



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

Distr.: General  
25 January 2022

Original: English

## Committee against Torture

### Decision adopted by the Committee under article 22 of the Convention, concerning communication No. 869/2018\*, \*\*

<i>Communication submitted by:</i>	Y.R. (represented by counsel, L.R.)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Russian Federation
<i>Date of complaint:</i>	5 December 2017 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 115 of the Committee's rules of procedure, transmitted to the State party on 14 May 2018 (not issued in document form)
<i>Date of adoption of decision:</i>	12 November 2021
<i>Subject matter:</i>	Torture; conditions of detention
<i>Procedural issues:</i>	Level of substantiation of claims; exhaustion of domestic remedies; abuse of procedure
<i>Substantive issues:</i>	Torture by police; conditions of detention; lack of medical assistance
<i>Articles of the Convention:</i>	1, 2, 4, 6 and 12–16

1. The complainant, Y.R., is currently serving a life sentence in the Russian Federation. He brings claims against the Russian Federation under articles 1, 2, 4, 6, 12, 13, 14, 15 and 16 of the Convention. The State party has made the declaration pursuant to article 22 (1) of the Convention, effective from 1 October 1991. The complainant is represented by counsel.

#### Factual background

2.1 On 7 February 2008, the complainant was detained at 11.30 a.m. in his office in the city of Tulun and was taken to the local police station. He remained there until the detention record had been written up, at 10.30 p.m. At 1.30 a.m. he was placed in a temporary detention facility in Tulun. He remained there until 3.50 p.m. on 9 February 2008, when he was taken to the SIZO-1 detention centre in Irkutsk. He was therefore detained unlawfully for more than eight hours in the police station. The conditions in the temporary detention facility in Tulun were poor (a bunk instead of a bed, no food, no separate toilet cubicle, no medical

\* Adopted by the Committee at its seventy-second session (8 November–3 December 2021).

\*\* The following members of the Committee participated in the examination of the communication: Essadia Belmir, Claude Heller, Erdoğan İşcan, Liu Huawen, Ilvija Pūce, Ana Racu, Diego Rodríguez-Pinzón, Sébastien Touzé and Peter Vedel Kessing. Pursuant to rule 109, read in conjunction with rule 15, of the Committee's rules of procedure, and paragraph 10 of the guidelines on the independence and impartiality of members of the human rights treaty bodies (the Addis Ababa guidelines), Bakhtiyar Tuzmukhamedov did not participate in the examination of the communication.



assistance even though he requested to see a doctor, no possibility to walk, and so on), which caused him physical and mental suffering. On an unspecified date, the complainant filed a civil suit for compensation with Tulun City Court against the Tulun police station on account of the unlawful detention for 11 hours and poor conditions of detention. On 20 October 2015, Tulun City Court rejected his claims as unsubstantiated. Among other things, the Court examined documents concerning the complainant's detention, noted the lack of complaints from him during his detention, and the presence of a lawyer, and studied technical documentation and photographs relating to the material conditions in the police station. On 19 November 2015, the complainant filed an appeal with Irkutsk Regional Court. The appeal was rejected on 7 June 2016. The complainant's cassation appeal to Irkutsk Regional Court, dated 1 August 2016, was rejected on 26 October 2016. His cassation appeal to the Supreme Court, dated 4 November 2016, was rejected on 15 December 2016.

2.2 On 9 February 2008, Tulun City Court issued a warrant for the arrest of the complainant on suspicion of attempted murder, and he was taken to SIZO-1 in Irkutsk. He claims that he was placed in an 8 m<sup>2</sup> cell in which three, four, five and even eight people were held at the same time. The conditions in the cell were inadequate, the toilet was not separated off, there was no ventilation, there was insufficient artificial lighting, personal hygiene items were not distributed, and there was no table and chair, and no radio.

2.3 Between 10 and 22 February 2008, the complainant was beaten and tortured by his cellmates in SIZO-1 on the orders of investigator T., who wanted the complainant to confess to the crimes. On 26 February, the complainant's brother received a phone call from an unknown man who demanded that 1 million roubles be transferred to his account, and threatened that, otherwise, the complainant would be raped in his cell. After that, on 27 February 2008, the complainant's brother and lawyer submitted separate complaints about this incident to the head of the investigative department in the regional prosecutor's office and to the head of the regional prison administration.

2.4 On 22 February 2008, the complainant was taken to the Irkutsk regional police department for questioning, where, on the orders of investigator T., police officers handcuffed him to a radiator, put a bag over his head, and beat him on his head and his body with a hard blunt object. He lost consciousness, his head was bleeding, and he had wounds from handcuffs on his wrists. The investigator demanded that the complainant sign a document confessing to the killing of four persons and to two attempted murders. The complainant refused.

2.5 On 24 February 2008, the complainant submitted a complaint to the head of the regional prosecutor's office about the beatings on 22 February, and asked to be given a medical examination. The prosecutor's office contacted SIZO-1 and was informed, in reply, that the complainant did not have any injuries and had not requested medical assistance. After numerous complaints by the complainant and his lawyer about the beatings, an inquiry was launched in October 2008 and a medical examination of the complainant was carried out on 23 October 2008. The examination revealed no sign of beatings, although according to the complainant, it failed to mention visible scars on his wrists left from handcuffs. On 24 October 2008, after carrying out an investigation into the complainant's allegations, the prosecutor's office refused to launch a criminal investigation into the beatings. The prosecutor, among other things, referred to witness statements, to the medical examination of 23 October 2008, and to the information from the medical unit of SIZO-1, none of which revealed any scars or injuries that could have been inflicted in the period claimed by the complainant.

2.6 In June 2011, the complainant appealed to Oktyabrskiy District Court in Irkutsk regarding the refusal on 24 October 2008 to launch a criminal investigation into the beatings. On 21 July 2011, the Court rejected his appeal, for lack of jurisdiction. Since the claims therein concerned pretrial investigation, they could only be considered by the trial court during the examination of the criminal case. On 4 October 2011, the decision of Oktyabrskiy District Court was confirmed by Irkutsk Regional Court. On 23 December 2011, the complainant's supervisory review appeal was rejected by Irkutsk Regional Court. His supervisory review appeal to the Supreme Court was rejected on 31 May 2012.

2.7 On 28 November 2008, the complainant requested another medical examination, claiming that the results of the first examination had been falsified. The second examination was ordered by Irkutsk Regional Court (the trial court) on 8 September 2009, and was carried out when the complainant had to be medically examined for another matter on 2 November 2009. That examination revealed that the complainant had scars on his wrists, but drew no conclusions about their timing or origin.

2.8 On 10 April 2008, the complainant submitted a motion to remove investigator T. from the case, on the grounds of unlawful detention on 7 February 2008. On 11 April 2008, the motion was refused by investigator T. himself. On an unspecified date, the same motion was denied by the investigative committee at the Irkutsk regional prosecutor's office.

2.9 During his trial, the complainant complained about the ill-treatment during the pretrial investigation, however his allegations were found to be unsubstantiated. On 8 February 2010, the complainant was sentenced to life imprisonment under articles 33, 105, 159 and 222 of the Criminal Code (for the organization of a crime, the murder of two or more persons for pecuniary motives, fraud, and illegal purchase, transfer, sales, storage, transportation or carrying of firearms and ammunition). On 9 June 2010, the Supreme Court, at cassation, excluded from the complainant's verdict one charge of illegal purchase of firearms, but left the sentence unchanged.

2.10 After the trial, on 8 February 2010, the complainant was taken to a solitary confinement cell. The next day, when he was taken to see his lawyer, he was handcuffed, a hat was put over his eyes, and two police officers bent him over, with his hands clasped behind his back, and made him walk in this position – with one police officer leading, in front of him, and another, with a dog, behind him.

2.11 In September 2010, on the way to Prison No. 56 in Sverdlovsk Region, the complainant was held in SIZO facilities in Krasnoyarsk, Novosibirsk, Omsk and Yekaterinburg. He claims that the conditions of detention therein were inadequate.

2.12 Since 2010, the complainant has been requesting dental implants to replace his teeth removed in 2010 and 2016. He has not been able to receive dental care, even though he was willing to pay. The administration of Prison No. 56 has been denying his request for implants due to a lack of the necessary dental specialist in the prison medical facilities and the impossibility of concluding contracts with external services, despite prison administration attempts. In June 2016, the complainant filed an administrative complaint with Ivdel City Court regarding the refusal of the prison authorities (i.e. of Prison No. 56 and the medical unit of Prison No. 66) to provide him with dental care. His complaint was rejected on 1 February 2017 on the grounds that the complainant had missed the three-month appeal period for administrative cases. His appeal to Ivdel City Court was denied on 25 April 2017 because he had missed the one-month deadline for appeal. On 30 May 2017, Ivdel City Court repealed the decision of 25 April 2017 and reinstated a one-month period for appeal.

2.13 On an unspecified date, the complainant filed with Ivdel City Court a civil suit for compensation from Medical Unit No. 25 of Prison No. 66 for failure to carry out biannual medical check-ups and failure to provide him with dental implants. On 14 April 2017, Ivdel City Court found that, according to his medical record, since 2015 the complainant had not had certain obligatory medical checks, and partially satisfied his claims, ordering all necessary medical check-ups, including X-rays, pneumotachometry and spirometry, to be carried out by Prison No. 66.

2.14 In March and April 2013, the complainant was held in Prison No. 56 with a person who was infected with tuberculosis. In February 2014, he was in the same premises as tuberculosis-infected persons, in the SIZO-1 facility in Yekaterinburg. The complainant filed numerous complaints to the prison authorities and to the prosecutor's office in 2013 and 2014. On 11 April 2014, the Sverdlovsk Region prosecutor's office responded that an inquiry had not confirmed the complainant's allegations. The inquiry established that all tuberculosis-positive detainees held in SIZO facilities needed outpatient treatment and did not present any risk to others. Walking yards and showers were disinfected on a daily basis. The prosecutor did not find any violation of the complainant's rights. On 17 April 2014, a response from the Federal Penitentiary Service in the Sverdlovsk Region provided details from the record of the complainant's stay in SIZO-1 from 11 to 16 February 2014. According to the record, the

complainant was held in cells No. 9 and No. 10. Persons infected with tuberculosis, if in exceptional circumstances they were brought to the facility, were held in cells No. 24 and No. 27. The special cells and corridors around them are equipped with bactericidal lamps. Yards and showers are disinfected after use by persons infected with tuberculosis. No complaints were received from the complainant during the period of his detention in SIZO-1.

2.15 On 26 August 2013, the complainant appealed to the Sverdlovsk regional prosecutor's office about inadequate conditions of detention in Prison No. 56, where he was placed on 25 September 2010. In particular, he mentioned around-the-clock video surveillance and the impossibility of getting privacy, including in the toilet, as well as permanent artificial light in the cell. He also mentioned that before he was placed in cell No. 5, a prisoner infected with tuberculosis had been held there. He complained that prisoners infected with tuberculosis stayed in the same prison, walked in the same yard and shared the washing facilities. In 2014, the complainant filed more complaints to the prosecutor and prison authorities on the matter of sharing facilities with persons infected with tuberculosis.

2.16 The conditions of detention in Prison No. 56, where the complainant is serving his sentence, are inadequate. The broken toilet in his cell has been replaced with a bucket, and the walking yard is next to a cesspool, which smells unbearably when prisoners are outside for one and a half hours a day. For 10 years he was allowed to have only two four-hour visits from his family per year, and he is detained some 4,000 km from his home.

### **Complaint**

3.1 Without providing details on specific violations of articles 1, 2, 4, 6, 12, 13, 14, 15 and 16 of the Convention, the complainant claims that his unlawful detention from 7 February 2008 until the time of submission of the present communication, constitutes torture.

3.2 He claims that the State party has failed to take effective measures to stop the acts of torture, despite his appeals.

3.3 He contends that the State party failed to initiate a prompt and impartial investigation concerning the fact of his torture.

3.4 Finally, he claims that he is continually being subjected to physical and mental suffering due to not receiving the necessary dental care, being incarcerated with persons infected with tuberculosis, and being in dire prison conditions.

### **State party's observations on admissibility and the merits**

4.1 In a note verbale of 24 June 2019, the State party submits that under article 22 (2) of the Convention, the Committee finds inadmissible any communication which it considers to be an abuse of the right of submission. The State party notes that the complainant connects his allegedly unlawful deprivation of liberty on 7 February 2008 and the inadequate conditions of detention with violation of his rights under the Convention. These claims were considered by Tulun City Court on 20 October 2015 after the complainant filed his complaint on 5 August 2015, that is to say, seven years and six months after the events in question. The complaint to the Committee was therefore submitted 10 years and 11 months after the events – which should be treated as an abuse of the right of submission.

4.2 The State party comes to the same conclusion in regard to the claims concerning his alleged beatings on 22 February 2008, which he complained about eight months after they had taken place. He brought an appeal against the decision of the prosecutor not to open a criminal case, three years after the decision had been made. His complaint to the Committee was filed six years and six months after the final decision of the Supreme Court on this matter on 4 May 2012, and no reasons were given for the delay. The complainant's allegations of beatings had been investigated by the investigative committee of the Irkutsk regional prosecutor's office, which refused to open a criminal case on 24 October 2008. This decision had not been appealed by the complainant.

4.3 The complainant brings before the Committee claims of violation of his human rights, when in fact he is trying to overturn the findings of the domestic courts.

4.4 The complainant has not exhausted domestic remedies regarding the conditions of detention in SIZO-1 in Irkutsk between 2008 and 2010 and in Prison No. 56.

4.5 The complaint submitted on 1 November 2014 concerning detention conditions in SIZO-1 in Irkutsk was considered by the Irkutsk regional prosecutor's office and was rejected on 11 December 2014. The complainant's claims for compensation for the conditions of detention in SIZO-1 in Irkutsk were rejected by Kuibyshev District Court in Irkutsk on 20 January 2017. This decision was upheld by Irkutsk Regional Court on 22 May 2017.

4.6 The State party notes that the complainant's claims concerning inadequate conditions of detention, unlawful use of handcuffs and lack of dental care were the subject of consideration by the European Court of Human Rights in application No. 34310/12 which the complainant submitted to the Court on 14 March 2012. The Court found a violation of article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) and awarded the complainant compensation for moral damages in the amount of €15,500.

4.7 The effectiveness of domestic remedies is proved by the decision of Sverdlovsk Regional Court of 3 November 2017, which repealed the decision of Ivdel City Court of 14 April 2017 under which dental treatment by Prison No. 66 had been refused. The appellate court obliged Prison No. 66 to provide the necessary dental treatment within three months.

4.8 Currently the European Court of Human Rights is considering another submission from the complainant (application No. 81595/17) concerning his conditions of detention in Prison No. 56 between August 2017 and April 2018.

4.9 On the basis of the above information, including the fact that similar claims have been considered by the European Court of Human Rights, the State party concludes that the complaint does not meet the admissibility criteria.

#### **Complainant's comments on the State party's observations**

5.1 On 1 January 2020, the complainant submitted his comments on the State party's observations, claiming that his submission is admissible. He reiterates his claim that his unlawful detention, which started on 7 February 2008 and has lasted already for 12 years, constitutes torture. He adds that until 24 February 2008, his lawyers were not allowed to see him and he received threats from the investigators on a daily basis. He was able write his first complaint on 24 February 2008 when his lawyer first came to visit him. Since then, he has submitted complaints to various authorities. The State party does not deny the unlawfulness of his arrest and continuing detention.

5.2 The complainant specifies that his application No. 34310/12 to the European Court of Human Rights concerned detention from 25 September 2010 to 8 August 2012. His application No. 81595/17 concerns detention between August 2017 and April 2018. In his complaint to the Committee, he complains about the entire period of detention, including in Prison No. 56, which was not considered by the European Court of Human Rights. It is not an abuse of the right of submission.

5.3 He further notes that the decision of Sverdlovsk Regional Court, of 3 November 2017, referred to by the State party, has not been implemented and the dental implants have not been placed, despite the deadline of three months set by the Court.

5.4 The complainant attaches the decision of Kirov District Court, in Irkutsk, dated 10 June 2019. This decision concerns an appeal against the refusal by investigator L., dated 14 October 2015, to open a criminal case against investigator T., including for alleged ill-treatment of the complainant and threats against him in February 2008. Kirov District Court found that the complainant had not provided any concrete proof of psychological or physical pressure exerted on him. The complainant refused to provide an explanation during the investigation referring to the ongoing psychological and physical pressure by investigator T., which began in February 2008. Such reference was abstract, and did not indicate any factual details that would enable an investigation. The complainant also provided a copy of the decision dated 11 September 2019 by investigator B., refusing to open a criminal case into allegations of pressure exerted on the complainant by investigator T. That decision describes steps taken as part of the investigation into the complainant's allegations, inter alia,

questioning of witnesses, including of the lawyers and relatives of the complainant. None of them received threats from investigator T. or any concrete information from the complainant himself about ill-treatment or threats. The complainant refused to provide information alleging that the investigation had exerted psychological pressure on him. The decision mentions that all the allegations were raised by the complainant's lawyers from June 2009 to February 2010 at Irkutsk Regional Court during the trial of the complainant. The Court did not uphold the allegations.

5.5 The complainant provides a copy of the European Court of Human Rights judgment on his application No. 34310/12 concerning the period of detention in Prison No. 56 from 25 September 2010 to 8 August 2012. The Court found a violation of the complainant's rights under article 3 of the Convention (torture and inhuman and degrading treatment) on the basis of inadequate conditions of detention (e.g. 3.5 m<sup>2</sup> of space per person, and a bucket instead of a WC, which the complainant had to take outside, while wearing handcuffs), and lack of dental care – something he had been requesting since 2010.

5.6 On 4 December 2018, Ivdel City Court rejected claims for compensation against Prison No. 56 and Prison No. 66 submitted by the complainant and other prisoners for, among other things, being held on the same premises as prisoners infected with tuberculosis. The Court noted information provided by the administration of the prisons that prisoners with tuberculosis were held separately, in a specially designated sector, that the cells were disinfected, that infected persons received food in their cells, and used shower facilities after everyone else, after which the facilities were disinfected, and that there was a separate walking yard for them. They did not go to the prison shop; their shopping was done for them by the duty officers. Prisoners were X-rayed twice a year. Persons cured of tuberculosis could be detained with other prisoners without any risk to the latter. The complainants were undergoing medical examinations, including X-rays, on a regular basis, and had not been listed among the persons infected with tuberculosis. The Court found that the complainants had not suffered any ill-effects and rejected their monetary claims. On 10 July 2019, the decision of Ivdel City Court was upheld by Sverdlovsk Regional Court. On 18 October and 26 November 2019, the complainant's cassation appeals were rejected by Sverdlovsk Regional Court and the Supreme Court respectively.

#### **State party's additional observations**

6.1 On 15 January 2020, the State party submitted additional observations stating that the complainant had not provided details about how his rights under articles 1, 2, 4, 6, 12, 13, 14, 15 and 16 of the Convention had been violated. In essence, the complainant, in each of his claims, tries to contest the verdict in his criminal case, by which he abuses the right of submission under article 22 (2) of the Convention. He alleges that his apprehension, arrest and detention are unlawful and constitute a torture since he experienced "fear, humiliation and suffering".

6.2 The complainant was arrested on 7 February 2008 at 11.30 a.m. on suspicion of attempted murder. The detention record was written up at 10.30 p.m. On 9 February 2008, Tulun City Court ordered the complainant's pretrial detention. That decision was upheld by the Supreme Court on 10 April 2010 and on 9 August 2012. The detention order was extended by courts until the end of his trial. The trial courts also considered and rejected the claims of unlawful detention. The complainant's allegations of unlawful detention are therefore groundless.

6.3 Under article 1 of the Convention, "torture" does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions. The actions of law enforcement agencies involving detention of the complainant, who was suspected of attempted murder, cannot be seen as torture or cruel, inhuman or degrading treatment.

6.4 The complainant also considers as torture suffering that he experienced from the detention conditions in SIZO facilities in Irkutsk, Krasnoyarsk, Novosibirsk, Omsk and Yekaterinburg, in particular because of the toilet which was not separated off, the lack of ventilation and natural light, the lack of personal hygiene items, the small windows, and the lack of furniture and of radio, and so on. According to the information received from the Federal Penitentiary Service, during his incarceration in SIZO facilities, the complainant was

held in cells measuring from 5.76 m<sup>2</sup> for one person to 42.6 m<sup>2</sup> for 10 people. All cells had one or two windows measuring 1.2 m x 1 m or 1.35 m x 1.35 m or 1.2 m x 1.9 m each. He had an individual sleeping place, and the number of persons in one cell did not exceed the number of sleeping places. All cells were equipped with lights and had sufficient natural lighting, as well as ventilation systems. The toilet is not separated off in cells for one person, but is outside the range of video surveillance. Toilets in cells for several people were separated by a floor-to-ceiling wall and a door. All cells were equipped with heaters. Personal hygiene items (e.g. soap, single-use razors and toothpaste) were distributed once a month. Showers were once a week. While in SIZO facilities, the complainant had not submitted any complaints.

6.5 In 2016, the complainant filed a suit for compensation from the Federal Penitentiary Service, the Ministry of Finance and SIZO-1 concerning his conditions of detention, with Kuibyshev District Court. On 20 January 2017, his claims were rejected. On 22 May 2017, his appeal was rejected by Irkutsk Regional Court. The complainant did not file appeals to the Supreme Court.

6.6 While serving his sentence in Prison No. 56 between 2010 and 2017, the complainant filed a suit for compensation for the inadequate conditions of detention, with Ivdel City Court. On 24 July 2018, his claims were partially satisfied, with compensation of 15,000 roubles awarded. On 18 January 2019, Sverdlovsk Regional Court increased the amount of compensation to 30,000 roubles. On 17 July 2019, the Supreme Court rejected the complainant's cassation appeal. On 7 February 2017, the European Court of Human Rights found a violation of the complainant's rights on the basis of his conditions of detention. Therefore, this part of the complaint should be found inadmissible under article 22 (5) (a) of the Convention.

6.7 The claims concerning ill-treatment of the complainant were investigated at the pretrial stage. According to the information received from Irkutsk Regional Court, on 28 February 2008 investigator T. received a request for a medical examination, from the complainant's lawyer, in connection with the beating of the complainant on 22 February 2008. On 12 March 2008, investigator T. requested the head of SIZO-1 in Irkutsk to provide information about whether the complainant had any injuries. On 28 March 2008, he received a negative response from SIZO-1. In addition, the complainant's allegations were investigated by the investigative committee at the Irkutsk regional prosecutor's office, which on 24 October 2008 refused to open a criminal case. This decision was appealed three years later in Oktyabrskiy District Court in Irkutsk. On 21 July 2011, the Court rejected the appeal for lack of jurisdiction, which rested with the trial court. The trial court also considered the complainant's claims about ill-treatment and psychological pressure. At the complainant's request, the Court questioned witnesses F. and G., his cellmates in SIZO-1. Mr. F. confirmed that he had exerted psychological pressure on the complainant. Mr. G. stated that he had heard about pressure exerted on him from the complainant himself. The trial court requested a medical examination of the complainant. The medical report, dated 18 November 2009, contrary to the complainant's statement, does not contain conclusions about injuries inflicted during his arrest. The court also verified that there had been no complaints or requests for medical assistance from the complainant during his detention. On 3 September 2009, Irkutsk Regional Court requested SIZO-1 in Irkutsk to carry out an inquiry into the complainant's allegations of ill-treatment and psychological pressure. On 17 September 2009, the response from SIZO-1 did not confirm the complainant's allegations. Medical certificates confirming an absence of injuries were attached to the investigation file. On 3 September 2009, the regional prosecutor of Irkutsk received an order to investigate the complainant's allegations of ill-treatment and psychological pressure during the pretrial investigation. On 15 October 2009, Irkutsk Regional Court received a decision dated 24 September 2009 refusing to open a criminal case against investigator T. Therefore, the complainant's allegations had been thoroughly investigated at the pretrial and trial stage and could not be confirmed.

6.8 The complainant has not brought before the domestic authorities his claims about being placed in solitary confinement after the end of his trial, or about being escorted in inhuman conditions on 9 February 2010 for a meeting with his lawyer.

6.9 With regard to the lack of dental treatment (i.e. of implants), the State party confirms that this claim was considered, and a violation was found, by the European Court of Human

Rights, as well as by Sverdlovsk Regional Court on 3 November 2017. This claim should be considered inadmissible under article 22 (5) (a) of the Convention. The State party adds that dental implanting was carried out in May and June 2018.

6.10 The State party concludes that the majority of the claims are inadmissible and all the claims are unsubstantiated.

### **Complainant's additional comments**

7.1 On 22 May, 1 June and 7 September 2020, the complainant reiterated his claims and arguments already presented. He adds that in 2018, in Prison No. 6, officers twisted his arm. In February 2018, he requested a medical examination, since he had lost a lot of weight, and could not lift his arm; the thumb and little finger on his left arm lost sensitivity and his left arm became thinner than his right one. The request was not answered. On 13 September 2019, a request for medical treatment was submitted to the Federal Penitentiary Service in Khabarovsk. The Service responded on 4 October 2019 that the complainant's health was satisfactory and stable and that there were no indications for medical treatment.

7.2 In his comments of 1 June 2020, the complainant submits that the dental treatment has not been carried out to date. He annexes the decision of Kirovsky District Court in Yekaterinburg of 14 December 2018, which found that Prison No. 66 had failed to implement in a timely manner the decision of Sverdlovsk Regional Court of 3 November 2017 concerning the provision of dental implanting care. The prison administration was ordered to pay the complainant compensation of 300 roubles (approximately €4). This decision was upheld by Sverdlovsk Regional Court on 19 June 2019. On 7 September 2020, the complainant's counsel reported that the complainant had received dental treatment and that implants had been placed between May and September 2018 in Prison No. 6 in Khabarovsk kray.

### **Additional submissions by the State party**

8. On 7 October 2020, the State party submitted that the complainant had not presented new information in his latest comments. The State party summarizes its previous observations. The State party argues here that the Convention does not provide for a right to timely implementation of a court decision. However, even if such a right existed, it would be inevitably related to the evaluation of facts and evidence and the application of domestic law, which are the prerogatives of domestic courts. Such an evaluation cannot be reviewed by the Committee if the complainant did not provide substantiation that it was clearly arbitrary or amounted to a denial of justice. The information submitted by the complainant does not lead to such a conclusion. The State party reiterates that the communication does not indicate that the complainant's rights under the Convention have been violated.

### **Issues and proceedings before the Committee**

#### *Consideration of admissibility*

9.1 Before considering any complaint submitted in a communication, the Committee must decide whether it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22 (5) (a) of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

9.2 In this regard, the Committee notes the information provided by the State party that the complainant submitted two applications to the European Court of Human Rights, in 2012 and 2017. The Court found a violation in respect of his application No. 34310/12 on account of the conditions of detention in Prison No. 56 in 2010–2012 and the lack of dental treatment. Application No. 81595/17, concerning conditions of detention in Prison No. 56 between August 2017 and April 2018, is still under consideration by the Court.

9.3 In light of this information, the Committee finds the complainant's claims concerning the lack of dental treatment and the conditions of detention in Prison No. 56 inadmissible, on the grounds of incompatibility with article 22 (5) (a) of the Convention.



9.4 In accordance with article 22 (5) (b) of the Convention, the Committee shall not consider any complaint unless it has ascertained that all available domestic remedies have been exhausted. The Committee notes the State party's observation that the complainant has not exhausted domestic remedies in respect of his claims concerning him being placed in solitary confinement on 8 February 2010 and being escorted in inhuman conditions to a meeting with his lawyer on 9 February 2010. The State party's observations are confirmed by the lack of any complaints to domestic authorities in the submission. The Committee notes, in addition, that the material on file does not provide information that the complainant has exhausted domestic remedies in respect of his allegations of beatings by cellmates in SIZO No. 1 in February 2008. Neither does the Committee find information on file about whether the complainant has exhausted domestic remedies with regard to conditions of detention in SIZO facilities in Krasnoyarsk, Novosibirsk, Omsk and Yekaterinburg. Accordingly, the Committee considers that it is precluded under article 22 (5) (b) of the Convention from examining these claims.

9.5 The Committee notes the State party's observations that the complainant has not exhausted domestic remedies in respect of his claims concerning conditions of detention in SIZO-1 in Irkutsk between 2008 and 2010. The State party mentions, however, that a complaint was submitted on 1 November 2014 concerning the detention conditions in SIZO-1 in Irkutsk, which was considered by the Irkutsk regional prosecutor's office and was rejected on 11 December 2014. Furthermore, the complainant's claims for compensation for the detention conditions in SIZO-1 in Irkutsk were rejected by Kuibyshev District Court in Irkutsk in its decision of 20 January 2017 and by Irkutsk Regional Court on 22 May 2017. In this regard, the Committee observes that the court decisions mentioned have not been provided either by the State party or by the complainant. Given the scarcity of information provided on this matter by the complainant, as well as the general nature of his claims, and in the absence of relevant documents, the Committee is unable to assess the impact of the detention conditions in SIZO-1 on the complainant. The Committee thus finds these claims insufficiently substantiated and inadmissible under article 22 (2) of the Convention.

9.6 The Committee further notes that the State party has contested the admissibility of the rest of the communication on the grounds that the complainant's claims are insufficiently substantiated. In this regard, the Committee notes the complainant's claim that his unlawful detention, which started on 7 February 2008 and continues until the present time, constitutes torture for the purposes of article 1 of the Convention. The Committee observes that the complainant's claims before the domestic courts referred to unlawful detention in the Tulun police station from 2.30 to 10.30 p.m. on 7 February 2008 because the detention record had not been written up within the three-hour time limit stipulated in the domestic law. The rest of the complainant's detention in the temporary detention facility in Tulun was authorized by the relevant investigative authorities; in SIZO, by the courts; and in prison, by the final sentence of a court. The Committee thus finds that the complainant's claims fall outside the scope of article 1 of the Convention, and finds this part of the communication inadmissible under article 22 (2) of the Convention.

9.7 The Committee notes the complainant's claims concerning inadequate conditions of detention in the temporary detention facility in Tulun, where he was held from 1.30 a.m. on 8 February 2008 to 3.50 p.m. on 9 February 2008. The Committee notes the general nature of the complaints submitted by the complainant, the short period of time he spent in the temporary detention facility, and the thorough examination of his claims by the domestic courts, which resulted in rejection of his claim for compensation. The Committee considers that the complainant has not substantiated any harm caused to him by the brief period spent in the temporary detention facility in Tulun and finds his claims insufficient to substantiate a violation of article 1 of the Covenant. The Committee thus finds this part of the communication insufficiently substantiated and inadmissible under article 22 (2) of the Convention.<sup>1</sup>

9.8 The Committee also notes the complainant's claims about ill-treatment in the police station in Tulun on 22 February 2008 with the purpose of extracting a confession. The Committee further notes the observations of the State party that the complainant's allegations

<sup>1</sup> Cf. *V.S. v. Belarus* (CCPR/C/122/D/2182/2012), para. 7.4.

on this matter had been the subject of thorough investigation by the prosecutor's office and the courts, but could not be confirmed (see para. 6.7 above). In this regard, the Committee observes that the complainant did not submit any complaints or request medical assistance when taken back to SIZO-1 after an extensive and prolonged beating that lasted for at least one hour. On 24 February 2008, he was visited by his lawyer, who did not request medical assistance for the complainant either, and did not report any physical injuries. The medical report of 18 November 2009 only stated that the complainant had scars on his wrists, but did not provide any conclusion about the nature and the origin or timing of the scars. On the other hand, the Committee notes that the investigation and the courts which considered the complainant's claims took into account the results of the medical examinations carried out in 2008 and 2009, and the medical certificates provided by SIZO-1, and questioned the complainant's witnesses and lawyers and unsuccessfully attempted to question the complainant. In light of the information available to it, the Committee cannot establish that the authorities and domestic courts acted arbitrarily or with bias or committed a manifest error that denied the complainant access to justice when considering his claims of ill-treatment. The Committee therefore finds the complainant's allegations of ill-treatment insufficiently substantiated and inadmissible under article 22 (2) of the Convention.

9.9 The Committee also notes the complainant's claims that he was detained on the same premises and on different occasions with persons infected with tuberculosis. In this regard, the Committee notes that the allegations of the complainant have been considered by the domestic courts, with evidence presented by the respective penitentiary institutions, and on no occasion have the courts found that the complainant was detained in the same cell as persons infected with tuberculosis. The decisions of domestic courts established that the necessary separation and disinfection were maintained in prisons, that the complainant received regular medical check-ups and that he did not contract tuberculosis while in prison. From the information before it, the Committee does not find reasons to doubt the fairness of the conclusions of the domestic courts. It therefore finds the complainant's claims insufficiently substantiated and inadmissible under article 22 (2) of the Convention.

9.10 In the light of the above, the Committee does not find it necessary to consider the State party's observations concerning an abuse of the right of submission by the complainant.

10. The Committee therefore decides:

(a) That the communication is inadmissible under article 22 (2) and (5) (a) and (b) of the Convention;

(b) That the present decision shall be communicated to the complainant and to the State party.

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