



**International Covenant on  
Civil and Political Rights**

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**Human Rights Committee**

**Communication No. 1628/2007**

**Views adopted by the Committee at its 105th session (9-27 July 2012)**

<i>Submitted by:</i>	Aleksei Pavlyuchenkov (not represented by counsel)
<i>Alleged victim:</i>	The author
<i>State Party:</i>	Russian Federation
<i>Date of communication:</i>	16 July 2007 (initial submission)
<i>Document references:</i>	Special Rapporteur's rule 97 decision, transmitted to the State party on 3 December 2007 (not issued in document form)
<i>Date of adoption of Views:</i>	20 July 2012
<i>Subject matter:</i>	Ill-treatment by police upon arrest and unfair trial
<i>Procedural issues:</i>	Non-exhaustion of domestic remedies; non-substantiation of claims;
<i>Substantive issues:</i>	Prohibition of torture, cruel or inhuman and degrading treatment or punishment; right to a fair hearing by an independent and impartial tribunal; right to adequate time and facilities for the preparation of a defence; right to legal assistance.
<i>Articles of the Covenant:</i>	Article 2, paragraph 3; article 7; article 10, paragraph 1, and article 14, paragraph 3(b), (d), (e), (g);
<i>Articles of the Optional Protocol:</i>	2 and 5, paragraph 2(b)

## Annex

### **Views of the Human Rights Committee under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights (105th session)**

concerning

#### **Communication No. 1628/2007\***

Submitted by: Aleksei Pavlyuchenkov (not represented by counsel)

Alleged victim: The author

State Party: Russian Federation

Date of communication: 16 July 2007 (initial submission)

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

Meeting on 20 July 2012,

Having concluded its consideration of communication No. 1628/2007, submitted to the Human Rights Committee by Mr. Aleksei Pavlyuchenkov under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication, and the State party,

Adopts the following:

#### **Views under article 5, paragraph 4, of the Optional Protocol**

1. The author of the communication, dated 16 July 2007, is Aleksei Pavlyuchenkov, a citizen of the Russian Federation born in 1977. He claims to be a victim of a violation by the Russian Federation of his rights under article 2, paragraph 3; article 7; article 10, paragraph 1, and article 14, paragraph 3(b), (d), (e) and (g) 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 unrepresented.

#### **The facts as presented by the author**

2.1 On 14 August 2001, the author was convicted of theft and fraud and sentenced to a suspended sentence of five years and two months by the Krasnokholmsk District Court of Tver province. On 14 October 2004, he was convicted of murdering Ms. V. by the Tver

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

Regional Court, and sentenced to 18 years' imprisonment to be served in a special colony. This punishment was partly appended to the first suspended sentence and the author was sentenced to a total of 18 years and 6 months' imprisonment in a special colony. On 17 November 2005, he was convicted of murdering Ms. S. by the Aleksandrovsk City Court of Vladimir province, and sentenced to 20 years' imprisonment in a special colony. The author submits that his complaint to the Committee is related to his second conviction by the Tver Regional Court dated 14 October 2004.

2.2 The author claims that at around 1 a.m. on 13 May 2004, he was arrested in Bulatovo village by officers of the Criminal Investigation Department of the Kashin and Bezhetsk District Section of Internal Affairs (DSoIA) of Tver region on suspicion of murdering Ms. V. While being transported to the DSoIA in a minivan, he was told that he was "lucky that Mr. Sh. had not participated in his arrest". The author had heard from Ms. V. that her relative Sh. was an officer of the Ministry of Interior, but did not know at that time exactly where he worked.

2.3 The author submits that approximately one hour later, he was taken to the DSoIA to see a senior investigator of the Bezhetsk Inter-district Prosecutor's Office and two DSoIA Criminal Investigation Department officers. They informed the author that there was information implicating him in the murder and suggested that he make a voluntary statement. The author claims that he had not slept the night before (having been drinking alcohol), then worked full time on 12 May 2004 and, by the time he was arrested, had not slept for at least 48 hours. On these grounds, he refused to make a statement and requested time to sleep and think everything over. Two criminal investigation department officers threatened him that if he did not confess, he would suffer "unbearable conditions of detention pending trial" because the victim's relative Sh. worked at the DSoIA. They also told him that they would be conducting the investigation "awaiting the return of Sh. from a business trip, so that [upon return] he could avenge his relative's death". Moreover, the author was told, another person being held on suspicion of committing the same murder, Mr. B., had already confessed by shifting the blame onto him and was already asleep in the temporary confinement cell (TCC).

2.4 The author submits that he subsequently agreed to make a statement and requested an attorney. The DSoIA officers explained that it would be difficult to find an attorney in the middle of the night and suggested that he gave an "explanation" – an oral statement not recorded in an interrogation report. They promised that this information would not be used in the indictment. The author claims that he confessed to the murder, also implicating B., in order to be allowed to sleep and to put himself in order.

2.5 The author claims that after providing the "explanation", he was taken to the Bezhetsk TCC and subjected to a search by two TCC duty officers. Allegedly, both officers were heavily intoxicated and swore at the author as they conducted the search, cut his clothes off with a knife and made a show of their superiority. The author refused to sign a search log and demanded a pen and paper to file a complaint. He was then threatened with the use of physical force and with being put in a situation where he might face sexual aggression. Finally, after he repeatedly refused to sign the log, he was taken to a cell.

2.6 The author submits that he was held in this detention facility for the following periods: 13-25 May 2004, 6-16 June 2004, 6-13 July 2004, 4-24 August 2004 and 8 September 2004-19 October 2004. The author submits that two-thirds of the cell (approximately 6 square metres) was taken up by a solid wooden plank bed without individual dividers. The cell was occupied by two to eight persons at a time. There was no separation between the living area and the toilet, wash-basin and a garbage bin. The author claims that, because of the unsanitary conditions of the cell and lack of privacy, he could not properly prepare for his defence. The only window (approximately 0.3 x 0.4 metres) was permanently shut and blocked by a metal plate; the artificial light was insufficient to

read and write by. The central ventilation was out of order for the duration of the author's detention. The TCC area designated for detainees' walks had been turned into an open-air cage for the DSoIA dogs. As a result, all walks for the detainees were abolished. The author was allowed to take a shower only twice during his detention in the TCC. Because of the lack of hygiene and broken ventilation, the cell was infested with lice, bed-bugs, wood-lice, ticks and other insects. The author was sharing the cell and food plates with detainees who had been diagnosed with hepatitis and tuberculosis.

2.7 The author further submits that while being detained in the TCC, he was constantly reminded about Sh.'s awaited return from a business trip and he took this threat seriously. The author repeatedly requested to be informed about the TCC internal regulations and his rights. On one occasion the DSoIA director accepted this request and took the author to the announcements board in the corridor, but handcuffed him beforehand so tightly that he could not withstand the pain for more than five minutes. Among the few things that the author managed to make out before he had to give up on studying the regulations was that they were outdated and displayed only in part. He filed several complaints about the conditions of detention which remained unanswered; in order to secure a meeting with a prosecutor in charge of supervision of the TCC, he went on hunger strike. The author claims that he requested to be taken to a dentist several times for acute toothache but these requests were refused due to the unavailability of transport and armed guards to escort him.

2.8 On 14 July 2004, the author filed a complaint to the Tver Regional Court requesting his transfer from the Bezhetsk TCC. On 20 July 2004, the Tver Regional Court forwarded this application to the Bezhetsk Inter-District Prosecutor's Office. On 28 July 2004, the application was examined by the Deputy Bezhetsk Inter-district Prosecutor and the author's request for transfer was rejected. On 5 August 2004, the author filed a complaint about conditions of detention and violation of his rights with the "Tvoy vikor" ("Your choice") organization. On 17 August 2004, the author was informed that the Prosecutor's Office of Bezhetsk District of Tver Region had examined his complaint filed with "Tvoy vikor" and found some violations of the requirements for detention facilities. The letter reads: "In view of existing violations of conditions of detention in the TCC, the DSoIA leadership is taking measures to find financial resources to bring these conditions into conformity with the requirements".

2.9 The author submits that on 30 September 2004, when he and B. were about to be transported to the court, Sh., who was intoxicated and armed, and was among the guards who escorted him, attacked the author, took him by the throat and started to strangle him, saying "so what, did you cut [her]?..." The chief guard allegedly pulled Sh. back, saying "not now, do it after the court hearing".

2.10 The author claims that his ex-officio attorney's services were inadequate because she did not complain about Sh.'s actions, despite the fact that the author stated in court that he had been attacked by the victim's relative, who was working in the DSoIA, and requested the court to ensure his safety and integrity. During the trial, the co-defendant, Mr. B., stated that his statement at the pretrial stage was obtained at night and with the use of illegal methods of interrogation.<sup>1</sup> According to the author, this important information was not taken up by his attorney, who failed, for example, to request the examination in

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<sup>1</sup> The trial transcript reads: B. stated in court that he was sitting next to a Criminal Investigation Department officer who was continually nudging him because B. was falling asleep in the middle of interrogation [as he was heavily intoxicated]. "At the time of interrogation I was in a state... that I cannot describe... I was told that I needed to add that I had been the first to take out the knife and that I had seen how Pavlyuchenkov was killing V. That's what I wrote. I was writing down what the Criminal Investigation Department officers were telling me to write".

court of those officers who had conducted Mr. B.'s interrogation. Around 10 prosecution witnesses never appeared before the court despite the author's attempts to summon them. He did not have adequate time or facilities for the preparation of his defence.

2.11 The author further claims that his numerous requests to obtain copies of his criminal case file were also denied. He submits several letters from courts stating that the author must pay a fee in order to obtain copies of his criminal case file. The author argues that this violates his rights and prevents him from pursuing his claims with international organizations.

2.12 On 7 February 2005, the Judicial College on Criminal Cases of the Supreme Court rejected the author's appeal on cassation of the Tver Regional Court's judgment of 14 October 2004. The author's appeal for a supervisory review of this judgment was rejected by the Supreme Court and by the Deputy Chairperson of the Supreme Court on 29 September 2005 and 3 August 2006 respectively.

### **The complaint**

3. The author claims that the above-described facts demonstrate that the State party violated his rights as guaranteed under article 2, paragraph 3; article 7; article 10, paragraph 1; article 14, paragraphs 3(b),(d),(e) and (g), of the Covenant.

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

4.1 On 13 June 2008 and 4 July 2008, the State party provided its observations. The State party submits that Mr. Pavlyuchenkov was detained on 13 May 2004, at 4.05 a.m. Mr. Pavlyuchenkov was explained his rights under article 46 of the Criminal Procedure Code of the Russian Federation and under article 51 of the Constitution, and signed a statement confirming this. The State party denies that Mr. Pavlyuchenkov was interrogated during that night in the absence of a defence lawyer.

4.2 The State party submits that the author's complaint about ill-treatment by the police officers was investigated by the prosecutor, who on 22 August 2007 refused to open a criminal case in the absence of a corpus delicti. This decision was upheld by the Bezhetsk City Court on 17 December 2007. The author never appealed this decision.

4.3 The State party submits that the first time the author was interrogated was on 13 May 2004 at 9.05 a.m. He was explained his rights, and was also told that he was suspected of murdering Ms. V. Mr. Pavlyuchenkov refused to talk, citing article 51 of the Constitution. No complaints were filed by the author at that time.

4.4 The State party submits that on 14 May 2004, Mr. Pavlyuchenkov volunteered to provide information, and admitted that he had attacked Ms. V., but denied killing her. This was done with the participation and in the presence of a defence lawyer, Ms. I. The author was again told of his procedural rights.

4.5 The State party submits that on 20 May 2004, in the presence of his defence lawyer, the author was officially charged with the murder of Ms. V. On 12 August 2004, the author and his lawyer, Ms. I., acknowledged that they were acquainted with the materials of the criminal case. There were no complaints of ill-treatment or otherwise, either by Mr. Pavlyuchenkov or his lawyer.

4.6 The State party submits that court hearings started on 27 September 2004. On that date, the court postponed the initial hearing, upon a request from Mr. Pavlyuchenkov, who claimed he needed more time to study the case materials. The next court hearing, on 30 September 2004, was also postponed, because Mr. Pavlyuchenkov told the court that he was "shaking, and ... afraid of the relative of Ms. V."

4.7 The State party submits that on 25 October 2004, he was given a copy of the transcript of the court hearings. Mr. Pavlyuchenkov had no complaints about the document, nor did he complain about it in his appeal.

4.8 The State party admits that not all witnesses were questioned during the court hearings. Mr. Pavlyuchenkov requested that only two witnesses be questioned – V.P.N. and A.V.N. Mr. V.P.N. was questioned on 1 October 2004. Mr. A.V.N. was summoned to testify, but did not appear in court. Another witness, Mr. P., was serving in the military at that time and was also unable to testify.

4.9 The State party submits that Ms. I. vigorously defended Mr. Pavlyuchenkov both during the investigation and during the court hearings, as is obvious from the transcript of the court hearings. Ms. I. also represented the author in his appeal. The author never complained about his lawyer and has not requested a different lawyer. The appeal contains no complaints about Ms. I.'s representation. As to the author's complaint that he did not personally participate in the supervisory appeal procedure in the Supreme Court, the State party submits that, according to article 406 of the Criminal Procedure Code, his participation would have been necessary only if the Court had granted the supervisory appeal. In the author's case, the supervisory appeals were denied on 29 September 2005 and 3 August 2006.

4.10 Regarding the author's complaint that the courts refused to provide a copy of the criminal case file, the State party submits that the documents concerned had already been provided to the author. The author was informed that additional copies would be provided only if he paid for the copying. However, the Constitutional Court of the Russian Federation decided that, upon request, payment for additional copies of the court materials might be reduced or waived. No such request was submitted by Mr. Pavlyuchenkov. Moreover, the author did not complain about this issue in his appeal.

4.11 The State party submits that the court correctly designated the type of penitentiary institution where Mr. Pavlyuchenkov would serve his sentence, in view of his criminal record. According to article 299 of the Criminal Procedure Code, such decisions are left to the court's discretion to consider during the sentencing. Sentencing occurred on 14 October 2004 in the presence of Mr. Pavlyuchenkov. The State party therefore submits that no provisions of article 14 of the Covenant were violated.

4.12 The State party further submits that the author's complaints about the conditions in the detention facilities are also ill-founded. Those conditions were in accordance with the rules of detention in the temporary confinement facilities dated 26 January 1996, according to which each detained person is provided a bed space. Additionally, according to paragraph 6.2 of the rules, the cleaning of the facilities must be carried out by detainees themselves. The ventilation was broken in September 2004, but was repaired on 20 September 2004 after Mr. Pavlyuchenkov complained. He was also able to use the shower regularly. Also, contrary to Mr. Pavlyuchenkov's claims, he was taken to the dentist on 24 May 2004.

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

5.1 In his letters dated 22 July 2008 and 29 July 2008, the author provides his comments on the State party's observations. He reiterates that the conditions of his detention were unacceptable. The State party indicated that the conditions in the detention facility were inspected on 11 April 2005 and no violations were found. The author submits that he was detained in the facility during 2004. The author further submits that he did not have enough light to read by and that the ventilation was not functioning properly.

5.2 The author submits that according to the standards of detention facilities dated 25 January 1971, the toilet should have been separate from the rest of the cell. The author

further submits that the Federal Law “On detention of persons suspected or charged with crimes” dated 1 January 1998 provides that the national legislation must comply with the requirements of international standards, such as the United Nations Standard Minimum Rules for the Treatment of Prisoners.

5.3 The author reiterates his position that he was arrested at 1 a.m. on the night between 12 and 13 May 2004, not 5 a.m. on 13 May, as submitted by the State party. He further claims that he was insulted by the officers who damaged his clothing. Further to these violations, Mr. Pavlyuchenkov filed a number of complaints to the Prosecutor’s Office. On 14 July 2004, he asked to be transferred to a different detention facility. The author also claims that a number of his complaints never reached the intended addressee.

5.4 Refuting the State party’s claim that he was taken to the dentist on 24 May 2004, the author submits that on that date he was taken for a blood test as part of the investigation.

5.5 As to the State party’s contention that he was provided with qualified legal assistance, he reiterates his previous allegations and states that he was convinced by Ms. I. that it would be futile to refuse legal assistance, because in such cases legal representation was mandatory. Ms. I. should have complained about the violations of the author’s rights, but did not do so. The author further claims that because of his limited education, he did not know how to complain about his lawyer. The author claims, however, that he did complain about Mr. I. to the Judicial Department of the city of Tver, to no effect.

5.6 The author submits that on 18 July 2008, he became aware of the fact that he owed 6,000 roubles for the legal assistance provided by Ms. I. The author claims that he was never told that he could be held accountable to pay for legal assistance. He argues that no reference was made to such payment during the conviction on 14 October 2004 and in later court documents. The author submits that this violates the laws of the Russian Federation and article 14, paragraph 3(d) of the Covenant.

5.7 The author reiterates that he had insufficient time to prepare for his trial. He further claims that his incomplete education did not allow him to fully understand the materials of his case. The author further submits that the court hearings were postponed twice, but that this was because he was afraid of relatives of Ms. V., who were “putting pressure” on him. He claims that Mr. Sh., as a relative of Ms. V., should not have been one of the guards who escorted him. The author refers to the incident that occurred on 30 September 2004, when Mr. Sh., while drunk, “physically pressured” him.

5.8 The author further submits that when he requested V.P.N. to testify at the court, he meant to request Va.P.N. to be questioned, and not Vi.P.N. The author also submits that that Mr. P. should have been summoned to court, even if he was serving in the military at that time.

5.9 The author reiterates that despite his numerous requests, he was not provided with copies of his criminal case file. The author claims that on 14 February 2007, he requested the Bezhetsk City Court to provide copies of the court materials without payment, citing his inability to pay. The court responded by saying that Mr. Pavlyuchenkov could send his representatives to the Tver Regional Court, where they could make copies in person. The Tver Regional Court agreed to provide copies only after the payment. His complaint to the Supreme Court dated 17 September 2007 was also rejected.

5.10 The author further claims that he was convicted on the basis of the inadmissible evidence provided by Mr. B. He claims that Mr. B. was drunk during the questioning and had not slept for more than two days.

**State party's further observations**

6.1 On 31 March 2009, the State party provided additional observations. It refutes the author's allegations of ill-treatment during the initial detention. The State party reiterates its position that Mr. Pavlyuchenkov received legal assistance of good quality from Ms. I.

6.2 The State party claims that according to article 50, paragraph 5, of the Criminal Procedure Code, the Russian federal budget covers expenses for a lawyer appointed by a court, an investigator or a prosecutor. However, article 132, paragraph 2, of the Criminal Procedure Code provides that the convicted person must reimburse expenses, unless (a) the person was acquitted, or (b) the person who was suspected or charged with a crime refused legal assistance but the lawyer participated nevertheless on the basis of the court order. Mr. Pavlyuchenkov did not refuse the assistance of the lawyer; the court therefore decided that the author must reimburse 6,000 roubles<sup>2</sup> to the federal budget.

6.3 The State party further submits that Mr. Pavlyuchenkov was fully informed about this court decision. On 21 February 2005, the Tver Regional Court sent a copy of the relevant court decision dated 18 October 2004. The author did not complain about this decision.

6.4 The State party further refutes the author's claim that he did not have sufficient time to prepare his defence. Mr. Pavlyuchenkov's request for additional time to study case materials was granted by the court, and no complaints regarding this issue were filed by the author.

6.5 Regarding the witnesses, the State party claims that V.P.N. was questioned in the court, as requested by the author. However, according to the trial transcript, the name of the person questioned was VI.P.N. The author did not object to this witness. Mr. A.V.N. and Mr. P. could not testify in court, but their absence did not affect "the completeness and objectivity of the court hearings".

**Further comments by the author**

7.1 On 10 August 2009, the author provided further comments. He reiterates his position that he was arrested earlier, at around 1 a.m. on 13 May 2004, and ill-treated during his initial detention. He also states that the reason he did not complain about a payment of 6,000 roubles that he owes to the State was because he only learned about this on 18 July 2008. The author submits that he still does not have a copy of the court decision concerned.

7.2 The author further reiterates that he was convicted on the basis of the testimony of Mr. B., which was obtained in violation of Mr. B.'s rights. The author claims that the court failed to verify that this information was obtained legally. He further submits that he did not have nearly enough time to become acquainted with the 819 pages of the case materials.

7.3 In his letter dated 31 August 2009, the author provides a detailed calculation showing that the Russian Federation owes him compensation for moral harm, his expenses for obtaining court documents, and for the assistance of his lawyer, for a total of 321,000 roubles. Additionally, the author asks the State party to provide a full copy of his criminal case file, including all copies of his cassation and supervisory appeals. The author is also asking the Committee to recommend that the State party reconsider the conviction dated 14 October 2004 by the Tver Regional Court.

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<sup>2</sup> According to the Central Bank of the Russian Federation, the exchange rate on 14 May 2012 was 1 rouble = 0.033 USD.



## 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.

8.3 With respect to the alleged violations of article 2, paragraph 3; article 7; and article 14, paragraph 3(d), (g), of the Covenant, the Committee notes the State party's argument that the author did not raise these claims before the domestic courts, either during the initial court hearings or subsequently, during the cassation appeal. The Committee notes that the author has filed a number of complaints with the prosecutor's office and the office of the human rights representative under the President of the Russian Federation. The Committee recalls its jurisprudence, according to which the term "all available domestic remedies refers in the first place to judicial remedies."<sup>3</sup> Noting that the author has failed to raise issues related to article 2, paragraph 3; article 7; and article 14, paragraph 3(d), (g), of the Covenant before domestic courts, the Committee concludes that this part of the communication is inadmissible pursuant to article 5, paragraph 2 (b), of the Optional Protocol.

8.4 The Committee notes the author's claims under article 14, paragraph 3(e), that his requests to call witnesses for testimony were declined by the court. The Committee observes that the author's allegations under article 14, paragraph 3(e) 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.<sup>4</sup> The Committee observes that the materials before it, 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 his claim under article 14, paragraph 3(e), of the Covenant, for purposes of admissibility, and declares it inadmissible under article 2 of the Optional Protocol.

8.5 As to the author's allegation that neither he nor his counsel had sufficient time to become 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 given to the author and his counsel to familiarize themselves with the case materials, together with the fact that the court hearing was postponed to

<sup>3</sup> See, inter alia, communication No. 397/1990, *P.S. v. Denmark*, decision of inadmissibility adopted on 22 July 1992, para. 5.4; communication No. 1575/2007, *Aster v. Czech Republic*, decision of inadmissibility of 27 March 2009, para. 6.2.

<sup>4</sup> Human Rights Committee general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial (article 14), para. 26; see also, inter alia, communication No. 541/1993, *Simms v. Jamaica*, decision of inadmissibility adopted on 3 April 1995, para. 6.2; communication No. 1616/2007, *Manzano v. Colombia*, decision of inadmissibility adopted on 19 March 2010, para. 6.4.; communication No. 1532/2006, *Sedljar and Lavrov v. Estonia*, decision of inadmissibility adopted on 29 March 2011, para. 7.3.

accommodate the author. 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.

8.6 The Committee considers that the author's allegations under article 10, paragraph 1, of the Covenant, have been sufficiently substantiated, for purposes of admissibility. The Committee also notes the State party argument that the author did not raise this claim during the court hearings. The Committee, however, notes that the author did file a number of complaints to the officers in charge of the detention facility, and asked the prosecutor's office and the Tver Regional Court to transfer him and Mr. B. to a different detention facility. The Committee notes that no other remedies were available to the author while he was in detention.<sup>5</sup> In light of the information provided by the parties, the Committee considers that the author has met the requirements of article 5, paragraph 2 (b), of the Optional Protocol regarding his claim under article 10, paragraph 1, of the Covenant, and proceeds to the examination on the merits.

#### *Consideration of the merits*

9.1 The Human Rights Committee has considered this communication in the light of all the information received, in accordance with article 5, paragraph 1, of the Optional Protocol.

9.2 Regarding the conditions of detention in the Bezhetsk TCC, the Committee notes the specific information received from the author, in particular, that the detention facility did not have a functioning ventilation system, adequate food or proper hygiene. In addition, the Committee notes the author's allegations that he remained inside his cell at all times, with no opportunity for outdoor exercise. The author had to eat his meals and use the toilet in cramped conditions in one room. The Committee further notes that the State party simply refers to the conformity with national standards, without providing detailed explanations regarding the conditions of the author's detention, or of measures taken by the State party to investigate the conditions of detention and provide the necessary remedies. The Committee finds that holding the author in the conditions as described by the author entailed a violation of his rights under article 10, paragraph 1, of the Covenant.

10. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts before it reveal a violation by the Russian Federation of article 10, paragraph 1, of the Covenant.

11. In accordance with article 2, paragraph 3, of the Covenant, the State party is under an obligation to provide the author with an effective remedy, including appropriate compensation to the author for the violations suffered. The State party is also under an obligation to take appropriate and sufficient measures to prevent similar violations in the future by bringing its prison conditions into compliance with its obligations under the

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<sup>5</sup> See the judgment of the European Court of Human Rights in the case of *Ananyev and Others v. Russia* (applications nos. 42525/07 and 60800/08, judgment of 10 January 2012), in which the Court expressed its view that "... the Russian legal system does not dispose of an effective remedy that could be used to prevent the alleged violation or its continuation and provide the applicant with adequate and sufficient redress in connection with a complaint about inadequate conditions of detention." (para. 119 of the judgment).

Covenant, taking account of the United Nations Standard Minimum Rules for the Treatment of Prisoners<sup>6</sup> and other relevant international norms.

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 and enforceable remedy in the event that a violation is established, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the present Views and to have them widely disseminated in the official language of the State party.

[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.]

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<sup>6</sup> Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.