 13 September 2005 at 5 a.m. as a suspect in the murder of a couple, after which he was taken to a local police department. The Committee observes that, despite numerous submissions, the State party has not presented any detailed information regarding the specific arguments made by the author as to the arbitrary nature of his arrest (para. 2.1). Accordingly, the Committee decides that due weight must be given to the author's allegations. The Committee concludes that the facts before it disclose a violation of the author's rights under article 9 (1) and (2) of the Covenant. In the light of this conclusion, the Committee will not examine separately the author's allegations under article 9 (3) and (4) of the Covenant.

13.6 The Committee notes the author's claim under article 14 (3) (b) that the Supreme Court did not provide for a confidential meeting with his lawyer prior to his cassation appeal on 25 December 2007 (paras. 2.8 and 3.5), even though the author motioned the Supreme Court on 22 October 2007 to appoint him a lawyer for his appeal hearing and provide for a confidential meeting with the lawyer prior to the appeal (para. 7.3). In this regard, the author complains that he was only granted a meeting by video link from the courtroom on the day of the trial during which other people were allegedly also present (para. 2.8). However, the author further acknowledges that these people were the prosecutor and a court employee present in the courtroom – where they were entitled to be – and a prison guard and computer technician behind a lattice, “who could see and hear him” (para. 7.3). The Committee notes, in this regard, the State party's argument that the Supreme Court conducted a study on how the right to legal assistance was provided in courts of cassation and supervisory appeals in which defendants participated using video links and that the study showed that video calls were carried out before court hearings and defence lawyers were the only persons present during those calls in courtrooms (para. 6.4). The Committee recalls that article 14 (3) (b) is an important element of the guarantee of a fair trial and an application of the principle of equality of arms.¹⁸ The right to communicate with counsel requires that the accused is granted prompt access to counsel.¹⁹ Counsel should be able to meet their clients in private and to communicate with the accused in conditions that fully respect the confidentiality of their communications.²⁰ Bearing in mind the seriousness of the charges involved in the present case, the Committee considers that the Supreme Court's failure to provide the author with a confidential meeting with his appointed lawyer well ahead of the appeal hearing, whether by video link or in person, does not meet the requirements of article 14. In the above circumstances, the Committee concludes that there was a violation of article 14 (3) (b) of the Covenant.

13.7 With regard to the author's claim that his appointed lawyer failed to attend the hearing on 15 September 2005 at the Bogotol District Court, which sanctioned the author's arrest (para. 2.3), the Committee observes that a lawyer was appointed by the case investigator and was present during the interrogation on 14 September 2005. However, this lawyer did not attend the author's interrogation on 15 September 2005 (para. 10.2) or his court hearing later that day sanctioning his arrest. Moreover, according to the author, a new lawyer was assigned to him only on 20 September 2005, when the three-day period to appeal his arrest had already passed. The Committee recalls that, in the case of appointed lawyers, blatant misbehaviour or incompetence may entail the responsibility of the State concerned for a violation of article 14 (3) (d), provided that it was manifest to the judge that the lawyer's behaviour was incompatible with the interests of justice.²¹ In these circumstances and in the absence of other pertinent observations from the State party in this regard, the Committee considers that the author's rights under article 14 (3) (d) of the Covenant have been violated.

¹⁸ The Committee's general comment No. 32, para. 32.

¹⁹ Ibid.

²⁰ Ibid.

²¹ Ibid., para. 38.

13.8 Having concluded that, in the present case, there has been a violation of article 14 (3) (b) and (d) of the Covenant, the Committee decides not to examine separately the author's claim under article 14 (3) (e) of the Covenant.

14. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the information before it discloses a violation by the State party of article 7, read in conjunction with articles 2 (3), 9 (1), 9 (2) and 14 (3) (b) and (d), of the Covenant.

15. Pursuant to article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the author with an effective remedy. This requires it to make full reparation to individuals whose Covenant rights have been violated. Accordingly, the State party is obligated, *inter alia*, to take appropriate steps to provide compensation to the author for the violations suffered. The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future.

16. 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 and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and 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. The State party is also requested to publish the present Views and to have them widely disseminated in the official language of the State party.

Annex

Individual opinion of Committee member José Manuel Santos Pais (partly dissenting)

1. I join the other members of the Committee in finding a violation of the author's rights under article 14 (3) (b) and (d) of the Covenant and in deciding not to examine separately the author's claim under article 14 (3) (e). However, I regret not being able to join the Committee's decision in finding a violation of the author's rights under article 7, read in conjunction with articles 2 (3) and 9 (1) and (2), of the Covenant.

2. It has been the standing case law of the Committee that it is for the courts of States parties to evaluate the facts and the evidence in each case, or the application of domestic legislation, unless the evaluation is manifestly arbitrary or amounts to a denial of justice (para. 12.4). Nonetheless, the Committee seems not to have followed this case law in its Views.

3. Regarding the violation of article 7, read in conjunction with article 2 (3), of the Covenant, the Committee concluded that nothing in the material on file allowed it to conclude that the investigation into the allegations of the author's cruel and inhuman treatment had been carried out promptly or effectively by the authorities (para. 13.4). However, the Committee itself refers to several arguments of the State party that clearly rebut this conclusion (para. 13.2).

4. The author was, according to the State party, detained at 5 a.m. on 13 September 2005 as a suspect in the murder of a couple and, when taken to a temporary detention facility, he did not complain about the beatings by the police. His parents were informed by telephone of his detention. On the same day, he was placed in a temporary detention centre, on the grounds that he had attempted to flee. The author did not complain about the beatings by the police while in the temporary detention centre. On 14 September 2005, the author was interrogated in the presence of a lawyer, but he refused to testify. He also did not request to have another lawyer appointed due to inadequate defence. At 4.50 a.m. on 15 September 2005, the author was detained again as a suspect in the attempted murder of a sales clerk (para. 10.2).

5. A second inquiry procedure, by another investigator, was initiated by the Bogotol Inter-district Prosecutor's Office, in October 2005, after the author's lawyer submitted a complaint. However, during the course of the inquiry, the author refused to testify. The inquiry investigator interrogated three police officers who explained that, at the time of detention, the author had displayed active resistance to the police by taking swipes at them with an iron and moving towards the exit, which had prompted the officers to use force to detain him. The medical examination of the author concluded that he had suffered light injuries to his face, which was consistent with the fact that the author may have resisted his arrest. Therefore, the inquiry concluded that the police officers had acted within their powers and refused to bring criminal charges against them (para. 10.3).

6. There was another inquiry in 2008, which also resulted in a refusal to charge the police officers, in the absence of *corpus delicti* (para. 10.4). This decision was upheld both by the Bogotol District Court and the Krasnoyarsk Regional Court, which held that the police officers had acted within their powers while detaining the author (para. 10.4). In 2013, the Bogotol District Court denied another complaint by the author against the unlawful actions of the police related to the night of his arrest, again due to the lack of grounds for opening a criminal investigation against the police officers (paras. 8.6 and 10.4). Finally, on 1 July 2014, the Krasnoyarsk Regional Court confirmed the decision of the Central District Court of Krasnoyarsk City, which denied the appeal by the author against the decision of the Deputy Prosecutor of Krasnoyarsk Region of 25 February 2014. By this decision, the prosecutor refused to reopen the case of the author on the basis of an allegation of manipulation of evidence used against him during forensic examinations (paras. 8.2–8.3). We have, therefore, successive investigations by the competent domestic authorities, all of which reject the author's allegations given the absence of *corpus delicti*.

7. The Committee refers, in particular, to a key witness, the author's friend at whose apartment he was detained, who was not questioned by the authorities to clarify the circumstances of the author's detention (para. 13.3). This seems, however, not to be entirely accurate. According to the author (para. 9.2), his friend testified at the trial that he had also been subjected to beatings when the police came looking for the author. However, as can be seen in the court transcript, this testimony during the trial was very vague, so it cannot even be said with certainty that the friend was with the author in his apartment on the night of the arrest. And the same applies to the allegation by the author (para. 2.1) that a witness confirmed, during the trial, that he had been taken to the river and beaten there. The witness only stated he had been beaten and threatened by the police with being "taken to the place where they had drowned the author" (footnote 2), which is in itself no direct evidence, but just hearsay testimony. Taking pieces of evidence out of context, when domestic courts have repeatedly investigated and assessed, in successive judgments, all the available evidence, poses significant problems, unless there is sufficient evidence to the contrary, which, in my view, was not the case in the communication. Ultimately, on 19 April 2007, a jury found the author guilty of committing multiple murders, extortion, hooliganism, illegal acquisition of firearms and assault and, on 3 May 2007, the Krasnoyarsk Regional Court sentenced him to life imprisonment. I would therefore have concluded that there had been no violation of article 7 of the Covenant.

8. Regarding the violation of article 9 (1) and (2) of the Covenant, the Committee is particularly laconic, referring only to the fact the State party has not presented any detailed information regarding the specific arguments made by the author as to the arbitrary nature of his arrest and so due weight should be given to the author's allegations. However, in my view, this is again not accurate and does not reflect the facts in the case.

9. The author claims, in this regard (para. 3.2), to have been unlawfully arrested by several men who did not identify themselves as police officers or provide him with an arrest warrant. He was unlawfully held for 18 hours before being interrogated, including beaten for 3 hours by the river. Also, he was held for 53 hours before being appearing in front of a judge, while domestic law requires that any arrest must be sanctioned by a judge within 48 hours.

10. As regards the first argument, as the author himself acknowledges (para. 2.1), the persons arresting him identified themselves as police officers and asked the author to confess to the killing of four people and wounding another two days prior. He was taken, that same day (para. 2.2), to the office of the investigator of the Krasnoyarsk Region Prosecutor's Office for formal questioning. The State party states that, on 13 September 2005 at 5 a.m., the author was detained as a suspect in the murder of a couple, after which he was taken to a local police department and later held in a temporary detention centre on the grounds that he had attempted to flee (para. 10.2 and para. 4 above). On 14 September 2005, the author was interrogated in the presence of a lawyer, but he refused to testify. On 15 September 2005, according to the author (para. 2.3), he was declared a suspect in another crime and, at 10 a.m. on the same day, taken to Bogotol District Court, which sanctioned his arrest, although for the second crime.

11. The author was, therefore, deprived of his liberty on the grounds of and in accordance with procedures established by domestic law, his detention being neither unlawful nor arbitrary. A judge, in fact, assessed all the circumstances of his detention, thought them in accordance with domestic law and sanctioned the detention. The fact that the author was brought before a judge 53 hours after his detention (para. 3.2), and not within 48 hours, is easily explained, since he was detained in the early morning of 13 September 2005 and was brought before the court at 10 a.m. on 15 September. Therefore, the fact he was brought before a judge 5 hours after the 48-hour rule seems justified under the circumstances.¹ I would therefore have also concluded that there had been no violation of article 9 (1) and (2) of the Covenant.

¹ The Committee's general comment No. 35 (2014) on liberty and security of person, para. 33.