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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. 3034/2017*, **

Communication submitted by:	Andrei Fedortsov (represented by counsel, Marina Makarova)
Alleged victim:	The author
State party:	Russian Federation
Date of communication:	17 November 2016 (initial submission)
Document references:	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 6 November 2017 (not issued in document form)
Date of adoption of Views:	9 July 2024
Subject matter:	Conditions of detention; arbitrary arrest and detention; preparation of defence; fair trial – legal assistance
Procedural issues:	Exhaustion of domestic remedies; lack of substantiation
Substantive issue:	Poor conditions of detention in a temporary detention facility
Articles of the Covenant:	7, 9, 10 (1) and 14 (3) (b) and (d)
Articles of the Optional Protocol:	2 and 5 (2) (b)

1. The author of the communication is Andrei Fedortsov, a national of the Russian Federation born in 1973. He claims that the State party has violated his rights under articles 7, 9, 10 (1) and 14 (3) (b) and (d) of the Covenant. The Optional Protocol entered into force for the State party on 1 January 1992. The author is represented by counsel.

Factual background

2.1 On 17 February 2011, Kurgan City Court sentenced the author to one year and six months in prison. Prior to his transfer to a prison colony, on 17 February 2011, the author

* Adopted by the Committee at its 141st session (1–23 July 2024).

** The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Wafaa Ashraf Moharram Bassim, Rodrigo A. Carazo, Yvonne Donders, Mahjoub El Haiba, Carlos Gómez Martínez, Laurence R. Helfer, Marcia V.J. Kran, Bacre Waly Ndiaye, Hernán Quezada Cabrera, José Manuel Santos Pais, Soh Changrok, Tijana Šurlan, Kobauyah Tchamdja Kpatcha, Teraya Koji, Hélène Tigroudja and Imeru Tamerat Yigezu.

was placed in temporary detention facility No. 1 in Kurgan city. Upon arrival at the facility, he was placed in solitary confinement cell No. 9. The author had a previous knee trauma and was using an orthopaedic cane and a knee brace, which were taken away by the administration. This impeded his movement around the cell. The cell measured 2x1 m^2. The window frames had no glass, the temperature inside was below 10°C and the cell floor was covered with 10–15 cm of snow. On the same date, 17 February 2011, he complained about the conditions of detention, through a lawyer, to the prosecutor's office. On the same day, he was transferred to cell No. 118, which had dim light, partly broken windows and a missing floor, disclosing wastewater. The cell was infested with insects and rats, which entered through the holes in the walls. On 20 February 2011, the author submitted another complaint to the prosecutor's office. On 7 April 2011, he was transferred to cell No. 116. To prevent him from staying by the door and complaining to senior officials passing by, the guards put chlorine under the entry door and poured water on it. The author had to cover his head with a wet towel so as not to suffocate. The treatment lasted 13 days. On 8 April 2011, the author wrote a letter complaining about the conditions of detention to the prosecutor's office. On 20 April 2011, he was transferred back to cell No. 118. Because of the humidity and lack of proper electric isolation, there were electric discharges throughout in the cell. The author complained to the prosecutor's office on the same day. On 3 May 2011, the author was transferred to the prison colony in Kurgan Region to serve his prison sentence.

2.2 In June 2011, a check of temporary detention facility No. 1 was carried out by the Kurgan regional prosecutor's office. Several technical problems were identified. It was noted in the report on the check that the conditions of cells No. 88, No. 89, No. 97, No. 100, No. 101, No. 105, No. 106, No. 107 and others did not comply with legislative standards. The light covers were missing, the window glass and window frames needed replacing and there were cracks in the ceiling and high levels of humidity. The lack of ventilation caused the presence of insects. It was concluded in the report that the state of the building was unsatisfactory and posed a real threat to the lives and health of the detainees and the staff. On 13 July 2011, a follow-up check was carried out by the Federal Penitentiary Service. A report was produced by the monitoring commission of the Federal Penitentiary Service, containing a detailed explanation of the technical problems identified during the check by the Kurgan regional prosecutor's office, repairs already effected and those under way. Disciplinary sanctions – withdrawal of a bonus payment or a reprimand – were applied to the responsible officers of temporary detention facility No. 1.

2.3 On 8 November 2011, the author was transferred again to temporary detention facility No. 1 in Kurgan.[1] Upon admission, his knee brace and cane were taken away, restricting his ability to move around. Throughout his stay, he was handcuffed whenever he had to leave his cell. He was initially placed in cell No. 92, where part of the floor was missing, disclosing wastewater. The cell was infested with insects and rats. On 11 November 2011, he was transferred to cell No. 117. He complained to the prosecutor's office on the same day, alleging the absence of glass in the window frames, partly broken flooring resulting in the ingress of wastewater, electric discharges resulting from uncovered electrical cables on wet walls and flooring, the presence of insects and rats, no ventilation and no toilet partitions. In such conditions, he was unable to prepare his defence. On 11 March 2012, he was transferred to cell No. 118, which had even worse conditions, about which he complained to the prosecutor's office on 12 March 2012. On 26 October 2012, he was transferred to cell No. 105 and remained there until 24 April 2013. The conditions of his detention further deteriorated as he was no longer provided with medical attention, despite his requests. On 10 February 2013, he submitted a complaint to the prosecutor's office. The author remained in temporary detention facility No. 1 until 28 April 2013, when he was transferred to a prison.

2.4 On 20 December 2011, while serving his sentence in a prison colony, the author was charged with murder. On 22 December 2011, an investigator filed a request for the author's pretrial detention in temporary detention facility No. 1 to Kurgan City Court. On the same date, the City Court rejected the request on the ground that the author was already detained

[1] According to the information from the State party, the author was transferred to temporary detention facility No. 1 as a witness in a criminal case on the basis of a Ketovo Interdistrict Investigative Department request dated 1 November 2011.

in prison. Without submitting an appeal of the court decision, the investigator filed another request for the author's detention in temporary detention facility No. 1 to the same court on 23 December 2011, adding several new arguments justifying the need for the transfer.[2] The City Court granted the investigator's request and ordered the author's detention in temporary detention facility No. 1 in Kurgan. On 26 December 2011, the author submitted a cassation appeal to Kurgan Regional Court, which remained unanswered. His detention in temporary detention facility No. 1 was extended by Kurgan City Court on 22 February and 25 April 2012 (upheld on appeal by Kurgan Regional Court on 6 March and 10 May 2012) and on 19 June, 23 July and 8 August 2012. On 8 November and 14 August 2013 and on 15 January 2015, the author appealed under the supervisory review procedure the extension of his detention to the Supreme Court. His appeals were rejected on 5 March and 1 October 2013 and on 25 February 2015.

2.5 On 26 October 2012, Kurgan Regional Court found the author guilty of murder and sentenced him to life imprisonment on the basis of a verdict by jury trial. On 5 March 2013, the Supreme Court upheld the conviction on appeal and dismissed the author's claims, including the alleged violation of his defence rights.

2.6 Two lawyers represented the author in the trial proceedings before Kurgan Regional Court, Mr. K and Mr. V. Due to an illness, Mr. K did not attend an additional judicial investigation on 12 October 2012. He informed the court of his absence in advance. The author asked to postpone the hearing, claiming that Mr. K was in charge of those parts of his defence and evidence that was to be examined that day. The Court dismissed the author's motion on the ground that the presence of a particular number of counsels was not required by the law, that the author's defence at the hearing would be ensured by Mr. V and that postponing the court hearing would protract the court proceedings and affect the rights of the parties to the proceedings, as well as witnesses present in the court, and the jury. The author appealed the decision of Kurgan Regional Court to hold a hearing with only one of his lawyers present. On 5 March 2013, his appeal was rejected by the Supreme Court. His requests for a supervisory review were rejected on 1 October 2013 by the Supreme Court and 25 February 2015 by the Deputy Chair of the Supreme Court.

2.7 On 4 July 2014, the author submitted a civil claim to Kurgan City Court for damage caused by the inhuman conditions of his detention in temporary detention facility No. 1. He claimed that the poor conditions of detention had caused a deterioration in his health; the dim light in cells No. 92, No. 105 and No. 118 had affected his eyesight; and the administration of the facility, knowing about his knee trauma, had removed his orthopaedic cane and knee brace to make him suffer and reduce his mobility. On 30 September 2014, the City Court rejected his claim for lack of substantiation.[3] Relying on the provisions of the Civil Code (arts. 1064, 1069 and 1100)[4] and Plenary Supreme Court ruling No. 10 of 20 December 1994,

[2] In particular, the investigator indicated that the author was of dubious character, had been previously sentenced for serious crimes, did not have a stable income, did not reside at his registered address, knew the participants in and witnesses of the crime and was serving a sentence for a lesser crime, to which a conditional release could be applied, which could allow him to abscond. The investigator also submitted that investigations involving the author needed to be carried out in Kurgan city.

[3] The court established that the author had failed to substantiate his claims that damage had been caused to his health, since he was regularly seen by medical personnel and treated as needed, which was confirmed by documents provided by the administration of temporary detention facility No. 1. He had not submitted claims concerning any mistreatment by officers at the facility, in particular as regards handcuffing or the removal of his cane and knee brace. He had submitted six claims during his stay in the facility, concerning the following: (a) the availability of a television in the cell; (b) the regime of detention; (c) the level of hygiene; and (d) nutrition standards. The Court took into account the findings of the 15 June 2011 prosecutorial check of temporary detention facility No.1, such as the unsatisfactory condition of the building and engineering infrastructure, the unsafe electrical wiring, the need to replace window frames and window glass in some cells, and the humidity levels. However, the Court concluded that the conditions of detention as described by the author had not been confirmed, with the exception of the lack of a toilet partition in cell No. 105. Since the author had been detained alone in that one-person cell, the lack of a partition could not be viewed as violating his rights to the extent that merited the award of compensation.

[4] Damage caused to the person shall be compensated in full by the offender. Offenders are not liable for damage if they prove that the damage has been caused through no fault of their own. Damage caused

on applying legislation on compensation for moral damages, the Court concluded that the author had failed to substantiate that the administration of temporary detention facility No. 1 had intentionally caused him damage. On 15 January 2015, the Regional Court upheld the decision on appeal.

Complaint

3.1 The author claims that he was detained in inhuman conditions in temporary detention facility No. 1 in Kurgan city from 17 February to 3 May 2011 and from 3 October 2011 to 28 April 2013. He alleges that he was kept there in order to confess guilt. He claims that the conditions of detention led to the deterioration of his health. He claims that he was arbitrarily handcuffed whenever taken out of cell. He claims a violation of articles 7 and 10 of the Covenant.

3.2 The author alleges that he was placed arbitrarily in temporary detention facility No. 1 by a court decision of 23 December 2011 in violation of article 9 of the Covenant. He claims that the courts did not take into account the fact that the conditions of detention in prison were better than those in temporary detention facility No. 1 and that the courts based their decisions solely on the arguments presented by the investigator and the seriousness of the charges, without taking into account his arguments, such as the state of his health and the impossibility of absconding, as he was in prison.

3.3 The author alleges that his right to defend himself through the counsel of his choice under article 14 (3) (d) of the Covenant was violated when Kurgan Regional Court held a hearing in the absence of one of his lawyers.

State party's observations on admissibility and the merits

4.1 In a note verbale dated 26 April 2018, the State party submitted its observations on the admissibility and merits of the communication.

4.2 The State party submits that the author has not appealed under cassation or a supervisory review procedure the decision of Kurgan City Court of 23 December 2011 to detain him in temporary detention facility No. 1. His claim under article 9 of the Covenant is therefore inadmissible under article 5 (2) (b) of the Optional Protocol. According to the State party, the fact that the author's submission to the Committee contains the text of a cassation appeal does not mean that it was submitted to the court.

4.3 Regarding the author's claim regarding his conditions of detention, the State party submits that the author failed to appeal under cassation the refusal of Kurgan City Court, dated 30 September 2014, to grant compensation, as well as the decision of Kurgan Regional Court, dated 15 January 2015. The author's claims under articles 7 and 10 of the Covenant are therefore inadmissible under article 5 (2) (b) of the Optional Protocol.

4.4 On the merits, concerning the author's claim under article 14 (3) (d) of the Covenant, the State party indicates that the domestic courts found that the author's claim that his right to defence had been violated as one of his lawyers was absent during the hearing on 12 October 2012 was unsubstantiated.

4.5 On the author's claims about the conditions of detention, the State party submits, without referring to the source of information, that the cells of temporary detention facility No. 1 in Kurgan city were in good material condition, including the windows, ventilation, heating, lights and toilet partitions (except the one-person cell No. 105). It also indicates that the administration of the facility concluded an agreement with the Kurgan Disinfection Centre, which had carried out monthly rat and pest control in the cells during the

by lawful actions shall be compensated in accordance with the law (art. 1064). State and municipal bodies and officials shall be liable for damage caused to a citizen by their unlawful actions or omissions (art. 1069). Irrespective of the offender's fault, non-pecuniary damage shall be compensated for if the damage was caused: (a) by a hazardous device; (b) in the event of unlawful conviction or prosecution or unlawful application of a preventive measure or unlawful administrative punishment; or (c) through the dissemination of information damaging to honour, dignity or reputation (art. 1100).

period 2011–2013. In cases where the process had not been effective, the company had been obliged to repeat the procedure. Medical personnel monitored the hygiene conditions in the cells.

4.6 The State party submits that the author received ongoing medical attention and assistance between 17 February 2011 and 29 April 2013, including outpatient treatment in the medical ward of temporary detention facility No. 1 and in Kurgan regional No. 3 tuberculosis hospital. A denial of medical assistance to the author was not established.

4.7 The author was handcuffed outside the cell in accordance with Act No. 5473-1, dated 21 July 1993, on detention facilities and penitentiary agencies. Handcuffs are used when a detained person's behaviour suggests that they intend to abscond or cause injury to others or themselves. Considering that the author had been identified as someone with tendencies towards absconding, assault, self-harm and fraud, the use of handcuffs was deemed a necessary precaution.

4.8 During the period of detention in temporary detention facility No. 1, six requests from the author were registered: on 22 November 2011 and 12 April and 12 November 2012 (requests concerning the level of hygiene); on 5 March 2011 (a request for a television in the cell); and on 24 January 2013 (a request concerning nutrition standards). There were no complaints from the author regarding mistreatment by the officers of the facility or the deterioration of his health.

4.9 Regarding the claim for damages proceedings before Kurgan City Court, the State party indicates that, as the author did not provide evidence, the Court could not confirm the author's claims that his cane had been taken from him and that he had been subjected to the unjustified use of handcuffs. His claims that his health had deteriorated in detention were also found by the Court to be unsubstantiated, as he failed to present any evidence that he had sought medical assistance in relation to the health problems caused by the conditions of detention, including the deterioration of his eyesight. On the contrary, according to a medical certificate issued by Federal Penitentiary Service medical unit No. 74 on 4 August 2014, the author had received medical assistance and treatment on numerous occasions. The court found that the conditions of the author's detention, as well as his treatment during the detention in temporary detention facility No. 1 in Kurgan, had not caused him physical or moral damage.

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

5.1 On 25 July, 12 November 2018, and 5 December 2018, the author submitted comments on the State party's observations on admissibility and the merits. The author reiterates that his right to defence was violated and provides additional information that, on 12 October 2012, after the hearing, the judge at Kurgan Regional Court postponed the hearing to 16 October 2012 because of the absence of the author's second lawyer, Mr. K. The author submits that this fact confirms that the hearing of 12 October 2012 was held in violation of his rights.

5.2 With regard to the State party's argument that he failed to submit a cassation appeal in the proceedings for compensation of moral damages against the Kurgan City Court decision dated 30 September 2014 and the decision of Kurgan Regional Court dated 15 January 2015, the author refers to the jurisprudence of the European Court of Human Rights, according to which there were no effective remedies regarding conditions of detention in the State party at that time.[5] The author points out that Kurgan City Court denied him compensation on the ground that he had failed to prove that he was subjected to physical and moral suffering. The author indicates that the burden of proof rested with the plaintiff, who is a priori in a position of disadvantage compared with the authorities regarding access

[5] Reference is made to *Ananyev and others v. Russia*, Applications No. 42525/07 and No. 60800/08, Judgment, 10 January 2012.

to evidence that could prove the conditions of detention.[6] The State party did not indicate a remedy that could have prevented the violation and put an end to it.

5.3 Regarding the failure to appeal the Kurgan City Court decision of 23 December 2011 authorizing his detention in temporary detention facility No. 1, the author submits that, once his State-appointed lawyer had been substituted by a lawyer of his own choosing (Mr. V), the latter appealed the decision of Kurgan City Court dated 22 February 2012 that extended the author's detention. In his cassation appeal, the author asked the court to lift the detention measure in view of the speculative reasons invoked by the investigator in his original request for detention on 23 December 2011, such as a possibility of a conditional release from prison. The author adds that the statistics of the Judicial Department of the Supreme Court indicate that practically all cassation appeals are denied in cases concerning authorization of detention. Therefore, this remedy cannot be viewed as effective.

5.4 The author clarifies that the violation of article 9 of the Covenant occurred on two grounds: (a) by the decision of Kurgan City Court dated 23 December 2011 authorizing the author's detention in temporary detention facility No. 1; and (b) by the consecutive, numerous extensions of the detention period on the same grounds. The author insists that the courts did not have sufficient reasons to authorize his detention in temporary detention facility No. 1, because he was already in prison. The prison was situated 33 km from the city of Kurgan and the author could have been transported if needed for the investigation.

5.5 The author reiterates his claims concerning the inhuman conditions of detention in temporary detention facility No. 1 and refers to the findings of the prosecutorial check on 15 June 2011 and the follow-up check by the Federal Penitentiary Service on 13 July 2011. He reiterates his claims that his health deteriorated, indicating that he was only seen by medical personnel four times. The rest of his claims were ignored, including his request to be checked by an ophthalmologist. In response to the State party's submission that he was handcuffed because it had been placed on his record that he was a person with tendencies to abscond, assault, self-harm and fraud, he states that that was placed on his record only in 2016, when he had cut his left hand and damaged his veins. He claims that the damage to his vertebrae, hips and knees was due to him being forced to walk with handcuffs and without the cane or knee brace. He claims that poisoning with chlorine vapours and a lack of medical treatment for his heart condition has resulted in the need to take medicine for blood pressure and different painkillers twice a day for the rest of his life. His eyesight is currently +2.75 in both eyes.

Additional submissions

From the State party

6. On 25 December 2019, the State party submitted additional observations. Among other things, the State party submits that, according to information dated 8 February 2012, it had been placed on the author's record that he was a person with tendencies to abscond and assault staff and as a person with a psychological disorder leading to a risk of self-harm, aggression towards others and fraud. The State party confirms this information on the basis of two additional records: (a) a copy of records provided by the Federal Penitentiary Service; and (b) a copy of certificate No. 231 of 2013 from the author's personal file. The information had been removed from his record on 29 April 2013, after his transfer to prison. Based on this information, the State party submits that the use of handcuffs in the author's case was well-grounded and lawful.

From the author

7. On 10 October 2020, the author reiterated his original claims.

[6] The author clarifies that, as of 2015, in accordance with the amended Code of Administrative Offences, the burden of proof is shared by the parties. At the time of events, however, the burden of proof rested exclusively with the author.

Issues and proceedings before the Committee

Considerations of admissibility

8.1 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.

8.2 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.

8.3 The Committee notes the author's claim that he was arbitrarily arrested and detained pursuant to Kurgan City Court decision of 23 December 2011 and subsequent court decisions authorizing the extension of his detention in temporary detention facility No. 1. The State party contests the admissibility of this claim on the ground of failure to exhaust domestic remedies. The Committee notes that the author was already serving a prison sentence when the decisions in question were adopted by the courts. Therefore, his claim relates, in essence, to his transfer to temporary detention facility No. 1 and not to a decision to deprive him of liberty. The author was deprived of liberty by sentence of Kurgan City Court on 17 February 2011. The Committee notes that, while the question of transfer of detainees might raise questions under the Covenant, the author does not substantiate how the choice of the place of detention, once the detention had been authorized by a lawful court order, fell under article 9 of the Covenant. The Committee thus finds the author's claim under article 9 of the Covenant inadmissible for lack of substantiation under article 2 of the Covenant.

8.4 The Committee notes the State party's arguments under article 5 (2) (b) of the Optional Protocol that the author has not exhausted domestic remedies on his claims under articles 10 of the Covenant as he failed to submit a cassation appeal against the Kurgan City Court decision of 30 September 2014 and the Kurgan Regional Court decision of 15 January 2015, denying him compensation for damage he had claimed for the conditions of detention. The Committee also notes the author's claim that there were no effective domestic remedies regarding conditions of detention (see para. 5.2 above).

8.5 The Committee recalls that, under article 5 (2) (b) of the Optional Protocol, authors are expected to exhaust domestic remedies insofar as such remedies appear to be effective in the given case and are de facto available to them.[7] Taking into account the author's claim that there were no effective domestic remedies available to him regarding his conditions of detention, the Committee should assess whether filing a cassation appeal in civil proceedings for compensation in cases related to conditions of detention can be considered an effective remedy and should have been exhausted by the author.

8.6 The Committee notes that Kurgan City Court, in its decision of 30 September 2014, and Kurgan Regional Court, in appeal decision of 15 January 2015, relied on articles 1064, 1069 and 1100 of the Civil Code (see para. 2.7 above). These provisions establish the principles on which damage, in particular, moral damage, should be assessed and compensated by courts. The articles outline two elements that are crucial for the Committee's assessment of the effectiveness of the remedy in question. First, compensation is linked to unlawful action or inaction by the offender. Compensation in the absence of fault by the offender is possible only on three grounds, none of which is relevant to the general conditions of detention. The Committee also notes that the Plenary Supreme Court, in its ruling No. 10 of 20 December 1994, to which the domestic courts referred, defines the fault of the offender as a mandatory condition for liability for causing moral harm. Second, the plaintiff bears the burden of proof in two respects: (a) that he or she has suffered damage; and (b) that this damage was caused by unlawful action or inaction by the offender.

8.7 In the Committee's view, the two preconditions for compensation set out in the Civil Code make it difficult, if not impossible, to qualify detention in poor conditions as damage

[7] See, for example, *P.L. v. Germany* (CCPR/C/79/D/1003/2001), para. 6.5; *Warsame v. Canada* (CCPR/C/102/D/1959/2010), para. 7.4; and *V.G. v. Russian Federation* (CCPR/C/139/D/2824/2016), para. 8.6.

under the Civil Code. In the present case, the domestic courts found that the administration of temporary detention facility No. 1 did not intend to hurt the author or damage his health, and that his detention in the conditions present in that facility was not aimed at violating his rights; therefore, there was no damage and no reason to award compensation. The Committee believes that, in the absence of any alternative remedies, the cassation court would have to rely on the same legal provisions and would be unlikely to reach a different outcome. This fact and the absence of any examples of successful cassation proceedings from the State party in cases related to conditions of detention lead the Committee to conclude that the author did not have any prospect of success at a cassation appeal.[8] The Committee finds that, in the present case, the cassation procedure under the Civil Procedure Code was not a remedy that the author was required to exhaust for the purpose of the admissibility of the communication. The Committee therefore finds that it is not precluded by article 5 (2) (b) of the Optional Protocol from examining the communication.

8.8 The Committee notes the author's claims that his detention in poor conditions was used to make him confess guilt, that his health, in particular his eyesight, deteriorated due to the poor conditions of detention, and that he was handcuffed arbitrarily whenever he was taken out of the cell. The Committee also notes that the information on file is not sufficient for it to consider these claims on their merits. The Committee finds these allegations, which could fall under article 7 of the Covenant, insufficiently substantiated and inadmissible under article 2 of the Optional Protocol.

8.9 The Committee also notes the author's allegations that he was unable to prepare his defence as a result of his being detained in inhuman conditions in temporary detention facility No. 1 in Kurgan. The Committee further notes that the author does not provide any details or documents supporting this claim. It therefore finds his claim under article 14 (3) (b) inadmissible for lack of substantiation under article 2 of the Optional Protocol.

8.10 The Committee further notes the author's claim under article 14 (3) (d) of the Covenant that his right to defence was violated because only one of two contracted lawyers was present at the Kurgan Regional Court hearing in his criminal case on 12 October 2012. The Committee notes from the hearing transcript on file that the judge took a decision not to postpone the hearing after consulting the parties. He mentioned that the hearing had been scheduled in advance and that the parties were preparing to present their evidence and had invited witnesses. The judge clearly specified that any outstanding issues could be addressed at subsequent hearings, should any of the parties submit a motion. Having consulted the parties, the judge stopped the hearing at the stage of presenting of additional evidence, taking into account that part of the information was unavailable in view of Mr. K's absence. Before he made the decision, the judge verified with the author and his second lawyer, Mr. V, that they would have sufficient time to prepare by 18 October 2012. At the request of Mr. V, the court moved the hearing to 16 October 2012. The Committee notes that the author did not specify how the hearing on 12 October 2012 in the absence of Mr. K affected the overall outcome of the trial. In this light, the Committee finds the author's claim under article 14 (3) (d) of the Covenant inadmissible for lack of substantiation under article 2 of the Optional Protocol.

8.11 The Committee considers that author has sufficiently substantiated his claims under article 10 of the Covenant regarding his conditions of detention in temporary detention facility No. 1. It, therefore, declares those claims admissible and proceeds with its consideration of the merits.

Consideration of the merits

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

9.2 The Committee notes the author's arguments that the conditions of detention in temporary detention facility No. 1 in Kurgan amounted to inhuman and degrading treatment. The Committee notes that the author provides a detailed account of his conditions of

[8] See, mutatis mutandis, *Alekseev et al. v. Russian Federation* (CCPR/C/134/D/2943/2017, 2953/2017 and 2954/2017), para. 6.6.

detention in various cells in temporary detention facility No. 1 from 17 February to 3 May 2011 and from 8 October 2011 to 28 April 2013. The Committee notes the findings of the prosecutorial check carried out on 15 June 2011, and a follow-up check and report by the Federal Penitentiary Service, which, although it did not describe in detail the conditions in the cells where the author had been held, indicated the generally unsatisfactory condition of the building, the missing glass in many windows, the unsafe electricity isolation, missing parts of the floor, the humidity level and the presence of insects in the cells. In the Committee's view, these findings, which characterized the detention facilities of temporary detention facility No. 1 as presenting a real risk for the safety and health of the detained persons and the staff working there, corroborate the author's allegations of poor conditions of detention.

9.3 The Committee recalls that persons deprived of their liberty may not be subjected to any hardship or constraint other than that resulting from the deprivation of liberty and that they must be treated humanely, in accordance with the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules).[9] The Committee considers that the author's conditions of detention, as described, violated his right to be treated with humanity, with respect for the inherent dignity of the human person, and are therefore also contrary to article 10 (1) of the Covenant.[10] For these reasons, the Committee finds that the conditions of the author's detention, as described by the author, constitute a violation of article 10 (1) of the Covenant.

10. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts before it discloses a violation by the State party of the author's rights under article 10 (1) of the Covenant.

11. Pursuant to article 2 (3) (a) of the Covenant, 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 to take appropriate steps 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.

12. 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 present 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.

[9] *Bobrov v. Belarus* (CCPR/C/122/D/2181/2012), para. 8.2; and *Aminov v. Turkmenistan* (CCPR/C/117/D/2220/2012), para. 9.3.

[10] *Evans v. Trinidad and Tobago* (CCPR/C/77/D/908/2000), para. 6.4; *Weerawansa v. Sri Lanka* (CCPR/C/95/D/1406/2005), para. 7.4; and *Gorbaeva v. Kyrgyzstan* (CCPR/C/139/D/3261/2018), para. 7.9.