|  |  |  |  |
| --- | --- | --- | --- |
|  | United Nations | CCPR/C/134/D/2758/2016 | |
| _unlogo | **International Covenant on Civil and Political Rights**  **ADVANCE UNEDITED VERSION** | | Distr.: General  5 September 2022  Original: English |

**Human Rights Committee**

Views adopted by the Committee under article 5 (4) of   
the Optional Protocol, concerning communication No. 2758/2016[[1]](#footnote-1)\*, [[2]](#footnote-2)\*\*

*Communication submitted by:* Olga Litkevich, on her own behalf, and on behalf of her son Sergei Litkevich (deceased) (represented by counsel, Katerina Vanslova, counsel from Komitet Protiv Pytok – an NGO based in Russia)

*Alleged victim:* The author and her son

*State party:* Russian Federation

*Date of communication:* 30 November 2015 (initial submission)

*Document references:* Decision taken pursuant to rule 92 of the Committee’s rules of procedure, transmitted to the State party on 29 March 2016 (not issued in document form)

*Date of adoption of Views:* 11 March 2022

*Subject matter:* Allegations of death in detention in the hands of the authorities, and subsequent lack of effective investigation

*Procedural issue:* Exhaustion of domestic remedies

*Substantive issues:* Effective investigation, right to life, torture

*Articles of the Covenant:* 2 (3), 6 (1), 7

*Articles of the Optional Protocol:* 2, 5 (2) (b)

1.1 The author of the communication is Olga Litkevich, who is submitting it on her own behalf, and on behalf of her son, Sergei Litkevich, a national of the Russian Federation, who died in 2004. She claims to be a victim of a violation by the Russian Federation of her rights under article 7, read alone and in conjunction with article 2 (3), and violation of her son’s rights under article 6 (1), read alone and in conjunction with article 2 (3), of the Covenant. The Optional Protocol entered into force for the Russian Federation on 1 January 1992. The author is represented by counsel.

1.2 On 30 May 2016, pursuant to rule 93 (1) of the Committee’s rules of procedure, the State party requested the Committee to examine the admissibility of the communication separately from its merits. On 5 September 2016, pursuant to rule 93 of its rules of procedure, the Committee, acting through its Special Rapporteur on new communications and interim measures, decided to examine the admissibility of the communication together with its merits.

The facts as presented by the author

2.1 On 7 September 2004, around 1.00 a.m., the author’s son was driving his car in the city of Orsk. Several of his friends were also with him in the car. At some point in time, the traffic police ordered him to stop which he did not and he continued driving. A police car started chasing his car. On Startovaya Street, the author’s son’s car collided with a road barrier, and stopped, since the back tire of the car was damaged. One of the police officers came to the car, grabbed the author’s son and forced him out and into the police car.

2.2 The author’s son was then arrested for drunk driving in the city of Orsk, but did not show any resistance during the arrest. He was taken to a drug treatment centre for a medical attestation to verify his blood alcohol level. During the examination, according to witnesses, the author’s son did not feel well. An ambulance was called at 2:29 a.m., and arrived at 2:37 a.m. The ambulance medical personnel diagnosed him “medium degree of alcoholic intoxication” and prescribed his transfer to a sobering-up station. The traffic police officers took him to this station, also in the city of Orsk, where he was examined by a paramedic and placed in a room with two other men.

2.3 The author submits that at 11 a.m. on the same day, that is, 7 September 2004, her son’s friends came to pick him up from the sobering-up station. Upon suggestion of the station duty officer, they went to the room where he was placed and tried to wake him up, unsuccessfully. They noticed dried blood under his nose and on the shirt. After the station paramedic failed to wake him up as well, an ambulance took the author’s son to the Orsk city hospital No.1. There, however, the doctors found that the author’s son had signs of head and brain injury, but refused to hospitalize him. The author’s son had to be taken to the neurosurgery department of the city hospital No. 2 where he underwent a surgical operation – a craniotomy.[[3]](#footnote-3)

2.4 The author’s son died without gaining conscience on 8 September 2004, at 6.30 p.m. A medical certificate, dated 8 September 2004, issued by the city hospital No. 2, states that the author’s son had the following diagnosis when he was admitted on 7 September 2004: “Severe brain contusion with the destruction of the left frontal lobe, brain compression by acute subdural and epidural hematomas on the left side. Closed linear fracture of the temporal bone with the transition to the occipital bone on the left side. Edema, brain dislocation”.

2.5 A post-mortem forensic examination was initiated immediately after the death. As a result, forensic expert S.N.S., issued a report no. 1093, dated 27 January 2005.[[4]](#footnote-4) This report concluded that the author’s son died as a result of serious injuries to his head, such as fracture of the skull bones, fracture of the right parietal bone, contusion of the brain and its subsequent destruction, and intersection of the brain stem into the greater occipital foramen. The injuries must have been caused by a dull object not long before being admitted to the hospital. The injuries caused serious damage to the health of the author’s son, and his death was a direct consequence of these injuries, the report concluded.

2.6 On 17 February 2005, S.N.S. (para. 2.5 above), issued additional forensic report. This report, which was conducted at the request of the prosecutor’s office, concluded that the injuries that the author’s son suffered, could have been caused by falling down. This expert also stated that it “cannot be excluded” that the injuries were caused not during the night of 6-7 September 2004, but earlier. The expert also opined that despite the injuries, it was possible that the author’s son could have been performing some “activities” after sustaining these injuries, including an ability to talk. Another expert, K.A.M, in a different report, dated 3 November 2004 concluded that the injuries were caused by applying “significant force”, which could have been achieved by “using additional acceleration” and that it is “unlikely” that the injuries could have been caused by falling. So the two forensic expert reports were somewhat contradictory in their findings. Another expert examination No. 141, conducted in January 2006 by M.B.G., concluded that the injuries caused to the author’s son, would have prevented him from doing anything, including talking. This report also concluded that it is excluded that the injuries could have been caused by falling.

2.7 On 13 September 2004, the author requested the prosecutor’s office of the city of Orsk to initiate a criminal investigation into her son’s death. After six refusals, a criminal investigation was finally opened on 19 May 2005. From 2005 to the moment of submission of the present complaint, the investigation had been suspended 18 times. The author has not been informed on many occasions on the progress of the investigation. Despite her numerous successful appeals to the courts, which ordered the reinitiating of the investigation, and concluded there was a lack of action by the investigators and the lack of control over the progress of preliminary investigation, the investigation has not delivered any results and, at the time of submission, was still ongoing.

2.8 There have been no prosecutions in the case of the author’s son’s death, even though multiple witnesses, such as traffic police officers, doctor at the drug treatment centre, ambulance doctor, and paramedics of the sobering-up station all testified that the author did not have any bodily injuries when he was brought to the station. The post-mortem forensic report No. 1093, however, concluded that the author had 11 bodily injuries when his body was examined. Witnesses that were present in the author’s son’s car, also testified that when his car came to a stop, he did not injure himself, as the impact with the road barrier was not very strong.

2.9 The author claims that the lack of proper investigation by the prosecutor’s office for more than ten years after her son’s death, despite all the court decisions in her favour, renders all domestic remedies ineffective.

The complaint

3.1 The author claims a violation of her son’s rights under article 6 (1), read alone and in conjunction with article 2 (3) of the Covenant. She claims that article 6 was violated on substantive grounds because her son died while detained in a state institution and on procedural grounds due to lack of effective investigation. The State party is held responsible for the safety and security of the person it holds in detention. All the evidence points to the fact that the author’s son was injured and died because of these injuries, while in the hands of the government authorities, and they did not properly investigate these claims.

3.2 The author has requested an investigation immediately after her son’s death, on 13 September 2004. The investigators of the prosecutor’s office for the Oktyabrsky District issued six decisions refusing to initiate a criminal investigation. Finally on 19 May 2005, the investigation was launched, and in this decision, investigators stated that there is “sufficient information to indicate signs of crime being committed, under article 111 (4) of the Criminal Code of the Russian Federation”. This means that for eight months, the investigator intentionally avoided initiating an investigation. After the investigation was launched, it was suspended 18 times.

3.3 The author claims that there are significant discrepancies in the investigation into the circumstances of her son’s death. For example, one of the forensic reports is dated 24 February 2005. However, in his decision dated 19 February 2005 refusing to initiate a criminal investigation, the investigator refers to the report that was issued later. In another refusal to initiate an investigation dated 22 September 2004, the investigator refers to testimony of a witness R.A.V., who actually testified only on 18 October 2004. These and other discrepancies were confirmed, but as a result, the investigator P.V.V. was given a reprimand.

3.4 She also claims that her own rights under article 7, read alone and in conjunction with article 2 (3) of the Covenant were violated since after more than ten years[[5]](#footnote-5), she has not received any results of the investigation into the circumstances of her son’s death. The author claims that she can have a victim status along with her son, as she suffered inhumane treatment contrary to article 7 of the Covenant, due to refusal by the State party authorities to conduct a timely, and effective investigation, and prosecute those responsible for her son’s death. The author submits that due to her son’s death under the circumstances which have not been investigated, and reasons for the death were not identified, she experienced stress and suffering, particularly because they were emotionally very close.

3.5 In addition to direct violation of article 7 of the Covenant, the author also claims that the State party violated her rights to an effective investigation, which should result in prosecution of those who caused her son’s death. The author further claims that she could not file a civil lawsuit, as these are tied to the results of the criminal investigation. If someone is found guilty of a crime, these gives a right to victims of this crime to file a civil lawsuit against the defendant. She asks the Committee to find a violation of the Covenant, to urge the State party to pay her fair compensation for the suffering and not to repeat the same violation in the future.

State party’s observations on admissibility

4.1 On 30 May 2016, the State party submitted its observations on the admissibility of the communication. The State party challenges the admissibility of the communication and argues that the author’s complaint should be considered inadmissible under article 2 of the Optional Protocol to the Covenant.

4.2 In accordance to article 389(1) of the Criminal Procedure Code of the Russian Federation, the first instance court decisions that have not come into force, can be appealed by the convicted or acquitted person, his or her defense lawyer and representatives, by a prosecutor, victim, and other persons. In accordance with article 401(1) of the Criminal Procedure Code, a court decision that came into force can be appealed in cassation court by the convicted person, his or her representatives or lawyers. Article 401(2) foresees that a convicted person or his or her representatives or lawyers can file a cassation appeal to the presidium of the Supreme Court of the republic[[6]](#footnote-6), krai or oblast, autonomous region, as well as to the Supreme Court of the Russian Federation.

4.3 The effectiveness of the cassation appeals has been reflected in the decision by the European Court for Human Rights, in 12 May 2015 case, *Abramyan and Yakubovskie v. Russian Federation*, in which the court recognized the cassation procedure in civil cases as an effective remedy that needs to be exhausted. This position should be considered by the Committee when considering the effectiveness of domestic procedures. The Committee on Elimination of Racial Discrimination also took similar approach in its decision *Svetlana Medvedeva v. Russian Federation*.

4.4 Statistical data also support the notion of effectiveness of the cassation procedures. In accordance with the Review of statistical data, the Supreme Court of the Russian Federation considered 64 799 cases cassation appeals under economic, administrative, civil and criminal cases. Of these cases, in 654, it was decided to consider the case in a cassation appeals court. The cassation court considered 240 criminal cases, which resulted in accepting the cassation requests in 226 of them.

4.5 As it transpires from the author’s submission, she did not file a second instance appeal, or a cassation appeal, on the decisions of the Oktyabrsky District Court dated 15 April 2015, and 24 November 2015. The author also did not file a cassation or a supervisory appeal on the decision of the Oktyabrsky District Court dated 17 January 2007.

4.6 The State party therefore submits that author failed to exhaust domestic remedies by failing to appeal the three decisions of the Oktyabrsky District Court under article 125 of the Criminal Procedure Code of the Russian Federation. Consequently, the author’s complaint to the Committee should be considered as inadmissible under article 2 of the Optional Protocol to the Covenant.

Author’s comments on the State party’s observations on admissibility

5.1 On 5 July 2016, the author submitted her comments on the State party’s observations on admissibility of the complaint. The author claims that she does not have to exhaust domestic remedies that are ineffective, insofar as they lack any prospect of success. Therefore, the author is not required to exhaust all domestic remedies, especially when the investigative bodies delay action on the author’s requests, or do nothing to move the investigation forward. The prosecutor’s office of the Oktyabrsky District of the city of Orsk refused to launch an investigation six times, and after the criminal investigation was finally started, it was suspended 19 times[[7]](#footnote-7), based on article 208(1) – in connection with a failure to identify the person to be tried as an accused.

5.2 The author filed numerous complaints to courts. Based on her complaints, for example, three decisions on suspension of the criminal investigation was found to be unlawful. The author therefore does not have any real opportunities to exhaust domestic remedies. Ten years have passed since the criminal investigation has been initiated with no results. Moreover, the author was not informed regarding many decisions to suspend the investigation, and therefore could not appeal these decisions to courts. The author further submits that due to these delays and inability to exhaust domestic remedies, she is facing continuous violation, which is due to ineffective investigation of her claims. This is confirmed by several court decisions, which have found the decisions of the investigator to be unlawful, which would lead to another round of resuming investigation and another suspension.

5.3 The author provides some examples of her complaints being rejected. On 7 July 2009, the deputy chief of the investigation department in the city of Orsk R.O.L informed the author’s lawyer, D.V.A., that it was not possible to study the materials of the criminal case. On 21 July 2009, the Oktyabrsky District Court, upon appeal by D.V.A., found R.O.L’s decision to be unlawful, and demanded the investigation department to “correct the existing mistakes”. On 24 November 2015, the Oktyabrsky District Court issued a finding that the “inaction” of the chief and deputy chief of the investigation department of the city of Orsk was unlawful. According to this decision, the investigator G.I.B., who was intended to be the lead investigator, was sent to another investigation department, and the investigation was not carried out. The authorities, according to court, did not provide any explanations to justify the delay.

5.4 The so-called extensions of time of the preliminary investigation were arbitrary decisions taken by the investigation department. The lawyer D.V.A. challenged these extensions dated 12 April, 30 May, 18 July, 18 September, 2 November 2006; 11 May, 9 July 2007; 11 September, 13 November 2009; and 27 April 2010. The Oktyabrsky District Court again issued a decision, on 2 September 2011, agreeing with the author’s lawyer, and ordering the investigation department “to correct existing violations” within the investigation.

5.5 Based on the above, the author asks the Committee to consider her claims as admissible and find violations on merits, and request the State party to pay fair compensation for the violations she suffered.

State party’s observations on the merits

6.1 On 10 January 2017 the State party provided its observations on merits of the communications. The prosecutor’s office of the Oktyabrsky District in the city of Orsk initiated a preliminary examination in accordance with articles 144-145 of the Criminal Procedure Code of the Russian Federation, into the circumstances of the death of the author’s son. On several occasions, these proceedings were discontinued, and then these decisions in turn were annulled due to “incompleteness of verification” of facts. On 19 May 2005, the investigator started a criminal case based on article 111(4) of the Criminal Code of the Russian Federation.[[8]](#footnote-8) There have been no suspects identified in this investigation.

6.2 On 29 April 2016, the chief of the investigation department for the city of Orsk ordered to annul the decision dated 23 December 2015, on suspension of the preliminary examination. On 4 June 2016, this examination was discontinued. In turn, on 14 June 2016, this decision was annulled, to clarify some findings of the forensics experts. During the preliminary examination, it was ascertained that on 6 September 2004, the author’s son was with his friends drinking alcoholic beverages. During the drinking, there were no conflicts or fights among them, as confirmed by friends present – S.A.D. and A.V.R.

6.3 On the same day, while intoxicated, the author’s son drove his vehicle with approximately ten people inside it. Two traffic police officers attempted to stop the car, but the author’s son did not obey their orders and attempted to flee. At around 1a.m. on 7 September 2004, the author collided with a road barrier, and was detained by the police. During the road accident, the author’s son did not hurt himself. During his arrest, the traffic police officers did not injure the author’s son, as confirmed by several witnesses, such as V.P.D., A.Y.F., S.A.D., and A.V.R.[[9]](#footnote-9). Later on, the author was brought to the drug treatment centre in the city of Orsk, where police officer, V.P.D., started writing an administrative protocol. The author’s son was seated on a bench. At some point, the author’s son fell asleep and tumbled from the bench. This fact is directly confirmed by V.P.D. The medical personnel of the drug treatment centre found the author’s son unconscious, on the floor. An ambulance was called, and the ambulance doctors assisted the author’s son. According to the witnesses at the centre, the author’s son did not suffer any injuries while there.

6.4 From the drug treatment centre, the author’s son was taken to the sobering-up station. The author’s son was placed in the same room as A.I.G, who testified during questioning by the police that he did not witness any workers of the sobering-up station causing any injuries to the author’s son. At 10 a.m. on 7 September 2004, when the workers of the station could not wake up the author’s son, they called an ambulance, and he was transported and hospitalized in the city of Orsk hospital No. 2, where he died at 6:30p.m. on 8 September 2004. On 21 October 2005, the medical forensic experts concluded that the author’s son had a head injury that could have been caused by a contact with a large area, such as floor, and not limited area, such as a fist, a foot, a resin baton or other objects. The experts also concluded that the author’s son’s head was in “moving” motion. The State party submits that the injuries are common for those who fall down, and this fact is confirmed by police officer, V.P.D. The commission of experts did not exclude that the author’s son could have caused his injuries himself by falling down from the bench. As a result, the preliminary examination concluded that the author’s son’s death was caused by his own negligent actions while being intoxicated.

6.5 In July 2015, the author’s lawyer filed a complaint to the Oktyabrsky District Court, claiming unlawful inaction from the investigators, who refused to provide the author access to the contents of the criminal case. On 17 July 2015, the court found that indeed the inaction of the chief of the investigation department for the city of Orsk was unlawful, and ordered for the violations to be corrected. The author’s lawyer further complained to the investigation department of the Orenburg oblast, where Orsk is located, claiming that by not following the court orders, the investigators committed a crime, under article 315 of the Criminal Code of the Russian Federation (“malicious failure to enforce a judgment, court order or other judicial act that has entered into legal force”). On 29 October 2015, the author’s lawyer received a response that his complaint will not be registered in the book of registration, and will not lead to an investigation, since the complaint contained “an assumption that an official committed a crime”.

6.6 The author’s lawyer appealed this decision to the Leninsky District Court in the city of Orsk. On 25 December 2015, the court refused to accept the appeal due to “lack of subject matter”. The author’s lawyer further appeals were also rejected, on 30 March 2016. The courts decided that there is no evidence that the officials “maliciously” avoided enforcing court orders. The courts did not consider these claims on substance, and therefore, the author and his lawyer did not suffer any violations of their right to access to justice.

6.7 There have been no violations of the provisions of the Criminal Procedure Code that would warrant reversal of this earlier decision. Based on all the above, the State party contends that there have been no violations of the provisions of the Covenant regarding the author’s son.

Author’s comments on the State party’s observations on the merits

7.1 On 17 March 2017, the author further submits that the forensic report dated 21 October 2005 concludes that a brain injury where there is an injury to the bone structure of the skull, leads to unconsciousness and inability of the person to act independently. The experts were also asked whether the author’s son’s injuries could have been caused prior to his detention, for example, several days before. The forensic experts responded that the existing brain injuries were caused shortly before admission to the hospital, and the severity of injuries indicates that they could not have been caused during the daytime on 6 September 2004 or several days before. During all the years of investigation, the authorities failed to provide a satisfactory and convincing explanation of the reasons of the death of the author’s son. The State party further failed to provide such explanations in its response to this complaint before the Committee.

7.2 The State party refers to the fact that the death of the author’s son occurred due to his own negligence while being intoxicated, and confirmed by the traffic police officer V.P.D’s testimony[[10]](#footnote-10). Indeed, this police officer, along with several witnesses in the drug treatment centre, confirmed that the author’s son did not have any injuries when he was admitted. Afterwards, however, the author’s son was taken to the hospital while being in coma, and the post-mortem examination No. 1093 identified 11 bodily injuries (see para. 2.8).

7.3 The author submits that the V.P.D.’s report dated 15 September 2004 states that the author’s son was brought to the drug treatment centre and fell asleep on the bench. The personnel of the centre called an ambulance, and ambulance doctors confirmed that the author’s son was drunk, but otherwise “in good health”. In his report on 8 September 2004, the same officer indicated that the author’s son was taken for examination, did not feel well, and fell off from the bench. The ambulance was called, according to this report, and the ambulance doctors told the officer that the author’s son was heavily intoxicated, and should be taken to a sobering-up station, and that’s what the officers did. Another police officer, K.A.M., in a report dated 23 September 2004 stated that the author’s son was intoxicated, lay down on the bench and fell asleep there. This officer and a doctor attempted to wake him up, but could not. At this point, they decided to call an ambulance. In another report by the same office dated 12 November 2004, he stated that during the medical examination, the author’s son fell asleep on the bench in the hallway. The officers attempted to wake him up, but without success, and decided to call an ambulance, which arrived after five minutes. The doctor diagnosed a heavy intoxication and requested the author’s son to be taken to a sobering-up station.

7.4 On 7 February 2005, representatives for the author spoke to the doctor at the drug treatment centre, E.V.I., who testified that he witnessed the author’s son when he was heavily intoxicated on the night in question. After the medical examination, the author’s son fell from the chair, and started vomiting. An ambulance was called, and the doctors stated that “was simply drunk”, and should be placed in a sobering-up station. An ambulance doctor, L.V.N., who was questioned by the representatives of the author, stated that his team was called to the drug treatment centre, where they witnessed a young adult who was on the floor. The doctor examined him, and did not see any bodily injuries. He was absolutely confident that there were no head injuries, and reported so in his registration log. He told the personnel of the centre that he was unhappy that they called an ambulance for such a “small matter”. He witnessed two traffic police officers taking the author’s son to the sobering-up station. Both doctors gave the same testimonies to the investigator from the prosecutor’s office, P.V.V.

7.5 A paramedic, A.M., testified that he was also on call on the night in question, and when he picked up the author’s son from the floor, he did not see any injuries. Another paramedic, B.T.A., who worked at the Oktyabrsky sobering-up station, testified that she examined the author’s son when he was brought there, and did not see any injuries to his head. Two other employees of the station helped the author’s son to take off his clothing, and put him to bed where he slept.

7.6 The author submits that it has long been the Committee’s jurisprudence that the State party is held responsible for any person in its detention, and when such person is injured, the State party must provide evidence to counter the claims of the author[[11]](#footnote-11). The author’s son received 11 bodily injuries while being in a state-owned entity (see paras. 2.8, 7.2), and the State party provided an inadequate explanation that these injuries were caused by the author’s son falling down.

7.7 Regarding the procedural issues, the author explains that on 25 December 2015, the author’s complaint was rejected by the Leninsky District Court. The author appealed to the Orenburg Oblast Court, which was also rejected, on 30 March 2016. On 23 August 2016, the same court refused to consider the author’s claim under cassation procedure. These decisions were adopted with significant violations of the provisions of the Criminal Procedure Code. The first instance court did not inform the complainant about time and place of the hearing. Concerning the report on crime which was submitted by the author’s lawyer, the court found to be a request for information, thus exceeding its own authority. Due to significant delays in investigation, the author does not have any other avenues to complain.

7.8 The author is asking the Committee to find her complaint as admissible, and find a violation, by the State party, of her rights and rights of her deceased son, and pay her fair compensation for the violations suffered.

Issues and proceedings before the Committee

Consideration of admissibility

8.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with article 97 of its rules of procedure, whether the communication is admissible under the Optional Protocol.

8.2 The Committee has ascertained, as required under article 5 (2) (a) of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

8.3 The Committee notes the State party’s argument that the author has failed to exhaust all available domestic remedies because she has failed to file a second instance appeal, or a cassation appeal, on the decisions of the Oktyabrsky District Court dated 15 April 2015, and 24 November 2015. The State party also claims that the author did not file a cassation or a supervisory appeal on the decision of the Oktyabrsky District Court dated 17 January 2007 (see para. 4.5 above). However, the Committee takes note of the author’s claim that she has submitted a number of complaints regarding the death of her son, and the lack of effectiveness of the investigation by the Prosecutor’s Office, without any result, and that the investigation has been ongoing since 2004. The Committee takes note that in 2005 alone, the author filed numerous complaints, such as on 11 February, 5 March, 3 May, 3 June, and 13 July 2005 (two complaints on this last date). The Committee notes that following the court decisions favourable to the author, the investigation would resume, only to be postponed to a later date. Under these circumstances, the Committee considers that domestic remedies have been unreasonably prolonged.[[12]](#footnote-12) The Committee accordingly finds that article 5, paragraph 2 (b), of the Optional Protocol does not preclude it from considering the communication.

8.4 The Committee considers that the author’s claims, raising issues under articles 6 (1), read alone and in conjunction with article 2 (3) regarding the author’s son, and 7, read alone and in conjunction with article 2 (3) of the Covenant, regarding the author herself, have been sufficiently substantiated for the purposes of admissibility and proceeds to their examination on the merits.

Consideration of the merits

9.1 The Committee has considered the case in the light of all the information submitted to it by the parties, in accordance with article 5 (1) of the Optional Protocol.

9.2 The Committee notes the author’s claim that her son was apprehended by the traffic police officers, was taken to drug treatment centre and subsequently, to the sobering-up station, and while in the hands of the State party authorities, he sustained injuries to his head. The Committee further notes that from the sobering-up station, the author’s son was taken to a hospital, where he died following the surgery to treat his head injuries. The Committee also notes that several forensic medical examinations were performed. The first one, No. 1093, dated 27 January 2004, was initiated, according to the copy of the report, on 10 September 2004, that is, immediately after the death of the author’s son. This report made several findings, such as identifying injuries that were the cause of the death, and concluding that it is “unlikely” that the author’s son died from falling down himself. The Committee also notes that the State party confirms the findings of this report No. 1093 and that it identified 11 bodily injuries on the author’s son’s body. The Committee further notes that the second forensic report dated 17 February 2005 indicated that the author’s son could have died from falling down. Another expert examination No. 141, conducted in January 2006, concluded that it is excluded that the injuries could have been caused by falling. The Committee observes that the State party did not take any measures to shed light on these contradictions. The Committee further notes the testimonies of several witnesses – friends of the victim, police officers and cell mates, who stated that the author’s son did not have any injuries until the moment when he was brought into the sobering-up station.

9.3 The Committee notes the author’s claim that the death of her son occurred while he was being transported and held in the hands of the State party’s authorities. The Committee recalls its jurisprudence, including its general comment No. 36, para. 29, according to which the States parties, by arresting and detaining individuals, take responsibility to care for their life,[[13]](#footnote-13) and that criminal investigation and subsequent prosecution are necessary remedies for violations of human rights, such as those protected by article 6 of the Covenant.[[14]](#footnote-14) The Committee also recalls its general comment No. 31, in which it stated that, where investigations revealed violations of certain Covenant rights, such as those protected under article 6, States parties must ensure that those responsible are brought to justice. Although the obligation to bring to justice those responsible for a violation of articles 6 is an obligation of means, not of result,[[15]](#footnote-15) States parties have a duty to investigate, in good faith and in a prompt and thorough manner, all allegations of serious violations of the Covenant that are made against them and their authorities.

9.4 The Committee further recalls that the burden of proof concerning factual questions cannot rest exclusively on the author of the communication, especially considering that the author and the State party do not always have equal access to evidence and that frequently only the State party has access to relevant information.[[16]](#footnote-16) In that regard, the Committee notes that the author’s lawyer was denied access to the contents of the criminal case, which was found by courts to be unlawful (para. 6.5 above). The Committee further notes that the criminal investigation in such a time-sensitive matter, in addition to being started eight months after the events in question, was later suspended 18 times.

9.5 The Committee concludes that, in the light of the State party’s failure to conduct an adequate and conclusive investigation to rebut the author’s allegations that her son died while in custody, during which he suffered injuries that ultimately caused his death (para 3.1), the facts as submitted reveal a violation by the State party of article 6 (1) read alone and in conjunction with article 2(3) the Covenant with regard to the rights of the author’s son.

9.6 The Committee notes the author’s claims that the lack of an effective and conclusive investigation prevented the author to know the exact circumstances of her son’s death, which is the cause of stress and suffering amounting to torture. The Committee observes that although some 18 years have elapsed since the death of her son, the author still does not know the exact circumstances surrounding it, and the State party’s authorities have been unable or unwilling to conduct an effective investigation. The Committee understands the continued anguish and mental stress caused to the author as the mother of the person who died in custody, and considers that it amounts to inhuman treatment of the author, in violation of article 7 of the Covenant[[17]](#footnote-17).

9.7 In the light of this conclusion, the Committee decides not to examine the author’s claims of violation of her rights under article 7, read in conjunction with article 2 (3) of the Covenant.

10. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts before it disclose a violation of the author’s rights under article 7 of the Covenant, and her son’s rights under article 6 (1), read alone and in conjunction with article 2 (3).

11. Pursuant to article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the author with an effective remedy. This requires it to make full reparation to individuals whose Covenant rights have been violated. Accordingly, the State party is obligated, inter alia, to take appropriate steps to conduct an effective, thorough, prompt and impartial investigation into the author’s allegations; and provide the author with adequate compensation for the violations occurred. The State party is also under an obligation to take steps to prevent similar violations occurring in the future.

12. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant and to provide an effective remedy when it has been determined that a violation has occurred, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee’s Views. The State party is also requested to publish the present Views and disseminate them widely in the official languages of the State party.

1. \* Adopted by the Committee at its 134th session (28 February–25 March 2022). [↑](#footnote-ref-1)
2. \*\* The following members of the Committee participated in the examination of the communication: [Wafaa Ashraf Moharram Bassim](https://www.ohchr.org/Documents/HRBodies/CCPR/Membership/Bassim_ENG.pdf), [Yadh Ben Achour](https://www.ohchr.org/Documents/HRBodies/CCPR/Membership/CV_BEN_ACHOUR_FRE.docx), [Arif Bulkan, Mahjoub El Haiba](https://www.ohchr.org/Documents/HRBodies/CCPR/Membership/CV_El_Haiba.pdf), Furuya Shuichi, Carlos Gómez Martínez, Marcia V.J. Kran, Photini Pazartzis, Hernán Quezada, Vasilka Sancin, José Manuel Santos Pais, Soh Changrok, [Kobauyah Tchamdja Kpatcha](https://www.ohchr.org/Documents/HRBodies/CCPR/Membership/Tchamda_FRE.pdf), Hélène Tigroudja, Imeru Tamerat Yigezu and Gentian Zyberi. [↑](#footnote-ref-2)
3. A copy of this document has been provided, along with all other supporting medical certificates, copies of complaints, court decisions, etc. [↑](#footnote-ref-3)
4. Copy of this report, and other forensic report examinations, have been provided by the author. This report indicates that the examination started on 10 September 2004 and completed on 27 January 2005. [↑](#footnote-ref-4)
5. From the moment of death until the submission of the complaint before the Committee, the author has been continuously submitting complaints to the State party authorities, both courts and the prosecutor’s office. [↑](#footnote-ref-5)
6. As a highest court of the federal unit of the country – which is different from the Supreme Court of the Russian Federation. [↑](#footnote-ref-6)
7. In her initial submission, the author mentions 18 suspensions. [↑](#footnote-ref-7)
8. Informal translation of Article 111: Intentional infliction of grievous harm to health, dangerous to life or resulting in loss of vision, speech, hearing or any organ or loss of function of an organ, interruption of pregnancy, mental disorder, drug or substance abuse, or expressed in permanent disfigurement of a person, or resulting in significant permanent loss of general capacity for work by at least one third or total loss of professional capacity, knowingly for the guilty party. Part 4: resulting in the victim's death through negligence. [↑](#footnote-ref-8)
9. S.A.D. and A.V.R are the same friends as in para. 6.2. [↑](#footnote-ref-9)
10. Please see para 6.3 of the SP’s submission. [↑](#footnote-ref-10)
11. The author refers to communications No. 907/2000, *Sirajev v Uzbekistan*; 889/1999, *Jeikov v. Russia*, and 1225/2003, *Eshonov v. Uzbekistan*. [↑](#footnote-ref-11)
12. See, inter alia, communications No. 1560/2007, *Marcellana and Gumanoy v.* *Philippines*, Views adopted on 30 October 2008, para. 6.2; No. 1250/2004, *Lalith Rajapakse v. Sri Lanka*, Views adopted on 14 July 2006, paras. 6.1 and 6.2; and No. 992/2001, *Bousroual v.* *Algeria*, Views adopted on 30 March 2006, para. 8.3. [↑](#footnote-ref-12)
13. *Lantsova v. Russian Federation* (CCPR/C/74/D/763/1997), para. 9.2; *Boboev v. Tajikistan* (CCPR/C/120/D/2173/2012), para. 9.3; and the Committee’s general comment No. 36 (2018) on the right to life, para. 29. [↑](#footnote-ref-13)
14. *Sathasivam and Saraswathi v. Sri Lanka* (CCPR/C/93/D/1436/2005), para. 6.4; *Umetaliev and Tashtanbekova v. Kyrgyzstan* (CCPR/C/94/D/1275/2004), para. 9.2; and *Boboev v. Tajikistan*, para. 9.3. [↑](#footnote-ref-14)
15. *Prutina et al. v. Bosnia and Herzegovina* (CCPR/C/107/D/1917/2009, 1918/2009, 1925/2009 and 1953/2010), para. 9.5; and *Boboev v. Tajikistan*, para. 9.3. [↑](#footnote-ref-15)
16. Communications No. 30/1978, Le*wenhoff and de Bleier v. Uruguay*, Views adopted on 29 March 1982, para. 13.3; and No. 84/1981, *Dermit v. Uruguay*, Views adopted on 21 October 1982, para. 9.6; and *Boboev v. Tajikistan*, para. 9.4. [↑](#footnote-ref-16)
17. See, inter alia, *Magomadova v. Russia*, (CCPR/C/125/D/2524/2015), para. 7.7. [↑](#footnote-ref-17)