United Nations CCPR/C/140/D/2987/2017

International Covenant on Civil and Political Rights

Distr.: General
21 May 2024

Original: English

Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2987/2017*, **, ***

Communication submitted by:	Valentina Akulich (not represented by counsel)
Alleged victim:	Aleksandr Akulich
State party:	Belarus
Date of communication:	2 February 2016 (initial submission)
Document references:	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 12 June 2017
Date of adoption of Views:	15 March 2024
Subject matter:	Excessive use of force by the police; lack of effective investigation; lack of medical assistance in detention
Procedural issue:	Exhaustion of domestic remedies
Substantive issues:	Cruel, inhuman or degrading treatment or punishment; torture – prompt and impartial investigation
Articles of the Covenant:	2 (3) and 7
Articles of the Optional Protocol:	2 and 3

1.1 The author of the communication is Valentina Akulich, a national of Belarus born in 1956. She claims that the State party has violated articles 2 and 7 of the Covenant with regard to her deceased son. The Optional Protocol entered into force for the State party on 30 December 1992. The author is not represented by counsel.

1.2 The present communication was submitted for consideration before the State party's denunciation of the Optional Protocol became effective, on 8 February 2023. In accordance with article 12 (2) of the Optional Protocol and the Committee's previous case law, the State

* Adopted by the Committee at its 140th session (4–28 March 2024).

** The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Wafaa Ashraf Moharram Bassim, Rodrigo A. Carazo, Yvonne Donders, Mahjoub El Haiba, Laurence R. Helfer, Carlos Gómez Martínez, Bacre Waly Ndiaye, Marcia V.J. Kran, Hernán Quezada Cabrera, José Manuel Santos Pais, Soh Changrok, Tijana Šurlan, Kobauyah Tchamdja Kpatcha, Teraya Koji, Hélène Tigroudja and Imeru Tamerat Yigezu.

*** An individual opinion by Committee member Hélène Tigroudja (partially dissenting) is annexed to the present Views.

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party continues to be subject to the application of the Optional Protocol in respect of the present communication.[1]

Factual background

2.1 The author is the mother of Aleksandr Akulich, born in 1978. On 22 May 2012, Mr. Akulich was apprehended by the police on the street in an inebriated state and placed in a temporary detention facility in the Svyetlahorsk district police department.[2] On 24 May 2012, the Svyetlahorsk District Court sentenced him to five days in administrative detention. Late on 25 May 2012, Mr. Akulich started to hallucinate,[3] run around the cell and bother his cellmates, who complained to the duty officer. The duty officer was instructed by a senior duty officer to monitor Mr. Akulich's behaviour over video camera. The duty officer reported that Mr. Akulich was walking in the cell and trying to hide in the corners. Having received more complaints from his cellmates, at about 12.30 a.m. on 26 May 2012, two police officers removed Mr. Akulich from the cell. According to the statements they provided later, they recognized the symptoms of alcohol withdrawal psychosis in his behaviour. They wanted to take him to the interrogation room to check that he was not feigning his symptoms and to call an ambulance if necessary.

2.2 Mr. Akulich resisted his removal from the cell and behaved aggressively.[4] According to their testimonies, the officers hit him several times with their rubber batons to calm him down. They attached him to the bars with handcuffs so that he could not hurt himself. Mr. Akulich managed to turn to face the bars and started hitting himself against the bars. The officers went to the room to adjust the handcuffs. When they opened the handcuffs, Mr. Akulich escaped and ran into the corridor. They caught him and attached his hands to the bars in the corridor. At some point, they noticed that his condition was getting worse, so they removed the handcuffs and laid him on the floor to provide medical assistance. The police officers called an ambulance at about 1.05 a.m. on 26 May 2012. When the ambulance arrived, at 1.10 a.m., Mr. Akulich was already dead. According to the medical-forensic reports,[5] his death was caused by chronic alcohol intoxication (alcohol dependence

[1] For example, *Sextus v. Trinidad and Tobago* (CCPR/C/72/D/818/1998), para. 10; *Lobban v. Jamaica* (CCPR/C/80/D/797/1998), para. 11; and *Shchiryakova et al. v. Belarus* (CCPR/C/137/D/2911/2016, 3081/2017, 3137/2018 and 3150/2018).

[2] According to information on file, Mr. Akulich had been under the effect of alcohol continuously for the two weeks before his arrest.

[3] In one of the statements, one of Mr. Akulich's cellmates reported that, at about 10 p.m. on 25 May 2023, Mr. Akulich started hallucinating and feeling scared, thinking that he was being followed. The cellmate talked to him and calmed him down and Mr. Akulich went to sleep.

[4] According to the police officers' statements, Mr. Akulich did not want to leave the cell. They asked the other cellmates to leave the cell, and he followed. When the rest of them returned, Mr. Akulich stayed in the corridor. He resisted being taken away, grabbed one officer by the uniform and tried to hit him. He did not react to warnings and the officers had to use physical force to stop him. They hit Mr. Akulich on the legs and arms, which is allowed by the legislation in such situations. They avoided sensitive areas such as the head, the feet and vital organs. One of the officers explained that he had called an ambulance, from the only telephone situated outside the building, as soon as he could without leaving his colleague in a dangerous situation, as well as without leaving Mr. Akulich alone, as he could have caused an injury to himself.

[5] The first medical-forensic examination was started on 26 May 2012. There have been a number of medical-forensic reports in the case, only one of which, report No. 57 of 21 August 2013, is on file. According to medical-forensic reports No. 362, dated 29 May 2012 (medical-forensic examination started on 26 May 2012), and No. 134, dated 25 June 2012, Mr. Akulich suffered from atherosclerotic heart disease, with morphological manifestations including coronary artery atherosclerosis and scar tissue in the heart muscle. This condition was complicated by an acute circulatory disorder, which was the direct cause of death. The presence of another disease, bilateral serous-purulent focal pneumonia, played a contributory role in the development of the acute circulatory disorder. In additional medical-forensic reports No. 851 of 19 June 2012, No. 51 of 9 November 2012, No. 57 of 21 August 2013 and No. 169 of 20 May 2013, it was concluded that Mr. Akulich had died of chronic alcohol intoxication complicated by the development of alcohol withdrawal with delirium and cerebral oedema. In report No. 72 of 29 April 2013, it was identified that Mr. Akulich had intrapleural hematoma, possibly caused by a lung contusion. Report No. 51 also contained mention of several

syndrome), complicated by the development of alcohol withdrawal psychosis with delirium and cerebral oedema.[6] Eighteen bodily injuries were identified on the body of Mr. Akulich.[7] They were considered light and not a cause of his death.

2.3 On 26 June 2012, the Svyetlahorsk District Investigative Committee refused to initiate a criminal investigation in relation to the death of Mr. Akulich, given the absence of corpus delicti in the actions of the police officers who had used force when faced with resistance, in accordance with the Law on Police. On 9 July 2012, the Svyetlahorsk District Prosecutor overruled the decision of 26 June 2012 and returned the case to the investigator for further investigation. On 22 July 2012, upon completion of the additional inquiry, the investigator refused to open a criminal investigation. On 14 September 2012, a supervising prosecutor overruled the 22 July 2012 refusal and remitted the case for further investigation.

2.4 Between September 2012 and February 2015, the domestic authorities carried out a preliminary inquiry into the death of Mr. Akulich on multiple occasions, each time finding that there were no grounds to open a criminal investigation. Decisions not to open a criminal investigation were adopted on 30 September 2012, 30 January, 31 March, 9 June, 10 August and 24 October 2013, 3 December 2014 and 7 February 2015. The author challenged all decisions to the supervising prosecutors. As a result, the decisions not to open a criminal investigation were overruled by supervising prosecutors and courts on 16 January, 19 March, 30 May, 1 August and 10 October 2013, 24 October 2014 and 28 January and 12 October 2015. Each time, an additional inquiry was ordered.

2.5 The author challenged the refusal of 24 October 2013 to open a criminal case before the Svyetlahorsk District Court of the Homiel Region. In its decision of 18 April 2014, the District Court rejected her complaint, having found no sufficient grounds to initiate criminal proceedings. The court noted that, in the particular circumstances of the case, the police officers' conduct towards Mr. Akulich did not disclose any appearance of a criminal offence as it had been justified by his violent and aggressive behaviour.

2.6 On an unspecified date in 2014, the author requested the President of the Supreme Court to lodge an application for supervisory review of the decision of 18 April 2014, on the ground that the actions of the police officers had been classified incorrectly and that the investigation had been incomplete. On 22 September 2014, the Deputy President of the Supreme Court lodged a supervisory review request with the Presidium of the Homiel Regional Court, indicating as the main ground for the request the substantial contradictions between the conclusions of different medical-forensic examinations concerning the cause of death of Mr. Akulich.

2.7 On 6 October 2014, the Presidium of the Homiel Regional Court quashed the Svyetlahorsk District Court decision of 18 April 2014 and remitted the case to the same court for a new examination. In its decision, the Homiel Regional Court endorsed the Svyetlahorsk District Court's findings as to the absence of wrongful actions on the part of the police officers. It quashed the Svyetlahorsk District Court's decision because the court had not clarified why different conclusions concerning the cause of Mr. Akulich's death were reached in different medical-forensic reports. On 24 October 2014, following the new examination of

streak-like haemorrhages on the victim's posterior chest wall, which could have been inflicted by a baton. An additional medical-forensic report, No. 623 of 16 January 2015, was aimed at clarifying some of the differences identified by the courts in some previous reports. It was confirmed that Mr. Akulich had had a lung contusion caused by an unidentified traumatic impact to the chest area between 12 and 24 hours before the death. The contusion was not the cause of death. In the report, the conclusion as to the cause of death stated in reports Nos. 851, 51, 57 and 169 was confirmed.

[6] In the decision not to open a criminal investigation dated 26 November 2015, there is a statement by an anaesthesiologist at a psychoneurological clinic to the effect that the symptoms manifested in the behaviour of Mr. Akulich, as described to him, could indicate a rapid development of cerebral oedema upon alcohol withdrawal. It is impossible to identify without special medical training. Cerebral oedema is treated through a skull trepanation. However, a rapidly developing cerebral oedema cannot be treated, even with surgery.

[7] In their testimonies, the police officers mentioned that one of them had hit Mr. Akulich in the legs once and the other officer had hit him two or three times. The officers believed that the other injuries found on the body of Mr. Akulich were caused when he resisted in a narrow corridor and hit himself against corners, edges, pipes and, later, the metal bars to which he was handcuffed.

the author's complaint, the Svyetlahorsk District Court determined that the 24 October 2013 refusal to open a criminal investigation had been premature and ordered an additional inquiry. Among the omissions of the investigation, the court noted the failure of the investigator to clarify why the police officers had had to use force to restrain Mr. Akulich and the failure to interview witnesses, namely Mr. Akulich's cellmates and persons detained in the cells near the place where he had been handcuffed.

2.8 On 7 February 2015, the investigator once again refused to open a criminal case. On an unspecified date in 2015, the author challenged this refusal before the Svyetlahorsk District Court, complaining that the actions of the police officers had been classified incorrectly and that the preliminary inquiry was incomplete. On 12 October 2015, the court quashed the decision of 7 February 2015, having found that the investigative measures did not fully comply with the instructions of the Svyetlahorsk District Court of 24 October 2014. The court ordered an additional inquiry.

2.9 On 26 November 2015, the investigator again refused to open a criminal investigation. According to the decision, the physical force and the measures of restraint applied to Mr. Akulich were in conformity with domestic law, given his violent and aggressive behaviour. Because of his behaviour, the officers on duty did not have a real possibility to provide him with medical assistance in a timely manner.

2.10 The author submits that she has duly exhausted all domestic remedies available to her. She states that the court decisions concerning refusal to open a criminal investigation are final and can only be appealed under the supervisory review procedure, which is at the discretion of a prosecutor or a judge. In view of the author's many unsuccessful attempts to request the domestic authorities to open an investigation into the death of her son, she is of the view that an appeal under the supervisory review procedure would not be effective. Furthermore, the domestic authorities, including the courts, have expressed a firm position as to the conformity of the State agents' conduct with domestic law; therefore, any further attempts to challenge the refusals to open a criminal case are unlikely to bring any positive results.

Complaint

3.1 The author claims a violation of articles 2 and 7 of the Covenant on account of the alleged ill-treatment of her son by agents of the State, the lack of medical assistance provided to him in detention that allegedly resulted in his death and the lack of effective investigation into the matter. In particular, the author contends that the officers on duty at the time of the events were well aware of the fact that the health condition of her son had significantly deteriorated and that he had been in urgent need of medical assistance in view of his alcohol withdrawal syndrome. However, the officials failed to take timely measures to ensure that the necessary assistance was provided to him, which ultimately resulted in his death. She submits that the physical force applied to her son was disproportionate in the circumstances and that it amounted to inhuman treatment contrary to article 7 of the Covenant.

3.2 The author asks the Committee to recommend that the State party provide an effective remedy, namely by conducting an investigation into the incident, and take measures in order to prevent the occurrence of similar violations in the future by bringing the national legislation in relation to ill-treatment into line with the requirements of the Covenant.[8]

State party's observations on admissibility

4. By note verbale dated 22 August 2017, the State party submitted its observations on the admissibility of the communication. The State party presents the facts of the case and the procedural steps of the investigation, as submitted by the author. It submits that the author

[8] The author points out deficiencies in the criminal legislation of Belarus, noting that the Criminal Code does not treat ill-treatment as a separate crime. It contains provisions on criminal liability in case of abuse of power combined with serious consequences or violence, or use of force or special measures of restraint (article 426, punishable by a fine, disqualification or up to a maximum of 10 years' imprisonment) and endangerment (article 159, punishable by a fine, penal labour for up to one year or restriction or deprivation of liberty for up to three years).

did not appeal against the decision not to open a criminal investigation dated 26 November 2015 to the courts. She also had the possibility to submit complaints to the Prosecutor General, his deputies and the President of the Supreme Court until the criminal liability for the crimes alleged by the author is status-barred. The State party submits that, in view of the author's failure to exhaust domestic remedies, her complaint is inadmissible under articles 2 and 3 of the Optional Protocol.

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

5.1 On 28 May 2018, the author provided her comments on the State party's observations on admissibility. She contests the State party's position and argues that the remedies referred to by the State party are ineffective. The author claims that she appealed against every refusal by the Svyetlahorsk District Investigative Committee to open a criminal investigation into the death of her son. She submits that the limitation of the procedure to only a preliminary inquiry, without the opening of a criminal investigation, deprived her of any procedural rights as a victim, as she could not attend an in-person questioning of the witnesses, the witnesses were not under criminal liability for providing any false statements and there was no investigative experiment or on-site testimony verification.

5.2 The preliminary inquiries carried out in the first year after the death of her son established all the relevant facts. The author did not question the evidence but contested its interpretation and the classification of the police officers' actions. The police officers knew about her son's alcohol dependence, as they had received complaints from his cellmates for two hours and had monitored his behaviour over video camera, and yet, instead of calling an ambulance, they removed him from the cell by force and tried to immobilize him using force and beating him for half an hour. The investigators never viewed the actions of the police officers from the standpoint of international standards prohibiting ill-treatment. Medical-forensic specialists refused to pronounce themselves on whether timely medical assistance could have prevented the death of her son. New inquiries did not establish new evidence but, with the passing of time, witnesses started to forget details or change them for the benefit of the investigator. Court decisions did not change the outcome of additional inquiries. Repeated court appeals would not be effective.

Issues and proceedings before the Committee

Consideration of admissibility

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

6.2 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.

6.3 The Committee notes the State party's argument that the author failed to exhaust domestic remedies by not challenging the Svyetlahorsk District Investigative Committee's decision dated 26 November 2015 not to open a criminal investigation. The Committee notes that the author has exercised due diligence in contesting the 10 previous refusals of the Investigative Committee to the supervising prosecutors (see paras. 2.3 and 2.4 above) and to the courts (see paras. 2.5–2.8 above). It finds that the preliminary inquiry process has been unreasonably prolonged as it lasted for more than three years, with numerous reopenings of inquiries. The Committee, therefore, considers that it is not prevented by virtue of article 5 (2) (b) of the Optional Protocol from examining the communication.[9]

6.4 The Committee notes that the author claims a violation of her son's rights under articles 2 and 7 of the Covenant. In view of the fact that the author is not represented by

[9] *Chernev v. Russia Federation* (CCPR/C/125/D/2322/2013), para. 11.3; *J.S. v. Australia* (CCPR/C/135/D/2804/2016), para. 7.3; and *Alakuş v. Türkiye* (CCPR/C/135/D/3736/2020), para. 9.5.

counsel, the Committee considers that the claims should be formulated as a violation of article 7, read alone and in conjunction with article 2 (3), of the Covenant.

6.5 The Committee finds that the author's claims under article 7, read alone and in conjunction with article 2 (3), of the Covenant are sufficiently substantiated for the purposes of admissibility. It therefore declares the communication admissible and proceeds with its consideration of the merits.

Consideration of the merits

7.1 The Committee has considered the communication in the light of all the information made available to it by the parties, as provided under article 5 (1) of the Optional Protocol.

7.2 The Committee notes the author's claim under article 7 of the Covenant that the use of force by the police officers against her son amounted to cruel and inhuman treatment, in violation of article 7 of the Covenant. The Committee reiterates its standing approach that it is normally up to the domestic authorities and courts to evaluate facts and the evidence in a particular case. The Committee will not re-evaluate an assessment done by the domestic authorities, unless it can be shown that such an assessment was clearly arbitrary or amounted to a manifest error or denial of justice.[10] The Committee notes, from the information available to it on file, that the Svyetlahorsk District Court, in its decision of 24 October 2013, requested the Svyetlahorsk District Investigative Committee to clarify whether the force used by the police officers against Mr. Akulich was necessary. The Committee notes that the latest decision, of 26 November 2015, not to open a criminal investigation concluded, in general terms, that the use of force against Mr. Akulich by police officers was in response to his aggressive behaviour and was in compliance with the domestic legislation on the use of force by the police. The Committee notes, however, that domestic authorities failed to examine and assess in detail whether the use of force was necessary or even proportionate in the circumstances of the case, concerning a person who, when apprehended, was in a visibly inebriated state and who later started to hallucinate. In these circumstances, the Committee will conduct its own assessment of the case.

7.3 The Committee notes from the statements of the police officers that they were aware that Mr. Akulich was in detention because of alcohol abuse. They testified that they recognized symptoms of alcohol withdrawal psychosis when he started to behave erratically in his cell on 25 May 2012. When his cellmates complained, the police officers started monitoring him by video. It appears from the information before the Committee that Mr. Akulich was not threatening his cellmates by his behaviour, even if he was bothering them. The police officers took him out of his cell allegedly to assess his physical and mental state and the need for medical assistance and to verify that he was not feigning his symptoms. It is only after he was removed from the cell that he started to behave aggressively. The Committee considers that, even if the police officers could not assess the seriousness of his symptoms, they could understand that Mr. Akulich was not feeling well. They also knew that he was scared, having observed him hallucinating and trying to hide in the corners of his cell. It is unclear from the police officers' testimonies whether they tried to gather more information about the state of Mr. Akulich from his cellmates when they complained. The Committee notes the statement of one of the cellmates of Mr. Akulich, who testified that, when Mr. Akulich started acting scared, he had been able to calm him down by talking to him until he fell sleep.

7.4 The Committee also notes that, as soon as Mr. Akulich started resisting when taken out of the cell, the police officers hit him several times with rubber batons, in order to calm him down. The Committee observes that the first reaction of police officers when confronted with resistance by Mr. Akulich was to apply force. The Committee notes that Mr. Akulich was under the full control of the police officers, who were fully aware about his mental state, as well as about the fact that he was unarmed and not dangerous. There is no information in the documents on file that the violence exerted against Mr. Akulich calmed him. It seems, on

[10] Mutatis mutandis, *K. v. Denmark* (CCPR/C/114/D/2393/2014), paras. 7.4 and 7.5; *Z.H. et al. v. Denmark* (CCPR/C/119/D/2602/2015), para. 7.4; *M.Z.B.M. v. Denmark* (CCPR/C/119/D/2593/2015), para. 7.3; and *Abdiev v. Kazakhstan* (CCPR/C/137/D/2618/2015), para. 7.6.

the contrary, that the violence further increased his resistance and worsened his mental state. However, later, when the police officers removed his handcuffs and Mr. Akulich ran into the corridor, they beat him again.

7.5 From the information available to it, and in absence of any information of substance from the State party, the Committee concludes that, by beating Mr. Akulich while he was defenceless, unarmed and vulnerable in a precarious mental condition, the police officers' actions were unnecessary and disproportionate, even if permitted by law. The Committee therefore finds that the police actions amounted to treatment contrary to article 7 of the Covenant.

7.6 The Committee notes the author's claim that article 7 of the Covenant was also violated by the failure of the police officers to call an ambulance to provide medical assistance to her son in a timely manner. The Committee notes that the police officers acknowledged that they had recognized signs of alcohol withdrawal psychosis in the behaviour of Mr. Akulich. Instead of calling an ambulance while he was still in the cell, they attempted to take him out and encountered resistance. However, they insisted on taking him to the interrogation room. According to the police officers, dealing with this behaviour, taking him to the interrogation room and restraining him delayed for some 30 minutes the calling of an ambulance. In these circumstances, the Committee notes that the police officers, who had monitored Mr. Akulich over video camera and had reasons to suspect that he could be suffering from alcohol withdrawal psychosis, failed to act promptly and provide him with necessary medical assistance, thus extending his suffering. The Committee therefore finds that failure of the police officers to call an ambulance in a timely manner amounted to treatment contrary to article 7 of the Covenant.

7.7 Finally, the Committee notes the author's claims that the investigation of her complaints regarding the use of force by the police officers and their failure to provide timely medical assistance to her son was not effective. The Committee recalls that, once a complaint about ill-treatment contrary to article 7 has been filed, a State party must investigate it promptly and impartially so as to make the remedy effective.[11] In the present case, the information in the file indicates that the first medical-forensic examination was initiated at the instigation of the investigative authorities on the day of Mr. Akulich's death (26 May 2012) (see para. 2.2. above). Within a month, on 26 June 2012, the Svyetlahorsk District Investigative Committee had carried out a preliminary inquiry and refused to initiate a criminal investigation. The Committee notes that, although started promptly, the investigation did not address the author's substantive claims of whether the use of force by the police officers had been necessary or proportionate and whether, in view of his mental and physical state, an ambulance should have been called earlier. The Committee notes that, some three years later, with numerous decisions not to open a criminal investigation and several court requests for additional investigation, the Investigative Committee summarily concluded that the police officers had used force in reaction to the aggressive behaviour of Mr. Akulich and in accordance with domestic legislation and that they had called an ambulance as soon as was possible in the circumstances. The limitation of the procedure to only preliminary inquiry, without the opening of a criminal investigation, deprived the author of any procedural rights as a victim: she could not attend an in-person questioning of the witnesses, the witnesses were not subject to criminal liability for providing false statements and there was no investigative experiment or on-site testimony verification. In this light, the Committee concludes that there has been no effective investigation of the author's claims by the domestic authorities. The Committee thus finds that there has been a violation of article 7, read in conjunction with article 2 (3), of the Covenant.

8. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts before it disclose a violation by the State party of article 7, read alone and in conjunction with article 2 (3), of the Covenant.

[11] *Neporozhnev v. Russian Federation* (CCPR/C/116/D/1941/2010), para. 8.4; *Khalmamatov v. Kyrgyzstan* (CCPR/C/128/D/2384/2014), para. 6.4; *Kurmanbekov v. Kyrgyzstan* (CCPR/C/137/D/2723/2016), para. 9.4; and *Voronkov v. Russian Federation* (CCPR/C/136/D/2951/2017), para. 10.4.

9. 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 to conduct a prompt, independent and impartial criminal investigation into the author's allegations with regard to her son's treatment and, if the allegations are confirmed, have the persons responsible prosecuted, and to provide the author with adequate compensation for the violation of her son's rights. The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future.

10. On becoming a party to the Optional Protocol, the State party recognized the competence of the Committee to determine whether there has been a violation of the Covenant. The present communication was submitted for consideration before the State party's denunciation of the Optional Protocol became effective, on 8 February 2023. In accordance with article 12 (2) of the Optional Protocol and the Committee's previous case law, the State party continues to be subject to the application of the Optional Protocol in respect of the present communication.[12] Since, 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 and enforceable 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 to have them widely disseminated in the official languages of the State party.

[12] For example, *Sextus v. Trinidad and Tobago*, para. 10; *Lobban v. Jamaica*, para. 11; and *Shchiryakova et al. v. Belarus*.

Annex

Individual opinion (partially dissenting) by Committee member Hélène Tigroudja

1. I fully concur with the conclusion of violation of both article 7 of the Covenant (prohibition of ill-treatment) and article 2 (3) (access to effective remedies) reached by the Committee in the present communication. As clearly stated in paragraphs 7.5, 7.6 and 7.7, the excessive and unnecessary use of force against a defenceless, unarmed and vulnerable person in a precarious mental condition, the failure of the police officers to call an ambulance in a timely manner and the lack of effective investigation met the threshold for concluding that there had been a violation of the Covenant.

2. However, I consider that the Committee fell short in failing to assess the directly connected allegation of the right to life under article 6 of the Covenant. I admit that the author did not expressly raise a claim under this provision. Nevertheless, as clearly mentioned in paragraph 3.1, the author claimed that the failure of the police officers to call for an ambulance while – according to the author – they were well aware that her son was suffering from alcohol withdrawal syndrome, "ultimately resulted in his death". This claim should have led to the Committee applying more flexibility in considering the scope of the claims before it.

3. Quite oddly, and without further explanation, the Committee applied a certain amount of discretion and flexibility regarding the claim under the lack of effective remedies (arts. 2 and 3 of the Covenant), which was also not clearly spelled out by the author. Indeed, in paragraph 6.4, the Committee affirmed that:

> "In view of the fact that the author is not represented by counsel, the Committee considers that the claims should be formulated as a violation of article 7, read alone and in conjunction with article 2 (3), of the Covenant.

4. In my opinion, the same justification should have amounted to the examination of the claim of violation of the right to life (article 6 of the Covenant) raised in substance by the author. This was even more important in a context such as that explicitly elaborated upon by the Committee in paragraph 25 of its general comment No. 36 (2018) on the right to life, namely that States have a heightened duty of care with regard to persons deprived of liberty, including persons with drug and alcohol use disorder. This was recently reaffirmed by the Office of the United Nations High Commissioner for Human Rights in its report on human rights challenges in addressing and countering all aspects of the world drug problem.[1] In the same vein, the European Court of Human Rights has affirmed the State's positive obligation to protect the right to life of a person with drug use disorder while in custody.[2]

5. In the present case, it is accepted by the Committee that the police officers knew about the health condition of Mr. Akulich. In paragraph 7.6, it is noted indeed that:

> The police officers acknowledged that they had recognized signs of alcohol withdrawal psychosis in the behaviour of Mr. Akulich. Instead of calling an ambulance while he was still in the cell, they attempted to take him out and encountered resistance. However, they insisted on taking him to the interrogation room.

6. It could be argued that there is no causal link between the failure to call an ambulance in a timely manner and the death of Mr. Akulich. However, this argument is not relevant, nor convincing when dealing with the State's positive obligation to protect the right to life of a person suffering from a withdrawal syndrome and described by the Committee itself as vulnerable and in a precarious mental condition. In the light of the Committee's general comment No. 36 (2018), the lack of due diligence by the police authorities, while they were

[1] A/HRC/54/53.

[2] *Ainis and others v. Italy*, Application No. 2264/12, Judgment, 14 September 2023, paras. 53 ff.

fully aware of the son's precarious condition, amounted not only to a violation of the prohibition of ill-treatment but also of the State's duty to protect the right to life of persons in its custody. I regret that the Committee decided not to extend its discretionary power to include not only article 2 (3) in its review but also, and more importantly, such a significant right as the right to life.

7. In the light of the circumstances of the facts, it is clear to me that the failures of the Belarusian authorities should have led to a conclusion of a violation of articles 6 and 7, read alone and in conjunction with articles 2 and 3, of the Covenant.