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International Covenant on Civil and Political Rights

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Human Rights Committee

Communication No. 1627/2007

Decision adopted by the Committee at its 104th session, 12–30 March 2012

Submitted by:	V. P. (not represented by counsel)
Alleged victim:	The author
State party:	Russian Federation
Date of communication:	29 June 2006 (initial submission)
Document references:	Special Rapporteur's rule 97 decision, transmitted to the State party on 3 December 2007 (not issued in document form)
Date of adoption of decision:	26 March 2012
Subject matter:	Ill-treatment by police upon arrest and unfair trial
Procedural issues:	Non-substantiation of claims
Substantive issues:	Prohibition of torture, cruel or inhuman and degrading treatment or punishment; right to a fair hearing by an independent and impartial tribunal; right to be informed promptly of the criminal charge; right to adequate time and facilities for the preparation of defence; right to be tried without undue delay; right to legal assistance
Articles of the Covenant:	7; 14, para.1; 14, para. 3(a), (b), (c), and (d)
Articles of the Optional Protocol:	2

Annex

Decision of the Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political Rights (104th session)

concerning

Communication No. 1627/2007*

Submitted by:	V. P. (not represented by counsel)
Alleged victim:	The author
State party:	Russian Federation
Date of communication:	29 June 2006 (initial submission)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 26 March 2012,

Adopts the following:

Decision on admissibility

1. The author of the communication is Mr. V. P., a citizen of the Russian Federation born in 1951. He claims to be a victim of a violation by the Russian Federation of his rights under article 7; article 14, paragraph 1; article 14, paragraph 3 (a), (b), (c), and (d), of the International Covenant on Civil and Political Rights. The Optional Protocol entered into force for the State party on 1 January 1992. The author is not represented.

The facts as presented by the author

2.1 The author works as a therapist in Samara, Russian Federation. He claims that, on 21 March 2002, a group of officers of the police department of Samara District Department of Internal Affairs (DDIA) brutally beat him in front of his colleagues and patients at his workplace. They punched him in the face, strangled him, twisted his arms behind his back and demanded him to confess to having taken a bribe.

2.2 On the same day, he was taken to Samara DDIA where he was allegedly forced to confess to having taken a bribe of 300 Russian roubles and a bottle of cognac amounting to some 250 Russian roubles from one B., whom the author did not know personally and whom he had never met before. The author asserts that B. and his friend F. acted as police's agents provocateurs, and, without his knowledge and consent, "planted" the cognac and 300

* The following members of the Committee participated in the examination of the present communication: Mr. Lazhari Bouzid, Ms. Christine Chanet, Mr. Ahmad Amin Fathalla, Mr. Cornelis Flinterman, Mr. Yuji Iwasawa, Mr. Walter Kaelin, Ms. Zonke Zanele Majodina, Ms. Iulia Antoanella Motoc, Mr. Gerald L. Neuman, Mr. Michael O'Flaherty, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Fabian Omar Salvioli, Mr. Marat Sarsembayev, Mr. Krister Thelin and Ms. Margo Waterval.

roubles in his office and thereafter framed up a bribe-taking at his office in the hospital. The Prosecutor's Office of Samara district in Samara city initiated criminal proceedings against him under art. 290, of the Criminal Code (bribery) pursuant to the complaint filed by Mr B. who claimed that the author requested a bribe for the issuance of a false medical document.

2.3 The charge of bribery was formalized by Mr B.'s above-mentioned complaint, the decision on the conduct of police operation; the planning of police operation; the report regarding receipt of money; the letter addressed to the Prosecutor's Office of Samara district of Samara city and the ruling on the opening of a criminal case against the author, all dated 21 March 2002. The author claims that there is no factual evidence in the criminal case, such as audio or video records, witness testimonies or any other objective proof about the alleged facts. He further submits that the criminal charge against him was based on evidence given by B. and F., who had a personal interest in opening a criminal case against him. On 16 May 2003, the author was sentenced to three years' imprisonment with deprivation of the right to practise medicine for one year. Pursuant to article 73 of the Criminal Code, the deprivation of liberty was changed to suspended sentence with a three-year probation period.

2.4 On 23 March 2002, the author submitted a request to the Samara regional bureau of forensic medicine for documentation of injuries sustained as a result of beatings by police. The medical examination attested several injuries, including abrasions and bruises resulting in a temporary incapacity to work for a period of three weeks.[1]

2.5 On 29 March 2002, the author filed a complaint with the Prosecutor's Office of Samara district of Samara city for abuse of power and use of force against him by police officers. The investigation into his allegations was carried out by the same investigating officer who was in charge of the investigation of the criminal case initiated on 21 March 2002. On 11 April 2002, the investigative officer refused to open a criminal case against the respective police officers on grounds of lack of corpus delicti.

2.6 On an unspecified date, the author appealed the decision of 11 April 2002 to the Samara District Court. On 9 July 2002, the court rejected the appeal, stating that the use of force was permissible and lawful under articles 12 and 13 of the Law on Police. Further, the author's cassation appeal was rejected by the Criminal Chamber of the Samara District Court on 23 August 2002.

2.7 On 11 April 2002, 22 April 2002, 17 May 2002, 23 May 2002, 13 June 2002 and 17 July 2002, the author filed complaints to various instances within the Prosecutor's Office, but claims that he received only formal replies. The Ombudsman Office of the Russian Federation and the Ombudsman Office of Samara Region of Samara city also failed to properly examine his complaints.

The complaint

3.1 The author claims that he was ill-treated by police upon arrest, in violation of article 7, of the Covenant. He maintains that his claims are corroborated by witness testimonies and the forensic medical report of 23 March 2002.

3.2 He claims a violation of article 14, paragraph 1, of the Covenant. During the proceedings in the Samara District Court, the judge violated the principles of impartiality

[1] The forensic medical report dated 23 March 2002 attested the following injuries: bruises on the face area and on the right forearm; abrasions on the left side of the neck; haemorrhages on the mucous membranes of both cheeks and wounds on the mucous membranes of both cheeks. The sustained bruises, abrasions and haemorrhages did not result in damage to health; the wounds resulted in light damage to health causing short-term health disruptions for a period up to three weeks.

and equality of arms. The judge, during the preliminary hearing of the case, assumed the prosecutor's role by attempting to serve him with a copy of the indictment which he had never received from the prosecutor at the completion of the preliminary inquiry, as required under article 222, of the Code of Criminal Procedure. Under article 237 of the Code of Criminal Procedure, the judge should have referred the case back to the prosecutor. Instead, the judge attempted to hand in the respective copy to the author personally. The same judge did not allow him to address questions to the prosecutor and rejected his requests to call witnesses, to conduct forensic examinations and to request the originals of certain documents, whereas all the motions of the prosecution were satisfied. Therefore, the author claims a violation of the principles of impartiality and equality of arms and maintains that he was de facto deprived of the opportunity to prove his innocence. Furthermore, his request for recusal of the judge was rejected on 21 April 2003.

3.3 The author claims a violation of article 14, paragraph 3 (a), as he was not provided with a copy of the indictment. Instead, he was served with two orders issued by the investigating officer, dated 1 July and 15 July 2002, indicating briefly the nature of the charges against him.[2] Since he was not adequately informed about the charges, he could not properly prepare his defence.

3.4 The author claims a violation of article 14, paragraph 3 (b), since neither he nor his counsel were acquainted with all materials of the criminal case at the completion of the preliminary inquiry, and therefore he was not given the opportunity to prepare his defence.

3.5 The author further claims a violation of his right to be tried without undue delay, as guaranteed by article 14, paragraph 3 (c), of the Covenant. His criminal case reached the Samara District Court's registry on 1 October 2002. However, it was only on 25 October 2002 that the judge held a preliminary hearing on the case. Following the hearing, the consideration of the case was scheduled for 8 November 2002, but it was subsequently postponed for unknown reasons. The first court hearing therefore took place only on 1 April 2003. This four-month delay breached article 233, paragraph 1, of the Code of Criminal Procedure, according to which the examination of a criminal case by the court shall be started within 14 days of the date of the preliminary court hearing. There were no objective obstacles to the consideration of the case within the legal deadline and the court provided no reasonable explanation for the delay.

3.6 Finally, the author claims a violation of his rights under article 14, paragraph 3 (d). He submits that he cannot afford a privately retained counsel and, given the complexity of his case both from a factual and a legal point of view, it was in the interest of justice to provide him with legal assistance. The defence counsel assigned to him in 2002, Mr. K., was not actively involved in his defence and did not consult the case file. Thus, the author refused his services and requested the court to assign him a more qualified counsel.

3.7 The second counsel, appointed in 2003, Mr. G., was present during most part of the trial. However, on the sixth day of the court hearing he admitted that he was not familiar with the materials of the case. Furthermore, he did not support the author's motions in court. Consequently, the author refused his assistance.

3.8 The third counsel, Mr. L., refused to support his motions, leaving them "at the discretion of the court". For this reason, the author refused his services as well. As a result,

[2] The order of 1 July 2002 (available on file) by which the investigative officer informed the author of his status as an accused was signed by the author. It specifically indicates that the author is charged with an offence under article 290, paragraph 2 (bribery) of the Criminal Code and lists the procedural rights the author has as an accused. The order of 15 July 2002 (available on file) adds a new charge under article 285, paragraph 1 (abuse of power), of the Criminal Code.

the court hearings of 8 and 12 May 2003 continued in the absence of a counsel. He claims that the passivity of counsels deprived him of the right to defence and argues that the appointment of a defence counsel by the State is not sufficient to ensure to the accused qualified legal aid.

State party's observations on admissibility and merits

4.1 On 21 April 2008, the State party provided its observations. It submits that, on 21 March 2002, the Prosecutor's Office of Samara district of Samara city opened a criminal case against the author for taking a bribe of 300 roubles and a bottle of cognac for the issuance of a false medical certificate to Mr. B. In the course of the preliminary inquiry, the author was charged with an offence under article 290, paragraph 2 (bribe-taking by an official for illegal actions), of the Criminal Code.

4.2 On 16 May 2003, the Samara District Court found the author guilty of bribery and sentenced the author to three years' imprisonment. Pursuant to article 73 of the Criminal Code, the deprivation of liberty was changed to a suspended sentence with a three-year probation period and deprivation of the right to practise medicine for one year. On 27 June 2003, after the review of the author's sentence by the Criminal Chamber of the Samara Regional Court, the reference to the deprivation of the right to practise medicine was also excluded.

4.3 With regard to the author's allegations under article 7 of the Covenant, the State party submits that, during his interrogations, the author stated that he was approached by policemen who, after the presentation of their identification, asked him to return together to his office. When they went upstairs, he got scared, pulled some money[3] from his pocket, put it in his mouth and started chewing it. Since he did not comply with the order to take out what he had in his mouth, one officer, using physical force, pulled the money out of the author's mouth, as a result of which the author's oral mucosa was damaged. This fact was confirmed by Mr. G., Ms. S., Mr. F., Mr. B. and other eyewitnesses.

4.4 On 29 March 2002, the author requested the Prosecutor's Office of Samara District of Samara city to open a criminal case against the police officers for abuse of power and use of force against him. On 11 April 2002, after having investigated the alleged facts, the investigating officer refused to open a criminal case for lack of corpus delicti. This decision was upheld by the Prosecutor's office of Samara district on 15 April 2002.

4.5 On 6 May 2002, the author appealed the decision of the investigative officer of 11 April 2002 to the Samara District Court, which rejected the appeal on 9 July 2002. The Court stated that, from the explanations given by persons present during the police operation as well as from the report based on the watching of the video recording of the arrest, it was clear that the author had not been beaten. The use of physical force was proportionate and necessary for suppression of a crime, and the actions of the police were in compliance with articles 12 and 13 of the Law on Police. On 23 August 2002, the Samara District Court upheld the decision of 9 July 2002, rejecting the author's cassation appeal.

4.6 As to the author's allegations under article 14, paragraph 1 and paragraph 3 (a), of the Covenant, the State party submits that, on 28 September 2002, the investigative officer

[3] As it transpires from the materials available on file, the money offered as bribe had been treated in advance with a special solution in order to glow when lightened with an ultraviolet lamp. Moreover, the bills were marked (the number and series of the bills have been registered in a special report and copies of them were made). The three bills of 100 roubles each were found in the possession of the author upon his apprehension.

offered to the author a copy of the indictment in the presence of two lay witnesses, Ms. R. and Ms. I. He categorically refused to take the copy. The author himself confirmed during the preliminary hearing that the investigative officer came to him accompanied by two women he did not know.[4] Following the author's refusal, a copy of the indictment was sent to him by regular post and another copy was handed to his counsel.[5]

4.7 During the preliminary hearing of 25 October 2002, the author complained that he had not received a copy of the indictment and the judge was ready to provide the respective copy, but he again refused to receive it. The judge did not assume in any way the prosecutor's role; her actions were rather aimed at ensuring that the right of the author to receive a copy of the indictment, as stipulated in article 47, part 4, paragraph 2, of the Code of Criminal Procedure, had been respected. The author's voluntary refusal to take a copy of the indictment does not constitute a violation of his right to be informed promptly and in detail of the charge against him. He was informed promptly and in detail about the charges against him and about his rights and duties as an accused, therefore the procedure stipulated in articles 171 and 172 of the Code of Criminal Procedure has been duly respected. These facts are not refuted by the author.

4.8 The author's allegations that he could not address questions to the prosecutor are unfounded. While the right of the prosecutor to interrogate the accused is set forth in article 275, of the Code of Criminal Procedure, the legislation in force does not guarantee to the accused the right to address questions to the prosecution, and thus there has been no violation of the author's rights in this respect.

4.9 All the motions advanced by the author and his counsel during the court hearing (i.e. to call witnesses, to conduct forensic examinations, to request the originals of certain documents) were duly considered by the court.[6] The fact that the number of prosecution's motions satisfied by the court was greater than the number of satisfied motions advanced by the defence cannot per se be interpreted as a violation of the principles of impartiality and equality of arms. As regards the author's request for recusal of the judge, the State party submits that the recusal filed against the judge examining the criminal case in a single-judge formation shall be considered by the judge concerned by it, as stipulated in article 64, paragraph 4, of the Code of Criminal Procedure. The request was duly considered by the judge and reflected in the ruling of the Samara District Court of 8 May 2003.[7]

4.10 The author's arguments on the unlawfulness of his conviction were considered both within cassation as well as supervisory review proceedings and were rejected as

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4 This argument is confirmed by the transcript of the hearing of 25 October 2002 (available on file).

5 According to the transcript of the preliminary hearing of 25 October 2002 (available on file), the prosecutor confirmed that a copy of the indictment was sent to the author via registered mail and a confirmation of delivery was available on file. Moreover, according to the ruling of 17 April 2003, the postal service confirmed that the registered letter addressed to the author was delivered to his home address on 30 September 2002. Since the author was not home, the letter was dropped in his mailbox. The same happened with the additional letters that had been sent on 7, 14, 21 and 28 October 2002.

6 According to the transcript of the hearing of 21 April 2003 (available on file), the author's request to call several witnesses for testimony was satisfied by the court, and the court provided grounds for the refusal to conduct additional forensic examinations.

7 On 21 April 2003, the judge issued a ruling explaining the grounds for her decision (available on file). Inter alia, the author was explained that, according to article 231 of the Code of Criminal Procedure, the question regarding the consideration of a case by a single judge or by a panel of judges is decided during the preliminary hearing. Since the author did not object to the consideration of his case by a single judge during the hearings of 1, 14 and 17 April 2003, his request during the trial for consideration of the case by a panel of judges could not be considered.

unsubstantiated. The author's conviction was based not solely on the testimony of the persons indicated by the author (see para. 2.3 above) but also on the testimonies of other witnesses, and other evidence.

4.11 With regard to the alleged violation of article 14, paragraph 3 (b), the State party submits that, on 16 July 2002, the investigating officer informed the author and his counsel about the termination of the preliminary inquiry and about their right to get acquainted with the materials of the criminal case. On the same day, the inquiry was extended until 21 August 2002. The case consisted of 240 pages, and the author had been previously acquainted with 64 pages (including the indictment, his interrogation reports, his explanations, petitions and requests and the decision to conduct forensic examination). Between 16 July and 24 July 2002, the author could consult the case file every day from 9 a.m. to 6 p.m., but did so only two hours per day.

4.12 On 25 July 2002, the author refused to receive, in the presence of two lay witnesses, a notice to appear to the Prosecutor's Office of Samara district in order to familiarize himself with the case file. On 29 July 2002, the author was summoned again for 9 a.m., but he came at 12 a.m., refused to wait for his counsel and did not consult any materials. He also refused to come to the Prosecutor's Office on 30 and 31 July 2002 giving the reason that he had been summoned to the Samara District Court. On 1 August 2002, he did not consult the case file because of the absence of his counsel. From 2 to 7 August 2002, he failed to appear to the Prosecution's Office without providing any reasons. On 9 August 2002, he consulted the case file from 9.15 a.m. until 10.50 a.m., thereafter refusing to do so due to health problems. The ambulance team concluded that his state was satisfactory. On 26 August 2002, he consulted the case files from 10.20 a.m. until 11.37 a.m. On 27 August 2002, he consulted pages 24 and 25 of the case file.

4.13 The author failed to appear to the Prosecution's Office in order to consult the case file between 28 August and 20 September 2002, and refused to accept any summon without explaining the reasons, although he was well aware of his obligation to appear at the Prosecution's office at the time indicated in the summons. The period to consult the file was terminated on 20 September 2002. Thus, in a period of more than two months (16 July 2002–20 September 2002), the author consulted the case file on only nine days. After 20 September 2002, he never requested additional time for this purpose. However, he could additionally consult the case file, and in fact he did so, from its deposit with the court on 2 October 2002 and until the consideration of the case on the merits on 14 April 2003. Therefore, he had enough time to prepare his defence.

4.14 As regards the author's allegations under article 14, paragraph 3 (c), the State party contends that the criminal case was sent to court on 1 October 2002. On 11 October 2002, the judge set the date of preliminary hearing to 25 October 2002 (according to article 227, paragraph 3, of the Code of Criminal Procedure, the judge shall schedule the preliminary hearing on a case within 30 days from the receipt of the case by the court). The consideration of the case was scheduled for 8 November 2002, in compliance with the deadline set out in article 233, paragraph 1, of the Code of Criminal Procedure (the examination of a criminal case in a court session shall be started within 14 days from the date of the preliminary hearing). On 8 November 2002, the case was not considered because the author filed a cassation appeal on 28 October 2002 (supplemented on 1 November 2002) against the decision of the judge to proceed with the consideration of the merits of the case.

4.15 On 25 November 2002, the criminal case was referred back to the Samara District Court and its consideration was scheduled for 17 December 2002. On that date, the author submitted a request for suspension of proceedings due to health problems and the court satisfied it.

4.16 A new court session was scheduled for 1 April 2003, when the author again claimed that he had not received a copy of the indictment. The hearing was then postponed to 14 April 2003 in order for the prosecution to obtain the confirmation of delivery of the respective document from the post office. On 14 April 2003, the hearing did not take place because the public prosecutor was replaced and the newly appointed prosecutor requested three days to get acquainted with the case file. The author did not object to this request and the court satisfied it.[8] The consideration of the case started on 17 April 2003. Therefore, the court hearings were postponed based on objective reasons and, on several occasions, upon the author's requests or because of the appeals he filed. Accordingly, there has been no violation of the author's right to be tried without undue delay.

4.17 As to the alleged violation of article 14, paragraph 3 (d), the State party submits that Mr. K. was assigned as counsel during the preliminary inquiry and the preliminary court hearing. The author, however, refused his legal aid on grounds of his "unprofessionalism". The court then appointed another counsel, Mr. G., who was familiar with the case file and participated in all court hearings. Nonetheless, on 28 April 2003, the author refused his assistance. On 7 May 2003, the author declined the legal assistance provided by the third appointed counsel, Mr. L., and requested the court to appoint a competent counsel.

4.18 In the light of the court's unsuccessful attempts to provide the author with legal assistance which he constantly declined on account of the counsels' low level of professionalism, the court proceedings continued in the absence of a counsel. The author has never indicated that he would have liked a particular counsel to represent him. Moreover, he could have himself retain a private defence counsel.

4.19 The court did not have any reasons to doubt the professionalism of the appointed counsels. All of them have actively used their procedural rights under article 53 of the Code of Criminal Procedure, inter alia by participating in the examination of evidence, addressing questions to witnesses, submitting motions to court and expressing their opinions thereon. Therefore, the author's allegations are not supported by the case-file materials and are unfounded.

Author's comments on the State party's observations

5.1 In his comments dated 14 June 2008, the author refutes the State party's arguments that he had "money in the mouth" and that he was not beaten by police officers, claiming that the video records of his arrest indicate the contrary and that his allegations are corroborated by the forensic medical report.

5.2 He maintains that the so-called "eye witnesses" were directly involved in the police provocation against him and were not objective witnesses, being "summoned" in advance by police for participation in the "deliberate provocation" against him. He reiterates the information provided in paragraphs 2.2 and 2.3 above. He claims that the criminal charge against him was based solely on the testimony of the police officers and of other participants in their "deliberate provocation", and refers to the decision of the European Court of Human Rights in *Teixeira de Castro v. Portugal*,[9] where the Court stated that the fact that Mr. Teixeira had been convicted because the police instigated the offence meant that, right from the outset, he was definitively deprived of a fair trial. Therefore, his rights under article 7 and article 14, paragraph 1, of the Covenant, have been violated.

5.3 As regards the argument that a copy of the indictment was sent to him by post and that he refused to receive a copy of it in the presence of lay witnesses, the author claims that

[8] This fact is confirmed by the trial transcript dated 14 April 2003 (available on file).

[9] Application No. 25829/94, judgement of the European Court of Human Rights of 9 June 1998.

he never received the copy by post and no confirmation of receipt signed by him exists in the case file. Furthermore, the so-called "lay witnesses" are fictional, since they have not been summoned for interrogation by the court and their names do not appear in the transcripts of court hearings.[10] He further submits that, since the prosecution has the right to address questions to the accused, the accused has the same right in relation to the prosecution and recalls that the judge did not allow him to address questions to the prosecutor.

5.4 The author further reiterates his claims that the judge violated the principle of impartiality by attempting to serve him with a copy of the indictment. He reiterates that the judge declined his requests to call witnesses for testimony, to conduct forensic examinations and to request the originals of certain documents, whereas all the motions submitted by the prosecution were satisfied. His request for recusal of the judge was rejected without any grounds being provided.[11] Thus, he was deprived of the possibility to prove his innocence, whereas the prosecution was provided with obvious procedural advantages in supporting the criminal charge against him.

5.5 The author further refutes the State party's information that he has allegedly refused to get acquainted with the case file without explaining the reasons. He recalls his health problems (see para. 4.12 above) and claims that he had time only to familiarize himself with a small part of the case file. He maintains that, according to article 218 of the Code of Criminal Procedure, the only document attesting that the accused and his counsel consulted the case file is the report produced for that purpose, and it should be signed by both the accused and his counsel. Neither he nor his counsel signed the respective report of 15 July 2002. He maintains that he was not acquainted with the materials of the criminal case and that he has never refused to consult them. On 17 July 2002, he requested from the Prosecutor of Samara District a four-month extension to consult the case file. Mr. K., his counsel, was also not familiar with the case file.

5.6 As regards the State party's observation in relation to the undue delay in consideration of his case (see paras. 4.14–4.16 above), the author maintains that he was sick only for two weeks between 17 December and 31 December 2002, and this circumstance could not have served as a ground to postpone the consideration of the case for more than four months. The consideration of the case should have started not later than 8 November 2002, in conformity with article 233, paragraph 1, of the Code of Criminal Procedure. However, this deadline, for unknown reasons, was not respected by the court,[12] in violation of article 14, paragraph 3 (c), of the Covenant.

5.7 As to the State party's contention that he was provided with qualified legal assistance, he reiterates his previous allegations and underlines that the examination of his criminal case on 8 and 12 May 2003 continued in the absence of a counsel. Therefore, there has been a violation of article 14, paragraph 3 (d), of the Covenant.

State party's further observations

6.1 On 15 July 2011, the State party provided additional observations. It refutes the author's allegations of ill-treatment by police and notes that the forensic medical report

[10] According to the transcript of the hearing of 21 April 2003 (available on file), the author requested to have these witnesses examined in court. The court satisfied the request; however, it appears that the defence failed to secure their presence in court.

[11] The materials available on file suggest the contrary. See footnote 7 above.

[12] Although the author is silent on the reasons for the delay and refers to "unknown reasons", the State party has provided relevant information refuting his allegations in paragraphs 4.14–4.16 of its observations.

invoked by the author refers to the following injuries: bruises on the face area and on the right forearm; abrasions on the right side of the neck; hemorrhages and wounds on the mucous membranes of both cheeks. Since during his arrest the author tried to swallow the money received as bribe, he did not react to the instructions given by police and showed resistance, police officers used force by holding his hands and pressing his cheekbones in order to prevent him from swallowing the money. Physical force was used within the limits necessary for suppression of a crime, and in compliance with articles 12 and 13 of the Law on Police.

6.2 The author's request for opening of a criminal case against the police officers was rejected and this decision was further upheld by courts within cassation and supervisory review proceedings. Moreover, his allegations of ill-treatment were considered by the court during the consideration of his case and were qualified as an attempt to avoid criminal responsibility. Also, in connection with his claims and upon his request, the court heard two witnesses, Ms Z. and Ms I., the author's colleagues.

6.3 Furthermore, the court specifically indicated in its ruling that the actions of police officers cannot be regarded as provocation. In this respect, the court referred to the ruling No. 6 of the Plenum of the Supreme Court of 10 February 2000 on the judicial practice regarding cases of bribery and commercial bribery, according to which the carrying out of a police operation pursuant to a complaint of request for bribe cannot be regarded as provocation. Such a complaint was filed by Mr B. and was duly registered in the register of crimes of the Samara District Department of Internal Affairs on 21 March 2002. On the same day, Mr B. was offered the money to be used in the course of the police operation.[13]

6.4 As to the alleged personal interest of the witnesses in having the author criminally prosecuted, the State party submits that, as explained by Ms S., on 21 March 2002 she was invited to participate as lay witness during a police operation against bribe-taking by one of the doctors of the hospital No. 1. Similar explanations were given by Mr G., another person invited as lay witness. These witnesses testified in court and have been informed about criminal responsibility for perjury. During the questioning of the respective witnesses the author did not claim that they were interested in him being criminally persecuted.[14] He also did not raise this claim in his cassation appeal.

6.5 With regard to the author's allegation that the lay witnesses Ms R. and Ms I., in the presence of whom he refused to receive a copy of his indictment, are fictional, the State party reiterates its previous observations, adding that the author never raised this claim in his cassation appeal.

6.6. As regards the author's claims under article 14, paragraph 3 (b), the State party reiterates its previous observations and adds that the absence of the author's and his counsel's signatures on the report on the familiarization with the case file (dated 15 July 2002) is explained by the fact that they had been informed about the termination of the preliminary inquiry and about their right to consult the case file only on 16 July 2002. This is attested by their signatures on the report informing them that the preliminary inquiry was completed. The author and his counsel have been acquainted with the videotape documenting the author's arrest. Although the report was not signed by any of them at that time, their signatures appear in the timetable of familiarization with the case file, according to which they both watched the videotape on 16 July 2003 from 4 p.m. to 5.45 p.m.

[13] See footnote 3 above.

[14] The information provided by the State party in this paragraph is confirmed by the transcript of hearing of 21 April 2003 (available on file).

6.7 The State party also reiterates its observations in relation to the author's claim of undue delay in considering his case and notes that the author did not raise this claim in the cassation appeal.

6.8 The State party further reiterates its previous observations with regard to the author's claims that he was not provided with qualified legal assistance and submits that the author refused the assistance of the first counsel, Mr K., on grounds that he "worked for the investigation and acted against his interests", whereas in the communication before the Committee invokes as a reason the failure of Mr K. to get acquainted with the case file. However, as confirmed by the materials of the case file, Mr K., together with the author, consulted the case file materials during five days; he also received a copy of the indictment on 30 September 2002.

6.9 The second appointed counsel, Mr G., ensured the author's defence during the court proceedings. He supported the author's motions in court and also addressed questions to the parties, which is confirmed by the trial transcript. The author's claims that Mr G. did not consult the case file and did not support his motions in court are unfounded. For example, the prosecutor requested the court to read out the testimony of a witness, one K., and after familiarization with the respective report, both the counsel and the author agreed to have it read out in court.[15] The court also satisfied the counsel's request for time to consult the case file.[16] However, after Mr G. consulted the case file, the author refused his legal assistance.

6.10 Based on the above, the State party maintains that the author abused his right to legal aid. It concludes that all the author's allegations under the Covenant are unfounded.

Further comments by the author

7.1 By letter of 22 August 2011, the author reiterates his previous comments in relation to his allegations of ill-treatment by police and maintains that his claims are corroborated by testimonies of two witnesses, Ms. Z. and Ms I. In his opinion, the State party acknowledged that the witnesses present during his arrest, i.e. Ms. G., Ms. S., Mr. F. and Mr. B., had been forcibly summoned by police to participate in the "deliberate provocation" against him. Furthermore, the State party presented no evidence confirming the commission of bribery.

7.2 The author also reiterates his arguments raised in paragraph 5.3 above, and claims that, since the lay witnesses Ms R. and Ms I. are fictional and have never been questioned by the court,[17] he could not refer to them in his cassation appeal.

7.3 With regard to the State party's arguments that he refused to familiarize himself with the case file, the author reiterates his previous comments. He further claims that the State party did not provide any reasons for the undue delay in examining his case[18] and that this allegation was not raised on cassation because the undue delay cannot per se serve as a ground for the reversal or modification of the sentence.

7.4 With regard to inadequate legal assistance, the author reiterates his allegations, adding that none of his defence counsels filed any cassation appeals or supervisory review applications on his behalf.

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[15] This is confirmed by the transcript of the court hearing of 17 April 2003 (available on file).

[16] This is confirmed by the transcript of the court hearing of 23 April 2003 (available on file), when the court granted time for counsel to consult the case file and postponed the hearing to 7 May 2003.

[17] See footnote 10 above.

[18] This argument is refuted by the State party in its observations, see paras. 4.14 - 4.16 above.

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 93 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

8.2 The Committee has 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. In the absence of any State party objection, the Committee considers that the requirements of article 5, paragraph 2 (b), of the Optional Protocol have been met.

8.3 The Committee takes note of the author's allegations of ill-treatment upon arrest, as documented by the forensic medical report dated 23 March 2002. It also notes that the State party refutes the allegations, stating that the use of force was proportional and necessary to prevent the author from tampering with evidence (swallow the money received as bribe). The Committee further notes that the author's complaint against the police officers was rejected for lack of corpus delicti, the decision being upheld on cassation and supervisory review proceedings. While noting that the versions of events advanced by the parties differ substantially, the Committee observes that the use of force as such is not contested by the State party.

8.4 The Committee observes that the forensic medical report adduced by the author documents bruises on his face and right forearm, abrasions on the right side of his neck, hemorrhages and wounds on the mucous membranes of both cheeks which resulted in light damage. It further takes note of the explanations of the State party that police officers used force by holding the author's hands and pressing his cheekbones in order to prevent him from swallowing the money he received as a bribe. Taking into account the arguments of the State party to justify the degree of force used during the arrest operation and given the contradictory information contained in the file as to the existence of witness testimonies on the facts alleged under this claim, the Committee concludes that the author failed to substantiate this claim, for purposes of admissibility, and declares it inadmissible under article 2 of the Optional Protocol.

8.5 The Committee notes the author's claims under article 14, paragraph 1, that his motion to recuse the judge was rejected and that his requests to call witnesses for testimony and to conduct forensic examinations were declined by the court, whereas all the motions of the prosecution had been satisfied. The State party contends that the author's motions to call witnesses were satisfied by the court, as reflected in the transcript of court hearings. As to the author's motions for additional forensic examinations, the court provided grounds for the refusal. Furthermore, the author's request for recusal of the judge was duly considered and rejected by a ruling indicating the legitimate grounds for the rejection.

8.6 The Committee observes that the author's allegations under article 14, paragraph 1, of the Covenant, are linked primarily to the evaluation of facts and evidence and recalls its jurisprudence according to which it is generally not for itself, but for the courts of States parties, to review or to evaluate facts and evidence, unless it can be ascertained that the conduct of the trial or the evaluation of facts and evidence was manifestly arbitrary or amounted to a denial of justice.[19] The Committee observes that the materials before it,

[19] General comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, *Official Records of the General Assembly, Sixty-second Session, Supplement No. 40*, vol. I (A/62/40 (Vol. I)), annex VI, para. 26; see, inter alia, communication No. 541/1993, *Simms* v. *Jamaica*,

including the transcripts of court hearings, do not suggest that the impartiality of the court was affected, the principle of equality of arms was violated or that the fairness of the author's trial had been otherwise undermined. It therefore concludes that the author failed to substantiate this claim, for purposes of admissibility, and declares it inadmissible under article 2 of the Optional Protocol.

8.7 The Committee notes the author's claims that he was not provided with a copy of the indictment, and therefore was not adequately informed of the nature of criminal charges against him, contrary to article 14, paragraph 3 (a), of the Covenant. In this regard, the Committee takes note of the State party's arguments that the author categorically refused to receive a copy of the indictment in the presence of lay witnesses. Moreover, the respective copy was sent to the author by registered mail on several occasions and a confirmation of delivery was available on file. Furthermore, the Committee observes that the author was served two orders issued by the investigating officer, dated 1 July and 15 July 2002, indicating briefly the nature of the charges against him. The order of 1 July 2002 (available on file) contains a general description of the facts and states specifically that the author was charged with an offence under article 290, paragraph 2 (bribery), of the Criminal Code. The author confirmed with his signature that the charge brought against him was clear and that he was informed of his procedural rights as an accused. In the circumstances, the Committee considers that the author failed to substantiate this claim, for purposes of admissibility, and declares it inadmissible under article 2 of the Optional Protocol.

8.8 As to the author's allegation that he and his counsel were not acquainted with the materials of the criminal case and therefore he was not given the opportunity to prepare his defence, in violation of article 14, paragraph 3 (b), of the Covenant, the Committee notes the detailed information provided by the State party regarding the period of time and facilities given to the author and his counsels to familiarize themselves with the case file (paras. 4.11–4.13). In view of this information, the Committee considers that this claim is insufficiently substantiated, for purposes of admissibility, and is therefore inadmissible under article 2 of the Optional Protocol.

8.9 With regard to the author's allegations of undue delay in considering his case, under article 14, paragraph 3 (c) of the Covenant, the Committee takes note of the argument of the State party that the consideration of the author's case was postponed based on objective reasons, inter alia because of the cassation appeal filed by the author, his subsequent request for suspension of proceedings due to health problems, and the request by the newly appointed prosecutor to get to know the case file, request to which the author did not object. In the light of these explanations, the Committee considers that that this claim is insufficiently substantiated, for purposes of admissibility, and is therefore inadmissible under article 2 of the Optional Protocol.

8.10 The Committee takes note of the author's allegations that, after he refused the legal assistance provided by the State party, the consideration of his case continued in the absence of a counsel, in violation of article 14, paragraph 3 (d), of the Covenant. It observes that the author rejected the legal assistance provided to him by three State-appointed counsels on account of their failure to familiarize themselves with the materials of the criminal case and to support his motions in court. These arguments are disputed by the State party, which states that the court found no reasons to doubt the professionalism of any of the appointed counsels. As it transpires from the transcripts of court hearings available to

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inadmissibility decision adopted on 3 April 1995, para. 6.2; communication No. 1616/2007, *Manzano et al.* v. *Colombia*, inadmissibility decision adopted on 19 March 2010, para. 6.4.; communication No. 1532/2006, *Sedljar and Lavrov* v. *Estonia*, inadmissibility decision adopted on 29 March 2011, para. 7.3.

the Committee, all three appointed counsels had been acquainted with the materials of the case file and had exercised their duties by, inter alia, addressing questions to witnesses, participating in the examination of evidence and supporting the author's motions in court. In light of the above, the Committee considers that this claim is insufficiently substantiated, for purposes of admissibility, and is therefore inadmissible under article 2 of the Optional Protocol.

9. The Human Rights Committee therefore decides:

(a) That the communication is inadmissible under article 2 of the Optional Protocol;

(b) That this decision shall be communicated to the State party and to the author.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]