



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. 2759/2016*, **

<i>Communication submitted by:</i>	Anvar Salikhov (represented by counsel, Katerina Vanslova)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Russian Federation
<i>Date of communication:</i>	4 February 2015 (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 15 June 2016 (not issued in document form)
<i>Date of adoption of Views:</i>	26 October 2021
<i>Subject matter:</i>	Torture and subsequent lack of investigation
<i>Procedural issue:</i>	Exhaustion of domestic remedies
<i>Substantive issues:</i>	Torture; lack of investigation
<i>Articles of the Covenant:</i>	2 (3), 7 and 14 (3) (g)
<i>Articles of the Optional Protocol:</i>	3 and 5 (2) (b)

1.1 The author of the communication is Anvar Salikhov, a national of the Russian Federation born in 1983. He claims that the State party has violated his rights under article 7, read alone and in conjunction with article 2 (3), and article 14 (3) (g) of the Covenant. The Optional Protocol entered into force for the State party on 1 January 1992. The author is represented by counsel.

1.2 On 8 December 2016, pursuant to rule 93 (1) of the Committee's rules of procedure, the State party requested the Committee to examine the admissibility of the communication separately from its merits. On 12 April 2017, also pursuant to rule 93 (1) of its rules of procedure, the Committee, acting through its Special Rapporteur on new communications and interim measures, decided to examine the admissibility of the communication together with its merits.

* Adopted by the Committee at its 133rd session (11 October–5 November 2021).

** The following members of the Committee participated in the examination of the communication: Wafaa Ashraf Moharram Bassim, Yadh Ben Achour, Arif Bulkan, Mahjoub El Haiba, Furuya Shuichi, Carlos Gómez Martínez, Duncan Laki Muhumuza, Photini Pazartzis, Vasilka Sancin, José Manuel Santos Pais, Soh Changrok, Kobayyah Tchamdja Kpatcha, Hélène Tigroudja, Imeru Tamerat Yigezu and Gentian Zyberi.



Facts as submitted by the author

2.1 The author submits that on 23 July 2005, he was visited at his home by two police officers, F.A. and A.A., who asked whether the author knew anything about drug trade in the area and about a murder case. The author denied his involvement in such activities.

2.2 On 26 July 2005, the author's wife, S.A., informed him that he had been asked to go to Moscow district police station in Nizhny Novgorod Province. The author's wife, his mother-in-law and his daughter accompanied him to the police station, where he was asked about his whereabouts on 21 and 22 July 2005. The author responded that he was at home on those dates, and that his wife could confirm this fact. Police officers asked the author's relatives to leave the police station.

2.3 The author was then taken to one of the rooms, where a group of six or seven police officers demanded that he confess to the murder. When he refused and denied any wrongdoing, the officers beat him for approximately three hours. During the beatings, the author was tied to a thick metal bar by his arms and legs. The beatings caused the author to faint three times, and each time that he fainted, the officers poured cold water over him. The author also submits that one of the police officers inserted a police baton into his rectum.

2.4 The author further submits that as a direct result of this torture, he agreed to sign a letter of confession. Moreover, the police asked him to identify two additional persons, G.O. and K.U., as his co-conspirators. In his forced confession, it is stated that on 21 July 2005, the author, G.O. and K.U. came across an unknown person with whom they started fighting. As a result of the fight, the person fell to the ground and died. It is also stated in the forced confession that on 22 July 2005, when passing by the place where he and his accomplices had attacked the unknown man, he saw the body of that person in a small recess at basement level. The deceased person was wearing a police uniform.

2.5 When the author signed the confession, he was taken to another office, where he saw a defence lawyer. He told this lawyer that he had not committed the murder. At a later, unspecified, time, the author learned the identity of a number of the police officers who had tortured him, including I.V.S. and D.A. of Moscow district police and L.U. of Sormovsky district police. He also identified two other Moscow district police officers, C.I. and S.E., who had witnessed the beatings but had not participated directly.

2.6 The author submits that later that same day, 26 July 2005, he was taken to the alleged crime scene. The author submits that a defence lawyer was present. The law enforcement officers were prompting him to give specific details. The author told the police at the scene that it was the location where he, G.O. and K.U. had attacked the unknown person. After that, the author showed the police the location of the small basement recess where the body of the deceased person in uniform had eventually been found. After the examination of the crime scene, the author's clothes and clippings from his nails were taken for examination. It was noted that the author's T-shirt had red spots on it, which were presumed to be spots of blood.

2.7 The author was subsequently taken to a cell. He was not beaten, but his arms were handcuffed to a bar above his head, so that he had to stand on his toes. He tried on a number of occasions to stand on a nearby bench, but each time the police officer on duty stopped him from doing so. His handcuffs were finally removed the next morning, when one of the police officers recognized him from the author's brother's wedding, which they had both attended.

2.8 On 27 July 2005, the author spoke to one of the doctors at the detention centre and told him that he had been beaten by police officers. The doctor documented a bruise under the author's eye. On 28 July 2005, the author was allowed to meet with his defence lawyer, R.N.V, and he told her that he had been beaten by police officers. The defence lawyer saw the bruises and haematomas on the author's body and filed a complaint with the Central Administration of the Ministry of Internal Affairs for Nizhny Novgorod Province and requested that an investigation be launched.¹

2.9 On 3 August 2005, upon request from the prosecutor's office, the author underwent a forensic medical examination (No. 2327). The examination revealed bruises on his "head,

¹ No further information is provided as to whether any response was received.

body and extremities". According to the doctor, it could not be excluded that these injuries had been inflicted on the author on 21 and 22 July 2005. However, the follow-up medical examinations concluded that these injuries could have been caused later than these dates. An additional examination, performed on 15 February 2006 (No. 25-DOP), indicated that the bruising under the author's eye, which had been documented on 27 July 2005, could have been sustained one to three days before the moment of that initial examination (27 July 2005). An examination dated 26 October 2005 (No. 165-DOP), for example, concluded that the injuries could have been sustained on 21, 22 or 27 July 2005.

2.10 The author submits, however, that the court concluded that the author's claims were contradicted by the testimonies elicited during the confrontation held between the author and police officer I.V.S. The author submits that he confirmed that he was beaten by this officer, while the officer denied beating him. The court also concluded that the bruising under the author's eye had been caused at the time the author had been apprehended. The court disregarded the fact that police officers had stated that there had been no use of force when the author had been apprehended.

2.11 On 1 December 2006, the author was sentenced to 11 years and 3 months of imprisonment for causing bodily injuries resulting in the unpremeditated death of a police officer, D.O. Despite complaints from the author and his representatives, the police, the prosecutors and the court failed to conduct an effective inquiry into his claims. On 28 July 2005, his brother submitted a complaint to the prosecutor of Moscow District in Nizhny Novgorod. On 29 July 2005, the author's counsel submitted a complaint to the Nizhny Novgorod police. On 4 August 2005, the author's father also filed a complaint alleging that his son had been tortured. On 6 August 2005, the prosecutor who was examining these claims decided not to open a criminal investigation into the torture claims.

2.12 The prosecutor stated that the author's injuries could have been caused on 21 or 22 July 2005, when the author was not in custody. This decision was appealed, and the prosecutor's office reinstated the preliminary examination of the author's claims. In the period from 20 October 2005 to 24 September 2007, the investigation into the author's torture claims was closed and reopened several times, with at least two additional medical examinations ordered. On 6 December 2005, the authorities finally initiated a criminal case regarding the allegations of torture, but, on 20 October 2006, it was decided to close the investigation because of a lack of "sufficient evidence" that police officers had committed torture. The deadline to complete the criminal investigation into the alleged acts of torture was extended several times.

2.13 The author further submits that in addition to his claims of torture, he also filed appeals in the criminal case against him, which were all rejected, including his cassation appeal, on 2 March 2007, and his supervisory review request to the Supreme Court, on 5 February 2008. The author therefore submits that he has exhausted all available domestic remedies.²

Complaint

3.1 The State party violated the author's right not to be subjected to torture, under article 7 of the Covenant. The author was beaten by police officers, whom he later identified, for approximately three hours while tied to a metal bar.

3.2 The author claims that by failing to effectively investigate his torture claims, the State party failed to fulfil its obligations under article 7, read in conjunction with article 2 (3), of the Covenant. Despite initiating several inquiries, including a criminal case, the State party failed to conduct an independent examination of the facts. The author claims that the Committee, in its concluding observations on the State party's seventh periodic report, noted that the State party was unable to conduct a prompt, effective and independent investigation regarding torture claims.

3.3 The author also claims that, in violation of his rights under article 14 (3) (g) of the Covenant, the State party used the author's forced confession as the basis for his conviction.

² The author also notes that he submitted an application to the European Court of Human Rights in 2007, which was rejected as inadmissible in 2012.

The author submits that the burden of proof lies with the authorities to demonstrate that the confession was obtained without resorting to torture. Despite the fact that the author clearly stated during the court hearings that he had been tortured, his claims were disregarded.

State party's observations on admissibility

4.1 On 8 December 2016, the State party submitted its observations on the admissibility of the communication. The State party recalls that, according to rule 99 (c) the Committee's rules of procedure, "a communication may constitute an abuse of the right of submission, when it is submitted five years after the exhaustion of domestic remedies by the author of the communication, or, where applicable, three years from the conclusion of another procedure of international investigation or settlement, unless there are reasons justifying the delay, taking into account all the circumstances of the communication". According to the verdict in the author's case, he was sentenced to 11 years and 3 months of imprisonment on 1 December 2006. On 2 March 2007, the cassation appeal court upheld the lower court's findings. On 5 February 2008, the author's supervisory review request to the Supreme Court of the Russian Federation was also rejected.

4.2 The State party submits that the author's communication, dated 4 February 2015, was received by the Committee on 6 February 2015, seven years after the author had exhausted domestic remedies. Moreover, when filing his supervisory review request to the Supreme Court, the author did not mention the alleged torture that he had suffered during the pretrial investigation.

4.3 Based on these facts, the State party considers that the author's communication constitutes an abuse of the right of submission of such communications, and should be considered inadmissible under article 3 of the Optional Protocol.

Author's comments on the State party's observations on admissibility

5.1 On 10 March 2017, the author submitted comments on the State party's observations on admissibility. Responding to the challenge raised by the State party, the author argues that the delay in submitting the communication to the Committee does not render his complaint inadmissible. In 2007, the author prepared an application to the European Court of Human Rights, which was rejected as inadmissible in 2012. From that time and until his release in 2015, the author was constantly moved from one prison to another, making it impossible for him to give power of attorney to counsel to submit his claims to the Committee.

5.2 As for the supervisory review procedure, the author submits that this procedure has been long recognized by the European Court of Human Rights as ineffective. The fact that the author did not mention torture in his supervisory review request does not, therefore, render the whole communication inadmissible as an abuse of the right of submission.

State party's observations on the merits

6.1 On 18 April 2017, the State party provided its observations on the merits of the communication. It confirms that on 6 December 2005, the deputy prosecutor of Nizhny Novgorod Province initiated a criminal case under article 286 (3) (a) of the Criminal Code of the Russian Federation, on the basis of a complaint submitted by the author and his co-defendant, G.O., who claimed that they had both suffered bodily injuries.

6.2 During the investigation of this case, both the author and G.O. were questioned, and they testified that on 26 July 2005, they were beaten by Moscow district police officers. These officers demanded that the author and G.O. confess to the murder of a police officer, D.O. As a result of the beatings, the author and G.O. signed their confessions, and they were questioned the same day as suspects. The next day, the author and G.O. were taken to hospital, where their injuries were examined.

6.3 During the investigation, another witness, S.A.M., testified that in July 2005, she was brought to Moscow district police station and placed in a cell next to the author. She asked the author why he was being detained. The author told S.A.M that he was suspected of murdering a police officer. Noticing a bruising under the author's eye, she commented, "They beat you well," to which the author did not respond. Two other witnesses, M.E.S. and S.E.L,

who had been brought to the police station at the same time, did not notice any visible injuries on the author.

6.4 Four Moscow district police officers were also questioned, and testified that they found the body of D.O. on 22 July 2005, and as a result of the investigation they brought the author to the police station. The author then confessed to the murder, which he had committed with two other persons, and wrote a confession letter. During the interrogation, police officers noticed bruises on the author's body. He explained that he had been injured the night before, during the fight with D.O. On 26 July 2005, police officers detained G.O., who also admitted to the murder of the police officer, and who also had some injuries on his body.

6.5 Three Sormovsky district police officers were also questioned, who testified that they did not take part in the interrogation of the author and his co-defendants.

6.6 In addition, an investigator from the prosecutor's office, D.S.K., testified that he had initiated a criminal investigation into the murder of D.O. He questioned the author when he was apprehended on 26 July 2005, and did not notice any injuries. A deputy prosecutor, E.N.S., participated in the interrogation, along with a defence lawyer Y.V.M., who also did not witness any violence against the author. G.O. was detained the same day and was questioned, and testified that he did indeed participate in beating D.O., along with the author and K.U. There were no visible signs of any injuries on G.O. Two more witnesses, E.N.S. and S.V.K., confirmed the testimony of D.S.K.

6.7 The State party submits that the police also questioned four lay witnesses and experts, who were present when the author and his co-defendants were brought to the alleged crime scene. They did not notice any injuries on the author or the others. All the information provided by the author and G.O. was given "voluntarily, and without any pressure". Y.V.M. and another defence lawyer, V.V.P., confirmed that they were present as defence lawyers when the author and his co-defendant were brought to the alleged crime scene. An assistant prosecutor, R.Y.N., testified that when he was present at the detention cells of Moscow police station on 26 and 27 July 2005, he did not receive any complaints from the author.

6.8 The Moscow district police officer on duty, A.L.C., testified that on 27 July 2005, he found out that the author and G.O. were being held on the charge of murdering a police officer. During his shift, he received several calls from the author's wife, who asked him to confirm that the author had been beaten, but he told her that he could not do so. Another witness, S.V.S., who was detained at Moscow district police station at the same time as the author, testified that he noticed that the author's arm was swollen. He did not notice any other injuries. Six additional witnesses who were also being held at the police station did not witness any beatings.

6.9 Another witness, T.V.R., who knew the author, testified that in July 2005, she learned that the author was being detained by police officers. The author's wife then asked her to provide false information that she had seen the author leaving his apartment at 5.20 a.m. on 22 July 2005. The author's wife told her that this information would help her husband. On 30 July 2005, she went to a defence lawyer, R.I.K., and provided the information as requested by the author's wife.

6.10 On the basis of the results of the forensic medical examination that the author underwent on 3 August 2005, he was diagnosed with bruises on his back, his arms and the left side of his face, which had been caused by a blunt object. G.O. was also diagnosed with multiple bodily injuries. The examination report could not exclude the possibility that the injuries had been sustained on 21 or 22 July 2005. During the preliminary investigation, "not enough information was received" to conclude that the author and G.O. had suffered violence at the hands of police officers. Analysis of the existing information led to the conclusion that "the injuries sustained by the author and G.O. were the result of their earlier fight with D.O.". As a result, on 20 October 2006, it was decided to discontinue the criminal investigation owing to a lack of *corpus delicti* concerning the actions of the police officers. The investigator who handled allegations against the police officers was independent of the police forces. The police officers against whom the author made allegations of mistreatment did not participate in the investigation of claims against them.

6.11 The author claims that his forced confession was used against him during the trial. In fact, these claims have been examined in court. During the interrogation after having been charged with a crime, the author stated that he voluntarily arrived at the police station where he was beaten for two hours. During the court hearings, the author stated that he was beaten for three hours and maybe more. Initially, police officers only asked questions, but then started beating him until he confessed. According to the court, the author's testimony about beatings is contradicted by the evidence. Indeed, on 26 July 2005, from 5.24 to 5.46 p.m., the author and his wife spoke by telephone six times. This means that the author was detained after 5.46 p.m. The report of his detention was prepared at 6.00 p.m. on 26 July 2005, and at 6.20 p.m. the same day, the author was already being interrogated as a suspect. From 8.00 to 8.35 p.m. the same day, he was taken to the crime scene. Before being questioned as a suspect, the author had already written a confession admitting to killing D.O. Based on this chronology, the court concluded that the police officers did not have enough time, between the initial detention and the interrogation of the author as a suspect, to use violence against him. This can be confirmed by the investigator from the prosecutor's office, D.S.K., who interrogated the author on 26 July 2005 and G.O. on 27 July 2005, and did not notice any injuries on either the author or G.O.

6.12 Furthermore, the forensic medical report does not prove that the author was subjected to violence. The conclusion of the expert corresponds to the testimony of G.O., who stated that he, K.U. and the author had struck a "man" until he fell to the ground. A witness during the trial, who was questioned under a pseudonym, stated that the person who was attacked did not resist, but he witnessed the proceedings only from when the person in question was already on the ground.

6.13 According to the additional forensic examination (No. 165-DOP), dated 26 October 2005, it was possible that the author's injuries could have been sustained during the night of 22 July 2005, but also during the night of 27 July 2005. According to the further forensic examination (No. 25-DOP), dated 15 February 2006, the bruises under the author's eye could have been caused one to three days before the examination. During the court hearings, the author testified that during the apprehension, he was wrestled to the ground by two police officers, who "attacked him from behind". In this regard, the court came to the conclusion that the author's bruises under his eye could have been caused at the time that he was apprehended, though there were no reports that the officers had "exceeded their authority" and used excessive force.

6.14 The court therefore concluded that the author's claims that he had been beaten by the police officers were not supported by evidence. The degree of the author's injuries and their location on his body indicated that they could not have been caused by a group of 6 to 10 "young, physically strong men" inflicting injuries for three hours. Moreover, the court identified several inconsistencies. During the interrogation as a suspect, for example, the author stated that he was beaten by 8 to 10 persons, without identifying police officers. During the confrontation held between the author and police officer I.V.S., the author stated that he was beaten by six persons, including I.V.S. himself. When he was questioned as an alleged victim of beatings, the author stated that he was beaten for three to four hours, and named three police officers, including I.V.S.

6.15 The State party further submits that when filing his supervisory review request to the Supreme Court of the Russian Federation, the author did not mention the claims of torture that he allegedly suffered during the pretrial investigation. Instead, the author questioned the verdict and asked for more lenient sentence.

6.16 In conclusion, the State party submits that there have been no violations of the author's substantive rights under the Covenant. In addition, the author's complaint constitutes an abuse of the right of submission, as the author is attempting to question the results of the court proceedings against him. The European Court of Human Rights concluded that the author's communication was inadmissible under articles 34 and 35 of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights).

Additional submissions

From the author

7.1 On 12 April and 1 October 2019, the author provided further submissions. He informed the Committee that his health had deteriorated owing to the events described in his initial complaint. A medical psychologist, in an examination conducted on 16 November 2018, identified symptoms of depression, high levels of anxiety and low ability to adapt to new environment.

7.2 The author reiterates his initial claims that the State party failed to conduct an effective investigation into his torture claims, thus violating his rights under the Covenant. The author asks the Committee to make a finding obliging the State party to conduct a thorough and effective investigation into his claims, to retry him while adhering to all the fair trial guarantees under article 14 of the Covenant and to provide him with full and adequate compensation for the violations suffered.

From the State party

8.1 On 30 October 2020, the State party provided a further submission. It reiterates its previous position on the admissibility and the merits of the communication. It notes that the author did not provide any evidence to support his claim that he was delayed in submitting the present communication because he was moved from one prison to another. Furthermore, the State party notes that power of attorney was given by the author on 15 September 2012 and 21 August 2014.

8.2 The author also refers to the decision of the European Court of Human Rights in *Berdzenishvili v. Russia*, in which the Court found, according to the author, that the supervisory review procedure was ineffective.³ The fact of the matter is, however, that in the above-mentioned case, the Court found only that a six-month deadline to submit a complaint to it did not apply owing to the fact that the right to submit a supervisory review request was not limited in time. In this regard, it has to be noted that the Supreme Court did review the author's supervisory review request, which did not contain any references to the mistreatment that he had allegedly suffered.

Issues and proceedings before the Committee

Consideration of admissibility

9.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with article 97 of its rules of procedure, whether the communication is admissible under the Optional Protocol.

9.2 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.

9.3 The Committee notes the State party's submission that the author failed to exhaust all domestic remedies since he did not include his torture claims in the supervisory review request that he filed with the Supreme Court. The Committee notes the author's assertion that all available and effective domestic remedies have been exhausted and that supervisory review proceedings are not considered by the Committee to constitute an effective remedy.⁴ The Committee recalls its jurisprudence according to which a petition for supervisory review to a prosecutor's office, which is dependent on the discretionary power of the prosecutor, against a judgment having the force of *res judicata* does not constitute an effective remedy that has to be exhausted for the purposes of article 5 (2) (b) of the Optional Protocol.⁵ It also considers that the filing of supervisory review requests with the president of a court directed

³ European Court of Human Rights (First Section), *Berdzenishvili v. Russia*, Decision as to the Admissibility of Application No. 31697/03, 29 January 2004. Available at [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-23737%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-23737%22]}).

⁴ For example, *Gerashchenko v. Belarus* (CCPR/C/97/D/1537/2006), para. 6.3.

⁵ *Alekseev v. Russian Federation* (CCPR/C/109/D/1873/2009), para. 8.4.

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.⁶ However, in this case, the State party has not shown whether and in how many cases supervisory review procedures were applied successfully in cases concerning the right to effective investigation of torture claims. Accordingly, the Committee considers that it is not precluded by article 5 (2) (b) of the Optional Protocol from considering the communication.

9.4 The Committee further notes the State party's position that, owing to the delay in submission of the present communication, the Committee should consider it inadmissible as constituting an abuse of the right of submission under article 3 of the Optional Protocol.

9.5 The Committee notes in that regard that there are no fixed time limits for the submission of communications under the Optional Protocol and that mere delay in submission does not of itself involve abuse of the right to submit a communication.⁷ However, in certain circumstances, the Committee expects a reasonable explanation justifying a delay.⁸ In addition, according to rule 99 (c) of the Committee's rules of procedure, a communication may constitute an abuse of the right of submission when it is submitted five years after the exhaustion of domestic remedies by the author of the communication, or, where applicable, three years from the conclusion of another procedure of international investigation or settlement, unless there are reasons justifying the delay, taking into account all the circumstances of the communication.

9.6 In the present case, the communication was submitted to the Committee on 4 February 2015.⁹ The Committee notes, however, that on 31 August 2007, the author filed an application to the European Court of Human Rights, which was rejected on 18 October 2012 as inadmissible under articles 34 and 35 of the European Convention on Human Rights. A period of less than three years passed, therefore, from the conclusion of "another procedure of international investigation or settlement" – in this case, a communication to the European Court of Human Rights – and the submission of the communication to the Committee. Accordingly, the Committee considers that it is not precluded by article 3 of the Optional Protocol or rule 99 (c) of its rules of procedure from considering the communication.

9.7 The Committee considers that the author has sufficiently substantiated his claims under article 7, read alone and in conjunction with article 2 (3), and article 14 (3) (g) of the Covenant for the purposes of admissibility. It therefore declares the communication admissible and proceeds with its consideration of the merits.

Consideration of the merits

10.1 The Committee has considered the case in the light of all the information submitted to it by the parties, in accordance with article 5 (1) of the Optional Protocol.

10.2 The Committee notes the author's claims that he was beaten, tortured and forced to confess guilt in a crime that he did not commit, in violation of his rights under article 7, read alone and in conjunction with article 2 (3), and article 14 (3) (g) of the Covenant. The Committee notes the author's contention that on 26 July 2005, he went to Moscow district police station, where he was asked to confess to a murder, and that when the author refused, he was beaten and tortured by several police officers to force him to confess to having murdered a police officer. The Committee notes the author's allegations that the torture stopped once he signed the confession, in which he admitted having committed the murder,

⁶ For example, *Gelazauskas v. Lithuania* (CCPR/C/77/D/836/1998), para. 7.2; *P.L. v. Belarus* (CCPR/C/102/D/1814/2008), para. 6.2; *Schumilin v. Belarus* (CCPR/C/105/D/1784/2008), para. 8.3; *Sekerko v. Belarus* (CCPR/C/109/D/1851/2008), para. 8.3; *Protsko and Tolchin v. Belarus* (CCPR/C/109/D/1919-1920/2009), para. 6.5; *Dorofeev v. Russian Federation* (CCPR/C/111/D/2041/2011), para. 9.6; and *Kostenko v. Russian Federation* (CCPR/C/115/D/2141/2012), para. 6.3.

⁷ *Polacková and Polacek v. Czech Republic* (CCPR/C/90/D/1445/2006), para. 6.3; and *D.S. v. Russian Federation* (CCPR/C/120/D/2705/2015), para. 6.4.

⁸ *Gobin v. Mauritius* (CCPR/C/72/D/787/1997), para. 6.3.

⁹ The Committee received the communication on 6 February 2015.

along with two co-conspirators, G.O. and K.U. The Committee also notes that the author submitted numerous complaints to the prosecutor's office, to the police and to the presiding judge during his trial, but all his complaints were rejected.

10.3 The Committee notes, on the other hand, the State party's submission that several medical examinations were conducted into the author's claims of torture, such as those conducted on 3 August 2005 (No. 2327), 26 October 2005 (No. 165-DOP) and 15 February 2006 (No. 25-DOP). The Committee also notes the arguments of the State party that several inquiries were conducted, including a criminal case that was initiated on 6 December 2005, on the basis of complaints from the author and his co-defendant, G.O. During this criminal investigation, which was extended several times, several witnesses were questioned, including the author, G.O., police officers, defence lawyers, prosecutors and expert witnesses. The Committee notes that after all these examinations and testimonies, the State party authorities decided to close the criminal investigation, on 20 October 2006, as they were unable to confirm that the author's injuries had been caused by police officers.

10.4 The Committee recalls its consistent jurisprudence that criminal investigation and consequential prosecution are necessary remedies for violations of human rights such as those protected by article 7 of the Covenant.¹⁰ Although the obligation to bring to justice those responsible for a violation of article 7 is an obligation of means, and not of result,¹¹ States parties have a duty to investigate, in good faith and in a prompt and thorough manner, all allegations of serious violations of the Covenant that are made against them and their authorities. In this regard, the Committee notes that the author was initially examined medically, including a medical examination on 3 August 2005, and that the criminal investigation into the author's allegations of torture was launched on 6 December 2005.

10.5 The Committee further recalls that the burden of proof concerning factual questions cannot rest on the author of the communication alone, especially considering that the author and the State party do not always have equal access to evidence and that frequently the State party alone has access to relevant information,¹² and especially when the injuries allegedly occur in situations in which the author is being detained by the State party authorities. In this regard, the Committee notes the statements from D.S.K. and several other witnesses, who testified that there were no visible injuries on the author when he was first apprehended, contradicting the State party's theory that the author was injured prior to his arrest (para. 6.6 above). The Committee notes therefore that the material on file does not allow it to conclude that the investigation into the allegations of torture was carried out effectively or that any suspects were identified, despite detailed reports from the author, witness statements and detailed medical records indicating injuries. The Committee also notes that the court invoked the author's confession, among other evidence, in finding the author guilty, despite his contention made during the trial hearings that he had been tortured. Accordingly, the Committee concludes that the facts before it disclose a violation of the author's rights under article 7, read alone and in conjunction with article 2 (3), and article 14 (3) (g) of the Covenant.

11. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts before it disclose a violation by the State party of article 7, read alone and in conjunction with article 2 (3), and article 14 (3) (g) of the Covenant.

12. 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 conduct a thorough, prompt and impartial investigation into the author's torture allegations and to provide the author with adequate

¹⁰ General comment No. 20 (1992), para. 14; general comment No. 31 (2004), para. 18; *Boboev v. Tajikistan* (CCPR/C/120/D/2173/2012), para. 9.6; and *Khalmamatov v. Kyrgyzstan* (CCPR/C/128/D/2384/2014), para. 6.4.

¹¹ *Prutina et al. v. Bosnia and Herzegovina* (CCPR/C/107/D/1917/2009, 1918/2009, 1925/2009 and 1953/2010), para. 9.5; and *Boboev v. Tajikistan*, para. 9.3.

¹² *Bleier Lewenhoff and Valiño de Bleier v. Uruguay*, communication No. 30/1978, para. 13.3; *Dermit Barbato v. Uruguay*, communication No. 84/1981, para. 9.6; and *Boboev v. Tajikistan*, para. 9.4.

compensation. The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future.

13. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant and to provide an effective 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 have them widely disseminated in the official languages of the State party.
