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Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2699/2015*, **, ***

<i>Communication submitted by:</i>	Semen Sbornov (represented by counsel, Sergei Romanov)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Russian Federation
<i>Date of communication:</i>	22 June 2015 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 97 of the Committee's rules of procedure (now rule 92), transmitted to the State party on 7 December 2015 (not issued in document form)
<i>Date of adoption of Views:</i>	25 July 2019
<i>Subject matter:</i>	Torture; self-incrimination under duress
<i>Procedural issues:</i>	Exhaustion of domestic remedies (cassations appeal in the Russian Federation)
<i>Substantive issues:</i>	Torture; forced confessions
<i>Articles of the Covenant:</i>	7, read alone and in conjunction with 2 (3), and 14 (3) (g)
<i>Articles of the Optional Protocol:</i>	5 (2) (b)

1. The author of the communication is Semen Sbornov, a national of the Russian Federation born in 1983. He claims that the State party has violated his rights under articles 7, read alone and in conjunction with article 2 (3), and 14 (3) (g) of the Covenant. The Optional Protocol entered into force for the State party on 1 January 1992. The author is represented by counsel.

The facts as submitted by the author

2.1 On 22 January 2013, the author was apprehended by three police officers. He was suspected of having inflicted serious bodily injuries on an individual, who died as a result.

* Adopted by the Committee at its 126th session (1–26 July 2019).

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

*** An individual opinion by Committee member José Manuel Santos Pais (dissenting) is annexed to the present Views.



The author was brought to the Kstovsk police department and was beaten there. On 24 January 2013, the investigation unit of the Kstovsk branch of the Investigation Committee of the Russian Federation received statements verifying the beating inflicted on the author by the police. On 4 February 2013, an investigator refused to open a criminal case in the matter in the light of the absence of *corpus delicti*.¹

2.2 On 22 May 2013, the author wrote to the non-governmental organization “Committee against Torture”, claiming that he had been subjected to police violence on several occasions and seeking legal aid.

2.3 On 8 August 2013, the deputy prosecutor of the city of Kstovsk annulled the decision of the investigator dated 4 February 2013, having decided that the senior investigator’s inquiry following the 24 January 2013 claim had been incomplete and inadequate. The deputy prosecutor ordered the conduct of a new inquiry. On 15 August 2013, a senior investigator of the Kstovsk branch of the Investigation Committee of the Russian Federation refused to open a criminal case. On 15 October 2013, the deputy prosecutor of the Nizhegorodsk region annulled the decision of 15 August 2013 as unlawful and groundless.

2.4 On 23 November 2013, a senior investigator of the Kstovsk branch of the Investigation Committee of the Russian Federation refused to initiate a criminal case in the absence of *corpus delicti*. The investigator based the decision on the statements of police officers of the criminal department of the Ministry of Internal Affairs of the Nizhegorodsk region to the effect that no unlawful methods of investigation had been used against the author and on the content of medical documents.

2.5 On 10 April 2014, an appeal was filed with the Kstovsk City Court of the Nizhegorodsk region against the refusal, dated 23 November 2013, to open a criminal case. On 24 April, the city court rejected the appeal.

2.6 The author claims that he was subjected to beatings, contrary to article 7 of the Covenant. He was apprehended on 22 January 2013 on suspicion of having inflicted bodily harm that resulted in death. He was beaten at the police station. The author claims that a police officer named V. closed the door while another officer started kicking him on the arms and feet. Following this, he was handcuffed and was tied tightly with a rope and kept in a very uncomfortable position for an hour and a half. During that time, V. kicked him on his back and in the area of his kidneys, demanding that he confess guilt. As a result, the author suffered moral damages including physical pain in the area of his back, arms and head. Later, he was brought to the investigator named B., who did not interrogate him. Instead, B. entered into the record the written explanations and documents provided by V. The lawyer called by B. did not identify himself to the author, and he countersigned all the documents produced by the investigation without reading them. The author, scared and fearing for his life, also countersigned all the documents.²

2.7 On 23 January 2013, a lawyer designated by the investigation ignored the author’s statements regarding the existence of marks on his head from beatings. The author was subsequently released, but when he arrived at the home of his parents, his health deteriorated and his mother called an ambulance. He informed the emergency personnel of the beatings by the police. A police officer came later and recorded his claims.

2.8 Also on 23 January 2013, the author received a phone call from the investigator named B., who asked him to go to the police station. Owing to his poor health, however, the author did not go. Later the same day, the author was hospitalized.

2.9 On 24 January 2013, the three police officers who had participated in his beatings took the author from the hospital to the police station. The author was beaten during the trip

¹ On 4 February 2013, a senior investigator rejected the complaint. In a complaint to the prosecutor dated 23 July 2013, the author complained about the decision of the investigator, pointing out *inter alia* that the senior investigator did not question witnesses who would have been able to confirm his health status prior to his detention on 22 January 2013.

² After signing his initial confessions as a suspect, the author has signed several documents as an accused.

and was asked to withdraw his complaint against the police; he was forced to agree to the demand. At the police station, an official record of the author's arrest was prepared and he was placed in a temporary detention facility. He was asked to sign a paper attesting that his injuries were the result of a fall.

2.10 During the trial of his alleged crime, the author complained about the use of torture against him by the investigation, but to no avail.

2.11 On 7 May 2014, the Kstovsk City Court found the author guilty under article 111 of the Criminal Code (intentional infliction of a grave injury) and sentenced him to seven years' imprisonment. During the trial, a medical assistant testified in court that on 23 January 2013, during her service, she had visited the author's home with a colleague because he had complained of a headache. The author told her that he had been beaten by the police to force him to confess guilt. He was brought for an examination by a surgeon and then hospitalized.³

2.12 On 28 July 2014, the Nizhegorodsk Regional Court examined the case on appeal, and confirmed the author's sentence.⁴ On 1 October 2014, a judge from the Regional Court refused to initiate a cassation appeal requested by the author on 12 September 2014. Thus, according to the author, domestic remedies have been exhausted.

2.13 A representative of the non-governmental organization "Committee against Torture" submitted a witness statement to the court, in which she stated that, on 23 January 2013, she was on duty when the author's mother called for an ambulance. Upon arriving at the address, the emergency personnel saw the author lying down. He complained of a headache, vertigo and nausea. The condition of the author was confirmed by a medical assistant, who added that the author's face was swollen. The author also notes other witness statements that support his claims of the beatings.

2.14 The author notes that, according to the content of a medical certificate dated 24 January 2013, he was diagnosed with bruises of the soft tissues of the head and upper limbs. He was also diagnosed with alcoholic intoxication. An expert concluded that the injuries disclosed by the author could have been caused by a solid blunt object or by a hand. It was possible that the injuries had occurred on 23 January 2013.

2.15 The author notes that the non-governmental organization "Committee against Torture" concluded that, in his case, (a) the police had acted in their official capacity; (b) as a result of unlawful actions by the police, the author had suffered physical harm; (c) the violence had been inflicted on him unlawfully, which was supported by the number and the nature of the injuries; and (d) the violence had been inflicted with the aim of obtaining a forced confession.

2.16 The author notes that, according to a ruling by the Supreme Court dated 10 September 2003, the universally recognized principles and norms of international law and international treaties concluded by the Russian Federation constitute an integral part of the domestic legal system. The human rights and freedoms contained in the principles and norms of international law and international treaties concluded by the Russian Federation are directly enacted within the jurisdiction of the Russian Federation. Article 13 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment obliges each State party to assure that any individual who alleges that he or she was subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his or her case promptly and impartially examined by, its competent authorities.

³ According to documents on file, the author was hospitalized on 23 and 24 January 2013 as the result of a concussion. He was brought to the hospital in an ambulance called by his mother, who claimed that her son had been beaten up by the police.

⁴ Regarding the author's claim that his confessions were obtained under duress as a result of beatings, the appeal court noted that they had been examined by the trial court but had not been confirmed. The appeal court noted that it had been established that the author's confessions had been given voluntarily, without coercion and in the presence of a lawyer. The interrogation records were read out and signed. An investigation of the author's torture allegations was carried out but on 13 November 2013 a senior investigator of the Investigation Committee of Kstovo issued a ruling on the refusal to open a criminal case on the basis of the absence of a corpus delicti.

In addition, steps should be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation they might suffer as a consequence of the submitted complaint or evidence given.

2.17 The author further refers to the case law of the Committee against Torture and the European Court of Human Rights in torture cases, and notes that each time a torture complaint is formulated, it must lead to an investigation to permit the sanctioning of those responsible. In his case, however, the authorities have failed to conduct a prompt and comprehensive investigation into his torture complaints. The investigation carried out was not effective and could not be considered to be independent or impartial. In its concluding observations on the fifth periodic report of the Russian Federation, the Committee against Torture expressed concern at the failure of the national authorities to carry out prompt, effective and independent inquiries into allegations of torture (CAT/C/RUS/CO/5).

The complaint

3.1 The author claims that his rights under article 7 of the Covenant, read in conjunction with article 2 (3), have been violated since the State party must assure an effective remedy in torture cases. He alleges that he was tortured by the police during a preliminary investigation. The law enforcement authorities and the courts did not exclude his confessions obtained under duress; instead, they used them as a basis for his conviction, in violation of article 7. The State party failed to carry out a prompt and effective investigation and to provide an adequate remedy for the violation of articles 7 and 2 (3).

3.2 The author also claims that his rights under article 14 (3) (g) of the Covenant have been violated because the police subjected him to torture in order to force him to confess guilt for a crime he did not commit. Despite the fact that the author had complained in court that his confessions had been obtained under duress, and the fact that witnesses had confirmed his injuries, the court did not make a proper assessment of the allegations. As a result, the author's confessions, obtained in violation of article 14 (3) (g), were relied upon to convict him.

3.3 The author asks the Committee to invite the State party to provide him with an effective remedy in the form of a prompt, comprehensive and effective investigation of his torture allegations; to have those responsible prosecuted and sanctioned; to have the criminal case against him reviewed in a new trial with all fair trial guarantees; to provide him with reparation for the torture suffered, the unlawful detention and arrest, and the violation of the fair trial guarantees, including compensation and rehabilitation; and to establish a mechanism for the independent and effective investigation of torture allegations, in line with the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The author also asks the Committee to recommend to the State party that it prevent similar violations in the future.

State party's observations on admissibility

4.1 In a note verbale dated 20 April 2016, the State party submitted its observations on the admissibility of the communication.

4.2 In those observations, the State party submits that under article 401 of the Criminal Procedure Code a court decision that has entered into force is subject to a cassation appeal. Pursuant to article 401 (2) of the Code, the appeal can be submitted to the presidium of the Supreme Court of the Republic, krai or regional court, the court of the city of federal significance, the court of the autonomous region, the court of the autonomous district, or to the judicial collegium of criminal cases of the Supreme Court of the Russian Federation.

4.3 Regarding the effectiveness of the cassation appeals, the State party refers to a decision of the European Court of Human Rights in the case of *Abramyan and Others v. Russia*,⁵ wherein the Court concluded that the cassation procedure before the regional courts and the Supreme Court in civil cases introduced by a reform to the Code of Civil

⁵ *Abramyan and Others v. Russia* (applications No. 38951/13 and No. 59611/13).

Procedure (Law No. 353-FZ), which entered into force on 1 January 2012, had to be exhausted by a person intending to lodge a complaint before the court.

4.4 The State party notes that in the present case the author has not appealed under the cassation procedure to the Supreme Court of the Russian Federation against the judgment of the Kstovsk City Court dated 24 April 2014 or against the ruling of the Nizhegorodsk Regional Court. The lawyer of the author has appealed under the cassation procedure only to the Nizhegorodsk Regional Court, which on 1 October 2014 refused to transmit the author's case for examination under the cassation appeal proceedings.

4.5 In addition, the State party notes that the analysis of the author's criminal case file did not show that the courts assessed the evidence in an arbitrary manner or committed a manifest error, or that the trial as a whole was unfair. The court of first instance verified the allegations of the defence with regard to the subjecting of the author to physical pressure by law enforcement personnel. The court concluded that those claims were unsubstantiated.

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

5.1 On 11 July 2016, the author provided comments to the State party's observations on admissibility.

5.2 The author states that on 10 April 2014, he appealed to the Kstovsk City Court against the investigation's negative decision dated 23 November 2013 to open a criminal case. On 24 April 2014, the Kstovsk City Court rejected his appeal. In his criminal trial, the author appealed to the Nizhegorodsk Regional Court, which, on 5 June 2014, rejected the appeal. On 28 June 2014, the judicial collegium on criminal cases of the Nizhegorodsk Regional Court examined the author's and his counsel's appeals but rejected them.

5.3 By a ruling dated 1 October 2014, the judge of the Nizhegorodsk Regional Court refused to initiate a cassation appeal examination of the author's appeal dated 12 September 2014 against the appeal ruling of the Regional Court dated 28 June 2014.

5.4 The author notes that, on 7 May 2014, the Kstovsk City Court found him guilty under article 111 of the Criminal Code and sentenced him to seven years' imprisonment. On 28 July 2014, the criminal collegium of the Nizhegorodsk Regional Court examined a further appeal from the author and his lawyer but rejected them. The decision of 7 May 2014 thus obtained the status of *res judicata*.

5.5 The author notes that the refusal to transmit his cassation appeal for an examination under the cassation procedure by the Kstovsk City Court dated 24 April 2014 and the appeal ruling of the Nizhegorodsk Regional Court dated 5 June 2014 was based on the fact that the argumentation regarding the use of violence by the police against the author had been examined by the first instance court and rejected. Thus, according to the author, it is obvious that the appeal to the Supreme Court of the Russian Federation would not have yielded any results because the author's cassation appeal was rejected in any event.

5.6 As to the State party's observations regarding the judgment of the European Court of Human Rights dated 12 May 2015 in the case of *Abramyan and Others v. Russia*, the author notes that on 19 April 2016, in the case of *Kashlan v. Russia* (application No. 60189/15), the Court concluded that filing of a cassation appeal as per the revised law 518-FZ was not a remedy that had to be exhausted for purposes of article 35 (1) of the Convention for the Protection of Human Rights and Fundamental Freedoms. Recourse to such appeal is not taken into account when calculating the delay for complaining to the European Court of Human Rights.

5.7 The author also notes that, according to the Committee's case law, if a State party considers that domestic remedies have not been exhausted, it should provide specific information on the effectiveness of the remedy in question.

5.8 In the present case, the State party simply notes that the author has not appealed to the Supreme Court, without taking into account that the author's previous cassation appeal was rejected.

5.9 According to the author, he had no recourse to an effective remedy after the rejection of his cassation appeal. Thus, he considers that he has exhausted all available domestic remedies.

State party's observations on the merits

6.1 In a note verbale dated 25 July 2016, the State party submitted its observations on the merits of the complaint. The State party explains that the court of first instance decided to give a central role to the depositions given by the author during the preliminary investigation, when he was interrogated as an accused, and the information given by a witness, since the respective accounts were matching and comprehensive and did not contain major contradictions. The State party also notes that these depositions were provided in a short period of time after the incriminating events and in the presence of a defence attorney. In addition, prior to giving the depositions, the author was informed about his rights and notified that the testimonies could be used against him in case of a future withdrawal. The author's testimonies were consistent. Furthermore, they matched the conclusions of the medical-forensic expert examination on the nature and the means of the occurrence of the bodily harm of the victim, the depositions of the witnesses and other evidence on file. In court, the author explained that he had confessed guilt under duress, but the court had assessed this critically. In support of his claims, the author quoted the statements of a number of witnesses and the medical records regarding the emergency service and his hospitalization.

6.2 Analysing the evidence, the court concluded that it could not confirm the version of events presented by the defence on the beatings of the author by the police, since none of the witnesses had seen the infliction of bodily harm to the author. The witnesses had only learned about the harm from the author's explanations, and the testimonies of the witnesses were contradictory. Several witnesses affirmed that they had seen the author with a swollen face on 23 and 24 January 2013. All the medical personnel in the ambulance, however, confirmed that no visible damages had been identified.

6.3 The former wife of the author has confirmed that on 18 January 2013 she gave birth to a daughter. She spoke with the author every day on the phone and he was supposed to come collect her from the hospital when she was discharged. In a conversation on 23 January 2013, the author did not inform her about any police beatings. It was only during a second phone call later the same day that he told her that he had been beaten by the police and that he could not be present when she was discharged from the hospital. In court, the author could not explain why he did not inform his wife about the beatings during the first phone conversation.

6.4 Several witnesses testified that on 23 January 2013 the author complained of a headache as a result of the beatings. In court, however, he explained that he did not know why he had not been feeling well and thought that it had been because of the use of alcohol. This corroborates the information in the medical file on his admission to the hospital on 23 January 2013 with alcoholic intoxication. In addition, the author testified that on 24 January 2013, as a result of being drunk, he accepted the suggestion of an individual named K. to incriminate the police officers.

6.5 In his deposition, K. affirmed that he had not suggested that the author should go to the police. In addition, K. had not witnessed the police putting the author under pressure or inflicting bodily harm on him on 23 January 2013. According to what K. had witnessed, the police had not used violence and the author had provided his testimonies voluntarily, in the presence of a lawyer.

6.6 In court, the author confirmed that he had not been beaten or subjected to violence during the investigation. During the interrogations, he had never affirmed that he had been beaten in order to obtain a forced confession of guilt. According to the author, the affirmation that K. had beaten him and advised him to write to the police to claim that he had confessed under duress is false. The author also explained that his interrogations as a suspect or an accused were carried out in the presence of a lawyer but that he never spoke to the lawyer about any pressure put on him by the police.

6.7 On 23 November 2013, a senior investigator refused to open a criminal case against the police in the author's case because of the absence of a corpus delicti. According to the investigator's ruling, the officer who recorded the author's statements on 23 January 2013 had been interrogated along with two other officers. All officers had denied using unlawful methods of interrogation against the author and had emphasized the voluntary nature of the author's depositions.

6.8 The existence of injuries on the author's body as documented by an expert on 5 November 2013 cannot unilaterally lead to a conclusion of the use of unlawful methods of investigation to force the author to confess guilt. The interrogations ended on 22 January 2013 at 4.10 p.m., but the allegations were not made until 24 January 2013. In addition, a number of witnesses confirmed having seen the author with a swollen face on 21 January 2013.

6.9 According to the State party, the author's right to counsel was not violated. The lawyer who represented the author as a suspect and as an accused confirmed that the interrogations had been carried out in line with the requirements of the criminal procedure law and that no agents of the police had been present during the interrogations. In addition, the author had never asked for a new lawyer to represent him, no other agreements for legal representation had been concluded and there had been no grounds to substantiate an unsatisfactory level of representation for the author.

6.10 The State party also notes that, in his cassation appeals against the decision of 7 May 2014 and the appeal decision of 28 July 2014, the author complained about his forced confessions. However, he also sought to be tried under article 109 of the Criminal Code instead of article 111, thus admitting the existence of a causal link between his acts and the death of the victim.

6.11 In the light of the above, the State party considers that the author's argumentation on the use of unlawful methods against him appears to have been correctly assessed by the courts as constituting a defence strategy. Accordingly, the State party considers that no violation of any of the author's rights occurred in the present case.

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

7.1 On 28 September 2016, the author provided comments to the State party's observations on the merits. He first notes that the only eyewitnesses of his beatings were the police officers who carried them out, and their depositions must be assessed critically, because they have an interest in the matter. On the other hand, numerous pieces of evidence, including several witness depositions and the results of expert examinations, demonstrate that the author's account of events, including of the use of force against him, was truthful and that on this basis an effective investigation should have been carried out.

7.2 According to the author, police officer V. closed the door of the office and another officer started beating him with a bat on the arms and feet. After the beatings, the author was handcuffed and tied with a cord for one and a half hours. V. kicked the author on the back and in the area of his kidneys, demanding that the author confess guilt. The author experienced moral suffering including physical pain. He could not bear this treatment and, as a result, signed confessions as dictated to him. When he returned to the home of his parents, his mother had to call an ambulance, owing to the poor state of his health. He informed the medical personnel of the beatings, and on the following day, inspector B. asked him to go to the police station. Because of his health status, however, the author did not go to the police station. Later the same day, he was hospitalized. On 24 January 2013, three police officers brought him to the police station. He was beaten again. He was officially arrested and was made to confirm in writing that his injuries were the result of a fall.

7.3 The author claims that these facts can be confirmed by the testimony of several witnesses. Regarding the witness K., the author notes that according to the State party, this witness did not advise the author to contact the police, did not see the police beating the author and did not see the author's injuries on 23 January 2013. The author reports that K. confirmed to the non-governmental organization "Committee against Torture" that from 10 a.m. to 12 p.m. on 22 January 2013, K. and the author were in the village of Zeletsino. In

the village, they visited the grocery store and bought various items. V.V. was at the shop's counter. Neither K nor the author had any bodily injuries or complained of health issues. When they went out, K. and the author moved further and saw a red foreign car. Two or three people in civilian clothes got out of the car. They identified themselves to K. and the author as police officers and said that they wished to talk about the case of P. (the individual who died). K. and the author were brought to the police station. On the way, the police officers did not threaten them and did not use violence. When they arrived at the police station, both men were placed in separate offices. The police officers handcuffed K.'s hands behind his back and under his knees. He could not see what happened behind his back. At some point, the officers started kicking K. on his back for a period of 10 to 20 minutes. Later, an unidentified police officer appeared and removed K.'s handcuffs.

7.4 K. was then brought to the office of officer B., where the author was already present. K. claims that the author's face was then swollen. The author asked K. to confirm that P. owed the author 1,000 roubles, and that it was for that reason that the author had hit P.K. refused to testify and was released. According to the author, K., who is also a victim of violence, has changed his deposition and has withdrawn his complaint against the police out of fear.

7.5 As to the State party's contention that he did not complain to the court about the beatings and threats that occurred during the interrogations, the author notes that he complained about the torture to the judge directly, but the judge rejected his claim. According to the court decision dated 7 May 2014, during the trial, the author complained about beatings and explained that he had confessed guilt under pressure by the police. He explained that three officers had been present but that he only remembered the name of V. In a confrontation with K., the author confirmed that he had confessed out of fear of the police officers present. Again under pressure, he had signed his confession in the presence of a lawyer.

7.6 The author notes the State party's conclusion that the existence of injuries cannot lead per se to the conclusion that the author was tortured. The author notes that if a person has been brought to a police station in good health but has injuries when discharged, the State party is under a duty to provide a plausible explanation for the origins of the injuries. If it cannot do so, it means that there is a violation of the prohibition on torture and cruel treatment.

7.7 Until his apprehension, the author did not have any visible injuries or complaints about his health. When he left the police station, however, he had suffered injuries to his head and body. This is confirmed by the author's statements and corroborated by the medical records and numerous witness depositions, including those of medical doctors. Medical record 53 of 24 January 2013 of the Kstovsk Central Regional Hospital indicates that on 23 and 24 January 2013, the author was hospitalized in the hospital's traumatology department with the following diagnosis: "bruises of the soft tissues of the head". In addition, in the refusal, dated 23 November 2013, to open a criminal case, the conclusions of the expert N. dated 5 November 2013 were quoted. The expert concluded that injuries in the form of bruises of the soft tissues of the head, as disclosed by the author, constituted a blunt trauma and could have occurred with the use of a blunt object, a hand or a bat. The injuries could have occurred on 23 January 2013. According to the author, if he had been brought to the police station with such trauma, it should have been recorded during the admission procedure.

7.8 The case contains objective medical information to the effect that the author received injuries while in the custody of the police. Neither the investigator nor the State party in its reply provided convincing evidence to explain how the injuries had occurred.

7.9 The depositions of the police officers to the effect that no violence was used against the author are refuted by the evidence. The author notes the seriousness of the injuries and the fact that the aim of the beatings was to obtain a forced confession. He also notes the nature of the police officers' acts, which caused him severe pain and suffering. In the light of this, the author believes that the above treatment amounts to torture.

7.10 In the author's case, the law enforcement authorities and the courts failed to assess the torture claims properly. Furthermore, the courts did not exclude his forced confessions,

obtained under torture, but used them in the conviction, in violation of the requirements of article 7 of the Covenant. The State party did not initiate the necessary investigation of the author's allegations, in violation of article 7, read together with article 2 (3). Article 14 (3) (g) was also violated, because the author was forced by the police, under torture, to confess guilt in a murder.

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 notes that the State party has challenged the admissibility of the communication under article 5 (2) (b) of the Optional Protocol, because the author has not complained to the Supreme Court of the Russian Federation under the cassation proceedings. The Committee takes note of the author's objection as to the effectiveness of the procedure in question given that his cassation appeal to the Nizhegorodsk Regional Court has already been rejected. The author has also noted that it is up to the State party to demonstrate that a particular remedy is effective but this was not done in his case.

8.3 The Committee notes that the cassation appeals procedure of the State party concerns the revision, on points of law only, of court decisions that entered into force. The decisions on whether to refer a case for hearing by the cassation court is discretionary in nature, does not have a time limit and is made by a single judge. These characteristics lead the Committee to believe that such cassation review requests contain elements of an extraordinary remedy. In accordance with the Committee's jurisprudence, therefore, the State party must show that there is a reasonable prospect that such procedure would provide an effective remedy in the circumstances of the case. In the absence of any clarification from the State party on the effectiveness of the cassation review procedures in cases similar to the present one, the Committee considers that it is not precluded by article 5 (2) (b) from examining the present communication.

8.4 Accordingly, it declares the communication admissible as raising issues under article 7, read alone and together with article 2 (3), and article 14 (3) (g) of the Covenant, and proceeds with its examination on 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 author claims that he was beaten by police officials during the preliminary investigation on charges of murder. In substantiation, he claimed that he was beaten by three police officers, one of whom he referred to as V. An officer kicked him on the arms and feet. He was handcuffed and was tied tightly with a rope in a very uncomfortable position for an hour and a half. V. kicked him on his back and in the area of his kidneys, demanding that he confess guilt. As a result, the author suffered moral damages including physical pain in his back, arms and head. Shortly after the beatings, the author, being scared, signed the confessions as dictated by the police. The author claims that the law enforcement authorities and the courts did not exclude the confessions obtained from him under duress, but instead used them as a basis for his subsequent conviction. The official documents regarding the investigation were signed by a lawyer chosen by the investigation and the author also countersigned them. Following his release and his return to the home of his parents, the author's mother called an ambulance because of the author's poor state of health and the pain he was experiencing. She complained to the members of the emergency personnel that her son had been beaten up by the police. As a result, the author had to be hospitalized on 23 and 24 January 2013.

9.3 The Committee notes that the State party has observed the trial court's decision to give a central role to the author's depositions produced at the time of the preliminary investigation, given that they were corroborated by a large amount of evidence. The State party has also contended that the author's torture allegations have been correctly assessed

by the courts as constituting a defence strategy (see paras. 6.1 and 6.2). The State party also noted that an investigator had conducted an inquiry into the author's allegations of ill-treatment by the police, but refused to open a criminal case in the absence of a *corpus delicti*, because when interrogated the police officers in question denied inflicting violence against the author.

9.4 The Committee considers that, in the present case, the State party has not demonstrated with reliable evidence that no police officer was involved in the author's ill-treatment and bodily injuries and that the author's health was not satisfactory before his apprehension by the police. It also considers that the State party has failed to demonstrate satisfactorily that its authorities addressed the author's allegations of torture and ill-treatment in a meaningful way.

9.5 The Committee recalls that the burden of proof in regard to torture or ill-treatment cannot rest alone on the author of a communication, especially in view of the fact that the author and the State party do not always have equal access to the evidence and that frequently the State party alone has access to the relevant information. The State party has the duty⁶ to conduct a prompt, effective and independent investigation⁷ of all credible allegations of violations of article 7 of the Covenant. Under those circumstances, the Committee considers that due weight must be given to the author's allegations of torture and ill-treatment. Accordingly, the Committee concludes that the facts as presented by the author reveal a violation of his rights under article 7, read alone and in conjunction with article 2 (3).

9.6 The Committee also notes the author's claim that his rights under article 14 (3) (g) have been violated because he confessed guilt for a crime under duress and his forced confessions served as the basis for his subsequent conviction. The State party has not refuted these allegations directly; instead, it has denied the author's torture allegations in general. In the absence of any other information or argumentation of pertinence on file, and in the light of the conclusion of a violation of article 7 of the Covenant, the Committee concludes that the fact under consideration also amounts to a violation of the author's rights under article 14 (3) (g).

10. 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 articles 7, read alone and in conjunction with article 2 (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 author with an effective remedy. This requires it to make full reparation to individuals whose Covenant rights have been violated. Accordingly, the State party is obligated, *inter alia*, to take appropriate steps to: (a) conduct a thorough and effective investigation into the author's allegations of torture and, if confirmed, prosecute, try and punish those responsible; (b) release the author, quash the author's trial court verdicts and, if necessary, conduct a new trial with all fair trial guarantees; and (c) provide adequate compensation to the author for the violations suffered. The State party is also under an obligation to take all necessary steps to prevent the occurrence of similar violations 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 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.

⁶ General comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, para. 15.

⁷ General comment No. 20 (1992) on the prohibition of torture or other cruel, inhuman or degrading treatment or punishment, para. 14.

Annex

Individual opinion of Committee member José Manuel Santos Pais (dissenting)

1. I regret not being able to join the Committee's decision in finding a violation of the author's rights under article 7, read alone and in conjunction with 2 (3), and article 14 (3) (g) of the Covenant.
2. It has been the standing case law of the Committee that it is for the courts of States parties to evaluate the facts and the evidence in each case, or the application of domestic legislation, unless the evaluation is manifestly arbitrary or amounts to a denial of justice. Nonetheless, the Committee seems not to have followed this case law in the present case.
3. Regarding the violation of article 7 of the Covenant, the Committee first considered that the State party had not demonstrated with reliable evidence that no police officer had been involved in the author's ill-treatment and bodily injuries and that the author's health had not been satisfactory before apprehension by the police (para. 9.4). This, however, entails a *probatio diabolica* imposed on the State. How can a State prove the good health of a person, when the person in question has not yet come under its control? This is particularly relevant taking into account that the alleged good health of the author before his apprehension was mainly alleged by the author himself (paras. 7.6 and 7.7).
4. The Committee also considered that the State party failed to demonstrate satisfactorily that its authorities addressed the author's allegations of torture and ill-treatment in a meaningful way (para. 9.4). Since the State party has the duty to conduct a prompt, effective and independent investigation of all credible allegations of violations of article 7 of the Covenant, the Committee considered due weight needed to be given to the author's allegations (para. 9.5).
5. This conclusion, however, does not seem to reflect accurately the facts of the present case. The State party rebutted the allegations of torture and ill-treatment (para. 6.1), explaining that the court of first instance had decided to give a central role to the depositions given by the author during the preliminary investigation when he was interrogated as an accused, and to the deposition of an eyewitness, which were corroborating and without major contradictions. These depositions were provided in a short period of time after the incriminating events, in the presence of a defence attorney and after the author had been informed about his rights. The author's testimonies were consistent and also matched with the conclusions of the medical-forensic expert examination on the nature and the means of the occurrence of the bodily harm of the victim, the depositions of the witnesses and other evidence on file.
6. Analysing the evidence (para. 6.2), the Court concluded that it could not confirm the version of events presented by the defence on the beatings of the author by the police, since none of the witnesses had seen the infliction of bodily harm to the author first hand. The witnesses had only learned about it from the author's explanations, and the witness testimonies were contradictory. Several witnesses affirmed that they had seen the author with a swollen face on 23 and 24 January 2013. All medical personnel in the ambulance on 23 January, on the other hand, confirmed that no visible damages could be identified.
7. The author alleges nonetheless (paras. 2.14 and 7.7) that medical record 53 of the Kstovsk Central Regional Hospital, dated 24 January 2013, indicates that on 23 and 24 January 2013, the author was hospitalized in the hospital's traumatology department with the following diagnosis: "bruises of the soft tissues of the head". In addition, an expert concluded on 5 November 2013 that injuries in the form of bruises of the soft tissues and of the head, as disclosed by the author, constituted a blunt trauma and could have occurred with the use of a blunt object, a hand or a bat. These injuries could have occurred on 23 January 2013 (the author was apprehended on 22 January 2013), but this conclusion is not sufficiently assertive.
8. In this regard, the State party reports (para. 6.4) that several witnesses testified that on 23 January 2013 the author complained of a headache as a result of the beatings. In court,

however, he explained that he did not know why he was not feeling well and thought that it was because of the use of alcohol (para. 2.14), which is corroborated by the medical record on his admission to the hospital on 23 January 2013 and the testimony of the author on 24 January 2013 to the effect that, having been drunk, he had accepted the suggestion of an individual named K. to incriminate the police officers. In his deposition (para. 6.5), however, K. affirmed that he had not suggested that the author should go to the police, nor had K. witnessed the police putting the author under pressure or inflicting bodily harm on him on 23 January 2013. According to what K. witnessed, the police had not used violence and the author had provided his testimonies voluntarily, in the presence of a lawyer.

9. In court (para. 6.6), the author confirmed that he had not been beaten or subjected to violence during the investigation. During the interrogations, he had never affirmed that he had been beaten in order to elicit a forced confession of guilt. According to the author, the affirmation that K. had beaten him and advised him to write to the police to claim that he had confessed under duress is false. The interrogations of the author were carried out in the presence of a lawyer, but he never spoke to the lawyer about any pressure put on him by the police.

10. On 4 February 2013 (para. 2.1), 15 August 2013 (para. 2.3), 23 November 2013 (paras. 2.4 and 6.7), investigators refused to open a criminal case against the police officers in the absence of a *corpus delicti*. The officer who recorded the author's statements on 23 January 2013 was interrogated along with two other officers. All three of them denied having used unlawful methods of interrogation against the author and emphasized the voluntary nature of the author's depositions. On 24 April 2014, the city court rejected the appeal of the author against this refusal (para. 2.5).

11. The existence of injuries on the author's body (para. 6.8) as documented by an expert on 5 November 2013 cannot unilaterally lead to a conclusion of the use of unlawful methods of investigation to force the author to confess guilt. The interrogations ended on 22 January 2013 at 4.10 p.m., but the allegations were not made until 24 January 2013. In addition, a number of witnesses confirmed having seen the author with a swollen face on 21 January (that is, before his apprehension by police officers). The State party therefore considered that the author's argumentation on the use of unlawful methods against him appeared to have been correctly assessed by the courts as constituting a defence strategy and that, accordingly, no violation of any of the author's rights had occurred in the case (para. 6.11).

12. In the face of such contradictory elements on file (see also para. 4.5), I fail to see how the Committee could reach the conclusion that due weight needed to be given to the author's allegations of torture and ill-treatment and that the State party had failed to demonstrate satisfactorily that its authorities had addressed the allegations in a meaningful way. I would thus have concluded for a non-violation of the author's rights under article 7, read alone and in conjunction with article 2 (3), of the Covenant.

13. For the same reason, I also fail to see the rationale behind the conclusion of a violation of the author's rights under article 14 (3) (g) of the Covenant for the confessions allegedly obtained under duress. As already stated in paragraphs 8 and 9 of the present opinion, both the author himself and a witness acknowledged that the author's testimonies had been provided voluntarily and in the presence of a lawyer, and that he had not been beaten or subjected to violence during the investigation. On 7 May 2014 (para. 2.11), the Kstovsk City Court pronounced the author guilty under article 111 (4) of the Criminal Code, pertaining to the intentional infliction of a grave injury resulting in the death of the victim, and sentenced him to seven years' imprisonment. During the trial, a medical assistant testified that, on 23 January 2013, during her service, she had visited the author's home with a colleague. She further asserted that the author had complained about a headache and that he was hospitalized with a concussion. Despite this, the appeal court noted that it had been established that the author's confessions had been given voluntarily and under no coercion, in the presence of a lawyer (footnote 6).

14. On the basis of this information, I would also have concluded, in the present case, for a non-violation of the author's rights under article 14 (3) (g) of the Covenant.