United Nations CAT/C/82/D/1070/2021

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

Distr.: General
25 April 2025

Original: English

Advance unedited version

Committee against Torture

Decision adopted by the Committee under article 22 of the Convention, concerning communication No. 1070/2021*, **, ***

Communication submitted by:	X (represented by counsel, Frank Selbmann)
Alleged victim:	The complainant
State party:	Germany
Date of complaint:	7 March 2019 (initial submission)
Document references:	Decision taken pursuant to rule 115 of the Committee's rules of procedure, transmitted to the State party on 5 May 2021 (not issued in document form)
Date of adoption of decision:	22 April 2025
Subject matter:	Access to redress for ill-treatment perpetrated by a former regime
Procedural issue:	Exhaustion of domestic remedies; victim status
Substantive issue:	Right to an effective domestic remedy and redress
Article of the Convention:	1, 14 and 16

1. The complainant is X,[1] a national of Germany born in 1949. He claims a violation of his rights under article 14, in conjunction with articles 1 and 16 of the Convention. The State party made a declaration pursuant to article 22 (1) of the Convention, effective from 19 October 2001. The complainant is represented by counsel.

Factual background

2.1 The complainant was born in the former German Democratic Republic (GDR). As a teenager, he attracted the attention of State Security agencies because of his association with other juveniles who were listening to Western music. In the fall of 1965, a conflict ensued between the GDR authorities and teenage fans of Beat music, including detention in labour camps without warrant or trial. On 20 January 1967, the Leipzig District Court sentenced the

* Adopted by the Committee at its eighty-second session (7 April–2 May 2025).

** The following members of the Committee participated in the examination of the communication: Todd Buchwald, Jorge Contesse, Claude Heller, Erdogan Iscan, Peter Vedel Kessing, Liu Huawen, Maeda Naoko, Ana Racu, Abderrazak Rouwane and Bakhtiyar Tuzmukhamedov.

*** Individual opinions by Committee members Todd Buchwald (dissenting) and Jorge Contesse, Erdogan Iscan and Ana Racu (partly dissenting) are annexed to the present decision.

[1] The complainant requested anonymity.

complainant to eight months in prison for incitement to disobey the laws of the GDR – he was accused of distributing leaflets calling for Beat music gatherings. He served the entire term from 29 October 1966, when he was taken into pre-trial custody, to 28 June 1967. In prison, the complainant was allegedly held in inhuman conditions of detention and was tortured and ill-treated by the guards, especially during interrogations at night.[2]

2.2 After release, the Criminal Investigation Department of the People's Police used threats, intimidation, and coercion to compel the complainant to sign an undertaking to become an unofficial collaborator and informant. He was listed as an unofficial collaborator by the Criminal Investigation Department from 6 November 1967 until 18 August 1975.

Rehabilitation under Criminal Law

2.3 After the reunification of Germany, the complainant applied for vacation of his 1967 criminal conviction. On 26 November 1992, the Leipzig Regional Court accepted the request, holding that his criminal trial in 1966-1967 had been unlawful and he had been a victim of unlawful imprisonment, which caused him adverse medical and psychological effects.[3] It also held that his period of imprisonment would be considered for calculating his social compensatory payments by the competent social security authorities. Based on this judgment, on 28 April 1994, the Compensation Board of Dresden Public Prosecutor General's Office awarded the complainant a lump-sum compensation for deprivation of liberty in the amount of 4,950 German Marks. Following an application dated 29 January 2000 – in which the complainant affirmed that he had not worked as a full-time or unofficial collaborator for the Ministry of State Security or for the Criminal Investigation Department – the same Compensation Board granted a supplementary payment in the amount of 450 German Marks on 16 March 2000.

2.4 By recovery order of 21 February 2011, the Compensation Board withdrew its above-mentioned decisions granting compensation. Referring to documentation provided on 8 April 2008 by the then Special Representative for the Documents of the State Security Services of the former GDR, the Compensation Board found that the complainant's role as an unofficial collaborator – during which time he had provided the People's Police with information leading to the imprisonment of five persons for the offence of slandering of the state and, in the case of other persons, to the prevention of passport offences or the offence of flight from the GDR – constituted a reason for excluding him from rehabilitation and compensation under criminal law due to a breach of the principles of the rule of law and humanity.

2.5 According to the Compensation Board, section 16 (2)[4] of the Criminal Rehabilitation Act[5] is applicable to persons who supported the authorities of the former GDR voluntarily and purposefully by providing information to the State Security agency and thereby condoned that the information would be used to the detriment of denounced persons, specifically to suppress their human rights and fundamental liberties. The decision specified that any activity as an informer would constitute, as a rule, such a breach of the principles of humanity or the rule of law, and that there was no need to prove concretely that the activity of an unofficial collaborator had caused acts of persecution against third parties. The mere possibility that information could have endangered any third party was sufficient to exclude the person concerned from rehabilitation and restitution. The Compensation Board relied exclusively on the documents issued and collected by the Criminal Investigation Department to conclude that the complainant had in fact "knowingly and willingly" provided information that had led to the arrest of several persons.

Occupational Rehabilitation

[2] Expert opinions in psychiatry and psychotherapy dated 11 November 2003, 27 May 2004 and 12 November 2006 confirm that following his treatment in detention, the complainant developed depressive symptoms and a post-traumatic stress disorder.

[3] Translation from German by the complainant, no further details.

[4] Which provides that compensation will not be awarded if the entitled person has acted contrary to principles of humanity or the rule of law, or has gravely abused his position in his own interest or to the detriment of others.

[5] Strafrechtliche Rehabilitierungsgesetz (StrRehaG).

2.6 On 7 May 1998, the complainant applied for occupational rehabilitation and for further compensatory payments, declaring that he did not work for the State Security Service. On 1 February 1999, the Saxony Land Office for Family and Social Affairs admitted the complainant's status as a persecuted individual within the meaning of section 1 (1) of the Occupational Rehabilitation Act[6] and his right to compensation, establishing that there were no grounds for exclusion under that Act and determining that his political persecution lasted from 29 October 1966 to 4 December 1969. The complainant appealed in respect of the duration of the period of persecution. On 16 August 1999, the same Land Office accepted that the complainant had suffered from occupational and professional disadvantages on account of his political persecution until 2 October 1990, since he continued to be excluded from employment as a skilled worker until the demise of the GDR.[7] The complainant was thus found to be entitled to social benefits pursuant to section 8 of the Occupational Rehabilitation Act, to be determined by the local social security office, and to compensation for disadvantages suffered in the calculation of his entitlements to old age benefits.

2.7 On 9 March 2011, the Chemnitz Regional Directorate withdrew the rehabilitation certificate of 1 February 1999 and the associated certificate of 16 August 1999 which was issued for pension insurance purposes in accordance with the Occupational Rehabilitation Act. It also rejected as ill-founded the complainant's application for occupational rehabilitation of 7 May 1998. In its reasoning, the Directorate referred to the false information regarding the complainant's activities as an unofficial collaborator, which the complainant had provided when filing the application. The Directorate relied on the Special Representative's report of 8 April 2008, which it had requested as part of an application for the granting of a special allowance for detention victims. The complainant appealed to the Leipzig Administrative Court, invoking inhumane treatment and imprisonment, abuse of prisoners and interrogations at night. However, the Leipzig Administrative Court dismissed his action by judgment of 22 June 2016, refusing to grant leave to appeal on points of law. A further complaint against that refusal to grant leave to appeal was dismissed by the Federal Administrative Court on 10 January 2018.

2.8 On 28 February 2018, the complainant contested the judgment of 10 January 2018 before the Federal Constitutional Court, alleging violations of his right to due process and to effective protection by law. He argued that he had been a political prisoner in the GDR and that while in detention, he suffered from mistreatment that qualify, at least in part, as torture within the meaning of the Convention. He added that as a consequence, he was suffering from post-traumatic stress disorder since his release in 1967. He denounced inhuman conditions of detention. He also contested the uncritical reliance by lower courts on the reports of the Criminal Investigation Department and on transcripts from the Special Representative. Referring to Constitutional Court's jurisprudence, the complainant alleged breaches of his rights to be heard and to address evidence produced against him. However, on 9 May 2018, the Constitutional Court denied his constitutional complaint for decision without comment.[8]

Special allowance for victims of detention

2.9 On 5 August 2007, the complainant applied to the occupational rehabilitation authority for a special allowance for victims of detention pursuant to the Criminal Rehabilitation Act and, in the context of that application, declared that he had not given any verbal or written commitment to collaborate with the Ministry of State Security and that he had not been an unofficial or any other kind of collaborator for the Ministry of State Security. The Chemnitz Regional Commissioner's Office sent a request for information to the then Special Representative, to which the Special Representative responded on 8 April 2008 by stating that there were indications that the complainant had been an unofficial collaborator for the State Security Service. Therefore, on 29 October 2008, the Chemnitz Regional Directorate revoked the award of monthly social benefits, rejected the application for a monthly victim's pension and ordered the complainant to return the contributions awarded

[6] Berufliches Rehabilitierungsgesetz (BerRehaG).

[7] Due to his incarceration, he was expelled from the vocational school he was attending. He subsequently worked as an unskilled labourer and then as a truck driver.

[8] The decision simply mentions: "The constitutional complaint is not accepted for decision."

since 1 September 2007.[9] The Directorate found that the complainant's alleged collaboration with the Criminal Investigation Department disqualified him from claiming victim status and receiving any compensation for the persecution suffered.

2.10 On 24 June 2009, the Leipzig Regional Court dismissed as ill-founded the complainant's application for a court ruling against the decision of 29 October 2008 because the grounds for exclusion set out in section 16 (2) of the Criminal Rehabilitation Act were applicable. The complainant's subsequent appeal against that order was in turn rejected as ill-founded by the Dresden Higher Regional Court on 17 March 2010.

Rehabilitation under Social Security Law

2.11 Following proceedings before the Communal Social Security Fund for Saxony, the complainant was awarded social security contributions in 2004, 2007 and 2010 [10] in accordance with the Criminal Rehabilitation Act. However, on 24 March 2011, the Fund revoked the awards, having been notified of the documentation produced by the Special Representative, and ordered the complainant to return the awards.[11] On 2 December 2016, the Leipzig Social Security Court ruled in complainant's favour and quashed the Fund's decisions to revoke the awards. The court based its decision on the binding effect of the determination of the Compensation Board of Dresden Public Prosecutor General's Office of 28 April 1994, which had affirmed the complainant's entitlement to compensation pursuant to the Criminal Rehabilitation Act. On 22 March 2017, the Fund repeated its intent to revoke the awards because they realized that the Compensation Board had subsequently overruled its own decision. The complainant argued that the decision of the Leipzig Social Security Court was final, hence the matter was settled by agreement between the complainant and the Fund.[12]

Complaint

3.1 The complainant alleges a violation of his rights under article 14, in conjunction with articles 1 and 16 of the Convention. He claims that the remedies provided by the State party for victims of violations of the Conventions are neither effective nor accessible to all victims.[13]

3.2 The complainant explains that State party's legislation requires victims of torture and inhuman or degrading treatment under "the regime of the Socialist Unity Party of Germany" (SED)[14] to pursue three distinct legal sets of proceedings before multiple – and repeatedly changing – authorities that are judicial, prosecutorial and administrative, simply to achieve two of the objectives mandated by article 14 of the Convention: compensation for injuries suffered and social benefits covering occupational rehabilitation and entitlements to retirement benefits and ultimately payments.

3.3 The complainant clarifies that the rehabilitation and redress scheme is based on rehabilitation under criminal law or the vacation of an unlawful conviction and incarceration by the GDR authorities under the provisions of the Criminal Rehabilitation Act. Thus, only a few narrowly defined categories of wrongs are being remedied or, in other words, only certain victims of torture can proceed to a determination whether they deserve remedies within the meaning of article 14 of the Convention. Non-political prisoners or prisoners whose convictions are not considered to have been in violation of principles of the rule of law are ex lege not beneficiaries of the rehabilitation and compensation scheme. For the complainant, this does not meet the standards of the Convention, which does not differentiate between types of prisoners and whether their convictions were eventually quashed.

3.4 The complainant contests the legal provision for an exceptionally far-reaching exclusion rule in that even victims of torture whose GDR convictions are eventually quashed lose all their claims to rehabilitation and restitution if *any* activity as an informer for the State

[9] 3,000 Euros.
[10] Monthly payments of 988 Euros.
[11] 157,857.32 Euros.
[12] The complainant retained the entire amount on the condition that he renounces to bring further claims.
[13] General comment no. 3 (2012) on implementation of article 14 (CAT/C/GC/3), paras. 2 and 5.
[14] Sozialistische Einheitspartei Deutschlands.

Security agencies is attributed to them, even if exclusively on the basis of the information obtained from the GDR security agencies archives. The complainant insists that the Convention does not establish such a limitation, which is contrary to the jus cogens character of the prohibition of torture and inhuman or degrading treatment and of non-discrimination. Thus, the State party's legislation is in itself incompatible with article 14 of the Convention.

3.5 While the complainant accepts limitations of rehabilitation measures in exceptional cases of the most serious crimes such as genocide, crimes against humanity or war crimes, he submits that there is no indication in the files kept by the Criminal Investigation Department suggesting that he ever committed such an act. The complainant was never charged with any crime, any administrative or disciplinary offence for the activities requested from him by the Criminal Investigation Department. He recalls that he was coerced into involuntary cooperation. There is also undisputed evidence in his case that he was subjected to acts of torture and inhuman and degrading treatment during his pre-trial detention and incarceration, in violation of articles 1 and 16 of the Convention. The complainant's narrative in different domestic proceedings regarding mistreatment in detention and subsequent threats by State Security agencies was never challenged or considered anything less than credible and consistent with historical facts.

3.6 For the complainant, the blanket exclusion rule must be seen in the context of the overall intent of the State party to keep rehabilitation for victims of the GDR authorities to a bare minimum, both with respect to beneficiaries and benefits.[15] Research has shown that a significant percentage of the GDR population was involved in one way or another with the State Security agencies. This included, in particular, informing the agencies of dissident thoughts or actions at home, in the neighbourhood, at school or in the workplace, or in social groups. While certain persons did volunteer, the majority were recruited using various forms of coercion, up to torture and the threat of future torture in detention. The complainant therefore concludes that State party's exclusion from rehabilitation and redress of all individuals who are alleged to have had any role in collaborating with the former GDR security agencies denies his right under article 14 of the Convention. While he provided evidence and argued that he was a victim of torture, he was never heard because of the exclusion rule.

3.7 The complainant also considers that the State party has violated his right to prompt redress insofar as the duration of the overall proceedings was of 26 years.

3.8 The complainant then refers to the principle of non-discrimination[16] to argue that in his capacity as a victim of torture, he finds himself in a fundamentally different situation than volunteers who aided the GDR authorities out of their own personal conviction or for other reasons and those who became collaborators without having been tortured and mistreated or facing clear and credible threats of such treatment and corresponding fear in the future. Nonetheless, the German law applied the strict exclusion rule without distinction and without allowing national authorities to assess in any meaningful way the particular circumstances of the complainant's case. The German courts thus failed to protect individuals against discrimination.[17]

3.9 Finally, the complainant submits that the proceedings initiated by the State party with a view to revoke his status as a victim, including the retroactive revocation of compensation previously awarded, themselves constitute both inhuman and degrading treatment under article 16 of the Convention.

State party's observations on admissibility and the merits

4.1 On 30 December 2021, the State party challenged the admissibility of the complaint for failure to exhaust domestic remedies and for lack of victim status. On the one hand, the State party notes that the complainant did not file a constitutional complaint against the order of the Dresden Higher Regional Court of 17 March 2010 in the proceedings concerning the

[15] Federal Government, Materials regarding German Unity and the Reconstruction of the New Federal States, 8 February 1994, Drucksache 12/6854, pp. 78-79.

[16] CAT/C/GC/3, par. 32.

[17] *Nahlik v. Austria* (CCPR/C/57/D/608/1995), para. 8.2.

special allowance for victims of detention (para. 2.10), even though this was possible and could have been reasonably expected from him. He even left completely unchallenged the Compensation Board's recovery order of 21 February 2011. The State party submits that in his constitutional complaint of 28 February 2018, the complainant only invoked procedural, not substantive rights. The State party considers that the complainant did not raise a substantive complaint alleging a violation by the German authorities or courts of the obligation to compensate victims of torture due to the issuance or confirmation of withdrawal notices, as he did not submit such a complaint before any of the lower courts.

4.2 On the other hand, the State party argues that the complainant does not have victim status because he is not directly affected by the alleged breach of the Convention arising from the rehabilitation laws. If the certificate of rehabilitation is withdrawn due to the existence of grounds for exclusion, the status of "persecuted person" within the meaning of section 1 (1) of the Occupational Rehabilitation Act remains unaffected. In such cases, the complainant can simply no longer claim benefits under the Occupational Rehabilitation Act. As is apparent from the reasoning provided in the relevant decisions by the courts and authorities, the withdrawal in the complainant's case was based solely on a reassessment as to whether grounds for exclusion existed within the meaning of section 4 of the Occupational Rehabilitation Act, according to which benefits under the Act are not to be granted if the persecuted person has breached the principles of humanity or the rule of law or has seriously abused his or her position to his or her own advantage or to the detriment of others.

4.3 On the merits, the State party starts by claiming that a violation of article 14 is already ruled out because the complainant has been fully rehabilitated under criminal law and has received adequate redress in the form of compensation payments in a not insignificant amount. Referring to General comment no. 3,[18] the State party notes that as a result of the detention suffered, the complainant received – and was allowed to keep – compensatory payments in the amount of 157,857.52 Euros on the basis of provisions that had been created specifically for the benefit of victims of detention in the GDR. Since the complainant had not been deprived of any assets, there could be no question of restitution. Satisfaction for his (political) persecution and conviction under the SED regime and the guarantee of non-repetition were achieved through the downfall of the GDR, meaning that the five forms of redress have been satisfied in the present case. For the State party, considering the specific circumstances of his imprisonment, the amount of financial redress granted to the complainant appears adequate in light of the health impairments suffered.

4.4 The State party explains that the exclusionary provisions are based on the assumption that a person who has acted in a manner that is damaging to the community has forfeited his or her rights to reparation or compensation. Only the victims of tyranny, and not the perpetrators, should benefit from compensation.[19] The State party takes the view that this intention, which underpins the exclusionary provisions, is perfectly compatible with the guarantees of the Convention insofar as the latter are also aimed purely at protecting victims, but not at protecting the perpetrators. The fact that there is no such explicit limitation in the wording of the Convention does not contradict this assessment, since the problem of overlapping victim/perpetrator status was not addressed within the framework of the Convention's adoption. Contrary to the view of the complainant, the jus cogens nature of the prohibition of torture and inhuman or degrading treatment or punishment and of non-discrimination also remains unaffected when grounds for exclusion are applied. The grounds for exclusion apply only if serious allegations exist, in order to take into account the fact that minor involvement in the political system of a decades-long dictatorship was not uncommon.

4.5 The State party also contests the allegation of a violation of procedural guarantees. In order to assess whether the complainant voluntarily commenced his activities for the People's Police, the Leipzig Administrative Court referred to the complainant's submissions and the impression he made at the oral hearing, and to the medical expert opinion of 11 November 2003. The complainant had ample opportunity during his personal hearing to comment on the specific circumstances of his recruitment, yet he was unable to provide any concrete,

[18] CAT/C/GC/3, paras. 2 and 6.

[19] Explanatory memorandum to the Federal Government's draft for a First Act to Reverse SED Injustice, Bundestag Printed Paper 12/1608, pp. 23 et seq.

substantiated explanations when asked by the court to describe the high-pressure situation he had alleged. The court examined the plausibility of the complainant's statements in light of the available documents – reports on his activities as an informer – and took these into account during its assessment. Against that background, there can be no question that the court was biased or that the complainant did not have the opportunity to question or correct the content of the evidence used.

4.6 As to the alleged excessive length of proceedings, the State party notes that the complainant was already rehabilitated under criminal law by the order of the Leipzig Regional Court on 26 November 1992, and explicit reference was made to the consequential rights arising from his rehabilitation at that time. However, the complainant did not apply for occupational rehabilitation until more than five years later, that is, on 27 April 1998. The first rehabilitation certificate was issued promptly thereafter, on 1 February 1999 and, following an objection by the complainant, was amended in his favour by objection notice of 16 August 1999. The fact that these decisions were not withdrawn until several years later is due to the complainant's own conduct. Since the complainant had denied working as an unofficial collaborator in his application of 27 April 1998, and this misrepresentation was only uncovered during another administrative procedure following a communication from the then Special Representative, the relevant withdrawal notice was not issued until 9 March 2011. The complainant's objection to this, received on 5 April 2011, was rejected by notice of 16 August 2013, following which the complainant brought an action before the Leipzig Administrative Court on 16 September 2013. This was dismissed in turn by judgment of 22 June 2016, with the court refusing to grant leave to appeal on points of law; the subsequent complaint against that decision was then dismissed by the Federal Administrative Court on 10 January 2018. Finally, by order of 9 May 2018, the Federal Constitutional Court declined to admit the complainant's constitutional complaint – substantiated on 28 February 2018 – for decision.

4.7 In light of the above, the State party considers that the complainant contributed significantly to the ultimate length of these proceedings by waiting to file his application and providing false information, whereas the national authorities and courts cannot be accused of procrastination given the complexity of the proceedings, which manifested itself in the necessity to evaluate the Ministry for State Security (Stasi) records and expert medical opinions.

4.8 Finally, the State party submits that the complainant does not explain to what extent he has experienced severe physical or mental pain or suffering as a result of the withdrawal proceedings so that, for this reason alone, his argument alleging a violation of article 14 in conjunction with article 16 must be rejected as unsubstantiated.

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

5.1 On 12 April 2022, the complainant submitted his comments on the State party's observations. As to the admissibility of his communication, the complainant clarifies that in his application to the Federal Constitutional Court of 28 February 2018, he specifically stated that he had been subjected to mistreatment falling within the ambit of the Convention.[20] Similar observations were submitted to the various administrative agencies and courts involved with this matter. His constitutional complaint was based on applicable national (constitutional) law and addressed exactly what the present communication before the Committee is about, namely the absence of access to an efficient remedy pursuant to article 14 of the Convention. Given that the Convention is non-self-executing under German law and does not enjoy constitutional status, the complainant based his constitutional complaint on provisions of the German Basic Law, claiming violations of his domestic rights to access to court and a fair hearing, while stipulating explicitly that he was a victim of torture under the Convention. The Constitutional Court dismissed that complaint without any material consideration.

[20] Copy of his constitutional complaint of 28 February 2018 on file.

5.2 According to the complainant, the Convention has not been incorporated into domestic law at the rank of a constitutional provision, therefore it could not have been directly asserted in the Federal Constitutional Court. In that sense, the complainant notes that the Committee has expressed concern about the lack of detail provided by the State party on cases in which the Convention has been invoked and directly applied before the domestic courts.[21] The complainant also considers that there is no indication whatsoever that a constitutional complaint in any of the other proceedings could have invoked any other new element of evidence, as the substance matter underlying all the domestic procedures was entirely the same.[22] He thus considers that he was not required to pursue repeated appeals up to the Federal Constitutional Court in parallel or successively because he already seized the Constitutional Court with a complaint that combined a clear assertion of his status as a victim of torture and the substantive submission that his rights to a remedy were violated.

5.3 The complainant then refutes the State party's argument on lack of victim status. He points out that all three prongs of rehabilitation and restitution – under criminal law, social security law, and administrative (occupational) law – were applied in his case in numerous decisions and judgments, including the decision of the Federal Constitutional Court. His communication before the Committee sets forth with abundant clarity that the subject matter of his complaints are these decisions in his individual case.

5.4 On the merits, the complainant recalls the absolute character of the prohibition of torture and the fact that the Convention does not distinguish between "good" and "bad" victims of torture. The obligation to provide redress in its article 14 is as absolute as all the other aspects of prevention, punishment, and remedying of torture.[23] For the complainant, the State party attempts to seek the Committee's endorsement of carving out an exception to the absolute character of the prohibition of torture in all its aspects, when it argues that a person who has acted in a manner that is damaging to the community has forfeited his or her rights to reparation or compensation and that exclusionary rules are perfectly compatible with the guarantees of the Convention insofar as the latter are aimed purely at protecting victims, but not at protecting the perpetrators.[24]

5.5 As to the alleged adequate character of the compensation received, the complainant argues that it does not amount to full rehabilitation. Those payments were actually terminated because even victims of torture lose any claim to rehabilitation, restitution and compensation if any activity as an informer for the State Security agencies is attributed to them, even if exclusively on the basis of the files of those agencies. The State party admits that the complainant would no longer be entitled to claim further benefits because of the application of the exclusionary rules. The complainant was allowed to keep the paid benefits only because he agreed to a settlement. He concedes that prior to their termination, those benefits may have been adequate, but in light of their termination, they are no longer adequate, fair, or full by Convention standards.

Additional submission from the State party

6.1 On 7 July 2022, the State party reaffirmed its position and provided further observations. It explains that the complainant did not complain before the Federal Constitutional Court that the system of restitution for SED injustice in Germany for victims of torture in a perpetrator-victim scenario was inadequate because the system is divided into various different parts. Such a complaint would have been entirely possible. Indeed, the other proceedings had already been concluded before the constitutional complaint was lodged. He could, therefore, at least have raised this issue within the context of his constitutional

[21] CAT/C/DEU/CO/6, para. 57. The Committee notes that, in its most recent periodic report submitted under article 19 of the Convention, the State party explains that "the Convention is cited and invoked by the German courts on a regular basis" and that it has "direct application," see CAT/C/DEU/7, paras. 224 and 225.

[22] Per a contrario, *D.Z. v. Switzerland* (CAT/C/71/D/790/2016), para. 9.2.

[23] General comment no. 2 (2008) on implementation of article 2 by States parties (CAT/C/GC/2), para. 1.

[24] The complainant notes that the applicant in the case of *Saadi v. Italy* before the European Court of Human Rights ([GC], no. 37201/06, 28 February 2008) was a perpetrator.

complaint, but failed to do so. Insofar as he now wishes to submit arguments relating to unreasonable expectations, these are not valid.

6.2 In his constitutional complaint, the complainant referred in a subordinate clause to possible ill-treatment when presenting the background to his complaint – which was actually only procedural – and stated that this ill-treatment "must be considered, at least in part, to be torture as defined by the United Nations." There were no other statements on this point. In particular, there were no submissions relating to his present complaint before the Committee. The State party considers that the complainant should have at least submitted statements regarding his recognition as a victim of torture, on the subject of compensation or on the compatibility of the grounds for exclusion with the prohibition of torture, which are now being complained of before the Committee.

6.3 Moreover, the State party deems to be inaccurate to declare that it was impossible to submit statements before the Federal Constitutional Court concerning the Convention. It is true that the Convention does not enjoy constitutional status. However, a submission concerning the substantive significance of the Convention in German law would have been entirely possible according to the case law of the Federal Constitutional Court[25] regarding the interpretation of the national Constitution in the light of ratified international law.

6.4 The State party then insists that the exclusionary rules contained in the relevant domestic laws are compatible with article 14 of the Convention. While the State party reiterates its unconditional respect for the absolute nature and jus cogens character of the prohibition of torture, it submits that the possible exclusion of "victim-perpetrators" from compensatory payments, as provided for in section 16 (2) of the Criminal Rehabilitation Act and section 4 of the Occupational Rehabilitation Act, in no way implies a justification or approval of ill-treatment in violation of the prohibition of torture. The relevant grounds for exclusion have no effect on an individual's rehabilitation under criminal law pursuant to section 1 (1) of the Criminal Rehabilitation Act or their recognition as a persecuted person within the meaning of section 1 (1) of the Occupational Rehabilitation Act. The grounds for exclusion apply only to the exclusion of compensatory payments. They enable the national authorities and courts to verify whether the person concerned has, through his or her action, offended against the principles of humanity or the rule of law or has severely abused his or her position to his or her own advantage or to the detriment of others, so that he or she may to some extent be considered part of the system perpetrating the torture and may, for this reason, have forfeited his or her right to financial compensation. This does not diminish the absolute nature of the prohibition of torture, but ensures that only the victims of tyranny, and not the perpetrators of it, benefit from financial compensation.

6.5 The State party does not share the complainant's view that the absolute character of the prohibition of torture translates into an absolute duty to provide redress, rehabilitation, and compensation. The State party considers that the complainant was not able to demonstrate such an approach with references to the jurisprudence of the Committee and of the European Court of Human Rights because those decisions do not answer the question regarding an absolute duty – derived from article 14 of the Convention – to pay financial compensation to "victim-perpetrators."

6.6 Finally, the State party points to the fact that contrary to what the complainant suggests, the discontinuation of further payments is ultimately not the result of a withdrawal of victim status, but is rather due to the friendly settlement with which he waived the possibility of asserting any further claims and expressly declared himself satisfied with the amount already paid.

Additional submissions from the complainant

7.1 On 9 October and 19 November 2024, the complainant provided further clarifications. As to the State party's statement that the complainant could have submitted a complaint before the Federal Constitutional Court in which he could have challenged the system of restitution for the former GDR injustice in Germany for victims of torture in a perpetrator-

[25] Federal Constitutional Court, order of 14 October 2004, file no.: 2 BvR 1481/08 and order of 29 January 2019, file no.: 2 BvC 62/14, margin no. 61 et seqq.

victim scenario as inadequate, the complainant responded that the lawyer who represented him in the first proceedings refused to file a constitutional complaint for him, and it was not possible to find another lawyer.[26] The complainant was also not aware of the one-month time limit to file a constitutional complaint. The fact that he did not file a constitutional complaint should not be an obstacle, because anyway he initiated unsuccessful proceedings before the Federal Constitutional Court in the subsequent set of proceedings. It cannot be expected from him to file two unsuccessful proceedings before the Constitutional Court.

7.2 While the complainant concedes that his constitutional complaint of 28 February 2018 may have not elaborated on constitutional principles, he considers that it expressed very clearly what was at stake: a victim of torture wanted to be heard and seek a remedy. Victims of torture must merely present their complaint and argue their case clear enough to identify themselves as torture victims and stipulate that they seek rehabilitation and compensation. Then the State party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation.

7.3 The complainant further explains that he could not have filed a request for concrete judicial review because it falls entirely within the discretion of a court to refer to the Federal Constitutional Court the question of constitutionality of a law. The complainant also did not have the option to challenge the Occupational Rehabilitation Act because it entered into force on 23 June 1994, hence the one-year delay to do so had passed long before the relevant proceedings started.

7.4 Finally, the complainant concedes that, "to the best of his knowledge," the national authorities never referred to him by using the specific terms of "victim of torture" or "victim of ill-treatment" or "victim of cruel/inhuman/degrading treatment."

Additional submissions from the State party

8.1 On 29 November and 20 December 2024, the State party explained that a constitutional complaint alleging the failure of the legislation on restitution to comply with either the Convention or the German Constitution – the Basic Law – by denying appropriate restitution and compensation for GDR injustice could have been brought under section 90 (1) of the Act on the Federal Constitutional Court. If the Federal Constitutional Court grants such a complaint, the relevant law is voided. One recent and widely published example of a successful individual complaint against legislation is the Federal Constitutional Court's decision of 24 March 2021 declaring parts of federal climate protection legislation incompatible with the Constitution.[27] In this decision, the Federal Constitutional Court also took account of the State party's international obligations as part of the constitutional order.

8.2 The State party submits that such a complaint against the system as a whole should have been brought within one year from the date when the law entered into force.[28] It notes that the complainant did not bring such an action because he was still hoping at that time that his false statements regarding his activities would go undetected. For the State party, this failure precludes him from bringing now a complaint before the Committee.

8.3 The State party insists that in his constitutional complaint, the complainant did not refer in any meaningful way to possible ill-treatment and did not raise the issues brought before the Committee. For the State party, the reference to "torture within the meaning of the UN Convention against Torture" served merely as an attempt to substantiate the allegation that the courts did not adequately evaluate his situation. The complainant's constitutional complaint does not deal with any concrete ill-treatment suffered or a characterization as torture under the Convention. The State party considers that the constitutional complaint was of a general nature and intended to serve only as an explanation for the asserted fear of renewed imprisonment. Thus, they concern the question whether or not the complainant's activities as an unofficial collaborator could be considered voluntary. The State party considers that the complainant's allegation brought forward in the constitutional complaint

[26] No further details.
[27] 1 BvR 2656/18.
[28] Section 93 (3) of the Act on the Federal Constitutional Court.

was that the ordinary courts ruled incorrectly due to their procedural approach regarding this question.

8.4 The State party concludes that the complainant has never brought before the Federal Constitutional Court either a complaint challenging the system of restitution as a whole or a complaint requesting reparations for any "torture." In the absence of any allegation of torture, the Federal Constitutional Court was not called upon to consider such an allegation. It also could not have done so, since the only question to be addressed would have been whether the lower courts had misinterpreted their constitutional obligations in assessing the procedural relevance of any additional medical opinion.[29]

Additional submission from the complainant

9.1 On 3 January 2025, the complainant insisted that he did file a constitutional complaint against the decision of the Federal Administrative Court of 10 January 2018, submitting comprehensive arguments concerning, in particular, the failure to provide him with a remedy against torture and inhuman or degrading treatment or punishment.

9.2 The complainant considers that the State party seeks to introduce a new threshold for admissibility: victims of human rights violations should not only challenge the acts which they consider a violation of their human rights, but should also be required to institute abstract constitutional proceedings against statutes that might, if and when applied to them, be the root cause of human rights violations. However, the complainant notes that laws applied in individual decisions by domestic authorities have usually been in force for more than one year. As a consequence, the State party could argue in every case that an author failed to file an abstract constitutional complaint at the time the law was adopted.

9.3 The complainant then notes that the State party cites one rare example when a constitutional complaint against a federal statute was successful. Empirical evidence shows that, for instance in 2021, only 1,29 % of constitutional complaints were successful.[30] When it comes to abstract constitutional complaints against statutes and federal laws as such, the quota of success is even smaller.

9.4 The complainant explains that constitutional complaints against a statute or a law are extraordinary measures. The Federal Constitutional Court has made clear that this petition is strongly subsidiary. Only if there is a current violation affecting parties to ongoing proceedings are they allowed to file a constitutional complaint against the law as such.[31] This was not the case in the complainant's proceedings. The moment when the complainant became the victim of a violation of his human rights was when the domestic authorities began to rescind his benefits under the various rehabilitation schemes outlined in the communication. Prior to that, the complainant was the beneficiary of benefits awarded to him and would not have had standing to challenge a statute since he could not assert a disadvantage that would have granted him such standing to file an abstract constitutional complaint.

Issues and proceedings before the Committee

Consideration of admissibility

10.1 Before considering any complaint submitted in a communication, the Committee must decide whether it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22 (5) (a) of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

10.2 The Committee notes that the State party formulates two pleas of inadmissibility of the communication, which it will examine separately.

[29] No further details.

[30] Geringste Erfolgsquote seit 24 Jahren, https://www.lto.de/recht/justiz/j/bverfg-2021-begruendungen-nichtannahmen-jahrestatistik-2021.

[31] BVerfGE 150, 309 = NJW 2019, 842; NVwZ-RR 2022, 241.

10.3 Firstly, the State party argues that the communication should be declared inadmissible for lack of exhaustion of domestic remedies because the complainant: did not file a constitutional complaint against an order concerning the special allowance for detention victims; that he did not challenge the Compensation Board's recovery order of 21 February 2011; that in his constitutional complaint of 28 February 2018, he did not raise a violation by the authorities of the obligation to compensate him as victim of torture; and that he did not complain before the Federal Constitutional Court that the system of restitution for SED injustice in Germany for victims of torture in a perpetrator-victim scenario was inadequate because the system is divided into various different parts. The complainant responded that: in his constitutional complaint of 28 February 2018, he did mention that he had suffered torture as defined by the Convention and claimed a violation of his rights to a fair hearing and access to court because the Convention does not enjoy constitutional status in German law, so he could not have invoked directly the provisions of the Convention; there is no indication that a constitutional complaint in the other proceedings would have led to a different outcome when the substance was the same; and he became a victim after the deadline to complain against the law and anyway there is evidence that the rate of success of such complaints is very low. The Committee notes that the complainant has not commented in respect of an alleged lack of appeal against the Compensation Board's decision of 21 February 2011.

10.4 The Committee notes that in accordance with provisions of domestic legislation, the complainant brought different sets of proceedings – under criminal, occupational and social security law – in order to secure reparation for the alleged treatment that he had suffered in detention from 1966 to 1967. However, he was denied a right to reparation for an already judicially-acknowledged illegal detention and also allegedly prevented from claiming reparation for torture and ill-treatment suffered in detention because according to the law, any activity as an informer in the former GDR would disqualify such persons – as the complainant – from claiming any rehabilitation and compensation. The Committee notes that in this context, the complainant has already used on one occasion – even though at a later moment than that pointed by the State party – the possibility of a constitutional complaint, which was dismissed. The Committee further notes that the State party does not explain the logic of using the same remedy – which anyway proved unsuccessful for his situation – for several similar proceedings. The Committee recalls that having unsuccessfully exhausted one remedy, it should not be required, for the purposes of article 22 (5) (b) of the Convention, to exhaust alternative legal avenues that would have been directed essentially to the same end and would in any case have not offered better chances of success.[32]

10.5 The Committee then notes that in his constitutional complaint of 28 February 2018, the complainant did invoke in a clear way that he had suffered treatment that could be qualified as torture under the Convention and that, as a consequence, he was suffering from post-traumatic stress disorder. The State party also accepts that the complainant referred to "torture under the Convention." This complaint was introduced in the framework of proceedings under the Occupational Rehabilitation Act and in the context of a decision of 1 February 1999 of the Saxony Land Office for Family and Social Affairs admitting the complainant's status as a person who suffered from political persecution. In his constitutional complaint, he also criticized reliance on information that disqualified him, in accordance with the law, from claiming rehabilitation and compensation for the concrete persecution that he had suffered. Therefore, the Committee considers that the complainant made clear before the Constitutional Court his wish to obtain rehabilitation and compensation for alleged torture as defined by the Convention, which was dismissed without any meaningful legal reason.

10.6 The Committee also notes that the complainant did not appeal against the decision of 21 February 2011 of the Compensation Board of Dresden Public Prosecutor General's Office, which revoked the lump-sum compensation awarded to him for illegal deprivation of liberty. However, the Committee notes that the Board relied on the legal exclusionary clause that was always endorsed by the courts in the other proceedings brought by the complainant. The State party itself confirms that the complainant would not have received relief since, according to its legislation, he was not eligible to receive benefits. The Committee therefore considers that

[32] *A v. Bosnia and Herzegovina* (CAT/C/67/D/854/2017), para. 6.4.

such an appeal would have been ineffective, in the particular circumstances of the present case, where similar court proceedings failed to provide relief, and where the State party itself admits that the procedures would have been unsuccessful.

10.7 Finally, the Committee notes the State party's argument that the complainant should have challenged before the Federal Constitutional Court the whole system of restitution. However, the Committee notes that according to the law, this would have been possible only within a year from the entry into force of that law, whereas at that moment the complainant did not suffer from adverse effects following the concrete application of the law. The Committee notes that, anyway, statistics show that the rate of success of such a complaint would have been very low. The Committee therefore considers that in the specific circumstances of the present case, such a remedy would not have been effective for the complainant.

10.8 Consequently, the Committee considers that it is not precluded from reviewing the present communication by virtue of article 22 (5) (b) of the Convention.

10.9 Secondly, the State party contested the victim status, alleging that the complainant is not directly affected by the alleged breach of the Convention arising from the specific provisions of rehabilitation laws because he continues to keep the status of persecuted person and only cannot claim compensation. The complainant responded that he was personally affected by the concrete application of rehabilitation laws. The Committee considers that the complainant has demonstrated that the concrete effects of the exclusionary rule in the rehabilitation laws, which were endorsed by the administrative and judicial authorities, are personal and imminent.

10.10 In that connection, the Committee notes that the complainant himself admits that national authorities never recognized him as being a "victim of an act of torture" as such, as required by article 14 of the Convention. In this connection, the Committee observes that in its decision of 26 November 1992, the Leipzig Regional Court held that the complainant's criminal trial in 1966 had been unlawful and expressly mentioned in its decision that the complainant had been a victim of unlawful imprisonment, which caused him adverse medical and psychological effects. Then on 1 February 1999, the Saxony Land Office for Family and Social Affairs admitted the complainant's status as a persecuted individual. And on 2 December 2016, the Leipzig Social Security Court upheld the complainant's entitlement to compensation pursuant to the Criminal Rehabilitation Act.

10.11 While the complainant has been recognized as being a victim of unlawful imprisonment, the Committee considers that this status does not also imply recognition of his alleged status as a victim of torture or ill-treatment. In that respect, the Committee notes that the complainant claims that he is a victim of torture, but does not explain why he has never brought specific proceedings at the domestic level to invoke precisely acts of torture and/or ill-treatment during his unlawful detention. He also does not explain why he expressly referred to torture before the domestic courts only in his constitutional complaint of 28 February 2018, when the State party ratified the Convention on 1 October 1990, that is, well before the complainant was recognized a victim of unlawful imprisonment on 26 November 1992.

10.12 The Committee recalls that article 14 is only applicable to victims of torture and acts of cruel, inhuman or degrading treatment or punishment.[33] For the Committee, this implies that in order to claim the right to redress under article 14, a complainant needs official recognition – following domestic proceedings – of having been subjected to torture or ill-treatment. The Committee also recalls that, for a claim to be admissible under article 22 of the Convention and rule 113 (b) of its rules of procedure, it must not be manifestly unfounded. In the light of the fact that the complainant has been recognized as being a victim of unlawful imprisonment and not of torture or ill-treatment, and in the absence of any further relevant information as to why he did not lodge proceedings in that sense, besides a separate claim

[33] CAT/C/GC/3, para. 1.

for reparation, the Committee concludes that the complainant has failed to substantiate his victim status sufficiently for the purpose of admissibility.[34]

11. The Committee therefore decides:

(a) That the communication is inadmissible under article 22 (2) of the Convention;

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

[34] Ibid., para. 12.6.

Annex I

Individual opinion of Jorge Contesse (partially dissenting), joined by Ana Racu and Erdogan Iscan

1. I concur with the Committee's rejection of the State Party's claims that (i) the complainant failed to exhaust domestic remedies;[1] and (ii) that "the complainant [was] not directly affected by the alleged breach of the Convention arising from the specific provisions of rehabilitation laws because he continues to keep the status of persecuted person and only cannot claim compensation".[2]

2. However, I dissent with the Committee's decision that "the communication is inadmissible under article 22 (2) of the Convention".[3]

3. Under such provision, "[t]he Committee shall consider inadmissible any communication […] which is anonymous or which it considers to be an abuse of the right of submission of such communications or to be incompatible with the provisions of this Convention".

4. The communication was not anonymous, and the Committee does not indicate that the communication was "an abuse of the right of submission." Therefore, the Committee finds the communication inadmissible because it was "incompatible with the provisions of this Convention" and, as it notes, "manifestly unfounded."[4]

5. According to the Committee, the complainant "failed to substantiate his victim status sufficiently for the purpose of admissibility",[5] as he does not "explain why he has never brought specific proceedings at the domestic level to invoke precisely acts of torture and/or ill-treatment during his unlawful detention", and "why he expressly referred to torture before the domestic courts only in his constitutional complaint of 28 February 2018".[6]

6. The Committee's decision is striking. The complainant's principal claim is that, under the State Party's laws, he was prevented from having his torture claims examined by the German courts. The complainant undertook multiple actions before numerous courts and agencies — except for a potential constitutional complaint to challenge the restitution system, which, as the Committee finds, "would not have been effective."[7]

7. As to the complaint before the Constitutional Court, the complainant explains that (i) he sought remedy for the lack of procedural avenues before the lower courts to have his case examined, and (ii) that he expressly mentioned that he was a victim of torture under the Convention. The State Party does not refute the complainant's claim.

8. I respectfully find it difficult to reconcile the Committee's conclusion that the communication is "manifestly unfounded" with the information and arguments presented. The complainant attempted to have the German courts review his case, but the State Party, relying solely on the findings of the Special Representative for the Documents of the State Security Services of the former GDR —which in turn relied on a handwritten note where the complainant allegedly declared his willingness to serve as a collaborator— dismissed the complainant's claim. The State Party did not investigate whether such a note had been

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[1] Para. 10.8 above.
[2] Para. 10.9 above.
[3] Para. 11 (a) above.
[4] Para. 10.12 above.
[5] Idem. The Committee concludes that, "in order to claim the right to redress under article 14, a complainant needs official recognition – following domestic proceedings – of having been subjected to torture or ill-treatment" (para. 10.12 above). As noted in Mr. Buchwald's dissent, the Committee "cites no authority no support the existence of this 'official recognition' theory". See Individual opinion of Todd Buchwald, para. 4.
[6] Para. 10.11 above.
[7] Para. 10.7 above.

obtained under duress, ill-treatment, or even torture. Instead, the State Party's authorities concluded that the author "had 'knowingly and willingly' ('*wissentlich and willentlich*') […] provided information that had led to the arrest of several persons."[8]

9. By failing to conduct a thorough investigation into whether the complainant had been subjected to torture or ill-treatment as defined under the Convention, the State Party effectively precluded a full and fair assessment of the complainant's allegations.[9]

10. The communication was, in my view, undoubtedly well-founded for the purpose of admissibility. Consequently, the Committee should have examined the merits of the case.

11. On the merits, the complainant may or may not have prevailed. But the Committee missed the opportunity to examine his case, which raised important questions, such as the compatibility of the State Party's legislation with the Convention —whereby "any activity as an informer for the state security agencies"[10] seems to be sufficient to exclude a person from redress—, and whether the absolute prohibition against torture extends to the Convention's provisions on redress.

[8] Decision of the Attorney General of Dresden of 21 February 2011.

[9] Such a failure could incidentally entail a violation of article 12 of the Convention.

[10] Decision of the Attorney General of Dresden of 21 February 2011.

Annex II

Individual opinion of Todd Buchwald (dissenting)

1. I agree with the opinion of Mr. Contesse, Ms. Racu and Mr. Iscan, but write separately to underscore my objection to the Committee's conclusion that claims under article 14 are inadmissible absent "official recognition" that a claimant has been tortured or ill-treated.

2. The case raises numerous questions worthy of consideration, including the extent to which a State Party may deny article 14 compensation based on other conduct in which a complainant has allegedly engaged (with even the complainant agreeing that he could be denied compensation if he had committed genocide, crimes against humanity or war crimes)[1] and whether the €157,857.52 provided by the State Party satisfied whatever obligation would exist if Article 14 did apply.[2]

3. Instead of considering such questions, however, the Committee has chosen to dispose of the case on the theory that it is inadmissible because the wording of article 14 "implies that in order to claim the right to redress under article 14, a complainant needs official recognition – following domestic proceedings – of having been subject to torture or ill-treatment."[3] The Committee cites no authority to support the existence of this "official recognition" theory. Indeed, taken on its face, such a theory would suggest that a State Party could evade its article 14 obligations simply by denying official recognition or failing to establish a mechanism to obtain it.

4. In any event, article 14 embodies not only an obligation for a State Party to provide redress and compensation to victims but also an obligation to ensure that its legal system provides a mechanism under which would-be victims can pursue such redress and compensation. Thus, where – as in the present case – a complainant alleges that he has been harmed by the failure of a State Party to provide such a mechanism, he has presented a claim that does not depend on whether he has been "officially recognized" and the absence of "official recognition" cannot therefore preclude the claim.

5. A conclusion that the lack of "official recognition" renders the case inadmissible is particularly inappropriate in the circumstances of this case. Thus, the Committee expressly recognizes that, in the course of domestic proceedings, "the complainant did invoke in a clear way that he had suffered treatment that could be qualified as torture under the Convention" and that "the complainant made clear before the Constitutional Court his wish to obtain rehabilitation and compensation for alleged torture as defined by the Convention." As the Committee proceeds to note, however, this "was dismissed without any meaningful legal reason."[4] Meanwhile, nowhere does the State Party challenge the complainant's claim of having been tortured or ill-treated or the consistency of his claim "with historical facts."[5]

6. In the final analysis, even if one accepted that a rule existed that required "official recognition" in other circumstances, it cannot be controlling where, as here, the essence of the claim is that the State Party enacted provisions that make irrelevant whether a person was in fact tortured or ill-treated. Article 14 specifically requires a State Party to "ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation." The essence of the complainant's claim is that he has been harmed by the State Party's failure to ensure such a right for a person in his circumstances. That claim may or may not ultimately have prevailed but, in my view, the complainant has a right under the Convention to have the Committee consider it, and the fact

[1] Para. 3.5 above.
[2] Para. 4.3 above.
[3] Para. 10.12 above.
[4] Para. 10.5 above. In regard to the separate decision of the Compensation Board or Dresden Public Prosecutor's General's Office (21 February 2011), with respect to which the complainant did not appeal, the Committee also expressly concludes that in any event "such an appeal would have been ineffective," see para. 10.6 above.
[5] Para. 3.5 above.

that the State Party has not "officially recognized" that he was tortured or ill-treated does not extinguish that right.

7. For these reasons, I respectfully dissent from the Committee's decision.