



## 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. 2711/2015\*, \*\*

<i>Communication submitted by:</i>	Olga Pichugina (represented by counsel, Roman Kisliak)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Belarus
<i>Date of communication:</i>	6 March 2009 (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 23 December 2015 (not issued in document form)
<i>Date of adoption of Views:</i>	7 July 2021
<i>Subject matters:</i>	Inhuman and degrading treatment; conditions of detention
<i>Procedural issue:</i>	Ratione personae
<i>Substantive issues:</i>	Torture; cruel, inhuman or degrading treatment or punishment; conditions of detention
<i>Articles of the Covenant:</i>	2–3, 7, 10 (1) and 14 (1)
<i>Article of the Optional Protocol:</i>	3

1. The author of the communication is Olga Pichugina, a national of Poland born in 1962.<sup>1</sup> She claims that the State party has violated her rights under articles 2–3, 7, 10 (1) and 14 (1) of the Covenant. The Optional Protocol entered into force for the State party on 30 December 1992. The author is represented by counsel.

#### Facts as submitted by the author

2.1 The author was travelling on a night train from Moscow to Warsaw when, at 6.30 a.m. on 20 April 2002, she was arrested in Brest, Belarus, by a customs inspector for attempting to smuggle a large amount of cash across the border. Ms. Pichugina was placed in the temporary detention facility of the Leninsky District police department in Brest. On 22 April

\* Adopted by the Committee at its 132nd session (28 June–23 July 2021).

\*\* The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Wafaa Ashraf Moharram Bassim, Yadh Ben Achour, Arif Bulkan, Mahjoub El Haiba, Furuya Shuichi, Carlos Gómez Martínez, Duncan Laki Muhumuza, Hernán Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Kobauyah Kpatcha Tchamdja, Hélène Tigroudja, Imeru Tamerat Yigezu and Gentian Zyberi.

<sup>1</sup> See also *Pichugina v. Belarus* (CCPR/C/108/D/1592/2007).



2002, an investigating officer issued an order for her to be detained on remand; the order was approved by the prosecutor of Brest Province on the same day. Also on 22 April 2002, Ms. Pichugina was transferred to a detention centre of the Committee of State Security, where she was kept for several hours before being transferred to investigative detention centre No. 7 in Brest. She was released on 30 April 2002.

2.2 The author submits that, between 20 and 22 April 2002, she was detained in the temporary detention facility of the Leninsky District police department in a basement cell with concrete walls together with five other persons. The door of the cell had a peephole through which the all-male personnel of the detention facility could watch her and other detainees. The author was not provided with a mattress, pillow or blankets and had to sleep on her coat spread out on the metal grid of a bed-frame. The cell was cold and the light in the cell, which was red, was on 24 hours a day, disturbing her sleep. The cell had one window covered with plastic sheeting that did not allow daylight to penetrate. It was too dark to read. The toilet was a hole in the floor; as it was not set apart from the rest of the cell, she had to use it in front of the other detainees. Above the toilet was a cold-water tap, without a sink. Towels and soap were not provided. When the author was fingerprinted, her fingers were covered with black ink that she was not able to wash away. There were rats and spiders in the cell. There was no ventilation and the air in the cell was stale.

2.3 The author also submits that, between 22 and 30 April 2002, she was detained in investigative detention centre No. 7 in the following conditions: she was placed in a cell on the ground floor that was 2.2 metres wide, 6.5 metres long and 3 metres high; it was cold; loud marching music played at all times throughout the centre, making it impossible for her to have a conversation with the other detainees; her cellmates smoked all the time and, as the ventilation was poor, the author, who suffers from asthma, had difficulty breathing; a mattress was provided but no pillow or blanket; the cell had one window covered with iron blinds that did not open; and the blue light that was always on disturbed Ms. Pichugina's sleep but was too dark to enable her to read. The author was taken for a walk once a day to a cell without a roof. The accompanying guards chased detainees with big dogs; the author feared that they would release the dogs and that she would be bitten. Because the author kept demanding a meeting with a Polish consular official and insisted that her rights be respected, on three occasions she was placed in a special "box" measuring 0.7 metres by 0.7 metres that was extremely cold and in which it was impossible to sit. Each time, she was forced to stay in the "box" for two hours. On 22 April 2002, the author fell ill and guards had to call for an ambulance. The ambulance registered high blood pressure (180/110) and a haemorrhage in the author's brain, which she attributes to the conditions of her detention.

2.4 On 11 April 2008, the author filed a complaint to the prosecutor of Brest Province claiming that the conditions of her detention and her treatment by the guards in the Leninsky District temporary detention facility and investigative detention centre No. 7 between 20 and 30 April 2002 violated her rights under article 7 of the Covenant and amounted to gender-based discrimination. The author submits that her claims were rejected by a decision of the prosecutor of Brest Province but provides no copy of such a decision.

2.5 Also on 11 April 2008, the author filed a similar complaint to the head of the Brest Province police department. In her complaint, the author requested that an investigation be conducted into the conditions of her detention and the actions of personnel at both facilities; that the conditions of detention be improved, especially for female detainees; that female staff be hired to guard female detainees; and that she be paid adequate compensation for the cruel and inhuman treatment to which she was subjected. On 23 April 2008, the author received a response from the head of the Leninsky District police department informing her that her claims had not been confirmed by the police department's internal inquiry and that the conditions of detention in the temporary detention facility were in line with the requirements set by law. On 7 August 2008, the author received an additional response from the head of the Leninsky District police department informing her that the temporary detention facility did not employ any female personnel in 2002 or in 2008. According to the letter, body searches of all newly booked female detainees were conducted by certified female police officers of the Leninsky District police department.

2.6 On 23 May 2008, the author filed a complaint to the Leninsky District Court claiming that her conditions of detention and the actions of the guards were contrary to article 7 of the

Covenant and amounted to gender-based discrimination. On 27 June 2008, the court dismissed the case for lack of jurisdiction. The court ruled that, in accordance with the law on conditions of detention, any complaint concerning places of detention should be addressed to the relevant prosecutor's office.

2.7 On 7 July 2008, the author filed an appeal to the Brest Province Court, which granted it on 24 July 2008 and ordered a new trial.

2.8 On 15 September 2008, the Leninsky District Court again dismissed the case for lack of jurisdiction. On 20 October 2008, after the author's appeal, the Brest Province Court confirmed the decision of the Leninsky District Court.

2.9 On 20 November 2008, the author submitted a lawsuit against the Leninsky District police department and investigative detention centre No. 7 for the pain and suffering she experienced during her detention between 20 and 30 April 2002. On 29 December 2008, the Leninsky District Court found no violation of the author's rights. On 2 February 2009, the Brest Province Court upheld the decision of the court of first instance.

2.10 The author notes that she filed several complaints to the prosecutor's office during her detention in 2002 that were ignored and to which she never received a response. She submits that she has exhausted all available domestic remedies.

### **Complaint**

3.1 The author claims that the conditions of her detention between 20 and 30 April 2002 have caused her physical and mental suffering and amount to a violation of her rights under articles 7 and 10 (1) of the Covenant.

3.2 The author also claims that the State party has violated her rights under articles 2, 3 and 26 by placing her in the detention facility guarded only by male guards, in violation of rule 81 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules).

3.3 The author further claims that, by dismissing her complaint, the domestic courts violated her rights under article 14 (1) of the Covenant.<sup>2</sup> She submits that courts in Belarus are not independent and defer to the executive branch because the local justice departments within municipal governments have the power to investigate complaints against judges.

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

4. In a note verbale dated 23 February 2016, the State party submitted its observations on the admissibility of the communication. The State party submits that it recognizes the Committee's competence to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of violations of their rights under the Covenant. However, since the author is a national of Poland, she is not subject to the State party's jurisdiction. Thus, the State party considers her communication inadmissible.

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

#### *Consideration of admissibility*

5.1 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.

5.2 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.

5.3 The Committee notes the State party's submission that the communication is inadmissible because the author is a national of Poland and is not subject to the State party's jurisdiction. The Committee recalls that article 1 of the Optional Protocol applies to

<sup>2</sup> A claim under article 14 (1) of the Covenant was made by the author also in *Pichugina v. Belarus*.

individuals subject to the jurisdiction of the State concerned who claim to be victims of a violation by that State of their rights under the Covenant, regardless of their nationality.<sup>3</sup> Accordingly, and since the author was in the relevant period in custody under the jurisdiction of the State party, the Committee considers that it is not precluded by article 1 of the Optional Protocol from examining the present communication.

5.4 The Committee notes the author's claim that, by dismissing her complaint, the domestic courts violated her rights under article 14 (1) of the Covenant. The Committee notes that the author submitted a claim under article 14 (1) of the Covenant stemming from the same events in her previous communication to the Committee in 2007, claiming a failure by the domestic authorities to take her before a judge during her detention, which was examined in 2013 and found inadmissible. The Committee finds it regrettable that the author failed to inform the Committee at the outset of the present communication that she had previously submitted another communication relating to the same events, even if the claims and facts presented in the communication currently under consideration are different from those presented in her previous one.

5.5 As to the alleged violation of the author's rights under articles 2, 3 and 26 of the Covenant, the Committee considers that these claims have been insufficiently substantiated for the purposes of admissibility. In the absence of any further pertinent information on file, the Committee concludes that this part of the communication is inadmissible under article 2 of the Optional Protocol.

5.6 The Committee considers that the author's claims under articles 7 and 10 (1) of the Covenant, relating to the conditions of her detention, have been sufficiently substantiated for the purposes of admissibility. Accordingly, it declares them admissible and proceeds to its consideration of the merits.

#### *Consideration of the merits*

6.1 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.

6.2 The Committee notes the author's claim that between 20 and 22 April 2002, she was incarcerated in the temporary detention facility of the Leninsky District police department in a basement cell, which was cold and had very poor sanitary and hygiene conditions. Specifically: there were rats and spiders in the cell; there was no ventilation, the air in the cell being stale; the lighting was always on and, despite being weak, disturbed the author's sleep; there was no mattress, pillow or blanket; the hole in the floor that functioned as a toilet was not separated from the rest of the cell; and the cold-water tap above the hole was without a sink. The Committee also notes that, between 22 and 30 April 2002, the author was incarcerated in investigative detention centre No. 7, where the conditions of detention were similar to those described above. Moreover, on three occasions each lasting two hours, for demanding to see a Polish consular official, she was placed in a "box" measuring 0.7 metres by 0.7 meters that was extremely cold and too small to even sit up in. The author claims that the conditions of detention have caused her physical and mental suffering. Specifically, on 22 April 2002, she fell ill, guards had to call for an ambulance and she was then diagnosed with high blood pressure and with having haemorrhage in her brain, which she attributes to the conditions of her detention.

6.3 The Committee notes that these allegations are consistent with the concluding observations of the Committee against Torture on the fourth periodic report of the State party, in which that Committee expressed its deep concern about continuing reports of poor conditions in places of deprivation of liberty, including with respect to the problems of overcrowding, poor diet, lack of access to facilities for basic hygiene, and inadequate medical care.<sup>4</sup> The Committee recalls that persons deprived of their liberty may not be subjected to any hardship or constraint other than that resulting from the deprivation of liberty; they must be treated humanely, in accordance with the Nelson Mandela Rules.<sup>5</sup> The Committee notes

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<sup>3</sup> *Mika Miha v. Equatorial Guinea* (CCPR/C/51/D/414/1990), para. 5.1.

<sup>4</sup> *CAT/C/BLR/CO/4*, para. 19.

<sup>5</sup> See, for example, *Aminov v. Turkmenistan* (CCPR/C/117/D/2220/2012), para. 9.3.

that the State party has not contested the information provided by the author on her conditions of detention, nor has it provided any information in this respect. In these circumstances, due weight must be given to the author's allegations to the extent that they are substantiated. The Committee considers, as it has repeatedly found in respect of similar substantiated claims,<sup>6</sup> that the author's conditions of detention as described violated her right to be treated with humanity and with respect for the inherent dignity of the human person, and are therefore also contrary to article 10 (1), a provision of the Covenant dealing specifically with the situation of persons deprived of their liberty and encompassing for such persons the elements set out generally in article 7. For these reasons, the Committee finds that the circumstances of the author's detention, as described by the author, constitute a violation of articles 7 and 10 (1) of the Covenant.

7. 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 articles 7 and 10 (1) of the Covenant.

8. 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. The Committee considers that, in the present case, its Views on the merits of the complaint constitute sufficient reparation for the violation found. The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future.

9. 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 languages of the State party.

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<sup>6</sup> See, for example, *Bobrov v. Belarus* (CCPR/C/122/D/2181/2012), para. 8.2; *Weerawansa v. Sri Lanka* (CCPR/C/95/D/1406/2005), para. 7.4; and *Evans v. Trinidad and Tobago* (CCPR/C/77/D/908/2000), para. 6.4.