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**Human Rights Committee**

 Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2820/2016[[1]](#footnote-1)\*,[[2]](#footnote-2)\*\*

*Communication submitted by:* Mitko Vanchev, represented by counsel, Mihail Ekimdjiev

*Alleged victim:* Mitko Vanchev

*State party:* Bulgaria

*Date of communication:* 27 October 2014 (initial submission)

*Date of adoption of decision:* 6 November 2020

*Subject matter:* Lack of effective investigation of allegations of cruel, inhuman or degrading treatment or punishment.

*Procedural issues:* Matter being examined under another procedure of international investigation or settlement; exhaustion of domestic remedies

*Substantive issues:* Cruel, inhuman or degrading treatment or punishment; right to a fair trial; right to an effective remedy

*Articles of the Covenant:* 2 (3)(a), 7, and 14 (1)

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

1. The author of the communication is Mitko Vanchev, a national of Bulgaria born on 1 June 1985. He claims that the State party has violated his rights under articles 7 and 14 paragraph 1, read alone and in conjunction with article 2, paragraph 3 (a) of the Covenant. The Optional Protocol entered into force for Bulgaria on 26 June 1992. The author is represented.

 Facts as submitted by the author

2.1 On 15 September 2005, the author, a second-year student at the Sofia Technical University, took a bus from Sofia to Kardzhali. The bus arrived at its destination at around 19:45 pm. While walking through the streets of Kardzhali, he heard footsteps behind him and a moment later, a big man suddenly attacked him. Thinking it was a robbery, the author punched the attacker in the face in self-defence. Then, a second man also attacked him and started punching him. He was hit with a hard object on the head and fell on the street[[3]](#footnote-3). The two men continued hitting and kicking him while he was on the ground. He unsuccessfully tried to defend himself, still thinking he was being robbed. One of the two assailants said: "Where is the weed? Give me the weed!”. At that moment, he thought he was assaulted by drug dealers who had mistaken him for a dealer. He replied that he did not have any weed and that he was not involved in that kind of business.

2.2 The author was handcuffed and put into a car. According to the author, it was only at that moment that the men identified themselves as police officers. Upon arrival at the Police Office, they found that there was an error and that the author was not the person they were seeking. The author was taken to hospital where he spent 4 days for treatment of the injuries sustained as a result of the beating. A judicial medical certificate was issued to the author stating that he had two lacerated contusions in the head as well as bruises and contusions of the skin on the surface of the right side of the abdomen[[4]](#footnote-4).

2.3 On 26 September 2005, the author submitted a complaint to the Director of the Kardzhali District Directorate of the Ministry of Interior against the two police officers for the violence suffered. On 13 October 2005, the Director acknowledged that the use of force by the police officers was disproportionate, that the police officers acted with negligence by not informing the author about their identity, and that they have been subjected to disciplinary sanctions[[5]](#footnote-5).

2.4 On an undetermined date, the author submitted the same complaint to the Plovdiv District Military Prosecutor's Office. On 17 October 2005, the Office rejected the request to initiate criminal proceedings against the police officers in question. On 9 February 2006, the Military Prosecutor’s Appeal Office annulled the decision of the Plovdiv District Military Prosecutor’s Office and ordered the initiation of criminal proceedings against the two police officers.

2.5 On 28 July 2006, the Plovdiv District Military Prosecutor's Office charged the two police officers with causing minor bodily harm to the author (articles 131(1) in conjunction with article 130(1) and article 20(3) of the Criminal Code)[[6]](#footnote-6). The Plovdiv Military Court of First Instance opened the criminal case No. 160/2006. The author filed a civil claim against the defendants for moral damages suffered in the amount of 8,000 Bulgarian levas (approximately 4,800USD).

2.6 On 16 September 2006, the Plovdiv Military Court acquitted the accused[[7]](#footnote-7). The Court found that the police officers had identified themselves when they adverted the author by saying “Don’t move, police,” and that the officers had attacked the author because he offered resistance and attacked them. The force used by the police officers was within the framework of the law and did not exceed in its intensity what was necessary to neutralize the resistance of the author. The author's defence and the Plovdiv Regional Military Prosecutor's Office appealed this decision before the Military Court of Appeal.

2.7 On 10 January 2007, the Military Court of Appeal quashed this decision, found the accused guilty for causing minor bodily harm to the author and imposed administrative fines of 1,000 levas (604.4 USD) on each of the accused[[8]](#footnote-8). It also ordered the payment of compensation for moral damages to the author in the amount of 1,500 Bulgarian levas (906.6 USD).

2.8 The General Prosecutor, based on article 422.1 of the Criminal Procedure Code requested the annulment of this decision before the Supreme Court of Cassation because the procedural rights of the defendants had been violated. The Prosecutor General's request was not sent to the author who was not summoned before the Supreme Court of Cassation when his case was examined[[9]](#footnote-9). On 18 December 2007, the Court annulled the decision of the Military Court of Appeal of 10 January 2007 in its entirety and referred the case back to the same court for reconsideration by a different chamber.

2.9 On 17 January 2008, by the decision No. 3 the Military Court of Appeal upheld the decision in first instance of the Plovdiv Military Court, acquitted the accused and rejected the author's claim for compensation[[10]](#footnote-10). The court specified that the judgement was final and not subject to appeal.

2.10 On 2 June 2008, the author lodged a complaint with the European Court of Human Rights claiming a violation of articles 3, 6 paragraph 1, and 13 of the European Convention on Human Rights. On 10 July 2014, the Court informed him that his application was inadmissible, as it did not comply with the admissibility criteria in articles 34 and 35 of the Convention[[11]](#footnote-11). The author refers to the jurisprudence of the Human Rights Committee, which accepts to examine the merits of cases after a decision of inadmissibility by the European Court of Human Rights, if the case was not examined on the merits[[12]](#footnote-12).

 The complaint

3.1 The author claims to be a victim of violations of his rights under articles 2 (3) (a), 7 and 14 (1) of the Covenant.

3.2 The author claims that he was a victim of a violation of his rights under article 7, read alone and in conjunction with article 2 (3). The author's contusions were clearly caused by the police officers. The severity and number of injuries, as well as the intensity of the pain and suffering of the author, fell within the material scope of article 7 of the Covenant. The police officers, without a clear legitimate reason, used disproportionate physical force against him. The author also claims that the investigation into his allegations of abuse by the police was not effective, in violation of international standards[[13]](#footnote-13).

3.3 The author refers to the jurisprudence of the European Court of Human Rights to argue that when a person alleges to have suffered ill-treatment at the hands of the police, the procedural requirements of Article 3 of the European Convention on Human Rights imply an obligation to conduct an effective official investigation[[14]](#footnote-14): the Convention “requires by implication that there should be an effective official investigation. This investigation, as with that under Article 2, should be capable of leading to the identification and punishment of those responsible.” He also refers to paragraph 117 of the same decision where the Court recalls that “Article 13 guarantees the availability at national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they might happen to be secured in the domestic legal order. The effect of this Article is thus to require the provision of a domestic remedy allowing the competent national authority both to deal with the substance of the relevant Convention complaint and to grant appropriate relief, although Contracting States are afforded some discretion as to the manner in which they conform to their obligations under this provision. The scope of the obligation under Article 13 varies depending on the nature of the applicant’s complaint under the Convention. Where an individual has an arguable claim that he has been ill-treated in breach of Article 3, the notion of an effective remedy entails, in addition to a thorough and effective investigation of the kind also required by Article 3 (see paragraph 102 above), effective access for the complainant to the investigatory procedure and the payment of compensation where appropriate.”

3.4 The author further refers to paragraph 140 of the European Court of Human Rights decision in *Anguelova v. Bulgaria*, where the Courts stated that “[t]here must be a sufficient element of public scrutiny of the investigation or its results to secure accountability in practice as well as in theory, maintain public confidence in the authorities' adherence to the rule of law and prevent any appearance of collusion in or tolerance of unlawful acts. The degree of public scrutiny required may well vary from case to case.[[15]](#footnote-15)”

3.5 The author argues that, by analogy, the investigation of his allegations of the abuse suffered at the hands of the police officers was not effective, and that its objective was not to identify them in order to engage their criminal responsibility. On one hand, he did not have effective access to the investigation during the preliminary procedure. He was not able to participate during the interrogations of the two accused police officers or the witnesses brought by them. The Code of Criminal Procedure does not even provide the victim with any formal procedural activity nor initiative in the form of “requests, notes and challenges”. He also refers to paragraph 86 of the European Court of Human Rights decision in *Assenov and others v. Bulgaria* where the “Court recalls that under Bulgarian law it is not possible for a complainant to initiate a criminal prosecution in respect of offences allegedly committed by agents of the State in the performance of their duties.” According to the author, this means that all actions of the investigation take place at the initiative and under the control of the corresponding public bodies and that the victims have no influence on the course of those proceedings.

3.6 He also claims that his access to the Supreme Court of Cassation was unjustifiably restricted. The author did not receive a copy of the Prosecutor General's request before the Supreme Court of Cassation to annul the decision of the Military Court of Appeal, nor a summons to participate in the annulment proceedings. He submits that it was the Supreme Court of Cassation, before which he was deprived of “his defence” that annulled the sentence of the Military Court of Appeal in his favour. This led in practice to his deprivation of compensation for moral damages awarded by the final judgment of the Military Court of Appeals.

3.7 The author also alleges a violation of article 14, paragraph 1, of the Covenant, as the State party’s authorities failed to respect his “full access to a tribunal” and the principle of equality of arms. He was not notified of the Prosecutor General's request for annulment of the decision of the Military Court of Appeal before the Supreme Court and he was not summoned to participate in these proceedings.

3.8 The author refers to the jurisprudence of the European Court of Human Rights in the decision of 12 January 2005, *Kehaya and others v. Bulgaria*[[16]](#footnote-16), where the Court stated that “the approach of the Supreme Court of Cassation in its judgment of 10 October 2000 had, moreover, the effect of providing a “second chance” for the State to obtain a re-examination of a dispute already determined by way of final judgments in contentious proceedings to which another emanation of the State, a specialised administrative authority in charge of restitution – the land commission –, had been a party and had been afforded all procedural means to defend the State interest. Such re-examination was apparently possible without any limitation in time and could only be barred after the expiry of the relevant period of acquisitive prescription ... That approach was unbalanced and created legal uncertainty.”

3.9 In the present case, the author considers that the infringement of the principle of legal stability derives from the possibility of reopening completed criminal cases and annulling decisions in force, referred to in article 422, paragraph 1, point 5 of the Code of Criminal Procedure, in hypotheses formulated in an unclear manner. This provision explicitly refers to the three grounds for annulment in cassation, referred to in article 348, paragraphs 1 to 3 of the Code of Criminal Procedure: article 348. (1) The sentence and the decision shall be subjected to revoking or modifying in the course of cassation proceedings in any of the following cases: 1. Breach of law; 2. Substantive breach of procedural rules; 3. Obviously unfair punishment. According to the author, the blurring of the distinctive criterion between the conditions for appeal in cassation under article 348 and the conditions for annulment under article 422 of the Code of Criminal Procedure creates conditions for a contradictory interpretation and arbitrary application of the conditions for annulment. This indefinite and unpredictable situation undermines the principle of legal stability. The requirement of clarity of the applicable law and predictability of the legal consequences of a given law are implicit in the term "fair trial".

3.10 Finally, the author claims that the State party violated his rights under article 2, paragraph 3 (a), as it failed to conduct a fair, effective and full investigation into his allegations of abuse by the police officers. It also failed to provide the author with compensation for the damage he suffered as a consequence of the violation of his rights under articles 7 and 14 of the Covenant.

3.11 The author requests the Committee to order the State party to reopen the criminal proceedings against the police officers who physically abused him and to provide him with an adequate compensation.

 State party’s observations on admissibility and the merits

4.1 In a *note verbale* dated 12 April 2017, the State party submitted its observations on the admissibility and the merits of the communication.

4.2 The State party submits that following the minor bodily harm to the author during the police raid aimed at arresting an alleged drug trafficker and his later release, a disciplinary committee was appointed on 16 September 2005 by order of the Director of the Kardzhali District Directorate of the Ministry of Interior. In the course of the investigation the author and witnesses gave testimonies and reports were requested from the police officers concerned. A Forensic Medical Certificate No. 264/05 dated 17 September 2005 was enclosed in the file. The Committee established that despite the resemblance between the author and the person wanted for purchasing narcotics, the two officers acted in an impetuous and presumptuous way, with tactically incorrect approach and were unprepared to react to possible resistance. They did not make sure that the author understood that they were law enforcement officers and used force that was not proportionate or adequate to the situation arisen, even if the author attacked the officers as he thought he was assaulted to be robbed. The use of force did not end even after the author was rendered harmless, in breach of the provisions of Article 84 of the Ethical Code for Officers of the Ministry of Interior. The Committee considered that their actions resulted in harming the reputation of the Ministry of Interior’s officers. It ordered the following measures: one of the officers was given a one-year disciplinary sanction of censure for his behaviour and assigned to another office[[17]](#footnote-17) and the other officer was given a six-months disciplinary sanction of censure[[18]](#footnote-18).

4.3 The State party states that on 10 October 2005, the author filed a lawsuit No. 1674/05 before the Plovdiv District Military Prosecutors Office. It resulted in the refusal for initiation of pre-trial proceedings and the closing of the case. On 9 December 2005, the order was reversed by the Appellate Military Prosecutor’s Office upon appeal by the author. On 17 January 2006, after the completion of a new investigation, a new order was issued by the Military Prosecutor’s Office refusing to initiate pre-trial proceedings. On 6 February 2006, the order was again reversed by the Appellate Military Prosecutor’s Office following an appeal of the author and the initiation of criminal proceedings was ordered.

4.4 The State party indicates that on 16 February 2006, the pre-trial proceedings were initiated for a crime under Article 131, paragraph 1 in connection with Article 130 paragraph 1, and Article 20 paragraph 2 of the Criminal Code. A time limit of 60 days was set for the investigation to be completed, which was subsequently extended twice. Between 27 and 29 March 2006, inspections of the scene of the incident and the home of a witness as well as other investigative actions were conducted. On 26 April 2006, a forensic medical report on the injuries suffered by the author was issued. During the investigation, eyewitnesses of the incident were interrogated.

4.5 The State party explains that on 30 May 2006 and on 20 June 2006, criminal charges were brought against the two defendants for a crime under the previous cited paragraphs of the Criminal Code. The criminal proceedings concluded on 17 January 2008 with the judgement No.3 of the Military Appellate Court, upholding the verdict of “not guilty” issued by the Plovdiv Military Court[[19]](#footnote-19).

4.6 The State party considers that the communication should be declared inadmissible because domestic remedies have not been exhausted. It asserts that the author, *as per* article 349 of the Criminal Procedure Code could have requested before the Supreme Court of Cassation the cassation review of the “Judgement N° 3 dated 17 January 2008 on Public Prosecution Case No. 186/2007 on the docket of the Military Appellate Court”.

4.7 Regarding the effectiveness of the investigation, the State party argues that the time between the incident (15 September 2005) and the acquittal of the defendants (17 January 2008), amounting to 2 years and 4 months, is within the reasonable time limits. It adds that the author did not lodge any complaint in the course of the pre-trial proceedings and that “the errors found in the evidence collection process during the investigation did not significantly impact the acts issued by the Prosecutor’s Office and the court judgments establishing the legal nature of the offense”[[20]](#footnote-20). The State party concludes that the criminal proceedings conducted satisfied the European standards of effective investigation, as the requirements of timeliness and speediness, completeness and comprehensiveness, impartiality and independence, and possibility for public supervision have been met.

4.8 The State party also argues that the author was allowed to exercise his rights as a victim of a crime. All prerequisites were fulfilled, including the possibility of bringing civil action for damages. The author took part in the first instance and appellate proceeding both personally and through an attorney authorized by him, including when the case was heard after having been resumed. Therefore, according to the State party, the author was provided with all effective remedies required under Article 2, paragraph 3 of the Covenant, while the provision of the article contains no mandatory requirement for the State party to provide compensation.

4.9 The State party asserts that the author’s allegation of violation of Article 7 in conjunction with Article 2 paragraph 3 is also unfounded, as he was allowed to exercise his rights within the criminal proceedings. The State party indicates that the author’s case was considered according to the general procedure, even though the conditions were met to be considered in accordance with the procedure provided in the Chapter 28 of the Criminal Procedure Code “Release from Criminal Liability by Imposition of an Administrative Sanction”, which excludes the figure of the private prosecutor and the civil claimant. It argues that, indisputably, the civil action brought by the author was subject to fair and public hearing by a competent, independent and impartial tribunal, established by law, as required under Article 14, paragraph 1, of the Covenant. According to the State party, it is inadmissible to make the fulfilment of the effective remedy requirement conditional on a specific outcome, as such an interpretation would be in contradiction with the fundamental principles of equality of citizens, equal rights of parties and “uncovering of the objective truth though the criminal procedure”.

4.10 The State party concludes that the author’s allegations of a violation of Article 7 of the Covenant, in conjunction with Article 2, paragraph 3, and of Article 14, paragraph 1 of the Covenant are unfounded.

 Author’s comments on the State party’s observations

5.1 In his comments of 5 June 2017, the author submits that, contrary to the State party’s assertion, the communication should be declared admissible, as he has exhausted all available domestic remedies. The author argues that the decision of the Appeal’s Tribunal is final, as stated in the decision. He explains that the article 346 of the Criminal Procedure Code limits the scope of the review in cassation. According to this article, judgments in second instance that uphold first instance decisions are not subject to appeal to the Supreme Court of Cassation.

5.2 The author observes that the State party does not dispute that the violence exerted on him was of an intensity and nature falling within the scope of article 7 of the Covenant and that it was caused by representatives of the State party, police officers, who used physical force and equipment resulting in several injuries to the author in violation of article 7 of the Covenant.

5.3 As to the conduct of the investigation and the State party's assertion that he did not submit any request during the pre-trial proceedings, the author submits that the investigation was initiated as a result of his requests to the Director of the District Directorate of the Ministry of Interior in Kardzhali and the Regional Military Prosecutor's Office in Plovdiv. He points out that according to the Criminal Procedure Code, the pre-trial proceedings take place exclusively on the initiative of the investigative bodies and that in this phase of the criminal proceedings, the victim has only the procedural status of a witness. According to article 75, paragraph 1 of the Criminal Procedure Code, the victim has the right to be informed about the course of the investigation and to receive protection of his or her safety. The victim has only the right to appeal against the acts that result from the end or termination of the proceedings. The author notes that the prosecutor's office adopted as true the author’s allegations of violence against him, since following the investigation he filed an indictment in court against the two police officers and maintained the charges against them in all court proceedings. In consequence, it cannot be argued that the author failed to act in the exercise of his rights under the law and thus contributed to the ineffectiveness of the investigation.

5.4 The author disagrees with the State party's contention that because the disciplinary proceedings initiated against the two police officers ended with the imposition of disciplinary penalties, the author’s claim's that the investigation was ineffective is ill-founded. He reiterates that the investigation of his allegations of the abuse suffered at the hands of the police officers was inefficient, as he did not have effective access during the preliminary procedure and as he could not participate in the proceedings before the Supreme Court of Cassation that annulled the sentence of the Military Court of Appeal. He notes that the State party has not contested this point and that this led in practice to him being deprived of compensation for moral damages granted by the Military Court of Appeal in its final decision.

 Issues and proceedings before the Committee

 Consideration of admissibility

6.1 Before examining 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.

6.2 The Committee has to ascertain, in accordance with article 5 (2) (a) of the Optional Protocol, whether the same matter is being examined under another procedure of international investigation or settlement. The Committee notes that, on 10 July 2014, a single-judge formation of the European Court of Human Rights found that the author’s complaint, which had been filed against the State party and which dealt with the same facts as those addressed in this communication, was inadmissible. Given that the complaint is no longer being examined by the European Court, the Committee considers that there are no obstacles to consideration of the communication under article 5 (2) (a) of the Optional Protocol[[21]](#footnote-21).

6.3 The Committee notes the State party’s argument that the communication should be considered inadmissible because the author has not exhausted all available domestic remedies, as he could have requested the cassation review of the “Judgement No. 3” of 17 January 2008 of the Military Court of Appeal before the Supreme Court of Cassation. The Committee also notes the author’s claim that no appeal could be filed against the decision of the Military Court of Appeal, as stated in the decision itself. The Committee observes the author’s argument that article 346 of the Bulgarian Criminal Procedure Code limits the scope of the review in cassation and that second instance judgments that uphold first instance decisions are not subject to further appeal to the Supreme Court of Cassation. The Committee further notes that the State party has not explained how a request for cassation review would have been an effective remedy for the allegations raised before the Committee. Consequently, the Committee considers the requirements of article 5 (2) (b) of the Optional Protocol to have been met.

6.4 The Committee takes note of the authors’ claims under article 14, paragraph 1 that the State party failed to respect his “full access to a tribunal” and the principle of equality of arms because he was not summoned to participate in the proceedings before the Supreme Court that annulled the decision of the Military Court of Appeal which had granted him compensation. However, the Committee notes the submission of the State party that the author, was allowed to exercise his rights as a victim of a crime, taking part in the first instance and appellate proceeding both personally and through an attorney authorized by him, including when the case was heard after having been resumed. Further, the civil action brought by the author was subject to a fair and public hearing by a competent, independent and impartial tribunal. In the absence of any further pertinent information on file, and in light of the State party’s explanation, the Committee considers that the author has failed to sufficiently substantiate, for the purposes of admissibility, these allegations. Accordingly, it declares this part of the communication inadmissible under article 2 of the Optional Protocol.

6.5 In the Committee’s view, the author has sufficiently substantiated, for the purposes of admissibility, his claims of violations of rights under article 7 read alone and in conjunction with article 2(3) of the Covenant regarding his allegations of abuse by police officers and the State party’s failure to conduct an effective investigation into these allegations, and to provide the author with compensation for the harm he suffered, declares them admissible and proceeds with their consideration of the merits.

 Consideration of the merits

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

7.2 The Committee notes the author’s arguments that on 15 September 2005 he was attacked by two police officers who mistook him for a drug dealer; that the police officers only identified themselves at a later stage, once he was handcuffed and put in their car; that a judicial medical certificate stated that the author had two lacerated contusions on his head as well as bruises and contusions of the skin on the right side of the abdomen; and that he spent 4 days in hospital for the treatment of the injuries sustained as a result of the beating.

7.3 The Committee observes the explanation of the State party that the author suffered minor bodily harm as a result of a police raid aimed at arresting an alleged drug trafficker. The Committee notes that, according to the State party, on 16 September 2005, a disciplinary committee was appointed by order of the Director of the Kardzhali District Directorate of the Ministry of Interior. This disciplinary committee acknowledged that the police officers used disproportionate and unnecessary physical force against the author. It also notes that during the investigation testimonies were taken from the author and witnesses, reports were requested from the police officers concerned and the Forensic Medical Certificate was examined; that the disciplinary committee established that the two police officers did not make sure that the author understood that they were law enforcement officers and used force that was not proportionate to the situation arisen; and that disciplinary sanctions were imposed on the police officers as a result.

7.4 The Committee also notes that criminal proceedings were subsequently initiated against the two police officers concerned which concluded with a decision of the Military Court of Appeal upholding the Plovdiv Military Court’s decision which acquitted the two police officers. It further notes the State party’s argument that the fulfilment of the effective remedy requirement under the Covenant should not be conditional on a specific outcome. However, the Committee considers that the acquittal from criminal charges of the police officers involved does not necessarily imply that the abuse actually suffered by the author at the hands of the police, which remains uncontested by the State party and was duly recognized by the disciplinary committee appointed by order of the Director of the Kardzhali District Directorate of the Ministry of Interior, did not amount to a treatment contrary to the article 7 of the Covenant.

7.5 The Committee also recalls that the use of force by the police, which can be justified in certain circumstances, may be viewed as contrary to article 7 under circumstances in which the force used is deemed excessive.[[22]](#footnote-22) The Committee refers to paragraph 4 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990), which states that law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force.

7.6 The Committee further recalls that the aim of the provisions of article 7 is to protect both the dignity and the physical and mental integrity of the individual against both intended and unintended harm.[[23]](#footnote-23) In that connection, the Committee notes that the allegations of the author concerning the abuse suffered at the hands of the police are very detailed and supported by medical evidence;[[24]](#footnote-24) that the facts have been admitted by the State party; that the quality of the injuries sustained, particularly in the head, required his hospitalization during four days; and that a disciplinary committee found that the police officers failed to adequately identify themselves and used disproportionate and unnecessary force against the author. Noting that a disciplinary committee set up within the Ministry of Interior of the State party did not refute that the abuse suffered by the author at the hands of the police amounted to a treatment contrary to article 7 of the Covenant, the Committee considers that due weight must be given to the allegations of the author. The Committee therefore finds that the facts as presented amount to a violation of the author’s rights under article 7 of the Covenant.

7.7 The Committee also notes the author’s allegations that he was not provided with an effective remedy for the abuse suffered at the hands of the police, in violation of article 7 in conjunction with article 2(3) of the Covenant, as he never obtained any compensation for the harm he suffered. The Committee notes that the civil claim for compensation for moral damages brought by the author in the framework of the criminal proceedings initiated against the police officers was rejected by the Military Court of Appeal when it acquitted the accused police officers. It also observes that, in compliance with its obligation to provide adequate redress to the author, the State party has not demonstrated that there were alternative legal avenues for the author to obtain effective redress once the criminal convictions were overturned and the author became deprived of the compensation for moral damages he had previously been awarded by the Military Court of Appeal.[[25]](#footnote-25) Therefore, the Committee considers that the author’s rights under article 7 in connection with article 2(3) of the Covenant have been violated.

8. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts before it disclose a violation by the State party of article 7 read alone and in conjunction with article 2(3) of the Covenant.

9. In accordance with 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. In the present case, the State party is under an obligation, *inter alia* to provide adequate compensation and appropriate measures of satisfaction, including reimbursement of any legal costs and medical expenses, as well as for non-pecuniary losses, incurred by the author. The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future.

10. 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 or 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.

1. \* Adopted by the Committee at its 130 th session (12 October–6 November 2020). [↑](#footnote-ref-1)
2. \*\* The following members of the Committee participated in the examination of the communication: Tania Abdo Rocholl, Yadh Ben Achour, Arif Bulkan, Ahmed Amin Fathalla, Schuichi Furuya, Christoph Heyns, Bamariam Koita, David Moore, Photini Pazartzis, Hernán Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Yuval Shany, Hélène Tigroudja, Andreas Zimmermann and Gentian Zyberi. [↑](#footnote-ref-2)
3. During the court proceedings it was established that the author was hit with the handcuffs of the police officers. [↑](#footnote-ref-3)
4. The author submits pictures of his wounds with his complaint as well as a summary in French language of a forensic medical certificate (No. 264/05) dated 17 September 2005. [↑](#footnote-ref-4)
5. See below paragraph 4.2 as the State party provides further information on this. The author submits a summary in French language of the letter of the Director of the Kardžali District Directorate of the Ministry of Interior, dated 13 October 2005, with his complaint. [↑](#footnote-ref-5)
6. According to the State party the pre-trial proceedings were initiated on 16 February 2006. The author provides a translation in French of the indictment which does not include a date. [↑](#footnote-ref-6)
7. The author submits a summary in French language of the Plovdiv Military Court decision, dated 16 September 2006, with his complaint. [↑](#footnote-ref-7)
8. The author submits a summary in French language of the Military Court of Appeal decision, dated 10 January 2007, with his complaint. [↑](#footnote-ref-8)
9. The author states that his participation in the proceeding before the Court is not noted in the introduction of the decision. The author submits a summary in French language of the Supreme Court of Cassation decision, dated 18 December 2007, with his complaint. [↑](#footnote-ref-9)
10. The author submits a summary in French language of the Military Court of Appeal decision, dated 17 January 2008, with his complaint. [↑](#footnote-ref-10)
11. The author submits a transcript of the letter or the European Court of Human Rights, dated 10 July 2014, with his complaint. [↑](#footnote-ref-11)
12. Communication No. 1945/2010, *Achabal Puertas v. Spain*. [↑](#footnote-ref-12)
13. The author refers to General Comment No. 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment), Adopted at the Forty-fourth Session of the Human Rights Committee, on 10 March 1992. [↑](#footnote-ref-13)
14. European Court of Human Rights, *Assenov and others v. Bulgaria*, 28 October 1998. [↑](#footnote-ref-14)
15. European Court of Human Rights, *Anguelova v. Bulgaria*, Application no. 38361/97, 13 June 2002. [↑](#footnote-ref-15)
16. European Court of Human Rights, *Kehaya and others v. Bulgaria*, Applications nos. 47797/99 and 68698/01, 12 January 2006, parr. 69. [↑](#footnote-ref-16)
17. The State party indicates that on 3 January 2012 his service at the Ministry of Interior was terminated at his request. [↑](#footnote-ref-17)
18. The State party indicates that on 21 November 2005, his service at the Ministry of Interior was terminated at his request. [↑](#footnote-ref-18)
19. For further details regarding the criminal proceedings, please refer to paras. 2.5 to 2.9 above. [↑](#footnote-ref-19)
20. The State party does not provide further explanations on this argument. [↑](#footnote-ref-20)
21. The State party did not submit any reservation to exclude the competence of the Committee to consider a communication from an individual if the same matter has already been considered under another procedure of international investigation or settlement. [↑](#footnote-ref-21)
22. See, *Vladimir Chernev v. Russian Federation* (CCPR/C/125/D/2322/2013), para. 12.2. [↑](#footnote-ref-22)
23. See general comment No. 20 (1992) on the prohibition of torture or cruel, inhuman or degrading treatment or punishment, para. 2; *A.H.G. v. Canada* (CCPR/C/113/D/2091/2011), para. 10.4. [↑](#footnote-ref-23)
24. See, *Maya Abromchik v. Belarus* (CCPR/C/122/D/2228/2012), para. 10.2. [↑](#footnote-ref-24)
25. See *Corinna Horvath v, Australia* (CCPR/C/110/D/1885/2009), para. 8.7; General Comment No 31, paras. 15 & 16. [↑](#footnote-ref-25)