



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. 2951/2017*, **

<i>Communication submitted by:</i>	Dmitry Voronkov (represented by counsel, Sergey Poduzov)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Russian Federation
<i>Date of communication:</i>	9 January 2017 (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 February 2017 (not issued in document form)
<i>Date of adoption of Views:</i>	25 October 2022
<i>Subject matter:</i>	Arbitrary arrest and torture
<i>Procedural issues:</i>	Incompatibility with the Covenant; exhaustion of domestic remedies
<i>Substantive issues:</i>	Torture; arbitrary detention
<i>Articles of the Covenant:</i>	7, read alone and in conjunction with 2 (3), and 9 (1), (3) and (4)
<i>Articles of the Optional Protocol:</i>	2, 3 and 5 (2) (b)

1. The author of the communication is Dmitry Voronkov, a national of the Russian Federation born in 1988. He claims that the State party violated his rights under articles 7, read alone and in conjunction with article 2 (3), and 9 (1), (3) and (4) of the Covenant. The Optional Protocol entered into force for the State party on 1 January 1992. The author is represented by counsel.

The facts as submitted by the author

2.1 On 2 June 2012, the author was arrested on suspicion of selling drugs, after police searched his bag and found several packages of a powdery substance, and was taken to police station No. 30, part of the Western District Police Department in Krasnodar. On his way to

* Adopted by the Committee at its 136th session (10 October–4 November 2022).

** 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, Marcia V.J. Kran, Duncan Laki Muhumuza, Hernán Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Soh Chongrok, Kobaujah Tchamdja Kpatcha, Imeru Tamerat Yigezu and Gentian Zyberi.



the police station and while there, he was subjected to beatings by several police officers. One of the officers hit the author in the head before placing him in the police vehicle and then struck him several more times in the car en route to the police station. Once at the police station, the author was taken to an interrogation room, where two police officers continued beating and threatening him until he agreed to sign a document granting permission for the police to search his apartment. On the same day, the author was taken to a hospital and examined by a doctor. The doctor bandaged the author's left eye, which had been injured by the police officers, and signed paperwork confirming that the author's health allowed him to be held in administrative detention. The author was brought back to the police station and forced to sign a waiver of his right to counsel. He was then taken to a different medical facility to be tested for drug and alcohol intoxication. According to the toxicology report, he was not intoxicated.¹ In addition, it was noted that the author had a fresh haematoma around his left eye. The officers submitted a report of administrative detention of the author under article 6.8 of the Administrative Offences Code² to the head of the police unit and held the author overnight at the police station.

2.2 On 3 June 2012, the author was transferred to a special administrative detention facility. Initially, the facility refused to accept the author due to the failure by the police to file correct procedural documents and the presence of visible injuries to the author's head. The officers then took the author back to the police station and charged him with failure to obey lawful orders of the police. To justify the author's injuries, the officers falsely stated that they had to use force during the author's arrest because he was trying to escape. Later the same day, the author was taken back to the special administrative detention facility, where a judge, who was present at the facility, held a hearing and authorized his administrative arrest. The author was not allowed to attend the hearing or to be represented by counsel. The police officers informed him about the court decision without giving him a copy of the decision, which is why the author does not know the name of the court that authorized his administrative arrest or the duration of his sentence.

2.3 On 4 June 2012, the police ordered a chemical analysis of the powdery substance found on the author. On 16 June 2012, on the basis of the results of the analysis, which confirmed that the substance was an illegal narcotic, the administrative investigation against the author was closed and a criminal case was opened under article 228 (2) of the Criminal Code.³

2.4 On 18 June 2012, Lenin District Court in Krasnodar approved the detention of the author on remand until 18 August 2012. His detention was extended by the same court on 15 August and again on 4 October 2012. The author was not present during the court hearings on the extension of his detention on remand.

2.5 On 27 September 2012, while being interrogated by the case investigator, the author complained about the beatings he had been subjected to by the police. However, the investigator took no action with regard to the complaint. On 20 December 2012 and 10 January 2013, when the author testified about the beatings he had received during his trial, the court stated that the injuries could have been inflicted during the author's arrest and noted that he had not filed any formal complaints or requested a medical examination of the injuries. On 14 August 2013, Lenin District Court in Krasnodar sentenced the author to 13 years in prison.

2.6 On an unspecified date, the author appealed the verdict. On 4 December 2013, Krasnodar Regional Court upheld the decision of the trial court.

¹ The author provides a copy of the toxicology report. The injury to the author's eye and several unspecified haematomas are also reflected in the testimony of a witness who was present when the police searched the author's apartment after his arrest.

² Trafficking in narcotic drugs, psychotropic substances or in their analogues, and illegal acquisition, storage and transportation of plants containing narcotics or psychotropic substances, or parts thereof containing narcotics or psychotropic substances.

³ Illegal manufacturing, acquisition, storage, transportation, sending or sale of narcotic drugs or psychotropic substances. Paragraph 2 of this article covers such crimes on a large scale.

2.7 On 29 April 2013, the author submitted a complaint against the police to the Western District Office of the Investigative Committee of the Russian Federation for the Krasnodar Region. On 20 June 2013, the Western District Office refused to open a criminal investigation against the police officers accused by the author.⁴ In April 2014, the author appealed the decision to Lenin District Court. On 28 August 2014, Lenin District Court discontinued consideration of the author's appeal, after the deputy head of the Western District Office of the Investigative Committee ordered a further inquiry into the author's complaint. After several requests to the Western District Office, on 30 April 2015 the author received a copy of the second refusal to open a criminal investigation against the police officers, dated 4 September 2014. The text of the decision was identical to the decision of 20 June 2013.

2.8 The author claims to have exhausted all effective domestic remedies, given the lack of an effective investigation and its undue prolongation by the authorities.

Complaint

3.1 The author claims that his rights under article 7 of the Covenant, read alone and in conjunction with article 2 (3), were violated when he was beaten by police officers on 2 June 2012, and again owing to the lack of an effective investigation into his allegations concerning those events.

3.2 The author also claims that his rights under article 9 (1) of the Covenant were violated by the police when they arbitrarily subjected him to an administrative arrest in order to conceal the beatings and the injuries inflicted on him during the arrest.

3.3 The author further claims a violation of his rights under article 9 (3) of the Covenant because the domestic courts failed to properly review the grounds for his arrest and its prolongation and authorized his detention without any substantiation.

3.4 Finally, the author claims that the State party violated his rights under article 9 (4) of the Covenant because he was not present during the hearings when Lenin District Court extended his detention on 15 August and 4 October 2012. He further argues that Lenin District Court has failed to review the grounds for his arrest.

State party's observations on admissibility

4.1 On 24 April 2017, the State party submitted its observations on admissibility of the communication. With regard to the alleged violation of article 7 of the Covenant, the State party notes that the author complained about the beatings only on 29 April 2013, almost 11 months after his arrest. In addition, he only appealed the refusal to open an investigation into his complaint two years after his arrest, in April 2014. The State party recalls that, in order to be effective, an investigation into alleged ill-treatment by State agents must be prompt and expedient.⁵ It notes that the belated commencement of criminal proceedings results in the loss of precious time which cannot but have a negative impact on the success of an investigation.⁶ Therefore, the State party argues that the author's claim under article 7 of the Covenant constitutes an abuse of the right of submission and is inadmissible under article 3 of the Optional Protocol.

4.2 The State party further notes that the author has not submitted a cassation appeal against the decisions of Lenin District Court and Krasnodar Regional Court to the presidium of Krasnodar Regional Court or to the Supreme Court. The State party argues that the cassation appeal procedure is an effective legal remedy and provides statistics regarding cassation appeals compiled by the Supreme Court. In 2014, out of 895 cassation appeals examined, the Court held cassation hearings in 494 cases and granted cassation appeals in 340 cases. In 2015, out of 654 appeals examined, the Court held cassation hearings in 240 cases and granted cassation appeals in 226 of them. In 2016, out of 599 appeals examined,

⁴ This decision was reached exclusively on the basis of testimony provided by the police officers who arrested the author.

⁵ European Court of Human Rights, *Dedovskiy and others v. Russia*, Application No. 7178/03, Judgment, 15 May 2008, para. 89.

⁶ European Court of Human Rights, *Kopylov v. Russia*, Application No. 3933/04, Judgment, 29 July 2010, para. 137.

the Court held cassation hearings in 207 cases and granted cassation appeals in 200 of them. In view of the above, the State party considers that the author has not exhausted all available and effective legal remedies with regard to his claim under article 7 of the Covenant and asks the Committee to find it inadmissible under article 5 (2) (b) of the Optional Protocol.

4.3 With regard to the author's claim under article 9 (1) of the Covenant, the State party submits that the author's assertion that he was unlawfully charged under the Administrative Offences Code, when he should have been charged under the Criminal Procedure Code, is incompatible with the provisions of the Covenant and should be found inadmissible under article 3 of the Optional Protocol. The State party refers to the Committee's jurisprudence according to which it is incumbent on the courts of States parties to evaluate the facts and evidence in each case, or the application of domestic legislation, unless it can be shown that such evaluation or application was clearly arbitrary or amounted to a manifest error or denial of justice.⁷ According to the State party, the information submitted by the author does not show that the evaluation or application of the domestic legislation in his case was arbitrary or amounted to a denial of justice.

4.4 The State party further notes that the author has not appealed his administrative arrest, thus his claim under article 9 (1) of the Covenant is also inadmissible due to non-exhaustion of the available domestic legal remedies.

4.5 With regard to the author's claim under article 9 (3) of the Covenant, that Lenin District Court unlawfully extended his detention on 15 August and 4 October 2012, the State party notes that the author has not appealed those decisions to the appellate or cassation instances, thus his claim under article 9 (3) of the Covenant is also not admissible due to non-exhaustion of the available domestic legal remedies.

4.6 As to the author's claim under article 9 (4) of the Covenant that he was never taken before a judge when his arrest was extended on 15 August and 4 October 2012, the State party submits that the provisions of this paragraph do not apply if the detention itself was sanctioned by a court. Therefore, since the author's initial arrest was sanctioned by Lenin District Court on 18 June 2012, this claim is incompatible with the provisions of the Covenant and should be found inadmissible under article 3 of the Optional Protocol. The State party notes that the European Court of Human Rights holds a similar position on this issue.

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

5.1 In a letter dated 31 July 2017, the author responded to the State party's observations on the admissibility of the communication. The author rejects the State party's assertion that he has not exhausted effective legal remedies. He argues that the cassation appeal procedure, which is of a supervisory nature, is not an effective legal remedy because it does not provide for a direct examination of the merits. The author notes that the acceptance of a cassation appeal depends on the discretionary power of a judge and constitutes an extraordinary remedy as evidenced by article 401.10 of the Criminal Procedure Code. The author further notes that the European Court of Human Rights has well-established jurisprudence that the extraordinary court review procedure provided by the Russian legislation cannot be considered an effective legal remedy.⁸

5.2 With regard to the State party's argument that he submitted the complaint against the police only 11 months after the incident, the author notes that he consistently informed the authorities about the violence used against him by the police; however, no action was taken to register his complaints or to investigate them. For example, on 27 September 2012, during his interrogation by investigator Z.A. Derbok, the author informed her about the beatings he had received. His statement was reflected in the interrogation protocol, but the investigator failed to take any action with regard to the complaint or to inform her superiors about it, as required under article 144 of the Criminal Procedure Code. The author submits that it was only after his complaints were ignored by the trial court that he decided to submit a separate complaint to the Investigative Committee, which was dismissed on 20 June 2013.

⁷ *Manzano and others v. Colombia* (CCPR/C/98/D/1616/2007), para. 6.4.

⁸ *Kashlan v. Russia*, Application No. 60189/15, Decision, 19 April 2016, para. 29.

5.3 The author notes that his appeal of the Investigative Committee's refusal to open an investigation into his complaint was delayed by the fact that he has been incarcerated since 2 June 2012 and only received materials of his criminal case in February 2014, after he was transferred to the republic of Mari El to serve his prison sentence. The author further notes that, after the Human Rights Committee registered his communication, the Krasnodar Regional Department of the Investigative Committee decided to carry out an additional inquiry into his complaint on its own initiative. However, based on the testimony of the police officers accused by the author in his complaint, and the fact that the Western District Police Department in Krasnodar had since been closed, which made it impossible to obtain documents from the earlier inquiries into the author's complaint, the Krasnodar Regional Department of the Investigative Committee again refused to open an investigation into the author's allegations.

5.4 The author reiterates that he has exhausted all effective domestic legal remedies and asks the Committee to find a violation of his rights under article 7, read alone and in conjunction with article 2 (3) (a), of the Covenant due to the failure of the authorities to investigate his complaint concerning the beatings he suffered at the hands of the police.

5.5 With regard to his claim under article 9 (1) of the Covenant, the author rejects the State party's argument that he requests the Committee to conduct an evaluation of the facts and evidence in his case. He notes that his claim concerns his status immediately after his arrest, when the police decided to place him under administrative arrest because it made it easier to justify the injuries he had received and to continue to detain him, as charging him with a criminal offence would have required them to follow the strict legal procedures set out in the Criminal Procedure Code. The author asserts that the police applied the law in an arbitrary manner, which makes his detention also arbitrary.

5.6 The author accepts the State party's argument that he has not appealed the decisions of Lenin District Court of 15 August and 4 October 2012 to the appellate or cassation courts. He notes that at that time he was not aware of the admissibility requirements set by the Covenant. However, the author also notes that the effectiveness of a legal remedy presupposes that the relevant public authorities are able to review and decide on decisions related to an alleged violation of the Covenant in their entirety. Such a possibility should also be practical, not just theoretical, and if there are no authorities in the State that are capable of ascertaining that the relevant violation has occurred, or are unable to correct the violation, including, where necessary, to award the person appropriate compensation, recourse to them will not constitute a remedy for the violation. The author notes that according to the information available on the website of Lenin District Court, in 2008 the court authorized 358 pretrial detentions on remand, which amounted to 93.9 per cent of the total number of cases. Only 38 of those court decisions were later appealed, 28 of them in the form of cassation appeals to Krasnodar Regional Court. According to the author, none of the cassation appeals were granted, which shows that the existence of a legal remedy in pretrial detention cases does not guarantee reinstatement of victims' rights. The author requests that the Committee find his claim under article 9 (3) of the Covenant admissible and that the Committee examine it on the merits.

5.7 As to his claim under article 9 (4) of the Covenant, the author reiterates that the decisions of Lenin District Court authorizing his detention on remand did not examine the legality of his arrest. The author notes that both the investigator's request to Lenin District Court and the court's decisions, including those extending his detention, only describe the reasons why the author should be placed in detention, without examining the actions of the police officers when he was arrested.

State party's observations on the merits

6.1 On 15 August 2017, the State party submitted its observations on the merits of the communication. The State party notes that, in accordance with the Administrative Offences Code, an administrative detention cannot exceed 3 hours; however, if a person is charged with an administrative offence that carries a penalty in the form of an administrative arrest or administrative removal from the territory of the Russian Federation, such detention can last up to 48 hours. Since the author was charged with failure to obey lawful orders of the

police, which carries a penalty of administrative arrest of up to 15 days, he was detained for an initial period of up to 48 hours.

6.2 The State party submits that, in the course of the administrative investigation against the author, it was discovered that his actions contained elements of a criminal offence under article 228 (2) of the Criminal Code, which led to the dismissal of the administrative case against the author and the transfer of the case materials to the Western District Police Department in Krasnodar for further investigation. As a result, on 16 June 2012, the author was detained on criminal charges and his pretrial detention was authorized by Lenin District Court on 18 June 2012. On 28 October 2012, his case was sent for trial, which concluded on 14 August 2013.

6.3 The State party notes that during the trial the author informed the court that he had been subjected to beatings by the police during his arrest and motioned the court to request his medical documents to support his claim. The trial court denied the author's motion but explained that he could submit a complaint to appropriate law enforcement agencies, which was done by the author at a later time. The State party submits that, starting from 29 April 2013, the Krasnodar Regional Department of the Investigative Committee conducted several inquiries into the author's allegations; however, all of them resulted in refusals to charge the police officers due to the absence of *corpus delicti* in their actions. According to the refusal dated 4 September 2014 and the report filed by the police officers after the author's arrest, the officers used physical force against the author because he tried to run away from them once they showed their police identification.⁹

6.4 The State party submits that the author's allegations have been thoroughly examined by the investigative authorities and domestic courts. On 3 April 2017, the Krasnodar Regional Department of the Investigative Committee ordered a medical forensic examination of the author based on the medical documents dated 3 June 2012. According to the 2012 documents, the author was diagnosed with a contusion and a fracture of the medial wall of his left orbit. It was further noted that he had a haematoma on his left eye and a subconjunctival haemorrhage. However, since there were no X-rays of the author's head and no documents describing the morphology of the haematoma, the 2012 diagnosis could not be taken into consideration during the forensic examination. In view of the above, the State party considers that there has been no violation of the author's rights under articles 7 and 9 of the Covenant.

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

7.1 In a letter dated 10 December 2018, the author responded to the State party's observations on the merits of the communication. The author notes that the State party's position with regard to his administrative arrest and initial detention contradicts the factual information in the case. According to the author, he was stopped by three police officers and asked to go with them to a police station, where in the presence of two witnesses the police searched his bag and found several packages with drugs, which he confirmed were for sale. The author notes that these facts are supported by the police officers' report to the section chief of the Western District Police Department in Krasnodar.¹⁰ However, despite the criminal nature of his offence, which required opening a criminal investigation and affording the author the rights and obligations set out in the Criminal Procedure Code, the police decided to proceed with an administrative arrest. The author reiterates that this was done to conceal the injuries he had suffered from the police at the time of his arrest. He argues that since neither he nor the Committee were provided by the State party with any procedural documents concerning his administrative arrest, the State party's observations cannot be accepted as true and objective.

⁹ According to the officers' testimony provided to the Investigative Committee, upon seeing the police, the author ran about 100 metres, after which he tripped and fell, causing his head to hit the ground. The police then had to use force, including combat wrestling techniques and special devices, to detain the author. At the same time, the report submitted by one of the police officers who detained the author on 2 June 2012 does not mention that the author had tried to run away or that any force was used against him during the detention.

¹⁰ The author provides a copy of this report.

7.2 As to the investigation of his claims under article 7 of the Covenant, the author notes that the State party's submissions confirm the ineffectiveness of the investigation into the author's claims. Despite the author complaining about the beatings in 2012, the Investigative Committee only decided to order a medical forensic examination of the author five years later. Moreover, he was not personally seen by the forensic experts or requested to undergo any tests or X-rays.

7.3 The author asks the Committee to find all of his claims admissible and, if it decides that the State party has violated his rights, he requests the following remedies: (a) a prompt and impartial investigation into his allegations of torture and, if the allegations are confirmed, the prosecution of the persons responsible; (b) adequate compensation; and (c) the quashing of his conviction and, if necessary, the conduct of a new trial, in accordance with the principles of fair hearings and other procedural safeguards provided by the Covenant.

State party's additional observations

8.1 On 3 February 2020, the State party reiterated its arguments concerning the cassation appellate procedure and its effectiveness. The State party acknowledges the author's claim that he informed the investigator about the beatings by the police on 27 September 2012; however, it notes that the author never appealed the investigator's inaction with regard to his complaint. In accordance with article 125 of the Criminal Procedure Code, any acts or omissions of investigative authorities that violate the constitutional rights of participants in a criminal case can be appealed to the local courts. The State party notes that during the author's interrogation on 27 September 2012, he already had counsel; therefore, he must have been advised about the possibility of an appeal. Moreover, nothing prevented the author from filing a separate complaint against the police under article 286 of the Criminal Code for exceeding their official authority.

8.2 The State party notes that in a similar situation the European Court of Human Rights ruled that the authorities' failure to act, although unacceptable to the Court, could not have relieved the applicant of his own obligation to undertake an elementary step and seek information from the prosecuting authorities about the progress of the investigation, if any had been initiated.¹¹ The State party also notes that, even though a person can submit a complaint under article 286 of the Criminal Code within 10 years after the alleged crime, an unjustified delay in filing such a complaint can affect the efficiency of a future investigation. It further notes that in the above-mentioned decision the European Court of Human Rights held that there was a burden on the applicant to ensure that his or her claims were raised before both the relevant domestic authorities and the Court with the necessary expedition to ensure that they could be properly and fairly resolved. The Court observed that with the lapse of time, memories of witnesses faded, witnesses could die or become untraceable, evidence deteriorated or ceased to exist, and the prospects that any effective investigation could be undertaken would increasingly diminish, and the Court's own examination and judgment might be deprived of meaningfulness and effectiveness.¹²

8.3 With regard to the author's allegation that he has not been provided with copies of any procedural documents related to his administrative arrest, the State party notes that the author has not formally requested such copies. It also submits that the case file concerning the author's administrative case was destroyed by Krasnodar Regional Court on 10 November 2014. The State party concludes that if the author had requested copies of documents from his administrative case file, it would have prevented the current situation in which some of the evidence was now lost.

8.4 Concerning the author's claim of arbitrary detention on administrative charges, the State party submits that despite the fact that the author was detained with drugs on his person, he was charged under article 6.8 of the Administrative Offences Code for trafficking in narcotic drugs, psychotropic substances or their analogues. Only after receiving the results of the chemical forensic examination of the drugs was it decided to dismiss the administrative case and to charge the author instead under article 228 (2) of the Criminal Code for the illegal

¹¹ *Manukyan v. Georgia*, Application No. 53073/07, Decision, 9 October 2012, para. 30.

¹² *Ibid.*, para. 28.

acquisition, possession, trafficking, manufacturing and processing of drugs in large amounts without intent to sell. At the same time, the State party notes that the author was detained by the police for his acts falling under article 19.3 of the Administrative Offences Code, that is, for failure to obey lawful orders of the police. The State party asserts that charging a person under article 19.3 of the Administrative Offences Code and conducting an investigation against the same person under article 6.8 are not mutually exclusive procedures. Moreover, the State party notes that the police officers took him to a medical facility on the day he displayed bruises, which shows that the officers did not try to conceal the fact that the author had bodily injuries. Therefore, the State party rejects the author's allegation that the police charged the author with an administrative offence to conceal their wrongdoings.

8.5 As to the author's allegations about the ineffectiveness of the appellate procedure during pretrial detention, the State party reiterates that the author has not appealed the decisions of Lenin District Court authorizing his arrest on 18 June 2012 or the following decisions dated 15 August and 4 October 2012 extending his detention on remand. The State party asserts that the statistics presented by the author concerning appeals submitted to Krasnodar Regional Court in 2008 are not representative of the real situation because of the very low number of court decisions appealed (38 out of 358 cases). The State party notes that in a similar case the European Court of Human Rights found the applicant's claim inadmissible.¹³ In view of the above, the State party considers that the author has failed to substantiate his arguments concerning the ineffectiveness of the procedures for appealing his detention on remand.

8.6 Finally, the State party reiterates that in its decisions authorizing and extending the author's detention on remand, Lenin District Court examined the legality of his arrest in the criminal case. The State party notes that the author's detention of 2 June 2012 was part of the administrative case against him and had no relation to the subsequent criminal case. With regard to the author's request for compensation should the Committee find a violation of his rights, the State party notes that in accordance with article 1069 of the Civil Code, the author could have submitted a claim to domestic courts for damages suffered as a result of unlawful acts or omissions of State officials, which he has not done.

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 rule 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 In accordance with article 5 (2) (b) of the Optional Protocol, the Committee shall not consider any communication from an individual unless it has ascertained that the individual has exhausted all available domestic remedies. The Committee notes the State party's submission that, with regard to his claim under article 7 of the Covenant, the author has not exhausted all available domestic remedies as he has not appealed the verdict of Lenin District Court in Krasnodar dated 14 August 2013 and the appellate decision of Krasnodar Regional Court dated 4 December 2012 to the presidium of Krasnodar Regional Court and to the Supreme Court under the cassation procedure. The Committee also notes the author's argument that the cassation appeal procedure is not an effective legal remedy because it does not provide for a direct examination of the merits and the acceptance of a cassation appeal depends on the discretionary power of a judge, which constitutes an extraordinary remedy as evidenced by article 401.10 of the Criminal Procedure Code. It further 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 for hearing by the cassation court is discretionary in nature, does

¹³ *Kantyrev v. Russia*, Application No. 37213/02, Judgment, 21 June 2007, paras. 61–62.

not have a time limit, and is made by one single judge. These characteristics lead the Committee to believe that the cassation review contains elements of an extraordinary remedy. The State party must therefore show that there is a reasonable prospect that such a procedure would provide an effective remedy in the circumstances of the case.¹⁴ In the present case, the State party submits that, in 2014, out of 895 cassation appeals examined by the Supreme Court, in 494 cases the Court held cassation hearings and in 340 cases it granted cassation appeals. Similar numbers have been provided for 2015 and 2016. However, the Committee notes that, in the present case, the State party has not shown whether or in how many cases cassation appeals to the Supreme Court and to the presidium of Krasnodar Regional Court were successful in drugs-related cases where there were allegations of ill-treatment. 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 claim under article 7 of the Covenant.

9.4 The Committee further notes the State party's submission that the author has not appealed the decisions of Lenin District Court authorizing his arrest on 18 June 2012 or the following decisions dated 15 August and 4 October 2012 extending his detention on remand. The Committee notes that the author has not contested this fact. It also notes the author's argument that the existence of a legal remedy in pretrial detention cases does not guarantee the reinstatement of victims' rights, and that according to the statistics available for Lenin District Court, in 2008, the court authorized 93.9 per cent of all detentions on remand and none of the cassation appeals to Krasnodar Regional Court were granted. The Committee recalls that mere doubts about the effectiveness of domestic remedies do not absolve an author of the requirement to exhaust them, and that the fulfilment of reasonable procedural rules is the responsibility of the applicant himself.¹⁵ In these circumstances, the Committee concludes that it is precluded from examining the author's claims under articles 9 (1), (3) and (4) of the Covenant due to non-exhaustion of all available domestic remedies and that these claims are inadmissible under article 5 (2) (b) of the Optional Protocol.

9.5 Finally, the Committee notes the State party's argument that the author's claim under article 7 of the Covenant constitutes an abuse of the right of submission because the author submitted his complaint against the police only on 29 April 2013, almost 11 months after his arrest, and only appealed the refusal to open an investigation into his complaint two years later, in May 2014. The Committee also notes the author's submission that he had consistently informed the authorities about the violence used against him by the police, including on 27 September 2012, during his interrogation by investigator Z.A. Derbok, as reflected in the interrogation protocol, but that no action was taken to register or investigate his complaints. It was only after his complaints were ignored by the trial court that the author decided to submit a separate complaint to the Investigative Committee, which was dismissed on 20 June 2013. Under these circumstances, and in the light of the material on file, the Committee does not find that the author abused his right of submission under article 3 of the Optional Protocol.

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

Consideration of the merits

10.1 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.

10.2 The Committee notes the author's claim that, on 2 June 2012, he was arrested on suspicion of selling drugs and taken to a police station which was part of the Western District Police Department in Krasnodar. On his way to the police station and while there, he was

¹⁴ *Vovchenko v. Russian Federation* (CCPR/C/127/D/2446/2014), para. 6.3; and *Dorofeev v. Russian Federation* (CCPR/C/111/D/2041/2011), para. 9.6.

¹⁵ *Tonenkaya v. Ukraine* (CCPR/C/112/D/2123/2011), para. 7.4.

subjected to beatings by several police officers. The Committee observes that the author has submitted a detailed account of the treatment to which he claims he was subjected, with supporting medical evidence. According to the report produced by the medical facility where the author was tested for use of drugs and alcohol, at the time when he was brought for testing several hours after his arrest, he had a fresh haematoma around his left eye. Also, according to the State party's submission of 15 August 2017, on 3 April 2017, the Krasnodar Regional Department of the Investigative Committee ordered a medical forensic examination of the author based on the medical documents dated 3 June 2012 and, according to those documents, the author was diagnosed with a contusion and fracture of the medial wall of his left orbit. It was also noted that he had a haematoma on his left eye and a subconjunctival haemorrhage. The Committee also notes the State party's argument that the injuries could have been caused during the author's arrest, as the officers used physical force against the author when he tried to run away from them after they showed their police identification.

10.3 The Committee notes that the use of force by the police, which can be justified in certain circumstances, may be viewed as contrary to article 7 under circumstances in which the force used is deemed excessive.¹⁶ The Committee refers to the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, which states that law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force (para. 4). Where injury or death is caused by the use of force and firearms by law enforcement officials, they shall report the incident promptly to their superiors (para. 6). Governments shall ensure that arbitrary or abusive use of force and firearms by law enforcement officials is punished as a criminal offence under their law (para. 7). The Committee observes that, according to the officers' testimony provided to the Investigative Committee, upon seeing the police, the author ran for about 100 metres, after which he tripped and fell, causing his head to hit the ground. The police officers then had to use force, including combat wrestling techniques and special devices, to detain the author. The Committee notes that the officers never provided any information as to why they had to use combat wrestling techniques and special devices, resulting in the fracture of the medial wall of the author's left orbit and a haematoma, if the author did not actively resist the arrest, and especially after he fell and hit his head on the ground. In the absence of any specific explanation by the State party as to how exactly the above-mentioned injuries were caused to the author and to counter his claims, the Committee considers that due weight must be given to the author's allegations.

10.4 With regard to the State party's obligation to properly investigate the author's claims of torture and ill-treatment, the Committee recalls its jurisprudence according to which criminal investigation and consequential prosecution are necessary remedies for violations of human rights, such as those protected by article 7 of the Covenant.¹⁷ The Committee also recalls that, once a complaint about ill-treatment contrary to article 7 has been filed, a State party must investigate it promptly and impartially so as to make the remedy effective.¹⁸

10.5 The Committee notes that, in the present case, the initial complaint about the torture suffered by the author was submitted on 27 September 2012 to investigator Z.A. Derbok during his interrogation. This information was reflected in the interrogation protocol, but the investigator failed to take any action with regard to the complaint or to inform her superiors about it, as required by article 144 of the Criminal Procedure Code. The Committee also notes that the author later complained about beatings by the police to the trial court and motioned the court to request his medical documents to support his claim, but the court denied the author's motion and explained that he could submit a complaint to the appropriate law enforcement agencies. When the author lodged a complaint with the Investigative Committee, the Committee observes that the decision to refuse the initiation of an investigation into the author's claims was exclusively based on the testimonies provided by the police officers against whom the author had submitted his complaint. The Committee also notes the State party's argument that, starting from 29 April 2013, the Krasnodar Regional Department of the Investigative Committee conducted several inquiries into the author's allegations and all

¹⁶ *Chernev v. Russian Federation* (CCPR/C/125/D/2322/2013), para. 12.2.

¹⁷ General comments No. 20 (1992), para. 14; and No. 31 (2004), para. 18.

¹⁸ General comment No. 20 (1992), para. 14; and, for example, *Khalmamatov v. Kyrgyzstan* (CCPR/C/128/D/2384/2014), para. 6.4.

of them resulted in refusals to charge the police officers due to the absence of *corpus delicti* in their actions. However, the Committee observes that both refusals by the Krasnodar Regional Department of the Investigative Committee dated 20 June 2013 and 4 September 2014 have almost identical texts and are based on the same testimonies of the police officers who arrested the author. Furthermore, despite the fact that the author complained about the beatings in 2012, the Investigative Committee ordered the author's medical forensic examination only in 2017, while the author himself was not personally seen by forensic experts and did not undergo any tests or X-rays. The Committee considers that nothing in the material on file allows it to conclude that the investigation into the allegations of the author was carried out promptly or effectively by the authorities. Therefore, the Committee concludes that the facts as submitted reveal a violation of the author's rights under article 7, read alone and in conjunction with article 2 (3) (a), of the Covenant.

11. 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 7, read alone and in conjunction with article 2 (3) (a), of the Covenant.

12. In accordance with article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the author with an effective remedy. This requires it to make full reparation to individuals whose Covenant rights have been violated. In the present case, the State party is under an obligation, *inter alia*:

(a) To conduct a prompt, effective, thorough, independent, impartial and transparent investigation into the author's allegations of torture, and to prosecute and punish those responsible;

(b) To provide the author with adequate 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 and enforceable remedy when it has been determined that a violation has occurred, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the present Views and to have them widely disseminated in the official language of the State party.
