



# International Covenant on Civil and Political Rights

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## Human Rights Committee

### Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2533/2015\*, \*\*

<i>Communication submitted by:</i>	Zelimkhan Magomadov
<i>Alleged victim:</i>	The author
<i>State Party:</i>	Russian Federation
<i>Date of communication:</i>	25 April 2011 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State Party on 16 January 2015 (not issued in document form)
<i>Date of adoption of Views:</i>	8 July 2025
<i>Subject matter:</i>	Imprisonment after forced confession
<i>Procedural issues:</i>	Exhaustion of domestic remedies; substantiation of claims
<i>Substantive issues:</i>	Torture; conditions of detention; fair trial – witnesses; fair trial – forced confession
<i>Articles of the Covenant:</i>	7, read alone and in conjunction with 2 (3) (a), 9 (1–4), 10 (1) and 14 (3) (e) and (g)
<i>Articles of the Optional Protocol:</i>	2 and 5

1. The author of the communication is Zelimkhan Magomadov, a national of the Russian Federation born in 1979. He claims that the State Party has violated his rights under article 7, read alone and in conjunction with articles 2 (3) (a), 9 (1–4), 10 (1) and 14 (3) (e) and (g), of the Covenant. The Optional Protocol entered into force for the State Party on 1 January 1992. The author is not represented by counsel.

#### Facts as submitted by the author

2.1 On the night of 4 February 2002, the author was at home in the city of Grozny with his wife when a group of armed masked men broke into their apartment. Without identifying themselves, they beat the author with the butts of their weapons and kicked him, then placed

\* Adopted by the Committee at its 144th session (23 June–17 July 2025).

\*\* The following members of the Committee participated in the examination of the communication: Wafaa Ashraf Moharram Bassim, Rodrigo A. Carazo, Yvonne Donders, Carlos Ramón Fernández Liesa, Laurence R. Helfer, Konstantin Korkelia, Dalia Leinarte, Bacre Waly Ndiaye, Hernán Quezada Cabrera, Akmal Saidov, Ivan Šimonović, Soh Changrok, Teraya Koji, Hélène Tigroudja and Imeru Tamerat Yigezu.



a bag over his head, put him in their van and drove away without telling his wife where they were taking him. While in the van, the author heard the voices of seven or eight other men who had also been detained;<sup>1</sup> they were brought, as the author later learned, to the local bureau of the Ministry of Internal Affairs for the investigation of organized crime, and the author was taken to one of the rooms on the third or fourth floor of the same building. Once in the room, the bag was taken off his head and he was handcuffed to a radiator. There were several men in the room, and they began asking the author which organized criminal group he was part of, which terrorist acts he had participated in, where he kept his weapons, and so on. When the author answered that he did not know what they were talking about, the men connected wires to the author's fingers and began electrocuting him, demanding that he confess to crimes that he had never heard of. After that, they put a gas mask over his head and filled it with smoke, while kicking him and beating him with rubber batons. The torture lasted for six days, after which the author signed all confession papers that were given to him.

2.2 On 11 February 2002, the author was transferred to the Leninsky District Office of the Ministry of Internal Affairs in Grozny. He was put in a metal container with nothing but a wet mattress and an empty bottle in it. At night he was taken to a building that looked like an old bathhouse and was subjected to beatings, drowning and electrocution. The torture took place every night for the next 28 days, as a result of which the author was forced to confess to 25 terrorist acts, murders and kidnappings. The author repeatedly asked to see a doctor, however he was told that he did not need one.

2.3 On 12 March 2002, the author was transferred to the Oktyabrsky District Office of the Ministry of Internal Affairs in Grozny. Upon arrival, the author informed the local police officers that he would like to retract the confessions he had previously made because they had been obtained using torture, however he was instead subjected to further torture. Specifically, he was taken to the basement and hung from the ceiling with his arms tied behind his back, while some officers beat him with batons on the heels and others aimed their weapons at him as if pretending to execute him. He remained suspended from the ceiling for six days, even though after three days of torture the author told the officers that he would sign any paper if they stopped torturing him. He was held at the Oktyabrsky District Office of the Ministry of Internal Affairs for nearly another three months, during which time he was occasionally taken to different investigators' offices for questioning. According to the author, the main reason for keeping him there was to make sure that the injuries that he had sustained when he was being tortured would heal and disappear.

2.4 On 6 June 2002, the author was transferred to Pretrial Detention Facility (SIZO) No. 1 in Grozny. There, for the first time in four months, the author was able to take a hot shower, to see medical personnel and to officially retract his previous confessions. He was also able to see a representative of the International Committee of the Red Cross, who registered him as a person affected by the armed conflict in Chechnya.

2.5 According to the author, during the time when he was transferred between various district offices of the Ministry of Internal Affairs, he was never brought before a judge or other official authorized to sanction his detention on remand. Moreover, the documents in his criminal case file incorrectly indicate that he was detained on 9 February 2002, and there is no official information on how long he was held at each detention facility from the moment of his arrest until 6 June 2002. Since, by the time of his arrival at SIZO No. 1 on 6 June 2002 his injuries had already healed, he could not produce any physical evidence of the torture that he had suffered during the preceding four months, therefore no formal investigation was ever launched into his claims of torture and forced confessions.

2.6 On 7 October 2003, Krasnodar Regional Court found the author guilty of terrorism, murders and several other crimes and sentenced him to 23 years of imprisonment. The Court admitted the author's confessions given during the pretrial investigation as evidence of his guilt, despite the author's claims that they had been obtained using torture. The Court dismissed the author's allegations of torture, noting that the Prosecutor's Office of the

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<sup>1</sup> According to the author, everyone in the van was detained as a result of a "sweep" (*zachistka* in Russian) – a special search and detention operation used by the police and the army to identify members of illegal armed groups during the first and second Chechen wars.

Chechen Republic and the Main Directorate of the Ministry of Internal Affairs of the Russian Federation for the Southern Federal District had conducted inquiries into them during the pretrial investigation and had found them to be unsubstantiated.

2.7 On 3 February 2004, the Supreme Court of the Russian Federation denied the author's cassation appeal. With regard to the author's claims of torture and forced confessions, the cassation court, without addressing the findings of the inquiries mentioned in the trial court's ruling, noted that the author's confessions had been signed in the presence of his lawyer without any remarks or objections. On 10 November 2008, the Supreme Court of the Russian Federation dismissed the author's appeal for a supervisory review.

2.8 On 27 August 2008, the author submitted a complaint to the Investigative Committee of the Prosecutor's Office of the Chechen Republic, asking it to open an investigation into the torture and ill-treatment that he had suffered during his detention in the bureau of the Ministry of Internal Affairs for the investigation of organized crime, in February 2002. On 6 September 2008, the chief investigator of the Investigative Committee refused to open an investigation. On 13 February 2009, the deputy chief of the territorial department of the Investigative Committee of the Prosecutor's Office of the Russian Federation quashed the refusal of the chief investigator and ordered an additional inquiry into the author's complaint. The inquiry determined that the two police officers who had worked on the author's case at that time had later both been killed in unrelated incidents, while the two investigators responsible for investigating the case could not be questioned because they both were no longer employed by the Prosecutor's Office of the Chechen Republic. The inquiry also established that detainees at the local bureau of the Ministry of Internal Affairs for the investigation of organized crime had not been subjected to medical examinations, due to the absence of a medical unit at the time of the author's detention in February 2002. Moreover, the Oktyabrsky District Office of the Ministry of Internal Affairs in Grozny, where the author was detained at a later time, also could not provide any information with regard to the author's detention, due to the time period that had elapsed. According to the information received from the Main Department of Medical Forensic Examinations, under the Ministry of Health of the Chechen Republic, a medical examination of the author revealed scars on the left side of his back that were determined to be caused by the impact of ammunition and shrapnel from an exploding shell. In view of the above, on 10 April 2009, the Investigative Committee of the Prosecutor's Office of the Chechen Republic again refused to open a criminal investigation into the author's complaint. On 30 April 2009, the Investigative Committee of the Prosecutor's Office of the Chechen Republic issued a similar refusal with regard to the torture suffered by the author at the Leninsky District Office of the Ministry of Internal Affairs in Grozny.

2.9 On 7 May 2009, Staropromyslovsky District Court, in Grozny, dismissed the author's complaint appealing against the 30 April 2009 refusal of the Investigative Committee to open an investigation into his allegations of torture. The Court referred to article 125 of the Code of Criminal Procedure, according to which it could not examine the appeal because the criminal case against the author had already been completed and a verdict had been handed down. According to the decision, the author could submit an appeal for a supervisory review to a higher court to consider his claims of torture.

2.10 The author submits that he has exhausted all available domestic remedies.

### **Complaint**

3.1 The author claims that the torture and ill-treatment that he suffered during the first four months of his arrest and the subsequent failure by the authorities of the State Party to carry out an investigation into his complaints amount to a breach of his rights under article 7, read alone and in conjunction with article 2 (3) (a), of the Covenant.

3.2 The author claims that, in violation of article 9 (1–4) of the Covenant, he was detained by the police on 4 February 2002 but his arrest was not officially recorded until 9 February 2002, that he was not presented with any formal charges at the time of his arrest, and that the authorities failed to promptly bring him before a judge, as his detention on remand was authorized by a court for the first time only on 9 August 2002.

3.3 The author claims that the conditions of his detention between 4 February and 6 June 2002 amounted to a violation of his rights under article 10 (1) of the Covenant.

3.4 The author further claims a violation of article 14 (3) (e) of the Covenant because the court refused to call and to question several witnesses who would have testified on his behalf, whereas the prosecution was allowed to call its witnesses.

3.5 Finally, the author claims that he confessed guilt for crimes under duress and that his forced confessions served as the basis for his subsequent conviction, in violation of article 14 (3) (g) of the Covenant.

3.6 On the basis of the above, the author requests the Committee to ask the State Party to quash his conviction because it was based on his testimony obtained using torture.

#### **State Party's observations on admissibility**

4.1 In a note verbale dated 16 April 2015, the State Party submitted its observations on the admissibility of the communication. The State Party submits that according to the information provided by the Ministry of Health of the Chechen Republic, a medical examination of the author revealed that he had scars that were determined to be caused by the impact of ammunition and shrapnel from the explosion of a shell. According to the State Party, on 30 April 2009, the Investigative Department of the Prosecutor's Office of the Chechen Republic refused to open a criminal investigation into the author's complaint against the actions of the officers of the Leninsky District Office of the Ministry of Internal Affairs in Grozny due to a lack of corpus delicti.

4.2 The State Party submits that the author's allegations of torture and other physical and psychological ill-treatment have been repeatedly examined by the Investigative Department, the Office of the Prosecutor General and domestic courts during judicial proceedings, including at the Supreme Court, and have been found to be unsubstantiated. The State Party also notes that the author has failed to provide any medical documentation that would prove that he was subjected to torture or other ill-treatment while in detention. Accordingly, the State Party considers that the author's communication constitutes an abuse of the right of submission and, therefore, is inadmissible under article 3 of the Optional Protocol.

#### **Author's comments on the State Party's observations on admissibility**

5. In his letter dated 6 July 2015, the author rejects the State Party's submission that it conducted a medical examination that concluded that he had scars caused by the impact of ammunition and shrapnel from the explosion of a shell. He submits that he has only one scar on his body and that it was caused by a bullet that was shot at him when he was tortured while detained in the bureau of the Ministry of Internal Affairs for the investigation of organized crime. He notes that for eight years the domestic authorities have been refusing to open a criminal investigation into his torture, claiming that there are no medical documents that could provide information about the state of his health for the period from 9 February to 6 June 2002.

#### **State Party's additional observations**

6.1 In its additional observations dated 15 July 2022, the State Party submits that on 7 May 2009, Staropromyslovsky District Court, in Grozny, refused to open a criminal investigation into his allegations of torture and ill-treatment during his detention on remand. Although the author continued to submit complaints to different investigative authorities asking them to open an investigation, he never appealed the court decision of 7 May 2009 to a higher court. Therefore, the State Party considers that the author has failed to exhaust all available domestic remedies with respect to his claims of torture and ill-treatment.

6.2 The State Party submits that in accordance with the practice of the European Court of Human Rights, when considering allegations of torture, national courts must rely on the totality of evidence that is provided to them, or, if necessary, that is obtained at its own initiative. The State Party notes that the author did not provide the domestic courts with any evidence of torture or violations of a procedural character by the investigative authorities. Thus, it argues that the author has failed to substantiate his claims against the State Party.

### Author's additional comments

7. In his additional comments dated 26 July 2022, the author maintains that the communication is admissible and reiterates his claims that his rights under article 7 read alone and in conjunction with articles 2 (3) (a), 9 (1–4), 10 (1) and 14 (3) (e) and (g) of the Covenant have been violated. He notes that he will finish serving his prison sentence on 28 February 2025.

### Issues and proceedings before the Committee

#### *Consideration of admissibility*

8.1 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.

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

8.3 The Committee notes the State Party's submission that the author has failed to exhaust all available domestic remedies with respect to his claims of torture and ill-treatment because he has not appealed the 7 May 2009 decision of Staropromyslovsky District Court, which refused to open a criminal investigation into his claims. However, the Committee observes from the verdict of Krasnodar Regional Court dated 7 October 2003 that during the pretrial investigation, the Prosecutor's Office of the Chechen Republic and the Main Directorate of the Ministry of Internal Affairs of the Russian Federation for the Southern Federal District conducted inquiries into the author's allegations of torture and found them to be unsubstantiated. The verdict was upheld on 3 February 2004 by the Supreme Court of the Russian Federation. The Committee recalls its jurisprudence in which it has stated that whenever the highest domestic tribunal has already decided on the matter at issue, thereby eliminating any prospect of success of an appeal to the domestic courts, authors are not required to exhaust domestic remedies.<sup>2</sup> The Committee concludes, therefore, that it is not prevented by virtue of article 5 (2) (b) of the Optional Protocol from examining the author's claims under article 7, read alone and in conjunction with articles 2 (3) (a) and 14 (3) (g), of the Covenant.

8.4 The Committee further notes the author's claims under article 9 (1–4) of the Covenant that he was detained by the police on 4 February 2002 but his arrest was not officially recorded until 9 February 2002, that he was not presented with any formal charges at the time of his arrest, and that the authorities failed to promptly bring him before a judge, as his detention on remand was authorized by a court for the first time only on 9 August 2002. The Committee also notes the author's claim with regard to the conditions of his detention under article 10 (1) of the Covenant. However, the Committee observes that the author has not submitted any information or documents to demonstrate that he has ever complained at the domestic level about his arbitrary detention or the conditions thereof. It is also not clear whether the author appealed the decisions by the prosecutor's office and courts extending his detention on remand. In those circumstances, and in the absence of any further information on file, the Committee declares the claims under articles 9 (1–4) and 10 (1) inadmissible pursuant to article 5 (2) (b) of the Optional Protocol.

8.5 With regard to the author's claim that the trial court failed to call witnesses for the defence, the Committee considers that the author has failed to provide sufficient information and factual evidence in support of these claims. Accordingly, and in the absence of any further pertinent information on file, the Committee considers that, for the purposes of admissibility, the author has failed to sufficiently substantiate his claims under article 14 (3) (e) of the Covenant and declares that part of the communication inadmissible pursuant to article 2 of the Optional Protocol.

<sup>2</sup> See, for example, *Bratsylo et al. v. Russian Federation* (CCPR/C/140/D/3022/2017), para. 7.5; and *Petromelidis v. Greece* (CCPR/C/132/D/3065/2017), para. 8.3.

8.6 In the Committee's view, the author has sufficiently substantiated, for the purposes of admissibility, his claims under article 7, read alone and in conjunction with articles 2 (3) (a) and 14 (3) (g) of the Covenant, declares them admissible and proceeds with its consideration of the merits.

*Consideration of the merits*

9.1 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.

9.2 The Committee notes the author's claim that he was apprehended on 4 February 2002 at his home by a group of armed masked men who, without identifying themselves, broke into his apartment, beat him with the butts of their weapons and kicked him, then placed a bag over his head, put him in their van and took him to the local bureau of the Ministry of Internal Affairs for the investigation of organized crime. The Committee further notes the author's detailed description of the torture that he suffered while detained at that location, then later at the Leninsky District Office and the Oktyabrsky District Office of the Ministry of Internal Affairs in Grozny during the first four months of his pretrial detention, until he was transferred on 6 June 2002 to Pretrial Detention Facility (SIZO) No. 1 in Grozny. The Committee also notes the author's claims that he was refused medical assistance for several months until he was transferred to SIZO No. 1, at which time, as he contends, there were no physical signs of injuries caused to him as a result of torture.

9.3 The Committee also notes the State Party's submission that on 30 April 2009, the Investigative Department of the Prosecutor's Office of the Chechen Republic refused to open a criminal investigation into the author's complaint against the actions of the officers of the Leninsky District Office of the Ministry of Internal Affairs in Grozny, due to a lack of corpus delicti. The Committee further notes the State Party's argument that the author did not provide the domestic courts with any evidence of torture or violations of a procedural character by the investigative authorities.

9.4 The Committee notes that although 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 observes from the verdict of Krasnodar Regional Court dated 7 October 2003 that the Prosecutor's Office of the Chechen Republic and the Main Directorate of the Ministry of Internal Affairs of the Russian Federation for the Southern Federal District conducted inquiries into the author's allegations of torture and found no wrongdoing, however, in its observations, the State Party makes no reference to the findings of those inquiries and does not provide any documents relating to those inquiries. Moreover, the State Party refers to an inquiry that was concluded only on 30 April 2009 by the Investigative Department of the Prosecutor's Office of the Chechen Republic, however that inquiry was unable to interview the law enforcement officials who had been directly involved in the investigation, to obtain medical records due to the absence of a medical unit at the detention facility, or to obtain any other relevant information relating to the author's detention, due to the time that had elapsed.

9.5 The Committee recalls that the burden of proof in regard to torture or ill-treatment cannot rest on the author of a communication alone, especially in view of the fact that the author and the State Party do not always have equal access to the evidence and that frequently the State Party alone has access to the relevant information, especially when the injuries allegedly occur in situations where the authors are detained by the authorities of the State Party.<sup>3</sup> The State Party has the duty<sup>4</sup> to conduct a prompt, effective and independent investigation<sup>5</sup> of all credible allegations of violations of article 7 of the Covenant. The

<sup>3</sup> *Khalmamatov v. Kyrgyzstan* (CCPR/C/128/D/2384/2014), para. 6.3; and *Abdurasulov et al. v. Kyrgyzstan* (CCPR/C/135/D/3200/2018-3207/2018), para. 7.5.

<sup>4</sup> See the Committee's general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, para. 15. See also *Sbornov v. Russian Federation* (CCPR/C/126/D/2699/2015), para. 9.5.

<sup>5</sup> See the Committee's general comment No. 20 (1992) on the prohibition of torture or other cruel, inhuman or degrading treatment or punishment, para. 14. See also *Sbornov v. Russian Federation*, para. 9.5.

Committee also 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.<sup>6</sup> The State Party is under a duty to investigate alleged violations of human rights promptly, impartially and thoroughly, to prosecute the suspects and punish those held responsible for such violations<sup>7</sup> and to provide other forms of reparation, including compensation.<sup>8</sup>

9.6 The Committee considers that nothing in the materials on file allow it to conclude that the investigation into the allegations of cruel and inhuman treatment against the author was carried out promptly or effectively by the Prosecutor's Office of the Chechen Republic and the Main Directorate of the Ministry of Internal Affairs of the Russian Federation for the Southern Federal District at the time when these were raised. Furthermore, neither the verdict of Krasnodar Regional Court nor the cassation decision of the Supreme Court shows that the judicial authorities made their own independent investigation of the author's claims. In the light of the above, and noting the failure of the State Party to provide detailed explanations regarding the serious nature of the allegations against it, the Committee concludes that the facts as submitted reveal a violation of the author's rights under article 7, read alone and in conjunction with article 2 (3) (a), of the Covenant, owing to the lack of effective investigation of the author's allegations of torture and cruel and inhuman treatment.

9.7 The Committee also notes the author's claim that his rights under article 14 (3) (g) of the Covenant have been violated because he confessed guilt for crimes under duress and his forced confessions served as the basis for his subsequent conviction. The State Party has not refuted these allegations directly; instead, it has denied the author's torture allegations in general. In the absence of any other information or argumentation of pertinence on file, and in the light of the conclusion of a violation of article 7 of the Covenant, the Committee concludes that the fact under consideration also amounts to a violation of the author's rights under article 14 (3) (g).

10. 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 alone and in conjunction with articles 2 (3) and 14 (3) (g), of the Covenant.

11. 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 to take appropriate steps: (a) to conduct a prompt investigation that is effective, thorough, impartial, independent and transparent into the author's allegations of torture and, if confirmed, to prosecute those responsible; and (b) to provide adequate 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.

12. 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.

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<sup>6</sup> See the Committee's general comment No. 20 (1992), para. 14; and its general comment No. 31 (2004), 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.

<sup>7</sup> Ibid.

<sup>8</sup> Ibid.