



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. 2322/2013*, **

<i>Communication submitted by:</i>	Vladimir Chernev (represented by the non-governmental organization “Committee against Torture”)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Russian Federation
<i>Date of communication:</i>	10 December 2013 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 97 of the Committee’s rules of procedure, transmitted to the State party on 11 June 2013 (not issued in document form)
<i>Date of adoption of Views:</i>	15 March 2019
<i>Subject matters:</i>	Cruel and inhuman treatment; effective remedy
<i>Procedural issue:</i>	Exhaustion of domestic remedies
<i>Substantive issues:</i>	Cruel and inhuman treatment; effective remedy
<i>Articles of the Covenant:</i>	2 (3) and 7
<i>Articles of the Optional Protocol:</i>	2 and 5 (2) (b)

1. The author is Vladimir Aleksandrovich Chernev, a national of the Russian Federation born in 1990. He claims that the State party has violated his rights under article 7, read alone and in conjunction with article 2 (3), of the Covenant. The Optional Protocol entered into force for the Russian Federation on 1 January 1992. The author is represented by counsel.

The facts as submitted by the author

2.1 On 14 June 2007, the author was arrested in the village of Vyazovka, Kstovo district, Nizhegorodsky region.¹ He was punched and kicked in the head by several police officers,

* Adopted by the Committee at its 125th session (4–29 March 2019).

** The following members of the Committee participated in the examination of the communication: Tania Maria Abdo Rocholl, Yadh Ben Achour, Ilze Brands Kehris, Christopher Arif Bulkan, Ahmed Amin Fathalla, Shuichi Furuya, Christof Heyns, Bamariam Koita, Marcia V.J. Kran, Duncan Muhumuza Laki, Photini Pazartzis, Hernán Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Yuval Shany, Hélène Tigroudja, Andreas Zimmermann and Gentian Zyberi.



which caused him to lose consciousness several times. He was transported to the office of the traffic police in the village of Olgino where he was searched in the presence of witnesses.² Before being searched, he was given a bottle of water and told to wash the blood off his face. After the search, he was taken to the Kanavinsky district police unit. During the night of 14 June 2007, he was examined by a doctor in city hospital No. 4 in Kanavinsky region. The medical report affirms injuries to the soft facial tissue and nose and hypodermic hematoma in both eye sockets.

2.2 On 15 June 2007, the author was officially charged with illegal trafficking of drugs. On the same day, he was placed in a pretrial detention facility in Kstovo where an ambulance had to be called to inject the author with painkillers.

2.3 On 21 June 2007, the author's lawyer submitted a motion to the case investigator requesting a medical forensic examination of the author because of the injuries suffered at the time of his arrest, claiming that he had been assaulted by the arresting officers. On 22 June 2007, while being interrogated by the investigator, the author himself stated that he had been assaulted by the arresting police officers, as a result of which he sustained injuries to his spleen, lungs and shoulder and complained of headache and dizziness.³ On 23 June 2007, the investigator denied the lawyer's motion on the grounds that the injuries were not related to the crime the author was being investigated for and that the allegations of beatings by the police should be separated from the main case and investigated independently. On 31 August 2007, the allegation of beatings by the police was separated into a separate file and referred to the Kstovo district prosecutor's office for investigation; however, no medical forensic examination of the author was conducted until 19 February 2009.

2.4 On 6 September 2007, the Kstovo district prosecutor's office investigator decided not to open a criminal case against the police officers because the author had resisted arrest and, as was explained by the arresting officers during the investigation, the use of combat Sambo techniques by the police in such cases was permitted by the Law on Police. On 15 September 2008, the author's lawyer appealed the investigator's decision to the city court of Kstovo. On 19 September 2008, the city court found the investigator's decision of 6 September 2007 unlawful on the grounds that there had been almost no investigation conducted into the allegations of the author.

2.5 On 8 October 2008, the director of the investigation department of the Kstovo district prosecutor's office revoked the investigator's decision of 6 September 2007 and requested further investigation. On 17 October 2008, the same investigator of the Kstovo district prosecutor's office again refused to open a criminal case on the grounds that the conduct of the police officers was in compliance with the Law on Police. On 27 July 2009, after the author's lawyer's appeal, the director of the investigation department of the Kstovo district prosecutor's office revoked the investigator's decision of 17 October 2008 as it was based on an incomplete assessment, and requested further investigation.

2.6 On 6 August 2009, the Kstovo district prosecutor's office investigator again refused to initiate a criminal investigation. On 19 March 2010, the author submitted an appeal challenging the investigator's decision of 6 August 2009 to the city court of Kstovo. On 29 March 2010, the city court of Kstovo dismissed the author's claim. On 7 April 2010, the author submitted a cassation appeal to the regional court of Nizhegorodsky region. On 1 June 2010, the regional court upheld the author's appeal and returned the matter to the city court of Kstovo. According to the regional court, the investigation was not complete as it did not include interrogation of eyewitnesses and medical personnel who had treated the author's injuries. Consequently, on 19 June 2010, the city court of Kstovo declared the investigator's decision of 6 August 2009 unlawful and requested further investigation. On 8

¹ According to the author, six men in civilian clothes (later revealed to be police officers) tried to apprehend him and his friends on the street. Since he did not know that the men were from the police he tried to run away, but after a few metres he stopped and sat on the ground. At that point, he claims, the officers started beating him.

² As a result of the search the police found drugs in the author's pockets.

³ A copy of the interrogation protocol also shows that the author wanted his injuries to be assessed by a forensic medical examiner and his clothing to be tested because it was bloodied from his injuries.

November 2010, the director of the Kstovo investigation department revoked the investigator's decision of 6 August 2009 and requested further investigation.

2.7 On 18 November 2010, the investigator again decided not to open a criminal case against the police officers due to lack of a *corpus delicti*. On 13 February 2012, this decision was appealed to the city court of Kstovo. On 21 February 2012, the deputy city prosecutor of Kstovo informed the author's lawyer – a member of the non-governmental organization (NGO) "Committee against Torture" – that the investigator's decision of 18 November 2010 had been revoked and the materials sent for additional investigation. However, when the lawyer was allowed access to the materials of the investigation on 25 June 2013, he discovered that there had not been any new procedural decisions since 18 November 2010.

2.8 The author submits that since the prosecutor's office has already refused four times to open an investigation into the beatings by the police, he has exhausted all available and effective domestic remedies.

The complaint

3. The author claims that police officials assaulted him at the time of his arrest and the State party's authorities failed to subsequently carry out an investigation into his complaints of cruel and inhuman treatment, and that these violations amount to a breach of his rights under article 7, read alone and in conjunction with article 2 (3) (a), of the Covenant.

State party's observations on admissibility and the merits

4.1 In a note verbale dated 23 April 2014, the State party submitted its observations on admissibility and the merits of the communication. The State party submits that the criminal case against the author was initiated on 15 June 2007 on charges of attempted sale of narcotic substances. By a verdict of the Kstovo city court of 10 December 2007, the author was found guilty and sentenced to six years in prison. On 31 August 2007, the case investigator reported that there had been a complaint from the author about physical force having been used against him at the time of his arrest by the police. On the same day, all materials related to the author's detention and his complaint were sent to the Kstovo prosecutor's office for investigation. During the investigation, it was determined that at the time of his detention, the author had shown active resistance to the police by trying to escape arrest, as a result of which one of the police officers had to use combat Sambo techniques to subdue him. The State party submits that this was confirmed by other police officers who participated in the arrest. During the trial, witness B, who participated in the search of the author after his arrest, testified that he did not notice any visible injuries. When questioned later, he confirmed that he did not remember the author's general state of health, nor did he see any injuries. The medical examination of the author conducted on 15 June 2007 at city hospital No. 4 revealed that he had suffered injuries to his soft facial tissue and nose and hypodermic hematoma in both eye sockets. The State party notes that the trial court has determined the legality of the use of combat Sambo techniques against the author during his detention due to his resistance. During the trial, the author explained that he had initially tried to run from the police and stopped only after they had warned him to stop or they would shoot; two police officers then threw him to the ground and started punching and kicking him.

4.2 The State party notes that all appeals by the author against the refusals of the prosecutor's office to open a criminal case have been considered and upheld by the respective courts; therefore, it considers that the author had access to effective domestic legal remedies. On 1 March 2012, the prosecutor's office again refused to open a criminal investigation into the alleged beatings due to lack of a *corpus delicti*. The State party states that, in view of the new allegations made by the author to the Committee in his communication, the refusal by the prosecutor's office of 1 March 2012 was revoked by the head of the Nizhegorodsky region investigation department on 4 March 2014. Case materials have been sent to an investigator for additional investigation, and the author will be notified of the outcome in due course. The State party notes that the additional investigation is being monitored by the Office of the General Prosecutor of the Russian Federation.

4.3 As the author's complaint is still being considered by the domestic authorities, the State party submits that the author has not exhausted all available domestic legal remedies, and therefore finds the Committee's consideration of the communication to be premature.

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

5.1 In a letter dated 27 June 2014, the author commented on the observations of the State party. He rejects the State party's assertion that he has not exhausted all available domestic legal remedies. He notes that the fact that the courts found investigations into his beatings to be incomplete and investigators' refusal to open criminal case unlawful, only to have the prosecutor's office repeatedly refuse to open criminal proceedings, shows that the domestic remedies were ineffective. He notes that between 2007 and 2014, the domestic authorities refused six times to open a criminal case into his beatings. The author submits that the investigations have been prolonged with no grounds and deliberately put off, while certain investigative procedures were not performed on time. He refers to the decision of the Nizhegorodsky region investigation department of 4 March 2014 to revoke the refusal to open a criminal case of 1 March 2012, and submits that this decision called for a number of investigative actions. However, these actions have been ineffective, as evidenced by the refusal of 9 April 2014, because the forensic medical expert failed to provide any clarifications concerning his medical examination of the author performed on 19 February 2009, the surgeon who initially treated the author in 2007 testified that he had quit his job seven years previously and could not recall any events related to the case, and all the registers containing records of the inmates in the detention facility where the author was initially held were destroyed in 2010.

5.2 The author submits that, despite the refusal of 9 April 2014, he again appealed to the head of the Nizhegorodsky region investigation department, addressing the discrepancies between the testimonies of the police officers provided during the trial in 2007 and their testimonies provided during the investigations of the author's complaint, including the latest one in 2014. The discrepancies concerned the circumstances of the author's detention, the way the injuries were caused and how they were reflected in the official documents.

5.3 The author submits that there exists an administrative practice of using torture and cruel, inhuman and degrading treatment in the State party, which makes theoretically available domestic legal remedies ineffective. He considers that the lack of an effective examination of the circumstances of his detention shows that the national authorities have decided to cover up the crimes committed by the police.

State party's additional observations

6.1 In a note verbale dated 15 October 2014, the State party noted that on 7 May 2014, an investigation into the author's complaint had resulted in a refusal to open a criminal case against the police officers who had detained him while he tried to sell a narcotic substance. The State party submits that there are no discrepancies in the testimonies of the police officers and that they do not deny using physical force against the author, who was detained while committing a crime and tried to flee the crime scene. On the other hand, the author himself has changed his testimony concerning the events of 14 June 2007. Initially, he said that he was detained while trying to run from the police while on 22 June 2007, he complained that he had been assaulted by the arresting officers. On 8 December 2007, the author again stated that he had received the injuries while trying to flee the police. The forensic medical examination concluded that the author had bruises and haemorrhage of soft tissue on his face that did not cause harm to his health. The State party submits that all of the above indicates that no excessive force was used against the author at the time of his detention.

6.2 The State party considers that, despite long investigations and the numerous times the decisions to refuse to open a criminal case into the alleged beatings were revoked, it has been established that the police officers did not exceed their authority and that there were no grounds for their criminal prosecution. At the same time, the 7 May 2014 decision refusing to open a criminal case was itself revoked by the Kstovo city prosecutor's office; therefore, the State party submits that the investigation is still ongoing and that the author thus has not exhausted the available domestic remedies.

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

7.1 In a letter dated 24 December 2014, the author noted that the State party's assertion that the police officers did not exceed their authority is based exclusively on the testimonies of the police officers who detained him. However, there are also testimonies of other witnesses that have not been properly assessed by the investigation. For example, witness S testified that she saw one of the police officers sitting on top of the author and punching him three or four times in the face. Similar testimony was given by witness K, who was with witness S at that time. Another witness saw the author after he was taken to the office of the traffic police in Olginio and testified during the trial that both the author's eyes were bruised and he was bleeding. Still another witness testified during the trial that he saw three men kicking the author while he lay on the ground, then handcuffed him and put him in a car. He then saw one of the men washing blood from his hands and shoes at a nearby water fountain.

7.2 The author further notes that if he had resisted his arrest, as the State party submitted, he would have been charged with the additional crime of resisting arrest. The author notes that he received his injuries not as a result of a sudden operation that would have forced the police officers to act in an impromptu fashion; on the contrary, he had been under surveillance, was set up by an undercover police officer and was apprehended by at least three police officers. The author suggests that the police officers knew very well that he was not dangerous or armed, did not possess any martial arts skills and was just a drug user who also had HIV. The author submits that the discrepancies in the officers' testimonies about the circumstances of his detention show that they lied in order to avoid being prosecuted for their cruel treatment.

7.3 With regard to the State party's assertion that he has not exhausted all available domestic remedies, the author notes that for seven years the national authorities have purposefully avoided carrying out an effective investigation of his claims; thus, he considers them exhausted and ineffective.

Additional observations

From the State party

8.1 In a note verbale dated 12 March 2015, the State party again provided information on procedural actions taken by the national authorities to investigate the claims made by the author. The State party notes that between 31 August 2007 and 10 October 2014, the national authorities issued six decisions refusing to open a criminal case into the actions of the police officers who had detained the author. All the refusals, except for the last one, were revoked by the prosecutor's office/investigation department upon the author's appeals. The State party submits that the last refusal, of 10 October 2014, is currently under review by the Investigation Committee of the Russian Federation.

8.2 In a note verbale dated 12 May 2015, the State party further submitted that the review by the Investigation Committee of the Russian Federation of the refusal to open a criminal case dated 10 October 2014 has revealed that testimonies of the witnesses suggested by the author were not found to be consistent. For instance, witness S testified that she saw the author being chased and detained by four men, while witness K testified that she saw the author with blood on his face being chased by two men who then tripped him, after which the author fell and was detained. Testimonies of the two other witnesses mentioned by the author in his submission have been found by the Investigation Committee to be unreliable because they were drug users and friends of the author, and also were found to be intoxicated by drugs at the moment of the author's detention.

8.3 The State party notes that, due to new facts submitted by the author in his communication, the refusal to open a criminal case dated 10 October 2014 was revoked and an additional investigation was launched on 12 March 2015. The State party submits that, as part of the investigation, the author has again been questioned by the authorities; however, he stated that he did not remember the circumstances of his detention. He also claimed that he did not meet with representatives of the NGO "Committee against Torture" after 2007 nor signed a power of attorney in its name to represent him. During the

additional investigation, witness K confirmed her previous testimony that she did not see anyone beating the author. Also, she rejected the testimony given by witness S with regard to the detention of the author. The additional investigation has also revealed that the place where the author was detained was out of sight of the place where the witnesses were supposedly standing.

8.4 The State party submits that the author has not appealed the refusal to open a criminal case against police officers dated 10 October 2014; thus, he has not exhausted all available domestic legal remedies, making his communication to the Committee inadmissible under article 5 (2) (b) of the Optional Protocol.

From the author

9.1 In a letter dated 9 June 2015, the author provided his comments to the State party's further observations. He rejects the State party's assertion that the place where he was detained was out of sight of the location of the two witnesses. He submits that both witnesses were questioned by the representatives of the NGO "Committee against Torture" and copies of their written testimonies were submitted to the Committee with the initial communication. Witness S was also asked to draw a map of the area where she was standing at the time of the author's detention and her hand-drawn map correctly showed the exact location where the author was detained, thus confirming that she had been able to see that spot.

9.2 The author notes that even though there are some inconsistencies between the testimonies of witness S and witness K, they do not refute each other and match chronologically and in their description of the appearance of the detaining police officers. At the same time, the testimonies of the police officers contradict not only testimonies of other witnesses but also each other, and have changed over time.

9.3 The author further rejects the State party's claim that he has not met with representatives of the NGO "Committee against Torture" since 2007 and has not given them a power of attorney to represent him before the Committee, and submits a new power of attorney authorizing four members of the NGO "Committee against Torture", including Ekaterina Vanslova, to represent him before the Committee.

From the State party

10.1 In a note verbale dated 21 December 2015, the State party notes that, with regard to the testimony of witness S, it has been determined that she is a good friend of the author's sister, and her testimony contradicts the testimony of the author. In particular, she testified that the author was assaulted by four men, while the author admits that he was apprehended by only two men. The State party also notes that witness S has refused to take a polygraph test. The State party submits that the other witness, K, has not confirmed the testimony of witness S and instead stated that she had seen a police officer chasing the author but did not see police officers beating him. With regard to the testimonies of the police officers, the State party submits that they do not contradict each other and that the officers do not deny using combat Sambo techniques in apprehending the author when he tried to escape. According to the State party, the police officers were questioned on 10 and 11 June 2015 by a polygraph specialist, who concluded that the information provided by them about the circumstances of the author's apprehension was reliable. The State party submits that the information given indicates that the measures used to apprehend the author did not violate the law and, in accordance with article 38 (1) of the Criminal Code of the Russian Federation, infliction of harm on a person who has committed a crime during his/her apprehension is exempt from criminal responsibility.⁴

10.2 The State party notes that, despite the lengthy duration of the investigation and the numerous times that the refusals to open a criminal case against the police were revoked,

⁴ Article 38 of the Criminal Code states: "1. The infliction of harm on a person who has committed a crime during his detention or during his delivery to the authorities, or in thwarting the possibility of the commission by him of further offences, shall not be deemed a crime unless it was possible to detain such person by other means and there was an excess of the measures taken for this detention."

the authorities have not been able to establish grounds for a criminal prosecution of the police officers. On 1 October 2015, the additional investigation of the officers' conduct resulted in a refusal to open a criminal case. The State party submits that, at present, the results of the latest additional investigation are under review by the Investigation Committee of the Russian Federation. Therefore, the author has not exhausted all available domestic remedies, and the Committee's consideration of the communication seems premature.

Issues and proceedings before the Committee

Consideration of admissibility

11.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 93 of its rules of procedure, whether the communication is admissible under the Optional Protocol.

11.2 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.

11.3 The Committee notes the author's claim that he has exhausted all effective domestic remedies available to him. It also notes the State party's claim that the investigation into the author's claims is ongoing before the Investigation Committee of the Russian Federation and thus the author has not exhausted all available domestic remedies. However, the Committee observes that more than 11 years have passed since the Kstovo district prosecutor's office investigator first refused to open a criminal case against the police officers, and during that time the investigation into the author's allegations was repeatedly reopened by the higher officer in the prosecutor's office and subsequently closed. The Committee observes that in the present case the application of remedies has been unreasonably prolonged and, therefore, considers that it is not prevented by virtue of article 5 (2) (b) of the Optional Protocol from examining the communication.

11.4 In the Committee's view, the author has sufficiently substantiated his claim under article 7, read alone and in conjunction with article 2 (3), of the Covenant, for the purposes of admissibility. It therefore declares the communication admissible and proceeds with its consideration of the merits.

Consideration of the merits

12.1 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.

12.2 The Committee notes the author's claim that while being apprehended on 14 June 2007 he was punched and kicked in the head by several police officers, causing him to lose consciousness several times. The author also claims that he sustained injuries to his spleen, lungs and shoulder, had headaches and dizziness, and that the doctor's examination later revealed injuries to the soft facial tissue and nose and hypodermic hematoma in both eye sockets, which is consistent with the description of the beatings given by the author. 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.⁵ The Committee also notes the State party's observation that, at the time of his detention, the author offered active resistance to the police by trying to escape arrest and one of the police officers had to use combat Sambo techniques to subdue him, as a result of which the above-mentioned injuries were caused. The Committee refers to paragraph 4 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990), 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. 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

⁵ See, *A.H.G. v. Canada* (CCPR/C/113/D/2091/2011), appendix II, para. 3.

is punished as a criminal offence under their law (para. 7). The Committee notes that, while the State party reports that it conducted several inquiries into the author's claims, it has not been shown that those investigations were launched promptly or that they were conducted effectively. The Committee emphasizes that the first allegations of ill-treatment were made by the author's lawyer on 21 June 2007, a week after the arrest, while the first investigation into the allegations did not start until 31 August 2007. Furthermore, no forensic medical examination of the author was conducted before 19 February 2009 and key witnesses and medical personnel were not promptly questioned by the authorities, as evidenced by the court decisions of 19 September 2008 and 1 June 2010, when the injuries had already healed and witnesses could not recollect details of the events in question due to the time elapsed.

12.3 The Committee recalls its jurisprudence according to which a failure by a State party to investigate allegations of violations could in and of itself give rise to a separate breach of the Covenant.⁶ The Committee reiterates that the Covenant does not provide a right for individuals to require that the State party criminally prosecute another person.⁷ It considers, nonetheless, that the State party is under a duty to investigate promptly, impartially and thoroughly alleged violations of human rights, to prosecute the suspects and punish those held responsible for such violations⁸ and to provide other forms of reparation, including compensation.⁹ The Committee notes that nothing in the material on file allows it to conclude that the investigation into the allegations of the author's cruel and inhuman treatment 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 in conjunction with article 2 (3) (a), of the Covenant.

12.4 Having concluded that, in the present case, there has been a violation of article 7, read in conjunction with article 2 (3) (a), of the Covenant, the Committee decides not to examine separately the author's remaining claim under article 7 of the Covenant.

13. 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 in conjunction with article 2 (3) (a), of the Covenant.

14. In accordance with article 2 (3) (a) of the Covenant, the State party is under an obligation to provide individuals whose Covenant rights have been violated with an effective remedy in the form of full reparation. Accordingly, the State party is obligated to, inter alia, provide Vladimir Chernev 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.

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

⁶ See the Committee's general comment No. 20 (1992) on the prohibition of torture or other cruel, inhuman or degrading treatment or punishment, para. 14; and its general comment No. 31 (2004) on the nature of the general legal obligations imposed on States parties to the Covenant, para. 15. See also *Askarov v. Kyrgyzstan* (CCPR/C/116/D/2231/2012), para. 8.3; and *Batanov v. Russian Federation* (CCPR/C/120/D/2532/2015), para. 11.2.

⁷ See, for example, *X. v. Sri Lanka* (CCPR/C/120/D/2256/2013), para. 7.4.

⁸ *Ibid.*

⁹ *Ibid.*