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

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Committee against Torture

Decision adopted by the Committee under article 22 of the Convention, concerning communication No. 780/2016*, **

Communication submitted by:	V.P. (not represented by counsel)
Alleged victim:	The complainant
State party:	Russian Federation
Date of complaint:	21 July 2016 (initial submission)
Document references:	Decision taken pursuant to rule 115 of the Committee's rules of procedure, transmitted to the State party on 11 November 2016
Date of present decision:	26 July 2019
Subject matter:	Ill-treatment by staff in prison hospital
Procedural issues:	Lack of substantiation of claims; non-exhaustion of domestic remedies
Substantive issues:	Torture and ill-treatment
Articles of the Convention:	1, 2, 4, 6, 11, 12 and 13

1. The complainant is V.P., a national of the Russian Federation born in 1991. He claims that the Russian Federation violated his rights under articles 1, 2, 4, 6, 11, 12 and 13 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

The facts as submitted by the complainant

2.1 On 2 November 2011, the Kirov district court in Krasnoyarsk found the complainant guilty of murder and infliction of bodily injury and sentenced him to 10 years in prison. The district court considered, inter alia, the complainant's forensic psychiatric evaluation and found him fit for trial.

2.2 On 11 June 2015, the complainant was admitted to penitentiary hospital No. 1 (KTB-1) in the Krasnoyarsk region in order to be treated for high blood pressure. Upon admission to the hospital, he was taken to ward No. 6 (psychiatric unit) and stayed there

* Adopted by the Committee at its sixty-seventh session (22 July–9 August 2019).

** The following members of the Committee participated in the consideration of the communication: Essadia Belmir, Felice Gaer, Abdelwahab Hani, Jens Modvig, Ana Racu and Diego Rodríguez-Pinzón. Pursuant to rule 109, read in conjunction with rule 15 of the Committee's rules of procedure, and article 10 of the guidelines on the independence and impartiality of members of the human rights treaty bodies (Addis Ababa Guidelines), Bakhtiyar Tuzmukhamedov did not participate in the examination of the communication.

until 9 September 2015. According to the complainant, the conditions in the ward were unbearable, including the lack of space (16.9 m^2 for 16 persons) and ventilation, no light bulb or drinking water container, improper bunks, security bars on the windows, poor hygiene and blood stains on the bedding. The inmates were taken to the toilet twice a day and only in the presence of a warden.

2.3 During his stay in the hospital, the complainant was treated with inappropriate medication, some of which had been proscribed in the Russian Federation since 1993, including Galloperedol (twice a day) and Amenosin (weekly). The medication caused shivering, temporary memory loss and headaches. According to the doctor treating the complainant, such medication is administered to persons with incurable mental diseases who are under intensive care. The complainant refers to his sentence and related expert evidence whereby he was considered mentally fit for trial and not in need of forced medical treatment. However, when he objected to the treatment, the medication dosage was increased. As a result, he became bed-bound and could not eat or go to toilet without help. He experienced shivering, blurred vision, loss of consciousness, dizziness and frequent headaches. At the time of the communication, he was still suffering from the after-effects of the treatment, such as constant headaches.

2.4 On 13 January 2016, the complainant reported his ill-treatment and inappropriate placement in the medical ward at KTB-1 to the Investigation Committee at the Office of the Prosecutor of the Krasnoyarsk region, requesting that it open criminal proceedings in his case. On 28 January 2016, the Regional Investigation Committee transferred his request to the Zheleznodorozhnyi District Investigation Committee. In the absence of a response, on 18 February 2016, the complainant requested the Regional Investigation Committee to inform him of the progress that had been made in the investigation. On 11 March 2016, the Regional Investigation Committee again forwarded his request to the District Investigation Committee. At the moment of submission of the present communication to the Committee the complainant received no response.

2.5 The complainant claims that he could not file a complaint to court without a substantive response to his requests from the Investigation Committees. Since the Investigation Committees had unduly prolonged the consideration of his claims, he was unable to exhaust domestic remedies.

2.6 On 9 February 2017, the complainant informed the Committee of two letters he had received from the District Investigation Committee (dated 17 March 2016, received by the complainant on 26 July 2016) and the Regional Investigation Committee (dated 14 October 2016, received by the complainant on 1 November 2016). According to these letters, the complainant's request to initiate a criminal investigation into the conduct of the staff of the prison hospital was denied owing to the lack of evidence of a crime. The letters indicated that if he disagreed with the decision of the Investigation Committees, the complainant could appeal the decision to the head of investigation authority, to the prosecutor of the Zheleznodorozhnyi district or to the Zheleznodorozhnyi district court in Krasnoyarsk.

The complaint

3. The complainant claims to have been a victim of ill-treatment by the medical staff of KTB-1 between 11 June and 9 September 2015. He claims a violation of articles 1, 2, 4, 6, 11, 12 and 13 of the Convention in that regard, without providing further details.

State party's observations on admissibility and the merits

4.1 On 6 October 2016, the State party submitted its observations on the admissibility and merits of the complaint, stating that the complainant's claims were inadmissible owing to non-exhaustion of domestic remedies and that there was no violation of his rights.

4.2 The State party submits that the complainant has not exhausted domestic remedies under article 22 (5) (b) of the Convention. He claims that he was deprived of the possibility to initiate proceedings in court in the absence of a reply to his complaint from the Investigation Committees. The State party explains that the complainant had the possibility of requesting compensation for damage caused by the actions/inaction of public servants, including the conditions of detention and matters related to medical assistance, within civil

and administrative proceedings. Such proceedings are regulated in articles 245–250 and 254–258 of the Civil Procedure Code and in chapter 22 of the Code of Administrative Proceedings. In addition, the complainant could have complained to a court about the conditions of detention and his medical treatment between 11 June and 9 September 2015 independently of the response from the Investigation Committees.

4.3 On the merits of the communication, the State party submits that the complainant was under psychiatric supervision and on various occasions underwent ambulatory treatment of emotional and volitional disorders. On 29 May 2011, a commission of forensic psychological and psychiatric experts concluded, within the criminal investigation in the complainant's case, that the complainant suffered from an organic personality disorder and mixed disorders. While serving his sentence, the complainant underwent ambulatory treatment twice. From 4 July to 4 September 2012, he was hospitalized in KTB-1 with a diagnosis of "organic personality disorder and mixed disorders". From 28 April to 1 June 2015, he was admitted to the medical ward of prison No. 15 with a diagnosis of "organic personality disorder and mixed disorders – depression syndrome, suicidal readiness". From 11 June to 22 September 2015, the complainant was treated at the psychoneurological unit of KTB-1 with a diagnosis of "schizotypal personality disorder, decompensation".

4.4 The complainant's claims have been checked by the Federal Service of Healthcare Monitoring (Roszdravnadzor) and by medical facility No. 24 of the Federal Penitentiary Service. They did not find any violations by the staff of KTB-1 in the provision of medical treatment to the complainant or in his medication. The medication referred to by the complainant as "proscribed" are duly registered and authorized for use in the Russian Federation. The complainant's treatment was prescribed in accordance with the respective Ministry of Health regulations. There are no complaints about side-effects by the complainant in the records of the psychiatrists and the neurologist who treated him. The complainant is currently under the supervision of the prison psychiatrist with a diagnosis of "schizotypal personality disorder, decompensation".

4.5 The complainant's allegations about inadequate sanitary conditions during his hospitalization at KTB-1 in 2015 could not be confirmed during the investigation. The complainant was held in ward No. 6. The size of the ward is 20.1 m^2. The complainant had a separate bed. Two more inmates were treated in the same ward with the complainant. The medical unit was cleaned three times a day. Ventilation was ensured through a small window. There were drinking water containers in the ward. The water was changed and the containers were cleaned in accordance with the regulations. The inmates were taken to the toilet upon request. The ward had sufficient natural and artificial light through windows and from lamps, in accordance with the regulation of the Ministry of Justice dated 2 June 2003. Bed linen was properly laundered and disinfected in a specially equipped laundry facility at KTB-1. No evidence was found that the complainant's bed linen and pajamas were inappropriate.

4.6 The State party also addresses the complainant's allegations that the Investigative Committees did not duly consider his claims about unlawful hospitalization at KTB-1. According to the State party, the complainant's claim dated 13 January 2016 reached the Regional Investigation Committee on 3 February 2016. The response was sent to the complainant on 15 February 2016. The complainant's status requests dated 18 February and 15 June 2016, were answered by the District Investigation Committee on 17 March and 8 July 2016. According to the records of prison No. 15, where the complainant was serving his sentence, he received the letters of 15 February and 17 March 2016 (the date is not specified), but did not receive the response from 8 July. The latter was sent by ordinary post and impossible to track.

Complainant's comments on the State party's observations

5.1 On 18 September 2018, the complainant submitted his comments on the State party's observations.

5.2 He claims that on 27 November 2017, he brought a civil suit for compensation against KTB-1 to the Zheleznodorozhnyi district court in Krasnoyarsk. He claimed compensation for torture in detention between 28 April and 11 June 2015 and 11 June and

21 September 2015. He states that after he submitted his claim to the court, the staff of prison No. 30, where he was then being held, beat him in an attempt to force him to retract the claim, which he ultimately did. On 8 May 2018, however, he wrote to the court about the treatment to which he had been subjected and the court resumed consideration of his civil claim on the basis of newly revealed circumstances. The hearing was scheduled for 20 September 2018.[1]

Issues and proceedings before the Committee

Consideration of admissibility

6.1 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.

6.2 The Committee recalls that, in accordance with article 22 (5) (b) of the Convention, it shall not consider any communication from an individual unless it has ascertained that the individual has exhausted all available domestic remedies. This rule does not apply where it has been established that the application of those remedies has been unreasonably prolonged or is unlikely to bring effective relief.[2]

6.3 The Committee takes note of the State party's observation that the complainant has failed to exhaust the available domestic remedies. According to the State party, the complainant failed to bring to court a claim for compensation under civil or administrative proceedings concerning the conditions of his detention and medical treatment from 11 June to 9 September 2015 but he could have done so independently from the response from the Investigation Committees.[3] The Committee also notes the complainant's own statement that he was unable to exhaust domestic remedies because he could not file a claim in court without a response to his complaint from the Investigation Committees.

6.4 The Committee further notes that the complainant submitted a claim about alleged torture in KTB-1 between 11 June and 9 September 2015 to the Regional Investigative Committees on 13 January 2016, some four months after being released from the KTB-1 medical ward. The Regional Investigative Committee took a decision on the complainant's claim on 15 February 2016. Although from the information before the Committee, it is unclear whether the complainant received this answer, on 26 July 2016 he received an answer from the District Investigative Committee dated 17 March 2016 in response to his status inquiry. On 1 November 2016, he also received a letter from the Regional Investigative Committee dated 14 October 2016. In these circumstances and based on the information before it, the Committee cannot conclude that consideration of the complainant's claims was unduly prolonged by the Investigation Committees.

6.5 The Committee notes that despite having obtained a response from the Investigative Committee that contained instructions for appeal in case of disagreement with its decision, the author did not appeal to the courts the refusal to open a criminal investigation against the staff of KTB-1. In the light of the above considerations, the Committee considers that the author has failed to exhaust the domestic remedies available to him and that his complaint is thus inadmissible under article 22 (5) (b) of the Convention.

7. The Committee therefore decides:

[1] The complainant did not provide a copy of the civil claim, nor did he update the Committee on the outcome of the court proceedings. The author claims that he might be tortured in order to make him retract his complaint to the Committee, but does not mention any previous ill-treatment caused by his submission, including as a result of the complaints submitted to the District and Regional Investigative Committees, nor does he provide any details to support his claims.

[2] See, for example, *E.Y. v. Canada* (CAT/C/43/D/307/2006/Rev.1), para. 9.2. See also the Committee's general comment No. 4 (2017) on the implementation of article 3 of the Convention in the context of article 22, para. 34.

[3] See para. 4.2 above.

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

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