



International Covenant on Civil and Political Rights

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Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2339/2014*,**

<i>Communication submitted by:</i>	Rizvan Taysumov et. al. (represented by counsel from TRIAL (Track Impunity Always) and the Stichting Russian Justice Initiative (SRJI).
<i>Alleged victim:</i>	The authors
<i>State party:</i>	Russian Federation
<i>Date of communication:</i>	28 October 2013 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 30 January 2014 (not issued in document form)
<i>Date of adoption of Views:</i>	11 March 2020
<i>Subject matter:</i>	Unlawful detention, torture and mistreatment of the authors
<i>Procedural issues:</i>	Non-substantiation of the claims; abuse of right of submission
<i>Substantive issues:</i>	Torture, arbitrary arrest – detention, presumption of innocence, fair trial – preparation for defence; fair trial – interpreters
<i>Articles of the Covenant:</i>	2(3), 7, 9(1-4), 14(2), 14(3)(a), (b) and (g)
<i>Article of the Optional Protocol:</i>	2, 3, 5(2)(b)

1. The authors are Rizvan Taysumov, born in 1979, a Russian national of Chechen origin; Salman Temirbulatov, born in 1972, a Russian national of Chechen origin; Khamit Barakhayev, born in 1954, a Kazakh national; Arzu Yusupov, born in 1985, a Russian national of Chechen origin; Magamed Alarkhanov, born in 1973, a Russian national of

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

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



Chechen origin; and Tamerlan Yashuev, born in 1983, a Russian national of Chechen origin. They claim to be victims of violation of their rights under articles 7 read alone and in conjunction with article 2(3); 9(1-4); 14(2) ; and 14(3)(a), (b), and (g) of the International Covenant on Civil and Political rights (“the Covenant”) by the Russian Federation. The Optional Protocol entered into force for the Russian Federation on 1 January 1992. The authors are represented by counsel, TRIAL (Track Impunity Always) and the Stichting Russian Justice Initiative (SRJI).

The facts as presented by the authors

2.1 The authors are 1) Rizvan Baudinovich Taysumov, who was deprived of liberty on 29 September 2004, by members of the Independent Intelligence Battalion (ORB) of the city of Khasavyurt, Republic of Dagestan; 2) Salman Saidovich Temirbulatov, who was deprived of liberty on 29 September 2004, by an agent of the Khasavyurt GOVD (city police) in civilian clothes; 3) Khamit Akhyadovich Barakhayev, who was deprived of liberty on 3 October 2004, by members of the 2nd regiment of the Patrol-Guard Militia Service and brought to the Municipal Department of the Interior Affairs of the city of Gudermes; 4) Arzu Magamedovich Yusupov, who was deprived of liberty on 28 October 2004, in the town of Suvorovska, Chechnya, by members of the Operational Investigation Bureau-2 (ORB-2); 5) Magamed Edamovich Alarkhanov, who was deprived of liberty on 19 February 2005 in the Astrakhan region by members of the ORB-2; and 6) Tamerlan Saidmagomedovich Yashuev, who was deprived of liberty on 7 November 2004, by agents of the Kadyrovtsy (pro-Federal Chechen forces under the effective command of the then Prime Minister Ramzan Kadyrov) in Tuchkar, Republic of Dagestan.

2.2 None of the authors was informed of the reasons of arrest after their apprehension by the Chechen forces. They were kept in unacknowledged and incommunicado detention and subjected to torture to force them to confess being involved in terrorist activities. The methods of torture used against them included beatings with various objects, electrocution, suffocation with plastic bag or gas mask, threats against their families, and sleep deprivation. Moreover, they were not assisted by neither lawyer nor interpreter, and some of them were forced to sign renouncement of legal assistance. At a certain point after their arrest, some of them had access to a lawyer. They filed several complaints about torture and the treatment they were subjected to, but no effective and thorough investigation was ever carried out.

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

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

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

2.6 On 10 July 2006, the Supreme Court of the Chechen Republic found all six authors guilty and sentenced them to various terms of imprisonment to be served in high security prisons. Mr. Yashuev was sentenced to 13 years of imprisonment; Mr. Barakhaev to 15 years; Mr. Taysumov to 21 years; Mr. Salman Temirbulatov to 20 years; Mr. Yusupov to 16 years; and Mr. Alarkhanov to 16 years. The authors' confessions obtained under torture were invoked and retained as valid evidence in court.

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

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

2.9 On 14 May 2007, the authors, together with other applicants, applied to the European Court of Human Rights. On 27 September 2012, a single judge has decided that the application was inadmissible because it "[did] not satisf[ied] the requirements established by Articles 34 and 35 of the Convention". No further explanation was provided by the ECHR.

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

The complaint

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

3.2 The authors further claim that their rights to liberty and security under article 9(1-4) of the Covenant have been violated by the State party, because they were subjected to arbitrary arrest and detention; they were not informed of the reasons for their arrest, nor were they promptly informed of the charges against them. Moreover, they were kept incommunicado and were not brought promptly before a judge or other officer authorized by law to exercise judicial power. Furthermore, on several occasions, they were not provided with an assistance of an interpreter, especially during the interrogations.

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

State party's observations on admissibility and merits

4.1 By note verbale of 11 April 2014, the State party submits that the authors were indeed sentenced to various terms of imprisonment, by the Supreme Court of the Chechen Republic on 10 July 2006. Mr. Yashuev was sentenced to 13 years of prison term, Mr. Barakhaev - to 15 years, Mr. Taysumov – to 21 years, Mr. Temirbulatov - to 20 years, Mr. Yusupov – to 16 years, Mr. Alarkhanov – to 16 years. On cassation, the Supreme Court of the Russian Federation, changed the verdict and sentence of the trial court. For Mr. Mr. Temirbulatov, Yusupov, Taysumov, Barakhaev, Alarkhanov and Yashuev, in accordance with article 205(3) of the Criminal Code of the Russian Federation, the court removed the terrorism count, for which the authors were convicted – breaching public order and threatening the general population. In addition, for Mr. Temirbulatov, a conviction for setting an explosion in the city of Noiber on 8 November 2000 was overturned due to the statute of limitations and he was sentenced to 19 years of prison term.

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

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

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

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

4.6 During the cassation appeal, the Supreme Court of the Russian Federation also found the statements given by the authors during the investigation as lawful, and noted that these statements were further confirmed by testimonies from victims, other witnesses, reports from crime scenes, results of ballistic and explosive reports, and other evidence. The fact that the

authors retracted their confessions does not mean that such evidence cannot be admitted, since they were obtained in the presence of a lawyer, and lay witnesses.

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

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

Authors' comments on the State party's observations

5.1 On 13 June 2014, the authors submitted that their communication should be considered admissible. The State party itself does not seem to challenge the fact that four authors, namely Yashuev, Barakhaev, Yusupov and Alarkhanov, have exhausted domestic remedies. The authors Taysumov and Temirbulatov contend that the supervisory review procedure cannot be considered as an effective remedy, since this procedure is fully discretionary. The European Court of Human Rights take the same approach on the supervisory review¹. Furthermore, the European Court of Human Rights also considered that the supervisory review requests create a legal uncertainty since the requests are not time-bound.

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

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

5.4 Regarding the State party's refusal to open an investigation of the authors' torture complaints, it has to be noted that the preliminary verification (“predvaritelnaya proverka”) cannot be considered as constituting a thorough, nor effective investigation. The same

¹ The authors refer to the ECHR decision in Pitkevich v. Russian Federation, dated 8 February 2001.

² The authors refer to the Committee's Views in Lansman et al v. Finland, communication No. 1023/2001.

investigator, H.A.S, decided not to initiate a criminal investigation, based on the authors' claims of torture. Therefore, this examination cannot be considered as independent or impartial, as required by international human rights standards. This occurred despite detailed reports from the authors, and despite the existence of corresponding medical certificates.

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

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

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

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

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

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

³ The authors refer to the ECHR decision in *Tangiev v Russian Federation*, dated 11 December 2012, paras. 58-63.

⁴ The authors refer to *Usaev v. Russian Federation*, communication No. 1577/2007.

⁵ The authors refer to *Zyuskin v. the Russian Federation*, communication No. 1605/2007, para. 11.4.

5.11 The authors also do not challenge the fact that they were assisted by lawyers during the court hearings. However, they claim that they did not have access to a lawyer immediately after arrest, especially during the interrogations. For example, being arrested on 7 November 2004, Yashuev had no access to a lawyer until 1 December 2004. Taysumov was arrested on 29 September, and received access to a lawyer on 20 October 2004. Barakhaev was arrested on 3 October 2004, but had access to a lawyer on 11 November 2004. Temirbulatov was arrested on 29 September 2004, and had access to a lawyer on 12 October 2004. Yusupov was arrested on 28 October 2004, but was assisted by a lawyer only in December 2004. Finally, Alarkhanov was arrested on 19 February 2005, but had access to a lawyer on 21 February 2005.

Additional submissions by the parties

By the State party

6.1 In a note verbal dated 29 January 2016, the State party provides additional information. The authors, inter alia, claim that they were not informed of the reasons of arrest, or the charges against them, that they were not brought before a judge, and that during the interrogations, they had no interpreters. Under article 91 of the Criminal Procedure Code, CPC, a law enforcement officer such as an investigator, has the right to detain a person suspected of committing a crime, under one of the following circumstances: 1) when this person is caught during the commission of crime; 2) when a victim or eye-witnesses identify this person as a perpetrator; 3) when there are clear signs of crime committed on the person or his/her clothing. A suspect can also be detained, if he/she tries to flee, does not have a permanent place of residence, or his/her identity cannot be confirmed. In addition, a person can be detained if the investigator files a request (which has also be approved by a prosecutor) with a court.

6.2 Article 92 of the CPC prescribes further steps that need to be taken. Upon arrival of the person to the inquiry officer or an investigator, the responsible officer has to file a report within three hours. In this report, an officer states that the detained person was given information about his rights under article 46 CPC (rights of a suspect). According to this provision, a suspect has a right to know what he/she is accused of, and receive a copy of the decision initiating a criminal case or a copy of the initial arrest or detention order. A suspect also has the right to explain and provide information regarding suspicions against him, or to refuse providing such information. When a suspect provides such information, a warning is given to him that the information can be used against him, including in case he subsequently retracts his initial statements, with the exception of cases which fall under article 75(2)(1)⁶ CPC. Furthermore, a suspect has a right to be assisted by a lawyer, meet his/her lawyer confidentially prior to the initial interrogation as a suspect. Additionally, a suspect can provide evidence; file motions and requests recusals; make statements in his native language or in a language that he/she speaks; use services of an interpreter free of charge; study the reports of investigative actions with his participation; file comments thereon; participate in investigative actions taken upon his/her request or requested by counsel or representative; and complain regarding actions or inaction of courts, prosecutors office, investigator or inquiry officer.

6.3 A suspect who was initially apprehended under article 91⁷ CPC must be interrogated within 24 hours. A person can be held up to 48 hours, and must be freed unless a court decides to hold him in pre-trial detention. Under article 108 CPC, a pre-trial detention can be imposed by a court if a less restrictive prevention measure cannot be used. As the records indicate, the authors of the present communication were accused of several crimes, including under article 209 CPC (banditry), with a potential punishment of ten years of imprisonment and higher. The authors were detained based on eye-witness statements. During the apprehension, they were explained their rights under articles 46 CPC and article 51 of the Constitution (on

⁶ Article 75 – inadmissible evidence. Article 75(2)(1) – Inadmissible evidence includes: 1) the testimony of the suspect, the accused, the data during the pre-trial proceedings in the criminal case in the absence of the defense counsel, including cases of refusal of the services of the defense counsel, and not confirmed by the suspect, the accused in court.

⁷ In the process of the commission of a crime.

the right not to testify against themselves). Before their interrogations, the authors were explained their rights. Yusupov and Yashuev were interrogated using services of an interpreter. According to the records reviewed by the State party, the authors did not file any comments before, during or after their interrogations. In their complaint to the Committee, they also do not claim that they have asked for an interpreter during the investigation but that their request was denied.

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

6.5 The State party notes that the authors indicate that they do not have to exhaust domestic remedies if there are no objective reasons to believe that these remedies will be successful. At the same time, a mere doubt in the chances of success or effectiveness of the remedy does not absolve the authors from exhausting.

6.6 Domestic law allows anyone to file a civil complaint ("isk") against any government agency, such as the refusal of the prosecutor's office to initiate a criminal investigation on the authors' claims of torture. Mr. Taysumov did not file such a complaint.⁸ The State party therefore contends that this author did not exhaust all available domestic remedies, and that this part of the communication must be declared inadmissible.

By the authors

7.1 By letter dated 20 May 2016, the authors reiterate that four of them: Yashuev, Barakhaev, Yusupov and Alarkhanov did file supervisory review requests. Taysumov and Temirbulatov did not pursue this remedy since there was no new evidence they could have presented, and as the supervisory review procedure is considered ineffective.

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

7.3 The authors note that the State party does not dispute some of their statements, and request the Committee to consider them as a fact. In their new submission, the State party does not challenge that all six authors were victims of violations of article 7, read alone and in conjunction with article 2(3) due to ill-treatment during the investigation; that two of the authors, Taysumov and Temirbulatov, were called terrorists, in violation of their right to a presumption of innocence; that the authors were compelled to testify against themselves; and that they were not given timely assistance of a lawyer.

7.4 The State party, in its submission, argues that all investigation actions were held in accordance to the law. The State party describes their formal charges and arrests, but the authors complain about their unlawful apprehension prior to the pressing of formal charges, which were not documented, and are therefore not included in the materials of the criminal case. Since the State party failed to respond to this part of the allegations, due weight must be given to their allegations.

7.5 Furthermore, in its submission dated 29 January 2016, the State party indicated that during the interrogations, the authors were assisted by interpreters. On the other hand, the authors have explained that no interpretation was assured to Mr. Yashuev during his interrogation of 1 December 2004; during the court hearing regarding Mr. Taysumov on 9 November 2004; during the interrogations of Mr. Yusupov, on 16 June 2005; or during several interrogations of Mr. Alarkhanov, who was provided with an interpreter only on 11 June 2005.

7.6 The authors note that the State party points out that they did not request interpreters. They note, however, that the Covenant and the legislation of the Russian Federation does not

⁸ The State party probably meant to include other authors as well, but this is not clear.

require a formal request as a condition to be assisted by an interpreter. The fact that four of the authors: Yashuev, Taysumov, Yusupov and Alarkhanov needed help of interpreters is proved by the episode that took place during one of the hearings, when the presiding judge asked the authors about their need for an interpreter, and all authors except Temirbulatov and Barakhaev requested one.

7.7 Regarding the contention that the restraint measure in the form of pre-trial detention was chosen by a court in accordance with the CPC, the authors note that the State party refers to formal charges and arrests. It does not elaborate on the unlawful apprehension of the authors before bringing of formal charges.

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

Issues and proceedings before the Committee

Consideration of admissibility

8.1 Before considering any claims contained in a communication, the Human Rights Committee must, in accordance with rule 97 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

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

8.3 The Committee has further ascertained, as required under article 5, paragraph 2 (a), of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement. It notes that a similar communication has been submitted on the authors' behalf before the European Court for Human Rights, but it has been declared inadmissible on 27 September 2012, as it "[did] not satisf[ied] the requirements established by Articles 34 and 35 of the Convention". In these circumstances, the Committee concludes that it is not precluded under article 5, paragraph 2 (a) of the Optional Protocol from examining the present communication.

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

8.5 The Committee recalls its jurisprudence according to which filing requests for supervisory review with the president of a court directed against court decisions which have entered into force and depend on the discretionary power of a judge constitute an extraordinary remedy, and that the State party must show that there is a reasonable prospect that such requests would provide an effective remedy in the circumstances of the case.⁹ The Committee notes that in the present case, the State party has not shown whether and in how many cases petitions to the president of the Supreme Court for supervisory review procedures were successful in cases of allegations of torture and ill-treatment. Accordingly, the

⁹ See communications No. 836/1998, *Gelazauskas v. Lithuania*, Views adopted on 17 March 2003, para. 7.4; No. 1851/2008, *Sekerko v. Belarus*, Views adopted on 28 October 2013, para. 8.3; Nos. 1919-1920/2009, *Protsko and Tolchin v. Belarus*, Views adopted on 1 November 2013, para. 6.5; No. 1784/2008, *Schumilin v. Belarus*, Views adopted on 23 July 2012, para. 8.3; and No. 1814/2008, P.L. v. Belarus, decision of inadmissibility adopted on 26 July 2011, para. 6.2.

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

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

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

8.8 In the Committee's view, the authors have sufficiently substantiated, for the purposes of admissibility, their remaining claims of a violation of their rights under article 7, read alone and in conjunction with article 2(3), article 9(1-4), and article 14(3)(g) of the Covenant, declares them admissible and proceeds with their consideration of the merits.

Consideration of the merits

9.1 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.

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

9.3 Regarding the State party's obligation to properly investigate the authors' torture claims, the Committee recalls its jurisprudence according to which criminal investigation and consequential prosecution are necessary remedies for violations of human rights such as those protected by article 7 of the Covenant.¹⁰ The Committee notes that the material on file does not allow it to conclude that the investigation into the allegations of torture was carried out promptly or effectively or that any perpetrators were identified, despite detailed reports from

¹⁰ See the Committee's general comment No. 20 (1992) on the prohibition of torture and cruel treatment or punishment, para. 14; and its general comment No. 31 (2004) on the nature of the general legal obligations imposed on States parties to the Covenant, para. 18.

the authors, witness statements, requests for medical examination, and for one of the authors, Mr. Yashuev – a medical certificate showing signs of injury.

9.4 The Committee considers that in the present case, the inquiry that was conducted in 2005 into the authors' allegations of torture lacked the element of impartiality,¹¹ as it was assigned to the same investigator, H.A.S., who was allegedly implicated in the authors' torture claims. The Committee also notes the authors' claims that their guilt was established in court proceedings in part based on the confessions they made when they were tortured which were retained as evidence by the courts. Accordingly, in the circumstances as described by the parties, the Committee concludes that the facts before it disclose a violation of the authors' rights under article 7, read separately and in conjunction with article 2 (3) and article 14 (3) (g) of the Covenant.

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

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

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

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

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

¹¹ See paragraph 5.4.

¹² General comment No. 35, para. 11.

¹³ *Gridin v. Russian Federation* (CCPR/C/69/D/770/1997), para. 8.1.

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

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

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

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

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

12. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not 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 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 disseminate them widely in the official language of the State party.
