



**Convention against Torture
and Other Cruel, Inhuman or
Degrading Treatment
or Punishment**

Distr.: General
16 January 2011

Original: English

Committee against Torture

Communication No. 353/2008

**Decision adopted by the Committee at its forty-seventh session, 31
October to 25 November 2011**

<i>Submitted by:</i>	Dmytro Slyusar (not represented by counsel)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Ukraine
<i>Date of complaint:</i>	28 July 2008 (initial submission)
<i>Date of present decision:</i>	14 November 2011
<i>Subject matter:</i>	Ill-treatment in detention
<i>Procedural issue:</i>	Non-exhaustion of domestic remedies
<i>Substantive issues:</i>	Torture, failure to conduct prompt and impartial investigation
<i>Articles of the Convention:</i>	1, 2, 12, 13 and 14.

Annex

Decision of the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (forty-seventh session)

concerning

Communication No. 353/2008

<i>Submitted by:</i>	Dmytro Slyusar (not represented by counsel)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Ukraine
<i>Date of complaint:</i>	28 July 2008 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 14 November 2011,

Having concluded its consideration of complaint No. 353/2008, submitted to the Committee against Torture by Dmytro Slyusar under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the complainant, his counsel and the State party,

Adopts the following

Decision under article 22, paragraph 7, of the Convention against Torture

1. The complainant is Dmytro Slyusar, a citizen of Ukraine, born in 1981. He claims to be a victim of violations of article 2, paragraph 1, and article 12 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. He is unrepresented.

The facts as presented by the complainant

2.1 On 17 April 2003, the complainant's father disappeared under strange circumstances. Two days before, he allegedly wrote a will whereby he was leaving all his property to his brother, Yuriy Slyusar. On 18 April 2003, the complainant and his mother went to the police and other law-enforcement agencies to report the disappearance; however, no actions were taken to investigate the disappearance. Instead a criminal case was opened regarding his murder.

2.2 The complainant claims that his uncle, Yuriy Slyusar, created obstacles to the investigation of the case, by giving false statements and instigating others to give false statements against the complainant and his mother.

2.3 On 17 February 2006, on his way to work, the complainant was detained by three men carrying police identification and taken to the Solomyanskiy District Police. Allegedly, they filed a report accusing him of an administrative offence for having used inappropriate language despite their warnings. The complainant claims that these accusations are false. On the same day, he was taken to the Svyatoshinskiy District Court, which sentenced him to seven days in detention. He claims that he did not have legal assistance while in administrative detention.

2.4 The complainant submits that in fact his arrest was ordered by the Prosecutor's Office, which was also investigating his father's murder. He claims that first he was kept in the Kyiv temporary detention centre, and after two or three days, he was transferred to the Solomyanskiy Police Department, where he was subjected to physical and psychological torture. He was severely beaten and kept in a cell where the temperature was 4° C. He was not allowed to sleep or eat and was threatened that his wife and mother would be harmed if he did not confess to having killed his father. On 24 February 2006, he was again detained by the Prosecutor's Office as a suspect for the murder of his father and tortured again.¹ His health deteriorated significantly and later, he was diagnosed with hypertensive cardiovascular disorder.

2.5 The complainant appealed the decision of the Svyatoshinskiy District Court to the Kyiv Court of Appeal, which annulled the decision and sent the case for re-examination on 4 April 2006. On 20 October 2006, a different judge of the Svyatoshinskiy District Court confirmed that the complainant had committed an administrative offence.

2.6 The complainant submitted another appeal to the Kyiv Court of Appeal against the second decision by the Svyatoshinskiy District Court. On 29 December 2006, it again annulled the decision of the Svyatoshinskiy District Court and sent the case for re-examination by the same court. On 4 April 2007, the third judge of the Svyatoshinskiy District Court decided that the complainant had committed an administrative offence and closed the case again due to the amount of time that had elapsed. The complainant's third appeal to the Kyiv Court of Appeal was dismissed. His appeal to the Supreme Court was also rejected on 26 December 2007.

2.7 The complainant submits that his claims of torture are supported by a forensic medical report. On 2 March 2006, he complained of the torture to the Prosecutor's office, which ignored the complaint. The lawsuit he filed with the Solomyanskiy District Court regarding the failure of the Prosecutor's Office to investigate his torture claims was dismissed. He appealed the decision of the District Court to the Kyiv Court of Appeal, which partly annulled the decision of the former. Namely, it recognized the failure by the Prosecutor's Office to investigate his claims but did not oblige the Office to conduct the investigation. Therefore, the complainant concludes that any domestic remedies would have been ineffective and unavailable.

The complaint

3. The complainant claims he was unlawfully detained and subjected to severe torture in violation of article 2, paragraph 1, and article 12 of the Convention.

State party's observations on admissibility and the merits

4.1 On 24 November 2008, the State party submitted that on 20 May 2003 the Solomyanskiy District Prosecutor's Office opened a criminal case regarding the illegal captivity of the complainant's father, Slyusar Sergey, under section 146, part 1, of the

¹ The complainant was released on 27 February 2006.

Criminal Code. On 9 July 2003, during the investigation of this criminal case, the same Prosecutor's Office initiated a criminal investigation against the complainant and his mother under the same section of the Criminal Code. On that date, both the complainant and his mother were detained for 10 days under the decision of the Solomyanskiy City Court. On 18 July 2003, they were released on the condition that they would not leave the country. As the involvement of the complainant and his mother could not be proven, the case was closed on 21 July 2003.

4.2 On 17 February 2006, the police detained the complainant for minor hooliganism. The case was examined the same day by the Svyatoshinskiy District Court, which sentenced the complainant to seven days of detention under section 173 of the Administrative Code.

4.3 After his release from detention on 24 February 2006, the complainant was again detained, but this time as a suspect in the murder of his father. On 27 February 2006, he was released. On 28 February 2006, the complainant asked for a medical examination, which showed that he had light injuries. He complained to the Prosecutor's Office about physical and psychological pressure by the police officers during both his detentions. However, the investigation by the Ministry of the Interior and the Prosecutor's Office did not confirm such claims. The Supreme Court found the complainant's detention in relation to hooliganism lawful and decided to uphold the decision of the Svyatoshinskiy District Court.

4.4 The State party submits that as a result of the complainant's appeals the decision on his detention was examined by the lower court several times. He also complained to the District Prosecutor's Office regarding torture, but on 26 July 2006, the Prosecutor's Office refused to open a criminal case against police officers. This decision was appealed to the higher Prosecutor's Office. The appeal is pending, thus the complainant has not exhausted domestic remedies.

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

5. On 19 January 2009, the complainant reiterated the facts from his initial submission and claimed that he exhausted all available domestic remedies in relation to his detention. He claims that there were seven decisions by the Ukrainian courts, all of which had dismissed his claims. Four months after his initial complaint of torture, his case was sent to the Kyiv Solomyanskiy District Prosecutor's Office in July 2006, which refused to open a criminal case against police officers. He appealed the decision to the Kyiv Prosecutor's Office on 26 July 2006, but has not received any answer since then. Therefore, he claims that the period of exhaustion is unreasonably prolonged and cannot bring effective remedy, as it will result in the return of the case to the Prosecutor's Office.

Additional observations by the State party

6.1 On 20 March 2009, the State party submitted that there was no link between the facts established by medical examination on 28 February 2006, the report of the medical clinic of the Ministry of Interior of 4 May 2006 and the possible use of torture against the complainant. Testimonies given by witnesses and the victim confirm his guilt regarding the administrative offence. The complainant has not used his constitutional right to complain before a court against the use of torture by the police.

6.2 On 27 May 2009, the State party cited domestic legislation in relation to the appeal procedure, which sets the deadline of seven days to appeal the decision of the Prosecutor's Office.

Further comments by the complainant

7.1 On 11 May 2009, the complainant contested the State party's submission. He stated that the witnesses referred to by the State party were officers of the Solomyanskiy Police Department, acting under the orders of the Kyiv Prosecutor's Office, which was investigating his father's murder. He reiterates that after seven days of detention for the administrative offence, before he could leave the premises of the Solomyanskiy Police Department he was detained again for 72 hours as a suspect in the murder of his father. He claims that the police officers were in his district conducting an investigation into his father's case and had instructions to detain him. He claims that if he had been detained merely for the administrative offence, as stated by the State party, he should have been kept in the Kyiv temporary detention centre and not transferred to the Solomyanskiy Police Department.

7.2 The complainant claims that there were many other inconsistencies and lies in the statements of the police officers and their collaborator – (the “victim” of the hooliganism offence), which were not thoroughly investigated by the court.

7.3 The complainant submits that, according to the medical report, his injuries were caused during his detention. As a result, he had to go to the hospital, where he was diagnosed with a hypertensive cardiovascular disorder, as indicated in the report of 4 May 2006. Finally, he reiterates his previous submission in relation to the exhaustion of remedies concerning his torture claims.

7.4 On 6 July 2009, the complainant once again reiterated that no decision had been taken by the Kyiv Prosecutor's Office in relation to his case, although under the law it should have responded within three days. He submits that he did not appeal the decision of the District Prosecutor's Office not to open a criminal case to the court because he appealed to the higher Prosecutor's Office and his appeal could not be considered by two bodies at the same time.

7.5 On 26 October 2011, the complainant submitted that his further appeals in 2010 and 2011 to the Prosecutor General's Office and the Kyiv Prosecutor's Office were dismissed.

Issues and proceedings before the Committee

Consideration of admissibility

8.1 Before considering a claim contained in a communication, the Committee must decide whether or not it is admissible under article 22 of the Convention.

8.2 The Committee notes the State party's claim that the complainant has not exhausted domestic remedies as his complaint is still pending with the Kyiv Prosecutor's Office. The complainant contested the claim, stating that his appeal had been pending several years and, therefore, the procedure had been unreasonably prolonged. The Committee notes that States parties are required to proceed to a prompt and impartial investigation whenever there is reasonable ground to believe that an act of torture has been committed. The Committee considers that significant time has elapsed since the complainant filed his appeal. In these circumstances, the Committee concludes that the exhaustion of domestic remedies has been unreasonably prolonged and that it is not precluded by the requirements of article 22, paragraph 5 (b), of the Convention, from considering the communication.

8.3 With the other admissibility requirements having been met, the Committee declares the communication admissible.

Consideration of merits

9.1 The Committee has considered the communication in the light of all information made available to it by the parties concerned, in accordance with article 22, paragraph 4, of the Convention.

9.2 The Committee notes that the complainant has alleged a violation of article 2, paragraph 1, of the Convention, on the grounds that the State party failed in its duty to prevent and punish acts of torture. It also notes his allegations on the treatment he was subjected to while in detention and the medical certificates, provided by the complainant describing the physical injuries inflicted on him as well as the absence of legal safeguards while in administrative detention. The State party merely stated that there was no link between the facts established in the medical report of 28 February 2006, the report of the medical clinic of the Ministry of Interior of 4 May 2006 and the possible use of torture against the complainant. In the absence of a detailed explanation by the State party, and based on the documentation provided, the Committee concludes that the facts, as submitted, constitute torture within the meaning of article 1 of the Convention, and that the State party failed in its duty to prevent and punish acts of torture, in violation of article 2, paragraph 1, of the Convention.

9.3 As to the allegations concerning the violation of article 12 of the Convention, the Committee notes that according to the complainant the State party failed to investigate his claims that he was subjected to torture while in detention. The State party has not refuted this allegation. Furthermore, the complainant's appeal against the inaction of the District Prosecutor's Office has been pending for several years, as confirmed by the State party. In the circumstances, the Committee reiterates that article 12 of the Convention² requires the State party to proceed to a prompt and impartial investigation whenever there is reasonable ground to believe that an act of torture has been committed. In the absence of any other information, the Committee considers that the State party failed to fulfil its obligations under article 12, of the Convention. The State party also failed to comply with its obligation under article 13 of the Convention to ensure that the complainant has the right to complain to, and to have his case promptly and impartially investigated by, its competent authorities, as well as under article 14, to provide him, as a victim of torture, with redress and compensation .

9.4 The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Inhuman or Degrading Treatment or Punishment, considers that the State party violated articles 1, 2, paragraph 1, 12, 13 and 14 of the Convention.

10. In conformity with rule 118 (former rule 112), paragraph 5, of its rules of procedure (CAT/C/3/Rev.5), the Committee wishes to be informed, within 90 days, on the steps taken by the State party to respond to this decision.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

² Communication No. 8/1991, *Halimi-Nedzibi v. Austria*, Views adopted on 18 November 1993, para. 13.5.