



## 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. 2152/2012\*\* \* \*\*

<i>Communication submitted by:</i>	S.P. (not represented by counsel)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Russian Federation
<i>Date of communication:</i>	24 February 2011 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 97 of the Committee's rules of procedure, transmitted to the State party on 22 May 2012 (not issued in document form)
<i>Date of adoption of Views:</i>	27 October 2016
<i>Subject matter:</i>	Treatment of the author while in pretrial detention
<i>Procedural issues:</i>	Admissibility — manifestly ill-founded; exhaustion of domestic remedies; other procedure
<i>Substantive issues:</i>	Cruel, inhuman or degrading treatment; conditions of detention; discrimination
<i>Articles of the Covenant:</i>	7, 10 and 26
<i>Articles of the Optional Protocol:</i>	2 and 5 (2) (a) and (b)

\* Reissued for technical reasons on 14 December 2016.

\*\* Adopted by the Committee at its 118th session (17 October-4 November 2016).

\*\*\* The following members of the Committee participated in the examination of the communication: Yadh Ben Achour, Lazhari Bouzid, Sarah Cleveland, Ahmet Amin Fathalla, Olivier de Frouville, Yuji Iwasawa, Ivana Jelić, Duncan Laki Muhumuza, Photini Pazartzis, Mauro Politi, Sir Nigel Rodley, Víctor Manuel Rodríguez Rescia, Fabián Omar Salvioli, Anja Seibert-Fohr, Yuval Shany, Konstantine Vardzelashvili and Margo Waterval.



1. The author of the communication is S.P., a national of the Russian Federation born on 4 February 1971, at the time of submission serving a prison sentence in a State penitentiary in Komi Republic, Russian Federation. The author claims that the State party has violated his rights under articles 7, 10 (1) and (2) and 26 of the Covenant. The Optional Protocol entered into force for the State party on 1 October 1991. The author is unrepresented.

#### **The facts as submitted by the author**

2.1 On 22 August 2006, the author was arrested on suspicion of committing a sexual offence against a juvenile and on 1 September 2006, he was transferred to the pretrial detention centre in Syktyvkar, Komi Republic. At 7 p.m. he was subjected to a body search, which included having to strip naked and an inspection of all his belongings. Two hours later the search was repeated. The author submitted that afterwards he was detained in the “rubber cell” for 18 hours, where the conditions were as follows: a strong smell of rubber and absence of ventilation, which caused him difficulties in breathing; he was forced to strip down to his underpants but the cell was not heated, while the temperature outside was 12°C, which resulted in him getting a cold; he was denied access to the toilet and not given food or water, which resulted in him having problems with urination for several days; and his sleep was disturbed every half an hour.

2.2 On 2 September 2006, after he was released from the rubber cell and provided with blankets and a spoon, the author made a request to be placed separately from the other detainees, since he was an ex-employee of the penitentiary. Also on 2 September 2006, the author underwent a medical examination. He did not complain regarding his cold and problems with urination at that time, because the symptoms appeared only later. From 2 to 3 September, he was placed alone in a cell with four-person occupancy capacity. On 3 September, the author was transferred to a punishment cell, where he remained for one and a half months. The punishment cell was 2m x 3m in size, located half underground and lacking daylight; he was denied visits to the bathing facilities; and he was constantly threatened and verbally assaulted by other detainees, placed in adjacent punishment cells.

2.3 Following his requests to be transferred from the punishment cell, he was moved several times to other cells, including to overcrowded cells with detainees with previous convictions for murder, mentally ill detainees and others who exposed the author to the surreptitious use of psychotropic substances. In cell No. 38 he was detained with four other persons, two with previous convictions, one with mental illness and one former officer. In cell No. 37, the author was held with two other persons, both with previous convictions; in cell No. 31, which was designed for two persons, the author was held with two other detainees and had to sleep on the floor; in cell No. 33, also designed for two persons, the author was held with three other detainees, one of whom had mental health issues, and he and another detainee had to sleep on the floor. In January 2007, the author was given a lice-ridden mattress, which caused him to develop a severe skin condition.<sup>1</sup> His requests for a new mattress were denied. The author maintained that the employees of the pretrial detention centre deliberately disclosed the circumstances of the accusations against him to the other detainees. He was constantly threatened by other detainees, owing to the nature of the criminal offence of which he was suspected and his previous occupation as an employee of the penitentiary. As a result of the constant pressure, on 10 June 2007, he attempted to

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<sup>1</sup> The author submitted letters from two of his cellmates confirming the condition in the cells as he describes them and that they were given lice-ridden mattresses. One of the cellmates testifies in his letter that the author appeared depressed after being transferred from the punishment cell and that he was often harassed by other detainees when he was in contact with them during transfers to court. The other testifies that the third individual in their cell systematically humiliated the author, forced him to take unknown pills and took his paper and pens to prevent him from writing complaints.

commit suicide by cutting his wrists. One of his cellmates, who had previously subjected the author to harassment, saw him, bandaged his wrist with a sheet and forbade him to seek medical assistance. The author remained in pretrial detention until 10 September 2007. On 12 July 2007, the Syktyvkar City Court convicted the author of several offences and sentenced him to 13 years' imprisonment.

2.4 On an unspecified date, the author filed a civil law suit against the actions of the employees of the pretrial detention centre, stating that they had caused him moral, physical and psychological damage, and asked for recovery of non-pecuniary damage. On 29 May 2009, the Syktyvkar City Court decided that the author's complaint was unfounded, since the author had failed to prove that non-pecuniary damage had been caused by deliberate illegal actions of employees of the pretrial detention centre. The author was not personally present during the hearings. On 24 September 2009, the Judicial Board in Civil Matters of the Supreme Court of the Komi Republic, rejected the cassation appeal of the author against that decision, with the motivation that the Syktyvkar City Court, when reviewing his complaint, had complied with the law. The author filed an application for a supervisory review of the two decisions with the Supreme Court of the Komi Republic, but his application was rejected on 1 March 2010, with a similar motivation to that issued in the cassation appeal.

2.5 On an unspecified date, the author filed a request with the Prosecutor's Office to initiate a criminal case against the employees of the detention centre. On 25 July 2009, the Prosecutor's Office issued a decision refusing to initiate a criminal case. On an unspecified date, the author filed a complaint with the Syktyvkar City Court, attempting to establish that the decision of the Prosecutor's Office was illegal and ill-founded. On 3 December 2009, the Prosecutor's Office overturned its 25 July 2009 decision, with the motivation that it was issued without proper consideration of submissions by witnesses. After additional investigation, on 24 March 2010 and 23 November 2010 the Prosecutor's Office again refused to initiate a criminal case.

2.6 On 10 December 2009, the author submitted a complaint to the European Court of Human Rights, which was rejected on the grounds that the alleged violations occurred between 1 September 2006 and 10 September 2007, therefore more than six months prior to the date of the complaint.

2.7 On 5 October 2010, the Federal Service for Execution of Punishment in the Komi Republic responded to the author's complaints from 24 August, 30 August, 2 September, 6 September and 9 September 2010. The response addressed his complaints with regard to the repeated searches, transfer to the punishment cell, the conditions in the cell, and detention with convicted detainees, and concluded that no violations of the law were observed in the actions of the employees of the pretrial detention centre. A similar response, dated 29 October 2010, from the same institution, was given to the author's complaints from 4 and 5 October 2010.

### **The complaint**

3. According to the author, during his detention at the pretrial detention centre from 1 September 2006 to 10 September 2007, numerous violations of domestic legislation occurred. He maintained that he was illegally detained in the "rubber cell" and in the punishment cell, and that no note regarding his detention was made in the registry; he was not allowed to use the bathing facilities for one and a half months; he was denied everyday walks; and he was detained with detainees with previous convictions of murder and with mentally ill detainees, one of whom forced him to take psychotropic substances. The author maintained that his rights under articles 7, 10 (1) and (2) and 26 of the Covenant were violated by the State party.

**State party's observations on admissibility**

4.1 On 17 August 2012, the State party submitted that the communication should be declared inadmissible as "insufficiently founded", in accordance with article 5 of the Optional Protocol, because the author had failed to exhaust all available domestic remedies. The State party submitted that the Syktyvkar City Court had reviewed the author's civil suit against the penitentiary and the Finance Department of the Republic of Komi and the Ministry of Finance of the Russian Federation for compensation of moral damages owing to the conditions of detention. On 29 May 2009, the City Court concluded that the conditions of detention "corresponded to the requirements of the legislation in force". The State party further submitted that the author had appealed that decision before the Supreme Court of the Republic of Komi, which confirmed the decision on 24 September 2009, but that he had failed to appeal before the Supreme Court of the Russian Federation.

4.2 The State party also submitted that the communication should be declared inadmissible because in 2010 the author had filed a complaint to the European Court for Human Rights, which was rejected on 21 May 2010, since the Court decided that the application did not correspond to the requirements of articles 34 and 35 of the European Convention on Human Rights.

4.3 The State party also maintained that the communication was ill-founded, since there was no evidence that the author had been subjected to physical violence or had attempted to commit suicide. It submitted that there were no reports by employees of the detention centre where he was held regarding any injuries sustained by him and there was no record in the medical journal of any requests by him for medical treatment. With respect to the author's claim that his rights under article 10 (2) of the Covenant had been violated, the State party maintained that the author did not have the "status of unconvicted" since he had earlier been convicted under article 132 of the Criminal Code and therefore article 10 (2) of the Covenant was not applicable to him. Finally, the State party submitted that the author had failed to substantiate his allegations of discrimination under article 26 of the Covenant.

**Author's submissions and comments on the State party's observations on admissibility**

5.1 On 3 September 2012, the author submitted that he had requested a medical examination with the aim of documenting a scar on his wrist. The administration of Penal Colony No. 49 refused to order the examination and to give him a written refusal.

5.2 The author submits that he has frequent nightmares and flashbacks regarding the torture endured. When seeing persons in uniforms he suffers from fear and he no longer believes in the law enforcement and justice systems. He also submits that when he tried to provide evidence to the court regarding his detention in the punishment cell and in the rubber cell, the administration of the detention centre presented the records for placement of detainees for 2007 instead of 2006 and the head of the centre gave inaccurate information. The conclusion of the investigation was based primarily on the testimony of employees of the detention centre, who denied any wrongdoing out of solidarity with colleagues and fear of being fired. The author reiterates that the conditions of his detention violated his rights under article 10 (1) of the Covenant and that he was a victim of discrimination in violation of article 26. He notes that in the punishment cell there was no natural light or ventilation and he had to sleep on a shelf adjacent to the toilet. In the corridor of the detention centre there was a loudspeaker which disturbed his sleep, because it was used to play the radio at an extremely loud volume in order to prevent conversations between cellmates.

5.3 The first regular cell in which he was kept with two other detainees was 2m x 5m in size; in the second there were only two beds, but three detainees. He was constantly

threatened by other detainees, but the administration ignored his requests to be placed separately from the general population. The author suffered from different illnesses (headaches, earaches, depression) but he did not receive adequate treatment.<sup>2</sup> On days when he was taken to a court hearing, he was woken up at 6 a.m., kept for three hours in a transfer cell in the basement and transported to the court in a truck, in which he was obliged to sit on a wooden bench. In the court building he was kept all day in a cell, which measured 1m x 3m, despite the fact that hearings usually took only a few minutes. He was not provided with any food and only allowed to drink water from the tap when he was taken to the toilet. He was returned to the detention centre only after dinner time, so on days when he had court hearings his only meal was breakfast.

5.4 On 7 September 2012, in his comments on the State party's observations, the author submitted that the Syktyvkar City Court had completely ignored his complaints regarding his detention in the punishment and rubber cells and the testimonies of his cellmates that he presented as evidence. He submits that he provided a detailed description of the interior of the rubber cell and the punishment cell, as evidence that he had been placed in those cells.

5.5 The author also submits that on 1 March 2010, the Supreme Court of the Komi Republic rejected his request for a supervisory review, stating that no serious violations of the material and procedural rules had been committed by the lower courts. The author maintains that any further appeals in the Russian Federation would be pointless. He also submits that a request for a supervisory review by the Supreme Court of the Russian Federation is not considered an effective remedy and that the Constitutional Court has limited competence and would not review the issue of compliance with an international treaty.

5.6 The author challenges the State party's submission that article 10 (2) of the Covenant is not applicable to him, since he was detained in the detention centre in the capacity of an accused person between 1 September 2006 and 28 August 2007, when the verdict against him entered into force. He also submits that his correspondence with the European Court of Human Rights did not yield any results, since his application was rejected because he had missed the deadline for submission.

5.7 The author further maintains that in violation of article 2 (2) of the Covenant, the State party did not provide effective measures against the illegal or unregistered placement of a detainee in the rubber cell. He also submits that the State party failed to provide information on when the heating system was turned on in the detention centre and reiterates that he was kept in underwear in the rubber cell in very cold temperatures.<sup>3</sup> He also reiterates that the State party has failed to provide an explanation as to why he was detained with mentally ill and convicted detainees. He also submits that he was placed under monitoring on 2 September 2006 as a person inclined to commit suicide.

#### **State party's observations on the merits**

6.1 On 28 March 2013, the State party submitted that in accordance with the internal rules of the pretrial detention centre, approved by order No. 189 of the Ministry of Justice of the Komi Republic on 14 October 2005, upon arrival detainees are placed in a common cell for no more than one day. The author arrived on 1 September 2006 and was placed in common cell No. 1. On 2 September, he was moved to cell No. 66. Upon arrival, the author

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<sup>2</sup> The author submitted a letter from a fellow detainee, describing the author's poor health, which was allegedly presented as evidence in court, but was ignored.

<sup>3</sup> The author submitted a copy of a note from the medical service of the detention centre, stating that he requested medical assistance on 20 September 2006, because he had a cold; that on 2 February 2007 he was suffering from dermatitis; and that on 16 June and 4 September 2007 he was suffering from post-traumatic encephalopathy.

requested the administration to take measures to ensure his safety, because he was a former employee of the same detention centre and had committed a sexual assault against a minor. Based on that request, the administration issued a ruling that he should be kept separately from the general population of the detention centre. The author was placed in single cell No. 3 (the punishment cell) from 4 to 6 September in order to ensure his safety. The placement did not constitute a disciplinary measure. The State party maintains that the cell was equipped in accordance with the requirements of the legislation in force, namely it had a metal bed with a wooden cover, attached to the wall, a table and a chair that were bolted to the floor, and there was a shelf for personal items, a tap, a sink and a toilet.

6.2 The State party confirms that there was a loudspeaker in the corridor of the first floor of the detention centre, but maintained that the noise was kept at acceptable levels. The author's allegations that the loudspeaker was used in a discriminatory manner to interrupt conversations between cells were subjected to verification but could not be confirmed. The State party also maintains that in 2003 the shutters were removed from all cells in detention centres and the windows equipped with glass panels, allowing in natural light and the possibility to read and work. The windows are also big enough to provide fresh air. Further, the detention centre in question has its own heating system, the start of the heating season is established by the municipal authorities and the temperature in all cells is to be no less than 18°C in winter and between 18°C and 20°C in summer. The medical officers of the centre do a daily check of the temperature in the cells. There were no violations of the above rules registered in the period when the author was detained there.

6.3 The State party further submits that between 6 September 2006 and 20 January 2007 the author was held together with five other detainees, who were also considered to be in danger from the general population of the detention centre, most of them being former officers. With regard to the author's allegations that he was held in a rubber cell and was placed under monitoring as a person inclined to commit suicide, the State party maintained that when placed in detention, the author demonstrated the following characteristics: he had difficulties adapting to the conditions of detention, was unbalanced, closed, secretive, touchy, expressed the intention of harming himself and had an inclination towards suicidal behaviour. Accordingly, based on a recommendation of a standing commission of the detention centre, the author was placed on a monitoring list as a person inclined to commit suicide on 2 September 2006. When he was transferred to penal colony No. 49 to serve his sentence, he was also placed on such a list.

6.4 Regarding the author's allegations that he was denied walks without reason and that the food was bad, the State party submits that in accordance with article 15 of the internal rules of the detention centre, detainees are entitled to a one-hour walk a day. According to the register of the SIZO the author had been taken for walks every day. He was allowed to bath once a week, for no less than 15 minutes. According to the records, during his stay in the detention centre he never applied for disinfection of his clothes or bed linen. Detained persons receive hot food three times a day and the State party provides general information regarding the food and the rules relating to its preparation. The State party also explains that on days when detainees are taken out to court or for investigative actions, they can receive a dry ration, but prefer to get a hot dinner or lunch upon their return.

6.5 The State party denies that the author suffered from a cold as a result of being held in a rubber cell, since there is no mention of that in his medical records. It provides a list of eight occasions on which the author was examined by the medical service of the detention centre and diagnoses were established (including acute respiratory infections on 20 September 2006 and 21 February 2007, acute respiratory viral infection on 29 May 2007, dermatitis on 2 February 2007 and post-traumatic encephalopathy on 16 June and 4 September 2007) for which he received adequate treatment. There is no record that the

author suffered from any parasites during his time in the detention centre. At the time of submission, the author was suffering from osteochondrosis and was having treatment.

6.6 The State party denies that the author was ever held in cell No. 35 and maintained that in cell No. 33, which is 11.4 m<sup>2</sup> in size, he was only held with one other detainee and that he always had an individual bed and bed linen.

6.7 The State party maintains that the “reasonable statute of limitations” regarding the author’s allegations has expired, since more than six years had passed since the alleged violations of his rights and more than two years have passed since the courts rejected his complaint. The State party also reiterates its submission with regard to the author’s application to the European Court of Human Rights.

6.8 The State party further submits that there is no record of any conflicts between the author and his cellmates in the detention centre and that the author himself never filed any complaints with the administration of the centre regarding degrading treatment by other detainees or violations by officers in the detention centres. The register of personal complaints at the detention centre lists a number of occasions when the author addressed requests to the administration. All those requests were dealt with in accordance with the law and without discrimination.<sup>4</sup> The State party notes that the alleged violations were subject to judicial proceedings in the law suit of the author against the administration of the detention centre and the Ministry of Finance and the Treasury Department of the Komi Republic. The lawsuit was rejected on 29 May 2009 by a decision of the Syktyvkar City Court. The author also filed a complaint claiming that documents presented to the Court by employees of the detention centre were faked and requesting their criminal prosecution. Those claims were investigated by the Syktyvkar investigative department of the Russian Federation Investigative Committee which refused to bring criminal charges against the employees of the centre. The legality of that decision was verified by the General Prosecutor’s Office of the Russian Federation and no grounds to revoke it were found. The State party concludes that no violations of the author’s rights under articles 7, 10 (1) and (2) and 26 of the Covenant were committed during his detention in detention centre No. 1.

#### **Author’s comments on the State party’s observations on the merits**

7.1 On 7 August 2013, the author reiterated his allegations regarding the period that he spent in the rubber cell. He also noted that the State party had admitted that he had been held in the punishment cell, providing the explanation that it was not recorded because he was there not as a punishment, but for his own protection. He reiterates, however, that he was held in the punishment cell for one and a half months and not for two days, as stated by the State party. He further notes that the State party confirms his claim regarding the existence of a loudspeaker in the corridor of the detention centre and reiterates that it was used to play the radio extremely loudly in order to prevent conversations. He further notes that even if in 2003 the shutters were removed from the windows of the detention cells, that was not the case for the punishment cells and further maintains that the window in the punishment cell where he was kept was covered with a metal sheet with small holes in it that did not allow adequate light and air into the cell. He further notes that the State party failed to provide information on when the heating season would start, reiterates his submission regarding the cold in the rubber cell and maintain that the State party’s submission also mentions that he was suffering from an acute respiratory infection on 20 September 2006.

7.2 The author also maintains that three of his cellmates (names on file) suffered from psychiatric illnesses and that one of them put psychotropic substances in the author’s food.

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<sup>4</sup> The State party does not specify the nature of the requests listed in the register, nor does it provide copies of documents or any details.

He challenges the State party's submission regarding his psychological characteristics and maintains that if he was that unstable he would not have been allowed to work in a detention centre, since potential employees go through extensive medical screening. He maintains that the information above was presented by the State party in order to exonerate the employees of the penitentiary. He refers to the conclusion of his forensic psychiatric examination, dated 19 January 2007, which found that he was not suffering from any chronic psychiatric conditions or other psychiatric troubles.

7.3 The author maintains that he was not taken out of his cell every day, as submitted by the State party and that the quoted records are not genuine. He submits that in the period when he was detained in the detention centre it was overcrowded, that it was logistically complicated to take all detainees for a walk for the required hour and that the guards predominantly took out inmates from cells with multiple occupancy, because they feared riots if they failed to do so. He also submits that many of his oral complaints, such as those regarding the condition of his mattress were never recorded by the administration. He reiterates that on the days when he was taken to court, he never received any dry rations and often did not get dinner either. He also repeats the information regarding the number of detainees in the cells where he was detained and regarding his application to the European Court of Human Rights. The author confirms that he only made oral complaints regarding the harassment he suffered from cellmates, but alleges that it was instigated by personnel of the detention centre and therefore the complaints remained unrecorded and unaddressed.

#### **State party's additional observations**

8.1 On 13 November and 19 December 2013, the State party submitted that upon his arrival at the detention centre at 6 p.m. on 1 September 2006 the author was placed in common cell No. 8 until 8.30 the next morning and was then transferred to cell No. 66. In accordance with domestic regulations, he was subjected to a full search twice. The author's allegations that he had been held in a rubber cell could not be confirmed. He was placed in single punishment cell No. 3 from 4 to 6 September 2006 in order to guarantee his safety. The State party reiterates its submission with regard to the loudspeaker in the corridor of the detention centre. It also reiterates the information regarding the author's medical records and maintains that the acute respiratory infection he had on 20 September 2006 could not have been caused by a stay in a rubber cell on 1 and 2 September.

8.2 The State party confirms that one of the author's cellmates was being monitored by a psychiatrist, but maintains that his illness was in remission at the time, he did not have to be isolated and did not present a danger to the other inmates. One other cellmate, who was placed in the cell between 22 May and 7 July 2007, also had a psychiatric condition and was inclined towards self-harm (name on file). No unlawful acts by that individual towards the author have been established. The remaining cellmates of the author were placed together with him in order to protect them from the general population and all but the two individuals undergoing psychiatric treatment were former officers.

8.3 The State party reiterates the evaluation of the author's personality (see paragraph 6.3 above) and submits that the evaluation was prepared by the Penitentiary Department and sent to the Prosecutor's Office. The State party maintains that the author was being monitored based on a psychological report revealing that he had psychiatric deviations. The State party reiterates its submission regarding walks, hygiene, food rations and the availability of an individual bed and bed linen in the detention centre (see paragraph 6.4). The State party also reiterates its submission regarding the domestic judicial proceedings (see paragraphs 4.2 and 6.8).

### **Additional submissions by the parties**

9. On 9 December 2013 and 23 January 2014, the author challenged the State party's submission and reiterated some of his factual claims.

10. On 2 April 2014, the State party reiterated its submission on the merits of the communication (see paragraphs 6.1-6.8).

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

#### *Consideration of admissibility*

11.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 93 of its rules of procedure, whether the claim is admissible under the Optional Protocol.

11.2 The Committee notes the State party's submission that the communication should be declared inadmissible because the author had filed a complaint to the European Court for Human Rights in 2010, which was rejected on 21 May 2010, since the Court decided that the application did not correspond to the requirements of articles 34 and 35 of the European Convention on Human Rights. The Committee observes that the matter is no longer pending before another procedure of international investigation or settlement and that the Russian Federation has not entered a reservation to article 5 (2) (a) of the Optional Protocol. Therefore, the Committee is not precluded by article 5 (2) (a) of the Optional Protocol from considering the present communication.

11.3 The Committee takes note of the State party's argument that the "reasonable statute of limitations" regarding the author's allegations has expired, since more than six years have passed since the alleged violations of his rights and more than two years have passed since the courts rejected his complaint in that regard.<sup>5</sup> The Committee notes that there are no fixed time limits for submission of communications under the Optional Protocol and that mere delay in submission does not of itself, involve an abuse of the right to submit a communication.<sup>6</sup> The Committee further notes that rule 96 (c) of its rules of procedure, which came into force on 1 January 2012 does not regard the two-year delay in the present case to amount to an abuse of the right of submission.

11.4 The Committee takes note of the author's submission that on days when he was taken to court hearings, he was woken up at 6 a.m., kept for three hours in a transfer cell in the basement and transported to the court in a truck, in which he was obliged to sit on a wooden bench. In the court building, he was kept all day in a cell, which measured 1m x 3m, despite the fact that hearings usually took only a few minutes. He was not provided with any food and only allowed to drink water from the tap when he was taken to the toilet. He was returned to the detention centre after dinner time, so on days when he had court hearing his only meal was breakfast. However, the Committee notes that in the present case the author has not submitted any information or documents to demonstrate that he has ever complained at the domestic level about the alleged inhuman or degrading conditions on days when he was taken to court hearings or the results of such complaints. In those circumstances, and in the absence of any further information on file, the Committee declares that part of the communication inadmissible pursuant to article 5 (2) (b) of the Optional Protocol.

11.5 The Committee notes that the State party has challenged the admissibility of the communication for non-exhaustion of domestic remedies under articles 2 and 5 (2) (b) of

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<sup>5</sup> See paragraph 6.7 above.

<sup>6</sup> See, inter alia, communication No. 1445/2006, *Polacková and Polacek v. Czech Republic*, Views adopted on 24 July 2007, para. 6.3.

the Optional Protocol, on the grounds that the author failed to exhaust the available domestic remedies in that he had failed to file an appeal before the Supreme Court of the Russian Federation. The Committee notes, however, that the State party does not specify the type of appeal available to the author. The Committee also notes that the State party has not challenged the author's submission that the only remaining remedy for him would be to request a supervisory review. The Committee recalls its jurisprudence, according to which the filing of requests to a court for a supervisory review directed against court decisions that have entered into force and depend on the discretionary power of a judge constitutes an extraordinary remedy and that the State party must show that there is a reasonable prospect that such requests would provide an effective remedy in the circumstances of the case.<sup>7</sup> The State party has not shown, however, whether and in how many cases petitions to the president of the Supreme Court for supervisory review procedures were applied successfully in cases concerning degrading treatment of detainees by detention centre personnel. In those circumstances, the Committee considers that it is not precluded by articles 2 and 5 (2) (b) of the Optional Protocol from examining the present communication.<sup>8</sup>

11.6 The Committee takes note of the author's claim that his rights under article 26 of the Covenant have been violated. However, in the absence of any other detailed and documented information, the Committee considers that the claim has been insufficiently substantiated for the purposes of admissibility and therefore considers it inadmissible under article 2 of the Optional Protocol.

11.7 The Committee notes the State party's submission that the communication should be declared inadmissible as "insufficiently founded". The Committee, however, considers that the author has sufficiently substantiated his claims under articles 7 and 10 (1) and (2) of the Covenant for the purposes of admissibility and proceeds with its consideration of the merits.

#### *Consideration of the merits*

12.1 The Committee has considered the communication in the light of all the information made available to it by the parties, as provided under article 5 (1) of the Optional Protocol.

12.2 The Committee notes the author's allegations that on 1 September 2006, after he had been transferred to detention centre No. 1, he was detained for 18 hours in a "rubber cell", where there was a strong smell of rubber and an absence of ventilation; the cell was not heated, while the temperature outside was 12°C; he was denied access to the toilet and not given food or water; and his sleep was disturbed every 30 minutes. The Committee, however, notes that the State party maintains that according to their records the author has never been placed in a rubber cell and that his allegation has been reviewed by the courts and found to lack credibility, while in his submission the author failed to indicate if and why these decisions were arbitrary or unreasonable.

12.3 The Committee further notes the author's submission that he was kept in a punishment cell for a month and a half and that the said cell was 2m x 3m in size, located

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<sup>7</sup> See communications No. 836/1998, *Gelazauskas v. Lithuania*, Views adopted on 17 March 2003, para. 7.4; No. 1851/2008, *Sekerko v. Belarus*, Views adopted on 28 October 2013, para. 8.3; Nos. 1919-1920/2009, *Protsko and Tolchin v. Belarus*, Views adopted on 1 November 2013, para. 6.5; No. 1784/2008, *Schumilin v. Belarus*, Views adopted on 23 July 2012, para. 8.3; No. 1814/2008, *P.L. v. Belarus*, decision of inadmissibility adopted on 26 July 2011, para. 6.2; No. 2021/2010, *E.Z. v. Kazakhstan*, decision of inadmissibility adopted on 1 April 2015, para. 7.3; No. 1873/2009, *Alekseev v. Russian Federation*, Views adopted on 25 October 2013, para. 8.4; No. 2041/2011, *Dorofeev v. Russian Federation*, Views adopted on 11 July 2014, para. 9.6.

<sup>8</sup> See also communication No. 2141/2012, *Kostenko v. Russian Federation*, Views adopted on 23 October 2015, para 6.3.

half underground and lacking daylight because the windows were covered with metal sheets with small holes in them, and that he was denied visits to the bathing facilities while he was held there. The Committee also notes the State party's submission that the author was only placed in a punishment cell from 4 to 6 September 2006, as a protection measure, after he requested to be placed under protection owing to his being a former employee of the penitentiary and to the nature of the crime he was accused of committing. The State party also denies the existence of cells where access to daylight would be blocked in the time period described by the author.

12.4 The Committee also notes the author's submission that, after being released from the punishment cell, he was placed in other cells, including cells designed for two persons that he had to share with two other detainees; that in January 2007, he was given a lice-ridden mattress, which caused him to develop a severe skin condition and that his requests to obtain a new mattress were denied; that he was not taken for exercise outside the cell every day and that he did not have regular access to bathing facilities. The Committee notes that the State party has denied the above allegations, claiming that according to its records, the author was taken for walks on a daily basis, that he always had an individual bed to sleep on and that there were no recorded complaints regarding the condition of his mattress.

12.5 The Committee also notes the author's claims that the employees of the pretrial detention centre deliberately disclosed the circumstances of the accusations against him to the other detainees, that he was constantly threatened by other detainees and that as a result of the constant pressure, on 10 June 2007, he attempted to commit suicide. The Committee also notes the State party's submission that there was no record of any conflicts between the author and his cellmates in the pretrial detention centre; that the author never filed any complaints regarding degrading treatment by other detainees and that there was no record of a suicide attempt, but that the author was unstable and prone to self-harm, and that for that reason he had been placed under monitoring as a person at risk of suicide.

12.6 In the light of the State party's refutation of the allegations of the author and relevant decisions of the courts, as well as the author's failure to produce documentary evidence in support of his allegations, or indicate if and why the decisions of the courts were arbitrary or unreasonable, the Committee cannot conclude that conditions in the detention centre or the State party's actions with regard to the author constituted a violation of his rights under articles 7 and 10 (1) of the Covenant.

12.7 The Committee notes the author's submission that while in the detention centre he was kept together with individuals with previous convictions, despite the fact that at the time he had the status of only being accused, in violation of his right under article 10 (2) (a) of the Covenant. The Committee, however, notes the State party's explanation that upon arrival, the author requested the administration to take measures to ensure his safety, because he was a former employee of the same detention centre and had committed a sexual crime against a minor; that based on his request the administration issued a ruling that he should be kept separately from the general population and that subsequently he was placed in a cell with other former officers accused of committing crimes and with inmates who were considered to be under threat from the rest of the detainees for other reasons (i.e. psychosocial disabilities). The Committee recalls that the State party is under the obligation to ensure segregation of accused persons from convicted ones, in order to ensure their status as unconvicted persons who enjoy the right to be presumed innocent, as stated in article 14 (2), as well as to ensure the rights guaranteed by article 10 (2) of the Covenant.<sup>9</sup> The Committee observes, however, that the State party is not required to make a distinction between the pretrial detainees with and without previous convictions, unless it is necessary to ensure the security and safety of a detainee, or is necessary for the proper administration

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<sup>9</sup> See general comment No. 21 (1992) on humane treatment of persons deprived of their liberty, para. 9.

of justice. All detainees in pretrial detention should equally enjoy the right to be presumed innocent, regardless of the number of previous convictions. Accordingly, the Committee finds that the fact that the author was detained with detainees with previous convictions during his pretrial detention in the circumstances of his case, did not constitute a violation of article 10 (2) (a) of the Covenant.

13. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts before it do not reveal any violations of the Covenant.

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