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International Covenant on Civil and Political Rights

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Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2758/2016*, **

Communication submitted by:	Olga Litkevich (represented by counsel, Katerina Vanslova, of Komitet protiv pytok)
Alleged victims:	The author and Sergei Litkevich
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 custody 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) and 7
Articles of the Optional Protocol:	2 and 5 (2) (b)

1.1 The author of the communication is Olga Litkevich, a national of the Russian Federation, who submits the communication on her own behalf and on behalf of her son, Sergei Litkevich, also a national of the Russian Federation, who died in 2004. She claims that the State party has violated her rights under article 7, read alone and in conjunction with article 2 (3), of the Covenant and 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 State party 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 the merits. On 5 September 2016, pursuant to rule 93 of its rules of procedure,

* Adopted by the Committee at its 134th session (28 February–25 March 2022).

** The following members of the Committee participated in the examination of the communication: Wafaa Ashraf Moharram Bassim, Yadh Ben Achour, Arif Bulkan, Mahjoub El Haiba, Furuya Shuichi, Carlos Gómez Martínez, Marcia V.J. Kran, Photini Pazartzis, Hernán Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Soh Changrok, Kobauyah Tchamdja Kpatcha, Hélène Tigroudja, Imeru Tamerat Yigezu and Gentian Zyberi.

the Committee, acting through its Special Rapporteurs on new communications and interim measures, decided to examine the admissibility of the communication together with its merits.

Facts as presented by the author

2.1 On 7 September 2004, at around 1 a.m., Mr. Litkevich was driving his car in the city of Orsk. Several of his friends were with him in the car. At some point, the traffic police ordered him to stop, but he continued driving. A police car started chasing his car. On Startovaya Street, his car collided with a roadside barrier and came to a stop, since one of the rear tyres had been damaged. One of the police officers approached the car, grabbed Mr. Litkevich and forced him out of it and into the police car.

2.2 Mr. Litkevich was then arrested for driving under the influence of alcohol. He did not resist arrest. He was taken to a drug treatment centre to verify his blood alcohol level. During the examination, according to witnesses, Mr. Litkevich 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 with a moderate level of alcohol intoxication and prescribed his transfer to a sobering-up station. The traffic police officers took him to the station, in the same city, 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 arrived at the sobering-up station to pick him up. Upon the suggestion of the station duty officer, they went to the room where he had been placed and tried to wake him, unsuccessfully. They noticed dried blood under his nose and on his shirt. After the station paramedic also failed to wake him, the author's son was taken to City Hospital No. 1 of Orsk by ambulance. However, despite identifying signs of head and brain injuries, the doctors refused to admit him. The author's son had to be taken to the neurosurgery department of City Hospital No. 2, where he underwent a craniotomy.[1]

2.4 Mr. Litkevich died, without regaining consciousness, at 6.30 p.m. on 8 September 2004. A medical certificate, dated 8 September 2004 and issued by City Hospital No. 2, states that, when he was admitted on 7 September 2004, Mr. Litkevich had severe head injuries.

2.5 A post-mortem forensic examination was initiated immediately after the death. As a result, the forensic expert issued a report, No. 1093, dated 27 January 2005.[2] It was concluded in the report that Mr. Litkevich had died as a result of serious injuries to his head, including fractures and contusions. The injuries must have been caused by a blunt object not long before Mr. Litkevich had been admitted to the hospital. It was concluded in the report that the injuries had caused serious damage to Mr. Litkevich's health and that his death had been a direct consequence of those injuries.

2.6 On 17 February 2005, the same forensic expert issued an additional forensic report. In that report, which was prepared at the request of the prosecutor's office, it was concluded that the injuries that Mr. Litkevich had suffered could have been caused by falling. The expert stated that the injuries could have been sustained prior to the night of 6 to 7 September 2004. The expert noted that it was possible that Mr. Litkevich would have been able to perform some activities, including talking, after sustaining the injuries. In a different report, dated 3 November 2004, another expert concluded that the injuries had been caused by the application of "significant force", which could have been achieved by using "additional acceleration", and that it was "unlikely" that the injuries had been caused by falling. The two forensic reports were thus somewhat contradictory in their findings. In another report, No. 141, relating to an expert examination conducted in January 2006 by a third expert, it was concluded that the injuries caused to Mr. Litkevich would have prevented him from doing anything, including talking. It was concluded in that report that the injuries could not have been caused by falling.

[1] A copy of a document relating to the procedure has been provided, as have copies all other supporting medical certificates, complaints, court decisions, etc.

[2] A copy of report No. 1093, and reports of other forensic examinations, have been provided by the author. Report No. 1093 indicates that the examination began on 10 September 2004 and was completed on 27 January 2005.

2.7 On 13 September 2004, the author requested the prosecutor's office for Orsk to initiate a criminal investigation into her son's death. After six refusals, a criminal investigation was eventually opened on 19 May 2005. From 2005 until the submission of the author's complaint to the Committee, the investigation was suspended 18 times. The author was on many occasions not informed about the progress of the investigation. Despite her numerous successful appeals to the courts, which ordered the resumption of the investigation and concluded that there had been a lack of action by the investigators and a lack of oversight of the progress of the preliminary examination, 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 Mr. Litkevich's death, even though multiple witnesses, including traffic police officers, a doctor at the drug treatment centre, an ambulance doctor and paramedics at the sobering-up station, all testified that the author's son had not had any injuries when he had been brought to the station. According to post-mortem forensic report No. 1093, however, there were 11 injuries on Mr. Litkevich's body at the time of the examination. Witnesses who had been present in Mr. Litkevich's car testified that, when his car had come to a stop, he had not injured himself, as the impact with the roadside barrier had not been very strong.

2.9 The author claims that the lack of a proper investigation by the prosecutor's office, in the more than 10 years since her son's death, and despite all the court decisions in her favour, renders all domestic remedies ineffective.

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 a lack of effective investigation. The State party is responsible for the safety and security of persons whom it holds in detention. All the evidence points to the fact that her son was injured, and died because of his injuries, while in the custody of government authorities, and that they did not properly investigate.

3.2 The author requested an investigation days after her son's death, on 13 September 2004. The investigators of the prosecutor's office for Oktyabrsky District of Orsk issued six decisions refusing to initiate a criminal investigation. Eventually, on 19 May 2005, the investigation was launched and, in that decision, the investigators stated that there was sufficient evidence of a crime under article 111 (4) of the Criminal Code of the Russian Federation. This means that, for eight months, the investigators intentionally avoided initiating an investigation. After the investigation was launched, it was suspended 18 times.

3.3 The author claims that there were significant discrepancies in the investigations into the circumstances of her son's death. For example, in his decision of 19 February 2005 refusing to initiate a criminal investigation, the investigator referred to a forensic report that had not yet been issued, dated 24 February 2005. In another refusal to initiate an investigation, dated 22 September 2004, the investigator referred to the testimony of a witness who did not actually testify until 18 October 2004. These and other discrepancies were confirmed, but, as a result, the investigator was given only a reprimand.

3.4 The author claims that her own rights under article 7, read alone and in conjunction with article 2 (3), of the Covenant have been violated, since, more than 10 years since her son's death,[3] the investigation has done nothing to clarify for her the circumstances of her son's death. The author also claims that she has victim status, along with her son, as she suffered inhuman treatment contrary to article 7 of the Covenant, due to the refusal by the State party's authorities to conduct a timely and effective investigation and to prosecute those responsible for her son's death. The author submits that, due to her son's death in circumstances that have not been investigated, and the fact that the reasons for his death have

[3] From the moment of her son's death until the submission of her complaint to the Committee, the author regularly submitted complaints to the State party's authorities, both the courts and the prosecutor's office.

not been identified, she has experienced stress and suffering, in particular because she was emotionally very close to her son.

3.5 In addition to a direct violation of article 7 of the Covenant, the author claims that the State party has violated her rights to an effective investigation, which should have resulted in the prosecution of those who caused her son's death. The author also claims that she could not file a civil lawsuit, as such lawsuits are tied to the outcome of the criminal investigation. If a person is found guilty of a crime, the victims of the crime have the right to file a civil lawsuit against that person. She asks the Committee to find a violation of the Covenant and to urge the State party to pay her fair compensation for her 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 argues that the author's complaint should be considered inadmissible under article 2 of the Optional Protocol.

4.2 In accordance with article 389.1 (1) of the Code of Criminal Procedure of the Russian Federation, first instance court decisions that have not entered into force can be appealed by the convicted or acquitted person, his or her defence lawyers or legal representatives, a prosecutor, a victim and other persons. In accordance with article 401.2 (1) of the Code, a court decision that has entered into force can be appealed to a cassation court by the convicted person or his or her legal representatives or defence lawyers. Article 401.2 (2) of the Code foresees that a convicted person or his or her legal representatives or lawyers can file a cassation appeal with various bodies.

4.3 The effectiveness of cassation appeals has been noted by the European Court of Human Rights, in its decision of 12 May 2015 in *Abramyan and Others v. Russia*,[4] in which the cassation procedure in civil cases was recognized as an effective remedy that needed to be exhausted. The Court's position should be considered by the Committee when considering the effectiveness of domestic procedures. The Committee on the Elimination of Discrimination against Women took a similar approach in its decision in *Medvedeva v. Russian Federation*.[5]

4.4 Statistical data also support the effectiveness of cassation procedures. According to the review of judicial data, the Supreme Court of the Russian Federation considered 64,799 cassation appeals in economic, administrative, civil and criminal cases. In 654 of those cases, it was decided that the appeal should be heard in a cassation court. The cassation courts considered appeals in 240 criminal cases, and 226 of them were upheld.

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

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

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 the admissibility of the complaint. The author claims that she does not have to exhaust domestic remedies that are ineffective, as they lack any prospect of success. The investigative bodies have delayed action on her requests and have done nothing to move the investigation forward. The prosecutor's office for Oktyabrsky District refused to launch an investigation six times and, once the criminal investigation had eventually been started, it was suspended

[4] Applications No. 38951/13 and No. 59611/13.
[5] CEDAW/C/63/D/60/2013.

19 times[6] under article 208 (1) of the Code of Criminal Procedure, as no person against whom charges could be brought could be identified.

5.2 The author filed numerous complaints with the courts. On the basis of her complaints, three of the decisions to suspend the criminal investigation were found to be unlawful. The author therefore does not have any real opportunity to exhaust domestic remedies. Ten years have passed since the criminal investigation was initiated, with no results. Moreover, the author was not informed about many of the decisions to suspend the investigation and therefore could not appeal these decisions to the courts. The author submits that, due to these delays and her inability to exhaust domestic remedies, she is facing a continuing violation of her rights. This was confirmed by several court decisions in which the decisions of the investigators were found to be unlawful and which in each case led to another resumption of the investigation, followed by another suspension.

5.3 On 7 July 2009, the deputy chief of the investigation department for Orsk informed the author's lawyer that it was not possible to consult the criminal case file. On 21 July 2009, following an appeal submitted by the author's lawyer, Oktyabrsky District Court found the decision of the deputy chief of the investigation department to be unlawful and ordered the investigation department to rectify the mistakes that had been identified. On 24 November 2015, Oktyabrsky District Court found that the "inaction" of the chief and deputy chief of the investigation department had been unlawful. According to this decision, the person who had been intended to serve as the lead investigator had been sent to another investigation department, and the investigation had not been carried out. The authorities, according to the Court, had not provided any explanation to justify the delay.

5.4 The so-called extensions of the preliminary examination were arbitrary decisions taken by the investigation department. The author's lawyer challenged the extension decisions dated 12 April 2006, 30 May 2006, 18 July 2006, 18 September 2006, 2 November 2006, 11 May 2007, 9 July 2007, 11 September 2009, 13 November 2009 and 27 April 2010. On 2 September 2011, Oktyabrsky District Court issued another decision in which it sided with the author's lawyer and ordered the investigation department to rectify the violations that had been identified.

5.5 On the basis of the above, the author asks the Committee to consider her claims to be admissible, to find violations of her rights and to request the State party to pay fair compensation for the violations that she has suffered.

State party's observations on the merits

6.1 On 10 January 2017, the State party provided its observations on the merits of the communication. The prosecutor's office for Oktyabrsky District initiated a preliminary examination, in accordance with articles 144 and 145 of the Code of Criminal Procedure, into the circumstances of the death of Mr. Litkevich. On several occasions, those proceedings were discontinued, and these discontinuance decisions, in turn, were annulled due to incomplete verification of the facts. On 19 May 2005, the investigator opened a criminal case based on article 111 (4) of the Criminal Code. No suspects were identified in the investigation.

6.2 On 29 April 2016, the chief of the investigation department for Orsk ordered the annulment of the decision dated 23 December 2015 to suspend the preliminary examination. On 4 June 2016, this examination was discontinued. On 14 June 2016, this discontinuance decision was in turn annulled, so that some of the findings of the forensic experts could be clarified. During the preliminary examination, it was found that, on 6 September 2004, Mr. Litkevich had been drinking alcohol with his friends. While they were drinking, no arguments or fights had taken place, as confirmed by two friends of Mr. Litkevich who had been present.

6.3 While intoxicated, Mr. Litkevich drove his vehicle with approximately 10 people inside. Two traffic police officers attempted to stop the car, but Mr. Litkevich did not obey their orders and attempted to flee. At around 1 a.m. on 7 September 2004, Mr. Litkevich collided with a roadside barrier and was detained by the police. During the accident,

[6] In her initial submission, the author mentions 18 suspensions.

Mr. Litkevich did not sustain any injuries. During his arrest, the traffic police officers did not injure Mr. Litkevich, as confirmed by several witnesses, including his two friends who had confirmed that no arguments or fights had taken place (see para. 6.2 above). Subsequently, Mr. Litkevich was brought to a drug treatment centre in Orsk, where a police officer started recording an administrative offence. Mr. Litkevich was seated on a bench. At some point, Mr. Litkevich fell asleep and fell from the bench. This fact was explicitly confirmed by the police officer in question. The medical personnel of the drug treatment centre found Mr. Litkevich unconscious, on the floor. An ambulance was called, and the ambulance doctors assisted Mr. Litkevich. According to the witnesses at the centre, Mr. Litkevich did not suffer any injuries while there.

6.4 From the drug treatment centre, Mr. Litkevich was taken to the sobering-up station. Mr. Litkevich was placed in the same room as a man who later testified during questioning by the police that he had not witnessed any of the workers of the sobering-up station causing any injuries to Mr. Litkevich. On 7 September 2004, when the workers of the station found that they could not wake Mr. Litkevich, they called an ambulance, and he was transported and admitted to City Hospital No. 2, where he died at 6.30 p.m. on 8 September 2004. On 21 October 2005, the forensic experts concluded that Mr. Litkevich had sustained a head injury that could have been caused by contact with a wide area, such as a floor, but not a limited area, such as a fist, a foot or a resin baton or other object. The experts also concluded that Mr. Litkevich's head had been moving at the moment of impact. The State party submits that such injuries are common among those who fall, and the fact that Mr. Litkevich fell was confirmed by the police officer who had been present. The experts noted that Mr. Litkevich could have caused the injuries himself, when he fell from the bench. As a result, it was concluded during the preliminary examination that Mr. Litkevich's death had been caused by his own negligence while intoxicated.

6.5 In July 2015, the author's lawyer filed a complaint with Oktyabrsky District Court, claiming unlawful inaction on the part of the investigators, who had refused to provide the author with access to the contents of the criminal case file. On 17 July 2015, the Court found that the inaction of the chief of the investigation department for Orsk had indeed been unlawful and ordered that the violations be rectified. The author's lawyer complained to the investigation department for Orenburg Province, where Orsk is located, claiming that, by not following the orders of Oktyabrsky District Court, the investigators had committed a crime, under article 315 of the Criminal Code, concerning 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 was informed that the complaint would not be registered and would not lead to an investigation, since it was based on an assumption that an official had committed a crime.

6.6 The author's lawyer appealed this decision to Leninsky District Court in Orsk. On 25 December 2015, the Court refused to accept the appeal for "lack of substantiation". The author's lawyer's subsequent appeal was rejected, on 30 March 2016. The courts decided that there was no evidence that the officials had "maliciously" avoided enforcing court orders. The courts did not consider these claims on the substance and, therefore, the author and her lawyer did not suffer any violations of their right of access to justice.

6.7 There have been no violations of the provisions of the Code of Criminal Procedure that would warrant a reversal of this earlier decision. On the basis of all the above, the State party contends that there have been no violations of the provisions of the Covenant in respect of Mr. Litkevich.

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

7.1 In her comments of 17 March 2017, the author submits that it was concluded in the forensic report dated 21 October 2005 that a brain injury involving an injury to the bone structure of the skull leads to unconsciousness and an inability to act independently. The experts who prepared that report were also asked whether Mr. Litkevich's injuries could have been caused prior to his detention, for example, several days before. The forensic experts responded that the brain injuries identified had been caused shortly before admission to the hospital and that the severity of the injuries indicated that they could not have been caused during the day on 6 September 2004 or in the preceding days. During all the years of

investigation, the authorities failed to provide a satisfactory and convincing explanation of the reasons for the death of Mr. Litkevich. The State party failed to provide such explanations in its response to the author's complaint to the Committee.

7.2 The State party refers to the fact that the death of Mr. Litkevich occurred due to his own negligence while intoxicated, as confirmed by the traffic police officer's testimony. Indeed, this police officer, along with several witnesses who had been present at the drug treatment centre, confirmed that Mr. Litkevich had not had any injuries when he had been admitted. Subsequently, however, Mr. Litkevich had been taken to the hospital while in coma, and 11 injuries were identified in post-mortem forensic examination report No. 1093 (see para. 2.8 above).

7.3 The author submits that the report of the traffic police officer, dated 15 September 2004, states that Mr. Litkevich was brought to the drug treatment centre and fell asleep on a bench. The personnel of the centre called an ambulance, and ambulance doctors confirmed that Mr. Litkevich was drunk but otherwise in good health. In his report dated 8 September 2004, the same officer indicated that Mr. Litkevich had been taken for an examination, had not felt well and had fallen from a bench. An ambulance had been called, according to this report, and the ambulance doctors had told the officer that Mr. Litkevich was heavily intoxicated and should be taken to a sobering-up station, which was what the officers did. In a report dated 23 September 2004, another police officer stated that Mr. Litkevich had been intoxicated and had laid down and fallen asleep on a bench. This officer and a doctor had attempted to wake him, unsuccessfully. At that point, they had decided to call an ambulance. In another report by the same officer, dated 12 November 2004, it was stated that, during the medical examination, Mr. Litkevich had fallen asleep on a bench in the hallway. The officers had attempted to wake him, without success, and had decided to call an ambulance, which had arrived after five minutes. The doctor diagnosed heavy alcohol intoxication and requested that Mr. Litkevich be taken to a sobering-up station.

7.4 On 7 February 2005, representatives of the author spoke to the doctor at the drug treatment centre, who stated that he had seen Mr. Litkevich while he had been heavily intoxicated on the night in question. After the medical examination, Mr. Litkevich had fallen from the chair and started vomiting. An ambulance had been called, and the doctors had stated that he had simply been drunk and should be placed in a sobering-up station. An ambulance doctor who was questioned by the representatives of the author stated that his team had been called to the drug treatment centre, where they had seen a young adult on the floor. The doctor had examined him but had not seen any bodily injuries. He had been absolutely confident that there were no head injuries and had made a note to that effect. He had informed the personnel of the centre that he was unhappy that they had called an ambulance for such a "small matter". He had witnessed two traffic police officers taking Mr. Litkevich to the sobering-up station. Both doctors gave the same testimony to the investigator from the prosecutor's office.

7.5 A paramedic testified that he had also been on call on the night in question and that, when had he picked Mr. Litkevich up from the floor, he had not seen any injuries. Another paramedic who worked at the sobering-up station testified that she had examined Mr. Litkevich when he had been brought in but had not seen any injuries to his head. Two other employees of the station had helped Mr. Litkevich to remove his clothing and had put him to bed, where he had slept.

7.6 The author submits that, according to the Committee's long-standing jurisprudence, the State party is responsible for any person in its detention and, when such a person is injured, the State party must provide evidence to counter claims made against it.[7] Mr. Litkevich received 11 bodily injuries while in a State-owned facility (see para. 2.8 above), and the State party provided an inadequate explanation, namely, that the injuries had been caused by Mr. Litkevich falling.

7.7 Regarding the procedural issues, the author explains that, on 25 December 2015, her complaint was rejected by Leninsky District Court. The author submitted an appeal to

[7] The author refers to *Siragev v. Uzbekistan* (CCPR/C/85/D/907/2000), *Zheikov v. Russian Federation* (CCPR/C/86/D/889/1999) and *Eshonov v. Uzbekistan* (CCPR/C/99/D/1225/2003).

Orenburg Provincial Court, which was also rejected, on 30 March 2016. On 23 August 2016, the same Court refused to consider the author's claim under the cassation procedure. The process by which these decisions were adopted involved significant violations of the provisions of the Code of Criminal Procedure. The first instance court did not inform the author about the time and place of the hearing. Concerning the complaint of a crime, which was submitted by the author's lawyer, the Court did not order an investigation and found it to be a request for information. Due to significant delays in the investigation, the author does not have any other avenues through which to complain.

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

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 rule 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 failed to file a second instance appeal, or a cassation appeal, against the decisions of Oktyabrsky District Court dated 15 April 2015 and 24 November 2015. The State party claims that the author did not file a cassation or supervisory appeal against the decision of Oktyabrsky District Court of 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, that the investigation by the prosecutor's office has been ineffective, without any result, and that the investigation has been ongoing since 2004. The Committee notes that, in 2005 alone, the author filed numerous complaints, such as on 11 February, 5 March, 3 May and 3 June and twice on 13 July. The Committee notes that, following court decisions in the author's favour, the investigation would resume, only to be postponed. Under these circumstances, the Committee considers that domestic remedies have been unreasonably prolonged.[8] The Committee accordingly finds that it is not precluded by article 5 (2) (b) of the Optional Protocol from considering the communication.

8.4 The Committee considers that the author's claims, which raise issues under article 6 (1), read alone and in conjunction with article 2 (3), of the Covenant in respect of her son, and article 7, read alone and in conjunction with article 2 (3), of the Covenant, in respect of the author herself, have been sufficiently substantiated for the purposes of admissibility and proceeds with its examination of 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 and was taken to a drug treatment centre and, subsequently, to a sobering-up station and that, while in the custody of the State party's authorities, he sustained injuries to his head. The Committee also notes that, from the sobering-up station, Mr. Litkevich was taken to a hospital, where he died following surgery to treat his head injuries. The Committee further notes that several forensic medical examinations were performed. One of the examinations,

[8] See, inter alia, *Marcellana and Gumanoy v. Philippines* (CCPR/C/94/D/1560/2007), para. 6.2; *Rajapakse v. Sri Lanka* (CCPR/C/87/D/1250/2004), paras. 6.1 and 6.2; and *Bousroual v. Algeria* (CCPR/C/86/D/992/2001), para. 8.3.

as documented in report No. 1093, dated 27 January 2005, was initiated, according to the report, on 10 September 2004, that is, immediately after Mr. Litkevich's death. The report set out several findings, such as identifying the injuries that were the cause of death and concluding that it was unlikely that Mr. Litkevich had died by falling. The Committee notes that the State party confirmed the findings of this report, in which 11 injuries were identified on Mr. Litkevich's body. The Committee also notes that another forensic report, dated 17 February 2005, indicated that Mr. Litkevich could have died by falling. In another expert report, No. 141, relating to an examination conducted in January 2006, it was concluded that the injuries could not 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 – police officers and the victim's friends and cellmates – who stated that Mr. Litkevich had not had any injuries before being brought to 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 by or held in the custody of the State party's authorities. The Committee recalls its jurisprudence, including its general comment No. 36 (2018), according to which States parties, by arresting and detaining individuals, take responsibility to care for their life (para. 29),[9] 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.[10] The Committee also recalls its general comment No. 31 (2004), in which it states that, where investigations reveal violations of certain Covenant rights, such as those protected under article 6, States parties must ensure that those responsible are brought to justice (para. 18). Although the obligation to bring to justice those responsible for a violation of article 6 is an obligation of means, not of result,[11] 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 made against them and their authorities.

9.4 The Committee recalls that the burden of proof concerning factual questions cannot rest exclusively with 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.[12] In that regard, the Committee notes that the author's lawyer was denied access to the contents of the criminal case file, which was found by the courts to be unlawful (see para. 6.5 above). The Committee also notes that, in addition to being started eight months after the events in question, the criminal investigation was later suspended 18 times, despite the time-sensitive nature of the case.

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 (see para 3.1 above), the facts as submitted reveal a violation by the State party of article 6 (1), read alone and in conjunction with article 2 (3), of the Covenant in respect of the rights of Mr. Litkevich.

9.6 The Committee notes the author's claims that the lack of an effective and conclusive investigation prevented her from knowing the exact circumstances of her son's death, which is a cause of stress and suffering amounting to torture. The Committee observes that, although some 18 years have elapsed since the death of Mr. Litkevich, 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 a person who died in custody, and considers that it amounts to inhuman treatment, in violation of article 7 of the Covenant.[13]

[9] See also *Lantsova v. Russian Federation* (CCPR/C/74/D/763/1997), para. 9.2.

[10] *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* (CCPR/C/120/D/2173/2012), para. 9.3.

[11] *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.

[12] *Lewenhoff and de Bleier v. Uruguay*, communication No. 30/1978, para. 13.3; *Dermit v. Uruguay*, communication No. 84/1981, para. 9.6; and *Boboev v. Tajikistan*, para. 9.4.

[13] See, inter alia, *Magomadova v. Russian Federation* (CCPR/C/125/D/2524/2015), para. 7.7.

9.7 In the light of this conclusion, the Committee decides not to examine the author's claims of a 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 of her son's rights under article 6 (1), read alone and in conjunction with article 2 (3), of the Covenant.

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 to provide the author with adequate compensation for the violations that occurred. The State party is also under an obligation to take steps to prevent similar violations from 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 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 language of the State party.