



**International covenant  
on civil and  
political rights**

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HUMAN RIGHTS COMMITTEE  
Eighty-fifth session  
17 October – 3 November 2005

**VIEWS**

**Communication 1218/2003**

<u>Submitted by:</u>	Andrei Platonov (not represented by counsel)
<u>Alleged victim:</u>	The author
<u>State party:</u>	Russian Federation
<u>Date of communication:</u>	27 May 2003 (initial submission)
<u>Document references:</u>	Special Rapporteur's rule 97 decision, transmitted to the State party on 18 November 2003 (not issued in document form)
<u>Date of adoption of Views:</u>	1 November 2005

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\* Made public by decision of the Human Rights Committee.

*Subject matter:* Unlawful detention, torture, unfair trial, examination of witnesses

*Substantive issues:* Exhaustion of domestic remedies, degree of substantiation of claims

*Procedural issues:* Exhaustion of domestic remedies

*Articles of the Covenant:* 2, 7, 9 (2), (3), (4), 10, 14 (3), (e), and (g)

*Articles of the Optional Protocol:* 2, 3, 5(2)(b)

On 1 November 2005, the Human Rights Committee adopted the annexed draft as the Committee's Views, under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 1218/2003. The text of the Views is appended to the present document.

[ANNEX]

**ANNEX**

**VIEWS OF THE HUMAN RIGHTS COMMITTEE UNDER ARTICLE 5,  
PARAGRAPH 4, OF THE OPTIONAL PROTOCOL TO THE INTERNATIONAL  
COVENANT ON CIVIL AND POLITICAL RIGHTS**

Eighty-fifth session

concerning

**Communication 1218/2003\*\***

Submitted by: Andrei Platonov (not represented by counsel)  
Alleged victim: The author  
State party: Russian Federation<sup>1</sup>  
Date of communication: 27 May 2003 (initial submission)

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

Meeting on 1 November 2005

Having concluded its consideration of communication No. 1218/2003, submitted to the Human Rights Committee by Andrei Platonov under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication, and the State party,

Adopts the following:

**Views under article 5, paragraph 4, of the Optional Protocol**

1. The author is Andrei Platonov, a Russian citizen born in 1955, currently imprisoned in Chelyabinsk, Russian Federation. He claims to be a victim of violations by the Russian Federation of articles 2; 7; 9, paragraphs 2, 3 and 4; 10; and 14, paragraph 3(e) and (g), of the International Covenant on Civil and Political Rights. He is not represented by counsel.

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\*\* The following members of the Committee participated in the examination of the present communication: Mr. Nisuke Ando, Mr. Prafullachandra Natwarlal Bhagwati, Mr. Alfredo Castillero Hoyos, Ms. Christine Chanet, Mr. Maurice Glèlè Ahanhanzo, Mr. Walter Kälin, Mr. Ahmed Tawfik Khalil, Mr. Michael O'Flaherty, Ms. Elisabeth Palm, Mr. Rafael Rivas Posada, Mr. Ivan Shearer, Mr. Hipólito Solari-Yrigoyen, Ms. Ruth Wedgwood and Mr. Roman Wieruszewski.

<sup>1</sup> The Optional Protocol entered into force for the Russian Federation on 1 January 1992.

## **Factual background**

2.1 On 22 February 1999, the author was arrested on suspicion of murder and placed in detention. His arrest and detention were approved by the Procurator on 24 February 1999. Between 22 and 24 February 1999, the author allegedly was beaten by policemen in order to force him to confess. Unable to withstand the beatings, he confessed. The author sought and was provided with medical assistance; he adds that the medical history file records the fact that he had sustained injuries. He also states that, when he wrote out his confession, he was still bleeding from a head wound sustained during the beatings, and that traces of his blood can be seen on the confession document. He contends that, although he filed a complaint about being subjected to beatings in detention, the Office of the Procurator General refused to open a criminal case to investigate the allegations of torture by the policemen.

2.2 The author contends that following his arrest, he was not given an opportunity to consult a lawyer, and was not brought before a judge or other officer authorized by law to exercise judicial power to allow him to challenge the legality of his detention.

2.3 On 31 January 2000, the Moscow City Court convicted the author on two counts of murder and one count of robbery, and sentenced him to 20 years' imprisonment.

2.4 The author claims that during his trial, he retracted his confession, but the judge did not react to his retraction and proceeded to base her findings in large part on his confession. The request of his lawyer for a forensic analysis of the stains on the confession document was denied by the court. The decision of the Moscow City Court indicates that the judge considered Platonov's retraction of his confession to be a "defence strategy" aimed at escaping responsibility for the crimes committed. She noted that Platonov's complaint about the "unlawful methods of investigation" was looked into during the preliminary investigation and was found to be unsubstantiated. In these circumstances, the judge admitted Platonov's confession into evidence.

2.5 The author alleges that he did not receive a fair trial. He contends that the court relied on circumstantial evidence and largely contradictory testimony from various prosecution witnesses. Despite the failure of one important defence witness, Gashin, to appear in court and give evidence, the judge failed to take steps to ascertain his whereabouts and compel his appearance.

2.6 The author submits that his forced confession and the circumstantial and contradictory testimony of various witnesses were not corroborated by other evidence. The murder weapon was never found and the court did not properly investigate alternative versions of how the crime was committed. In its decision, the court relied on forensic analysis of blood found on the author's clothes, which found it to be of the same blood type as the two murder victims. The Court ignored the fact that the author has the same blood type.

2.7 The author appealed on cassation against his conviction in the Supreme Court. On 19 July 2000, the Supreme Court rejected the appeal and upheld the verdict of the Moscow City Court. The Court found that there was no basis to challenge the factual findings of the Moscow City Court, and that there was no basis to conclude that the author had been subjected to 'unlawful investigatory methods by the police'.

**The complaint**

3. The author claims that his arrest, ill-treatment in custody, and the manner his trial was conducted, amount to violations of articles 7; 9, paragraphs 2, 3 and 4; 10; and 14, paragraphs 3 (e) and (g), of the Covenant. He adds that he was not afforded a remedy for the violation of his Covenant rights, in breach of article 2, paragraph 3, of the Covenant.

**The state party's observations on admissibility and merits**

4.1 By note verbale of 23 March 2004, the State party submits that the communication should be declared inadmissible with regard to the alleged violation of article 7 in conjunction with article 14, paragraph 3(g), and that in any event the communication does not reveal violations of the relevant provisions of the Covenant.

4.2 In relation to the author's claims under article 7, the State party submits that the author failed to exhaust domestic remedies, as he did not appeal against the refusal of the Office of the Procurator General to open a criminal case to investigate the author's allegations of torture.

4.3 As to the alleged violation of article 14, paragraph 3(e), the State party submits that it has not been substantiated. The author did not have the opportunity to examine the witness Gashin because his whereabouts were unknown, but the prosecution was also deprived of the opportunity to examine this witness. Thus, the procedural opportunities available to the defence and the prosecution were equal. The defence never applied to have Gashin summoned to court; his testimony during the preliminary investigation was not relied upon, and the court did not refer to it in its judgment. It follows that the allegation of a violation of article 14, paragraph 3(e), has not been substantiated and is inadmissible.

4.4 The State party also submits that the communication does not reveal a violation of article 9, paragraphs 2 to 4. It notes that the author's arrest was made in accordance with the procedural requirements of the legislation in force at the time of the arrest. The arrest was made with the approval of the Procurator and within the relevant time limits allowed for detention. The author had a right to appeal his detention in court and subsequently file a complaint in cassation; he chose not to do so. Accordingly, the State party submits that the author did not exhaust domestic remedies available to him to challenge the legality of his detention, and his complaint related to article 9 should be also inadmissible.

4.5 The State party does not comment on the alleged violations of articles 10 and 2, paragraph 3, of the Covenant.

**Author's comments on the State party's submissions**

5.1 In his comments on the State party's submission dated 31 May 2004, the author concedes that, in relation to the alleged violation of article 7 read together with article 14, paragraph 3 (g), he did not directly appeal the refusal of the Office of the Procurator General to open a criminal investigation into the allegations of torture; he claims, nonetheless, that he did in fact "raise the question" of beatings and a forced confession in the course of his appeal before the Supreme Court. The Court dismissed the claim without giving reasons.

5.2 The author contends that, although neither prosecution nor defence had an opportunity to examine Mr. Gashin in court, his rights under article 14 paragraph (3) (e), were nonetheless violated. He alleges that the Procurator General did not insist on having Mr. Gashin's whereabouts ascertained and his appearance secured because his testimony would have jeopardized the prosecution's case.

5.3 Finally, he argues that the Constitution of the Russian Federation stipulates that international obligations are part of, and take precedence over, domestic legal norms in force at the time. Thus, even if his arrest and detention were made in accordance with the requirements of the Code of Criminal Procedure then in force, this is not a defence to the claim that the author's rights under article 9 were violated.

5.4. On 24 November 2004, the State party reiterated that the author's allegations are either inadmissible or do not disclose a violation of the Covenant.

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

### **Consideration of admissibility**

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

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 Concerning the author's claim of a violation of article 7, the Committee notes that after the Office of the Procurator General refused to open a criminal case and to investigate the allegations of torture against the policemen allegedly involved in his arrest, the author did not appeal to court the above refusal to investigate his claim. As a result, the Committee concludes that the author has failed to exhaust domestic remedies with respect to his claim under article 7. It further transpires that the author's claim under article 10 is based on much the same facts presented in connection with the claim under article 7; the Committee thus considers it unnecessary to examine it, in light of its conclusion on the article 7 claim.

6.4 The Committee takes note of the fact that the author was informed, upon his arrest on 22 February 1999, of the reasons for the arrest and the charges against him. Therefore, his allegation relating to article 9, paragraph 2, is unsubstantiated, and accordingly inadmissible under article 2 of the Optional Protocol.

6.5 With regard to the author's allegations under article 9, paragraph 4, of the Covenant, the Committee notes that the author failed to appeal the detention order and did not raise the issue of unlawful detention at any point during his trial. Accordingly, this claim is inadmissible pursuant to article 5, paragraph 2(b), of the Optional Protocol.

6.6 In relation to the author's claim of a violation of article 14, paragraph 3 (e), in that the court failed to take action to establish the whereabouts of Mr. Gashin and secure his attendance, the Committee has noted the State party's contention that the author did not apply to have that particular witness summoned to appear in court. The trial records indicate that the court continued proceedings after the failure of Mr. Gashin to appear in court, with

agreement of both the Prosecutor and the accused. Accordingly, the author has failed to exhaust domestic remedies in relation to these claims and they are accordingly inadmissible under article 5, paragraph 2(b), of the Optional Protocol.

6.7 In relation to the author claims that, in violation of article 14, paragraph 3 (g), he was forced to testify against himself and was further convicted largely on the basis of this confession, the Committee notes that the Moscow City Court and the Supreme Court concluded that his allegations of the use of unlawful investigatory methods by the police were unsubstantiated. The Committee observes that, in substance, this part of the communication relates to an evaluation of elements of facts and evidence. It refers to its prior jurisprudence and reiterates that it is generally for the appellate courts of States parties to the Covenant to evaluate facts and evidence in a particular case, unless it can be ascertained that this evaluation was clearly arbitrary or amounted to a denial of justice<sup>2</sup>. The material before the Committee does not show that the courts' examination of the above allegations suffered from such defects. Accordingly, this part of the communication is inadmissible as incompatible with the provisions of the Covenant, pursuant to article 2 of the Optional Protocol.

6.8 The Committee decides that the remaining claim of the author is sufficiently substantiated, as far as it raise issues under article 9, paragraph 3, and proceeds to its examination on the merits.

### **Consideration of the merits**

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

7.2 The Committee notes that, after his arrest on 22 February 1999, the author's pre-trial detention was approved by the public prosecutor, until the author was brought before a court and convicted on 31 January 2000. The Committee observes that article 9, paragraph 3, is intended to bring the detention of a person charged with a criminal offense under judicial control and recalls that it is inherent to the proper exercise of judicial power, that it be exercised by an authority which is independent, objective and impartial in relation to the issues dealt with<sup>3</sup>. In the circumstances of the instant case, the Committee is not satisfied that the public prosecutor could be characterized as having the institutional objectivity and impartiality necessary to be considered an "officer authorized to exercise judicial power" within the meaning of article 9, paragraph 3. The Committee therefore concludes that there has been a violation of this Covenant provision.

8. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts before it disclose a violation of article 9, paragraph 3, of the International Covenant on Civil and Political Rights.

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<sup>2</sup> See, for example, Errol Simms v. Jamaica, Communication No. 541/1993, Inadmissibility decision adopted on 3 April 1995.

<sup>3</sup> See, for example, Communication No. 541/1992, Vladimir Kulomin v. Hungary, Views adopted on 22 March 1996.

9. Pursuant to article 2, paragraph 3(a), of the Covenant, the Committee considers that the author is entitled to an effective remedy, including appropriate compensation. The State party is also under an obligation to take effective measures to ensure that similar violations do not recur.

10. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognised the competence of the Committee to determine whether there has been a violation of the Covenant or not, and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory or subject to its jurisdiction the rights recognised in the Covenant and to provide an effective and enforceable remedy in case a violation has been established, the Committee wishes to receive from the State party, within 90 days, information about the measures taken to give effect to the Committee's views.

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

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