International Covenant on Civil and Political Rights

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Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2820/2016*, **

Communication submitted by:	Mitko Vanchev (represented by counsel, Mihail Ekimdjiev)
Alleged victim:	The author
State party:	Bulgaria
Date of communication:	27 October 2014 (initial submission)
Document references:	Decision taken pursuant to rule 92 of the Committee’s rules of procedure, transmitted to the State party on 22 December 2020 (not issued in document form)
Date of adoption of Views:	6 November 2020
Subject matter:	Lack of effective investigation of allegations of cruel, inhuman or degrading treatment or punishment
Procedural issues:	Matter being examined under another procedure of international investigation or settlement; exhaustion of domestic remedies
Substantive issues:	Cruel, inhuman or degrading treatment or punishment; right to a fair trial; right to an effective remedy
Articles of the Covenant:	2 (3) (a), 7 and 14 (1)
Articles of the Optional Protocol:	2, 3 and 5 (2) (a) and (b)

1. The author of the communication is Mitko Vanchev, a national of Bulgaria born on 1 June 1985. He claims that the State party has violated his rights under articles 7 and 14 (1) of the Covenant, read alone and in conjunction with article 2 (3) (a) of the Covenant. The Optional Protocol entered into force for Bulgaria on 26 June 1992. The author is represented by counsel.

* Adopted by the Committee at its 130th session (12 October–6 November 2020).

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

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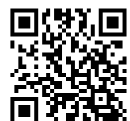

Facts as submitted by the author

2.1 On 15 September 2005, the author, a second-year student at the Technical University of Sofia, took a bus from Sofia to Kardzhali. The bus arrived at its destination at around 7.45 p.m. While walking through the streets of Kardzhali, he heard footsteps behind him and, a moment later, a large man suddenly attacked him. Thinking that it was a robbery, the author punched the attacker in the face in self-defence. Subsequently, a second man arrived on the scene and also attacked him and punched him. The author was hit on the head with a hard object and fell into the street.[1] The two men continued hitting and kicking him while he was on the ground. He unsuccessfully tried to defend himself, still thinking that he was being robbed. One of the two assailants said: “Where is the weed? Give me the weed!” At that moment, the author thought that he was being assaulted by drug dealers who had mistaken him for another dealer. He replied that he did not have any weed and that he was not involved in that kind of business.

2.2 The author was handcuffed and put into a car. According to the author, it was only at that moment that the men identified themselves as police officers. Upon arrival at the police station, they discovered that there had been an error and that the author was not the person whom they were seeking. The author was taken to hospital, where he spent four days for the treatment of the injuries sustained as a result of the beating. A judicial medical certificate was issued to the author indicating that he had two lacerated contusions to his head and visible bruising owing to contusions to the skin on the right side of his abdomen.[2]

2.3 On 26 September 2005, the author submitted a complaint to the Director of the Kardzhali District Directorate of the Ministry of the Interior against the two police officers for the violence that he had suffered. On 13 October 2005, the Director acknowledged that the use of force by the police officers had been disproportionate, that the police officers had acted with negligence by not informing the author that they were police officers and that they had therefore been subjected to disciplinary sanctions.[3]

2.4 On an undetermined date, the author submitted the same complaint to the Plovdiv District Military Prosecutor’s Office. On 17 October 2005, the Office rejected the request to initiate criminal proceedings against the police officers in question. On 9 February 2006, the Appellate Military Prosecutor’s Office reversed the decision of the Plovdiv District Military Prosecutor’s Office and ordered the initiation of criminal proceedings against the two police officers.

2.5 On 28 July 2006, the Plovdiv District Military Prosecutor’s Office charged the two police officers with causing minor bodily harm to the author, under article 131 (1), read in conjunction with article 130 (1), and article 20 (3) of the Criminal Code.[4] The Plovdiv Military Court of First Instance opened a criminal case (No. 160/2006). The author filed a civil claim against the defendants for moral damages suffered in the amount of 8,000 leva (approximately $4,800).

2.6 On 16 September 2006, the Plovdiv Military Court acquitted the accused.[5] The Court found that the police officers had identified themselves when they had alerted the author by saying “Don’t move, police”, and that the officers had attacked the author because he offered resistance and attacked them. The Court deemed the force used by the police officers as being within the framework of the law and not exceeding in its intensity what was necessary to

[1] During the court proceedings, it was established that the author had been hit with the police officers’ handcuffs.

[2] The author submitted pictures of his wounds with his complaint as, well as a summary in French of a forensic medical certificate (No. 264/05) dated 17 September 2005.

[3] See paragraph 4.2, in which the State party provides further information. The author submitted with his complaint a summary in French of the letter dated 13 October 2005 from the Director of the Kardzhali District Directorate of the Ministry of the Interior.

[4] According to the State party, the pretrial proceedings were initiated on 16 February 2006. The author provides a translation in French of the indictment, which does not include a date.

[5] The author submitted with his complaint a summary in French of the Plovdiv Military Court decision dated 16 September 2006.

neutralize the resistance of the author. The author and the Plovdiv Regional Military Prosecutor's Office appealed that decision before the Military Court of Appeal.

2.7 On 10 January 2007, the Military Court of Appeal quashed the decision, found the accused guilty of causing minor bodily harm to the author and imposed administrative fines of 1,000 leva (approximately $604) on each of the accused.[6] It also ordered the payment of compensation for moral damages to the author in the amount of 1,500 leva (approximately $907).

2.8 The Prosecutor General, on the basis of article 422 (1) of the Code of Criminal Procedure, requested the annulment of that decision before the Supreme Court of Cassation, because the procedural rights of the defendants had been violated. The Prosecutor General's request was not sent to the author, and he was not summoned before the Supreme Court of Cassation when his case was examined.[7] On 18 December 2007, the Court annulled the decision of the Military Court of Appeal of 10 January 2007 in its entirety and referred the case back to the same court for reconsideration by a different chamber.

2.9 On 17 January 2008, by its decision No. 3, the Military Court of Appeal upheld the decision of the court of first instance, the Plovdiv Military Court, acquitted the accused and rejected the author's claim for compensation.[8] The Court specified that the judgment was final and not subject to appeal.

2.10 On 2 June 2008, the author lodged a complaint with the European Court of Human Rights claiming a violation of articles 3, 6 (1) and 13 of the Convention for the Protection of Human Rights and Fundamental Freedoms. On 10 July 2014, the Court informed him that his application was inadmissible, given that it did not comply with the admissibility criteria set out in articles 34 and 35 of the Convention.[9] The author refers to the jurisprudence of the Human Rights Committee, under which the Committee has accepted to examine the merits of cases after a decision of inadmissibility by the European Court of Human Rights, if the case was not examined on the merits.[10]

Complaint

3.1 The author claims to be a victim of violations of his rights under articles 7 and 14 (1), read alone and in conjunction with article 2 (3) (a), of the Covenant.

3.2 The author claims that he was a victim of a violation of his rights under article 7 of the Covenant, read alone and in conjunction with article 2 (3) (a). The author's contusions were clearly caused by the police officers. The severity and number of injuries, as well as the intensity of the pain and suffering of the author, fall within the material scope of article 7 of the Covenant. The police officers, without a clear legitimate reason, used disproportionate physical force against him. The author also claims that the investigation into his allegations of abuse by the police was not effective, in violation of international standards.[11]

3.3 The author refers to the jurisprudence of the European Court of Human Rights in *Assenov and others v. Bulgaria* to argue that, when a person alleges to have suffered ill-treatment at the hands of the police, the procedural requirements of article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms imply an

[6] The author submitted with his complaint a summary in French of the Military Court of Appeal decision dated 10 January 2007.

[7] The author states that his participation in the proceedings before the Court was not noted in the introduction of the decision. The author submitted with his complaint a summary in French of the Supreme Court of Cassation decision dated 18 December 2007.

[8] The author submitted with his complaint a summary in French of the Military Court of Appeal decision dated 17 January 2008.

[9] The author submitted with his complaint a transcript of the letter from the European Court of Human Rights dated 10 July 2014.

[10] Human Rights Committee, *Achabal Puertas v. Spain* (CCPR/C/107/D/1945/2010).

[11] The author refers to the Committee's general comment No. 20 (1992) on the prohibition of torture or other cruel, inhuman or degrading treatment or punishment.

obligation to conduct an effective official investigation.[12] The Court indicated that the investigation, as with that under article 2, should be conducted in such a way as to lead to the identification and punishment of those responsible. He also refers to paragraph 117 of the same decision, in which the Court recalled that article 13 guaranteed the availability at the national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they might happen to be secured in the domestic legal order. The effect of that article was therefore to require the provision of a domestic remedy allowing the competent national authority both to deal with the substance of the relevant Convention complaint and to grant appropriate relief, although contracting States were afforded some discretion as to the manner in which they conformed to their obligations under that provision. The scope of the obligation under article 13 varied depending on the nature of the applicant's complaint under the Convention. Where an individual had an arguable claim that he or she had been ill-treated in breach of article 3, the notion of an effective remedy entailed, in addition to a thorough and effective investigation of the kind also required by article 3, effective access for the complainant to the investigatory procedure and the payment of compensation where appropriate.

3.4 The author also refers to paragraph 140 of the European Court of Human Rights decision in *Anguelova v. Bulgaria*, in which the Court indicated that there must be a sufficient element of public scrutiny of the investigation or its results to secure accountability in practice, as well as in theory, maintain public confidence in the authorities' adherence to the rule of law and prevent any appearance of collusion in or tolerance of unlawful acts. The degree of public scrutiny required might well vary from case to case.[13]

3.5 The author argues that, by analogy, the investigation of his allegations of the abuse suffered at the hands of the police officers was not effective and that its objective was not to identify them in order to engage their criminal responsibility. On the one hand, the author did not have effective access to the investigation during the preliminary procedure. He was not able to participate during the interrogations of the two accused police officers or the witnesses called by them. The Code of Criminal Procedure does not even provide the victim with any formal procedural activity nor initiative in the form of "requests, notes and challenges". He refers to paragraph 86 of the European Court of Human Rights decision in *Assenov and others v. Bulgaria*, in which the Court recalled that, under Bulgarian law, it was not possible for a complainant to initiate a criminal prosecution in respect of offences allegedly committed by agents of the State in the performance of their duties. According to the author, that means that all actions of the investigation take place at the initiative and under the control of the corresponding public bodies and that the victims have no influence on the course of those proceedings.

3.6 The author also claims that his access to the Supreme Court of Cassation was unjustifiably restricted. The author did not receive a copy of the Prosecutor General's request before the Supreme Court of Cassation to annul the decision of the Military Court of Appeal nor a summons to participate in the proceedings. He submits that it was the Supreme Court of Cassation, before which he was deprived of providing his input, that annulled the judgment of the Military Court of Appeal in his favour. That led in practice to his deprivation of compensation for moral damages awarded in the final judgment of the Military Court of Appeal.

3.7 The author also alleges a violation of article 14 (1) of the Covenant. He claims that the State party's authorities failed to respect his right to full access to a tribunal and the principle of equality of arms, given that he was not notified of the Prosecutor General's request for annulment of the decision of the Military Court of Appeal before the Supreme Court of Cassation and was not summoned to participate in those proceedings.

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[12] European Court of Human Rights, *Assenov and others v. Bulgaria* (application No. 24760/94), judgment of 28 October 1998.

[13] European Court of Human Rights, *Anguelova v. Bulgaria* (application No. 38361/97), judgment of 13 June 2002.

3.8 The author refers to the jurisprudence of the European Court of Human Rights in *Kehaya and others v. Bulgaria*,[14] in which the Court noted that the approach of the Supreme Court of Cassation, in its judgment of 10 October 2000, had had, moreover, the effect of providing a "second chance" for the State to obtain a re-examination of a dispute already determined by way of final judgments in contentious proceedings to which another emanation of the State, a specialized administrative authority in charge of restitution – the land commission, had been a party and had been afforded all procedural means to defend the State interest. Such re-examination had apparently been possible without any limitation in time and could only be barred after the expiry of the relevant period of acquisitive prescription. That approach had been unbalanced and created legal uncertainty.

3.9 In the present case, the author considers that the infringement of the principle of legal stability derives from the possibility of reopening completed criminal cases and annulling decisions in force, referred to in article 422 (1) (5) of the Code of Criminal Procedure in hypotheses formulated in an unclear manner. That provision explicitly refers to the three grounds for annulment in cassation referred to in article 348 (1) of the Code, namely: (a) breach of law; (b) substantive breach of procedural rules; and (c) obviously unfair punishment. According to the author, the blurring of the distinction between the conditions for appeal in cassation under article 348 and the conditions for annulment under article 422 of the Code creates conditions for a contradictory interpretation and arbitrary application of the conditions for annulment. The indefinite and unpredictable situation undermines the principle of legal stability. The requirements of clarity of the applicable law and the predictability of the legal consequences of a given law are implicit in the term "fair trial".

3.10 The author claims that the State party violated his rights under article 2 (3) (a) of the Covenant, given that it failed to conduct a fair, effective and full investigation into his allegations of abuse by the police officers. It also failed to provide the author with compensation for the damages that he suffered as a consequence of the violation of his rights under articles 7 and 14 of the Covenant.

3.11 The author requests the Committee to order the State party to reopen the criminal proceedings against the police officers who physically abused him and to provide him with adequate compensation.

State party's observations on admissibility and the merits

4.1 In a note verbale dated 12 April 2017, the State party submitted its observations on the admissibility and the merits of the communication.

4.2 The State party submits that, following the police raid aimed at arresting an alleged drug trafficker, during which the author sustained minor bodily harm, a disciplinary committee was appointed on 16 September 2005 by order of the Director of the Kardzhali District Directorate of the Ministry of the Interior. In the course of the investigation, the author and witnesses gave testimony, and reports were requested from the police officers concerned. The State party included forensic medical certificate No. 264/05 dated 17 September 2005 in its reply. The disciplinary committee established that, despite the resemblance between the author and the person wanted for purchasing narcotics, the two officers had acted in an impetuous and presumptuous way, with a tactically incorrect approach, and were unprepared to react to possible resistance. They did not make sure that the author understood that they were law enforcement officers and used force that was not proportionate or adequate to the situation that arose, even if the author had attacked the officers because he thought he was being assaulted in order to be robbed. The use of force did not end even after the author was rendered harmless, in breach of the provisions of article 84 of the Ethical Code for Officers of the Ministry of the Interior. The disciplinary committee considered that their actions had resulted in harming the reputation of the Ministry of the Interior's officers. It ordered the following measures: one of the officers was given a one-

[14] European Court of Human Rights, *Kehaya and others v. Bulgaria*, (applications No. 47797/99 and No. 68698/01), judgment of 12 January 2006, para. 69.

year disciplinary sanction of censure for his behaviour and assigned to another office;[15] and the other officer was given a six-month disciplinary sanction of censure.[16]

4.3 The State party notes that, on 10 October 2005, the author filed a lawsuit (No. 1674/05) before the Plovdiv District Military Prosecutor's Office. It resulted in a refusal to initiate pretrial proceedings and the closing of the case. On 9 December 2005, the order was reversed by the Appellate Military Prosecutor's Office, upon appeal by the author. On 17 January 2006, after the completion of a new investigation, a new order was issued by the Military Prosecutor's Office refusing to initiate pretrial proceedings. On 6 February 2006, the order was again reversed by the Appellate Military Prosecutor's Office, following an appeal lodged by the author, and the initiation of criminal proceedings was ordered.

4.4 The State party indicates that, on 16 February 2006, pretrial proceedings were initiated for a crime under article 131 (1), read in connection with article 130 (1), and article 20 (2) of the Criminal Code. A time limit of 60 days was set for the investigation to be completed, which was subsequently extended twice. Between 27 and 29 March 2006, inspections of the scene of the incident and the home of a witness and other investigative actions were conducted. On 26 April 2006, a forensic medical report on the injuries suffered by the author was issued. During the investigation, eyewitnesses of the incident were interrogated.

4.5 The State party explains that, on 30 May 2006 and on 20 June 2006, criminal charges were brought against the two defendants for a crime under the articles of the Criminal Code cited above. The criminal proceedings concluded on 17 January 2008, with judgment No. 3 of the Military Appellate Court upholding the verdict of not guilty issued by the Plovdiv Military Court.[17]

4.6 The State party considers that the communication should be declared inadmissible because domestic remedies have not been exhausted. It asserts that the author, in accordance with article 349 of the Code of Criminal Procedure, could have requested the cassation review of the judgment before the Supreme Court of Cassation.

4.7 Regarding the effectiveness of the investigation, the State party argues that the time between the incident (15 September 2005) and the acquittal of the defendants (17 January 2008), amounting to 2 years and 4 months, is within the reasonable time limits. It adds that the author did not lodge any complaint in the course of the pretrial proceedings and that the errors found in the evidence collection process during the investigation did not significantly affect the decisions issued by the Prosecutor's Office or the court judgments establishing the legal nature of the offence.[18] The State party asserts that the criminal proceedings conducted satisfied the European standards of effective investigation, given that the requirements of timeliness and speediness, completeness and comprehensiveness, impartiality and independence and the possibility for public supervision were met.

4.8 The State party argues that the author was allowed to exercise his rights as a victim of a crime. All prerequisites were fulfilled, including the possibility of bringing civil action for damages. The author took part in the first instance and appellate proceedings, both personally and through an attorney authorized by him, including when the hearing in the case resumed after having been adjourned. Therefore, according to the State party, the author was provided with all effective remedies required under article 2 (3) of the Covenant, and the State party notes that the article contains no mandatory requirement for the State party to provide compensation.

4.9 The State party asserts that the author's allegation of a violation of article 7, read in conjunction with article 2 (3), is also unfounded, because he was allowed to exercise his rights within the criminal proceedings. The State party indicates that the author's case was considered in accordance with the general procedure, even though the conditions were met to be considered in accordance with the procedure provided for in chapter 28 of the Code of

[15] The State party indicates that, on 3 January 2012, the officer's service at the Ministry of the Interior was terminated, at his request.

[16] The State party indicates that, on 21 November 2005, the officer's service at the Ministry of the Interior was terminated, at his request.

[17] For further details regarding the criminal proceedings, please refer to paras. 2.5 to 2.9 above.

[18] The State party does not provide further explanation of this argument.

Criminal Procedure, entitled "Release from criminal liability by imposition of an administrative sanction", which excludes the figure of the private prosecutor and the civil claimant. It argues that, indisputably, the civil action brought by the author was subject to a fair and public hearing by a competent, independent and impartial tribunal established by law, as required under article 14 (1) of the Covenant. According to the State party, the position of the author that the fulfilment of the effective remedy requirement is conditional on a specific outcome renders the communication inadmissible, given that such an interpretation would be in contradiction with the fundamental principles of the equality of citizens, equal rights of parties and "uncovering of the objective truth though the criminal procedure".

4.10 The State party concludes that the author's allegations of a violation of article 7 of the Covenant, read in conjunction with article 2 (3), and of article 14 (1) of the Covenant are unfounded.

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

5.1 In his comments of 5 June 2017, the author submitted that, contrary to the State party's assertion, the communication should be declared admissible, because he had exhausted all available domestic remedies. The author argues that the decision of the appeals tribunal was final, as stated in its decision. He explains that article 346 of the Code of Criminal Procedure limits the scope of the review in cassation. According to that article, second-instance judgments that uphold first-instance decisions are not subject to appeal to the Supreme Court of Cassation.

5.2 The author observes that the State party does not dispute that the violence exerted on him was of an intensity and nature falling within the scope of article 7 of the Covenant and that it was caused by representatives of the State party, police officers, who used physical force and equipment resulting in several injuries to the author in violation of article 7 of the Covenant.

5.3 As to the conduct of the investigation and the State party's assertion that he did not submit any request during the pretrial proceedings, the author recalls that the investigation was initiated as a result of his requests to the Director of the District Directorate of the Ministry of the Interior in Kardzhali and the Regional Military Prosecutor's Office in Plovdiv. He points out that, according to the Code of Criminal Procedure, pretrial proceedings take place exclusively on the initiative of the investigative bodies and that, in that phase of the criminal proceedings, the victim has only the procedural status of a witness. According to article 75 (1) of the Code, the victim has the right to be informed about the course of the investigation and to receive protection for his or her safety. The victim only has the right to appeal against the acts that result from the end or termination of the proceedings. The author notes that the prosecutor's office adopted as true the author's allegations of violence against him, given that, following the investigation, it filed an indictment in court against the two police officers and maintained the charges against them in all court proceedings. In consequence, it cannot be argued that the author failed to act in the exercise of his rights under the law or that he contributed to the ineffectiveness of the investigation.

5.4 The author disagrees with the State party's contention that, because the disciplinary proceedings initiated against the two police officers ended with the imposition of disciplinary penalties, the author's claim that the investigation was ineffective is ill-founded. He reiterates that the investigation of his allegations of the abuse suffered at the hands of the police officers was inefficient, because he did not have effective access during the preliminary procedure and because he could not participate in the proceedings before the Supreme Court of Cassation that annulled the sentence of the Military Court of Appeal. He notes that the State party has not contested that point and that that led in practice to his being deprived of compensation for moral damages granted by the Military Court of Appeal in its final decision.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before examining any claim contained in a communication, the Committee must decide, in accordance with rule 97 of its rules of procedure, whether the communication is admissible under the Optional Protocol.

6.2 The Committee must ascertain, in accordance with article 5 (2) (a) of the Optional Protocol, whether the same matter is being examined under another procedure of international investigation or settlement. The Committee notes that, on 10 July 2014, a single-judge formation of the European Court of Human Rights found that the author's complaint, which had been filed against the State party and was concerning the same facts as those addressed in the present communication, was found to be inadmissible. Given that the complaint is no longer being examined by that Court, the Committee considers that there are no obstacles to its consideration of the communication under article 5 (2) (a) of the Optional Protocol.[19]

6.3 The Committee takes note of the State party's argument that the communication should be considered inadmissible because the author has not exhausted all available domestic remedies, given that he could have requested the cassation review of judgment No. 3 of 17 January 2008 of the Military Court of Appeal before the Supreme Court of Cassation. The Committee also takes note of the author's claim that no appeal could be filed against the decision of the Military Court of Appeal, as indicated in the decision itself. The Committee further takes note of the author's argument that article 346 of the Code of Criminal Procedure of Bulgaria limits the scope of the review in cassation and that second-instance judgments that uphold first-instance decisions are not subject to further appeal to the Supreme Court of Cassation. The Committee notes that the State party has not explained how a request for cassation review would have been an effective remedy for the allegations raised before the Committee. Consequently, the Committee considers the requirements of article 5 (2) (b) of the Optional Protocol to have been met.

6.4 The Committee takes note of the author's claims under article 14 (1) of the Covenant, that the State party failed to respect his right to full access to a tribunal and the principle of equality of arms, given that he was not summoned to participate in the proceedings before the Supreme Court that annulled the decision of the Military Court of Appeal, which had granted him compensation. However, the Committee also takes note of the submission of the State party that the author was allowed to exercise his rights as a victim of a crime, taking part in the first-instance and appellate proceedings, both personally and through an attorney authorized by him, including when the case was heard after consideration had resumed. Furthermore, the civil action brought by the author was subject to a fair and public hearing by a competent, independent and impartial tribunal. In the absence of any further pertinent information on file, and in the light of the State party's explanation, the Committee considers that the author has failed to sufficiently substantiate those allegations for the purposes of admissibility. Accordingly, it declares that part of the communication inadmissible under article 2 of the Optional Protocol.

6.5 In the Committee's view, the author has sufficiently substantiated, for the purposes of admissibility, his claims of violations of rights under article 7 of the Covenant, read alone and in conjunction with article 2 (3), regarding his allegations of abuse by police officers and the State party's failure to conduct an effective investigation into those allegations or to provide the author with compensation for the harm he suffered. The Committee therefore declares those aspects of the communication admissible and proceeds with its consideration of the merits.

[19] The State party did not submit any reservation to exclude recognition of the competence of the Committee to consider a communication from an individual if the same matter has already been considered under another procedure of international investigation or settlement.

Consideration of the merits

7.1 The Committee has considered the present communication in the light of all the information submitted by the parties, in accordance with article 5 (1) of the Optional Protocol.

7.2 The Committee takes note of the author's arguments that, on 15 September 2005, he was attacked by two police officers who mistook him for a drug dealer, that the police officers only identified themselves at a later stage, once he was handcuffed and put into their car, that a judicial medical certificate indicated that the author had two lacerated contusions on his head, as well as visible bruising owing to contusions of the skin on the right side of the abdomen, and that he spent four days in hospital for the treatment of the injuries sustained as a result of the beating.

7.3 The Committee takes note of the explanation of the State party that the author suffered minor bodily harm as a result of a police raid aimed at arresting an alleged drug trafficker. The Committee also takes note of the information provided by the State party indicating that, on 16 September 2005, a disciplinary committee was appointed by order of the Director of the Kardzhali District Directorate of the Ministry of the Interior. The disciplinary committee acknowledged that the police officers had used disproportionate and unnecessary physical force against the author. It further takes note of the information provided that, during the investigation, testimonies were taken from the author and witnesses, reports were requested from the police officers concerned and the forensic medical certificate was examined. The disciplinary committee established that the two police officers did not make sure that the author had understood that they were law enforcement officers and used force that was not proportionate to the situation that arose, and disciplinary sanctions were imposed on the police officers as a result.

7.4 The Committee takes note of the fact that criminal proceedings were subsequently initiated against the two police officers concerned, which concluded with a decision of the Military Court of Appeal upholding the Plovdiv Military Court's decision, by which the two police officers were acquitted. It also takes note of the State party's argument that the fulfilment of the effective remedy requirement under the Covenant should not be conditional on a specific outcome. However, the Committee considers that the acquittal from criminal charges of the police officers involved does not necessarily imply that the abuse actually suffered by the author at the hands of the police – which remains uncontested by the State party and was duly recognized by the disciplinary committee appointed by order of the Director of the Kardzhali District Directorate of the Ministry of the Interior – did not amount to treatment contrary to article 7 of the Covenant.

7.5 The Committee recalls that use of force by the police, which can be justified in certain circumstances, may be viewed as contrary to article 7 under circumstances in which the force used is deemed excessive.[20] The Committee refers to paragraph 4 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, which states that law enforcement officials, in carrying out their duty, should, as far as possible, apply non-violent means before resorting to the use of force.

7.6 The Committee also recalls that the aim of the provisions of article 7 of the Covenant is to protect both the dignity and the physical and mental integrity of the individual against both intended and unintended harm.[21] In that connection, the Committee notes that the allegations of the author concerning the abuse suffered at the hands of the police are very detailed and supported by medical evidence,[22] that the facts have been conceded by the State party, that the nature of the injuries sustained, in particular those to the head, required the author's hospitalization for four days and that a disciplinary committee found that the police officers had failed to adequately identify themselves and had used disproportionate and unnecessary force against the author. Noting that a disciplinary committee set up within the Ministry of the Interior of the State party did not refute that the abuse suffered by the author at the hands of the police amounted to treatment contrary to article 7 of the Covenant, the

[20] *Chernev v. Russian Federation* (CCPR/C/125/D/2322/2013), para. 12.2.

[21] Human Rights Committee, general comment No. 20, para. 2; and *A.H.G. v. Canada* (CCPR/C/113/D/2091/2011), para. 10.4.

[22] *Abromchik v. Belarus* (CCPR/C/122/D/2228/2012), para. 10.2.

Committee considers that due weight must be given to the allegations of the author. The Committee therefore finds that the facts as presented amount to a violation of the author's rights under article 7 of the Covenant.

7.7 The Committee takes note of the author's allegations that he was not provided with an effective remedy for the abuse suffered at the hands of the police, in violation of article 7 of the Covenant, read in conjunction with article 2 (3), given that he never obtained any compensation for the harm he suffered. The Committee recalls that the civil claim for compensation for moral damages brought by the author in the context of the criminal proceedings initiated against the police officers was rejected by the Military Court of Appeal when it acquitted the accused police officers. It also observes that the State party has not demonstrated that there were alternative legal avenues for the author to obtain effective redress once the criminal convictions were overturned and the author became deprived of the compensation for moral damages he had previously been awarded, which is not in line with its obligation to provide adequate redress to the author.[23] Therefore, the Committee considers that the author's rights under article 7 of the Covenant, read in conjunction with article 2 (3), have been violated.

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

9. In accordance with 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. In the present case, the State party is under an obligation, inter alia, to provide adequate compensation and appropriate measures of satisfaction, including reimbursement of any legal costs and medical expenses, as well as for non-pecuniary losses, incurred by the author. The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future.

10. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy when it has been determined that a violation has occurred, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the present Views and to have them widely disseminated in the official language and other major languages of the State party.

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[23] *Horvath v. Australia* (CCPR/C/110/D/1885/2009), para. 8.7; and Human Rights Committee, general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, paras. 15–16.