



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. 2446/2014*, **, ***

<i>Communication submitted by:</i>	Vladimir Vovchenko (not represented by counsel)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Russian Federation
<i>Date of communication:</i>	27 December 2013 (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 28 July 2014 (not issued in document form).
<i>Date of adoption of Views:</i>	24 October 2019
<i>Subject matter:</i>	Arrest without record; handcuffing; failure to provide adequate medical care in detention
<i>Procedural issues:</i>	Exhaustion of domestic remedies; substantiation of claims
<i>Substantive issues:</i>	Arbitrary arrest – detention; cruel, inhuman or degrading treatment or punishment; conditions of detention; freedom of movement – own country
<i>Articles of the Covenant:</i>	7, 9, 10 and 12
<i>Articles of the Optional Protocol:</i>	2 and 5 (2) (b)

1. The author of the communication is Vladimir Vovchenko, a national of the Russian Federation born in 1979. He claims that the State party has violated his rights under articles 7, 9, 10 and 12 of the Covenant. The Optional Protocol entered into force for the State party on 1 January 1992. The author is not represented by counsel.

* Adopted by the Committee at its 127th session (14 October–8 November 2019).

** The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Yadh Ben Achour, Ilze Brands Kehris, Arif Bulkan, Ahmed Amin Fathalla, Schuichi Furuya, Christoph Heyns, Bamariam Koita, Photini Pazartzis, Hernán Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Yuval Shany, Hélène Tigroudja, Andreas Zimmermann and Gentian Zyberi.

*** Individual opinions by Committee members Christoph Heyns (dissenting), José Manuel Santos Pais (dissenting) and Gentian Zyberi (partly dissenting) are annexed to the present Views.



Factual background

2.1 The author suffers from a second-degree visual disability. On 10 April 2013, at around 11 a.m., he was apprehended, together with Mr. Sh., during a police investigative operation regarding a case of extortion.¹ The author and Mr. Sh. were brought to the Volgograd regional police station, investigator's office No. 7. The journey to the police station took some 20 minutes. The author claims to have been handcuffed from the moment of apprehension.² Having spent several hours handcuffed, either alone or with Mr. Sh.,³ and locked in the investigator's office, the author was questioned as a witness, between 4 p.m. and 5.30 p.m. A face-to-face interrogation with the victim – Mr. B. – took place between 5.35 p.m. and 6.10 p.m. The author was taken to his apartment for a search between 9 p.m. and 10 p.m. At 11.47 p.m., at the police station, the author was notified that he was suspected of having committed a crime under article 163 (3) (b) of the Criminal Code (extortion for the purpose of obtaining property on an especially large scale). An official record of the author's arrest was then drawn up. The author signed the record of arrest without any objections.

2.2 On an unspecified date, the author filed a complaint with the Central District Court in Volgograd,⁴ under article 125 of the Criminal Procedure Code, against the investigator for failure to draw up his record of arrest in a timely manner⁵ and to inform him of his rights, including the right to a lawyer and on the use of handcuffs. The author claimed that before 4 p.m., when he was questioned, he had been handcuffed and locked up in the investigator's office. The prosecutor and investigator argued that, at the moment of the author's apprehension, the investigating authorities had no information about the author's involvement in the crime.⁶ That is why, after being brought to the Volgograd regional police station, the author participated in the investigative procedure as a witness. Having clarified the circumstances of the case, the investigator made a decision to have the author arrested as a suspect.

2.3 On 12 September 2013, the Central District Court rejected the author's complaint. The Court noted that the author had participated in the examination of the crime scene between 12 noon and 1 p.m., had been questioned as a witness between 4.00 p.m. and 5.30 p.m., had had a face-to-face interrogation with the victim between 5.35 p.m. and 6.10 p.m., and had been taken to a search of his apartment between 9.32 p.m. and 9.55 p.m. on 10 April 2013. After these investigative actions, at 11.47 p.m., a record of arrest had been drawn up by the investigator. At 9 a.m. on 11 April 2013, within 12 hours of the moment of arrest, the investigator had informed the prosecutor's office of the author's arrest, in accordance with the requirements of article 92 (3) of the Criminal Procedure Code. The Court noted that there was no evidence that the author's freedom of movement had been restricted between the examination of the crime scene and drawing up the record of arrest. The Court found that the author had failed to present any evidence of having been handcuffed⁷ and also stated that since the author had participated in the investigative procedure as a witness, he had had no right to be provided with a lawyer but could have sought one on his own.

¹ The author was apprehended after the victim handed the money, marked by the police, to Mr. Sh., who arrived at the crime scene with the author in the author's car.

² The author, along with Mr. Sh., was taken to the police station in order to clarify his status in the case. The investigator denies having handcuffed the author.

³ During his questioning by the investigator, Mr. Sh. stated that he and the author had been handcuffed while held at the police station.

⁴ The author was represented by a lawyer in all judicial proceedings mentioned in the submission. The author himself worked as a lawyer in various companies.

⁵ Under article 92 of the Criminal Procedure Code, a record of arrest must be drawn up within three hours after a suspect is brought to the investigating authorities or the prosecutor.

⁶ According to the investigator, the criminal case was open on the basis of reported facts, and not against concrete individuals, therefore, he did not know whether the author was involved in the case. The criminal police report of 8 April 2013 concerning this case mentions the author as a suspect. However, the report was declassified only at the end of the working day on 10 April 2013, after the author's apprehension.

⁷ The author does not allege that he was ill-treated or received any injuries as a result of handcuffing. Investigation into his allegations of having been handcuffed took place after the Central District Court's decision (see paras. 2.5–2.6).

2.4 On 11 December 2013, the Volgograd Regional Court upheld the Central District Court's decision on appeal. The court of appeal noted that, according to the meaning of criminal procedure law, the moment of factual arrest had been the moment when the arrest decision had been made in accordance with articles 91 and 92 of the Criminal Procedure Code,⁸ that is at 11.47 p.m. on 10 April 2013, and when the record of arrest had been read out to the author. The rest of the measures related to apprehension and transportation of the author to the police station, where he had spent some time before the record of arrest had been drawn up, did not form part of the arrest, as understood in criminal procedure, but fell under the definition of "conveying".⁹

2.5 On 10 September 2013, the author requested the Volgograd regional police department to carry out an investigation of his unlawful handcuffing by police officers. On 8 October 2013, the investigation was concluded with the finding that the author's allegations of unlawful handcuffing could not be established. The decision mentioned the testimony of police officers M., Re. and Ro., who had taken the author for a search of his apartment. Officer M. stated that he had handcuffed the author with the intention of transporting him from the police station to the apartment and preventing his escape and physical resistance. The handcuffs were removed before the author entered his apartment. On 6 February 2014, the author appealed the finding of the regional investigative department to the Ministry of the Interior. The author claimed, inter alia, that at the moment of the search he had been a witness and not a suspect. He referred to the Constitution and the Criminal Procedure Code according to which, as a witness, he was free to go anywhere and the police did not have a right to take him by force and handcuff him.¹⁰

2.6 On 12 September 2013, the author submitted a request to the Dzerzhinsky district investigative unit of the Volgograd regional investigative committee to open a criminal case against the police officers for unlawful handcuffing. His request was rejected, in the absence of *corpus delicti*, on 23 September, 9 October and 12 December 2013 and 20 January 2014. The decisions noted that the author had not reported any injuries or ill-

⁸ Article 91, paragraph 1, provides that an investigator or a prosecutor has the right to arrest a suspect on suspicion of his or her having committed a crime punishable by deprivation of liberty on any of the following grounds: (a) the person is caught committing the crime or immediately afterwards; (b) the victim or witnesses identify the person as the perpetrator of the crime; or (c) clear evidence of a crime is discovered on the person, his or her clothing or at his or her place of residence.

Article 91, paragraph 2, provides that a suspect can also be arrested if: he or she has tried to flee or does not have a permanent residence; his or her identity has not been established; or the prosecutor or the investigator has applied to the court seeking the individual's detention as a preventive measure.

Article 92 sets out the procedure for the arrest of a suspect. A record of arrest must be drawn up within three hours of the time the suspect is brought to the investigating authorities or the prosecutor. The record of arrest must include the date, time, place, grounds and reasons for the arrest. It should be signed by the suspect and the person who carried out the arrest. Within 12 hours of the time of the arrest, the investigator must notify the prosecutor of it in writing. The suspect must be questioned in accordance with established questioning procedure and a lawyer must be provided for him or her at his or her request. Before questioning, the suspect has the right to a confidential two-hour meeting with a lawyer.

⁹ In Russian, the word is "*dostavleniye*". The appeal court does not refer to any particular provision of the Criminal Procedure Code with regard to "conveying". In fact, the Criminal Procedure Code does not define this term. Article 27.2 of the Code of Administrative Offences of 30 December 2001 contains a definition of "conveying": "1. The escorting or the transfer by force of an individual for the purpose of drawing up an administrative offence report, if this cannot be done at the place where the offence was discovered and if the drawing up of a report is mandatory, shall be carried out: (1) by the police."

Article 92 of the Criminal Procedure Code provides that a record of arrest must be drawn up within three hours of the time the suspect is brought (*posle dostavleniya*) to the investigating authorities or the prosecutor. The European Court of Human Rights construes the term "conveying" employed in the Criminal Procedure Code as measures related to forced escorting of the suspect to the authority competent to formalize the arrest and treats it as effectively constituting deprivation of liberty as part of arrest.

¹⁰ The author seems to refer to the wrong article of the Code, namely 51. Under article 56 of the Code, a witness can be summoned for questioning. Articles 56 (7) and 113 of the Code provide for the possibility of bringing the witness in for questioning by force if he or she fails to respond to a summons without valid reasons. The author has never been summoned as a witness.

treatment by the police. The investigative department referred to article 21 (6) of the Law on Police of 7 February 2011, which allows police officers to use special restraint measures (handcuffs) during the transportation of apprehended and arrested persons to police stations in order to prevent escape, resisting a police officer or causing harm to others or oneself.

2.7 On 12 April 2013, the Central District Court ordered the author's pretrial detention in SIZO No. 1 in Volgograd. The pretrial detention was extended on several occasions by court decisions; the last decision, on 3 December 2013, extended the author's detention until 4 March 2014. In his appeals (dates not specified) of the Central District Court's decisions to extend his pretrial detention dated 12 April and 24 May 2013, the author mentioned his second-degree visual disability and the deterioration of his health in detention. On 30 April and 7 June 2013, the Volgograd Regional Court rejected the author's appeals and his requests to substitute his detention for house arrest. In its decision dated 30 April 2013, the Regional Court indicated that the author had failed to present documents related to his disability. In its decision of 7 June 2013, the Regional Court stated that the question regarding the author's medical treatment and the actions of the staff of SIZO No. 1 in this regard were outside its jurisdiction and had to be addressed through a different procedure. The author's cassation appeal (date not specified) to a judge of the Volgograd Regional Court, concerning the District Court's decision of 24 May 2013 and the Regional Court's appeal decision of 7 June 2013, was rejected on 28 August 2013.

2.8 In the appeal decision dated 18 December 2013, the Volgograd Regional Court reduced the period of the author's detention to 19 January 2014. Regarding the author's claims about his lack of medical treatment, the Regional Court stated that, according to the information provided by the Head of SIZO No. 1, the author had been referred to municipal and prison medical facilities in Volgograd for consultations and examinations regarding his illness. The court stated that the author had failed to present evidence regarding the deterioration of his health in detention.

2.9 The author was diagnosed with ocular nerve atrophy and retinal dystrophy, having received ophthalmological outpatient treatment since 2006.¹¹ In this connection, he had to undergo specific treatment, twice a year, to maintain his vision. The author submitted requests to the head of SIZO No. 1 on 4 August and 20 September 2013 asking for the necessary treatment. His lawyer submitted similar requests on 24 September and 12 November 2013. On 3 October 2013, the author was admitted to LIU-15 prison hospital with pharyngitis. The author's lawyer submitted requests to provide the author with the necessary ophthalmological treatment to the head of the LIU-15 prison hospital on 11 and 15 October 2013. Despite these requests, the author received no ophthalmological treatment and was never examined by an ophthalmologist. On 21 October 2013, he was transferred back to SIZO No. 1. According to medical documents, his health condition upon discharge was satisfactory and there were no grounds for hospitalization.

2.10 On 17 December 2013, the author requested the Dzerzhinsky district investigative department to open a criminal investigation concerning the failure by the staff of LIU-15 to provide him with adequate medical care.

The complaint

3.1 The author claims that the failure of the investigator to draw up a record of his arrest within three hours of his actual apprehension, to inform him of his rights and to provide him with a lawyer, and the fact that he was handcuffed while still being a witness, violated his rights under articles 9 and 12 of the Covenant.

3.2 He claims that the failure of the staff of SIZO No. 1 and LIU-15 to provide him with the necessary ophthalmological treatment amounted to a violation of his rights under articles 7 and 10 of the Covenant.

State party's observations

4.1 In a note verbale dated 8 December 2014, the State party contests the admissibility of the communication on the grounds of the failure of the author to exhaust all available domestic remedies. The State party reiterates the facts of the case and adds that, on 19

¹¹ This diagnosis is mentioned in a medical certificate from the Nikolaevsky Central Regional Hospital in Volgograd Region dated 5 August 2013.

January 2014, the author's detention period ended and he was released. On 24 January 2014, the Volgograd Regional Court ordered the author's house arrest. On 16 April 2014, house arrest was replaced with an engagement not to leave the country and a requirement of good behaviour.

4.2 On 15 January 2014, the author was charged under articles 33 (3) (organizer of a crime), 163 (1) (extortion) and 163 (3) (b) (extortion for the purpose of obtaining property on an especially large scale) of the Criminal Code. In April 2014 the criminal investigation was closed and the case was transmitted to the Kirov Regional Court in Volgograd for consideration. The court proceedings were ongoing at the moment of the State party's submission.

4.3 The investigation into the author's allegations of unlawful handcuffing carried out on 12 April 2014 by the Volgograd regional police department did not reveal any unlawful actions committed by the police officers. The Dzerzhinsky district investigative unit carried out an investigation on 20 January 2014 and decided not to open a criminal case given the absence of corpus delicti in the police officers' acts.

4.4 The author complained to the Central District Court in Volgograd about the investigator who had failed to draw up the record of arrest within three hours of his apprehension, had not informed him of his rights, including his right to a lawyer, and had kept him handcuffed. The Court rejected these claims on 12 September 2013. The Volgograd Regional Court upheld the Central District Court's decision on 11 December 2013. The appeal court indicated that the author had the possibility of submitting a cassation appeal within one year of the date of the appeal decision. The author failed to submit a cassation appeal under articles 389.35 and 401 (2) of the Criminal Procedure Code.

4.5 Regarding the author's allegations of lack of medical care in detention, the State party submits that, on the basis of the decision by the SIZO No. 1 medical commission, the author was examined twice at Volgograd regional clinical hospital No. 1. According to the hospital's decisions dated 9 August and 16 September 2013, the author did not have an illness that could exclude the possibility of detention. From 3 to 21 October 2013, the author was treated in LIU-15 based on a diagnosis of pharyngitis. On 21 February 2014, the federal health-care monitoring service in Volgograd Region carried out an investigation concerning the quality of medical care provided to the author in LIU-15. The investigation indicated that the author had not been provided with the necessary treatment for his ophthalmological condition and that he had not received any hospital or outpatient treatment for retinal dystrophy. The monitoring service issued an instruction to LIU-15, but concluded that the said omission had not and would not result in the deterioration of the author's illness.

4.6 The State party notes that, on 7 June 2013, the Volgograd Regional Court, considering the author's appeal on the prolongation of his detention, addressed the author's complaint concerning the lack of medical care in detention. The Court explained that it did not have jurisdiction over the matter and that the actions of SIZO No. 1 should be appealed through a different procedure. The State party submits that national law provides for the possibility for everyone to bring a civil suit against the acts or omissions of State officials and to receive compensation for such acts or omissions. The author has never complained to a court about the acts or omissions of SIZO No. 1 staff.

4.7 The State party concludes that the author has failed to exhaust all domestic remedies.

Author's comments on the State party's observations

5.1 On 10 March 2015, the author submitted his comments on the State party's observations. He submits that, contrary to the State party's claim, he did not receive appropriate treatment either in SIZO No. 1 or in LIU-15, as neither of these institutions have an ophthalmologist. He adds that, on 21 January 2014, he was referred by an ophthalmologist from polyclinic No. 5 in Volgograd for inpatient treatment at ophthalmologic hospital No. 1 in Volgograd. The author describes the medication that he received in the hospital and asks the State party to provide a similar description of what was supposedly provided to him in detention.

5.2 The author submits that, after the treatment in hospital No.1, his degree of disability was reclassified from second to first, because he completely lost his sight in both eyes. The

author questions the effectiveness of the treatment allegedly provided to him in detention if the doctors failed to notice his deteriorating eyesight.

5.3 Regarding the State party's claim concerning his failure to complain about his lack of treatment in SIZO No. 1 and LIU-15 to the courts, the author submits that he had three months to submit a complaint to a court. He claims that he could not do so because he was in detention and that he did not have means to hire a lawyer. Because of his blindness, he could not have learned about the procedure on his own. Nevertheless, he complained about the lack of treatment to the higher authorities of the Federal Penitentiary Service and to the prosecutor's office. He claims that, since no action was taken by the authorities mentioned, there was no use in submitting a complaint to the courts.

5.4 According to the author, the State party's claim that he failed to appeal some decisions under cassation and supervisory review proceedings is irrelevant because such proceedings do not need to be exhausted as effective domestic remedies.

5.5 The author complains that a criminal trial against him in Kirov Regional Court is unduly prolonged and, as at the time of submission, has lasted for 12 months. He claims that he has submitted numerous complaints concerning recusal of the judge, the questioning of witnesses, corrections to the court records, carrying out a handwriting analysis etc., but all of them were rejected by judge N. He claims that, for two years, the State party has unlawfully and without evidence continued criminal proceedings against him, notwithstanding his first-degree disability.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 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.

6.2 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.

6.3 The Committee notes the State party's claim that the author has failed to exhaust domestic remedies regarding his claims of unlawful detention under article 9 because he did not submit a cassation appeal against the court decisions of 12 September and 11 December 2013. The Committee also notes the author's claims that cassation and supervisory review proceedings are not considered as domestic remedies to be exhausted for the purposes of admissibility. The Committee notes that the cassation review procedure set out under article 401 of the Criminal Procedure Code concerns the revision, on points of law only, of court decisions that have entered into force. This decision on whether to refer a case to the cassation court is discretionary in nature and is made by one single judge, which leads the Committee to believe that the cassation review contains elements of an extraordinary remedy. Under these circumstances, the State party must show that there is a reasonable prospect that such a procedure would provide an effective remedy in the author's case.¹² In the absence of any clarification from the State party on the effectiveness of the cassation review procedure in cases similar to the present one, the Committee finds that it is not precluded by article 5 (2) (b) of the Optional Protocol from examining the author's claims under article 9 of the Covenant.

6.4 The Committee notes the State party's claim that the author has failed to exhaust all domestic remedies with regard to his allegations under articles 7 and 10 of the Covenant concerning the failure of SIZO No. 1 and LIU-15 staff to provide him with appropriate medical care because he failed to make a corresponding complaint to the competent domestic courts. The Committee also notes the author's allegation that the court proceedings concerning the failure to provide him with the necessary medical care in detention would not have been effective; and that he could not submit a complaint to the court on time because he was in detention and could not afford a lawyer or learn about the procedure himself because of his disability.

¹² *Schumilin v. Belarus* (CCPR/C/105/D/1784/2008), para. 8.3; and *Dorofeev v. Russian Federation* (CCPR/C/111/D/2041/2011), para. 9.6.

6.5 The Committee notes that the State party itself has recognized that the author did not receive the necessary medical treatment in LIU-15, according to the findings of the federal health-care monitoring service in Volgograd Region, which carried out an investigation concerning the quality of medical care provided to the author in LIU-15 (para. 4.5 above). The Committee recalls that the function of the exhaustion requirement under article 5 (2) (b) of the Optional Protocol is to provide the State party itself with the opportunity to remedy the violation suffered by an individual.¹³ It also recalls its jurisprudence that, although there is no obligation to exhaust domestic remedies if they have no chance of being successful, authors must exercise due diligence in the pursuit of available remedies and that mere doubts or assumptions about their effectiveness do not absolve the authors from exhausting them.¹⁴

6.6 In the present case, the Committee observes that the author was represented in all domestic proceedings concerning his pretrial detention by a hired lawyer. The Committee also notes that the author and his lawyer submitted several requests regarding the lack of treatment in detention to the administration of SIZO No. 1 and LIU-15 (para. 2.9 above) and raised related claims in court hearings concerning the author's detention. The author and his lawyer were, however, present when the Volgograd Regional Court, on 7 June 2013, pronounced that it had no jurisdiction over the claims concerning the lack of treatment in detention and informed the author that those claims should be addressed through a different procedure (para. 2.7 above). In these circumstances, the Committee cannot accept the author's claim that he was unaware about the complaint procedure related to lack of treatment in detention and did not have a lawyer who could inform him thereon and represent him in proceedings.

6.7 The Committee also notes that the author submitted a complaint to the Dzerzhinsky district investigative department in Volgograd on 17 December 2013, in which he requested a criminal investigation to be opened concerning the lack of medical care in detention. The Committee notes that the author did not provide any details of the outcome of this investigation and any further steps that might have been taken by him. In such circumstances, the Committee finds the author's claims under articles 7 and 10 of the Covenant inadmissible under article 5 (2) (b) of the Optional Protocol.

6.8 The Committee notes the author's claim that his detention on 10 April 2013 violated his rights under article 12 of the Covenant. The Committee notes that matters related to arrest and detention within criminal proceedings are covered by article 9 of the Covenant. In the absence of any clarification from the author on how his rights under article 12 have been affected, the Committee finds this claim unsubstantiated and inadmissible under article 2 of the Optional Protocol.

6.9 The Committee considers the author's claims under article 9 of the Covenant related to his unlawful arrest on 10 April 2013 sufficiently substantiated, and proceeds with its consideration of the merits.

Consideration of the merits

7.1 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.

7.2 The Committee notes the author's claim under article 9 of the Covenant, namely that on 10 April 2013 he spent some 13 hours in de facto detention before an official record of his arrest was drawn up. In his opinion, such an arrest was contrary to national legislation, which allows three hours for the official record of the arrest to be drawn up once a suspect is brought before the investigator. The Committee notes the author's claims that he remained handcuffed and locked up in the investigator's office for several hours and then participated in investigative actions as a witness and, as such, was deprived of procedural guarantees afforded to arrested persons by national law, in particular the right to be represented by a lawyer.

¹³ *Celal v. Greece* (CCPR/C/82/D/1235/2003), para. 6.3.

¹⁴ See, inter alia, *V.S. v. New Zealand* (CCPR/C/115/D/2072/2011), para. 6.3; *García Perea and García Perea v. Spain* (CCPR/C/95/D/1511/2006), para. 6.2; *Zsolt Vargay v. Canada* (CCPR/C/96/D/1639/2007), para. 7.3; and *S.C. v. Australia* (CCPR/C/124/D/2296/2013), para. 7.8.

7.3 The Committee notes that the national authorities considered the author to be a witness from the moment of his actual apprehension until the official record of arrest was drawn up. In its decision of 12 September 2013, the Central District Court of Volgograd did not find evidence that the author's freedom of movement had been restricted between the examination of the crime scene and the drawing up of the official record of arrest. The investigation carried out by the national authorities found the author's allegations about having been handcuffed to be unsubstantiated. The Committee notes, however, that the police officers M., Re. and Ro., who took the author to a search of his apartment, admitted having handcuffed him for the duration of the journey. The Committee thus observes the facts, uncontested by the parties, that (a) the author was apprehended at the crime scene and taken to the police station; (b) he remained at the police station from the moment of being brought there and was available for all investigative actions; (c) he was handcuffed by the police officers during the journey to his house. The Committee notes that the State party has not established that the author was free to leave at any point of time after his apprehension. The Committee thus concludes that, from the moment of his apprehension at the crime scene, the author remained in custody.

7.4 The Committee notes the author's claim that, as a witness, he should have been free to leave and not taken with handcuffs to a search of his apartment (para. 2.5). The Committee notes that, according to articles 56 and 113 of the Criminal Procedure Code, a witness has to be summoned for questioning. There is a possibility of bringing a witness in for questioning only if he or she has failed to respond to the summons without a valid reason. Article 21 of the Law on Police provides that a police officer can use measures of restraint, in particular handcuffs, for transporting arrested persons. In the light of these provisions, the Committee observes that the actions of apprehending the author and transporting him to the police station, and handcuffing him and transporting him to and from a search of his apartment, can only be applied to an arrested person or to a suspect, but not to a witness.

7.5 The Committee notes the finding of the Volgograd Regional Court that the author was not arrested but conveyed to the investigator from the moment of his apprehension until the official record of arrest was drawn up. The Committee notes that the meaning of the term "conveyed" is not specified in the State party's law on criminal procedure. The Committee observes that the information on file suggests that the author's journey to the police station took some 20 minutes. It also observes that the Volgograd Regional Court does not explain how the investigative actions, which involved the author, in particular taking him from the police station to a search of his apartment, were embraced by the definition of "conveyed". On account of these reasons, the Committee finds that the author's conveyance to the investigator during some 13 hours, during which time he participated in different investigative actions at and outside the police station, appears to include a number of features characteristic of deprivation of liberty.

7.6 The Committee refers to its general comment No. 35 (2014) on liberty and security of person (para. 13), according to which arrest within the meaning of article 9 need not involve a formal arrest as defined under domestic law. In the light of the above considerations, the Committee considers that the author was de facto under arrest from the moment of his apprehension at the crime scene. The Committee notes that under paragraph 23 of its general comment No. 35, States parties are required to comply with the domestic rules providing important safeguards for detained persons, such as making a record of an arrest. In the present case, the Committee observes that the investigator's failure to draw up the record of arrest within three hours of the author's arrival at the police station, while he was not free to leave and was at certain times handcuffed and thus de facto arrested, was not in line with the procedure established in national law. The Committee, therefore, finds that the author's unrecorded arrest between 11 a.m. and 11.47 p.m. on 10 April 2013, in the absence of procedural guarantees provided for by national law, was not based on law and thus arbitrary in nature.

7.7 The Committee also notes that it is clear from the file that the investigator brought the author to the police station in order to clarify his status in the crime through a number of investigative actions and not to simply question him as a witness. The Committee emphasizes that intentionally using the status of witness in order to carry out actions that apply to a suspect, thus excluding a person from the procedural guarantees provided by law, amount to arbitrary detention. The Committee thus concludes that the author's arrest was both arbitrary and unlawful in violation of article 9 (1) of the Covenant.

8. 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 the author's rights under article 9 (1) of the Covenant.

9. Pursuant to article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the author with an effective remedy. This requires it to make full reparation to individuals whose Covenant rights have been violated. Accordingly, the State party is obligated, *inter alia*, to take appropriate steps to provide compensation to the author for his arbitrary detention. 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 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 language of the State party.

Annex I

Individual opinion of Committee member Christof Heyns (dissenting)

1. I regret not being able to join the majority of the Committee in holding that there was a violation of article 9 (1) in this case.
2. It is undisputed that the author was apprehended by the police on the morning of 10 April 2013 and held for between 12 and 13 hours before a record of arrest was drawn up in the evening. However, it is disputed whether he was held during that period as a suspect or a witness (or some combination of the two, while evidence was gathered).
3. Article 92 of the Criminal Procedure Code requires that, if someone is detained “as a suspect”, a record of arrest must be drawn up within three hours of the person being brought to the investigating authorities or the prosecutor.
4. The Committee’s general comment No. 35, setting out its understanding of article 9 of the Covenant, does not require such a record of arrest to be drawn up. Russian law thus poses stricter requirements than the general comment. Paragraph 23 of the general comment requires States to comply with their own laws to provide procedural protection to those detained, such as drawing up a record of arrest, to avoid violating article 9 (para. 7.6).
5. The principle of holding States to such higher domestic safeguards is no doubt sound. However, I am not convinced about its application to the facts before the Committee. It is not clear to me when the clock started running as far as the three-hour period is concerned. In the first place, there is a factual dispute about when the author was first regarded as a suspect. Was the author already considered a “suspect” when he was first taken to the police station or was that point reached only later, based on the additional evidence obtained? We do not know. Moreover, it seems that a somewhat unclear provision of Russian law may play or have played a role in this case, according to which, for the period during which a suspect is taken to a police station, known as “conveying”, the clock does not run (footnote 9). It is hard to judge, from the available evidence, what proportion of the 13 hours technically fell under “conveying”.
6. Care should be taken not to hold States accountable for violations of the Covenant based on infringements of their own, higher standards, in cases in which there is uncertainty about the facts or whether domestic law may be applied selectively – e.g. by imposing the three-hour rule, but not suspending the rule while such suspension may be provided for under domestic law.
7. It is useful to compare the facts of the current case with the very different facts of a case in which the Committee relied on paragraph 23 of general comment No. 35, namely *Kurbonov v. Tajikistan* (CCPR/C/86/D/1208/2003), in which the author was detained for 21 days without a record of arrest, as required by domestic law. There can be no doubt that the three-hour rule was indeed breached in the present case, and that the domestic (and the international) standards were consequently violated.
8. This last case is an extreme one and much shorter periods during which an arrest is to be recorded can potentially be viewed as an article 9 (1) violation, based on a violation of domestic law, but on the facts of the present communication there seems to be too many uncertainties to reach that conclusion.
9. In my view, the claim of a violation of article 9 (1) should therefore have been held inadmissible due to lack of substantiation.

Annex II

Individual opinion of Committee member José Manuel Santos Pais (dissenting)

1. I regret not being able to join the Committee's decision in finding a violation of the author's rights under article 9 (1) of the Covenant.
2. The author was apprehended on 10 April 2013, at around 11 a.m., together with Mr. Sh., during a police investigative operation. Both were brought to Volgograd regional police station. The author claims to have been handcuffed and spent several hours locked in the investigator's office. He was questioned as a witness, between 4 p.m. and 5.30 p.m. A face-to-face interrogation with the victim took place between 5.35 p.m. and 6.10 p.m. The author was subsequently taken to his apartment for a search between 9 p.m. and 10 p.m. At 11.47 p.m., at the police station, the author was duly notified that he was suspected of having committed a crime under article 163 (3) (b) of the Criminal Code (extortion for the purpose of obtaining property on an especially large scale). An official record of the arrest was then drawn up (para. 2.1). Between the moment of the author's apprehension (11 a.m.) and the moment when he was officially considered a suspect and formally arrested (11.47 p.m.) scarcely 12 hours had elapsed.
3. The author, a lawyer by profession (footnote 4), alleges having been questioned as a witness. However, the criminal case was opened on the basis of reported facts, not against concrete individuals, therefore it was not clear whether the author was involved. A criminal police report of 8 April 2013 mentions the author as a suspect. However, the report was declassified only at the end of 10 April 2013, after the author's apprehension (footnote 6). So, when the author was apprehended, after the victim handed over the money, marked by the police, to Mr. Sh., who arrived at the crime scene with the author in the author's car (footnote 1), both the author and Mr. Sh. were taken to the police station in order to clarify their status. After a face-to-face interrogation with the victim and a search of the author's apartment, the author was then duly notified, at the police station, of being a suspect for having committed a crime. An official record of the author's arrest was then drawn up, in line with article 92 of the Criminal Procedure Code, which requires the record of arrest to be drawn up within three hours of the suspect, as such, being brought before the investigating authorities (footnote 5). The author signed the record of arrest without any objections (para. 2.1).
4. Volgograd Regional Court, acting as court of appeal, noted, in this regard, that according to Russian law on criminal procedure, the moment of factual arrest had been the moment when the arrest decision had been taken in accordance with articles 91 and 92 of the Criminal Procedure Code, namely on 10 April 2013, at 11.47 p.m., when the record of arrest had been read out to the author. The rest of the measures relating to the apprehension and transportation of the author to the police station, where he spent some time before the record of arrest was drawn up, do not form part of the arrest, as understood in criminal procedure, but fall under the definition of "conveying" (paras. 2.4 and 7.5). Therefore, the apprehension and conveying of the author were lawful according to the Russian legal order.
5. Hence, I fail to see the rationale behind the Committee's reasoning, in paragraphs 7.3 to 7.7, that considers the author's detention unlawful and arbitrary, when domestic courts, more knowledgeable on domestic legal issues, considered otherwise (paras. 2.4 and 4.4). Even if the author was first apprehended without his status, as a witness or as a suspect, being entirely clear, within just a few hours he was indeed considered a suspect and arrested as such. The status of a person may vary during criminal proceedings: a witness may become a suspect and vice-versa, depending on the evidence produced at each stage of the proceedings. The important fact is that a person must be considered as a suspect as soon as it is reasonable to assume that he or she is the perpetrator of a criminal offence, which happened in the present case, while respecting the time frame of three hours to draw up the record of arrest, after no doubts subsisted as to the author's guilt. Moreover, it seems reasonable that the police would not allow the author to leave the police station without establishing his role in the extortion that took place when he was present at the crime scene (para. 2.1), particularly when the Criminal Procedure Code foresees the possibility of even

witnesses being brought forcibly before investigating authorities (see for instance arts. 56 and 188).

6. Finally, I fail to see, and the Committee does not explain (para 7.8), which procedural guarantees the author was unable to enjoy. The facts occurred at the outset of the criminal investigation when the author's legal status was yet to be determined. However, procedural guarantees apply to the whole of the criminal investigation and to the trial stage, where all due process guarantees have to be respected. The author complains (para. 3.1) that his record of arrest was not drawn up within three hours of his initial apprehension, but according to domestic courts, that rule was respected. He also complains that he was not informed of his rights, but he is a lawyer by profession, having sufficient knowledge of the relevant provisions. He further complains of not having been provided with a lawyer, but domestic courts refer to the fact that he could have sought one on his own. Finally, he complains of having been handcuffed, but domestic courts found he failed to present the relevant evidence (para. 2.3).

7. I therefore consider the author's complaint inadmissible, due to lack of substantiation, his apprehension having been neither unlawful nor arbitrary.

Annex III

Individual opinion of Committee member Gentian Zyberi (partly dissenting)

Introductory remarks

1. I agree with the Committee's finding concerning a violation of article 9 (1). However, in view of the failure by the State party to provide the author with adequate health care while in prison, the Committee should have found the State party in violation of article 10.

The health condition of the author and his efforts to get treatment

2. The author suffered from a second-degree visual disability (para. 2.1). In his appeals of the Central District Court's decisions to extend his pretrial detention dated 12 April and 24 May 2013, the author mentioned his second-degree visual disability and the deterioration of his health in detention (para. 2.7). In its decision of 7 June 2013, the Volgograd Regional Court stated that the question regarding the author's medical treatment and the actions of the staff of SIZO No. 1 in this regard were outside its jurisdiction and had to be addressed through a different procedure (para. 2.7). In the appeal decision dated 18 December 2013, the Volgograd Regional Court, in addressing the author's claims about the lack of provision of the necessary medical treatment, stated that, according to the information provided by the Head of SIZO No. 1, the author had been referred to municipal and prison medical facilities in Volgograd for consultations and examinations regarding his illness (para. 2.8). The Court stated that the author had failed to present evidence regarding the deterioration of his health in detention (para. 2.8).

3. The author was diagnosed with ocular nerve atrophy and retinal dystrophy, having received outpatient ophthalmological treatment since 2006 and, in this connection, he had to undergo specific treatment, twice a year, to maintain his vision (para. 2.9). The author submitted requests to the head of SIZO No. 1 on 4 August and 20 September 2013 asking to be provided with the necessary treatment and his lawyer submitted similar requests on 24 September and 12 November 2013 (para. 2.9). The author's lawyer submitted requests to the head of the penitentiary hospital LIU-15, on 11 and 15 October 2013, to provide the author with the necessary ophthalmological treatment. However, despite these requests, the author received no ophthalmological treatment and was never examined by an ophthalmologist (para. 2.9). On 17 December 2013, the author requested the Dzerzhinsky district investigative department in Volgograd to open a criminal investigation concerning the failure to provide him with adequate medical care by the staff of LIU-15 (para. 2.10).

4. On 21 February 2014, the federal health-care monitoring service in the Volgograd Region carried out an investigation concerning the quality of medical care provided to the author in LIU-15, which indicated that the author had not been provided with the necessary general treatment for his ophthalmological condition and that he had not received any hospital or outpatient dystrophic therapy (para. 4.5). The monitoring service issued an instruction to LIU-15, but concluded that the said omission had not and would not result in the deterioration of the author's illness (para. 4.5). The author submits that, after the treatment in hospital No. 1, his degree of disability was reclassified from second to first, because he had completely lost his sight in both eyes (para. 5.2).

The complaint

5. The author claims that the failure of the staff of SIZO No. 1 and LIU-15 to provide him with the necessary ophthalmological treatment amounted to a violation of articles 7 and 10 of the Covenant (para. 3.2). The State party submits that national law provides the possibility for everyone to bring a civil suit against the actions or omissions of State officials and to receive compensation caused by such actions or omissions, and that the author has never complained to a court about the actions or omissions of SIZO No. 1 staff (para. 4.6). While noting that the State party itself has recognized that the author did not receive the necessary medical treatment in LIU-15, according to the findings of the federal

health-care monitoring service in Volgograd Region, the Committee found the author's claims under articles 7 and 10 of the Covenant inadmissible under article 5 (2) (b) of the Optional Protocol, because of failure to exhaust all domestic remedies (para. 6.7).

Health care in prison and due diligence on the part of the State authorities

6. From the facts, it appears that the author demanded, from the detention facility authorities, both in person and through his lawyer, that he be provided with treatment for his ophthalmological condition. He also raised this issue with the judicial authorities, with a court decision stating that this fell outside of its jurisdiction and an appeal decision going into the author's claims about the lack of provision of the necessary medical treatment (paras. 2.7–2.8). Additionally, the author requested the opening of a criminal investigation concerning the failure by the staff of LIU-15 to provide him with adequate medical care (para. 2.10). He did not receive any hospital or outpatient treatment for retinal dystrophy and after the treatment in hospital No. 1 his degree of disability was reclassified from second to first, because he had completely lost his sight in both eyes (para. 5.2).

7. The author tried to get access to the necessary health care, both by bringing the matter to the attention of the detention facility authorities and the judicial authorities, but to no avail. The State party has accepted that the author was not provided with the necessary health care while in prison. Given the failure of the State authorities to provide him with the necessary health care, despite the repeated requests for them to do so, article 10 has been violated.

Concluding remarks

8. In the circumstances of this case and for the reasons explained above, the Committee should have found a violation of article 10.
