



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. 2339/2014*, **

<i>Communication submitted by:</i>	Rizvan Taysumov, Salman Temirbulatov, Khamit Barakhayev, Arzu Yusupov, Magamed Alarkhanov and Tamerlan Yashuev (represented by counsel from TRIAL International and the Stitching Russian Justice Initiative)
<i>Alleged victims:</i>	The authors
<i>State party:</i>	Russian Federation
<i>Date of communication:</i>	28 October 2013 (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 30 January 2014 (not issued in document form)
<i>Date of adoption of Views:</i>	11 March 2020
<i>Subject matter:</i>	Unlawful detention, torture and mistreatment of the authors
<i>Procedural issues:</i>	Non-substantiation of the claims; abuse of right of submission
<i>Substantive issues:</i>	Torture; arbitrary arrest; detention; presumption of innocence; fair trial; preparation for defence; interpreters
<i>Articles of the Covenant:</i>	7, read alone and in conjunction with 2 (3), 9 (1)–(4) and 14 (2) and (3) (a), (b) and (g)
<i>Articles of the Optional Protocol:</i>	2, 3 and 5 (2) (b)

1. The authors of the communication are Rizvan Taysumov, a national of the Russian Federation, of Chechen origin, born in 1979; Salman Temirbulatov, a national of the Russian Federation, of Chechen origin, born in 1972; Khamit Barakhayev, a national of Kazakhstan born in 1954; Arzu Yusupov, a national of the Russian Federation, of Chechen origin, born in 1985; Magamed Alarkhanov, a national of the Russian Federation, of

* Adopted by the Committee at its 128th session (2–27 March 2020).

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



Chechen origin, born in 1973; and Tamerlan Yashuev, a national of the Russian Federation, of Chechen origin, born in 1983. They claim that the Russian Federation has violated their rights under article 7, read alone and in conjunction with articles 2 (3), 9 (1)–(4), and 14 (2) and (3) (a), (b) and (g), of the Covenant. The Optional Protocol entered into force for the State party on 1 January 1992. The authors are represented by counsel.

The facts as presented by the authors

2.1 The authors are Rizvan Taysumov, who was deprived of liberty on 29 September 2004 by members of the Independent Intelligence Battalion of the city of Khasavyurt, Republic of Dagestan; Salman Temirbulatov, who was deprived of liberty on 29 September 2004 by an agent of the Khasavyurt City Police in civilian clothes; Khamit Barakhayev, who was deprived of liberty on 3 October 2004 by members of the second regiment of the Patrol-Guard Militia Service and brought to the Municipal Department of the Interior Affairs of the city of Gudermes; Arzu Yusupov, who was deprived of liberty on 28 October 2004 in the town of Suvorovsky, Chechnya, by members of Operational Investigation Bureau No. 2; Magamed Alarkhanov, who was deprived of liberty on 19 February 2005 in the Astrakhan region by members of Operational Investigation Bureau No. 2; and Tamerlan Yashuev, who was deprived of liberty on 7 November 2004 by agents of the Kadyrovtsy (pro-Federal Chechen forces under the effective command of Ramzan Kadyrov, who was the President of Chechnya at the time) in Tuchkar, Republic of Dagestan.

2.2 None of the authors was informed of the reasons of arrest after their apprehension by Chechen forces. They were kept in unacknowledged and incommunicado detention and subjected to torture in order to force them to confess to being involved in terrorist activities. The methods of torture used against them included beatings with various objects, electrocution, suffocation with a plastic bag or gas mask, threats against their families and sleep deprivation. Moreover, they were not provided with the assistance of a lawyer or an interpreter, and some of them were forced to sign a renouncement of legal assistance. At a certain point after their arrest, some of them had access to a lawyer. They filed several complaints about torture and the treatment they were subjected to, but no effective and thorough investigation was ever carried out.

2.3 In the case of Mr. Yashuev, on 15 December 2004, a medical examination found wounds on his head as well as a hearing impairment on the right side, which were consistent with his claims of torture; however, both the Chechen Prosecutor's Office and the General Prosecutor's Office refused to open an investigation. Mr. Barakhaev was apprehended on 3 October 2004, but his family was not informed about his whereabouts until 18 October 2004. During this time, he was subjected to prolonged beatings with spade handles, rubber sticks, fists and an iron whip, as well as to electrocution. He was hospitalized with injuries, such as an open fracture of the right leg and two broken ribs. Mr. Taysumov was apprehended on 29 September 2004 and was unlawfully held until 8 October 2004. During that time, in order to obtain a confession, he was subjected to torture, such as being kicked with boots, and being subjected to prolonged beatings with sticks, electrocution and suffocation using a gas mask.

2.4 Mr. Temirbulatov was apprehended on 29 September 2004, but his detention was officially recognized on 10 October 2004. During the initial interrogations, he was not regularly assisted by an interpreter. During his incommunicado detention, he was tortured to force him to confess guilt in terrorist activities. He was beaten, deprived of sleep and suffocated using a gas mask. Mr. Yusupov was apprehended on 28 October 2004, but he was kept incommunicado until 1 November 2004. He was electrocuted, suffocated using a plastic bag, beaten and threatened that harm would befall his brother. During the first interrogation, he was not assisted by a lawyer or an interpreter.

2.5 Mr. Alarkhanov was apprehended on 19 February 2005 and kept incommunicado until 21 February 2005. During this time, he was subjected to torture, with a view to extracting a confession. He was not assisted by a lawyer during his first formal interrogation, and he first received the assistance of an interpreter on 11 June 2005.

2.6 On 10 July 2006, the Supreme Court of the Chechen Republic found all six authors guilty and sentenced them to various terms of imprisonment to be served in high security prisons. Mr. Yashuev was sentenced to 13 years of imprisonment; Mr. Barakhaev to 15 years; Mr. Taysumov to 21 years; Mr. Temirbulatov to 20 years; Mr. Yusupov to 16 years;

and Mr. Alarkhanov to 16 years. The authors' confessions, obtained under torture, were invoked and retained as valid evidence in court.

2.7 The six authors appealed to the Supreme Court of the Russian Federation against the judgment issued by the Supreme Court of the Chechen Republic. The authors claimed that they had been subjected to torture and forced to confess guilt. They further claimed that they had not received a fair trial.

2.8 On 2 May 2007, the Supreme Court of the Russian Federation rejected their appeals, except in the case of Mr. Temirbulatov, whose verdict was partially changed. His sentence was lowered to 19 years of deprivation of liberty. Nevertheless, the authors claim that the Supreme Court in this case also disregarded their allegations of torture, and that the confessions obtained under torture were retained as valid evidence.

2.9 On 14 May 2007, the authors, together with other applicants, applied to the European Court of Human Rights. On 27 September 2012, a single judge decided that the application was inadmissible because it did not satisfy the requirements established by articles 34 and 35 of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights). No further explanation was provided by the Court.

2.10 The authors contend that the above circumstances must be read in the context of gross human rights violations prevailing in the Russian Federation. In fact, several international human rights bodies, including the Human Rights Committee, have denounced the existence of a systematic practice of unacknowledged detention and torture in the investigation of cases allegedly related to terrorism, as well as the lack of effective investigation and the ensuing impunity of perpetrators.

The complaint

3.1 The authors claim that they filed several complaints and that there was evidence consistent with their allegation of torture or to cruel, inhuman or degrading treatment, under article 7, read alone and in conjunction with article 2 (3), of the Covenant. Despite this, the authors submit that no prompt, effective, independent, impartial and thorough investigation on their allegations took place, and that those responsible were neither prosecuted nor sanctioned. In some cases, the authors expressly reported the identity of the State party's agents responsible for their torture and requested medical examinations. In the case of Mr. Yashuev, the medical examination showed a wound consistent with his allegations. In the other cases, no medical examination was carried out, without justification. In cases where some actions were undertaken by the authorities, the investigation was entrusted to one of the main suspects. Likewise, the Supreme Courts of the Chechen Republic and of the Russian Federation did not specifically address the authors' claims that their confessions were forced and that they were victims of fair trial violations.

3.2 The authors further claim that their rights to liberty and security under articles 9 (1)–(4) of the Covenant have been violated by the State party, because they were subjected to arbitrary arrest and detention; they were not informed of the reasons for their arrest; and they were not promptly informed of the charges against them. Moreover, they were kept incommunicado and were not brought promptly before a judge or other officer authorized by law to exercise judicial power. Furthermore, on several occasions, they were not provided with the assistance of an interpreter, especially during the interrogations.

3.3 The authors claim that their rights to a fair trial under articles 14 (2) and (3) (a), (b) and (g) were violated. They claim that they were not presumed innocent until proven guilty in accordance with the law; that they were not informed promptly in a language that they understand of the nature and cause of the charges against them; and that they did not have adequate time and facilities for the preparation of their defence and to communicate with a lawyer of their own choosing. Moreover, they were all forced to confess guilt under torture.

State party's observations on admissibility and the merits

4.1 In a note verbale dated 11 April 2014, the State party submitted that the authors were indeed sentenced to various terms of imprisonment, by the Supreme Court of the Chechen Republic on 10 July 2006. Mr. Yashuev was sentenced to 13 years in prison; Mr. Barakhaev to 15 years; Mr. Taysumov to 21 years; Mr. Temirbulatov to 20 years; Mr.

Yusupov to 16 years; and Mr. Alarkhanov to 16 years. On cassation, the Supreme Court of the Russian Federation changed the verdict and the sentence of the trial court. Although all the authors were convicted on the terrorism count, which pertains to breaching public order and threatening the general population, in accordance with article 205 (3) of the Criminal Code of the Russian Federation, the court removed that count for all the authors. In addition, for Mr. Temirbulatov, a conviction for setting off an explosion in the city of Noiber on 8 November 2000 was overturned owing to the statute of limitations; his sentence was therefore reduced to 19 years in prison.

4.2 On various dates in the period from 27 November 2007 to 20 January 2014, the judges of the Supreme Court of the Russian Federation, together with the deputy Chairperson, rejected the authors' complaints under the supervisory review procedure. Under chapter 48 of the Criminal Procedure Code of the Russian Federation, which was in force at the time, convicts have a right to request a review of their sentence under the supervisory review procedure. Under this procedure, the judge, in compliance with article 406 (3), would issue a decision to initiate a supervisory review, or deny such a request. Both the Chairperson of the Supreme Court and the Chairperson's deputies have the right to challenge such a denial and to issue their own decision about whether or not to initiate a supervisory review. Since Mr. Taysumov and Mr. Temirbulatov, and their counsel, did not file a request for a supervisory review, their complaints to the Committee should be considered inadmissible.

4.3 Three of the authors – Mr. Yashuev, Mr. Taysumov and Mr. Yusupov – complained about violence and threats used against them during the preliminary investigation. They claim they were forced to testify against themselves and each other. These claims were examined by the first and cassation instance courts and were found to be without validity. As it transpires from the verdict of the Supreme Court of the Chechen Republic, the prosecutor's office of the Chechen Republic initiated an examination upon request from the judge. During the examination, several persons were questioned, including the authors, other witnesses, relevant officers of law enforcement agencies and forensic medical experts. As a result, the authorities refused to initiate a criminal investigation on 3, 13 and 19 March 2006. Similar inquiries were carried out by the prosecutor's office of the Chechen Republic during the preliminary investigation, and no criminal investigations were initiated as a result. The court agreed with these findings and with the testimony of H.A.S., the head of the investigative group in charge of investigating the crimes in question.

4.4 The court also considered the fact that the authors did not provide any procedural documents that had been obtained at the time of the alleged violence against them, at the stage of the preliminary investigation. All investigative actions were carried out in the presence of defence lawyers and, in many cases, according to the State party, with the participation of interpreters. Unreliability of information from the authors can be proven by the fact that in accordance with article 51 of the Constitution of the Russian Federation, they could have refused to testify or could have changed their testimonies. The court therefore considered the testimonies of the defendants given during the preliminary investigation as corroborating the other evidence, relative to "factual circumstances", relevant and admissible as evidence in court. This evidence was then used as a basis of the verdict and sentence. In court, the authors retracted the statements they had given during the investigation.

4.5 Furthermore, during the court hearing, Mr. Temirbulatov and Mr. Alarkhanov declared that no violence or other methods of physical contact had been used against them. Mr. Barakhaev testified that during the investigation, he filed a complaint that had resulted in an investigation, and he considered the results of the investigation to be sufficient, lawful and substantiated.

4.6 During the cassation appeal, the Supreme Court of the Russian Federation also found the statements given by the authors during the investigation to be lawful, and noted that these statements were further confirmed by testimonies from victims and witnesses, reports from crime scenes, results of ballistic and explosive reports, and other evidence. The fact that the authors retracted their confessions does not mean that they cannot be admitted as evidence, since the confessions were obtained in the presence of a lawyer and lay witnesses.

4.7 During the court hearings, Mr. Temirbulatov and Mr. Barakhaev confirmed that they could speak Russian and that they did not require the assistance of an interpreter. The other

defendants stated that they did not speak Russian well, and an interpreter participated in court hearings. The judge asked whether all defendants had received a copy of the indictment against them, which they confirmed having received on 13 September 2005. Mr. Yusupov, Mr. Taysumov, Mr. Alarkhanov and Mr. Yashuev also received a Chechen language version. During the court hearings, all defendants were represented by lawyers. Other lawyers, both those retained by the authors and by the court, also participated during further court hearings. The authors never asked the court to remove counsel or provide them with additional time to prepare their defence.

4.8 In conclusion, the State party submits that the investigation and the court hearings were held in strict compliance with national legislation and the State party's international obligations. In the circumstances, the authors' communication to the Committee can be considered as an abuse of the right of the submission, in violation of article 3 of the Optional Protocol.

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

5.1 On 13 June 2014, the authors submitted that their communication should be considered admissible. The State party itself does not seem to challenge the fact that four of the authors – Mr. Yashuev, Mr. Barakhaev, Mr. Yusupov and Mr. Alarkhanov – have exhausted domestic remedies. The authors Mr. Taysumov and Mr. Temirbulatov contend that the supervisory review procedure cannot be considered as an effective remedy, since this procedure is fully discretionary. The European Court of Human Rights takes the same approach on the supervisory review.¹ Furthermore, the Court also considered that the supervisory review requests create a legal uncertainty since the requests are not time-bound.

5.2 The Committee's approach to the requirement of the exhaustion of domestic remedies is quite clear: authors are not required to exhaust those remedies that they consider to have no objective chances of success.² In its response, the State party confirms that those authors who went through this procedure obtained no tangible results. In a majority of cases of supervisory review requests, the Supreme Court refuses to hear complaints.

5.3 The authors of the communication also note that the State party does not dispute some of their claims, and therefore, the Committee must consider them as facts. For example, the State party does not dispute the violations of articles 9 (1)–(4), namely that the authors were subjected to unlawful arrest and detention, that they were not informed about charges against them or the reasons for arrest, and that they were not brought promptly before a judge. The State party cannot challenge the fact that Mr. Yashuev was held in isolation from 7 November to 1 December 2004. He presented a detailed report about the torture and inhuman treatment against him, as well as a medical certificate with an assessment of his injuries. Mr. Barakhaev was held in isolation from 3 to 25 October 2004, and also provided a detailed report regarding the torture and other cruel treatment that he experienced. Mr. Taysumov was held in isolation from 29 September to 20 October 2004, and reported in detail the torture that he experienced. Mr. Temirbulatov was held in isolation from 29 September to 20 October 2004, and provided a detailed report of the torture that he experienced. Mr. Yusupov was held in isolation from 28 October to 1 November 2004, and provided a similar detailed report, as did Mr. Alarkhanov, who was held in isolation from 19 to 21 February 2005. In addition, the mass media referred to Mr. Taysumov and Mr. Temirbulatov as terrorists, which violated their right to the presumption of innocence.

5.4 Regarding the State party's refusal to open an investigation into the authors' torture complaints, it has to be noted that the preliminary verification stage cannot be considered to constitute a thorough or effective investigation. The same investigator who was implicated in the authors' claims, H.A.S., decided not to initiate a criminal investigation on the basis of the authors' complaints. Therefore, this examination cannot be considered to be independent or impartial, as required by international human rights standards. This occurred despite detailed reports from the authors and despite the existence of corresponding medical certificates.

¹ The authors refer to European Court of Human Rights, *Pitkevich v. Russia* (application No. 47936/99), decision of 8 February 2001.

² The authors refer to *Lansman et al v. Finland* (CCPR/C/83/D/1023/2001).

5.5 In a complaint similar to the claims made by the authors, the European Court of Human Rights found that it was not convinced that the investigation by the authorities was sufficiently prompt, thorough and effective. As an example, the Court said that the administration of the detention centre was aware that the complainant had injuries but the inquiry thereon was undertaken only one year later. The prosecutor's office investigating the allegations did not take into consideration the medical documentation prepared by the detention centre. The courts did not rectify these deficiencies but simply accepted the investigation results.³

5.6 The authors note that the State party also contends that during the court hearings, Mr. Temirbulatov and Mr. Alarkhanov announced that they were not subjected to any form of physical pressure. Mr. Barakhaev stated that his complaint was properly considered. In this connection, Mr. Temirbulatov, Mr. Alarkhanov and Mr. Barakhaev emphasize that at the time, they were concerned for their safety and the safety of their families. For all six authors, the State party is not able to provide any details on how, in practice, their torture claims have been investigated, and by which exact State body.

5.7 In this connection, the authors emphasize that the Committee should use the same approach used in *Usaev v. Russian Federation*,⁴ where it found a violation of articles 7 and 14 (3) (g) since the State party failed to provide any explanations on how and by whom the author's complaints were investigated. The Committee came to the same conclusion in its decision in *Khoroshenko v. Russian Federation*.⁵ In that case as well, after the author complained about mistreatment, the State party questioned only relevant officials and the investigator. No criminal investigation on the torture complaint was initiated. These circumstances led the Committee to believe that the author had made all reasonable attempts to collect evidence in support of his claims, and where further clarification depended on information exclusively in the hands of the State party, the Committee could consider the author's allegations to be substantiated in the absence of satisfactory evidence or explanations to the contrary presented by the State party.⁶

5.8 The authors reiterate that they complained about torture that was aimed at forcing them to confess guilt. In some cases, the authors provided the names of the officials involved. The authors asked for medical examinations. In some cases, these examinations were carried out, and their injuries were found to confirm their complaints. In other cases, medical examinations were refused, without justification. When the State party did take some steps to investigate, the investigation was assigned to one of the officials who was suspected of inflicting torture.

5.9 Regarding the issue of interpretation, the authors claim that they complained about the lack of interpretation immediately after their arrests and during the preliminary investigation, especially during interrogations, to which the State party provided no explanation.

5.10 In its response, the State party claims that all authors received a copy of the indictment against them on 13 September 2005. The authors explain that they never questioned that fact; rather, they claim that they were never informed of the reasons for arrest or the charges against them, and that they were not brought promptly before a judge. Moreover, during the initial arrest and detention, the authors did not receive timely assistance from a lawyer and an interpreter. According to article 14 (3) (a) of the Covenant, the defendant has a right to be informed of charges against him or her in a language he or she can understand. In *Khoroshenko v. Russian Federation*, the Committee found a violation of 14 (3) (a) as the author was informed of some of the charges against him only 25 days after his arrest.⁷

5.11 The authors also do not challenge the fact that they were assisted by lawyers during the court hearings. However, they claim that they did not have access to a lawyer immediately after arrest, especially during the interrogations. For example, having been

³ The authors refer to European Court of Human Rights, *Tangiev v. Russian Federation* (application No. 27610/05), judgment of 11 December 2012, paras. 58–63.

⁴ The authors refer to *Usaev v. Russian Federation* (CCPR/C/99/D/1577/2007).

⁵ See *Khoroshenko v. Russian Federation* (CCPR/C/101/D/1304/2004).

⁶ The authors refer to *Zyuskin v. Russian Federation* (CCPR/C/102/D/1605/2007), para. 11.4.

⁷ *Khoroshenko v. Russian Federation*, para. 9.6.

arrested on 7 November 2004, Mr. Yashuev had no access to a lawyer until 1 December 2004. Mr. Taysumov was arrested on 29 September 2004, and received access to a lawyer on 20 October 2004. Mr. Barakhaev was arrested on 3 October 2004, but did not have access to a lawyer until 11 November 2004. Mr. Temirbulatov was arrested on 29 September 2004, but did not have access to a lawyer until 12 October 2004. Mr. Yusupov was arrested on 28 October 2004, but he was not assisted by a lawyer until December 2004. Finally, Mr. Alarkhanov was arrested on 19 February 2005, but did not have access to a lawyer until 21 February 2005.

Additional submissions

From the State party

6.1 In a note verbale dated 29 January 2016, the State party submitted additional information. The authors claims include: that they were not informed of the reasons of arrest, or the charges against them; that they were not brought before a judge; and that during the interrogations, they had no interpreters. Under article 91 of the Criminal Procedure Code, a law enforcement officer, such as an investigator, has the right to detain a person suspected of committing a crime, under one of the following circumstances: when the person is caught during the commission of a crime; when victims or eyewitnesses identify the person as a perpetrator; or when there are clear signs of traces of the crime on the person or on his or her clothing. A suspect can also be detained, if he or she tries to flee or does not have a permanent place of residence, or if his or her identity cannot be confirmed. In addition, a person can be detained if the investigator files a request with a court, which must also be approved by a prosecutor.

6.2 Article 92 of the Criminal Procedure Code prescribes further steps that need to be taken. Upon arrival of the suspect or accused at the inquiry body, the responsible officer has to file a report within three hours. The report needs to stipulate that the detained person was given information about his or her rights under article 46 of the Code, which pertains to the rights of a suspect. According to this provision, a suspect has a right to know what he or she is accused of, and to receive a copy of the decision initiating a criminal case or a copy of the initial arrest or detention order. A suspect also has the right to explain and provide information regarding suspicions against him or her, or to refuse to provide such information. When a suspect provides such information, a warning is given to the suspect that the information can be used against him or her, including in case he or she subsequently retracts those initial statements, with the exception of cases that fall under article 75 (2) (1) of the Code.⁸ Furthermore, a suspect has a right to be assisted by a lawyer and to meet his or her lawyer confidentially, prior to the initial interrogation as a suspect. Additionally, a suspect has the right to provide evidence; file motions and request recusals; make statements in his or her native language or in a language that he or she speaks; use the services of an interpreter free of charge; study the reports of investigative actions with his or her participation; file comments thereon; participate in investigative actions taken upon his or her request or requested by counsel or a representative; and file complaints regarding actions taken by, or the inaction of, the courts, the prosecutor's office, an investigator or an inquiry officer.

6.3 A suspect who was initially apprehended under article 91 of the Code during the commission of a crime must be interrogated within 24 hours. A person can be held up to 48 hours, but must then be freed unless a court decides to hold him or her in pretrial detention. Under article 108 of the Code, pretrial detention can be imposed by a court if a less restrictive prevention measure cannot be used. As the records indicate, the authors of the present communication were accused of several crimes, including under article 209 of the Code, which pertains to banditry, with a potential prison term of 10 years or more. The authors were detained on the basis of eyewitness statements. During the apprehension, they were informed of their rights under article 46 of the Code and article 51 of the Constitution, with regard to the right not to testify against themselves. The authors were also informed of their rights prior to interrogation. Mr. Yusupov and Mr. Yashuev were interrogated using

⁸ According to article 75 (2) (1), inadmissible evidence includes testimony given by the suspect or the accused during pretrial proceedings in the criminal case that was provided in the absence of the defence counsel, including in cases in which the services of defence counsel to the suspect or accused were refused, and testimony that was not confirmed by the suspect or the accused in court.

the services of an interpreter. According to the records reviewed by the State party, the authors did not file any comments before, during or after their interrogations. In their complaint to the Committee, they also did not claim that they had asked for an interpreter during the investigation, nor did they indicate that such a request was denied.

6.4 A detention measure against the authors was decided by the court within the time limits prescribed by law under article 94 (2) of the Criminal Procedure Code. Accordingly, on the basis of the above-mentioned arguments, the State party submits that no violations of the Covenant occurred during the authors' detention.

6.5 The State party notes that the authors indicated that they did not have to exhaust domestic remedies if there were no objective reasons to believe that those remedies would be successful. However, being doubtful about the chances of success or effectiveness of the remedy does not absolve the authors from exhausting all domestic remedies.

6.6 Domestic law allows anyone to file a civil complaint (*isk*) against any government agency, such as the refusal of the prosecutor's office to initiate a criminal investigation into the authors' claims of torture. Mr. Taysumov did not file such a complaint.⁹ The State party therefore contends that he did not exhaust all available domestic remedies, and that this part of the communication must be declared inadmissible.

From the authors

7.1 In a letter dated 20 May 2016, the authors reiterated that four of them – Mr. Yashuev, Mr. Barakhaev, Mr. Yusupov and Mr. Alarkhanov – did file supervisory review requests. Mr. Taysumov and Mr. Temirbulatov did not pursue that remedy since there was no new evidence they could have presented, and because the supervisory review procedure was considered ineffective.

7.2 Regarding the new argument that the authors could have filed a complaint about the refusal of the prosecutor's office of the Chechen Republic to institute proceedings after its examination of the claims of torture, the authors note that this argument was not provided by the State party in its initial observations dated 11 April 2014. In addition, in *Usaev v. Russian Federation*, the Committee found a similar complaint admissible.

7.3 The authors note that the State party does not dispute some of their statements, and they request that the Committee consider them as facts. In their new submission, the State party does not challenge that:

- (a) All six authors were victims of violations of article 7, read alone and in conjunction with article 2 (3), of the Covenant, owing to ill-treatment during the investigation;
- (b) Two of the authors, Mr. Taysumov and Mr. Temirbulatov, were called terrorists, in violation of their right to a presumption of innocence;
- (c) The authors were compelled to testify against themselves;
- (d) The authors were not given the timely assistance of a lawyer.

7.4 The State party, in its submission, argues that all investigative actions were undertaken in accordance with the law. The State party describes the formal charges and arrests of the authors, but the authors raise a complaint about their unlawful apprehension prior to the pressing of formal charges, which was not documented and is therefore not included in the materials of the criminal case. Since the State party failed to respond to this part of the allegations, due weight must be given to it.

7.5 Furthermore, in its submission dated 29 January 2016, the State party indicated that during the interrogations, the authors were assisted by interpreters. However, the authors have explained that no interpretation was provided to:

- (a) Mr. Yashuev during his interrogation on 1 December 2004;
- (b) Mr. Taysumov during his court hearing on 9 November 2004;
- (c) Mr. Yusupov during his interrogation on 16 June 2005;

⁹ The State party probably meant to include other authors as well, but this is not clear.

(d) Mr. Alarkhanov during the course of several interrogations, until he was provided with an interpreter on 11 June 2005.

7.6 The authors note that the State party pointed out that the authors had not requested interpreters. The authors note, however, that both the Covenant and the legislation of the Russian Federation do not require a formal request as a condition for the provision of assistance by an interpreter. The fact that four of the authors – Mr. Yashuev, Mr. Taysumov, Mr. Yusupov and Mr. Alarkhanov – needed the help of interpreters is evidenced by the fact that during one of the hearings, when the presiding judge asked the authors if they needed an interpreter, all of the authors except Mr. Temirbulatov and Mr. Barakhaev requested one.

7.7 Regarding the contention that the restraint measure in the form of pretrial detention was chosen by a court in accordance with the Criminal Procedure Code, the authors note that the State party refers to formal charges and arrests. It does not elaborate on the unlawful apprehension of the authors before the formal charges were brought.

7.8 In view of the State party's lack of responses on the above-mentioned issues from the authors' submissions, including the authors' initial communication, the authors urge the Committee to find their complaint admissible, to issue its views on the merits and to request the State party to provide adequate measures of reparation.

Issues and proceedings before the Committee

Consideration of admissibility

8.1 Before considering any claims contained in a communication, the Committee must decide, in accordance with rule 97 of its rules of procedure, whether it is admissible under the Optional Protocol.

8.2 The Committee takes note of the State party's submission that the communication constitutes an abuse to the right of submission under article 3 of the Optional Protocol, since the authors failed to substantiate their claims sufficiently. The Committee finds that the material before it does not show that the authors presented their communication in bad faith, and that they provided all the information and documents at their disposal. Under these circumstances and in the light of the material on file, the Committee does not find that the authors abused their right of submission under article 3 of the Optional Protocol.

8.3 The Committee has further 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. It notes that a similar communication has been submitted on the authors' behalf to the European Court of Human Rights, but that it was declared inadmissible on 27 September 2012, as it did not satisfy the requirements established by articles 34 and 35 of the European Convention on Human Rights. Under these circumstances, the Committee concludes that it is not precluded under article 5 (2) (a) of the Optional Protocol from examining the present communication.

8.4 The Committee takes note of the State party's argument that two of the authors – Mr. Taysumov and Mr. Temirbulatov – have failed to exhaust all available domestic remedies by not filing a supervisory review request before the Supreme Court of the Russian Federation. The State party does not challenge the exhaustion of domestic remedies on this ground for the four remaining authors.

8.5 The Committee recalls its jurisprudence according to which filing requests for a supervisory review with a court directed against court decisions that have entered into force and depend on the discretionary power of a judge constitute an extraordinary remedy, and that the State party must show that there is a reasonable prospect that such requests would provide an effective remedy in the circumstances of the case.¹⁰ The Committee notes that in the present case, the State party has not shown whether and in how many cases petitions to the president of the Supreme Court for supervisory review procedures were successful in cases of allegations of torture and ill-treatment. Accordingly, the Committee concludes that

¹⁰ See *Gelazauskas v. Lithuania* (CCPR/C/77/D/836/1998), para. 7.4; *Sekerko v. Belarus* (CCPR/C/109/D/1851/2008), para. 8.3; *Protosko and Tolchin v. Belarus* (CCPR/C/109/D/1919-1920/2009), para. 6.5; *Schumilin v. Belarus* (CCPR/C/105/D/1784/2008), para. 8.3; and *P.L. v. Belarus* (CCPR/C/102/D/1814/2008), para. 6.2.

it is not precluded under article 5 (2) (b) of the Optional Protocol from considering the communication for all six authors.

8.6 The Committee further notes the State party's argument that the authors did not file complaints about the refusal of the prosecutor's office to initiate a criminal case against the alleged torture perpetrators. The Committee notes that the authors already exercised their rights to raise a complaint with the court as part of the criminal case against them, both during the initial trial and in the second instance appeal to the Supreme Court of the Russian Federation, and that their appeals were rejected on 2 May 2007. Accordingly, the Committee considers that it is not precluded under article 5 (2) (b) of the Optional Protocol from considering the communication for all six authors on this ground.

8.7 The Committee has taken note of claims made by two of the authors – Mr. Taysumov and Mr. Temirbulatov – that they were called terrorists, in violation of their right to a presumption of innocence under articles 14 (2) (see paras. 5.3 and 7.3 above) and (3) (a) and (b) of the Covenant. In the absence of any further explanation or pertinent information on file, however, the Committee considers that the authors have failed to sufficiently substantiate these allegations for the purposes of admissibility. Accordingly, it declares this part of the communication inadmissible under article 2 of the Optional Protocol.

8.8 The Committee considers that the authors have sufficiently substantiated the remaining claims under article 7, read alone and in conjunction with articles 2 (3), 9 (1)–(4) and 14 (3) (g), of the Covenant, for the purposes of admissibility. It therefore declares them admissible and proceeds with its consideration of the merits.

Consideration of the merits

9.1 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.

9.2 The Committee first notes the authors' claims that upon apprehension, they were tortured in order to force them to confess guilt, and that subsequently those confessions were retained as evidence against them in court, despite their numerous retractions and their complaints of torture, including complaints made during the trial, and in the framework of their cassation appeal. The Committee notes the claims made by the authors, including that Mr. Yashuev was subjected to prolonged beatings with shovel handles and electrocution; Mr. Barakhaev was beaten with rubber sticks, fists and an iron whip, in addition to being subjected to electrocution; Mr. Taysumov was kicked with boots, beaten with sticks and suffocated using a gas mask; Mr. Temirbulatov was sleep deprived and suffocated; Mr. Yusupov was suffocated using a plastic bag and was subjected to threats against a family member; and Mr. Alarkhanov was beaten and members of his family were threatened. The Committee notes that according to the authors, these acts occurred while they all were held incommunicado, as their initial apprehension was only recognized several days later, or in some cases, weeks later (see paras. 2.3–2.5 above). The Committee notes the State party's argument that the authors' claims were properly assessed by the courts, without providing further explanations. The Committee considers that, in the circumstances of the present case, and in particular in the light of the State party's inability to provide detailed explanations regarding the treatment the authors were subjected to during their initial apprehension, due weight must be given to the authors' allegations.

9.3 Regarding the State party's obligation to properly investigate the authors' torture claims, 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.¹¹ The Committee notes that the material on file does not allow it to conclude that the investigation into the allegations of torture was carried out promptly or effectively or that any perpetrators were identified, despite detailed reports from the authors, witness statements, requests for medical examinations and, for one of the authors – Mr. Yashuev – a medical certificate showing signs of injury.

9.4 The Committee considers that in the present case, the inquiry that was conducted in 2005 into the authors' allegations of torture lacked the element of impartiality (see para. 5.4

¹¹ 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 obligation imposed on States parties to the Covenant, para. 18.

above), as it was assigned to H.A.S., the same investigator who was allegedly implicated in the authors' torture claims. The Committee also notes the authors' claims that their guilt was established in court proceedings in part on the basis of confessions they had made when they were tortured, which were retained as evidence by the courts. Accordingly, in the circumstances as described by the parties, the Committee concludes that the facts before it disclose a violation of the authors' rights under article 7, read separately and in conjunction with articles 2 (3) and 14 (3) (g), of the Covenant.

9.5 The Committee next considers the authors' claims that during various times in 2004 and 2005, they were held unlawfully, and that their official arrest and detention was formalized only later. The Committee notes the authors' assertions that Mr. Yashuev was held unlawfully from 7 November to 1 December 2004; Mr. Barakhaev, from 2 to 25 October 2004; Mr. Taysumov, from 29 September to 20 October 2004; Mr. Temirbulatov, from 29 September to 10 October 2004; Mr. Yusupov, from 28 October to 1 November 2004; and Mr. Alarkhanov, from 19 to 21 February 2005. The Committee also notes the claims by the authors that upon their unlawful apprehensions, they were not informed of the reasons for their arrest and were not brought promptly before a judge. The State party does not provide any refutation or explanations regarding these specific dates, claiming only that the authors were arrested and treated in accordance with provisions of the Criminal Procedure Code of the Russian Federation.

9.6 The Committee recalls its general comment No. 35 (2014) on liberty and security of person, in which it refers to the prohibition on arbitrary and unlawful deprivations of liberty, i.e., deprivation of liberty that is not imposed on such grounds and in accordance with such procedures as are established by law. The two prohibitions overlap, in that arrests or detentions may be in violation of the applicable law but not arbitrary, or legally permitted but arbitrary, or both arbitrary and unlawful. Arrest or detention that lacks any legal basis is also arbitrary.¹² Article 9 also requires compliance with domestic rules that define when authorization to continue detention must be obtained from a judge or other officer,¹³ where individuals may be detained,¹⁴ when the detained person must be brought to court¹⁵ and the legal limits on the duration of detention.¹⁶ Persons deprived of their liberty must be assisted in obtaining access to effective remedies to enforce their rights, including an initial and periodic judicial reviews of the lawfulness of the detention, and to prevent conditions of detention that are incompatible with the Covenant.¹⁷

9.7 In the present case, the Committee notes, on the basis of the submissions on file, that the authors were not informed at the time of apprehension of the reasons for their arrest or of the charges against them, and they were not brought promptly before a judge to verify the legality of their detention. In the circumstances as described, and in the absence of further relevant information or explanations by the State party, the Committee concludes that the State party violated the rights of the authors under articles 9 (2) and (3).

9.8 In the light of this conclusion, the Committee decides that it will not examine separately the authors' remaining claims under article 9 of the Covenant.

10. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts before it disclose a violation by the State party of article 7, read alone and in conjunction with articles 2 (3), 9 (2) and (3), and 14 (3) (g), of the Covenant.

11. Pursuant to article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the authors with an effective remedy. This requires it to make full reparation to individuals whose Covenant rights have been violated. Accordingly, the State party is obligated, inter alia, to take appropriate steps to: conduct a thorough, prompt and impartial investigation into the authors' allegations of torture and, if confirmed, prosecute those responsible; and provide full redress to the authors, including just compensation and other

¹² General comment No. 35, para. 11.

¹³ *Gridin v. Russian Federation* (CCPR/C/69/D/770/1997), para. 8.1; see also the Committee's general comment No. 35, para. 23.

¹⁴ *Umarov v. Uzbekistan* (CCPR/C/100/D/1449/2006), para. 8.4.

¹⁵ *Gómez Casafranca v. Peru* (CCPR/C/78/D/981/2001), para. 7.2.

¹⁶ *Israel v. Kazakhstan* (CCPR/C/103/D/2024/2011), para. 9.2.

¹⁷ *Fijalkowska v. Poland* (CCPR/C/84/D/1061/2002), paras. 8.3–8.4; *A v. New Zealand* (CCPR/C/66/D/754/1997), para. 7.3; and the Committee's general comment No. 31, para. 15.

measures of satisfaction for the violations that have occurred. 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 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.
