



**International Covenant
on Civil and Political
Rights**

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HUMAN RIGHTS COMMITTEE
Ninety fifth session
16 March – 3 April 2009

VIEWS

Communication No. 1278/2004

<u>Submitted by:</u>	Yevgeni Reshetnikov (represented by counsel, Ms. Karina Moskalenko)
<u>Alleged victim:</u>	The author
<u>State party:</u>	Russian Federation
<u>Date of communication:</u>	21 February 2004 (initial submission)
<u>Document references:</u>	Special Rapporteur's rule 97 decision, transmitted to the State party on 28 April 2004 (not issued in document form)
<u>Date of adoption of Views:</u>	23 March 2009

* Made public by decision of the Human Rights Committee.

Subject matter: Complainant's detention for attempted murder

Procedural issues: Exhaustion of domestic remedies, lack of substantiation of claims

Substantive issues: Arbitrariness of detention; unfair trial.

Articles of the Covenant: 9, paragraph 2, paragraph 3, and paragraph 4; 14, paragraph 1, paragraph 2, and paragraph 3 (a).

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

On 23 March 2009, the Human Rights Committee adopted the annexed text as the Committee's Views under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 1278/2004.

[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

Ninety-fifth session

concerning

Communication 1278/2004**

Submitted by: Yevgeni Reshetnikov (represented by counsel, Ms. Karina Moskalenko)

Alleged victim: The author

State party: Russian Federation

Date of communication: 21 February 2004 (initial submission)

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

Meeting on 23 March 2009,

Having concluded its consideration of communication No. 1278/2004, submitted to the Human Rights Committee on behalf of Mr. Yevgeni Reshetnikov 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,

Adopted the following:

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

1. The author of the communication is Mr. Yevgeni Reshetnikov, a Russian citizen, born in 1965, currently imprisoned in the Russian Federation. He claims to be a victim of violations by

** The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Prafullachandra Natwarlal Bhagwati, Mr. Ahmad Amin Fathalla, Mr. Yuji Iwasawa, Ms. Helen Keller, Mr. Lazhari Bouzid, Ms. Zonke Zanele Majodina, Ms. Iulia Antoanella Motoc, Mr. Michael O'Flaherty, Mr. José Luis Pérez Sanchez-Cerro, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Fabian Omar Salvioli and Mr. Krister Thelin.

the Russian Federation¹ of article 9, paragraphs 2, 3, and 4; and article 14, paragraphs 1, 2 and 3 (a), of the Covenant. He is represented by Ms. Karina Moskalenko.

The facts as presented by the author

2.1 The author was arrested on 21 August 1999 in connection with an investigation into ammunition cartridges which the police discovered in his garage in Volgograd. On 24 August 1999, the prosecutor (prokuror) ordered that the author be remanded in custody. Under article 96 of the old Code of Criminal Procedure of the Russian Federation, in force at the time of the author's arrest, the prosecutor was responsible for endorsing or approving arrests.

2.2 The author states that, when he was questioned by the police, and for a period of six months following his arrest, he thought that he was under investigation only in relation to the ammunition cartridges found in his garage, and that he was unaware that he was in fact being investigated for attempted murder. He was finally charged with attempted murder on 14 February 2000. Only on that day was he advised that on the day of his arrest, 24 August 1999, an order had been issued for the investigation into his case to be joined to an investigation into the attempted murder of the manager of an oil company in Moscow in 1998.

2.3 On 16 September 1999, he was placed on an identification parade for the attempted murder. He was told that his participation in the parade was as a witness and not as a person accused of the crime in question. Accordingly, he was not entitled to have his lawyer present. He claims that the parade did not meet the legal requirements according to which the participants have to bear some resemblance. In fact, the other participants did not look like him. Some of them later admitted that the police had provided them with artificial beards in order to make them resemble the author, who did have a beard. Not knowing that he was under investigation for attempted murder, and without his lawyer present, he had no opportunity to file a complaint in that respect. As a result, the evidence obtained by the police through the parade was used to declare him guilty in first instance and was not challenged later on appeal.

2.4 On 13 November 2000, the author was sentenced to 11 years' imprisonment for attempted murder by the Moscow city court. He was acquitted of the charge of unlawfully possessing ammunition cartridges. On 17 January 2001, his appeal to the Supreme Court was dismissed, and a further appeal to the Presidium of the Supreme Court was dismissed on 15 August 2001.

The complaint

3.1 The author claims that irregularities during the pre-trial detention, investigation and court proceedings constitute violations by the Russian Federation of article 9, paragraphs 2, 3, and 4, and article 14, paragraphs 1, 2, and 3 (a), of the Covenant.

3.2 He argues that his arrest was authorized by a prosecutor, and thus violated his right under article 9, paragraph 3, of the Covenant. He invokes the Committee's decision in *Zheludkov v Ukraine*, where the Committee concluded that the State party had not provided sufficient information showing that the prosecutor has the institutional objectivity and impartiality necessary to be considered an officer authorized to exercise judicial power within the meaning of

¹ The Optional Protocol came into force for the Russian Federation on 1 January 1992.

article 9, paragraph 3, of the Covenant.² He adds that, in any event, he was not ‘brought before’ a prosecutor and contends that he was not informed of his right to appeal the prosecutor’s decision to remand him in custody, and that his right under article 9, paragraph 4, of the Covenant was violated.

3.3 The author further claims that he was not informed of the reasons for his arrest for six months after his arrest and submits that this fact amounts to a violation of his rights under article 9, paragraph 2, and article 14 paragraph 3 (a), of the Covenant.

3.4 The author finally submits that the evidence relied on for his conviction was obtained through procedural violations during the identification parade. This is said to amount to a violation of his right to a fair trial under article 14, paragraph 1, of the Covenant.

State party’s observations on admissibility and merits

4.1 On 7 October 2004, the State party provided information on the events that led to the arrest of the author as well as on details of the preliminary investigation and the court proceedings. It contends that the inquiry established that the author could have been involved in the crime of attempted murder of the manager of an oil company. It submits that the author was detained as a suspect for unlawful possession of a machine gun and other ammunition, as well as for attempted murder.

4.2 The State party refutes the author’s arguments regarding the alleged violations in the composition of the identification parade. It acknowledges that there were differences in the age of those who participated in the parade. However, in compliance with articles 164 and 165 of the Criminal Procedure Code of the Russian Federation, they were of the same height, same body structure and were dressed similarly. The author participated in the parade as a witness as there was a suspicion that he could have committed a crime³. The State party notes that the participation of a lawyer in this process was not required, as the author did not have the status of a suspect or accused and he did not request the participation of a lawyer himself. The identification parade was conducted in accordance with the law. The State party adds that none of the participants of the identification parade, including the author, presented any complaints or comments regarding the alleged violations during the process.

4.3 The State party recalls that the author was detained for possession of ammunition cartridges found in his garage. The author read the detention protocol and was informed of his procedural rights and duties as a detainee. He entered a note in the protocol that he understood the reasons for his detention. In the protocol, which explained the status of a detainee, the author had entered a note that he did not need a lawyer and this was not due to lack of resources.

4.4 The State party contends that the arrest warrant was issued by the Prosecutor of Volgograd city in compliance with the Criminal Procedure Code then in force. This was an established practice in the Russian Federation until 1 July 2002. From this date onward, all such warrants are issued by court. The State party reiterates that at the end of preliminary investigation the author was given enough time to read the materials of his case in detail together with his lawyer.

² Communication 726/1996, views adopted 29 October 2002, paragraph 8.3

³This statement reflects the exact wording of the State party, which is wholly contradictory.

4.5 The State party affirms that the case file does not contain any information about whether the decision to remand the author in custody was presented to the author and whether his right to appeal the decision to a court was explained to him.

4.6 The State party notes that the author did not invoke any procedural violations during the court proceedings either at first or at other instances, and such violations could not be established by the State party during the investigation.

Author's comments on State party's observations

5.1 By letter of 17 June 2005, the author submits that the State party's observations are vague and imprecise. He notes the State party's statement that the "inquiry" established that he could have been involved in the crime of attempted murder of the manager, and claims that the State party did not specify what type of "inquiry" it refers to. He also refers to affirmations by the State party to the effect that he had been detained as a suspect on two criminal cases: unlawful possession of a machine gun and other ammunition and attempted murder. In reality, the author argues, he was detained under a completely different criminal case initiated as a result of finding only ammunition cartridges in his garage.

5.2 On the State party's observation in relations to the composition of the identification parade, the author submits that the State party itself confirmed that the age difference between the author and one of the persons on the parade, was 12 years. The State party did not refute the fact that participants on the parade wore artificial beards.

5.3 The author reiterates that he was intentionally misled about his status as a detainee. According to Russian law, a witness is informed about his/her criminal liability for refusing to give testimony or for giving false testimony, while a suspect or accused does not incur such responsibility. Russian law does not require the participation of a lawyer for a witness. The author was interrogated as a witness, but then he was identified as a suspect. In reality, the author claims, the investigators already suspected the author for having committed a crime and kept him in custody.

5.4 The author submits that during the additional reconstruction of the crime scene on 17 September 1999, investigators discovered the damages on the wall and found bullets. This occurred almost one year after the initial examination, which took place on 25 November 1998, when nothing had been found.

5.5 On the argument of the State party related to the decision to remand the author in custody, the author reiterates his initial explanations. He contends that the State party implicitly acknowledged that he was not informed of the decision to remand him in custody by stating that there was no information in the case file that the author was informed about the decision.

5.6 The author adds that the State party omitted the fact that when he read the charges, he made a statement to the effect that he required services of a lawyer and wanted that his interests were represented by his lawyer, Mr. Patskov.

Additional State party's observations on admissibility and merits

6.1 On 23 November 2005, the State party submitted its additional observations, where it reiterates its statements in its previous submission that the author was found guilty based on the identification made by the manager of an oil company, witnesses as well as the conclusions of ballistic experts and others. The State party recalls that all the evidence was thoroughly evaluated by courts in compliance with the laws. The author availed himself of the services of his defence lawyer throughout the preliminary investigation and the court proceedings. There were no violations of criminal procedure provisions.

6.2 The case was considered on cassation by the Supreme Court and the Presidium of the Supreme Court, under the supervisory review mechanism. As such, the State party concedes that the author has exhausted all domestic remedies.

6.3 The State party submits that the allegations of the author under articles 9 and 14 of the Covenant should be declared inadmissible for lack of substantiation.

Consideration of admissibility

7.1 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.

7.2 The Committee has ascertained, as required under article 5, paragraph 2, of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement and notes that the State party did not contest that domestic remedies in the present communication have been exhausted.

7.3 In relation to the alleged violation of article 9, paragraph 2, and article 14, paragraph 3 (a), the Committee notes the author's claim that he was not presented with the decision to remand him in custody and that for six months after his arrest, he was unaware that he was under investigation for attempted murder. It also notes the State party's argument that the author did not complain in court that his detention was illegal or ungrounded and unreasonably prolonged. The Committee notes that the author has not refuted this argument of the State party. In the circumstances, the Committee considers that this part of the communication is insufficiently substantiated, for purposes of admissibility, and declares it inadmissible under article 2 of the Optional Protocol.

7.4 The Committee notes the author's allegation that he was not informed of his right to appeal the prosecutor's decision to remand him in custody. The author does not however provide, nor does the case file contain information to this effect that he ever addressed this specific claim to the State party authorities. In the absence of any other information, the Committee concludes that this part of the communication is insufficiently substantiated, for purposes of admissibility, and is therefore inadmissible under article 2, of the Optional Protocol.

7.5 The Committee notes the author's allegations under article 14, paragraph 1, that his trial was unfair and biased as the sentence was based on the evidence obtained with procedural violations. The Committee also notes the State party's position refuting this claim as not

sufficiently corroborated. It further notes that the author's allegations relate to the evaluation of evidences 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 the evaluation was clearly arbitrary or amounted to a denial of justice.⁴ The material before the Committee does not show that the trial indeed 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.

7.6 On the alleged violation of article 14, paragraph 2, the Committee notes that the author has not corroborated this claim in any manner. Therefore, he has failed to substantiate his claims. In the absence of any further information, the Committee decides that this part of the communication is inadmissible under article 2 of the Optional Protocol.

7.7 The Committee notes the author's claim that the arrest warrant was issued by a prosecutor contrary to the provisions of article 9, paragraph 3, of the Covenant. This claim was uncontested by the State party. Accordingly, the Committee declares this part of the communication admissible, as raising issues under article 9, paragraph 3, of the Covenant.

Consideration on the merits

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

8.2 The Committee notes that in the present case, the author claims that he was arrested and placed in custody by decision of a prosecutor. The State party has not refuted this, and has explained that this was done in accordance with the law then into force. The Committee notes that the State party has not provided sufficient information, showing that the prosecutor had the institutional objectivity and impartiality necessary to be considered an "officer authorized to exercise judicial power" within the meaning of article 9, paragraph 3, of the Covenant. In the circumstances, the Committee concludes that the facts as submitted reveal a violation of the author's rights under paragraph 3 of article 9 of the Covenant.

9. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol, 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.

10. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author with an effective remedy, including appropriate compensation. The Committee reiterates that the State party should ensure that all persons enjoy both equality before the law and equal protection of the law.

11. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not, and that, pursuant to article 2 of the Covenant, the State party has

⁴ See inter alia, Communication No. 541/1993, Errol Simms v. Jamaica, inadmissibility decision adopted on 3 April 1995, paragraph 6.2.

undertaken to ensure to all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy in case a violation has been established, 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.

[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.]
